

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 4th day of February, 2011

Original Application No. 769 of 2007
(U/S 19, Administrative Tribunal Act, 1985)

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr.S. N. Shukla, Member (A)

N.K. Singh, aged about 41 years, S/o Shri Ram Sureman Singh, presently residing at 1487-D, Manas Nagar, Mughalsarai, District-Chandauli.

..... *Applicant*

By Adv. : **Shri Rakesh Verma**

VERSUS

1. Union of India through the General Manager, East Central Railway, Hazipur (Bihar).
2. The Divisiona Railway Manager (P), East Central Railway, Mughal Sarai.
3. Senior Divisional Personnel Officers, East Central Railway, Mughal Sarai.

..... *Respondents*

By Adv. : **Shri A.K. Pandey**

ORDER

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

The matter is simple and short. The applicant is working as signal Interlocking Maintainer in the grade of Rs 4,500 – 7000 (pre revised scale). A notification dated 18-05-2006 was issued by the

respondents for selection under 20% Limited Departmental Competitive Examination quota for preparation of a panel of Intermediate Apprentice of J.E. II (Signal) in the grade of Rs 5000 – 8000. Of those who had applied, the SC candidates were sent for pre-promotional coaching for 21 days in August 2006. Written test was conducted on 16-11-2006 in which 69 persons participated. The applicant is one of the aspirants for the post and his performance in the examination has been claimed to be highly satisfactory. However, without declaring the selection result the authorities had cancelled the selection process and hence this OA challenging the cancellation order and seeking for a direction to the respondents to declare the result.

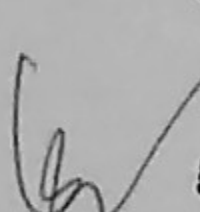
2. Respondents have contested the O.A. They have stated that cancellation of selection process was on account of erroneous calculation of vacancies and inclusion of as many as eight ineligible candidates, out of a total of 69 candidates for the selection. They have also contended that the applicant has no locus standi to challenge the selection since the order of cancellation of selection has been passed by the competent authority before casting the final result. Through a supplementary counter, the respondents had furnished the entire noting of the office and the approval by the competent authority for cancellation of the selection process. They have also annexed a letter from a Union and another individual, which pointed out certain deficiencies in the conducting of the

examination, including deficiency in conducting the 21 days pre-promotional training for the reserved candidates.

3. The applicant in his rejoinder has contended that the reason for cancellation of selection cannot be held to be bonafide for the following reasons:-

- (a) Error in calculation of vacancies cannot be a valid reason for cancellation.
- (b) The examination being one of competitive in nature, (Limited Departmental Competitive Examination), the total number of eligible candidates for the selection does not depend upon the number of vacancies.
- (c) The noting vide annexure SCA I does not indicate precisely as to who are the eight ineligible candidates.
- (d) The decision to cancel the selection is after the papers were evaluated in which three persons have been found to have qualified in the written examination.

4. Parties had consented to file written submission and the counsel for the applicant promptly filed the written submission, succinctly bringing out the aforesaid aspects and contentions. Written arguments from the respondent's side was not forthcoming. As such, their counter and supplementary counter have been considered.

 5. Pleadings, documents and written submission have been considered.

6. The noting portion vide Annexure SCA I, inter alia contains the following:-

"Selection has been conducted for JB/J signal ---- in which there are following lacuna as per note of concerned clerk & dealing officer,

- (a) *Vacancy as per percentage distribution should be 03 which has been calculated as 04 and selection conducted for the same and three candidate has passed in written examination.*
- (b) *8 candidates has been called provisionally as per circular 60/97 which otherwise were not being used in division and fact of this was not mentioned in notification. Immediate clarification should have been asked which has been done after written result was issued and complain was record regarding the same. It has since been clarified by HQ that one of the candidates passed in written examination is otherwise not eligible to appear in the examination.*

Considering above lacuna it may kindly be decided latter.

Examination may be cancelled and fresh selection to be held or otherwise as deemed fit.

*Sd/-Ille
24.04.07*

ADRM

1. *The various correspondence and noting regarding this selection is available in file No.E/S&T/supervisor/Promotion (Promotion of SSE, SE,JE-I JE-II). The page Nos referrerd in the note of APO-II & Dealing Clerk refers to the NS of above file. I have gone through the noting in above file from beginning i.e. NS-51 to NS-89.*

2. *From the above notings/details it is clear that there has been two errors/mistake*

- *Calculation of vacancies in LDCE quota is not as per procedure/rule and is incorrect.*
- *8 candidates who were otherwise not eligible were called for written test.*

3. *In view of the above errors/mistakes this selection (LDCE) is cancelled. The fresh selection should be initiated right from beginning i.e. calculation of vacancies & so on.*

*Sd/ Ille.
27.04.07*

7. The above would go to show that the cancellation of selection process has been ordered on the basis of two errors – (a) erroneous calculation of vacancies and (b) eight ineligible candidates having been permitted to participate in the examination.

8. The question for consideration is whether the challenge is maintainable by the applicant who has not been declared selected and if so, whether there is any illegality in the cancellation i.e. whether the cancellation smacks arbitrariness.

9. Law on the subject has been crystallized by the Apex Court through various decisions. In a recent case of *East Coast Railway v. Mahadev Appa Rao*, (2010) 7 SCC 678,, the Apex Court has referred to various decisions of the past and held as under:-

13. A Constitution Bench of this Court in Shankarsan Dash v. Union of India had an occasion to examine whether a candidate seeking appointment to a civil post can be regarded to have acquired an indefeasible right to appointment against such post merely because his name appeared in the merit list of candidates for such post. Answering the question in the negative this Court observed:

7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwaha, Neelima Shangla v. State of Haryana or Jatinder Kumar v. State of Punjab."

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. ...

15. To the same effect is the decision of this Court in *UT of Chandigarh v. Dilbagh Singh* 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.

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.
.....

23. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable.
.....

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* case. 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.

.....

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.*

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.*

10. In the instant case, the noting goes to prove that there is application of mind. However, whether there is sufficiency of material to warrant cancellation is the only question to be considered. Two mistakes - one relating to calculation of vacancies and the other calling 8 ineligible without qualifying them in the relevant notification as provisional were pointed out. One of the ineligible is stated to have qualified in the written test. No names of the passed candidates are reflected in the noting.

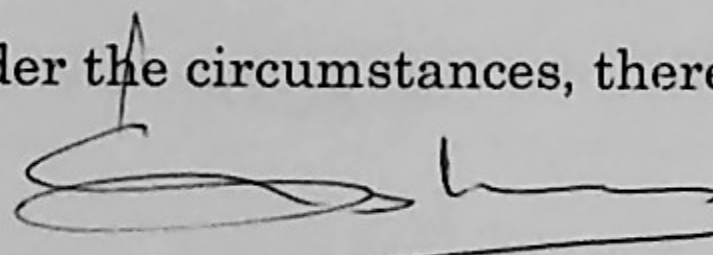
11. If the decision to cancel the selection is for any ulterior purpose, the purpose could be only that non-qualified person is intended to be brought in as selected. Here, when the names of those who have qualified have not been made known to the

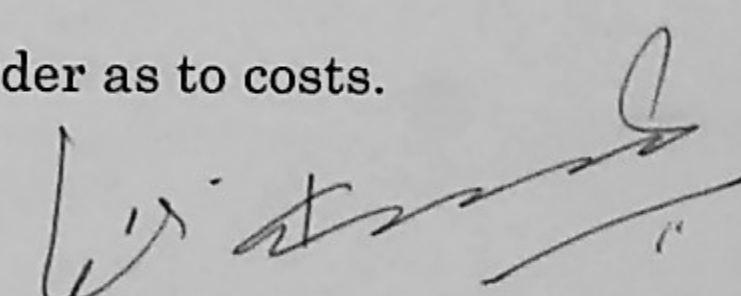
authority, it would be fair to presume that the cancellation has been effected on bonafide consideration. To think otherwise would amount to disregard the observations of the Apex Court in the case of *Ajit Kumar Nag v. Indian Oil Corpn. Ltd*, wherein a three Judge Bench of the Apex Court has held "There is every presumption in favour of the administration that the power has been exercised bona fide and in good faith." (Referred to in *Mazdoor Sangh v. Usha Breco Ltd., (2008) 5 SCC 554*)

12. So far as the applicant's locus is concerned, it is to true that he has not been declared as qualified in the written test. He may be amongst the rest of the two eligible candidates. However, the same cannot give him an indefeasible right to claim for appointment.

13. Taking into account the fact that there has been full application of mind and the cancellation had been ordered prior to declaration of the result and no loss is caused to the applicant who could participate in the examination again, this **OA is rejected.**

14. Under the circumstances, there is no order as to costs.


(S.N. Shukla)
Member-A


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

Sushil