

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00925/2015

Jabalpur, this Thursday, the 23rd day of August, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Adarsh Kumar, Son of Sri Bhagwan Singh, Resident of Village – Shumbha, P.O. – Ramchaura, Via – Ishuapur, P.S. – Ishuapur, District – Saran – 841411 (Bihar).

2. Shatrughan Kumar Chaudhary, Son of Sri Yadunandan Chaudhary, Resident of Village – Bodhi Bigha, P.O. – Ramghat, P.S. – Chandi, District – Nalanda – 801305 (Bihar).

-Applicants

(By Advocate – Shri Vijay Tripathi)

V e r s u s

1. The Union of India through the Director General of Post, Ministry of Communication, Department of Post, Sanchar Bhawan, New Delhi.

2. The Chief Post Master General, Chhattisgarh Circle, Raipur – 492001.

3. The Director, Postal Service (HQ.), Office of the Chief Post Master General, Chhattisgarh Circle, Raipur – 492001.

4. The Assistant Director (Staff), Office of the Chief Post Master General, Chhattisgarh Circle, Raipur – 492001.

5. The Superintendent of Post Offices, Raigarh Division, Department of Post, Raigarh - 496001

-Respondents

(By Advocate – Shri Vivek Verma)

(Date of reserving order : 06.04.2018)

ORDER**By Navin Tandon, AM.**

The applicants are aggrieved by order dated 15.09.2015 (Annexure A-9), whereby result of Postman/Mailguard examination held on 01.03.2015 has been cancelled and a fresh notification is proposed to be issued to fill up the unfilled vacancies.

2. The case of the applicants is that a notification (Annexure A-1) was issued by the respondent department to fill up the post of Postman/Mail Guard for the year 2014 through direct recruitment. In pursuance to the said notification, the applicants submitted their candidature and have opted for Raigarh Postal Division. They were issued admit card to appear in the examination to be held on 01.03.2015. Result of the said examination was published on 12.03.2015 (Annexure A-4), in which, name of applicant No.1 has been shown at Sr. No.4 against OC quota, whereas name of applicant No.2 finds place at Sr. No.1 against SC quota.

2.1 After being selected for the post of Postman, the applicants, vide letter dated 18.03.2015 (Annexure A-5), were called for document verification and other formalities on

25.03.2015. Thereafter, the Superintendent of Post Office, Raigarh Division, issued a memo dated 07.04.2015 (Annexure A-6), whereby result of the examination held on 01.03.2015 for the post of Postman-Mailguard has been kept in abeyance till further orders.

2.2 On 29.07.2015 (Annexure A-7), a revised result was published, by canceling the earlier examination held on 01.03.2015, wherein the applicants have been placed at Sr. Nos.3 and 9 respectively. In pursuance to the revised result dated 29.07.2015, the applicants were called for document verification afresh on 25.08.2015 vide letter dated 12.08.2015 (Annexure A-8). However, no appointment orders were issued to them and on 15.09.2015 (Annexure A-9), the respondent department has cancelled the result of Postman/Mailguard examination held on 01.03.2015, without assigning any reason.

3. The applicants have prayed for the following reliefs:

“8.1 That your Lordships may graciously be pleased to quash and set aside the impugned Orders dated 15.09.2015 as contained in Annexure-A/9 issued by the Respondent No.4.

8.2 That your Lordships may further be pleased to direct/command the Respondents to issue offer of appointment letter in favour of the Applicants to the post of Post Man/Mail Guard against the Post Man/Mail Guard Examination 2014 in pursuance to the Final Result and document verification

and completion of appointment formalities as contained in Annexure A/7 & A/8 dated 29.07.2015 and 25.08.2015.

8.3 That your Lordships may further be pleased to direct the Respondents to grant all the consequential benefits in favour of the applicants.

8.4 Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the Applicant.”

4. In pursuance to the notice, the respondents have filed their reply. It has been submitted that in respect of the examination held on 01.03.2015 for the post of Postman/Mail Guard, a combined merit list (Annexure R-3) was issued. However, due to certain objection filed by some other candidates regarding the answer key of the question paper dated 01.03.2015, the office of the Chief Post Master General Chhattisgarh, Raipur, issued a memo dated 29.07.2015 by keeping in abeyance the result declared on 12.03.2015.

4.1 It has been further submitted that the department fixed the date of re-examination on 25.08.2015 in respect of the selected candidates. The applicant No.1 Adarsh Kumar, Roll No. 4103097 appeared on 25.08.2015 for document verification but not appeared for test on the same date.

4.2 Subsequently, Divisional Heads have reported that the most of the candidates who were selected in the above

examination have secured very poor marks in matriculate specially the candidates of Haryana and Bihar State, and they unable to make the same signature which appeared in the attendance sheet of examination.

4.3 Respondents have further submitted that the information were collected and it has been found that the candidates standards in matriculate and marks secured in Post Man examination are much varied. Doubts have been raised about impersonation and it was decided to conduct reexamination of selected candidates of Post Man on same question paper with randomized questions on valuation of reexamination. It has been found that 65% to 70% candidates are unable to secure qualifying marks specially the selected candidates of Haryana and Bihar Stated. Some malpractice in the examination is confirm. Copy of the tabulation sheet is also filed as Annexure R-7 with the reply. Hence, vide order dated 15.09.2015, the authority decided to cancel the result dated 29.07.2015 held on 01.03.2015.

5. The applicants have filed the rejoinder, refuting the averments made in the reply. It has been submitted that the respondents have not pointed out the irregularities committed in

the selection process. Further, the objection raised by the respondents that the marks secured by the candidates in matriculation are varied than their marks in Aptitude Test, cannot be a cogent reason to cancel the result of the examination declared on 29.07.2015 (Annexure A-7).

5.1 The applicants have also raised the issue that no prior intimation was given to them for appearing in re-examination of selected candidates on 25.08.2015.

6. Heard the learned counsel for the parties and have gone through the pleadings and documents available on record.

7. The grievance of the applicants is that once they have participated in the selection process and were declared successful and have also appeared for document verification twice, the respondents ought to have offered them appointment and could not have cancel the result of the examination declared on 29.07.2015, without any valid reason.

8. Learned counsel for the applicant has argued that any decision which has civil consequences need to be explained by reasons. In the instant case, no reasons have been spelled out either in public domain or to this Tribunal. He has also placed

reliance in the matters of **Union of India and Others vs. Rajesh P.U., Puthuvalnikathu and Another**, (2003) 7 SCC 285.

9. Learned counsel for the respondents argued that after finding out that there were malpractices, as pointed out by Divisional Heads, the respondents have correctly decided to cancel the entire selection. He placed reliance in the matters of **Nidhi Kaim vs. State of Madhya Pradesh and Others**, (2016) 7 SCC 615, decided by Hon'ble Supreme Court.

10. The impugned order dated 15.09.2015 (Annexure A-9) reads as under :

“Kindly refer this office memo no. AD(S)/Con/Postman Exam/2015/OM dated 29.07.2015 where in the result of Postman/Mailguard examination held on 01.03.2015 was declared in respect of all divisions of Chhattisgarh Circle. Consequent on irregularities noticed in the above examination and on approval of competent authority the result of Postman/Mailguard examination held on 01.03.2015 is cancelled. Fresh notification will be issued against unfilled vacancies.”

11. It is seen that no reasons have been assigned to cancel the said examination. Even in the reply of the respondents, the reasons are more in the realm of suspicion and apprehensions, rather than facts.

12. The Hon'ble Apex Court in the matters of **Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank vs. Jagdish Sharan Varshney and Others**, (2009 4 SCC 240 has categorically held that, *“the purpose of disclosure of reasons, as held by a Constitution Bench of this Court in S.N. Mukherjee v. Union of India (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.”*

13. Respondents in the reply have stated that the department re-examined the selected candidates and fixed the date for re-examination on 25.08.2015. Copy of intimation is annexed as Annexure R/5 with the reply. Perusal of the same indicates that this communication is from office of respondent No.2 to all the Divisions and has been issued on 25.08.2015 itself. Obviously, the candidates have not been given advance information about

the same. The legal validity of such a re-examination is questionable.

14. The respondents have carried out an exercise to compare the marks obtained by successful candidates in the selection test vis-à-vis their marks in class X and have raised doubts about the caliber of the selected candidates. However no substantive proof of any foul play has been given. Just because someone scored poor marks in class X and scored high marks in this test cannot be sufficient reason to question the caliber of the candidate.

15. Further, the respondents have stated that the signatures of some of the selected candidates are not matching with those in the attendance sheets in the examination. Action can obviously be taken in such cases of impersonation and their candidature can be cancelled. This can not result in cancellation of the whole selection procedure.

16. In the case of **Rajesh P.U.** (supra), the Hon'ble Apex Court has held that the decision to cancel the selections in their entirety to the selected candidates, whose selection was not vitiated in any manner, is irrational. It was further held as under:

“6.Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except of 31 of such

selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such and extreme and unreasonable decision of canceling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.”

17. It is very clear from the judgment of Hon’ble Supreme Court in the matters of **Rajesh P.U.** (supra) that the bad cases should be segregated from the good ones and selection should be allowed to continue. Wisdom of Hon’ble Shri Justice V.R. Krishna Iyer, flowing through the words in **Charles K. Skaria and others vs. Dr. C. Mathew and others, (1980) 2 SCC 752** tell us that, “Indeed, the judicial process, in its creative impulse, must hesitate to scuttle, salvage wherever possible and destroy only when the situation is beyond retrieval.”

18. The Hon’ble Apex Court in the case of **Nidhi Kaim** (supra), has upheld the decision of Hon’ble High Court of Madhya Pradesh regarding the cancellation of result on the basis of Expert Committee’s reports coming to conclusion that

it was a case of “mass copying”. Para 84 and 85 of the judgment reads as under:

“84. The State and Vyapam supported the decision of cancellation of the results and inter alia contended that it is based on Expert Committee’s Reports, which has taken into account the aforementioned material for coming to a conclusion that it was a case of “*mass copying*”.

85. The High Court upheld the stand taken by the State/Vyapam and dismissed the writ petitions. The High Court by its reasoned judgment held inter alia that:

Firstly, it was a case of “*mass copying*”;

Secondly, the material seized was sufficient for the Expert Committee for coming to a conclusion that it was a case of “*mass copying*” found to have been done at a large scale by the appellants and other candidates by resorting to unfair means;

Thirdly, the decision to cancel the appellants’ results is based on Expert Committee’s report which has applied their mind to all aspects of the case after taking into account all material seized in investigation and, therefore, no fault could be found in such decision of the Expert Committee;

Fourthly, the decision has been taken in larger public interest;

And *lastly*, this being a case of “*mass copying*”, it was not necessary for the State/Vyapam to give any opportunity of hearing to any candidate individually to show cause before cancellation of their results as has been laid down by this Court consistently in several decided cases referred to hereinbelow.

It is this issue, which is not carried by the unsuccessful candidates (appellants) to this Court in these appeals.

19. We have not been informed by the respondents if any committee was formed to enquire into specific cases/complaints

regarding malpractices in the conduct of the examination. In such a scenario, how the respondents came to the conclusion of the malpractices, is not clear to us.

20. Taking the guidance of Hon'ble Apex Court in the above mentioned cases and considering the facts of the instant case, we find that there are no specific complaints regarding conduct of the examination, which has been brought to our notice. The apprehension and doubts raised by the Divisional Heads, have been considered without formation of any Expert Committee to decide on the issue. Since the infirmities, if any, have not been found affecting the entire selection, it is our considered view that the selected candidates should be offered appointment without canceling the entire selection proceedings.

21. Before we part, we are constrained to point out that notices were issued to respondents on 28.10.2015 and the reply has been filed on 06.10.2017 only after imposition of cost of Rs.5000/-. We observed that some of the Annexures filed along with the reply are only some worksheets and not authenticated documents e.g. combined merit list (Annexure R/3) and comparison of marks obtained in test and Class X (Annexure

R/7) are not authenticated by any officer of the respondent department.

22. Accordingly, the O.A is allowed. The impugned order dated 15.09.2015 (Annexure A-9) is quashed and set aside. The respondents are directed to proceed further in pursuance of the results declared on 29.07.2015 and take necessary steps to offer appointment letter to the applicants, if otherwise found fit, within a period of 90 days from the date of receipt of a certified copy of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-