
(2022) 09 CAT CK 0046

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00262, 00264 Of 2022

Arun.P.

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 26-09-2022

Acts Referred:

Citation : (2022) 09 CAT CK 0046

Hon'ble Judges : Sunil Thomas, Member (J); K.V. Eapen, Member (A)

Bench : Division Bench

Advocate : M/s.Varkey & Martin, O.M. Shalina

Final Decision : Allowed

Judgement

K.V. Eapen, Member A

1. These two Original Applications are being taken together for a common order as the issues involved in both are essentially the same. However, the O.A.No.180/262/2022 will be taken as the lead O.A in disposal of the matter.

2. The applicant in O.A.No.180/262/2022 is aggrieved by the impugned order dated 24.09.2021 produced at Annexure A-3 and even more particularly by the impugned order at Annexure A-6 dated 27.05.2022 under which the written examinations held for selection of candidates for the post of Junior Engineer (Carriage & Wagon) [JE (C&W)] in the Trivandrum Division of the Southern Railway in Pay Matrix Level 6 against the 25% Limited Departmental Competitive Examination (LDCE) quota were cancelled due to "administrative reasons". The said LDCEs were conducted, pursuant to a notification issued by the Southern Railway, Divisional Office, Trivandrum dated 29.04.2021 inviting applications from employees working as Technician III and above of Carriage & Wagon Wing of Mechanical Department and from ancillary category Technicians of Mechanical/ C&W subject to their fulfilling certain conditions (notification produced at Annexure A-1). The process of selection was to be based on the result of the written examination as well after a perusal of personal records. It was indicated

at paragraph 6 of the notification at Annexure A-1 that the question paper for the written examination would be on a 100% objective type multiple choice based questions and that it would be conducted in CBT mode or pen and paper test. It was also indicated that there would be negative marking for incorrect answers and that one third of the marks allotted for each question would be deducted for each wrong answer. After the notification dated 29.04.2021 was issued the written examination was held for the first time on 18.09.2021 and the results were published on 21.09.2021. In the results, a copy of which has been produced at Annexure A-2, only the applicant in O.A.No.180/262/2022 was shown as qualified (the other applicant, in O.A.No.180/264/2022, did not qualify in this particular examination). However, soon after the result was published, the respondents passed the first impugned order at Annexure A-3 on 24.09.2021, cancelling the examination due to 'administrative reasons'. The applicant in O.A.No.180/262/2022 then filed an O.A.No.180/489/2021 against the said cancellation. While this was pending for consideration, the respondents conducted a fresh written examination on 05.10.2021 pursuant to the original notification at Annexure A-1. A panel was then published, produced at Annexure A-4 in the O.A.No.180/262/2022, where only two candidates were included, namely, the applicant in O.A.No.180/264/2022 at Sl.No.1 and the applicant in the O.A.No.180/262/2022 at Sl.No.2. It was indicated in the letter at Annexure A-4 that the two selected employees may be directed for the prescribed training of 52 weeks.

3. The applicant in O.A.No.180/262/2022 submits that he was given to understand that inspite of his selection, he would be send for the training only after the disposal of O.A.No.180/489/2021 which had been filed by him. In these circumstances and since he had again got qualified, he submits that he withdrew the O.A.No.180/489/2021 in order not to cause any delay in the training. He also submits that soon after that on an RTI application made by one of the unsuccessful candidates for the examination, the Southern Railway, Divisional Office, Trivandrum issued a letter detailing the marks secured by each of the qualified candidates in the examination, which is produced at Annexure A-5. From the details of the marks provided at Annexure A-5 it is seen that the first candidate ie., the applicant in O.A.No.180/264/2022 had scored 75.66 marks out of 97 in the written examination whereas the second candidate, ie., the applicant in O.A.No.180/262/2022 scored 74.33 marks out of 97. The applicant and the applicant in O.A.No.180/264/2022 were deputed to the Multi Disciplinary Divisional Training Institute, Bengaluru for the training which commenced on 30.12.2021.

4. However, while undergoing the said training, the two applicants were shocked to learn that a letter, produced as the impugned order at Annexure A-6 in this O.A and Annexure A-1 in O.A.No.180/264/2022 had been issued that the second written examination which had been held on 05.10.2021 as well as the subsequent panel published on 26.11.2021 were cancelled again due to "administrative reasons". However, the said cancellation order was not officially

served on the two applicants in these O.As. It is this order that both the applicants are aggrieved by, as it does not state any reasons and is, therefore, submitted to be arbitrary, without application of mind. At that time the applicants were undergoing the training along with some others and the said training has been started with effect from 30.12.2021. They then approached this Tribunal in these two Original Applications. When the O.A first came up for hearing on 30.05.2022 since five months of the training had elapsed, this Tribunal, after initial hearing passed an interim order directing the respondents to allow the applicant in O.A.No.180/262/2022 to continue with training. A similar order in respect of the other applicant in O.A.No.180/264/2022 was also passed on 30.05.2022. The two interim orders have been extended from time to time till date.

5. The main contentions and ground for relief taken by the two applicants is that the orders passed cancelling the examination at Annexure A-6 in the O.A.No.180/262/2022 and at Annexure A-1 in O.A.No.180/264/2022 are without stating any reasons whatsoever and are thus arbitrary and would cause substantial prejudice and hardship. The applicants who fared well in the examination and were undergoing training would be put to great difficulty by the order. No reasons have been furnished in the said orders except for a bland statement that it was cancelled due to "administrative reasons". The applicant in the O.A.No.180/262/2022 submitted that the second examination held on 05.10.2021 and the panel published on 26.11.2021 were perhaps cancelled due to the O.A.No.63/2022 filed by another candidate, who had qualified at the third position in the select list from the marks of the candidates produced at Annexure A-5. It was submitted by the applicant that the third candidate, one Shri.Sanil Kumar S, had raised the issue that the applicant in O.A.No.180/264/2022, who had qualified at the top of the list, was not actually eligible to be included in the panel, as he came from a non safety category of Carpenter. He submitted that he himself coming from the Technician Gr.I category, was not affected by such submissions and disputes and there was no need to have cancelled the panel in his case. He submits that the contention of the applicant Shri.Sanil Kumar S in O.A.No.180/63/2022 was that in all Divisions, except Trivandrum Division, Carpenters who are in the non-safety category were not eligible to be considered for promotion to the post of Junior Engineer/C&W.

6. However, the actual reasons were clarified in the respondents' reply statements in both the O.As. In the matter of the cancellation of the first examination held on 18.09.2021, the respondents clarified that there had been an issue relating to the constitution of members of the Selection Committee which required that the examination be cancelled. It is submitted that a new Selection Board was constituted as per the extant rules and the procedure of selection was then reinitiated from the point from where it went wrong. Accordingly the written examination was again conducted afresh on 05.10.2021 and the results were declared on 11.10.2021 along with the final panel on 26.11.2021. The applicants in these two O.As., ie. O.A.No.180/262/2022 and

O.A.No.180/264/2022, were empanelled and had been recommended for the post of Junior Engineer (C&W), subject to completion of the required training for which they were deputed from 31.12.2021. The respondents have also clarified that the said examination was not cancelled due to O.A.No.180/63/2022 filed by Shri.Sanil Kumar S as the O.A was later withdrawn by the applicant after it had been clarified by the respondents that the Carpenters holding ancillary posts were also entitled to be considered for promotion as JE (C&W) against the 25% LDCE quota. The applicant had accepted this clarification and had withdrawn the O.A.

7. It is submitted that the reason for cancelling the second written examination held on 05.10.2021 is different. A representation had been received after the Panel was published on 27.01.2022 by the office of one of the members of the Selection Committee from a candidate who had cleared the written examination but had not figured in the final panel. In the representation, a copy of which has been produced by the respondents at Annexure R-1, it was pointed out that 5 questions in the written examination conducted on 05.10.2021 had their answers wrongly indicated in the answer key which was used for evaluation. It is submitted by the respondents that even though the representation was not received within the stipulated time of two months from the date of announcement of panel (as it was received only on 27.01.2022 whereas the panel was published on 26.11.2021) it was still considered, as the Selection Committee noticed that the contentions raised therein had some merit. It is submitted by the respondents that the Question Nos.13, 20, 31, 56 and 100 had their answers given in the answer key as A, C, C, C and B. However, these were found to be wrong and should have been options C, A, D, D and A. It was noticed that several candidates who had appeared for the written examination had attempted these 5 questions, and thus it had to be presumed that the evaluation done based on the erroneous answer key would be incorrect thus affecting the legitimacy of the panel.

8. It is further submitted by the respondents that the Railway Administration has no provision of re-evaluation of the written test in its rules. A Panel once approved, should not normally be cancelled or amended. Since the Selection Panel had been approved and published on 26.11.2021 and since the candidates selected were undergoing training, the only option available with the authorities in the light of the procedural irregularity/defect brought out, was the cancellation of the selection. In this regard the respondents have submitted that they have relied on paragraph 219 (I) of Chapter 2 of IREM Vol.I, which reads as under :

"219(I). After the competent authority has accepted the recommendations of the Selection Board, the names of the candidates will be notified to the candidates. A panel once approved should normally not be cancelled or amended. If after the formation and announcement of the panel with the approval of the competent authority it is found subsequently that there were procedural irregularities or other defects and it is considered necessary to cancel or amend such a panel this

should be done after obtaining the approval of the authority next higher than the one that approved the panel.”

It is submitted that an amendment of the panel is usually done when there is a calculation error in the record of service or in the tabulation of marks of the written examination. It is submitted that the marks of the written examination, in itself, cannot be amended. The written examination held on 05.10.2021 and the subsequent panel published on 26.11.2021 had to be therefore cancelled as per the orders at Annexure A-6 in O.A.No.180/262/2022. As the initial panel had been approved by Additional Divisional Railway Manager of Trivandrum Division the Selection Committee prepared a report on the procedural irregularity that had occurred as per the provisions of paragraph 219 (I) and put up the matter to the next higher authority ie., Divisional Railway Manager of Trivandrum Division, who then cancelled the selection under his powers. Hence, the cancellation of the written examination and panel published and consequential direction to withdraw the applicant from the ongoing training was necessitated due to administrative reasons as mentioned above.

9. A copy of the above report of the Selection Committee has also been produced by the respondents at Annexure R-2. The report states that as per Railway Board Circular RBE 59/2022 dated 19.05.2022, if a question paper involves error in question, those questions can be omitted from the scope of evaluation instead of giving grace marks. However, it is indicated in the Selection Committee Report that this process can be done only during the selection process. In this case as the Panel had already been published on 26.11.2021 with the approval of the competent authority ie., the selection proceedings were over, there was no scope for re-evaluation under provisions of Chapter II in IREM, Vol.1 on Rules Governing Promotion of Subordinate Staff and other rules and circulars to the best of the knowledge of the Committee. As such, a change in answer key and subsequent re-evaluation for the written examination could not be done at this stage. Further the report states that since the answer key was not published at the time of the conduct of the selection, publishing a revised answer key at this stage was also not possible. Further, under paragraph 219(I) of Chapter 2 of IREM, Vol.1 (f-123), if it is found that there were procedural irregularities or other defects in the selection and it is considered necessary to cancel or amend such a panel, this should be done after obtaining the approval of the authority next higher than the one that approved the panel. The panel in this case had been approved by the Additional Divisional Railway Manager. Therefore, the next higher authority, the Divisional Railway Manager (DRM), had the authority to cancel or amend the panel. The report recommended to the said DRM that as amendment of the panel was not possible without a re-evaluation, cancellation was the proposed way forward. Specifically it was indicated as follows in the report :

“As amendment of the panel is not possible without a re-evaluation, cancellation is the proposed way forward. Therefore, it is proposed by the

committee to cancel the aforementioned selection on administrative grounds. The 2 candidates recommended by the committee are also to be reverted."

The above report of the Selection Committee was then approved by the Divisional Railway Manager (DRM).

10. The respondents also brought to notice that this Tribunal, in a similar matter in O.A.No.180/620/2020, considered the propriety of cancellation of written examination as well as aptitude test due to procedural irregularities and had upheld the cancellation of the said examination by the respondents. A copy of the order in O.A.No.180/620/2020 dated 30.09.2021 is produced at Annexure R-3. The applicant in O.A.No.180/262/2022 then filed an M.A.No.180/453/2022 for a direction. It was submitted that since the respondents have contended in the reply statement that the answers given in the answer key was erroneous and that it has resulted in wrong valuation of the answer papers, the applicant, at least the one in O.A.No.180/262/2022, would actually end up getting more marks than he would be having at present, if the right answers were considered. He prayed for a direction to produce a copy of his valued answer book. Meanwhile, the Tribunal after hearing both sides on 20.06.2022, directed the respondents to produce the list of candidates including those who had objected with their marks on the next posting date. This was later produced by the respondents at Annexure MA-R1. It is seen therein that the candidate who submitted the representation against the conduct of the examination had qualified at Sl.No.4 with 70.66 marks.

11. After this, during the course of oral submissions, the applicant in O.A.No.180/262/2022 filed a rejoinder, wherein, he reiterated that in case the right answers as indicated in paragraph 5 of the reply statement were taken into consideration, ie., if answer key was changed to options C, A, D, D and A to question numbers 13, 20, 31, 56 and 100, he, who had not been given any marks to said questions would get at least 3 more marks plus negative marks given to wrong answers on the basis of incorrect answer key. Further, it was submitted by him that the contention that the Railway Administration had no provision for re-evaluation of the written test in its Rules is highly misleading. The paragraph 219(1) of the IREM Vol.I gives authority to amend the panel. If an authority has the power to cancel, naturally it has also the power to amend and modify the panel, after rectifying the mistakes, if any. In any case it is submitted that the applicant's own inclusion in the select panel cannot be faulted and the impugned Annexure A-6 order of cancellation was totally unwarranted and illegal. It is submitted that the entire selection can be cancelled only for justifiable reasons as a last resort and not for the reasons put forwarded by the respondents. It is submitted that the alleged irregularity is a curable one simply by giving marks to the candidates for the right answers as per the correct answer key and deducting the marks for wrong answers, instead of cancelling the entire selection at such a belated stage when they were already deputed for training. Further, the issue which had been raised in the Annexure R-3 order in

O.A.No.180/620/2020 was completely different and based on other facts which are applicable in the facts and circumstances of this case.

12. We have considered the above contentions of the applicants and have heard both sides. As regards the applicability of the orders passed by the Tribunal in O.A.No.180/620/2020, it was noted that the matter basically related to Pointsman of Palakkad Division who were appearing for an LDCE. In that matter, after relying on the judgments of various High Courts and the Apex Court, this Tribunal found no reason to interfere in the decision of the respondents to cancel the examination and to re-conduct the same. The reliance therein was mainly on the directions of the Hon'ble Supreme Court in Sachin Kumar & Ors. v. Delhi Subordinate Services Selection Board (DSSSB) & Ors., in Civil Appeal No.639-640 of 2021 dated 03.03.2021. On going through the Tribunal's order in that matter, it is found that the basis of the findings therein was on the fact the cancellation had been done as there were clear infirmities and irregularities, which had occurred in the examination. The Vigilance Division had conducted an inquiry and on their advice, the respondents had cancelled the examination. However, in this matter there seems to have been no irregularity or illegality in the conduct of the examination, nor, has there been any whisper relating to the same brought out in the O.As or reply. The issue herein was based on a representation pointing out that the answers given by all the candidates had been wrongly evaluated due to a faulty answer key. According to us, this was a matter which could have been easily corrected by the respondents, without taking a drastic step such as the cancellation of the entire examination and withdrawing the candidates who were half way through their training. This is particularly relevant as it has been mentioned by the candidate in O.A.No.180/262/2022 that the actual re-evaluation based on the correct answer key would result in his marks being enhanced on the basis of the correct answers. We are also guided in this connection by the judgment of the Hon'ble Supreme Court in Union of India & Ors. v. Rajesh P.U. Puthuvalnikathu & Anr. reported in 2003 SCC (L&S) 1048, wherein, the Hon'ble Supreme Court had found that ".....applying an unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 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 bye to contextual considerations throwing to winds the principle of proportionality in going farther than what was strictly and reasonably required to meet the situation. In short, the Competent Authority completely misdirected itself in taking such an 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. For all the reasons stated above, we could not find any infirmity whatsoever in the judgment of the High Court which adopted a practical, pragmatic, rational and realistic solution to the problem."

13. In this connection there have been decisions by Courts/Tribunals that only when there are infirmities of all pervasive nature that cancellation of an entire recruitment process is justified. Drawing from these decisions, we think that the decision of the Selection Committee to cancel the entire examination and the subsequent approval by the DRM appears rather disproportionate to the facts and circumstances of the situation. One of the grounds taken by the Selection Committee is that there is no scope for re-evaluation under provisions of Chapter II in IREM, Vol.I on Rules Governing Promotion of Subordinate Staff and other rules and circulars. It can also be argued, on the other hand, that there is also no direct prohibition or bar on re-evaluation under any of the IREM provisions on Rules Governing Promotion of Subordinate Staff and other rules and circulars. In fact, a plain reading of paragraph 219 (I) of Chapter 2 of IREM, Vol.I shows that, while a panel once approved should normally not be cancelled or amended, if it has been found that there were procedural irregularities or other defects it is considered necessary to cancel or amend such a panel, it can be done after obtaining the approval of the higher authority. The Selection Committee taking the ground that there could be no re-evaluation done at that stage decided to cancel the panel whereas it could have amended it after re-evaluation with the required approval. The number of candidates who attended the examination were only 47, of which, only 13 qualified. It would have been quite easy enough for the Selection Committee to have taken into consideration the right answers to the questions as indicated earlier, and to re-work the marks that had been secured by the candidates. That to us, would have been a much fairer and rational approach, rather than going for the nuclear option of a full cancellation, that too for the second time. It appears to be quite unfair for the candidates, particularly, the candidate in O.A.No.180/262/2022 that this procedure was adopted. We also comforted by the aforementioned judgement of the Hon'ble Supreme Court in Rajesh P.U Puthuvalnikathu (supra) that there should not be an unilateral rigid and arbitrary standard applied to cancel the selection when there has been no pervasive infirmity or that there should be no consideration of contextual consideration. It is the principle of proportionality in such cases, as has been pointed out by the Hon'ble Supreme Court, which should apply and steps taken to correct the situation.

14. Drawing from the above considerations, we direct the respondents to again re-evaluate the answers of the candidates who had appeared on the basis of the agreed correct answer key and to draw up a fresh selection list. The earlier panel can, therefore, be either amended or cancelled as the case may require after this exercise is done. In case the same two candidates who are the applicants in O.A.No.180/262/2022 and O.A.No.180/264/2022 qualify after the above re-evaluation has been conducted, then obviously they may be allowed to continue and complete their training for which they have been protected by our interim orders so far. The re-evaluation and drawing of a fresh panel should be completed within a period of 45 days from the date of issue of this order. There should obviously be no disturbance to the two applicants till the above action has

been completed and, as stated, in case they qualify even after the said re-evaluation is completed, they may continue the training till it is completed.

15. With these directions, the O.As are allowed to the extent as indicated above. In view of the order in the O.As, the M.A.No.180/453/2022 and M.A.No.180/552/2022 in O.A.No.180/262/2022 are closed. There shall be no order as to costs.

(Dated this the 26th day of September 2022)