

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Date of Order :.. This the 8th Day of January, 1998. X

JUSTICE SHRI D.N.BARUAH, VICE-CHAIRMAN
SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER

O.A.No. 142/96

1. Sri B.K.Daimary Applicant

-vs-

U.O.I & Ors. Respondents

2. O.A. 143/96

Ms.Nirmali Das Applicant

-Vs-

U.O.I & Ors. Respondent

3. O.A. 144/96

Shri S.Goswami Applicant

-Vs-

U.O.I & Ors. Respondents.

4. O.A. 145/96

Ms. Kamala Deka Applicant

-Vs-

U.O.I & Ors. Respondents

5. O.A. 146/96

Shri P.J.Das Applicant

-Vs-

U.O.I & Ors. Respondents

6. O.A. 147/96

Shri P.K.Sarkar Applicant

-Vs-

U.O.I & Ors. Respondents

7. O.A. 148/96

Shri T.K.Das Applicant

-Vs-

U.O.I & Ors. Respondent

8. O.A.No.149/96

Shri S.Kumar Applicant

-Vs-

U.O.I & Ors. Respondents

9. O.A. 150/96

Shri M.Ghose Applicant

-Vs-

U.O.I & Ors. Respondents



contd/-

10.	O.A. 151/96		
	Shri P.K.Kakati	...	... Applicant
	-Vs-		
	U.O.I & Ors.	...	... Respondents.
11.	O.A. 152/96		
	Shri D.Choudhury	...	... Applicant
	-Vs-		
	U.O.I & Ors.	...	... Respondents.
12.	O.A. 153/96	...	...
	Shri S.K.Rai	...	... Applicant
	-Vs-		
	U.O.I & Ors.	...	... Respondents.
13.	O.A. 155/96		
	Shri B.C.Bore	...	... Applicant.
	-Vs-		
	U.O.I & Ors.	...	... Respondents.
14.	O.A. 193/96		
	Shri Rupak Chakraborty	...	... Applicant
	-Vs-		
	U.O.I & Ors.	...	... Respondents.
15.	O.A. 42/97		
	Smt. A.Devi	...	... Applicant
	-Vs-		
	U.O.I & Ors.	...	... Respondents

By Advocate Mr.G.Sarma for all the petitioners.

By Advocate Mr.B.K.Sharma for all the respondents.

O R D E R.

G.L.SANGLYINE, ADMINISTRATIVE MEMBER,

The above 15(fifteen) Original Applications are disposed of by this Common order as they involve the same issue, facts and grounds.

contd/-

2. The Railway Recruitment Board, Guwahati issued the Employment Notice No.1/95 dated 26-4-1995 for the purpose of appointment in various posts under the North East Frontier Railway. In this Original applications we are concerned with CATEGORY No.7 : STENOGRAPHER : (English) in the scale of pay of Rs. 1200-2040/- mentioned in the Employment Notice. Pursuant to the said Notice we have the following results -

"Date of Written Test : 27-9-95
Date of Speed Test : 04-11-95 (for 80 w.p.m.)
Date of Speed Test : 05-11-95 (for 60 w.p.m.)
Date of Viva Voce Test, 08-11-95
Date of panel
approved: 09-11-95

The selection Board held the viva voce test on 8-11-95 for the recruitment of Jr. Stenographer (Eng) under Employment Notice No.1/95 Cat No.7 in scale Rs. 1200-2040/- and has found 16(UR -10,SC-2,ST-2, OBC-2) candidates suitable for the said post and their names are recommended to GM/P/N.F.Railway/Maligaon in ORDER OF MERIT.

AGAINST U.R.VACANCY

<u>SN</u>	<u>Roll No.</u>	<u>Name of Candidate</u>
1.	810704	Anjali Devi
2.	810786	Asis Chakraborty
3.	810798	Mrityunjoy Ghosh
4.	810018	Debasish Choudhury
5.	810589	Rupak Chakraborty
6.	810777	Pradip Kr. Sarkar
7.	810761	Nirmali Das
8.	810767	Kamala Deka
9.	810794	Pabitra Kr. Kakati
10.	810759	Satyaranayan Goswami

AGAINST S.C.VACANCY

1.	820123	T.Krishna Das
2.	820246	Sanjoy Kr.Rai

AGAINST S.T.VACANCY

1.	830077	Bijay Ch.Baro
2.	830108	Biney Kr.Daimary.

AGAINST O.B.C. VACANCY

1.	840025	Santosh Kumar
2.	840052	Pankaj Jyoti Das."

3. Further, the applicants inform us in their rejoinder that in response to the Employment Notice 2120 candidates had applied for the posts advertised and out of them 1520 appeared in the Written Test; 172 appeared in the Speed Test; 47 were sent for Viva Voce. Ultimately 16 candidates were successful and were empanelled as above. These facts have not been refuted by the respondents. The panel was published on 9-11-1995 but no appointment of any successful candidate was made by the respondents. On the other hand employment Notice No.1/96 dated 20-5-96 was issued. On 10-6-1996 the applicants prayed to the General Manager, N.F.Railway, Maligaon to issue appointment letters at the earliest. There was no response. Consequently, the applicant submitted the Original Applications seeking direction on the respondents to appoint them (the applicants). Notice for admission was issued on 7-8-1996. Thereupon, Respondent No.3, the Chairman Railway Board, Guwahati published his No.RRB/G/41/90 dated 5-9-1996 cancelling the panel on the ground of various irregularities. As a result, the applicants amended the Original applications seeking among others quashing and setting aside of the aforesaid No.RRB/G/41/90 dated 5-9-1996. In the meantime in the absence of show cause from the respondents the Original Application was admitted on 9-9-96.

4. The respondents justify the cancellation of the Panel as follows :-

".....it has already been stated that the selection in question pursuant to which the applicant has staked his claim for appointment has already been cancelled in view of the various irregularities found in the selection of Junior Stenographer in scale Rs. 1200-2040/- against Employment Notice No.1/95 dated 26-4-95 conducted by the Railway Recruitment Board, Guwahati, which has necessitated cancellation of the entire selection are as follows:-

contd/-

(g)

On a visual checking, it has been noted that in certain answer scripts (Transcription sheet) containing poor performance, higher marks have been allotted in comparison to that containing better performance.

The above irregularities in the selection are only illustrative and not exhaustive. In any case, with the above irregularities detected in the selection, the respondents were left with no other option than to cancel the entire selection. By doing so, no irregularity has been committed by the respondents - rather the same has been done in the larger public interest which has also brought confidence among the public. The irregularities were detected upon an enquiry conducted by the Vigilance Deptt. of the Railway and in consideration of such enquiry, the selection in question has been cancelled and the applicant should not make any grievance against the same."

5. In support of the action of the respondents, Mr. B.K. Sharma, their learned counsel, had submitted that the irregularities are two folds, namely, before the actual test took place, 600 applicants had been arbitrarily excluded from the competition by the office of the Railway Recruitment Board on untenable grounds, and during the entire course of the actual test irregularities which violated the selection as a whole had taken place. Under these circumstances, according to him, the action of the respondents in cancelling the panel in public interest cannot be faulted and it should be sustained.

6. The applicants have assailed the action of the respondents in cancelling the select Panel above terming it as illegal, arbitrary, despotic, void and not maintainable in the eye of law. Mr G. Sarma, learned counsel for the applicants, pointed out that the employment panel was cancelled because of alleged malpractices or irregularities but not even a single instance of malpractice or unfair means or irregularities committed by any of the applicants or

(a) In the advertisement of Jr. Stenographer, required qualification was mentioned only as Matriculate without indicating anything about the qualification of diploma in shorthand and type-writing. The advertisement also did not stipulate production of Diploma certificate. As a result, many of the candidates did not submit the same although they were qualified both in shorthand and type-writing and had diploma certificate. However, the Railway Recruitment Board, Guwahati, rejected the candidature of many eligible candidates on the ground of non-submission of diploma certificate, thereby deserving eligible candidates were deprived of consideration for selection.

(b) Sample test checks revealed mistakes in totalling in the written paper and in computation of marks which has resulted in empanelment of candidates securing less marks and exclusion of candidates securing more marks.

(c) In the recruitment process, it has been found that all the three stages of testing, the knowledge and quality of the candidates have been handled by a single individual (Member Secretary, Railway Recruitment Board) instead of getting the works done by different qualified persons as under :-

- (i) Setting of question paper for written test.
- (ii) Selection of dictation passage.
- (iii) Preparation final marksheet including marks for viva-voce test only done by MS/RRB himself without any signature from other two members. This has raised doubts of malpractice by MS/RRB.

(d) As per Board's extant instruction 15% of marks for written test and viva-voce together is required to be fixed for viva-voce. But in the subject selection, RRB/Guwahati had adopted 15% of the sum total of marks for written test (200 marks) shorthand test (300 marks) as well as viva-voce marks (90 marks). The marks of shorthand test (300) was therefore irregularly included in computing the marks for viva-voce test. This has allowed the selection authority undue flexibility in the final allocation of marks of a candidate though he might have secured less marks in written test.

(e) In a number of cases it has been noted that marks once allotted in the shorthand transcription sheets have been over-written/defaced and new marks allotted, ostensibly to favour the candidates of evaluator's choice.

(d) It has been noted in some cases, that though the shorthand dictation scripts do not contain certain materials of dictated passage, the type transcription sheets contain the material of the dictated passage and in a ~~way~~ better way. This indicates adoption of mal-practice in conducting the shorthand test.

attributed or attributable to any of them has been cited by the respondents in support of their action. Referring to the case of Progaty Supply and Co-operative Society Ltd. reported in (1995) 3 GLR 327 in which it has been held to the effect that every State action must be fair and informed of reasons and administrative action must not only be reasonable but free from bias and malafide, Mr. Sarma submitted that the respondents had on the contrary acted otherwise in respect of the cancellation of the select panel. The expressed ground for investigation was because of some alleged malpractices but in the end the panel was cancelled on a contradictory ground of irregularities. According to him, in the face of all these, there is no escape from the conclusion that the respondents had with bias and malafide against the applicants, arbitrarily cancelled the panel. Further, the respondents without giving an opportunity of being heard to the applicants before such cancellation had arbitrarily cancelled the panel. According to him, such action is not sustainable in law and in this regard he placed reliance on the case of Pradip Kumar Das and others reported in (1985) 2 GLR 459 which was upheld in the order dated 8.5.1986 in SLP (Civil) No.66 of 1986 by the Hon'ble Supreme Court. Mr. Sarma further referred to the order dated 14.6.1996 of this Tribunal in O.A.No.9 of 1993 in which after referring to the aforesaid P.K.Das & others case and also to D.V.Ramana and others, 1986(4) SLR 50, the action of the respondents to withhold appointment of successful candidates without giving them opportunity of being heard was set aside and quashed.

7. In the light of the above, we are now to consider whether the action of the respondents in cancelling the

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select list of Junior Stenographer (English) mentioned above is sustainable in law. It has not been shown by the respondents that the alleged malpractices or irregularities referred to above were committed or attributed or attributable to any of the present applicants. On the other hand, it is seen from their submission that it is the respondents themselves who had committed the alleged malpractices or irregularities. The applicants have had to suffer because of/ the alleged acts of omission and/or commission of the respondents. According to the respondents they had in the facts and the circumstances of the case cancelled the select panel in larger public interest and in order to bring public confidence in the administration of the North East Frontier Railway. These are indeed lofty ideals. But we are in these O. As concerned with the question whether on their way towards these goals the respondents had not trampled under foot the rights of the applicants. There is no dispute of the fact that the select Panel was cancelled by the respondents without affording any opportunity of being heard to the applicants before the cancellation was made. In the case of Pradip Kumar Das and others (supra) 357 out of the 790 successful candidates who had been empanelled were screened out by the North East Frontier Railway on the ground that some malpractices were allegedly committed by some of them. No opportunity of being heard was given to them by the respondents before such action was taken. The Hon'ble Supreme Court had held :

"It was necessary according to the rules of fairplay and natural justice that these candidates who were included in the original select panel of 790 candidates published by the Commission had acquired a right to get employment and therefore they were entitled to be heard before any prejudicial action was

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taken. The judgment of the High Court quashing the impugned order on the ground that it was vitiated for non-compliance with the rules of natural justice can hardly be assailed."

Thus, according to this Judgment, the selected candidates have acquired two rights, namely, the right to get employment and the right of being heard before any action prejudicial to them is taken. The learned Railway Counsel had not cited any other case law to contradict this position. The present applicants are successful candidates who had been empanelled for appointment to the posts. They had acquired both the aforesaid rights. The aforesaid judgment of the Hon'ble Supreme Court was rendered against the very same N.F.Railway yet the authorities of the Railway had chosen to ignore the law laid down therein. We have no hesitation to hold that when the respondents had cancelled the Select Panel without affording an opportunity of being heard to the applicants before the cancellation was made, they had violated both the rights of the applicants.

8. Mr.B.K.Sharma had submitted that the fact that the applicants were selected and empanelled does not bind the Railway authorities to appoint the applicants to the posts. In fact, according to him it was clearly stipulated in the Employment Notice itself that the selection of the candidates by the Railway Recruitment Board does not confer any right on the candidates. On the other hand, according to law the Railway authorities have the right to refuse appointment. Further he had referred to para 113 of the Indian Railway Establishment Manual Volume I (Revised Edition 1989) in support of his contention that selected candidates can be refused appointments. We are aware that there are law and rules in this regard. The para 113 aforesaid reads thus :

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"Selection of a candidate by a Board or a Railway administration is, however, no guarantee of employment on the railway which is subject to his qualifying in the prescribed medical examination and to his being otherwise suitable for service under Government."

Perusal of this rule/para shows that there must exist a fault or deficiency on the part of a selected candidate in order to deny him an appointment to a post under the railway for which he was selected. In this particular case however the applicants were denied appointments for no fault of theirs. They had subjected themselves to the rigours of the examination and tests conducted by the respondents giving out the best they could with the sole expectation to come out successful within the standards set by the respondents. No blame has been apportioned to them. They had not also been allowed to reach the stage stipulated in the para/rule mentioned above in order to ascertain whether they are suitable for appointment to the posts. It may also be mentioned here that the learned Railway counsel had sought time to produce certain records to enable him to make submission. He was allowed time. But though he had produced some administrative records before us he was unable to produce any answer script for the written test as well as the speed test including the passages for the speed test. The contentions of the respondents against the applicants with regard to the answer scripts or marking thereon are therefore not substantiated before us.

9. We are in a society which upholds the supremacy of the rule of law. Therefore, an administrative action which is done without observing due process of law or the relevant law or rules prescribed is liable to be quashed. In the light of our discussion and findings above, we are of the view that the respondents had arbitrarily and illegally

cancelled the select panel. Therefore, the action of the respondents in cancelling the panel is not sustainable in law. Consequently, the order No.RRB/G/41/90 dated 5-9-96 (Annexure A.VIII) issued by the respondent No.3 and the Railway Board letters No.96/E(RRB)/25/12 dated 7.8.1996 and No.96/E(RRB)/25/13 dated 21.8.1996 mentioned therein insofar as they relate to category No.7 Stenographer(English) of the Employment Notice No.1/95 dated 26.4.1995 are liable to be set aside and quashed. Accordingly, they are hereby set aside and quashed. Further, we direct the respondents to complete the process of recruitment to the posts of Stenographer (English) aforesaid in accordance with law and rules within three months from the date of their receipt of this order.

10. All the above Original Applications are allowed in the lines indicated above. No order as to costs.

sd/- VICE CHAIRMAN
TRUE COPY sd/- MEMBER (A)
महापिता

Deputy Registrar (C)
Central Administrative Tribunal
Guwahati Bench