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Order dated 26.5.2005

Heard the learned counsel for the parties on Misc. Application No. 263/05 filed by ~~Mr~~ Abhaya Kumar Dash and 59 others seeking intervention in the O.A. on the ground that they are the successful candidates in the selection for the post of Group D in Engineering and Operative Department of East Coast Railway, Khurda Road Division, which is the subject matter of challenge before this Tribunal.

Having heard the learned counsel for the parties, the prayer for intervention is allowed. Accordingly, the intervenor-petitioners be impleaded as necessary parties in the O.A. 157/05 and necessary incorporation be carried out in the cause title of the O.A.

M.A. 263/05 is accordingly disposed of.

*Tulsi*  
VICE-CHAIRMAN 26/5/05

*Yash*  
MEMBER (JUDICIAL)

Order dated 26.5.2005

Heard the learned counsel for the parties on M.A. Nos. 264/05 and 271/05 filed by the intervenors seeking vacation of the interim order of stay granted by the Single Bench of this Tribunal on 25.4.2005.

Orders are reserved.

*Tulsi*  
VICE-CHAIRMAN

*Yash*  
MEMBER (JUDICIAL) 26/5/05

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Order dated 26. 5.2005

We have heard the learned counsel appearing for the parties on Misc.Application Nos.264 and 271/05 filed by the intervenors seeking vacation of interim order dated 25.4.2005 passed by the Single Bench of this Tribunal.

It is the case of the intervener-petitioners that vacancies in Group D in Civil Engineering and Operative Department of Khurda Road Division numbering about over 1000 were advertised through the Employment Exchange as well as public notification. The candidates were put to physical test followed by written test and currently, the successful candidates in the written test have been called to produce their educational and other testimonials for verification before offer of appointment could be issued to them. The intervener-petitioners have stated that the two applicants in the O.A., who secured poor marks and have not been selected and after becoming unsuccessful have sought to challenge the selection and put a spanner on the legitimate expectation of the successful candidates. They have, therefore, submitted that the applicants in the O.A. do not have a *prima facie* case and the balance of convenience is not in their favour and that the intervener-petitioners would suffer irreparable loss if the order dated 25.4.2005 is not vacated.

The learned counsel for the applicants opposing the stay vacation petitions has argued that the selection

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procedure is fraught with irregularities and infraction of declared procedure of selection. In the first instance, the notification dated 5.11.1998 limited the selection from amongst the candidates whose names were sponsored by the Employment Exchange, but the said notification No.1/98 dated 5.11.1998 was later on amended/modified by the issue of notification dated 26.11.1998 (Annexure-P/2), whereby the last date of receipt of applications was extended from 30.11.1998 to 30.12.1998 and opportunity was granted to the candidates to apply for the posts directly in response to the Employment Notice, even though their names may not be sponsored by the Employment Exchange. Further, in the initial Employment Notice No.1/98, the procedure of selection was declared for physical test followed by written test and viva voce. However, the said recruitment procedure was changed subsequently after a long delay by their notification dated 1.11.2003 (Annexure-P/3), whereby the selection procedure was restricted to physical test followed by written test ~~only~~ and it was declared that the final result of the selection would be made on the basis of the written test only. The contention of the applicants (in O.A.) is that changing the selection procedure in the mid stream was bad in the eye of law and, therefore, the whole selection process is vitiated and, therefore, the same is liable to be declared null and void.

The learned counsel for the Respondents submitted that the Department had to resort to public

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notification for filling up of the vacancies by their notification dated 28.11.1998 in pursuance of the directives of the Hon'ble Supreme Court in the case of Excise Superintendent, Malakpatnam Krishna District vs. K.V.N. Visweshwara Rao & Ors. (1996 (7) Supreme 210. He further submitted that in response to the public notification they had received several lakhs applications and all these candidates were put to physical test. Obviously, it was a ~~gigantic~~ operation which took couple of years to be completed. Out of these, 3, 33, 366 applicants, who were put to physical test 9872 candidates were cleared for written test and after the written test, in October, 2004, more than 1000 candidates have been called for verification of documents/testimonials prior to offer of appointment could be issued. The learned counsel for the Respondents contested the submission that the results of the written test have been announced. It is his submission that the Respondent-Department have only prepared a list of candidates based on their merit in the written test for verification of documents.

We have carefully considered the rival submissions made at the Bar and perused the materials placed before us. Having regard to the facts and circumstances of the case, we see no reason to restrain the Respondent-Department from continuing the process of verification of documents/testimonials of the candidates on the basis of their merit in the written examination with a view to offering them appointment in the cadre of Group D. Accordingly, we direct the Respondent-Railways

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to complete verification of documents of the candidates, if not completed already. In the meantime, they should disclose the total number of candidates, who have been called upon for verification of records and also to publish the result of the written test strictly in order of merit forthwith, and in any case by 20.7.2005. The Respondent-Railways are also at liberty to issue offer of appointment to the successful candidates during this period.

*Copy of order  
of 26/5/05 issued  
to the Counsel  
for both sides.*

Wolff  
S.O.

*MM  
20/6/05*

Notwithstanding pednency of this O.A., the applicants, if their names appear in the merit list of successful candidates, should also be given call letters for the purpose of verification of documents, leading to offer of appointment.

With the above observation and direction, order dated 25.4.2005 passed by the Single Bench of this Tribunal is modified and accordingly, M.A. Nos.264 and 271 of 2005 are disposed of.

Handover copies of the order to the learned counsel for the parties.

*John*  
VICE CHAIRMAN

*John*  
MEMBER (JUDICIAL)

*John*  
26/6/05