

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 139/96

Date of Decision 26-04-96

A.J.Gawade & 16 Ors.

Petitioner

Shri D.V.Gangal

Advocate for the Petitioner.

Versus

Union of India & Ors.

Respondent

Shri N.K.Srinivasan

Advocate for the Respondents.

Coram:

The Hon'ble Mr. B.S.Hegde, Member(J)

The Hon'ble Mr. M.R.Kolhatkar, Member(A)

1. To be referred to the Reporter or not? ✓
2. Whether it needs to be circulated to other X
Benches of the Tribunal?

M.R.Kolhatkar
(M.R.KOLHATKAR)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
MUMBAI

ORIGINAL APPLICATION NO: 139/96

Dated, this 26th day of April 1996

CORAM: HON'BLE SHRI B.S.HEGDE, MEMBER(J)

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Shri A.J.Gawade & 16 Ors.

(By advocate Shri D.V.Gangal)

..Applicants

-versus-

1. Union of India
 2. The General Manager,
Western Railway, Churchgate,
Mumbai - 400 020.
 3. The Chief Workshop Manager,
Western Railway, Parel,
Mumbai - 13.
 4. Mrs.S.Kademani,
Dy.Chief Personnel Officer(W)
C.W.M. Office, Western Railway,
Parel, Mumbai - 13.
 5. Shri Maheshchandra,
Dy.Controller of Stores,
Western Railway, Parel,
Mumbai - 13.
 6. Shri Virendrakumar,
Ex.Deputy Chief Mechanical
Engineer(R), Now Senior Divisional
Mechanical Engineer(D), Western Rly.,
Ratlam.
 7. Shri Maheepkapoor,
Chief Workshop Manager,
Garage Workshop, Western Railway,
Lower Parel, Mumbai - 13.
- (By counsel Shri N.K.Srinivasan)

ORDER

(Per M.R.Kolhatkar, Member(A))

In this O.A. the 17 applicants who are either Head Clerks or ad-hoc Chief Clerks in the Western Railway, in the O/O Chief Workshop Manager, have impugned two memoranda dt. 22-11-95 cancelling the result of written test for the post of Chief Clerk in the scale of Rs.1600-2660 held on 27-7-1995 and subsequent letter dt. 23-1-1996 by which it was notified that the written examination for the same post would be held on 20-2-1996. The second memorandum dt. 22-11-1995 gives the reason for the cancellation of the written test as below:

".....it is advised that the reason for cancellation of written test of Chief Clerk held on 27-7-95 is that competent authority has reviewed all the answer scripts and there are sufficient grounds to apprehend that lacunae have crept in during the conduct of exam and subsequently in course of marking."

The contention of the applicants is that decision to cancel the result of the written test held earlier and to re-conduct the test ~~is~~ neither in accordance with the rules nor in accordance with the earlier stand of the respondents. The action of the respondents has been taken malafide under pressure of the **failed** candidates and the Unions etc. In this connection attention is invited to letter dt. 5-10-1995, Annexure A-7, page 39 which deals ^{with} joint/individual representation dt. 29-9-95 and 30-9-95 and ~~which~~ states as below :

"Your representation under reference have been thoroughly examined by the competent authority and he has satisfied that/reasonably uniform standard of judgment has been applied by the examiner in the course of evaluation of your answer-scripts."

The applicants also contend that if there were any irregularity in the conduct of examination and in the process of assessment, the respondents ought to have taken action against the invigilator whose names are given at page 7 and also action should have been taken against respondent Nos. 4, 5 & 6 who were on the selection board. No such action has been taken and respondents cannot compel the applicants to re-appear for the written test and applicants have a right to have the results announced on the basis of written test held on 27-7-95 as well as the viva-voce test held on 5-10-95, Viva-voce test having been held on the same date that the letter dt. 5-10-95 referred to earlier was issued by the respondents.

2. Respondents have opposed the O.A. According to them, the reasons for the cancellation of the written test have been given in the separate order dt. 22-11-95. Moreover the viva-voce test held on 5-10-95 was incomplete as two candidates were to have been interviewed but they were absent, and they are yet to be tested. Regarding letter dt. 5-10-95 giving a clean chit for the conduct of the examination this letter has nothing to do with the viva-voce test which was announced much earlier. However, this letter dt. 5-10-95 was given with reference to the standard of evaluation of the sample of eight answer papers, consisting of four failed candidates and four passed candidates. It does not talk about other irregularities which came to the notice of the competent authority later on & which led to the cancellation of the written test. It is stated subsequent to the viva-voce test held on 5-10-95 that four representations were received which together alleged possibility of counting mistakes in answer sheets, negligent evaluation of answer sheets, alterations

or changes made in answer papers, differential treatment to candidates and procedural mistakes/ errors of administrative officer incharge of the written examination. On 6-11-95 the position was advised to the HQ office for directions and the competent authority was directed ^{by HQ office} to carry out cent percent check of the answer books and decide himself as the panel was not finally approved yet. Hence panel based on the earlier written test was cancelled and a re-conduct of the written test was ordered

3. On 13-2-96 we had given interim relief restraining the respondents from going ahead with reconduct of written examination. With reference to written statement filed by the respondents five of the 17 applicants ^{have} filed a rejoinder on 12-4-1996. They have also filed an MP 313/96 to summon respondents No.3 to 7 for cross examination by applicants. We heard the learned counsel for the parties on 15-4-1996.

4. At the argument stage the first contention raised by the counsel for the applicant is that it cannot be stated that the viva-voce test was incomplete because two candidates has remained absent. The learned counsel for the applicant has pointed out that there is no ⁱⁿ provision/ the rules for postponing selection merely because two candidates remained absent. It is pointed out that notice dt. 9-6-95 says that no second chance will be given to appear for the selection unless the candidates bring specific certificate from the railway doctor. We are inclined to agree with the ^{counsel for} applicants that the selection process cannot be ^{said to be} incomplete merely because two candidates remained absent and this cannot be a sole ground for postponing declaration of the results.

5. It is next contended by the counsel for the applicant that the respondent No.3 having given a clean chit in regard to written test by his letter dt. 5-10-95 cannot change his stand to say that lacunae have ~~been~~^{crept} in during the conduct of the examination and subsequently in the course of marking. We are not inclined to accept this contention. The written statement gives the background of the circumstances, under which the letter dt. 5-10-95 was written. Subsequently the competent authority on receipt of serious allegations had a fresh look. It is seen from letter dt. 6-11-1995 Ex.R-II that various allegations were enumerated and fresh directions were sought from the Head Quarter. On this letter it was ~~endorsed~~ that "It is not necessary for HQ's to intervene. I had explained to CWM that CWM himself is competent to review till such time the panel is finally approved ^{by} him." Further direction was that "CWM/PL may please be asked to carry out 100% check on the answer book and decide accordingly." It is seen that on the basis of this instruction from the head office, the CWM had conducted 100% check and the results of 100% check ^{as conducted on 21-11-95} are given at pages 12 and 13 of the written statement and they are reproduced below:

- "1. Extensive over writing and alteration of marks allotted, atleast 30 out of 54 copies.
2. Six candidates who had been declared successful in written test, have had their marks altered to reach the required level of 60% or 50% as relevant in individual cases - Details are :-

(a) Code No.089(ST) Out of Part A marks increased from 4 to 5, thus giving a total of 50 marks;

(b) Code No.189(SC). Same remark as in (a) above.

- (c) Code No.213(Gen)Marks increased from 4 to 5 each in four different questions out of five in Part A,thus giving a total of 60 marks;
 - (d) Code No.227(Gen)Marks increased from 4 to 5 each for Ques.nos. 1 & 4,thus giving a total of 60marks.
 - (e) Code No.263(SC). The pattern of alternatives leads to the suspicion that as originally marked, the total was $61\frac{1}{2}$ (inclusive of $37\frac{1}{2}$ marks for Part B(Objective)). Examiner has rechecked and reduced the marks in Part B(objective) to 35, which would have given a total of 59. Hence marks for Que 3(P/A)increased from 4 to 5 giving a total of 60 marks. Candidate called for interview on his own merit and not by relaxed standards, the latter should have been done.
 - (f) Code No.456(SC). Total very obviously altered. Que 13 Part B wrongly treated as correct, giving a total of 51 marks. If $2\frac{1}{2}$ marks are deducted because of wrong marking, the total really should be $48\frac{1}{2}$,insufficient for passing.
3. Totalling errors - 9 cases.
(Code Nos.051,065,207,209,295,365,434, 449 & 456)
 4. Lesser allocation of marks in Part B (objective) Code No.337 only 18 allotted instead of 30 due.
 5. Questions left uncorrected - 3 cases
(Code Nos. 001, 151, 229)
 6. Contradictory marking in part B (objective),such as:- (a)Que 5, Code 239 and 303 as compared to others.
(b) Que 14, Code 263 and 307 as compared to others.
 7. Wrong key or master solution to Que 17 Part B (objective)
 8. Wrong choices for Que 18 Part B (Objective). Parel out turn is 5.5 coaches or 11 F.W. units per working day.
 9. Roll numbers allowed to remain on additional sheets of the answer copies -

six cases.

(Code Nos. 204, 207, 299, 375, 456 and 459)

Of these five were called for interview.

Code Nos. 456 also features in para 2(f) above, where prima facie candidate passed by alteration of allotted marks.

10. Examiner has not signed answer copies.

11. Cumulative adverse impact of paras 3 to 9 above may have prevented many other persons from qualifying for the interview."

A perusal of the above analysis shows that there were sufficient grounds for the competent authority to arrive at a conclusion that the selection was ^{not} conducted properly. In our view therefore if the rules permit, the competent authority had sufficient grounds to order cancellation of the selection.

6. Counsel for the applicant would then argue that under the rules the competent authority is the General Manager and the CWM himself has no such powers. In this connection reference is made to page 59, Rule 215 of which (c) reads as below:

"(c) Promotion to selection post shall be made by the competent authority in accordance with the recommendations of a Selection Board in the manner detailed in paragraph 216 below. If, in any case, such authority is unable to accept the recommendation, a reference shall be made to the General Manager, who may if necessary constitute a fresh Selection Board at a higher level and whose decision in the matter shall be final.

Attention is also invited to 219(k) which reads as below:

"(k) The list will be put up to the competent authority for approval. Where the competent authority does not accept the recommendations of a Selection Board, the case ~~could~~ be referred to the General Manager, who may constitute a fresh Selection Board at a higher level, or issue such other orders as he considers appropriate."

However, both these rules need to be read with Rule 219(1) which reads as below :

"(1)After the competent authority has accepted the recommendations of the Selection Board, the names of candidates selected will be notified to the candidates. A panel once approved should normally not cancelled for amended. If after the formation and announcement of the panel with the approval of the competent authority it is found subsequently that there were procedural irregularities or other defect and it is considered necessary to cancel or amend the panel, this should be done after obtaining the approval of the authority next higher than the one who approved the panel."

It would thus be seen that this was not strictly a case of competent authority not accepting selection in terms of Rule 215(c) or 219(k) but rather competent authority finding lacunae in the examination. The issue was not regarding particular names but the issue was regarding credibility of the selection process. 219(1) makes it clear that even after the publication of the panel, if a procedural irregularity or other defects are noticed cancellation or amendment of panel can be done after obtaining the approval of the authority next higher than the one who approved the panel. It is thus clear that in a situation where the panel has not been announced, 219(1) applies with a greater force and that was the advice rendered by the HQ. Since panel was not announced, therefore, the competent authority was authorised to cancel the results of written examination. It may also be noted what we are interpreting are the instructions/guidelines in the IREM which do not have a statutory force and the reference to the General Manager has to be read in the context as a

reference to the HQ and in view of the subsequent provision to para 219(1) the action of the competent authority of cancelling the selection prior to the announcement of the panel within his own powers appears to be within the frame work of guidelines.

7. Counsel for the applicant then argues that the competent authority has exceeded his brief by unnecessarily going into not only totalling mistakes but also making a fresh assessment of answer sheets which is never done in a selection process. Here it may be noted that there is no authority for the statement that a competent authority cannot make re-assessment. Further, if any reassessment was made in this case, this reassessment was made only to ascertain whether there is any malpractice in the conduct of the examination. The reassessment has not been made with a view to announcing the result. Hence, the argument advanced by the counsel for the applicant even on a general basis cannot be accepted.

8. We are therefore of the view that the cancellation of the test and the notification for holding a fresh written test were fully in accordance with the rules and competent authority had reasonable grounds to take the action that he took. In this connection we may also refer to the Supreme Court judgment in the case of Union of India vs. Anand Kumar Pandey & Ors., JT 1994(4)SC 419, where the facts were that an enquiry established adoption of unfair means by candidates at a particular centre & Railways cancelled the selection and empanelment of candidates of that centre and the issue involved was whether on the footing of non-compliance with ^{a principle} natural justice Tribunal could grant relief. Supreme Court set aside the order of the Tribunal granting relief

observing that in the facts and circumstances, the question of following of principles of natural justice does not arise. In the instant case, no doubt the question of following principles of natural justice has not arisen but a right has been claimed by applicants of announcement of the panel on the basis that written test and the viva-voce test had already been held and to promotion on the basis of the panel so declared and the competence of the respondents to hold a fresh test has been challenged. According to us the right of the applicants to be considered for promotion which is all they can claim is not at all affected because it is open to them to appear for the fresh written test to be held by the respondents. According to us any inconvenience to which the applicants would be subjected as a result of being required to appear at the fresh written test has to yield to the general responsibility of the railway administration (respondents) to ensure that the procedural irregularities and other defects do not vitiate the sanctity of the process of selection.

9. We are, therefore, of the view that applicants are not entitled to the relief claimed by them. In the circumstance O.A. is admitted, interim relief is vacated and O.A. is dismissed at the admission stage with no order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member (A)

B.S. Hegde

(B.S. HEGDE)
Member (J)

R.P. no 74/96
with m.p. no 422/96
for Interim order
by circulation.

✓
6/6

CENTRAL ADMINISTRATIVE TRIBUNAL
Review Petition No.74/96 in BOMBAY BENCH
Original Application No. 139/96

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

along with M.P.No.422/96 dt.4.6.96
and M.P.No.nil Diary No.4146/96

filed on 18.6.96 in RP 74/96. Date of Decision 26.6.96

A.J.Gawade & 16 Ors.

Petitioner/s

Advocate for
the Petitioners

Versus

Union of India & 6 Ors.

Respondent/s

Advocate for
the Respondents

CORAM :

Hon'ble Shri. B.S.Hegde, Member(J),

Hon'ble Shri. M.R.Kolhatkar, Member(A).

- (1) To be referred to the Reporter or not ? x
- (2) Whether it needs to be circulated to x
other Benches of the Tribunal ?

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER(A)

B.S.Hegde
(B.S.HEGDE)
MEMBER(J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

Review Petition No.74/96
in
Original Application No.139/96
along with
M.P. No.422/96 filed on 4.6.96
and
M.P. No. nil Diary No.4146/96
filed on 18.6.96 in R.P. 74/96.

A.J.Gawade & 16 Others.

... Applicants.

V/s.

Union of India & 6 Others.

... Respondents.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

ORDER ON REVIEW PETITION BY CIRCULATION

Dated: 26.6.1996.

In this Review Petition the Review Petitioners original applicants have sought review of our order dt. 26.4.1996 in O.A. No.139/96 on the ground that the order contains several mistakes and grave illegalities. It is contended firstly that the Tribunal did not pass any orders on the prayers at (c) and (d) of the O.A. These prayers were :

- "(c) To hold and declare that Respondents No.4 to 7 should be prosecuted under the prevention of corruption act and also proceeded departmentally under the Railway Servant's Discipline and Appeal Rules.
- (d) To hold and declare that the Respondents No.4 to 7 should be suspended, pending criminal prosecution and disciplinary action".

It is contended that the Tribunal is required to specifically consider all the prayers and its failure to do so is a patent mistake. Secondly, it is contended that the Tribunal did not consider the M.P.No.313/96 in the O.A. praying for summoning Respondents No.3 to 7 for cross-examination by the applicants. It is contended that the Tribunal was dutybound to decide this M.P. and the Tribunal has a duty to give a finding on the right of the applicants to cross-examine

Respondents No.3 to 7. Regarding illegalities in the order it is contended that the Tribunal had not accepted the contention of the Respondents that the viva voce test was incomplete because two candidates had remained absent. Therefore, it is contended that the Tribunal ought to have given a direction to the Respondents to declare the panel. It is next argued that the Tribunal had considered the Rules in the IREM to be merely guidelines not having statutory force. whereas, there are several authorities of the Supreme Court, High Court and Central Administrative Tribunal that IREM contains statutory rules and has therefore statutory force. Moreover, the Tribunal has upheld the competence of ^{the} /third respondent to make a re-valuation of the answer books, whereas, it is settled position that re-valuation can never be done and it is only the re-totalling which is permitted. Lastly, the Review Petitioners have contended that the reliance placed on Supreme Court Judgment in Union of India V/s. Anand Kumar Pandey is mis-placed because in the instant examination there was no proof of large scale copying and leakage of question papers.

2. We have considered the Review Petition. Our final order was passed after considering all material on record. When there is no specific order on any prayer, that prayer is taken to have been rejected. When there is no specific decision on an M.P., that M.P. is taken to have been rejected. ^{There are thus no patent mistakes.} / So far as grave illegalities said to have been committed by the Tribunal are concerned, our order is self-contained and reasons for our order are contained in the same. The various grounds for review re-agitate the same

grounds which were considered by us earlier and it is not necessary to detail our reasons for rejecting the same. In particular, we wish to observe that neither Rule 215(c) nor Rule 219(k) was applicable and we had made reference to Rule 219(1) only in the context of the power of the competent authority to cancel the panel if there are procedural irregularities or other defects. The reliance on the Supreme Court Judgment was in the context of the supreme importance of sanctity of the process of selection. It is well settled that IREC has statutory force and IREM does not have such statutory force. The authorities to the contrary referred to in para 3 of R.P. are not at all cited. We again invite attention to what has been stated in para 8 viz. "... but a right has been claimed by applicants of announcement of the panel on the basis that written test and the viva-voce test had already been held and to promotion on the basis of the panel so declared and the competence of the respondents to hold a fresh test has been challenged. According to us the right of the applicants to be considered for promotion which is all they can claim is not at all affected because it is open to them to appear for the fresh written test to be held by the respondents. According to us any inconvenience to which the applicants would be subjected as a result of being required to appear at the fresh written test has to yield to the general responsibility of the railway administration (respondents) to ensure that the procedural irregularities and other defects do not vitiate the sanctity of the process of selection."

3. We, therefore, consider that there is no merit in terms of Rules under Order 47 of CPC in the Review Petition which is liable to be rejected. We reject the same by circulation as provided by rules.

...4.

4. M.P. No.422/96 is a prayer for interim relief viz. to restrain the respondents from conducting any fresh written test for selection to the post of Chief Clerk. The second M.P. ~~which~~ is not numbered, of which Diary Number is 4146. In this M.P. it is prayed that the respondents may be restrained from giving effect to the letter dt. 14.6.1996 Annexure 'A' to the application. This letter is regarding the written examination. In other words, the general relief claimed in the first M.P. is made specific in the second M.P. with reference to the Circular since issued. Since R.P. does not survive, the M.Ps. are liable to be rejected and are accordingly rejected. Incidentally, we are constrained to observe that the copy of the Judgment enclosed with the R.P. is incomplete because only 8 pages are enclosed, whereas, the original order contains 9 pages. We strongly deprecate such carelessness on the part of the petitioners.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER(A)

B.S. Hegde

(B.S. HEGDE)
MEMBER(J).

B.

del 26/1/96
Order/Judgement despatched
to Applicant/Respondent(s)
on 9/7/96

9/7/96