RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad, this the 24th day of December, 1999.

ORIGINAL APPLICATION NO.645 OF 1999

alongwith

ORIGINAL APPLICATION NO.637 OF 1999

alongwith

ORIGINAL APPLICATION NO.780 OF 1999

alongwith

ORIGINAL APPLICATION NO.741 OF 1999

alongwith

ORIGINAL APPLICATION NO.657 OF 1999

alongwith

ORIGINAL APPLICATION NO.710 OF 1999

alongwith

ORIGINAL APPLICATION NO.667 OF 1999

alongwith

ORIGINAL APPLICATION NO.651 A OF 1999

CORAM : Hon'ble Mr.S.Dayal, Member(A)
Hon'ble Mr.Rafiq Uddin, Member(J)

1. Sanjay Kumar Singh
S/o. Sri Udaiveer Singh,
R/o. Shashtri Nagar, Betiahata,
Distt. Gorakhpur.

2. Mahendra Pratap,
S/o. Sri Baijnath Prasad,
R/o. Vill & Post Cholapur,
Distt.Varanasi.

3. Devendra Patel,
S/o. Shri Brijraj Dass,
R/o. Vill. Rajapur Khurd,
Post Karaliya, Distt. Maharajganj.

4. Suneet Kumar Sharma,
S/o. Shru Shambhu Dayal Sharma,
LIC of India Branch, Anandnagar,
Distt. Maharajganj.

5. Ram Raksha,
S/o. Sri Rangi Prasad,
R/o. Vill Mandapar, Post Kusumahi Bazar,
Distt. Gorakhpur.

contd..../2p

6. Ram Karan,
S/o. Shri Dhanpat Prasad,
R/o. Village Kadsari, Post Bhagwanpur Bakhira,
Distt. Basti.

7. Vikas Kumar Singh,
R/o. Vill M.P. Bagh Aara, Post Aara.

8. Vijai Kumar,
S/o. Sri Shiv Kumar Prasad,
R/o. Sadak Lane, Anandpuri,
Post Khagol, Patna (Bihar)

9. Sanjay Kumar Yadav,
S/o. Shri Prahlad Yadav,
R/o. Purana Gorakhpur,
Gorakhnath Road, Post Gorakhnath,
Distt. Gorakhpur.

10. Udai Bhan Singh,
S/o. Sri Shree Kant Singh,
R/o.village Pokhar Bhinda, Bhulahi,
Via Bodarwar, Distt. Paudrana.

11. Vijai Kumar Gupta,
S/o. R.S. Gupta, R/o. Vill. Chaksha Hussain,
Post Basharatpur, Distt. Gorakhpur.

12. Amarsen Singh,
S/o. Shri Rana Pratap Singh,
R/o. Chandrawati Kuteer, Daudpur,
Post Bilandpur, Distt. Gorakhpur.

13. Dharamveer Singh,
S/o. B.Singh, R/o. Indira Nagar,
Post Vishwavidlaya, Distt. Gorakhpur.

14. Subhash Chandra Lal Srivastava,
S/o. Sri Kedar Lal Srivastava, R/o. Village-
Rudlapur (Sekhui) Post Anandnagar, Distt.Maharajganj.

15. Jeet Bahadur Jaiswal,
S/o. Shri Bhagwati Prasad Jaiswal,
R/o. Bharat Medical Kasya Road, Post Kusumahi
Bazar, Distt. Gorakhpur.

16. Kamlesh Yadav,
R/o. Vill Jungle Tulsiram Bichhiya, Post Bichhiya
Camp, Distt. Gorakhpur.

17. Deepak Kumar Sharma,
S/o. Shri Vindyachal Prasad Sharma,
R/o. Himiyunpur Uttari, Post Gorakhnath,
Distt. Gorakhpur.

18. Hari Ram Yadav,
S/o. Shri Badri Prasad Yadav,
R/o. Majzgawana, Post Khajni, Distt. Gorakhpur.

19. Vishwanath Patel,
S/o. Sri Ram Dass, Vill. Rajpur Khurd,
Post Karaliya, Distt. Maharajganj.

contd..../3p

20. Ashwani Kumar Dubey,
S/o. Shri Lallan Dubey,
R/o. Village Dunali, Post Kathghara,
Distt. Ballia.

21. Amar Singh,
S/o. Sri Ganga Singh,
R/o. Vill. Rampur Garbhauli,
Post Madanpura (Khajni),
Distt. Gorakhpur.

22. Rakesh Kumar Singh,
S/o. Shri Ram Raj Chaudhary,
R/o.Village Ranipur,
Post Bakhira, Distt. Sant Kabir Nagar.

.....Applicants in O.A.No.645/99.

(By Shri S.Agrawal,S.Kumar, &
Sri S.K.Mishra,Advts.)

Versus

1. Union of India, Ministry of Railway,
Railway Board, through its Chairman,
Baroda House, New Delhi.

2. General Manager, North Eastern Rly.,
Gorakhpur.

3. General Manager (Personnel) N.E.Rly.,
Gorakhpur.

4. Railway Recruitment Board, Gorakhpur,
through its Chairman.

.....Respondents in O.A.No.645/99.

(By Shri Amit Sthalekar,Advt.)

alongwith

Shri Gyanendra Kumar Bagi,
S/o. Sri Bachchan Ram,
R/o. Vill. Uparwar, P.O. Sewapuri,
Varanasi.

.....Applicant in O.A.No.637/99.

(By Shri Sudhir Agrawal, Advt)

Versus

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

contd..../4p

2. Railway Board, Rail Bhawan, New Delhi through its Chairman/Dy.Director, Estt. (R.R.B.) Railway Board, New Delhi.

3. The General Manager, N.E.Railway, Gorakhpur.

4. The Railway Recruitment Board, Gorakhpur, through its Chairman.

.....Respondents in O.A.No.637/99

(By Shri P.Mathur, D.C.Saxena & Shri A.Sthalekar,Advts.)

alongwith

Shri Ramesh Kumar,
S/o. Sri Hari Prasad,
R/o. Mahadev Math,
P.O. Rosara- Samastipur.

.....Applicant in O.A.No. 780/99

(By Shri S.Agrawal, Advt).

Versus

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

2. Railway Board, Rail Bhawan, New Delhi, through its Chairman/Dy. Director, Estt. (RRB), Railway Board, New Delhi.

3. The General Manager, N.E. Rly, Gorakhpur.

4. The Railway Recruitment Board, Gorakhpur, through its Chairman.

.....Respondents in O.A.780/99

(By Shri A.Sthalekar, Advt)

alongwith

1. Narendra Kumar Bharti, S/o. Sri Gaya Ram, R/o. Mohall Jai Prakash Nagar (Shivpurwa) House No. D-59/339-E/1,Gha, P.O. Mahmurganj, Distt. Varanasi.

2. Satya Kumar, S/o. Sri Ram Bahal, R/o. House No.9/134, Sector-9, P.O. Indranagar, Lucknow.

.....Applicants in O.A. No.741/99

Versus

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

2. Railway Board, Rail Bhawan, New Delhi. through its Chairman/Dy.Director Estt. (RRB) Railway Board, New Delhi.

3. The General Manager, North Eastern Rly. Gorakhpur.

4. The Railway Recruitment Board, Gorakhpur. through its Chairman.

.....Respondents in O.A. 741/99

(By Shri P.Mathur, D.C.Saxena & A.Sthalekar,Advts)

alongwith

Shri Ramesh Kumar,
S/o. Sri Deo Sagar Ram,
R/o. 3-MF-7/26, Village Bahadurpur Housing Colony,
P.O. Lohianagar,
PATNA

.....Applicant in O.A.657/99

(By Shri S.Agrawal & Sri S.K.Mishra,Advts.)

Versus

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

2. The Railway Board, Rail Bhawan, New Delhi through its Chairman/Dy.Director, Establishment (RRB) Railway Board, New Delhi.

3. The General Manager, N.E.Railway, Gorakhpur.

4. The Railway Recruitment Board, Gorakhpur through its Chairman.

.....Respondents in O.A.657/99

(By Shri P.Mathur, D.C.Saxena & A.Sthalekar,Advts)

alongwith

Sri Ajit Kumar,
S/o. Late Jyashish Ram, R/o. Village Mittha Bazar,
P.O. Sursand Distt, Sitamarhi.

.....Applicant in O.A.No.710/99

Versus

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

2. The Railway Board, Rail Bhawan, New Delhi through its Chairman/Dy.Director, Estt.(RRB) Railway Board, New Delhi.

3. The General Manager, N.E.Railway, Gorakhpur.

4. The Railway Recruitment Board, Gorakhpur, through its Chairman.

..... Respondents in O.A. 710/99

(By Shri P.Mathur & Sri A.Sthalekar,Advts.)

alongwith

1. Sri Navin Kumar, S/o. Sri Ram Vikas Singh, R/o. Sri Krishna Rd. Sinha, S.B.I. Road, Giridih, Bihar.

2. Sri Awadhesh Kumar, S/o. Sri Jagdhar Prasad, R/o. Pokhra, Post Bahadurpur, Via - Shakarpura, Distt. Khagaria.

.....Applicants in O.A.667/99

(By Shri Saumitra Singh, Advt.)

Versus

1. Union of India through the Secretary, Ministry of Railways, New Delhi.
2. Railway Board, Rail Bhawan, New Delhi tho. its Chairman,/ Dy.Director, Estt.(R.R.B.) Railway Board, New Delhi.
3. The General Manager, North Eastern Railway, Gorakhpur.
4. The Railway Recruitment Board, Gorakhpur, through its Chairman.

.....Respondents in O.A.667/99

(By Shri P.Mathur,D.C.Saxena & Sri A.Sthalekar,Advts)

alongwith

contd...../7p

1. Jitendra Kumar,
S/o. Sri V.P.Singh, R/o.Rasulpura House,
Sadaklane, Anandpuri, Post M.I.T.
Distt. Muzaffarpur (Bihar)

2. Savindra Kumar Singh,
S/o. Sri Chaturbhuj Narain Singh,
R/o. Mohalla Barwaha Railway Colony,
Qr.No.T/120 B, Post Sonepur,
Distt. Chhapra (Bihar)

3. Girish Kumar Singh,
S/o. Sri Ram Ayodhya Singh,
R/o. Vill. & Post Urvarak Nagar Barauni,
Qr.No. 3A/40, Distt. Begu Sarai

4. Mukesh Kumar Singh,
S/o. Sri Jagdish Prasad Singh,
R/o. Vill Narawan Tola, Post Narawan,
Distt. Saal (Chhapra) (Bihar).

5. Rakesh Kumar, S/o. Sri Chhedi Ram,
R/o. Vill & Post Pipri Dihi,
Distt. Mau.

6. Birbali,
S/o. Sri M Jungli,
C/o. Sri R.A. Vishwakarma, Qr.No.E-10,
Fertilizer Colony,
Gorakhpur.

7. Riaz Ahmad, S/o. Mod. Naqvi,
R/o. Mohalla Aga Dariya Khan, Post Gandhi Nagar,
Basti, Distt. Basti.

8. Firoz Akhtar, S/o. Ali Akbar, C/o. Parvez Akhtar,
S.B.I. (Walterganj), Distt. Basti.

.....Applicants in O.A.651/99

(By Shri Shishir Kumar, Advt)

Versus

1. Union of India, Ministry of Railways, Railway Board, through its Chairman, Boarada House, New Delhi.
2. General Manager, N.E.Rly., Gorakhpur.
3. General Manager (Personnel), N.E.Rly, Gorakhpur.
4. Railway Recruitment Board, Gorakhpur through its Chairman.

.....Respondents in O.A.651/99

(By Shri P.Mathur & Shri A.Sthalekar, Advts.)

ORDER

(By Hon'ble Mr.S.Dayal, Member(A)

We have heard these eight original applications

together because the facts, issues and reliefs sought are common. O.A.No.645 of 1999 has been filed by twenty two applicants, 651-A of 1999 by eight applicants, 667 of 1999 and 741 of 1999 by two applicants each and O.A.Nos. 637 of 99, 657 of 1999, 710 of 1999 and 780 of 1999 by one applicant each. The applicants belong to the category of General, other Backward classes and Scheduled Castes.

2. The reliefs sought are setting aside of order dated 10-5-99 by which panel of Assistant Station Masters based on the written examination held on 28-12-97 by Railway Recruitment Board of Gorakhpur was cancelled. In some Original Applications the setting aside of Press Communique dated 17-5-99 is also sought. A direction to the respondents to appoint the applicants is also sought.

3. The applicants have stated that advertisement was issued in a daily newspaper inviting applications from eligible candidates for the post of Assistant Station Master. This advertisement was issued by Railway Recruitment Board to fill up 50 vacancies of which 25 were for general, 14 for O.B.C.s, 9 for SCs and 2 for STs. Written Examinations and interviews were held and final result was published. The applicants were declared successful and they were sent three forms by General Manager (P), Gorakhpur which they filled up and returned. They waited for letter of appointment but after fourteen months of waiting, they came to know about cancellation of the panel.

4. The arguements of Shri Sudhir Agrawal were heard for the applicants and Shri Amit Sthalekar presented arguements on behalf of the respondents. The pleadings have been considered.

5. The issues raised by the learned counsels for the applicant can be stated as follows :-

(i) The findings of the enquiries did not reveal any ground for cancellation of panel. Hence cancellation was malafide and arbitrary.

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(ii) No reason was given in the order of cancellation of panel for the act of cancellation, and therefore the order was bad in law.

(iii) After C.B.I. and Vigilance of Railway Board had conducted enquiries, no enquiry by a subordinate authority was called for and it should not have been allowed to upset the findings of superior authorities.

(iv) Since no mass irregularities had been established, action should have been confined to candidates found guilty of committing any act for which action could be taken.

(v) No action could have been taken against successful candidates without issuance of notice and opportunity of being heard.

(vi) There was no provision for cancellation of panel after it was approved and acted upon.

6. The first and third issues can be examined together. The contention of the applicants is that none of the enquiry reports reveal any irregularities which would lead to cancellation of panel. The reports of enquiries conducted by C.B.I., by Vigilance division of the Railway Board and by the Zonal Vigilance have been shown to us. The report of C.B.I. categorically states that the Written Examination and Viva-Voce were conducted in a manner which indicated that the process of selection was not free and fair. The Vigilance division of the Railway Board had seized some sixty answer sheets. An examination of these answer sheets again revealed a number of irregularities. Both these reports were communicated to the General Manager, North Eastern Railway, who was directed by the Railway Board to conduct detailed investigations through Zonal Vigilance set up. The report of Zonal Vigilance deals with nineteen allegations, nine of which could not be substantiated for want of evidence and the remaining were found partly/ factually correct. The C.B.I. in their report had said

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that findings showed a high degree of probability that answer sheets were substituted at the time of evaluation. The Railway Recruitment Control Board had examined the nature of irregularities and had recommended for cancellation of panel. This recommendation was accepted by the Railway Board and communicated to the General Manager, North Eastern Railway. There is no arbitrariness or malafides in the action of the respondents. Since the enquiry by Zonal Vigilance was conducted under the directions of the Railway Board, the contention of the applicants that this enquiry was allowed to upset the findings of superior authorities is also not correct.

7. The second issue is regarding the legality of order of cancellation of panel because it gives no reasons for cancellation. The order of cancellation dated 10-5-99 reads as follows :-

> "Board has considered in detail the nature of irregularities detected pursuant to vigilance investigations in the aforementioned selection of Assistant Station Master conducted by RRB/ Gorakhpur and have decided to cancel the panel."

8. The order thus makes it clear that irregularities were detected in selection and that nature of such irregularities has been considered by the Board. The reason for panel's cancellation is thus succinctly given in the order. We do not consider it necessary in cases of cancellation of entire panel that details of such irregularities are required to be given and since the order does not contain such details, it for that reason cannot be considered to be bad in law.

9. With respect to the fourth issue, the learned counsel for the applicant had contended that none of the findings on any of nineteen allegations dealth with in the report of the Zonal Vigilance substantiated allegation of mass malpractices or corruption and, therefore, the cancellation of entire panel was bad in

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law. The respondents should have confined their action to defaulters. The facts that answer sheets having cuttings and erasures have been evaluated contrary to instructions and marks awarded, some of the answer sheets not properly darkened have been awarded marks while other similar answer sheets have not been evaluated, and the performance of many candidates who had secured very high marks in the written examination of an abysinally low level in the interview have been established. This lends support to the findings that the selection was not conducted in a free and fair manner and the cancellation of entire panel appears to be quite reasonable. The contention of the learned counsel for the applicants is not valid.

10. The fifth issue has been dealt with by the Apex Court in Sankarsan Dash Vs. Union of India, AIR 1991 SC 1612, which has laid down that candidate who is on the select list gets no indefeasible right to get appointment. The learned counsel for the applicant has placed reliance on a judgement of Allahabad High Court dated 19-12-97 in Amar Nath Singh Vs. Union of India and others filed as Civil Misc. Writ No.38406 of 1996, and Jagmohan & others Vs. Union of India & others in Writ Petition 36605 of 1997. However, this judgement relates to recruitment of constables in Railway Protection Force. What appeared to be involved in this test was physical and efficiency test. The nature of irregularities were also different. Therefore, we do not consider that the ratio of this authority is applicable to the case before us. The learned counsel for the applicant has also sought to rely on TA No.113 of 1987 decided by a Division Bench of this Tribunal on 16-9-88 between Jagdish Prasad Phulbhati and Railway Board & others. The facts of this case are different although it relates to the recruitment of Assistant Station Masters along with others. In the case before us, although the panel has been declared, none of the candidates has been given an appointment order. Since the irregularities

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are such that they permitted the selection proceedings making it difficult to pin point the candidates who had benefitted from the process, it is neither possible nor necessary to give a show cause notice to the candidates on panel before the cancellation of the panel. Therefore, the contention of the applicant is not acceptable.

11. The last issue is that panels once approved cannot be cancelled. We find from this case that allegations against selection were made to Railway authorities and also to Central Bureau of Investigation. The Railway Board in exercise of its supervisory power over the Zonal Railway decided to inquire into the allegations and as a result of findings of inquiry, cancel the panel. It is not the case of the applicants that the authority of General Manager, North Eastern Railway is not subordinate to the authority of the Railway Board. Annulment of an action of subordinate authority is inherent in the powers of supervision. Therefore, the action of the Railway Board in cancelling the panel was in order.

12. The findings on each of the issues discussed in the preceding paragraphs show that relief as asked for cannot be allowed. However, there is another issue which has been considered by us on the request of learned counsels for the applicant. The representatives of the Railway Recruitment Board has informed us on 2-7-99 as mentioned in the order sheet of O.A.No.637 of 1999 of same date that intimation to the candidates was yet to be sent and wanted the interim injunction sought by learned counsels to be rejected. On 14-7-99 it was brought to our notice that a newspaper report showed that a fresh written examination and interview etc. were to be held for those who had appeared in the earlier exam and a notice had been issued. The learned counsel for the applicant drew attention to newspaper reports which said that many admit cards were not sent and were lying in Gorakhpur. The learned counsel for the applicant said that as a result only about nine thousand candidates as against 24-25000 who had

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appeared earlier could take the written exam. The Railway Board are directed to examine this information given to us during the arguements of learned counsel for the applicant and if it is true, hold a supplementary examination and then call the candidates for interview, psychological test etc. This shall be complied with in four months time.

13. With the above directions the original applications stand disposed of. There shall be no order as to costs.