

CIVIL APPEAL

**Present: The Hon'ble Justice Pranab Kumar Chattopadhyay
And
The Hon'ble Justice Kishore Kumar Prasad**

M.A.T. 95 of 2009

Judgment On: 26.03.2010.

**Dileshwar Kumar & Others
Versus
Union of India & Others**

**With
M.A.T. 96 of 2009**

**Niraj Kumar Sinha & Others
Versus
Union of India & Others**

POINTS:

SELECTION PROCESS - Categorical findings of the Chief Vigilance Inspector (A)/E.R. with regard to widespread illegalities, irregularities and infirmities in the selection process- Selection process whether liable to be cancelled- Service Law

FACTS:

The appellants in both the appeals are members of Railway Protection Force of Eastern Railway and have been serving as Constables/Head Constables. The appellants are posted in different divisions under Eastern Railway. A notification was issued inviting applications from Head Constables/Constables for selection of the candidates to the promotional post of Assistant Sub-Inspector of Railway Protection Force in the Eastern Railway. The appellants submitted their applications in response to the aforesaid notification. The appellants duly qualified in the said selection test and after scrutiny of the A.C.R. (Service Records) are among the empanelled

candidates. In spite of successful completion of all required tests, the respondent authorities did not issue posting orders in respect of the appellants for the aforesaid promotional post of Assistant Sub-Inspector, Railway Protection Force. Their Writ Petition being dismissed by the Learned Judge of this Court, the present appeal.

HELD:

Categorical findings of the Chief Vigilance Inspector (A)/E.R. with regard to widespread illegalities, irregularities and infirmities in the selection process cannot be ignored by the competent authority and in the present case, the competent authority of the Railway Protection Force namely, the Director General, Railway Protection Force, has rightly decided to cancel the selection process on detection of the serious irregularities as specifically mentioned in the Vigilance Report.

Paras-26&28

CASES CITED:

1. R. S. Mittal vs. Union of India, 1995 Supp (2) SCC 230.
2. Union of India and others vs. Rajesh P.U., Puthuvalnikathu and another (2003) 7 SCC 285.
3. M.V. Thimmaiah and others vs. Union Public Service Commission and others (2008) 2 SCC 119.
4. Aryavrat Gramin Bank vs. Vijay Shankar Shukla (2007) 12 SCC 413

For the Appellants

(in both the appeals) : Mr. Asoke De
Mr. Achin Kumar Mazumdar

For the Union of India

(in both the appeals) : Mr. P. K. Mallick
Mr. A. K. Gayen

THE COURT:

1. Both the appeals arise out of a common judgment and order passed by a learned Judge of this court dismissing two writ petitions which were heard analogously.
2. The appellants in both the appeals are members of Railway Protection Force of Eastern Railway and have been serving as Constables/Head Constables. The appellants are posted in different divisions under Eastern Railway.
3. On 13th January, 2006 a notification was issued inviting applications from Head Constables/Constables for selection of the candidates to the promotional post of Assistant Sub-Inspector of Railway Protection Force in the Eastern Railway. The appellants herein submitted their applications in response to the aforesaid notification and the said applications were duly processed by the concerned authority. The selection was held pursuant to the aforesaid notification for filling up all 28 posts of Assistant Sub-Inspector in the Railway Protection Force. Out of the aforesaid 28 posts, six posts were reserved for SC and two posts were reserved for ST category candidates.
4. For the purpose of the aforesaid selection, a written test for total 40 marks was held at Liluah and in the said written test, altogether 429 candidates appeared out of which 290 candidates were declared qualified for viva-voce test. The appellants were also called to appear at the said viva-voce test.
5. The appellants in both the appeals duly qualified in the said selection test and after scrutiny of the A.C.R. (Service Records) a provisional panel of 28 candidates was published for promotion to

the rank of Assistant Sub-Inspector subject to passing the requisite training. The appellants in both the appeals are among the aforesaid 28 empanelled candidates.

6. From the records we find that the Chief Security Commissioner, Railway Protection Force, Eastern Railway specifically mentioned in the Memo dated 25th May, 2007 that the vigilance clearance of all the aforesaid 28 candidates have been obtained from the G.M., Vigilance, Eastern Railway, Kolkata.

7. The aforesaid empanelled candidates namely the appellants herein were thereafter asked to report at Kanchrapara R.P.F. Zonal Training Centre for undertaking requisite promotion course training. All the appellants had duly undergone the aforesaid promotion course training at Railway Protection Force Training Centre at Kanchrapara and after completion of the said training successfully all the appellants were declared fit for promotion to the promotional post of Assistant Sub-Inspector.

8. In spite of successful completion of all required tests, the respondent authorities did not issue posting orders in respect of the appellants for the aforesaid promotional post of Assistant Sub-Inspector, Railway Protection Force.

9. In the aforesaid circumstances, the appellants submitted representations before the Chief Security Commissioner requesting him to issue necessary orders for granting promotion to the said appellants to the post of Assistant Sub-Inspector, Railway Protection Force.

10. At this juncture, Chief Security Commissioner, Railway Protection Force, Eastern Railway on 22nd January, 2008 issued an order cancelling the entire selection process on the basis of a vigilance report. The said order dated 22nd January, 2008 issued by the Chief Security Commissioner, Eastern Railway is set out hereunder:

“CSC’S ORDER ON LIMITED DEPARTMENTAL COMPETITION UNDER RULE 72 OF RPF RULES, 1987 FOR PROMOTION TO THE RANK OF ASI/RPF.”

As per this office order No. SC.30/19/34-E/ASI-72/2005 dated 30.06.2006 a departmental promotion committee consisting of (i) Sri Pranav Kumar, Sr. SC/RPF/HWH-I (ii) Sri S.R. Gandhi, DSC/HWH-II and (iii) Sri L. K. Bandia, ASC-II/SDAH was formed for holding limited departmental competition to the rank of ASI. Sri Pranab Kumar, Sr.SC/HWH-I being the senior most of the three members was ordered to assume the role of the Chairman of the committee.

However, on receipt of a complaint alleging anomalies in selection the Vigilance Department conducted an enquiry on the selection proceedings. During enquiry some lapses have been detected.

On perusal of the Vigilance report, DG/RPF has cancelled the selection proceedings.

Hence the entire process so far initiated for the departmental promotion to the rank of ASI under Rule 72 of RPF Rules, 1987 vide this office letter No. SC.30/19/34-E/ASI-72/2005 dated 30.06.2006 and 13.01.2006 as well as the panel published vide this office Force Order No. 162/2007 dated 25.05.2007 stands cancelled.

Sd/-

(S.C. Sinha)

Chief Security Commissioner/RPF
Eastern Railway/Kolkata

Eastern Railway

No:-SC.30/19/34-E/ASI/2005(Pt.II) Kolkata, Dated:-22.01.2008”

11. In the aforesaid order dated 22nd January, 2008, Chief Security Commissioner, Railway Protection Force, Eastern Railway specifically mentioned that on receipt of a complaint alleging anomalies in selection, the Vigilance Department conducted an enquiry and during enquiry some lapses have been detected. It has also been mentioned that on perusal of the Vigilance Report, D.G., R.P.F. had cancelled the selection proceedings.

12. It has been argued on behalf of the appellants that the learned Single Judge dismissed the writ petitions without looking into the Vigilance Report and only relying on the submissions of the learned Counsel of the respondent authorities. The learned Counsel of the appellants submitted that the appellants were duly selected for the promotional post of Assistant Sub-Inspector, Railway Protection Force, Eastern Railway after passing all the required tests.

13. The respondent authorities, however, produced the Vigilance Report before us and a copy of the same was also handed over to the learned Counsel of the appellants. The learned Counsel of the appellants submitted written comments on the Vigilance Report before us.

14. Mr. Ashok De, learned Senior Counsel of the appellants submitted that there was no logical and justiciable reason to cancel the entire selection process even on the basis of the vigilance report. Mr. De further submitted that in the present case, no allegation was ever made regarding adoption of unfair means or mass copying or leakage of question papers etc in respect of the written test. According to Mr. De, entire selection process was cancelled in absence of any valid and proper reason. Mr. De also submitted that the superior authorities of the Railway Protection Force in an unfortunate manner cancelled the entire selection process upon placing reliance on the vigilance report and without any application of mind. Referring to the written comments submitted on behalf of the appellants in respect of the aforesaid vigilance report Mr. De submitted that the allegations made in the said vigilance report are mostly invalid, improper and vague.

15. Mr. De specifically urged before this court that the vigilance report itself was prepared without considering the actual relevant data and rules. Therefore, according to the learned Senior Counsel of the appellants, cancellation of the entire selection process relying upon the vague and fanciful report of the Vigilance Department is an unjust and illogical action on the part of the respondent-Railway Protection Force authorities. The learned Senior Counsel of the appellants specifically submitted before us that the entire selection process has been cancelled in absence of proper materials and valid reasons.

16. Mr. P. K. Mallick, learned Senior Counsel of the respondents submitted that the empanelment of a candidate does not create any right of appointment to the post.

17. Mr. De, however, submitted that empanelment although does not create any right, the same does not mean that the authority can cancel a panel and deny appointment of an empanelled candidate without any justiciable reason. The learned Senior Counsel of the appellants referred to and relied on a decision of the Supreme Court in the case of *R. S. Mittal vs. Union of India* reported in *1995 Supp (2) SCC 230*.

18. Mr. De also submitted that the respondent authorities herein totally misdirected itself and took an extremely unreasonable decision by canceling the selection of the untainted candidates and, therefore, such an action cannot be approved by any court of law. Mr. De referred to and relied on a decision of the Supreme Court in the case of *Union of India and others vs. Rajesh P.U., Puthuvalnikathu and another* reported in *(2003) 7 SCC 285*. Mr. De also referred to and relied on another decision of the Supreme Court in the case of *M.V. Thimmaiah and others vs. Union*

Public Service Commission and others reported in (2008) 2 SCC 119 in support of his aforesaid submissions.

19. Mr. Mallick, learned Senior Counsel of the respondents referred to and relied on a decision of the Supreme Court in the case of *Aryavrat Gramin Bank vs. Vijay Shankar Shukla* reported in (2007) 12 SCC 413 and submitted that mere inclusion of name in the panel cannot confer any right of appointment to a post.

20. Scrutinising the papers submitted on behalf of the Vigilance Department we find that the Chief Vigilance Inspector (A)/E.R. submitted final Inspection Report wherein several serious irregularities in the selection process at the instance of the Chairman of the Selection Committee namely, Sri Pranav Kumar have been specifically mentioned. Some of the major irregularities specifically mentioned in the said Inspection Report by the Chief Vigilance Inspector (A)/E.R. are set out hereunder:

“9.6. Major irregularities found in the part of Sri Pranav Kumar are as follows:

- I. He had not followed the extant rules and procedures at different stages while conducting the examination. Kept no records of tenders/quotations, bills etc. for printing of answer scripts from outside market. Answer scripts printed were not in prescribed format.
- II. He had not prepared any condified and decoded lists of candidates violating CPO/SI 217/99.
- III. He had not maintained any accountal of answer scripts and question papers etc. Unused 168 nos. answer scripts are not available with Sr. SC/HWH-I office (No. of eligible candidates = 597, candidates appeared = 429)
- IV. Question papers were printed by him well in advance, which is against the prevailing practice in Eastern Railway.
- V.
- VI.
- VII.

- VIII.
- IX. Tabulations for field tests and viva voce days were not written on the actual day of the examinations held and the committee members signed the same without any dates. It is a serious violation of CPO/SI 217/99 under para 11.3 Note (6). Again final tabulation of the outdoor test (dates not mentioned) has been signed by Sri Pranav Kumar only which should have been signed jointly by other members also.
- X. The entire examination was conducted with the help of unauthorized personnel for which no official records were maintained. No formal orders/appointment letters were issued to the invigilating officials. No invigilating officials had signed in any of the official documents. No invigilators from the school side were allowed in the examination halls.
- XI. He had arranged to distribute the answer sheets to the candidates pre-signed thereby he had not verified the genuineness of the candidates as an invigilator.
- XII.
- XIII.
- XIV. Taking the full advantage of non-availability of proper guidelines by allowing much higher time (3 Hrs.) for a 40 marks written examination consisting 20 marks objective type questions, the spirit of competition has totally diluted. Deliberately slow candidates were brought to competition and the sanctity of the examination was lost. Further time of commencement and completion of the written examination on 12.11.2006 (Sunday) was not recorded in any of the official documents.
- XV.
- XVI. By the way of which Sri Pranav Kumar, the chairman of the selection committee has shown lack of devotion to his duties which has left scopes for subsequent manipulations with malafide intentions.”

21. The final Inspection Report of the aforesaid Chief Vigilance Inspector (A)/E.R. was thereafter reviewed, consolidated and signed by the Vigilance Officer wherein the irregularities in the selection process were elaborately discussed and summarized in a note. Some of the irregularities mentioned in the said note by the Vigilance Officer are set out hereunder:

“ **NOTE**

- 1.
- 2.
- 3.

4.
.....

5.
.....

6.
.....

7. No invigilator was officially booked for written test on 12.11.06 and none had signed in any of the documents in the examination hall. There was no official booking in writing available in the concerned file in respect of the so called invigilators. None of the candidates had put any date against their signatures on the attendance sheets. There has been no counter-signatures of any officials/invigilators in that sheet for authentication purpose. It has been gathered that although charge of Rs. 8/- per candidate was given to Belur High School, the venue of the examination no invigilator from the school side was present in any of the rooms during the examination.

8.
.....

9. As per extant rule, the selection of ASI/RPF was to be held on a question paper consisting of 40 marks in the written/indoor test. Out of 40 marks, objective type questions (one word answer, fill in the blanks etc.) are required to be set for at least 50% marks i.e. 20 marks. But the question setter has allowed 3 hours time for answering this question paper of 40 marks. Normally, in other various selections of other departments, for a question paper of 100 marks, 3 hours time is allotted. During investigation it is found that due to absence of any guidelines regarding time to be allotted for 40 marks question paper, the question setter, it is felt, has allotted a unduly long time of three hours to the examinees. This being a competitive examination (LDCE) – the essence here is to select the fittest candidates only. Since the time was given three hours, all the candidates have utilized that time for completing answering. So, if the time is not allowed commensurate with the marks (40 marks), chances of getting the fittest candidates become less.

10.
.....

11.
.....

12.
.....

13. Moreover, from the relevant selection file and other related documents supplied from the CSC office, no document like codification list after giving dummy numbers to candidates after the written examination was found. Neither, the tabulation statements of the evaluators after evaluation of copies by them were also found in the concerned file. Even the decodification list vis-à-vis marks obtained by each candidate was not found. All these formalities were very integral part in the process of any selection to be done by the Chairman of the selection committee and the respective evaluators. Sri Pranav Kumar, chairman of the selection committee vide answers to Q. 35 &

37 during his clarification confirmed that he did not prepare any codification as well as decodification lists, neither the evaluators had submitted tabulation sheets at the time of submission of evaluated answer sheets to the chairman of the selection committee. This is again infringement of instructions laid down at Note 5 under para 9.3 of CPO SI 217/99.

14. The answer sheets used in the written test were full of deficiencies. There was no provision for tabulation by the evaluator. Even there was no provision of invigilator's signature on the flyleaf. The answer sheets were prepared in the office of Sri Pranab Kumar, the then Sr.DSC/HWH-I. Even no accountal towards number of copies made etc. had been kept in his office. During clarification Sri Pranab Kumar confirmed that these copies were made in his office after purchasing stationeries from open market. But no such expenditure was booked in the imprest bill for the said period as clarified."

22. Apart from the aforesaid irregularities it has also been mentioned in the said Vigilance Report that atleast 9 out of the 28 selected candidates have close connections with the members of the selection committee.

23. In view of the detection of the serious irregularities in the selection process by the Vigilance Department, Director General, Railway Protection Force, ultimately cancelled the selection procedure.

24. The learned Single Judge while deciding the issues raised in the writ petition also considered the Vigilance Report and other relevant materials as disclosed by the parties and ultimately came to the conclusion that the action taken by the respondent authorities does not suffer from any infirmity or impropriety.

25. We also cannot ignore the serious irregularities and illegalities in the selection process as have been specifically mentioned in the Vigilance Report. Those irregularities, in our opinion, are such

that it is impossible to weed out the beneficiaries of the irregularities and/or illegalities. Therefore, it is not possible to avoid cancellation of the entire selection process in the facts of the present case.

26. Categorical findings of the Chief Vigilance Inspector (A)/E.R. with regard to widespread illegalities, irregularities and infirmities in the selection process cannot be ignored by the competent authority and in the present case, we are satisfied that the competent authority had no other option but to take an extreme step by cancelling the entire selection process upon considering the magnitude of irregularities as specifically mentioned in the Vigilance Report.

27. The decisions cited by Mr. De, learned Senior Counsel of the appellants have no manner of application in the facts of the present case.

28. For the reasons discussed hereinabove, we are of the opinion that the competent authority of the Railway Protection Force namely, the Director General, Railway Protection Force, has rightly decided to cancel the selection process on detection of the serious irregularities as specifically mentioned in the Vigilance Report.

29. The learned Single Judge, therefore, did not commit any mistake in approving the actions of the competent authority namely, the Director General, Railway Protection Force, regarding cancellation of the entire selection process.

30. We do not find any error and/or infirmity and/or illegality in the decision of the learned Single Judge.

31. Therefore, we affirm the judgment and order under appeal passed by the learned Single Judge and dismiss both the appeals since we do not find any merit in the same.

32. In the facts of the present case, there will be, however, no order as to costs.

33. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

[PRANAB KUMAR CHATTOPADHYAY, J.]

KISHORE KUMAR PRASAD, J.

34. I agree.

[KISHORE KUMAR PRASAD, J.]