

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE PARTHA SARATHI SEN**

**WP.CT 131 of 2019
With
I.A. No. CAN 3 of 2020
Narendra Narayan Talukdar & Ors.
Vs.
Union of India & Ors.
With
WP.CT 136 of 2019
With
I.A. No. CAN 1 of 2021
With
CAN 2 of 2024
+
CAN 3 of 2024
Partha Chatterjee & Ors.
Vs.
Union of India & Ors.**

Appearance:-

For the Petitioners : Mr. Ajay Debnath, Adv.
in WP.CT 131 of 2019 Mrs. Swagata Datta, Adv.

For the Petitioners : Mr. Soumya Majumder, Sr. Adv.
in WP.CT 136 of 2019 Mr. Barun Chatterjee, Adv.
Mr. Atreya Chakraborty, Adv.

For the Railways : Mr. Partha Ghosh, Adv.
Mr. Debashis Das, Adv.
Mr. Bratin Guin, Adv.

For the Applicant : Mr. Ujjal Ray, Adv.
in CAN 3 of 2024

Heard on : 25.11.2025
Delivered on : 25.11.2025

Judgment (oral)**Per, Sujoy Paul, ACJ:-****WPCT 136 of 2019****Admitted facts:-**

1. The admitted facts between the parties are that the petitioners pursuant to a selection notification dated 01.09.2008 appeared in the selection for the post of Apprentice Mechanics Inter Stage (Mechanical). The petitioners were declared successful in the said selection process. They joined the respective promotional posts and worked for about four years. However, pursuant to memorandum dated 10.02.2015 the said selection was cancelled by Railway Administration. It is admitted between the parties that said cancellation memorandum dated 10.02.2015 is founded upon the report of vigilance department and it is not in dispute that decision to cancel the selection was taken by the competent authority.

Contention of petitioners:-

2. The learned senior counsel for the petitioners fairly submitted that after cancellation of earlier notification dated 01.09.2008 by memorandum dated 10.02.2015, a new selection process for the said post began. The petitioners herein appeared in the fresh selection and out of five petitioners four have been selected. Shri Sainen Ghosh, applicant no.4 could not clear the subsequent selection. Shri Soumya Majumdar fairly urged that if petitioners succeed in the present petition, they will get seniority from the date of their original selection pursuant to the earlier notification dated

01.09.2008. The learned senior counsel for these petitioners urged that the original selection held pursuant to notification dated 01.09.2008 in which petitioners were selected was called in question by certain persons in OA No. 1135 of 2011. The department filed its reply in the said case and stated in the reply dated 09.02.2012 that there was no flaw in the selection process. Thus, it was not open to the administration to cancel the entire selection. The bone of contention of learned senior counsel for petitioners is that in the instant case the persons who have committed irregularity/illegality etc. were identifiable and therefore action of cancelling the entire selection is bad in law. To bolster this submission, Shri Majumder placed heavy reliance on the finding of tribunal in Paragraph 8 (iv) where the tribunal recorded that upon accepting the report of vigilance, the CVC recommended major penalty proceedings against 12 junior engineers as well as the members of the selection committee. Thus, these delinquent employees were clearly identified who committed mal-practices in the selection process. To buttress this stand reliance is also placed on the finding of tribunal in internal page 38 wherein tribunal has given finding in relation to the connected OA No. 1706 of 2015, 1365 of 2015, 1432 of 2015 and 232 of 2016. It is urged that these applicants in those cases were the persons who allegedly committed misconduct and malpractices. Hence cancellation of entire selection is bad in law.

Stand of Department:-

3. Learned counsel for the Railway Administration supported the impugned order and urged that the action of cancelling the previous notification by memorandum dated 10.02.2015 is based on the report of vigilance which

was duly examined and accepted by the competent authority. Thus no fault can be found in the impugned order. The nature of illegality and mal practice is so wide spread that the actual persons and beneficiaries cannot be identified and segregated. Hence the impugned order is justifiable.

Findings:-

4. The first contention of the Learned Senior Counsel Shri Soumya Majumdar on the first blush appears to be attractive but lost much of its shine when matter is by us examined minutely. The first contention was that when petitioner's selection pursuant to Notification dated 01.09.2008 was challenged in O.A No. 1135 of 2011, the railway administration defended the selection by contending that selection was devoid of any irregularities. It is noteworthy that the irregularities and malpractices were detected much later (in 2013) than the date of filing of reply by the department in O.A No. 1135 of 2011. The vigilance department took time to examine the material available before it and thereafter recommended for cancellation of the entire selection held pursuant to the Notification dated 01.09.2008 in which present petitioners were selected. Since malpractise was detected at a later point of time, any stand taken by railway in the reply filed in O.A No. 1135 of 2011 at a prior point of time, will be of no assistance to the petitioners.
5. In the considered opinion of this Court, Shri Majumdar rightly contended that pivotal question to be decided in this matter is whether tainted candidates can be separated from other candidates. If yes, the action of cancelling the entire selection by Memorandum dated 10.02.2015 deserves interference.

6. The point is certainly ponderable. Admittedly, this question came up for consideration before the Supreme Court in the case of ***Union of India & Ors. Versus Rajesh P.U. Puthuvalnikathu & Ors. 2003 (7) SCC 285, Suzuki Parasrampuriah Suitings Pvt. Ltd. Versus The Official Liquidator of Mahendra Petrochemicals Ltd. 2018 (10) SCC 707 and Ashok Kumar & Anr. Versus State of Bihar & Ors.***
7. The *ratio decidendi* of these cases is that where candidates who have committed irregularity can be identified and segregated, the entire selection should not be cancelled.
8. The vigilance department gave its findings and opined as under:-
- (i) Duplicate case file bearing No. 12/VO/RA/CLW/CON/03 containing investigation report and vigilance comments with legible copies of relevant documents based on which the report has been prepared.
 - (ii) Brief summary of the case.
 - (iii) Tabular statement.
 - (iv) Index of documents.
 - (v) Check list.
 - (vi) Soft copy containing investigation report, vigilance comments and CVO's comments/recommendations
- (iii) The vigilance investigation report of CLW, had concluded as follows:-
 "8.3. The selection process has suffered from serious irregularities **arising from leakage of question paper/model answers, adoption of unfair means by the candidates during the written examination**, fraudulent and malafide activities by some candidates in connivance with the evaluator, lack of uniformity in award of marks, unreasonable/illogical distribution of marks by the evaluator, violation of Board's guidelines in award of marks, long delay in declaration of the written test result, missing of the selection file and missing of answersheets of 07 borderline candidates. Selection, therefore, is not considered credible and the resultant panel lacks sanctity/integrity. **The same is recommended to be cancelled.** The selection process may be conducted denovo from the stage of written examination with nomination of new members in selection committee."

(Emphasis Supplied)

9. The competent authority accepted the said recommendation and issued the cancellation Memorandum dated 10.02.2015 which is reproduced by the Learned Tribunal in page 27 of the impugned order.
10. A minute reading of Clause 8.3 of the vigilance report shows that serious irregularity had taken place including leakage of question papers/model answers, adoption of unfair means etc. Even assuming that few candidates were identified who were allegedly involved in malpractices, fact remains that this does not mean that no other candidate could be involved in the malpractice. More so, when finding of vigilance department is that the selection suffered from leakage of question papers/model answers. It cannot be said with accuracy and precision as to who were those beneficiaries of such leakage of question papers/model answers. In other words, the magnitude/degree, details and coverage of such leakage of question papers/model answers cannot be ascertained with mathematical accuracy. Thus, leakage of question paper certainly pollutes the entire selection. No argument could be advanced to demolish the findings of the Learned Tribunal that selection got polluted because of mass scale irregularity including the leakage of question papers/model answers.
11. In view of the principles laid down by Supreme Court in aforesaid matters, it can be safely held that the department has not committed any error in accepting the report of the vigilance department. We find no error in the decision making process adopted by railway administration in passing the cancellation Memorandum dated 10.02.2015.
12. The Learned Tribunal has considered the report of vigilance department and consequential decision taken by competent authority is on permissible

parameters. The tribunal rightly opined that the selection stood vitiated because of serious irregularities including leakage of question papers. Such a plausible view taken by the tribunal deserves a seal of approval from this Court. We order accordingly. Consequently, the writ petition no. **WP.CT 136 of 2019** is **dismissed**.

Since both the petitions are arising out of common order of Central Administrative Tribunal dated 08.11.2019, the matters are decided by this common judgment.

WPCT 131 of 2019

Contention of Petitioners:-

13. Mr. Debnath, learned counsel on behalf of petitioners in WP.CT 131 of 2019 advanced his argument by contending that he is borrowing the argument of learned senior counsel, Sri Majumder except the argument that the so-called tainted candidates before the Central Administrative Tribunal were identifiable.
14. On more than one occasion, on the specific query from the Bench, Sri Debnath, learned counsel maintained his stand that the argument of Sri Majumder, learned senior counsel cannot be accepted that the tainted candidates were identifiable and could be segregated. Thus, he is not inclined to adopt this part of argument of Sri Majumder. However, he borrowed the argument of Sri Majumder to the extent of Railway Administration's stand in the previous case, when first selection was called in question, was referred by Tribunal by holding that Railway Administration supported the selection process of the first selection.

15. Sri Debnath has taken us to the Vigilance report by Railway alongwith affidavit-in-opposition before this Court. It is submitted that the original complainant, Sri Aamod Kumar, in fact, preferred complaint in relation to revaluation. However, the Vigilance Committee/Department has considered various aspects. The examination by the Vigilance Committee must be founded upon the relevant selection files. However, said selection files were not traceable, which is evident from number of replies given to the petitioners under the R.T.I. Act, 2005. By taking this Court to the annexures filed with the reply viz. documents dated 03.05.2015, 20.04.2015, 23.04.2015 and 29.05.2015, learned counsel for petitioners submitted that relevant selection files were not traceable. Similar is the reply given on 21.03.2016. Thus, when selection files were not traceable, there was no occasion for the Vigilance department to form an opinion regarding genuineness, validity and purity of the selection process.
16. Lastly, he placed reliance on the judgment of Supreme Court in the case of ***Dr. Sridip Chatterjee Vs. Dr. Gopa Chakraborty & Ors.*** reported in ***2019 (7) Supreme 602***, to bolster his submission that the outcome/result of first selection is based upon the report of the Selection Committee, which was consisting of experts. Hence, the Court cannot sit on an expert opinion and take a different view.

Contention of department:

17. Learned counsel for Department supported the impugned order of the Tribunal and urged that the magnitude of the irregularity in the selection was not measurable with mathematical exactitude. The leakage of question paper is an aspect, which cannot be measured with utmost clarity. Para

8.3 of the vigilance report, which is reproduced by the Tribunal is also referred to show the facets of irregularity and illegality in the selection process.

18. Lastly, he placed reliance on a recent judgment of Supreme Court in the case of ***State of West Bengal Vs. Baishakhi Bhattacharyya (Chatterjee) & Ors.*** reported in **2025 SCC OnLine SC 719**. It is canvassed that when the selection is vitiated to a great extent and it is not possible to apply the principle of weeding out the tainted persons, the only course available is to cancel the entire selection process. On the strength of Vigilance Report, the said decision is taken and no fault can be found in the said decision.
19. We have heard the parties at length and perused the record. No other point is placed by other parties.

Findings:

20. As noticed above, Sri Debnath, learned counsel for the petitioners, on more than one occasion stated that he does not agree with the argument of learned senior counsel, Mr. Soumya Majumder that the tainted candidates were identifiable. He submits that such identification of tainted candidates was not possible. This argument in our view supports the impugned order of learned Tribunal. The Tribunal after due analysis came to hold that the nature and extent of irregularity shows that the tainted candidates, who were actually responsible are not identifiable and therefore, in a case of this nature, the entire selection needs to be interfered with.
21. So far the stand taken by Railway Administration in the previous O.A. is concerned, wherein the Administration supported the selection process is

already dealt with while deciding WP.CT 136 of 2019. This argument, for the reasons stated therein, must fail.

22. The next contention of Sri Debnath was based on the Vigilance Report. He advanced an attractive argument that when in multiple replies to the R.T.I. questions, the Railway Administration maintained their stand that relevant selection files are not traceable, as to how vigilance report can gain confidence and treated to be trustworthy. We have examined the matter carefully. The Vigilance Report was prepared in the year 2013. From Vigilance Report it is clear that findings are founded upon the marshalling of the relevant files. The R.T.I. informations on which Sri Debnath has placed reliance were issued in the year 2015 and 2016. Thus, it cannot be said that when Vigilance Report was prepared in the year 2013, the files were not traceable. Thus, this R.T.I. information on which heavy reliance is placed, will not improve the case of the present petitioners.
23. The principle of law laid down by Supreme Court in the case of ***Union of India & Ors. vs. Rajesh P.U. Puthuvalnikathu & Ors.*** reported in **2003 (7) SCC 285** is reiterated by Supreme Court in its recent judgment in the case of ***State of West Bengal (supra)***. It was poignantly held that when selection is vitiated to the extent that it is not possible to decipher the candidates who were actually responsible for polluting selection, the only course available is to cancel in the entire selection. In the instant case, as noticed above, the selection was vitiated because of leakage of question papers. The other serious flaws, which are mentioned in paragraph 8.3 of the Vigilance Report are also serious in nature.

24. Thus, in our considered judgment, the Tribunal has considered the relevant material before it and had taken a plausible view which is in consonance with law.
25. In this view of the matter, we find no reason to interfere with the common impugned order of Tribunal dated 08.11.2019. As a result, both the writ petitions are **dismissed**.
26. Certain candidates have filed CAN 3 of 2024, who claimed themselves to be successful candidates in the subsequent selection, which took place during the pendency of this case. They are anxious about the result of this case. This adjudication may have an adverse impact on their prospects. Since, both the writ petitions are dismissed, we find no reason to entertain this CAN 3 of 2024 and accordingly, the same is **disposed of**.
27. With the disposal of the instant two writ petitions, all other pending interlocutory applications are also disposed of.
28. Urgent Photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(SUJOY PAUL, ACJ.)

I agree.

(PARTHA SARATHI SEN, J.)