

Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No. 113 of 1987 (W.P.No.6006 of 1984)
Jagdish Prasad Phulbhati Petitioner

Railway Board and 4 others Respondents.

CONNECTED WITH

1. Reg.T.A.No.114 of 1987 (W.P.No.8582 of 1984)

Ram Gopal Sharma and 3 others Petitioners
Vs.

Railway Board & 4 others Respondents.

2. Reg. T.A.No. 115 of 1987 (W.P. No. 8176 of 1984)

Ramvir Singh and 5 others Petitioners
Vs.

Railway Board and 2 others Respondents.

3. Reg. T.A.No. 117 of 1987 (W.P. No. 801 of 1984)

Vyas Singh Petitioner
Vs.

Railway Board and 2 others Respondents.

4. Reg. T.A.No. 118 of 1987 (W.P. No. 14360 of 1984)

Rajesh Kumar Petitioner
Vs.

Railway Board and 4 others Respondents.

5. Reg. T.A.No. 119 of 1987 (W.P. No. 7796 of 1984)

Lalit Ram Tripathi Petitioner
Vs.

Railway Board and 4 others Respondents.

6. Reg. T.A.No. 121 of 1987 (W.P. No. 7277 of 1984)

Bansidhar Agarwal & 7 others Petitioners
Vs.

Railway Board and 4 others Respondents.

7. Reg. T.A.No. 122 of 1987 (W.P. No. 6705 of 1984)

Umesh Kumar Sharma and 2 others... Petitioners
Vs.

Railway Board and 4 others Respondents.

8. Reg. T.A.No. 123 of 1987 (W.P. No. 7042 of 1984)

Prem Narain & 8 others Petitioners
Vs.

Union of India and 2 others Respondents.

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9. Reg. T.A.No. 124 of 1987 (W.P.No. 5533 of 1984)
Santosh Kumar Gautam & 11 others Petitioners
Vs.
Railway Board and 4 others Respondents.

10. Reg. T.A.No. 125 of 1987 (W.P.No. 8576 of 1984)
Ashok Kumar Singh & 18 others Petitioners
Vs.
Union of India and 2 others Respondents.

11. Reg. T.A.No. 134 of 1987 (W.P.No. 992 of 1985)
Pankaj Munshi Petitioner
Vs.
Union of India and 2 others Respondents.

12. Reg. T.A.No. 225 of 1987 (W.P. No. 6596 of 1984)
Anil Kumar Misra Petitioner
Vs.
Railway Board and 4 others Respondents.

13. Reg. T.A.No. 246 of 1987 (W.P.No. 12059 of 1984)
Ramesh Chandra Pandey Petitioner
Vs.
Union of India and 2 others Respondents.

14. Reg. T.A.No. 643 of 1987 (W.P.No. 17561 of 1984)
Kamlesh Kumar Varma and 3 others -.... Petitioners
Vs.
Railway Board and 4 others Respondents.

15. Reg. T.A.No. 909 of 1987 (W.P.No. 6661 of 1985)
Ajai Kumar Sharma Petitioner
Vs.
Union of India and 2 others Respondents.

16. T.A. No. 1298 of 1987 (W.P. No. 14519 of 1983)
Santosh Kumar Pandey and 28 others.... Petitioners
Vs.
Railway Board and 2 others Respondents.

17. Reg. T.A.No. 1299 of 1987 (W.P.No. 5188 of 1984)
Brijendra Kumar and 8 others Petitioners
Vs.
Railway Board and 4 others Respondents.

18. Reg. T.A.No. 1300 of 1987 (W.P.No. 5736 of 1984)
Dinesh Singh and 43 others Petitioners
Vs.
Union of India and 2 others Respondents.

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19. Reg. T.A.No. 1301 of 1987 (W.P.No. 7218 of 1984)
Chandvir Singh and 8 others ... Petitioners.
Vs. Respondents.

20. Reg. T.A.No. 1303 of 1987 (W.P.No. 12256 of 1984)
Raghvendra Kumar Sharma Petitioner
Vs. Respondents.

21. Reg. T.A.No. 1304 of 1987 (W.P.No. 13889 of 1984)
Mohd. Nasuruddin Khan and 5 others Petitioners.
Vs. Respondents.

22. Reg. T.A.No. 1305 of 1987 (W.P.No. 15030 of 1984)
Krishna Kumar Ojha and 5 others Petitioners.
Vs. Respondents.

23. Registration T.A.No. 1309 of 1987 (W.P.No. 7043 of 1985)
Rakesh Chandra Yadav and 4 others Petitioners.
Vs. Respondents.

24. Registration T.A.No. 1310 of 1987 (W.P.No. 13225 of 1985)
Parmatmanand Singh and 2 others Petitioners.
Vs. Respondents.

25. Reg. T.A.No. 1469 of 1987 (W.P.No. 6571 of 1984)
Mohd. Sarfaraj Khan and 3 others Petitioners.
Vs. Respondents.

26. Reg. T.A.No. 1471 of 1987 (W.P.No. 4103 of 1984)
Saeedul Haq Usmani Petitioner
Vs. Respondents.

27. Reg. T.A.No. 1474 of 1987 (W.P.No. 11383 of 1984)
Ratan Kumar Shukla and 13 others Petitioners.
Vs. Respondents.

28. Reg. T.A.No. 1477 of 1987 (W.P.No. 8827 of 1984)
Vinod Kumar Dixit Petitioner
Vs. Respondents.

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29. Registration T.A.No.1478 of 1987 (W.P.No.9204 of 1984)
Subhash Chandra Gautam and another Petitioners.
Vs.
Railway Board and 4 others ... Respondents.

30. Reg. T.A.No. 1479 of 1987 (W.P.No. 8824 of 1984)
Umesh Chandra Sharma ... Petitioner
Vs.
Railway Board and 4 others Respondents.

31. Reg. T.A.No. 1667 of 1987 (W.P.No. 6577 of 1984)
Mohd. Ajaz Khan Petitioner
Vs.
Railway Service Comission, Allahabad ... Respondent.

32. Reg. T.A.No. 1793 of 1987 (W.P.No. 1998 of 1985)
Nazeer Ahmad Khan and 3 others ... Petitioners.
Vs.
Railway Board and 2 others Respondents.

33. Reg. O.A.No. 20 of 1985
Girish Kumar Singh and another ... Petitioners.
Vs.
Railway Service Commission, Allahabad Respondent.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

In this bunch of 33 writ petitions filed under Article 226 of the Constitution of India in the High Court of Judicature at Allahabad and received on transfer under Section 29 of the Administrative Tribunals Act XIII of 1985 and one original application u/s.19 of the Act XIII of 1985, the petitioners have challenged the validity of the results declared by the Railway Service Commission, Allahabad now known as Railway Recruitment Board, Allahabad for certain class III posts on 22.9.1983 and 22.2.1984 and as common questions of facts and law arise in these cases, they are proposed to be disposed of by this single order.

2. Before taking up the facts of any particular case, we will like to narrate the relevant facts of these cases about which there is either no controversy between the parties or the controversy, if any, is not very much significant. On 13.11.1979, the Railway Service Commission, Allahabad (hereinafter referred to as the Commission) issued Employment Notice No. 1/79-80 for 250 posts of Asstt. Station Masters in category no.1 and 1215 posts of Guard Grade 'C', Goods Clerks, Coaching Clerks, Signallers, Train Clerks, Office Clerks, Ticket Collectors and Telephone Operators in category no.2, which was published in an English Daily (Northern India Patrika) of Allahabad on 30.11.1979. The total number of vacancies of both the categories was 1465. About 3,80,000 candidates had applied for the said posts and after examining their forms, admit cards were issued to 3,33094 candidates. In the ^{written} reexamination held at various centres on 22.2.1981, 4020 general candidates and 1620 candidates belonging to Scheduled castes/ Scheduled Tribes/ Ex-Servicemen had qualified in the written test and interview letters were issued to them. Interviews were held at Allahabad and Lucknow from 16.6.1982 to 10.11.1982. Sri Kunwar Ashraf Ali Khan (hereinafter referred to as Sri Khan) was the Chairman of the Commission from 16.8.1976 to 15.8. 1982 with a short gap of about a month from 24.10.1981 to 27.11.1981. Sri Khan was the Chairman of the Selection Board which had taken the viva-voce test at Lucknow and the Member Secretary Sri G.D. Chaturvedi of the Commission was the Chairman of the Selection Board at Allahabad. Each Board had one other outsider as a Member. ^{Most of} the petitioners of these cases had qualified in the written test and had appeared for viva-voce test on the dates and at the places intimated to them.

3. Before the result of the selection could be finalised and published, Sri Khan had retired and Sri B.P.Bhargava, a senior officer of the Northern Railway had assumed the charge of the Commission on 16.8.1982. The services of Sri Khan were terminated on 24.10.1981 ~~and~~^{but} he was reinstated on 28.11.1981. The confidential records pertaining to the competitive examination in question remained with him and were not handed over to Sri O.S.Dongra, who had succeeded him during this short period. After the interviews were over on 10.11.1982, Sri B.P. Bhargava vide his D.O. letter dated 11/12.11.1982 addressed to the Addl. Director Establishment (M), Ministry of Railways, New Delhi brought to his notice that on the last date of interview, certain candidates were called whose applications were not available and some candidates who were called for interview were otherwise not eligible and some candidates who actually did not belong to SC/ST communities, were placed in that category. By his another D.O. letter dated 12.11.1982, Sri Bhargava reported to the same officer the details of the conversation ^{he} had on telephone with Sri Abdul Khaliq, Officer on Special Duty to Sri C.K.Jaffar Sharif, the then Minister ~~of~~ State for Railways that day, conveying the desire of the Minister to finalise the results within 7 days and his (Sri Bhargava's) reply showing his helplessness in finalising the results in view of serious irregularities coming to his notice. It was also mentioned in the said D.O. letter that Sheikh Mustaq Ahmad Head Clerk (Confidential) of the Commission had been asked by him to hand over charge of the Confidential Section as the compilation of the result under him was not considered advisable.

4. To have an idea of certain irregularities alleged to have been committed by the candidates, examiners and the staff of the Commission including the then Chairman Sri Khan in conducting the selection *at this stage* we will like to state that on 14.02.1983, Sri Bhargava by addressing a detailed D.O. letter to the Director (Establishment), Ministry of Railways New Delhi stated that he had already pointed out certain gross irregularities in conducting the selection on account of which the results were likely to be delayed. He pointed out the various ^{difficulties} ~~defects~~ in finalising the results and also gave a gist of the gross irregularities coming to his notice in connection with this selection. It was reported that on the basis of the statistical analysis made, most of the candidates having roll numbers in a particular range had qualified whereas the pass percentage in other ranges was very low. Out of 55~~0~~ centres about 60% candidates appearing ~~at~~ 55 centres only had qualified in the written test. He had also given a state-wise and station wise break-up of successful candidates in the written examination, which showed the concentration of successful candidates at particular places. Sri Bhargava had opined that all bright students could not concentrate at certain places and there should have been a uniform distribution all over the country, where the examinations were held. Sri Bhargava had further pointed out that in all there were 244 examiners but the answer sheets of about 60% successful candidates were evaluated by 37 examiners only and even out of those 37 examiners, the full particulars of most of them were not available in the office of the Commission. Some of the glaring irregularities detected by Sri Bhargava on his screening about 2000/3000 answer sheets and mentioned in the said D.O. letter were as follows:-

- (i) candidates writing wrong roll numbers in words or omitting to write roll numbers in words were found qualified ;

- (ii) the hand writing in which the roll numbers in figures ~~were~~written, was different than the hand writing in which the roll numbers in words appeared ;
- (iii) different ink was used in writing the roll no. and the answers ;
- (iv) some answer sheets were written in 2 or 3 hand writings and over writings were not treated as mistakes ;
- (v) no notice of too many cuttings in the answer sheets was taken;
- (vi) in some cases, no cognizance of the erasers in the answer sheets was taken and in a number of cases, marks were allotted even for incorrect answers;
- (vii) some answer sheets were not initialled by the examiners at all and in some answer sheets only the initials of the examiners appeared without their names and designation ;
- (viii) in some cases, the names and the initials of the examiners were different ;
- (ix) in some cases, in the answer sheets, the totalling was incorrect ; and
- (x) more than 5 corrections in each section ~~were~~not permitted and such corrections had to disqualify the candidates, which was not done.

5. Sri Bhargava had further pointed out that looking at the question paper, it was difficult to score more than 60% marks in the written examination. The question paper consisted of 3 parts having 50 questions in each part. These 150 questions were to be answered in 100 minutes but some candidates had secured 145 marks and above in the written test. He was further of the view that specific instructions were not followed by the examiners and the candidates. The most remarkable feature of this D.O.letter was that dots-/chits/ lists were prevalent in the Commission before the interview.

Before the interviews lists were made for those candidates who were to be selected and they were indicated in the summary sheets in the form of dots in the cases in which the interview was to be conducted by the Chairman and in cases of the interview conducted by the Member Secretary, the lists or chits were reported to have been handed over to him by the Chairman or his agents. According to his information, 3 dots- VVIP-denoted that the candidate had to be selected at any costs. Two dots -VIP-denoted that the candidate had to be selected and one dot- important-denoted that he should be considered after the candidates having 3 and 2 dots.

6. In the end, Sri Bhargava concluded that in view of serious irregularities, he had come to the inevitable conclusion that this result should be declared null and void and an inquiry should be held by an independent agency. Sri Bhargava sought the direction of the Railway Board and stated that he would not announce any decision till he heard in this connection. Sri Bhargava had also reported the matter to the Director (Vigilance), Railway Board, New Delhi.

7. Before anything could be finalised by Sri B.P. Bhargava, he was succeeded by Sri M.K. Agarwal as Chairman of the Commission in June 1983. A news item appeared in the Indian Express of 18/19.6.1983 highlighting the various irregularities committed in conducting the selection for 1465 candidates of categories numbers and 1 and 2 and the matter was also echoed in the Parliament. Sri Bhargava vide his D.O. letter dated 13.7.1983 suggested three alternatives to the Director (Establishment) - (i) to hold fresh examination after scraping the whole examination and interviews conducted earlier, (ii) to approve the so called panel as prepared/marks allotted by the then

Chairman Sri Khan or (iii) to re-assess the marks given in the written examination as well as viva-voce holding back the names of those candidates where there was even slightest doubt of irregularity. In reply the Railway Ministry vide its secret D.O. letter dated 20.9.1983 communicated its following decision to Sri Agarwal:-

(Copy Annexure C.A-64/TA No.113281)

"1981 Examination

- (i) The Service Commission should frame policy direction to be adopted with a view to sort out apparent bonafide and malafide candidates with the assistance of an officer of Vigilance Directorate.
- (ii) The Commission should first sort out the 1400 or odd candidates who were designed to find place in the panel from the bottom so that those who had secured upto 135 marks or so as may be considered by the Commission could possibly be obtained by the candidates. Out of these cases, they should disqualify the candidates where there were apparent reasons for malafide, as may be adopted by the Commission.
- (iii) In respect of persons who have secured higher marks, the Commission should scrutinize the answer sheets of such candidates, keeping in view -
 - (a) similarity in the answers given;
 - (b) where same ink has been evidently used;
 - (c) Persons with higher marks can be called for interview again ; and
 - (d) other reasons as may be considered appropriate.
- (iv) The results should then be declared on the basis of candidates sorted out and found bonafide.
- (v). The Railway should clearly be told that the persons to be empanelled are to be appointed on adhoc basis till finalisation of the scrutiny and the seniority inter-se would also be according to the merit list to be finally announced by the Commission.
- (vi) In the first instance, the Commission should scrutinize 1400 or so candidates as would have found place in the panel and then resort to the scrutiny of further papers, if considered necessary, by giving lower priority.
- (vii) The papers sorted out and found malafide should be handed over to Vigilance for their further scrutiny. The vigilance should also be associated in all cases where doubts exist."

8. The office of the Commission had prepared a tentative or provisional list of successful candidates for being approved by the Chairman for the declaration and publication of the result. But after the necessary exercise in the light of the directions of the Railway Board, the Chairman of the Commission cleared 577 candidates on 22.9.1983 out of the said list and their result was published on 24.9.1983 in a Hindi Daily (Amrit Prabhat) of Allahabad. The Chairman issued one other notification on 25.11.1983 in partial supersession of the result declared by him on 22.9.1983 for deleting the result of 3 candidates and for adding the name of one new candidate, to the said list of 577 successful candidates by way of correction. On the second round of the scrutiny the Chairman cleared 809 more candidates deleting the names of those against whom illegalities and irregularities were discovered and their result was published on 22.2.1984.

9. Aggrieved by the declaration of the piece meal result of 577 candidates on 22.9.1983, the first of these petitions, namely, T.A.No. 1298 of 1987 was initially filed by four petitioners on 22.11.1983 with a prayer that the result declared on 22.9.1983 be quashed and direction be issued to the Commission to declare the result of the entire examination afresh. One more prayer was made to the effect that the re-examination process fixed for 27.11.1983 in the office of the Commission be also quashed. The petition was admitted on 6.2.1984 and on the same day, an interim order to the effect that the result of the examination as declared on 22.9.1983 shall be subject to the decision in the writ petition was issued by a Division Bench of the Hon'ble High Court. The Bench had further directed the respondents for not declaring the result in piece meal. The result of 809 candidates was

declared on 22.2.1984 after this interim order. It appears that after 22.2.1984, no further piece meal result was declared and the result of 81 candidates was yet to be declared to complete the total of 1465. Vide interim order dated 18.9.1984 passed in T.A.No. 113 of 1987, Hon'ble Mr. Justice B.N.Sapru, constituting a Single Bench had permitted the respondents to make appointments in pursuances of results declared as above but the appointments were made subject to the final orders in the writ petition. Similar interim orders were made in various other writ petitions and the result declared and the appointments made were made subject to the decisions in these writ petitions.

10. In T.A.No. 1298 of 1987 filed against the Railway Board, Railway Service Commission and the General Manager Northern Railway, the allegations are that on 21.9.1983 Sri V.K.Agarwal, Chairman of the Commission had issued a notice in the Press stating that the result of the interviews held in 1982 in pursuance of the ^{written} re-examination conducted by the Commission in Feb.1981, which was to be declared by Sept.1983, could not be completed due to unavoidable circumstances and the same would be declared by the end of Oct. 1983. The result declared on 22.9.83 was thus surprising and without necessary process, the result should not have been declared in piece meal. It was further stated that the part result was declared on account of the vigilance enquiry and the result of the candidates cleared by the vigilance had been declared as the vigilance could not go through the papers of the remaining candidates. On 23.11.1983, the Chairman of the Commission had issued a fresh notice stating that on account of certain unavoidable circumstances, the written examination of the candidates bearing the roll numbers mentioned in the said notice was to be held again on 27.11.1983 at 5 centres. It was this re-examination

against which the relief was sought in this writ petition. As there is no further controversy about this re-examination in these petitions, it will suffice to say at this stage that this re-examination of only such candidates was scheduled to be held whose answer books were not found traceable in the office of the Commission.

ii. The validity of the piece meal result of 577 candidates declared on 22.9.1983 was challenged in this writ petition on the ground that the vigilance department could not abrogate the powers of the Commission to process, scrutinise and declare the list of successful candidates and proper proportion of the reserved vacancies could not be maintained in the piece meal result. Twentyfive more candidates joined this petition as petitioners. An amendment for seeking further relief to quash the result dated 20.2.1984 (published on 22.2.1984) was sought in this petition and a supplementary affidavit was filed stating that the petitioners had secured more marks than those who were declared successful by the Commission and the merit list of 1465 candidates was arbitrarily tampered with and superseded by Sri V.K. Agarwal in an irregular manner. It was also alleged that the summary sheets of the interviews ~~held~~ was signed by the Member Secretary Sri G.D.Chaturvedi but subsequently a new summary sheet was prepared by Sri V.K.Agarwal which did not bear the signautes of Sri Khan and Sri G.D.Chaturvedi. In connection with serious irregularities committed by Sri V.K.Agarwal in conducting the written examination fixed for 26.2.1984, Sri V.K.Aga-rwal and Sri D.D.Agarwal, Joint Director of the Railway Board were suspended.

12. In the counter affidavit filed by one Kedar Nath and in the supplementary counter affidavit filed by both Assistant Secretaries, supplementary one Kanhaiya Lal and reply to the impleadment application filed by the Member Secretary Sri Sudhakar Misra of the Commission, it was stated that when Sri B.P.Bhargava took over as Chairman of the Commission, he discovered certain illegalities and irregularities in the examination in question and referred the matter to the Railway Board and the Railway Board had directed a vigilance enquiry to be conducted in respect of the said irregularities. The results of the candidates were declared only after clearance from the vigilance department of the Railways. There was no illegality or irregularity in declaring the result. The piece meal results were declared without following the merit position and the appointments of the successful candidates were recommended to be made on adhoc basis. The Commission is not a statutory body and it works under the Ministry of Railways and subject to its administrative control. In case any illegality or irregularity is discovered by the Railway Board in connection with any selection, it can always refer the matter to the vigilance department and the vigilance department is competent to issue necessary directions as the circumstances may require. The provisional list was never approved by the then Chairman Sri Khan.

13. In pursuance of the direction of the Railway Board, Sri V.K.Agarwal had personally scrutinised the matters in detail and the partial result was declared by him in Sept. 1983 strictly in order of merit from the provisional list and the candidates who were dis-

qualified were deleted from the provisional panel and subsequently the entire result was declared. The names of only such candidates were deleted from the provisional list who were found disqualified on valid and legal grounds and not for arbitrary reasons. The petitioners were disqualified and as such, the question of their securing higher marks is not relevant. Therefore, Sri V.K. Agarwal had not prepared any fresh summary sheet. He had signed only the final panel which was declared and the allegations to the contrary are not correct. In the supplementary counter affidavit, the reasons for not finding the petitioners successful in the final examination were given. The petitioner no.1 Santosh Kumar Pandey is shown to have obtained only 149 marks while the last candidate of general category recommended for appointment had secured 160 marks and as such, the petitioner no.1 could not be recommended for his low marks. Similarly, the petitioner no.2 Rajendra Kumar had secured only 158 marks, less than the minimum marks and could not be recommended. The petitioner no.3 was recommended for appointment for a post of category no.2 and he has wrongly filed the petition. The petitioner no.4 had committed more than 5 mistakes and in terms of instruction no.5 printed on the question paper, he was disqualified. Reasons have been given for not recommending the names of other petitioners who had joined the petition afterwards and it does not seem necessary to give their details here.

14. In T.A.No. 113 of 1987, the relief claimed by the sole petitioner is that the entire record of the examination held in pursuance of advertisement dated 13.11.1979 be sealed and the result declared on 24.9.1983 and 21.2.1984 be quashed and the respondents be commanded to declare the candidates in the original

selection list as successful. Sri B.P.Bhargava, ex-chairman and Sri V.K.Agarwal, the then Chairman were also impleaded by name as respondent nos. 4 and 5 in this writ petition besides the 3 respondents aforesaid. The allegations made by the petitioner in this case are that according to his information, after the interviews were over, a list of 1465 successful candidates was drawn and was ready for publication when Sri B.P.Bhargava had taken over as Chairman. In order to have his own candidates, Sri B.P.Bhargava is shown to have raised a false bogey of irregularities in the aforesaid examination and he was successful in his manœuvrings by which the vigilance inspectors were given control of the examination under his supervision. His successor Sri V.K.Agarwal reaped the fruits of the interference of the vigilance department. The vigilance inspectors tampered with and changed the list of the selected candidates without any basis and arbitrarily. Nepotism, favouritism and illegal gratification prevailed in changing the list and those candidates who were not selected were given places among the selected candidates with ulterior motive. According to the reliable information, the name of the petitioner was in the list of selected candidates and he had secured a high position but his name did not appear in the list of the successful candidates and the candidates who had secured less marks than him were declared successful by manipulations.

15. In the counter affidavit filed by Kanhaiya Lal, Asstt. Secretary of the Commission, it was stated that the selection becomes final only when it is approved by the Chairman of the Commission. Before the result of the Commission could be finally approved by the Chairman, a large number of complaints of mal-practices, serious irregularities and corruption^s were reported to the Railway Board in respect of this selection and the complaints were highlighted

in the newspapers and the Parliament whereupon the matter was referred to the vigilance department of the Railway Board. After thorough investigation, the vigilance department found the complaints true and Sri V.K. Agarwal was directed by the Board to satisfy himself about the irregularities alleged to have been committed before finally approving the panel and it is only after the screening made by Sri V.K. Agarwal that the result was declared in accordance with rules and the allegations made by the petitioner to the contrary are false and concocted.

16. It was further stated that the list of candidates who had qualified in the written examination was scrutinised and approved by Sri Khan and the candidates were called for interviews according to the said list. The provisional list of successful candidates after interview was prepared by the office, which was subject to the final approval of the chairman. Sri B.P. Bhargava had simply submitted his report in respect of the illegality and irregularity coming to his notice to the Railway Board and the personal allegations made against him are totally false. The personal allegations against Sri V.K. Agarwal were also denied and it was stated that the name of the petitioner was deleted as there were about 22 corrections in his answer sheets and different ink was used in making the corrections. The marks awarded to this petitioner and the total were cut and rewritten by the examiner. The petitioner had passed his High School and Intermediate in third division and had no previous experience but he was awarded 45 marks out of 45 marks for personality etc., and again 15 out of 15 marks for previous experience. In this way, out of 75 marks, he was awarded 71 marks in the viva-voce test. No candidate who has been selected has committed more than 5 mistakes and the petitioner was dis-

qualified in accordance with instruction no.9.

17. In T.A.No. 114 of 1987, again there are 5 respondents and 4 petitioners. The relief claimed in this petition is to quash the list of successful candidates published on 25.6.1983 (?) and 26.2.84(?) and to declare the candidates of the original selection list as successful. The allegations made in the writ petition are almost the same as made in T.A.No. 113 of 1987 and need not be repeated here.

18. In T.A.No. 115 of 1987 there are only 3 respondents and the relief claimed is that the result dated 20.2.1984 be quashed and it be declared ~~that~~ the petitioners ^{are} ~~as~~ included in the list of successful candidates as prepared and approved by the then Chairman Sri Khan.

19. In T.A.No. 117 of 1987, there are only 3 respondents and a single petitioner. It was filed on 5.1.1984 and the relief claimed is that the result declared on 22.9.1983 be quashed and the fresh result of the entire examination be ordered to be declared. The petitioner did not allege in the petition that his name was in the list of the successful candidates and only the general allegations about the result were made. In the counter affidavit filed in this case, there is no allegation as to whether the petitioner was recommended in the second list and if not, what were the reasons of not finding him fit for selection.

20. In T.A.No. 118 of 1987, there is only one petitioner and he has prayed for quashing both the lists of successful candidates and for declaring the result of the original selection list. In the counter affidavit filed in this case, by R.C.Srivastava, Assistant Secretary

of the Commission, it was stated that in the screening made by the Chairman, Sri V.K. Agarwal, ^{& was bound and} the marks awarded to the petitioner in the viva-voce were tampered and manipulated. There were cuttings and interpolations and in place of the original marks awarded to him, 66 were re-written. The entry was initialed only by one member of the Selection Board. He was accordingly disqualified and was not recommended for selection by the Chairman. In the rejoinder, the petitioner has stated that the officials of the Commission itself had tampered with his result and this could not be a ground to disqualify him and the action of the Commission is malafide. It was also stated that no inquiry was made before taking the action against the petitioner by the Commission.

21. In T.A.No. 119 of 1987, there is again a single petitioner and the relief claimed by him is the same as in the previous petition. In the counter affidavit filed by the Asstt. Secretary of the Commission, it was stated that on screening the answer sheet of the petitioner, it was found rewritten to the extent of about 90% after scoring of the original answers. The petitioner, who is merely a Matriculate, could not have time to revise the entire answer sheets. He had committed more than 5 mistakes and he was disqualified under instructions 6 and 9. Despite giving repeated opportunities, the petitioner did not file any rejoinder in this case and in the written arguments submitted on his behalf, there is no reply in respect of the irregularities found in the answer sheet of the petitioner.

22. In T.A.No. 123 of 1987, the petitioners have challenged the validity of the declaration of the result of 809 candidates on 21.2.1984 and have prayed for declaring

the result as originally prepared. In T.A.No. 125 of 1987 the petitioners have prayed for quashing the results declared on 24.9.1983, 25.11.1983 and 21.2.1984.

23. In T.A.No. 1300 of 1987, the petitioners have prayed for quashing the result declared on 21.2.1984 and for declaring the result as originally prepared. In T.A. No. 1304 of 1987 filed after the declaration of all the results, the petitioners have not prayed for quashing any result and have sought a direction for declaring the candidates of the original selection list as successful. In T.A.No. 1309 of 1987, the petitioners have further prayed for a mandamus directing the respondents not to appoint any candidate of the second list published on 21.2.84 and have not sought any direction in respect of the declaration of the first result.

24. In T.A.No. 1469 of 1987 filed after the declaration of the second result, relief sought is that the result published on 22.9.1983 be quashed and the fresh result of the entire examination be declared. In T.A. No. 1793 of 1987, the only relief besides summoning the record is that the candidates of the original selection list be declared successful. The relief sought in O.A. No. 20 of 1985 is that the respondents be directed to declare the result in accordance with the earlier merit list and the result illegally declared by them be set aside.

25. In the remaining petitions, reliefs claimed are that the results of both the lists dated 22.9.1983 and 22.2.1984 be quashed and the result of the original selection list be ordered to be declared. In T.A.No.1469

of 1987, T.A.No. 1667 of 1987 and O.A.No. 20 of 1985, the sole respondent is the Railway Service Commission Allahabad, while in the remaining cases, there are either 3 respondents, namely, Railway Board, Railway Service Commission and the General Manager or 5 respondents which include Sri B.P. Bhargava and Sri V.K. Agarwal in their personal capacities. The counter affidavits have been filed in these cases only on behalf of the Railway Service Commission and the other respondents did not file any counter affidavit. The general pleas taken by the Commission in its counter affidavits have already been stated above and the specific pleas raised in respect of the individual petitioners shall be discussed while taking up their cases in the later part of the judgment.

26. Though, by the interim orders passed by the High Court of Judicature at Allahabad, the results declared and the appointments made in pursuance thereof were made subject to the decision in these cases, it was considered expedient to give a general notice to all the selected candidates under the 3 impugned lists by publication in the newspapers and the official gazette of the Northern Railway as their results were sought to be quashed. A number of persons put in appearance in reply to the said notice and filed their short replies stating that they were selected on merits and there was no irregularity in preparing and declaring their results and they are already in service and the allegations made about the irregularities in declaring the results were not correct. It does not seem necessary to mention the names of such persons and discuss their replies in detail.

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27. On behalf of the petitioners, the arguments were advanced by a set of 7 lawyers. A basic question challenging the powers of Sri V.K. Agarwal, Chairman of the Commission for amending or altering the results of the selection-examination has been raised by them. Placing reliance on paras 102, 109 and 112 of Chapter I, Section B of the Indian Railway Establishment Manual (hereinafter referred to as the Manual), it was contended that direct recruitment to fill class III posts of the Indian Railways has to be made through the Commission and the names of successful candidates who are recommended by the Commission have to be exhibited on Notice Board in the Commission's office. Though para 112 provides that selection of a candidate by a Commission is no guarantee of the employment on the Railway, the recommendations made by the Commission are always accepted by the railway administration and the appointments are made subject to medical examination and the candidates being otherwise found suitable for service. According to them, on the receipt of the recommendations of the Commission, the administration simply insists for medical examination and character verification to ascertain the antecedents of the successful candidates to judge their suitability for Government service and in other respects, the administration has no choice. As such, the recommendations once made are final and it confers a right on the successful candidate to get an appointment and if this right is infringed otherwise than in accordance with law, the action of the authority who infringes such right is liable to be quashed as illegal and unconstitutional. This argument of the petitioners is based on the assumption that before Sri Khan retired as Chairman of the Commission on 15.8.1982, the result of the entire selection based on written examination and viva voce was ready for publication and by making alterations in the said result, Sri V.K. Agarwal deleted the names of the petitioners and introduced the names of certain

other persons in their places with personal considerations and ulterior motive.

28. This contention of the petitioners is not factually correct. Without entering into the question of motive with which the alterations were made by Sri Agarwal we are of the view that during the tenure of Sri Khan, the interviews of only general candidates were concluded on 3.8.1982. The interviews of the reserved category candidates which had started on 23.8.1982 were still in progress and were concluded on 10.11.1982. The stage of finalising the result had, thus, not reached during the period of Sri Khan. Both the types of candidates- general and reserved categories- are before the Tribunal and as such, it is not correct to say that before Sri Khan had laid down his office as Chairman of the Commission, the results of the examination held on 22.2.1981 was ready. It is altogether incorrect to say that before Sri Khan retired, he had approved any list of successful candidates for declaring their result. It has been stated in the counter affidavits filed on behalf of the Commission in these cases that the result of the written examination was approved for declaration and publication by the then Chairman Sri Khan and the provisional result after taking into consideration the marks obtained by the candidates in the viva voce test was prepared after interviews were over and such result was to be approved by the Chairman before it could be declared and as the result was not approved by the then Chairman Sri B.P.Bhargava, no candidate mentioned in the list of the successful candidates acquired any right under the law to seek an appointment under the railway administration. Placing reliance on

paras 214 to 216 of Chapter II, Section A of the Manual the further contention made on behalf of the respondents is that after written and viva-voce tests, the names of the selected candidates are to be arranged in order of seniority and the list has to be approved by the competent authority. After the recommendation of the Selection Board are accepted by the competent authority, the names of the candidates selected by the Selection Board have to be notified. Their contention, therefore, is that unless the result is approved by the competent authority, the stage for its declaration or publication does not arise and as Sri Khan had retired before the result of the selection was declared, the contention of the petitioners is devoid of any force.

29. Reliance has been placed on behalf of the petitioners on Union of India Vs. Mohan Lal Kapoor (1973 (2) SLR-824) ; S.Govindaraju Vs. K.S.R.T.C (A.I.R. 1986 S.C.-1680) and B.B.Ramana Vs. Central Provident Fund Commissioner (A.T.R. 1986(2) CAT-587) in support of their contention that inclusion of the name in the select list gives an opportunity of appointment and if the name from the select list is deleted without affording an opportunity of hearing, the same is illegal. It has already been made clear, as above, that there was no select list till the results were declared in piece meal by Sri V.K.Agarwal and the petitioners did not acquire any right by the inclusion ^{and all,} of their names in the provisional list prepared by the office of the Commission after the retirement of Sri Khan on the basis of the marks obtained by them in the written and viva-voce tests. In the rulings relied upon by them, the names were included in the final select lists, which stage had not reached in the cases of the petitioners.

30. As a corollary to their basic argument, the afo-
mentioned, it was vehemently urged on behalf of the petitioners that the chairman Sri V.K. Agarwal had embarked upon an enquiry and scrutiny under the instructions of the Railway Board and as his decision to do so was not his own and independent decision, the action taken by him in pursuance thereof is illegal and without jurisdiction. In other words, the contention of the petitioners is that though the railway administration or the railway ministry was a superior and supreme authority in the matters of appointment, but as it had delegated its power to make the selection to the Commission in accordance with the instructions contained in the Manual, the Commission should have exercised its powers independently and on exercising such powers, on the advice and instructions of the Railway Board, its decision should be deemed to have vitiated under the law. In support of this contention, reliance was placed on a Single Bench decision of the Allahabad High Court in Lala Krishna Chand Jain Vs. District Magistrate (1956 A.L.J.-809); Bombay Municipality Corporation Vs. Dhondu Narayan Chowdhary (A.I.R. 1965 S.C.-1486) and Manohar Singh Vs. State of M.P. (A.I.R. 1986 M.P.-182).

31. The correctness of the principle of law urged on behalf of the petitioners cannot be disputed. It can also not be disputed that while conducting the written examinations and interviews and the preparation of the result by Commission was not merely an administrative act but it was an act of quasi judicial nature and had to be performed according to law and the rules ^{framed} ~~laid down~~ by the Railway Board. Before embarking upon further discussion on this legal issue, we will like to examine the factual position to see whether the contentions raised on behalf of the petitioners

holds good in the circumstances of these cases. We have already pointed out in the earlier part of this judgment that after the retirement of Sri Khan when Sri B.P.Bhargava had taken over as the Chairman of the Commission, he had addressed certain D.O. letters to the Railway Board bringing to its notice the various illegalities and irregularities coming to his notice in conducting the written and viva-voce tests for 1465 posts in question. Before any final decision in the matter could be taken, Sri V.K.Agarwal had taken over as Chairman of the Commission in June 1983 and vide his D.O. letter dated 13.7.1983, Annexure C.A. 5, addressed to the Director Establishment of the Ministry of Railways, mentioned above, he had suggested three alternatives to sort out the scandal made in conducting the written examination and the interview in this selection. The third alternative ^{suggested by him} runs as follows :-

"Reassess the marks given in written examination as well as viva-voce and holding back the names of those candidates where there are even slightest doubt of irregularity."

32. It was thus the suggestion of Sri V.K.Agarwal to reassess the marks given in the written examination as well as viva voice and hold back the names of those candidates about whom there was any doubt. The Railway Board vide its D.O. letter dated 20.9.1983, copy annexure CA 6, had suggested a middle course. The advice given by the Railway Board regarding the 1981 examination has been quoted in verbatim in para 7 above. This advice elaborates, with necessary details, the course sought to be adopted by Sri V.K.Agarwal in his letter dated 13.7.1983. We are further of the view that this letter of the Railway Board contained certain instructions by way of guidance to the Chairman of the Commission being his administrative and supervisory head to take his own decision after doing the necessary exercise. The Railway Board neither intended nor, in fact, conveyed

any decision of its own in respect of any individual candidate and the final decision was to be taken by the Chairman of the Commission in accordance with the guidelines laid down by the Railway Board. We are, therefore, of the view that the Railway Board neither took any decision in respect of any candidate nor asked the Chairman of the Commission to follow the same in declaring the result. In our opinion, it was the duty of the Railway Board to help and guide the Chairman of the Commission in the event of his being confronted with a number of serious complaints in conducting the selection and the Railway Board would have failed in its duty in case no steps had been taken by it for guiding the Chairman on seeking its guidance in the serious situation in which he and his immediate predecessors were placed after the retirement of Sri Khan.

33. The Railway Board had suggested that the Commission should frame policy direction to sort out bonafide and mala-fide candidates with the assistance of an officer of the vigilance department. The suggestion of taking the assistance of the vigilance department could never be objectionable as the vigilance directorate is under the Railway Board and it is not a wing of the Police or its Intelligence Department. The office ~~itself~~ of the Commission being directly or indirectly responsible for the alleged illegalities and irregularities the Chairman could not perform this uphill task alone and his taking the help of vigilance cannot be said to be illegal. We are further of the view that the Chairman had simply to take the assistance of the officer of the vigilance directorate and not his decision. The decision was to be ultimately taken by the Chairman himself after necessary scrutiny.

34. Under instruction no.2, the Railway Board had suggested that the Commission should first sort out 1400 or odd candidates designed to find place in the panel from the bottom and out of the said candidates such were to be disqualified about whom there were apparent reasons for malafide. The actual course to be adopted by the Commission for doing so was left by the Railway Board ^{to the Commission} and its discretion was not fettered in any manner. Under instruction no.3, guidelines were given which were to be applied in making the scrutiny of the records of the candidates securing higher marks. Such directions were to be applied uniformly and in accordance with the discretion of the Commission. Instruction no.4 clearly authorised the Commission to declare the result of all such candidates sorted out and found bona-fide. Instruction no.6 gave the full freedom to the Commission to scrutinise ^{only} not the records of 1400 or odd candidates sought to be included in the panel according to the provisional result but such scrutiny was to be further resorted if necessary by giving lower priority to select the required number of candidates. Instruction no.7 does not relate to the declaration of the result and is not relevant. As under instruction no.5 the Board had advised the Commission to make recommendation to the railway administration for appointment on adhoc basis till the finalization of the scrutiny and the seniority inter se, the Commission in its wisdom decided to declare the result, which was already much delayed, in piece meal to avoid further delay in finalising and declaring the whole result together. In this way, the guidelines or the directions given by the Board to the Commission for declaring the results after necessary exercise of scrutiny afforded full opportunity to the Chairman to implement the guidelines in his own manner and no particular result was to be affected by any guideline or decision of the Railway Board and the

ultimate result declared by Sri V.K.Agarwal cannot be said to be the result declared without application of his mind and as such, in no way it can be said to be the result actually declared by the Railway Board through Sri V.K.Agarwal, Chairman. There is, therefore, no foundation for the legal issue raised on behalf of the petitioners.

35. In the case of Lala Krishna Chand Jain (Supra) the Rent Control Officer ^{while exercising} ~~was enjoying~~ the delegated powers of the District Magistrate under U.P.(Temporary) Control of Rent and Eviction Act 3 of 1947 had made an allotment in accordance with the allotment actually made by the District Magistrate himself and as such, in that case, it was rightly held that the Rent Control and Officer had done so without the application of his own mind and had acted according to the decision actually taken by the District Magistrate. In the present case, no decision in respect of any candidate was taken by the Railway Board. In the case of Bombay Municipalities Corporation (Supra), the Hon'ble Supreme Court had observed that the decision taken by an officer under the delegated powers while acting under the control and supervision of the officer delegating such powers will amount to the decision of the officer to whom the powers are delegated as the provision to act under the control and supervision of the superior authority has to apply only to administrative function and not to judicial or quasi judicial functions. In our opinion, this decision does not support the petitioners at all. In Manohar Singh's case (Supra), it was held by a Division Bench of the Madhya Pradesh High Court that an order passed by the Commissioner under M.P. Municipalities Act as

delegate of the State Government, cannot be revised by the State Government under its revisional powers. There is no such case before us.

36. On the other hand, in Kanhaiya Lal Vs. Union of India (1987 (4) A.T.C.-83, it was held by the Jodhpur Bench of the Tribunal that just, fair and appropriate course in ^{such} the circumstances of the case was to have amended the panel by deleting therefrom the names of the candidates in respect of whom the said irregularities were discovered. It was further held that the plea of estoppel is not available against a statutory provision or even administrative instruction having the force of law. The Chairman of the Commission was, therefore, right in deleting the names of only such candidates from the provisional result against whom certain irregularities were discovered and the Chairman committed no error in following the guidelines suggested by the Railway Board in reply to his letter suggesting certain alternatives.

37. In Kusheshwar Rai Keshri Vs. Union of India (1987 (3) ATC-444), the Patna Bench of the Tribunal while interpreting certain rules of the North Eastern Railway for promotion and selection of non-gazetted railway employees had held that a list of candidates who passed the written and viva-voce test would become a select list only after it had been (a) recommended by the Selection Board, (b) approved by the competent authority and (c) notified and published in the prescribed manner. It was further held that the persons appearing at and passing the written and viva-voce tests do not ipso-facto acquire any legal right. It was also observed in that case that while granting approval, it is certainly up to the competent

authority to apply such standards and checks as he considers desirable or necessary and in view of the irregularities pointed out in the case, the competent authority was certainly within his right to withhold the approval and quash the entire proceeding of the selection.

38. There is yet another objection raised on behalf of the petitioners of the nature of a preliminary objection regarding the competence of the Commission to cancel or revise the result. Some of the learned counsel appearing on behalf of the petitioners have contended that once the result of the written examination was approved by the then Chairman and the viva-voce marks were awarded by the Chairman or the Secretary-Member in their respective Selection Boards, there remained nothing to be done in finalising the result and even the Chairman was not competent to make any change or alteration in the results. In other words, their contention was that the Commission had no jurisdiction to cancel its own result. However, some learned counsel appearing on behalf of the petitioners frankly conceded that even in the absence of any such power, the Commission empowered to declare the result is supposed to possess the power of cancelling the result as well under its inherent power as every authority empowered to do certain act impliedly possesses the power to undo it. We fully find ourselves in agreement with this contention and in our opinion, the Commission had implied powers to amend, alter or cancel the result prepared or declared by it for certain reasons. This view finds support from a Division Bench decision of the Andhra Pradesh High Court in B.Subba-rao Vs. A.P. Public Service Commission (A.I.R. 1961 A.P.-378, in which the authority of the Andhra Pradesh Public Service Commission for cancelling the result of certain competitive examination as well as the constitutional

validity of rules 14 and 15 framed by the Commission for making inquiries in the case of fraud and irregularities and the power of cancelling the result were challenged before the Andhra Pradesh High Court. The following observations made by the Hon'ble High Court in that case may be quoted for the appreciation of the point in controversy:-

" It is true that Art.320 speaks only of the conduct of examinations and does not specifically confer any power to hold enquiries into the malpractices or misconduct of the examinees or to punish such delinquents....

Such power is impliedly granted by the very enactment. Unless such ancillary or incidental powers are implied, it is difficult for a statutory body to give effect to the purpose for which the enactment was made. It follows that the power or duty to do everything in furtherance of the object of the enactment is implied in the statute itself.

..... It is the primary duty of the body that conducts the examinations to maintain the purity and strict standards of the examinations.

It is also expected to device every method to put an end to malpractices and to prevent one or other of the examinees obtainin an unfair advantage by resorting to malpractices.

.....

... Further, the very concept of publication of result involves the investigation into misconduct concerning examinations. Publication of results involves the thought that it should be a correct publication and excludes the possibility of results obtained by fraud being given effect to.

....

The purpose underlying the principle enunciated above, namely, to enable the statutory body to exercise the powers derived from the statute applies with full vigour to duties. It is as important to discharge duties effectively as to exercise the powers. Such powers or duties are inherent in the Statute if they are essential to carry into effect the object of the Act. Otherwise, the purpose of the statute will be defeated."

39. Having thus carefully considered the preliminary objections raised on behalf of the petitioners regarding competence of Sri V.K. Agarwal, Chairman of the Commission in making amendment or alterations in the provisional list of successful candidates, we are of the view that Sri Agarwal had acted in doing so according to his best judgment with full application of mind with a view to eliminate the persons who had secured high marks in ^{viva-} written or voce tests by unfair means and in doing so, ^{though} he had acted ~~only~~ in accordance with ^{the} general directions of the superior body - Railway Board-but the Railway Board having made no decision of its own, the results declared by Sri Agarwal did not vitiate in law for the reasons highlighted on behalf of the petitioners. We further hold that technically speaking, no select list or the final result was prepared before the result was declared by Sri V.K. Agarwal after necessary scrutiny and no petitioner had acquired any legal right for his name being included in the provisional list of the successful candidates and the Chairman was fully competent to re-examine the whole matter in the light of the complaints received before approving the result for publication. In any case, he should be deemed to have been vested with such powers for discharging his duties as Chairman of the Commission fairly. We also hold that except in the cases

to be discussed hereinafter it was not necessary for the Chairman to give an opportunity of hearing to any petitioner before deleting his name from the provisional list.

40. The petitioners can be divided into various categories in the light of the facts coming to light about them and we now propose to take up the cases of the petitioners category-wise.

CATEGORY NO.1 :- In the first category, we will like to place 3 petitioners, namely, Tripurari Singh petitioner no. 5 in T.A.No.125 of 1987, Mohd. Shamim Khan, petitioner no. 3 in T.A.No.1469 of 1987, ^{and} Ved Prakash Agarwal, petitioner no.3 in T.A.No.1298 of 1987. In the counter affidavit filed on behalf of the respondents, it was stated that these 3 petitioners were duly selected as Asstt. Station Master, Goods Clerk and Office Clerk respectively and they have no right to challenge the validity of any result. The petitioners in their rejoinders admitted the fact of their selection and also stated that they did not want to press the petitions, so far as they were concerned, any further. In view of this undisputed position, the petitions of these petitioners have become infructuous and they are not entitled to any relief in these cases.

CATEGORY NO.2 :- The petitioner no.7 Suresh Pratap Singh of T.A.No.1300 of 1987 was disqualified by the Commission on the ground that he being an Intermediate and an average student, secured more than 90% marks in the written examination and without any past experience secured 10 out of 15 marks on this count in viva-voce which was considered to be unfair and was accordingly disqualified. Petitioner no.31 Ram Yagya of this petition had also secured more than 90% marks in the written examination and he also possessed educational qualification of Intermediate. Nothing further has been stated in the counter affidavit of the Commission about this candidate. Similarly, petitioner

no.38 Mohd. Aslam Khan was disqualified by the Commission as the marks awarded to him in the viva-voce were not found to be justified and fair. We wanted to have our own satisfaction in this respect after seeing their records but the answer sheets of these three candidates were not available in the office of the Commission and could not be produced for our perusal. It cannot be said as to who is responsible for the non-availability of the record. In view of the mass examination and the fact that the other records required by the Tribunal pertaining to the petitioners were made available by the respondents, we will not like to attribute any motive to the respondents or draw any adverse inference against them for withholding the records of these three petitioners deliberately. However, in the absence of any material leading to the conclusion that the petitioners themselves were responsible for the loss or non-availability of the records pertaining to them, the petitioners cannot be punished for the same. We will, therefore, direct that the Commission shall give these three petitioners, if they were not overage on the relevant date according to the notification, an opportunity of reappearing in the next competitive examination to be held for the posts for which they had applied earlier and on any of them being found successful therein, the Commission shall recommend the successful candidate for appointment.

CATEGORY NO.3 :- The petitioner no.28 Santosh Kumar Shukla in T.A.No.1298 of 1987 is shown to have secured low marks in the written examination and was not called for interview. His original record was perused and it was found that he had secured 71 marks in the written examination. Minimum marks fixed for passing the written examination were 112 for general candidates and 83 for S.C. candidates. Nothing to the contrary has been brought to our notice on behalf of the petitioner.

There is one other candidate Rishi Kumar Rawat, petitioner no.3 in T.A. No.122 of 1987 who had secured only 37 marks in the written examination as appears from the record produced before us, though in the written statement this fact was not mentioned as the roll number was not given by the petitioner. This petitioner too can, therefore, have no grievance against any body for his own poor performance. We are accordingly of the view that these two petitioners have no case for including their names in the list of successful candidates and they are not entitled to even any other relief.

CATEGORY NO.4 :- Only two petitioners Vijay Kumar Sharma and Brij Mohan Tewari can be placed in this category. They were called for interview after qualifying in the written examination, but, despite their obtaining 160 marks on which some candidates were selected, they were not selected even though they did not incur any disqualification. The record produced before us on behalf of the respondents shows that the lowest marks obtained by a candidate of the reserved category in the final selection were 118 while by general category candidate such marks were 160. 84 general category candidates had secured 160 marks. Out of them only 20 such candidates were considered for including their names in the list of selected candidates and the remaining candidates were excluded on the ground of age. It has been brought to our notice that when several candidates are bracketed together having secured the same marks, the oldest in age is selected and the youngsters are excluded. In fact, 8 candidates securing 160 marks were disqualified out of the 20 candidates considered and only 12 were cleared. The having roll no.282088 was last of them, namely, Ramesh Kumar Varma/born on 26.8.56.

Two of the petitioners of this category, namely, Vijay Kumar Sharma, petitioner no.9 in T.A.No. 1298 of 1987 and Brij Mohan Tewari petitioner no.36 in T.A.No.1300 of 1987 had respectively secured 160 marks each and were born on 1.7.1960 and 18.1.58. They being younger in age in comparision to the last selected candidate securing 160 marks, they could not be selected under the rules of the Commission and they cannot complain of any unfairness or discrimination against them. These petitioners are, therefore, ^{also} not entitled to any relief.

CATEGORY NO.5 :- There are 19 petitioners, who were called for interview after qualifying in the written test but they were not selected on the ground of low marks. There is no charge of any unfair practice against them. One of them is Ram Vir Singh petitioner no.1 in T.A.No.115 of 1987. He is a Scheduled Caste candidate and had secured 99 marks in the written test and 17 marks in the viva-voce. His aggregate of 116 thus being less than 118 secured by the last selected candidate of the reserved category, he could not be selected. Ashok Kumar, petitioner no.3 in T.A.No.123 of 1987 had secured 151 marks, Satya Prakash Singh petitioner no.3, Piyush Kant Varma petitioner no.10 and Rakesh Kumar petitioner no. 16 in T.A.No. 125 of 1987 had secured 154, 141 and 157 marks respectively, Pankaj Munshi, the sole petitioner in T.A.No. 134 of 1987 had secured 158 marks, Kamlesh Kumar Varma petitioner no.1, Ram Singh petitioner no.3 and Harish Chand Srivastava petitioner no.4 in T.A.No.643 of 1987 had secured 153, 148 and 149 marks respectively. Santosh Kumar Pandey petitioner no.1, Rajendra Kumar petitioner no.2, Indra Sen Singh petitioner no.5, Rakesh Kumar petitioner no.11, Lavkush Prasad petitioner no.15, Rakesh Sinha petitioner no.16 and Manik Lal Malviya petitioner no.25 in T.A.No.1298 of 1987 had secured 149, 158, 157, 154, 155 and 155 marks respectively. Kamlesh Chandra petitioner no.12 and Sanjay Kumar Tewari petitioner no.13 in T.A.No. 1474 of 1987 had secured 142 and

150 marks respectively and Mukesh Kumar Tewari petitioner no.4 in T.A.No. 1301 of 1987 had secured 150 marks only in the aggregate and in this way all of them had secured less than 160 marks on which the last general candidate was selected. After seeing the necessary record produced by the Commission, we have made our satisfaction that there is no alteration or interpolations in the marks ~~assigned~~ ^{awarded} to these candidates and as such, even these petitioners have no cause of any grievance for their non-selection. These petitioners are thus also not entitled to any relief.

CATEGORY NO. 6:- About 96 petitioners were disqualified by the Commission for committing breach of instruction no. 9. At this stage, it is not necessary to give ^{their} names and ~~their~~ particulars. To appreciate the stand of the Commission on this point as well as on the point of the breach of instruction no.6 regarding change of ink, we will like to state certain facts about the question paper set for this selection. The question paper ran into 16 pages and in the end of the question paper, an answer sheet having 150 blank squares was attached. The question paper was divided into 3 parts. Each part contained 50 compulsory questions. The first part contained the question on General English. It had 8 Sections. The first question runs as follows :-

1. He knocked the door
(A) On (B) Over (C) About (D) At (E) UP

Part II contained the question on arithmetic without any Section. Its question no.11 runs as follows :-

Change 3/5 into percentage

- (A) 40 (B) 60 (C) 20 (D) 30 (E) None of these.

The third Part contained questions on General Knowledge. Its question no.1 runs as follows :-

Who wrote the following book:-

Airth-Shashtra

- (A) Kalidas (B) Kautilya (C) R.K.Narayan

(D) Ban_ABhatt (E) None of these.

Out of the 5 answers suggested to the candidates, they had to select the correct answer and in the relevant square of the Part concerned of the answer sheet, he had simply to write A,B,C,D or E. As a matter of safeguard and to prevent unfair practices, the change of ink was prohibited under instruction no.6 and more than 5 corrections in each Section were prohibited and the defaulters were liable to be disqualified. In case of an outside assistance or with the help of any other candidate inside the examination hall, if a candidate decides to correct his answers, he could write 150 alphabets again in the squares of the answer sheet within a few minutes and secure the maximum marks. To prevent the chances of such abuse, it was provided that in case there are more than 5 mistakes in any part of the answer sheet the candidate will be disqualified. Further to avoid the chances of making changes or corrections by the candidates themselves or any body else later on, the change of ink was prohibited. This is understandable that a candidate will come prepared with a fountain pen^{or}, ball pen having sufficient ink to write his roll no. and 150 alphabets and cross marks in the answer sheet and it is not expected that the candidates will make use of different pen for doing so little work during the written examination. On the first page of the question paper, nine instructions were printed for the candidates. According to instruction no.3, each correct answer carried one mark and under instruction no.4, 100 minutes time was allowed to the candidates for solving the question paper. No square was to be left blank and the square meant for the answer of any question, which was not attempted, was to be crossed by the candidate. Instruction nos.6 and 9

with which we are more concerned in these cases are reproduced below :-

"(6) Avoid overwriting and change of ink. This will be treated as mistake.

(9) Not more than 5 corrections in each section is permitted. More corrections will disqualify the candidate."

The contention of the respondents is that breach of instruction no.9 cannot be taken lightly and in the scrutiny made by Sri V.K.Agarwal, Chairman the candidates who where found to have committed the breach of this instruction were disqualified under the rules and the petitioners cannot complain against the same. The petitioners have, however, contended that compliance of instruction no.9 was merely directory and not mandatory and in case of breach of this instruction, the Commission could treat the correction as mistake like other mistakes and the candidates could not be disqualified on this ground. In this connection, they have placed their reliance on the order dated 4.6.1982 of Sri Khan, the then Chairman, copy annexure RA 1 in T.A.No. 113 of 1987. This document shows that the Confidential Section had placed its report before the Chairman stating that normally the Commission cannot totally disqualify a candidate on the basis of more than 5 corrections in each section of the answer sheet and at best what would have been preferable was that in case of more than 5 corrections, no marks should have been awarded for such corrections exceeding the prescribed limit. The report further states that no such instruction was given to the examiners as a result of which they evaluated and awarded marks in such answer books having more than 5 cuttings. It would be practically impossible to go through all answer books and to get them re-evaluated having more than 5 corrections in each Section. In the end, the report suggested that if approved, the result could be compiled ignoring more than 5 corrections. This report was approved by the Chairman on 4.6.82.

The stand of the petitioners, therefore, is that answer sheets were properly evaluated after ignoring more than 5 mistakes according to the direction of the then Chairman and his successor could not change the same arbitrarily.

40.11 We have carefully considered the necessary implications ~~as a result~~ ^{the} of breach of instruction no.9 and are of the view that the Chairman of the Commission had the power to waive any of the conditions laid down by the Commission for conducting the competitive examination in the general interest of the candidates. Though some facts stated and the reasons given in the confidential report that the full instructions were not brought to the notice of the examiner are not convincing as the instructions were contained on the first page of the question paper and the examiners, who were entrusted with the responsible work of evaluation, are expected to read carefully the instructions printed on the first page of the question paper itself. Anyway, if a uniform practice was to be adopted under which in ~~the~~ cases of more than 5 corrections no marks were to be awarded for corrections exceeding the prescribed limit of 5, it could not be said to be ~~wrong~~ ^{wrong} or unreasonable but in fact, it does not seem to have been done. We examined the answer sheet of roll no.46888. In the first part of this answer sheet, there are 26 corrections and in the second and third parts, there are 19 and 29 corrections respectively. He was awarded 37 marks in the first part, 38 marks in the second and 34 marks in the third part. Similarly, in the answer sheet of roll no.294871, there are not less than 15 corrections in each part but he was awarded 43, 33 and 43 marks in the I, II and III part of the answer sheet. We have a peculiar feature to see in the answer sheet of roll

no.161655 where all the squares of the I and II part
as well as answers contained cross marks but the candidate was awarded 41 in part no.I and 39 marks in part no.II. There are about 27 cross-marks in the squares of part III and over writings in some parts but the candidate was awarded 38 marks for the answers of this part. The cross marks and the alphabets indicating answers appears in the same ink and pen. This shows that the examiners did not follow even the principle suggested by the Confidential Section and approved by the Chairman in making the evaluation in cases of more than 5 corrections. The confidential report, annexure R.A.I approved by the Chairman further states that all precautions will be taken while distributing answer books of future examinations to the examiners and in the case of cuttings by way of erasings candidates of 1982 examination have been disqualified as the candidates making erasers in the answer sheet were to be disqualified. Some of the petitioners before us also appear to be guilty of making erasers and on this ground, they are liable to be disqualified. We are further of the view that the erasers have not only been made by the candidates but even by some of the examiners. It is really a sad aspect of this examination.

¶ The respondents have not produced before us any order of the successor of Sri Khan revising or reviewing the order dated 4.6.1982 of his approval to the confidential report aforesaid and as such, in our view, the said order of Sri Khan could not be ignored by Sri Agarwal treating it void or illegal for want of power or authority. In view of the aforesaid approval of Sri Khan, the instruction no.9 was to literally could not be strictly followed and the evaluation was to be done by ignoring more than 5 corrections in each part by treating them as mistakes. In this way, no marks

were to be awarded for such corrections. As this has not been done and the Tribunal will certainly not like to do this job, we will direct the Commission to get all the answer sheets of the candidates who were disqualified under instruction no.9 re-evaluated by ignoring more than 5 corrections in each part and treating them as mistakes. We may add that the corrections made by resorting to erasers may be sufficient ground for disqualifying the guilty persons as stated above.

CATEGORY NO.7 :- The sole petitioner Vyas Singh in T.A.No. 117 of 1987 and petitioner no.1 Subhash Chand Gautam in T.A.No 1478 of 1987 had noted their names in the answer sheets. As the petitioner Vyas Singh had simply sought the declaration of the result of the entire examination, the respondents did not make this allegation in their counter affidavit filed in his case specifically but this thing was brought to our notice on the production of the original record. Instruction no.2 prohibits the writing of name by the candidates on the answer sheet. On the other hand, the stand of the respondents regarding Subhash Chand Gautam is that he is also guilty of committing the breach of instruction no.9. The question concerning breach of instruction no.9 has to be dealt with in accordance with the directions contained above but so far as the breach of instruction no.2 is concerned, we will simply like to say that in case, under the practice and rules of the Commission, the candidates disclosing their identity by writing their names or otherwise are to be disqualified these two petitioners are also liable to meet the same fate. However, in case there is no rule on this point and in the actual practice in the Commission, the breach of instruction no.2 is not taken seriously and is not considered as a sufficient ground for disqualifying a candidate, after getting their answer sheets re-evaluated by a different examiner and on their obtaining the required number of marks for being declared successful, they should also be ^{so} declared and recommended for appointment.

CATEGORY NO.8:- There are 13 petitioners, namely, Ravindra Kumar and Kishan Chand in T.A.No.121 of 1987, Ranvir Singh, Rajan Lal, Satya Prakash Shah in T.A.No.124 of 1987, Ramesh Chand Pandey in T.A.No.246 of 1987, Rama Shankar Tripathi in T.A.No.1298 of 1987, Mohand Chand Gupta in T.A.No.1299 of 1987, Dinesh Singh and Kamla Prasad Singh in T.A.No.1300 of 1987, Sailendra Kumar and Sri Newas in T.A.No.1301 of 1987 and Jamruddin in T.A.No.1305 of 1987 whose roll numbers in figures as noted in the answer sheets did not agree or tally with the words noted therein. On account of this difference in the figures and words of their roll numbers, their results could not be declared. Sometimes, such mistakes do take place due to some accidental slip and if a candidate is debarred or disqualified for committing such bonafide mistake, it will be too hard to cancel his result on that ground. We will, therefore, direct that the cases of these petitioners should be re-examined by the Commission and if with the help of their applications and the sheet of roll numbers maintained by the Commission, their identity can be fixed with the help of any of the two roll numbers noted on the answer sheets, their results should also be declared and if found successful, their names be recommended for appointment. In case of any doubt about their bonafides, the Commission will be free to obtain their specimen hand writing to ensure that the roll numbers and the answers in the answer sheets were actually written by these candidates. We will also like to add that in case any of these petitioners also fall in any other category made by us, the declaration of their result will be subject to the consideration of all the aspects of their cases.

CATEGORY NO.9:- The sole petitioner, Ajay Kumar Sharma in T.A.No.909 of 1987 is shown to have failed in psychological

test while his passing the said test was necessary for selection to the post of Asstt. Station Master. It is *further* alleged that he had applied only for the post of ASM. In his rejoinder, he has denied this allegation and has stated that he had applied for both the categories of posts and on his having failed in Psychological test, he should have been considered for the post in category no.2 for which Psychological test was not compulsory. His original application was summoned from the Commission and it shows that this petitioner had applied only for the post of category no.1-ASM and not for any other post. His contention to the contrary is not correct. The copy of the application filed by him in this case is not the true copy of the application submitted to the Commission. He, therefore, rightly could not be considered for any other post and no relief can be granted to this petitioner.

RESIDUAL CATEGORY: The remaining petitioners can be placed in this category which can be further divided into 3 sub-categories. The first of such sub-categories is of those candidates whose answer sheets did not bear the signatures of any examiner. The second sub-category is of the candidates who adopted unfair means in the written examination and the third sub-category is of the candidates in whose summary sheets, manipulations have been made. The results of such candidates were withheld and they were disqualified. The grievance of the petitioners is that this could not be done without affording them opportunity of hearing. They relied on D.V.Ramana Vs. Central Provident Fund Commissioner (Supra) ; Union of India Vs. Tulsiram Patel (A.I.R.1985 S.C-1416) ; S.Govindaraju Vs. K.S.R.T.C (Supra); Smt. Meneka Gandhi Vs. Union of India (A.I.R. 1978 S.C.-597) in support of this contention. On the other hand, the learned counsel appearing on behalf of the Commission has urged that in such a case, the principle of *Audi Alteram Partem* will not apply and the examining body is under no legal obligation to give an opportunity to show cause to the

candidates in whose cases, serious irregularities are detected. He placed his reliance on a decision of the Hon'ble Supreme Court in Jawahar Lal Nehru University Vs. V.S. Narwal (A.I.R. 1980 S.C.-1666). The following observations of their Lordships, made in that case, ~~of the Supreme Court~~ may be quoted below :-

"..... One does not hear of a claim to be heard when a candidate fails to qualify at an aptitude or intelligence test, written or oral. When duly qualified and competent academic authorities examine and assess the work of a student over a period of time and declare his work to be unsatisfactory we are unable to see how any question of a right to be heard can arise. The duty of an academic body in such a case is 'to form an unbiased assessment of the student's standard of work based on the entirety of his record and potential.

....

....

If the assessment by the academic body permitted the consideration of 'non academic' circumstances also, a right to be heard may be implied. But if the assessment is confined to academic performance, a right to be heard may not be so implied. Of course, if there are allegations of bias or mala fides different considerations might prevail, but in the absence of allegations of bias or mala fide we do not think that the declaration by an academic body that a student's academic performance is unsatisfactory, is liable to be questioned in a Court on the ground that the student was not given an opportunity of being heard."

He further placed his reliance on R.S. Dass Vs. Union of India (1987 (2) ATC-628) in which considering the scope of the principle of *Audi Alteram Partem* in a case of the preparation of the select list under the IAS (Appointment by Promotion) Regulations, 1955, the Hon'ble Supreme

had observed that no vested legal right of a member of the State Civil Service, who after being considered, is not included in the select list, is adversely affected. Non-inclusion in the select list does not take away any right of a member of the State Civil Service. Therefore, no opportunity is necessary to be afforded to him for making representation against the proposed supersession.

40.2 Placing reliance on Sanjeev Kumar Agarwal Vs. Union of India (Supra), it was contended on behalf of the Commission that in a case of fraud like the one before the Tribunal, when the fraud is committed even by the servants of the employer, the employer is not bound by their acts though done during the course of their employment and when the appointment was void ab-initio having been obtained by fraud, no opportunity of showing cause was necessary before terminating the appointment.

40.3 We have very carefully considered the contentions raised on behalf of the parties in this connection and are of the view that though no right accrued to the petitioners simply by inclusion of their names in the provisional list, that was prepared by the office of the Commission on the basis of the marks obtained by them in the written and viva-voce tests but in view of the serious allegations against the petitioners, the then Chairman, examiners and other staff of the Commission, if it was deemed necessary to disqualify some of the candidates on any ground, it would ^{have been more} ~~not~~ be expedient on the part of the Commission to have their version before taking final decision in their cases. This would have certainly gone a long way to help the Commission in coming to a correct and equitable conclusion in a good number of cases.

40.4. The petitioners have further contended that the persons who had taken the decision against the petitioners themselves were not free from their own weaknesses as Sri B.P. Bhargava was removed from the post of Chairman in a short time

and Sri V.K.Agarwal in whose time the impugned results were declared had to ^{be} placed under suspension in connection with the leaking out of a question paper of the 1984 examination. It was also contended that it is surprising that despite the serious allegations made by the petitioners against these two officers and their being impleaded as parties in most of these petitions, they did not have the courage to come forward and file their counter affidavits to clear the doubts ^{expressed} ~~made~~ against them in the petitions. Reliance was placed on State of Gujarat Vs. S.Tripathi (1986 S.C.C.(L&S) 273) in which the Supreme Court had laid emphasis on the fact that counter affidavits on behalf of the officers ~~for~~ or the State against whom serious allegations are made in the writ petitions should promptly file their counter affidavits to avoid adverse comments. It was also pointed out on behalf of the petitioners that though Sri Bhargava in his D.O.letters, annexures CA 1, 2 and 4, had adversely commented against his predecessor Sri Khan and had pointed out about certain illegalities and irregularities committed during the tenure of Sri Khan in conducting the selection in question, neither he nor any body else on behalf of the respondents could have the courage to make even a slightest insinuation against the former Chairman Sri Khan in the counter affidavits filed in these cases and as such, the results prepared during his time cannot be allowed to be altered by his successors in the absence of the necessary materials to justify the same.

40.5. Regarding the allegations of fraud, the contention of the petitioners is that the allegation of fraud like any other charge of a criminal offence must be established beyond any reasonable doubt and where a person on whom the

fraud is committed is in a position to discover the truth by due diligence, the fraud cannot be said to have been established. In support of this contention, they placed their reliance on Union of India Vs. M/S. Chatur Bhai N. Patel & CO., (A.I.R. 1976 S.C.-712) and Sri Krishna Vs. The Kuruchhetra University (A.I.R. 1976 S.C.-376).

40.6. The petitioners have also complained of discrimination against them. Their contention is that in case illegalities and irregularities were committed at the large scale in the 1982 examination conducted by the Commission, the entire result of the selection should have been cancelled and the action of the Commission in not doing so is highly arbitrary and discriminatory and the petitioners could not be placed in a disadvantageous position in comparison to those selected by the Commission on the basis of the same examination. They have further cited one specific example of discrimination and placing reliance on the D.O. letter dated 14.2.1983, annexure CA 3, of Sri B.P. Bhargava addressed to the Director Establishment, Ministry of Railways, it was contended that the candidate having roll no. 220220 mentioned at page 11 of this D.O. letter had committed various irregularities in the opinion of Sri Bhargava but his name appears in the list of successful candidates issued by the Commission. It was, therefore, urged that in case this candidate could be found ~~successful~~ ^{successful} by Sri V.K. Agarwal, the petitioners allegedly committing similar mistakes could not be treated differently and on this ground alone, they all are entitled to be cleared of the allegations of fraud, illegalities and irregularities alleged to have been committed by them. They placed their reliance on Sengra Singh Vs. State of Punjab (A.I.R. 1984 S.C.-1499) and Vishun Das Hundu Mal Vs. State of MP. (A.I.R. 1981 S.C.-1636) in which the Hon'ble Supreme Court had granted relief to the petitioners before it on the

basis of the well established principle that the petitioners similarly situated must receive the same benefit and treatment granted to others in the absence of any distinguishing feature in their cases.

40.7. So far as the question of discrimination and the principle of equality before law are concerned, there cannot be two opinions about the fact that the petitioners before us are entitled to the same benefits as allowed to the others similarly situated by the Commission. The only question to be seen by us is whether they are similarly situated or their cases are in any way distinguishable as alleged by the respondents. There can also be no dispute about the principle that the mere allegation of committing fraud or any illegality or irregularity by any candidate is not sufficient and there should be necessary material to bring home such charge to them. Regarding the absence of any counter affidavit on behalf of Sri B.P.Bhargava and Sri V.K.Agarwal arrayed as respondent nos. 4 and 5 in some petitioners, it may suffice to say that no relief has been claimed in any of the petitions against them personally. Though Sri V.K. Agarwal was suspended for a short time for about a month or so in 1984, he was reinstated with full benefits as appears from the own documents of the petitioners, namely, annexure R.A.III in T.A.No.125 of 1987. We are told that ~~that~~ both Sri Bhargava and Sri Agarwal are serving under the railway administration on senior posts. Therefore, there appears nothing against them so far as their employer, the railway administration, is concerned to be cleared by the Court and if they chose not to contest these cases or file their counter affidavits, no adverse inference can be drawn against them. The same arguments of the petitioners should apply to counter their contention ^{and} ~~that~~ in the absence of any material furnished by them, we are unable to accept

their contention that Sri B.P.Bhargava and Sri V.K.Agarwal were not good persons or they had not declared the result on the basis of the provisional list due to any personal reasons or with ulterior motive. As already pointed out above, no counter affidavit was filed on behalf of the Railway Board and the General Manager Northern Railway and the counter affidavits were filed only on behalf of the Commission. Most of them were sworn by its Assistant Secretaries and a few of them were sworn by Secretary-Member. ^{All} Both of them being subordinate officers, they could hardly be expected to make any insinuation what to say of serious allegations against Sri Khan and as such, on this ground as well, we are not inclined to draw any adverse inference against the respondents.

40.8 Regarding the discrimination, we are of the view that if the Commission on getting the assistance of the vigilance Directorate was in a position to separate the grain from the chaff, no allegation of discrimination can be made against it. Candidates found indulged in any unfair practice or breach of rules formed a separate class of their own and they cannot be equated with those who either despite having opportunity or due to not having such opportunity, appeared in the selection honestly without committing any breach of the rules or regulations or without resorting to any unfair practice and as such, the petitioners cannot be said to be similarly situated and they being a class by themselves, it cannot be said that they have been denied equality in law.

40.9 So far as the specific example of discrimination cited on behalf of the petitioners is concerned, it is certainly a matter which requires serious consideration. A few days after the hearing in these cases was closed, a supplementary counter affidavit was filed on behalf of the respondents to meet this objection raised on behalf of the petitioners but the same was rejected as the Commission did not follow the

correct procedure in doing so. We, however, summoned the answer sheet of this candidate and examined it in the light of the allegations made by Sri Bhargava about this candidate in his D.O.letter, annexure C.A.3. Sri Bhargava had made the following comments about this candidate in his letter :-

" Hand writing in which answers have been written is different than one in which the roll number has been written. Roll No. in words has been wrongly written even in Hindi. Ink used in answer sheet is different. There are few over-writings and corrections. Answers appear to be written in two hand-writings."

It is correct to say that the roll number was written by this candidate by blue ink while the answers were written by black ink in the answer sheet and there is, thus, difference in ink. In our opinion, such difference in ink is not covered under instruction no.6. The change of ink and over writing should be deemed to have been prohibited in respect of the answers and not in respect of roll numbers. The only mistake committed by the candidate in writing his roll number in words in Hindi is that he has used the word SAV (साव) for word SAU (सौ) between the words DO and BIS. We have not come across any word SAV being used for denoting any number and perhaps in some local dialect some people might be calling SAV ^{SAU as} for [^] SAU. In any case, the use of word SAV can be said to be a grammatical or spelling mistake but in no case, it could make out different roll number ^{other} than that noted in figures.

40.8 The other allegation of Sri Bhargava about this candidate is that there are a few over writing and corrections in his answer sheet. Answers are also stated to have been written in two hand writings. The over writings appearing in ^{the} answer sheet have been made very carefully and without the help of magnifying glass and expert knowledge, it is difficult for a lay man to say whether the hand-writing used in this answer sheet is of more than one person and whether the actual over writings committed in each part are more than 5. It is, thus, possible that at the time of scrutiny, the successor of Sri Bhargava might have come to a different conclusion and could not detect the over writings and the difference in hand writing appearing in the opinion of Sri Bhargava. In view of the fact that some cases are to be re-examined by the Commission, we will direct that the case of the candidate of this roll number should also be very carefully re-examined by the Commission and, if necessary, with the help of some hand-writing experts, and if he is found to have used unfair means in getting himself declared successful, his result should be cancelled after giving an opportunity of hearing to him. There can be no difficulty in cancelling his result and even appointment by the respondents as the same were made subject to the decision in these writ petitions. We will like to add that as Sri Bhargava entertained doubts about the competence of the candidate who had secured very high marks in the written test, it will be expedient to call him in the office of the Commission to obtain a few specimen hand writing of his roll numbers in figures and words as well as of the alphabets A, B, C, D and E for comparison with those used in his answer sheet.

40.9 Regarding the fraud and illegalities alleged by the respondents in conducting this examination, we are of the view that there are tale-telling features of such illegalities and unfair means, which require no external evidence for their establishment and by a mere look one can feel convinced about the alleged unfairness resorted to. The cases coming in this category can be sub-divided into 3 parts as pointed out above. The procedure followed by the Commission is that each examiner is allotted certain number of answer sheets and he is required to write his name in capital letters and make his signatures in ^{each} ~~the~~ answer sheet ^{examined by him} at the bottom at the place reserved for it. He has to enter the marks awarded to each candidate on his answer sheet in respect of each part separately and in the bottom he has to give total of the marks obtained in all the parts. The marks awarded to each candidate are then entered in a result sheet to be prepared separately by each examiner. Such result sheets are submitted along with answer sheets by the examiners to the office of the Commission and on the basis of the result sheets a summary sheet is prepared in which the marks obtained in each part and their total by the candidates are separately recorded in its respective columns. The marks awarded by the Selection Board in the viva-voce under each head are thereafter separately noted against each candidate in the summary sheet. After noting the total number of marks obtained in viva-voce the grand total of the marks is written in the next column which is considered for preparing the final result.

40.10 Sri Bhargava has stated in his letter, annexure out CA -3, that of 244 examiners about 60% answer sheets of successful candidates were evaluated by only 37 examiners. Out of the said 37 examiners, the necessary particulars of most of them were not available. This single fact indicates that

the examiners declaring most of the candidates successful in the written examination were not regularly appointed by the Commission for discharging this duty and the answer sheets were examined by unauthorised persons. This appears to have been done with a view to help certain candidates and its consequences cannot be avoided by the candidates merely by saying that they are not responsible for the acts of the officials of the Commission. In some answer sheets examined by us, there are interpolations in the marks awarded by the examiners while in some cases, the marks noted in the result sheet are different than the marks awarded in the answer sheet. In some cases, the examiners, irrespective of the nature of the answers, awarded high marks to the candidates in order to help them illegally. To quote an example, petitioner Triloki Nath Shukla in T.A.No. 1474 of 1987 was awarded 115 marks in his answer sheet while on tallying the answers with the model answer sheets, he is not entitled to get more than 52 marks. The same appears to be the case of the petitioner having roll number 221722 who was awarded 132 marks by the examiner while according to the model answer sheet, he could not get more than 54 marks. The petitioner Ashok Kumar Varma in T.A.No.643 of 1987 was awarded 81 marks in the answer sheet but in the result sheet prepared by the examiner, he had entered 135 marks. Similarly, in the summary sheet there are interpolations and cuttings in the marks awarded to the candidates in the viva-voce. Only a few corrections made in the summary sheet bear the initials of both the members of the Selection Board. We have been told that the marks awarded in viva-voce are not noted by the members of the Selection Board anywhere else.

There is, therefore, no other material from which there can be a cross-checking. We do not want to highlight other irregularities committed in noting the marks in the summary sheets as the same may prejudice the parties later on. It will suffice to say that in ^{the} cases in which it is not possible to determine ~~after re-examination~~ as to what marks were actually awarded to any candidate originally in the viva-voce test, such candidates should be called again for viva-voce to have a fair deal. Such candidates, not already selected, may also be called for viva-voce again who were awarded exceptionally high marks in the viva-voce.

40.11 Frequent change of ink, similarity in the answer sheets of a number of candidates, awarding of high per centage of marks to the candidates of average standard, subsequent interpolations in the answers, similarity in the hand writing of a number of candidates in their answer sheets, repetition of the same mistakes by a number of candidates in attempting their answers, similarity in the hand writing in the answers and the marks awarded in some answer sheets are some of the broad features of the unfair means adopted in writing the answers and awarding the marks in the answer sheets. There have been some cases in which the candidates appeared from the centres different than those allotted to them. In view of such features, we do not require any evidence for coming to the conclusion that unfair means were used at a large scale by all concerned in conducting ^{and provisional list could not and should not have been declared as a final result} the selection in question and the action of Sri V.K. Agarwal in disqualifying or not clearing such candidates in whose cases such glaring irregularities were detected on scrutiny cannot be termed to be arbitrary and in no case, mala fide. As a matter of

fact, Sri V.K. Agarwal had simply taken up the thread already held by his predecessor Sri Bhargava and he is responsible only for the follow-up action. The real initiative was taken by Sri B.P. Bhargava who even at the cost of his career and threats to his life refused to perpetuate the wrongs committed in conducting the selection as appears from his letters, annexures CA 2 and CA 3, and did not agree to declare the result soon after the interviews were over without doing the necessary scrutiny. In our opinion, the petitioners have tried to condemn these two officers wrongly without any basis simply to bring their cases within the scope of judicial scrutiny by irresponsibly making personal allegations against them.

41. Usually some opportunity is given by the Public Service Commissions, Universities and other educational Boards and institutions to show cause to the delinquents when it is proposed to cancel/or debar them on the charge of using unfair means. In most of the cases before us, it could not be deemed necessary as the results of a number of petitioners were deleted on account of the illegalities and irregularities committed by the examiners or the members of the Selection Board or by the office of the Commission and not by the candidates themselves. Naturally in such cases any opportunity to the affected candidates could hardly be of any meaning. However, in other cases, such opportunity should have been given but the same was not done. It may be partly due to the fact that perhaps no clear rules exist on this point. No party to the bunch of these cases has alleged the breach of any specific rule of the Commission in their pleadings. No such breach was brought to our notice even at the time of long arguments in these cases. We, therefore, infer that the Railway

Board has not framed the necessary rules governing the procedure of the Railway Service Commission/Railway Recruitment Board and specially for meeting the contingencies as had arisen in these cases. In case, no such rules in fact exist or have been framed even till date, the Railway Board will be failing in its duty if a set of such comprehensive rules are not framed without any further loss of time now to prevent the abuse of power by the staff of the Commission/Board including its Chairman and Secretary and the use of unfair means by the candidates, examiners and others.

42. The declaration of the final result of the written examination held on 16.2.1981 was already ^{much} delayed and during the tenure of Sri Bhargava, no policy decision could be taken to meet the extra-ordinary situation created by the various illegalities committed in conducting ^{the} selection and interviews. Perhaps, on account of this delay, Sri Agarwal had issued a press note on 21.9.1983 for removing the suspense by notifying that the results will be declared by the end of Oct. 1983 and on account of hurry the idea of giving such opportunity either did not strike him or he deliberately did not resort to it to avoid further delay and on a second thought decided to declare the results in piece meal soon thereafter. The idea of declaring the result of any competitive examination in piece meal apparently looks strange but under ^{the} peculiar circumstances of the examination in question, the same could be done without committing any wrong or illegality. Before declaring

the result, a merit list of each category of candidates has to be prepared and in the absence of the merit list it is not possible to declare the result in piece meal.

A provisional merit list was ready in this case and after making the scrutiny of the result of about 1400 and odd candidates comprised in the provisional merit list designed to be notified, the result could be declared in piece meal as soon as the scrutiny in respect of certain number of candidates was over. We, therefore, find nothing wrong in the action of Sri Agarwal in declaring the result in piece meal in these case and the contention of the petitioners to the contrary is not correct.

43. Now coming to the main question whether and if so, what opportunity was to be given to the petitioners before deleting their names from the provisional list of successful candidates. In our opinion, the opportunity should have been given to only such candidates who themselves appear to have committed some wrong and no opportunity could be given or was necessary in respect of wrongs committed by the examiners or own staff or Selection Board. However, by the action taken by the Commission for the acts of others, the candidates ultimately suffered. The results of some of the candidates were cancelled or deleted on account of ^{the} mistakes committed by the examiners and the members of the Selection Board. In case the Commission decided to cancel the evaluation wrongly made by some examiners or to ignore the marks wrongly awarded to some of the candidates in the viva-voce test, the answer sheets of such candidates should have been got re-evaluated by proper persons and they should have been called for a fresh interview and without affording such opportunity, it could not be equitable and fair to cancel their results, though

there may be some presumption that the examiners and the members of the Board or other staff of the Commission would have committed the wrongs with a view to help the candidates with their active cooperation or connivence , yet there may be some cases when the candidates themselves may not be directly responsible for such acts and someone interested in them might have resorted to such unfair tactics. We are, therefore, of the view that though no opportunity of showing cause was necessary to any candidate for the wrongs done by others, they should have been placed in the position as if nothing wrong was done by ignoring the wrongs done by others.

44. After giving a serious thought to this problem, we are of the view that the Commission should get all such answer sheets re-evaluated by a different set of reliable examiners which were evaluated by unauthorised persons. It should get such further answer sheets re-evaluated by different sets of examiners in which either interpolations have been made by examiners in marking or in carrying forward the marks in the result sheets or the marks are not based on merits. Before handing over the answer sheets for re-evaluation, the marks awarded by the previous examiners should be concealed by pasting paper slips or using other appropriate device to have a fair and proper re-evaluation. Similarly in the cases in which exceptionally high marks were assigned to some candidates in the interviews, or cuttings, over writings or other interpolations have been made in the summary sheets by anyone, all candidates whose results were deleted on this ground should be called for fresh interview and after the re-evaluation and the fresh interviews, when necessary, the result of such candidates should be prepared afresh and on their getting more marks than those secured by the last

selected candidates of their category they should be declared selected and recommended for appointment.

45. In our opinion, the candidates appearing from examination centres not allotted for them under the authority of the Commission can hardly be heard making any grievance on their participation in the competitive examination in the manner and from the place best suited to them and in case the results of any such candidate were cancelled by the Commission on this ground alone, we will direct that their cases be re-examined only to ascertain the reason of their appearing from such centres after giving them an opportunity of hearing and on their failure to furnish any satisfactory explanation, their performance at the examination is liable to be ignored.

46. The other cases, in which the use of any unfair means ~~was been~~ detected and as a result of which the candidates were disqualified, have also to be re-examined after giving them an opportunity of showing cause. We have come to this conclusion after a careful consideration of the case law submitted on behalf of the respondents. In our opinion, the cases of all candidates falling under para 2 of the observations made in Jawaharlal Nehru University Vs. V.S. Narwal (Supra) and quoted at page 46 para 40.1 of this judgment are entitled to an opportunity of hearing. The principle laid down in Sanjeev Kumar Agarwal Vs. Union of India (Supra) cannot be applied to the cases before us as in that case, the Principal Bench, after following the unusual procedure ^{of} taking oral evidence had come to the conclusion that the petitioners before it had obtained their appointment as Clerks in the C.P.W.D. by committing fraud without even appearing in the written and viva-voce tests; their appointments were void ab.

initio and they were not entitled to any opportunity. In the cases before us, we have not recorded a finding of committing fraud by any petitioner and unless the fraud is established by some *prima-facie* evidence, some opportunity has to be given even to a person who is shown to be guilty of committing fraud. The other cases cited on behalf of the respondents are not applicable to the facts of the cases before us.

47. Regarding the nature of the opportunity to be given to the petitioners, nothing in particular was submitted on behalf of any party. In P. Subbarao Vs. Andhra Pradesh Public Service Commission (Supra), it was held that the Public Service Commission could collect the material against the delinquent behind his back and it was not necessary for it to reveal the source of information to him. All that was necessary was that he should have been given an opportunity to correct or contradict any statement prejudicial to him. For this opportunity, a mere notice containing the allegation against the delinquent was sufficient to have his say by way of explanation in writing and no other opportunity was considered necessary. In S. Govindaraju Vs. Karnataka S.R.T.C. (Supra), while pointing out the scope of opportunity of hearing to be given to a person whose name was included in the select list but whose services were terminated on the ground of unsuitability, the Hon. Supreme Court had laid down that compliance with minimal requirement of natural justice by affording opportunity of explanation was sufficient. The relevant observations made by the Hon'ble Court in that case are quoted below:-

"In such a situation even though the Regulations do not stipulate for affording any opportunity to the employee, the principles of natural justice would be attracted and the employee would be entitled to an opportunity of explanation, though no elaborate enquiry would be necessary. Giving an opportunity of explanation would meet the bare minimal requirement of natural justice."

48. In our opinion, no more opportunity than one suggested by the Hon'ble Supreme Court, as above, is necessary in the present cases and in all cases in which the results of the petitioners were deleted by the Commission on account of their resorting to any unfair means, they should be given an opportunity of stating their cases by serving them with the notice containing the necessary allegations against them. If deemed necessary, the Commission will be at liberty to ask any candidate to give his specimen writing for comparision by a Government expert and in case the persons concerned fail to turn up to give such specimen an adverse inference can be drawn against them and their cases be decided accordingly on the basis of the existing material. No candidate will have a right of further opportunity to adduce evidence or to cross-examine any person. unless deemed necessary by the Commission in any case due to the peculiar nature An opportunity of personal hearing is also not necessary in these cases. We will, however, make it clear that the opportunity of hearing has to be given by the Commission only to such petitioners who are shown to have obtained more marks than those secured by ^{the} last selected candidates of their category. Such opportunity is also not required to be given to those petitioners who were over age or otherwise disqualified for appearing in this selection. We will however, advise the Commission that it may undertake the aforesaid exercise even in respect of such candidates who are not the petitioners before the Tribunal but had secured more than the minimum marks required for selection and are

still desireous of seeking employment in the railway administration.

49. A few cases came to our notice in which the candidates were overage according to the terms and conditions of the notification No.1/79/80 of the Commission under which the selection in question was held. The plea of estoppel has been raised on their behalf and it was contended that the candidates having been allowed to appear in the written examination and the viva-voce tests with open eyes by the Commission, their candidature could not be cancelled at a later stage. In our opinion, in the cases against Government and Public Institutions, the principle of estoppel or promisory estoppel cannot be applied in every case. The plea of estoppel can be raised ^{only such} in cases when the declaration, act or omission ~~made by express~~ on which the plea of estoppel is based, was made by a person competent to take a decision in the matter and not by a person at the lower level. In case, this ^{view} ~~case~~ is not taken, sometimes it may lead to disastrous consequences on the convenience of the people made at the lower level with ulterior motive at the instance of someone interested in such things. In the cases of the present nature, when more than 3 lakhs candidates applied for 1465 posts, it can hardly be said that the candidature of such candidates who were either overage or were otherwise disqualified due to their not fulfilling any condition was accepted with open eyes. Further, the petitioners had to establish that there was a provision under the rules of the Commission for granting exemption in the matter of overage and the decision for making such exemption was made by the competent authority after considering the full facts. In the absence of this, in view of specific

condition of age, the plea of estoppel is not open to the petitioners. There is no other point for consideration in these cases.

50. In view of the above considerations, we dismiss the petitions of the petitioners falling in categories 1,3,4,5 and 9. The petitioners falling in category no.2 have to be re-examined by the Commission in the next selection to be held for the similar post in future and no time limit for its compliance is fixed. The Railway Service Commission/Railway Recruitment Board is directed to complete its necessary exercise in respect of other cases in the light of the observations ^{made} ~~given~~ above in the body of this judgment within a period of 4 months from the date of the receipt of copy of this order. We further direct the Railway Board and the General Manager of the Northern Railway to give appointment to all such candidates who are recommended by the Railway Service Commission for appointment under this judgment against the existing vacancies and in case of there being no vacancy, ~~supererogatory~~ ^{numerary} posts should be created for them, in case they are otherwise found suitable for appointment. It is, however, made clear that such appointees shall not be entitled to any arrears of pay for the period prior to their appointment. The petitions are disposed of accordingly without any order as to costs.

Sharma
MEMBER(J)

Bhmm
MEMBER(A)

Dated: Sept. 16, 1988
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