

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXX No. 214 of 1998

DATE OF DECISION 25.1.2001

Shri Pankaj Choudhury and 15 others

PETITIONER(S)

Mr K.N. Choudhury

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

The Union of India and others

RESPONDENT(S)

Mr B.K. Sharma, Railway Counsel

ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.214 of 1998

Date of decision: This the 25th day of January 2001

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Pankaj Choudhury and 15 others

.....Applicants

By Advocates Mr K.N. Choudhury

- versus -

1. The Union of India, represented by
The Secretary to the Government of India,
Ministry of Railways,
New Delhi.
2. The Railway Recruitment Board,
Represented by its Chairman,
Station Road,
Guwahati.
3. The North East Frontier Railway,
Head Office,
Maligaon,
Represented by its General Manager,
N.F. Railway, Guwahati.
4. The Chief Personnel Officer,
N.F. Railway,
Maligaon, Guwahati.

.....Respondents

By Advocate Mr B.K. Sharma, Railway Counsel.

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ORDER (ORAL)

CHOWDHURY, J. (V.C.)

Was the decision impugned in the proceeding, one which a public authority reasonably could order? The question has emerged in this proceeding in the following circumstances:

The Railway Recruitment Board by Employment Notice No.1/96 dated 24.5.1996 invited applications for thirtyseven categories of posts. The sixteen applicants alongwith others submitted their applications in the prescribed forms before the respondents for the category No.30, i.e.

for the post of Apprentice Permanent Way Inspector (PWI for short) Grade II. In due course the candidates including these applicants were called were called for the written test on 26.10.1997 and the result of the written test in respect of category No.30 was declared by notice dated 18.3.1998 and the same was also published in the local newspapers. The applicants were shown successful in the written test. It was also stated that the applicants were called for the viva voce test that was scheduled to be held on 7.4.1998 and 9.4.1998 in the office of the Railway Recruitment Board, Guwahati. Call letters and admit cards were issued to the applicants accordingly. It was also averred that in the meantime the Railway Board initiated the process of appointing a new Chairman and as an interim measure the Ministry of Railway vide order dated 26.3.1998 took a decision not to make further offers of appointment based on the panels received from Railway Recruitment Boards till 30.4.1998 and if any such offers were already issued based on the panels received from Railway Recruitment Boards and the candidates did not join their duty they were not to be allowed to join till 30.4.1998. The aforesaid notice was followed by the impugned notice issued by the Chairman, Railway Recruitment Board, Guwahati on 27.3.1998 notifying that in terms of Railway Board's notice dated 26.3.1998 the viva voce tests fixed to be held on 28.8.1998, 30.3.1998, 7.4.1998 and 9.4.1998 for the categories mentioned therein including category No.30 vide Employment Notice No.1/96 was postponed until further orders. The said notification was duly published in the local newspapers on 27.3.1998 itself. Next followed a notification issued by the Chairman, Railway Recruitment Board, Guwahati pertaining to the category No.30 as per Employment Notice No.1/96 notifying the decision of the Railway Board for holding a fresh written test for the post on 11.10.1998. By the notification it advised all those who had applied earlier to contact the Railway Recruitment Board, Guwahati positively by 10.9.1998 with their original call letters which were issued earlier from Railway Recruitment Board, Guwahati and two passport size photos for issuance of admit cards afresh. The legality of the aforesaid actions are under challenge in this proceeding.

2. The respondents submitted their written statement denying and disputing the claim of the applicants. It was averred, inter alia, that there were total 5198 candidates for the post of PWI. The applicants were among the 150 candidates declared to have passed in the written test. The *viva voce* test was scheduled to be held on 7.4.1998 and 9.4.1998. The Railway Board, however, by its communication dated 26.3.1998 decided to postpone all the selections on hand all over the country conducted by various Railway Recruitment Boards till 30.4.1998. Thereafter on detection of certain irregularities, the written test held on 26.10.1997 was cancelled and a fresh examination was held on 11.10.1998. Pursuant thereto the written test for the post of PWI was held on 10.11.1998 in conformity with the direction issued by this Bench in the O.A. But the result of the examination was not declared in deference to the order of the Tribunal. The respondents stated and contended that the Railway Authority exercised their discretion honestly and lawfully on consideration of all the relevant aspects of the matter and thereafter took the decision in the public interest.

3. Mr K.N. Choudhury, learned Sr. Counsel appearing on behalf of the applicants submitted that the applicants in terms of the advertisement applied for the post and the respondent authority considering their eligibility asked the candidates including the applicants to participate in the selection test, found them suitable and on evaluation of their answer scripts found them qualified and announced their results. The *viva voce* test carried only 30 marks out of a total of 200 marks. The candidates who secured high marks in the written test were assured of their employment to enable them to take a decent livelihood. The written test that was conducted lawfully and the results were announced by a duly constituted committee pursuant to the Employment Notice No.1/96 dated 20.5.1996. The result of the written test was announced as far back as on 18.3.1998 and at no point of time till the declaration of the result there was any complaint as regards irregularities in the written test. The legitimate expectation as well as the interest of the applicants was not meant to be sacrificed for alleged difference of

opinion of the two successive incumbents of the Railway Recruitment Board. Mr Choudhury submitted that there is no lawful justification or valid ground for outright cancellation after due deliberation. The learned counsel submitted that the action of the respondents is unsustainable as the decision was taken by the Railway authority without following the principles of natural justice. Mr Choudhury, in support of his contention, relied on a decision of this Bench in O.A.Nos.160 of 1998, 161 of 1998 and 302 of 1998 disposed of on 9.2.2000 and also the Judgment and Order rendered by the Supreme Court on 3.4.2000 in Civil Appeal No.2368/2000 arising out of SLP(C) No.12153/1999 (O.A.No.235/96).

4. Mr B.K. Sharma, learned Railway Counsel, supporting the decision of the respondents, submitted that the decision of the respondent authority was lawfully taken on balancing and reviewing the different aspects of the matter. The respondent authority exercised their responsibility lawfully and on evaluation of the facts that surfaced it took a decision bonafide to cancel the examination and to hold a fresh test as a remedial exercise. Mr Sharma placed before us some records containing the complaint received as to the irregularities of the examination. Dismissing the claim of the applicants, Mr Sharma submitted that the applicants did not acquire any indefeasible right to the post simply because they were shown to be qualified in the written test. A candidate even if he is selected may not be appointed for good and justifiable ground. In the instant case, the Railway Authority when it found that there were irregularities in the process of selection, the authority only decided to hold a fresh written test. None of the candidates were either debarred or disqualified from appearing in the written test. The respondent authority had taken the decision for recruiting only deserving candidates, and therefore, initiated the process of written test. The learned counsel, in support of his contention, referred to the decision of the Supreme Court rendered in Union of India and others vs. Anand Kumar Pandey and others, reported in (1994) 5 SCC 663 and also a Bench decision of the Gauhati High Court in Union of India and others vs. Debasish Chowdhury and others, reported in 1992(2) GLT 68.

5. On consideration of the materials on record it emerges that the respondent authority pursuant to the Employment Notice No.1/96 held the written test on 26.10.1997 for the post in question and declared the result on 18.3.1998. The notification declaring the result itself indicated about the holding of the viva voce test of the successful candidates on 7.4.1998 and 9.4.1998 in the Railway Board's Guwahati office. Subsequently the decisions were taken, first to postpone the viva voce test and thereafter to hold a fresh written test for the post. The decision was taken by the Railway Board on receipt of some complaint for the said category of post. The Railway Authority particularly referred to a complaint lodged by one of the candidates who also appeared in the written test, but whose name did not appear in the list of successful candidates. The candidate requested for rechecking of his examination paper. By his complaint which was received by the Chairman on 27.7.1998. The Chairman conducted an investigation and thereafter communicated the same to the Executive Director (RRB), Railway Board, New Delhi vide letter No.RRB/G/154/1/Pt.II dated 4.8.1998.

The full text of the letter is reproduced below:

"Sub: Complaint lodged by Shri Manab Bora - Roll No.14301069

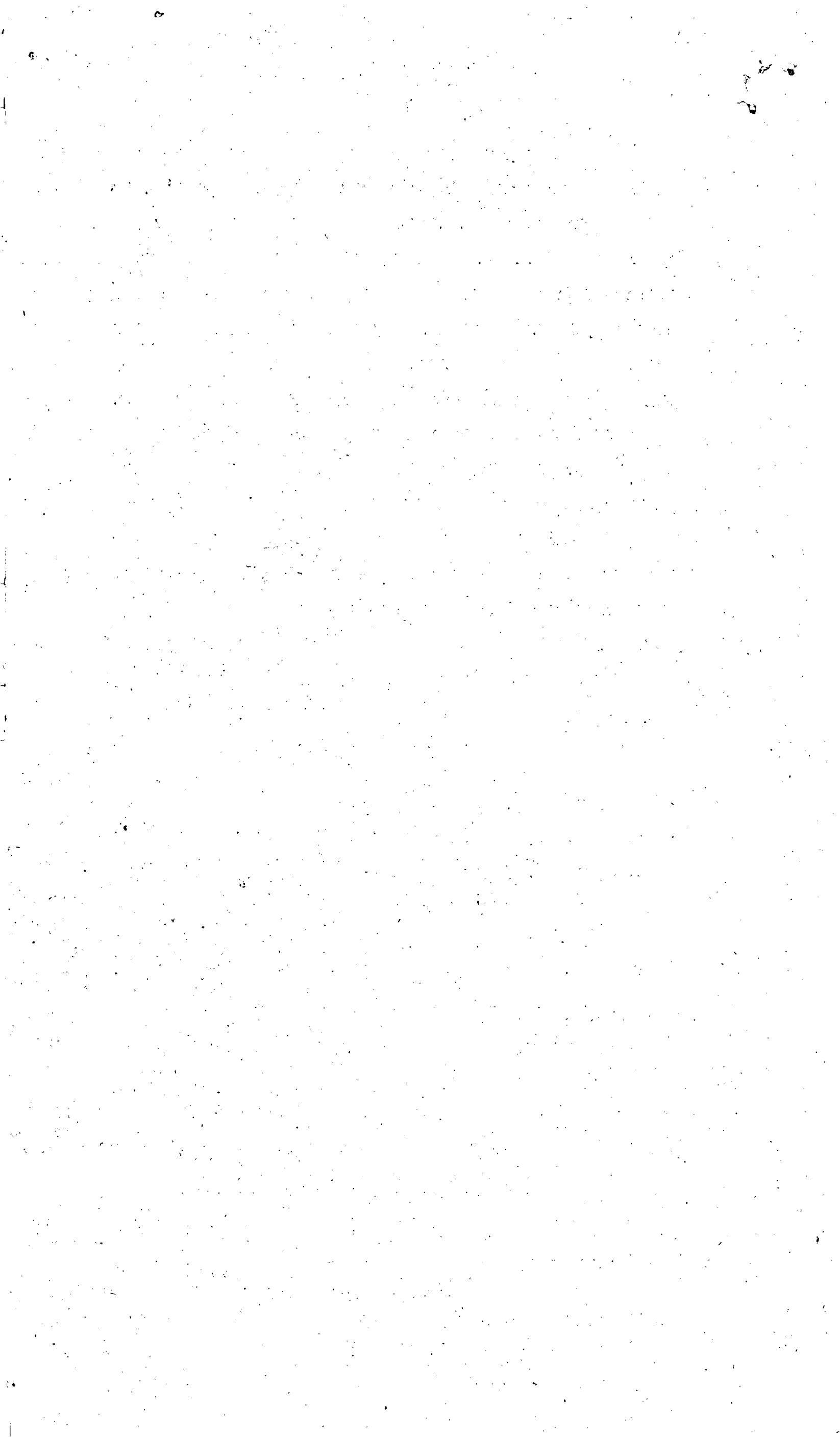
The above mentioned candidate appeared for the examination of APWI (Category No.30) held on 26.10.97 at Guwahati. According to him he had performed well in the written examination but his name was not there in the list of successful candidates. He has requested for re-checking of his examination paper. His complaint was received by me on 27th July '98 and the investigation was conducted. The procedure followed in this case was that answer sheets were coded before evaluation. Computerised merit list therefore has only codes. Roll Nos. appeared to have been filled in by the Chairman himself. The result of the investigation are as under:-

- 1) His Roll No. is not there in the absentee statement. It is, therefore, assumed that he appeared in the written examination.
- 2) His Roll No. is also not found in the coding sheets either. Since he appeared in the examination, a coding sheet corresponding to his Roll No. should have been there.
- 3) Although the answer sheets are available with this office, we cannot link up the answersheet with his Roll Nos. in absence of coding sheet.

No further investigation, therefore, possible in this case.

Following other irregularities have also been detected in the merit list during the sample check:

- (a) In seven cases, there is difference between Roll No. entered on the coding sheet and the Roll No. which has been entered on the merit list.



(b) For merit list Sl.No.61, coding sheet NO.300066 is altogether missing.

RRB/Guwahati may kindly be advised as to what further course of action should be taken in this regard. The result of the written examination has already been declared on 18.3.1998."

The Railway Board upon considering the same, by its communication No.98/E(RRB)/20/2 dated 14.8.1998 informed the decision of the Railway Board to cancel the written test held on 26.10.1997 for category No.30 in view of the irregularities noticed in the selection of PWI and advised them to hold the written test afresh calling those candidates only, who had appeared earlier. By one more communication dated 22.9.1998 the Railway Recruitment Board also pointed out some other irregularities which were found by the Railway Recruitment Board. However, the aforesaid communication is of not much relevance since the decision of the respondents for cancellation of the examination was taken earlier to the communication dated 22.9.1998.

6. From the foregoing facts it thus appears that the report of the Chairman dated 4.8.1998 wherein the Chairman cited some irregularities. Those incongruities led the respondents to initiate the process for the decision making process of the Railway Board. Mr Choudhury submitted that the candidate in question also appeared with the applicants on 26.10.1997. The result of the written test was also declared on 18.3.1998. The aforesaid candidate waited till July 1998 for submitting the complaint and the respondents used the same as a handle to set at naught the process of selection lawfully undertaken by the earlier Recruitment Board. A solitary complaint of a disgruntled candidate could not have been acted upon for setting at naught the process of selection and the results of the examination, more particularly in the absence of any complaint against the performance of any of the candidates.

7. We have given our anxious consideration in the matter. The whole exercise, jurisdiction, power and authority under Chapter III of the Administrative Tribunals Act, 1985 in relation to recruitment and matters relating to recruitment etc., the Tribunal is relatable as to the lawfulness of the decision making process, it is not exercising the power of appellate jurisdiction. It is basically concerned with the legitimacy of the decision making process. Under the law, the administration is entrusted with the

responsibility.....

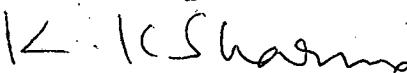
responsibility of recruitment and to recruit the best available candidates through a fair selection process. The complete authority and discretion is entrusted upon the administration for taking all steps for recruitment as per law. The duty of the court and for that matter also Tribunal is to look into as to whether the decision is lawful or not. The Tribunal and Courts are the authority to look into reasonableness and legality of the decision making process. If the decision is unreasonable in the sense it is beyond the range of response, upto a reasonable decision maker, the courts and Tribunals, undoubtedly, can interfere in such matters. The primary responsibility is that of the administration for conducting fair selection process. The authority acted on some complaint, ofcourse at a belated stage. The decision maker could have ignored the same because of the inordinate delay. It, perhaps could have been declined as was suggested by Mr Choudhury, though according to Mr Sharma the aforesaid delay was not inordinate to devoid a genuine complaint. The Tribunal should not venture to enter the aforesaid area and substitute its own conclusion like an appeal. The Courts and Tribunals are always astute to condemn illegal acts, if the acts or actions are within the jurisdiction and unless arbitrarily atrocious, the Courts or Tribunal could not go and intervene in such matters. Courts and Tribunals are ready to review administrative decision within the area of legality, but, at the same time they also cannot overlook the margin of appreciation of the discretionary authority. In our view the respondent authority received the complaint and on receipt of the complaint enquired into the matter and, at least found some irregularities in one case. A decision cannot be flawed for inadequacy or insufficiency of evidence in a judicial review. In exercising the judgment on discretion, the respondents were to carry out a balancing exercise on evaluation of the factual matrix. In exercising discretion some margin of appreciation is to be given. The rights claimed by the applicants are not absolute in nature. They appeared in the examination and were found qualified. In retrospect, the respondent authority on the available materials, on record decided to hold a fresh test. The aforesaid acts cannot per se be said to be arbitrary or unlawful. At least we do not find any improper

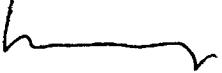
motive.....

motive requiring interference from the Tribunal. The respondents seemingly exercised the responsibility to decide the measures which they thought it necessary in the prevailing circumstances, after taking into account the factors which cannot be said to be irrelevant or arbitrary.

8. For the foregoing reasons we do not find any merit in this application and accordingly the same is dismissed. The interim order dated 10.9.1998, accordingly stands dissolved. The respondents are now free to announce the results.

There shall, however, be no order as to costs.


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(D. N. CHOWDHURY)
VICE-CHAIRMAN

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