

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

(Order reserved on 27.04.2021)
O.A.No.060/351/2020

Chandigarh, this the 18th day of May, 2021



CORAM: HON'BLE MS. JUSTICE VIJAY LAKSHMI, MEMBER(J)
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

1. Nitish Kumar S/o Sh. Ram Balak Singh, age 27 years, Carriage Cleaner, office of SSE (C&W), Northern Railway, Ludhiana.
2. Sanjeev Kumar S/o Sh. Vijay Pal Singh, age 33 years, Carriage Cleaner, office of SSE (C&W), Northern Railway, Ludhiana.
3. Sarvdaman Pundhir S/o Sh. Chutney Singh Pundhir, age 32 years, Carriage Cleaner, office of SSE (C&W), northern Railway, Ludhiana.
4. Hanuman Mena S/o Sh. Samrathlal Meena, age 30 years, Carriage Cleaner, office of SSE (C&W), northern Railway, Ludhiana.
5. Rohtash Yadav S/o Sh. Parbhati Yadav, age 30 years, Carriage Cleaner, office of SSE (C&W), Northern Railway, Ludhiana.
6. Sachin S/o Sh. Rajesh, age 27 years, Carriage Cleaner, office of SSE (C&W), Northern Railway, Ludhiana.
7. Ravi Kumar S/o Sh., Suresh, age 26 years, Carriage Cleaner, office of SSE (C&W), Northern Railway, Ludhiana.
8. Anish, S/o Sh. Rajpal, age 35 years, Carriage Cleaner, office of SSE (C&W), northern Railway, Ludhiana.
9. Sajid Kureshi S/o Sh. Faiyz, age 28 years, Carriage Cleaner, office of SSE (C&W), Northern Railway, Ludhiana.
10. Gurtej Singh S/o Sh. Chamkaur Singh, age 27 years, Carriage Cleaner, office of SSE (C&W), Northern Railway, Sahnewal, Distt. Ludhiana.
11. Shivcharan Kumar S/o Sh. Brijpal Singh, age 29 years, Carriage Cleaner, office of SSE (C&W), Northern Railway, Ludhiana.
12. Rahul Dev Shah S/o Sh., Devnandan Shah, age 26 years, Carriage Cleaner, office of SSE (C&W), northern Railway, Ludhiana.
13. Amit Kumar Attri S/o Sh. Udaivir Singh, age 29 years, Helper / Khalasi, office of SSE (C&W), Northern Railway, Shri Mata Vaishno Devi Katra.



14. Satish Kumar S/o Sh. Balbir Singh, age 30 years, Helper / Khalasi, office of SSE (C&W), Northern Railway, Shri Mata Vaishno Devi Katra.
15. Sandeep Kumar S/o Krishan, age 33 years, helper / Khalasi, office of SSE (C&W), Northern Railway, Shri Mata Vaishno Devi Katra.
16. Sudhir Kumar S/o Sh. Satyadev, age 37 years, helper / Khalasi, office of SSE (C&W), Northern Railway, Shri Mata Vaishno Devi Katra.
17. Purshotam Meena, S/o Sh. Tunda Ram Meena, age 28 years, Carriage Cleaner, office of SSE (C&W), Northern Railway, Shri Mata Vaishno Devi Katra.
18. Jitender Kumar S/o Sh., Vidyananda, Age 32 years, Helper / Khalasi, office of SSE (C&W), Northern Railway, Shri Mata Vaishno Devi Katra.
19. Gopal S/o Sita Ram, age 34 years, helper / Khalasi, office of SSE (C&W), northern Railway, Shri Mata Vaishno Devi Katra.
20. Vijay Kumar S/o Sh. Malkit Singh, age 34 years, Carriage Cleaner, office of SSE (C&W), Northern Railway, Shri Mata Vaishno Devi Katra.
21. Pawan Kumar S/o Sh. Malkit Singh, age 38 years, Helper / Khalasi, office of SSE (C&W), Northern Railway, Shri Mata Vaishno Devi Katra
22. Ghanshyam Saini S/o Sh. Dana Ram, age 33 years, helper / Khalasi, office of SSE (C&W), Northern Railway, Shri Mata Vaishno Devi Katra
23. Ram Kishor S/o Sh. Bala Ram Solanki, age 27 years, Carriage Cleaner, office of SSE (C&W), Northern Railway, Shri Mata Vaishno Devi Katra
24. Raju S/o Sh. Ramesh, age 32 years, Carriage Cleaner, office of SSE (C&W), Northern Railway, Shri Mata Vaishno Devi Katra
25. Dayanand S/o Sh. Raj Pal, age 27 years, Helper / Khalasi, office of SSE (C&W), Northern Railway, Shri Mata Vaishno Devi Katra. All are Group D employees.

(BY ADVOCATE: MR. DINESH KUMAR)

Applicants

Versus

1. Union of India represented by General Manager, Northern Railway, Baroda House, New Delhi-110001.
2. Divisional Railway Manager, Northern Railway, Ferozepur 152001.
3. Sr. Divisional Personnel Officer, Northern Railway, DRM Office Ferozepur Cantt. 152001.
4. Sr. Divisional Mechanical Engineer, Northern Railway, Ferozepur 152001.

(BY ADVOCATE: MR. L.B.SINGH)

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Respondents



ORDER
HON'BLE MRS.AJANTA DAYALAN, MEMBER(A)

The present O.A. has been filed by the applicant Nitish Kumar and 24 others seeking quashing of the order dated 29.5.2020 (Annexure A-1) whereby the written test for the posts of Technician-III/C&W Level-2 against 25% intermediate quota has been cancelled. The applicants have further prayed for restraining the respondents from holding a fresh test for same vacancies as notified vide notices dated 21.2.2019 (Annexure A-2) and 25.2.2019 (Annexure A-3) for which the examination was earlier conducted and result declared vide letter dated 3.12.2019 (Annexure A-5). It is further prayed to restrain the respondents from making any promotion against 25% quota for promotion on the basis of seniority to avoid dispute regarding inter-se seniority. Finally, the applicants have prayed for direction to the respondents to issue appointment orders on the basis of result declared on 3.12.2019, with all consequential benefits including seniority etc.

2. All the applicants are working on Level-1 Group-D posts in the pay band of Rs.5200-20200 + grade pay of Rs.1800/-. They were entitled to be considered for promotion to the posts of Technician-III/C&W Level-2 in the same pay band with grade pay of Rs.1900/-, subject to fulfilment of eligibility conditions, against 25% intermediate quota of Mechanical/C&W Department.

3. In order to fill 148 posts against this 25% talent quota from amongst the serving regular C&W Group 'D'



employees, the respondents issued notice dated 21.2.2019 (Annexure A-2) inviting applications for the same. In continuation of this notice, another notice dated 25.2.2019 (Annexure A-3) was issued, slightly relaxing the eligibility conditions in terms of Railway Board's circular dated 5.2.2019.

4. All the applicants being eligible, applied for the posts. Of the 270 applications received in total, as many as 265 candidates were found eligible.

5. In view of the number of candidates who applied for the posts, the respondents decided to hold the written test in three phases – on 17.8.2019, 24.8.2019 and 31.8.2019.

6. The results of the test were declared on 3.12.2019 (Annexure A-5) and 87 candidates were declared to have qualified the written test 'for further proceedings of final empanelment'. All the applicants were declared successful and so they were expecting to be sent for training as per usual practice. However, no action was taken by the respondents in pursuance of the declaration of result on 3.12.2019.

7. To the surprise of the applicants, the respondents issued the impugned order dated 29.5.2020 (Annexure A-1) cancelling the written test 'due to administrative reasons'.

8. The case of the applicants is that the written test was held in August 2019 from 17th to 31st and the result was declared on 3.12.2019. There was no complaint,



whatsoever, with regard to conduct of examination and declaration of the result. The examination was conducted in just, proper, fair and most transparent manner. The result was declared after due and proper evaluation, according to the performance of the candidates. Out of 265 candidates, only 87 qualified the written test and hence the pass percentage was about 33%. There was no complaint regarding leakage of paper, mass copying, use of unfair means or undue favour shown by the invigilators. There was no complaint regarding evaluation of written examination and ultimate declaration of the result. Hence, there was no occasion for cancelling the examination and consequential result.

9. The applicants have further submitted that the Railway Board has earlier issued instructions dated 3.7.2002 (Annexure A-6) in compliance of an order passed by Allahabad Bench of this Tribunal in O.A.No.359 of 2001. As per these instructions, it is obligatory to disclose reasons in the order if cancellation of selection is required. However, the impugned order does not disclose any reasons for cancellation of examination in violation of these instructions. It is only stated that the cancellation is 'due to administrative reasons' but no administrative reasons have been indicated.

10. The applicants have further pleaded that there are instructions of the Railway Board dated 11.11.2019 (Annexure A-7). These instructions make it mandatory for the respondents to issue due notice to the candidates whenever selection proceedings are required to be



cancelled after declaration of result due to procedural irregularities or malpractice. But, no notice has been issued to the candidates in violation of these instructions.

11. The applicants have also argued that vide impugned order, only the written test has been cancelled but the result remains which has not been cancelled leading to apparent anomaly.

12. The applicants have also stated that of the three methods of placement on the posts of Group-C staff, they are not against placement from open market. However, both posts to be filled by promotion and 25% quota for talent should not be filled till settlement of this matter, in order to avoid dispute regarding their inter-se seniority.

13. The applicants have also relied upon number of judgments on issues such as requirement on part of the authorities to pass speaking orders; principles of natural justice to be followed if any adverse action is to be taken; decision not to fill up vacancies to be taken for bonafide reasons; examination not to be cancelled without any reasons etc. etc.

14. In view of all above the applicants have claimed that they deserve to the relief claimed in the O.A. and impugned order needs to be quashed.

15. The respondents have contested the claim of the applicants. They have stated that a selection to fulfil 148 posts of Technicians -III (Carriage & Works) Level-2, in the grade pay of Rs.1900 against 25% intermediate quota was initiated by the respondents vide notice issued



on 21.2.2019 (Annexure A-2). The process of selection comprised of a written test followed by a trade test of candidates qualifying the written test. As per para 159 of Indian Railway Establishment Manual Vol. I, the posts of Technician – III (Carriage & Works) Level 2 are to be filled in the following quotas:

- Direct recruitment - 25%+shortfall of Intermediate Quota.
- Intermediate quota- 25% through Selection & Trade Test.
- Promotee Quota - 50% through Trade Test.

16. It is further stated that 265 eligible candidates were called to appear for the written test in 3 phases on 17.8.2019, 24.8.2019 and 31.8.2019. Out of these, only 87 candidates qualified the written test vide Annexure A-5 dated 3.12.2019 for further proceedings of final empanelment. However, this list did not confer any vested right to selection or appointment. The selection and declaration of result of selection will be complete only after the marks for record of service are added and selection panel is notified.

17. The respondents have brought out that one of the recognized Unions of Railway employees in its meeting with the respondent no.2 complained that the result dated 3.12.2019 was imbalanced due to the written examination having been held in three phases on different dates. After discussion, the matter was got examined by Divisional Personnel Officer who found that there was a vast unexpected difference in the pass percentage of the candidates. In the first phase, only 3 out of 82 candidates passed – that is only 3.65% passed. In the second phase, 35 out of 79 candidates passed – that is 45.56% passed.



In the third phase, 49 out of 82 candidates passed – that is 59.75% passed. On closer scrutiny of the matter, it was revealed that almost 50% of questions in the first phase had been repeated in the second and third phases – thus giving undue advantage to the candidates appearing in the second and third phase.

18. In view of above facts, the competent authority considered the matter on 24.1.2020 and cancelled the written exam on 'administrative grounds', in the interest of fairness and equality. Accordingly, cancellation order at Annexure R-1 was issued on same date. Copy of notings on file are attached as Annexure R-2.

19. The respondents have further argued that there is no equity in favour of the applicants as they have approached the Tribunal more than four months after cancellation of the written test on 24.1.2020. The respondents have also stated that prayer for restraining the respondents from making promotion is premature as promotions will be made only after a fresh written test and trade test are held.

20. The respondents have also brought out that the written examination was only one of the steps in the selection process and does not vest any legal right to selection or appointment.

21. The respondents have stated that since then, a fresh written test has been held on 6.12.2020 at one go and not in phases. In this test, the applicants have also



appeared. After the marks for the written test, the marks for record of service will be added before finalizing the selection and preparing the selection panel.

22. The respondents have also alleged that Annexure A-1 dated 29.5.2020 has not been correctly reproduced by the applicants. Annexure R-1 is the real order of cancellation. They have also stated that applicants should have amended their O.A. after the written test on 6.12.2020 which has not been done by them.

23. The respondents have concluded that the process of selection was annulled at intermediate level itself on the grounds of administrative anomaly which arose after repetition of questions in second and third phase was detected. This put the candidates who appeared in first phase of examination at disadvantageous position. This cancellation was just and fair to all. As it was at intermediate level, the Railway Board Circulars dated 3.7.2002 and 11.11.2019 are not applicable. The selection process would be completed only after trade test and adding the marks for record of service. Besides, re-examination has already been held in which the applicants have also appeared. Hence, there is no illegality in the cancellation order. The selection had not reached its finality and the candidates were not selected. As such, no relief needs to be granted to the applicants and the O.A. deserves to be dismissed.

24. We have heard the counsel of opposing sides and have also gone through the pleadings. We have given thoughtful consideration to the entire matter.



25. The facts of the case are largely undisputed. In order to fill 25% intermediate quota of 148 posts in Level-2 with grade pay of Rs.1,900/-, applications were invited from eligible Group 'D' staff of the respondent department vide notice dated 21.2.2019 (Annexure A-2) as modified slightly by notice dated 25.2.2019 (Annexure A-6). 265 candidates were found eligible. Written test was conducted in 3 phases on 3 different dates - on 17th, 24th and 31st August, 2019. In all, 87 candidates were declared pass vide result dated 3.12.2019. However, the written examination was later cancelled vide impugned order dated 29.5.2020. The applicants are challenging this cancellation.

26. The issue involved in this case is, therefore, rather limited. The applicants are questioning the cancellation of written test held by the respondents. The applicants are basically taking three grounds. These are:

- (1) that there were no complaints about any irregularity or unfairness in the process of examination;
- (2) that no reasons are recorded in the impugned order cancelling the examination except a vague one – that is “due to administrative reasons”; and
- (3) that no notice was given to the candidates despite such notice being mandatory in view of Railway Board instructions dated 11.11.2019 (Annexure A-7).



27. We find that none of these grounds are valid. Firstly, even though the applicants have stated that there were no complaints, the respondents have categorically stated that some of the recognized Railway Unions had complained to them about the skewed pass percentage in the three phases of the examination. On examination of the matter, it was found that the results in the three phases were in fact very skewed. In the first phase of 82 candidates who appeared, only 3 passed resulting in pass percentage of less than 4%. In the second phase, the pass percentage was 45.56% as 35 out of 79 candidates passed. In the third and last phase, 49 out of 82 candidates passed leading to 59.75% pass percentage. On further scrutiny of the matter, it was found that almost 50% of the questions of first phase had been repeated in second and third phases. This obviously gave undue advantage to the candidates appearing in the second and third phases. We, therefore, find startling difference in the pass percentage of first phase (being less than 4%) and in the second and third phases (being about 45% and 60% respectively) totally un-explainable and unusual. Such difference in pass percentage cannot be justified by any logic or reason. On examination of the matter, the Railway authorities had found that almost 50% of questions in the first phase got repeated in second and third phases. Such huge level of repetition of questions obviously subverts the whole process of ensuring fair selection in the examination. Hence, the decision of the competent authority to cancel the exam is found to be just and fair. Equally importantly, even the plea of the applicants that there was no



complaint is not correct. The matter was taken up by the recognized Unions of the Railways employees with the Administration and was investigated thereafter.

28. Next plea of the applicants that reasons are to be mandatorily recorded by the respondents is also not found convincing. Firstly, the process of selection included not written test alone, but the trade test as well, as given in para 159 of Indian Railway Establishment Manual Vol. I. Hence, the written test was only one of the steps in selection process and was not a final step. Even otherwise, the reasons have been given by the respondents in the cancellation order to be "due to administrative reasons". It is sometimes not easy to establish or prove the nature and extent of malpractice in examinations. Hence, it is not considered obligatory on part of the respondents to give much more specific and detailed reasons in the cancellation order. Once there are reasons to believe that fairness and equal opportunity to all candidate has been compromised, the executive authorities are within their right to cancel the examination and record reasons to the extent possible in each case based on facts of that particular case. In the instant case, though there were no other malpractices involved like leakage of question papers, mass copying etc., however, repetition of almost 50% of questions of first phase in the second and third phases leads to unfair advantage to the candidates appearing in second and third phases. In the circumstances, I find the reasons recorded by the respondents to be adequate. This is even if a view is taken



that respondents were mandated to disclose the same. We are, however, of the view that no such reasons were required to be indicated as the written examination did not complete the selection process and was only an intermediate stage.

29. Thirdly, regarding the notice to the candidates as per Railway Board Circular dated 11.11.2019, the same was also not obligated in the instant case. Firstly, the whole examination enbloc has been cancelled and as such, no purpose would be served by issuing individual notices to the candidates – especially the successful ones. The ones who have suffered due to repetition of questions are the unsuccessful candidates who appeared in the first phase – and not the applicants who were beneficiary of the vitiated process. Secondly, because the process of selection itself was not complete with the passing of written test alone. There were other steps including trade test and record of service that needed to be completed before the process of selection could be said to be complete. This is as per provisions of Railway Manual quoted above. Even the declaration of result dated 3.12.2019 (Annexure A-5) clearly states that 'the following employees have qualified for further proceedings of final empanelment'. On the other hand, instructions of 11.11.2019 state that 'due notice should be given to the candidates declared selected'. But, in the instant case the applicants are not yet selected. They have only qualified for further proceedings of final empanelment. Hence, issue



of notice was also not a mandatory requirement to be fulfilled at this stage.

30. We also observe that a fresh written test has already been held on 6.12.2020. The applicants have also appeared therein. As such, now they have no case to plead for quashing of the order cancelling the earlier examination. In case such relief is now granted to the applicants, it will be unfair to all the other candidates who have appeared in the examination held on 6.12.2020. Such candidates are not even party to this O.A. No orders adversarial to them can therefore, be passed in this O.A. by the Tribunal without hearing them first. Even otherwise, the candidates of the first phase of the test held in August 2019 who were adversely affected by the repetition of questions have also not been made party. The applicants are projecting a one sided view of the examination process which was vitiated by the repetition of almost 50% questions in the latter phases of the examination. Upholding of result of such an examination will be against equity and justice to the other candidates who were not declared successful in the written examination.

31. Thus, we do not find any merit in the O.A. The same is therefore dismissed.

32. There shall be no order as to costs.

(AJANTA DAYALAN)
MEMBER(A)

Place: Chandigarh
Dated: May 18, 2021

(JUSTICE VIJAY LAKSHMI),
MEMBER (J)

HC*