

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE <sup>21</sup> DAY OF <sup>Sept.</sup> ~~AUGUST~~, 2000

Original Application No.524 of 2000

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.S.BISWAS, MEMBER(A)

Akhilesh Kumar Singh, son of Shri Awadhesh  
Kumar Singh, R/o, K-5 E.W.S Colony,  
Mehdauri Awas Yojna, Rasoolabad  
District Allahabad.

Original Application No.471 of 2000

Miss Roma Yadav, d/o Shri Dinesh yadav  
R/o 6/2, New idgah Colony  
P.O.Ram krishna Nagar, City and  
District Kanpur Nagar

Original Application No.525 of 2000

Prakash Singh, son of Shri Sriman Singh  
R/o village Nagarua, P.O.Dhata,  
District-Fatehpur.

Original Application No.640 of 2000

Siyaram Chaurasia, son of Jai Ram Chaurasia  
R/o Vill.&P.O. Bhain,  
District Sultanpur.

Original Application No.641 of 2000

Abhai tewari, son of Shri J.N.Tewari  
R/o Vill.&P.O Madhwapur, Kanchausi Bazar,  
District Auraiya.

Original Application No.642 of 2000

Shailendra Singh, son of Jagdish Singh,  
R/o 358/3A, Hanuman Mandir Gali,  
Mandawali, Fazalpur.

Original Application No.643 of 2000

Shailendra Kumar Verma, son of Sri Man Singh  
Verma, R/o Mohalla Rawtan, district  
Jalaun

Original Application No.644 of 2000

Ajay Deepak Sehgal, Son of R.K.Sehgal  
R/o Bocket-D-881, LIG Flats, Dilshad Garden.

Original Application no.645 of 2000

Abdur rehman Usmani, Son of Jamalur  
Rehman Usmani, R/o Bl8/27 A, Roori  
Talab, Varanasi.

Original Application No.646 of 2000

Vijay mishra, Son of Jagdish prasad Mishra  
R/o Village Bijhouli, Post Tela,  
District Allahabad.

Original Application No.647 of 2000

Mahendra Kumar, Son of Nand Lal,  
R/o Village Avasan ka Pura, P.O.Nandauta  
District Allahabad.

Original Application No.648 of 2000

Manish kumar Rathor, son of Jagdish Prasad Rathor  
R/o Mohalla Rapatganj, District Jalaun

Original Application No.649 of 2000

Prabhat Kumar YaDAV, S/o Hari karan yadav  
R/o Intiathoke, District Gonda.

Original Application no.650 of 2000

Alok mishra, son of Nagesh Chandra Mishra  
R/o 23/K, B.T.C.School, Pratapgarh  
at present residing at 89/3, Moheley Nagar  
Allahpur, Allahabad.

Original Application No.651 of 2000

Puneet Dubey, son of Gopal Dutt Dubey  
R/o 237 A, New Loco colony,  
Northern Railway, Varanasi.

Original Application No.652 of 2000

Manoj kumar Verma, son of Babban prasad Verma  
R/o village Puredhana, (Bhadaiya) P.O.Barsara  
District Sultanpur, at present r/o Shankarghat  
Colony, Teliarganj, Allahabad.

Original application No.653 of 2000

Shailesh kumar Singh, son of Awadhesh Kumar  
Singh, R/o village & Post Haldirampur  
District Ballia.

Original Application no.656 of 2000

Satyendra Tripathi, son of Jai  
Narain Tripathi, R/o HC-5, 'F' Block  
Kotwali, Alambagh, Lucknow, presently residing  
at Central Excise Colony, G-11, Muir  
Road., Allahabad.

Original Application no.657 of 2000

Rajeev Kumar Soankar, Son of babu Ram  
Soankar, R/o village Subhaspur,  
P.O.Pali, district Jaunpur.

..... Applicants

(By Adv: Shri Saumitra Singh)

Versus

1. Union of India, through Chairman/Secretary  
Railway Board, Rail Bhawan,  
New Delhi.
2. Members Staff, railway board,  
Rail bhawan, New Delhi.
3. Railway Recruitment Board, Allahabad  
through its Chairman, D.R.M.  
Annexe Building, Nawab yusuf Road,  
Allahabad.

... Respondents

(By Adv: Shri Prashant Mathur)

O R D E R (Reserved)

(By Hon.Mr.Justice R.R.K.Trivedi,V.C.)

In all the aforesaid OAs questions of fact and law are similar and they can be decided together by a common order against which learned counsel for the parties have no objection. O.A.No.524/2000 shall be the leading case.

The reliefs claimed in the aforesaid OAs are that Respondents Authorities be directed to declare the applicants selected in written examination held on 6.2.2000 by Railway recruitment Board,Allahabad for selecting candidates to join Vocational Course in Railway Commercial(2 years job linked course) commencing in the Academic Year 2000-2001. It has been further prayed that the respondents may be directed to issue letters calling applicants to appear in the interview and to declare the final result and allow them to join their posts.

The facts in short giving rise to the present disputes are that the Railway recruitment Board,Allahabad(hereinafter referred to Board) issued a Notification/advertisement on 23.10.1999 inviting applications for admission to the Vocational Course in Railway Commercial for the Academic year 2000-2001. The last date for submission of the application form was 22.11.1999. The applications were invited against 40 seats in total. Out of which 20 seats were allocated for general candidates, 11 for O.B.Cs, 6 for S.C and 3 for S.T.candidates. All the applicants submitted applications within time. They appeared in written examination held on 6.2.2000. The result of the written examination was declared by the Board on 26.4.2000. However, the names and roll numbers of the applicants were not in the list of the

successful candidates. Aggrieved by which they have filed the present original applications.

The case of the applicants is that they appeared in the written examination and had solved cent percent questions and they are confident to have obtained more than 90% of marks in the said written examination. They requested the Tribunal to probe into the matter as to why their names did not figure among the successful candidates. It is claimed that the applicants were sure that they have obtained more than 90% marks. The basis of this claim is self assessment which has been affirmed by the teachers who had been teaching them. It has also been alleged by the applicants that the candidates who had secured much less marks than the applicants in all categories have been declared successful. It has been submitted that the entire controversy in the present case shall be solved if the Tribunal directs the Board to produce the answer books of the applicants as well as the answer books of the candidates who have obtained the highest and lowest marks and tabulation sheets of the written examination, the merit list prepared by the Board as per roll numbers. The applicants also prayed that the respondents may be directed to call the applicants in the interview which is likely to be held between 5th June to 9th June, 2000.

Resisting the claim of the applicants respondents filed Counter affidavit mentioning in detail the procedure adopted in the written examination. It has been further stated that on the basis of the marks obtained by the individual upto a minimum level as fixed by the Commission have been declared to be qualified. Assertions made by the applicants are based on hypothetical presumption and have no leg<sup>al</sup> to stand. It has been further submitted that on the direction of the Tribunal the entire original record shall be produced in support of the averments made in the counter affidavit and for satisfaction of the Tribunal. It has been further stated that the

individual written part of the examination is strictly confidential and it is not disclosed to the Members of the Interview Committee as the same can vitiate the entire selection proceedings. It has also been submitted that the applicants failed to make out any case for interference by this Tribunal and is not entitled to any relief.

The respondents alongwith Misc.applications also filed a supplementary counter affidavit dated 30.6.2000 in which it was stated that the applicants got themselves disqualified on account of their involvement,alongwith others, in mal-practices, who obtained assistance and help from outside to solve the question papers. It has been further stated that before disqualifying a detailed computer analysis had been done by the Board to pin-point such candidates. For all such candidates a physical check of the answer sheets, which are optical mark reader type, was carried out, which has shown that all the questions(both right as well as wrong) have been answered on the same set of choice in all these cases. A detailed computer analysis and statistical study report will be explained to the Tribunal at the time of hearing. It has been stated that in the written examination question booklets were in four series namely, A,B,C&D consisting of 120 questions relating to Subjects Maths,English,Hindi,General Knowledge and I.Q. It is stated that on computer analysis and further checks of the entire examination revealed that some of the candidates who were provided with 'B'series question booklets involved themselves in mal-practice as the pattern adopted by these candidates in the written examination was almost one and the same, which was practically impossible. It has also been stated that the question booklets show that these candidates had not done rough work for answering questions of Maths and the page provided in the answer book for the purpose was practically blank, while contrary to it,



the booklets of the meritorious candidates show that for answering the question extensive rough work was done. It has been stated that one candidate namely Sushil Kumar Srivastava who appeared in a subsequent examination held on 7.5.2000 for the post of Junior Engineer(P-Way) was caught red-handed using unfair practice, recovery was also made of a piece of paper containing solution and supplied to him from the outside source. The First Information Report was lodged and on investigation a gang of the culprits was apprehended who admitted their involvement in helping such candidates in previous examination, also. In this connection, news paper reports after 2nd June, 6th June and 23rd June have been filed as (Annexures 2, 3 & 4).

We have heard Shri Saumitra Singh, learned counsel for the applicant and Shri Prashant Mathur, learned counsel appearing for the respondents. On the date of hearing i.e. 27.7.2000 we also heard Shri Kali Shanker, , Chairman, Railway Recruitment Board who was personally present in court. The record pertaining to the examination in question has also been handed over by the respondents for perusal of the Tribunal.

We have carefully considered the submissions of the counsel for the parties. The applicants have come before this Tribunal on the basis of a plain and simple case that they have secured more than 90% marks and their names ought to have been shown in the list of the successful candidates. From the submissions made by the Chairman of the Board, it is clear that out of 360 marks, in general category the last candidate had secured 192 marks. In case of OBC and SC candidates minimum 'Cut off' marks are 151 and 92 respectively. For appreciating the controversy in better way and with clarity we are mentioning the marks secured by the applicants with other details.



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Sl.No.	OA.No.	Name	Roll.No.	Category	Question Book Series	Marks
1.	471/2000	Miss.Rama Devi	2207770	OBC	'B'	248
2.	524/2000	A.K.Singh	1503025	OBC	'B'	272
3.	525/2000	P.Singh	3616036	OBC	'B'	246
4.	640/2000	S.R.Chaurasia	2811309	OBC	'B'	246
5.	641/2000	A.Tiwari	2811198	General	'B'	250
6.	642/2000	S.Singh	2811034	General	'B'	250
7.	643/2000	S.K.Varma	3616051	SC	'B'	237
8.	644/2000	A.D.Sahgal	1503149	General	'B'	237
9.	645/2000	A.R.Usmani	2811431	General	'B'	241
10.	646/2000	V.Mishra	2810987	General	'B'	243
11.	647/2000	Mahendra Kumar	4018078	OBC	'B'	20
12.	648/2000	M.K.Rathore	2810996	OBC	'B'	252
13.	649/2000	P.K.Yadav	2509469	OBC	'B'	266
14.	650/2000	Alok Mishra	4017927	General	'B'	262
15.	651/2000	Puneet Kr.Dubey	2308783	General	'B'	56
16.	652/2000	M.K.Varma	1503207	OBC	'B'	31
17.	653/2000	Shailesh Kumar Singh	1503023	General	'B'	221
18.	656/2000	Satyendra Tripathi	2811199	General	'B'	267
19.	657/2000	R.K.Soankar	1503336	SC	'B'	245

During the course of hearing, we permitted the Chairman of the Board to explain us about the procedure adopted for detecting how the applicants could be pin-pointed to have used unfair means in the written examination. During his address it was stated that so far three candidates Mahendra Kumar, Puneet Kumar Dubey and M.K.Varma are concerned, they have secured marks much below the Cut Off marks and they could not be called for interview. In respect of applicant Miss.Rama Devi it has been submitted that she had adopted unfair practice of submitting two applications which became additional ground for her disqualification besides adopting unfair means. It has been submitted that the marks secured by the remaining 16 applicants were unusually high including

Miss. Rama Devi and they were all given Question Book Series 'B' which gave rise to suspicion that some unfair practice had been adopted. It has been submitted that on the basis of the Computer analysis the following figures were worked out.

Question Book Series	No.of candidates in Top 284	No.of candidates in Top 50	No.of candidates in Top 25	Total Candidates
A	68	8	2	6138
B	84	29	22	6257
C	71	7	Nil	5917
D	61	6	1	5831

On the basis of the aforesaid figures, it has been submitted that the acute uneven distribution of top merit candidates in favour of answer books Series 'B' is highly improbable, as the number of candidates qualifying from the other three booklet series is approximately same, and the total number of candidates appearing in each book series was almost same. It has also been submitted that further analysis of all the questions rightly attempted, wrongly attempted, and left blank by the candidates of the four book series, was carried out, for top 50 and top 25 candidates. From this analysis it was found that 20 of the top candidates among top 25 were/ 'B' series question booklets. The question booklets are of the applicants. The analysis also shows that they attempted questions in a specific pattern and even to the extent of choosing the same wrong options against 19 questions. It has been submitted that while it could be expected that the selection of right choice of answers for most of the top candidates is likely to match but it is highly impossible that wrong options for a large number of questions will also match for so many candidates. The Chairman further elaborated his submission by saying that there were four choices of answers of each question. Chance of selecting a wrong choice is one



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in four and the chance of two candidates selecting the wrong choice for two questions is <sup>2</sup> ~~by~~ 1:4 equal to  $1/16$  i.e. 1:4. extending this probability the chances of wrong choices of two candidates matching <sup>15</sup> ~~of~~ 15 questions, is 1:4 i.e. in one billion. Against this remote and almost impossible chance there are 20 candidates out of a total 6257 in 'B' Series question booklets who have chosen wrong answers for more than 15 answers and their wrong choices had matched more than 90%. This can take place only when the candidates have copied the ~~answers~~ <sup>answers</sup> by a common solution made available to them by outside source. It has been submitted that a physical and visual check of the answer sheets of these 20 candidates confirms that they have copied the answers apparently from a solution circulated to them by outside agency who somehow got the 'B' series booklet smuggled out and got it solved quickly (though made a few mistakes in solving the questions) got it solved quickly and circulated the solution to their chosen candidates. The 16 candidates who have been disqualified are out of those chosen candidates. It has been submitted that the modus operandi however, further obviates leakage of question papers before it reached to examination centre. It has been submitted that 16 of the such disqualified candidates out of 20 have filed the present applications. Chairman also disclosed that on the basis of criminal case lodged with the police investigation followed and a racket had been detected which was indulging in such activities in connection with the examinations held by the Railway Recruitment Board. It has been submitted that the involvement of the applicants, in using unfair means during the written examination has been detected on the basis of the scientific and reliable method on the basis of the computer analysis.

Shri Saumitra Singh, learned counsel for the applicant submitted that in view of the admitted position as disclosed by the Chairman of the Board that the applicants have secured

marks higher than those declared successful in written examination, applicants are entitled for relief. It has been submitted that in the counter affidavit filed in OA numbers 471,524 and 525 of 2000 there was no allegation against the applicants that they adopted unfair means during written examination. The case of unfair means was developed subsequently on the basis of observations of the court and then supplementary counter affidavits have been filed. Though in other OAs these allegations were incorporated <sup>in</sup> in the main counter affidavit. Allegations about unfair means are after thought and cannot be believed. The learned counsel in his written submission submitted that though record was produced by the respondents but opportunity was not granted to the applicants to peruse the same. Learned counsel has further submitted that the documents are not privileged documents and applicants ought to have been permitted to examine the answer books. Reliance has been placed on a Full Bench Judgement of this Tribunal in case of B.N.Rangawani Vs. Union of India and Others (Full bench Judgement of C.A.T) Vol(1) page -116

Lastly, the learned counsel for the applicant has submitted that even if the respondents were convinced that applicants adopted unfair means during written examination, they ought to have <sup>been</sup> ~~been~~ provided reasonable opportunity of hearing, to the applicants before disqualifying them from the examination. The learned counsel has placed reliance for his submission, <sup>on</sup> ~~of~~ various judgements. Learned counsel further submitted that as the respondents have made a final opinion for disqualifying the applicants from examination even a post decisional hearing will not be of any help. It has been submitted that in the facts and circumstances of the case, the entire selection proceedings may be cancelled.



Shri Prashant Mathur, on the other hand, submitted that the involvement of the applicants ~~has~~<sup>has</sup> been fully established on the basis of the computer analysis explained by learned Chairman of the Board during his address and the applicants have been rightly disqualified. The involvement of the applicants ~~is~~<sup>is</sup> using unfair means ~~is~~<sup>is</sup> apparent on the face of the record and they are not entitled for any relief. The learned counsel has also submitted that for selecting 40 candidates for the Vocational Course in Railway Commercial, large number of candidates about 30,000 appeared in the written examination and if the entire selection proceedings are cancelled, it shall have serious financial implications and loss of time and energy.

We have carefully considered the submissions of the learned counsel for the parties. From the detailed reasons mentioned in the address of the Chairman of the Board, it cannot be said that the approach of the respondents for taking action against applicants was for baseless reasons and was arbitrary. There was justification for the respondents to doubt performance of candidates who were supplied question booklet of 'B' series. It appears that marks secured by applicants are between 221-272, whereas the 'Cut off' mark for the general candidates was 192. Only 20 candidates out of about 30,000 could secure this high level of marks. Thus, the action taken by the respondents cannot be termed illegal and arbitrary. However, the important question, which needs serious consideration by this Tribunal remains whether the decision for disqualifying the applicants from examinations could be taken by the respondents without affording opportunity of hearing to them. We have no doubt about the legal position, that having serious civil consequences against anybody <sup>in order to</sup> cannot be passed without affording the reasonable opportunity of hearing to the affected person. In the present case, admittedly, such opportunity has not been given to the 16

applicants. In our considered opinion the applicants ought to have been given reasonable opportunity of hearing before passing the order disqualifying them from the examination.

The next related question is whether a post decisional hearing shall be appropriate in the facts and circumstances of the present case. Shri Saumitra Singh, learned counsel for the applicants relying on the judgement of Hon'ble Supreme Court in case of Yogendranath D. Bagde Vs. State of Maharashtra 1999(7) SCC-739 has submitted that post decisional hearing will not be of any help to the applicant<sup>as</sup> as respondents have taken a final decision. However, we are not prepared to accept this submission of the learned counsel for the applicants. The decision taken by the respondents against the applicants can still be termed tentative and by way of prima facie satisfaction for taking action against them. The final result of the selection has not yet been declared. Applicants appeared in interview on the basis of the interim orders passed by this Tribunal.

The second alternative suggested by learned counsel for the applicants, for cancelling the entire selection proceedings does not appear just and proper. In written examination about 30,000 candidates appeared, more than 200 of them were declared successful. They have been interviewed. Cancellation of selection at this stage shall involve serious financial loss and also loss of time and energy. The respondents have doubted the conduct of a very small number i.e. 20 out of 30,000. It will be doing injustice to others if on account of <sup>allegations</sup> ~~them~~ against a few of them, entire selection is cancelled.

In these circumstances, ends of justice shall be served if opportunity of post decisional hearing is given to the applicants and they are found entitled for relief to this extent in the present applications, except applicants of OA nos. 647/2000, 651/2000 and 652/2000 who have not been able to

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secure marks about 'Cut off' marks.

For the reasons stated above, the original application nos 647/2000, 651/2000 and 652/2000 are dismissed. Rest of the Original Applications are partly allowed. The applicants are given liberty to file a copy of this order before the Chairman, Railway Recruitment Board within a week and claim opportunity of hearing. The Board, thereupon shall serve a show cause notice on the 16 applicants giving reasons for their disqualification in the written examination and requiring them to submit their explanation. These show cause notices shall be served on the applicants within two weeks. The applicants shall submit their explanations within a week from the date of the receipt of the notice. The Railway Board/Competent Authority thereafter shall pass order within two weeks. The appearance of the applicants in the written examination and interview shall be subject to the orders passed by the Board/Competent Authority.

Let a copy of this order be kept in each file of the OAs.

There will be no order as to costs.

*S. B. Singh*  
MEMBER(A)

*[Signature]*  
VICE CHAIRMAN

*u* *u*  
Dated: Sept: <sup>21</sup>21, 2000

U. Verma