

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH AT LUCKNOW

Transfer Application No.1159 of 1987
(Writ Petition No.2735 of 1983)

Sri Afzalur Rehaman	Applicant
Versus		
Union of India and Others	Respondents
Hon'ble Mr. Justice K. Nath, V.C.		
<u>Hon'ble Mr. K. Obayya,</u>	<u>A.M.</u>	

Petition described above is before us under Section 29 of the Administrative Tribunal's Act 1985 for quashing and order issued in March, 1983 contained in Annexure - 3, whereby a written test for selection for posts of Assistant Loco Foreman / Power Controller Grade Rs. 550 - 750 was cancelled.

Counter rejoinder have been exchanged and we have heard counsel for both the parties. There is not much dispute on the facts of the case. Selection was to be made on the criterion of merit-cum-seniority for the post of Assistant Loco Foreman and Power Controller for which 33 persons including the petitioner were called to appear at a written test by order dated 2.11.1982 contained Annexure - 1. The written test was held on 16.11.1982 and 8.12.1982. The answer books having been evaluated; 20 persons written in Annexure 2 were notified as having qualified and were called to

appear for a viva test on 5.2.1983. The list includes the petitioner.

Before the viva could be held on the appointed date 5.2.1983 the proceedings of interview were cancelled on a telephonic message given by the DRM, Respondent No.2. The viva consequently could not be held and ultimately by the impugned order; Annexure 3 of the DRM issued in March 1983, the entire test was cancelled in following words:- "On representation received from the Staff and others, the answer books were reviewed by the ADRM (U.P.). Since some technical irregularities were found, the selection has been cancelled."

The grievance of the petitioner is that there was no valid reason for cancellation of the examination. It is said that under the cover of cancellation of examination, the respondents have manipulated to fill in the higher posts; such persons who had even failed in the written test while persons like the petitioner who had passed in the written test were not promoted. Consequently the petitioner has prayed for quashing the impugned cancellation order Annexure - 3. There is also prayer for quashing a notification; Annexure - 6 whereby candidates were again called for attending at the examination. It has been admitted that proposed examination was challenged in a writ petition and by an interim order, the holding of an examination was stayed. It is also noticed that sometime later the interim order was vacated, but till date no examination was held again. The petitioner, therefore, urges that any injustice which was done by cancelling the examination has been perpetuated by the action of the respondents.

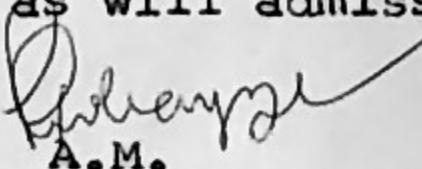
The respondents were expected to give out the reasons for cancelling the examination. Their pleading on the subject is contained in para '7' of their counter and all that is stated is that some irregularities were detected when the answer books were reviewed by the competent authority and, therefore, the examination was cancelled. It was added that the respondents would refer to the original record at the time of hearing.

The order was passed by us on 15.5.1990 stating that it was necessary to have a clear statement of irregularities or the reasons for which the written test was cancelled by the impugned order. The respondents were allowed three weeks time to submit a supplementary counter in which they were to set out the reasons including irregularities for cancellation of the written examination. No supplementary counter has been filed. Sri G.P. Agarwal, on behalf of the respondents says that he had sent intimation of Tribunal's directions to the concerned authorities but he has not received any instructions on the point. Sri Agarwal is also not equipped with the record which the respondents thought, they would produce in terms of para '7' of the counter. The inevitable conclusion, therefore, is that the respondents have not been able to show that there was any valid reason for cancelling the examination. The cancellation, therefore, must be termed to be arbitrary. It is not shown that there is any rule under which the DRM was competent to cancel any examination without disclosing proper reasons. It is well settled that even in Administrative action, arbitrariness cannot be sustained. We hold, therefore, that the impugned order contained in Annexure - 3,

cancelling the examination of which the written test results are set out in Annexure - 2 was arbitrary and must be quashed.

What relief the petitioner may have in this respect, is the next point for consideration. It is somewhat strange that in respect of written results which were announced in January, 1983; a viva-voice test may be held in the year 1990 but then it is the admitted position for both the parties that a viva is a Sine Qua Non in as much as the rules of examination, which was for a selection post on the criterion of merit-cum-seniority, it requires a viva before the final outcome of the examination can be arrived at. We find, therefore, that in the first instance, there has to be viva examination; the ultimate result of the cumulative effect of the success in viva test only will say whether or not the petitioner could be entitled to the rest of the reliefs sought in this petition.

This petition is partly allowed and we direct that Respondents 1 and 2 shall proceed with the process of selection from the stage concluded by the interview call, contained in Annexure -2. They shall finalise the results and take appropriate action according to law for selection/appointment to the posts of Assistant Loco Foreman and Power Controller Grade Rs. 550 - 750 (RS) within a period of three months from the date of receipt of a copy of this judgement. In case the petitioner is finally selected for the appropriate post, he shall also be considered for such consequential benefits as will be admissible under the rules of service.


A.M.

V.C.

rrm/