

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.Nos.260/136 & 104 of 2019

Date of Reserve:29.04.2019
Date of Order: 10.07.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

O.A.No.136/2019

1. Jeeban Jyoti Pradhan, aged about 34 years, S/o. Junus Pradhan.
2. Sujit Kumar Sahoo, aged about 32 years, S/o. Madan Mohan Sahu.
3. G.Srinivas Rao, aged about 30 years, S/o.G.Krishna Rao.
4. Ajit Bahira, aged about 26 years, S/o.Bharat Bahira.
5. Pranabandhu Suna, aged about 32 years, S/o.Ratu Suna.
6. Ashutosh Mahanna, aged about 32 years, S/o. Kailash Chanendra Mahanna.
7. Devendra Kumar Sahoo, aged about 30 years, S/o.Shankar Prasad Sahoo.
8. Manas Behera, aged about 31 years, S/o. Makar Behera.
9. Sunaram Singh, aged about 30 years, S/o.Shukana Singh.
10. Manash Kumar Sahoo, aged about 39 years, S/o.Musa Sahoo.
11. A.Lokesh, aged about 29 years, S/o.A.Venkata Rao.
12. Ramesh Chandra Mohanty, aged about 35 years, S/o.Birendra Nath Mohanty.
13. Manoranjan Swain, aged about 28 years, S/o.Narahari Swain.
14. Md.Kuktar Alam, aged about 35 years, S/o.Md.Jalauddin.
15. K.Kanesh Kumar, aged about 31 years, S/o.K.Eswara Rao.
16. Pravat Kumar Moharana, aged about 32 years, S/o. Abhiram Moharana.
17. Satyabrata Nayak, aged about 32 years, S/o.Chandrasekhar Nayak.
18. Satya Prakash Sahoo, aged about 33 years, S/o.Satrughna Sahoo.
19. Debasis Parida, aged about 33 years, S/o. Baidhar Parida.
20. Sangram Keshari jena, aged about 28 years, S/o.Bishnu Charan Jena.
21. Gyana Ranjan Rout, aged about 30 years, S/o.Dharanidhara Rout.
22. Premashisha Naik, aged about 32 years, S/o.Kalit Naik.
23. Amulya Kumar Jena, aged about 36, S/o.Pitambar Jena.
24. Pramod Kumar Sahoo, aged about 28 years, S/o.Sumitra Sahoo.
25. Srinibash Pallai, aged about 36 years, S/o.K.C.Pallai.
26. Pranabandhu Moharana, aged about 28 years, S/o.Janardan Moharana.
27. Sarada Prasanna Jena, aged about 38 years, S/o.Kishore Chandra Jena.

All the above mentioned applicants are working as Group-D employees, like TP/GK under East Coast Railways, Khordha Division, Jatani, District-Khordha and their names appear in the Select List of Limited Departmental Competitive Examination (LDCE).

...Applicants

By the Advocate(s)-M/s.D.K.Panda
A.Mishra

-VERSUS-

Union of India represented through :

1. The General Manager, East Coast Railway, Rail Kunja, Chandrasekharpur, Bhubaneswar-751 016, District-KHORDHA.
2. Divisional Railway Manager (P), Khordha, District-KHORDHA-752 050.
3. Divisional Personnel Officer, East Coast Railway, Khordha Road, PO-Jatni, Dist-KHORDHA-752 050.
4. Sr.Divisional Personnel Officer, East Coast Railway, Khordha Road, PO-Jatni, District-KHORDHA-752 050.

...Respondents

By the Advocate(s)-Mr.T.Rath

O.A.No.104/2019

1. Karunakar Nayak, aged about 28 years, S/o.Bulukesar Nayak.
2. Bikash Kumar Mohapatra, aged about 35 years, S/o.Balaram Mohapatra.
3. Jaganath Das, aged about 3 years, S/o.Purna Chandra Das.
4. Krushna Chandra Bhoi, aged about 39 years, S/o. Late Banamali Bhoi.
5. Ch.Pramodh Kumar, aged about 28 years, S/o.Jagannothan.
6. R.Ravi Kumar, aged about 30 years, S/o.R.Mahadeva Rao.
7. A.Satish Kumar, aged about 31 years, S/o.Sai Babu.
8. G.Sreehari Rao, aged about 30 years, S/o.C.Mouli.
9. V.Prasad Rao, aged about 31 years, S/o.Suryanarayan.
10. B.Sairam, aged about 35 years, S/o.Marreppadu.
11. Sekhar Behera, aged about 30 years, S/o.Sanyasi Behera.
12. Alekha Charan Behera, aged about 33 years, S/o.Bandhu Behera.
13. S.Saraswati, aged about 35 years, W/o.Y.Devaraju.
14. Bikram Kishor Gochhayat, aged about 36 years, S/o.Kailesh Ch.Gochhayat.
15. G.Srinivas Rao, aged about 40 years, S/o.G.Gopal Rao.
16. Lingaraj Maharana, aged about 39 years, S/o.Ganesh Maharana.
17. Laxmi Narayan Nahak, aged about 33 years, S/o.Ramachandra Nahak.
18. Sumanta Kumar Sethy, aged about 41 years, S/o. Late Parsuram Sethy.
19. B.Padmanav, aged about 26 years, S/o.B.Surya.
20. P.Ram Raju, aged about 28 years, S/o.Pentayya.

All are working as Group-D employees under East Coast Railway, Khordha Division, Jatni, District-KHORDHA and their names appear in the Select List of Limited Departmental Competitive Examination (L.D.C.E.)

...Applicants

By the Advocate(s)-M/s.Ch.S.Mohapatra
P.Mangaraj

-VERSUS-

Union of India represented through :

1. The General Manager, East Coast Railway, Rail Kunja, Chandrasekharpur, Bhubaneswar-751 016, District-KHORDHA.
2. Divisional Railway Manager (P), Khordha, District-KHORDHA-752 050.
3. Divisional Personnel Officer, East Coast Railway, Khordha Road, PO-Jatni, Dist-KHORDHA-752 050.
4. Sr. Divisional Personnel Officer, East Coast Railway, Khordha Road, PO-Jatni, District-KHORDHA-752 050.

...Respondents

By the Advocate(s)-Mr.T.Rath

ORDER

PER MR.GOKUL CHANDRA PATI, MEMBER(A):

Both the OAs have been filed by the applicants challenging decision of the respondents to re-conduct the written examination again in respect of some of the rooms in which the written examination was held on 6.5.2018 in which the Vigilance Department reported irregularity in conduct of the examination for promotion to the post of Goods Guard under 15% LDCE quota. The applicants had qualified in earlier written examination and hence, they are aggrieved. Since both the OAs pertain to the LDCE for promotion to Goods Guard held in May, 2018, both are taken up together. The MAs filed in both the OAs for by the applicants to jointly prosecute the OAs have been allowed earlier by this Tribunal.

2. The reliefs prayed for in O.A.No.136/2019 are as under:

- i) To quash the notice dated 06.02.2019 under Annexure-A/4 by concurrently holding the same as bad, illegal and not sustainable in the eye of law and thereby allow promotion to the Goods Guard as per the Select list under Annexure-A/2;
- ii) To pass such other order(s) or issue direction(s) as may be deemed fit and proper in the bona fide interest of justice.

The reliefs prayed for in O.A.No.104/2019 are as under:

- i) Quash the order dated 23.01.2019 under Annexure-A/3 and thereby this Hon'ble Tribunal further be pleased to direct the Respondent No.2 to give promotion to the applicants as per the Select List under Annexure-A/2.
- ii) Pass such other order(s) or issued direction9s) as may be deemed fit and proper in the bona fide interest of justice.

3. The facts of the matter are that all the applicants in both the OAs are presently working as Group – 'D' employees, viz., Train Porter/Gate Keeper under the East Coast Railways. In pursuance of a notification dated 01.08.2017, they had appeared the Limited Departmental Competitive Examination (LDCE) for filling up the posts of Goods Guard in the Operating Department under 15% quota for promotion by LDCE.. The result of the written test was announced on 14.09.2018 (A/2), in which all the applicants were declared qualified for promotion to the post of Goods Guard. While the matter stood thus, Respondents issued a notice dated 23.01.2019 (A/3) in O.A.No.136/2019 and notice dated 6.2.2019 (A/4) in O.A.No.104/2019 in which the written examination for selection to the post of Goods Guard against 15% LDCE quota of Khurda Road Division for some of the candidates were stood cancelled and it was ordered that re-examination would be conducted on 15.02.2019. Thereafter, a further order was issued vide A/4 dated 06.02.2019 in which it was stipulated that the re-examination would be conducted on 28.02.2019 comprising the candidates who had appeared written test in Room No.1 excluding the candidates of Room No.7 who were mentioned in the notification dated 15.2.2019. The applicants in O.A.No.136/2019 are the candidates whose names were included in notification dated 6.2.2019 (A/4) for which they are aggrieved by the order at Annexure-A/4. The applicants submitted a joint representation dated dated 12.02.2019 to the Divisional Railway Manager, East Coast Railway, Khurda

Road (Respondent No.2) with a request to cancel the re-examination and to finalize the selection on the basis of the results that had been published on 14.09.2018 (A/2). Since it did not yield any fruitful result, the applicants have filed these OAs praying for the reliefs as referred to above.

4. It is the case of the applicants in O.A.No.136/2019 that on the basis of the complaints received from two unsuccessful candidates, viz., S/Shri A.K.Yadav and Sanjay Kumar that unfair means had been adopted during the course of examination and with intention to declare both of them qualified, the respondents included the Room No.1 within the purview of re-examination while excluding the Room No.7 in an arbitrary manner. According to applicants, they had appeared the written test on 06.05.2018 with all fair means under the supervision of APO Shri Santosh Kumar Mishra and Invigilator, Shri Bikram Sethi. Applicants have pointed out that as per the norms of the Railway Recruitments, only after vigilance clearance, results should get published or announced. It has been further pointed out that the entire process was completed on 20.05.2018 and the results were announced on 14.09.2018. Therefore, the action taken by the respondents to conduct re-examination after about 4 months of the declare of results, is nothing but arbitrary and colourable exercise of powers since the respondents took a decision in this regard on receipt of the complaints from the two unsuccessful candidates only after the publication of the results of the LDCE.

5. In O.A.No.104/2019, the case of the applicants is similar to the applicants in O.A.No.136/2019. It is is stated that no reason has been assigned for not cancelling the Room No.6 while cancelling the written examination selectively in Room No.4,5 and 7. Principles of natural justice was violated and no action against the culprits was taken if any malpractice was detected. It

is also stated that selective cancellation of examination was stigmatic. It is stated that the written examination was conducted on five dates, but the examination held on 6.5.2018 was cancelled.

6. Per contra, respondents have filed detailed counters in O.A.No.136/2019 as well as in O.A.No.104/2019 stating that the written examination for the post of Goods Guard against 15% LDCE was conducted under the surveillance of C.C.T.V. After the announcement of the results of the written test on 14.09.2018, the Vigilance Branch vide their letter dated 10.01.2019 communicated to D.R.M., Khurda Road that gross irregularities have been detected in the written examination held on 06.05.2018 as per the C.C.T.V. footage and hence, advised to conduct re-examination in respect of candidates of Room Nos. 4, 5 & 7. On receipt of such advice, the D.R.M., Khurda Being the competent authority, took a decision to re-conduct the examination on 15.02.2019 and this fact was intimated to Sr.D.O.M./KUR. But after getting the Photographs of the candidates as per the Attendance Sheet, the Vigilance Wing vide their letter dated 25.01.2019 while sticking to their earlier advice, clarified that besides Room Nos. 4 and 5, re-examination should be conducted in respect of the candidates who appeared in Room No.7 invigilated by Sri Bikram Sethy. Respondents have pointed out that Sri Bikram Sethy had been nominated for invigilation in Room No.7 and accordingly, he had invigilated the said Room, but had taken signatures of the candidates in blank Attendance Sheet of Room No.1 erroneously. Similarly Sri Saroj Ku.Behera had been nominated as Invigilator for Room No.1 and had taken signatures of the candidates of Room No.1 in blank Attendance Sheet for Room No.7. The Vigilance Wing after going through the CCTV footage confirmed that Shri Bikram Sethy had invigilated the Room No.7, but it was erroneously described

as Room No.1 in the attendance sheet. It is stated that as per the Vigilance report, the irregularities had taken place in Room No.7 in addition to Room Nos. 4 and 5.

7. Applicants have filed rejoinders to the counter in both the OAs. It is submitted that even after thorough investigation, the Railway Authorities have assigned no reason as to why and under what circumstances, candidates of Room No.7 have been excluded and what prompted them to include the candidates of Room No.1. It has been pointed out that as there is no chance of supplementary examination in terms of the notification, the authorities have adopted dubious means to make the unsuccessful candidates eligible to further appear for the examination. Applicants have pointed out that if there would have been malpractice in the examination, all the candidates appearing in the Room Nos. 1, 4 & 5 would have been successful whereas the fact remains that a number of candidates appearing for the examination in the said rooms have been unsuccessful. According to applicants, all the localities of Khurda were arranged in Room No.6 the result of which has not been disturbed. It has been pleaded that in the first instance the railway authorities fixed the date of re-examination to 15.02.2019 which was rescheduled to 28.02.2019. Subsequently, the same was cancelled and again rescheduled to 20.03.2019. It is averred that there is every reason to believe that the railway administration is not at all serious in conducting the said examination and on the other hand, it is their intention to show favouritism to the unsuccessful candidates of Room Nos. 1, 4 and 5.

8. We have heard the learned counsels for both the sides and perused the records in both the OAs. We have also gone through the written notes of submission filed by the applicants. In the written notes of submission, it has

been pointed out by the applicants that selective cancellation of written examinations for Room Nos. 4, 5 & 7 and thereafter Room Nos. 1, 4 and 5 is bad in law. Further it has been submitted that out of total 367 candidates, 280 were declared qualified. The candidates in Room Nos. 1, 4 & 5 who did not qualify in the examination, owing to such cancellation, are illegitimately getting a second chance to appear the examination, which according to applicants, are discriminatory. Learned counsel for the respondents stressed on the point that the applicants have not exhausted the departmental remedies as stated in Para-2 of the counter filed in O.A.No.104/2019. He also submitted that Vigilance being an independent department should have been made a party in the OAs.

9. From the above recital of facts, the respondents have not made it clear as to why the vigilance wing did not report about irregularities in the written examination held on 6.5.2018 prior to declare of results. It is an admitted fact that whereas the result of the written test was announced on 14.09.2018 the Vigilance Department vide their letter dated 10.01.2019, i.e., more than three months of the publication of the results and more than eight months from examination held on 6.5.2018 communicated to D.R.M., Khurda Road stating that gross irregularities have been detected in the written examination held on 06.05.2018 as per the C.C.T.V. footage and advised to conduct re-examination in respect of candidates of Room Nos. 4, 5 & 7. Even this report was not a complete one. After getting the Photographs of the candidates as per the Attendance Sheet, the Vigilance Wing again vide their letter dated 25.01.2019 clarified that besides Room Nos. 4 and 5, re-examination should be conducted in respect of the candidates who appeared in Room No.7 invigilated by Sri Bikiram Sethy. It is the case of the Respondents that the

said Sri Bikram Sethy although had been nominated for invigilation in Room No.7 and had invigilated the said Room, but erroneously he had taken signatures of the candidates in blank Attendance Sheet of Room No.1. Conversely, Sri Saroj Ku.Behera who had been nominated as Invigilator for Room No.1 had taken signatures of the candidates of Room No.1 in blank Attendance Sheet for Room No.7. This sort of mismanagement in the examination makes the examination unfair. It is not known if the respondents have decided to proceed against the officers due to whose lapses such irregularities have taken place.

10. We have perused the vigilance department's records produced by the respondents' counsel at the time of hearing. In letter dated 22.2.2019, the Sr.Vigilance Officer had reported the respondent no.2 stating as under:

"Although irregularities have been notified in some part of the said written examination, vigilance department in its fairness and justice has tried its best not to cancel the examination process to protect the interest of genuine candidates who appeared in the examination. Rather Vigilance department has made all out effort to identify culprits. But for the following discrepancies in the examination, this department was not able to identify the culprits candidates and has been compelled to advise DRM/KUR for re-examination of the candidates appeared in Room No.04, 05 & 07 on 06.05.2018.

- A) No seat was allotted on basis of Roll numbers. In fact roll numbers were not allotted.
- B) The candidates were allowed to sit randomly as per their choice.
- C) This department was unable to match the Photographs collected through Personnel department/Khurda Road with CCTV footages due to random sitting arrangements.
- D) Clarity of Photographs in CCTV footage was not good enough to match with photograph collected.
- E) Due to heavy workload of vigilance official in other matters".

In letter dated 10.01.2019 (Annexure-R/4 of the counter in O.A.No.104/2019) it is stated by the Vigilance department as under:

"Sub: Written examination for selection to the post of Goods Guard in Level-5 against 15% LDCE quota in Operating Department of KUR division:

On investigation from the CCTV footages of written examination held on 06.05.2018 for selection to the post of Goods Guard against 15% LDCE in Operating Department, gross irregularities have been detected in Room Nos. 04, 05 & 07.

- 1) In view of the above, considering the essentiality and transparency of the selection it is advised to re-conduct the written examinations only for the candidates of Room Nos. 04, 05 & 07, those who had appeared on 06.05.2018 for the post of Goods Guard against 15% LDCE.
- 2) As envisaged from allotment letter & CCTV footage it is noticed that the invigilator of Room No.07 was Shri Bikram Sethi, Ch.OS, but inadvertently the photographs of Room No.01 (invigilator Shri Saroj Kumar Behera, Jr.Clerk) has been sent to this office vide DPO/KUR letter No. Dated 29.10.2018. Hence, it is once again requested to arrange to provide to this office the very recent passport size photographs of the candidates of Room No.07 appeared in the said written examination on 06.05.2018 for further vigilance investigation".

It is seen from above that the Vigilance department has not informed any specific malpractice in the examination. On perusal of vigilance records (copy filed by respondents' counsel), the following has been stated in the "Preliminary Preventive Check Report" of the CVI(P) stating as under:

"It was noticed in the examination hall that at the Room No. 01, 04, 06 & 07 maximum candidates were talking with each other in spite of the repeated instruction by the Room Invigilators and Exam. Conducting officer which can be easily identified from CCTV footage captured on that date. The candidates were not maintaining the proper silence inside the examination hall. All the candidates had sat on their own choice without any allotment. The invigilators were also not in a position to maintain the proper discipline and regularity inside the examination hall. Many Chits of papers (micro Xerox copies) have been seized from the bath room of the examination centre. Hence it has been confirmed that the candidates were doing the malpractice. Even after the

repeated instructions to the candidates and the invigilators, the situation was in laissez faire".

11. The above reports show on one hand that there were irregularity in all the room i.e., Room No.1, 4, 5 6 and 7 as stated in the report of the CVI(P), whereas the Sr. Vigilance Officer has reported for re-conduct of the examination in respect of the candidate in Room No. 4, 5 and 7. The reasons for excluding the candidates in Room No. 1 and 6 in the notes recorded by Sr.Vigilance Officer are not satisfactory.

12. Learned counsel for the applicants in O.A.No.104/2019 cited the judgment of Hon'ble Apex Court in the case of K.Surekha vs. Mahadev Appa Rao & Ors. (2010) 7 SCC 68 in which it was held that the competent authority has not recorded any reason for cancellation of the test conducted in a departmental examination. An examination cannot be cancelled because of some complaints or representations received from some candidates. It was further held that the authority has to apply his mind while passing the order. In this case, Hon'ble Apex Court has held as under:

"26. If a test is cancelled just because some complaints against the same have been made howsoever frivolous, it may lead to a situation where non-selection process can be finalised as those who fail to qualify can always make a grievance against the test or its fairness. What is important is that once a complaint or representation is received the competent authority applies its mind to the same and records reasons why in its opinion it is necessary to cancel the examination in the interest of purity of the selection process or with a view to preventing injustice or prejudice to those who have appeared in the same. That is precisely what had happened in Dilbagh Singh case. The examination was cancelled upon an inquiry into the allegations of unjust, arbitrary and dubious selection list prepared by the Selection Board in which the allegations were found to be correct.

27. Even in Tarun K.Singh case relied upon by Mr.Malhotra an inquiry into the complaints received against the selection process was conducted no matter after the cancellation of

the examination. This Court in that view held that since the selection process was vitiated by procedural and other infirmities cancellation thereof was perfectly justified.

28. That is not, however, the position in the instant case. The order of cancellation passed by the competent authority was not preceded even by a *prima facie* satisfaction about the correctness of the allegations made by the unsuccessful candidates leave alone an inquiry into the same. The maximum that was expected of the authority was a due and proper application of mind to the allegations made before it and formulation and recording of reasons in support of the view that the competent authority was taking".

In the case of K.Surekha, Hon'ble Apex Court directed the concerned authority to reconsider the representation received against the examination.

13. We also have taken note of the contention relating to alternative remedy taken in the counter filed in O.A.No.104/2019. No specific reply has been furnished in the rejoinder filed by the applicants in O.A.No.104/2019. It is also seen that no representation to higher authority of the respondent no.2 has been made by the applicants, who had submitted a joint representation to the respondent no.2 against the decision to re-conduct the written examination. Since representation was made against the decision to re-conduct the examination and no decision was taken on it, it cannot be said that alternative remedy was not exhausted by the applicants before filing the O.A.

14. Learned counsel for the respondents had submitted at the time of hearing that Vigilance wing should have been made a party to the O.A. We do not agree with the submission since although the vigilance department submitted the report, the competent authority for decision making in those case was the respondent no.2. Hence, Vigilance department is not essential party in this case. Moreover, the respondents' counsel has produced the file of Vigilance Department at the time of hearing for our perusal.

15. The impugned orders dated 23.1.2019 and 6.2.2019 notifying the date of re-examination along with the name of the candidates do not indicate any reason for cancellation of earlier written examination held on 6.5.2018 for which, the result had been declared on 14.9.2018. Non-disclosure of reasons in the orders indicates non-application of mind of the competent authority for which, these orders cannot be sustained as per the ratio of the judgment in the case of K.Surekha (supra). It is noted that the order dated 23.1.2019 is superseded by the order dated 6.2.2019 (Annexure-A/4 of O.A.No.136/2019).

16. In view of the above discussions, the following orders are passed taking into the circumstances of both the OAs:-

- i) The order dated 6.2.2019 (A/4) in O.A.No.136/2019 is cryptic and non-speaking. Hence, it is set aside and quashed.
- ii) The matter is remanded to the Respondent No.1 to re-examine the entire issue of re-conduct of the written examination held on 6.5.2018 with reference to the records of the Vigilance department and CCTV footages and pass an appropriate speaking and reasoned order which is to be notified for information of all concerned within two months from the date of receipt of a copy of this order. In case Respondent No.1 decides to cancel the written examination held on 6.5.2018 in respect of some or all candidates, then the reasons for such cancellation are to be disclosed in the order to be passed by him as per the above direction.

17. Both the O.A.No.136/2019 & 104/2019 are allowed in part as above. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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