BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Applications
No. 280/91, 281/92, 288/92, 289/92,
292/92, 293/92, 295/92, 296/92,
300/92, 303/92, 304/92, 305/92
325/92 and 821/94

1. Mohammed Haroon
2. Brahmadatta Mishra
3. Awdesh Tiwari
4. Smt. Sushma Sharma
5. Motilal Kushwaha
6. B.K. Chawre
7. R.K. Sharma
8. Rambabu Jha
9. P.G. Wani
10. Anwar Hussain
11. K.K. Gupta
12. Imtiaz Husain
13. Amin Sahib Kasar
14. Pradeep Kumar & Ors. .. Applicants

V/s.

Union of India & Ors. .. Respondents

CORAM : 1.Hon'ble Shri Justice M.S.Deshpande, V.C
2.Hon'ble Shri.P.P.Srivastava, Member (A)

APPEARANCES :

Shri.G.S.Walia, Shri.D.V.Gangal
Counsel for applicants

Shri.P.M.A. Nair, Counsel
for respondents

ORAL JUDGMENT DATED : 01/02/1995
(Per Shri.M.S.Deshpande, Vice- Chairman)

It would be convenient to decide these 14 Original Applications by a common judgment as the points raised are identical it will suffice to set-out the averments in O.A. 281/92 as illustrative of the pleadings in all the other cases except in O.A. 821/94 in which there are 14 applicants, while there

is only one applicant in each of the other 13 cases. Though in O.A. 821/94, the learned counsel for the applicant made a statement on September 02, 1994 that the matter had been stayed by the Supreme Court and they will move the Tribunal later, there is no dispute about the position that the Supreme Court was seized of an S.L.P from an order passed in Contempt Petition and the SLP was disposed of by the Supreme Court on 29th September, 1994 and the learned counsel agreed that all these matters should be heard together and disposed of by a common judgment.

2. Respondents had issued an employment notice No. 2/80-81 for recruitment to several categories and it came to be published in several local newspapers. The present applicants, among others, applied in response to the employment notice. They appeared in the written test and there after they have been called for interviews in March 1982 and later. They hoped to be selected and according to them they had performed well at the written test as well as in the interview. Some results were declared in Indian Express dated December 17, 1986. It is contended that, according to respondents, those results were provisional. Some of the applicants' names appeared in the Provisional Result declared, but they were not issued any selection letters. There were allegations of large scale corruption and nepotism against the officers in

..3

employment of the respondents touching the manner of holding written test and interviews and final selection, and an enquiry was held by C.B.I in this respect. Seven candidates filed writ petition No. 897 of 83 before the Bombay High Court which was decided on September 24, 1984. The High Court made the rule absolute in respect of 3 of the applicants and discharged the rule in respect of 4 others. In respect of the three who were successful, the observations were that the Vigilance Branch found that the selection of these candidates was without any blemish and there was no prima facie material to suggest that their appointments were secured by any foul means and the counsel for respondents made a statement that those three candidates would be given appointments. 45 others had filed Writ Petitions and those Writ Petitions came to be transferred upon establishment of this Tribunal under Administrative Tribunals Act to the Tribunal were decided by a common judgment on February 14, 1991. After considering the allegations, the Tribunal observed that most of the applicants were not declared selected because they obtained less than 150 marks and it had been pointed-out by the respondents that the cut off point was reached in order to adjust the successful candidates in the advertised vacancies of each category. Since this cut-off point had been decided after the result had already been prepared, the Tribunal held that the cut off point was arbitrary as it laid down certain qualifying marks in excess of

35% even though sufficient number of persons were not going to join the services and even those who had secured less than 150 marks had to be appointed to fill the available vacancies which were advertised. With regard to number of vacancies the Tribunal pointed-out that there were discrepancies in the figures of the vacancies which varied from 4236 to 7241 in the written statements made by the respondents on different occasions. It was also observed that in the last category of cases which were those where answer-sheets as well as tabulation sheets or summary sheets were not available and so the matter shall have to be considered by a committee appointed to find out whether these persons actually appeared in the examination and to call from amongst them the persons to whom call letters were issued for appearing at the examination or interview. As a sequal to these observations, the Tribunal by its judgment dated 14.2.91 made following seven 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 earmarked. 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 appointments.

(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.

(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 those whose marks are not available of the answer sheets as well as of interview, then these candidates shall be alleged 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 caseswhich were entrusted to Directorate of Vigilance after giving notice to the effected parties and form their own opinion about the genuine-ness of such tests given by such candidates whether there has been any interpolation etc. to inflate the marks or change the answer sheets, as the case may be, and given their report to RSC which shall finally determine whether such a candidate has to be selected or not.

..6

(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 those, in order of merit recommend for appointment of 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 2 others who have been so selected and appointed, shall not be governed by these directions.

3. After the High Power Committee gave its report a contempt petition was filed on behalf of the applicants in those O.As and when the C.P, 69/92 & Ors., came up for hearing before the Tribunal, the Tribunal passed an order on October 06, 1993 directing that all those applicants who have secured 105 or more marks out of 300 shall be deemed to have been recommended for Category No. 25 and the General Manager of the respective Railways shall take steps to consider whether these applicants can now be granted appointments in the vacancies which we have indicated, within two months from the date of receipt of the order.

4. The respondents approached the Supreme Court by filing Civil Appeals Nos. 1821-31/1994 and by the judgment delivered on September 29, 1994 the Supreme Court made the following observations :

"We have carefully perused the order of the tribunal dated 14.2.1991 as well as the order made in Contempt Petitions dated 6th October, 1993. In the main order the Tribunal found fault with the fixation of the cut-off marks mainly on the ground that no such provision existed in the relevant rules and therefore the action of the Railway Administration did not have legal support. It would appear from the order in the Contempt Petitions that the fixation of the cut-off point was objected on a different ground. There was however, no allegation that the Railway Administration had not acted in good faith in fixing the cut-off marks. That apart, as stated earlier in the final directions given by the Tribunal extracted earlier it decided to appoint a High Powered Committee to look into the grievances of the candidates. The High Powered Committee appointed under directions (5) was required to scrutinize all those cases which were entrusted to the Directorate of Vigilance after giving notice to the affected parties and the committee was directed to form its own opinion about the genuineness of the test, etc. As stated earlier, the High Powered Committee came to the conclusion that there were no such vacancies in view of the fact that 1152 Class IV employees had since been promoted to those vacancies and 2600 candidates

who had secured 50 per cent and more marks and were not, in any manner, involved in the vigilance enquiry had been selected and appointed in the existing vacancies, 399 vacancies having been kept reserved for ex-service personnel. Besides, as stated above the High Powered Committee also thought it appropriate to adopt the 50 per cent cut-off po nt for the purpose of its exercises. "

It added :

"A straight jacket criterion applicable to all situations may not be provided for by the rules and could be adopted by the authority charged with the duty to select, depending on the total number of posts advertised, the total number of applications received, the level at which the appoint appointments are to be made and the like. We therefore find it difficult to sustain the order of the tribunal dated 6th October, 1993."

5. In reply to the petitioners' contentions, the respondents raised firstly the bar of limitation because the panels had been prepared on 22.11.1988 and the applicants had not qualified at the examinations held. They urged that there is no practice of informing the candidates who were not selected, for the non-selection and it was only the selected candidates who were to be mentioned in the notice sent to the press. Since the applicants

had not qualified at the tests held, they were not recommended and selected and they were therefore not entitled to make a grievance by filing these petitions. With regard to the 45 applicants who had approached the Tribunal earlier since the direction was that they could not be selected on the basis of reduced cut-off marks, their applications also failed, and only 693 vacancies were identified and since all those vacancies have been filled as observed by the Supreme Court while considering the report of the High Powered Committee, nothing further remained to be done.

6. The learned counsel for the applicants urged that there is no allegation against any of them that they were involved in vigilance proceedings and upon the respondents own showing their cases were not affected by the vigilance enquiries and therefore their case should have been considered by the High Powered Committee and eventually by the respondents for appointment.

7. With regard to the question of limitation, it is apparent that the panel had been published on 22nd November 1988 and the applicants have themselves stated that some results were declared on 17.12.1986 and their names had not appeared in the results so declared. Though several allegations of fraud and corrupt practices practiced by the employees of the respondents had been made, it is apparent that the

cause of action arose when some results were declared in Indian Express dated 17.12.1986 or on 22.11.88 when according to the respondents selections were finalised and final panels were issued. Applicants approached the Tribunal in March 1992 and that was not within the period of one year as prescribed by Section 21 of the Administrative Tribunals Act. Shri.Gangal, learned counsel for the applicants urged that the judgment delivered by the Tribunal on 14.2.1991 would be a judgment in rem and since that was a declaratory judgment, applicants would be entitled to the benefit of that judgment. It is true that the Tribunal had appointed a High Powered Committee for looking into the mal-practices as well as for ascertaining the number of actual vacancies and how many candidates who appeared in the examination were selected finally and given appointment. According to the applicants, they had not received any notice from the High Powered Committee for appearing before them. But it is apparent that under direction No. 5 it had to scrutinise all cases which were entrusted to the 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 had been any interpolation etc., to inflate the marks or change the answer sheets as the case may be, and give their report to RSC who shall finally determine whether such a candidate has to be selected or not. The applicants case (because no vigilance case was pending against them) would not be covered by the direction No. 5 and it was not

incumbent upon the high powered committee in the light of these directions to examine the case of the applicants. The exercise by the High Powered Committee was not to be in respect of each and every one of thousands of candidates who had appeared at the written test and interview, but those candidates who had approached the Tribunal within one year either from the publishing of notice in Indian Express or preparation of panel on 22.11.1988 and the applicants would not be entitled to agitate their grievance by this petition much later.

8. With regard to the applicants' contention that the judgment in the previous petitions was a judgment in rem, it is not necessary to go into the wider question whether it could be regarded as a judgment in rem. The judgment itself prescribed the scope of the enquiry by the high powered committee and the deliberations of the committee were to be restricted only to those persons who were within the direction No. 5 above. The applicants did not fall within that category and they cannot therefore claim any benefit of the directions issued by the Tribunal in the earlier cases.

9. On merits, our attention was invited to the instructions issued on 22nd July, 1964 on the subject of recruitment of Class III service and particularly to para 7 & 8 under which there were no minimum qualifying marks to be obtained, except in English, and the number of candidates

who should be interviewed had been stipulated. The challenge that these instructions have not been followed, has not been raised in the present petition and since so much has been said in the earlier petitions and by the Supreme Court, it is not necessary for us to go into this aspect again. The position remains that according to the respondents the applicants were not qualified and therefore could not have been recommended for appointment.

10. Reliance was placed on observations in Miss. Neelima Shangla V. State of Haryana (1986 Supreme Court cases L&S 759) where the rules for appointment of Haryana Civil Service (Judicial Branch) came to be considered and it was held that the Public Service Commission had erred in withholding the names of several successful candidates including the petitioner therein on the ground of limited number of vacancies. It was because the petitioner's name had not been sent though she had been successful and that she had not secured appointment, the Supreme Court directed the Government to include her name in the 1984 list of candidates selected for appointment as Subordinate Judge in the Haryana Civil Service (Judicial Branch) and forward the same to the High Court of Punjab and Haryana for inclusion in the High Court Register. The Court also observed in para 4 as follows :

> " As a result of our finding a few more candidates would also be entitled to be included in the Select List and ordinarily we would have directed their inclusion in the list. But having regard to the fact that most of the

> others have not chosen to question the selection and the circumstance that two years have elapsed we do not propose to make any such general order as that would completely upset the subsequent selection and create confusion and multiplicity of problems. The cases of any other candidate who may have already filed a writ petition in this Court or the High Court will be disposed of in the light of this judgment. Those who have not so far chosen to question the selection will not be allowed to do so in the fugure because of their laches."

11. We have pointed-out above that High Powered Committee have come to the conclusion that there wer e no vacancies as some Class-IV employees had been promoted and 2600 candidates have secured 50% and more marks who were not involved in the vigilance enquiry and had been appointed in the existing vacancies. It is clear that there are no more vacancies to be filled. To carry-over the vacancies for which employment notice had been issued, at this distance of time when the applicants have been guilty of latches in not approaching the Tribunal at the appropriate stage, would only have the effect of encouraging stale claims and unsettle the positions which have become settled since then.

12. Shri. Gangal, learned counsel for the applicants referred us to B.M.Gupta Vs. Union of India and others (1992(2) S.L.J (C.A.T) ) where the Allahabad Bench of the Tribunal had given directions relying upon the following observations of the Supreme Court in Inderpal Yadav v. Union of India and Others (1985(2)SCC 648)

> "There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill-afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore some of the retrenched workmen failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. Therefore those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court."

The issue there was about treatment that was being meted-out to the workmen. We have given our anxious consideration to these observations of the Supreme Court but we do not think that they can be invoked in the circumstances of the present case, which we have stated in detail above and they would not lend any assistance to the applicants here.

13. In the result, we see no merit in the applications. They are dismissed. There will be no order as to costs.

(P.P.SRIVASTAVA)
MEMBER (A)

(M.S.DESHPANDE)
VICE-CHAIRMAN

J*