

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH ALLAHABAD**

Dated: This the 1st day of April 2011

Original Application No. 1551 of 2001
(U/S 19, Administrative Tribunal Act, 1985)

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

1. Hari Ram a/a 41 years (T.No.360) Son of Sri Vishwanath working as Technician Gr-II In the Office of Senior Section Engineer (Maintenance) TRS ER Mughalsarai.
2. Ram Subash (T.No.815) a/a 36 years Son of Late Bandhan working as Tech. Grade II, In the Office of Sr. Selection Engineer (Main) TRS, Eastern Rly, Mughalsarai.
3. Radheyshyam Pal a/a 36 years (T.No.745) Son of Sri Sukhram Pal. Working as Tech. Grade III. In the Office of Sr. Section Engineer (Main.) TRS Eastern Rly, Mughalsarai.
4. Pratap Mandal (Ticket No.453) Son of Sri Thakur Mandal. Working as Tech. Grade-I. In the Office of Sr. Section Engineer (Main) TRS Eastern Railway Mughalsarai.
5. Ram Dhani Ram (Ticket No.552) Son of Shri Samaru Ram. Working as Tech. Grade-II In the Office of Sr. Section Engineer (Main) TRS Eastern Railway Mughalsarai.

..... Applicants

By Adv. : **Shri Pankaj Srivastava**
 Shri Arvind Srivastava
 Shri S.K. Mishra

V E R S U S

1. Union of India, Ministry of Railways through the General Manager, Eastern Railway, Calcutta.
2. The Divisional Railway Manager, ER Mughalsarai.

3. The Senior Divisional Personnel Officer Eastern Railway, Mughalsarai.
4. Ujagar Upadhyaya. Working as Tech. Grade-II. In the Office of Sr. Section Engineer (Main) TRS ER Mughalsarai.
5. Naran Prasad. Working as Tech. Grade-II, In the Office of Sr. Section Engineer (Main) TRS ER Mughalsarai.
6. Shri Prakash Singh. Working as Tech. Grade-II. In the Office of Sr. Section Engineer (Main) TRS ER Mughalsarai.

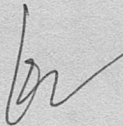
..... Respondents

By Adv. : Shri Prashant Mathur
 Shri D. Awasthi

O R D E R

(Delivered by Hon'ble Dr. K.B.S. Rajan, Member-Judicial)

Notification for 6 vacancies for the post of Junior Engineer Gr. II (Rs 5000 – 8000) was issued on 22-05-2001 (Annexure 2). Written test was held on 18-10-2001 in which the applicant was one among the sixty candidates participated. Two others who appeared were office bearers. These two and one more are stated to have adopted malpractice and were caught red handed. There was a complaint about question papers being from out of syllabus. Inquiry was ordered and the Chairman and Member of the Selecion Board vide Annexure A-2 clearly stated that there was no question paper which was different from other question papers. Result declared on 08-11-2001 but by 13-11-2001 respondent No. 2, without disclosing the reasons, cancelled the examination in toto. Annexure A-1 (impugned) refers. It is



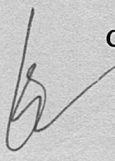
Significant to note that the complaint is not even duly signed.

The so called signatory had denied their signature.

2. Respondents have contested the OA. According to them, cancellation is in respect of all and all have been given an opportunity to participate in the re-examination. Allegation that there had been undue pressure has been denied. Code 219© provides for the format of question paper and the same had not been strictly followed and the inquiry committee had overlooked the same. The decision to hold a fresh examination was arrived at by the DRM in consultation with the Sr. DPO and both the Unions. Applicants cannot take advantage of Paras 217 and 218 of IREM Vol I, which come into play only after full selection is over and the list approved.

3. Private respondents filed their separate counter in which they have justified the action of the respondents in cancelling the examination.

4. The applicants have filed their rejoinder to the two counter affidavits filed by the respondents (official and private) and contended that the respondents have deliberately failed to investigate and inquire into the fact as to whether the alleged complaint is genuine at all.



5. Counsel for the applicant argued that there is absolutely no valid reason to cancel the examination and it is only to appease the union leaders that the cancellation had taken place. Without assigning reason, cancellation has taken place and the respondents try to justify cancellation by providing certain reason which cannot be permitted as per the decision of the Apex Court in M.S. Gill's case. Again, in a recent case of East Coast Railway vs Mahadev Appa Rao (2010 (6) SCALE 432) the Apex Court has criticized whole sale cancellation as unwarranted. Other cases cited and relied upon by the counsel for the applicant are as under:-

- (a) O No. 308 of 1999 decided on 22-09-2002 (Bramhanand Mishra and others vs Union of India and others)
- (b) OA No. 1149 of 1996 decided on 16-09-1997 – Mangla Munda and others vs Union of India and others.
- (c) OA No. 359 of 2001 decided on 21-03-2002 (Prabhat Mohan Saxena vs Union of India and others)

6. On the other hand, counsel for the respondents relied upon the decision in the case of *State of A.P. v. D. Dastagiri (2003) 5 SCC 373* to hammer home the point that when the selection process was not complete, there is no question of vested right. In fact even if select list only remained to be published, that does not advance the case of the respondents for the simple reason that even the candidates who are selected and whose names find place in the select list do not get vested right to claim appointment based on the select list.


7. Arguments were heard and documents perused. There was an interim order restraining the respondents from conducting the examination after cancellation of the earlier examination conducted. The same was continued at intervals and at least on more than one occasion when the OA was dismissed for non prosecution, during the intermediate period the stay did not continue. Each time on restoration, the OA was restored with the earlier status and thus, at the time of final hearing stay was continued. Thus, till now the examination is presumed to have not been conducted.
8. The question that arises for consideration is whether there was any justifiable reason for cancellation of the entire examination. The Senior D.P.O. Mughalsarai, vide his letter dated 13-11-2001 precisely gave the grievance of some that the question paper for the post of JE was completely different from the syllabus. However, the DEE/TRD and TRS were asked to offer their remarks. Both of them have remarked that the question had been set up as per the notification published vide office letter No. EE/TRS/Intermediate Apprentice Mech/MGS/2001 dated 22-05-2001. The matter was put up to the ADRM and after his orders the result has been published on 08-11-2001. So far so good. What is intriguing is the content of the letter dated 13-11-2001, which reads as under:-

"However, in view of the representation given by ERMU Branch No. 2, it is mentioned that E.Railway Men's Congress has also raised the matter. Both the Unions are

consistently repeating for cancellation of the above selection. Their main contention is (a) not enough options have been given (b) questions from General Knowledge, Matriculate etc., have not been asked and (c) questions on sketching, Workshop calculation and Workshop technology has not been asked. "

9. The above letter addressed to DRM on 13-11-2001 had been so fast acted that on the very same day, i.e. 13-11-2001, the DRM had decided to cancel the examination and order for a fresh examination. While the swift action is appreciated that only gives an impression that the same was without even verifying whether the grievances were at all correct. In fact, their grievance was not that question paper was out of portion; their grievance was that questions from certain portions have not been given. Again, when the DEE/TRD and TRS had considered and offered their remarks and the DRM had approved the same and published the result that considered action had been stultified by the knee-jerk action of the DRM.

10. Much has been said about the absence of vested rights of the candidates who have participated in the examination. All the objections of the respondents hold good, subject to only one condition that there is fairness in the decision to cancel the examination for justifiable reason. If the cancellation is arbitrary, without justifiable reason, then there is absolutely no meaning in the respondents' contention that there is no vested right with those who have been selected for their



appointment. In this regards, the latest decision of the Apex court is ***East Coast Railway v. Mahadev Appa Rao***, (2010) 7

SCC 678 wherein the Apex Court has held as under:-

14. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter.

*15. To the same effect is the decision of this Court in **UT of Chandigarh v. Dilbagh Singh**¹⁰ where again this Court reiterated that while a candidate who finds a place in the select list may have no vested right to be appointed to any post, in the absence of any specific rules entitling him to the same, he may still be aggrieved of his non-appointment if the authority concerned acts arbitrarily or in a mala fide manner. That was also a case where the selection process had been cancelled by the Chandigarh Administration upon receipt of complaints about the unfair and injudicious manner in which the select list of candidates for appointment as conductors in CTU was prepared by the Selection Board. An inquiry got conducted into the said complaint proved the allegations made in the complaint to be true. It was in that backdrop that action taken by the Chandigarh Administration was held to be neither discriminatory nor unjustified as the same was duly supported by valid reasons for cancelling what was described by this Court to be as a "dubious selection".*

16. Applying these principles to the case at hand there is no gainsaying that while the candidates who appeared in the typewriting test had no indefeasible or absolute right to seek an appointment, yet the same did not give a licence to the competent authority to cancel the examination and the result thereof in an arbitrary manner. The least which the candidates who were otherwise eligible for appointment and who had appeared in the examination that constituted a step-in-aid of a possible appointment in their favour, were entitled to is to ensure that the selection process was not allowed to be scuttled for mala fide reasons or in an arbitrary manner.

17. It is trite that Article 14 of the Constitution strikes at arbitrariness which is an antithesis of the guarantee

contained in Articles 14 and 16 of the Constitution. Whether or not the cancellation of the typing test was arbitrary is a question which the Court shall have to examine once a challenge is mounted to any such action, no matter the candidates do not have an indefeasible right to claim an appointment against the advertised posts.

11. In the instant case after declaration of result (which was allowed in pursuance of due consideration about the nature of the question) and without proper inquiry before cancellation, the sudden decision to cancel the exam without any inquiry cannot but be branded as arbitrary. The Apex Court in the above case of Mahadev Apparao further went to hold as under:-

26. If a test is cancelled just because some complaints against the same have been made howsoever frivolous, it may lead to a situation where no selection process can be finalised as those who fail to qualify can always make a grievance against the test or its fairness. What is important is that once a complaint or representation is received the competent authority applies its mind to the same and records reasons why in its opinion it is necessary to cancel the examination in the interest of purity of the selection process or with a view to preventing injustice or prejudice to those who have appeared in the same. That is precisely what had happened in Dilbagh Singh case¹⁰. The examination was cancelled upon an inquiry into the allegations of unjust, arbitrary and dubious selection list prepared by the Selection Board in which the allegations were found to be correct.

27. Even in Tarun K. Singh case⁵ relied upon by Mr Malhotra an inquiry into the complaints received against the selection process was conducted no matter after the cancellation of the examination. This Court in that view held that since the selection process was vitiated by procedural and other infirmities cancellation thereof was perfectly justified.


28. That is not, however, the position in the instant case. The order of cancellation passed by the competent authority was not preceded even by a prima facie satisfaction about the correctness of the allegations made by the unsuccessful candidates leave alone an inquiry into the same. The

minimum that was expected of the authority was a due and proper application of mind to the allegations made before it and formulation and recording of reasons in support of the view that the competent authority was taking.

29. There may be cases where an enquiry may be called for into the allegations, but there may also be cases, where even on admitted facts or facts verified from record or an enquiry howsoever summary the same maybe, it is possible for the competent authority to take a decision, that there are good reasons for making the order which the authority eventually makes. But we find it difficult to sustain an order that is neither based on an enquiry nor even a prima facie view taken upon a due and proper application of mind to the relevant facts. Judged by that standard the order of cancellation passed by the competent authority falls short of the legal requirements and was rightly quashed by the High Court.

30. We may hasten to add that while application of mind to the material available to the competent authority is an essential prerequisite for the making of a valid order, that requirement should not be confused with the sufficiency of such material to support any such order. Whether or not the material placed before the competent authority was in the instant case sufficient to justify the decision taken by it, is not in issue before us. That aspect may have assumed importance only if the competent authority was shown to have applied its mind to whatever material was available to it before cancelling the examination. Since application of mind as a threshold requirement for a valid order is conspicuous by its absence, the question whether the decision was reasonable having regard to the material before the authority is rendered academic. Sufficiency or otherwise of the material and so also its admissibility to support a decision the validity whereof is being judicially reviewed may even otherwise depend upon the facts and circumstances of each case. No hard-and-fast rule can be formulated in that regard nor do we propose to do so in this case.

31. So also whether the competent authority ought to have conducted an enquiry into or verification of the allegations before passing an order of cancellation is a matter that would depend upon the facts and circumstances of each case. It may often depend upon the nature, source and credibility of the material placed before the authority. It may also depend upon whether any such exercise is feasible having regard to the nature of the controversy, the constraints of time, effort and expense. But what is absolutely essential is that the authority making the order is alive to the material on the basis of which it purports to take a decision. It cannot act mechanically or under an impulse, for a writ court judicially reviewing any such order cannot countenance the exercise of power vested in a public authority except after due and proper application of




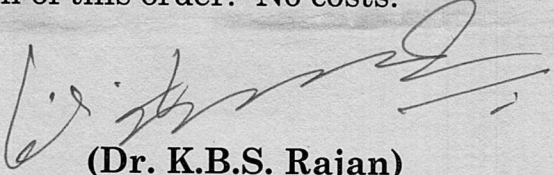
mind. Any other view would amount to condoning a fraud upon such power which the authority exercising the same holds in trust only to be exercised for a legitimate purpose and along settled principles of administrative law.

12. In the instant case also, there has been no application of mind by the DRM when he had decided to cancel the examination. Application of mind was in fact expressed when, on the basis of the remarks of DEE/TRD and TRS the results were pronounced. Hence, the impugned order of cancellation of examination has to be quashed and set aside and action to proceed ahead with the results declared should stare. We accordingly order.

13. In the end, the OA is allowed. The impugned order dated 16-11-2001 is hereby quashed and set aside. Respondents are directed to operate the earlier examination result in making appointment to those who have been found successful in accordance with law.

14. This order shall be complied with, within three months from the date of communication of this order. No costs.


(D.C. Lakha)
Member-A


(Dr. K.B.S. Rajan)
Member-J

Sushil