IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
* * *

1. T.A. No.241/86
(W.P. 1553/85)

Date of decision 14-2-1991.

Shri A.G. Bodhani ...Applicant

Shri G.S. Walia ...Counsel for the Applicant

Vs.

Union of India and
Rly. Recruitment Board ...Respondent

Shri P.M.A. Nair ...Counsel for the Respondent

2. T.A. No.287/86
(W.P. 1590/86)

Shri Sarfaraz Baig ...Applicant

Shri G.S. Walia ...Counsel for the Applicant

Vs.

Union of India and
Rly. Recruitment Board ...Respondent

Shri P.M.A. Nair ...Counsel for the Respondent

3. O.A. No.208/86

Shri Jehangeer Khan & Others ...Applicants

Shri D.V. Gangal ...Counsel for the Applicants

Vs.

Union of India and
Central Railway ...Respondent

Shri P.M.A. Nair ...Counsel for the Respondent

4. O.A. No.56/87

Smt. Jayashree A. Chitra ...Applicant

Shri G.S. Walia ...Counsel for the Applicant

Vs.

Union of India and
Central Railway ...Respondent

Shri P.M.A. Nair ...Counsel for the Respondent

...2

(8)

5. O.A. No.69/87

Kumari Beena Vasudevan ...Applicant

Shri G.D. Samant ...Counsel for the Applicant

Vs.

Union of India and
Rly. Recruitment Board ...Respondent

Shri P.M.A. Nair

6. O.A. 177/87

Kumari Lata Nathan ...Applicant

Shri S.Natarajan ...Counsel for the Applicant

Vs.

Union of India and
Rly. Recruitment Board ...Respondent

Shri P.M.A. Nair ...Counsel for the Respondent

7. O.A. No.273/87

Kumari Leela Kannan ...Applicant

Shri G.D. Samant ...Counsel for the Applicant

Vs.

Union of India and
Rly. Recruitment Board ...Respondent

Shri P.M.A. Nair ...Counsel for the Respondent

8. O.A. No.424/87

Kumari Aruna Chaurasia ...Applicant

Shri D.J. Gangal ...Counsel for the Applicant

Vs.

Union of India and
Rly. Recruitment Board ...Respondent

Shri P.M.A. Nair ...Counsel for the Respondent

9. O.A. No.516/87

Shri Shaikh S. Ahmed ...Applicant

Shri G.D. Samant ...Counsel for the Applicant

Vs.

Union of India and
Rly. Recruitment Board ...Respondent

Shri P.M.A. Nair ...Counsel for the Respondent

...3...

10. O.A. No.517/87

Shri V.B. Chaudhary ...Applicant

Shri G.D. Samant ...Counsel for the Applicant

Vs.

Union of India and
Rly. Recruitment Board ...Respondent

Shri P.M.A. Nair ...Counsel for the Respondent

11. O.A. No.573/87

Shri S.M.A. Samed ...Applicant

Shri G.D. Samant ...Counsel for the Applicant

Vs.

Union of India and
Rly. Recruitment Board ...Respondent

Shri P.M.A. Nair ...Counsel for the Respondent

12. O.A. No.700/87

Miss Mercy K.V. & Another ...Applicants

Shri G.D. Samant ...Counsel for the Applicants

Vs.

Union of India and
Central Railway ...Respondent

Shri P.M.A. Nair ...Counsel for the Respondent

13. O.A. No.717/87

Shri V.K. Khare & Others ...Applicants

Shri D.V. Gangal ...Counsel for the Applicants

Vs.

Union of India and
Central Railway ...Respondent

Shri P.M.A. Nair ...Counsel for the Respondent

14. O.A. No.718/87

Shri Y.N. Pandey ...Applicant

Shri D.V. Gangal ...Counsel for the Applicant

Vs.

Union of India and
Central Railway ...Respondent

Shri P.M.A. Nair ...Counsel for the Respondent

(10)

15. O.A. No.731/87

Shri M.S. Qureshi ...Applicant

Shri D.V. Gangal ...Counsel for the Applicant

Vs.

Union of India and
Central Railway ...Respondent

Shri P.M.A. Nair ...Counsel for the Respondent

16. O.A. No.801/87

Shri Anand Kishorilal & Ors. ...Applicants

Shri D.V. Gangal ...Counsel for the Applicants

Vs.

Union of India and
Central Railway ...Respondent

Shri P.M.A. Nair ...Counsel for the Respondent

17. O.A. No.121/88

Shri M.S. Zha ...Applicant

Shri D.V. Gangal ...Counsel for the Applicant

Vs.

Union of India and
Central Railway ...Respondent

Shri P.M.A. Nair ...Counsel for the Respondent

18. O.A. No.701/88

Shri M.J. Rawadka ...Applicant

Shri G.D. Samant ...Counsel for the Applicant

Vs.

Union of India and
Rly. Recruitment Board ...Respondent

Shri P.M.A. Nair ...Counsel for the Respondent

19. O.A. No.276/89

Shri Zaheer Hussain & Ors. ...Applicants

Shri D.V. Gangal ...Counsel for the Applicants

Vs.

Union of India and
Rly. Recruitment Board ...Respondent

Shri P.M.A. Nair ...Counsel for the Respondent

(11)

20. O.A. No.451/89

Ms. Neelam J.Jaysinghani	...Applicant
Shri G.K. Masand	..Counsel for the Applicant
Vs.	
Union of India and Rly. Recruitment Board	..Respondent
Shri P.M.A. Nair	...Counsel for the Respondent

21. O.A. 56/90

Smt. M.M. Malpekar	...Applicant
Shri G.D. Samant	...Counsel for the Applicant
Vs.	
Union of India and Rly. Recruitment Board	..Respondent
Shri P.M.A. Nair	...Counsel for the Respondent

22. O.A. 230/90

Kumari Anuradha Saxena	...Applicant
Shri D.V. Gangal	..Counsel for the Applicant
Vs.	
Union of India and Central Railway	..Respondent
Shri P.M.A. Nair	...Counsel for the Respondent.

CORAM

HON'BLE MR. M.Y. PRIOLKAR, ADMINISTRATIVE MEMBER

HON'BLE MR. J.P. SHARMA, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?

2. To be referred to the Reporter or not?

...6...

(12)

DATE OF DECISION 14-2-91

JUDGEMENT

(DELIVERED BY MR. J.P. SHARMA, HON'BLE MEMBER (J).

The applicant(s)/petitioner(s) in this application under section 19 of the Administrative Tribunals Act, 1985 assails their non-appointment by the respondent No.1 Union of India on the basis of examination conducted by Railway Recruitment Board, Respondent No.2 for being appointed to various posts in the Western Railways/Central Railway under their General Manager Respondent No.3. The relief claimed by the applicants almost in all the cases is the same that the applicant(s)/petitioner(s), be ordered to be appointed by the Respondents to the post of ASM or any of the other posts for which he/she has given option in their application forms submitted to Respondent No2, i.e. for Ticket Collector (TC) Clerks etc.

2. The brief facts of the case are that the Respondent No.2 published an advertisement in local Newspaper at Bombay and Railway Gazette (i.e. September, 1980) under Employment Notice No.2/80-81 and thereby invited applications for category No.25, which included the following category of posts for Central and Western Railways:

a) Probationary Assistant Station Master,
b) Guard,
c) Commercial Clerks,
d) Telegraph Signallers,
e) Ticket Collectors,
f) Train Clerks, and
g) Office Clerks.

The applicants appeared in the written test on or about 21st June, 1981 and answered almost all the questions quite well and the call letter has been annexed to the application (marked as Ex. 'A' or 'B'). After the applicant(s) was/were declared successful they were called for an interview (call letter Ex. B or C) for which they appeared on 16.2.1982 Some of the applicants as the case may be were called also

...7.

to appear before a psychological test board for the categofy of A.S.M. ~~As~~ The said test was held only for A.S.M., Signallers and Guards and not for other posts. It is also stated that only those candidates who obtained relatively higher marks are called for a psychological test. The respondents No.2 have displayed a notice dt. 25.10.1983 on their notice board intimating that the candidates should not make inquiries with regard to the results as there were some administrative reasons for which the full results were not being declared and the copy of the said order has been enclosed (Ex. D). It was learnt later on that some investigations with regard to selection conducted by the Railway Recruitment Board was in progress and on completion of the same the appointment order may be issued, but that was not done though the applicant(s)/Petitioner(s) were in no way involved in malpractices, if any. It has been further stated by the applicant(s)/petitioner(s) that a psychological test for the categories of ASM, Guards etc. is only taken for those who have passed both in written, as well as interview and those who fail in the psychological test are to be accommodated in other categories (Railway Board's letter No.E(NG)III-76/RCI-16 dt. 10.11.1976, and No.E(NG)III 79 RSC/63 dt. 23.11.1979). When the applicant(s)/Petitioner(s) did not get any appointment they moved the High Court/Tribunal for the reliefs quoted above.

3. Since in all these above named 22 cases same and similar facts have been alleged and the respondents are almost the same excepting R-3 wherein some

cases it is Western Railway and others it is Central Railway so the cases are disposed of together by a common Judgment.

4. The respondents No.2 filed a reply purported to be reply on behalf of the respondents. The first preliminary objection has been taken regarding the gross delay and laches in filing the application and it is stated that the application is barred under section 21 of the Central Administrative Tribunals Act, 1985. The next point taken by the respondents was that the RRB advertised certain posts by Employment Notice No.2/80-81 for certain categories of Class.III staff i.e. A.S.M., Guards etc. on the Western Railway and Central Railway. The applications were submitted and the Railway Service Commission issued the call letters of eligible candidates and the written examination was held on 25th June, 1981 at different centres falling within the jurisdiction on Western/Central Railways. After the completion of the written examination the candidates who have secured substantially high marks were called for the interview before the Selection Board for which regular intimation cards were also sent to the candidates. However, when this process of selection was going on, complaints were received for mass scale corruption practices resorted to by the interested parties to secure selection against those posts. In this connection there was adverse criticism both in the Press as well as from prominent men from public life. It was generally said that the appointments against those posts were being sold through regular touts on payment of Rs.5,000/- 10,000 per candidate. It was alleged that these touts who work in collusion with the railway staff

...9..

(15)

had been resorting to large scale malpractices including manipulation of marks in answer sheets/interview tests so as to inflate the aggregate marks to enable such candidates to come high up in the merit list for selection against these posts. In the face of such criticism, the Directorate Vigilance, Railway Board took up the inquiries into these complaints and it was decided to scrutinise the basic documents relating to the examinations i.e. answer sheets, tabulation sheets, summary sheets, attendance sheets etc. of all such cases wherein the staff was suspected to have indulged in corrupt practices. During this process, the Vigilance Department took up scrutiny of 13,500 cases of candidates with reference to their answer sheets, attendance sheets etc. Out of 13,500 cases scrutinised by the team of vigilance Officers of the Railway Board as many as 6,075 cases were spotted out where there was suspicion that some corrupt means had been employed in order to secure his/her selection. Some test cases were subjected to detailed investigation which revealed that the staff of the RSC including the then Chairman and the then Member Secretary had been actively conniving with the candidates through some of their agents on consideration of acceptance of illegal gratification from the candidates with intention to secure appointments for such candidates against these posts. As the preliminary investigation carried out by the Vigilance Directorate confirmed the suspicion that some outside agencies had also been involved in this racket, it was decided by the Railway Board that further investigations into the complaints of the corrupt practices may be handed over to the CBI unit Bombay for investigation and taking action

against the persons responsible railway employees and outsiders under the law.

5. In May, 1983, the CBI unit Bombay registered a case vide RC 28/83 under section 120-B 161, 162 IPC read with 420,466, 467, 468, 471 IPC and r/w 5(1)(d) of Prevention of Corruption Act, 1974 and 201 IPC imposed Shri A.K.Ramayya, the then Chairman, Shri D.S.Narkhede, the thenMember Secretary and other members and staff of RSC, Bombay. All the relevant documents concerning ~~to~~ this category No.25 Examination and the preliminary ~~examination~~ investigation report of the Vigilance Directorate were also handed over to the CBI. The Investigations have already been completed and results have been released where malafide/ ~~dex~~ malpractice is not involved. The Ministry of Transport(Department of Rail ways) have now decided to finalise the results of the candidates where mala fide/malpracticesare involved. However, pending the finalisation of the results/competitive examination written and viva voce tests RSC, Bombay recommended the names of some of the candidates to the Central Railway and Western Railway for the post of the Office Clerks and ASM. It is also stated that the name of the applicant/(s)/Petitioner(s) was/were not recommended in the provisional list that was sent to the Railways. Their contentions that they were declared successful in the interview tests and therefore called for psychological test is not correct.

...11...

6. It is further submitted that the selection of category No.25 of Employment Notice 80/2 is still under finalisation and the cases of the applicant/applicants will be considered along with other candidates provided he comes up in the merit list.

7. In the above circumstances the respondents stated that no case is made out in favour of the applicant(s)/petitioner(s) and the application/petition be dismissed.

(1.) T.A. No.241/86
(W.P. 1553/85)

Writ Petition 1553/85 was filed by Shri Ajai Gajanan Bedhani for a writ of mandamus directing the respondents to forthwith appoint the petitioner in the post of A.S.M./Guard or in any other post for which he had given options like Commercial Clerks etc. The applicant filed annexures to the writ petition as follows :-

Annexure 'A' is the Employment Notice No.2/80-81. And the total number of vacancies advertised is 2378. Annexure 'B' is the call letter for written examination. Annexure 'C' is the call letter for interview. Annexure 'D' is the call letter for psychological test for the category of A.S.M. bearing Roll No.2859. Annexure 'E' is the information that no firm date for announcement of result can be given. Annexure 'F' is the circular of Ministry of Railways dated 23.11.1979 No.E(NG)III-79 RSC/63 pertaining to employment of medically unfitted direct recruits in alternative categories.

Respondents filed the written statement contesting the reliefs claimed by the applicant. During the course of arguements, the answer sheet, the tabulation sheet and the summary sheet were made available and the applicant has received marks below the cut off marks, i.e. 150. So he could not be selected and given appointment.

...12...

(18)

(2) T.A. No.287/86
(W.P. 1590/86)

Shri Sarfaraz Baig is the applicant who filed the Writ Petition No.1590/86 before the Hon'ble High Court of Bombay for the reliefs of appointment in the post of A.S.M./Guard or in any other post for which he has given options as a Ticket Collector, Clerk etc. Alongwith the Writ Petition, the applicant filed the copy of the Employment Notice No.2/80-81 showing the total number of vacancies in the Western Railway as 2378 and in the Central Railway as 1858 totalling to 4236. Annexure 'B' is the call letter for written examination bearing the Roll No.254027. Annexure 'C' is the call letter for interview with Roll No.2037. Annexure 'D' is the call letter for psychological test bearing Roll No.2037. Annexure 'E' is the information that the result will be announced and no correspondence be made in that regard. Annexure 'F' is the notification dated 23.11.1979 of Ministry of Railways. The respondents filed the written statement contesting the reliefs claimed by the applicant. During the course of arguements, the answer sheet, the tabulation sheet and summary sheet of the applicant were seen and he was not appointed having secured marks below the cut off marks.

(3) O.A. No.208/86

S/Shri Jangeer Khan, Razzak Khan, Mohd. Aslam Qureshi, Azmat Ullah Khan, Anwar Ahmed Siddiqui, Ganesh Prasad Mishra, Shabbir Hussain, Karam Mohammad filed a joint application for declaration of the results of the applicants with a further direction for the Respondent No.2, the Central Railway to appoint the applicants in the respective posts. Annexure 'A' is the call letter of Shri M.A. Qureshi bearing Roll No.041229. Annexure 'B' is the call letter for interview of Shri Razzak Khan

...13...

bearing Roll No.13863. Annexure 'C' is the call letter for psychological test of Shri Jangeer Khan, Roll No.16626. Annexure 'D' is the call letter of Shri Mohd. Aslam Qureshi for interview bearing Roll No.17312. Annexure 'D1' is the call letter for psychological test of Shri Mohd. Aslam Qureshi Roll No.17312. Annexure 'E' is the copy of the judgements of the Bombay High Court given in Writ Petition 897/83 filed by Miss Jayashree Vasudeo and six others decided on 24th September, 1984. A direction was issued to the respondents in respect of petitioners 1,2 and 5, i.e. Miss Jayashree Vasudeo Pai, Miss Vijaya Vasudeo Pai and Miss Rekha Pratapsingh Gour to appoint them to the post of Office Clerks within a period of two weeks. Regarding the other petitioners 3,4,6 and 7, the report prepared by the Vigilance Inspector was accepted as it was reported that there are suspicious circumstances about the selection of these petitioners. Annexure 'F' to 'I' is the representation by some of the applicants. Annexure 'J' is the summary statement of the candidates.

The respondents contested the application and filed their reply. It is further stated by the respondents that the applicants 1,3,4,6,7 &8 have not passed in the selection and are consequently ineligible forappointment in Railways. The result of the Applicant No.2 alongwith that of the other candidates is in the process of finalisation as a large number of connected documents are yet to be scrutinised. The applicant No.5, Shri Anwar Ahmed Siddiqui has successfully passed the selection and his name will be recommended to the Railways for appointment. During the course of the arguements, it was found that in case of Shri Jangeer Khan, Roll No.047526/16626, the answer sheet and the summary sheet were available, but he was not appointed because of having secured marks below cut

(20)

off marks. In case of Shri Azmat Ullah Khan, Roll No. 043150/13237, the mark sheet was available and he was not appointed having secured marks below the cut off marks. In the case of Shri Ganesh Prasad Mishra, Roll No.043186/13256, the answer sheets were available, the summary sheet was also available, but he was not appointed having secured marks below the cut off marks. In case of Mohd. Aslam Qureshi, Roll No.041229/17312, the answer sheet as well as the summary sheet were available and he has not been selected having secured marks below cut off marks. Anwar Ahmed Siddiqui has already been selected. In case of Shabbir Hussain, Roll No.051525/16415, the answer sheets as well as summary sheets were available, but he has secured marks below cut off marks and was not selected. In case of Karam Mohammad, Roll No.045900/16541, the answer sheets were available, the summary sheets were also available, but he could not be selected having secured marks below the cut off marks. Razzak Khan, Roll No.044928/13863 has already been selected.

(4) O.A. No.56/87

Jayashree Anil Chitra filed this application for the relief of appointment with all consequential benefits of seniority promotion and back wages after being declared successful in the selection held in Employment Notice No.2/80-81. Annexure 'A' is the Employment Notice No.2/80-81. Annexure 'B' is the Roll No.1161 for interview. Annexure 'C' is the recommendation for appointment having been declared successful by the Railway Service Commission by the letter dated 7.8.1982. Annexure 'D' is the information to the candidate that further correspondence about the results may not be made.

The respondents contested the application and filed the

reply. It is contended that the applicant was absent in the written test as per the report of the Vigilance Directorate of Railway Board and her name has not been included in the final panel. Her answer sheet, tabulation sheet and attendance sheet are not available in the office as it is suspected that the same have been deliberately removed from records. The applicant has also not made any stipulation in her application about her appearance in the written test which was held on 21.6.1981 nor she has produced the zerox copy of the written test call letter. During the course of arguements, the answer sheets, tabulation sheets of the applicant were not available, but only the summary sheet was available and there was a vigilance report against the applicant that she did not appear in the examination at all.

(5) O.A. No.69/87

Kumari K. Beena Vasudevan and Shri Gulam Hussain Attar, applicants in this application prayed for the reliefs that the respondents be directed to include the applicants' names in the list of candidates declared as successful and recommend their names forappointment in the Western Railway with all consequential benefits.

Annexure 'A' is the Employment Notice. Annexure 'B' is the call letter for written examination with Roll No.252078 of Kumari Beena Vasudevan and Annexure 'B' is also the call letter for written test of Shri G.H. Attar with Roll No.253022. Annexure 'C' is the call letter for interview with Roll Nos. 1973 and 378 respectively. Annexure 'E' is a letter by the Western Railway dated 18th June, 1983 showing a number of vacancies existing therein. Annexure 'F' is another letter dated 26.3.1984 issued by Western Railway regarding economy in administration and non-plan expenditure.

(22)

Annexure 'G' is the result of the written examination published on 17.12.1984 in the Indian Express giving certain Roll Numbers of 1730 successful candidates. Annexure 'H' & 'I' are the copy of the oral judgement dated 21.6.1985 given in Writ Petition Nos.2473/84 and 2522/84 shewing therein that both the Writ Petitions were allowed and the respondents were directed to appoint the petitioners in these Writ Petitions. Annexure 'I' collectively is the result declared by Railway Recruitment Board, Bombay said to have been published in the Indian Express, Bombay dated 17th December, 1986. Annexure 'J' is the copy of the judgement in O.A. No.196/86 delivered by the Central Administrative Tribunal, Additional Bench, Ahmedabad Bench. In this judgement, a direction was issued for the appointment of the plaintiff of the original suit 746/82 which was filed in the Court of Civil Judge, Rajkot and was registered as T.A. No.213/86. Annexure 'K' is the representation by the applicants.

The respondents contested the application and filed the written statement opposing the reliefs prayed by the applicants. In this reply the respondents have admitted that the result was declared and published in the Indian Express on 17.12.1986 declaring the names of 2432 candidates as successfull. It was also stated in the reply that the applicants have not qualified., so their names do not find place in the Select List. It is further stated that the judgement of the Ahmedabad Bench wherein the marks obtained were 142 and the plaintiff of that case was ordered to be given appointment, it is stated that the judgement did not relate to category No.25 as no candidate who has obtained less than 150 marks was appointed to the post under the said category No.25 except the SC/ST candidates. During the course

(23)

of arguements, in case of applicant Kumari Beena Vasudevan, Roll No.252078/1973, the answer sheets are available, so also the summary sheet and in the case of Shri G.H. Attar, Roll No.253002/378, the answer sheets are available, so also the summary sheets and there was a combined vigilance report that marks were altered.

(6) O.A. No.177/87

Kumari Lata Nathan filed this application for the relief of her selection and appointment in the examination of Employment Notice No.2/80-81 for category No.25 with all consequential benefits. Annexure 'A' is the call letter for written test bearing Roll No.255238, Annexure 'B' is the call letter for interview bearing Roll No.522, Annexure 'C' is the letter dated 7.6.1983 that she has been selected as Office Clerk. Annexure 'D' is the information that no further correspondence be made for result to Railway Service Commission. Annexure 'F' is the representation to Western Railway.

The respondents filed the reply contesting the application stating therein that the petitioner's name was not included in the Select List and the appointment letter already issued was withdrawn as on re-examination of her case, her name was not included in the Select List. During the course of the arguements, Kumari Lata Nathan, Roll No.255238/522, her answer sheet, tabulation sheet and marks sheet are available. There was a combined vigilance report against her that her marks have been altered. So she had not been appointed.

(7) O.A. No.273/87

Kumari Leela Kanna is the applicant who claimed the relief for her selection and appointment in the Western

(24)

Railway on the basis of the examination by Railway Service Commission as per Employment Notice No.2/80-81. Annexure 'A' is the Employment Notice No.2/80-81, Annexure 'B' is the call letter for written test bearing Roll No.265216 and Annexure 'C' is the call letter for interview with Roll No.9912. Annexure 'G' is the result published in the Indian Express dated 17.12.1984 in which the Roll No. of the applicant appears. Annexure 'I' is the copy of the judgement delivered by Bombay High Court in Writ Peition Nos.2473 and 2522/84 on 21st June, 1985 directing the respondents to give employment to the petitioners of that case. Annexure 'J' is the copy of the judgement of the Ahmedabad Bench wherein on a transfer of a Civil Suit from Civil Court, Rajkot under Section 29, the Ahmedabad Bench decided T.A. No.213/86 and the plaintiff of that case secured 142 marks and was ordered to be given appointment.

The respondents contested the application and filed the written statement. It is stated that the applicant did not qualify. As regards the judgement in the High Court of Bombay, it is stated that the vigilance had cleared both the petitioners who filed the Writ Petitions in the High Court. It is further stated that the copy of the judgement of the Ahmedabad Bench of the Central Administrative Tribunal was filed to mislead the Tribunal as that did not relate to category No.25. In category No.25, none of the candidates who secured less than 150 marks was appointed. During the course of the arguements, it was pointed out that Kumari Leela Kannan, Roll No.265216/9912 ~~made~~ none of the documents are available, i.e. the marks sheet, answer sheet or the tabulation sheet for inspection.

...19...

(25)

(8) O.A. No.424/87

Kumari Aruna Chaurasia, Shri Hariram Mishra and Shri Narendra Kumar filed this application claiming for the relief of their selection and appointment to the Western Railway in the Employment Notice No.2/80-81 to the various categories of posts. Annexure 'A' is the call letter of Kumari Aruna Chaurasia for interview bearing Roll No.C43138. Annexure 'A1' is the letter dated 7.8.1982 informing about her selection bearing Roll No.13229. Annexure 'B' is the call letter for written examination of Shri Hariram Mishra with Roll No.13306 and Annexure 'B1' is the call letter for psychological test of Shri Hariram Mishra. Annexure 'C' is the call letter for written examination of Shri Narendra Kumar with Roll No.C33633. Annexure 'C2' is the call letter for psychological test of Shri Narendra Kumar with Roll No.16073. Annexure 'D' is the copy of the judgement of Bombay High Court dated 24th September, 1984 in which some of the petitioners were directed to be appointed. Annexure 'E' is the representation of Kumari Aruna Chaurasia.

The respondents contested the application and filed the written statement. It is stated that the applicant No.1 Kumari Aruna Chaurasia was recommended for appointment in Central Railway, but the same was withdrawn as directed by the Vigilance Directorate of Rail Way Board. Applicant No.2 and 3 did not secure the required marks to qualify the Select List. During the course of the arguements, the answer-sheets and tabulation sheets of all the three applicants are not available, but the summary sheets are available. There was a vigilance report in case of Kumari Aruna Chaurasia and there is alteration in the marks which was made to read from the original 145 to 165. So it was a case of alteration of marks. Regarding the other applicants, they secured marks below cut off marks, so they could not be appointed.

...20...

(26)

(9) O.A. No.516/87

Shri Shaikh S. Ahmed, applicant in this application, prayed for the relief for his selection and appointment in Employment Notice No.2/80-81 for category No.25 in Western Railway for various posts. Annexure 'A' is advertisement notice, Annexure 'B' is the call letter for the written test with Roll No.COO243. Annexure 'C' is the call letter for interview bearing Roll No.1303. Annexure 'G' is the result published in the Indian Express. Annexure 'H' is the judgement of the Bombay High Court dated 21st June, 1985 in Writ Petition Nos. 2473/84 and 2522/84. Annexure 'I' is the photo-copy of the Indian Express, Bombay dated 17th December, 1986 showing the publication of the result. Annexure 'J' is the judgement of the Ahmedabad Bench of the Central Administrative Tribunal where Civil Suit is transferred from Civil Court, Rajkot and registered as T.A. No.213/86 and the applicant who secured 142 marks, was ordered to be appointed.

The respondents contested the application and filed the reply and it is stated that the applicant was not selected. Regarding the other case decided by the High Court, the vigilance has cleared these petitioners. The applicant was dropped out of the Select List due to vigilance complaint. The judgement of the Additional Bench of the Central Administrative Tribunal, Ahmedabad Bench did not pertain to the present category of advertisement no.2/80-81. During the course of the arguements, the answer sheet and the mark sheet of Roll No.293/1303 were not available, but the summary sheet is available. There was a vigilance report against him to the effect that the application of the candidate was inserted in the bundle after expiry of the closing date. In the application form, the date of stamping is earlier than the date of application. Hence it was a doubtful case, so the applicant was disqualified.

...21...

(27)

(10) O.A. No.517/87

Shri Vishwanath B. Chaudhary claimed the relief of his selection and appointment on the basis of examination of Employment Notice No.2/80-81 with all consequential benefits. Annexure 'A' is the copy of the advertisement notice. Annexure 'B' is the call letter for the written test of the applicant, Roll No.30189/12739. Annexure 'F' & 'H' are the result published. Annexure 'G' & 'I' are the copy of the judgements of Bombay High Court and Additional Bench, Central Administrative Tribunal, Ahmedabad in other matters already referred to above

The respondents contested the application by filing the reply. The applicant did not qualify and was not included in the Select List. The answer sheets and the tabulation sheets are not available, but the summary sheet of the applicant is available. However, the marks secured by the applicant were below the cut off marks. So he could not be selected. He secured only 107 marks and, therefore, could not be selected.

(11) O.A. No.573/87

Shri Shaikh Mukhtar Abdul Samad filed the application for the relief of his selection and appointment as a result of the examination of Employment Notice No.2/80-81 for various posts in Central Railway under Category No.25. The applicant filed the Employment Notice at Annexure 'A', call letter for written test with Roll No.203734 at Annexure 'B', call letter for interview with Roll No.11286 at Annexure 'C' and various other documents already referred to in other applications.

The respondents contested the application and filed the reply. It is submitted that since the applicant has not been qualified and his name has not been there in the Select List, so he was not appointed.

(28)

During the course of the arguements, the answer sheet, marksheet and the tabulation sheet of Roll No.203734/11286 are not available, but the summary sheet is available and he has secured marks below the cut off marks. So he was not declared successful.

(12) O.A. No.700/87

Miss Mercy K.V. and Miss Prafulla V.Suchda have filed the application for declaring them selected in the Selection held in Employment News No.2/80-81 by Railway Service Commission and consequential appointment in Western Railway. They filed the advertisement notice at Annexure 'A', the call letter for written test of Miss Mercy K.V., Roll No.30364 and Miss Prafulla V.Suchda, Roll No.P-17 at Annexure 'B'. But the applicant Miss Prafulla V.Suchda is the daughter of Shri Vishwamitre Suchde and did not co-relate to her. The other Annexures filed are almost the same as in other O.As.

The respondents contested the application and stated that the applicants did not qualify, so they were not selected. During the course of the arguements, it was pointed out that the answer sheets, tabulation sheets of the applicant ~~were~~ are not available, but the summary sheets ~~were~~ are available. There is a vigilance report against both the applicants. She scored 124 marks + 36 marks, i.e. totalling 160, but there is a report by the interview bodies that she did copying and so was disqualified as her performance in viva-voce is poor, even on the questions put which were in the paper in objective tests. Regarding the applicant Mercy K.V., now Mrs. Jacob, though her total marks still remained 149 below the cut off marks, but the over-writing in digit 4 of the interview marks 40 and to the total marks 149, she has been disqualified.

29

(13) O.A.No.717/87

Shri Vijay Kumar Khare, Shri Mahesh Pal Singh, Shri Yusuf Ali, Shri Santosh Kumar Gupta, Shri Ramesh Prasad Gupta and Shri Hari Mohan filed this application for the relief for a declaration that Applicants be declared to have been passed all the tests and they may be appointed. The Applicants filed the call letters for interview, of Shri Vijay Kumar Khare Roll No.16823 Employment Notice No.2/80-81 Annexure A-2 call letter for written test of Shri Mahesh Pal Singh Annexure B, call letter for written test of M.P.Singh roll No.16156, call letter for written test of Yusuf Ali roll No.50300, of Santosh Kumar Gupta for written test roll No. is 50396 Annexure D, call letter for written test of Ramesh Prasad Gupta roll No.46151 Annexure E call letter of Ramesh Kumar Gupta for psychological test roll No.17407, call letter for psychological test of Hari Mohan roll No. 16591, Annexure F. The Respondents contested the application and filed the written reply stating therein that the Applicants did not qualify and so they were not selected.

During the course of the arguments the Department produced certain documents. The Tabulation Sheet of none of the Applicant was available but the Summary Sheet of all the Applicants is available.

The Answer Sheet of Shri Vijay Kumar Gupta Roll No. 52844/16823, of Yusuf Ali Roll No.50300/16157, of Santosh Kumar Gupta Roll No.50396/16188, and of Shri Hari Mohan Roll No.46327/16591 are not available. The answer sheets of Mahesh Pal Singh Roll No.50299/16156 and of Shri Ramesh Prasad Gupta Roll No.46151/17407 are available. All the above Applicants except Shri Ramesh Kumar Gupta were not selected because they secured below the cut off marks 150 in the selection. Shri Ramesh Prased Gupta was dropped due to vigilance case against him. In the Summary Sheet — in the interview marks there appears over-writting and digit 8 of 87 has over-writting to read 87. The Applicant obtained 82 marks in the written and there is interpolation and tampering in the interview marks so there is a report of vigilance. As such the Applicants, accoring to Respondents, have not been selected.

(14) O.A.No.718/87

Shri Yougesh Narayan Pandey and Kum.Harpal Kaur filed the application for the relief that they should be declared to have been selected in the examination of Employment Notice No.2/80-81 and should be given appointment with all consequential benefits. Annexure 'A'

the call letter for interview of Yougesh Narayan Pandey Roll No.16372 Annexure A-2 is the representation by him, Annexure B is call letter for interview of Kum. Harpal Kaur Roll No.13965. The Applicants have also filed other Annexures as in other [illegible] applications.

The Respondents contested the application and filed the written statement stating therein that the Applicants were not selected because they secured marks below the cut off marks 150. The same thing has been stressed during the arguments and the Summary Sheet of the Applicants was made available for inspection where they secured less than 150 marks.

(15) O.A.No.731/87

Shri Mohammad Shakil Qureshi, Applicant in the application preyed for relief of selection and appointment in the examination conducted by Railway Service Commission vide Employment Notice 2/80-81. The Applicant filed Annexure 'A', call letter for Written Examination Roll No.43644. He also filed the Call Letter for interview Annexure 'B', Roll No.13744. He was also called for Psychological Test vide Annexure 'C'.

... 26 ..

32

The Respondents contested the application and stated therein that Applicant could not be selected as he could not qualify in selection. There was a vigilance report against him. During the course of the arguments the Department produced documents. In the case of the Applicant summary marks sheet is available and the vigilance report shows over writting over digit 4 of 48 in the interview marks. The Applicant obtained 102 marks in written test but the marks in interview has been tampered with. So the Applicant was disqualified and could not be selected.

(16) O.A.No.801/87

Shri Anand Kishorilal, Shri Ram Krishan Tripathi, Shri Imtayaz Ahmad Khan, Shri Natthu Prasad Sahu, Shri Ram Swaroop and Shri Balram Kumar Gupta filed the application for the relief that the Applicants have passed the examination and the Respondents be directed to appoint them on the various posts advertising Employment Notice No.2/80-81 with all consequential benefits. The Applicants filed Annexure 'A' showing the summary of the bio-data of the Applicants, their Roll No in the Written Test, Roll No. in the Interview and Roll No. in Psychological Test.

Shri Anand Kishorilal has Roll No.47195/16613, Shri Ram Krishan Tripathi Roll No.51378/15981, Shri Imtayaz Ahmad Khan, Roll No. 45456/13950, Shri Natthu Prasad Sahu, Roll No. 48972/16663, Shri Ram Swaroop Roll No.68949/27327 and Shri Balram Kumar Gupta Roll No. 50522/16179. The Applicants have also filed other Annexures which have already been referred to in other applications.

The Respondents contested the application and filed the reply that the Applicants did not qualify in the examination so they were not selected.

During the course of the argument the Respondent produced the documents and the Answer Sheet of none of the Applicants are available but the Summary Sheet of all the Applicants is available. It shows that all the Applicants except Shri Imtayaz Ahmad Khan has secured marks below cut off marks and so they were not selected. Shri Imtayaz Ahmad Khan was absent in re-interview on 21-7-1987. In view of this none of the Applicants could be selected.

.... 28 ....

(17) O.A.No.121/88

Shri Mahendrakumar Sohanlal Jha filed the application that he may be declared selected in the Examination conducted by the R.S.C. on the basis of Employment Notice 2/80-81 and be appointed in the Western Railway with all consequential benefits. Annexure 'B' is the Call Letter for the Written Test of Mahendra Kumar Jha Roll No.16428. The Applicant has filed other documents also as have been filed in the other applications.

The Respondents contested the application and filed the reply stating therein that the Applicant did not qualify in the Examination so he was not selected. During the course of the arguments the Respondents produced the documents but the Answer Sheet and the Tabulation Sheet of the Applicant of Roll No.41925/16428 are not available but the Summary Sheet of the Applicant was filed which shows that the Applicant received marks below the cut off marks in the sellection so he was not selected.

(18) O.A.No.701/88

Shri Mukesh Jivraj Rawadhka, the Applicant filed the application for the relief that he may be declared selected in the Examination conducted by

Railway Service Commission in Employment Notice No.2/80-81 and the Respondent be directed to appoint him with all consequential benefit.

The Applicant filed the Employment Notice Annexure 'A', the Call Letter for Written Test, Interview Roll No.1258 and also filed other documents as have been filed in the other application. The Respondents contested the application and filed the written statement stating therein that the Applicant did not qualify in the Examination and so he was not selected. During the course of arguments, The Respondents produced the Summary Sheet of the Applicant which showed that the Applicant secured below cut off marks and so could not be selected. The Answer Sheet and Tabulation Sheet of the Applicant are not available.

(19) O.A.No.276/89

Shri Zaheer Hasan, Shri Kishanlal Kamta Prasad, Shri Javed Hussain and Shri Mohammad Yusuf Khan filed the application for the relief to hold and declare that the Applicants deserve to be recommended to the employment to the Western Railway Administration and be appointed. The Applicant Shri Zaheer Hasan filed the Call Letter Annexure 'A' Roll No.41780,

(36)

Call Letter for Interview Annexure 'B' Roll No. 16427, Call Letter for Psychological Test Annexure 'C', Shri Kishorilal Kamra Prasad filed the Call Letter for Interview Roll No.26802 and Applicant Javed Hussan filed the Call Letter for Interview Roll No.15880 and Applicant Mohammad Yusuf Khan filed the Call Letter for Written Examination Roll No.41423 Annexure 'H'. The Applicants have also filed ~~the~~ such another documents which have been mentioned in other applications.

The Respondents contested the application and filed the reply. It is stated by the Respondents that the Applicants have assailed the Order dated 30-11-1988 but none of the Applicant's name is in that order thus facts stated in the application is misconcieved and the Applicants are not entitled for relief. During the course of the arguments the Respondents filed certain documents. The Answer and the Tabulation Sheet are not available. Shri Zaheer Hasan Roll No.41870/16427, Shri Kishanlal Roll No.34245/76802, Shri Javed Hassan Roll No.49260/15880 and Mohammad Yusuf Khan Roll No.41423/13630. Shri Zaheer Hasan got 143 marks and so also the other Applicants secured marks below the cut off marks. So they were not selected. The marks sheet of of Kishan Lal is not agailable.

(20) O.A.No.451/89

Ms.Neelam Jawahar Jaysinghani filed the application against non appointment as office clerk

...31....

and sought the declaration that she should be declared selected and directed to be appointed for Western Railway with all consequential benefits as she has successfully passed the prescribed test for Employment Notice No.2/80-81. She has fil-ed the letter dated 7-8-1982 addressed to her, Roll No. 848, that she has been selected and name was recommended to the Western Railway for appointment. No written reply was filed by the Respondents but they contested the application at the time of argument alongwith other application. The documents were also produced of the Applicant Roll No.258758/ 848. The Answer Sheet and Tabulation Sheet are not available. The Summary Sheet of the Applicant was filed and there is a vigilance report against the Applicant. The Vigilance report says that the written marks typed bear overwriting and no correction or alteration have been attested. The marks of via via have been altered subsequently. In the written there are 107 marks and in the Interview 70, total 177. The report of the vigilance shows that the marks of the Interview have been tampered with and such the Applicant was not appointed. The overwriting is evident.

...32..

(38)

(21) O.A.56/90

Mrs.Mohini (W/o.Mangesh Malpekar) Kum. Vasundhra C.Kushte filed the application for the relief that the Respondents be directed to appoint the Applicant ... as office clark and pay wages from December, 86 and declares letter dated 1-11-1989 as well as 20-12-1989 as void. The Applicant has filed an Annexure 'C', a letter dated 7-8-1982 when a recommendation was made for her appointment to Western Railway by Railway Service Commission. No reply has been filed by the Respondent but the argument have been addressed alongwith other connected matters. The documents have been shown that the Answer Sheet and Tabulation Sheet are not available but the Summary Sheet is available. There is a vigilance report against the Applicant. All the documents are missing except the Summary Sheet. The Application Form of the Applicant is also missing and so it was termed as a doubtful case. However the Applicant obtained 176 marks, 136 in the written test and 40 in Interview. In view of this the Applicant was not appointed.

(22) O.A.No.230/90

Ku. Anuradha Saxena filed the application for the relief that the Tribunal be pleased to issue

...33...

(39)

a direction to Respondents to release the letter of appointment in favour of the Applicant. The Applicant has filed an Annexure-I a letter addressed to her dated 7-8-1982 that she has been declared successful. She also made representation but no effect. No reply has been filed by the Respondent but during the course of the arguments the record has been produced. The Roll No. of the Applicant is 40747/13488 and a photocopy of Summary Sheet is available and there are no marks Sheet or Tabulation sheet. There is a vigilance report against the Applicant. She got 137 marks in written but the marks in Interview shown as 25. But earlier it appears to be 05 for which the digit '0' has been over written as 2 to read 25. So as the marks in Interview were altered and there was no signature over it so the Applicant could not be selected.

8. The respondents have also filed a solemn affirmation of Shri B.B. Modgil, Chairman, Railway Recruitment Board regarding the records. From this affirmation/affidavit, it is deposed that the Railway Board finally fixed the number of vacanciesat 4236 from Category No.25. It is further stated that cut off point was finalised at the time of finalising the selection panel keeping in view the total number of vacancies and in the instant case, it was fixed on 26.9.1986.

...34...

(50)

Annexure Exhibit 'A' in that regard has been filed as a schedule to the affidavit. The same is reproduced below :-

On date the list of candidates who have secured above 147 marks in GL, 141 in SC and 105 marks and above in ST has been drawn out. The vacancy position has also been noted in the CP.239. The following note is given to record the manner in which the cut off point has been finalised:-

1.GL: The number of candidates securing 149 and above marks is 2880, whereas the requirements as per CP.239 is 3024 including vacancies of Ex.Servicemen . It is seen from the advertisement that 401 posts out of 4236 were re-served for Ex.Servicemen. According to this proportion app.300 posts out of 3024 i.e.2724 have to be allotted for GL. It is, however, seen from the entries given under 'Community' in summary sheet that no candidate has been shown as ES. It is evident that ES have not applied or have not qualified for viva. The vacancies allotted for ES cannot be allotted for GL, hence the number of GL to be selected will be out of 2880 GL.

The candidate who have secured 149 marks is app. 300. If cut off point is raised the number of candidates available will be short of the minimum requirements of 2724. If all the candidates securing 149 marks are accommodated, the number of GL candidates recommended will be exceeded the vacancies calculated for GL cancidates and the no. of candidates considered will be 2880 whereas the number of candidates required to be considered is 2724 only. If the cut off point is

(41)

kept at 150, the Rly. Bd.'s orders to limit the panel, can be strictly followed. It is decided to make c/o point as 150. This is for record.

2. SC:

The total number of candidates securing 141 marks and above is 536. The minimum required as per note on CP.236 is 467 candidates. The cut off point will, therefore, be raised to 142 or 143 and necessary action will be taken to estimate the number of candidates to be considered for panel. The number of candidates to be considered should not exceed to 467 as per Board's instructions. Therefore, cut off point will have to be decided accordingly.

3. ST:

The numberef candidates securing 105 marks and above is 263, whereas the number of ST candidates to be considered for empanelment is 507. Instructions are being given to go down from the list so as to obtain more candidates. This is for record.

In brief C/O point for GL - 150
SC - 142 or 143 as per para 2.
ST - Below 105 as per para 3.

9. The details of the selection have been explained in another Annexure Exhibit 'B' which is also reproduced below :-

Sub : Finalisation of panel by RRB/Bombay for category No.25, Employment Notice No.2/80-81.

This matter was discussed with Chairman, Railway Recruitment Board, Bombay in his office on 3rd.December, 1986. He advised that after scrutiny by the two officers of Personnel Branch of Central/Western Railways of cases of such of the candidates to be empanelled as have been included in the list of suspected cases by Vigilance Directorate of Railway Board, the panel is likely to be issued by middle of December, 1986.

...36...

(42)

The number of candidates likely to be included in the panel/ cut off points of total marks (written examination/interviews) was stated by him to be as under :-

Category	Cut-off points of total marks (out of 300)	Approximate no. of candidates in the panel
Unreserved Category	150	1,990
Scheduled Caste	143	334
Scheduled Tribe	125	123
		2,447

The total vacancies notified in the Employment Notice were 4,236. 1813 candidates, who have already been interviewed will have to be re-interviewed as the relevant summary sheets are not available. About 110 more candidates, were not interviewed (though they had been issued call letters for the same and were above the cut-off point in written examination) owing to interviews being stopped as a result of commencement of Vigilance Enquiries. They will also have to be called for interviews. Room is, therefore, being kept for these 1913 candidates on a pro-rata basis (4236 vacancies for about 32,000 total candidates interviewed, i.e. for 1913 candidates $\frac{1913 \times 4236}{32,000}$ = 240 (rounded figure) by reducing the panel by 240.

Further reduction in the size of panel vis-a-vis vacancies as notified in Employment Notice (4236) is due to :-

(a) Vacancies for ex-servicement not being filled owing to separate record of ex-servicemen candidates not available. = 401

(b) ST categories vacancies being partly filled as cut off point for ST category candidates kept at 125 marks (in partial modification of para 3(2) of Chairman, RRB/BB's D.O. No.RSC/CON/ ME/13 of 29.9.86 to Sh.Unny, Director, Rly.Bd. where a cut-off point of 120 marks was suggested. About = 400

(c) By keeping the cut-off points for U/R candidates at 150 (para 3.1 of Chairman, RRB/BB's D.O. referred to above). About = 100

...37...

(43)

		About
(d)	Total number of Psychological test passed candidates being less than number of vacancies notified for Prob.ASMs.	= 300
	(240 vacancies referred to para 3 above)	= 240
	Total	1,441

Chairman, RRB/Bombay was advised on the following points :-

(i) The panel must be notified in Employment News, Delhi though there is no objection to it being notified additionally in other papers also. The panel should also be sent to CPOs, Western/Central Railways and concerned DRMs for exhibition on Notice Boards of Divisional Offices, Stations, Workshops, Railway Institutes etc.

(ii) The panel should, as far as possible be arranged in order of merit but if doing so is likely to delay its notification and it is, therefore, issued in chronological order of roll numbers, this should be specifically stated while notifying it adding that notification of panel in order of merit will follow.

(iii) The issue of a panel according to order of merit should be expedited because in any case while sending the panels to CPOs, it will have to be arranged in order of merit.

(iv) Roll Numbers of candidates who have not yet been interviewed/re-interviewed should be notified stating that their results have yet to be finalised and that they should contact the Recruitment Board if they do not hear further from the Board within a specified time.

(v) For ST candidates a second instalment of panel with a cut-off point of 105 marks (or such other cut-off point as Chairman, RRB/BB feels justified, keeping in mind the criterion of suitability, should be issued in accordance with para 7 of my D.O. of even number dated 21.10.86, to Chairman, RRB/Bombay) because a panel of only 123 against over 500 ST vacancies, notified is too small, even after making allowance for short-fall in 118 ST vacancies of Prob.ASMs (due to non-availability of Psychological test passed candidates).

...38...

(44)

(vi) Since some of the candidates now being interviewed/ re-interviewed are likely to be empanelled and to cater for (v) above it should be specifically stated, while notifying the panel, that there might be a supplementary panel.

(vii) CPOs, Western/Central Railways should be asked to notify urgently category-wise (UR, SC, ST) and post-wise vacancies, so that post-wise allocation of empanelled candidates between the two Railways can be made. Candidates should only be allotted to a particular Railway/post, the division-wise allotment being left to the Railways, keeping in mind (a) the number of vacancies, (b) the candidates' position in order of merit, and (c) his/her option.

(viii) Legal opinion on the points mentioned in my note dated 2nd August, 1986 should be obtained quickly.

(ix) While finalising the panel, the various points mentioned in my earlier note should be borne in mind.

10. Another Annexure Exhibit 'C' is regarding subject of cases of candidates by Vigilance Directorate and that is reproduced below :-

Sub : Review of cases of candidates by Vigilance Dte.

It has been decided that for Category 25 the panel will be limited to 4236 only and no provisional panel would be formed thereafter. Clearance for a provisional panel containing 660 names was given to you in November, 1982 in 3 lists wherein 322 candidates were recommended for deletion. It is presumed that this deletion has since been done, and Central/Western Railways asked to report to retruitment based on guidelines issued vide Board's letter of 21.9.82.

In respect of categories 23 and 46, it has been reported that the lists have already been given by the Vigilance Directorate. Board desire that final list may be given to the Railways based on the lists finalised by Vigilance keeping Board's directive of 21.9.82 in view. It is reiterated that immediate action should be taken to advise the railways of the final lists as and when released by Vigilance.

...39...

(45)

11. Regarding the availability of the records which are deposed in the affidavit by Mr.Modgil in para '5' is as follows :-

I say further that in the matter of conducting written test, calling for interview and finalisation of the call letter etc. the Board could not preserve all the applications, answer books and connected records, as the same was running into lacs. Added to this, certain papers and documents have been seized by the Vigilance and C.B.I., as a result whereof it is not possible for the Board to salvage all the connected papers. I say, however, that meticulous care has been taken to preserve whatever is available and the same is being produced for the scrutiny of this Hon'ble Tribunal. I say that there have been large scale manipulations and irregularities and frauds committed by various candidates which in turn has made the task of the Board more complicated and cumbersome. I am, therefore, producing a statement showing the particulars of Ex.'D' original records which are available and which are not available with the Board. Hereto annexed and marked Exhibit 'D' is the said statement.

12. It is, therefore, evident that some of the applicants in the present original applications have been rejected for selection because of obtaining marks below cut off points and certain other candidates have been rejected because of vigilance report.

13. From the above discussion, it may be summarised as follows :-

In O.A. 241/86-Ajay Gajanand Bodhani, O.A. 287/86-Sarfaraj Baig, O.A. 208/88-Jangeer Khan, Ajmat Ullah Khan, Ganesh Prasad Mishra, Mohd.Aslam Qureshi, Sabbir Hussain, Karam Mohammed,

...40...

(96)

O.A. 169/87-Kumari Beena Vasudevan, O.A. 273/87-Kumari Leela Kannan, O.A. 424/87-Kumari Aruna Chaurasia, O.A. 517/87-V.B. Choudhary, O.A. 573/87-Sheikh Mukhtar Abdul Saiad, O.A. 718/87-Yogesh Narayan Pande and Kumari Harpal Kaur, O.A. 801/87-Shri Anand Kishori Lal Gupta, Ram Kishore Tripathi, Mathur Prasad Sah, Ram Swaroop, Balram Kumar Gupta, O.A. 121/88-Mahender Kumar Jha, O.A. 701/88-Mukesh Jiva Raj, Rawadkar, the applicants were not selected because they secured marks below the cut-off marks, i.e. 150. In O.A. 801/87, Imtehaaz Ahmed Khan absented himself at the time of re-interview on 21.7.1987, so he could not be selected. In O.A. 208/86, Anwar Ahmed Siddiqui and Rajjak Ahmed have since been declared selected and have been appointed. So the relief desired by them has become infructous. O.A.No.276/89. There are four Applicants. Zaheer Hussain got 143 marks having secured less than cut off marks. There is no vigilance report against any of them. Javed Hussain and Mohd. Yusuf Khan got 143 marks and 146 respectively. There is no Summary Sheet of marks of Kishan Lal.

.....41...

In O.A.56/87 Kum. Jai Shree A.Chitra was not selected because of the vigilance report. Her name before marriage was Kum. J.S.Sule. Vigilance report in her case is that she is said to be absent in the written test. The marks of the written test are however 94+24 that is 118. Inspection of the candidate do not indicate prima facie foul play. The photostat copy available with the Respondents is not legible. She is said to have obtained 50 marks in interview and the total comes to 168. Vigilance has reported on the report of the Dy.C.P.O. (T.&.P.C.) dated 12-9-1986 that the case of presence in examination is doubtful as it is likely to be a case of inserting of Answer Sheet subsequently.

In O.A.No.169/87 Shri Gulam H.Attar Zerox copy is not at all legible. The Answer Sheet is available. This Applicant secured 20+115 marks in both the papers that is 135 marks in total.

In O.A.No.177/87 Kum.Latha Nathan and after marriage Pillay Lata Subramaniam. The Answer Sheet is available and she got 79+32 marks and in Interview she got 49 marks but in the remarks column there is a sign of -x- against her name.

In O.A.No.424/87 Kum.Aruna Chaurrasia got 138 marks in the written and 27 in Interview but the marks in

Interview bear over-writing, so also the total 165 but it is intialled by some person. She is also physically handicapped.

In O.A.No.516/87 Shri Shakil A.Shaikh. There is vigilance report that the application of the candidate was inserted in the bundle after the closing date. It has been observed on the report of Dy.C.P.O., Central Railway by the vigilance the date of stamping is earlier than the date of application, hence the doubtful case. The Applicant received 138 marks in the written and 21 marks in the Interview, that is total 159.

In O.A.No.700/87 Kum.Mercy & Shri P.V.Suchhade There is a vigilance remark in the Summary Sheet. In the case of Mercy, she got 109 marks in the written and in the interview she got 40 marks total 149 but the remark column shows that there is a alteration in the marks in the Interview as well as so in the total. It appears that for 119, 149 has been made in the total making 40 to 10 in the Interview. The other Applicant Mrs. P.S. Viswamitra (after marriage) there is a remark in the Summary Sheet that this is a case of copying and so disqualied as she got 160 marks. She was not given any mark in the Interview but it appears that she got 160 marks only in the written.

....43..

In O.A.731/87 Mohammed S.Qureshi. There is a vigilance report of overwriting in the written marks as he got 102 marks in the written and 48 in the Interview. There is no attestation or initial of anybody on overwriting.

In.O.A.451/89 Kum.Neelam Jaisinghani, there is a vigilance report that this is doubtful case and the marks in the interview appears to have been altered subsequently from 10 to 70. The marks in the written is 107. The answer sheet of the candidate is also missing.

In O.A.No.56/90 Smt.Mohini Malpekar (V.C.Kaghle) There is a vigilance report that all the documents are missing except the Summary Sheet. The Application Form is also missing. She got 136 marks in the written and 40 marks in Interview and that is the 176 marks in total.

In O.A. No.230/89 Kum.Anuradha Saxena. There is a vigilance report that there is a alteration in the marks of Interview. She got 137 marks in the written and in Interview she is shown to have got 25 marks but it appears that of 05, 25 has been made to make the total 162.

....45..

We have heared the learned counsel of the parties at length and perusedthe record of each of the above applications as well as documents filed in sealed cover by the Respondents. These documents have already been shown to the counsel of the Applicants during the course of arguments.

The learned counsel for the Applicants separately argued but the main contentions raised by them are that in the absence of the original Answer Sheets and the Original Interview Sheets (in most of the cases) and in the absence of the Original C.B.I., or Vigilance reports the Oral Submissions that some of the candidates have been deleted from the panel because of the vigilance report cannot be accepted. The Vigilance Department and the Vigilance Officers are subordinate to the Respondents and without varification of Original Document their report cannot be accepted as true. It hasbeen further argued by the counsel for the Applicantsthat the criteria of selection is the creation of the Railway Service Commission and there are no orders of the Railway Board or of any competent authority in that regard. The relevant instructions issued by the Ministry of Railway and copy of the Railway Board letter dated 1.9.64 lays down entire procedure of selection prescribing qualifying marks, does not show any fixation of cut off

of marks. It is further stated that there were 7000 vacancies for which 2,00,000 candidates have applied and only 2438 were empanelled and ultimately 500 candidate have been finally in 1989 appointed as a result of the said mass examination.

From the side of the Respondents it has been contended that ~~the~~ initially the vacancies were to the tune of 4236. The Railway Service Commission invited Application Forms up to December 21, 1980. A competitive examination was conducted on June 21, 1981. Sometimes in the middle of year 1982 complaints were received that the appointments were being secured on consideration of Rs.5,000/- to Rs.10,000/- from the candidates. In face of such complaints, the Directorate of Vigilance, Railway Board took up enquiry in the complaints and it was decided to scrutinize the basic documents relating to the examination that is Answer Sheet, Summary Sheet and Attendance Sheet of all such cases wherein the staff was suspected to have been indugled in corrupt practices . The preliminary investigations carried out by the Vigilance Directorate confirm that some outside agencies had also been involved in the racket and there upon it was decided by the Railway Board that further investigation should be handedover to C.B.I. Unit, Bombay for taking requisite action against the persons responsible. The reports of the Vigilance have been received in some of the cases and all the documents available

....47...

(52)

pertaining to the present Applicants have been filed. It is already argued by the learned counsel for the Respondents that the letter issued in the month of August, 1982 to some of the Applicants who have been declared successful and were recommended for appointment to the Central Railway/Western Railway have since been withdrawn on the report of the Vigilance. It has been argued that cut off marks has been considered taking into account the number of vacancies available in general category, S.C. category, S.T. category and other categories. The detail anylises has been given in Annexure A.B.& C reproduced above.

It appears that earlier some of the aggrieved candidates filed in the Bombay High Court, Writ Petition No.897/83 and the Bombay High Court by its judgment dated 24-9-1984 only approved the appointment of those Petitioners who were declared clear by the Vigilance. In that case there were 7 Petitioners and out of those 7 candidates Applicant No.1,2 & 5 were directed to be appointed and the remaining Petitioners of the Writ Petiton No.3,4,6 & 7 were not granted any relief and it was observed "It is not possible to direct the Respondents to make appointment when the report prepared by the Vigilance Inspector clearly indicates that there are suspicious circumstances about the selection of these Petitioners". The Learned Counsel for the

...48...

Applicants have already relied on this judgment as it has been filed by the Applicants either as an Annexure of the Original Application/Writ Petition/ Rejoinder. The Applicants also placed reliance on a judgment of the Ahmedabad Bench of C.A.T. in O.A.No.196/86 decided on 17-9-1986. The Respondents pointed out that this judgment does not relate to the Examination couducted by Railway Service Commission in Employment Notice No.2/80-81. In the body of the judgment also there was a date of interview of 1979. So no benefit can be given to the Applicants of this judgment, only that the Applicant getting 142 marks was ordered to be appointed. The finding of judgments in W.P.2473/84 and 2522/84 relied by Applicants is based on the judgment delivered by the Bombay High Court in Writ Petition No. 897/83 decided on 24-9-1984. Both these judgments of Bombay High Court does not help those Applicants who has got a Vigilance report against them.

In the case of Shri Sanjeev Kumar Aggarwal and three others versus Union of India reported in A.T.R. 1987 (2) C.A.T. 566, a similar matter was considered where the services of the Applicants were terminated under Rule 5(1) C.C.S. T.S. Rule, 1965 because of the appointments were obtained by fraud on the basis of foul nominations. The Applicants neither qualified in the Examination nor the Staff Selection Commission ever intended to nominate them

.....49...

(52)

Roll No. under which they purported to have appeared in the Examination and were recommended by the S.S.C. actually pertained to the other candidates. The Applicants in that case failed to produce any document to show that roll numbers were allotted to them and where they took the Examination.

It was observed "Granting any relief to the Applicants would amount to allowing them to abuse the process of the Court". In the Board of High School and Intermediate Examination U.P. versus Baleshwar Prasad and others reported in 1983 (3) S.C.R. page 767 the matter came before the Hon'ble Supreme Court on the Writ Petition filed by the U.P.Board challenging the validity of the Order passed by Hon'ble High Court Allahabad cancelling the results of the Respondents at the High School Examination held in the 1960. The Respondent was declared successful in 2nd division but thereafter a letter was received from the Principal asking him to appear before a sub-committee to answer the charge of having used wrong methods in the papers of Math, English etc. As a result of the report of the sub-committee the result of the Applicant was cancelled. The Respondent challenged that Order before the High Court which allowed the Writ Petition and the result of the Respondent was maintained. announced earlier. The Hon'ble High Court held that

...50...

though the Order passed by the High Court was not justified but no interference was made. In fact the Hon'ble High Court observed that normally it is within the jurisdiction of domestic Tribunals to decide of relevant question in the light of the evidence adduced before them. The Court should not interfere with the decision of the Domestic Tribunal appointed by the Education Bodies like the Universities. The High Court cannot sit in appeal over the decision in question and its jurisdiction is limited. The similar matter came before the Hon'ble Supra Court in Board of High School and Intermediate, Education, U.P., Allahabad versus Ghanshyamdass Gupta and others reported in 1962 S.C.R. Supplement (3) page 36. In this reported case the Respondents were declared by the Appellant to have passed the High School Examination, subsequently their result was cancelled without affording them any opportunity. The Writ Petiton was filed before the High Court and the Single Judge decided that there was no need to give any notice as the Examination Committee was an Administrative Body. The matter was taken to a Division Bench where the judges differed and the Third Judge, to whom the matter was referred, held that the notice was necessary to be given to the Respondents. The Supreme Court upheld the Judgment of the other Judge as no opportunity was given to the Respondents to put forward their cases before the Committee. and the order of cancellation of result remained struck down.

...51

(58)

As has been discussed earlier, the grievances of the Applicants fall in three categories. Most of the Applicants were not declared selected because they obtained less than 150 marks and the Respondents pointed out that cut off point was reached in order to adjust the successful candidate in the advertised vacancies of each category. There is a detailed analysis of this fact in Annexure B quoted above. However this cut off point was decided after the result had already been prepared. The cut off point have not been to screen the ability of the candidate but is only to make adjustment of the successful candidates in the available vacancies. Thus this cut off point was neither laid down in any circular of the Railway Board or any direction because the circular of 1964 only lays down certain qualifying marks. Moreover if sufficient number of persons are not going to join the service than even those who have secured less than 150 marks have to be appointed to fill the available vacancies which were advertised. What has been decided by the Commission was only to facilitate the recommendation of exact number of candidates in each category for subsequent appointment. It is not pointed out by the Respondents that how many persons have been recommended and how many vacancies have been filled up. In the affidavit of B.R.Mudgil in para 4 it is stated that initially number of

..52..

vacancies have been fixed at 4236 from category No.25 on 3-2-1963. The Applicants have stated that the vacancies were 7000 and the judgment of the Writ Petition No.897/83 decided on 24-9-=983 also shows that these vacancies were subsequently increased to 7241. Be whatever may the Railway Service Commission have to recommend sufficient number of candidates on the basis of their outstanding merit in written and viva-voce Examination. Arbitrarily fixing the cut off point and their still remaining number of vacancies would prejudice the case of the Applicants. There should be minimum requirement in the advertisements or a subsequent notification before examination that the candidates should have secured a minimum percentage of marks for qualifying for appointment and that is not the case here. The cut off point is a line drawn to take out successful candidates having obtained a number of marks from those who failed to obtain up to that level. This line has been drawn by the Railway Service Commission keeping in view the number of vacancies to be filled. This should have been easily done by drawing a merit list of all those candidates who have secured the fixed number of marks and if the vacancies still remained than those who have secured lesser marks may also be recommended for appointment. Thus the cut off point criteria

...53..

(58)

adopted by the Respondents is not supported legally as to have been done on a reasonable classification. It is arbitrary and has to be struck down.

As regards the report of the Vigilance against some of the Applicants a Notice should have been given to them to show cause before a sub-committee to be appointed by Railway Service Commission so that they should have represented before that sub-committee their innocence or should have given any other explanation besides the evidence that they took the Examination. The Committee Inquiring into the various charges of interpolation of marks in Interview or overwriting of marks in the Tabulation Sheet may have recommended the cancellation of the Examination or may have directd for reinterview of any such candidate in whose case there was a doubt or suspicion of interpolation of marks. Condemning unheard would be against the principle of natural justice. Thus all those Applicants, against whom there is a Vigilance Report, have to be given a Notice and they should be heard by a Committee to be appointed by the Railway Service Commission and the Committee after hearing them give report to the Railway Commission regarding selection or non selection of each of such candidates.

....54..

The last category of cases are these whose answer sheet as well as tabulation sheet or summary sheets are not available. In such cases, the matter should have also been considered by a committee to find out whether actually these persons appeared in the examination and also call from them the call letter issued for admitting in the examination or interview. Thiswill also cover those cases where the candidate's answer sheets have been subsequently inserted orthey did not take the examination and no Roll No. given to them, but marks are entered in the summary sheet

It has also been argued by the learned counsel for the applicants that the respondents in their counter did not disclose the number of vacancies. In Annexure 'B' filed with the affidavit of Mr. Modgil at the time of arguements, vacancies shown are 4236 in Category No. 25. But in the judgement of the Bombay High Court, W.P. No. 879/83 annexed to the O.A., the number of vacancies mentioned in the body of the judgement is 7241. Thus it is said that the position regarding actual vacancies then existing remained ambiguous. In fact, the cut off marks, as discussed above, for all the categories GC, SC and ST have been settled as per the consideration to empanel the required number of candidates and not as qualifying marks for empanelment. Figure of 150 marks for GC, 141 marks for SC and 105 marks for ST can be varied and belowered as also it was recommended for ST category. Any other reason for fixing cut-off marks would be arbitrary and against the circular of the Railway Board of 1964. This fact is further supported by the fact that in the selection of Employment Notice 1/80, a person obtaining 142 marks was also appointed. It goes to show that the cut off point of marks depends on the number of vacancies and in order to empanel exact number of successful candidates, this method is adopted. There is no rigid rule that the marks cannot be

(60)

lowered for general category from 150 as if still vacancies remain unfilled, then the candidates securing lesser marks than 150 can also be selected. The RSC has further confounded the issues in publishing the result in the Indian Express in 1982 of a large number of candidates, though subsequently it was found by the Vigilance that most of the candidates who were declared successful, have been declared as such because of corrupt practices by the employees of the respondents. In any case the candidates were the beneficiaries of such corrupt tactics adopted in the process of examination as well as tabulation. Not only this, but the original mark sheets, answer sheets as well as tabulation sheets are not available. For this, the blame cannot be squarely laid on the candidates. In such a situation, it is all the more necessary that RSC should have appointed an independent high-powered committee with the consent of the Railway Board to go into the details regarding the performance of each individual candidate and then recommend its opinion to RSC. The Vigilance report is signed in the signature which is not legible. The report is, in some of the applicants, on zerox copy, which too is not legible. On the basis of such a report without giving an opportunity to the concerned affected party, will be against the principles of natural justice. This contention of the learned counsel for the applicants has, therefore, to be accepted that the report of the Vigilance cannot be out-right accepted behind the back of the applicants.

It also appears from the note of the cut off point marks that certain candidates were to be re-interviewed and

(61)

vacancies were kept reserved for them, but the respondents have not filed any document as to when such an interview has taken place and how many such candidates were called another time for interview. This process, therefore, also has to be undergone. Also the interview has to be taken of these candidates in whose case the marks of the interview are not on record.

Some of the applicants even got 150 or above 150 marks, as has been discussed in the body of the judgement and though there was no definite report of Vigilance against them, but only on the basis of suspicion, they have not been finally declared selected. This fact has also to be undergone again.

In view of the above discussion, we are of the opinion that all the applications be together disposed of with the following directions :-

(1) That the respondents shall identify the actual number of vacancies in the Employment Notice 2/81-82 and the vacancies in each category have to be further ear marked. This is for Category No.25.

(2) The respondents shall further find out as to how many candidates, who appeared in the said examination, have been selected finally and given appointment.

(3) The respondents shall further find out how many vacancies are existing of that period which are to be filled up out of the selection of Employment Notice 2/81-82 for Category No.25.

(62)

(4) The respondents are further directed to find out the actually missing application forms of the candidates. They have to further find out whether such candidates did appear in the examination and whether the attendance sheet is available with the Centre. If that is also not available, then in that case, the candidates shall be free to furnish the evidence before the high-powered committee which is to be appointed as being directed below. Similarly these whose marks are not available of the answer sheets as well as of interview, then these candidates shall be allowed to appear in a restricted examination and their selection shall be made on that basis.

(5) The respondents, RSC, shall appoint a high-powered committee with the concurrence of the Railway Board of which the Chairman of RSC shall be one of the members and the committee shall scrutinise all the cases which were entrusted to Directorate of Vigilance after giving notice to the affected parties and form their own opinion about the genuineness of such tests given by such candidates whether there has been any inter-polation etc. to inflate the marks or change the answer sheets, as the case may be, and give their report to RSC which shall finally determine whether such a candidate has to be selected or not.

(6) The respondents are further directed to complete the process and find out how many such persons are eligible to be declared selected and out of

(63)

these, in order of merit recommend for appointment the persons, even though, they may have secured less than the cut off point marks in any of the categories, should be declared selected, keeping in view the number of vacancies found out under (3) above.

(7) These two applicants who have already been declared selected and others who have been so selected and appointed, shall not be governed by these directions.

In the circumstances of the case, the respondents are allowed six months time to complete the process and declare the final result on the basis of which, if the applicants are found eligible, they should be given appointment, but they will have no claim of seniority or back wages. In these circumstances, the parties shall bear their own costs.