courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 28/10/2025

Dileshwar Kumar and Others Vs Union of India (UOI) and Others

M.A.T. 95 of 2009

Court: Calcutta High Court

Date of Decision: March 26, 2010

Citation: 114 CWN 861

Hon'ble Judges: Pranab Kumar Chattopadhyay, J

Bench: Single Bench

Advocate: Asoke De and Achin Kumar Mazumdar, for the Appellant;P.K. Mallick and A.K. Gayen, for the Respondent

Final Decision: Dismissed

Judgement

Pranab Kumar Chattopadhyay, J.
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. Inspite 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 (UOI), .

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 (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another, . 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, 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 v. 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 codified 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:

N O T E

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

11 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-Ã¯Â¿Â½-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.