

क.स.स. (प्रक्रिया) नियमानुसार के दिन 22 के अन्तर्गत निः शुल्क प्रति

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 595/2011, 02/2012, 03/2012 & 15/2012

Jodhpur this the 5th day of March, 2013.

Reserved on 26.02.2013

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms. Meenakshi Hooja, Member (A)

1. Ram Niwas S/o Narayan Ram aged about 53 years, R/o Subhash Nagar Shiv Chowk, Near Gramin Bank, Nagaur Sarak, Merta Road, Distt.-Nagaur, at present employed on the post Cabin Man in the office of Station Superintendent, Merta Road Jn, NWR Distt. Nagaur.
2. Moola Ram S/o Channa Ram S/o Shri Chanana Ram, aged 50 years, resident of Village and Post-Jatawas Lohawat Tehsil Phalodi, Distt-Jodhpur, at present employed on the post Points Man in the O/o Station Superintendent, Marwar Lohawat Railway Station, NWR Distt. Jodhpur.

.....Applicants in O.A. No. 595/2011

3. Nand Kumar S/o Ram Lagan, aged about 57 years, R/o Qtr No. T-140-B, New Loco Colony, Ratanada Jodhpur at present employed on the post of Cabin Man in the O/o Station Superintendent, Jodhpur, NWR.
4. Gopal Ram S/o Shri Ram Chandra, Aged 48 years, R/o Village and Post-Kharia, Distt-Nagaur, at present employed on the post of Points Man 'A' in the O/o Station Superintendent, Merta City Railway Station, NWR, Distt. Nagaur.
5. Babu Lal S/o Shri Motiji, aged 52 years, R/o House No. 121, Sutla Gajanand Colony, in front of Chopasani Housing Board, Jodhpur, at present employed on the post of Shunting Jamadar in the O/o Station Superintendent, Merta Road Railway Station, NWR, Distt. Nagaur

.....Applicants in O.A. No. 02/2012

6. Dhool Singh S/o Shri Madho Singh, aged about 54 years, resident of Plot No. 377, New BJS Colony, Jodhpur, at present employed on the post of Points Man 'A', in the office of Station Superintendent, Raika-Bag, Jodhpur, NWR

.....Applicant in O.A. No. 03/2012



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7. Raheesh Khan S/o Mukarak Khan, aged about 40 years, R/o Khayamkhani Nagar, Degana Distt. Nagaur, at present employed on the post of Points Man 'A' in the O/o Station Superintendent, Degana, NWR.
8. Girdharilal S/o Shri Mangilal, aged about 51 years, R/o Railway Station Ren, Distt. Nagaur, at present employed on the post of Points Man 'A' in the O/o Station Master, Khedoli Railway Station, NWR, Distt. Nagaur.
9. Kanhiyalal S/o Shri Gularam, aged 51 years, R/o Railway Qtr. No. T/3-B, Near GRP Chowki, Degana, Distt. Nagaur, at present employed on the post of Shunting Master in the O/o Station Superintendent, Degana Railway Station, NWR, Distt. Nagaur.

.....Applicants in O.A. No. 15/2012

(Through Advocate Mr. J.K. Mishra)

Versus

1. Union of India through General Manager HQ Office, North-Western Railway, Malviya Nagar near Jawahar Circle, Jaipur-17
2. Sr. Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur

(Through Advocate Mr Kamal Dave)



..... Respondents

ORDER

Per Justice Kailash Chandra Joshi, Member (J)

These four OAs bearing No. 595/2011, 02/2012, 03/2012 and 15/2012 are being disposed off for the reason that the relief claimed in all these OAs is common pertaining to quashing of the impugned order dated 13.10.2011 and notification dated 14.12.2011 and all proceedings thereof. Further they sought the relief to direct the respondents to conduct the paper screening as

per written test result dated 13.4.2011. In all these applications except OA 03/2012, the applicants have sought permission to pursue joint application on behalf of 2 or more applicants under rule 4(5) of CAT Procedure Rule, 1987.

2. The applicants are claiming the same relief being aggrieved by the same order of the respondents. We are allowing all the applicants to pursue joint OA on behalf of two or more applicants under rule 4 (5) of Central Administrative Tribunal (CAT) Procedure Rule, 1987. For the sake of convenience we are referring we are referring brief facts of the case of OA No. 595/2011 Ram Niwas & Another vs UOI & Ors.

3. The brief facts of the case are that applicants Shri Ram Niwas and Shri Moola Ram were initially appointed to the post of Traffic Khalasi against Pointsman on 10.12.1992 and 11.07.1992 respectively and further they were promoted to the post of Cabin Man and Pointsman A of Group C category posts carrying pay scale of Rs 5200-20200 with Grade Pay Rs 1900/- as per the recommendations of 6th CPC. The respondent No. 2 i.e. Sr. Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur issued a notification dated 01.09.2010 [A/3], for inviting applications for filling up 29 posts of Goods Guard in the pay scale of Rs 4500-7000, under 60% quota meant for various categories, fulfilling eligibility conditions in the advertisement. Vide letter dated 29.12.2010 Annex. A/4 eligibility list of 165 persons was issued and the names of Shri Ram Niwas and Moola



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Ram were included in the eligibility list at serial number 14 and 100 respectively and the dates of written test 5th, 6th, 12th & 13th of Feb., 2011 were also notified. Both these applicants appeared in the written test and as may be seen from letter dated 13.04.11 Annex. A/5, their names find place at serial number 14 and 8 respectively in those passing the test and eligible for paper screening.

The applicants of OA No. 2/2012 i.e. Shri Nand Kumar, Gopal Ram and Babu Lal appeared in the written test and their names find place at serial number 7, 6 and 23 respectively in the results declared vide letter dated 13.04.2011 Annex. A/5.

The applicant of OA No. 3/2012 i.e. Shri Dhool Singh appeared in the written test and his name find place at serial number 2 in the result at Annex.A/5.

The applicants of OA No. 15/2012 i.e. Shri Raheesh Khan, Girdharilal and Kanhiyalal appeared in the written test and their names find place at serial number 4, 5 and 21 respectively in the result at Annex.-A/5.

Thereafter the respondent issued an order dated 13.12.2011[A/1] whereby the result of the written test was cancelled assigning the reason that grave irregularities in written test took place without disclosing the details of the irregularities and further ordered to hold fresh selection vide notification dated 14.12.2011 Annex. A/2.

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In all these OAs the applicants aggrieved by the same order, have prayed for the same relief (s) referred in para No. 1.

4. By way of reply the respondents denied the arbitrariness on the part of the respondents and also denied the violation of Article 14 and 16 of Constitution of India. The respondents in their reply further specifically pleaded that the written examination including the process of evaluation was found to be based on number of irregularities to the extent of subsequent adding answers in the answer sheet, different hand writing in the answer sheet etc. and further averred that before initiation of further process i.e. paper screening of eligible staff, Vigilance Team of the Railways initiated the vigilance inquiry and noticed gross irregularities in respect of the process of selection at large level and a process which is found to be clouded by irregularities cannot be allowed to continue to maintain the pious process of selection. The competent authority after considering the entire facts and circumstances decided to cancel the selection vide Annex. A/1 and ordered for initiation of fresh selection process.

It has been further averred that no vested right is created by merely appearing in the written examination and qualifying the same which form one of the part of the process of selection. The respondents by way of their written reply, therefore, prayed to dismiss the OA filed by the applicants.

5. Counsel for the applicant contended that no specific reason has been mentioned by the respondents for cancelling the

examination and if such irregularities were found in the examination process, those irregularities could have been removed by the competent authority whereas instead of removing any irregularities, the respondents simply passed the order of cancellation and issued a fresh notification dated 14.12.2011 Annex. A/2 and further dated 25.04.2012 (Annex.A/6 filed with the rejoinder for 59 vacancies) and thus, now the applicants have to compete with the candidates falling in enhanced zone of consideration. Further vide letter dated 17.07.2012 date of written tests has been declared as per Annex. MA-2.

6. Per contra counsel for the respondent relying upon the judgment of the Hon'ble Apex Court passed in *Chairman, All India Railway Recruitment Board and Another vs K. Shyam Kumar and Ors reported in SCC Vol. 6 of 2010 page 614* contended that where large scale irregularities and malpractices were noticed and reported by Vigilance Department in preliminary enquiry, *prima facie* revealed leakage of question papers, mass copying and impersonation of candidates in the written examination and recommended further action, the decision taken by the Railway Board to hold re-test was held by the Apex Court to be fair, reasonable, well balanced and harmonious.

Counsel for the respondents further contended that when the Vigilance Team came to certain conclusion regarding any other malpractices then no alternative was left with the competent authority except holding a re-examination. He further contended

that in such circumstances where in the recruitment process, malpractices, irregularities were found, there is no need to supply the copy of the report to the individuals unless and until any action is proposed against those individuals and non supply of the vigilance report cannot be held as infirmity. It has been further held in the above judgment that merely by passing the written examination applicant does not acquire any indefeasible legal right to insist that they should be appointed to the post. The Hon'ble Apex Court while dealing with the similar matter in the above judgment held that 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.

He further relied upon the judgment of the Hon'ble Apex Court *Krishan Yadav vs. State of Haryand* reported in SCC Vol. IV of 1994, page 165.

7. We have considered the rival contentions of both the parties and also perused vigilance report placed before us, the respondents entirely acted upon the report of the vigilance team and in view of the judgments relied upon by the counsel for the respondents, there were valid reasons to cancel the examination and to order for the retest/reexamination.

8. In our considered view it was a clear case where the sanctity of the examination was totally eroded due to commission of large scale irregularities. In such a situation the only course open to



Railways (respondents) was to cancel examination and to hold fresh one from its inception, rather than to give benefit to some.

9. Accordingly the OAs lack merit and these are dismissed. However, looking into the entire facts and circumstances of the case and the fact that the respondents issued second advertisement dated 14.12.2011 for 37 posts and another advertisement dated 25.04.2012 for 59 posts, we direct the respondents to hold the written test for 29 vacancies initially on the basis of notification dated 01.09.2010 Annex. A/3 and 29.10.2010 Annex. A/4, otherwise, the applicants have to compete with the persons falling in the enhanced zone of consideration. Further they may hold separate examination for the future posts added in the advertisements dated 14.12.11 and 25.04.12. At the same time competent authority may take necessary action if deemed fit as per rules including the debarring of the candidates from the written examination who were involved in the irregularities and malpractices.

COMPARED &
CHECKED The OAs are accordingly disposed off with the above direction. There shall be no order as to costs.

Ran

Sd —
[Meenakshi Hooja]
Administrative Member

Sd —
[Justice K.C. Joshi]
Judicial Member

CERTIFIED TRUE COPY

Dated ... 6/3/2013

J.R. Shew

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application No.19/2012

Jodhpur, this the 21st March, 2013

CORAM

**HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)**

1. Vijay Kumar S/o Shri Lumba Ram ji, aged about 42 years, working as Senior Booking Clerk in the pay-scale of Rs.5200-20200+2800 grade pay, R/o Banar Road, Jodhpur.
2. Abhishek Meena S/o Shri Mohan Krishna Meena, aged about 23 years, working as Senior Book Clerk in the pay-scale of Rs.5200-20200+2800 grade pay, R/o Section 7, Plot No.60, New Power House Road, Jodhpur.
3. Rajesh Saxena S/o Shri Omprakash Saxena, aged about 46 years, working as Parcel Clerk in the pay-scale of Rs.5200-20200+2800 grade pay, R/o 6-S-24, Chopasani Housing Board, 5th Pulia, Jodhpur.

.....**Applicants**

Mr. Vinit Dave, for Mr. Rajesh Joshi, counsel for applicants.

Vs.

1. Union of India through General Manager, HQ Office, North-Western Railway, Malviya Nagar, Near Jawahar Circle, Jaipur-17.
2. Senior Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur.

...**Respondents**

Mr. Dhirendra Pandey for Mr. Kamal Dave, counsel for respondents.

ORDER (ORAL)

Per Justice K.C. Joshi, Member (J)

Three applicants namely Vijay Kumar, Abhishek Meena and Rajesh Saxena prayed for the permission to pursue this application

jointly. The same is allowed for the reasons stated in the application.

2. The facts of this case in narrow compass are that all the three applicants are working in the Railway Department and the respondent department issued a notification dated 01.09.2010 for inviting application for filling up 29 posts of Goods Guard and all the three applicants appeared in the written examination, and the respondent department after the declaration of the result abruptly notified to cancel the notification without any reason. Therefore, the applicants by way of this application sought the following reliefs:-

"(i) That the applicants may be permitted to peruse this joint application on behalf of three applicants under Rule 4 (5) of the Central Administrative Tribunal Procedure Rules, 1987.

(ii) That impugned order dated 13.12.2011 (Annex.A/1) and notification dated 14.12.2011 (Annex.A/2) and all proceedings thereof, may be declared illegal and the same may be quashed.

(iii) The respondents may be directed to conduct the paper screening as per written test result dated 13.04.2011 and finalize the selection, accordingly and all consequential benefits to the applicants; or in alternative, the respondents may be directed to permit the applicants to participate in written examination for the post of Goods Guard notified by Notification dated 14.12.2011 (Annexure-A/2) and the condition mentioned in the said notification dated 14.12.2011 (Annex.A/2) "that employees having in pay-scale of Rs.5200-20200+2800 pay band are not entitled." May kindly be quashed and set-aside.

(iv) That the respondents may be directed to produce the relevant records/file notings for perusal of this Hon'ble Tribunal whereby the decision to cancel the selection vide impugned order (Annex.A/1) was taken.

(v) Any other appropriate order or direction, which may be considered just and proper in the light of above, may kindly be issued in favour of the applicants.

(vi) Costs of the application may kindly be awarded in favour of the applicants."

3. By way of reply, the respondents averred that the examination was cancelled due to irregularities or fraud and misrepresentation found by the Vigilance Committee of the Department. Therefore, the respondents notified the cancellation of



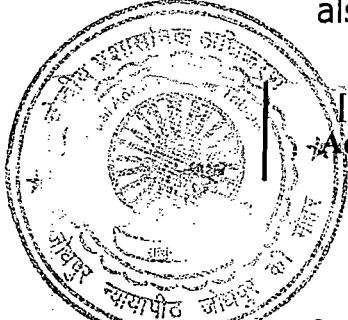
the written examination, and further advertised 37 posts and after the cancellation of the same further posts were notified. 22

4. During the course of arguments, it emerged that later on vide notification dated 25.04.2012, 59 posts were advertised including these 29 posts.

5. We have heard both the parties and perused the record. We have already decided the similar applications bearing OAs No.595/2011, 02/2012, 03/2012 and 15/2012, and have disposed of these applications with a detailed order and reasoning. As this OA has been filed to challenge the same examination, therefore, this OA is also disposed of in terms of our judgment dated 05.03.2013 passed in 595/2011, 02/2012, 03/2012 and 15/2012, and the respondents are directed to hold the written examination for 29 vacancies initially on the basis of notification dated 01.09.2010 (Annexure-A/3), otherwise the applicants have to compete with the persons falling in the enhanced zone of consideration. Further, they may hold separate examination for the future posts added in the advertisements dated 14.12.2011 and 25.04.2012. At the same time, competent authority may take necessary action if deemed fit as per rules, including the debarring of the candidates from the written examination, who were involved in the irregularities and malpractices.

6. The OA is, accordingly, disposed of with the above directions. There shall be no order as to costs.

7. A copy of the order dated 05.03.2013 passed in OA No. 595/2011, 02/2012, 03/2012 and 15/2012 may be kept in this OA also and vice versa.



COMPARED &
CHECKED

[Meenakshi Hooja]
Administrative Member

[Justice K.C. Joshi]
Judicial Member

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Dated 26.3.2013

J.K. Joshi

अधिकारी कार्यालय (जायज.)
Section Officer (Jud.)
कानूनी कार्यालय अधिकारी
Central Administrative Tribunal
जोधपुर आदानपेट जौधा
Jodhpur Bench, Jodhpur.