

(19)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. 18/2004

With

O.A.521/2004,

O.A.2554/2004

New Delhi this the 10th day of October, 2007

**HON'BLE MR. JUSTICE M. RAMACHANDRAN, VICE CHAIRMAN (J)
HON'BLE MRS. NEENA RANJAN, MEMBER (A)**

OA 18/2004

1. Shri Brijesh Mathur,
S/o Shri M.L. Mathur,
Sr. Section Engineer (Works),
Under Chief Administrative Officer,
Construction, Jaipur.
2. Shri K.S.Kardam,
S/o Shri Phool Singh,
Sr. Section Engineer (DRG),
Under DRM/Jaipur.
3. Shri S.S. Panwar,
S/o Shri Baru Singh.
S.E.C. (Works),
Under Deputy Chief Engineer,
N. Railway, NDLS.
4. Shri D.K. Garg,
S/o Shri J.L.Garg,
S.E.E. (Works),
Under DEN/GZB.
5. Shri R.D. Naik,
S/o Shri G.S.Naik,
S.E./DRG,
Under DRM/Jodhpur.
6. Shri Moti Lal Meena,
S/o Shri Hazari Lal Meena,
S.S.E./G,
Under Dy. Secy to G.M.Baroda House,
NDLS.
7. Shri H.S. Sidhu,
S/o Shri Ajit Singh,
Sr. S.E. (Works),
Under DRM/N.Rly., Delhi.

8. Shri Satya Pal Singh,
S/o Shri Badloo Singh,
S.S.E. (Works),
Under Assistant Engineer, Tughlakabad.
9. Shri Anil Kumar,
S/o Shri Karam Singh Manda,
S.S.E Ballast,
Under SSE/Ballast/TKD.
10. Shri J.M. Lamba,
S/o Shri C.L. Lamba,
S.S.E. (Works),
Under DRM/Jodhpur.
11. Shri A.C. Tiwari,
S/o Shri R.S. Tiwari,
S.S.E. (Works),
Under DRM/ Jodhpur.
12. Shri Sanjay Mathur,
S/o Shri M.L.Mathur,
S.S.E., under C.A.O./C/ Jaipur.
13. Shri O.P. Chetiwal,
S/o Shri D.R.Chetiwal,
S.S.E. (Works),
Under CAO/C/Jaipur.
14. Mukesh Baweja,
S/o Shri R.L.Baweja,
S.S.E. (Works),
Under D.R.M./Jodhpur.
15. Shri Sandesh Raj,
S/o Shri Roslo Ram,
S.S.E. (Works),
Under C.A.O./C./N. Rly.,
Kashmiri Gate, NDLS.
16. Shri Triloki Ram,
S/o Shri Duij Ram,
S.E. (Design),
Under CAO/C., Northern Railway,
Kashmiri Gate, New Delhi.
17. Shri Surya Kant,
S/o Shri P.S.Verma,
Sr. S.E. (Works),
Under CAO/C.N. Rly.,
Kashmerigate, NDLS.

.. Applicants

(By Advocate Shri B.S. Mainee)

Versus

Union of India : Through.

1. The Secretary,
Ministry of Railways,
Railway Board, New Delhi.
2. The General Manager,
Northern Railway,
Baroda House, New Delhi.
3. Shri G.L.Meena,
ADEN/Estate/DLI.
4. Shri N.K.Sethi, AEN/D,
N.Rly. Construction Organization,
Kashmere Gate, Delhi.
5. Mohinder Kumar, ADEN/Estate-1,
New Delhi.
6. Shri Hargian Singh, ADEN/Rohtak,
N.Rly, Rohtak.
7. Shri Ashok Kumar Diwakar, ADEN,
Shamli, N.Rly, Shamli.
8. Shri Vijay Kumar, ADEN/C/Design,
N.Rly. Construction Organisation,
Kashmere Gate, Delhi.
9. Shri Ashok Kumar, ADEN/Jind,
N.Rly. Jind. .. Respondents

(By Advocates Shri V.S.R.Krishna and Shri R.L.Dhawan)

OA 521/2004

1. Shri K.R.Koli, Adult,
Senior Section Engineer,
Northern Railway, Roorki.
2. Shri Rajendra Prasad, Adult,
Senior Section Engineer,
Northern Railway, Moradabad.
3. Shri Vidya Ram,
Senior Section Engineer/Works,
Northern Railway, Laskar.
4. Shri D.S. Rawat,
Senior Section Engineer/Works,
Northern Railway, Chaudausi.

(51)

5. Shri S.P. Singh,
Senior Section Engineer,
Sleeper Concrete Plant,
Nizamuddin, Northern Railway,
New Delhi.
6. Shri Mihi Lal,
Senior Section Engineer,
North Central Railway,
Chandausi.

.. Applicants

(By Advocate Shri H.P.Chakravorty)

Versus

1. Union of India through General Manager,
Northern Railway, Headquarters Office,
Baroda House, New Delhi.
2. Shri G.L.Meena,
Senior Section Engineer, Headquarters Office,
S.P.O./R.P.
3. Shri R.L.P. Singh,
Senior Section Engineer/PW/JU,
Divisional Railway Manager,
North Western Railway/JU.
4. Shri Ram Singh Meena,
Senior Section Engineer/PW,
Divisional Railway Manager,
North Western Railway/JU.
5. Shri Amarjit Singh,
Senior Section Engineer/ W,
Divisional Railway Manager/FZR.
6. Shri N.K. Sethi,
Section Engineer/DRG/SPO/RP/
Headquarters.
7. Shri Mohinder Kumar,
Senior Section Engineer/W/ ,
Divisional Railway Manager, Delhi.
8. Shri Hargyan Singh,
Senior Section Engineer/W/ ,
Divisional Railway Manager, Delhi.
9. Shri Ashok Kumar Diwakar,
Senior Section Engineer/W/ ,
Divisional Railway Manager, Delhi.
10. Shri Vijay Bhan,
Section Engineer, CAO.



(52)

11. Shri Harpal Singh,
Section Engineer/PW,
Divisional Railway Manager,
UMB.
12. Shri Amrik Singh,
Section Engineer/PW,
Divisional Railway Manager,
UMB.
13. Shri Prithipal Singh Badoga,
Section Engineer, Deputy Chief Engineer,
Baroda House, New Delhi.
14. Shri Ghanshyam Vijay,
Section Engineer/PW,
Divisional Railway Manager, N.W.R./JU.
15. Shri Ashok Kumar Verma,
Section Engineer/PW,
Divisional Railway Manager,
NWR/JU.
16. Shri Panna Lal,
Senior Section Engineer/PW,
Divisional Railway Manager,
North Central Railway, Allahabad.
17. Shri D.R. Gupta,
Senior Section Engineer/PW,
Divisional Railway Manager,
North Central Railway, Allahabad.
18. Shri A.K. Jain,
Senior Section Engineer/PW,
Divisional Railway Manager,
North Central Railway, Allahabad.
19. Shri Rakesh Kumar,
Senior Section Engineer/PW,
Divisional Railway Manager,
North Central Railway, Allahabad.
20. Shri R.S. Pachauri,
Senior Section Engineer/PW,
Divisional Railway Manager,
North Central Railway, Allahabad.
21. Shri Harbhajan Singh,
Senior Section Engineer/PW,
Divisional Railway Manager/UMB.
22. Shri V.D. Agrawal,
Senior Section Engineer/W/Constructions,
C.A.O/C/KG/DLI.

23. Shri N.K. Mishra,
Senior Section Engineer/PW,
Divisional Railway Manager,
North Central Railway, Allahabad.

24. Shri Ashok Kumar,
Senior Section Engineer/PW,
Divisional Railway Manager, UMB.

(Respondents No. 2 to 24 be served through
Respondent No. 1)

.. Respondents

(By Advocates Shri V.S.R.Krishna, Shri S.S.Tiwari and Shri R.L.Dhawan)

OA No. 2554/2004

1. Shri Raj Pal,
Working as Section Engineer (P.Way),
Northern Railway, Jhallandar Cantt.
2. Shri Bhan Singh,
Working as SE (P.Way),
Northern Railway Station, Pathankot.
3. Shri M.B.Azad,
Working as Sr. Section Engineer (Works),
Northern Railway Station, Jhallandar City.
4. Shri K.K.Sharma,
Working as Sr. Section Engineer (P./Way),
Northern Railway Station, Karnal.
5. Shri Pardeep Sharma,
Working as Section Engineer,
Northern Railway Station, Pathankot.
6. Shri Nirmal Singh,
Working as Sr. Section Engineer,
Northern Railway Station, Pathankot.
7. Shri J.K.Bansal,
Working as Sr. Section Engineer,
Northern Railway Station, Ludhiana.

.. Applicants

(By Advocate Shri Yogesh Sharma)

Versus

1. Union of India through the Secretary,
Ministry of Railway,
Railway Board, Rail Bhawan,
New Delhi.

24

2. The General Manager,
Northern Railway, Baroda House, New Delhi.
3. Shri Om Prakash Deshwal,
Asstt. Divnl. Engineer (Designate),
Under DRM, Ambala.
4. Shri Rajneesh Kumar,
Asstt. Divisional Engineer (Designate),
Under DRM Ferozepur.
5. Shri Jatinder Kumar,
Asstt. Divisional Engineer (Designate).
Under DRM Moradabad.
6. Shri Harminder Singh,
Asstt. Divisional Engineer (Designate),
Under CAO (Constrn) / N. Rly., Kashmeri Gate,
Delhi.
7. Shri Sanjay Chawla,
Junior Engineer/Construction,
Under CAO (Const.)/N.Rly,
Kashmiri Gate, Delhi.
8. Shri Sukhvir Singh,
J.E.(Const.) under Dy. C.E. (C). TKJ,
New Delhi.
9. Shri M.K.Kinger, Section Engineer,
Under Dy. CE (C), TKJ, New Delhi.
10. Shri R.S. Meena,
Sr. Section Engineer,
Under Dy. CE (C) TKJ, New Delhi.
11. Shri N.A. Khan,
Asstt. Divisional Engineer (Designate),
Under DRM Muradbad.
12. Shri Sukhbir Singh,
Junior Engineer- I / Const.
Under Deputy Chief Electrical Engineer (C),
Northern Railway, Tilak Bridge, New Delhi.
13. Shri Rajinder Goel,
Assistant Divisional Engineer (Designate),
UMB Division, Northern Railway, Delhi.
14. Shri Amit Jain,
Asstt. DE (D) UMB DB.
15. Shri Harpal Singh,
S/o Roopram Singh,
Under DRM, Delhi.

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16. Shri Kanti Prasad,
S/o Shri Basu Dev,
Under Northern Railway,
Head Quarters Office, Baroda House,
New Delhi.
17. Shri Pawan Kumar,
S/o Shri Mool Chand Saini,
ADEN Under GM, Northern Railway,
Baroda House, New Delhi.
18. Shri Agya Pal Singh,
S/o Shri Avatar Singh,
JE-I, under SE/P. Way, RPI.
19. Shri Nirmal Singh S/o Shri Rikhi Ram,
SE/W, under XEN, Construction,
Northern Railway, Umbala.
20. Shri Kishan Lal S/o Shri Sarni Lal,
AEN, under Chief Administrative Officer,
Construction, Kashmiri Gate, New Delhi.
21. Shri Satyendra Pal Singh,
S/o Shri Samsha,
AEN, under XEN, KSF. .. Respondents

(By Advocates Shri V.S.R.Krishna and Shri B.S>Mainee)

O R D E R

Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J).

The three Original Applications are being disposed of by a common order, taking notice of the fact that the claims as well as the reliefs prayed for by the applicants are similar in all respects.

2. There are 17 applicants in O.A.18/2004. 6 persons have joined together to file O.A.521/2004 and 7 applicants have sought permission to file O.A.2554/2004 by a joint application. By amendment in two of the applications, additional private respondents have been impleaded. As a matter of fact, O.A. 18/2004 had been disposed of, on an earlier occasion and the relief prayed for had been granted, as could be seen



from the order-dated 29.7.2004. But in view of the review applications filed by the Union of India, as well as private respondents, the order had been recalled and the matter thereby required to be disposed of afresh.

3. We had occasion to hear Mr. B.S. Mainee, Mr. H.P. Chakravorty and Mr. Yogesh Sharma, counsel appearing on behalf of the applicants. Respondents are represented by Shri V.S.R. Krishna, Shri R.L. Dhawan and Shri S.S. Tiwari, counsel.

4. We may give in brief respective contentions of the parties, as has been urged in the applications, and for this purpose, may refer to the pleadings in OA 18/2004, since the contentions appear to be mostly identical.

5. A selection Notification for promotion from Group 'C' to Group 'B' posts of Assistant Engineer against 70% quota vacancies for the year 2003-2005 in the Civil Engineering Department of the Northern Railways had been circulated by the General Manager, Headquarters Office, New Delhi, on 05.09.2003. The notice referred to the background, in which the same came to be published. The rules provide for selection to 70% of the vacancies in the seniority stream and 30% of the vacancies were to be filled by LDCE. Since there was formation of new zones, it appears that routinely the selection was not being carried out, namely, once in two years, but letter, however, refers to the order dated 13.5.2003, which authorized a conduct of the combined selection for forming two panels, one for the vacancies assessed for the period from 01.12.2002 to 31.03.2003 and the second panel for vacancies assessed in respect of the period from 01.04.2003 to 31.03.2005. There is also reference to the revised proposal for holding selection to the LDCE quota.

6. It had been indicated that effort was to find candidates for filling up 92 vacancies, in respect of the requirement of North Western Railway and North Central Railway. For the first assessment period, the number of vacancies was shown as 40 and for the second period, 52. Certain other reservations in respect of LDCE candidates were also incorporated in the Notification but in these proceedings we are not concerned with the above. The Notification spoke of eligibility as on the cut off date viz. 01.04.2003. The names of staff of the Civil Engineering Department, who were entitled to participate in the selection, were separately shown as 308 in the main list. There was a reserve list consisting of 65 names, to take the place of the dropouts, who might have been there while holding of supplementary selection. The candidates were advised that a written test would be held, followed by viva voce. The test was to comprise of only one paper. Those, who qualified in the written test and passed medical standards prescribed, were to be called for interview. The Notification also referred to the method, in which a supplementary written test would have been held and also to the pre-selection coaching/training, which may be imparted to SC and ST personnel. Individual acknowledgment has to be obtained from the persons, whose names had been shown in the annexure. We may at the outset note that the Notification was comprehensive.

7. Consequent to the notice as above, a written test was held on 15.12.2003, and a supplementary a few days later. It is seen that after the first written test, some of the applicants felt that the examinations were very tough, and it was loaded in favour of one of the groups, simultaneously making it difficult for other streams to appropriately

attempt the questions. There was no response coming to such representation. Headquarters Office, on 23.12.2003, published a list consisting of 23 persons, and it had been thereby notified that only such number of persons had qualified in the written test. The Original Application had been filed in this context, on 06.01.2004 pointing out that the method of selection was unfair. It had been pointed out that circumstances required a fresh test to be held, cancelling the test already held. There was interim application whereby respondents were to be restrained from declaring select list. The O.A. was allowed, but the orders have been recalled. At all the time the applicants maintained that the selection proceedings are liable to be set aside as ab initio, illegal and not to be relied on for any purpose.

8. In the two connected applications, of course, the finalization of the list after the viva voce has been challenged. The principal question, however, is as to whether Annexure A-1 Notification was illegal, ^{OR} ~~and~~ ~~if~~ the selection consequent to such Notification has violated the rights of the applicants to such an extent for this Tribunal to hold that the whole proceedings are required to be annulled.

9. Mr. Maine, appearing on behalf of the applicants, submits that the selection was irregular principally for three reasons. The first is that a combined selection, for several years as had been held, could not have been considered as authorized, and it was mandatory that selections were to be held with a frequency of two years in the maximum. It is pointed out that 1998 selection took care of the vacancy position upto the year 2000. However, on the face of it, Annexure A-1 refers to the position for the period from 01.12.2002 to 31.03.2005 alone. He submits that he represents the senior most employees of the Division

and if proper selection had been held in the years 2000, 2001 and 2002, it would have been possible for the applicants to participate in the selection. If they could not secure the position at that point of time, it would have been possible for them to compete in the subsequent selection, and ~~of~~ so, there were better chances for them to get selected. The impugned arrangement, therefore, has interfered with the rights, for improving of career and there is also no reference to vacancies, which obviously might have occurred during the year 2001-2002.

10. If it was possible to hold that the selection Notification was valid, it is submitted that the selection process in any case was irregular. Appropriate opportunity to partake in the written test had not been offered, to the extent that there was no supply of the model questions nor was there an opportunity for pre-examinations coaching. The further submission was that there was serious error in preparation of the question papers and it was so prepared so as to confer advantage on the group of Permanent Way Inspectors, as it ultimately reflected in the results. He submits that the categories of Permanent Way Inspectors, Inspector of Works, Bridge Inspectors and Draftsman, were entitled to partake in selection but the results have indicated that 15 Permanent Way Inspectors had come out successful and there are only 8 persons belonging to three other streams. This was as a result of the advantage conferred by the question paper. It was a flaw to be appropriately noted and they are required to be rectified, as arbitrariness was writ large.

11. Another substantial submission was about the zone of consideration, which is alleged as unduly extended. Resultant position is that they had been superseded by juniors by far and if strict compliance was there to the rules, this contingency would not have been

there. Submissions were made, elaborately on the contentions as above raised.

12. With reference to the reply affidavits filed, respondents submit that the alleged errors highlighted, had no factual or legal basis at all. According to them, there were adequate reasons for not holding a selection during the year 2000 to 2002 and this had been taken notice of the highest body, namely, the Railway Board and the subsequent selection had been held only as authorized. The instructions, in vogue, were duly complied with in the matter of setting question papers, and giving alert to the examinees and none of the legal rights of the applicants, therefore, have been violated. In the matter of zone of consideration also, taking notice of the instructions, full attention has been bestowed so as to ensure that only candidates from the permissible limits, had participated in the selection, and applicants thereby stood to no prejudice as the allegations were misconceived. By way of preliminary objections, it has also been urged that on principle of estoppel, the applicants are disentitled to invoke the jurisdiction of Section 19 of the Administrative Tribunals Act, 1985 as they had participated in the selection proceedings and only on finding that they were not successful in the written examinations, they had chosen to file petitions, condemning the methodology, employed and the procedure adopted. This would not have been permissible, on the basis of judicial principles, which stand evolved.

13. We may examine the contentions by one by one. The first objection appears to be that there was clubbing of examinations and this had resulted in a position where the applicants stood prejudiced. Even though they may appear to be contentions with a legal basis, on a

close examination, it may be possible to find that the arguments as such finally may not be productive. It cannot be disputed that a person has no rights for promotion in general terms. There might be vacancies of Assistant Engineers to be filled up, but it may not be necessary that all such vacancies are to be forthwith filled up or operated since this is well within the discretion of the employer. On exigencies of administration, a guideline is to be followed that a select list is to be prepared also taking notice of the requirements of the future but that is purely in the interest of the Railway Administration. Nevertheless, the issue could be examined in the light of the arguments advanced.

14. We may refer to Paragraph 203.7 of the Indian Railway Establishment Manual, which, in fact, takes notice of an exigency, viz. that where due to exceptional reasons, beyond the control of the Administration, it is not possible to hold selections as scheduled and it is delayed by more than one selection period, the next selections are to be held on a procedure, as prescribed. This indicates that there might be contingencies where selection may not be possible to be held, but on those occasions selections are to be held so as to ensure that substantial rights of the persons concerned are not adversely affected. It is pointed out by way of counter affidavit, that even as seen from Annexure A-1, the inability to conduct selections during the period from 2000 to 2002 has been explained. Formative process in respect of new Railway zones was in progress. Instructions were there even to discontinue postings from the panels in force so as to ensure that the system was not upset. There was also a seniority dispute as between the general candidates and SC/ST candidates pending before the Supreme Court, impact of the decision was being examined. We find that these aspects had been taken notice by the Railway Board and it

was only after this, Annexure A-1 had come to be issued proposing a common selection. Of course, a selection was not held as usually expected but that could not have been equated to a legitimate expectation, ^{which was} and thwarted whimsically.

15. The respondents also had adverted to a circular dated 19.3.1992 of the Railway Board on the subject of selection for promotion from Group 'C' to Group 'B'. A point had been raised as to whether in a situation where vacancies relate to more than one selection period and they are bunched and a common selection is held. The query was whether in such circumstances there should be one written examination or written examinations were to be held separately for each of the selection period. The Board had clarified that there will be only one written examination. Therefore, the proposal to conduct one examination as notified by Annexure A-1 could not have been found fault with. The other contentions, therefore, are to be considered as inconsequential.

16. The next submission about the inadequacy of guidance in the matter of preparation of the examination also does not appear to be of any real substance. This is because the Railway Board's instructions for coaching classes in respect of SC/ST candidates had been adverted to in Annexure A-1. Admittedly, applicants had not protested that such facilities were not given to the unreserved candidates. Thus, this does not appear to be a valid circumstance to take Annexure A-1 as irregular. ^{one other} In respect of the contention raised, is that question papers were framed in such a manner to unduly favour one section of the stream, viz. Permanent Way Inspectors. But, however, we have been taken to the provisions of the IREM, and it is seen that a legal contention of this

nature is difficult to be raised with success. Paragraph 204.2 of the Manual only prescribes that the question paper for the written test should have a practical bias; that it should be designed to test the ability of candidates to tackle the practical problems they are likely to face rather than their theoretical knowledge. It is further incorporated in the said paragraph that no syllabus has been prescribed for the written examination. We do find that a good number of Permanent Way Inspectors have secured qualifying marks. This may be especially because a large number of candidates from this Group had appeared for the selection. Further, it is not as if the list contains only the persons from one Group alone. There is distribution though not in equal proportions. Therefore, the contentions raised on this score may not be possible to be upheld, in the present proceedings.

17. The next contention, which has been urged, centres round the issue of zone of consideration. The submission made was that candidates, who were far below in the seniority list, had come to be selected, and if strict principles have been borne in mind, perhaps this illegality might not have resulted. It is also submitted that the select list would indicate that there has not been due advertence to the relevant instructions issued by the Railway Board. But on behalf of the respondents, it had been submitted by Mr. Krishna that perhaps it may be possible for the applicants to suggest that there had been certain irregularities, at the most, but they were not illegalities which may go to the root of the issue for Tribunal to hold that the selection is to be set aside. He has submitted that in respect of essential features, it was a fair selection and the attempt was to see that the most meritorious persons came up to be selected. We may examine the facts.

18. In the application, it has been suggested that about 400 candidates had participated and the vacancies were 92. This was not permissible since Board orders always provided for determining the zone of consideration. The field of consideration of eligible employees initially was six times the number of vacancies to be filled, vide the orders passed on 26.10.1976. But that had been varied on 9.4.1981, and number of employees to be considered, were three times number of vacancies, when the vacancies to be filled were four or more.

19. With reference to actual figures, it is alleged that as per Annexure A-1 when admittedly 92 posts were shown as available for two selection years, as many as 308 candidates had been included, and this was far an excess of the permissible limit of 276. In so far as persons beyond this number have participated in the selection, the procedure should not have been upheld as acceptable.

20. One other subsidiary submission was that when the selection was admittedly in respect of 40 vacancies for the assessment period of 01.04.2002 to 31.03.2003, the selection process should have been confined to 120 personnel and only after the process, a fresh selection should have been commenced in respect of 52 posts. This position to participate 308 candidates, was wholly impermissible, is the argument.

21. In respect of contentions as above, the submission of the respondents is that primarily the applicants are estopped from taking such contentions at all. The selection procedure has been transparent from day one. The selection Notification showed the above vacancies and the manner in which the selection was to be held, and also the number of candidates, shown as eligible to appear for the selection.

The applicants had taken stock of the situation and without any demur

had partaken in the selection. Thereafter, when they find that it was not possible for them to secure qualifying marks, further contentions have been raised, which could not have been permitted. They were sitting on the fence, and exactly in such circumstances in **O.P. Shukla Vs. Union of India** (1986 Supp. SCC 285), it had been held that on the principle of estoppel, they are disentitled to urge claims of any such nature. It is further submitted that on the basis of Railway Board instructions, the field of selection of Group 'B' posts should continue to be determined on the scale referred to earlier. The field was also to include employees, who had failed twice in earlier selections and a corresponding number of additional employees also were to be called for selection. It was on this basis that in respect of 92 vacancies, the senior most employees, were called for consideration in the combined selection and they included four persons on the basis of the interim orders passed by the Administrative Tribunal.

22. We find that the issue has been satisfactorily explained, and we need not even go to principles of estoppel. Thus, it does not appear that in prescribing the zone of consideration as 308 candidates, a mistake had been committed in Annexure A-1 notice. Of course, there is an arguable point raised by the applicants when they submit that the zone of consideration had to be separate vis-à-vis, the assessment years. However, on the facts of the case, we are constrained to hold that such a contention would not have been possible to be appreciated, as we have to construe the situations, as prescribed by the Railway Board orders in harmonious manner. When it had been specifically provided by the Board that it may be permissible to hold a common written test, in the particular selection held, in a year, where previous selection was not possible to be held beyond the control of the Administration, the

resultant position automatically has to follow. The emerging position is that the sanctity of a single written test, is not possible to be doubted. The valuation of the papers has to be carried out by adopting a common yardstick because there cannot be two different standards for valuing the answer sheets that are there before the examiner. Naturally, therefore, marks are to be awarded to the whole examinees and when qualifying marks are prescribed, the position emerges that the candidates who secure highest marks/cut off marks are to be declared as successful.

23. Paragraph 203.7 prescribes preparation of a panel of selection. Therefore, it may not be possible to separate the answer sheets of 120 persons, especially when a common examination is authorized. The panel admittedly is to be prepared by placing the names of persons selected for the earlier period above the one coming next.

24. The selection process did not come to an end after the written examination, and after the viva voce the final select list had come to be published on 9.3.2004 as Annexure A-A appended to the reply statement dated 12.12.2005. Final list consists of 19. The panel is shown as provisional panel for the assessment period from 01.12.2002 to 31.3.2003. Specifically thereafter, it is recorded that in the provisional panel for the period from 01.04.2003 to 31.03.2005, there are no names. Thus, two panels have come to be published. This satisfies the legal requirement, and the method adopted we find was neither arbitrary or unacceptable.

25. We are told at the bar that further selections for the ensuing year had been duly completed, during the pendency of this application. Thus, vacancies for the period from 01.04.2003 to 31.03.2005 and

periods beyond that also might have been duly filled up in the unreserved category. We are satisfied that due adherence to the relevant rules have been made at the time of selection and, therefore, there are no compelling circumstances, for us to come to a conclusion that any substantial error has been committed, which calls for rectification or interference.

26. Advertence was also made to a decision of Hon'ble Supreme Court in **Chandra Prakash Tiwari and Ors. Vs. Shakuntala Shukla and Ors.** (2002 (6) SCC 127), which, according to the respondents, fully endorses their stand. But in view of our findings already recorded, we do not think it is necessary to advert to the precedents or such judgment. Original Applications are dismissed. Parties to suffer their own costs.

27. Let a copy of this order be placed in O.A.521/2004 and OA 2554/2004.

Neena Ranjan

(Mrs. Neena Ranjan)
Member (A)

Ramachandran

(M. Ramachandran)
Vice Chairman (J)

'SRD'