

ORIGINAL APPLICATION NO 356/01

Date of Decision: 13/1/2005

Shri A.V. Bahirat & 2 ors

Applicant/s

Shri R.D. Daheria

Advocate for Applicant/s

Versus

Union of India & 7 ors.

Respondents

Shri S.C. Dhawan

Advocate for Respondents 1 &amp; 2

Shri K.B. Rajan for R4, 6, 7, 9, 11 to 15, 17, 18, 21 to 24.

CORAM

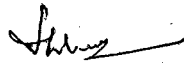
HON'BLE SHRI A.K. AGARWAL

VICE CHAIRMAN

HON'BLE SHRI MUZAFFAR HUSAIN.

MEMBER (J)

1. To be referred to the Report or not. x
2. Whether it needs to be circulated to other Benches of the Tribunal? x
3. Library. ✓

  
(MUZAFFAR HUSAIN)  
MEMBER (J)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 356/01

<sup>13/10</sup>  
THIS THE DAY OF OCTOBER, 2005

CORAM: HON'BLE SHRI A.K. AGARWAL. VICE CHAIRMAN  
HON'BLE SHRI MUZAFFAR HUSAIN. MEMBER (J)

1. Ashok Vasant Bahirat,  
Age 56 years, working  
as Station Superintendent,  
R/o Railway Quarter No.  
RBII/46/17, Shivajinagar,  
Pune-410 005.
2. Shivkant Prasad Saxena,  
Age 48 years, working as  
Station Superintendent,  
R/o Railway quarter No.C-29,  
Railway Colony, Lonavala,  
Post Lonavala, Post Lonavala,  
Dist. Pune, Pin 410 401.
3. Dindayal Ramaiya,  
Age 50 years, working as  
Cabin Asst. Station Master,  
I/C Railway Quarter No.  
MS RB III/112/3, Central  
Railway, Matunga Colony,  
P.O. Matunga, Mumbai-400 019. . Applicants

By Advocate Shri R.D. Deharia.

Versus

1. Union of India, through  
The General Manager,  
Central Railway, CST,  
Mumbai-400 001.
2. Divisional Railway Manager,  
Central Railway, CST  
Mumbai-400 001.
3. Shri Anil Kesarkar,  
working as TNI (Cog)  
CST Mumbai.

*Shri*

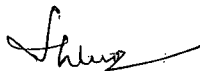
4. Shri Jagannath Paul,  
working as Dy. CYM,  
CST Mumbai.
5. Shri N.S. Pusalkar,  
working as Dy. SS, LTT
6. Shri Surendra G.  
working as Dy. SS LTT
7. Shri K.M. Inasu,  
working as MVI COM Office,  
CST Mumbai
8. Shri T.R. Mishra,  
working as Train Supdt. DCTI,  
CST Mumbai
9. Shri A.D. Karandikar,  
working as Dy. Station  
Superintendent LTT,  
Kurla Terminus.
10. Shri Harishankar Deviram,  
working as dy. SS CCH.
11. Shri M Daniel,  
working as Dy. CYM NCSM
12. Shri S.K. Saxena,  
working as Dy. CYM KLMG
13. Shri r.B. Paul,  
working as TNI O(Cog)  
CST Mumbai.
14. Shri Joy A. Abraham,  
working as Dy. SS Kalyan,
15. Shri Shankar Narayan,  
working as Dy. CYM Jasai
16. Shri S.V. Atre,  
working as dy. CYM GTT
17. Shri Daniel Christian  
working as dy. CYM NGSM

*Shri*

18. Shri Vipin Gupta  
working as TS DCTI,  
CST Mumbai.
19. Shri Pradeep Kumar Das,  
working as TS DCTI  
CST Mumbai.
20. Shri Rajesh Kumar Singh,  
working as Dy. CYM TMBY
21. Shri Khalid Azad  
working as CYM Jasai
22. Shri K O Abraham  
working as Dy. CYM KLMG
23. Shri G.M. Shafi,  
working as Dy. CYM TMBY
24. Shri Ashok R Bhatia  
working as Dy. CYM Kalyan
25. Shri T.Z. Yadav working as  
Dy. SS, CST Mumbai
26. Shri P.M. Chauhan, working  
as Dy. SS, CST Mumbai.
27. Shri A.G. Medhekar,  
working as Dy. CYM, GIT
28. Shri K.K. Agarwal, working  
as CASM, Kalyan.
29. Shri Mohd Vaseem, working  
as Dy. SS, Byculla.
30. Shri M.G. Sankhpal,  
working as SM, MNKD
31. Shri MNS Nair,  
working as SM Bud.
32. Shri H.M. Agarwal,  
working as Dy. SS NEU.



33. Shri Rambachan R. Sharma  
working as Dy. SS, CST Mumbai.
34. Shri P.M. Xavier,  
working as ACOR, IGP.
35. Shri Sachinder Saxena,  
working as Dy. SS, KJT.
36. Shri M.V. Vasudevan,  
working as CASM, Kalyan
37. Shri V.R. Jadhav,  
working as Dy. CYM IGP
38. Shri S.B. Verma,  
working as MVI PNVL
39. Shri Vinod Kumar Sharma  
working as CYM KLMG
40. Shri Navin Kumar Saxena  
working as CASM CST
41. Shri V.K.P. Seth,.  
working as CASM PA
42. Shri D.K. Gonga  
working as SS IGP
43. Shri D.G. Dange,  
working as ACOR PA/GTT
44. Shri Abdul Razak,  
working as Dy. SS KJT
45. Shri N.S. Shukla  
working as ACOR IGP
46. Shri M.A. Shaikh  
working as Dy. SS, CST
47. Shri V.R. Shelve, working  
as CASM, CLA
48. Shri D.C. Shukla  
working as ACOR Kalyan



49. Shri Sanjiv Kumar Sharma  
working as TS DCTI, CST.
50. Shri Satveer Singh  
working as TS DCTI, CST
51. Shri Anil Choudhary,.  
working as Dy. CYM, Kalyan.
52. Shri R.C. Verma,  
working as MVI CSTM.
53. Shri Prakash Pillai  
working as TS DCTI CST
54. Shri G.D. Barnawal  
working as ACOR Kalyan
55. Shri R.K. Shrivastava,  
working as Dy. CYM Kalyan
56. Shri C. Gabriel,  
working as TI CST
57. Shri M.A. Khatri, working  
as Dy. SS Byculla.
58. Shri a.J. Jha  
working as TI COM
59. Shri D.G. Pendhere  
working as Dy. SS ABY
60. Shri H.B. Saini,  
qworking as YM LTT
61. Shri Shyam Sunder shukla  
working as Dy. SS Kalyan
62. Shri V.N. Warke, working  
as Dy. SS CSTM.
63. Shri A.T. Patil,  
working as Dy. SS DI
64. Shri A.B. More (SC)  
working as Dy. SS CCH



65. Shri H.G. Jagtap,  
working as CASM DR
66. Shri Mukesh R. sharma  
working as Dy. SS DR.
67. Shri R.K. Sabaria (SC)  
working as Dy. SS KE
68. Shri MA. Mane (SC)  
working as Dy. SS APX
69. Shri Sunil Soma Bhalerao  
working as Dy. SS CST
70. Shri P.M. Shelke (SC)  
working as Dy. SS PR
71. Shri V.R. Sshinde (SC)  
working as Dy. CYM KLMG
72. Shri Ram Sagar (SC)  
working as CASM MLND
73. Shri V.C. Kanojia  
working as Dy. SS Kalyan
74. Shri S.B. Dive (SC)  
working as YM IGP
75. Shri V.W. Pagare,  
working as CASM KSRA.

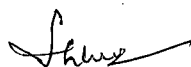
... Respondents

By Advocate Shri S.C. Dhawan for R1 & R2 and Shri K.B. Rajan for 4, 6, 7, 9, 11 to 15, 17, 18, 21 to 24.

#### O R D E R

Hon'ble Shri Muzaffar Husain. Member (J)

The applicants herein (three in number) are challenging the order dated 02.5.2001 issued by Divisional Railway Manager, Central Railway, Mumbai CST (respondent



No.2) by which reversion to lower post and transfer to other station / post have been made. They are also challenging the selection dated 28.07.2000 containing list of 73 employees selected and placed on the panel for the post of Station Master / Yard Master in the grade Rs.6500-10500 in operating department of Mumbai division.

2. The applicants have sought the following relief.

This this Hon'ble Tribunal may be pleased to call for the relevant records and proceedings and documents of the selection held pursuant to notification dated 04.02.2000 which led to formation of select panel dated 28.7.2000 and also wrongful orders of reversion of the applicants vide office order dated 02.5.2001 and after going through the legality and propriety of the same hold and declare that

1. That the impugned selection panel alleged to be published vide letter No. BB/P/558/GT/SB/CYM/MVI/TNI/ selection dated 28.7.2000 is illegal and quashed and or set aside.

2. That the impugned orders of reversion No.BB/P/558/GT/SM/CYM/MVI/TMI/TI/105008 dated 02.5.2001 is illegal and quashed and or set aside.

3. That the present seniority based on which the selection was held as defective and illegal and be declared void and accordingly set aside.

4. Decree and direct the respondents to recast the seniority list of staff of Station Masters cadre as well as Yard Masters Cadre, complying with the orders dated 21.7.2000 passed by this Hon'ble Tribunal in OA No.497/94.

5. Order that after complying with (4) above, to direct the respondents to conduct a fresh selection of SM/CYM/MVI/ TNI/TI Grade Rs.6500-10500 by a new DPC.

*[Signature]*



6. The respondents may be directed to pay the cost of this application.

7. The applicants be permitted to file this joint application.

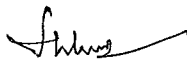
8. Pass any other appropriate order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.

During the course of argument learned counsel for the applicant pointed that the reversion of the applicant did not take place. Therefore, the applicants are pressing for the relief 8 (1) and sought the relief that the impugned selection panel published vide letter dated 28.7.2000 (Annexure A2) is illegal quashed and set aside.

3. The brief facts as brought out in this OA are that the applicants are working in Station Master cadre and holding the post of Station Master in grade Rs.6500-10500 on adhoc basis varying from 6 years to 4 years. Respondents by letter dated 02.5.2001 have ordered for reversion to the grade of Rs.5500-9000 on the plea that they have not been selected to the post of SM/CYM in the selection conducted in the year 2000. It is stated that the selection conducted in the year 2000 is irregular and void as the said selection was conducted based on incorrect seniority in clear violation of the directions of this Tribunal passed in OA 497/94. It is also stated that the said OA 497/94 was admitted on 20.6.1994 and placed in sine-die list after granting the first relief. Since after



decision and as a result of compliance of the order dated 21.7.2000 of this Tribunal in OA 497/94 the respondents have issued promotion order of eligible station master and also Yard master to the grade of Rs.1600-2660 vide letter dated 18.10.2001 (Annexure A13). From this order of promotion of the employees, the list of employees, who were eligible for selection to the grade of Rs.2000-3200 which was issued on 04.02.2000 by respondents (annexure A8) has become totally defective and thus the selection based on defective seniority list is irregular and illegal and liable to be set aside. The respondents in clear disregard and in clear violation of the said order of this Tribunal finalized the selection based on defective seniority list and alleged to publish the same on 02.8.2000. All India Station Master Association divisional Secretary wrote a letter to Respondent No.2 on 24.07.2000 drawing his attention to judgment of this Tribunal and requested him to cancel the selection which was under process at that time. The applicants also made representations to this effect. Despite the above request the respondents have processed and finalized the selection, though it has not been circulated and published. The said selection was conducted on irregular seniority list that was ordered to be recast by this Tribunal in OA 497/94. Thus, only on that ground



itself selection is liable to be scraped. Further it was observed that due to irregular / illegal computation of seniority the applicants name did not appear in the selection panel whereas many juniors including Respondents 3 to 24 who belong to Yard Master and Station Master cadre have been included. It is also stated that as per extent rules and regulation the selection committee is required to meet every year for the purpose of making selection from the eligible employees whereas this selection has been ordered after four years and thereby respondents have violated the rules. It is further stated that the selection committee has adopted the method of allowing seniority marks to failed candidates in written test, which is not permissible as per judgment of Jabalpur Bench of this Tribunal in OA 869/89 decided on 13.8.1993 and also further in OA 154/95 by the same Bench. The respondents have violated the orders of this Tribunal referred above and therefore, the selection became irregular, illegal and liable to be quashed. Respondents have failed and neglected to correct the irregularity. They neither responded to the request of the applicants nor they have given any reply to representations made by applicants. Hence this OA.

4. The official respondents have filed written



statement wherein it is stated that this application is misconceived and not maintainable in law as the applicants who have appeared in the selection and failed to qualify, cannot turn round and challenge the same on any ground of alleged procedural defects as repeatedly held by the Hon'ble supreme Court. It is also stated that this application do not disclose any cause of action as the applicants were included in the eligibility list and have appeared in the selection but failed, now they cannot raise any objection to the same or have any grievance against the same. The applicants are seeking this Hon'ble Tribunal to intervene in the selection process without disclosing what procedural flaw has been committed in the selection in which they have participated. The applicants were promoted to the post of Station Manager Grade Rs.1600-2660 against upgraded post with effect from 01.3.1993 and are senior to all the members of the Yard Master Grade. They were further promoted to the post of Station Manager / Yard Master in the grade Rs.2000-3200 purely on adhoc basis pending selection. The post of Station Manager / Yard Master Grade Rs.2000-3200 (Rs.6500-10500 RSRP) are classified as selection posts and are filled in by the positive act of selection. It is further stated that a notification for selection for the post of Station



Manager / Yard Master Grade Rs.2000-3200 was issued in February, 2000 along with the said notification a list of eligible candidates was also attached in which the names of the applicants were also included and were serial number 1, 32 & 33 respectively. All the applicants appeared in the written test and they could not secure minimum qualifying marks i.e. 60% but by awarding notional seniority marks they became eligible to be called for viva-voce test. In the final selection they could not secure 60% marks in professional ability (written test + viva-voce). They were found unsuitable by the duly constituted selection Board and could not be empanelled resulting in reversion to the grade Rs.5500-9000 vide office order dated 02.5.2001. This Tribunal will justify the action of the respondents as the empanelled candidates were available and there was no other alternative but to revert them. The respondents, therefore deny that the applicants have been ordered for irregular reversion to the grade of Rs.5000-9000. They have also denied that the said selection is irregular and invalid and was conducted based on incorrect seniority in clear violation of directive of Tribunals passed in OA 497.94. The panel was declared on 28.7.2000. It is further stated that the applicants were working on adhoc basis had to be reverted as duly selected candidates were available who had

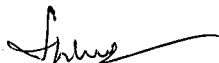


to be posted after their selection. The applicants have no vested right to continue on the said post as they were neither selected nor regularly posted on the said post. The respondents denied that the order passed in OA 497/94 of the SMS cadre staff was in regard to assignment of seniority for purpose of selection against the upgraded posts (Restructured posts). The said order was passed in regard to filling up of the upgraded posts in SMS cadre which became available with effect from 01.3.1993 as a result of restructuring of cadre in pursuance of Railway Board letter dated 27.01.1993. This Tribunal held that only the members of the cadre of Station Masters as on 01.3.1993 are eligible to be promoted and the ratio 7 : 3 is not to be adopted in filling up of the upgraded posts in Station Master Cadre and set aside the promotion of Respondents 3 to 25 and to fill up the upgraded post in Station Master cadre in scale of Rs. 1600-2660 from the staff working in Station Master cadre as on 01.3.1993. Applicant Shri A.V. Bahirat is senior to respondents No.3 to 25 and applicants No.2 & 3 Shri S.K.P. Saxena and D.D. Ramaiya are senior to respondents 5 to 25 in OA 497/94.

5. On behalf of private respondents 4, 6, 7, 9, 11 to 15, 17, 18, 21 to 24 written statement has been filed contending that in OA 497/94 the matter of compiling

*Shive*

seniority among Station Master or Yard Master cadres was not in question. So also there was no challenge ever raised against the channel of promotions in vogue under the official respondents. On the contrary the only question under dispute in the said OA No.497/94 was how to fill the 106 upgraded posts that they have come to exist in the grade of Rs.1600-2660 due to restructuring with effect from 01.3.1993. They have also stated that under the respondents 1 and 2 channel of promotion for Station Masters cadre and Yard Master cadre are combined from grade Rs.1600-2660 even though at one grade alone i.e. at Rs.1400-2300 the cadres are separate. However, the feeder cadre to the said combined cadre to Rs.1600-2660 is 70% from the Station Master at Rs.1400-2300 and 30% from Yard Master cadre at Rs.1400-2300 fixing the combined seniority interse at grade Rs.1600-2660 by interpolation as per para 320 of the Indian Railway Establishment Manual and this seniority position is alone counted for consideration for any future higher grade seniority and promotion. That this implies that from the grade Rs.1600-2660 onwards there is only one single unified and / or combined cadre of Station Master / Yard Masters / Train inspectors / Movement Inspectors / TrIs of which the seniority is fixed at Rs.1600-2660 as stated above, that all the individuals



functioning in one capacity are eligible and entrusted to function in all the other posts / capacities. Exhibit PR-1 is copy of the chart showing the channel of promotions which is as per IREM and IREC authorized by respondent No.1 letter dated 25.7.1990. The question of formation of panel for promotion to the combined grade Rs.2000-3200 (6500-10500) was not an issue at all in OA 497/94 as also the same was not even referred to or observed by this Tribunal so as to assume the tone of obiter and there was no direction by this Tribunal for fixing the seniority of any grade in the combined cadre.

6. The official respondents have also filed written statement after the amendment of the OA. The applicants have also filed two rejoinders.

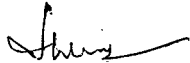
7. We have gone through the pleadings and material placed on record and have given anxious consideration to the rival contentions raised, arguments advanced and case law cited by learned counsel for the parties.

8. Learned counsel for the applicant advanced the contention that the respondents have failed to compute the seniority list of eligible candidates for selection to the post of SM/CYM /VI / TMI / TI grade Rs.6500-10500 after implementation of the judgment of this Tribunal rendered in OA 497/94. The seniority list was defective and therefore,





the selection conducted based on the said defective seniority list is also defective. The seniority list prepared prior to the order of this Tribunal and the zone of consideration was based on it. This has resulted the lower seniority staff brought to the higher side and this has adversely affected the promotional chances of the applicants and thus the private respondents, who now find place as outstanding would not have come within zone of consideration. It is further contended that as a result of compliance of the order dated 21.7.2000 passed by this Tribunal in OA 497/94 the respondents have issued the promotion order of eligible Station Master staff also Yard Master staff to grade Rs.1600-2660 vide their letter dated 18.10.2001. From these orders of promotion of employees the list of employees who were eligible for selection to the grade of Rs.2000-3200 which was issued on 04.02.2000 by the respondents has become totally defective and thus selection based on defective seniority list is irregular and illegal and liable to be quashed and set aside. Learned counsel has also placed reliance in case of Ramesh Kumar Choudhry & Others Vs. State of MP & Others 11-1997 (1) AISLJ 114 wherein it was held that ineligible persons even if selected and promoted, they cannot be treated as regular promotees.



9. Learned counsel for the respondents stated that in compliance of the order dated 21.7.2000 in OA 497/94 the respondents have issued an order of eligible SM staff and YM staff vide letter dated 18.01.2001. This Tribunal in OA 497/94 held that against the upgraded post in SM cadre in pursuance of the restructuring of the cadre by Railway Board vide its letter dated 27.01.1993 are eligible to be promoted and the ratio of 7 : 3 is not to be adopted in filling up the upgraded post in SM cadre and set aside the promotion of respondents 3 to 25 in OA 497/94 who were promoted by order dated 18.3.1994 declaring it unsustainable in law and directed the respondents to fill up the upgraded post in SM cadre in scale Rs. 1600-2660 from the staff working in SM cadre as on 01.3.1993. It is also stated that before passing the order dated 21.7.2000 by this Tribunal, besides the order dated 18.3.1994 promoting 76 members from SM category and 23 members from YM category 71 SMs have already been promoted to the post of SM cadre in grade Rs.1600-2660. All these persons were given the benefit of promotion with effect from 01.3.1993. On receiving the order of this Tribunal cancelled the promotion of Respondents 3 to 25 who belong to YM category total 30 of these Station Masters were to be taken, to have been promoted against 106 upgraded posts i.e. 23 YM and 7



against against upgrades post. Apart from 106 upgraded post in SM cadre in Rs.1600-2660 73 resultant / chain vacancies were also became available for promotion. These posts were filled up as per rules by members of Sm cadre and YM cadre in the ratio of 7:3 as per the then existing channel of promotion i.e. 51 vacancies by members of SM cadre and 22 by members of YM cadre. After the judgment of the Tribunal 10 members from SM category who were promoted to grade Rs.1600-2660 from the date subsequent to 01.3.1993 were promoted with effect from 01.3.1993 against resultant vacancies vide order dated 08.6.2001 promoting nine employees and vide order dated 09.10.2001 one employee. Thus all the upgraded post and 51 resultant vacancies were filled up by members of SM category out of 23 YM whose promotion orders were set aside by this Tribunal, 22 senior most YM i.e. Respondents 3 to 24 in OA 497/94 were eligible for promotion in grade of Rs.1600-2660 against resultant / chain vacancies with effect from 01.3.1993 as sated earlier as per rule. These YM were treated as promoted against resultant vacancies in grade Rs.1600-2660 with effect from 01.3.1993 and their names were included in the seniority list dated 11.6.2001. Respondent No.25 in OA 497/94 A.R. Bhatia was promoted in grade Rs.1600-2660 with effect from 23.3.95 against existing vacancy instead of



01.3.1993. However, formal orders were issued on 18.10.2001 in favour of 51 SM and 22 YM and office order dated 18.10.2001 in favour of Shri A.R. Bhatia respectively which have already been annexed by applicants to the amended OA (Page 132 to 135 of the paper book) Similarly 23 out of 71 Assistant Station Masters who had been promoted with effect from 01.3.1993 on various dates between 1994-1999 were also treated as having been promoted against upgraded post in the cadre of SM R3 to R25 in OA 497/94 had been set aside by the Tribunal and necessary orders cancelling the promotion of 23 YM were issued who were promoted against 106 upgrades post in lieu there of 23 SM stood promoted as per directions of this Tribunal. It is further stated that before passing the order dated 21.7.2000 by this Tribunal promotion order in grade Rs.1600-2660 with effect from 01.3.1993 in favour of 147 members of SM category and 27 members of YM category were issued between 1994 and 1999 and seniority list in combined care of SM and YM was regulated as per provisions of para 320 of IREM. Based on the seniority list all the eligible candidates for selection for the post of SM / CYM / MVI / TI grade Rs,6500-10500 (RPRS) was issued under letter dated 08.02.2000. It is further stated that after the judgment of this Tribunal, the respondents issued office order dated



08.6.2001 and 09.10.2001 promoting 10 members from SM cadre with effect from 01.3.1993 and vide office order dated 18.10.2001 promoting one member of YM cadre with effect from 23.3.1995 instead of 01.3.1993. The seniority position only in respect of those employees who got revised in the eligibility list for selection circulated vide letter dated 08.02.2000 but the zone of consideration for selection was not at all changed. They have also stated that out of 10 members from SM cadre 4 members were retired from railway service prior to conducting the selection and seniority position of remaining six employees got revised. Out of these six employees three remained absent in the selection and three employees failed to qualify in the written test. With the issue of office order dated 18.10.2001 promoting Shri A.R. Bhatia with effect from 23.3.1995 instead of 01.3.1993 he became junior and his position has been revised in the eligibility list of selection. Learned counsel therefore contended that the order dated 18.3.1994 stood accordingly partly modified by cancelling the promotion of YM at No. 1 to 23 under item 2 of the said order promoting 23 SM in lieu thereof besides being 7 SM out of 71 SM who had been promoted with effect from 01.3.1993 on various dates between 1994 and 1999 stood promoted against remaining upgraded post. Copies of the

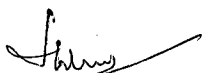


office order dated 18.10.2001 promoting 30 SM has been enclosed at page 136 of paper book. A perusal of this order dated 18.10.2001 it is seen that all 106 upgraded post in SM cadre in grade Rs.1600-2660 were filled with effect from 01.3.1993 exclusively by members of SM cadre to comply with the order of this Tribunal passed in OA 497/94 and 73 resultant / chain vacancies became available in grade Rs.1600-2660 with effect from 01.3.1993 were filled as per rule by members of SM and YM cadre in ratio 7:3 as per the existing channel of promotion i.e. 51 vacancies by members of SM cadre and 22 members from YM cadre. The total 157 posts i.e. 106 before and 51 resultant / chain vacancies were filled by SM cadre and 22 posts of YM cadre as stated above. It is also seen that even after implementation of the order of the Tribunal and revising the seniority the applicants' seniority has not been affected. More over the applicants have not challenged the said seniority at any time. The contention of the applicants that the selection issued vide notification dated 08.02.2000 is defective and is based on wrong seniority is not tenable. Thus, we find that the selection is not based on defective seniority list and panel published pursuant to the selection is based on seniority recast by the respondents.

10. Learned counsel for the applicants also contended



that as per extent rules and regulation the selection committee is required to meet every year for purpose of making selection from among the eligible employees; whereas this selection has been ordered after four years, thereby the respondents have violated the rules on this point. Learned counsel for the respondents on the other hand contended that the under provision of para 215F of IREM assessment of vacancies has to be made at the time of selection, the existing vacancies and anticipated vacancies during the course of 15 months on account of retirement / superannuation, vacancies likely to be occurred as a result of likely acceptance of voluntary retirement etc., are to be taken into account. Learned counsel placed reliance on the decision of Bombay Bench of this Tribunal in OA 168/01 etc. decided on 19<sup>th</sup> December, 2001. The Tribunal in this case on account of bunching of vacancies alone held that the selection process and panel as well as promotion order need to be quashed and set aside. Learned counsel for respondents has repelled this contention of applicants and placed reliance in case of Chandra Prakash Tiwari & Ors. Vs. Shankuntala Shukla & Ors. 2002 (2) SCSLJ 104 wherein it was held "that as regards the issue of selection and clubbing, while in the normal circumstances the same ought to be observed, but in the event of these being no such



assessment or selection, it would not render the subsequent selection void. Held further that it cannot thus be treated to be void but any irregularity which is of curable nature can be cured." Learned counsel also relied upon a decision of Apex Court in case of *Mangej Singh & Others Vs. Union of India & Others* 1999 (1) SCSLJ 163. In this case vacancies from 1979 to 1982 clubbed for purpose of selection. No factual data on record to show how many vacancies arose in 1979 and in each subsequent years up to 1982. Under the circumstances Tribunal not right in holding that the clubbing of vacancies has caused prejudice to R5 to 8. In the present case the applicants have not given any data regarding clubbing of vacancies of previous years. They have also not shown that any prejudice has been caused to them by reasons of clubbing of vacancies of previous years. This is not the irregularity which goes to the root of the selection. Such irregularity can be cured by re-arranging the panel. Therefore, on this ground the selection process cannot be said to be void as held by Apex Court in case of *Chandra Prakash Tiwari (supra)*

11. Learned counsel for the applicant advanced the contention that the selection committee has adopted the method of allowing the notional seniority marks to failed candidates in written test, which is not permissible as per

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judgment of Jabalpur Bench of CAT in OA 869/89 decided on 13.3.1993 and also further order in OA 154/95 by the same Bench. Therefore, the selection became irregular and liable to be quashed. Learned counsel for the respondents on the other hand contended that the notional seniority marks were awarded to candidates to determine their eligibility for calling for Viva-Voce test in terms of Railway Board letter dated 05.12.1984. It is further contended that the applicants were also granted the notional seniority marks in the written test otherwise the applicants would have also failed in the written test. The applicants by virtue of addition of notional seniority marks were made eligible to appear in the viva-voce test. The applicants have taken the benefit of the same without any protest or objection at the relevant time. Therefore the applicants cannot challenge the process of selection on this ground and estopped from challenging the said selection on the ground of any procedural lapse or otherwise. Learned counsel further contended that the applicants who failed in the selection cannot turn round and challenge the same on the ground of alleged procedural defect. Learned counsel also placed reliance in case of (1) N.s. Kanjoonjamma & Others Vs. University of Cochin & Others 1997 SCC (L&S) 976 and (2) Union of India & another



Vs. N. Chandrasekharan & Others 1998 (1) SCSLJ 199. In para 4 in case of N.S. Kanjoonjamma (supra) it was held Hon'ble apex Court "In fact, the first respondent also had applied for and sought selection but remained unsuccessful. Having participated in the selection, she is estopped to challenged the correctness of the procedure." In case of Union of India vs. chandrasekharan & Ors (supra) Hon'ble Apex court held that "they cannot turn around and contend later when they found they were not selected by challenging that procedure."

12. Learned counsel has also placed reliance on the following decisions of Hon'ble Apex Court (a) Om Prakash shukla Vs. akhilesh Kumar Shukla & Ors. 1986 SCC (L&S) 644; (b) Madan Lal & Ors Vs. The State of Jammu & Kashmir & Ors 1995 (1) SC SLJ 369 and © G.N. Nayak Vs. Goa University & Ors 2002 (1) SCSLJ 112.

In case of Om Prakash Shukla, the Apex Court held as follows:-

*"In this case there was no material to show that after the 1969 Amending Rules, examinations were held in the different districts of Uttar Pradesh in accordance with the 1947 Rules as amended by the 1969 Amending Rules. On the other hand examinations were held according to the 1950 Rules even after the above 1969 amendment. In the year 1981 in some other districts of Uttar Pradesh examinations were held as per 1950 Rules. In the circumstance having regard to the lacuna created by the non-re-promulgation of Rule 11 of the 1947 Rules, there was no effective*

*Shukla*

substitution of the 1950 Rules brought about by the 1969 Amending Rules. The 1950 Rules should therefore be held to be operating even in the year 1981. Hence the examinations held according to them cannot be held to be bad.

The 1950 Rules cannot be said to have been repealed by the 1975 Rules insofar as the subordinate civil courts are concerned. Though Rule 20 of the 1975 Rules clearly stated that the 1950 Rules had been repealed but the 1975 Rules did not apply to the subordinate courts under the control and superintendence of the High Court. Hence the 1950 Rules insofar as they applied to the subordinate courts continued to be in force.

Moreover, the respondent-candidate who had challenged the examination in High Court under Article 226 had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the result of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the district in question (Kanpur) also. They were not responsible for the conduct of the examination."

In case of Madan Lal & Ors in para-9, the Hon'ble apex Court held

"Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitions as well as the

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concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes 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 Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors.* (AIR 1986 SC 1043), 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."

In case of *G.N.Nayak* in para-21 Apex Court held as follows:-

"According to the respondent no.5, the amendment of the qualifications for the post of professor of Marine Science was illegal. It was contended that under statute 8, it is the executive council which has to prescribe the qualifications after considering the recommendations of the academic council. According to the respondent no.5, the qualifications which were prescribed in the 1995 advertisement and hand-out issued to the applicants in connection therewith had not been prescribed by the executive council nor recommended by the academic council. Whether this is so or not, this is not a grievance which could have been raised by the respondent no.5. He knew that there was a change in the eligibility criteria for the post, yet he applied for the post and appeared at the

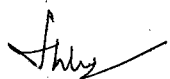
*Shukla*

*interview without protest. He cannot be allowed to now contend that the eligibility criteria were wrongly framed. Madan Lal & Ors. v. State of Jammu & Kashmir & Ors (AIR 1995 SC 1088; Om Prakash Shukla v. Akhilesh Kumar (AIR 1986 SC 1043)*

13. In the present case, the applicants participated in the selection process and appeared for viva-voce test. The result of the written test was held on 11.3.2000 and supplementary test was held on 25.3.2000 and viva voce on 02.5.2000 and the panel was declared on 28.7.2000. There is no material to show that the applicants ever raised objection in respect of granting notional seniority marks or on the ground of defective seniority list or on the basis of clubbing vacancies or any other procedural lapse. Thus, it is quite clear that the applicants have taken a calculated chance in the selection process and since they have not been able to qualify in the viva voce test they cannot challenge the selection process including grant of notional seniority marks to the private respondents. If there was any illegality in the selection process on the basis of defective seniority list, clubbing of vacancies and granting notional seniority marks, the applicants should have raised their grievance immediately to the competent authority but they have not done so. Therefore, they are estopped from challenging the selection on any ground whatsoever. In the light of settled legal position,


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they cannot be allowed to contend that the rules were wrongly applied and the eligibility criteria was wrongly fixed. The contention of the applicant that the respondents acted in contravention of law and rules is not tenable as they failed to challenge the so called illegality or irregularity before the competent authority at the relevant time. In case of Om Prakash Shukla (supra) the selection was conducted as 1950 Rules. Later-on it was challenged on the ground of mis-application of the rules and it was quashed by the High Court of Allahabad. Applicant filed special leave against that order the Hon'ble Apex Court set aside the judgment of the High Court and held that respondent candidates who had challenged the examination in High Court under Article 226 had appeared for the selection without protest and he filed a petition only after he had perhaps realized that he would not succeed in the examination. Thus, in this case, the selection was challenged on the wrong application of the Rules and the Apex Court set aside the order of the High Court on the ground that the candidates appeared in the examination without protest and raised the challenge only after realising about their failure in the examination. In case of G.N. Nayak (supra) according to the respondent No.5 amendment of the qualification for the post of Professor in



Marine Science was illegal and he knew that there was a change in the eligibility criteria for the post yet he applied for the post and appeared at the interview without protest. Their Lordship of Hon'ble Apex Court held that he cannot be allowed to contend that the eligibility criteria was wrongly framed. Similarly, in case of Madan Lal (supra) the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. Thus, in the light of the aforesaid legal position, the arguments of the learned counsel that the applicant cannot be estopped for agitating the illegality of selection process before this Tribunal has no force.

14. For the reasons stated above, the applicants have failed to establish any vested legal right justifying grant of relief on any legal, valid and tenable ground. The OA is devoid of merit, it is accordingly dismissed. NO order as to costs.

  
(MUZAFFAR HUSAIN)  
MEMBER (J)

  
(A.K. AGARWAL)  
VICE CHAIRMAN

Gajan