

Central Administrative Tribunal
Prilncipal Bench, New Delhi.

(10)

O.A.No.2206 of 1993

24th day of January, 1994.

Shri N.V. Krishnan, Vice-Chairman(A)

Shri B.S. Hegde, Member (Judl.)

1. Shri Dilip Singh,
R/o RB-II, 717/C, Rani Laxmi Nagar,
Jhansi.
2. Shri K.N. Kutty,
R/o D-382 Store Road,
West Railway Colony,
Jhansi.
3. Shri Tejinder Singh,
R/o 7-B Type III,
East Railway Colony,
Faridabad.
4. Shri B.S. Kate,
R/o Bhopal
C/o D.R.M.(W),
Central Railway,
Bhopal.
5. Shri D.C. Jain,
R/o CPWI(C), Mathura Junction,
RB-II/16-C, Railway Colony,
Mathura Junction.
6. Shri M.K. Agarwal,
C/o Dy. L.E.(C), Railway,
Bhopal.
7. Shri M.K. Shrivastava,
C/o D.R.M.(W),
Central Railway, Bhopal.
8. Shri D.P. Lulla,
R/o Qtr. No.RB-III/132-A,
West Railway Colony,
Bhopal.
9. Shri R.S. Rajput,
R/o Railway Quarter,
Biasra-Rajgarh (M.P.).
10. Shri M.K. Agrawal,
R/o Dholpur, Rly. Station,
Central Railway.
11. Shri D.G. Deshmukh,
R/o C/o X-En, Bhuswal.

Applicants

By Advocates: Shri R.K. Kamal with Shri S.K.Gupta.

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Versus

Union of India through:

1. The Secretary,
Railway Board,
Rail Bhavan,
New Delhi-110001.

2. The General Manager,
Central Railway,
Headquarters Office,
Bombay V.T.

Respondents

By Advocate Shri H.K. Gangwani.

O R D E R

Shri N.V. Krishnan, Vice-Chairman

The applicants are holding Group 'C' supervisory posts in the Indian Railways. They are aggrieved by the Annex. A-2 Memorandum dated 29.9.1993 of the Chief Personnel Officer, Central Railway (C.P.O.) by which he cancelled the Annex. A-5 Circular dated 10.9.1993 notifying the names of 47 candidates as having qualified in the written test held on 24.7.1993 and 31.7.1993 for promotion to Group 'B' and intimating them that a viva-voce test would be held for them on 24.9.1993.

2. This grievance arises in the following manner:
 2.1 In accordance with the rules governing promotion of subordinate staff contained in Chapter II of the Indian Railway Establishment Manual (IREM), extracts of which have been furnished at Annex. A-1, the procedure for promotion to Group 'B' is as follows:-

(a) There will be Limited Departmental Competitive Examination for filling up 70% of the vacancies (Rule 201.1).

(b) The General Manager will constitute a Selection Committee consisting of senior officials of the rank of Head or Addl. Head of Department (Rule 202.1).

(c) There will be a written test to judge professional ability followed by a viva-voce test for those who pass the written test. The maximum marks prescribed for professional ability (i.e. written test) are 50 and the qualifying marks are 30 (Rule 204.1).

(d) An officer of Senior Administrative Grade, Level I, not necessarily a member of the Selection Committee, should set the question paper and also evaluate the answer-books (Rule 204.4).

(e) No moderation of performance is permissible (Rule 204.5).

(f) On conclusion of the examination, the Selection Committee should make its recommendations. Rule 204.10 requires that the recommendations shall be placed before the General Manager for approval. If he does not approve of the recommendations, he will record his reasons and order a fresh selection. Once the General Manager has approved the panel, no amendment can be made, except with the approval of the Railway Board (Rule 204.10).

2.2 In accordance with these rules, an examination for 64 posts against the 70% vacancies was notified by the Annex. A-3 Memorandum dated 4.6.1993 to be held on 17.7.1993, followed by a supplementary test for absentees on 24.7.1993. This letter mentioned that

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there would be two papers in the written test but particulars of marks were not given. A further letter was issued on 11.6.1993 (Annex. A-4) clarifying that there will be only one paper on Professional Subjects, Establishment and Financial Rules, carrying a maximum 150 marks and 90 marks were specified as the qualifying marks.

2.3 The written tests were ultimately held on 24.7.93 and 31.7.93. The results of these tests were announced in the circular letter dated 10.9.1993 (Annex.A-5) of the C.P.O. 47 candidates, including all the 11 applicants, are shown to have qualified in the written test and an interview was fixed on 24.9.1993.

2.4 However, it appears from Annex.A-6 telegram dated 23.9.93 that the viva-voce examination had been postponed by a telegram dated 21.9.1993 and by this telegram, the viva-voce was fixed for 28.9.1993.

2.5 However, no interview was held on 28.9.1993. Instead, the C.P.O. issued the impugned Annex. A-2 letter dated 29.9.1993 stating that the competent authority has decided to cancel the list of qualified candidates issued on 10.9.1993 (Annex. A-5). The reason stated is as follows:-

.....While tabulating the marks for viva-voce, it has been noticed that the written test results were declared taking the qualifying marks as 60, whereas the minimum qualifying marks are 90 since the question paper consisted of 150 marks. On further scrutiny, it is revealed that all these 47 candidates have scored less than 90 marks. In view of this position, the results declared vide letter dated 10.9.1993 ibid have become erroneous and infructuous. In view of this inadvertant administrative error, this office letter of even no. dated

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10.9.1993 stands superseded and it is now advised that none of the candidates who took the written test for Group 'B' post in Civil Engineering department on 24.7.1993 and 31.7.1993 have qualified in the written test."

It was also advised that a fresh written test would be held on 30.10.1993 with a supplementary test on 6.11.1993 for the absentees.

2.6 The applicants are aggrieved by this Annex. A-2 Memorandum and have contended that, without any authority, the General Manager (Respondent 2) has done this under pressure from the candidates who failed to qualify in the written test. It is contended that when once the process of selection/examination has commenced, the General Manager can exercise his authority only under Rule 204.10, when the panel of selected candidates is put up to him for approval and not before. He has no right to cancel the list showing the names of qualified candidates at an earlier stage.

2.7 Hence, the following reliefs have been sought:-

"(i) The impugned Rule 204.10 of IREM be set aside and quashed.

(ii) The impugned order dated 29.9.1993 be set aside and quashed.

(iii) The respondents be directed to comply with orders dated 10.9.1993 and get the process of selection completed expeditiously by conducting the viva-voce test."

3. The respondents have filed a reply stating the circumstances in which a fresh written examination had to be ordered. The following important points

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have been made in their reply:-

3.1 In the first instance, while identifying the names of candidates who had qualified in the written test and had become eligible for appearing in the viva-voce, all candidates who had scored 60 marks or more, were cleared. On this basis, the Annex. A-5 notice was issued declaring that 47 candidates had qualified. Subsequently, when a tabular statement was prepared for the use of the Selection Committee, it was realised that as the question paper carried 150 as the maximum marks, the qualifying marks will be 90. It was noticed that none of the candidates whose names were notified in the Annex.A-5 circular, had scored 90 marks - i.e., 60 per cent of the maximum marks of 150 of the written question paper. They have scored 60 or more marks but less than 90 and, therefore, none of them was eligible for being called for the interview.

3.2 Pending a final decision of the competent authority, the viva-voce test was initially postponed. The tabulated information was seen by the competent authority and a decision was taken to hold a fresh written examination after cancelling the earlier result. Accordingly, the impugned Annex. A-2 letter dated 29.9.1993 was issued.

3.3 It is denied that this decisionm was taken under pressure of the failed candidates.

3.4 It is also stated that similar applications have been filed before the Benches of this Tribunal at Bombay and Jabalpur. The application has been

dismissed by the Jobalpur Bench. The O.A. filed in the Bombay Bench is pending.

3.5 In the circumstances, the respondents contended that the O.A. does not have any merit and should be dismissed.

4. On 28.10.1993, after hearing both the sides, the following interim order was passed:-

- i) The fresh written test may be held on 30.10.93 for the main examination and on 6.11.1993 for the Supplementary Examination, as notified in the Annex. A-2 Memorandum.
- ii) If any of the applicants are unable to appear in the Supplementary Examination on 6.11.93, another Supplementary Examination shall be held on 20.11.1993 for them.
- iii) The appearance of the applicants in this fresh examination will be without prejudice to the stand taken by them in this O.A. that the very holding of the Examination is illegal.
- iv) Valuation of the written papers shall not be taken up except after fresh direction is given.

5. We further directed that an affidavit should be filed by the authority who actually evaluated the papers as well as by the authority who permitted the applicants to be called for interview even though they had scored less than 90 marks. The respondents were

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also directed to produce the question papers as well as the answer-books.

6. When the case came for final hearing, the matter was argued by both the parties at great length. We find it convenient to consider the relevant issues arising out of the pleadings seriatim so to avoid repetition.

7. The first question is whether the question paper for the examination held on 24.7.1993 and 31.7.1993, in respect of which the Annex. A-5 list of qualified persons has been issued, carried 150 marks, or 100 marks. The learned counsel for the applicant did not seriously contest that, as a matter of fact, the question paper carried 150 marks only and not 100. In fact, advance notice in regard to this was given by the Annex. A-4 letter dated 11.4.1993, which specifically indicated that there would be only one paper carrying 150 marks. This is also fully corroborated by the question papers produced for our perusal. No doubt, the question paper for the examination on 24.7.1993 has an over-writing in this respect inasmuch as the maximum marks were shown as 100 at the top of the question paper, but this has been scored off and substituted by 150. Further, the candidates were required to attempt two questions from Part-A and Part-B and four questions from Part-C, of which question No.7 was compulsory. It is seen that question No.7 carries 30 marks and questions 8 to 14 carry 24 marks each. Thus, Part-C alone carried 102 marks. Therefore, we have no doubt that the respondents are correct when they contend that the question paper carried a maximum of 150 marks.

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8. Hence, *prima facie*, the 47 candidates referred to in Annex. A-5, who have secured only 60 marks or more but less than 90 marks in the written test, have not qualified for the viva-voce test. The learned counsel for the applicant contends that such an inference cannot be drawn for, it is ~~is~~ contended that the examiner *under* was, perhaps, / the genuine impression that the total marks for the question paper were 100 only. In that case, the marks awarded are percentage marks and the candidates mentioned in Annex. A-5 have correctly been declared to have qualified for interview.

9. To dispel this doubt, two affidavits have been filed by the authorities on our direction. The first is an affidavit by Shri Rajendra Behari, Chief Engineer (Planning), which reads as follows:-

"AFFIDAVIT"

I, Rajendra Behari, son of late Shri A.B. Mathur, working as Chief Engineer (Planning) in the General Manager's Office, Central Railway, Bombay V.T. do hereby solemnly affirm and state on oath as under:-

1. That I am fully conversant with the facts that the question paper of LGS(70%) examination which was held on 24.7.93 and followed by supplementary examination on 31.7.93 for the post of Asstt. Engineer (AEN) Class II was for 150 marks and not for 100 marks.
2. While evaluating the question paper, I was knowing that the question paper was of 150 marks and accordingly the marks allotted to each question was kept in view while awarding the marks for each answer.

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After completion of the valuation of the answer books, the answer books as a whole were passed on to the Personnel organisation for tabulating the result. Therefore, I affirm on oath that I have valued the answer books and awarded marks on the assumption that the total marks were 150 and not 100."

10. The learned counsel for the respondents points out that the examiner should necessarily have valued the answer books, keeping the question paper(s) by his side. This was necessary to enable him to award marks to each question or sub-question. As the question paper carried 150 marks, it is clear that the valuation was also on the basis of a maximum of 150 marks. Therefore, the affidavit of Shri Rajendra Behari should clear all suspicions and doubts in this regard.

11. We, however, are not fully satisfied with these explanations. We notice that in the outer cover of the answer-book, the valuer, Shri Rajendra Behari, Chief Engineer, has recorded the marks awarded by him both in figures and in words and has signed it. As already noted, none of the candidates has been given more than 90 marks. Therefore, as and when he recorded the marks on the cover of the answer-book, he would or should - have known that the candidate has not qualified. No doubt, the valuation was not done in one sitting, but was spread over some days. Even so, he should have got this impression every time he valued a paper and awarded marks of less than 90. Therefore, at the end of the valuation, he should have realised that none had qualified for the viva-voce test. If this be so, one would have expected him to be totally surprised by the results even though, admittedly, he had not tabulated them on a sheet of paper so as to

see the marks of all candidates at a glance. It is relevant to add here that the counsel for the respondents admitted that in the past there has been no case of 100% failure in the written test. One would then have expected the examiner to do a little introspection to find out whether he has been so stiff in valuation that not one candidate passed. Therefore, one would have further expected him to re-examine the answer-books and apply necessary corrections in deserving cases. We are aware that Rule 204.5 provides that no moderation of performance is permissible. In our view, this ^{is for application} ~~is for application~~ to an authority other than the first examiner or valuer. The first examiner or valuer is bound to consider the outcome of his results and before parting with the answer-books, he can apply such corrective as he considers necessary. That this was not done, is certainly a matter of surprise, but not conclusive to establish that the valuation was done with the subconscious assumption that the maximum marks are 100.

12. May be, the valuer did not have this feeling because he had given 60 marks or more to a number of persons and had an impression and a subconscious feeling that they had qualified for the interview. In other words, while he was aware that the total marks were 150, he was, perhaps under an impression that the qualifying marks were only 60. It is worthy of note that, in the affidavit, Shri Rajender Behari does not state that he was also aware that a minimum of 90 marks has to be scored to qualify for interview. There are two circumstances which might lend support to this possibility. The first is that, as already stated, the examiner was not at all perturbed about the results,

because he, perhaps, genuinely believed that he had awarded qualifying marks to a number of candidates. Perhaps, that was the reason why he did not find it necessary to have a second look at the valuation to see if any moderation was needed. He received confirmation of this impression by the Annex. A-5 circular declaring that 47 candidates had qualified.

13. If, on the contrary, he was conscious of the fact that his valuation had resulted in none of the candidates being qualified for the interview, he would have protested against the Annex. A-5 at the earliest opportunity. This was not done. Perhaps, he was satisfied that he had given qualifying marks to 47 candidates. Another circumstance - which is too much of a coincidence - is that the authorities in the Personnel Branch also took 60 marks as sufficient to qualify for the interview. Accordingly, without hesitation, the Annex. A-5 circular was issued. Perhaps, they were also under the impression that 60 marks were sufficient for qualification. The affidavit of Shri V.S. Saxena, working as Senior Personnel Officer (Engg.) in the General Manager's Office, shows that he understood wrongly that the passing marks were 60 instead of 60 per cent. How such a confusion could have arisen in the Personnel Branch, is not easy to understand, especially when the Annex. A-4 letter was also issued by the Personnel Branch indicating the maximum marks to be 150 and qualifying marks to be 90. It should be

noted that, in the first stage, the marks were just noted after decoding the ~~marks~~ ^{name} of the candidates to find out who had qualified. It is surprising that during the entire operation which must have lasted about an hour or so, none realised that the qualifying mark was 90. Perhaps, they too had a preconceived notion that the qualifying mark was 60.

14. In the circumstance, we cannot definitely conclude that the marks awarded were percentage marks, as sufficient proof in this regard is not available. Therefore, we are satisfied that the valuation was done out of a total of 150 marks but there is a great possibility that the examiner had the impression that the qualifying mark is 60. Hence, the interest of justice would demand a revaluation to be made.

15. The next question is whether on the grounds mentioned in the Annex. A-2, relevant extracts of which have been quoted in para.2.5 above, the competent authority referred to in para.2 therein was justified in cancelling the results of the written examination and directing the holding of a fresh examination. The learned counsel for the applicants points out that the respondents have not indicated who the competent authority is. This is easily answered as it is the General Manager, as we find from the record produced before us. He contends that any intervention by the General Manager, can only be under Rule 204.10 at the stage when the recommendations of the Selection Committee with the panel is put up to him.

16. We are of the view that the General Manager has sufficient administrative powers to correct any mistake that might have been committed before the finalisation of the panel, if circumstances warrant such correction. The mistake committed is that, on the face of it, candidates who had scored less than 90 marks in a question paper which, undoubtedly, carried 150 marks, had been called for the interview, whereas only candidates who had scored 90 or more marks, should have been called for the interview. In the circumstance, it is not necessary for the General Manager to wait till a panel is prepared on the basis of these incorrect results and then act under Rule 204.10 and cancel the panel. The only alternative before the General Manager was to hold a fresh examination after cancelling the Annex. A-5 list. Therefore, we cannot find fault with the Annex. A-2 orders passed by the General Manager.

17. We are also of the view that the Annex. A-2 order was not passed in exercise of the powers under Rule 204.10 which can be exercised only at the stage when the panel has been prepared and recommendations are recorded. In the circumstance, we are not called upon to consider the prayer in the O.A. that Rule 204.10 should be quashed.

18. The learned counsel for the applicant relies heavily on the Annex. A-7 judgement rendered by this Tribunal on 12.8.1991 in OA-1297/91. We have carefully seen that judgement. It is distinguishable. That

was also a case where after declaring that 12 candidates had qualified for the interview, the viva-voce test was not held for quite some time and before it could be held, the list of candidates qualified for the interview was cancelled and a fresh written test was ordered to be conducted. Thus, that case is similar to the instant case, except for the reasons for cancellation. The reasons given by the respondents for cancellation in that case are as follows:-

"6. In the course of the argument, the ld. counsel for the respondents strongly urged the following points:

- i) When the selection was for 68 posts and only 12 candidates were declared successful in the written test, the purpose of selection process was more or less defeated because even out of 12 candidates a few might not have succeeded in the viva-voce test.
- ii) The reason for cancellation was that in the finance paper the marking was very stiff and therefore even those who had done very well in the technical papers which were more relevant to the work that the selected candidates were required to do after selection, could not succeed."

This was not accepted as a reasonable justification to cancel the list of qualified candidates and hence, the Tribunal allowed the application and directed that the 12 successful candidates should be interviewed separately and considered for selection. It also held that the second written test to be held on 8.6.1991 should be for selection of more candidates in order to fill the large number of remaining vacancies.

19. As pointed out above, that judgement is distinguishable. In the present case, we are fully satisfied that on the face of it, the respondents have a clear

case that a major irregularity has been committed in as much as candidates who did not secure the minimum qualifying marks, were declared qualified to appear in the interview. Therefore, we cannot follow that judgement.

20. The learned counsel for the applicants, however, pointed out that, at any rate, the 47 persons mentioned in the Annex. A-5 notice, have been adjudged to be the best out of 210 persons who appeared in the examination and they have all scored 60 marks or more. They should not be left without any relief. He prayed that, in the interests of justice, their papers should be revalued and if it is found, on such revaluation, that one or more candidate has qualified for the interview, a separate interview should be held to finalise the selection which was initiated by the Annex. A-3 memorandum. In that event, the answer-books of such candidates, if they had appeared in the second examination notified by the Annex. A-2 memoranda, should not be valued. The valuation should be confined to others who appeared in the examination. The candidates who qualify in the second examination should then be considered separately in a viva-voce test and the selection should be for the other vacancies not filled by the first examination.

21. We put a question to the learned counsel for the respondents whether there had been any instance in the past when none had qualified in the written

test to be called for the interview, in an examination for appointment to the same posts as in the present case. On instructions from the departmental representative who were present, the learned counsel for the respondents submitted that there has been no such case in the past. That, indeed, is an important point and it is unfortunate that this special feature was not noted by the Chief Engineer (Plg.), Shri Rajender Behari, who valued the papers. We are of the view that an indelible impression should have been registered in the mind of this official as and when he valued the answer-books that according to his valuation, none could qualify for the interview. That itself is a sound ground for entertaining a suspicion that, perhaps there has been some sub-conscious mistake in valuation-viz., a genuine assumption that the qualifying mark is 60 - notwithstanding his affidavit to the contrary. However, there can be no certainty about this matter. A lingering doubt persists and in the interest of justice, it has to be removed. Therefore, a revaluation has to be done.

22. That gives rise to two questions. The first is whether the revaluation should be ordered in respect of only the applicants or the 47 persons referred to in Annex.A-5 or in respect of all candidates who appeared in the written examination held on 24.7.1993 and 31.7.93. The learned counsel for the respondents was of the opinion that a charge of discrimination can be avoided

if all the papers are directed to be revalued. We have carefully considered this matter. We are of the view that it would be sufficient if the answer-books of not only the applicants who figure in the Annex. A-5 list of qualified candidates, but also the answer-books of all the 47 candidates mentioned therein are revalued. It is not necessary to revalue the answer-books of others who have scored less than 60 per cent. There are three reasons for restricting the revaluation thus: (i) The 47 persons in Annex. A-5 constitute a separate class, because they had scored 60 marks or more and were considered, in the first instance, to have qualified for the interview, vide the notice at Annex. A-5. (ii) If, for arguments' sake, it is assumed that the marks given were percentages and not absolute marks, only the 47 candidates mentioned in Annex. A5, would stand qualified. We are, however, not making this assumption which would be dangerous for we are dealing with an examination for posts which are connected with the safety of the Railways. (iii) That takes us to the third ground. In the very nature of things, a mere change of the valuer, is bound to result in some change in the result, especially in respect of questions which are not in the nature of simple objective questions. However, it is unlikely that the revaluation would vastly differ from the valuation made earlier. We may assume that a stiff valuation had been made, which had resulted in nobody getting more than 90 marks. If we restrict the revaluation to 47 persons in Annex. A-5, the minimum additional marks which a person who had scored 60 marks would require to become qualified, is 30. This is 20 per cent of the maximum marks and

50 per cent of the marks actually scored. We are of the view that this is a reasonably large margin to take note of possible variation after revaluation. With this margin, those who have been given less than 60 marks, cannot qualify. In our view, it would not be in the interest of maintaining quality and efficiency, if this margin is further increased. Therefore, we are of the view that the revaluation should be restricted to only the 47 candidates who have been declared qualified by the Annex. A-5 notice.

23. We are unable to accept the prayer made by the learned counsel for the applicant that if any of these persons qualify in the revaluation, they should be interviewed and selected separately for appointment. We have held that there was full justification for holding a second examination. In other words, the second examination is still a part of the selection process initiated by the Annex. A-3 memoranda to fill up 68 vacancies. The only concession that we have accorded is to the 47 candidates mentioned in Annex. A-5 in respect of whom a genuine doubt arises about the valuation of their papers, in regard to which, we have held that a revaluation is the proper answer. In our view, no other right accrues to these persons even on considerations of equity. We notice that the O.A. filed in the Jabalpur Bench by certain persons similarly situated as the present applicants, has been dismissed as not pressed. We also understand that a similar O.A. is pending in the Bombay Bench of this

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Tribunal. We are, therefore, satisfied that any order that we may pass, will not result in any further difficulties for the Department.

24. In the circumstances, we are of the view that this O.A. can be disposed of with the following declaration/orders/directions:-

(a) The validity of the Annex. A-2 memorandum is upheld.

(b) Notwithstanding this declaration, in the interest of justice, the respondents are directed to revalue the answer-books of the 47 candidates who were declared to be qualified by the Annex. A-5 memoranda by the same Examiner who will value/has valued the answer-books of candidates in the examination held on 30.10.1993, 6.11.1993 or 21.11.1993 on which date the examinations/supplementary examinations were permitted to be held by our order dated 28.10.1993. The answer-books of these candidates, if they had appeared in the second examination, will also be valued. Insofar as these 47 candidates are concerned, the higher of the marks scored by them, i.e., either in the earlier examination held on 24.7.93/31.7.1993, or in the subsequent examination held on 28.10.1993, 6.11.1993, 14.11.1993, should be taken into account for consideration as to whether they have qualified

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for the interview or not. In respect of the other candidates, the marks scored in the second examination, will alone be taken into account.

(c) The respondents are, thereafter, directed to complete the process of selection in accordance with law.

24. Before parting with this case, we must express our unhappiness at the careless manner in which the results of the written examination were taken up for consideration as to which candidates have qualified for interview. No doubt, the General Manager has directed that responsibility should be fixed for wrong declaration of results and deterrent action taken. We commend for the consideration of the Railway Board a stipulation that the person who values the examination papers, should also be required to tabulate the results, even if the particulars of the candidates are given in code numbers, and indicate the particulars of those who have qualified for the interview. This will squarely fix the responsibility in regard to this matter on the Examiner.

25. With these observations and the directions given above, this O.A. is disposed of. No costs.

B.S. Hegde
24/1/94
(B.S. Hegde)
Member (J)

N.V. Krishnan
24/1/94
(N.V. Krishnan)
Vice-Chairman (A)