

John Oomen and ors. Vs. Union of India (Uoi) and anr.

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Court : Central Administrative Tribunal CAT Mumbai

Decided On : Oct-07-2005

Reported in : (2007)(1)SLJ53CAT

Judge : A Agarwal, B Ray

Appellant : John Oomen and ors.

Respondent : Union of India (Uoi) and anr.

Judgement :

1. These two O.As. viz. 282/2005 and 307/2005 have been filed by the applicants aggrieved by the cancellation of the select panel dt.

14.2.2005 for Goods Driver (for short, GDs) by respondents. There are 41 applicants in O. A. No. 282/2005 and 47 applicants in O.A. 307/2005 and all of them were included in the panel dt. 14.2.2005 containing the names of 141 persons who had qualified in the written examination. We therefore, propose to dispose of both the O.As. with this common order.

2. The earned Counsel for the applicant submitted that the respondents had taken action for filling up vacant posts of GDs. The written test was conducted in batches on five dates viz. 10.12.2004, 14.12.2004, 18.12.2004, 22.12.2004 and 26.12.2004. The result of written examination was declared on 14.2.2005. The Railway Unions in a letter dt. 13.12.2005 addressed to the Divisional Railway Manager, Personnel Branch, Mumbai CST complained that the question paper set

on 10.12.2004 was not as per the guidelines laid down by the Railway Board, with the result a large number of candidates who had appeared on that date could not clear the written test.

3. The earned Counsel for applicant submitted that even for eligibility for appearing in the written test of GD one has to acquire a certificate of competency by undergoing a training of nearly 7 1/2 months. He stated that without such certificate of competency one does not become even eligible for selection. For this reason, the respondents could find only 175 eligible candidates although selection was to be conducted for filling up as many as 303 posts. Out of the candidates who appeared in the written test only 141 qualified in it.

Further, the applicants have already been appointed as GDs, though on an ad hoc basis, soon after getting the competency certificate and well before the date of selection which the held in December, 2004. Although appointed in August, 2004 on an ad hoc basis the applicants are still continuing as GDs, but they will be regularised only after completion of the selection process.

4. The earned Counsel continuing his submissions stated that although the demand for cancellation of the test held on 10.12.2004 was made by the Union on 13.12.2004 itself, but the respondents held written test on subsequent four dates and finally declared the results of the written test on 14.2.2005. Thus, no action was taken by the respondents for cancelling the test held in December, 2004 for nearly two months and they continued with the selection process. Thereafter, vide impugned order dt. 19.4.2005 the entire selection including the result declared on 14.2.2005 has been cancelled on the plea that a part cancellation of the selection is not permitted. The earned Counsel drew our attention towards the results of candidates in the written test who appeared on 5 different dates pointing out that out of the 35 persons who appeared on 10.12.2004 as many as 22 failed. On the other hand, the number of such failures on other four dates of written test are 4, 1, 0 and 7 respectively. These figures amply demonstrate that there was something wrong with the question paper set for the test of 10.12.2004.

The earned Counsel contended that there has been no allegation of any malpractice from either of two sides in conducting the written test.

Therefore, the cancellation of results of the entire written test is neither necessary nor fair. The persons who had cleared the written test should not be penalised for no fault on their part especially when there was no malpractice in the selection process. The lapse of the administration in setting a question paper, beyond the guidelines of the Railway Board, for 10.12.2004 can well be rectified by giving an opportunity to those who could not clear on that date. There would be no justification in asking the candidates who had cleared the test, despite a difficult paper, to appear again. Such opportunity is justifiable only in the case of persons who could not clear the test.

5. The earned Counsel for applicant stated that under IREM there is no provision for holding the written test on different dates, but it is being done keeping in view the administrative convenience. The earned Counsel drew our attention towards a letter dt. 3.2.2005, wherein Railway Board has sought the views of General Managers regarding the difficulties being faced in following the revised procedure for promotion along with the details of selection held in filling up the posts of Goods/Passenger Drivers between 7.8.2003 and 31.12.2004. This letter was issued by the Railway Board on a reference made by South Western Railway. The earned Counsel contended that when the written test has been held on different dates, though there is no express provision for doing so in the present instructions of the Railway Board, then keeping in view facts of a particular case there should be no objection for cancellation of a part of selection. He contended that after a decision that there will be no viva voce, in departmental selection vide Railway Board Circular dt. 7.8.2003, the results of the written test are primarily the basis for the final panel. The earned Counsel has relied upon a verdict of the Apex Court in the case of *Anamica Mishra and Ors. v. U.P. Public Service Commission, Allahabad and Ors.* 1990(1) SLJ 78 (SC) : 1991 SCC (L&S) 461, wherein it was held that: Cancellation of the entire examination was unjustified and holding fresh interviews on the basis of the same written examination would have sufficed.

6. The earned Counsel submitted that in the cited case some candidates who had performed better in the written examination were not called for the interview, whereas, some candidates securing lesser marks were called on account of improper feeding into the computer. The Apex Court directed that the results of the

written examination shall stand sustained and shall form the basis for the interview part of the recruitment. On the same analogy, out of the written test held on 5 different dates, giving of an opportunity to the persons who failed on the date when the paper was admittedly difficult and outside the syllabus would suffice. There is no justification in asking all the successful candidates to appear again.

7. The earned Counsel for the applicant has also relied upon a verdict of the Apex Court in the case of Union of India and Ors. v. Rajesh P.U., Puthuvalnikathu and Anr. 2004(1) SLJ 306 (SC) : 2003 SCC (L&S) 1048, wherein, the Apex Court has held that: There was no justification to cancel the entire selection when the impact of irregularities which crept into evaluation on merits could be identified specifically and was found.

There seems to be no serious grievance of any malpractices as such in the process of the written examination--either by the candidates or by those who actually conducted them....In the absence of any specific or categorical finding supported by any concrete or relevant material that widespread infirmities of an all-pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one of the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or the other reasons.

8. The earned Counsel contended that it is very simple to identify the group which has suffered on account of paper being outside syllabus and these are the persons who could not clear the written test on 10.12.2004. The written test of candidates who appeared on other four dates have not in any manner got vitiated because of the difficult paper on 10.12.2004. Therefore, as per the verdict of the Apex Court there is no justification for denying the benefit of clearing the written test to the applicants of both the O. As.

9. The earned Counsel for respondents submitted that the selections were to be conducted in accordance with provisions of Rule 215 of IREM Vol-I and the recommendations of the Selection Committee are to be accepted by Competent

Authority. The procedure to be adopted by the Selection Board have been prescribed under Rule 219 of the IREM Vol-I and the written test was cancelled well before the completion of selection process. He contended that whenever there is any difficulty which cannot be cured, the only option is to cancel the selection.

Further, till the selection process is complete and a panel is finalised, no right accrues to any candidate. He submitted that the Apex Court verdict in the case of Anamica Mishra (supra) relied upon by the earned Counsel for the applicant is not relevant to the facts of the present case since the defect in the instant case is not of a curable nature. He submitted that the question papers set up for all the five dates were not as per the instructions given to the paper setter. The paper setter was specifically told that the question paper should be designed to test the practical problems one is likely to face rather than the theoretical knowledge. He further stated that even when a written test for particular selection are held on five different dates, it is essential that the nature and standard of questions to be set should be uniform.

10. The earned Counsel for the respondents has relied upon a verdict of the Apex Court in the case of C.B.S.E. and Anr. v. P. Sunil Kumar and Ors. etc. 1998(4) SLR 379, wherein it was held that "The Court should not pass orders on the basis of any sympathy". The earned Counsel for the respondents has also relied upon another verdict of the Apex Court in the case of Union of India v. Rati Pal Saroj and Anr. 1998(2) SLJ 45 (SC): 1998 SCC (L&S) 674, wherein the cancellation/withdrawal of an offer of appointment to IAS without affording an opportunity was held valid. The earned Counsel for the respondents concluding his submissions contended that in this case the applicants who appeared on the dates other than 10.12.2004 should not be given any benefit of misplaced sympathy essentially because the papers set even for those dates were not in conformity with the guidelines. Further, since the selection process was not complete and the panel was not declared the applicants had no accrued right in this regard. He, therefore, pleaded that the O.A. deserves to be dismissed.

11. We have heard learned Counsel Mr. G.K. Masand for the applicants, Mr. S.C. Dhawan for the respondents and have perused the material placed on record. The respondents had taken a plea that as per Rule 219 of IREM Vol-I no partial cancellation of process of selection is permissible. The respondents have taken action based on the Sub-rule (1) of Rule 219 which is as follows: (1) After the Competent Authority has accepted the recommendations of the Selection Board, the names of candidates selected 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.

12. The provision of IREM relied upon by the respondents empowers the Competent Authority to cancel or amend the panel after formation of the panel. However, as per the facts of the instant case, no final panel was prepared.

13. The Apex Court in the case of Anamica Mishra (supra) had held that the written part of the examination shall stand sustained and shall form the basis for the interview part of the recruitment and there was no justification for cancelling the written part of the examination. In the case of UOI v. Rajesh P.U. and Ors. (supra), the Apex Court had held that there was no justification to cancel the entire selection when the impact of the irregularities can be identified specifically.

14. In the instant case, we find that a complaint was lodged on 13.12.2004 that the paper of the written test dt. 10.12.2004 was difficult and beyond the syllabus. The number of applicants who failed in the test of this date when placed in juxtaposition to the number of the unsuccessful candidates on other dates amply demonstrate this. The number of failures on 10.12.2004 were 22 out of 35 and on other four dates such failures were 4, 1, 0 and 7 respectively. The respondents even after receiving a complaint to this effect continued with the written test on 14.12.2004, 18.12.2004, 22.12.2004 and 26.12.2004 and thereafter also declared the results of the written test on 14.2.2005.

If the papers of all other dates were not according to guidelines, as contended now, then action should have been taken before the declaration of result. We also notice from the written statement filed by the respondents that the Competent Authority has made the following observations "I find that the question paper of 10.12.2004 does not have any 'choice' which is provided for in subsequent papers. This makes this paper substantially more difficult and it is reflected in the higher number of failed candidates of this lot. As decided informally in the joint meeting on 10.3.2005 the matter was referred to Head Quarter Office vide letter dt. 18.4.2005 instructed that the selection as a whole may be treated as cancelled as part cancellation of the selection is not permitted".

15. The aforementioned view of the Competent Authority is sufficient to indicate that the Competent Authority attempted to rectify the situation created by the test conducted on 10.12.2004. However, when a reply was received from headquarters that partial cancellation is not permissible, impugned order was issued.

16. As mentioned above, Rule 216 of IREM provides for cancellation of selection only after declaration of final result. However, if some complaint about some irregularities is received at an interim stage of selection the Competent Authority should also have the power to cancel the process undertaken till that date, since no rule explicitly prohibits exercise of such power. On a similar analogy, if a written test for a particular selection is held on a number of days and some anomaly has crept into the selection process on a particular date which is also identifiable, then action for the rectification of that particular anomaly would suffice. As per facts of this case, there were no malpractices during the process of selection and only thing was that the question paper set for the written test held on 10.12.2004 was substantially more difficult.

17. We are of the considered opinion that as per the ratio laid down by the Apex Court in the case of Anamica Mishra (supra) and UOI and Ors.

v. Rati Pal Saroj and Ors. (supra) that when the impact of any irregularity is identifiable, then there is no point in cancelling the entire selection. As per facts of this case giving of another opportunity for appearing in the written test to the candidate who failed in the written test held on 10.12.2004 which was admittedly

substantially difficult, would suffice.

18. In view of the analysis of the facts of the case herein before, the O.A. succeeds. The impugned order dated 19.4.2005 whereby the entire selection was cancelled is quashed and set aside. The respondents are directed to give another opportunity to the persons who had failed in the written test held on 10.12.2005 and thereafter complete the process of selection as per rules No costs.

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