

**Court No. - 33**

**Case :-** WRIT - A No. - 27555 of 2011

**Petitioner :-** Union Of India Thru. Chairman,Railway Board,New Delhi & Ors.

**Respondent :-** Anil Kumar And Others

**Counsel for Petitioner :-** A.K.Gaur

**Counsel for Respondent :-** Shamim Ahmad,Dharmendra Kumar Srivasta,Niladra Shekhar Singh,S.C.

And

**Case :-** WRIT - A No. - 28655 of 2011

**Petitioner :-** Union Of India & Another

**Respondent :-** Krishna Kumar & Another

**Counsel for Petitioner :-** A.K. Gaur

**Counsel for Respondent :-** Shamim Ahmad

**Hon'ble Manoj Misra,J.**

**Hon'ble Ved Prakash Vaish,J.**

As these two petitions are connected with each other and the order impugned in Writ A No.28655 of 2011 follows the order impugned in Writ A No.27555 of 2011, with the consent of learned counsel for the parties both the petitions are being decided together by a common judgment. For convenience Writ A No.27555 of 2011 has been treated as the leading petition.

We have heard Sri A.K. Gaur for the petitioners; Sri Shamim Ahmad and Sri D.K. Srivastava for the contesting respondents and have perused the record.

In Writ A No. 27555 of 2011, the petitioners have challenged the orders dated 6.3.2002 and 9.12.2010 passed by the Central Administrative Tribunal, Allahabad. By order dated 6.3.2002, the Original Application no.1215 of 1998 filed by the respondent nos.1 to 5 against decision to cancel the examination for recruitment on the post of Assistant Electrical Drivers was allowed and a direction was issued to the respondents to inspect the records relating to the five applicants in connection with that examination and, if no irregularities were found, to declare the result and allow them to appear in viva voce test and, if they qualify, to give them appointment and preserve their seniority by treating them as having qualified in the first examination. By other order dated 9.12.2010, review application of the petitioners against the order dated 6.3.2002 was rejected on the ground that the scope for review is limited.

In Writ A No.28655 of 2011, the petitioners have challenged the order dated 9.12.2010 of the Tribunal by which O. A. No.519 of 2003 filed by solitary applicant (Krishna Kumar) to extend the same benefit as was provided to the applicants of O.A. No.1215 of 1998, which is impugned in Writ A No.27555 of 2011, was allowed.

A brief narration of facts giving rise to these two petitions would be apposite. On 9.9.1997, an advertisement was issued by Railway Recruitment Board (in short the Board) for recruitment on the post of Chemical Metallurgical Assistant (Trainee); Staff Nurse Grade-B; and Assistant Electrical Driver. Eight posts of Chemical Metallurgical Assistant (Trainee) as well as Staff Nurse Grade-B and 63 posts of Assistant Electrical Driver were advertised. Pursuant to the advertisement, the contesting respondents, alongwith other candidates, totalling 6260 candidates, appeared in the examination, which was held on 19.10.1997. On 21.1.1998, the result of Chemical Metallurgical Assistant (Trainee) and Staff Nurse Grade-B was declared whereas the result of examination for the post of Assistant Electrical Driver was not declared. Consequently, it appears, the respondent nos.1 to 5 of Writ A No.27555 of 2011 represented to the authorities for declaration of result. After exchange of correspondences between the authorities, on 12.10.1998, a decision was taken by the Board to cancel the examination for the post of Assistant Electrical Driver and to hold a fresh examination. For the fresh examination, the Board relaxed the age limit to enable the erstwhile candidates to appear in the examination. At this stage, respondents 1 to 5 of Writ A No.27555 of 2011 filed O.A. No.1215 of 1998 for quashing the order dated 12.10.1998 and for declaration of their result by claiming that there was no irregularity in their examination, therefore decision to cancel the examination was arbitrary.

It is not in dispute that in the second examination, 4 out of 5 of the original applicants of O.A. No.1215 of 1998 had appeared in the examination. Only the respondent no.4 of Writ A No.27555 of 2011, namely, Satish Kumar Singh, did not appear in the second examination.

Before the Tribunal, the original applicants had taken a plea that if the result of two categories of posts could be declared, there was no justification not to declare result of the third category in which the applicants had appeared. That apart, it was pleaded that there was no thorough enquiry and the decision to cancel the examination was arbitrary.

The stand taken by the Railways before the Tribunal was that the Recruitment Agency did not timely forward the result of the third category of posts and necessary data in respect of the result was not available. More over, even before declaration of result, the result was leaked out therefore

to maintain purity of examination process, a conscious decision was taken to hold a fresh examination. It was also pleaded that no right accrues to a candidate by mere appearance in an examination and, therefore, a candidate would have no right to challenge holding of fresh examination particularly when there was material on record to suggest that there could have been manipulation in the result. In the counter affidavit, a stand was also taken that when the recruitment agency was required to submit result of the third category (Assistant Electrical Drivers) they had forwarded the same with letter dated 5.1.1998 and by the time it could be declared, the result had leaked out as was clear from the record of another Original Application No.180 of 1998. An apprehension was therefore expressed in the counter affidavit that if the result was not declared by the Board but the same was already out, there was serious possibility that there had been tampering/manipulation/ leakage of the result which was sufficient for the Board to take a decision to hold a fresh examination.

The Central Administrative Tribunal after examining the record and pleadings of the parties held as follows;

*"we are of the opinion that if nothing irregular was found in the particular examination for the Assistant Electrical Drivers, the same should have not been cancelled and, if the five candidates/applicants had passed the written test, they should have been called for viva voce test. This opportunity was denied to them and they rightly refused to sit for another examination because they may have already been declared as qualified had the first examination not been cancelled. It would be, therefore, in the interest of justice to give a direction to the respondents to inspect the records relating to the five applicants and the particular examination and if no irregularities were found to have been committed by them or in the particular examination generally, their result should be declared and they may be allowed to appear for viva voce test and if they qualified, they should be given appointment as if they qualified in the first examination. They should not suffer in their seniority. However, they will not be entitled for any back wages. If the total vacancies for the said posts have been filled up, extra posts may be created for the applicants if they are successful. The execution of this order may be carried out within 6 months from the date of receipt this order."*

The order of the Tribunal appears to be based on the premise that if result of two other categories of posts held on the same date, by the same Recruitment Agency, could be declared, there should be no valid justification not to declare the result of third category of posts in which the applicants had appeared merely on the ground that the merit list had leaked out even before it was declared. The Tribunal was also of the view that thorough enquiry was not conducted before cancellation of the

examination.

Aggrieved by the order of the Tribunal, the petitioners filed a review application. In the review application, the petitioners had sought to justify their stand in respect of cancellation of the examination on the ground that the result of the other two categories was received from the Recruitment Agency timely whereas it was not received for the third category and, therefore, when necessary data was not timely made available and the result had been leaked out before it could be declared, to maintain purity of the examination, a decision was taken to hold fresh examination. The review application also indicated that it was not admitted by the petitioners that the result of third category i.e. Assistant Electrical Driver was received on 5.1.1998.

The Tribunal rejected the review application by observing that the scope of review is limited.

As there was delay in disposal of the review application, the petitioners filed this petition by claiming that there was no laches in challenging the order dated 6.3.2002 inasmuch as review application was filed promptly/bona fide in the year 2002 which came to be decided in the year 2010.

At the time of filing of the petition, the petitioners had pointed out that the original applicants (respondent nos.2 to 5) had re-appeared in the second examination and, therefore, there was no justification for taking any decision in respect of their previous examination result. The said argument appealed to the Court and, on 12.5.2011, following order was passed:-

*" There is report of learned Stamp Reporter that this petition is delayed by 8 year 296 days.*

*In the relief petitioner has sought for quashing of the original order passed by the Tribunal dated 6.3.2002 as well as order dated 9.12.2010 which has been passed by the Tribunal while rejecting the review petition.*

*If the limitation is seen from the order dated 9.12.2010 then it will not be so much delayed as has been reported.*

*Be as it may, we overrule the initial objection of the learned counsel for the respondent about delay and thus entertain the matter on merits.*

*Submission is that in an examination which was held for the post of Assistant Electrical Driver about 6000 candidates appeared but for various reasons so stated in the correspondences examination was cancelled by order dated 12.10.1998 and fresh examination was held/took place in which admittedly respondents 2 to 5 appeared but in the second examination they could not succeed. Irrespective of pendency of O.A. in which there was no stay for holding of selection or for declaration of result and therefore, result of said examination was declared.*

*In view of the aforesaid it is clear that petitioners having not succeeded in the second examination, direction given by the Tribunal in the order dated 6.3.2002 is totally illegal.*

*Submission is that once the applicants have appeared in the second examination in which they failed, they have no right to challenge the result of the first examination.*

*Be as it may, on the facts, this court is of the view that matter needs disposal on getting response from the respondents.*

*Notices meant for respondent no. 3 has been accepted by Sri Shamim Ahmad, learned Advocate. Issue notice to respondents 2, 4 and 5. Steps will be taken within two weeks.*

*All the respondents may file counter affidavit by the next date.*

*List this matter in the first week of August, 2011.*

*In the meantime, it is directed that till next date of listing, petitioner will not be compelled to give effect of the order passed by the Tribunal dated 6th March, 2002 which has been confirmed by the second order of the Tribunal dated 9.12.2010."*

Sri Shamim Ahmad who has appeared on behalf of the contesting respondents has pointed out that at the time of pressing the petition, the petitioners had made a wrong statement that the respondent nos.2 to 5 had appeared in the second examination when, in fact, respondent no.4 had not appeared.

Sri A.K. Gaur who has appeared on behalf of the petitioners has submitted that there were 6260 candidates to appear in the first examination for 63 posts of Assistant Electrical Drivers, and, out of them, only 5 had come forward before the Tribunal resisting fresh examination, and, thereafter, out of those 5, 4 had re-appeared in the fresh examination, there was no justification for the Tribunal to allow the original application, particularly, when a conscious decision was taken by the Board to cancel an examination whose purity was rendered doubtful on account of delay in transmission of result as also lack of verifiable data available coupled with the circumstance that even before declaration of the result by the Board, the same had leaked out.

Sri Gaur had also submitted that no candidate by dint of his appearance in an examination, gets a vested right to be selected/appointed. And, therefore, if the Board had found that the purity of examination has been compromised and there was serious possibility of manipulation in the result, the decision of the Board to hold a fresh examination cannot be questioned before the Court. He has placed reliance on a decision of the Apex Court in **B. Ramanjini and others Vs. State of A.P. and others, 2002 SCC (L & S) 780** in which the Apex Court had observed that in conduct of examination if the Government comes to a conclusion that purity of the examination has been violated then wide latitude should be shown to the Government and the Court should not unduly interfere with the action taken by the Government which is in possession of necessary information and takes action upon the same. He has also submitted that

since 4 candidates had re-appeared in the examination, they have taken the chances of selection and, accordingly, they cannot now challenge the holding of subsequent examination.

Sri Shamim Ahmad, who has appeared on behalf of the contesting respondents, submitted that no doubt a candidate by mere appearance in an examination does not get a vested right for appointment but before an examination is cancelled on the ground of irregularity or mass-copying or unfair means, there has to be material on record to demonstrate that unfair means have been adopted or the result has been vitiated on account of manipulation, otherwise decision to cancel the examination would be arbitrary. He has placed reliance on decision of the Apex Court in **Joginder Pal Vs. State of Punjab and others, (2014) 6 SCC 644** wherein the Apex Court had taken the view that if the grain can be sifted from the chaff, then the untainted candidate should not be punished and only the tainted one should be removed. He has submitted that, in this case, no effort was made by the petitioners to conduct an enquiry to ascertain whether the entire examination stood vitiated or it was only few candidates who had used unfair means for which they should alone be punished. He has, accordingly, supported the order of the Tribunal.

Having heard the rival submissions, and on perusal of the record, we find that this was not a case where material was brought before the Tribunal to demonstrate that unfair means was used in the examination by some candidates. Here the stand of the Department, as would be reflected from paragraph 5 of their reply before Tribunal (Annexure No.3 to Writ A No.27555 of 2011), was that confidential records were missing and there was inordinate delay by the computer agency in forwarding the result and, finally, when it was discovered that even before declaration of result, the result was leaked out, a decision was taken to cancel the examination and to hold fresh examination for the category concerning the original applicants. When such is the position then there was no option for the Department but to hold a fresh examination to maintain purity of the examination process.

In a case where sanctity of the result can not be ensured or the same gets shrouded in suspicious circumstances, the exercise of sifting the grain from the chaff gets meaningless and serves no purpose. When purity and sanctity of records cannot be certified what purpose an enquiry would serve, particularly, when it relates to the claim of only five or six applicants whereas thousands of candidates who had earlier appeared have chosen to re-appear in the examination and even majority of the applicants had themselves re-appeared. Further, it is well settled that a person, who is successful in the selection process, does not acquire any indefeasible right to be appointed. Here, even the selection process was not complete when

decision to cancel the examination was taken. Under the circumstances, keeping in mind that majority of the applicants had re-appeared in the fresh examination, the Tribunal ought to have been loath to interfere with the decision of the Board to hold a fresh examination after cancellation of the earlier examination. More so, when sanctity of result was shrouded in suspicion there was no occasion to direct for individual examination of the claim of the original applicants. We are therefore of the view that the orders impugned cannot be sustained and are liable to be set aside.

Writ A No.27555 of 2011 is accordingly allowed. The orders passed by the Tribunal dated 6.3.2002 and 9.12.2010 are hereby set aside. The Original Application No.1215 of 1998 of the respondent nos.1 to 5 shall stand dismissed. As order dated 9.12.2010 passed in O.A. No.519 of 2003 follows the order dated 6.3.2002 in O.A. No.1215 of 1998, Writ A No.28655 of 2011 is also allowed and order dated 9.12.2010 in O.A. No.519 of 2003 is set aside. O.A. No.519 of 2003 shall stand dismissed. There is no order as to costs

**Order Date :- 25.7.2018**

Vivek Kr.

**(V.P. Vaish, J.)      (Manoj Misra, J.)**