

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 20th day of October, 2008

ORIGINAL APPLICATION No.186/2008

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.B.L.KHATRI, ADMINISTRATIVE MEMBER

1. Mahendra Singh Meel
s/o Shri Bhagwan Singh Meel,
r/o Village and Post Katrathal,
District Sikar, Rajasthan,
Presently posted as Station Manager,
D.M.R.C. Limited Delhi on deputation.
2. Mohd. Haroon
s/o Late Shri Munshsi Khan,
Vilalge and Post Bhainsrawat,
Via Govindgarh, District Alwar,
Presently posted as Deputy
Chief Controller, HQ,
North Western Railway,
Jaipur.
3. Kailash Bishnoi
s/o Shri Bhakar Ram Bishnoi,
Plot no.4, Ratnada Vistar Yojana,
Ratanada, Jodhpur,
Posted as T.I. (S.W.R.),
Jodhpur.

.. Applicants

(By Advocate: Ms. Shalini Sheoran)

Versus

1. Union of India
through General Manager,
Northern Western Railway,
In front of Railway Hospital,
Hasanpura Road,
Jaipur.

2. Chief Personnel Officer,
H.Q. North Western Railway,
H.Q. Office,
Jaipur

.. Respondents

(By Advocate: Ms Sonal Singh, proxy counsel for Mr. Alok Garg)

O R D E R

Per Hon'ble Mr. M.L.Chauhan

The applicants, three in number, have filed this OA thereby praying for quashing the order dated 9.5.2008 (Ann.A1) whereby written test held on 27.11.2005 for selection to Group-B post of Assistant Operating Manager/Assistant Traffic Manager/Area Manager was cancelled with further prayer that respondents may be directed not to conduct any selection against the notification published vide order dated 27.12.2007 (Ann.A2).

2. Briefly stated, relevant facts of the case are that vide notification dated 25.7.2005 (Ann.A3) respondents proposed to hold a Limited Departmental Competitive Examination (LDCE) against 30% of vacancies for promotion to the Group-B post of Assistant Operating Manager/Assistant Traffic Manager/Area Manager in the scale of Rs. 7500-12000. As can be seen from para 12 of this notification, the examination consisted of a) written examination and b) viva-voce and it was mentioned in the said

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notification that persons who qualify the written examination and pass the prescribed standard of medical examination as detailed in Railway Board's letter dated 21.5.99 and 18.12.2000 will be called for viva-voce test.

It is admitted case between the parties that examination was conducted on 27.11.2005 and result was declared on 7.2.2006 (Ann.A4) in which applicants and other persons were declared successful. In all seven candidates qualified the written test including the applicants. The applicants have also placed on record letter dated 24.2.2006 (Ann.A5) which shows that the applicant No.1 has also passed the medical examination. However, the viva-voce test for the aforesaid post which was scheduled to be held on 10.3.2006 was postponed till further orders vide letter dated 9.3.2006 (Ann.A6). Applicant No.1 has also placed a representation dated 22.1.2007 (Ann.A7) on record whereby he has objected to cancellation of the entire selection test on the basis of the judgment rendered by the Hon'ble Apex Court in the case of All India PG Medical Entrance Test. However, vide impugned order dated 9.5.2008 (Ann.A1), the respondents have cancelled the whole selection without disclosing any reason. It is on the basis of these facts, the applicants have filed this OA as according to the applicants the entire selection could not have been cancelled unless it is proved nexus between the

candidates in particular with the authority conducted the examination to establish the malpractice in selection at any stage.

3. Notice of this application was given to the respondents. The respondents have filed reply. By way of preliminary objection, the respondents have objected that the applicants are barred by Rule 10 of the Administrative Tribunals Act as they are seeking plural remedies and also that the applicants have approached the Tribunal without exhausting alternative remedy. According to the respondents, the applicants did not challenge the order dated 9.3.2006 by which viva-voce test was postponed, as such, they cannot agitate after a lapse of two years.

On merits, the respondents have justified their action. According to the respondents, the impugned order dated 9.5.2008 was issued as there were severe irregularities in the evaluation of answer sheets and the answer sheets were seized by the Central Bureau of Investigation (CBI). It is further stated that the CBI and Railway Vigilance investigated the matter and in the investigation severe manipulations in the answer books were established and involvement of some of the successful candidates was also proved. According to the respondents, a report has already been sent to the CVC through Railway Board recommending action against the evaluator as well as some other officers involved

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and including some of the candidates. The matter is pending as advice of the CVC is awaited. According to the respondents, the notification dated 27.12.2007 is also valid. The reason for postponing the viva-vice test has also been explained. It is further stated that complaints were received in North Western Railway (NWR) Vigilance Office alleging malpractices in evaluation of answer sheets. Scrutiny of answer sheets of 7 successful candidates indicated insertion, cuttings, over writing and manipulations in the answer sheets of at least 5 of the successful candidates and in one case over writing and cutting in marks was also found. It is further stated that in order to ascertain whether the manipulations were done by the candidates during the examination or subsequently, these answer sheets were referred to the Government Examiner of Questioned Documentation (GEQD), Shimla. The CBI also made parallel investigation in the selection process and submitted a report and the case was referred by CBI to NWR recommending departmental action. According to the respondents, the GEQD, Shimla report confirmed tempering of answer sheets by at least 5 successful candidates and in one case original/initial answer and markings has also been erased. Therefore, in view of this, as manipulations were indicated for a significant proportion of the passed candidates the result was not a fair reflection of the candidates' capabilities and in view of this there was no other

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option but to cancel the selection and start afresh. It is further stated that in the instant case, the selection process was not complete, as such, any individual person does not get a right to the post unless he is selected in the selection and get the letter of appointment. It is further stated that Vigilance Branch of the NWR has already submitted its investigation report on the written examination cancelled to the Vigilance Directorate, Railway Board, New Delhi recommending the action to be taken against Railway Officials involved in the selection proved and found guilty in the investigation and also the candidates whose answer sheets were found tempered.

4. The applicants have also filed rejoinder in which it has been stated that the applicants have garnered the information from reliable sources that concerned investigating authorities have not categorically established the allegations as correct as averred by the respondents in the case of all concerned. For that purpose our attention was invited to para 7 of the rejoinder where the following find mention:-

".....The concerned authorities CBI made observations that "on the report of GEQD, (Govt. Examiner of Questioned Documentation) it can not definitely be said that these corrections, eraser and alteration were made after examination...."

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Thus, according to the applicants there was no material available with the respondents to cancel the entire selection process.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. The sole question which requires our consideration in this case is whether the selection process initiated vide notification dated 25.7.2005 could have been cancelled in its entirety and whether action of the respondents canceling written examination held on 27.11.2005 with further stipulation that date of the written examination will be notified shortly vide impugned order dated 9.5.2008 (Ann.A1), is justified.

7. The learned counsel for the applicants has placed reliance upon the decision of the Hon'ble Apex Court in the case of Union of India and others vs. Rajesh P.U. Puthuvalnikathu and another, AIR 2003 SC 4222 and argued that it was not a case of such nature where the entire selection process should have been cancelled and any infirmity pointed out by the respondents in the reply affidavit cannot be taken as proof that there was a mass irregularity. At the most the matter falls within the realm of suspicion. The further plea taken by the learned counsel for the applicants is

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that the impugned order Ann.A1 is not speaking order and no such reason has been given in the said order as to why the written examination is being cancelled. Thus, according to ~~the learned counsel~~ for the learned counsel for the applicants, the impugned Ann.A1 is not sustainable on this ground. On the contrary, the learned counsel for the respondents have argued that on the basis of the material placed on record and consequent upon the inquiry conducted by the CBI and Railway Vigilance, severe manipulations in the answer sheets were detected and involvement of some of the successful candidates have also been proved, as such, the entire examination/selection process was required to be conducted afresh. According to the learned counsel for the respondents, the applicants were also aware about cancellation of the selection process on account of irregularities, as such, the contention put forth on behalf of the applicants that they were not aware about the reason which prevalent for cancellation of the written examination cannot be accepted. For that purpose, our attention was invited to para 2 of the representation made by one of the applicants (Ann.A7). The respondents have also placed reliance on the judgment of the Hon'ble Apex Court where the entire selection process was cancelled when mass irregularities were detected in the examination. According to the respondents it was not necessary to

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communicate reasons of rejection in the impugned order.

8. We have given due consideration to the submissions made by the learned counsel for the parties. We are of the view that the applicants have not made out any case for our interference for the reasons stated hereinafter.

Admittedly, as can be seen from notification dated 25.7.2005 (Ann.A3) respondents took steps for filling up four posts of Assistant Operating Manager/Assistant Traffic Manager/Area Manager scale Rs. 7500-12000. Perusal of the said notification reveals that the examination consisted of written test and viva-voce and it is also evident that persons who qualify the written test and pass the prescribed standard of medical examination shall be called for viva-voce test. Separate marks have to be awarded for written test and viva-voce. It is admitted case between the parties that respondents have only declared result of the written test in which only 7 candidates qualified the written test including three applicants. The selection process was not over. The select list was to be prepared after conducting the viva-voce test which includes awarding marks under the head 'record of service' and 'viva-voce'. It is only after conducting viva-voce the select list was to be prepared on the basis of written test and viva-voce

test. Thus, admittedly, it is not a case of the nature where the applicants have been selected and only offer of appointment was to be given to them. It may or may not be possible that all or any one of the applicants could have qualified the examination finally after conducting the viva-voce test.

Be that as it may, the fact remains that names of the applicants were not included in the select list and the selection process as initiated vide Ann.A3 was cancelled before completion of the selection process i.e. written examination and viva-voce. Thus, the question which requires our consideration is whether a person whose name did not find in the select list can seek mandamus that selection process as initiated vide subsequent notification dated 27.12.2007 be not initiated. At this stage, it may be stated that subsequently pursuant to the aforesaid notification the respondents have fixed 27.7.2008 as the date for written examination. This Tribunal vide order dated 24.7.2008 directed the respondents to proceed further in the matter but result of the said examination shall not be declared till the next date. The said stay was continued from time to time till date. A person whose name did not find mention in the select list has no indefeasible right to seek mandamus that the department should not proceed with the fresh selection process especially when from the material placed on record, it is established that there were several

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irregularities found in the evaluation of answer sheets and scrutiny of answer sheets of 7 successful candidates indicated insertion, cuttings, over writing and manipulations in the answer sheets of at least 5 successful candidates and in one case over writing and cuttings in marks was also found. Not only the respondents half hazardedly cancelled the selection process but the matter was also referred to the Govt. Examiner to the Questioned Documentation which report confirmed tempering of answer sheets by at least 5 successful candidates and in one case original/initial answers and markings have also been erased. That apart, the matter was independently examined by the CBI also and departmental action against defaulting officials have also been recommended. Thus, in view of such material placed on record, it cannot be said that this is not a case of mass irregularities and entire examination should not be cancelled. Where the answer sheets have been found tempered and the evaluator who have evaluated the answer sheets have also been found guilty and against whom departmental action is recommended, the department has no option but to cancel the entire selection process. It is not a case of such nature where it can be said that only few persons have committed irregularities, as such selection process in respect of other candidates should be continued.

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9. The law on the point has been settled by the Hon'ble Apex Court in various decisions. At this stage, it will be useful to notice few of the decisions rendered by the Hon'ble Apex Court. In the case of Union of India and Others vs. Tarun K. Singh and Others, (2003) 11 SCC 768, the issue before the Apex Court was whether the learned Single Judge of the Allahabad High Court was justified in interfering with the order of cancellation passed by the competent authority and directing that process of selection should be completed. It may be stated that subsequent to passing of order of cancellation, in view of allegation of malpractice, the departmental authorities held an inquiry into the matter and in that inquiry it was found that gross irregularities and illegalities were committed in the selection process. Consequently, the Division Bench of the Allahabad High Court interfered with the order passed by the learned Single Judge of the Allahabad High Court. The Division Bench of the Calcutta High Court, however, relied upon the judgment of the learned Single Judge of the Allahabad High Court and disposed of the Writ Petition allowing the same. It may be stated that the issue involved before the Allahabad High Court as well as before the Calcutta High Court was relating to selection process for the post of Constable in the Railway Protection Force. The Apex Court while allowing the appeal filed by the Union of

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India has categorically held that process of selection stands vitiated by adoption of large scale malpractice to a public office, cannot be permitted to the sustained by a court of law. That apart, an individual applicant for any particular post does not get a right to be enforced by a mandamus unless and until he is selected in the process of selection and get the letter of appointment. In the instant case much before the so called list of selection was approved by the Railway Board, the order of cancellation had emanated on the basis of complaints received from so many quarters. In view of subsequent findings of the Enquiry Committee which went into the matter, the learned Single Judge of the Allahabad High Court was wholly in error in issuing the direction in question and therefore the Division Bench of the Allahabad High Court was fully justified in interfering with the said order of the learned Single Judge of the Allahabad High Court and the Division Bench of the Calcutta High Court committed error in following the judgment of learned Single Judge of the Allahabad High Court. The ratio as laid down by the Hon'ble Apex Court in the case of Tarun K. Singh (supra) is squarely applicable in the facts and circumstances of this case. Rather the case in hand is on better footing. In the case of Tarun K. Singh (supra) the process of selection was almost complete and only approval of the Railway Board was awaited

whereas in the instant case selection process has not been completed and only written test was held and viva-voce was still to be conducted. It is on the basis of these two examinations that select list was to be prepared. Thus, according to us, the applicants have got no right whatsoever.

So far as violation of principles of natural justice and that opportunity should be given to the successful candidates before canceling the written examination, the matter is squarely covered by the decision of the Hon'ble Apex Court in the case of The Bihar School Examination Board vs. Subhash Chandra Sinha and Others, (1970 (1) SCC 648 whereby in para 13 of the judgment it has been held that it was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. At this stage it will also be useful to notice decision of the Hon'ble Apex Court in the case of B.Ramanjini and Others vs. State of A.P. and Others, (2002) 5 SCC 533 whereby the Apex Court has held that in conducting examination, a fair procedure should be adopted. Fair procedure would mean that the candidates taking part in the examination must be capable of competing with each other by fair means. One cannot have an advantage either by copying

or by having a foreknowledge of the question paper or otherwise. In such matters wide latitude should be shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same (emphasis supplied).

In the case of Union of India and Others vs. O.Chakradhar, (2002) 3 SCC 146, the Hon'ble Apex Court has held that if the mischief played is so widespread and all-pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notices to each selectee. The only way out would be to cancel the whole selection. The motive behind the irregularities committed also has its relevance.

Further, in the case of Hanuman Prasad and Others vs. Union of India and Another, (1996) 10 SCC 742 the panel was cancelled by an order which does not indicate any reason and it was argued that such an order is bad. The Apex Court while relying upon the decision in the case of Maharashtra State Board of Secondary and High Secondary Education vs. K.S.Gandhi, (1991) 2 SCC 716 whereby it was held that if order canceling the examination came to be passed, the record should indicate the reason, though order may

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not contain the reasons as contained in para 21 of the judgment. In that case it was held that the order did not contain the reasons but the record indicated the same. Thus, according to the Apex Court, mass copying alleged was sustained. The Hon'ble Apex Court has also distinguished the decision in the case of Asha Kaul vs. State of J&K, 1993 SCC (L&S) 637 and held that ratio of the case is not applicable where after perusal of report submitted by the investigating agency, the competent authority had cancelled the selection so that the regular and proper examination could be conducted giving opportunity to everyone in a fair manner. No prior opportunity need be given in the case of mass copying. It is not a case where a named candidate committed copying. Thus, the finding given by the Tribunal was upheld.

10. Thus, in view of the law as laid down above, we are of the view that in this case action of canceling the written test was taken by the department after taking into consideration the report submitted by the CBI, report given by the Govt. Examiner of Questioned Documentation) and report of the independent inquiry conducted by the vigilance department. Thus, it cannot be said that action of the respondents is arbitrary. In view of the law laid down by the Hon'ble Apex Court in the case of B.Ramanjini (supra), in such matters wide latitude should be shown to the government and

the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and take action upon the same, no interference is made out.

11. We will fail in our duty, if we do not notice the only judgment cited by the learned counsel for the applicant i.e. Union of India and Others vs. Rajesh P.U.Puthuvalnikathu and another (supra). As can be seen from para 2 and 3 of the judgment that was a case where selection process was over. The candidates were anxiously waiting for orders of appointment. The Hon'ble Apex Court on the basis of the material placed on record viz. report given by the Committee whereby infirmity in the selection of only 31 candidates was found as against 139 posts of Constable for which selection was to be made, The Hon'ble Apex Court held that entire selection process should not have been cancelled and denial of appointment to other candidates was not justified. The case in hand is not of such nature.

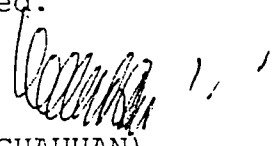
12. Thus, for the foregoing reasons, the OA being bereft of merit is dismissed with no order as to costs.



13. Interim direction issued on 24.7.2008 and continued from time to time shall stand vacated.


(B.L. KHATRI)

Admv. Member


(M.L. CHAUHAN)

Judl. Member

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