

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

O.A.No.363/2005

With

O.A.No.364/2005

This the 8th day of December 2005

HON'BLE SHRI S.P. ARYA, MEMBER (A)
HON'BLE SHRI K.B.S. RAJAN, MEMBER (J)

1. Yunis-Ali aged about 56 years S/o Sri Tahir Ali R/O Village Brahamin Tola, Kharika, Jalibagh, Lucknow.
2. Adil Hussain, aged about 48 years S/o Sardar Ali R/o Qn LD 44-H, Loco Running Shed Colony Alambagh, Lucknow.
3. Mohd. Zaheer Khan, aged about 49 years, S/o M.Z. Khan R/o Qn LD 60/D Loco Running Shed Colony, Alambagh, Lucknow.
4. Shiv Kumar Srivastava aged about 49 years S/o Srio S.P. Srivastava R/o N/No.213/1 Trtheri Tola, Chhanchi Kuan, Lucknow.
5. Ram Bhaskar, aged about 42 years S/o Sri S.L. Tewari R/o Qn LD 62/E, Loco Running Shed Colony Alambagh, Lucknow.
6. L.P. Sharma, aged about 50 years S/o Sri Sant Prasad R/o Qn LD 45/G Loco Running Shed Colony Alambagh, Lucknow.
7. Akhilesh Kumar Singh aged about 45 years S/o Sri R.P. Singh R/o Qn ii, 89/H, Sleeper Ground Colony Alambagh, Lucknow.
8. Sanjeev Singh aged about 40 years S/o Sri Virendra Singh R/o 280/38 K Blunt Square, Lucknow.
9. Sri Ramji aged about 39 years S/o Sri Ram Pyare R/o SSE/ Loco Shed/AWV Lucknow.

10. U.P.S. Vishwakarma aged about 38 years S/o Sri H.P. Vishwakarma R/o Qn LD 45/B Loco Running Shed Colony, Alambagh, Lucknow.
11. S.K. Gupta aged about 40 years S/o Sri V.P. Gupta R/o 122 Mill Road, Mawaiya, Lucknow.
12. Ghanshyam aged about 38 years S/o Sri Tirath Prasad R/o I-58-L, Sleeper Ground Colony Alambagh, Lucknow.
13. Dinesh Chandra aged about Adult years S/o Ram Avtar R/o LD Loco Running Shed Colony Alambagh, Lucknow.
14. S.N. Mishra aged about 38 years S/o Sri V.V.ishra R/o ITVB 78 D, Sleeper Ground Alambagh, Lucknow.
15. R.N. Srivastava aged about 37 years S/o Sri K.S. Srivastava R/o H/No.210/2 Bawarchi Tola Chowk, Lucknow.
16. Vindeshwar Prasad aged about 39 years S/o Garjun Prasad R/o H.No. SS 811 Sector H LDA Colony Kanpur Road, Lucknow.
17. Sadhu Saran aged about 39 years S/o Jokhu Ram R/o Qn I-124/C, Loco Running Shed Colony Alambagh, Lucknow.
18. Gopal Srivastava aged about 39 years S/o H.P. Srivastava R/o Qtr. No. LD 45/C Loco Running Shed Colony Alambagh, Lucknow.
19. Sushil Kumar aged about 38 years S/o Harmani Prasad R/o Qn II-90 Sleeper Ground Colony Alambagh, Lucknow.
20. R.G. Verma aged about 39 years S/o S.R. Verma R/o SSE/Loco Shed/AMD Lucknow.
21. Vinod Kumar aged about 37 years S/o Prem Chandra R/o SSE/Loco Shed, AMB Lucknow.
22. Satya Prakash II, aged about 51 years S/o Sri Mata Prasad R/o N/No.569 Ka/104/2/ Sneh Nagar Sheetla Mandir Alambagh, Lucknow.



23. R.L. Mishra aged about 48 years S/o Lalta Prasad Mishra ZH/No.570/88 Virat Nagar Kasimpur, Pakri Lucknow.
24. S.K. Mishra aged about 37 years S/o G.D. Mishra R/o Qn No.90/G Sleeper Ground Colony Alambagh, Lucknow.
25. Randhir Singh aged about 45 years S/o Sri S.N. Singh R/o Sleeper Ground Colony Alambagh, Lucknow.

...Applicants.

By Advocate: Shri A. Moin.

Versus.

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Sr. Divisional Personnel Officer, Northern Railway, Hazratganj, Lucknow.
4. Divisional Personnel Officer, Northern Railway, Hazratganj, Lucknow.

...Respondents.

By Advocate: Shri Arvind Kumar.

O.A. 364/05

1. Ram Bhadur, aged about 49 years S/o Sri Ram Jaiswal presently working as Loco Pilot Goods Driver under SSE/Loco, Northern Railway, Lucknow and R/o LD-46/E, Loco Running Shed Colony, Alambagh, Lucknow.
2. Nanhey Lal, aged about 49 years, S/o Sri Makodar presently working as Loco Pilot Goods Driver under SSE/Loco, Northern Railway, Lucknow and R/o C-554/2, Kailashpuri, Alambagh, Lucknow.



3. H.C. Verma, aged about 51 years, S/o Sri Ram Das presently working as Loco Goods Driver under SSE/Loco, Northern Railway, Lucknow and R/o Village Behsa Near Amausi Air Port, Lucknow.
4. H.R. Maurya, aged about 49 years, S/o Sri Sheo Ram presently working as Loco Pilot Goods Driver under SSE/Loco, Northern Railway and R/o Village Behsa Near Amausi Air Port, Lucknow.
5. S.C. Jaiswal, aged about 45 years, S/o Sri N.D. Jaiswal presently working as Loco Pilot Goods Driver under SSE/ Loco Shed, Northern Railway, Lucknow.
6. A.K. Gupta, aged about 37 years S/o Sri D.N. Gupta presently working as Loco Pilot Goods Driver under SSE/Loco, Diesel Lobby, Northern Railway, Varanasi.
7. O.N. Rai, aged about 41 years, S/o Sri S.G. Rai presently working as Loco Pilot Goods Driver under SSE/Loco, Diesel Lobby, Northern Railway, Varanasi.
8. U.C. Jaiswal, aged about 39 years, S/o Sri Chiranje Lal presently working as Loco Pilot Goods Driver under SSE/ Loco Diesel Lobby, Northern Railway, Varanasi.
9. A.K. Singh aged about 36 years, S/o Sri Babu Lal presently working as Loco Pilot Goods Driver under SSE/ Loco, Diesel Lobby, Northern Railway, Varanasi.
10. A.K. Rao, aged about 39 years, S/o Sri S.S. Rao presently working as Loco Pilot Goods driver under SSE/ Loco, Diesel Lobby, Northern Railway, Varanasi.
11. A.K. Hazzam, aged about 39 years, S/o Sri D.C. Ram, presently working as Loco Pilot Goods Driver under SSE/ Loco, Diesel Lobby, Northern Railway, Varanasi.
12. H.R. Ranjan, aged about 41 years, S.o Sri G.Ram presently working as Loco Pilot Goods Driver under Crew Controller, Diesel Lobby, Northern Railway, Sultanpur.



(5)

13. G.S. Srivastava, aged 38 years, S/o Sri S.P. Srivastava presently working as Loco Pilot Goods Driver under Crew Controller, Diesel Lobby, Northern Railway, Sultanpur.
14. Mahesh Kumar aged about 38 years, S/o Sri Ram Charan presently working as Loco Pilot Goods Driver under Crew Controller, Diesel Lobby, Northern Railway, Sultanpur.
15. Yogendra Prasad, aged about 38 years, S/o Sri Mahato Ram, presently working as Loco Pilot Goods Driver under Crew Controller, Diesel Lobby, Northern Railway, Sultanpur.
16. Akhilesh Kumar aged About 39 years, S/o Sri Balram presently working as Loco Pilot Goods Driver under SSE/Loco Shed, Northern Railway, PBH.
17. S.P. Singh aged about 48 years, S/o Sri B.B. Singh presently working as Loco Pilot Goods Driver under SSE/ Loco, Northern Railway, Faizabad and R/o L-6-C Loco Railway Colony, Faizabad.
18. Upendra Nath, aged about 48 years, S/o Sri Jagan Nath presently working as Loco Pilot Goods Driver under SSE/ Loco, Northern Railway, Faizabad and R/o Village Madaha (South), Faizabad.
19. M.R. Khan aged about 48 years, S/o Sri A.R.Khan presently working as Loco Pilot Goods Driver under SSE Loco, Northern Railway, Faizabad and R/o H.No. 215/71, Kandhari Bazar, Arya Kanya Road, Faizabad.
20. Jamil Ahmad aged about 47 years, S/o Sri Khalil Ullah presently working as Loco Pilot Goods Driver, R/o Q.No.11-198 A, New Loco Colony, Northern Railway, Varanasi.
21. Shaym Sunder Singh aged about 45 years, S/o Sri R.A. Singh, R/o T/28-B, New Loco Colony, Northern Railway, Varanasi.



....Applicants.

By Advocate: Shri Alok Trivedi.

Versus.

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. The Sr. Divisional Personnel Officer, Northern Railway, Hazratganj, Lucknow.
4. The Divisional Personnel Officer, Northern Railway, Hazratganj, Lucknow.

...Respondents.

By Advocate: Shri N.K. Agrawal.


ORDER

BY SHRI K.B.S. RAJAN, MEMBER (J)

The applicants have challenged the order dated 30th March, 2005 of the respondents, whereby they had cancelled the earlier examination held for promotion to the post of Pilot Driver Passengers. As the two O.As have identical features, this Common Order disposes them of.

2. Briefly the facts of the case are as under:-

- (a) The applicants are working as Loco-Pilot-Driver Goods. The next promotional post for the Loco Pilot Driver Goods is Loco Pilot Driver Passenger. Selection is made from amongst the eligible Loco Pilot Driver Goods and the sole criteria for the selection is Written Test.

- (b) The Divisional Railway Manager, Northern Railway Lucknow issued a Notification dated 8.10.04 for selection to 110 posts of Loco Pilot Driver Passenger along with an Eligibility list containing the names of 223 eligible candidates. The dates for written test were mentioned as 2.11.04, 5.11.04, 8.11.04 and 11.11.04. The requisite pre-selection training was given to the SC/ST candidates in November, 2004.
- (c) Selection proceedings progressed as per schedule and written test conducted on 13.11.2004. More or less 50% objective type questions were asked in the written tests so held.
- (d) The respondent No. 4 declared the panel of selected candidates vide order dated 31.3.05 containing the names of 10 selected candidates and by order dated 4.4.2005, names of 52 more selected candidates were declared.
- (e) After the aforesaid panel was declared, and while the applicants were awaiting promotion as Loco Pilot Driver Passenger on regular basis, the applicants got some inkling as to certain nefarious attempts being resorted to by vested interests to get the whole selection cancelled. As such, the applicants and some other similarly situated candidates in the select panel, submitted a representation dated 11.4.2005 wherein they submitted that they have been working as Loco Pilot Driver Passenger for over two years and running important trains and that they have been selected for the post of Loco Pilot Driver Passenger on the basis of written test, but they are under extreme mental tension on account of certain strong rumours that the selection so held would be cancelled by the respondent No. 4, as some candidates owing allegiance to certain trade unions have not made it to the Select List.
- 

(f) The apprehensions of the applicants were not a distant astrology but became an imminent futurology, as the respondent No. 4 issued the impugned order dated 15.4.2005 canceling the selection held by the respondents for the post of Loco Pilot Driver Passenger from the stage of written test vide the impugned order.

3. On filing the OA, the case of the applicants for stay of the impugned cancellation order dated 15.4.05 came up for consideration of the Tribunal and the Tribunal by its order dated 3.5.05 declined to allow the said prayer. Against the aforesaid order, the applicants had filed two writ petitions No. 978 (S/B) of 2005 and 979 (S/B) of 2005 before the Hon. High Court and the High Court passed the following order:


"All these petitioners figure in the select list drawn by the department on the basis of written and oral test. The said list was, however, cancelled vide order dated 5.4.05 (Annexure 9) on three grounds- the first being that the objective types of questions were not put in adequate numbers and there was no uniformity in such kind of questions, secondly the syllabus was not circulated; and thirdly, some of the candidates of Loco Pilot Driver Passenger could not make through written test. In our considered view, all these three grounds can be termed to be insignificant. It is clearly borne out from perusal of the cancellation order that the authorities were perhaps compelled to cancel the selection under the pressure of the staff and recognized unions. Also it seems to have been taken into consideration that some of the senior persons failed to clear the test. All these reasoning are held illogical. The integrity of the Selection Board has not been doubted nor any mala fide attributed. Further neither there is any allegation of favouritism nor any bias has been said to have guided the Selection Board.

Keeping in view the fact that first selection list was based on impartially conducted written and oral test, taken by the Selection Board, it is provided that the opposite parties shall not draw any final list for selection nor will carry on with the ongoing selection process of Loco Pilot Driver Passenger and if any test has been held during this period, result will not be declared nor implemented. However, we provide that this order shall remain in force until the Central Administrative Tribunal decides on merit M.A. No. 1083/2005 in Dy. No. 1045 of 2005 and M.A. No. 1082 of 2005 in Dy. No. 1046 of 2005. The Central Administrative



Tribunal is directed to finally decide this matter within three months."

4. The respondents have contested the O.A. Their version is as under:
 - (a) As a result of written test, a panel comprising of 10 selected candidates ^{was} ~~were~~ issued strictly in the order of seniority vide panel dated 31.3.2005, with a clear stipulation that employee may be informed that mere in the empanelment would give no guarantee for promotion, ^{followed by} a further list disclosing the 52 names of suitable candidates for placement on panel after passing pre-requisite course.
 - (b) Considerable number of complaints through the representations from staff/recognized Union and individual against the said provisional panel were received. The competent authority after carefully and thoroughly considering the above representation and taking into account the issues raised therein, came to conclusion that in conducting said selection, there were certain basic infirmities/illegalities and keeping in view the facts that illegalities committed during the said course of selection cannot be cured, have decided to cancel provisional panel announced on 31.3.2005/4.4.2005.
 - (c) The perusal of the order dated 15.4.2005 for cancellation of provisional panel, will substantiate that the competent authority had after carefully examining the issues raised in the representation of the affected recognized Unions came to the conclusion that the illegality for not circulating the outline of professional subject/syllabus amongst the candidates and having not uniformity in the objection type questions set for various dates creating the discrimination amongst the candidates.



(b)

(d) Provision of 50% objective type question in all the Question Paper for written Test held on different date were required to be observed but the same was not observed.

(e) The question paper should be set up on accordance with syllabus and that too by giving wide publicity amongst the eligible candidates with a view to knowing the criteria of asking the questions to enable the candidates to prepare themselves by studying the subject/topic of the provided syllabus but during the course of investigation and consideration, it was found that such exercise was not done. Accordingly, the competent authority evaluating the facts/eventualities of the events taken place in the said course of selection, has rightly passed just, legal and valid orders in accordance with Rules and Law.

2. Arguments were heard the documents perused. At the outset it is to be clarified that though in the order dated 10.5.05, passed by the Hon'ble High court, the stay granted by them was upto the time M.A. 1083/05 and M.A. 1082/05 were to be disposed of, since these two had already been disposed of even prior to passing of the aforesaid order by the Hon'ble High Court, the inadvertent error in referring to already disposed of applications was kept in view and the spirit of the order to the extent that the applications filed by the applicants should be finally disposed of has been kept in mind and hence, the disposal of this O.A as directed by the High Court.
3. The learned counsel for the applicant has stated that the respondents have decided to cancel the written examination not on any bonafide grounds but purely on account of succumbing to the pressure applied by the Railway Employees Union. He has further submitted that after

62

the respondents have also filed Counter to the writ petition and it is only after hearing the parties, that the Hon'ble High Court has given specific findings as to the fact that none of the reasons reflected by the respondents for cancellation of the written test was logical. The said order of the Hon'ble High Court has attained finality by virtue of the fact that the respondents have not gone in appeal against the same. He has stated that the Tribunal might proceed with the aforesaid specific findings of the High Court as the foundational fabric, and submitted that these findings may be duly considered while passing the order. The learned counsel for the respondents, on the other hand, has stated that notwithstanding the aforesaid specific findings of the High Court, if the records were called for, the same would also reflect the actual reasons for cancellation as there were certain irregularities in conducting the examination.

4. The learned counsel for the respondents has also submitted that cancellation of examination for bonafide reasons is not normally interfered with by the Judicial Forum. He has referred to certain decisions of the Apex Court.
5. The Hon. High Court has given express findings as extracted above. None of the reasons spelt out in the impugned order could be justified by the respondents either before the Hon'ble High Court ^{when it} order dated 10.5.05 was passed, nor for that matter before us. In any event, since specific finding has already been rendered by the Hon'ble High Court, there is no question of such findings being kept aside while dealing with the issue by us. In view of the categorical findings registered by the Hon'ble High Court in its order dated 10-05-2005, this Tribunal has no hesitation to come to the conclusion that the impugned order is

bn

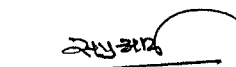
legally unsustainable. The reasons that objective questions were not to the extent of 50% and that the syllabus had not been properly circulated etc., cannot be considered as those who had made the representations for cancellation of the exam had not only participated but also waited for the result and it is only after they found they not being declared successful, chose to move the representations. Such objections ought to have been raised immediately after the examination was over. This has not been done and the same goes to prove that the reasons searched for demanding cancellation of examination are a clear "after thought." As such the impugned order dated 15-04-2005 cannot stand the judicial scrutiny and the same is therefore, quashed and set aside. The O.As thus, succeed. Respondents are directed to proceed ahead with the further process selection from the stage of declaration of the results of the written test. Completion of the drill for positioning the selected candidates as per the procedure be accomplished as expeditiously as possible and in any event within a period of six months from the date of communication of this order.

6. No costs.



(K.B.S. RAJAN)
J.M.

s.a.



(S.P. ARYA)
A.M.