

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH,  
ALLAHABAD.

Allahabad this the day 16th May of 1997.

CORAM : Hon'ble Mr. T.L. Verma, Member-J  
Hon'ble Mr. D.S. Baweja, Member-A

ORIGINAL APPLICATION NO. 430 OF 1991.

Lakshmi Narain Tiwari  
aged about 22 years,  
S/o Shri Shiv Narain Tiwari, Advocate,  
R/o Narainpatti Post Lakhnapur,  
District Gorakhpur.

..... Applicant.

(By Advocate Shri Bashist Tiwari)

Versus

1. Union of India through Secretary  
Ministry of Railway, New Delhi.

2. Phool Singh Vimal,  
Chairman Railway Recruitment Board,  
N.E. Rly, Gorakhpur.

..... Respondents.

(By Advocate Shri V.K. Goel)

Alongwith

ORIGINAL APPLICATION NO. 531 OF 1991.

Rakesh Kumar Tripathi,  
aged about 24 years, S/o Shri Ram Achal  
Tripathi, R/o House no. D-300  
Suraj Kund Colony, Gorakhpur.

..... Applicant.

(By Advocate Shri Bashist Tiwari)

Versus

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

2. Phool Singh Vimal, Chairman,  
Railway Recruitment Board, N.E. Rly. Gorakhpur.

..... Respondents.

(By Advocate Shri V.K. Goel)

ALONGWITH

ORIGINAL APPLICATION NO. 548 OF 1991.

Anand Prasad Srivastava, S/o Sri Rama Shankar Lal,  
aged about 24 years, R/o 3 Vindwasani Nagar Bank  
Road, Gorakhpur.

..... Applicant.

(By Advocate Shri Bashist Tiwari)  
Versus

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

2. Phool Singh Vimal, Chairman,  
Railway Recruitment Board, N.E. Railway,  
Gorakhpur.

3. Chief Vigilance Officer, N.E.R., Gorakhpur.

(By Advocate Shri V.K. Goel) ..... Respondents.

ALONGWITH  
ORIGINAL APPLICATION NO. 986 OF 1991.

Mani Kant Pandey, aged about 26 years,  
S/o Shri Raj Mani Pandey, R/o Basharatpur,  
District-Gorakhpur.

(By Advocate Shri Bashist Tiwari) ..... Applicant.

Versus

1. Union of India through the General Manager  
N.E.Railway, Gorakhpur.

2. The Chairman Selection Committee,  
Railway Recruitment Board, N.E. Railway,  
Gorakhpur.

..... Respondents.

(By Advocate Shri V.K. Goel)

ALONGWITH

ORIGINAL APPLICATION NO. 1175 OF 1994.

Nirangan Kumar Srivastava, S/o Sri Babban Prasad  
Srivastava, R/o Jateypur, Gorakhpur.

(By Advocate Shri B. Tiwari ..... Applicant.  
and Shri S.C. Budhwar )

Versus

1. Union of India through General Manager,  
N.E. Railway, Gorakhpur.

2. Chairman,  
Railway Recruitment Board, N.E. Railway,  
Gorakhpur.

..... Respondents.

(By Advocate Shri V.K. Goel)

ORDER (RESERVED)

By Hon'ble Mr. D.S. Baweja, Member-A

(A)

1. The above referred five applications have been heard together and being disposed of by a common judgment as they involve common facts, challenging the same selection and common question of law.

2. A notification no. 3/88/89 was issued by Railway Recruitment Board, Gorakhpur, for recruitment to the posts of Ticket Collectors and Commercial Clerks for 165 vacancies (120 General and 45 for Scheduled Caste and Scheduled Tribes categories). The written test was conducted on 12.11.1989. The result of the written test was declared on 23.10.1990. The viva-voce test was held on different dates during November and December 1990. All the applicants in the above referred applications appeared in the examination and were declared successful in the written test. The applicants in O.A. no. 431/91, O.A. no. 548/91 and 1175/94 appeared in viva voce test on 3.12.1990 while the applicants in O.A. no. 430/91 and O.A. no. 986/91 appeared for the viva voce test on 28.11.1990 and 30.11.1990 respectively. The final panel of 91 general candidates was declared on 6.4.1991. However, all the applicants did not find place in the final select list and being aggrieved by the same, the above referred applications have been filed as under :-

- a) O.A. no. 430 of 1991 filed on 26.4.1991.
- b) O.A. no. 431 of 1991 filed on 26.4.1991.

- c) O.A. no. 548 of 1991 filed on 27.5.1991.
- d) O.A. no. 986 of 1991 filed on 21.10.1991.
- e) O.A. no. 1171/94 filed on 10.8.1994.

3. In all the applications <sup>the</sup> following reliefs have been prayed for :-

- i) to issue direction setting aside proceedings taken by the Recruitment Board in constituting Committee and on that very basis the result of general candidates as well as reserve candidates were announced.
- ii) to issue direction to the respondents to initiate the interview process after constituting proper selection committee.
- iii) to issue direction to post the applicants either on the post of Commercial Clerk or Ticket Collector.

In O.A. no. 1171/94 additional relief has been prayed to quash the order dated 26.2.1994 issued by the General Manager, North Eastern Railway, Gorakhpur and in O.A. no. 986 of 1991 to set aside the circular dated 25.1.1982 of the Railway Board.

4. The grounds advanced in the Original Applications in support of the reliefs prayed for are more or less the same in all the applications ~~and~~ <sup>These</sup> grounds advanced are as under :-

a) The constitution of the selection committee for conducting the viva-voce test was illegal and not complying with the extant instructions laid down by the Railway Board vide letter dated 28.8.1986 and as per para 112 of Indian Railway Establishment Manual Volume I (I.R.E.M) in respect of (i) there was no Scheduled Caste / Scheduled Tribe members nominated on the interview committee (ii) members of the committee were subordinate to the Chairman of the Interview committee (iii) originally constituted committee was modified by Chairman of the Railway Recruitment Board.

b) Reservation of 45 posts for Scheduled Caste and Scheduled Tribe candidates was in excess of  $22\frac{1}{2}\%$  as laid down by the Railway Board. Further no reservation is permissible on the basis of Caste. Under Article 16 (4), 73 and 309 of the Constitution of India.

c) Against the notification of 120 vacancies for general candidates, the result of only 91 candidates had been declared. (Except O.A.no.1175/94)

d) 308 persons were called for viva-voce test. Since the panel was notified <sup>for</sup> 91 persons only, only 227 candidates should have been called for the viva-voce test (plea taken only in O.A. no. 430/91, 431/91 and 1175/94).

e) Against 150 marks of the written test,  $37\frac{1}{2}$  marks have been kept for viva-voce test. This allocation ~~for~~ <sup>of</sup> marks for viva-voce test was excessive

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keeping in view the law of not ~~existing~~ exceeding 15% by the Hon'ble Supreme Court.

f) Corrections and cuttings are understood to have been made in the marksheets of the interview with the intention to manipulate the result to select the favourites.

g) The applicants claim that they had secured good marks in the written examination and hoped to be selected but have been deliberately kept out of selection ( plea taken in O.A. no. 430/91, O.A. no. 431/91 and O.A. no. 986/91 ).

4. The respondents have filed the counter affidavit in all the applications. In O.A. no. 430/91, O.A. no. 431/91, O.A. no. 548/91 and O.A. no. 986/91, counter affidavit have been filed through Shri U.C. Srivastava, Secretary, Railway Recruitment Board and in case of O.A. no. 1175/94, the counter affidavit has been filed through Shri Baqridan, Chairman, Railway Recruitment Board. The facts of the applications with regard to recruitment, passing of the applicants in the written test, appearance in the viva-voce test and constitution of the Interview Board are admitted. The respondents refute the contention of the applicants with regard to violation of the rules in constitution of the Interview Board. The respondents have explained that the recruitment

was for the post of Commercial Clerk and Ticket Collector belonging to the Commercial Department and, therefore, one Technical Member was required to be nominated from the concerned Department.

Shri P.S. Bimal who was working as a Chief Commercial Superintendent (General) and belonging to Commercial Department was asked to lookafter the work of Chairman, Railway Recruitment Board in addition to his normal duties. Shri Vijayee Ram and Shri Rakesh Tripathi were nominated from the Commercial Department as Technical Members by the Chief Personnel Officer and both of them were not working directly under Shri B.S. Bimal. Similarly Rakesh Tripathi was not directly working under Shri U.C. Srivastava who was working as a Member Secretary.

It is further asserted that no changes in the nomination of the members of the Interview Board were ~~done~~ <sup>made</sup> by either Shri B.S. Bimal or Shri U.C. Srivastava. The respondents contend that the averments made by the applicants in this regard are baseless as no details of the alleged changes have been disclosed. As regards the non nomination of the Member belonging to Scheduled Caste / Scheduled Tribes community, the respondents have explained that interview of the general candidates was done in a seperate block and all the applicants belonging to the general category. Member representing the Minority Community was nominated and on all the ~~candidates~~ <sup>days</sup> when the applicants were interviewed. Further the contention of the applicants is not tenable as they <sup>have</sup> are not broughtout as to what prejudice has been caused to their interest on account of non nomination of Scheduled Caste /

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Scheduled Tribes Member~~s~~ in the Interview Committee.

The respondents further contend that the reservation for the Scheduled Castes and Scheduled Tribes has been provided as per the extant instructions within the percentages laid down. While countering the contention of the applicants for excessive allocation of marks ~~for~~ the viva voce test, the respondents contend that marks ~~for~~ the interview ~~are~~ allotted are only 20% and <sup>are</sup> not excessive. With regard to the allegations of the applicants ~~for~~ of corrections and modification in the marks allotted for the interview test, the respondents deny the same submiting that the applicants have not brought out the basis on which such an averment has been made as the marks of the viva-voce test have not been notified. The respondents have ~~also~~ countered the pleading of the applicants with regard to calling of the excessive candidates for the interview and notifying the panel of less candidates that the notified vacancies stating that subsequently panel for 29 candidates has been declared ~~subsequently~~ <sup>and</sup> thereby the panel for notified vacancies had been formed. The respondents ~~also~~ have opposed O.A. no. 1175/94 on the plea of being barred by limitation. In consideration of these facts, the respondents pray that the grounds taken by the applicants do not survive and all the applications deserve~~s~~ to be dismissed.

5. The applicant has filed rejoinder affidavit only in O.A. no. 430/91 refuting the submissions of the respondents and affirming the grounds taken in the application. In none of the other applications rejoinder affidavit has been filed.

6. In O.A. no. 986/91 vide order dated 23.10.1991 stay had been granted with the direction that the recruitment and selection shall be subject to the final decision of the Tribunal, in O.A. no. 1155 of 1994, no interim order was passed. In other three Original Applications no. 430/91, 431/91 and 548/91 interim <sup>stay</sup> order was granted vide orders dated 6.5.1991 and 30.5.1991 respectively with the direction to the respondents to keep one post of Commercial Clerk / Ticket Collector. However, the <sup>se</sup> interim orders were not extended further vide order dated 10.8.1993 in all these three Original Applications.

7. The <sup>matter</sup> applicant was heard on 7.9.1995 when Shri Bashist Tiwari learned counsel for the applicant and Shri V.K. Goel learned counsel for the respondents in all the Original Applications were present. The judgment was reserved. The respondents were directed to produce the record relevant to the recruitment under challenge, <sup>and</sup> the respondents submitted the original proceedings of the viva-voce test for the perusal of the Bench.

8. Subsequent to the reserving of the judgment, Misc. applications no. 2545/95 and 2546/95 were filed on 19.9.1995 in O.A. no. 430/91 and Misc. applications nos. 2547/95 and 2548/95 were also

filed on the same date in O.A. no. 1175/94. Following prayer was made in these applications :-

(a) Misc. Application no. 2545/95 and 2547/95, to direct the respondents to produce the documents for inspection of the applicants.

(b) Misc. Applications nos. 2546/95 and 2548/95, to summon the following additional documents :-

- (i) Coding and decoding copy.
- (ii) Copy of the original examination.
- (iii) Vigilance report.

These documents are prayed to be called on the plea that the applicants had obtained higher marks than indicated in the summary sheet placed before the Interview Board for viva-voce test and without the above record, it would be difficult to decide on merits by the Tribunal. These Misc. Applications were considered on 10.12.1996 and the counsel for the parties were heard. The learned counsel for the applicants failed to show as to what relevance the coding and decoding copy had with the controversy involved. As regard the request for summoning the answer books, no such request was made in the earlier Misc. Applications filed seeking for calling of the records. Further no allegation has been made in the averments in the O.A.'s that any irregularity in evaluating of the answer books was committed. In view

of this, <sup>the</sup> request was not allowed. In respect of the Vigilance report, it was noted that the same had already been filed through a Misc. Application and the same was allowed.

9. Since the arguments on the applications were heard long back. On the request made by the parties, the matter was reheard on 31.1.1997. The applicants were represented in all the applications by Shri Bashist Tiwari and Shri S.C. Budhwani Senior Counsel and Shri V.K. Goel learned counsel appeared on behalf of the respondents in all the applications. During rehearing, the focus of the pleadings shifted to the contents of the report of the vigilance inquiry conducted by the Department. Quoting extensively from the Vigilance report a case was sought to be made out that serious irregularities had been committed in the selection process of the recruitment under challenge.

10. We will first consider the grounds raised in the Original Applications and reiterated during the first hearing on 7.9.1995 forming basis for the reliefs

prayed for. The pleadings made based on the vigilance report when the matter was re-heard will be taken up subsequently as no amendment to the reliefs prayed for has been done.

10. First and main ground of attack is is with regard to the constitution of the Interview Board being not in accordance with the instructions contained in the Railway Board letter dated 28.8.1986 and as per para 112 of I.R.E.M. The three infirmities pointed out are (a) one of the members was directly subordinate to the Chairman. (b) There was no member nominated from the Scheduled Caste / Scheduled Tribe Community. (c) Originally nominated ~~me~~ members were changed by the Chairman of the Interview Board.

In order to go into the merits of these violations or the extent instructions, it would be pertinent to detail as under, the constitution of the Interview Board on the various dates when the applicants were interviewed and given in the respective applications.

O.A	Date of interview	Constitution of the Board
430/91	28.11.1990	P.S. Bimal as Chairman, Vijayee Ram and S. Hasan, Alleged that Shri Vijayee Ram directly subordinate to Shri P.S. Bimal
986/91	30.11.1990	P.S. Bimal, Chairman, Rakesh Tripathi. 3rd Member not indicated. Alleged that Shri Rakesh Tripathi directly working under P.S. Bimal.
431/91 548/91 1175/94	3.12.1990	U.C. Srivastava, Chairman, Rakesh Tripathi and S. Hasan.

On checking the proceedings of the viva-voce test made available by the respondents, it is noted that the averments made in the O.A. no. 1175/94 with regard to the date of interview and the constitution of the Interview Board are not factual. The applicant's roll number is 63017 as indicated in the Application and he was interviewed on 29.11.1990 and not on 3.12.1990. In view of this, the very basis of challenging the constitution of the Interview Board does not survive. In respect of the other applications, the designations of the members of the Interview Board on 3.12.1990 have not been disclosed in the Applications. However, from the proceedings of the Interview Board, we find that all the three members were junior grade Officers and, therefore, the question of any Member being directly subordinate to the other did not arise. For the Interview Board constituted on 28.11.1990, 30.11.1990, the applicants allege that Shri Vijayee Ram and Rakesh Tripathi respectively were directly subordinate to Shri P.S. Bimal. The respondents have rebutted this contention. It is admitted that Shri P.S. Bimal, Vijayee Ram and Shri Rakesh Tripathi belong to the same Department. The respondents have explained the nomination of Members from the same Department to which the Chairman of the Interview Board belonged. The respondents have, however, asserted that none of these two Members, though belonging to the same Department were working directly under Shri P.S. Bimal. The applicants have not specifically contradicted this position. In fact, the designation of Shri Rakesh Tripathi has been indicated as Chief Commercial Superintendent (Catterring) and as Chief Commercial Superintendent of Shri Vijayee Ram

has been disclosed. No documentary evidence has been brought on the record by the applicants <sup>to show</sup> that these two members were working under <sup>Shri</sup> P.S. Bimal. From the averments of the respondents and the records produced, we find that Shri Bijayee Ram was working as Deputy Chief Commercial Superintendent (Catering) and Shri Rakesh Tripathi as Deputy Chief Project Manager. Keeping in view the non-disclosure / incorrect designation of the Members and non submission of any documentary evidence to support the contention, we have no reason to disbelieve the submission of the respondents and hold that <sup>on this account</sup> no violation of the laid down rules has been done. The second infirmity is with regard to the non nomination of the Members belonging to Scheduled Caste / Scheduled Tribe Community. We have already brought out the above, the explanation given by the respondents for non nomination of the Members of Scheduled Caste / Scheduled Tribe Community. All the applicants belong to the general Category and they have not brought out as to how their case has been prejudice by non presence of the Scheduled Caste / Scheduled Tribe Member in the Interview Board. We have gone through the rules and inclined to accept the explanation of the respondents and are of the view that this violation is not fatal to the case of the applicants. The third infirmity pointed out is that Shri P.S. Bimal and Shri U.C. Srivastava had made changes in the nomination of the Members as originally done. The applicants have not brought out who were the Members originally nominated and what was the changes made. The applicants have just made a bald statement without making any details <sup>available</sup> to support

the alleged changes. We are, therefore, unable to appreciate any merit in this contention also. Concludingly, we record our finding, that none of the grounds challenging the constitution of the Interview Board in violating the laid down instructions survive. Looking <sup>also</sup> from another angle, the applicants have no locus standie to challenge the Interview process on the plea of defects in the constitution of the Interview Board after having appeared before the same and not finding successful in the same. In this regard, we refer to the judgment of the Apex Court "Madan Lal Versus State of J & K and others" (1995) 29 ATC 603 <sup>in</sup> para 9, their Lordships have held as under :-

" - It is now well settled that if a candidate takes a calculated chance and appears at the Interview, then, only because <sup>the</sup> result of the Interview is not pliable to him, he <sup>cannot</sup> return and subsequently contend that the process of Interview was unfair or the selection committee was not properly constituted.

12. The second ground of challenge that reservation is not permissible on the basis of Caste and the reservation of ~~xxxxxx~~ posts provided for Scheduled Caste and Scheduled Tribe candidates was in excess of 22½% as laid down. These are contradictory contentions on one side the very provision of reservation <sup>450</sup> ~~as~~ and is being challenged/void/ on the other hand accepting the reservation policy validity, the issue of excessive reservation has been raised. Constitutional validity of the reservation policy has been upheld by the <sup>of the</sup> Apex Court in ~~cantena~~ judgments and as such this contention does not merit any consideration.

As regards the reservation in excess of the percentages laid down, the respondents have asserted that the vacancies notified to be filled up by Scheduled Caste / Scheduled Tribe candidates are as per the extant instructions and there is no excess over the percentages laid down. The applicants have not disclosed the basis on which the assessment of the vacancies under reservation policy have been made by them. Infact in reply to para 8 of the counter reply in the rejoinder affidavit, there is no specific denial of the respondents' submission. It is simply mentioned that the suitable reply will be given at the time of hearing. No details were furnished during the hearing also. In the absence of any details furnished by the applicants ~~are~~ on the basis of which the assessment of vacancies has been termed as excessive, we are not able to see any merit in their contention and inclined to accept the submission of the respondents.

13. The third ground is that excessive number of candidates were called for interview, as the panel was notified for 91 posts only as against 120 vacancies notified. From the averments made by the respondents, it is noted that subsequent to the panel of 91 candidates, the result of 29 candidates <sup>was also</sup> were declared on 2.5.1992. In view of this factual position, this ground does not survive.

14. The fourth ground for attack is that the panel for the notified vacancies has not been declared. This contention of the applicants is not tenable. The respondents have explained that the notification

provided that notified vacancies could be increased or decreased. Therefore, it was within the right of the respondents to decide the number of the posts to be filled up. Further no legal enforcement right is vested in the applicants merely by participation in the selection process. Infact even inclusion of the name in the select list does not create a right for appointment. Apart from this as brought out earlier, the result of 29 candidates had been declared subsequently and thus the panel for notified vacancies had been issued. Thus, there is no force in this averment, of the applicants.

15. The fifth ground for assailing the selection is that the marks for the interview had been allocated in excess of 15% as laid down by the Apex Court. This plea has been taken only in O.A. no. 548 of 1991, O.A. no. 986 of 1991 and O.A. no. 1175 of 1994. The applicants have relied upon the judgment of the Hon'ble Supreme Court in Mahendra Sain Garg Versus State of Punjab and others 1991 SC (L&S) 555. The marks of the written examination are 150 and for interview 37½ and with this, <sup>the</sup> interview marks are 20% of the total marks. The respondents have submitted that the marks of the interview are not excessive and the instructions from the Railway Board laying down 15% marks have been received vide Railway Board letter dated 30.9.1991 i.e., subsequent to holding of the selection. We have carefully gone through the judgment of the Hon'ble Supreme

Court referred above. The <sup>to</sup> Lordship in this judgment have reviewed earlier judgments on the subject of the allocation of marks <sup>for</sup> ~~of~~ the interview and held as under :-

"Even if Ashok Kumar Yadav case may not in terms apply in the cases before us to the extent of laying down 12.12 per cent of the total marks for viva voce test which was made applicable for selections to be made by UPSC, we deem it proper to lay down after taking in view the dictum of all the authorities decided so far that the percentage of viva voce test in the present cases at 25 per cent of the total marks is arbitrary and excessive. There could be no gainsaying that viva voce test cannot be totally dispensed with, but taking note of the situation and conditions prevailing in our country, it would not be reasonable to have the percentage of viva voce marks more than 15 per cent of the total marks in the selection of candidates fresh from college / school for public employment by direct recruitment where the rules provided for a composite process of selection namely written examination and interview."

¶ From the above, it would be seen that the dictum of viva voce marks being not more than 15% of the total marks in public Employment Exchange through direct recruitment has been <sup>in this judgment</sup> laid down. This judgment is dated 15.11.1990 and the present selection had been commenced much earlier. In view of this the law laid down by the Hon'ble Supreme Court would apply prospectively. The selection <sup>under</sup> challenge in the <sup>judgement</sup> above referred of the Hon'ble Supreme Court was not quashed even though the marks for interview were more than 25% of the total marks, as the selected candidates <sup>they</sup> had already been joined the post, long back and <sup>there</sup> were not impleaded as a party. In the present case also, the applications

have been filed after the panel had been notified and the selected candidates have not been impleaded as a party. In view of this fact-situation even if it is held that the marks for the interview are excessive, it would be unjust to quash the interview process on this ground.

16. The sixth ground advanced by the applicant is that they had secured good marks in the written examination and hoped to be selected but have been deliberately kept out of the selection. This plea has been taken in O.A. no. 430 of 1991, O.A.no. 431 of 1991 and O.A. no. 986 of 1991. From the averments made by the applicant, it is not understandable, as to what is the basis of making this submission. The determination of quantum of marks to be given to the candidates is the function of the Interview Board. Assigning lower marks in the written examination cannot be termed as unfair treatment. In this connection we refer to the judgment of the Hon'ble Supreme Court "Madan Lal and others Versus State of J&K"(1995) 29 ATC 603 wherein it is held in para 17 as under :-

" The petitioners subjectively feel that as they had fared better in the written test and had got more marks therein as compared to the selected respondents concerned, they should have been given more marks also at the oral interview. But that is in the realm of assessment of relative merits of candidates concerned by the expert committee before whom these candidates appeared for the viva voce test. Merely on the basis of petitioner's apprehension of suspicion that they were deliberately given less marks at the oral interview as compared to the

rival candidates, it cannot be said that the process of assessment was vitiated. This contention is in the realm of mere suspicion having no factual basis. It has to be kept in view that there is not even a whisper in the petition about any personal bias of the Members of the Interview Committee against the petitioners. They have also not alleged any malafides on the part of the Interview Committee in this connection. Consequently, the attack on assessment of merits of the petitioners cannot be countenanced. It remains in the exclusive domain of the expert committee to decide whether more marks should be assigned to the petitioners or to the respondents concerned. It cannot be the subject-matter of an attack before us as we are not sitting as a court of appeal over the assessment made by the committee so far as the candidates interviewed by them are concerned."

From the averments made in all the applications, we do not find any allegation of malafide against the Members of the Interview Board except making oblique reference through a general statement that they have been deliberately kept out of the selection, although having done well in the written examination. Marks of the written examination as well as viva-voce test have not been disclosed and, we are, therefore, unable to comprehend <sup>as to</sup> ~~that~~ on what source of information this apprehension has been made. The applicants have not come out the names of the candidates alleged to have been selected by manipulation of their marks by the Committee and by keeping the applicants deliberately out. By making merely <sup>1</sup> statement without any substantiating evidence to support cannot form the basis of the challenge of the selection process on the ground of malafides. There is not even a whisper of averment that as to why the Chairman or the Members of the Interview Board were personally prejudiced against the applicants in particular.

As indicated earlier during rehearing reliance has been placed in the vigilance report in support of their contention. This aspect has been deliberated subsequently. However, considering the averments made and also what is held by the Hon'ble Supreme Court in the judgment referred to above, we find it hard to persuade ourselves to subscribe to the contention of the applicants.

17. The seventh ground is raised alleging that the corrections and cuttings have been made in the marksheets with an intention to manipulate the result to select the favourite. As brought out earlier the respondents on the direction issued have brought on the record the proceedings of the Interview Board. The record furnished contains 12 sheets covering the Interview held from 27.11.90 to 5.12.90. We have carefully gone through the proceedings, ~~we~~ <sup>and</sup> find that, <sup>in case</sup> none of the applicants there is any corrections in the marks allotted for the interview. There are some corrections on the various dates but the same have been initiated by the members of the Interview Board. As regards the allegations of malafide <sup>in making Corrections</sup> we have covered this aspect ~~and~~ para 16 above.

18. The last grounds raised in O.A. no. 986/91 is with regard to quashing of the circular of the letter dated 25.1.1992, the copy of the circular which has been challenged has not been brought on the record. However, from para 4(xiii), it is noted that quashing of the circular is sought based on the law laid down by the Hon'ble Supreme Court with regard to 15% of the total marks being allocated for the Interview. In view of the deliberations in para 15, we do not find any merit in this prayer.

19. Prayer has also been made in O.A. no. 1175 of 1994 to set aside the order dated 22.6.1994 issued by General Manager, Northern Eastern Railway, Gorakhpur. We have gone through the averment made in para 4 (xvii) as well as the letter dated 22.6.1994 (A-VI). We are unable to appreciate any illegality in this letter. The letter conveys that there are no more vacancies and the life of the panel has expired. The applicant has not brought on record any supporting details to refute this contention. The applicant has

not stated the rules with regard to the life of the panel and in which way the contents of this letter violate the laid down rules. Further as we have observed earlier it is within the right of the respondents to decide the vacancies to be filled up. The applicant can be aggrieved only if somebody junior to him in the panel is appointed. This is, however, not the case of the applicant. Keeping in view these facts we are unable to find any reasons to set aside the order dated 22.6.1994.

20. Now we will take up the pleadings made during the rehearing of the applications. The focus of the arguments was on the contents of the Vigilance report. The supplementary affidavit has been filed in O.A. no. 1175 of 1994 bringing Vigilance report on the record and highlighting serious irregularities committed in the selection process quoting extensively from the report. Besides this in O.A. no. 431 of 1991 through Misc. application prayer had been made for calling of the documents including the Vigilance report. No Supplementary Affidavit based on the Vigilance report <sup>or</sup> any Misc. application has been filed in any of the other applications except the above two applications as detailed above. The respondents have filed Supplementary Counter Reply for the Supplementary Affidavit and the applicant has filed Supplementary Rejoinder Affidavit thereafter.

21. No prayer have been made in any of the Original Applications other than 1175/94 that the Supplementary Affidavit filed in O.A. no.1175/94 based on the Vigilance report be taken for the other applications <sup>being</sup> ~~be~~ heard together. Even in the absence of such a prayer, we are taking the arguments advance based on the Vigilance report in O.A. no.1175 of 1994 applicable to all the Original Applications in view of the fact that the same selection is under challenge and common question of law is involved. We have carefully gone through the Supplementary Affidavit and observed that there is no averments with regard to the amendment in the reliefs originally prayed for. No amendment application has been also filed. In view of these facts, relief <sup>the</sup> prayed for remain the same as in the Original Applications and ~~the~~ detailed in para 3 above. We have already deliberated on the grounds raised in support of these reliefs. A mere look at the relief prayed for and the averments made it is quite obvious that the attack has been mainly on the manner in which the viva-voce test was conducted and the final result thereafter. The thrust of the submissions made in the Supplementary Affidavit and the arguments advanced during rehearing were focused on the irregularities <sup>in</sup> and conducting the written examination and the evaluation of the answer books which vitiates the result of the written test and consequently the final result. In the Original Applications there is not even a whisper of an averments with regard to the written test and thus the applicants have no grievance against the result

of the written test. This is quite understandable since of the applicants had qualified in the written test and only after not finding their names in the final list after viva-voce test felt aggrieved and filed the present Original Application mainly assailing the constitution of the Interview Board and allegation of marks <sup>in</sup> the viva-voce test thus though during the hearing the counsel for the applicants were at pains to highlight serious irregularities based on the Vigilance report but the reliefs prayed for remain the same. During hearing the learned counsel for the applicants, however, <sup>put</sup> to forward the contention that the Tribunal is empowered to mould appropriate relief under provisions of Section 14 read with Section 22 of Administrative Tribunal Act, 1985. However, the learned counsel for the applicant was not very explicit on this aspect. From the arguments it appeared that the applicant <sup>did</sup> not press for quashing of the interview process or the whole selection and they wanted direction <sup>to</sup> be issued to the respondents to consider the <sup>the</sup> case for appointment. This plea is made on the basis as advanced in the written submission that one candidate with 120 marks has been selected and Vigilance report in respect of this candidate has brought out that answer book contained cuttings/ erasures for which no marks should have been awarded. Thus, the candidates with 107 marks <sup>therefore</sup> has been selected and the applicants should be considered for appointment and if they <sup>have</sup> secured 107 <sup>above</sup> marks.

(V)

This arguments of the applicant is not tenable, as the result of the written test has not been challenged, <sup>highlighting</sup> Inspite of the irregularities / lapses brought out in the affidavit in conducting of the examination and evaluation of the answer books. Since the result of the written test is not under challenge, we refrain ourselves from going into the merits of the averments made based on the Vigilance report with regard to the written test. No direction can be issued for granting any relief based on the observations made in the Vigilance report with regard to the irregularities in the written test without going into the merits. In the present case, the question of going into merits does not arise in view of the fact that the written examination of the result is not under challenge. In this view of the matter we are unable to persuade <sup>to find</sup> ourselves any merit in this contention of the applicants.

22. Since the main thrust of the attack in the Original Applications concern that the constitution of the Interview Board and the allocation of marks. We will consider the issue raised in the Supplementary Affidavit with regard to viva voce test. We find that para 8, 9 and 10 of the Supplementary Affidavit deal with this aspect. The irregularities high-lighted are (a) marks for the Interview test were not allocated under various heads such as personality, academic qualification, experience and professional ability leading to discriminatory marking. (b) Roll no. 52237 obtaining 120 marks has been empanelled while candidate obtaining more than 120 marks have not been empanelled. (c) Roll no. 64473 securing <sup>zero</sup> 0 marks in the Interview test has been selected while others similarly placed

have not been selected and have <sup>been</sup> disqualified.

As regard the observations of allocation of marks of Interview ~~the~~ test not being given under various heads, We have carefully considered the averments made and unable to find merit in the same. The Vigilance report says that marks for Interview may be provided for each aspect like professional ability, personality, experience and qualification etc. and marks be awarded by the Committee by concensus of the Members. From these provisions, it is quite apparent that the rules ~~do not~~ laid down <sup>no</sup> <sup>with</sup> the specific break up of the marks to be allocated for each aspect. These provisions are the guideline laid down to assess the suitability of the candidate and while doing so these areas are to be kept in view. In this connection we again refer to the judgment of "Madan Lal and others Versus Union of India & others" quoted earlier wherein in para 13 as under :-

"It is not possible to agree with this contention. So far as Rule 10(1)(b) is concerned it does not provide for any separate assessment of marks for candidates at viva-voce examination facultywise, that is on intelligence, general knowledge, etc., listed in the said rule. On the contrary, it appears that as per the said rule, while conducting viva-voce examination, the Committee has to keep in view the overall performance of the candidates at the oral interview and while doing so their intelligence, general knowledge, personality, aptitude and suitability have to be kept in the centre. The rule merely lays down the object of assessing such candidates in the viva-voce examination. It is a general guideline given to the Interviewing Committee members. Therefore, it is not possible to agree with the submission of the Senior Counsel for petitioners that the members of the Interview Committee must separately assess and give marks on different listed topics facultywise as per the said rule."

In view of what is held above by the Hon'ble Supreme Court we do not find that the irregularities pointed out ~~by~~ the Vigilance report is ~~not~~ fatal to the Interview test. In respect of Roll no.52237, a perusal of the Interview test record we find that the observations in the Vigilance report is not factual as the candidate has secured 121 marks in the written test and 19 marks in the Interview. In view of this we are unable to appreciate the contention made. As regards the selection of the candidate with zero marks in the Interview test, we are not able to comprehend as to how this is helpful to the case of the applicants. It is quite likely that the applicant has secured high marks in the written test and is still able to come within the merit. For other observations of those with zero marks in the Interview test, Vigilance report itself has brought out that where ~~the~~ very <sup>the</sup> high marks secured and copying was suspected, such candidate ~~had~~ been disqualified and it is clearly mentioned in the proceedings. Considering these facts <sup>that</sup> above, we are of the view of the irregularities pointed out ~~did~~ not give the cause of action to the applicants to challenge the marks allocated <sup>for the</sup> ~~during~~ Interview. In view of our observations in para 16 above, we find no substance in this ground.

23. Taking an ~~overall~~ view of the facts and circumstances as discussed above, we have no hesitation to come to the conclusion that there is no merit in the contentions raised by the applicants and no judicial interference is called for with the

viva voce test and the final result thereof.

We also find no merit in the plea of the applicant that the direction be issued to consider the case of the applicants for appointment in case they have secured 107 or above marks.

24. The respondents have opposed the O.A no. 1175 of 1994 being barred by limitation. The first panel of 91 candidates <sup>was</sup> ~~were~~ declared on 6.4.1991 and this application has filed on 10.8.1994. The applicant has submitted that the application is within the limitation period. This may be perhaps on the understanding that the prayer has been made for setting aside of the order dt. 22.6.1994 <sup>in addition</sup> ~~above~~ from the other reliefs. On going through the grounds advanced relief, prayed for other than the quashing of the order dt. 22.6.1994, we are not inclined to accept the contention of the applicant. The letter dated 22.6.1994 has been discussed earlier and as brought out, it concerns with the availability of the vacancies and currency of the panel. The other reliefs do flow out of the contents of this impugned order. The <sup>main</sup> again reliefs prayed for concern with the basic issue with regard to alleged irregularities in the viva-voce test process. The cause of action for this arose in 1991 when the panel was declared. Therefore, by challenging the order dated 22.6.1994 as one of the relief <sup>which</sup> not extend the limitation for the other reliefs. Considering these aspects, we agree with the submission of the respondents that the application is barred by limitation. However, we have still considered the

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application on merits as will be clear from the deliberations above.

25. In the result of the discussions above, we do not find any merit <sup>m</sup> and all the applications heard together and the same are accordingly dismissed. The copy of the judgment shall be placed on the respective files. No order as to costs.

SA : . . . . .

Member (J)

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