

Central Administrative Tribunal
Calcutta Bench, Calcutta

OA 352/1997

This the 21st day of April, 2005

Hon'ble Shri S.K. Malhotra, Member (A)
Hon'ble Shri G. Shantappa, Member (J)

1. Dilip Pal,
son of Sr. Suresh Chandra Pal
of Village – Chandrapur,
Post Office – Duttagupukur,
District – 24 Parganas (North)
2. Md. Nuruddin Ahamed,
son of Azimuddin Ahamed,
of village and post office – Bhalota,
District – Murshidabad
3. Sandip Ghosh
son of Tarapada Ghosh,
of 5/40, Jatindas Nagar,
Post Office – Belghoria,
Calcutta – 700 056.
4. Rabindra Nath Sen,
son of Late Netaipada Sen,
Village and Post Office – Aranghata,
District – Nadia.
5. Achintya Mitra,
son of Purna Chandra Mitra,
of 35/4, Attapara Lane,
Calcutta – 700 050.

(By Advocate Ms. S. Banerjee)

Versus

1. The Union of India,
Service through the General Manager,
Eastern Railway, 17, Netaji Subhas Road
Calcutta.
2. The Senior Divisional Operating Manager,
Eastern Railway, Sealdah, Calcutta.
3. The Divisional Railway Manager,
Eastern Railway, Sealdah.
4. The Chief Personnel Officer,
Eastern Railway, 17, Netaji Subhas Road,

Calcutta.

5. The Senior Divisional Personnel Officer,
Eastern Railway, Sealdah, Calcutta.
6. The Divisional Personnel Officer,
Eastern Railway, Sealdah.
7. The Chief Operating Manager,
Eastern Railway, 17, Netaji Subhas Road,
Calcutta.
8. The Divisional Safety Officer,
Eastern Railway, Sealdah, Calcutta. ..Respondents

(By Advocate Shri P.K. Arora)

ORDER

By Hon'ble Shri G. Shantappa, Member (J):

The present OA has been filed by the applicant under Section 19 of the A.T. Act, 1985 seeking the following reliefs:

- "a) An order directing the applicants to move this application jointly as they are all similarly circumstanced employees;
- b) A mandate please may be given directing the respondent authorities to cancel and /or withdraw the letter dated 13-3-1997, Annexure-D herein and not to hold the fresh selection for the post of switchman without publishing the result of earlier selection.
- c) An order directing the respondent authorities to publish the result of the selection for the post of switch man which was held on 4.2.1997 and 5.2.1997 respectively.
- d) Any other order or orders as to this Hon'ble Tribunal may deem fit and proper."

2. The facts of the case in brief are that the applicants are working as class-IV employees in different places under Eastern Railway performing their duties in the capacity of Porter, Point Man, Gate Man etc. at the chain vacancy scale of Rs.752-940/- All the applicants are possessing qualification of matriculation and as per the established rules and regulations of the Railway Administration, after two years of regular service they are entitled to appear in the examination for the post of class-III.

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3. Vide letter dated 9-8-1996, the Divisional Personnel Officer, Sealdah, declared the selection for the post of Switchman in the pay scale of Rs.1200-2040/- (RP) total no. of posts-30 (UR-13, SC-8, ST-9). In order to form the panel for the post of Switchman, options are called and the applicants have applied for the aforesaid post in the category of class-III. A written test was conducted on 7-12-1996 and viva-voce test was conducted on 4-5 February, 1997. Subsequently without announcing the results, the Senior Divisional Personnel Officer, Sealdah has directed that the selection for the post of Switchman was hereby cancelled on account of procedural lacuna as per the order of the competent authority. For filling by 50% of the vacancies i.e. for 16 posts (UR-8, SC-4, ST-4), options are called from amongst the Lineman/ Cabinman/ Pointman working in the pay scale of Rs.950-1500/- (RP) and Rs.1200-1600/- (RP) who have the educational qualification of class-VIII standard should have 2 years of regular service in their existing posts. The remaining 50% vacancies i.e. for 17 posts (UR-0, SC-4, ST-4), options are called from amongst Group-B and Group-C staff of operating department of Sealdah Division.

4. For canceling the selection process/ examination, the applicants have submitted the representation dated 19-3-1997 to the authorities, to which there was no reply from the respondents. The action of the respondents for canceling the selection process/ examination was illegal. When there was no information from the respondents, the applicants' right to get information about the result after successfully appearing in the examination is not only the directive principle but also the fundamental right of the applicants. The authorities have acted and proceeded by cancelling the whole selection which is an abuse of



the due process of law on their part and also smacks of colourable exercise of power. There is a serious miscarriage of justice in the matter of public employment and not only the serious injustice but also the hostile attitude against the applicants. Subsequently, a fresh option in the next selection of the said post was called within 15 days i.e. on 31-3-1997. The applicants have not filed their options. The grievance of the applicants is that the authority who has cancelled the selection process/ examination has no competence to cancel. Therefore, the impugned order is illegal and the reliefs as prayed for by the applicants shall be granted.

5. The respondents have filed reply denying the averments made in the OA. The respondents have contended that the written test for the post of Switchman in the pay scale of Rs.1200-2040/- was held on 7-12-1996, in which 57 candidates secured qualifying marks and they were called for viva-voce test but the final result for matric quota was not published as the selection process for the post of Switchman was cancelled with the approval of the competent authority on account of procedural lacuna. Subsequently, a fresh notification was notified, all the applicants along with other eligible staff have again ^{been} called to appear in the written examination. All the applicants have filed their options except the applicant no.2 and 4, within the due dated i.e. 31-3-1997 in response to the circular dated 13-3-1997. The applicants were given an opportunity by extending the date for submission of their options for seven days as per the directions of this Tribunal. The applicants have submitted their options and appeared in the written examination which was held on 31-5-1997, the results for which are still awaited.



6. The applicants have filed their rejoinder against the reply of the respondents, in which they have stated that as per Railway Board's Manual 215(e) order of cancellation of selection process/ examination can be passed only by the General Manager, not by anybody else. In the instant case, the respondent authorities only to avoid the real aspect of the matter, have stated that cancellation order was passed due to procedural lacuna with the approval of competent authority but they have not explained therein who is the competent authority as such. The respondent authorities may be directed to produce the whole record regarding the selection proceeding and the cancellation of selection process before the Tribunal. They have stated that the respondent authorities have illegally and arbitrarily cancelled the whole proceeding for the post of Switchman which was done after observing all the formalities, before publication of the panel for the reason best known by them although without approval of General Manager. No selection proceeding and panel can be cancelled as per established rules and regulations of the Indian Railway Manual. The respondent authorities have acted at their own whims and caprices cannot proceed which is contrary to the established rules and regulations. The applicants have further stated that it is not possible for anyone to appear in the examination of Switchman successfully in all chances as such once the applicants secured qualifying marks in written test for the examination of Switchman and appeared successfully in the viva-voce test for the same they may not be successful in the next chances as such whole proceeding cannot be cancelled without assigning any cogent reason on the ground of procedural lacuna. The applicants appeared in the written examination and the viva-voce but not



empanelled for the said post of Switchman. The applicants along with others were again called for the written examination for the said post and they have appeared on 31-5-1997. Then viva-voce test for the qualifying candidates was held on 13-8-1997 and 14-8-1997, for which the result was published on 9-9-1997 and panel for the post of Switchman was prepared although the respondent authorities have stated that the result of the said examination is still awaited. The result of the said post of written test dated 1-8-1997 and of panel dated 9-9-1997 are annexed as Annexure-A and B.

7. Thereafter, the respondents have filed a supplementary reply to the OA, in which they have stated that the main contention of the respondents is that the applicants appeared in the written test held for the post of Switchman on 31-5-1997. The results revealed that none except the applicant namely Sri Dilip Kumar Paul - Porter/ BBT, became successful in the said test and accordingly he was called for viva-voce test which was held on 14-8-1997 but he did not qualify the same. Therefore, he was not figured in the final list published on 9-9-1997. Further selection is going to be held in the Division for which options have been called from the eligible candidates. The applicants except the applicant no.2 and 5 have forwarded their options for being called for written test to be held for the post of Switchman.

8. We have heard Ms. S. Banerjee, counsel for the applicant and Shri P.K. Arora, counsel for the respondents and have also perused the pleadings available on record as well as the judgement cited by the respondents.

9. The short question for our consideration is that, whether the applicants have legal right to challenge the cancellation of the

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examination/ selection process for the post of Switchman (class-III)?

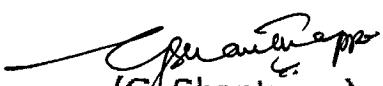
It is an admitted fact that the applicants have appeared for the written examination and also for the viva-voce test but due to procedural lacuna, the respondents have cancelled the examination. Hence the selection was not taken place. They have cancelled the examination only because of some procedural lacuna. They have published the same post once again in the subsequent publication, in which the applicants have appeared in the written test and viva-voce test. The specific stand taken by the applicants is that the General Manager is the competent authority to cancel the examination or the selection process, the General Manager has not taken the decision. The respondents have stated that they have taken the decision for cancelling the selection process with the approval of the competent authority on account of procedural lacuna. When there is a specific statement made by the respondents that the competent authority has taken the decision, the contention of the applicants has no merit. The applicants have no legal right to ask for the authorities to cancel the examination. Hence the OA is liable to be dismissed. In support of their contention, the respondents have cited a judgement of the Hon'ble Supreme Court in the case of B. Ramanjini and others vs. State of A.P. and others [2002 SCC (L&S) 780]. In view of the above judgement, the applicants have no legal right and the OA is accordingly liable to be dismissed.

10. Whether the applicants ~~have~~ legal right for challenging the cancellation of the examination/ selection process. In this aspect of the matter, the respondents have cited the judgement of Hon'ble Supreme Court which has clearly held that the applicant have no legal



right to challenge the cancellation of selection process/ examination. The Hon'ble Supreme Court has held that the Courts should not unduly interfere with the action taken by the Government particularly when there was some material for the Government ^{to} act one way or the other. The facts of the case in the said judgement were that there was mass-copying, the staff appointed for invigilation was totally inexperienced and some other mistakes were there. Hence the Government has taken the decision to cancel the examination. The Supreme Court categorically held that the courts should not interfere with the action taken by the Government. In view of the above judgement of the Hon'ble Supreme Court, the OA is liable to be dismissed. A similar issue has been decided by the CAT, Ernakulam in the case of C. Somasundaram & Another vs. U.O.I. & Another reported in 2003 (3) SLJ (CAT) 273. Be that as it may, in the instant case, the Competent Authority has cancelled the examination on the ground of procedural lacuna. There is nothing wrong in taking such a decision, for that the applicants have no legal right. We answer the said question, accordingly.

11. For the foregoing reasons, we are of the considered view that the applicants have no legal right to challenge the selection process/ examination which was cancelled by the respondents on the ground of procedural lacuna. In view of the judgement of the Hon'ble Apex Court, the applicants have not made out the case for grant of any of the reliefs; the OA is liable to be dismissed and is accordingly dismissed. No costs.


 (G. Shantappa)
 Member (J)
 /gkk/


 (S.K. Malhotra)
 Member (A)