

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH : GULESTAN BUILDING
6, PRESCOT ROAD, MUMBAI - 400 001
ORIGINAL APPLICATION No.454/1993

FRIDAY, THIS THE 2ND DAY OF JULY, 1999
SHRI JUSTICE S. VENKATARAMAN .. VICE CHAIRMAN
SHRI S.K. GHOBAL .. MEMBER (A)

M. Anand Rao,
Working as Inspector for
Hours of Employment Regulation
(IHER), Gr.III in DRM's Office,
Western Railway, Bombay Central,
Bombay - 400 008. .. Applicant

(By Advocate Shri R. Ramesh)

Vs.

1. Union of India, through
The General Manager,
Western Railway, Churchgate,
Bombay - 20.
2. The Additional Divisional
Railway Manager (O), Western
Railway, Bombay Central,
Bombay-8.
3. The Sr. Divisional Personnel Officer,
Western Railway, Bombay Central,
Bombay-8. .. Respondents

(By Standing Counsel Shri V.S. Masurkar)

O R D E R

Justice S. Venkataraman, Vice Chairman :

The applicant, who had applied for IHER Gr.III

was selected and placed in the panel after written test and viva-voce. He was also appointed by order dated 25.5.1992. By memo dated 1.12.1992, the Respondents cancelled the panel on account of some irregularities stated to have been pointed out during vigilance check. Consequently, the applicant was ordered to be reverted. The applicant challenged that order in O.A. No.1260/1992. The Tribunal, quashed the above order and gave liberty to the Respondents to issue show cause notice and then pass the appropriate order.

2. The Respondents issued a notice to the applicant as per Annexure-'C' dated 24.12.1992, stating that in his answer script, the evaluator who had given only 10 marks to Question No.4 had subsequently altered to 12 marks by over-writing, that, but for this correction, the applicant would have failed, that for Question No.3 consisting of two parts viz., (i) and (ii) ~~and~~ carried 20 marks, which meant that each part carried 10 marks and that however, though the applicant had answered Part (ii), which was also incomplete, he had been awarded 12 marks. The applicant was required to submit his representation against the proposed cancellation of panel ^{and} ~~of~~ his reversion. The applicant gave a representation dated 22.2.1993. The competent authority has now passed the impugned order

Annexure 'A' cancelling the selection panel and ordering reversion. The reasons given for the cancellation of the panel so far as it pertains to the applicant are the same as stated in the show cause notice, except for the fact that another reason viz., that the applicant had disclosed his name, designation, etc., on the answer book, which was against the general instructions and principle of affixing code numbers, etc., is also included.

3. The applicant has challenged that part of the order by which his selection has been cancelled and he is ordered to be reverted.

4. The learned counsel for the applicant contended that the reasons given for the cancellation of the panel are no reasons at all as it is nowhere alleged that the applicant had anything to do with the irregularity in the evaluation nor is it alleged that the evaluator had any malafides in the so called mistakes in giving marks. He further pointed out that merely because the evaluator who had first given 10 marks and ~~2nd time~~ ^{Later} changed it to 12, did not make that irregularity and that likewise, with regard to the other question, there being no stipulation that each part of the question carries 10 marks, there was no basis for the Respondents to assume that each part carried 10 marks and on that ground to hold that the allotment of marks of 12 to one part was irregular.

With regard to the 3rd irregularity, mentioned in the order, he pointed out that, that was not at all ^{an} irregularity which was shown in the show cause notice and that reason should not have been included ~~in~~ the first time in the order. He also contended that there was nothing to show that there was any bar against mentioning the candidate's name on the answer script especially when no roll number had been given.

5. The learned counsel for the Respondents contended that in the earlier case, all that the Tribunal had directed was that a show cause notice should be issued to the applicant before passing the order, that now a show cause notice has been issued and an order has been passed by the competent authority, that under Para 219 L of the IREM Vol. I, the authority has power to cancel or amend a panel if subsequently procedural irregularities or defects are noticed and that in this case, as the competent authority has in exercise of that power passed the impugned order, this Tribunal cannot sit in judgement over the correctness of the reasons given and that the order does not call for interference.

6. It is no doubt true that under Para 219 L of IREM, the authority has got power to cancel or amend the panel if the irregularities are noticed subsequently. It is also true that this Tribunal cannot sit in judgement

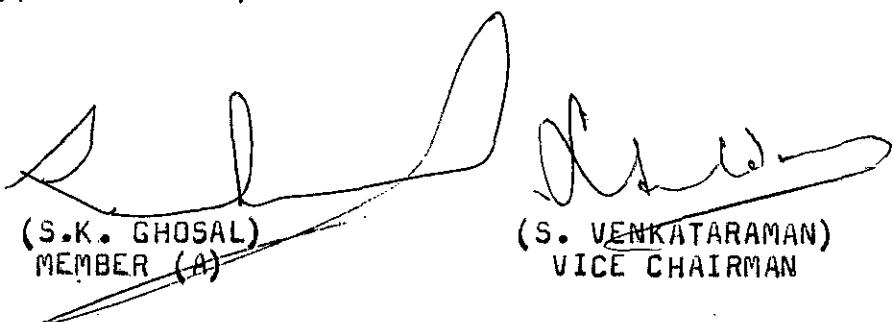
over the order of the competent authority passed in exercise of the above power. That does not mean that the Tribunal has no jurisdiction to find out whether the order passed by the authority is arbitrary or not. If the order passed by the authority is arbitrary, then this Tribunal can certainly interfere with it. An order does not cease to be arbitrary merely because some reasons are given. If the reasons given are really no reasons at all, then that order could be an arbitrary order.

7. It is seen that ~~to~~ the show cause notice issued to the applicant does not indicate that his writing his name and designation in the answer script was irregular. The contention of the learned counsel for the Respondents that it was not necessary to indicate the grounds for cancelling the panel in the show cause notice cannot be accepted. The purpose of issuing a show cause notice is to enable a party to put forth his representation and show that the proposed action is not warranted. If the grounds on which the panel is proposed to be cancelled are not intimated to the party, he will have no opportunity to meet the same. In the instant case, the competent authority could not have cited the reason that the applicant had mentioned his name and address in the answer script as a ground for cancelling the panel.

8. With regard to the other two grounds, the mere fact that the evaluator had changed the marks given from

10 to 12, cannot be said that there is ^{an} irregularity. Though it is alleged that but for that correction, the applicant would have failed ^{if it} does not allege that the total marks had also been altered subsequently to indicate that only to see that the applicant succeeded the alteration was done. The 2nd ground given is also on the basis of surmise. There was no basis to infer that the 2 parts of the Question No.3 carried equal marks and as such, there was no basis to hold that allotting 12 marks to the part answered by the applicant was irregular. The reasons given by the authority are virtually no reasons for cancelling the panel. This is not a case where the panel had just been prepared and it is cancelled before anyone was promoted. This is a case where the applicant had been promoted and he was holding the higher post and the order will have the effect of reverting him. In the light of this position, the impugned order must be held to be arbitrary and cannot therefore be sustained.

9. For the above reasons, this application is allowed and that part of the impugned order which pertains to the applicant is quashed.



(S.K. GHOSAL)
MEMBER (A)

(S. VENKATARAMAN)
VICE CHAIRMAN