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RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 15th day of July, 1996  
Original Application No. 930 of 1988

District : Varanasi

CORAM:-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

1. Jiwan Ram S/o Sonhu

2. Nirmal Biswas S/o Nalini Biswas

Head Clerk U/Dy.C.C.S./C., N.Rly.,

Station Building, Varanasi.

(By Sri SK Dey, Advocate)

. . . . . Applicants

Versus

1. Union of India, through the General Manager,  
Northern Railway, Baroda House, New Delhi.

2. The Dy. Chief Commercial Superintendent (Claims),  
Northern Railway, Station Building, Varanasi.

(By Sri A.K. Shukla, Advocate)

. . . . . Respondents

O R D E R

By Hon'ble Mr. S. Das Gupta, A.M.

Two applicants jointly filed this application under  
Section 19 of the Administrative Tribunals Act, 1985 challenging  
the office order no.29/88 dated 16-5-1988, by which results of  
written tests held on 25-4-1987 and 6-6-1987 for the post of  
Asst. Superintendents was cancelled and a fresh selection for  
the said post was notified. They have also challenged a

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subsequent notification issued under office order no. 31/88 dated 25-5-1988 by which a fresh date for selection was notified. They have prayed that both the orders be quashed and the respondents be directed to hold interview on the basis of result published vide office order no. 1/88 dated 14-1-1988.

2. The applicants were posted as Head Clerks in Northern Railway Varanasi. They were in the line of promotion to the post of Asst. Superintendent, which is a selection post and promotion to which is made on the basis of a positive act of selection. By the order dated 27-3-1987 (Annexure-2), 84 persons were directed to appear in the selection test for the post of Asst. Superintendent. The applicants also figured in the list. Applicant No. 1 appeared for the written test held on 25-4-1987 whereas the applicant No. 2 appeared in the Supplementary test held on 6-6-1987. The result of the written test was declared by the office order no. 1/88 dated 14-1-1988 (Annexure-4). 33 candidates were declared successful in the written test and were directed to appear in the interview on 3-2-1988. The applicants figured at Serial Nos. 32 and 33. However, no interview was held on 3-2-1988 and it was postponed to 5-2-1988 by office order no. 3/88 (Annexure-5). However, by order dated 3-2-88 (Annexure-6) the result of the written test was revised. In the revised list names of five candidates, who were shown as successful in the earlier list were deleted, while the names of twelve candidates, who did not figure in the first list, were included. The revised list was thus for forty candidates in which the applicants figured at Serial Nos. 37 and 39. All these forty candidates were directed to

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appear for the interview on 5-2-1988. No interview was, however, held on that date and by the impugned order dated 16-5-1988 (Annexure-7) the result of the written test was cancelled and it was proposed to hold fresh selection on 5-6-1988. This time 105 candidates including the applicants were directed to appear in the written test. Subsequently, the impugned order dated 25-5-1988 was issued directing 108 candidates including the applicants to appear for selection test on 11-6-1988. The applicants thereafter filed this application challenging the impugned orders. They also moved an application for grant of interim order restraining the respondents from declaring results of the test held on 24-9-1988 and 1-10-1988 and also for not promoting any other person as Asst. Superintendent during the pendency of the case. This application was disposed of with the order that the result of the selection test as well as promotions made therefor shall be subject to the decision of this case.

3. The respondents have filed a written reply in which it has been stated that after the results of the written test was declared on 14-1-1988, it was noticed that some mistake in the preparation of the results had been committed. Therefore, the result was scrutinised by the competent authority and the result was declared afresh on 3-2-1988 declaring five candidates of the previous list as unsuccessful and 12 candidates who did not earlier figure in the list as successful. However, thereafter both the recognised unions represented on 3-2-1988 that the vacancies were wrongly calculated for the selection and also that the

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declaration of the results twice was wrong and, therefore, the selection ~~xx~~ process be cancelled and a fresh selection be held. The case was called for by the higher authorities in the headquarters office for examination. <sup>The</sup> ~~There~~ representations of the recognised unions L examined in detail by the competent authority i.e. the Chief Personnel Officer and the Chief Claims Officer and it was decided by them to cancel the result of the previous written test and to hold a fresh selection after calculating the vacancies afresh. The vacancies were calculated at 36 and accordingly 108 candidates were called to appear in the fresh written test. However, earlier by mistake names of only 105 candidates were published in the order dated 16-5-1988 and therefore the revised order was issued on 25-5-1988 directing 108 candidates to appear in the test. <sup>held</sup> The written test was finally L on 24-9-1988 and on 1-10-1988 in which 99 candidates actually appeared.

4. The applicants have filed a rejoinder reply in which it has been alleged that the result declared on 14-1-1988 was subsequently modified with malafide intention and that no interview was held on 3-2-1988 only to manipulate the result by declaring 12 failed candidates as passed. They have also stated that incorrect calculation of vacancies cannot be a justification for cancellation of a selection held.

5. When the case was called out, none appeared for respondents. As the case is a very old one, we heard the learned counsel for the applicants and perused the records.

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6. In our considered view, the respondents have all along acted in a most arbitrary manner. They had initially called 84 candidates to appear in the selection. Since the prevalent rules in the Railways is that the number of candidates to be called for selection would be three times the number of vacancies, presumably the number of vacancies for the selection test was held was 28. Initially only thirty three candidates were declared successful in the written test. The result was declared on 14-1-1988. Successful candidates were directed to appear for viva voce test on 3-2-1988. This date was postponed to 5-10-1988 and on 3-2-1988 itself the revised results were declared deleting certain names and including certain others making up a total of forty persons to be called for viva voce test. It is strange that the results once declared had to be revised in less than a month's time and that too on the grounds that certain mistakes were detected. The reason given in the counter reply totally fails to explain how the names of certain persons earlier declared as successful had to be deleted and the names of certain other persons who did not find place in the list of successful candidates were included in the revised list. The entire procedure would appear to be totally arbitrary and the allegations made by the applicant that such revision was made with malafide intention cannot be totally ruled out. Also the cancellation of the results of the written test was totally arbitrary. It would appear from the explanation given in the written reply by the respondents that this was done on the basis of representations of the two unions who alleged that the vacancies were not correctly

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calculated. The vacancy position is not something which is static. It keeps on changing from time to time. If at the time the initial notification was made, the selection was held for 28 vacancies only, there was no justification of cancelling the result of the test on the ground that subsequently the vacancies worked out to 36. Even in the subsequent notification, <sup>only</sup> 105 names were notified and by <sup>yet another</sup> subsequent notification, 108 candidates were directed to appear in a fresh selection test. Thus, at every stage of the selection, the respondents appear to have acted in a manner which not only is totally arbitrary but is strongly indicative of a malafide intention of favouring certain persons who did not find place in the initial selection.

7. In view of the foregoing, we are of the view that the cancellation of the result of the initial selection test in which the applicants figured at Serial Nos. 37 and 39, cannot be sustained. We are aware that the respondents have subsequently held a fresh selection and presumably based on such selection, certain persons have already been promoted to the post of Asst. Superintendent. These persons are not before us. Nevertheless, we cannot allow the interest of the petitioners before us to suffer due to the totally unjustified and arbitrary action of the respondents. In the facts and circumstances of the case, we direct that in case the applicants were subsequently promoted to the post of Asst. Superintendent, their seniority shall be re-determined on the basis as if they were promoted as a result of the earlier selection for which the results of

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the written tests were notified on 3-2-1988. In case, they were not so promoted, the respondents are directed to call them for viva voce test and if they succeed in such test, they shall be granted promotion w.e.f. 5-2-1988 when the viva voce test was scheduled to be held. They shall be entitled both, to the arrears of salary and to the determination of seniority on the basis of such ante-dated promotion. This direction shall be complied with within a period of three months from the date of communication of this order.

8. The parties shall, however, bear their own costs.

*H. J. H. J.*  
Member (J) Member (A)

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