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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No 1644/2001 with
O.A. 1250/2001 & O.A. 2963/2001

Date of Decision : 1.11.2002

Jai Prakash & Ors. ... Applicant^s

Shri B.S. Mainee, Shri ... Advocate for the Applicant^s
Lalit Anand and Shri S.K. Sawhney.

VERSUS

Union of India & Ors. ... Respondents

Shri B.K. Aggarwal with... Advocates for the Respondents
Shri Rajeev Bansal and
Shri Rajinder Khatter.

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V.K. Majotra, Member (A).

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? No



(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 1644/2001
with
O.A. 1250/2001 & O.A.2963/2001

New Delhi this the 1st day of November, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri V.K. Majotra, Member (A).

1. O.A.1644/2001

1. Jai Prakash,
S/o Shri Jogi Ram,
R/o R-505, Gali No.8,
Swatenter Nagar,
Narela,
Delhi.
 2. Subhash Chand,
S/o Shri Daya Ram,
R/o Vill & PO Bambawar,
Dist. Gautam Budh Nagar,
Noida, UP.
 3. Ram Sahadar,
S/o Shri Sakhiya,
R/o H.No. K-1322, Sector 9,
Vijay Nagar,
Ghaziabad, UP.
 4. Khazan Singh,
S/o Shri Sarup Singh,
working as Technician Trade III,
under Senior Sectional Engineer (TL),
Northern Railway,
Delhi Railway Station,
Delhi.
 5. Suraj Prakash,
S/o Shri Manvir Singh,
R/o H.No. 233, Sector 11,
Vijay Nagar,
Ghaziabad, UP.
 6. Raj Pal Singh,
S/o Shri Nepal Singh,
R/o V & PO. Sadullapur Baidayra,
Distt. Gautam Budh Nagar,
Noida, UP.
 7. Avdhesh Kumar,
S/o Shri Om Prakash,
R/o H.No. L-115A, Sector 9,
Vijay Nagar,
Ghaziabad, UP.
 8. Murlidhar,
S/o Shri Ram Kishor,
R/o H.No. 269, New Sanjay
Amar Colony (DSA),
Delhi-110032.
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9. Mukesh,
S/o Shri O.P. Sekana,
R/o H.No. 135, New Hanumanpuri,
S.K. Road,
M.T.C. UP.
 10. Subhash Chander,
S/o Shri Daya Nand,
R/o H.No. 27/33, Take Nagar,
Kath Mandi,
Rohtak.
 11. Ishwar Singh,
S/o Shri Hari Ram,
R/o H.No. 825/28, Circular Road,
Rohtak.
 12. Kamal Singh,
S/o Shri Inder Bhan,
R/o H.No.280, Maliwara,
Ghaziabad, UP.
- ... Applicants.

(By Advocate Shri B.S. Mainee)

Versus

Union of India through

1. The General Manager
Northern Railway,
Baroda House,
New Delhi.
 2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
- ... Respondents.

(By Advocate Shri B.K. Aggarwal with Shri Rajeev Bansal)

2. O.A.1250/2001.

1. Prem Singh,
S/o Shri Ram Parshad,
R/o H.No.45, Mohalla Sunderpuri,
Ghaziabad.
2. Shri Ram Dass,
S/o Shri Hari Ram,
R/o 76-B-5, Railway Colony,
Moti Bagh, Delhi-110054
3. Shri Mehar Singh,
S/o Shri Sant Ram,
R/o TT-55A, Railway Colony,
Village Khera, Shahdara,
Delhi.

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4. Shri Om Prakash,
S/o Shri Keshar Singh,
R/o G-81, Old Seelampur,
Delhi-110095

5. Shri Shailender Kumar,
S/o Shri Sri Ram,
R/o 174, Old Vijay Nagar,
Ghaziabad (UP).

... Applicants.

(By Advocate Shri Lalit Anand)

Versus

1. The General Manager,
Northern Railway, Baroda House,
New Delhi.

2. The C.E.E., Northern Railway,
Baroda House, New Delhi.

3. Ms. Shailesh Chandra,
Asstt. Electrical Engineer (Coaching),
Northern Railway, Delhi Main,
Delhi.

... Respondents.

(By Advocate Shri Rajinder Khatter)

3. O.A.2963/2001.

1. Shri Shanta Kumar,
Train Lighting Fitter-III,
under Sr. Section Engineer,
(Elect.) (CHG),
Northern Railway,
Nizamuddin, New Delhi.

2. Shri Ramesh Kumar,
Train Lighting Fitter-III,
under Sr. Section Engineer,
(Elect.) (CHG),
Northern Railway,
Nizamuddin, New Delhi.

3. Shri Shambhu Nath,
Train Lighting Fitter-III,
under Sr. Section Engineer,
(Elect.) (CHG),
Northern Railway,
Nizamuddin, New Delhi.

4. Shri Harish Chand,
Train Lighting Fitter-III,
under Sr. Section Engineer,
(Elect.) (CHG),
Northern Railway,
Nizamuddin, New Delhi.

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5. Shri Anil Kumar Gupta,
Train Lighting Fitter-III,
under Sr. Section Engineer,
(Elect.) (CHG),
Northern Railway,
Nizamuddin, New Delhi.
6. Shri Ram Kishan,
Train Lighting Fitter-III,
under Sr. Section Engineer,
(Elect.) (CHG),
Northern Railway,
Nizamuddin, New Delhi.
7. Shri Ram Pratap Dubey,
Train Lighting Fitter-III,
under Sr. Section Engineer,
(Elect.) (CHG),
Northern Railway,
Nizamuddin, New Delhi.
8. Shri Balbir Singh,
Train Lighting Fitter-III,
under Sr. Section Engineer,
(Elect.) (CHG),
Northern Railway,
Nizamuddin, New Delhi.
9. Shri Bajrang Bihari,
Train Lighting Fitter-III,
under Sr. Section Engineer,
(Elect.) (CHG),
Northern Railway,
Nizamuddin, New Delhi.
10. Shri Sham Lal,
Train Lighting Fitter-III,
under Sr. Section Engineer,
(Elect.) (CHG),
Northern Railway,
Nizamuddin, New Delhi.
11. Shri Vinod Kumar,
Train Lighting Fitter-III,
under Sr. Section Engineer,
(Elect.) (CHG),
Northern Railway,
Nizamuddin, New Delhi.
12. Shri Rajinder Singh,
Train Lighting Fitter-III,
under Sr. Section Engineer,
(Elect.) (CHG),
Northern Railway,
Nizamuddin, New Delhi.

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13. Shri Mohinder Singh,
Train Lighting Fitter-III,
under Sr. Section Engineer,
(Elect.) (CHG),
Northern Railway,
Nizamuddin, New Delhi.

(By Advocate Shri S.K. Sawhney)

Versus

1. The General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, DRM Office,
Chelmsford Road,
New Delhi.
3. Divisional Personnel Officer,
Northern Railway,
DRM Office, Chelmsford Road,
N. Delhi.

... Respondents.

(By Advocate Shri B.K. Aggarwal with Shri Rajeev Bansal)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

The above three Original Applications have been listed together as the learned counsel for the parties have submitted that the facts and issues raised in these applications are similar. They have submitted that the applications deal with the interpretation of the relevant rules which are common to these applications. Hence, these applications have been heard together and are being disposed of by a common order.

2. The facts in Jai Prakash and Ors. Vs. Union of India & Ors. (OA 1644/2001) have been referred to, to bring out the issues to be dealt with in the aforesaid

three O.As. This application has been filed by twelve applicants who are working as Technicians Grade-III under Train Light Branch under the Divisional Railway Manager (DRM), New Delhi. They are eligible for promotion to the next higher posts of Train Lighting Fitter Grade-II (TLF-II) which is a post to be filled up on the basis of seniority-cum-suitability by holding a trade test. There were 84 vacancies of TLF-II, for which the process of trade test was initiated by the respondents in accordance with the rules. The respondents had issued a letter dated 29.12.1999 calling for 84 eligible staff in order of seniority in the main list and in addition, they kept 20 number of persons lower in the seniority list as a waiting list, for being trade tested. The trade test was held from 19.1.2000 onwards in terms of this letter. With regard to the waiting list of 20 persons, it has been mentioned that they may be asked to keep themselves in readiness as they could be called at short notice, if required. According to the respondents, the purpose of keeping the staff in the waiting list, in addition to the number of staff in the main list equal to the assessed vacancies, was that in case there was a need for further requirement of staff due to non-availability or failure of the staff from the main list in the original test, they may be called at short notice in subsequent continuation trade test so that the process of conducting the trade test is completed within a period of six months.

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3. Shri B.S. Mainee, learned counsel has submitted that the results of the trade test were declared on 23.1.2001 by which 64 persons were declared passed and 20 persons had failed in the 84 vacancies. He has very vehemently submitted that in accordance with the Rules, further candidates in order of seniority equal to the number of failures had to be called in continuation of the original trade test which should be completed within six months. According to him, in case there is any delay in holding the trade test beyond six months, then it will assume the character of a fresh suitability test for which those who had failed would also become eligible for reconsideration. He has submitted that there were still 20 vacancies for which candidates in order of seniority equal to the number of failed candidates ought to have been called within the prescribed period of six months which was to be over on 20.7.2001, although in Tribunal's order dated 10.7.2001 the date mentioned is 22.7.2001. The applicants submit that they are within the range of 20 candidates in order of seniority. As the respondents were not holding the trade test within the prescribed time, by the ad-interim order of the Tribunal dated 10.7.2001, the respondents were directed to hold the trade test in continuation of the original test within the prescribed period of six months. The applicants in O.A 1644/2001 have also filed CP 62/2002, in which it has been stated that six months period was going to expire on 23.7.2001. Learned counsel has submitted that the respondents have not acted in accordance with the Rules by not calling the remaining candidates for consideration against the left over 20 vacancies although the last date of holding the trade test was going to expire on 23.7.2001 which is the date

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mentioned in the aforesaid CP and which is also six months from the date of the publication^{of} results i.e 23.1.2001. He has relied on Paras 14 and 15 of the Railway Board instructions (Annexure A-5). He has submitted that the number of candidates to be called for suitability/trade test in a non-selection post should be equal to the actual existing vacancies and those anticipated in the next four months. If sufficient number of suitable candidates are not available, further candidates to meet the short fall may be called in continuation of the original test and continuation test should be completed within six months. If this period is expired, then it will assume the character of a fresh suitability/trade test for which those who have failed would also become eligible for reconsideration. Learned counsel has very vehemently argued that the whole exercise conducted by the respondents was to [extend this period beyond the stipulated period of six months with regard to the trade test held in pursuance of respondents letter dated 29.12.1999. This was so even though the applicants had obtained the ad interim order from the Tribunal dated 10.7.2001. He has, therefore, prayed that the applications may be allowed with a direction to the respondents to consider the claims of the applicants as a continuation test of the original trade test which has been held to fill 84 vacancies.

4. The respondents in their reply have submitted that a notification was issued on 29.12.1989 calling for 84 eligible staff in order or seniority in the main list and in addition 20 persons were kept on the waiting list for the trade test held on 19.1.2000 onwards. The original test of the staff was conducted from 19.1.2000 to 24.1.2000. The subsequent continuation tests were

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conducted from 10.4.2000 to 13.4.2000, on 26.6.2000, 30.6.2000, 1.7.2000 and 12.7.2000 whereby according to them, the process of the test which was started on 19.1.2000 was completed on 12.7.2000, when the last continuation test was held. They have submitted that the whole process was completed within the period of six months as per Rules. They have also referred to the same instructions relied upon by the applicants (Annexure A-5 of the O.A.). They have stated that due to administrative reasons although the result of the trade test was ready for declaration in August, 2000 it was actually declared on 23.1.2001. According to them, as the continuation tests have already been held within the stipulated period of six months i.e. prior to 22.7.2001, only a fresh trade test becomes due as per the extant instructions and cannot be a continuation test. They have, therefore, submitted that the fresh trade test for the post of TLF-II has become due from the date of declaration of the result of the last trade-test, when the applicants will be considered along with their seniors who could not turn up or pass the last trade test, subject to their falling within the zone of consideration i.e. equal to the assessed number of vacancies as per their seniority position. They have submitted that out of 104 candidates who had appeared in the trade test during the period from 19.1.2000 to 12.7.2000, which includes 84 candidates from the main list and 20 candidates from the waiting list, a total of 66 candidates were declared passed, 24 candidates had failed and the remaining 14 candidates did not turn up for the trade tests held on the different dates mentioned above. They have relied on the Railway Board's letter dated 13.10.1967, (N.Rly.PS No. 4134). Shri Rajeev Bansal, learned counsel has submitted that the original test and

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the continuation tests have to be completed within a period of six months and not beyond six months from the date of declaration of the results of the trade test in the manner the learned counsel for the applicants has contended.

5. With regard to the interim order of the Tribunal dated 10.7.2001, according to the respondents, they received the order on 12.7.2001 in the office of Respondent No. 1 and on 19.7.2001 in the office of DRM/ND i.e. the Cadre Controlling Officer. Since 21st and 22nd were Saturday and Sunday, there was only one working day i.e. 20.7.2001 to hold the trade test before 22.7.2001. The formalities had taken some time to complete before the trade test could be held. Learned counsel for the applicants has, however, submitted that the respondents have deliberately delayed holding the trade test beyond six months. He has prayed that the CP may be listed later.

6. O.A.1250/2001 and O.A.2963/2001 have been filed on 15.5.2001 and 29.10.2001, respectively. We have also heard Shri Lalit Anand and Shri S.K. Sawhney, learned counsel for the applicants. The facts in these two cases are similar to the extent that all these applicants have appeared in the trade test for promotion to the posts of TLF-II in pursuance of the respondents' letter dated 29.12.1999 but have failed. Learned counsel have submitted that as the applicants have failed, they are entitled to be called again for the trade test after a period of six months. Their grievance is that a fresh trade test has been ordered vide letter dated 3.10.2001 but persons junior to them have been called, in terms of the interim order passed by the Tribunal dated 10.7.2001 in OA 1644/2001, without including the applicants and other eligible persons

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who are senior. In the representation dated 10.9.2001 made by the applicants in OA 2963/2001, they have submitted that as six months have expired after the date of the earlier result of the trade test which was declared on 23.1.2001, they being failed candidates should be allowed to appear in the trade test, in preference to their juniors who had not appeared in the trade test earlier. According to them, the interim order has been obtained by the applicants in OA 1644/2001 by reference to the rules incorrectly.

7. In the reply to OA 2963/2001, the respondents have referred to the interim order passed by the Tribunal in OA 1644/2001 which, according to them, has been obtained by the applicants in that O.A. by misquoting the relevant rules. The respondents have submitted that as and when a fresh test is held when it becomes due as per the extant instructions, the applicants who are failures will also be called, along with others/seniors who could not turn up or were declared failed in the previous test. They have submitted that in compliance with the Tribunal's interim order dated 10.7.2001 in OA 1644/2001, they have issued the letter dated 3.10.2001 which has been impugned in the later two O.As. They have further submitted that the trade test has been held in pursuance of the Tribunal's interim order with regard to the applicants in O.A.1644/2001. In O.A.1250/2001, the applicants have prayed that the respondents may be directed to hold a further fresh trade test for the applicants at an early date as they are senior in the seniority list.

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8. Shri B.S. Mainee, learned counsel has also been heard in reply to the submissions made by the learned counsel for the respondents and has reiterated his arguments.

9. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

10. Annexure A-5 circular issued by the Railway Board dated 13.10.1967 relied upon by the learned counsel for the applicants in OA 1644/2001 has also been annexed by the respondents. The relevant portion of the circular reads as follows:

"(14) Failed candidates: A person who failed once in suitability test should be called up again for a suitability test after a time lag of 6 months and if he passes the same he should be given preference over his junior who had passed a suitability test earlier but are still waiting to be promoted for want of a vacancy.

(15) An employee who has passed a suitability test for promotion to a non-selection post once should be eligible for promotion to the higher post when a vacancy arises, i.e. he should not be called upon second time for suitability test.

The number of candidates to be called for suitability test or trade test to fill non-selection post should be equal to the actual vacancies existing and those anticipated in the next 4 months due to retirement or creation of new posts. If sufficient number of suitable candidates is not available, further candidates to meet the shortfall may be called in continuation and so on, but the original test and the continuation test should be completed within six months. If this period is exceeded, any further test will assume the character of a fresh suitability test for which those who failed in the original test would also become eligible for reconsideration".

(Emphasis added)

Extracts of Rule 224 (ii) (Non-Selection Posts) and Rule 214 (c) P-59 of IREM Part-1, copies placed on record, relied upon by the respondents and Shri S.K. Sawhney, learned counsel, read as follows:

"Rule 224 (ii).

Trade test for Artisan Categories.

(i) and (ii) x x x x

(iii) In so far as interval between two trade tests, calculation of vacancies, number of staff to be called for trade test etc. are concerned, orders issued from time to time regarding suitability tests apply also to the trade test.

Rule 214 (c).

(iv) A suitability test should be held at the interval which should not be less than six months. All the eligible candidates as per their seniority including those who failed at the last test should be called. The period of six months is reckoned from the date of announcement of the result.

(Board's letter No.E(NG) 1-66 PM 1-98 dated 18.2.1967 and 3.12.1969).

(vi) If an employee fails in a suitability test but is called up again, a suitability test, after a time lag of six months and he passes the same, he should be given preference over his junior who had passed the suitability test earlier than him but is still waiting to be promoted for want of a vacancy.

(Board's letter No.E(NG)I-66 PM 1-98 dated 18-2-1967)"

(Emphasis added)

11. In this case, the original trade test held for the staff who are eligible for consideration for promotion to the post of TLF-II, in pursuance of respondents letter dated 29.12.1999, is stated to have commenced on 19.1.2000 and held on subsequent dates upto 12.7.2000 i.e. within six months. There were 84 vacancies existing for which 84 candidates were called who were placed in the main list and 20 candidates were kept in the waiting list. Out of these candidates, the respondents have submitted that 66 candidates have passed and 24 candidates have failed and

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the remaining 14 candidates did not turn up for the trade tests held on different dates from 19.1.2000 to 12.7.2000, which adds up to a total of 104 candidates. Having regard to the Railway Board Circular/instructions referred to above, the action taken by the respondents cannot be held to be illegal or ultravires these rules. The above quoted paragraph of the rules states that the original test and the continuation tests have to be completed within six months, which has been done in this case for the tests held upto 12.7.2000. The results of the original trade test for this period have been declared on 23.1.2001. It is noticed that even after calling 104 candidates in the suitability/trade test in question, only 66 candidates have been found suitable but it is seen from the aforesaid instructions, that the original test and the continuation tests have to be completed within six months and if this period is exceeded, the further test will assume the character of a fresh suitability test for which those who have failed in the original test will also become eligible for reconsideration. The applicants in OA 1250/2001 and OA 2963/2001 are persons who have appeared in the original test but have failed and would, therefore, become eligible to appear in the fresh suitability test for reconsideration in terms of the Railway Board's circular dated 13.10.1967. Their contentions are, therefore, found to be in accordance with the above rules.

12. Shri B.S. Mainee, learned counsel has very vehemently submitted that the period of six months is to be reckoned from the date of the announcement of the results which, according to him, is the crucial issue in this case. He has contended that since the result of the trade test in question has been declared only on 23.1.2001, the

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continuation test of the original test started on 19.1.2000 has to be held within six months which the respondents have failed to do. We are unable to agree with this contention.

13. The applicants in O.A.1644/2001 have not challenged the letter/notification issued by the respondents dated 29.12.1999 calling for 84 eligible staff in order of seniority to appear in the trade test for promotion to the posts of TLF-II, which had commenced from 19.1.2000. The period of six months from the date of announcement of the result as referred to in the extract of Rule 214(c) of IREM Part-I refers to the holding of the suitability test by the respondents which has to be held at the interval of not less than six months from the date of announcement of the result. Taking into account the facts and circumstances of the case, as only 66 candidates had passed out of 104 candidates who had been called for the trade test during the relevant period of six months from 19.1.2000 to 12.7.2000, only those could be considered as a "continuation test" which has been completed within six months in terms of the Railway Board Circular dated 13.10.1967. This letter has been relied upon by the learned counsel for the applicants in O.A.1644/2001. The 13 applicants in O.A.2963/2001 have been called for the trade test in pursuance of the respondents letter dated 29.12.1999 but have failed in the trade test. In the circumstances, their contention that they are entitled to be called for the trade test to be held after six months in terms of the aforesaid rules, is correct.

14. As per the extract of Rule 214(c) of IREM Part-I quoted above, in the suitability test which is to be held at the interval of not less than six months, all

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eligible candidates as per their seniority, including those who failed at the last test have to be called. The applicants in O.A.1250/2001 and 2963/2001 are senior to the applicants in O.A.1644 of 2001 in the seniority list in the lower grade. We see force in the submissions made by the respondents that after the declaration of the results of the trade test held on 23.1.2001 i.e. of the trade test which began on 19.1.2000, the next trade test would be a fresh suitability trade test as per the aforesaid instructions and not a continuation test. For the fresh suitability/trade test to be held at the interval of not less than six months which has to be reckoned from the date of announcement of the results of the previous test, the respondents have clearly submitted that the applicants in O.A.1644/2001 will be called along with other senior employees who did not turn up or were declared fail in the previous test. The suitability/trade test which has to be held in the case of promotion for non-selection posts, like in the present case of TLF-II, has to be held at the interval of not less than six months from the date of announcement of the result in the previous test. According to the rules, the test so held will be a fresh suitability test. The rules further provide that a suitability test for the eligible candidates in accordance with the rules should be completed within six months, which in the present case has been held from 19.1.2000 to 12.7.2000. In the facts and circumstances of the case, the action taken by the respondents cannot be faulted. The contention of Shri B.S. Mainee, learned counsel that the test held by the respondents in pursuance of Tribunal's ad interim order dated 10.7.2001 is part of the first suitability test, is not tenable and, therefore, rejected.

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15. Having regard to the aforesaid rules/instructions of the Railway Board on which both the learned counsel have relied upon, we are unable to come to the conclusion that the action of the respondents is arbitrary or illegal to justify any interference in the matter. Accordingly, for the reasons given above,

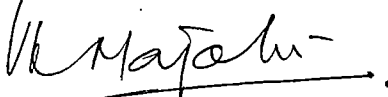
(i) as there is no merit in O.A.1644 of 2001 it is dismissed and the interim order dated 10.7.2001 passed in that O.A. also stands vacated;

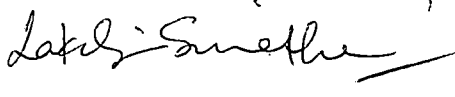
(ii) O.A.1250/2001 and O.A.2963/2001 are disposed of with a direction to the respondents to consider the claims of the applicants for reconsideration in the suitability trade test to be held in accordance with the relevant rules and instructions.

No order as to costs.

16. Let a copy of this order be placed in O.A.1250/2001 and O.A.2963/2001.

17. List CP 62/2002 in OA 1644/2001 on 6.11.2002.


(V.K. Majotra)
Member(A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'