

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 142/2014
MA 1724/2014
MA 2276/2014

Reserved on: 3.05.2016
Pronounced on: 6.05.2016

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

Roopak Saharia
S/o Shri R.K. Saharia
Working as Parcel Porter,
N.C.R. Jhansi Division, Jhansi (U.P.)
R/o 1293/1, Prem Ganj
Sipri Bazar, Jhansi (U.P.) ... Applicant

(Through Shri Yogesh Sharma, Advocate)

Versus

1. Union of India
Through Chairman
Railway Board, Ex-Officio
Principal Secretary, Govt. of India
Ministry of Railway, Rail Bhawan,
New Delhi
2. The Adviser Vigilance
Ministry of Railway,
Rail Bhawan, New Delhi
3. Secretary,
Chief Vigilance Commission,
Vigilance Bhawan, INA, New Delhi
4. The General Manager,
N.C.R. Allahabad (UP)
5. The Divisional Railway Manager (P),
N.C.R. Jhansi (U.P.) ... Respondents

(Through Shri Shailendra Tiwari, Advocate)

ORDERMr. P.K. Basu, Member (A)

The applicant was appointed as Parcel Porter on 27.03.2006 by the respondents. A notification for selection to the post of Ticket Examiner under 33-1/3% quota from Group 'D' to Group 'C' was issued on 22.12.2009. A written examination was held and the applicant was declared successful therein. On 14.06.2010, the panel was declared and 10 employees including the applicant were empanelled. They were sent for training for the period 28.06.2010 to 7.08.2010. The result of training was declared and the applicant was also declared passed on 1.09.2010. At this point of time, the applicant was asked to attend inquiry on 21.09.2010 in the Vigilance Division, Railway Board, New Delhi. The applicant was placed under suspension and his statement was recorded by the Vigilance Team on 5.10.2010. On 2.12.2010, the applicant filed a representation to the DRM praying that posting order to the post of Ticket Examiner may be issued. On 10.01.2011, his suspension was revoked and major penalty chargesheet was served on him. On 18.01.2011, the Deputy Chief Vigilance Officer Allahabad informed DRM Jhansi not to take further action in the selection process because case has been investigated by the Railway Board Vigilance.

2. The applicant filed OA 535/2011 before the Tribunal against the major penalty chargesheet. The OA was allowed and the impugned chargesheet dated 10.01.2011 was quashed.

3. The counterparts of the applicant filed OA 1486/2011 before the Allahabad Bench of the Tribunal for implementation of the panel for the post of Ticket Examiner under 33-1/3% quota in Group 'C'. The Tribunal disposed of the aforesaid OA with direction to respondent no.3 (DRM/P) to refer the matter to the Railway Board seeking advice on the stage of the vigilance investigation and if nothing adverse is recorded against the applicants therein, grant them appropriate posting as per their empanelment. On 21.10.2013, the respondents cancelled the panel on the advice of the Railway Board and Central Vigilance Commission (CVC). The present OA has, therefore, been filed seeking the following reliefs:

- "(i) to quash and set aside the impugned order dt. 20.10.2013 with all consequential benefits.
- (ii) to operate the panel dt. 12.05.2010 and appropriate posting order be issued to the post Ticket Examiner, in favour of the applicant.
- (iii) To award cost and further relief which this Hon'ble Tribunal may deem fit and proper in the interest of justice."

4. It is argued by the learned counsel for the applicant that in their reply the respondents have stated in brief history that mainly two types of irregularities have been noticed by Vigilance Branch as per letter dated 30.08.2013 which are as under:

- "(i) Commission has observed that the procedure failure in opening the question paper envelope in the chamber of APO which shows the malafide intention of the officer concerned as well as the possibility of leakage of question

paper before exam could have resulted in use of unfair means by the candidates.

(ii) During investigation it was inter-alia noticed that two candidates i.e. Arti Tamori and Smt. Meena Mahor who were selected and placed on provisional panel (as best among the failure scheme) did not fulfill the eligibility criteria of minimum requirement of service for appearing in the selection and therefore ineligible to appear as per Rly Bd's letter dated 3.04.2003. Rly Bd's letter dated 3.04.2003 states that SC/ST candidates of Gr. D staff will be eligible for consideration in the selection for promotion only on successful completion of probation in recruitment grade."

5. Regarding the first irregularity, the learned counsel for the applicant states that instead of opening the question paper in the examination hall the APO had opened the same in his chamber, which according to the Vigilance Branch created possibility of leakage of the question paper. It is argued that this is only a conjecture and the Vigilance has not been able to establish that actually there was leakage of question paper and just based on conjecture and surmises, the whole process should not be cancelled as it may harm the prospects of genuine candidates also who took the examination.

6. Regarding second irregularity pointed out by the Vigilance Team, it is stated that since the Vigilance found that Ms. Arti Tamori and Ms. Meena Mahor did not possess the requisite qualifications, the solution was to delete their names and not to scrap the whole panel itself. The learned counsel, however,

informed us that in 2015, there was a subsequent selection in which the applicant was selected and promoted as Ticket Examiner but his grievance is that between the period 2010 to 2015 many others have been promoted against quota, other than the 33-1/3% quota, and these employees have become senior to him.

7. During the arguments, it is stated that the applicant prays that he be given seniority of 2010 since he had not indulged in any irregular practice. In this regard, the learned counsel relied on **Union of India and others Vs. Rajesh P.U., Puthuvalnikathu and another**, (2003) 7 SCC 285, where the Hon'ble Supreme Court held as follows:

“A. Service Law – Recruitment process – Selection – Cancellation of, en bloc – Held, where from out of the selectees it was possible to weed out the beneficiaries of irregularities or illegalities, there was no justification to deny appointment to those selected candidates whose selection was not vitiated in any manner – On facts, the decision cancelling the selections in their entirety was rightly held to be irrational by High Court.

B. Administrative Law – Judicial review – Grounds of – Proportionality principle – Application of – Cancellation of selections in their entirety by competent authority – Absence of any specific or categorical finding of widespread infirmities of all-pervasive nature undermining the selection process – Held, the competent authority misdirected itself in taking such an extreme and unreasonable decision – Cancellation of the selection of untainted candidates, held, not justified.”

It is thus argued that in the light of the Supreme Court judgment, steps taken by the respondents to scrap the whole panel is unjustified and not good in law.

8. The learned counsel for the respondents presented the original file No.P-15/3/CON/Sel/Gr. 'D' to 'C'/TE/CB relating to this matter which contains a note (at page 79) by the CVC to the Railway Board, New Delhi. The Commission in its note states that they have perused the investigation report and the comments of the authorities thereon. CVC held that the APO was responsible for opening the envelope of the question paper in his chamber whereas the same should have been opened in the examination hall. In fact, during the investigation, the APO tried to mislead the Railway Board (Vigilance) by saying that he had opened the envelope in the examination hall. The CVC observed that the leakage of question paper could have resulted in use of unfair means by the candidates and recommended major penalty proceedings against the APO, Shri Manmohan Singh and minor penalty proceedings against others. Learned counsel also drew our attention to letter dated 30.08.2013 written by Executive Director Vigilance, Railway Board to the SDGM, North Central Railway, Allahabad (pg 89 of original file). This was regarding two candidates namely Ms. Arti Tamori and Ms. Meena Mahor regarding whom it was detected during investigation that they were placed on the provisional panel though they did not fulfill the eligibility criteria of minimum requirement of service for appearing in the selection. Learned counsel for the respondents informed us that the APO has been awarded a minor penalty.

9. In reply, learned counsel for the applicant placed before us copy of order of this Tribunal dated 16.01.2014 in OA 1209/2012 with OA 1770/2012 and specifically referred to para 12 thereof, which we quote below for ready reference:

“12. In our considered view, the reason given by the Respondents for scrapping the examination was absolutely flimsy. From their noting it is clear that the reason for scrapping was something else. When large number of candidates have applied for the post which is to be filled on deputation basis and a written examination was also held for the purpose and the result was published, it cannot be scrapped simply on the ground that there was some representation that the eligibility criteria was not clear. When all the persons who had participated in the examination were clear about the eligibility conditions, it cannot be said that few others have not understood them due to ambiguity. In our considered opinion, such action on the part of the Respondents scrapping the examination after holding the same and declaring the result of the written examination, will also help to erode the faith of the employees in the Administration. As held by the Apex Court in the case of Brijesh Kumar Srivastava and Others (supra) and Railway Board in its letter dated 17.02.2009 (supra) unless there are irregularities in the selection, the examination already held cannot be cancelled putting the qualified candidates at great disadvantage.”

However, it will be seen from the facts of the case that they are different from the present OA as in that case the selection was cancelled merely on some representation that eligibility criteria was not clear whereas in the instant case, on the complaint, Ministry of Railways made an investigation in consultation with CVC and based on advice of the CVC, action was initiated against the delinquent APO and the examination scrapped. Given the grave irregularity committed by the APO in opening the question paper in his chamber rather than in the examination hall creating

the possibility of leakage of question paper, in our opinion, order of the Tribunal in OA 1209/2012 (supra) will not apply in the present case.

11. Learned counsel for the applicant also relied on **Jnanendra Kr. Sarma and 18 others Vs. Senior Superintendent, RMS, Guwahati DN. and others**, 1986 ATC 698, where the Tribunal held as follows:

"Selection – Panel of selected candidates – Cancellation of, without giving show cause notice – Held, violative of principles of natural justice – Natural justice – Hearing

Selection – Panel of selected candidates – Cancellation of – Validity – Selection duly made by a Departmental Selection Committee – Petitioners informed of their provisional selection – They admitted to, and completing part of training and receiving stipend therefor – They assured of further training – Subsequently their selection cancelled on the ground of alleged receipt of complaints against the selection list, though no fault was pointed out against the petitioners – Such cancellation of selection, held, not justified."

Again we are of the opinion that this order will not apply in the present case as the facts and circumstances are different. In the present case, the respondents investigated the matter through the Vigilance Department, detected a blunder committed by the APO of opening the question paper in his chamber instead of examination hall thus giving rise to the possibility of leakage of question paper. They referred the matter to the CVC and the CVC took a very serious view of the lapse committed by APO and recommended major penalty proceeding against him. The CVC also clearly stated that there was every possibility of leakage of

question paper. It is only thereafter that the respondents cancelled the selection process.

12. We have heard the learned counsel for the parties and gone through the pleadings available on record as well as orders/ judgments cited.

13. We have gone through the original file produced by the respondents and as already stated in our order above, the APO committed a blunder in the process of opening the question paper in his chamber instead of the examination hall. This led to the possibility of question paper being leaked and the sanctity of the selection process jeopardised. In our opinion, the respondents had no option but to cancel the selection process in which such a great blunder had been committed.

14. We find nothing irregular or arbitrary in the decision the respondents have taken. The OA, therefore, does not succeed and is dismissed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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