

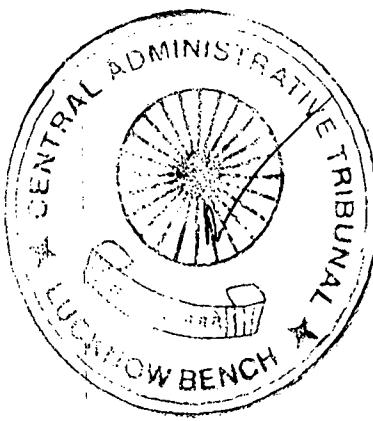
Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH, LUCKNOW****Original Application No.253/2004****C.W.****Original Application No.52/2011****This the 2nd Day of December 2011.****Hon'ble Mr. Justice Alok Kumar Singh, Member (J)****Hon'ble Mr. S.P. Singh, Member (A)**

1. Subhash Srivastava, aged about 24 years, son of Sri S.N. Srivastava, resident of 227/76, Hata Mangali Prasad, Astabal Yahiyanj, Lucknow.
2. Shaiju Abraham, aged about 31 years, son of Late V.G. Abraham, resident of 213/6, Chhachhi Kuan, Near K.G.M.U., Lucknow.
3. Surendra Nath Tewari, aged about 30 years, son of Late R.B. Tewari, resident of Ravindra Nagar, Teli Bagh, Lucknow.
4. Bhaskaranand Sati, aged about 24 years, son of Sri D.D. Sati, resident of D-2178, Indira Nagar, Lucknow.
5. Rohit Shukla, aged about 31 years, son of Late K.S. Shukla resident of C-13/6, Paper Mill Colony, Nishat Ganj, Lucknow.
6. Km. Namitha Raj K., aged about 23 years, daughter of Sri Kanak Raj, resident of SS-1/351, Sector-A, Sitapur Road Yojana, Lucknow.

...Applicants.

By Advocate: Sri Subhash Vidyardhi.**Versus.**

1. Union of India, through the Secretary, Ministry of Defence, Sena Bhawan, New Delhi.
2. The Additional Director General of Man Power MP 4 (Civ.) (b) Adjutant General's Branch, Army Head Quarters, DHQ P.O., New Delhi-110011.
3. The Commanding Officer, Army Medical Corps Records, Lucknow.
4. The Officer-in-charge, Army Medical Corps Records Office, Lucknow.
5. Lt. Col. H.S. Bisht, Chief Record Officer, A.M.C. Record Office, Lucknow.
6. Major Appa Durai, A.M.C. Record Office, Lucknow.
7. Captain Amit Sharma, Station Head Quarters, Lucknow.
8. Amit Kumar, aged about 27 years, son of Sri Suresh Chandra R/o 150 B, Badi Lal Kurti, Dilkusha, Lucknow.

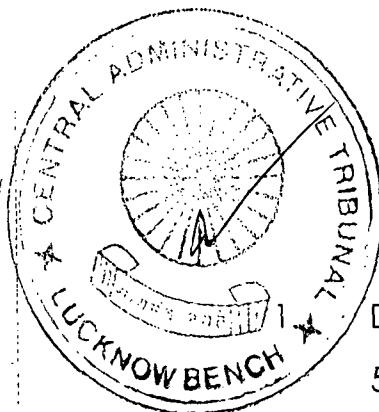


9. Dhermendra Dixit, aged about 26 years, s/o Sri J.N. Dixit, R/o 558/27 Kha, Sunder Nagar, Alambagh, Lucknow.
10. Lokendra Singh aged about 25 years S/o Sri Sub Dhan Singh r/o Nilmatha Sector-A, Malakh Road, Lucknow.
11. Rabia Bano aged about 27 years D/o Sri Shahjahan R/o 23, Khenchendro Market, Sadar Bari Bazar, Lucknow.
12. Abdul Rustam aged about 29 years S/o Sri Mohd. Sattor, R/o Rajiv Nagar, Ghosiana, Telebagh, Lucknow.

.... Respondents.

By Advocate: Sri K.K. Shukla for Resp. Nos. 1 to 4.

Sri Praveen Kumar for Resp. Nos. 8 to 12.



**Connected With
Original Application No.52/2011**

- Dhermendra Dixit, aged about 32 years, s/o Sri J.N. Dixit, R/o 558/27 Kha, Sunder Nagar, Alambagh, Lucknow.
2. Amit Kumar, aged about 29 years son of Shri Suresh Chandra, resident of 150-B, Badi Lal Kurti, Dilkusha, Lucknow.
3. Abdul Rustam Ansari aged about 32 years S/o Sri Mohd. Sattar, R/o Rajiv Nagar, Ghosiana, Telebagh, Lucknow.
4. Rabia Bano aged about 29 years D/o Sri Shehjahan R/o 23, Khenchendra Market, Sodor Bari Bazar, Lucknow.

...Applicants.

By Advocate: Sri Praveen Kumar.

Versus.

Union of India through,

1. The Secretary, Ministry of Defence, Sena Bhawan, New Delhi.
2. The Additional Director General of Man Power MP 4 (Civ.) (b) Adjutant General's Branch, Army Head Quarters, DHQ P.O., New Delhi-110011.
3. The Commanding Officer, Army Medical Corps (Records), [Brigadier [Records]], Lucknow.

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4. The Officer-in-charge, Army Medical Corps (Records), Lucknow.

.... Respondents.

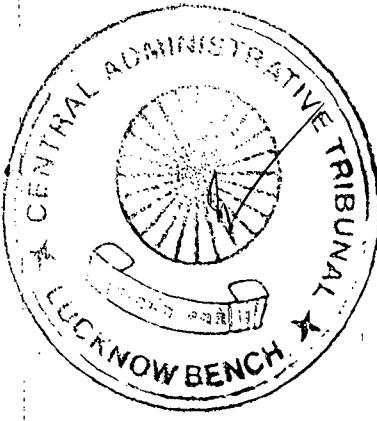
By Advocate: Sri Subhash Vidyardhi.

Sri R. Mishra.

ORDER

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

This O.A.No.253/2004 has been filed for the following relief's:-



"I. This Hon'ble Tribunal may be pleased to quash the selection proceedings initiated by the respondents in pursuance of the advertisement contained in Annexure No.1 to this application regarding the post of lower division clerk.

II. This Hon'ble Tribunal may be pleased the direct the respondents to hold a fresh selection for the post of lower division clerk in pursuance of the advertisement dated 24.04.2004 contained in Annexure No.1 to this application.

III. Costs of this application may kindly be awarded to the applicants against the respondents and such other orders, as may be deemed to be just and proper in the circumstances of the case, may also be passed in favour of the applicants."

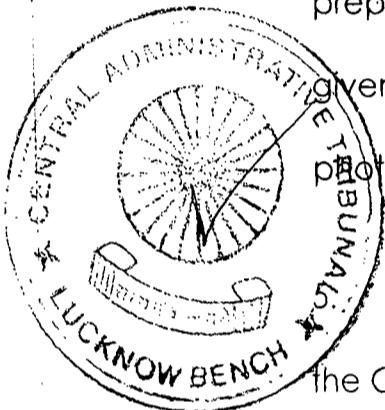
2. As is apparent from the aforesaid relief this O.A. has been filed assailing the selection method adopted by the respondents for the post of Lower Division Clerk. This examination is said to had been initiated on the basis of an advertisement given in Daily Newspaper, Times of India, issued on 24.04.2004.

3. According to the applicants in response to an advertisement as many as 156 candidates who had applied for the post of LDC were called for appearing in the test on 24.05.2004 comprising

written examination, typing test and interview but no sitting plan was made by the examinees. Rather, candidates were allowed to choose the seat of their choice. Roll numbers were also not allotted to the candidates rather candidates were directed to write down their names on the answer sheets and were also asked to affix their photographs on answer sheets. It was highly improper, unfair and unreasonable, because while evaluating the answers, the examiner would know the identity of the candidates and given marks accordingly. It is further said that the question paper was set up only in English language whereas it should have been bilingual. Further the candidates were not required to put signatures at the end of their answer sheets which gave enough scope to manipulate the things. The Ministry of Defence Rules for recruitment of Class-III post do not provide for taking written examination and interview of the candidates. The written examination is only to screen the candidates who are less meritorious and who do not deserve to be considered for appointment and thereafter only those candidates who are successful in the written examination are to be interviewed. The performance of the examinees has no value before interview and even a candidate who had not appeared in the written examination and had not answered any questions, could also be interviewed. The procedure adopted by the respondents for conducting the examination is totally arbitrary and illegal and does not meet the test of secrecy required to be adopted for holding such examination.

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4. The respondents have filed the detailed Counter Affidavit saying that Board of Officers was asked to carry out complete selection procedure including conduct of written test, evaluation of answer sheets and interview. The answer sheets were kept in the unit quarter guard after sealing the box. However, it is admitted that no roll numbers were allotted to the candidates and instead they were asked to write their name, father's name on the answer sheets for identification. It is also admitted that the question paper was prepared only in English language and not in bilingual. No reply was given as to why the applicants were asked to affix their photographs.



After considering the points in question this Tribunal allowed the O.A. on 01.11.2004.

6. The respondents went for judicial review before the Hon'ble High Court by filing Writ Petition No.833 (S/B) of 2005. That writ petition was allowed and the aforesaid order dated 01.11.2004 and the order dated 28.04.2005 passed by CAT were set-aside and the matter was remitted back to the Tribunal to decide afresh. The aforesaid second order dated 28.04.2005 is an order by which the application for recall by some of the selectees, was rejected by this Bench.

7. O.A.No.52/2011 has bee filed for the following relief's:-

"1. To quash the impugned order dated 16.06.2010 contained as Annexure No.A-1 to the OA with all consequential benefits.

2. To appoint the applicants on the post of Lower Division Clerk in pursuance of the offer of appointment issued by the respondents on 04.06.2004 with seniority

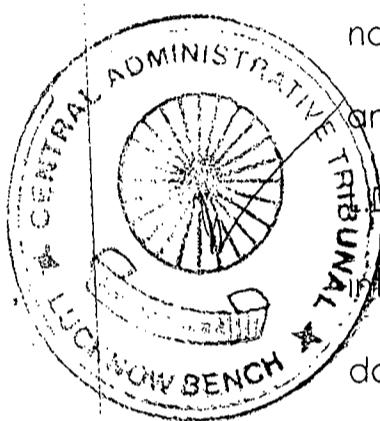
with effect from 2004 with all consequential promotion and pay fixation etc.

3. To pay arrears of pay right since 2004 till the date of payment with update revision of pay with interest @ 12% P.A.

4. Any other relief, with this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.

5. Cost of the present case, as the applicants have unnecessary dragged into litigation."

8. The cases of all the four applicants is that in response to the notification dated 24.4.2004 for the selection of 7 posts of L.D.C. and 5 posts of Peons, the applicants have applied for the post of L.D.C. They received letters calling them to appear in the Test and Interview on 24.05.2004. They participated in the selection on that date and were declared successful. Their result was also displayed on the Notice Board. The respondents have also issued offer of appointment to the applicants alongwith other selected persons (Anexure-A-3). In pursuance thereof they reported to the respondents and they were subjected to medical test etc. But even after completion of all the formalities the applicants were not allowed joining. On inquiry, it was found that selection has been challenged and ultimately it was decided and allowed by this Tribunal in O.A.No.253/2004 vide order dated 01.11.2004. Thereafter, the applicants approached this Tribunal by moving an application for recall of the order on the ground that they have not been heard. But, it was rejected on 28.04.2005. Then the applicants preferred W.P.No.833/2005 (S.B.). The Hon'ble High Court was pleased to stay the operation of both the orders dated 01.11.2004 and 28.04.2005. Finally, the writ petition filed by the applicants was allowed and both the orders of this Tribunal were quashed



(Annexure-A-4). The Hon'ble High Court was also pleased to remand back O.A.No.253/2004 to this Tribunal. By means of an order dated 26.04.2010 this Tribunal has observed that the official respondents are at liberty to act accordingly in respect of appointing the selectees (Annexure-A-6). The applicants then submitted a representation dated 03.04.2010, which was rejected on 16.6.2010 by saying that the Tribunal has not specifically directed for issuance of appointment order. They further took shelter of pendency of O.A.No.253/2004. Thus, the applicants are being denied joining for almost six years in gross violation of law.

The official respondent no. 1 to 4 have contested the O.A. by filing a detailed counter affidavit admitting most of the factual position. But it has been said that no medical examination of the applicants or any other formality were carried out by the respondents as the selection stood quashed on 01.11.2004 by this Tribunal. It has been further said that since procedural error in the selection process have come to the fore, the matter shall be proceeded with as per final outcome of O.A.No.253/2004. A Supplementary Affidavit dated 28.06.2011 on behalf of Respondent No.1 to 4 has also been filed saying that the department was willing to conduct the selection process afresh in compliance of the Court order dated 01.11.2004. But, in the meantime, the applicants have moved before Hon'ble High Court in Writ Petition No.833/2005, challenging the order dated 01.11.2004 on the ground that they are necessary parties in this case but have not been impleaded in the O.A.No.253/2004. After hearing, the case has been remanded

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back vide order dated 03.01.2008 for deciding afresh after affording opportunity to the applicants.

10. We have heard the learned counsel for the parties and carefully perused the material on record.

11. As the question involved in both the O.As. are intermingled, therefore these O.As. were clubbed together and are being decided by a common judgment/order.

12. As would be apparent from the pleadings of the respective parties there does not appear to be almost any quarrel on the factual matrix. The selection/examination took place in the manner as alleged in the pleadings of O.A.No.253/2004, which has been filed by six unsuccessful candidates. On the other hand, the connected O.A.No.52/2011 has been filed by four applicants, who are selectees of the aforesaid selection but have not been given appointment till date.

13. There is also no quarrel on the point that the procedure adopted by the respondents was quite strange. Usually, in any examination the identity of the candidates is not supposed to be known so that proper evaluation may be done. Concededly, in the selection in question no roll numbers were allotted. Instead, the candidates were asked to write their names, father's name on the answer sheets. Not only this, they were also asked to affix their photographs. But the question is as to whether now it is open to the unsuccessful candidates to turn round and challenge the said examination in which they duly participated without any protest and it is only when the result was declared and they were not

selected then they challenged the examination/selection by filing O.A.No.253/2004.

14. Both the sides have placed reliance on the catena of decisions of Tribunal/Hon'ble High Court/ Hon'ble Supreme Court which have to be looked into and then only, we have to arrive to any conclusion.

15. From the side of the applicant reliance has been placed on the following decisions:-

(1997) 9 SCC-527, *Raj Kumar & Others Versus Shakti Raj & Others*--Emphasis has been laid on para 16 of the judgment, which is as under:-

"Para-16.

Yet another circumstance is that the Government had not taken out the posts from the purview of the Board, but after the examinations were conducted under the 1955 Rules and after the results were announced, it exercised the power under the proviso to para 6 of 1970 Notification and the posts were taken out from the purview thereof. Thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal: It is true, as contended by Shri Madhava Reddy, that this Court in Madan Lal V. State of J&K and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or

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the Committee as well as the action taken by the Government are not correct in law."

(2). AIR 1994 SC-2166 Krishan Yadav & Another Vs. State of Haryana & Others---Attention has been drawn towards para-19 and 21 of this case law, which are as below:-

"Para-19.

The story does not end here. From out of the "selection list" secret communications have been sent to the candidates. Selections were made without medical test or verification.

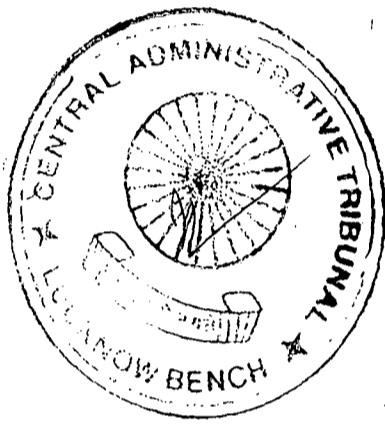
Para-21.

In the above circumstances, what are we to do? The only proper course open to us is to set aside the entire selection. The plea was made that innocent candidates should not be penalized for the misdeeds of others. We are unable to accept this argument. When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as "Fraud unravels everything". To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly, we hereby set aside the selection of Taxation Inspectors."

(3). AIR 1993 SC-796 Union Territory of Chandigarh Vs. Dilbagh Singh & Others--- Attention has been drawn towards para-11 of this case law, which as under:-

"Para-11.

If we have regard to the above enunciation that a candidate who finds a place in the select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in the absence of any specific Rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bonafide reasons, it follows as a necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bonafide and valid reasons and not arbitrarily. In this instant case, when the Chandigarh Administration which received the complaints about the unfair and



injudicious manner in which select list of candidates for appointment as conductors in CTU was prepared by the Selection Board constituted for the purpose, found those complaints to be well founded on an enquiry got made in that regard, we are unable to find that the Chandigarh Administration had acted either arbitrary or without bonafide and valid reasons in canceling such dubious select list. Hence, the contentions of the learned counsel for the Respondents as to the sustainability of the Judgment of CAT under appeal on the ground of non-affording of an opportunity of hearing to the Respondents (candidates in the select list) is a misconceived one and is consequently rejected."

16. From the side of the private respondent no.8 to 12, reliance has been placed on the following case laws:-

(A) **Failed candidates cannot challenge the selection.**

(1). **University of Cochin, Pep. By its Registrar, University of Cochin Vs N.S. Kanjoonjamma & Others reported in 1997 (2) SCSLJ-157.**-----

Having participated in the selection; she is estopped to challenge the correctness of the procedure.

(2). **Sardara Singh & Others V. State of Punjab & Others reported in AIR 1991 SC-2248.** Attention has been drawn towards para-4 and 8 of this case law, which are under:-

"Para-4.

It is next contented that the District Collector was not competent to invite applications afresh and selection of the candidates from out of those applicants is illegal. It is true that he is bound by the instructions issued by the Government in Annexure 'D' wherein it was stated that since the number of applicants are quite large in number, it would not be necessary to solicit candidate afresh from Employment Exchange or through public advertisement. But in paragraph 4 therein it was stated that priority categories listed in the proceeding dated April 24, 1986 will have to be given precedence over candidates from all other sources other than the regularization of the existing ad hoc Pastwaris. It had given room to the District Collector to invite applications from those categories. Though it was mistaken compliance on wrong impression, the selection of the candidates, so

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applying, does not become illegal. It was, next contended that instead of calling the applications by publication in the newspapers, only notice was put on the Notice Board of the Collector's office and some candidates submitted their applications in pursuance thereof and that is not a proper notification. Though we find that the procedure adopted by the Collector, in inviting applications is not commendable, but the grievance would be voiced only by the person who did not have the opportunity to make applications within the prescribed period. But no such grievance could be raised by persons like the appellants. Under those circumstances, the procedure adopted, though irregular, does not vitiate the selection of candidates, ultimately made by the Committee.

Para-8.

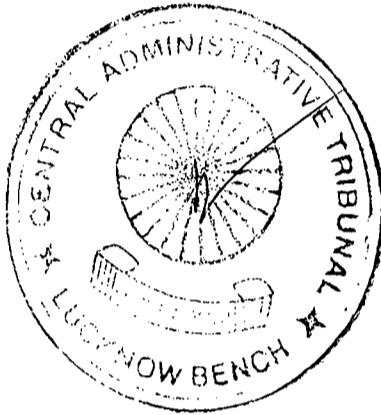
It is next contended that the appellants have now become over-aged and that they are 22 in all. Therefore, directions may be given to the Government to relax their age qualification and given appointments to them. We find no justification to give such a direction. Admittedly, the appellants have taken the chance for selection and they were not selected on the basis of comparative merits. Therefore, merely because appellants are carrying on the litigation, there cannot be any justification to give direction to the Government to consider their cases by relaxing the age qualification for appointment as Patwari. It is not in dispute that hundreds of candidates who could not be selected would in that event seek similar relief. Under these circumstances we do not find any cause to add to the selection and appointment of the candidates as Patwaris. The High Court, though for different reasons, has rightly dismissed the writ petitions. The appeals are accordingly dismissed, but without costs."

(3). Chandra Prakash Tiwari & Others Vs. Shakuntala Shukla & Others reported in 2002 (2) SCSLJ -140. Attention has been drawn towards para-32 of this case law, which is as under:-

"Para-32.

Subsequently, the decision in Om Prakash stands followed by a later decision of this Court in Madan Lal & Ors. V. State of J&K & Ors. (1995 (3) SCC 486), wherein this Court stated as below:-

"9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be



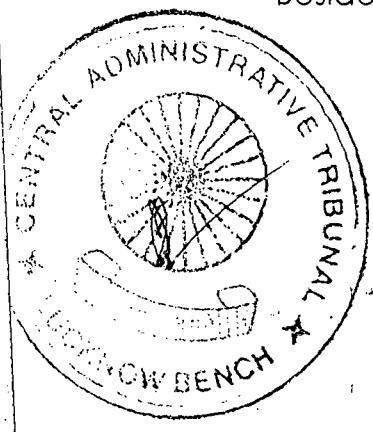
eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners was well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves selected to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate taken a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla (1986 Supp SCC 285) it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who taken a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview, nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such a expert committee."

(4). Manish Kumar Shahi Vs. State of Bihar & others reported in (2011) 1 SCC (L&S)-256. ----In this case the following earlier case laws have been relied upon:-

" Lila Dhar v. State of Rajasthan, (1981) 4 SCC 159 : 1981 SCC (L&S) 588; Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258; State of U.P. v. Rafiuddin, 1987b Supp SCC 401 : 1988 SCC (L&S) 183 : (1987) 5 ATC 257; Mehmood Alam Taria v. State of Rajasthan, (1988) 3 SCC 241 : 1988 SCC (L&S) 757 : (1988) 7 ATC 741; Anzar Ahmad v. State of Bihar, (1994) 1 SCC 150 : 1994 SCC (L&S) 278 : (1994) 26 ATC 504; P. Mohanan Pillai v. State of Kerala, (2007) 9 SCC 497 : (2007) 2 SCC (L&S) 542; K.A. Nagamani v. Indian Airlines, (2009) 5 SCC 515 : (2009) 2 SCC (L&S) 57; Marripati Nagaraja v. Govt. of A.P., (2007) 11 SCC 522 : (2008) 1 SCC (L&S) 68.

Besides the above the following case laws have also referred to:-



"Ashok Kumar Yadav v. State of Haryana, (1985) 4 SCC 417 : 1986 SCC (L&S) 88; Mohinder Sain Garg v. State of Punjab, (1991) 1 SCC 662 : 1991 SCC (L&S) 555 : (1991) 16 ATC 495; Ashok v. State of Karnataka, (1992) 1 SCC 28 : 1992 SCC (L&S) 38 : (1992) 19 ATC 68; Raj Kumar v. Shakti Raj, (1997) 9 SCC 527 : 1997 SCC (L&S) 1029; Vijay Syal v. State of Punjab, (2003) 9 SCC 401 : 2003 SCC (L&S) 1112; Madan Lal v. State of J&K, (1995) 3 SCC 486 : 1995 SCC (L&S) 712 : (1995) 29 ATC 603.

Reliance has been placed on para-16 of this judgment, which is as under:-

"Para-16.

We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for vivo voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the high Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the

judgment in Madan Lal v. State of Uttarakhand, Amlan Jyoti Borooah v. State of Assam and K.A. Nagmani v. Indian Airlines.

(5). Union of India Vs. N. Chandra Shakar reported in 1998 (1) SCSLJ-199---

On account of different facts and circumstances this case law does not appear to be of much importance as far as the present case is concerned.

(6). Union Of India & Others Vs. S. Vinodh Kumar & Others reported in (2007) 8 SCC-100

"Para-18.

It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See Munihdar Kumar v. Rajiv Govil) (See also Roshmi Mishra v. M.P. Public Service Commission).

Para-19.

In Chandra Prakash Tiwari v. Shakuntala Shukla, it was held: (SCC p.148, para 32).

32. In conclusion, this Court recorded that the issue of estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and it is on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status--- the situation, however, presently does not warrant such a conclusion and we are thus not in a position to lend concurrence to the contention of Dr. Dhavan pertaining to the doctrine of estoppel by conduct. It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not bar a contention as regards the right to challenge an appointment upon due participation at the interview /selection. It is a remedy which stands barred and it is in this perspective in Om Prakash Shukla v. Akhilesh Kumar Shukla a three Judge Bench of this Court laid down in so uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise."

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It was further observed: (SCC p.149, para 34)

34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'palatable' to him, he cannot turn round and subsequently contend that the process of interview was unfair to there wds some lacuna in the process."

(7). O.A.No.188 of 2004, Rajeev Kumar Vs. U.O.I. decided on 07.01.2005 by coordinate Bench of CAT, Lucknow. ---In this case besides examining various case laws cited by both the sides the **Full Bench decision of CAT in M.R. Gopalakrishna and Others vs. The General Manager S.C. Railway, Madras (1994-1996 A.T. Full Bench Judgments)** was also considered wherein it was hold that candidates having failed to secure the minimum of 30% marks out of 50 in the evaluation of service record and viva-voce test when not empanelled for promotion cannot challenge the legality of selection for promotion of others. In Para-28, it was observed by Principal Bench that when the applicants have participated in the selection process without protest on any grounds, whether they can have any locus standi to for challenging the selection, after having been declared unsuccessful.

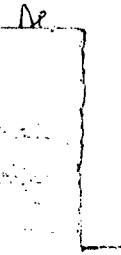
(8). O.A.No.276 of 2005, Smt Beena Singh Vs. U.O.I. & Others decided on September, 2011.---In this case also relying upon the ratio laid down in the case of **Chandra Prakash Tiwari (Supra)** the O.A. was rejected.

(B) Person selected but not appointed due to pendency of case.

(1). Krishna Kumar Singh Vs. Collector ----. Reported in 2009 (27) LCD-1378.

Head Note-Person selected in existing vacancy, but denied appointment---Held to be arbitrary—Person should not be made to suffer due to pendency of case.

17. Let us firstly take up the case laws cited in favour of the applicants. In the case of Raj Kumar, (Supra) decided by three Hon'ble Judges it was held that in view of the fact and circumstances of the case principle of estoppel and acquiescence will not be applicable against the unsuccessful candidates because in that case the procedure of selection and the exercise of power to exclude the post in question from the purview of the SSSB suffered from glaring illegalities. Earlier, in the case of Madan Lal Vs. J&K (1995) 3 SCC page-486 following the preposition of law laid down by Hon'ble Apex Court in the case of Om Prakash Shukla Vs. Akhilesh Kumar Shukla 1986 Supp. SCC 285 (also decided by three Hon'ble Judges) held that if a candidate has taken a calculated chance and appeared in the interview then only because the result of interview is not 'palatable' to him, he cannot turn round and subsequently contend that the process of interview was unfair or the selection committee was not properly constituted. This preposition of law laid down in Om Prakash Shukla has been followed and reiterated in Madan Lal (Supra) which has been further followed all along by the Hon'ble Apex Court till date as would be apparent from several old and new case laws, which have been cited on behalf of the other side as noted hereinbefore. Coming back to the above case of Raj Kumar (Supra), which has also been decided by three Hon'ble Judges, suffice is to mention that in this case the aforesaid case of Madan Lal (Supra) which has followed the case of Om Prakash Shukla (Supra) which too was decided by three Hon'ble Judges of Hon'ble Apex Court), has been distinguished in view of the peculiar facts and circumstances



of the case as has been discussed in para-16 in the judgment of Raj Kumar (Supra). The law laid down in the case of Om Prakash Shukla decided by three Hon'ble Judges of Hon'ble Apex Court duly followed by the case of Madan Lal (Supra) has never been reviewed or unsettled. Therefore, this is settled law on the point till today. Further the facts of the present case are not similar to the case of Raj Kumar (Supra) therefore, in our opinion the applicants do not get any benefit from it. The second case law of Krishna Yadav Vs. State of Haryana (Supra) is on the point of secret communications sent to the candidates and selection having been made without medical test or verification, which is not the case before us. Therefore, this case law also is of no use as far as applicants are concerned. The third case law of Union Territory of Chandigarh Vs. Dilbagh Singh (Supra) only says that if a candidate finds place in the select list for appointment to a civil post he does not acquire an indefeasible right to be appointed in such post and he could be aggrieved only when Administration does so either arbitrarily or for no bonofide reasons. This preposition of law will be kept in mind while deciding the connected case filed by the selectees.

18. From the other side in most of the eight case laws, which have been cited the view laid down in the case of Om Prakash Shukla (Supra) decided by three Hon'ble Judges of Hon'ble Apex Court and followed in the case of Madan Lal and Others Vs. State of J&K & Others (Supra) has been constantly adhered and maintained to the effect that if a candidate takes a calculated chance to appear in the selection/ interview then only because the



result of the interview is not 'palatable' to him, he cannot turn round to say that process of selection was unfair. He is estopped from doing so in view of the principle of estoppel and acquiescence. The aforesaid preposition of law squarely applies in the present case before us.

19. On account of the above this O.A.No.253/2004 filed by unsuccessful candidates seeking quashing of selection process initiated by the official respondents in pursuance of advertisement contained in Annexure-1 and for directing the respondent to hold fresh selection for the post in question deserves to be dismissed.

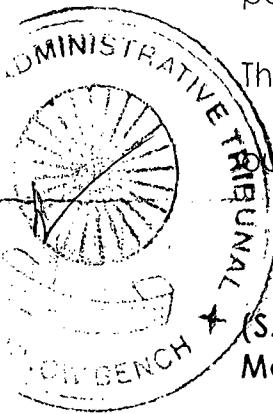
20. On the other hand the O.A.No.52/2011 filed by some of the selectees deserves to be allowed in view of the aforesaid settled law on the point as discussed hereinabove. The law laid down in the case of Krishna Kumar Singh Vs. Collector (Supra) squarely applies in this case which is to the effect that a selectee should not made to suffer during the pendency of the case. In the present case the respondents have rejected the request and representation of some of the selectees and refused to give them joining on the ground that the matter is pending in the Court/Tribunal and there is no clear direction in O.A.No.52/2011 (Annexure-A-1).

21. Accordingly, O.A.No.253/2004 is dismissed. O.A.No.52/2011 is allowed and the impugned order dated 16.06.2010 (Annexure-A-1) is set-aside. The respondents are directed to proceed further in respect of giving appointment to the selectee applicants on the post of Lower Division Clerk in pursuance of offer of appointment issued by the respondents on 04.06.2004. For the purposes of seniority, promotion, and pay fixation they have to be deemed in

service from the relevant date and month of the year 2004. But, as far as prayer for payment of arrears since 2004 with interest is concerned, it is declined. There is no question of directing for payment of salary for the period during which they did not work.

Therefore, the question of interest on the pay arrears is also ruled

out. No order as to costs.



Sd/-
(S.P. Singh)
Member (A)

Amit/-

Certified Copy

Received 23/12/2011
Section Officer (Judicial)
Central Administrative Tribunal
Lucknow Bench, Lucknow

Sd/-
(Justice Alok Kumar Singh)
Member (J)

23/12/11

Sd/-
23/12/2011

(i) Date of Order 23/12/2011
(ii) Date of Pre. 23/12/2011
(iii) Date of Receipt 23/12/2011