

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 237 of 2008

Reserved on 21.2.2012

Date of Decision 21st February, 2012

Hon'ble Mr. Justice Alok K Singh, Member-J
Hon'ble Mr. S.P. Singh, Member-A

1. Ajai Kumar Kanaujia, S/o Sri Hari Lal.
2. Shafique Ahmad, S/o Sri Azizuddin.
3. Abrar Ahmad, S/o Sri Usman.
4. Wazid Ali, S/o Sri Rahmat Ali.
5. Ajai Rawat, S/o Sri Ram Chandra.
6. Ram Ji, S/o Sri R.S. Yadav
7. Mohd. Wasim, S/o Sri Mohd. Nasim.
8. Nak Chhed, S/o Sri Tung Nath.
9. Rakesh Kumar, S/o Sri Shiv Ratan.
10. Abdul Aziz, S/o Sri Ajai Kumar.
11. Rajendra Kumar Balmiki, S/o Sri Ram Chandra Balmiki.
12. Rajesh Kumar Upadhayay, S/o Sri Shambhu Nath Upadhayay.
13. Dinesh Kumar, S/o Sri Babu Ram.
14. Devendra Kumar, S/o Sri Om Prakash.
15. Brij Raman Das, Mishra, S/o Sri Shiv Narain Mishra.
16. Nagendra Pratap Singh, S/o Sri Lal Ji Prasad Singh.

.....Applicants

By Advocate : Sri A.C Misra

Versus.

1. Union of India through General Manager, N.R. Headquarter Office, Baroda House, New Delhi.
2. The DRM, NR, Divisional Office, Lucknow.
3. The Sr. Divisional Personnel Officer, N.R., Divisional Office, Hazratganj, Lucknow.

.....Respondents.

By Advocate :Sri Amar Nath Singh Baghel for Sri M.K. Singh.



O R D E R

By Justice Alok K Singh, Member-J

This O.A. has been filed for the following main relief(s):

“(i) *Under the facts and circumstances mentioned above the Hon’ble Tribunal may graciously be pleased to direct the respondents to call the applicants for Viva Voce without further delay as already ordered by this Hon’ble Tribunal vide order dated 17.7.2007 in O.A. no. 400 of 2006 filed by S. Mishra & Others contained in Annexure no.1 to this O.A. this judgment is a judgment in Rem and the applicants are also entitled for its benefits.*

(ii) *That the Hon’ble Tribunal may further be pleased to direct the respondents to promote them to the said post of ticket collector for which this selection was notified vide Annexure no.3 to this O.A. against those 61 vacancies after finding them qualified in its training.”*

2. The case of 16 applicants is that they have been working as S.W. under the respondents for more than ten years with applicants of O.A. no. 400 of 2006 which had already been decided. Therefore, they are fully entitled for the benefit allowed by this Tribunal in O.A. no. 400 of 2006. The applicants of this O.A. alongwith applicants of above O.A. and many other Group ‘D’ employees applied for selection for promotion to Group ‘C’ post of Ticket Collector in the pay scale of Rs. 3050-4590/-. They were declared qualified by the respondents vide letter dated 22.4.2004 (Annexure no.4). But the respondents did not call them for Viva Voce test although it was mentioned in the aforesaid letter that they would be called for Viva-Voce Test. In above O.A. no. 400 of

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2006, this Tribunal has already directed the respondents to fix a date of Viva Voce test within a period of 2 months from the date a certified copy of the order was produced before them and to take selection process to a logical conclusion within a period of two months thereafter. The applicants of this O.A. moved a representation to the respondents on 14.2.2008 for extending the benefit of the said judgment to them also (Annexure no.5) followed by another representation (Annexure no.6). But nothing has been done by the respondents. Therefore, this O.A. has been filed.

3. The claim has been contested by the official respondents saying that by means of notification dated 28.5.2002 for promotion to the post of Ticket Collector against 33 1/3% promotion quota, applications were invited for filling up 61 posts by selection. It has also been admitted that the result was published on 22.4.2004. Some of the successful applicants filed O.A. no. 152 of 2005 Rama Kant Shukla & Others Vs. Union of India & Others. In the said case, the respondents filed an affidavit clearly stating that the records relating to selection had already been seized by Vigilance department on account of some complaints regarding irregularities. Ultimately, Vigilance department submitted its report saying that the selection process had not been conducted fairly. On the basis of that report, the competent authority has decided to cancel the entire selection proceedings. In the meantime, O.A. no. 400 of 2006 was filed which was decided as noted before. The order in the aforesaid O.A. could not be implemented in view of the findings

given by the Vigilance department and subsequent order cancelling the selection proceedings.

4. On behalf of applicant no.1, M.P. no. 97 of 2009 has been filed enclosing therewith certain documents including a copy of judgment/order of this Tribunal dated 20.1.2009 passed in O.A. no. 152 of 2005. In para 5 of the judgment, it has been mentioned that according to vigilance report, the following irregularities were found : (i) higher marks given to incomplete answers; (ii) failure to evaluate correctly attempted answers; (iii) award of marks to wrong answers; (iv) cuttings and over writings on marks awarded in may instances; (v) non-tabulation of marks on the top of the answer-sheets in violation of prescribed guidelines; and (vi) non-availability of model answers in violation of prescribed guidelines. The instances of irregularity were more than 60. It was also found that model answer-sheet had not been given to the evaluator which strikes at the root of the need to maintain transparency & objectivity in awarding marks.

Considering these factors, this Tribunal dismissed the O.A. and directed the respondents to conduct the examination afresh meticulously following the guidelines prescribed for the purpose.

5. Learned counsel for the applicant also filed M.P. no. 1420 of 2009 enclosing therewith a copy of order of dismissal passed by this Tribunal in Review Application no. 21 of 2007 on 1.7.2009.

6. We have heard the learned counsel for the parties and thoroughly perused all the relevant material available on record. AK

7. As the applicants of this O.A. have claimed parity with applicants of another O.A. no. 400 of 2006, first of all, we would like to peruse the order of this Tribunal passed in the above O.A. The above O.A. was decided with direction to the respondent nos. 2 to 4 i.e. DRM, N.R., Lucknow, Sr. Divisional Personnel Officer, N.R., Lucknow, Sr. D.C.M., N.R., Lucknow to fix a date for Viva voce test and to take selection process to a logical conclusion. It is not contested that the names of the present applicants also find place in the list declared vide notification dated 22.4.2004 (Annxure-4). But the said result of the written test in the said examination has been cancelled on account of several significant irregularities found in the Vigilance report by the Vigilance Department as already mentioned hereinbefore.

8. This Tribunal has specifically observed in para 6 of its judgment dated 20.1.2009 rendered in the above O.A. no. 152 of 2005 that large number of irregularities were committed in the evaluation process as brought out in the vigilance report and it was also found that the guidelines relating to tabulation of marks and making available model answer-sheets to the evaluators were not observed vitiating the evaluation process itself. Therefore, it was finally observed by this Tribunal that there is justification for cancelling the results of this examination and holding a fresh examination. Accordingly, O.A. no. 152 of 2005 filed by 13 similar candidates namely Rama Kant Shukla & 12 Others was ultimately dismissed.



9. The applicants of the present case have sought parity with applicants of another O.A. no. 400 of 2006 which was decided by this Tribunal on 17.7.2007 directing the respondents to take the selection process to a logical conclusion.

10. As against this, the order regarding cancellation of the examination and for holding fresh examination has also been passed by this Tribunal in the aforesaid O.A. no. 152 of 2005 on 20.1.2009 which order is of a subsequent date of the order dated 17.7.2007 passed in O.A. no. 400 of 2006. Thirteen applicants of that O.A. no. 152 of 2005 were similarly placed and their names also found place in the aforesaid list dated 22.4.2004 of successful candidates (Annexure no.4). Since the examination itself has been cancelled, the selection process could not be taken to a logical conclusion as directed vide order dated 17.7.2007 in O.A. no. 400 of 2006. This order has infact become redundant. The doctrine of frustration has played its role. If we see the matter from another angle, then it can be also said that the aforesaid order dated 17.7.2007 has been complied with because cancellation of that examination also amounts to bringing it to a logical conclusion particularly when this has been done on account of serious lapses found in the vigilance report which had also been adjudicated by this Tribunal in another O.A. no. 152 of 2005 as discussed above. There is nothing on record to show that the aforesaid order dated 20.1.2009 passed in O.A. no. 152 of 2005 for cancellation of examination was ever challenged any-where. It has, therefore, attained finality. Its copy has also been filed by none

other than applicant no.1 himself. As the examination in question has already been cancelled by this very Tribunal in the above O.A, there is no occasion for directing the respondents to call the applicants for Viva-voce on the basis of select list dated 22.4.2004 (Annexure-4). Infact after the above judgment and order dated 20.1.2009 passed in O.A no. 152 of 2005 (which appears to have attained finality), the present O.A. has become meaningless and infructuous. But it is a matter of surprise as to why even after passing of said order three years before, this O.A. was being pursued by the present applicants.

12. In view of the above, O.A. deserves to be dismissed with cost and accordingly it is so ordered.

S.P. Singh
24.2.12
(S.P. Singh)

Member-A

Alok Kumar Singh
24.2.12
(Justice Alok K. Singh)
Member-J

Girish/-