

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

**Original Application No.020/00474/2018 & MA 609/2018 with
Original Application No.020/00542/2018 & MA 611/2018**

**Reserved on: 01.11.2018
Order pronounced on: 15.11.2018**

OA No.020/00474/2018 & MA 609/2018

Between:

1. P.Irfan Khan s/o P.Khasim Khan, Group C,
aged about 32 years, Occ. Parcel Office Hamal,
o/o The Chief Parcel Supervisor,
Vijayawada Railway Station, Vijayawada.
 2. L.Lakshmana Kumar s/o L.V.Prasad, Group C,
aged 31 years, Occ: Parcel Office Hamal
o/o The Chief Parcel Supervisor, Vijayawada
Railway Station, Vijayawada.
 3. O.Hymavathi D/o O.Subba Rao, Group C,
aged 26 years, Occ.Waiting Room Attendant,
o/o the Chief Ticket Inspector,
Vijayawada R.S., Vijayawada.
 4. T.Padma Rao s/o T.Seshadri, Group C,
aged: 41 years, Occ. Parcel Office Hamal,
o/o The Chief Parcel Supervisor, Vijayawada
Railway Station, Vijayawada.
 5. K.Srinivasa Rao s/o K.Appala Naidu, Group C,
aged 33 years, Occ. Parcel Office Hamal,
o/o The Chief Parcel Supervisor,
Vijayawada Railway Station, Vijayawada.
 6. SK. Mahabee w/o Sk.Nagulmeera, Group C,
aged 27 years, Occ.Waiting Room Attendant,
o/o the Chief Ticket Inspector,
Vijayawada R.S., Vijayawada.
 7. T.Nooka Ratna Kumari d/o T.Venkata Ramana, Group C,
Aged 30 years, Occ; Parcel Office Hamal,
o/o the Chief Ticket Inspector, Vijayawada R.S.,Vijayawada.
-Applicants

AND

1. Union of India rep. by
The General Manager, South Central Railway,
3rd Floor, Rail Nilayam, Secunderabad. Telangana

2. The Divisional Railway Manager,
South Central Railway, Vijayawada Division, Vijayawada.
3. The Senior Divisional Personnel Officer,
South Central Railway, Vijayawada Division,
Vijayawada.
4. K.Nagendra Babu s/o K.V.Satyanarayana, aged about
29 years, Occupation Porter, Booking Office, Tenali
Railway Station, South Central Railway, Vijayawada Division,
R/o H.No.7-18/1,Kola Street, Kotauralla (V & M),
Vizag District- 531085
5. K.Chandrasekhar Rao s/o Sivanaidu, aged about 32 years,
Occupation Luggage Porter, Booking Office, Kakinada Port,
South Central Railway, Vijayawada Division, r/o H.No.5-168,
Valasapala, Kakinada, East Godavari 533005.
6. Kutam Paavan Kumar s/o Venkateswara Rao, aged about
31 years, Occupation Booking Office Porter, Booking Office,
Ongole, South Central Railway, Vijayawada Division,
r/o H.No. 19-028-690, Railpeta, 1st Line, Ongole-523001.
7. K.Arjun Kumar s/o Nageswara Rao, aged about 31 years,
Occupation Reservation Office Hamal,Vijayawada, South
Central Railway, Vijayawada Division, r/o. H.No. 3-4-1,
Mustabad Post, Gannavaram Mandal, Krishna District-521107.
8. R.Naga Prasad s/o Appalaswamy, aged about 37 years, Occupation
Waiting Room Attender (WRA), SMR Office, Vijayawada, South
Central Railway, Vijayawada Division, r/o. H.No. 4-27/13,
Krishnalanka, Kotha Mission Road, Vijayawada 520013.
9. Kanchi Muni Sekhar s/o K.N.Achari, aged about 30 years,
Occupation Goods Shed Hamal (GSH), Goods Shed Office NGFS,
Kakinada, South Central Railway, Vijayawada Division, r/o
H.No.70-18-11-1/1, Bondagunta, Near V.S, Lakshmi College,
Ramanaiahpetta, Kakinada – 533005.
10. Naveen Babu Indla s/o I.Durga Rao, aged about 29 years,
Occupation Parcel Office Hamal(POH), Parcel Office,
Vijayawada, South Central Railway, Vijayawada,
r/o H.No.1-74, Nulakapeta, Tazdepalli Mandal,
Guntur district- 522501.
11. Baattu Hari Babu s/o B.Venkateswarlu, aged about 41 years,
Occupation Goods Shed Hamal (GSH), Goods Shed Office,
Dwarapudi, South Central Railway, Vijayawada Division r/o
H.No.10-1-1/3,ABS Function Hall Road, Nidavolu, WG Dist.
12. Anand Kumar s/o Arun Prasad, aged about 31 years, occupation

Hamal, Booking Office, Kakinada Port, South Central Railway,
Vijayawada Division r/o H.No.4-95, Sivalaya Colony, Kakinada, EG.

13. Pagilla Sekar s/o Balaswamy aged about 34 years, Occupation Parcel Office Hamal (POH), Parcel Office, Vijayawada, South Central Railway, Vijayawada Division, r/o H.No. 8-7-91/86/21/A, Padmavathi Nagar Colony, Road No.2B, Hastinapur, Saroornagar Mandal, Hyderabad 500079.
14. Chintu Kumar s/o. Dilipram, aged about 29 years, Occupation Goods Shed Hamal, Goods Shed Office, KSLK/Kakinada, South Central Railway, Vijayawada Division r/o Kakinada.
15. N.Satyanarayana s/o.Subbaraju, aged about 39 years, Occupation Commercial Porter, Booking Office, Tadepalligudem, South Central Railway, Vijayawada Division, r/o H.No.2-22, Rajula Street, Ganapavaram, West Godavari District -534197
16. Kakani Sri Hari s/o Venkateswarlu, aged about 37 years, Occupation Parcel Office Hamal, Parcel Office Tenali, South Central Railway, Vijayawada Division, r/o H.No.193/D, Chenchupeta, Tenali, Guntur District.
17. Prem Sagar Gupta s/o. Kishorisha, aged about 31 years, Occupation Goods Shed Hamal, Goods Shed Office, Gudivada, r/o H.No. Rly.Qtr.No. 28E, Gudivada, Krishna District.
18. Korrayi Suresh s/o Simhadri, aged about 35 years, Occupation Rest House Watchman(RHWM), CTI Office Visakhapatnam, r/o. Pimpidia Village Chowkapeta Post, Mandusa Mandal, Srikakulam Dist.
19. Chukka Narasinga Rao s/o Ganapathi Rao, aged about 39 years, Occupation RHWM, CTI Office, Visakhapatnam, r/o H.No. 38-35-48/1,Ranapratap nagar, Marripalem, Visakhapatnam.
20. Matta Chittibabu s/o Atchenna, aged about 35 years, Occupation RHWM, CTI Office, Visakhapatnam, r/o H.No.Attada Village, Jami Mandal, Vizianagaram Dist. 535214.
21. Alisha Md.A s/o Md.Jilani, aged about 38 years, Occupation Waiting Room Attender, Booking Office, Anakapalli, South Central Railway, Vijayawada Division, r/o H. No. 7-12-105, Yellamanchili, Visakha District 531055.
22. U.Santhi Swaroopa w/o N.Sudhakar, aged about 29 years, Occupation Waiting Room Attender, Booking Office, Rajamaundry, South Central Railway, Vijayawada Division, R/o. Netaji Nagar, 6th Street, Gurukulam Road, Rajmaundry. EG.

...Respondents

Counsel for the Applicants	...	Mr.KRKV Prasad
Counsel for the Respondents	...	Mr. D. Madhava Reddy, SC for Rlys Mr. K. Siva Reddy for RR 4 to 22

OA No.020/00542/2018 & MA 611/2018

Between:

T. Vara Prasad, S/o. Babu Rao,
Aged about 44 years, Working as Rest House Watchman,
O/o. Chief Ticket Inspector Railway Station,
Vijayawada Division, Vijayawada, Andhra Pradesh.

...Applicant

And

1. Union of India rep. by
The General Manager, South Central Railway,
3rd Floor, Rail Nilayam, Secunderabad. Telangana
2. The Divisional Railway Manager,
South Central Railway, Vijayawada Division,
Vijayawada, Andhra Pradesh.
3. The Senior Divisional Commercial Manager,
South Central Railway, Vijayawada Division,
Vijayawada, Andhra Pradesh.
4. The Senior Divisional Personnel Officer,
South Central Railway, Vijayawada Division,
Vijayawada, Andhra Pradesh.
5. K.Nagendra Babu s/o K.V.Satyanarayana, aged about
29 years, Occupation Portor, Booking Office, Tenali
Railway Station, South Central Railway, Vijayawada Division,
R/o H.No.7-18/1,Kola Street, Kotauralla (V & M),
Vizag District- 531085
6. K.Chandrasekhar Rao s/o Sivanaidu, aged about 32 years,
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Ongole, South Central Railway, Vijayawada Division,
r/o H.No. 19-028-690, Railpeta, 1st Line, Ongole-523001.
8. K.Arjun Kumar s/o Nageswara Rao, aged about 31 years,
Occupation Reservation Office Hamal,Vijayawada, South
Central Railway, Vijayawada Division, r/o H.No. 3-4-1,
Mustabad Post, Gannavaram Mandal, Krishna District0521107.

9. R.Naga Prasad s/o Appalaswamy, aged about 37 years, Occupation Waiting Room Attender (WRA), SMR Office, Vijayawada, South Central Railway, Vijayawada Division, r/o H.No. 4-27/13, Krishnalanka, Kotha Mission Road, Vijayawada 520013.
10. Kanchi Muni Sekhar s/o K.N.Achari, aged about 30 years, Occupation Goods Shed Hamal (GSH), Goods Shed Office NGFS, Kakinada, South Central Railway, Vijayawada Division, r/o H.No.70-18-11-1/1, Bondagunta, Near V.S,Lakshmi College, Ramanaiahpetta, Kakinada – 533005.
11. Naveen Babu Indla s/o I.Durga Rao, aged about 29 years, Occupation Parcel Office Hamal(POH), Parcel Office, Vijayawada, South Central Railway, Vijayawada, r/o H.No.1-74, Nulakapeta, Tazdepalli Mandal, Guntur district 522501.
12. Baattu Hari Babu s/o B.Venkateswarlu, aged about 41 years, Occupation Goods Shed Hamal (GSH), Goods Shed Office, Dwarapudi, South Central Railway, Vijayawada Division r/o H.No.10-1-1/3,ABS Function Hall Road, Nidavolu, WG Dist.
13. Anand Kumar s/o Arun Prasad, aged about 31 years, occupation Hamal, Booking Office, Kakinada Port, South Central Railway, Vijayawada Division r/o H.No.4-95, Sivalaya Colony, Kakinada, EG.
14. Pagilla Sekar s/o Balaswamy aged about 34 years, Occupation Parcel Office Hamal (POH), Parcel Office, Vijayawada, South Central Railway, Vijayawada Division, r/o H.No. 8-7-91/86/21/A, Padmavathi Nagar Colony, Road No.2B, Hastinapur, Saroornagar Mandal, Hyderabad 500079.
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19. Korrayi Suresh s/o Simhadri, aged about 35 years, Occupation Rest House Watchman (RHWM), CTI Office Visakhapatnam,

r/o. Pimpidia Village Chowkapeta Post, Mandusa Mandal,
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20. Chukka Narasinga Rao s/o Ganapathi Rao, aged about 39 years,
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r/o H.No.38-35-48/1,Ranapratap nagar, Marripalem, Visakhapatnam.
21. Matta Chittibabu s/o Atchenna, aged about 35 years,
Occupation RHW, CTI Office, Visakhapatnam,
r/o H.No.Attada Village, Jami Mandal, Vizianagaram Dist. 535214.
22. Alisha Md.A s/o Md.Jilani, aged about 38 years, Occupation
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23. U.Santhi Swaroopa w/o N.Sudhakar, aged about 29 years,
Occupation Waiting Room Attender, Booking Office,
Rajamaundry, South Central Railway, Vijayawada Division,
R/o Netaji Nagar, 6th Street, Gurukulam Road, Rajmaundry.EG.

...Respondents

Counsel for the Applicant	...	Mr. E. Rama Mohan Rao
Counsel for the Respondents	...	Mr. D. Madhava Reddy, SC for Rlys Mr. K. Siva Reddy for RR – 5 to 23.

CORAM:

Hon'ble Mr. B.V. Sudhakar	...	Member (Admn.)
Hon'ble Mr. Swarup Kumar Mishra	...	Member (Judl.)

COMMON ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

As the issue involved in both the OAs is one and the same, they were heard together and a common order is being issued.

2. The OAs are filed challenging the impugned order dt.7.5.2018 cancelling the written exam held on 10.3.2018 for selection to the post of Ticket examiner.
3. The brief facts of the case are that the applicants appeared at the written exam held for the selection of Ticket examiner under 33 1/3 percent promotional quota from erstwhile group D staff of Commercial Dept on 10.3.2018 vide notification dt 27.10.2017 and cleared it. However the exam was cancelled by the respondents on 7.5.2018 stating administrative reasons and indicated the date

of re-exam as 26.05.2018. The applicants represented to declare the selection based on the written exam (referred to as first exam hereinafter) held on 10.3.2018, in which they had come out successfully, by taking up the next stage of selection of scrutiny of records. They also asserted that they would appear for the re-exam scheduled on 26.05.2018 only under protest. As there was no relief forthcoming from the respondents, the applicants approached this Tribunal which ordered on 29.5.2018, as an interim measure to dispose of the representations of the applicants within 2 weeks and not to finalise the selection based on the re-exam held on 26.05.2018 till the reply is filed. Aggrieved by the action of the respondents the applicants filed the present O.A.

4. The contention of the applicants is that the exam was cancelled without assigning any reasons and that the cancellation is against law, violative of the Railway Board orders in RBE No.95/2002 conveyed through Serial Circular No.129/2002, dt. 09.08.2002 as well as in violation of Articles 14 & 16 of the Constitution of India. More so, without disposing the representations of the applicants conducting the re-exam is bad in law. Doubts have been expressed as to whether the competent authority has approved the Impugned order. Applicants had little time to prepare and appear at the re-exam. Due to court holidays they could not move the Tribunal earlier to the date they had moved. This Tribunal in OA No.1153 /2016 in a similar case of selection to the post of Chief Loco Inspector has ordered to go ahead with the 1st notification and annulled the decision of the respondents to go for 2nd notification to decide the selection. The same was the case in respect of OA No.118/2017. Despite such past experiences the respondents continuing with the same illegality of cancelling exams without valid reasons need to be curbed. Hence their prayer to render justice.

5. Respondents contend that against the first written exam held on 10.03.2018, they have received a complaint alleging gross irregularities in evaluation of answer sheets and on being found them to be true, the exam had to be necessarily cancelled on administrative grounds. It was decided to conduct re-exam but continue with the selection process, in the interest of employees keeping in view the Railway Board orders RBE No.29/ 2009 and those in 35/2009. The Railway Board orders 29/2009 in brief spoke about 5 types of corrections, which if found in answering the objective type questions then such answers should not be evaluated. The Rail Board orders 35/2009 states that “whenever due to irregularities noticed in the selection procedure, competent authority decides to cancel the main examination, in such a case supplementary examination also automatically ceases to exist. Conversely, in the event there are irregularities in the supplementary examination, the supplementary may be conducted afresh without affecting the main examination. However, in case it is decided to cancel the written examination in such a case complete selection procedure shall stand cancelled.” Respondents suspecting that the one month time gap between the first exam held on 10.03.2018 and announcement of results thereof on 9.4.2018 could be the cause for tampering of answer sheets, declared the results of the re-exam held on 26.5.2018 with lightening pace on 29.5.2018 by even indicating the names of those who passed with relaxed standards. They point out that the applicants excepting the one at sl 3 have not qualified in the re-exam. The provisional panel was ready but in compliance with the Interim orders of this Tribunal dt 29.5.2018 the finalised panel was not published. The main argument of the Respondents is that cancellation of written exam does not mean cancellation of the selection. Even after not being able to ascertain the extent of tampering of answer sheets plus the possibility of leakage

of question paper, going ahead with the selection process based on results of the 1st exam, announced on 9.4.2018, would mean promoting malpractice, corruption and doing injustice to genuine candidates. Hence to curb malpractice and encourage merit the decision to cancel the first exam is justified. The representations of the applicants were disposed on 5.6.2018 after the exam and within the time period of 15 days allowed by the Tribunal. No candidate sought postponement of the exam and that the applicants from Sl. 1 to 6 have appeared at the re-exam under protest and those at Sl.7 & 8 without protest. The respondents claim that there are distinct difference between the present OAs and OAs 1153/16 & 118/17, in the sense that in the present OAs only written exam was cancelled but not the notification/selection, eligible candidates were selected and malpractices could not be severed. Whereas in OAs 1153/16 & 118/17 fresh notification was issued, ineligible candidates were made eligible, no malpractice was noticed and irregularity could be severed. Abiding by the Honourable Allahabad CAT judgment quoted by applicants, communicated vide Railway Board orders 95/2002, the respondents did state administrative reasons for cancelling the exam. Respondents confirm that the written exam was cancelled with the express approval of the competent authority. The applicants could not justify as to what prevented them to move the vacation bench in time without participating in the re-exam. The demand of the applicants to be selected based on the 1st exam marred by irregularities cannot be accepted and that if the OA is allowed it would be travesty of justice.

6. Heard the ld counsel and perused the records. Ld counsel for the Respondents after the final hearing submitted the confidential proceedings of the Sr. D.P.Os office in regard to the first exam. He also informed that the exam was cancelled due to malpractices in the 1st exam and that most of the applicants who

passed in the 1st exam held on 10.3.2018 have failed in the re-exam and that administration is empowered to cancel exams when any irregularities are noticed. The learned counsel for the applicants pointed out that the Impugned order does not contain reasons for cancelling the exam. His submission was that the exam has been cancelled for extraneous reasons. There was haste in declaring the second exam result and that they could not move the vacation court for reasons beyond their control. The ld counsel for the private respondents informed that the private respondents have passed both the 1st exam and the re-exam and that to protect their interests they got impleaded. Power to cancel selection would mean any part of the selection process as well. Courts cannot review exam results were his averments.

7. A step by step analysis of the case would enable this Tribunal to arrive at a fair decision in the interest of Justice. Let us begin raising some simple questions which when answered would take us to the destiny of Truth which we are looking for.

i) What are the basic parameters of an exam?

The basic parameters of an exam are reliability and validation. Reliability and validity are to be tested in respect of all parameters associated with an exam commencing from setting of the paper, conduct of the exam, evaluation and announcement of results.

ii) Tested against these parameters whether the 1st exam held on 10.3.2018 holds good or fails?

In regard to evaluation of answer sheets, the respondents produced confidential office noting which indicates that after due scrutiny, the evaluation

of the answer sheets for the objective type questions was not as per instructions contained in Railway Board orders 29/2009, which specify that 5 types of corrections listed in the said order if found, such answers should not be evaluated. Thus malpractices were noticed violating the Railway Board orders stated, vide office note of APO/T/BZA. Therefore there is no reliability in the evaluation of the answer sheets and such answers associated with malpractices are invalid. Therefore the 1st test conducted is neither reliable nor valid. The exam has been contaminated and it is a threat to public trust, reliability and credibility to the system as a whole.

iii) What was the course open to the respondents in such a situation?

We are in the era of transparency provided by RTI act. The respondents are well within their right to cancel the exam. However, while doing so they need to have particularised the reasons for cancelling the exam. They took cover under administrative reasons. The spirit of the Railway Board instructions 95/2002 was to adduce distinctive reasons for cancellation of selection. Applicants represented on the issue but without replying/resolving their grievance, Respondents forced the re-exam which aggravated the issue further. Thus the validity of the decision of the respondents would obviously raise many doubts in the minds of the applicants who took the 1st exam. To this extent the Respondents are to be found fault with, as their decision led to unnecessary doubts since they did comply with the instructions contained in Railway Board orders 95/2002 but not in a manner clarifying the doubts entertained by the applicants. As malpractice continues to exist on record whether it is shown to the candidates or not, there should not have been any hesitancy on part of the respondents to dispose of the representations of the applicants by comprehensively disclosing the reasons so that the issue could get dissipated in

the normal course. Nevertheless, the fact remains that the exam is polluted with malpractices.

iv) Having hesitated to come out straight on facts, what was to be done in such an eventuality by the Respondents?

Simply follow the rules prescribed. The Railway Board orders 35/2009 clearly stipulate that in case it is decided to cancel the written examination then in such a case complete selection procedure shall stand cancelled. The respondents have cancelled the written exam but not the selection thereby violating rules framed by themselves. Rules are framed to administer the organisation in a uniform, transparent and efficient manner. Any decision against the rules is null and void. Therefore the proper course of action open to the Respondents was to cancel the entire selection. Honourable Supreme Court has come down heavily on non observance of rules in *Seigal's case* (1992) (1) supp 1 SCC 304 the Hon'ble Supreme Court has stated that "*Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.*"

v) Despite the relevant Railway Board order being clear what prompted the Respondents to conduct the re-exam ?

One can understand the anxiety of the Respondents to complete the selection by interpreting the rules in an amenable manner but such interpretation should pass the test of reasonableness. We find that it does not. This requires a detailed understanding of the way the Respondents dealt with the issue. The 1st exam was conducted on 10.3.2018. Results announced on 9.4.2018. Complaint dt. 10.4.2018 is received on 30.4.2018. Exam is cancelled on 7.5.2018. Applicants represent on 16.5.2018. Respondents decide to conduct re-exam on 26.5.2018. Applicants approach the court on 28.5.2018. Results of the exam are announced

within 24 hours on 29.5.2018. Tribunal directs the Respondents to dispose of the representation of the applicant in a fortnight and not to decide selection based on the re-exam till reply is filed. The intrinsic aspects which draw one's attention is that the Respondents disposed the representations of the applicants on 5.6.2018 after the exam was conducted. When there was nothing to hide where was the necessity to dispose of the representations after the exam is a question which would linger in the minds of the applicants. Adding fuel to fire, forcing applicants to reappear at the exam without resolving their grievance is what the respondents need to introspect, since as a model employer their decisions should be uniform, transparent and create confidence among the employees. The Principles of Natural Justice of hearing the aggrieved and dispose of the same was not followed. The minimum thing they could have done is to inform that the exam was tainted with malpractices and therefore the decision. Instead the grievance was compounded by the said action of the Respondents. The pace at which they conducted and announced the results of the re-exam on 29.5.2018 is amazing. Papers are evaluated in 24 hours of the applicants approaching this tribunal on 28.5.2018. Generally Respondents are found not doing so in many other cases but doing so in this particular one in the context of the applicants approaching this tribunal on 28.5.2018 does give room for a debate on the decision of the respondents. The reason given for such urgent evaluation was to avoid malpractices. If such practice were to be followed uniformly in all exams then there is reason to believe. But it is not so. Hence the reasoning given is unreasonable. Further, the complainant who was not selected in the 1st exam gets selected in the re-exam. The respondents do not contact the complainant to ascertain as to whether it was a genuine complaint or otherwise in accordance with para 509 of chapter V ('Sources of information') dealing with vigilance

complaints. In particular, when the complainant has disowned the complaint vide his affidavit dt 22.6.2018. Thus the rudimentary step prescribed to contact the complainant and record his statement to affirm/denial of the allegations of corruption/malpractices scribed in the complaint was not followed. To top it, they are not empowered to cancel only the written exam as per Railway Board order RBE No.35/2009 cited which states that “ However, in case it is decided to cancel the written examination in such a case complete selection shall stand cancelled ”. The learned counsel for the Respondents tried to portray the re-exam as a supplementary exam and that since it was conducted correctly it should hold good as per the Railway Board order 35/2009. However the major error in submission of the ld counsel in interpreting Railway Board order 35/2009 is that in the supplementary exam only those who failed in the main exam are permitted to appear, whereas in the present case applicants who passed the 1st exam were forced to re- appear at the re-exam. Thus the re-exam does not qualify to be termed as a supplementary exam. The Respondents cannot make rules and break them. Rules are framed to be followed. If they do not then who will! There cannot be arbitrariness in application of rules by trying to interpret them based on circumstances. We have also noticed that the DRM at N-8 of the confidential note submitted to the Tribunal, has not discussed the relevant rules in cancelling the exam nor was he ably assisted by those down below. Any decision taken has to be in the context of rules framed. Decision taken without the backing of a rule stands invalid. Hence any convenient interpretation thereafter to substantiate the decision, without relevant contravening material, is only an afterthought as we have seen in the averments of the Respondents counsel and the counsel for the private Respondents. Thus the reasons that prompted the Respondents to act

against the rule are not justified. Therefore the Respondents action in conducting the re-exam was a flagrant violation of rules laid down by the Railway Board.

vi) A question that follows the previous one is what to do next?

The 1st exam is flawed for reasons stated by the respondents in the confidential note submitted. The Respondents are not competent to act against rules. The re-exam was conducted against rules and hence has to go. The only way out is to conduct a fresh examination through a fresh notification in a vigilant, transparent and uniform manner, giving reasonable time to the candidates to prepare. Individual interests are subservient to organisational interests and therefore the suggested mode of action. Besides, as has been rightly questioned by counsel for the applicants Mr K.R.K.V. Prasad, Respondents have not indicated as to what punitive action has been taken against those responsible for allowing the malpractices reported. The Respondents have reported that they cancelled the exam based on the complaint received from Mr K. Babu Rao, which did take the names of Senior officers alleging corruption. Their reply statement is silent on these aspects. The confidential note file indicates that a relevant remark has been made in the APAR of Sri G.Chandrashekar referred to as an evaluator and that he has been transferred on 31.8.2018 from Vijayawada to Hyderabad. Transfer is no punishment. A reference has been made to the SDGM/SC, supposed to be in charge of vigilance, vide office note dt 10.7.2018. Thereafter what happened to the action on this note is not known. Any slackness in this regard, cannot rule out the possibility of wrong signals emerging, encouraging employees to entertain the thought that they can get away by indulging in malpractices. Therefore it is necessary that the Respondents may have to consider to pursue the matter to its logical end by initiating action deemed necessary.

vii) Which way does the balance of convenience tilt in the context of different averments and case laws quoted by the learned counsel during the final hearing?

The learned counsel for the applicants has stated that the Impugned order does not provide reasons for cancelling the exam. Anything stated later to improve the Impugned order does not hold good. To substantiate the same, the learned counsel for the applicants has quoted Honourable Supreme Court judgment in ***State of Orissa and anr vs Mamata Mohanty*** in CA No.1272 of 2011 reported in **2011 (3) SCC 436** in support of his argument as under:

Para 37 – “It is a settled legal proposition that if an order is bad in its inception it does not get sanctified at a later stage. A subsequent action /development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceeding consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin.”

The impugned order did state administrative reasons and not that it did not state anything. Strictly speaking Respondents have given an omnibus reason. Hence it cannot be branded as bad in law. The learned counsel for respondents did submit, the Honourable Supreme Court judgment in ***Chairman, All India Railway Rec. Board vs K. Shyam Kumar & ors*** reported in CA No.5675-5677/2007 wherein it was held that reasons given in the Impugned order cannot be the only grounds to take a decision, as under:

“38. We are also of the view that the High Court has committed a grave error in taking the view that the order of the Board could be judged only on the basis of the reasons stated in the impugned order based on the report of the vigilance and not on the subsequent materials furnished by the CBI. Possibly, the High Court had in

mind the constitution bench judgment of this Court in Mohinder Singh Gill and Anr. Vs The Chief Election Commissioner, New Delhi and Anr (1978) 1 SCC 405.

39. We are of the view that the decision maker can always rely upon subsequent materials to support the decision already taken when larger public interest is involved. This Court in Madhyamic Shiksha Mandal , M.P v Abhilash Shiksha Prasara Samithi and ors, (1998) 9 SCC 236 found no irregularity in placing reliance on a subsequent report to sustain the cancellation of the examination conducted where there were serious allegations of mass copying. The principle laid down in Mohinder Singh Gill's is not applicable where larger public interest is involved and in such situations, additional grounds can be looked into to examine the validity of an order. Finding recorded by the High Court that the report of the CBI cannot be looked into to examine the validity of order dt 4.6.2004, cannot be sustained."

8. The Respondents organisation is a public institution involved in rendering public service of transporting people across the length and breadth of the country. Anything that happens in the organisation will have an impact on public interest. The issue in discussion is to promote employees from Gr. D to Gr. C positions through an exam does impact public interest as the promoted employees will have to render public service. Therefore there are two distinct factors namely i) the Impugned order did cite administrative reasons and ii) Honourable Supreme Court observation related to malpractices in exams; adequately and deftly overrule the learned counsel objection. Further, it is also evident that the applicants have filed the OA since they failed in the re-exam. Had they passed the exam they would not have had any issue with the re-exam. In fact, the 3rd applicant in OA No. 474/2018 Mrs. U. Santhi Swaroopa after passing the re-exam switched over from being an applicant to a private respondent, taking a 180 degree turn, changed her stance by pleading to declare selection based on the re-exam as was stated by the learned counsel for the private respondents. This is an example affirming the above assertion. The

learned Counsel for the private respondents submitted that once a candidate appears in an exam/selection after being aware of the terms and conditions then he/she cannot find fault with the said exam quoting the Honourable Supreme Court judgment in:

Ashok Kumar and anr vs State of Bihar and ors in CA 9092/2012 where in the judgment in regard to ***Union of India vs S. Vinodh Kumar*** reported in **2007 (8) SCC 100** was quoted as under:

“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same.”

Similar Judgment of the Honourble Supreme Court in D. Saroja Kumari vs R.Helen Thilakom and ors reported in CA Nos.8345- 8346/2009 was relied upon by the ld counsel for the respondents to bring home the point that once a candidate participates in the selection process the candidate is not permitted to challenge the same after being unsuccessful.

9. We are in respectful agreement with the observation of the Honourable Supreme Court. However, in the present case the difference is that the applicants have been forced to appear in the re-exam and as a result some have appeared under protest. Inevitability of the circumstances forced them to appear at the re-exam. Besides, the intrinsic aspect is that the respondents instead of cancelling the entire selection process, consequent to the 1st exam getting vitiated as per Railway Board order RBE No.35/2009, they have cancelled only the written exam which is grossly irregular. Hence the respondents can't take shelter under the cited Honourable Supreme Court judgments to uphold the re-exam on grounds expounded.

10. Respondents cited one another judgment of Honourable Supreme Court in U.P.S.C v Rahul Singh & anr in CA No.5838 of 2018. In this case the issue adjudicated was about the key answers being wrong, two committees going into the issue involving a large number of candidates appearing through an open advertisement. The important issue was that the Honourable High Court of Allahabad has gone into the correctness of the key answers with which the Honourable Supreme Court did not concur. In the present O.A we are not going into the correctness of the answers or their evaluation but questioning the respondents for failing to follow their own rules in regard to which there is no doubt and hence the case law quoted is not relevant. The same judgment does state that there should be internal checks and balances to be worked out by the respondents in conducting an exam. The Respondents failed to bring out the checks and balances which they adopted to make the exam malpractice free.

11. Further, the ld counsel for Respondents quoted the W.P. No.5261 of 2016 dealt by the High Court of M.P. at Jabalpur, harping on para 28 of the judgment of Hon'ble Supreme Court in 2011 (15) SCC 81 relied upon therein, wherein it was observed that the appellants need to adopt a reasonable and fair procedure and that the order causing civil consequences is not passed arbitrarily. In the present case the respondents action was arbitrary as they were neither fair nor reasonable in conducting the re-exam without disposing of the representation of the applicants. Further, the main difference is that they have conducted the re-exam against the Railway Board order 35/2009. Hence the case cited does not come to their rescue.

12. One more judgment cited by the Respondents is that of the Honourable Supreme Court in Chairman, All India Railway Rec. Board & anr vs K.Shyam Kumar & Ors in CAs 5675-5677 of 2007, wherein conduct of a re-exam was

upheld on grounds that the first exam was disfigured due to mass copying, impersonation, leakage of papers etc. In this case Railway Board instruction of 2009 that once the written exam which is a part of the selection process is cancelled the entire selection process has to be cancelled has not been touched upon. Therefore, according to the cited judgment the 1st exam because of the infirmities recorded in the confidential note of the respondents has to be annulled. However, the respondents have no right to conduct the re-exam because they have to cancel the selection and not just the exam as per Railway Board orders 35/2009.

13. The next judgment quoted by the ld counsel for the Respondents is the observation made by the Honourable Supreme court in B. Ramanjini and ors v State of A.P and ors in CA No.6461 of 1998 reported in 2002 (5) SCC 533. In this case too there was open recruitment, mass copying, leakage of question paper. District Collector based on the enquiry report of the Supdt. of Police ordered cancellation of the exam conducted and fresh conduct of exams. The gravity of the irregularities involved were that there were multiple exam centres with poor facilities, photo copy of the question paper reached the private coaching centres which were put on sale, key to the question papers were photo copied and supplied to some candidates etc . Such irregularities are not there in the present case. However, considering the malpractices noticed in the first exam in the present OA, entire selection should have been cancelled as per the Railway Board orders cited and a fresh notification issued. Respondents disregarding their own orders by conducting the re-exam is not only irregular but also illegal as per law set by Honourable Supreme Court in T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544 where in it was held that “*Action in respect of matters covered by rules should be regulated by rules*”. Again in Seighal’s case (1992)

(1) supp 1 SCC 304 the Hon'ble Supreme Court has stated that "*Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.*"

In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held "*the court cannot de hors rules*"

14. Coming to the complaint *per se*, the Id counsel for the applicants submission that the complainant has disowned the complaint through an affidavit cannot be appreciated. The complainant should have written to the DRM claiming that he has not made the complaint instead of stating so in an affidavit on a judicial stamp paper with the caption to 'whomsoever it may concern'. Being an employee, complainant is bound by conduct to report to his superior authorities for clearing anything that besmears his image. Equally the argument of the Id. counsel for the respondents stating that the complainant has drafted the complaint in Telugu and the affidavit is in English does not carry much weight since it is not understood as to what exactly prevented the respondents in contacting the complainant and inquire into the same as per para 509 of vigilance instructions referred to. More so, in the context of the submission of the Id counsel for Respondents during the arguments that out of the 34 candidates who appeared for the exam, 20 indulged in malpractices. This would not have happened without collusion at different levels is the impression which anyone would gain. The complainant did allege about the facilitating role of senior officers and allegation of corruption in lakhs. The Id. counsel for the Respondents Sri D. Madhav Reddy, when questioned as to why the complainant was not contacted with such grave charges levelled in the complaint, he had no answer. Instead he only reiterated the argument that, had the applicants passed the exam, then they would not have come before this Tribunal. We agree, but only when there is a grievance which remains unresolved despite approaching

the Respondents, the first citadel to unravel the hidden facts and arrive at the truth, is the Tribunal, more so when the action of the respondents is arbitrary and against rules, as seen in the present case.

15. The argument of the Id. Counsel for the Private Respondents Sri K. Siva Reddy, claiming that the Respondents are empowered to cancel a selection would mean a part of it too, is stretching the argument beyond its elastic limit. If the Railway Board had this in mind then the order 35/2009 would have indicated “cancellation of selection or part thereof”. The second part being absent the submission of Id counsel for Pvt. Respondents loses credence. The arguments of the Id counsel for the respondents and the applicants that some applicants wrote the re-exam on protest and some others without protest need not be dwelled upon because of a big question mark on the very conduct of the 1st exam and re-exam itself. The defense of the respondents in the conduct and announcement of results of the re-exam in 3 days was that they did not want a repeat of the malpractices of the 1st exam to occur. Sounds rational but in the context of the applicants approaching the Tribunal hastening the process by the respondents, raises many questions as to whether i) the short time given had enabled proper evaluation and ii) instead of getting the OA disposed announcing the results thereof iii) absence of stringent penal action against the perpetrators and facilitators of the malpractice nor any commitment to do so in the reply statement does not further the case of the respondents in the way they want it to be. Respondents admitting that they are not certain about leakage of question paper is too serious an admission which cannot be wished away by the transfer of one officer, as claimed by the Id counsel for the Respondent. One should do a root cause analysis and root out the infection infecting the examination system in the respondents organisation. Transfer is not a punishment, it is incidental to

service. That too a single officer singled out leaving all others including the candidates involved in such malpractices does not repose confidence in the corrective measures taken. It was repeatedly stressed by the ld. counsel for the applicants that those responsible have to be proceeded against. The Respondents counsel response was lukewarm. Indeed having admitted that they are not confident of the fairness of the 1st exam in regard to evaluation, leakage of question paper etc involving employees, evaluators, candidates in as many words as possible in the reply statement, their consequential action is woefully lacking. Respondents have an irrevocable responsibility to verify every step of exam process right from paper setting, invigilation, evaluation and announcement of results through a system of internal checks and balances as observed by Honourable Supreme Court in paras supra. Deterrent action was called for, to prevent a repeat and to create an environment conducive for conduct of free and fair exams. The Respondents have failed to submit comprehensive details in regard to the restorative action taken as well as the outcome of the office note forwarded to the SDGM, who deals with vigilance. The learned counsel for the applicants claiming that the complainant wanted his answer sheet to be evaluated is true but the complainant did indicate the names of applicants who were alleged to be involved in the malpractice. Such a written complaint naming most of the applicants does call for verification of their answer sheets as well. To this extant the action of the respondents is correct. As the Respondents organisation is under the ambit of the RTI Act, the respondents could have contemplated to allow the candidates to see their answer sheets and the report of the APO, so that they know the ground reality. There are many RTI judgments where answer sheets were directed to be shown. Before being directed under RTI, had the

Respondents taken the initiative, the story and screen play would have been different.

16. The learned counsel for the applicants allegation that the exam was cancelled for extraneous reasons was not rebutted with force by the respondents during the arguments since they were found wanting in taking stringent action against all those involved. The ld counsel for the applicants submitted that the private respondents need not have impleaded themselves, as they passed both the exams, is not an acceptable argument, as candidates have a right to defend themselves on any issue concerning them. The ld counsel for applicants further assertion that the first list did not contain the names of candidates who were selected under relaxed standards but the re-exam did, in no way alters the reality of malpractices reported in the 1st exam. The learned counsel for the applicants focus on the aspect that the complainant who failed in the 1st exam getting selected in the re-exam does not further the case of the applicants unless evidence is produced to show that there was something more in his clearing the re-exam.

17. The ld counsel for Mr T.Vara Prasad in OA 542/2018, one another applicant, has also urged that the respondents reply was incoherent, unfair, opaque, against rules and above all they did not get an inquiry done into the matter. There is force in the argument since the Respondents have not revealed as to what did the vigilance do with serious vigilance issues raised in the complaint received by them on 30.4.2018, albeit 6 months have passed after receipt of the complaint. The learned counsel for the Respondents tried to suggest that a segregation of candidates who resorted to malpractices and those who did not can be attempted to resolve the impasse. Such segregation is also not possible since the respondents themselves have admitted that there could be

scope for leakage of question paper, evaluation irregularities etc. These are indications that the respondents have not put the best foot forward after detecting the malpractices to assess the malady in its entirety. Hence the beginning or the end of the malady has not been fully unearthed even to undertake the segregation proposed. The measures suggested in OAs 1153/2016, 118/2017, OA 92/2009 and OA 388 of 2008 quoted by the ld. counsel for the applicants are based on the concept of segregation and other measures asymmetric to the present one and hence, are not relevant to the present case.

18. The ld counsel for the applicants has quoted the judgment of Honourable High Court of A.P in W.P Nos.1295 of 2009 & 6603 of 2009 dt.01.04.2009 wherein it was observed that the entire selection should not have been cancelled by giving a go-bye to the principles of proportionality to protect the interests of the candidates who did not indulge in malpractices. However, the Honourable Supreme Court in *Chairman, All India Railway Rec. Board vs K. Shyam Kumar an ors* in CA Nos.5675-5677/2007 has made a reference to its earlier judgment in *Bihar School Examination Board Vs. Subhas Chandra Sinha*, 1970(1) SCC 648, wherein it has been held as under, which holds the ground:

“That is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held. Must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination has a whole had to go.”

Another observation of the Honourable Supreme Court which is relevant to the present case in regard to inapplicability of segregation is in **Gohil Vishvaraj Hanubhai & Others Vs. State of Gujarat & Others** [Civil Appeal Nos.5680-83 of 2017 arising out of Special Leave Petition (Civil) Nos.19570-19573 of 2016] is as under:

“22. Purity of the examination process - whether such examination process pertains to assessment of the academic accomplishment or suitability of candidates for employment under the State - is an unquestionable requirement of the rationality of any examination process. Rationality is an indispensable aspect of public administration under our Constitution. The authority of the State to take appropriate measures to maintain the purity of any examination process is unquestionable. It is too well settled a principle of law in light of the various earlier decisions of this Court that where there are allegations of the occurrence of large scale malpractices in the course of the conduct of any examination process, the State or its instrumentalities are entitled to cancel the examination. This Court has on numerous occasions approved the action of the State or its instrumentalities to cancel examinations whenever such action is believed to be necessary on the basis of some reasonable material to indicate that the examination process is vitiated. They are also not obliged to seek proof of each and every fact which vitiated the examination process.

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28. The submission by the applicants is that the mere fact that some of the candidates resorted to some malpractice cannot lead to the conclusion that the entire examination process is required to be cancelled as it would cause undue hardship to huge number of innocent candidates. In other words, the applicants urge this Court to apply the primary review test.

29. We have already held that there were large scale malpractices at the examination process and the State was entitled to take appropriate remedial action. In the context of the occurrence of such malpractice obviously there can be two classes of candidates: those who had resorted to malpractice and others who did not. By the impugned action, no doubt, all of them were treated alike. Whether such herding together would amount to the denial of the equal protection guaranteed under Article 14? is the question.

Identifying all the candidates who are guilty of malpractice either by criminal prosecution or even by an administrative enquiry is certainly a time consuming process. If it were to be the requirement of law that such identification of the wrong doers is a must and only the identified wrongdoers be eliminated from the selection process, and until such

identification is completed the process cannot be carried on, it would not only result in a great inconvenience to the administration, but also result in a loss of time even to the innocent candidates. On the other hand, by virtue of the impugned action, the innocent candidates (for that matter all the candidates including the wrong doers) still get an opportunity of participating in the fresh examination process to be conducted by the State. The only legal disadvantage if at all is that some of them might have crossed the upper age limit for appearing in the fresh recruitment process. That aspect of the matter is taken care of by the State. Therefore, it cannot be said that the impugned action is vitiated by lack of nexus with the object sought to be achieved by the State, by herding all the candidates at the examination together.”

19. The ld counsel for the applicants has also quoted OAs 1005 & 1144 of 2004 of this Bench. In these OAs a selection committee has gone into the case and presented a detailed report and there was possibility of segregation of candidates who indulged in malpractices. Such segregation being not possible for reasons cited supra the quoted judgments do not hold ground. The learned counsel banked on these to affirm that reasons were not given for cancelling the exam. The respondents did mention administrative reasons but they could have been a little more elaborative in accordance with the observations of the Honourable Allahabad Bench of this Tribunal, referred to by the counsel for learned applicants. However, by not doing so in detail, the fact of malpractices committed cannot be erased. The confidential note submitted by respondents did disclose malpractices in the 1st exam and they also expressed the apprehension that there could be scope for leakage of question paper. An examination with many so many question marks on its face would for obvious reasons cannot maintain the purity as is required in selecting employees for higher positions. When there is impurity in the exam, can we expect purity in the result is the question to be pondered upon. Honourable Supreme Court in *Chairman, All India Railway Rec. Board vs K. Shyam Kumar* while holding that any exam involving malpractices should be cancelled has observed as under:

"50. We are also of the view that the High Court was in error in holding that the materials available relating to leakage of question papers was limited and had no reasonable nexus to the alleged large scale irregularity. Even a minute leakage of question paper would be sufficient to besmirch the written test and to go for a re-test so as to achieve the ultimate object of fair selection."

20. In regard to the Honourable Supreme Court Judgment in U.P.S.C v Jagannath Mishra reported in CA no 675 of 2000 reported in 2003 (9) SCC 237, quoted by the Id counsel for the private respondents, it was held that even without a report from the invigilators an expert body can decide on material available as to whether any exam was tainted with the malpractices. Cancellation of an exam based on such an approach should not be questioned. In the present case this Tribunal is not questioning the respondents action of cancelling the first exam but definitely finding fault with them for conducting the re-exam against rules. The Id Counsel for the Private Respondents further relied on the Honourable Supreme Court Judgment in Chief General Manager, Calcutta Telephones District, BSNL & ors Vs Surendra Nath Pandey & ors, 2011 (15) SCC 81, wherein it was held that non holding of disciplinary proceedings before cancellation of candidature is inconsequential. We concur as the Respondents can act against the candidates based on the material available with them in the interest of the organisation in a reasonable interval of time. He has also cited another Judgment of Honourable High Court for the State of Telangana and the State of A.P in W.P. No.40119/2016 about grant of interim stay. In the present case we are disposing of the O.A itself and not the interim stay. Hence the judgment quoted is not applicable.

21. Thus as can be seen from the facts and the case laws cited the Respondents have acted against the Railway Board orders 35/2009 in conducting the re-exam. Any action taken against rules cannot be upheld. Honourable Supreme Court in a

catena of judgments cited above has stated so. Hence the action of the Respondents in conducting the Re-exam is illegal, arbitrary and violative of clearly laid down rule. Therefore the re-exam held on 26.5.2018 vide impugned order dt 7.05.2018 is declared null and void. All the proceedings which led to the conduct of the said exam and consequential action thereof, if any, are quashed. Now coming to the first exam which has been cancelled by the Respondents due to malpractices vide proceedings dt 7.5.2018, we uphold the same, since it is in consonance with the Railway Board orders 29/2009. Any malpractice committed in an exam, irrespective of its dimension, does defile the sanctity of the exam and defeats the very purpose of conducting an exam. The piousness associated with an exam is lost. In the words of the Honourable Supreme Court, the said exam has lost its piousness:

24. In the case of Nidhi Kaim Vs. State of Madhya Pradesh and Ors., 2016 (7) SCC 615, taking note of gradual rise of malpractices, academic fraud and cheating in examination, the Apex Court of the land, observed thus:

"134. Examination malpractices, academic fraud or cheating in the examination is as old as the examination itself. Study made by the educationist has revealed that these malpractices are gradually on the rise across the world and has caused a threat to public trust in reliability and credibility to the system as a whole. These (CW-4521/2018) malpractices occur within and outside the examination halls and are perpetrated by the candidates, staff and other external agencies before, during and after the examination. Various kinds of strategies are innovated and then applied to enable the candidate to clear the examination anyhow. It has, therefore, destroyed the piousness of the examination. With a view to prohibit such activities, State of A.P. had enacted a legislation but it was found inadequate to control such activities."

22. To cut the long story short, the Respondents cancelling the first exam is as per rules and the law stated by the Honourable Supreme Court. Tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14, we have no hesitation in holding that the first exam cannot be sustained. In respect of the re-exam it has been conducted against rule and Honourable

Supreme Court has observed in paras supra, such violation of rule is to be curbed. Therefore the decision of the respondents, in conducting the re-exam is against the observation of the Honourable Court observation and hence illegal.

23. Based on the aforesaid reasons and observations made by the Honourable Supreme Court the balance of convenience does not fling either towards the respondents/ private respondents or the applicants. The tilt has to be towards justice. Hence this Tribunal is left with the only option of directing the Respondents to consider:

- i) To issue a fresh notification and conduct the exam afresh to select candidates for the post of Ticket Examiner against 33 1/3 % quota by giving reasonable time to the candidates to prepare and appear
- ii) To allow all those candidates who appeared in the 1st exam and the re-exam, to appear in the proposed exam to be conducted without disqualifying them on grounds of age or any other parameter
- iii) To permit other candidates who are eligible to appear, in order to usher in a healthy competition and select the best among the lot, by conducting the exam and the selection in a vigilant, fair, uniform and transparent manner.
- iv) Taking into account that Group D/Group C staff are expected to be computer literate, the Respondents may think of conducting exams in future on an IT platform with objective type questions with highly secure software's which are proven and tested. This will bring in transparency, automated evaluation, evaluation accuracy, economy in conduct of exams, instant results, curbing diversion of regular staff to do evaluation impairing operational functions, augment morale of the employees, build trust in the exams conducted and above all eliminate

malpractices by random jumbling of questions candidate wise etc. Associated action of a pen mounted camera placed in the exam hall or on the body of the invigilator will send real-time video images of the conduct of the exam which can be monitored from a command centre with provision to store such images for future reference. These tools are relatively cheap but highly efficient. Such surveillance would send chilling fear in anyone's spine and would be an effective deterrent against exam malpractices. The Respondents organisation with the strong IT backing can easily adopt the suggestion. The suggestion is made since the Respondents organisation is the pride of the Nation and any dent to its image is not in Public interest. We also make it lucid that this is only suggestive and not a directive. It is open to the respondents to do what best they can to make the exams free of all variants of malpractices. The earlier the better lest they have to continue fighting legal battles on exams which can be avoided by harnessing appropriate and well grounded I.T solutions. Suggestion may be brought to the notice of the first Respondent for taking necessary action as is deemed fit in the matter in the interests in the Respondents organisation.

- v) The fact that the respondents do also put in lot of hard work and efforts to organise an exam as much as the candidates in preparing for the exam, we leave it open to the Respondents to act sternly against all those involved in derailing the selection/exam process in question by getting a detailed vigilance probe done covering all aspects to the minutest extant, so as to dissuade anyone associated with the exam to indulge in deviant actions leading to cancellation of exams and causing injustice

to those who have been honest in writing the exam or submitting themselves to a selection. We are making this observation considering the trend of exam related litigation involving the Respondents.

- vi) Time allowed to implement the order is 4 months from the date of receipt of this order.

24. OAs are disposed of with the above directions. Pending MAs stand disposed accordingly. No order to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 15th day of November, 2018

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