

## CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

OA 448/97 &amp; OA 537/97

MUMBAI, THIS THE 8<sup>th</sup> DAY OF JULY, 2001.

HON'BLE SHRI S.L.JAIN, MEMBER (J)

HON'BLE SHRI GOVINDARAJ TAMPI, MEMBER (A)

OA 448/97

(A) SHRIMATI URMILA VASUDEO LAD )

1. Office Superintendent Grade-II )

Controller of Stores, Central- )

Railway, C.S.T., MUMBAI-400 001. )

R/at : 11/C Suyog, Co-Op. Hsg. Society )

MULUND EAST, MUMBAI-400 081. )

2. MRS. ASHA SHRIPAT RANE. )

Office Supdt. (O.S. for short) Gr-II )

Controller of Stores, Mumbai-1 )

R/at : A/14/14, Suman, Goregaon, )

MUMBAI-400 108 )

3. MRS. VIMAL MANIKRAO WARLIKAR. )

O.S. Grade-II, Controller of Stores )

Central Railway, MUMBAI )

R/at : Warli Koliwada, Mumbai-25. )

4. SHRI. VIVEK YESHWANT VOGAL. )

O.S. Grade-II, Controller of Stores. )

Central Railway, Mumbai. )

R/at : Borivali, MUMBAI-97 )

5. SHRI. SARJERAO BAPU DHOND. )

O.S. Gr-II (Controller of Stores )

Central Railway, MUMBAI-1 )

R/at : B.J. Road, MUMBAI-11 )

6. SHRI. VINAYAK MANOHAR KULKARNI. )

O.S. Gr-II, Controller of Stores. )

Central Railway, Mumbai )

R/at : Mukund Nager, UNE-37 )

7. SHRI. J.N. NAIK )

Head Clerk., Controller of Stores. )

Central Railway, Mumbai )

R/at : Dombivali (East), Thane )

8. SHRI. A.V. SHAIKH. )  
Head Clerk, Central Railway, )  
Controller of Stores, MUMBAI-1 )  
R/at : Central Railway's Quarters, )  
Supari bag, Parel. )  
)  
9. SHRI. NARAYAN ANANT DUBATE. )  
O.S. Gr-II, Controller of Stores. )  
Central Railway, Mumbai-1 )  
R/at : Jiwala Pada, Borivali(East) )  
MUMBAI-92 )  
)  
10. SHRI. V.B. BHAVSAR. )  
H.S. (Controller of Stores. )  
Central Railway, Mumbai-1 )  
R/at : Borivali (East). )  
)  
11. MRS. MANDAKINI P. PATIL. )  
Head Clerk, Controller of Stores. )  
Central Railway, MUMBAI-1 )  
R/at : Sector-16, Building No.\*-4/29/8) )  
NEWBOMBAY (AIROLI) )  
)  
12. SHRI. A.T. DONGRE. )  
Head Clerk, Controller of Stores. )  
Central Railway, MUMBAI-1 )  
R/at : Dharavi, MUMBAI-17. )  
)  
13. VENU N. NAIR. )  
Head Clerk, Controller of Stores. )  
Central Railway, MUMBAI-1 )  
R/at : Behind Maruti Mandir, )  
Thakurli (East), Dist-THANE. )  
)  
14. SHRI. SHAMRAO MITHAL WAGHARE. )  
Head Clerk, Controller of Stores. )  
Central Railway, MUMBAI-1 )  
R/at : Anant Niwas, Pune Link Road, )  
KALYAN (EAST) )  
)  
15. MRS. SHOBHAI PRABULLA GARUD. )  
O.S. Gr-II, Controller of Stores. )  
Central Railway, Mumbai-1 )  
R/at : Vijetha Co.Op.Society, Thakurli )  
DIST THANE. )  
)  
... 3/-

16. SHEELA VILAS SAHASRABUDHIE )  
O.S. Gr-II, Controller of Stores, )  
Central Railway, MUMBAI-1. )  
R/at : Navdeepal Co-op.Heg.Society, )  
Kopar Road, Dombivli (West) )  
)  
17. MRS. K.K. BHARMANI. )  
O.S. Gr-II, Controller of Stores, )  
Central Railway, MUMBAI-1. )  
R/at : Nehru Nagar, Kurla, (East) )  
MUMBAI-28. )  
)  
18. SHRI. V.R. AMRUTE. )  
O.S. Gr-II, Controller of Stores, )  
Central Railway, MUMBAI-1. )  
R/at : Vasant Bhawan, Karnik Road, )  
KALYAN. (Kalyan) )  
)  
19. SHRI. RAMCHANDRA DRAKU YADAV. )  
O.S. Gr-II, Controller of Stores, )  
Central Railway, MUMBAI-1. )  
R/at : New Ambewadi, Jawahar Nagar, )  
Khar, MUMBAI-55 )  
)  
20. MRS. MEENA N. JOLANI. )  
Head Clerk, Controller of Stores, )  
Central Railway, MUMBAI-1. )  
R/at : B/32, Vishal Nagar, Andheri(W) )  
MUMBAI-61. )  
)  
21. MRS. BETSY J. SOLOMON )  
Head Clerk, Controller of Stores, )  
Central Railway, MUMBAI-1. )  
R/at : 188/8, Jawahar Nagar, Khar-Rd. )  
MUMBAI-51. )  
))..APPLICANTS.

OA 537/97

(A) MRS. UMA SHANKALA MAHAJAN )  
1. Office Superintendent, )  
Controller of Stores, )  
Central Railway, C.S.T., MUMBAI-1 )  
R/at : Three Type Kharal Section )  
AMBERMATH (MEST). )  
2. MRS. ARCHANA P. SAMANT )  
Office Superdt, Controller of Stores )  
Central Railway- Mumbai-1 )  
R/at : New Link Road, Andheri )  
MUMBAI-58 )  
3. MRS. MANISHA CHANDRAKANT VAIDYA )  
Office Superdt, Controller of Stores )  
Central Railway, Mumbai-1 )  
R/at : Borivali, Mumbai-92 )  
4. MRS. SUMATI ANIL KHAIRATKAR. )  
Office Superdt, Controller of Stores. )  
Central Railway, Mumbai-1 )  
R/at : Dombivli (East) Thane. )  
5. MRS. JAYSHREE RAJAVARDHAN RAO )  
Office Superdt, Controller of Stores. )  
Central Railway, Mumbai-1 )  
R/at : Panchpakhadi, Thane. )  
6. MRS. SHAKESKILLA CHANDRAKANT PAGARE. )  
Office Superdt, Controller of Stores )  
Central Railway, Mumbai-1 )  
R/at : Govandi, Mumbai-93 )  
7. MRS. USHA ANIL PAWASHE )  
Office Superdt, Controller of Stores )  
Central Railway, Mumbai-1 )  
R/at : Kalyan East, Thane- )  
8. MRS. MEENA MUHAMMAD PATWARDHAN )  
Office Superdt, Controller of Stores )  
R/at : Dombivli, Dist- Thane. )

9. SHRI. RATIPAL VERMA. )  
Office Supdt., Controller of Stores )  
Central Railway, Mumbai-1. )  
R/at : Kalyan (East), DIST-THANE. )  
)  
10. SHRI. PREM KUMAR. )  
Office Supdt., Controller of Stores )  
Central Railway, MUMBAI-1 )  
R/at : Kolsewadi, Kalyan (East) )  
)  
11. MRS. SHAILAJA CHANDRAKANT BORULKAR. )  
Office Supdt., Controller of Stores )  
Central Railway, Mumbai-1 )  
R/at : Bombay Central, Mumbai-8 )  
)  
12. M.K. KHATIB. )  
Head Clerk, Controller of Stores. )  
Central Railway, Mumbai-1. )  
R/at : Matunge, MUMBAI-19 )  
)  
13. SHRI. MAHADEV BHOOMI MEGHJI. )  
Office-Supdt., Controller of Stores )  
Central Railway, Mumbai-1 )  
R/at : Mahim, Mumbai-16 )  
)  
14. SHRI. SUBHASH VITthal KARPE. )  
Office Supdt., Controller of Stores )  
Central Railway, Mumbai-1 )  
R/at : Ghatkopar, Mumbai-34 )  
)  
15. SHRI. V. PARAMASHIVAM. )  
Head Clerk, Controller of Stores. )  
Central Railway, Mumbai-1. )  
R/at : KALYAN (EAST), DIST-THANE. )  
)  
16. MRS. VEENA R.P. PRIOKER. )  
Office-Supdt., Controller of Stores )  
Central Railway, Mumbai-1 )  
R/at : Mumbai-7 )

17. MRS. ANITA FERNANDES )  
Office Supdt.-II, Controller of Stores )  
Central Railway, MUMBAI-1. )  
R/at : Santacruz, Mumbai-4. )  
)

18. SHRI. L.V. SONDEKAR. )  
Office Supdt-II, Controller of Stores )  
Central Railway, Mumbai-1. )  
R/at : Kalyan (Dist-Thane) )  
)

19. SHRI. ALBERT SAMUEL )  
Office Supdt-II, Controller of Stores )  
Central Railway, Mumbai-1 )  
R/at : Revikiran, Thakurli (East) )  
District-Thane. )  
)

20. SHRI. G.D. KADAM. )  
Head Clerk, Controller of Stores. )  
Central Railway, Mumbai-1 )  
R/at : Subhash Nagar, Ghatkopar )  
MUMBAI-86 )  
)

21. SHRI. P. SELVAMANI. )  
Head Clerk, Controller of Stores. )  
Central Railway, Mumbai-1 )  
R/at : R.C. Mary, Chembur. )  
MUMBAI-74. )  
)

22. SHRI. S.K. ACHAREKAR. )  
Head Clerk, Controller of Stores. )  
Central Railway, MUMBAI-1. )  
R/at : J.P. Road, Andheri (West) )  
MUMBAI-86. )  
)

23. SHRI. S.K. SALI. )  
Office-Supdt.-II, Controller of )  
Stores, Central Railway, Mumbai-1 )  
R/at : Kalyan, Dist-Thane. )

24. MRS. JAYASHRI VILAS DESHPANDE. )  
Controller of Stores. )  
Central Railway, Mumbai )  
R/o: Near R.R. Construction. )  
Rambaug Lane No. 3, KALYAN (WEST) )  
DISTRICT TRAVEL. )  
Working as : )  
Office Superintendent - IX )  
APPLICANTS

(b) By Advocate Shri S.P. Kulkarni in both OAs)

V/S...  
/

(R) UNION OF INDIA )  
Through B )  
1. Secretary, Ministry of Railways )  
Railway Board, Rail Bhawan,  
NEW DELHI-110 001. )  
/ )  
2. Chief Personnel Officer ( S & M ) )  
Central Railway, Personnel Branch- )  
Head Quarter Office, )  
Chhatrapati Shivaji Terminus, Port. )  
MUMBAI-400 001. )  
/ )  
3. Controller of Stores. )  
Central Railway, New Admin. Building )  
Opposite Anjuman High School. )  
C.S.T. Complex, Port. )  
MUMBAI- 400 001. )

4. Joint Director Establishment (N)  
Railway Board, Rail Bhawan,  
New Delhi.

... Respondents

(By Advocate Shri S.C.Dhawan)

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMIL

This combined order seeks to dispose of two identical Original Applications filed by similarly placed individuals. The points raised by them are similar, arguments raised and contested are identical and were made in common oral submissions.

2. (i) OA 448/97 has been filed by Smt. U.V.Lad and 20 ors., all employees of Western Railway challenging the selection process for promotion to the grade of Office Superintendents held on 20-4-97 on the grounds of alleged procedural irregularities .

(ii) OA 537/97 has been filed by Smt. U.S.Mahajan and 18 others, also employees of Western Railway challenging the same selection process.

3. Heard Shri S.P.Kulkarni, learned counsel for the applicants in both the applications and Shri S.C.Dhawan, learned counsel for the respondents, again in both the applications.

4. Relevant facts as brought out in the identical pleadings in the two OAs that the applicants who joined as Junior Clerks in Stores Department of Central Railway in the grade of Rs. 950-1500/-, became Sr. Clerks in the grade of Rs. 1200-2040/- through a written examination and became Head Clerks

in the grade of Rs. 1400-2300/- on seniority-cum-fitness basis. Twelve (12) applicants in OA 448/97 and nineteen (19) applicants in OA 537/97 are already working as ad hoc Office Supdt. Gr.II in the scale of Rs. 1600-2600/- from 1995-96 onwards while remaining 9 applicants in OA 448/97 and 5 applicants in OA 537/97 are seniors ~~and are entitled to~~ to many <sup>who</sup> have been permitted to appear for the test held on 20 & 21-5-1997. In terms of Indian Railway Establishment Rules, Rule 214 (c) (i) IREM, only those with two years in the feeder cadre are permitted to appear in the written test for promotion. Railway Board's order also permit allocation of notional marks for seniority for senior employees twice. Further in the examination for promotion to the highest grade in the category, objective type questions up to 50 % elasticity in the percentage is permitted. For Jr. Clerks ultimately Office Supdt.II is the only promotion <sup>Head Clerk</sup> in line. The applicants allege that in the impugned selection the respondents had not followed the above laws and not prepared the list of candidates after duly observing the procedure laid down by the Railway Board as (a) even those who have not completed 2 years as Head Clerks were allowed to appear in the written test/viva-voce (b) senior employees were not given notional seniority marks in terms of Railway Board's directions of 5-12-1984 (c) objective type questions were conspicuously omitted, (d) no question on Rajbhasha was included (e) vacancies from 1991 for 6 years were pooled together which has denied the seniors' chances for taking the examination when they were eligible and (f) juniors having just two years of service or even less were equated with seniors like

the applicants with more than 5 years, by the enlargement of the zone of consideration resulting from the pooling of vacancies which has given unintended benefit to otherwise ineligible juniors employees who could not have found places in the eligibility zone for the years 1991-95. Though the applicants had protested against this pattern adopted through the service unions, it did not evoke any proper response and the respondents had gone ahead with the selection proceedings even at the likely cost of reversion to some of the applicants. The respondents also had bunched candidates by formulating zones of consideration for the purpose of viva-voce in such a manner that some one promoted in 1986 came to be in the same batch as some one promoted in 1993 as Head Clerks. In view of the above the applicants challenge the action of the respondents on the following grounds :-

(i) Railway Board's orders which are mandatory in nature, especially having been issued in consultation with Permanent Negotiating Machinery (PNM) with regard to setting of objective type questions, compulsory questions up to 10 % on Rajbhasha have not been honoured.

(ii) As many as 11 candidates who were promoted as Head Clerks on regular basis on 14-6-95 and who were thus ineligible to take the examination were ~~permitted for the list~~ promoted. This was protested by the representative Associations as well.

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- 11 -

(iii) Department of Personnel and Training OM dated 12-10-1990, which prescribes the selection by drawing eligibility zone with reference to year wise vacancies has not been followed and the bunching of vacancies had given undue advantage to junior persons who could not have been permitted to take the examination at the exams been done on yearly basis. This was also against the decision of the Hon'ble Apex Court in the case of Krishan Chander Vs. UOI (1987 (4) ATAC 668) and Basava Sindivale Vs. UOI (1988 (1) SLJ 335) violating the selection process intiating on 31-1-1997 with subsequent letters.

(iv) There is considerable variation between the posts notified and those actually <sup>filled by</sup> on promotion from Head Clerk to Office Supdt. Gr.II, which shows that the filling of the vacancies has been arbitrary. In fact 40 vacancies had remained unfilled.

(v) There has been arbitrary expansion of the zones of consideration to accommodate the favourites.

(vi) The question papers had many defects and a few candidates were shown as outstanding, all of whom belonged to the Purchase Section on account of many questions relating to Purchase Branch being included. Some of the applicants who did not qualify the merit process were from S.T. Category. Therefore, the "best among the failures ought to have been considered".

(vii) The question on Rajbhasha was not made compulsory which should have been done.

5. In view of the above, following reliefs are claimed :-

(a) This Hon'ble Tribunal be pleased to call for the concerned file, Notings and Railway Board Circulars, for appreciation of factual position for justice.

(b) Hold and declare process of selection initiated by the respondents on 20-4-1997 vide Exh.A-2 for promotion to Office-Supdt. Grade-II as arbitrary, illegal and violative of Railway Board Orders and Recruitment Rule, eligibility conditions.

(c) Direct the respondents to cancel the proceedings held so far and hold fresh Examination in accordance with procedure and rules, Railway Board Orders etc.

(d) Direct the respondents not to promote the Selectees as per Selection held in May, 1997.

(e) Hold and declare the last sentence in Rule 215 (a) IREM as unconstitutional, illegal, arbitrary and ultra-vires.

(f) Any other and further relief as may be deemed fit and proper by this Hon'ble Tribunal.

(g) Cost of Rs. 15,000/- be awarded.

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6. In the Miscellaneous Petition, the applicants repeat that the selection of 76 persons made during May, 1997 was incorrectly done and those selected should not be permitted to join duties as Office Supdt.II by reverting those of the applicants who are already working as ad hoc Office Supdt. Gr.II.

7. In almost identical reply filed on behalf of the respondents on 22-9-1997 in OA 448/97 and 3-10-1997 in OA 535/97, the respondents state that both the applications are mis-conceived and non-maintainable. They indicate that the selection of the candidates for empanelment having been issued on 30-6-1997, the non-joinder of necessary parties whose interest will be hurt, if the OA succeeds, makes the applications liable to be dismissed. According to the respondents they have not committed any procedural irregularities or flouted any provision of the Railway Board's Circular and deny that any ineligible candidates was allowed to participate in the selection process. All the respondents have been allowed notional seniority marks in terms of Railway Board's Circular dated 5-12-1984. The application is, therefore, liable to be dismissed on that count as well. Notification for selection for the post of Office Supdt. Gr.II in the scale of Rs. 1600-2660/- was issued along with list on 291 eligible candidates who were working as Head Clerks in Stores Department. Out of these 291 candidates 271 presented themselves in the written test held on 12-4-1997 and 20-4-1997. 109 candidates became eligible for the viva-voce test out of them 12 had become so eligible by addition of

-14-

notional seniority marks in terms of Railway Board's letter dated 5-12-1984, one SC candidate came in by relaxed standards and 3 ST candidates got in being the best among the failures. None of the applicants could become eligible as they did not get the requisite qualifying marks in the written test even after addition of notional seniority marks. Therefore, they were not correctly called for viva-voce test. The applicants cannot have any grievance on the same and they cannot now turn round and challenge the said selection process. Having participated in the selection process but failed to make the grade, they had subjected themselves to calculated risk and have, therefore, to bear the consequences. They had not raised any objection to the list of eligible candidates circulated on 2-4-1997, when their names were also appeared. It was only after the declaration of the results of the written test on 30-4-1997, the applicants sought to challenge the selection process which was totally improper as the letter dated 30-4-1997 had clearly stated that the candidates have been called for Viva-Voce test in terms of Railway Board's letter dated 5-12-1984 which provided for addition of notional seniority marks to those candidates who had not obtained 60 % in the written test.

8. Rule 215 (a) in IREM Vol.I, reads as below :-

"Selection post shall be filled by a positive act of selection made with the help of Selection Boards from amongst the staff eligible for selection. The positive act of selection may consist of a written test and/or viva-voce test; in every case viva-voce being a must. The staff in the immediate lower grade with a minimum of two years service in that grade will only be eligible for promotion. The service for this

purpose will include service, if any, rendered on ad hoc basis followed by regular service without break. The condition of two years service should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration."

Therefore, the condition of eligibility of two years of service for being called for the selection is to be reckoned at the time of actual promotion. Further, selection process is detailed in Rule 219 (g) as below :-

~~"Selection should be made primarily on the basis of aver all merit, but for the guidance of selection Board the factors to be taken into account and their relative weight are laid down below :-~~

	Max. Marks	Qualify. Marks
i) Professional ability	50	30
ii) Personality, Address, Leadership & Academic qualification.	20	-
(iii) Record of Service	15	-
(iv) Seniority	15	-

NOTE : - (i) The 'item record of service' should also take into consideration the performances of the employees in 'essential Training Schools/Institutes apart from the examining CRs and other relevant records.

(ii) Candidates must obtain a minimum of 30 marks in professional ability & 60% marks of the aggregate for being placed on the panel. Where both written & oral tests are held for adjudging the professional ability, the written test should not be of less than 35 marks and the candidates must secure 60 % marks in written test for the purpose of being called in viva-voce test. This procedure is also applicable for filling up of general posts-provided 60 % of the total of the marks prescribed for written examination and for seniority will also be the basis for calling candidates for viva-voce test instead of 60 % of the marks for the written examination."

9. Therefore the candidate should get 60 % marks in the written test before he is declared eligible for the viva-voce test though allocation of notional marks for seniority is also added for determining the same. However, inspite of additional of the notional seniority marks, the applicants did

not make the grade and they cannot, therefore, have any legitimate grievance. It is true that a few candidates who did not complete 2 years at the time of the selection were also called for the written test, but they were called as they came within three times the number of assessed vacancies and also in terms of the condition in Rule 215 (a) providing that the condition of two years service need be fulfilled only at the time of actual promotion. The respondents repeat that the applicants who did not qualify in the written test even after the addition of the notional seniority marks cannot demand that the junior persons who had got the marks should not have been called. Respondents further state that the applicants are not correctly citing Rule 214 (c) of the IREM providing that the condition of 2 years service should be fulfilled at the time of actual promotion. Even otherwise it was applicable only to non-selection post while 215 (a) related to selection post. The respondents also contest the interpretation by the applicants with regard to assignation of seniority marks. And point out that Railway Board's letter dated 7-4-1984 providing for 50 % of questions being objective type was only as a matter for guidance and not inflexible percentage and the applicants cannot expect that questions of their liking or choice alone should have been put. Even otherwise a number of questions to be made were only objective type. While it is true that a few candidates who did not qualify in the written test, were also called for viva-voce by giving notional seniority marks, it did not follow that only those had been given notional marks. In fact, a large number of other candidates also

have been given notional marks inspite of which they did not make the grade, and those included the applicants. The argument that question regarding the Rajbhasha is to be compulsory is also incorrect as the applicant has not been able to show any such specific directions. The respondents also deny that ineligible juniors have been preferred and unequal have been treated as equals as all were called who came within three times, no. of vacancies and there was no rule which prevented or restricted such dealing of vacancies in Group "C" cadre where cent-percent vacancies were filed from promotions. The respondents who have willingly participated in the selection process without any protest, cannot have any reason or grievance on a later stage when they found that the results have not been according to their liking. They have not come to the Tribunal with clean hands and their plea cannot, therefore, be accepted by the Tribunal. What they are attempting is, the abuse of procedure to gain from the Tribunal a relief which was not strictly available to them. The allegation that there has been invidious bunching of candidates was also not correct as what has happened is that the eligible candidates have been called for keeping in mind the vacancies.

10. In their additional reply, the respondents deny that the vacancies which occurred from the year 1991 and thereafter have been pooled for the selection held in 1997. According to them the last selection of O.S. Gr.II was held after the orders of restructuring and all the vacancies lying as on 28-2-1993 and the posts re-structured on 1-3-1993 were filled according to the

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modified procedure, which resulted in empanelling 90 employees, IREM does not prevent grouping of vacancies for selection within Group 'C' categories. In fact Rule 215 (f), provides that assessment of vacancies, within the cadre would include all the vacancies existing and those anticipated during the course of next one year, plus 20 % vacancies for meeting unforeseen contingencies. It is not correct to say that there has been any variation between the posts notified and actually filled and this point has been raised only to gain the sympathy of the Tribunal. Vacancies were not filled in without following the rules as alleged. They had strictly gone by the instructions in force and it was not necessary to draw year wise panel. There was no illegal bunching of vacancies and only correct number of persons were called. As against 97 vacancies, 291 were called with an additional 8 candidates being asked to be in readiness, and as such the allegation that 325 were called was wrong. It was also wrong to state that objective type questions were not asked in the test. Same was the position with regard to questions on Raj Bhasha. It is further pointed out by the respondents that one of the applicants in OA 448/97 has been promoted as Office Supdt.. Gr.II on restructuring benefits in 1993 while four have got the benefits by the 1998 selection. Similarly 4 applicants in 537/99 have got the restructuring benefits of 1993 and 8 person have been promoted in 1998 selection. This would show that the respondents have always adopted the correct procedure and there was nothing irregular

-10-

about the selection. The application, therefore, deserved to be dismissed, is what the respondents pray.

11. The counsel for the applicants and the respondents strongly and vehemently reiterated the respective claims made by them in their petitions and their pleadings.

12. We have carefully considered the matter. While the applicants call for the cancellation of the selection procedure on the ground that vacancies have not been worked out correctly, they have been bunched improperly, and that the proceedings have been adopted wrongly, the respondents plead that they have gone by the Instructions of the IREM and the selection proceedings have been gone through without any irregularity. The latter also point out that the applicants who were seniors have been given due notional marks, but still could not make it and, therefore, they have now come up challenging the selection process, which was improper.

13. The first objection raised by the respondents that the applicant's claim is liable to be dismissed on account of non-joinder of necessary parties cannot be accepted. It is found that the OA No. 448/97 has been filed on 15-5-1997 and OA No. 537/97 10-6-1997. The list of successful candidates was published only on 30-6-1997 and, therefore, the applicants could not have issued any notice to those candidates. Even otherwise it is found that in both the OAs, an order has been passed by the Tribunal on

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11-7-1997 that any promotion made will be subject to the outcome of the OAs. Therefore, the concerned parties have been put on notice and the objection relating to non-joinder of parties has ceased to be of any relevance. It is accordingly rejected.

14. At the same time, it is found that the respondents have while initiating the process of selection have issued a notification for a selection of Office Supdt. Gr.II on the scale of Rs. 1600-2660/- for filling up the 97 vacancies, 28 general, 7 SC and 2 ST along with the list of 294 eligible candidates. These included all the applicants as well. The applicants did not object to the list as their names were included very much in the list for consideration. Only after they found out on the subsequent date that they had not made the grade for the Viva-Voce test, they have protested and made complaints against the selection method. These have taken place much after the selection tests were held on 20-4-1997 and 21-4-1997. Because they did not make the grade they have sought to assail the proceedings before the Tribunal. After having willingly participated in the selection procedure and having exposed themselves to the likely risk of being not selected if their performance did not come to the requisite level, they cannot at this later stage turn around and find fault with the procedure.

15. However, we note that in one aspect of the selection, the respondents are guilty of an irregularity which has vitiated the proceedings. This relates to the bunching of vacancies. It is evident

that all the vacancies which existed as on 28-2-93 and those which arose w.e.f. 1-3-93, on restructuring have been taken together for the selection held in April - May, 1997. According to the respondents there was nothing in law which prevented from pooling of the vacancies and they were permitted to take all existing vacancies on a given date, all those expected to arise within the next one year plus 20 % vacancies more for meeting contingencies. This was clearly wrong. Courts including the Hon'ble Supreme Court have directed ~~s~~ time and again that assessment of vacancies for the purposes of DPC shall be reckoned yearwise and consideration zones worked accordingly. They are not permitted to be bunched together even when DPCs are held at the same time. ~~Not~~ Doing so and bunching vacancies would give an unfair advantage to certain individuals, especially juniors, who would not have entered even the consideration zone, if the vacancies were reckoned correctly and yearwise. This is what precisely has happened in these cases and a few persons who would have reached the feeder only during 1994-95, have been given the chance of being considered for the vacancies arising from 1993 onwards. Respondents' version that the eligibility has to be reckoned not with reference to the date of selection but with reference to date of actual promotion is no answer in law for this irregularity. The mere fact that the applicants had participated in the selection and thus acquiesced in the process does not sanctify or clothe with legality the irregular procedure adopted by the respondents. The vacancies should only have been reckoned yearwise and there is no statutory prescription. Candidates constituting *11. Kat*

thrice the number of vacancies would have to be invariably considered even if there are not eligible candidates. By extending the consideration zone and not reckoning the vacancies yearwise has given the junior and ineligible candidates an unfair advantage, which should have been clearly avoided. This irregularity on the part of the respondents is not washed away by the inaction on the part of the applicants in not protesting against it at an earlier stage. An irregularity and illegal action does not become legal merely because the affected persons did not protest. The respondents had a duty as model and responsible employers not to stray from the correct path. Once they do so, the procedure adopted by them has to be assailed and dealt with in accordance with law. And the results emerging from the incorrect action have to be negatived. And that we proceed to do.

16. In the above view of the matter the applications succeed and are accordingly allowed. The selection process initiated on 2-4-97 and the results pronounced on 30-6-97 are quashed. The respondents are directed to go through the selection process once again, after identifying the vacancies and reckoning them yearwise, and arriving at the consideration zones yearwise only from eligible candidates. Fresh promotions should be ordered thereafter, from among the selected candidates. We are not ordering the reversion of the individuals now occupying the posts of Office Supdt. Gr.II on the basis of the select list of 30-6-1997. However, they will hold the posts purely on ad hoc basis, without conferment of

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seniority in the grade/scale, till such time the new selection as directed above is completed and those selected persons join duty as Office Supdts. Gr.II. We also note that all the persons who are likely to be affected have been kept on notice, by the Tribunal's interim order dated 11-7-1997 in both the applications.

17. OA No.448/97 and 537/97 are disposed of in the above manner. No costs.

(GOVINDAN S. TAMPI)  
MEMBER (A)

SLJ -  
(S.L.JAIN)  
MEMBER (J)

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