

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.C.T. 204 of 2024

With

CAN 1 of 2025

Union of India and Others

Versus

Anup Mondal and Others

With

W.P.C.T. 242 of 2024

Anup Mondal and Others

Versus

Union of India and Others

For the Petitioners (in W.P.C.T. 204 of 2024)	: Mr. Gouranga Kumar Das, Mr. Subrata Santra.
And	
For the Respondents (in W.P.C.T. 242 of 2024)	

For the Petitioners (in W.P.C.T. 242 of 2024)	: Mr. Soumya Majumder, Sr. Adv Mr. Indranath Mitra.
And	
For the Respondents (in W.P.C.T. 204 of 2024)	

Judgment on	: September 10, 2025.
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Madhuresh Prasad, J.:

1. The writ petition (W.P.C.T. 204 of 2024) has been filed by the Railway Authorities challenging the order of the Central Administrative Tribunal, Kolkata Bench (in short 'Tribunal'), in O.A. 746 of 2023.

2. The writ petition (W.P.C.T. 242 of 2024) filed by Anup Mondal and Others, applicants before the Tribunal are being considered analogous/ together, as both writ petitions are arising out of same cause of action i.e. order passed by the Tribunal in O.A. No. 00746 of 2023 dated 14.05.2024.
3. The Tribunal has set aside the alleged speaking order dated 25.04.2023 passed by the Central DPO/KIR for DRM (P)/KIR, passed in purported compliance of order dated 21.04.2023 passed by the Central Administrative Tribunal in the earlier O.A. No. 509 of 2023 filed by the applicants. The Tribunal has also set aside the order dated 17.04.2023 passed by the DPO for DRM (P)/KIR whereby and whereunder the result/ panel of Goods Guard dated 08.12.2022 , for appointment against 15% Limited Departmental Competitive Examination (LDCE) quota was cancelled on alleged "*administrative account*".
4. The facts leading to the filing of the writ petition/s are not in dispute. The selection process was initiated for the post of Goods Guard against the 15% LDCE quota by a notification dated 01.12.2021. The applicants are permanent railway employees under the regular Non-Ministerial Operation and Commercial Department posted under different Station Master. They fulfilled the eligibility criteria for participating in the selection process by way of promotion for the post of Goods Guard under the LDCE quota (15%). The applicants participated therein and based on merit in the written test, the panel was approved containing 27 successful candidates including the applicants. The panel was published on 08.12.2022. After successful completion of medical examination, the applicants, before being posted on the promotional post of Goods Guard, were sent for requisite training on 20.03.2023. While the applicants were

undergoing the 50 days training, the panel was suddenly cancelled by the respondent authorities, vide office order dated 17.04.2023. Cancellation is allegedly based on a complaint made by certain candidates, leading to a vigilance enquiry into the matter. The Vigilance Report allegedly indicated a state of affairs, which necessitated cancellation of the promotion granted to the applicants.

5. The learned counsel for the Railways submitted that since there was a vigilance report, the authorities could not overlook the same, and were under a legal obligation to cancel such promotion granted to the applicants. They have given a notice to the candidates on 12.04.2023, and after giving them an opportunity of hearing, have passed the final order on 23.05.2023. The authorities have, thus, observed due fairness in the matter.
6. The Tribunal, therefore, has misdirected itself in concluding that there was no basis for cancellation of the promotional process, and that procedural fairness was not observed in cancellation of the promotional process.
7. The findings to this extent are unsustainable and, therefore, the directions as a consequence of such unsustainable findings are also liable to be set aside. The order of the Tribunal, according to the learned counsel for the Railways, is unsustainable. He has relied upon a decision of a co-ordinate Bench of this court in the case of ***Dileshwar Kumar and others Vs. Union of India and others*** in ***MAT 95 of 2009***. Referring to paragraph 28 of the said judgment, he submits that under similar circumstances when the Director General of the Railway Protection Force had cancelled the selection process on detection of the serious

irregularities based on a vigilance report, the co-ordinate Bench had approved such action.

8. The learned senior counsel for the applicants on the other hand, submitted that there is an unambiguous finding of the Tribunal in paragraphs 10.3 and 12 that the authorities have not been able to produce any cogent material or justification for taking the action of cancellation of the promotional process and panel. Such being the findings, there was no occasion for the Tribunal to direct the authorities to undertake any exercise for segregating tainted and untainted candidates. It is submitted that in spite of specific opportunity given to the authorities, they did not produce any material in this regard, though it was their bounden duty, as per Rule 12 of the Central Administrative Tribunal Procedural Rules, 1987 to produce such material, if it existed.
9. It is prayed that the direction for segregating the tainted and untainted candidates is unwarranted in the facts and circumstances, and fit to be set aside. The applicants are entitled to the benefit of the promotional process, based on their merit performance, and the result wherein admittedly they were selected and had also been sent for training. The impugned action of the authorities in cancelling the panel without giving any show cause, is also in violation of the instructions issued in this regard, by the Railway Board.
10. On consideration of the rival submissions we find that the railway authorities claimed that prior to cancellation of the panel an opportunity was given to the empanelled applicants vide communication dated 12.04.2023. The Tribunal has considered the communication dated 12.04.2023 which reads:

“... Sub: Notice of proposed cancellation of selection to the post of Goods Guard against 15% LDCE quota held on 24/04/2022 and result published on notice board vide this office Note of even number dated 08/12/2022.

Representations against the above selection for the alleged irregularities/malpractices were received and the matter was investigated by Vigilance. The investigation report indicates the irregularities noticed during the said selection. It is, therefore, cancellation of above selection and holding of fresh selection is considered necessary to maintain sanctity of examination, to protect the interest of meritorious candidates and to meet the ends of justice.”

11. On reading of the communication, it is apparent that the same is nothing more than an intimation regarding cancellation of the promotion process/ panel. The same cannot by any stretch of imagination be considered to be an opportunity of hearing. The same was not accompanied by the alleged investigation report, based on which it was decided to cancel the empanelment. The communication does not disclose any irregularity whatsoever, considering which the decision was taken. It does not specify any time for, or solicit any reply from the applicants. It, therefore, does not afford opportunity of showing cause.
12. Another aspect of the matter is that the authorities have not stated any reasons based on any instances of any malpractice or irregularity whatsoever, with reference to an alleged investigation report, to justify cancellation of the empanelment, vide office order dated 17.04.2023. The office order does not disclose any reasons whatsoever. The office order directs cancellation of the panel dated 08.12.2022, by stating that the same is being cancelled on “administrative account”. When this was assailed by the applicants in O.A. NO. 509 of 2023 the Tribunal disposed of the O.A. vide an order dated 21.04.2023 allowing the applicants an opportunity of making representation, since

respondents did not issue any show cause before cancellation of the panel dated 08.12.2022, in the following terms:

"5. Considering the aforesaid submission, we deem it fit to dispose of this O.A at the admission stage as the applicants are willing to submit their comprehensive representation for redressal of their grievance before the competent authority with a view to exhaust the available remedy, at the same time considering the submission of the Ld. counsel for the applicants that they were already selected and without any issuance of show cause, the result has been cancelled, that too, in violation of RBE 192/2019, we allow the applicants to file their comprehensive representation within a weeks' time from today, before the competent authority and, on receipt of it, respondents are directed to consider the grievance of the applicants as ventilated in their representations in accordance with the extant rules and policy involved and intimate the decision to the applicants expeditiously not later than 30 days.

In the meantime, it is expected that the respondents will not take further steps as indicated in the office of 17.04.2023 issued by office of the DRM(P)/KIR.

It is made clear that we have not expressed any opinion on the merit of the case."

13. The representation filed by the applicants thereafter has been disposed of by the order dated 23.05.2023, which the authorities claim to be a speaking order issued in compliance with the order of the Tribunal passed in O.A. No. 509 of 2023. The same merely reiterates the decision contained in the office order dated 17.04.2023 in the following terms:

"The candidate's selection to the post of Trainee Goods Train Manager being found erroneous and competent authority decided to cancel the selection in terms of provision of Master Circular No. 31 and IREM Vol. 1. Para 219(L) were directed to returned back from the MDZTI/APDJ to their HQ under DRM(P)/KIR's vide letter dated 18 04.2023 in pursuance of order of competent authority dated 17.04.2023 by which the panel for selection to the post of Goods Guard against 15% LDCE quota was cancelled on administrative account".

The cancellation of selection were done by following due process and authority next to ADRM/KIR had decided cancellation."

14. It is this decision which was put to challenge by the applicants before the Tribunal in a second Original Application bearing O.A. No. 00746 of 2023. From bare reading of the communication dated 23.05.2023 it is apparent that the same is nothing more than a mere reiteration of the earlier order dated 17.04.2023. It does not specify any reason/ justification based on any instance of irregularity in the process leading to issuance of the panel dated 08.12.2022, wherein the applicants emerged successful.
15. The applicants relied upon the instructions contained in RBE No. 192 of 2019 dated 11.11.2019 which required giving of a notice to the successful candidates, if the result was required to be cancelled. The Tribunal has accepted such submission of the applicants and found that the authorities did not comply with RBE No. 192 of 2019. The Tribunal has further taken into consideration the fact that order was passed by the Guwahati Bench of the Tribunal and affirmed by the Guwahati High Court in WP(C) No. 462 of 2023 setting aside cancellation of result, which was done in violation of RBE No. 192 of 2019, which was implemented and promotion granted.
16. The learned Advocate for the Railway, however, took a stand that cancellation of the panel dated 08.12.2022, by the office order dated 17.04.2023 was after giving a notice dated 12.04.2023. The cancellation was owing to procedural irregularities/ malpractices. Once irregularities are noticed the authorities were obliged to cancel the result. They have claimed that since a notice was given, there was compliance with principles of natural justice as contemplated in RBE No. 192 of 2019.

17. The stand of the respondent railways is clearly unsustainable which is apparent from bare reading of the communication dated 12.04.2023 which the authorities claimed to be a notice. The relevant extract of the communication is quoted above. From bare reading of the same it is apparent that the same does not provide any opportunity which can be said to be in compliance with the principles of natural justice. The impugned cancellation of the panel was clearly unsustainable, being in violation of RBE No. 192 of 2019 dated 11.11.2019 which also has been taken into consideration by the Tribunal. The relevant extract of RBE No. 192 of 2019 reads:

"As the existing rules/instructions on the subject are silent on this issue. It has been decided by the Board that whenever selection proceedings are required to be cancelled after declaration of result due to procedural irregularities/malpractices, due notice should be given to the candidates declared selected."

18. The Tribunal has also considered decision of the Railway Board incorporated as "note" below Rule 228 of IREM Vol. 1 which reads:

"228. Erroneous Promotions.-(I).....

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Note:- "Where any selection is cancelled after declaration of result owing to procedural irregularities/ malpractice, due notice should be given to the candidtes who have been declared selected""

19. From bare reading of the communication dated 12.04.2024 the irresistible conclusion is that there was no compliance with the requirement of giving notice to the applicants who were selected vide panel dated 08.12.2022, as required under the RBE No. 192 of 2019 and the note below Rule 228 of IREM. On ground of procedural lapses resulting in violation of the principles of natural justice the

resultant order dated 23.05.2023 has been held to be unsustainable by the Tribunal.

20. We further find that the alleged speaking order dated 23.05.2023 passed in purported compliance with the earlier order dated 21.04.2023 passed in O.A. No. 509 of 2023, which directed for consideration of the applicant's grievance, is unsustainable, being devoid of any reasons whatsoever. It is by now settled law that assigning of reasons is required by authority. It is only if reasons are assigned that a link can be established between the consideration and the conclusion. In absence of reasons, as in the instant case, the alleged speaking order dated 23.05.2023 is unsustainable.

21. The learned Advocate for the writ petitioner/ Railways has also relied upon decision of a co-ordinate Bench in **MAT No. 95 of 2009** in the case of **Dileshwar Kumar and others Vs. Union of India and others** to sustain the impugned decision cancelling the panel dated 08.12.2022. We find reliance placed on the decision to be misplaced for the reason that the co-ordinate Bench while passing the judgment in the case of **Dileshwar Kumar** (supra) has considered various irregularities which had been brought on record in those proceedings. Considering the various major irregularities recorded in paragraph 20 and 21 of the judgment, the co-ordinate Bench approved the cancellation of the selection process. In the present case no reasons whatsoever have been assigned. Cancellation of the process is sought to be justified by making a vague and general assertion that it is on "*administrative account*". therefore, the case of the **Dileshwar Kumar** (supra) is factually at variance with the facts and

circumstances of the present case, and, therefore, inapplicable to the facts and circumstances of the present case.

22. In support of our consideration, we consider it profitable to refer to and rely upon decision of the Apex Court in the case of ***Vinodan T. and Others vs. University of Calicut and Others*** reported in ***(2002) 4 SCC 726***. The Apex Court in the said judgment has restated the law that two restrictions have been placed on exercise of power by the appointing authority, namely:

“10.... that the appointments to the vacancies must be made in accordance with the Rules, if any, relating to reservations and also that the appointing authority cannot scrap the panel of selected candidates during the period of its validity, except for well-founded reasons....”

23. In so far as submissions of the learned Senior Advocate appearing for the applicants regarding violation of Rule 12 of the Central Administrative Tribunal (Procedure) Rules 1987 we find that Rule 12(1) contemplates the filing of a reply by the respondent intending to contest the application. Sub-Rule 2 contains the procedure to be followed at the time of filing of reply under sub-Rule 1. The respondent is given an opportunity under this provision to specifically admit, deny or explain the facts in the application and also to state additional facts, considered necessary for a just decision of the case. Sub-Rule 3 provides for filing of the documents referred to, in the reply filed under sub-Rule 2. However, the respondent authorities while filing their reply have chosen not to place on record the advice of the vigilance, though it was the case of the respondents that the panel dated 08.12.2022 was cancelled based on vigilance advice. It is specific averment of the respondent before the Tribunal in their reply, that *“Vigilance Organization of HQ/Maligaon conducted investigation and according to advice of*

Vigilance, the written test has been cancelled...”. However, the document referred to in this paragraph being the “*advice of vigilance*” has not been filed along with the reply as per Rule 12(3) of the Central Administrative Tribunal (Procedure) Rules 1987. The omission to disclose the document in support of averments in the reply only leads to a presumption that the uncorroborated averment, regarding advice of vigilance is devoid of any substance and unacceptable.

24. The findings of the Tribunal are supported by law based on decision of the Apex Court in this regard. The Tribunal’s decision is product of detailed and elaborate consideration. Decision of the Tribunal in this regards, in our opinion, therefore, does not require any interference.

25. Insofar as the prayer made in WPCT No. 242 of 2024 by the applicants of the O.A., in view of our conclusion recorded above, there is no reason to sustain the directions contained in paragraph 13.1 wherein the authorities have been directed to undertake a suitable exercise to segregate the tainted candidates from the untainted ones. Such an occasion could arise only if any reason whatsoever was assigned with reference to any specific malpractice, or irregularity in the promotion process. Since no reasons whatsoever have been assigned with reference to any instance or nature of irregularity, there is no factual basis to conclude that any malpractice or irregularity was committed by anyone of the selected candidates. Therefore, there is no parameter, based on which such a segregation, or weeding out exercise may be undertaken by the authorities. The directions contained in paragraph 13.1 of the Tribunal in the impugned order dated 14.05.2024, is, therefore, unsustainable. We, therefore, set

aside the order of the Tribunal, limited to the directions contained in paragraph 13.1 of order dated 14.05.2024 passed in O.A. No. 746 of 2023.

26. The WPCT No. 204 of 2024 filed by the Railway Authority assailing the Tribunal's order is dismissed. The WPCT No. 242 of 2024 filed by the applicants is allowed in the above terms.

27. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

(A.D.)