

**Central Administrative Tribunal
Ernakulam Bench**

O.A No.180/00620/2020

Thursday, this the 30th day of September, 2021

CORAM:

**Hon'ble Mr. P.Madhavan, Judicial Member
Hon'ble Mr.K.V.Eapen, Administrative Member**

1. Swapna K, 38 years, W/o Biju K.
Pointsman A, Walayar Railway Station
Southern Railway,
Resident of: Swathy, Devi Nagar,
Kongad, Palakkad - 678 631
2. Usharani T, aged 35 years,
W/o Babu D.V., Pointsman B/
Southern Railway, Kottekad
Resident of: Dwaraka Bhavanam,
Meleppuram, Olavakkode – 678002.
3. Baby Smitha S, aged 40 years,
W/o Santhosh Kumar
Pointsman B, Kollengode R.S.
Southern Railway,
Resident of: Kavungal, Kizhakkumuri P.O.
Palakkad District - 678 508
4. Smaritha M, aged 43 years,
W/o Muralidharan K.B.
Pointsman A/ Mangalore Central,
Resident of Kallayil (HO), Melarcode 678 703,
Palakkad District
5. Sobha K., aged 36 years,
W/o Sooraj M.P.
Pointsman B/ Southern Railway, Kottekad
Resident of: Palattil House, Kongad,
Palakkad 678 631

6. P. Vinesh, aged 31 years
S/o Pushparajan,
Pointsman B/Station Manager's Office,
Shornur Railway Station
Southern Railway, Resident of: Nambulipura P.O.,
Mundur - 678 592,
7. Noushath H, aged 43 years,
D/o Haneefa A.
Pointsman B, Southern Railway,
Palakkad Junction,
Resident of: "Salma", Hill view Nagar, Kakkani
Dhoni P.O, Palakkad 678 009
8. Dhanalakshmy A, aged 39 years,
W/o Vinod, Pointsman B,
Office of the Divisional Railway Manager,
Palakkad Divisional Office, Palakkad
Resident of: 30/87, Kallingal House,
Sakthi Nagar, Melamuri, Palakkad - 678 012
9. Saidalavi P., aged 32 years, S/o Alikutty P.,
Pointsmn A, Mangalore Junction
Southern Railway,
Resident of: Pulikkalakath House,
Pariyapuram, Pachathiri P.O.,
Tirur, Malappuram District 676 105
10. Zainul Abid V, aged 33 years,
W/o hammed Koya V., Pointsman -B
Kallayi R.S., Southern Railway,
Kozhikode,
Resident of: Valakattommal (H),
Chelapram, Makkada P.O.,
Kozhikode - 673 611
11. Ummar K.K., aged 31 years,
S/o Aboobacker V.C., Points Man A, Westhill R.S., Southern Railway,
Kozhikode - 673 005 Resident of: Karakkunnummal (H),
Pantheerpadam, Kunnamangalam P.O.
Kozhikode - 673 571
12. Deepa K.P., aged 37 years, D/o K.P. Prabhakaran
Pointsman B/ Southern Railway,
Palakkad Junction,
Resident of: 'Sree Padmam', Kadampadipura,
Muttikulangara P.O., Palakkad - 678 594

13. Sinu M., 28 years,
 S/o Gopalakrishnan M.,
 Pointsman A/Mangalore Central,
 Southern Railway
 Resident of: Mangasseri,
 Ariyallur P.O., Vallikunnu
 Malappuram - 676 312

14. Vijina P.V. aged 35 years,
 D/o Raveendran K.K.
 Pointsman B/Kannur South R.S.
 Southern Railway, Resident of: Shijina Nivas, Thannada,
 P.O.Chala East, Kannur 670 621

15. Shamna K.M., aged 33 years,
 W/o Rajesh P.M.
 Pointsman B/ Kannur R.S./Southern Railway
 Resident of: 'Krishna', Kottarathumpara,
 Azhikode P.O., Kannur - 670 009

16. Simna M., aged 43 years,
 W/o Shaji V.P.,
 Pointsman A/ Southern Railway/ Calicut
 Resident of: Malikakandy House,
 EranhiPalam P.O.,
 Kozhikode – 673 006

17. Ajisha K.M., aged 35 years,
 W/o Ajaya Kumar M.R.,
 Pointsman A, Southern Railway, Calicut,
 Resident of: Sarath Bhavan, Mampully P.O.
 ZGA College,
 Pokkunnu, Kozhikode 673 014. - Applicant

(By Advocate: Mr. T. C. Govindaswamy & Mrs. Kala T. Gopi)

Versus

1. Union of India represented by the
 General Manager, Southern Railway,
 Headquarters Office, Park Town P.O.
 Chennai – 600 003.
2. The Senior Divisional Personnel Officer,
 Southern Railway, Palakkad Division,
 Palghat – 678 002.

3. The Divisional Railway Manager,
Southern Railway, Palakkad Division,
Palghat – 678 002.

4. The Chief Personnel Officer,
Office of the General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai – 600 003. - Respondents

(By Advocate: Mrs. Sumati Dandapani, Sr with Mr. P R Sreejith)

The O.A having been heard on 20th July, 2021, this Tribunal delivered the following order on 30.09.2021.

ORDER

P.Madhavan, Judicial Member

This Original Application has been filed by the applicants seeking the following reliefs:

“(i) Call for the records leading to the issue of Annexures A12 and A14 and quash the same as being arbitrary, discriminatory and hence, unconstitutional;

(ii) Direct the respondents to finalise the selection process initiated in terms of Annexure A2 forthwith, and direct further to publish the panel, and to issue consequential orders of promotion within a time frame, as may be found just and appropriate by this Hon'ble Tribunal.

(iii) Direct the respondents to grant the applicants all the benefits of promotion against the vacancies notified in terms of Annexure A2, at least with effect from 01.10.2018 i.e. on completion of a reasonable period of six months from the date of Annexure A2 Notification.

(iv) To award costs of and incidental to this application.

(v) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.”

2. In short, the applicant's case is as follows:-

The applicants herein are Pointsmen of the Traffic/Transportation Department of the Palakkad Division of Southern Railway. They are working under the

Palakkad Division. They had applied for 25% of the vacancies which are earmarked for promotion quota by selection and they had participated in the written test as well as aptitude test and they have come out successful. According to them, the respondents had not appointed them and subsequently the respondents had issued Annexure A-12 impugned order dated 8.12.2020 stating that the written examination as well as the aptitude test conducted are cancelled due to procedural irregularities. They had also issued a notification as Annexure A-14 dated 11.12.2020 fixing a fresh date for participating in the written test and aptitude test again on 16.1.2021.

3. The applicants are aggrieved by the impugned orders issued as Annexure A-12 and Annexure A-14. The applicant's had earlier filed an O.A No.539/2020 against the respondents stating that they are not finalising the selection process initiated way back in March 2018. But when the above Original Application was pending, the respondents had issued Annexures A-12 and Annexure A-14 orders. Hence they had withdrawn the said O.A 539/2020 and filed the present O.A challenging Annexures A-12 & A-14 impugned orders. They have produced a copy of the notification issued for selection as Annexure A-2, a letter intimating the date of written examination as Annexure A-4 and a list of personnel who have passed in the written test as Annexure A-5. They have also produced the intimation for appearing in the aptitude test as Annexure A-6 and the list of persons successful in the aptitude test as Annexure A-7. Since the respondents have not filled up the vacancies, applicants gave various representations for appointing them as Station Masters. But they were not accepted and the respondents have ordered for a fresh written test and aptitude test on the basis of some irregularities occurred in the examination. According to them, the vigilance had conducted an Inquiry and on the

advise of the vigilance, the respondents had cancelled the examination. The action of the respondents is highly arbitrary and cannot be sustained in the eye of law. According to them, the decision of the respondents to cancel the examination was with ulterior motives, extraneous considerations and undue influence of some of the failed candidates from the office of the DRM. There is no valid reason for cancelling all selection as such and there is no irregularity or illegality in the process of selection which goes into the root of the matter. So Annexure A-12 is issued with *malafide* intention. The applicants also submit that the respondents are not legally justified in cancelling the selection and issued a fresh notification when the earlier O.A 539/2020 is pending. The above action of the respondents are intended to help one Mr.Nagendra Sab Gond, a Sweeper-cum-Porter, who is understood to be utilised in the office of the Divisional Railway Manager, Palakkad and who has failed in the aptitude test. Hence the applicants have approached this Tribunal praying for the aforementioned reliefs.

4. The respondents have appeared through their senior counsel Adv.Mrs.Sumathi Dandapani.Sr with Adv.Mr.P.R.Sreejith and filed a detailed reply statement denying the allegations made against the DRM and various other statements made by the applicants.

5. According to the respondents, 36 employees who were qualified in the written examination were sent for aptitude test. The aptitude test was conducted on 2.12.2019 and 3.12.2019. Out of the 32 employees, 18 were found suitable by the Selection Committee which was convened on 23.12.2019. The Selection Committee after perusal of records, recommended 12 UR employees. Since there was no eligible candidates under the quota for SC and S.T, they were not selected.

When the panel was drawn up, the vigilance had received a complaint regarding irregularity in the examination and they had conducted an Inquiry into the procedure adopted in the examination. On verification of the examination paper, they found that two persons have got more marks and if that marks were substracted, they will not pass the examination. They also submitted that there is no merit in the contention of the applicants that the examination was cancelled only because of the personal staff of DRM was not successful in the aptitude test. It is not correct to say that the examination was cancelled due to the pressure of the failed candidate, and there is no specific pleading made against the DRM to show that he is interested in the passing of his personal staff as alleged in the Original Application. The Hon'ble Apex Court, on numerous occasions, has held that the action of the authorities in cancelling the examination when such action is believed to be necessary on the basis of some reasonable material to indicate that examination process is vitiated. If there are glaring aberrations which provide *prima facie* proof of the occurrence of irregularity, the respondents are entitled to cancel the same. The procedure of selection in this case was not complete and many of the decisions produced before the Tribunal by the applicants are not directly applicable to the present case. In those cases, the selection process is completed and the Court permitted to remove only those candidates who have committed the mistake and protected the remaining list. The stay obtained by the applicants in this case seriously prejudiced the selection process for appointing Station Masters by promotion and a lot of vacancies are pending without appointment. The respondents had produced the file relating to the selection and cancellation of examination and also the copy of Vigilance report on which cancellation was ordered.

6. The applicants filed their rejoinder and contended that the Selection Committee had actually selected 12 UR employees for appointment and hence it is not correct to say that the selection process was not complete. It appears from the pleadings that the respondents had acted on the direction of the Vigilance and they had not applied their independent decision in this case. There is no merit in the contention put forward by the respondents that they have full right to cancel the examination when it is vitiated by procedural irregularities and which cannot be properly cured.

7. The main point to be considered in this case is that whether cancellation of written test and aptitude test and issuance of fresh notification for conducting the above test are arbitrary and against the principles of natural justice. The counsel for the applicants content that even according to the Vigilance Report, only two persons had got more marks than they are eligible to get in the written test. According to him, since there is no widespread illegalities or irregularities, the action of the respondents in cancelling the examination itself is arbitrary in nature. As the infirmity was found to effect the selection of only two of the candidates and since there is no infirmity in the selection of other candidates, the respondents ought to have appointed other successful candidates. In such cases, there is no justification in denying the appointment of other candidates. The counsel for the applicants mainly relies on the judgment of apex court in *Union of India & Others v. Rajesh P.U Puthuvalnikathu and Another* reported in 2003 SCC (L&S) 1048 in support of his contention. The Hon'ble Apex Court has held in para 6 that:

“..... There was no infirmity whatsoever in the selection of the other successful candidates than the 31 identified by the Special Committee. In the light of the above and in the absence of any specific or

categorical finding supported by any concrete and relevant material that widespread infirmities of all pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or other of irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or other reasons. Applying an unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go bye to contextual considerations throwing to winds the principle of proportionality in going farther than what was strictly and reasonably required to meet the situation. In short, the Competent Authority completely misdirected itself in taking such an extreme and unreasonable decision of canceling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational. For all the reasons stated above, we could not find any infirmity whatsoever in the judgment of the High Court which adopted a practical, pragmatic, rational and realistic solution to the problem.”

8. He also cited the decision of this Tribunal in O.A No.479/2007 dated 04.04.2008 in ***G.N.Ram Mohan Unni and Anr. v. Union of India, Secretary, Ministry of Railways and 3 others*** wherein cancellation of the selection in written test done by Railways was set aside holding that cancellation done was not *bonafide* as there were no infirmities in all pervasive nature and directed the respondents to publish the results and finalise the selection process. The Counsel for applicants also cited the decision of the Hon'ble Allahabad High Court in ***Vindhya Vasini Tiwari and 4 others v. State of Himachal Pradesh and 2 others*** where the cancellation of entire recruitment was found unjustified.

9. On the other hand the Senior counsel arguing for the respondents Smt.Sumathi Dandapani content that there had taken place serious irregularity in evaluating the answer sheets and those irregularities cannot be cured by removing the two candidates who got selected due to the excess marks obtained by them in

the written test. According to her, out of the 36 candidates who came up in the select list, marks obtained in excess by 25 candidates has to be deducted. Only 4 candidates' marks remained unchanged and hence there has occurred widespread irregularity and hence the respondents had to cancel the written test conducted. In the case of ***Hanuman Prasad and others v. Union of India and Another*** reported in 1996 (10) SCC 742 in a similar case held (in para 3) that:

“Therefore, it is a case where the authorities have taken the decision on the basis of the report submitted by the investigating agency, containing proof in support of the allegations of malpractice committed in writing the examination. It cannot, therefore, be said that the order of cancellation does not contain any reasons.”

10. The Senior Counsel had also invited our attention to the decision of the apex court in ***Chairman, All India Railway Recruitment Board and Another v. K. Shyam Kumar and Others*** (reported in (2010) 6 SCC 614 wherein the Hon'ble Apex Court had held in paragraph 50 that:

“ We are also of the view that the High Court was in error in holding that the materials available relating to leakage of question papers were limited and had no reasonable nexus to the alleged large scale irregularity. Even a Minute leakage of question paper would be sufficient to besmirch the written test and to go for a retest so as to achieve the ultimate object of fair selection.”

11. This was a case where the Apex Court upheld the decision of the Board to cancel the test. According to the Senior counsel, the applicants have no indefeasible right to be appointed even though adequate number of candidates were found successful. Here, final merit list was not published and no appointment orders published. The Senior Counsel had also invited our attention to a recent decision of the Hon'ble Supreme Court in ***Sachin Kumar & Ors v. Delhi Subordinate Services Selection Board (DSSSB) & Ors*** in Civil Appeal Nos:639-640 of 2021 dated

3.3.2021 where the Apex Court has explained the law on the subject under point F.-

The position in law – (paragraph 33) that:

“In deciding this batch of SLPs, we need not re-invent the wheel. Over the last five decades, several decisions of this Court have dealt with the fundamental issue of when the process of an examination can stand vitiated. Essentially, the answer to the issue turns upon whether the irregularities in the process have taken place at a systemic level so as to vitiate the sanctity of the process. There are cases which border upon or cross-over into the domain of fraud as a result of which the credibility and legitimacy of the process is denuded. This constitutes one end of the spectrum where the authority conducting the examination or convening the selection process comes to the conclusion that as a result of supervening event or circumstances, the process has lost its legitimacy, leaving no option but to cancel it in its entirety. Where a decision along those lines is taken, it does not turn upon a fact-finding exercise into individual acts involving the use of mal-practices or unfair means. Where a recourse to unfair means has taken place on a systemic scale, it may be difficult to segregate the tainted from the untainted participants in the process. Large scale irregularities including those which have the effect of denying equal access to similarly circumstanced candidates are suggestive of a malaise which has eroded the credibility of the process. At the other end of the spectrum are cases where some of the participants in the process who appear at the examination or selection test are guilty of irregularities. In such a case, it may well be possible to segregate persons who are guilty of wrong-doing from others who have adhered to the rules and to exclude the former from the process. In such a case, those who are innocent of wrong-doing should not pay a price for those who are actually found to be involved in irregularities. By segregating the wrong-doers, the selection of the untainted candidates can be allowed to pass muster by taking the selection process to its logical conclusion. This is not a mere matter of administrative procedure but as a principle of service jurisprudence it finds embodiment in the constitutional duty by which public bodies have to act fairly and reasonably. A fair and reasonable process of selection to posts subject to the norm of equality of opportunity under [Article 16\(1\)](#) is a constitutional requirement. A fair and reasonable process is a fundamental requirement of [Article 14](#) as well. Where the recruitment to public employment stands vitiated as a consequence of systemic fraud or irregularities, the entire process becomes illegitimate. On the other hand, where it is possible to segregate persons who have indulged in mal-practices and to penalise them for their wrong- doing, it would be unfair to impose the burden of

their wrong-doing on those who are free from taint. To treat the innocent and the wrong-doers equally by subjecting the former to the consequence of the cancellation of the entire process would be contrary to Article 14 because unequals would then be treated equally. The requirement that a public body must act in fair and reasonable terms animates the entire process of selection. The decisions of the recruiting body are hence subject to judicial control subject to the settled principle that the recruiting authority must have a measure of discretion to take decisions in accordance with law which are best suited to preserve the sanctity of the process. Now it is in the backdrop of these principles, that it becomes appropriate to advert to the precedents of this Court which hold the field.”

12. In this case also the irregularities in the process have taken place at a systemic level so as to vitiate the sanctity of the process. So there is no illegality or arbitrariness in the cancellation of written examination. All persons will get an opportunity to participate in the written test and if eligible they will get appointed.

13. We have heard the counsels appearing on both sides and perused the pleadings and various documents produced in this case. The dispute mainly centres around the irregularities happened in the written test conducted for the 25% quota for the post of Station Masters. The respondents had cancelled the written examination held on 25.9.2019 and 28.9.2019 and aptitude test held on 3.12.2019 by Annexure A12. They had also notified that a fresh written test for the post of Station Master (25% quota) will be held on 16.1.2021 as per letter dated 11.12.2020 (Annexure A-14). The respondents by Annexure A7 earlier published the result of examination on 9.12.2019. But the selection was not finalised. The applicants were successful and the respondents had cancelled the examination and it was alleged that it was due to the influences of the candidates who failed in the test. The respondent's reply shows that the written examination was cancelled on the basis of a report filed by the

Vigilance. A copy of the report filed by the Vigilance after investigation is produced for perusal the the Tribunal. As per the report they had scrutinized the answer papers of 36 candidates who come up in select list. The written examination consists of both descriptive type and objective type questions. On scrutiny of the objective type questions (36 nos.), irregularity were noted in 25 cases. They also found that out of them, 2 would not have got the requisite marks if there was no lapse in the evaluation (Sl No: 5 & SL No:20 in Annexure 1). They also found difference in the 'T' score of candidates when again re-scanned the OMR sheets. The report also shows the difference in marks received by candidates when the scrutiny was conducted. Out of the 36 candidates, 25 candidates had differences in marks either in excess or less than due to them. According to the counsel, some of the candidates had given correct options and the answers written were wrong. In some cases, option selected was wrong and answer given was correct. So, on the whole, the written test conducted had suffered irregularities in evaluation which goes to the systemic level and cannot be cured by removing the two failed candidates at Sl.No:5 and Sl.No: 20 as argued by the counsel for the applicant. It cannot be held that the selection of other successful candidates has no infirmity at all. Irregularities in evaluation had crept in 25 OMR answer sheets used for objective type questions.

14. So we are of the view that the decisions relied upon by the counsel for applicant in *Union of India a& Others v. Rajesh P.U Puthuvalnikathu and Another* (referred Supra) has no application in this case. The decisions cited by the applicants have no direct bearing with the facts of this case and cannot be adopted to come to a finding in this case. The position of law as explained by the Hon'ble Supreme Court in para 33 in *Sachin Kumar's Case* (referred supra) is more

applicable to the facts of this case. We are of the view that the irregularities in the process have taken place at a systemic level and that it had vitiated the sanctity of the process. The respondents had cancelled the examination after conducting a vigilance investigation and there is sufficient reasons for cancelling the examination. We do not find any reason to interfere in the decision of the respondents to cancel the examination and to re-conduct the same. In the result, we find no merit in this Original Application and it is dismissed accordingly. Consequently interim order dated 6.1.2021 staying the operation of Annexure A-12 order stands vacated. M.A No.180/386/2021 to vacate interim relief is closed. No costs.

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

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List of Annexures

Annexure A1- A true copy of the Railway Board Order bearing RBE No. 22/2018 dated 16.02.2018.

Annexure A2- True copy of Notification No. J/P.608/VIII/SM/Vol.XVI dated 30.03.2018, issued by the 2nd respondent.

Annexure A3- A true copy of the clarification bearing No.J/P.608/VIII/SM/Vol.XVI dated 04.04.2018 issued from the office of the 2nd respondent.

Annexure A4- A true copy of Notification bearing No.J/P.608/VIII/SM/PRQ25%/Vol.1 dated 09.09.2019 issued by the 2nd respondent.

Annexure A5- A true copy of communication bearing No. J/P.608/VIII/SM/PRQ/Vol.1 dated 11.11.2019 issued by the 2nd respondent.

Annexure A6- A true copy of letter bearing No. J/P.608/VIII/SM/PRQ/Vol.I dated 26.11.2019, issued from the office of the 2nd respondent.

Annexure A7- A true copy of Order bearing No.J/P.608/VIII/SM/PRQ/Vol.I dated 09.12.2019, issued from the office of the 2nd respondent.

Annexure A8- True copy of the Online request under RTI, Request Registration No. SRPKD/R/E/20/00059.

Annexure A9- True copy of the reply receive under No. J/P.PG/RTI/2020-21/29 dated 25.07.2020.

Annexure A10 series- True copies of representations submitted by some of the applicants on different dates.

Annexure A11- A true copy of Railway Board Order bearing No. RBE No. 10/1997 dated 09.01.1997.

Annexure A12- A true copy of Order bearing no J/P 608/VIII/SM/25% PRQ/Vol. I dated 08.12.2020 issued on behalf of the 2nd respondent.

Annexure A13- A true copy of the order passed on 12.11.2020 in O.A. No. 539 of 2020 as downloaded from the website of this Hon'ble Tribunal.

Annexure A14- A true copy of the order bearing No. J/P 608/VIII/SM/25% PRQ/Vol.1 dated 11.12.2020 issued on behalf of the 2nd respondent.

Annexure A15- A true extract of para 219(g) to para 219(j) of the IREM, downloaded from the website of the respondents.

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