

WP.CT. 113 of 2022

(Union of India & Ors. Vs. Shri Ranajit Dutta)

Mr. Promod Kumar Drolia

Mr. Santosh Kumar Pandey

..... For the petitioners

Mr. P. C. Das

Mr. S. K. Ganguly

Ms. Soma Chowdhury

..... For the respondent

1. The present writ petition has been preferred by the Union India and its functionaries challenging an order dated 10th of January, 2022 passed by the learned Tribunal in original application being O.A No. 350/01641/2016.

2. Shorn of unnecessary details the facts are that while the applicant/respondent herein was working as helper-II, the respondent no. 3 *vide* memo dated 9th of April, 2013 intimated all concerned that the competent authority had decided to hold selection for filling up the vacancies of Material Clerk in PB-I of Rs. 5200/- to 20200/- with Grade Pay Rs. 1900/- through LDCE in Stores Department. The respondent applied for participation in the said selection process and he was called for a written test. Having emerged to be successful in the said written test held on 15th of September, 2013, his name was included in the select list issued *vide* memo dated 19th of September, 2013. Thereafter, as directed, he also attended the Vigilance

department but since the selection process was not being finalized, he submitted several representations and ultimately the petitioner no. 3 issued a memo dated 5th of April, 2016 intimating *inter alia* that that the said written examination stands cancelled. Challenging the said memo dated 5th of April, 2016, the respondent preferred the original application before the learned Tribunal and the same was disposed of by an order dated 10th of January, 2022. The operative part of the said order runs as follows: -

‘Be that as it may admittedly and evidently 19 posts have been kept aside, against which the present applicant can be easily accommodated if found eligible.

In the aforesaid backdrop, the respondents are directed to finalise the selection process in question and fill up the said 19 vacancies in terms of the said selection process and issue appropriate orders within 2 months.’

3. Aggrieved by the order dated 10th of January, 2022 the present writ petition was preferred in which an order was passed on 21st of December, 2022 directing *inter alia* that *‘there shall be stay of all further proceedings in the contempt application filed before the learned Tribunal till the disposal of the writ petition’*. By the said order the parties were also directed to exchange their affidavits. In the affidavit-in-reply, the petitioners stated *inter alia*, that in the concerned selection process consisted of written test of 85 marks

and 15 marks for scrutiny of service record and working report. There were 19 vacancies and 28 candidates including the respondent appeared in the written test on 15th of September, 2013. After publication the result of the written test the petitioners received some complaints which were investigated by the Vigilance Department of South Eastern Railway and considering the investigation report prepared, the Senior Deputy General Manager of South Eastern Railway cancelled the written test. During pendency of the original application, the petitioners abolished the post of Material Clerk and merged the same with the Post of Junior Clerk-cum-Typist on the same pay band and issued a notification dated 9th of March, 2019 for filling up 141 vacancies keeping aside the 19 vacancies pertaining to the earlier selection process. In the said selection process notified on 9th of March, 2019 almost all the 28 candidates, who participated in the earlier selection process, also competed and were promoted, as would be explicit from the memo dated 24th of July, 2023 annexed of the affidavit in reply.

4. Mr. Drolia, learned advocate appearing for petitioners submits that during the vigilance enquiry it was found that the selection process was conducted in derogation to the procedure prescribed. On the basis of the findings arrived at by the vigilance, the petitioners were constrained to cancel the selection/written test. In support of such contention reliance has been placed

upon the South Eastern Railway establishment Serial circulars and a memo dated 5th of March, 2009 annexed to the writ petition.

5. He argues that the vigilance report, was, however, not appropriately considered by the learned Tribunal and it was erroneously observed that *'no records have been placed by the respondents to demonstrate the nature of irregularities that crept in the selection process and vitiated the selection'*.

6. According to Mr. Drolia, the learned Tribunal erroneously came to finding that *'seemingly, only to effect subsequent merger of the post of Material Clerk with that of Jr. Clerk, Typist, that the entire selection process was cancelled and not otherwise'*. The earlier selection process was cancelled on the basis of the vigilance investigation report and the learned Tribunal ought not to have such treated such cancellation to be without any reason whatsoever. Complaints were submitted, detailed enquiry was conducted by the Vigilance Department. The question setter, as well as the evaluator deposed in course of such enquiry and all material records were scrutinized.

7. Mr. Drolia argues that the learned Tribunal erroneously directed the petitioners to finalize the selection process in question to fill up the said 19 vacancies in terms of the same selection process being oblivious of the fact that save and accept the respondent, almost all the candidates, who qualified in

the written test held on 19th of September, 2013, appeared in the written test in the fresh selection process notified *vide* memo dated 9th of March, 2019 and that in view thereof, the directions contained in the order dated 10th of January, 2022 cannot be complied with *moreso* when the respondent, in the midst thereof, had already retired on 22nd of February, 2023.

8. Mr. Das, learned advocate appearing for the respondent denies and disputes the contention of Mr. Drolia and submits that in the absence of any allegation of fraud or leakage of question papers, there was no necessity for vigilance enquiry. In the vigilance report it has been observed *inter alia* that '*after scrutinizing the answer scripts of the top six candidates no irregularities such as arbitrary marking pattern could be detected*'. In the said conspectus, it was rightly observed by the learned Tribunal that only to effect subsequent merger of the posts of Material Clerk with that of Junior Clerk, Typist, that the said selection process was cancelled.

9. Mr. Das argues that the learned Tribunal rightly observed that there had been no specific recording of the nature of complaints made or irregularities detected which may have justified the cancellation. If a test is cancelled just because some complaints have been lodged, no selection process can be finalized. The authority competent to cancel the written test did not

apply its independent mind before cancelling the same and in view of such infirmities and moreso when the earlier 19 vacancies were kept apart by the petitioners, the learned Tribunal rightly directed that the selection process pertaining to the said post should be finalized.

10. He submits that the learned Tribunal by the order dated 10th of January, 2022 directed the petitioners to comply with the directions within two months. The petitioners knew that the respondent was going to retire on 28th of February, 2022 and as such they did not take any step with an intent to frustrate the right of the respondent and filed the present writ petition about ten months after the learned Tribunal's order. The concerned selection process consisted of written test of 85 marks and 15 marks for record of service. The respondent had completed the selection test and considering his service record, the petitioners should grant him promotion from the date his competitors in the written test held on 15th of September, 2013 were promoted. Retirement cannot debar the respondent's right to be promoted. Reliance has been placed upon a judgment delivered in the case of *Abhijit Ghosh Dastidar –vs- Union of India and Others*, reported in (2009) 16 SCC 146.

11. Heard the learned advocates appearing for the respective parties and considered the materials on record.

12. It is contention of the petitioners that on the rudiments of the vigilance report earlier selection process was cancelled. A perusal of the final investigation report would reveal that the investigation was initiated *'taking cue from source information'* but surprisingly there is no disclosure of the allegations made in the purported complaints. The respondent secured the third highest marks in the written test. In the report a finding was arrived at that the question paper was difficult and that the proper cut-off marks were not set as per statutory provisions. On the basis of such purported findings arrived in the report, the written test could not have been cancelled. There was no allegation that question papers have been leaked or that fraud had been practiced or the records had been destroyed. On the contrary in the report it has been observed *'After scrutinizing the answer scripts of the top six candidates no irregularities such as arbitrary marking pattern could be detected. Hence, it was decided to take a re-examination of the same paper at Vigilance office in order to detect abrupt/glaring contradictions in their performances. The above-named candidates were accordingly called for clarification in Vigilance office on a single day without revealing that an impromptu mock test would be taken. They were subjected to the mock test on the same question paper and within the specified time limit of 3 hours.'*

After putting them through the mock test, the answer scripts were compared with the original ones. It was observed that all of them have performed significantly well-almost in line with their performance shown during the original examination, in spite of the fact that they wrote the paper impromptu several months after the original examination was held. Rather, they fared better than what they performed during the actual examination. Hence, no obvious irregularities regarding the performances of top six candidates could be detected'.

13. From such observations it is explicit that the respondent was eligible and competent to be promoted. He also secured the third highest marks in the written test. The merit of the first six candidates including the respondent was further tested by conducting a reexamination in course of investigation. From the memo dated 24th of July, 2023 it appears that all the said five candidates have been granted promotion. Since, the respondent ventured to challenge the illegal selection process he had been the worst sufferer.

14. Indisputably there are 19 existing vacancies. Almost all the candidates excluding the respondent, who participated in the earlier selection process, had already got their promotion upon emerging to be successful in the subsequent process. The petitioners did not take expeditious steps towards compliance of the order of the learned Tribunal wherein two months

time was granted on 10th of January, 2022 to finalize the selection process. Instead the petitioners filed the present writ petition about ten months from 14th of November, 2022 without explaining such delay in filing the report. Such facts clearly reveal the arbitrary intent to deprive the respondent of the fruits of the order passed by the learned Tribunal. The written test held on 15th of September, 2013 was arbitrarily cancelled after more than two years *vide* memo dated 5th of April, 2016. The original application filed in the year 2016 itself had ultimately being disposed of on 10th of January, 2022. Had the order been immediately complied with, the respondent would have got the benefit of promotion prior to his retirement on 22nd of February, 2023. However, today the respondent has retired and had been deprived of the benefits due to the dilatory tactics adopted by the petitioners.

15. In view thereof, we direct the petitioners to grant notional promotion to the respondent in the post of Material Clerk/Junior Clerk-cum-Typist of Group-C on and from the date on which the candidate, who secured lesser marks than him in the written test held on 15th of September, 2013, was promoted. Such retrospective promotion shall be considered for the benefit of refixation of the respondent's pension and other retiral dues, in accordance with law. The petitioners shall disburse all consequential benefits to

the respondent within a period of four weeks from the date of communication of this order.

16. With the above observations and directions, the writ petition being WPCT 113 of 2022 is disposed of.

17. There shall, however, no order as to costs.

18. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Uday Kumar, J.)

(Tapabrata Chakraborty, J.)