

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

**OA No.167/2019
With
MA No.172/2019 and 317/2021**

This the 23rd day of August, 2021.

**Coram : Hon'ble Shri Jayesh V.Bhairavia, Member (J)
Hon'ble Dr. A.K.Dubey, Member (A)**

1. Shri Chetram Meena,
Son of Shri Briandra Singh, Age: 25 years.
2. Shri Pradeep Kumar,
Son of Shri Raj Singh, Age: 28 years.
3. Shri Ashish Anand,
Son of Shri Anil Kumar Sinha, Age: 25 years.
4. Shri Lakhan Singh Meena,
Son of Amar Singh Meena, Age: 24 years.
5. Shri Shashi Kumar,
Son of Shri Lakhan Lal Das, Age: 26 years
6. Shri Jitendra Kumar,
Son of Shri Ramesh, Age: 26 years
7. Shri Kailash Chand Meena,
Son of Shri Dagluram Meena, Age: 26 years.
8. Shri Jitendra Narwal,
Son of Shri Ramchandra, Age: 26 years.
9. Shri Ramesh Chand Meena,
Son of Shambhu Dayal Meena, Age: 29 years.
10. Shri Anil Kumar,
Son of Shri Hari Charan, Age: 35 years.
11. Shri Rajesh Paswan,
Son of Shri Shri Shivbalak Paswan, Age: 29 years.
12. Shri Mukesh Kumar Gupta,
Son of Shri Raksha Gupta, Age: 28 years.
13. Shri Vishal Kumar Meena,
Son of Shri Prahlad Singh Meena, Age: 24 years.

14. Shri Randhir Singh,
Son of Shri Sunil Singh, Age: 26 years.
15. Shri MD Ali Hussain,
Son of Shri MD Wazeer Alam, Age: 24 years.
16. Shri Ram Nagina Kumar,
Son of Shri Sitaram Manjhi, Age: 34 years.
17. Shri Atal Bihari Kumar,
Son of Shri Damodar Das, Age: 28 years.
18. Shri Ramesh Kumar. K,
Son of Shri Kashinath Ram, Age: 24 years.
19. Shri Jayesh L. Jadav,
Son of Shri Keshav Lal, Age: 42 years.
20. Shri Mahendra Singh,
Son of Shri Swamideen, Age: 28 years.
21. Shri Abhijeet A. Fulgele,
Son of Shri Arunrao Shriram, Age: 32 years.
22. Shri Ravi. B,
Son of Shri Batukbai, Age: 30 years.
23. Shri Karan Singh Bairwa,
Son of Shri Parmanand, Age: 28 years.
24. Shri Kalu Ram Meena,
Son of Shri Narayan Meena, Age: age: 27 years.
25. Shri Shashi Bhushan Kumar,
Son of Shri Parmanand Prasad, Age: 32 years.
26. Shri Ram Ratan Meena,
Son of Shri Sitamram Meena, Age: 29 years.
27. Shri Sonu khangar,
Son of Shri Ramsinh Khangar, Age: 25 years.
28. Shri Lakshmi Kumar,
Son of Shri Shivram Pd Tanti, Age: 36 years.
29. Shri Pradeep Kumar Chori,
Son of Shri Ramnarayan, Age: 30 years.
30. Shri Brajendra Verma,
Son of Shri Kailash Verma, Age: 30 years.

All are working As P.P.
 Residing at: C/o. Quarter No. T/12/11
 Rajasthan Lakhmachi Railway Station,
 Lolay, Thangadh,
 Dist – Surendranagar – 363 530.

...Applicants

(By Advocate Mr. M. S. Trivedi)

VS

1. Union of India, through
 The Secretary,
 Ministry of Railways,
 Rail Bhavan, New Delhi – 110 001.
2. The General Manager,
 Western Railway,
 Churchgate, Mumbai – 400 020.
3. The Divisional Railway Manager,
 O/o. DRM, Western Railway,
 Rajkot Division,
 Kothi Compound, Rajkot – 364 001.

...Respondents

(By Advocate Mr. M. J. Patel)

O R D E R (ORAL)

Per : Hon'ble Shri J.V. Bhairavia, Member (J)

- 1 The applicants (30 in number) challenging order dated 12.04.2019 (Annexure A/1), passed by Office of DRM, Western Railway (i.e. respondent no.3), cancelling the selection process for the Group ‘C’ TE/Scale Rs.5200-20200 + 2000 (GP)/ Level-3 & ACC/Scale Rs.5200-20200 + 2000 (GP)/ Level-3 against 33.1.3 % ranker quota – Comm. Deptt.-RJT Division have filed a common OA alongwith MA No.172/2019 for permitting them to file Joint Application.
- 2 The applicants while working as Points Person in Group ‘D’ post, the respondents had issued notification No. EC/1025/26/Vol.III dated 21.12.2017 (Annexure A/2), for selection for promotion to Group ‘C’ post TE/Scale Rs.5200-20200 + 2000 GP, Level – 3 and ACC Scale Rs.5200-20200 + GP Level-3 against 33 1/3% rankers quota of commercial department. In response to the said notification, the applicants who fulfilled the eligibility criteria/norms applied for the said promotion post.

2.1 On receipt of applications against the aforesaid notification, a written test was held as part of the selection for the said post on 22.07.2018 and 23.08.2018. The applicants appeared in the said written test. Consequent upon the said written test, the Divisional Office of Rajkot, Western Railway vide memorandum dated 15.10.2018 (Annexure A/3) declared the list of employees who had qualified and considered for record verification. In the said memorandum/list the names of applicants were shown as successful in the written test.

2.2 After due verification of the service record of successful candidates with respect to selection for the post of TE/ACC Level-3, the Divisional Office, Rajkot Western Railway issued a show cause notice dated 31.01.2019 (Annexure A/5) inviting options from the said successful employees/candidates who have carried out their promotion order as P/Man 'A' in 1900 GP Level-2 in terms of instructions of para 4 of HQ/CCG's letter dated 03.10.1991. In response to it the applicants herein had opted for promotion to the post of TE/ACC Level-3 and submitted their unwillingness for promotion to the post of Pointsman/A in Rs.1900/- GP Level-2.

3 After submission of their option to be considered for promotion to Level – 3, the applicants were expecting the select list/panel but they came to know about the Memorandum No.EC/1025/26/Vol. VIII dated 12.04.2019 (Annexure A/1) whereby the respondents had cancelled the selection process issued vide notification dated 21.12.2017. Hence this OA. seeking following prayers:-

“Para 8

(A) *That the Hon'ble Tribunal be pleased to allow this petition.*

(B) *That the Hon'ble Tribunal further be pleased to hold/declare that the impugned ex-facie, illegal, arbitrary, unjust and unconstitutional action/decision and memorandum No.EC/1025/26/Vol. VIII dated 12.04.2019 (Annexure A/1) issued by the respondents regarding cancellation of the selection process issued by the respondents vide notification dated 21.12.2017 for promotion from erstwhile Group 'D'\ to Group 'C'\ post, TE/Scale Rs.5200-20200 + 2000 GP, Level -3 and ACC/Scale Rs 5200-20200 + 2000 GP, Level – 3 against 33 1/3% rankers quota – Commercial Department on alleged administrative reasons.*

(C) *That, the Hon'ble Tribunal further be pleased to direct the respondents to finalise the selection in pursuant to notification dated 21.12.2017 on the basis of the employees who had cleared the*

written test earlier as notified on 15.10.2018 and prepare the select list/panel accordingly.

(D) Such other and further relief/s as may be deemed just and proper in view of the facts and circumstances of the case may be granted."

- 4 Learned counsel Shri M S Trivedi for the applicants, mainly submitted that the applicants herein have been declared successful in selection process for the promotion to post of TE/ACC Level- 3. They had foregone their promotion to Level-2 in GP 1900/- by way of submitting their option as sought for by the respondents vide their show cause notice dated 31.01.2019 (Annexure A/5). Therefore, the impugned decision dated 12.04.2019 of cancelling the selection process issued vide notification dated 21.12.2017 is bad in law, arbitrary, illegal and unjust.
- 5 Shri Trivedi in support of his submission has relied upon the order dated 17.09.2020 passed by this Tribunal in identical case i.e. OA 266/2020 of Baroda Division.
- 6 Per contra, the respondents have filed a detailed reply stating as under:-
 - 6.1 It was proposed to hold selection Board for forming a panel of employees for promotion to the post of TE/Scale Rs.5200-20200+2000 (GP) and ACC/Scale Rs.5200-20200+2000 (GP) in Level-3 against Ranker Quota in Commercial Department. Total assessed vacancies were 36 for ACC and 41 for TE which had been notified vide Office Order No. EC/1025/26 Vol.III dated 21.12.2017 (Annexure R/1).
 - 6.2 In response to the aforesaid notification, total 182 candidates were eligible to appear in the written test held on 22.07.2018 and supplementary test held on 23.08.2018. Only 32 employees qualified in the written test and the result was notified vide memo dated 15.10.2018 (Annexure A/3).
 - 6.3 As part of selection procedure before verification of service record for framing panel, the DAR clearance of eligible employees had to be obtained.
 - 6.4 It is also stated that para - 4 of HQ Office CCG's letter No. EP/1025/13 dated 03.10.1991 (P.S. No.3/91) stipulates that, "*if any employee is to be promoted to a post of one category during period when any selection/suitability test for the other category is in progress, he will be required to give his option before he is considered further for such selection/suitability test. As per para 4.1, if he opts out from selection/suitability in progress and accepts his promotion, he will be*

allowed to join the post of his promotion. He will not be considered further for selection/suitability test in progress." Accordingly, vide office letter No.E/840/2 dated 31.01.2019 the O/o. DRM(E)/Rajkot invited options from such employees who were found suitable in the written test for the post of TE/ACC GP 2000/- Level-3 as also their names had been placed in the select list for promotion to the post of P/Man/A in GP 1900 Level-2 before finalization of the said selection. The names of applicants were also included in the said show cause notice dated 31.01.2019.

6.5 It is contended that after issuance of result of the written test for the selection of employees for the post of Level-3, the respondents had received representation from number of employees for re-evaluation. In this regard, the respondents have placed reliance on the representation/application submitted by some of the employees by way of Annexure R/2. On consideration of the said representations the competent authority noticed that in certain objective type questions of examination held on 22.07.2018, the answers given by some of the employees were almost correct but not in accordance with/as per answer keys given by the paper setter officers to the evaluator and evaluating officer has not given marks for such answer.

Further, it is contended by the respondent that possibility of re-evaluation of answers were also examined and it was decided that even after re-evaluation and correction, if any, in marks allotted earlier may result in injustice to certain employees. Considering the same, the competent authority, i.e. DRM Rajkot had cancelled the selection. Further, it is stated that now as per Railway Board's instruction vide letter dated 14.12.2018, all written test as a part of selection process will require to be conducted by 100% objective type multiple choice questions. Thus, there will be no chance of any injustice in future and employees including the applicants herein will get fair opportunity to participate in the examination on a later date.

6.6 The respondents submit that the impugned decision has been taken as per rules and the applicants are not entitled for any relief as sought in the OA.

7 Applicants have filed rejoinder reiterating the facts in OA. Additionally it is submitted that the reason assigned for cancellation of selection process

notified on 21.12.2017 are contrary to the material on record. Once the applicants were declared duly succesfull in written test and had also cleared the verification, thereafter on receipt of options submitted by applicants, to consider them for promotion post to GP 2000/- Level-3, it was not open for the respondents to cancel the selection process dated 21.12.2017.

- 8 Heard the learned counsel for the parties and perused the material placed on record.
- 9 On going through the records and considering the submissions, it reveals that undisputedly the applicants herein were declared successful in written test as well as verification of their service record with respect to selection process notified vide notification dated 21.12.2017 for the post of TE/ACC GP Rs.2000/- Level-3. It is evident that before finalizing their selection, the applicants were also qualified for the post of Pointsman/A in GP 1900 (Level-2). Therefore, the respondents in terms of para-4 of HQ/CCG's letter dated 03.10.19991 invited options from the successful candidates with respect to selection process for promotion post of TE/ACC GP 2000 Level-3 vide their letter/show cause notice dated 31.01.2019. In response to the said show cause, the applicants herein submitted their option for their promotion to the post of TE'/ACC in Level-3 and had foregone their selection in Rs.1900 GP Level-2 to the post of Pointsman/A. Subsequent to carrying out the aforesaid process, it was not open to the respondents to cancel the selection process in which the applicants were declared successful.
- 10 At this stage, we find it appropriate to refer to the observations and findings stated in OA 266/2020 decided on 17.09.2020 in an identical issue of cancellation of results and the selection process as relied upon by the counsel for the applicant. In the said case, the applicants therein participated in the written test for promotion from erstwhile Group 'D' to Group 'C' post of TC/TNC/ACC against 33.33% against rankers quota – traffic department of Vadodara Division, Western Railway and on being successful in written test, they were sent for the training and on completion of it, applicants were declared successful to be eligible for posting to the promotional post. However, vide order dated 25.08.2020 the respondents cancelled the written test mainly on the ground that their occurred discrepancy in written test about missing of correct options of certain questions and the question paper setter

decided to cancel the written test on administrative ground. The successful candidates had challenged the said decision in aforesaid OA, the same was allowed vide order dated 17.09.2020 wherein in para-19 and 20 it was stated as under:-

"19we take note of the fact that the Railway Board vide its order dated 11th November, 2019 i.e. RBE No.192/2019 wherein, it categorically stated that "it has been decided by the Board that whenever selection proceedings are required to be cancelled after declaration of results due to procedural irregularity/malpractices, due notice should be given to the candidates declared selected". Further, below para 228 (II) of IREM Vol.I /269 it has been stipulated that "where any selection is cancelled after declaration of result, owing to procedural irregularities/malpractices, due notice should be given to the candidates who have been declared selected."

20. In the present case, as noted herein above, undisputedly, there was no malpractice or mass copying had ever occurred during the written test. It is also not in dispute that the applicants herein were declared successful after due selection process including written test, DPC and trainings for the promotional post of Group C. At this stage, we also take note of the fact that the respondents had admitted that they have not issued any due notice to the candidates declared selected in terms of provision of Para 228 (II) of the IREM Vol. Thus, in our considered view the impugned decision appears to have been issued as contrary to the mandatory provision of Para 228 (II) of the IREM Vol.1.

22. In the instant case, it is noticed that the respondents while cancelling the written test or even in their reply in this O.A. had not stated any reason whatsoever for not complying the mandatory provision stipulated in Para 228 (II) IREM Vol.1. The respondents failed to place any record to justify their decision. The office of the respondent Nos.3 and 4 themselves had taken the corrective steps with regard to typographical error in the options to the answers during the exam. Not only that, the respondents had conducted the second phase of examination on 02.06.2019 and subsequently, declared the result of written test. It is noticed that only 18 candidates i.e., applicants herein were declared successful in the selection process against the 32 vacancies of Group „C". In absence of any material on record with respect to mass copying, malpractice or any irregularities attributed to the applicants as also any irregularities said to be continued in conducting the written test, the impugned decision for cancelling the written test cannot be said to be a just and rational decision. After completion of selection process and on declaration of final panel as also on completion of two phase training of the selected candidates it becomes mandatory for the respondents to follow the statutory provision i.e., Para 228 of IREM Vol.1 before taking such harsh decision of cancellation of written test. It is seen that the respondents have totally given go by the aforesaid mandatory provision and arbitrarily passed the impugned order, Thus, said decision suffers from infirmities being

arbitrary, same has been passed in contravention of statutory provision of IREM as also contrary to the law laid down by the Hon'ble Apex Court in the case of Mahipal Singh Tomar (supra).

- 11 In the present case, as noted herein above, undisputedly, there was no malpractice/mass copying had ever occurred during the written test. It is apt to mention that since the respondents had declared the applicants successful in selection for the post of TE/ACC GP 2000 Level-3, and had obtained option for their posting in level 3 by issuing show cause making applicants ineligible for promotion to GP 1900 Level – 2 and thereafter cancelling the selection process for the post of TE/ACC Rs.2000 GP Level-3 amounts to depriving the applicants to be appointed in Level – 3 for no fault of the applicants. The order passed in identical case as referred herein above in para 10 is squarely applicable and accordingly we hold that the impugned decision is contrary to the provision of para 228 (II) of IREM Volume I.
- 12 Further, in absence of any material on record with respect to any irregularity attributed to the applicants, the impugned decision for cancelling the selection process including written test cannot be said to be just and rational decision. Therefore the contentions of respondent are not sustainable.
- 13 In view of above factual matrix and in light of order passed by this Tribunal in identical OA 266/2020, the impugned decision dated 12.04.2019 suffers from infirmity. Accordingly, the same is quashed and set aside. The respondents 3 & 4 are directed to take appropriate decision for filling up the vacant post of TE/ACC GP 2000 Level-3 in Comm. Deptt. of Rajkot Division on the basis of option sought from the applicants herein by way of letter dated 31.01.2019 (Annexure A/5) within two months of receipt of copy of this order. OA Allowed. No order as to costs.

(A K Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

Skv/abp