

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
KOLKATA



Present : Hon'ble Mr. A.K. Patnaik, Judicial Member

Hon'ble Mrs. Jaya Das Gupta, Administrative Member

No.CPC.350/278/2016  
(O.A.350/1792/2015) - Gyani Prasad

Vs.

Union of India & Others  
(G. Sridhar, A.P.O., RRC, S.E. Railway & Anr.)

No.M.A.350/110/2017  
(O.A.350/1007/2016) - Ganesh Kamat

Vs.

Union of India & Others  
(S.E. Railway)

No.M.A.350/307/2016 - RRC(S.E. Railway)  
(O.A.350/895/2015) Vs.  
Sunil Kumar & Others

For the applicant : Mr. S.K. Datta, counsel  
Mr. A. Chakraborty, counsel  
Mr. J.R. Das, counsel

For the respondents : Mr. S. Banerjee, counsel  
Mr. B.P. Manna, counsel

Heard on : 15.02.2017 & 24.02.2017

Order on : 7.3.2017

ORDER

Per Ms. Jaya Das Gupta, A.M.

The Id. counsels for the applicants and the Id. counsels for the respondents have submitted at the Bar that similar issues are concerned in the above three cases and hence may be considered together. Hence, we are considering the case of Sri Gyani Prasad in O.A.1792/2015 as the representative case. Orders passed on the concerned issues shall apply to the other two cases.

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2.(a) Sri Gyani Prasad in O.A.1792/2015 had originally approached this C.A.T. against the respondents Railway Recruitment Board (RRC) with the following prayers:-

- "i) An order holding that the Note below the advertisement/employment Notice dated 29.9.2012 at Annexure A-1 is neither bonafide nor justified and cannot be sustained;
- ii) An order directing the respondents to cancel, rescind, withdraw, quash and set aside the order dated 7.12.2015 issued by Chairman/RRC/S.E. Railway is bad in law and cannot be sustained;
- iii) An order holding that the rejection of candidature of the applicant dated 7.12.2015 on the ground that the IPO date is before the date of publication of Employment Notice dated 29.9.2012 is bad in law and arbitrary and cannot be sustained;
- iv) An order directing the respondents to recall the decision regarding rejection of candidature of the applicant and further directing them to give appointment to the applicant as per his merit position with all consequential benefits within period as to this Hon'ble Tribunal may seem fit and proper;
- v) An order directing the respondents to produce entire records of the case at the time of adjudication for conscionable justice;
- vi) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

(b) This O.A. was disposed of on 18.12.2015 by a Bench of this C.A.T. Said order is extracted herein below :-

"Heard both.

2. This O.A. has been filed seeking the following reliefs:-

- "i) An order holding that the Note below the advertisement/employment Notice dated 29.9.2012 at Annexure A-1 is neither bonafide nor justified and cannot be sustained.
- ii) An order directing the respondents to cancel, rescind, withdraw, quash and set aside the order dated 7.12.2015 issued by Chairman/RRC/S.E. Railway is bad in law and cannot be sustained.
- iii) An order holding that the rejection of candidature of the applicant dated 7.12.2015 on the ground that the IPO date is before the date of publication of Employment Notice dated 29.9.2012 is bad in law and arbitrary and cannot be sustained;

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- iv) An order directing the respondents to recall the decision regarding rejection of candidature of the applicant and further directing them to give appointment to the applicant as per his merit position with all consequential benefits within period as to this Hon'ble Tribunal may seem fit and proper.
- v) An order directing the respondents to produce entire records of the case at the time of adjudication for conscionable justice;
- vi) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

3. The Ld. Counsel for the applicant placing reliance on the averments in the O.A. as well as the annexures attached thereto would pyramid his argument which could succinctly and precisely be set out thus:-

The applicant applied for the post of Gr. 'D' in response to the Employment Notice No. SER/RRC/02/2012 dated 29.9.2012. While so applying, he enclosed along with it, the IPO purchased before the date of issuance of Employment Notice. However, on that ground at the earliest point of time, his candidature was not rejected, but he was allowed to appear in the written test as well as PET and he came out successful. Thereafter document verification was done and with that also, he came out successful. Whereupon he was subjected to medical examination and he was declared fit. Consequently, he was waiting for his appointment letter. In as much as, he did not receive any appointment letter, he filed earlier the O.A. No. 350/01433/2015, wherein the order dated 21.9.2015, was passed by the CAT directing the respondents concerned to pass a speaking order. Annexure A-4 the speaking order emerged, and the operative portion of it would run thus:-

" As per Para 7.4 of our Employment Notice No. SER/RRC/02/2012 dated 29.9.2012-"Bank draft/IPO issued before the date of issue of Employment Notice and after closing date will not be accepted and such application form will be rejected and amount forfeited." Also as per Para 8.8.5 of this notification dated 29.9.2012, RRC/SER would be free to reject any application not fulfilling the requisite criteria, at any stage of recruitment, and if erroneously appointed, such candidates shall be liable for termination from service without notice."

4. Challenging and impugning the said Annexure A-4, this O.A. has been filed.

5. The Ld. Counsel for the applicant would submit that on flimsy grounds the candidature of the applicant was rejected and suitable direction might be given.

6. Per contra, the Ld. Counsel for the respondents would vehemently oppose the O.A. on the ground that appropriately and appositely, correctly and legally, and that too adhering to para 7.4 of the Employment Notice concerned, the rejection of the candidature was made, warranting no interference at the hands of CAT.

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7. The point for consideration is as to whether the rejection of the candidature of the applicant invoking para 7.4 of the employment notice at *the belated stage is justified and that too when the applicant having participated in the written test and PET, and came out successful.*

8. The perusal of the records would unambiguously and unequivocally highlight and spotlight the fact that the applicant passed the written test and the PET and he also successfully underwent the document verification and after the medical examination, he was declared fit. Thereafter only his candidature was rejected on the flimsy ground by invoking the said para 7.4. It is not the case of the Railway authorities that there was any fraud committed by the applicant. Had the Railway authorities thought of rejecting his candidature by invoking the Para 7.4, they ought to have done it at the earliest point of time. It became fait accompli that the applicant was allowed to participate in all the Railway tests and examinations and it is too late in the day on the part of the Railways to reject his candidature on flimsy grounds.

9. The ratio scientiae behind the respondent authority's order in rejecting the candidature cannot be countenanced legally. The fact alleged in the speaking order is not capable of cutting at the root of the very candidature of the applicant. In such a case, we are of the view, that the speaking order has to be set aside and a positive order has to be given for appointing the applicant to the Group 'D' post by the respondent concerned, if he is otherwise eligible, within a period of three months from the date of receipt of a copy of this order and accordingly it is ordered.

10. On balance, the O.A. is disposed of. No costs. "

3(a) From the records it appears that the respondent South Eastern Railway authorities have filed M.A.307/2016 in connection with O.A.895/2015 [Union of India & Others Vs. Sunil Kumar]. In this O.A. i.e. O.A.895/2015 an order was given by this Bench on 09.07.2015 , operative portion of which is as under:-

"7. In such view of the matter and for the ends of justice the present O.A. is disposed of with a similar direction upon the respondents i.e. to publish the final merit list or final panel out of Employment Notice No.SER/RRC/02/2012 after holding medical examination of the candidates who have cleared up to PET and only thereafter issued appointment orders to the empanelled candidates."

(b) On the above context we must mention that an order was passed by this Bench on 06.10.2016 in O.A.1680/2015 pertaining to Eastern Railway in case of similarly situated persons . Said order is extracted below:-

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"CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
KOLKATA

Reserved on : 20.09.2016

Pronounced on: 6.10.2016

MA. 350/00437/2016  
OA. 350/01680/2015  
(Order modification)  
(Add Party)

OA. 350/00094/2015

OA. 350/01321/2015

CPC. 350/00246/2015  
OA. 350/01681/2015

OA. 350/01707/205

OA. 350/01787/2015

OA. 350/01919/2015

OA. 350/02040/2015

OA. 350/02047/2015  
10. OA. 350/00113/2016  
11. MA. 350/00400/2016  
(OA. 350/00221/2016)

12. OA. 350/00447/2016

13. OA. 350/00595/2016

14. OA. 350/00700/2016

15. OA. 350/01103/2016

16. OA. 350/01120/2016

17. OA. 350/01189/2016

18. MA. 350/00410/2016  
OA. 350/01255/2016  
(Delay)

19. OA. 350/01411/2016

20. OA. 350/01428/2016

21. OA. 350/01429/2016

22. OA. 350/01430/2016

23. CPC. 350/00245/2015  
(OA. 350/01680/2015)

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## PRESENT:

THE HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, JUDL. MEMBER  
THE HON'BLE MS. JAYA DAS GUPTA, ADMIN. MEMBER

MA.350/00437/2016 OA.350/01680/2015	SUBENDU DEB & ORS VS R K GUPTA & ORS (E RLY)	MR. S K DATTA MR. J R DAS MR. I N MITRA MR. A K GUHA MR. S BANERJEE MR. L K CHATTERJEE
OA.350/00094/2015	KOUSHIK MONDAL VS R R C (E RLY)	MR M SARKAR MR. A K GUHA
OA.350/01321/2015	SUPRAVAT MONDAL & ORS VS E RLY	MR. J R DAS MR. A K GUHA
CPC.350/00246/2015 OA.350/01681/2015	SANJIBAN MONDAL & ORS VS R K GUPTA & ORS (E RLY)	MR S K DUTTA MR. J R DAS MR. A K GUHA MR. S BANERJEE
OA.350/01707/2015	UMESH KUMAR PRASAD VS R R C (E RLY)	MR. J R DAS MR S BANERJEE
OA.350/01787/2015	RATAN SIKDAR & ORS VS R R C (E RLY)	MR. J R DAS
OA.350/01919/2015	CHIRANJIT KHAN VS R R C (E RLY)	MR. A CHAKRABORTY MS. P MONDAL MR A K GUHA
OA.350/02040/2015	UTPAL MONDAL & ORS VS E RLY	MR. A CHAKRABORTY MS. P MONDAL
OA.350/02047/2015	KARTICK CH DAS & ORS VS E RLY	MR. A CHAKRABORTY MS. P MONDAL

OA.350/00113/2016	PARITOSH KR MAJUMDAR & ORS VS R R C (E RLY)	MR. J R DAS  MR A K GUHA
MA.350/00400/2016 (OA.350/00221/2016)	SAMRAT HALDER & ORS VS E RLY	MR. J R DAS  MS S D CHANDRA
OA.350/00447/2016	AWADESH KR RAY VS R R C (E RLY)	MS. S ROY.
OA 350/00595/2016	BIPUL KUMAR BISWAS & ORS VS E RLY	MR A CHAKRABORTY MS P MANDAL  MS GARGI ROY
OA.350/00700/2016	ALTAB AHMMED VS R R C (E RLY)	MR P K GHOSH  MR S K DAS
OA.350/01103/2016	KASHINATH MANDAL & ORS VS R R C (E RLY)	MR A CHAKRABORTY MS. P MANDAL
OA.350/01120/2016	SHIB SHANKAR SAHA VS R R C (E RLY)	MR I N MITRA
OA.350/01189/2016	SUPRIYA SARKAR & ORS VS RRC (E RLY)	MR A CHAKRABORTY MS P MANDAL
MA 350/00410/2016 OA 350/01255/2016	SUBHANKAR SARDAR & ORS VS R R C (E RLY)	MR J R DAS
OA.350/01411/2016	ABHISHEK GHOSH & ORS VS RRC (E RLY)	MR J R DAS
OA 350/01428/2016	TUMPA GHOSH VS RRC (E RLY)	MR C SINHA  JW

OA 350/01429/2016 SAHEB MANDAL & ORS  
VS  
RRC (E RLY)

MR A CHAKRABORTY  
MS P MANDAL

OA 350/01430/2016 BHAGABATI BISWAS & ORS  
VS  
RRC (E RLY)

MR. A CHAKRABORTY  
MS. P MANDAL

CPC.350/00245/2015 SUBENDU DEB & ORS.  
(O.A.350/01680/2015) Vs.

Mr. S.K. Datta  
Mr. J.R. Das

R.K. Gupta & Ors.(E. Rly)

Mr. I.N. Mitra  
Mr. A.K. Guha  
Mr. S. Banerjee  
Mr. L.K. Chatterjee

### ORDER

Justice V. C. Gupta, J.M:

These cases are analogous and similar question of law and facts are involved, thus, they are being decided by this common judgment.

2. With the consent of the parties of all the Original Applications, this bunch of cases can be decided on the basis of the pleadings in Original Application No. 1680 of 2015; irrespective of the fact that no reply has been filed by the Respondents in other cases; nor is there any application for impleading as party respondents and the fact that no interim order was passed in other cases. So the entire things happened in Original Application No. 1086 of 2015 were taken note. Therefore, Original application No. 1086 is taken as the leading case for the purpose of deciding all these OAs.

3. The Applications filed this O.A. No. 1680 of 2015 seeking the following reliefs:

a) An order granting leave to the applicants under Rule 4(5)(a) of CAT (Procedure) Rules, 1987 to move the application jointly;

b) A specific order directing the respondents to hold necessary Medical Test and also examination of documents of the applicants herein as well on immediate basis;

c) An order directing the respondents to effect the process of recruitment of the applicants from the very point upto which it has been completed in the process of said recruitment;

d) An order directing the respondents to implemented the judgment and order dated 25.6.2015 passed by this Hon'ble Tribunal for strict compliance;

e) An order directing the respondents to quash/set aside all the illegal steps that have been taken by the respondent after



issuance of order dated 25.06.2015 by Hon'ble Tribunal, including indicative Notices dated 8.8.15, 25.9.2015 and several irregular orders dated 10.3.2015, 5.10.2015, 7.10.2015, 8.10.2015 and similar orders thereafter;

f) An order directing the respondents not to take any steps and/or further steps regarding aforesaid rectt. Process till the medical test of the applicants be complete;

g) To pass an appropriate order directing the respondents to submit all relevant records of the case before the Hon'ble Tribunal for conscionable justice with copies of the Ld. Advocate of the applicants for reference thereto;

h) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

4. The case of the applicants, in nut shell, is that in pursuance of the Employment Notification No. 0112 dated 16.08.2012 issued by the Railway Recruitment Cell (RRC), Eastern Railway, Kolkata, all of them had applied and appeared at the written test conducted by the Railway and having come out successful in the written test, they were called for Physical Efficiency Test (PET). Thereafter, as per the laid down procedure, they ought to have been sent for medical examination hereafter final panel could have been published by the Railway and out of the final panel appointments could have been issued by the Railway Respondent. It has been stated that though they have come out successful in both i.e. written and PET they were not called to appear at the medical test and on the other hand called some of the candidates for medical test at their sweet will and fancy in a pick and chose manner. It has been alleged that even without publishing the final panel the respondents have also issued orders of appointment to some of the candidates who had come out successful unlike the applicant in the written and PET only. Further case of the applicants as against such action of the Respondents they had earlier approached this Tribunal in OA No. 350/00242/2015 which was disposed of on 16.2.2015. But the authorities concerned without complying with the order of this Tribunal gone ahead in giving appointment to the candidates. Hence they have filed the instant OA with the aforesaid reliefs.

5. Reply has been filed by Respondent Nos. 1 & 2 denying the allegations made by the applicant and further stating therein that they have strictly adhered to the process of selection as contained in RBE No. 121/2005. The procedure prescribed in RBE No. 121/2005 is extracted herein below for ready reference:

"RBE No. 121/2005

7.5. Candidates to the extent of 10(ten) times the number of vacancies in order of merit out of those who have obtained the prescribed minimum pass marks in the written test as in paras 7.4 above, will be called for being subjected to PET as per standards

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mentioned in para 7.6 below. Candidates will be called for PET in order of merit separately for each ground of General, SC/ST and OBC. Applications of all candidates to be called for PET should be scrutinized carefully in order to check their eligibility.

7.6. PET should be of the standard prescribed vide letter No. 99/E(RRB)/25/11 dated 4.9.2002 (Bahri's 151/2002, P. 166). It will be only a qualifying test. Physical Efficiency Test should be video recorded. Passing of PET is mandatory. Result of PET will be declared on the same day.

7.7. PET shall be supervised by different teams at different places of three Assistant Officers nominated by the Deputy Chief Personnel Officer (Recruitment), one of whom should be a medical officer. One of these three officers will be nominated as the Convener. List of candidates qualifying in the PET will be displayed on the Notice Board after finalization of the result on that day. Officers conducting the PET shall advise the result of the test to the Deputy Chief Personnel Officer (Recruitment) immediately after completing the tests. Convener of the Committee shall be the final authority for deciding them and there, any dispute/representation preferred during the course of PET.

7.8. Medical examination of the candidates who have passed the written examination and PET shall be done before the empanelment. Accordingly, only those who have passed the medical examination will be included in the final merit list.

7.9. Existing provisions of verification of the original educational/caste certificate(s) and other relevant documents of the candidates, mentioned in Para 6 of Board's letter No. 99/E (RRB)/25/2 dated 18.3.1999 (Bahri's 56/1999, P. 46) will be applicable.

7.10. Panel shall be formed by the Deputy Chief Personnel Officer (Recruitment) for the entire Zonal Railway on the basis of merit of the candidates in the Written Test and their qualifying the PET and Medical Examination. Thereafter, the Deputy Chief Personnel Officer (Recruitment) shall allot each successful candidate the Division/Unit after taking into account his merit position and preference of Division/Unit etc.

7.11. Currency of the panel shall be for a period of two years from the date of publication. General Manager may extend the life of the panel by one year in case of administrative exigencies."

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On the basis of the above, it has been submitted that the selection consist of written test followed by PET and medical examination. The written test shall be on the basis of multiple choices of objective type questions and answer scripts shall be readable on Optical Mark Reader (OMR). The result of Written Examination will be declared on the basis of evaluation. The minimum pass marks will be 40% for General candidates, 30% for SC/ST and OBC candidates. The candidates to the extent of 10 (ten) times the number of vacancies in order of merit out of those who have obtained the prescribed minimum pass marks in the written test will be called for being subjected to PET which is a qualifying test. After PET, candidates will be called for medical examination. Medical Examination of the candidates who have passed the written examination and PET is done before their empanelment and only those who have passed the medical examination is included in the final merit list. There is no provision for interview. It has been stated that whatever has been done it has been done strictly in accordance with the Rules, and there being no illegality in the matter of conducting the selection, these Original Applications are liable to be dismissed.

6. We have heard the learned counsel for both sides and perused the records.

7. In these Bunch of cases, the applicants applied against the Employment Notice No. 0112 issued by the Eastern Railway for filling up of vacancies in Group D categories. All the applicants appeared at the examination. They qualified in the written test and were also called for PET qualifying test and verification of documents. But medical examination was not conducted but some other candidates who qualified in the written test and PET were called for medical examination. Alleging that without publishing the select list the respondents issued appointment letters to some of the candidates on pick and chose basis different OAs were filed which were disposed of on 26.2.2015. The full text of the order dated 25.6.2015 in OA Nos. 350/00154/2015 and others are extracted hereunder for ready reference:

"Since the facts pleaded are identical and identical issues are raised, they are taken up for hearing analogously with the consent of the parties. OA No. 154 of 2015 is delineated for the sake of brevity. MA. 252/2015 stands allowed.

This application has been filed seeking a direction upon the respondents to hold necessary medical test and also examination of documents and to effect the process of recruitment from the very point up to which it was completed, publication of merit list after completion of Physical Endurance Test (PET) in accordance with the notification dated 16.8.12 and restraining the respondents from taking any steps till medical test of the applicants are completed.

2. The admitted facts are that the applicants 8 (eight) in number had applied against an Employment Notification No. 0112 issued on 16.8.12 by RRC, Eastern Railway, Kolkata. Having cleared the written test they were called for PET. It is the contention of the

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Ld. counsel for the applicants that in terms of the laid down procedure for filling up of the posts as advertised through RRC after written test and PET, all the candidates are sent for medical examination where after a final panel is published and from that final panel appointment orders are issued whereas the respondents have without publishing the final panel issued appointment letters to some candidates. It has been contended that the appellant who have come out successful in the written examination followed by PET have not been called for medical test and the respondents without publishing the merit list are adopting a pick and choose method for calling the candidates for medical test.

3. During the course of hearing of this matter on 16.2.15 it was appointed out by the Id. counsel for the applicant that the number of candidates sent for medical examination is more than the number of candidates who had qualified in the PET. As such clarifications were called from the respondents. Further respondents were restrained from sending any candidate for medical examination till the clarifications were received by way of supplementary affidavit.

4. Ms. Mahua Sarkar, Chief Staff & Welfare Inspector is present on behalf of the Respondents. She has adequately justified the variance in the number of candidates sent for medical examination and declared fit for empanelment and we are satisfied in regard to such submission. However, we note that the respondents authorities have not published any final merit list prior to dispatch of appointment letters to the selected candidates. They could not complete medical examination of the candidates due to the stay order.

5. In answer to our queries the said office of the respondents has submitted that the provisional part panel has been published in terms of the merits of the candidates. Since a huge number of candidates had applied in the selection, the scrutiny and the documents verification of all such candidates is time consuming. However, she agrees that before dispatching any further appointment letter the respondents shall first publish a final panel of selected candidates after conclusion of medical examination of the candidates who have cleared the PET.

6. Ld. counsel for the applicants also submitted at the Bar that they have no objection if such a course is adopted by the respondents i.e. issuing appointment orders after publication of a final merit list/panel of the selected candidates.

7. In such view of the matter and for the ends of justice the stay in regard to sending the candidates for medical examination is vacated. The present OA as well as the connected OA are disposed of with a direction upon the respondents to publish the final merit list or final panel out of Employment Notification 0112 after holding medical examination of the candidates who have cleared upto PT



and only thereafter issue appointment orders to the empanelled candidates.

8. The OAs are accordingly disposed of. No order as to costs."

(Emphasis supplied)

8. Alleging inaction on the matter of conducting the medical examination, in pursuance of the direction of this Tribunal in the cases referred to above, the applicants have filed the instant Original Applications, virtually with prayer for implementation of the earlier order of this Tribunal, referred to above. An interim order was passed by this Tribunal on 14<sup>th</sup> October, 2015 staying implementation of the final list. Challenging the interim order, some of the selected candidates approached the Hon'ble High Court of Calcutta by filing WPCT No. 12 of 2016. Also WPCT No. 224 of 2015 and WPCT No. 225 of 2015 were filed by the Railways challenging the interim order dated 14<sup>th</sup> October, 2016 of this Tribunal. All those Writ Petitions were disposed of by a common order dated 21.01.2016 and direction was issued to this Tribunal to decide the vacation of stay application moved by the Writ Petitioners before the Tribunal. It is to be noted that the Writ Petitioners have also filed Misc. Application No.502/2015. In pursuance of the order passed by the Hon'ble High Court of Calcutta. The interim order was modified on 17.03.2016 after hearing the parties on the stay vacation application by the Tribunal, relevant portion of which is quoted herein below for ready reference:

"Hence without going further into the merit of the matter, we confine ourselves as to whether the order dated 14<sup>th</sup> October, 2015 should be vacated/modified on the basis of the discussions made herein above, we are of the view that the order dated 14.10.2015 requires modification. Consequently, we modify the interim order dated 14<sup>th</sup> October, 2015 in the following manner:

- (a) The Petitioners, the applicants in OA No.1680 of 2015 are directed to implead the present applicants in the MA as private respondents in the OA by moving an application within a period of 10(ten) days from the date of this order;
- (b) Since the offers of appointments were issued to the present applicants in the MA prior to the issuance of the interim order dated 14<sup>th</sup> October, 2015 the Railway Respondents ought not to have withheld their joining on the pretext of the interim order dated 14<sup>th</sup> October, 2015. Be that as it may, the Railway Respondents are directed if they are otherwise entitled to join the service in pursuance of the offers of appointment issued to them prior to passing the impugned order they shall be permitted to join.

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(c) However, to safeguard the interest of the Applicants we made it clear that anything happened during the pendency of the OA No.1680 of 2015 shall be subject to final outcome in the aforesaid OA.

14. Last but not the least, we would like to observe that all other points which have been raised in the MA as well as during the course of the arguments and have not been discussed in the order will be considered while deciding the Original Application No.1680 of 2015.

15. MA No.350/00502/2015 is accordingly disposed of. No costs."

9. The Private Respondents were also impleaded as Respondent Nos.7 onwards. However, during the pendency of this OA, application for impleadment was moved by successful candidates. They were also impleaded as Respondent Nos.7 to 175 in this OA. But no reply has been filed by any of the private Respondents and in course of hearing the learned counsel appearing for them has submitted that the private respondents will rely upon the reply filed by the Railway and the stand taken in the Miscellaneous Application seeking for vacation of the interim order.

10. The scheme shows that the merit is prepared on the basis of written examination and all candidates who qualified in the PET also are not necessarily be called for medical examination because candidates are called in order of merit for medical examination. If the number if equal to the vacancies is fulfilled it would not be necessary to call for other candidates for medical test who have even qualified in the PET. The Respondents, in this regard have categorically stated that candidates who obtained the prescribed marks in the written test are called for PET as per the merit in the ratio 1:3 of notified vacancies which is followed by documentary verification. The PET is of qualifying in nature and is followed by document verification and the candidates to a limited extent in the ratio 1:1 as per merit are sent for medical examination of relevant standard. It has been stated that they have not ever violated the order of the Tribunal. It has been stated that the applicants of the instant OA have failed to come in the zone of consideration as per merit against EN No.0112 and in this regard, the respondents have furnished a list showing the details of the candidates applied, appeared and got qualified which is extracted herein below for ready reference:-

1	Total vacancies advertised in Emp Notice No.0112	5847
2	Candidates appeared for written examination	5,87,448
3	Candidates qualified in written examination	50,850
4	As per Rules if vacancies notified are more than 1,500 candidates to be called for Physical	16,950

	Endurance Test(PET) 3 times the vacancies advertised (called for PET in order of marks obtained in written examination)	
5	Candidates qualified in PET	13,636
6	Candidates sent for medical examination from among the candidates qualified in PET (again on the basis of initial order of merit as per written examination)	5,938
7	Duly qualified candidates against Emp Notice No.0112(Panel finally published 26.9.2015 on the web site)	5709
8	The short fall of 138(5,847-5,709) was to be filled up by PWD (Persons with Disabilities) as per Supreme Court Jt. (Present applicants are not PWDs)	

11. The Applicants have also challenged the process of Recruitment that as per the information obtained under RTI Act, 2005, candidates were given mark more than 100 which is not possible/feasible and as such there was irregularity in evaluating the answer scripts. A challenge has also been made that 3573 candidates in the OBC category and 2372 in the SC category qualified in the written test whereas 3732 in OBC category and 2732 in SC category candidates were called for PET which is more than the candidates qualified in the written test and as such there was no fairness in the selection. All these things have been replied by the respondents in paragraphs 14,15 and 16 of the reply filed by them which are quoted herein below for ready reference:

"14. That with regard to the statements made in paragraph 4m.i of the said application it is stated that the total nos of questions in any Question Booklet is 100 in any of the set of Question Booklet pertaining to E.N. No.0112 and the total marks is 100. The explanation regarding score of above 100 out of total 100 marks is as follows:

Normalization is a statistical tool to equate/judge the merit position/standard of the participating candidates in the Written Examination in different shifts of examination with different sets of Question Booklet for the same post against one notification. There is a statically established formula being used universally and in Indian Railways since the examinations are conducted in more than one shift/days batches in all RRB's and all RRCs are following the same formula to determine the merit position of the candidates as a whole.

Candidates are getting the benefits of the normalization with respect to other candidates who have appeared in other shifts.

By virtue of normalization, no candidate can have any claim regarding the difficult and easier question sets of corresponding shifts and

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the merit of all the candidates appeared in the examination are judge without any doubt.

The above decision was taken in full Board meeting at Railway Board.

Further it is mentioned that 0.33 marks is deducted for every wrong answer from the raw score of the candidate before normalization. So for every three (03) wrong answer one (01) mark is deducted. So, the question raised stands invalid.

15. That with regard to the statements made in paragraph 4.m.iii of the said application it is stated that the directive of Railway Board the date of examination for alphabetic group of candidates of "S" & "1" was on 17.11.2013 and for "M" & "T" was on 27.10.2013. Due to typographical error the name of "TUMPA" was printed as "IUMPA". As there was no fault of the candidate, she was considered and allowed to give her written examination 17.11.2013 by invigilators. The same was corrected after written examination. Allegation is strongly denied."

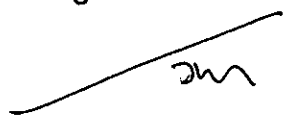
12. It is to be noted that this Tribunal while deciding the Original Application No. 154 of 2015, cited supra, in paragraphs 4 & 5 discussed the matter in great detail in which the Tribunal expressed his satisfaction on the reply submitted by the Respondents in this regard.

13. So far as the controversies raised with regard to written examination and variance of the candidates called for PET test are concerned, this Tribunal in earlier occasion already recorded its satisfaction with regard to those questions and discussions made in paragraphs 4 and 5 of the aforesaid order rendered by this Tribunal earlier is relevant and needs no reiteration/repetition.

Moreover, the reply submitted by the Respondents in this regard in paragraphs 14, 15 and 16 quoted herein above, makes it abundantly clear that there was no irregularity at all in conducting the written test and declaration of the result and preparation of final list of successful candidates for appointment. Further paragraph 7 of the earlier judgment is very important and at the risk of repetition the same is re-produced herein below:

"7. In such view of the matter and for the ends of justice the stay in regard to sending the candidates for medical examination is vacated. The present OA as well as the connected OA are disposed of with a direction upon the respondents to publish the final merit list or final panel out of Employment Notification 0112 after holding medical examination of the candidates who have clerked upto PT and only thereafter issue appointment orders to the empanelled candidates."

(ii) There is a clear mandate in the earlier order that the Respondents to publish the final merit list or final panel out of Employment Notification No.0112 after holding medical examination





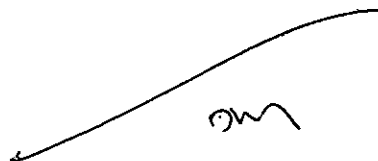
of the candidates who have cleared upto PET and only thereafter issue appointment orders to the empanelled candidates. In this regard the discussions made in paragraphs 5 & 6 of the earlier order cannot be ignored wherein the respondents have stated before the Tribunal that as the large number of candidates had applied for the selection, the scrutiny and the documents verification of all such candidates is time consuming. However, the respondents agreed that before despatching any further appointment letter the respondents shall first publish a final panel of selected candidates after conclusion of medical examination of the candidates who have cleared the PET. The learned counsel for the applicants had also made a supine submission at bar before the earlier bench of the Tribunal that they have no objection if such a course is adopted by the Respondents. It is crystal clear that candidates who have qualified in the written test are large in number and out of which certain percentage considering the number of vacancies sent for PET. The outcome of the candidates who qualified in the PET were considered for further process of medical examination considering the number of vacancies. In such a manner every candidate who qualified in the PET is not necessarily be called for medical test and if the number of vacancies and number of suitable candidates after medical examination are available there is no further need of the medical test of the remaining candidates who qualified in the PET.

15. There is no grievance of the applicants that the medical test was done by the respondents not in accordance with the merit position secured by the candidates in the written test nor they named any candidates who although secured less mark in the written test in comparison to the applicants was called for the medical test ignoring the merit. In such a view of the matter we are of the view that the orders passed by this Tribunal has not been violated by the respondents rather the orders have been strictly complied with by the Respondents. It is also clear that the final panel was also published before filing the OAs. Hence, if we direct the Respondents to get the medical test of the applicants done this will be a futile exercise because they did not have secured such mark in the written test so as to be accommodated within the vacancies notified and filled up by the Respondents. Therefore, their medical examination not at all necessary and once the direction has been complied with by the Respondents by preparing the final merit list in terms of the process of recruitment by following the Rules, we do not find any illegality in publishing the final list.

16. All the OAs, MAs and CPC sans merit and are accordingly dismissed. No costs.

(Ms. Jaya Das Gupta)  
Administrative Member

(Justice V.C. Gupta)  
Judicial Member"



(C) Hence, we see that it is not necessary that all the applicants who have *successfully cleared the written test, PET and documents verification* should be called for medical examination before the final panel is published. Depending on the vacancies, part by part, medical examination should be done for those candidates, **as per merit**, who have successfully cleared the written examination, PET and document verification i.e. the publishing of names of successful candidates in part panels as has been done by the Eastern Railways, referred to our orders in O.A.No.1680/2015 supra.

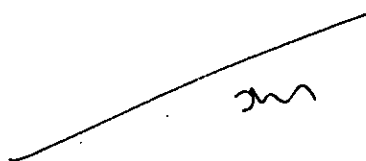
4. From M.A.307/2016 filed by the respondent authorities, arising out of O.A.895/2015[Sunil Kumar Vs. RRC] it appears that Sri Gyani Prasad has cleared successfully the written examination, PET, documents verification, medical examination and also has been empanelled. The following details regarding vacancies as per notification No.SER/RRC/02/2012 also emanate from M.A.307/2016 filed by the respondent authorities:-

Total vacancies notified	2461
No. of candidates applied	407780
No. of candidates appeared at the written examination	131179
No. of candidates called for PET @ 3 times of notified vacancies	6899
No. of candidates qualified in PET	5088
No. of candidates short listed for document verification @ 1.2 times of notified vacancies	2952
No. of candidates sent for medical examination	2196
No. of candidates declared fit	2169
No. of candidates empanelled so far	1935
No. of candidates appointed so far	1555

5. Therefore 906 vacancies remain to be filled up. Mr. S. Banerjee, Id. counsel for the respondent authorities submitted at the bar that even though Sri Gyani Prasad has been empanelled, he could not be given appointment as they are confused with the order passed by this C.A.T. in O.A.No.895/2015. **The case of Gyani Prasad is different from the case of the applicant in O.A.895/2015(Sri Sunil Kumar vs. Union of India & Ors.) because Gyani Prasad successfully completed the medical test while Sri Sunil Kumar has not been called for the medical test.** Therefore, the case of Gyani Prasad and of such similarly situated candidates against the 2012 notification of S.E. Railway, who have cleared on merit the written test, PET and document verification and also cleared the medical examination should be empanelled and given the appointment letters provided the vacancies still remain to be filled up against such notification of 2012 of the South Eastern Railways.

6. Against our order dated 06.10.2016 given in O.A.No.1680 of 2015 three review petitions were filed on 22.11.2016. Such review petitions have been dismissed on the ground that the review petitions were not maintainable in view of the fact that they have been filed beyond the period of limitation and in view of the judgment rendered by the Full Bench of Andhra Pradesh High Court in case of **G.Narasimha Rao vs Regional Joint Director of School Education, Warrangal & Ors, 2005 (4) SLR 720** and also on the merits of the case as **no interference was warranted in the Review Petition.** Hence, such order given in O.A.No.1680/2015 dated 06.10.2016 has reached its finality.

7. As per our direction, the relief portion was amended only in the case of O.A.1007/2016 (Ganesh Kamat vs. Union of India & Others) through M.A.110 of 2017 to the effect that "An order do issue directing the respondents to



grant appointment to the applicant in the 3<sup>rd</sup> part panel of 373 non PH Candidates published by Railway Recruitment Cell, South Eastern Railway vide notification no.SER/RRC/02/2012 dated 29.09.2012." With the consent of the Id. counsel for both sides, this amended relief has been considered in the case of Gyani Prasad (O.A.350/1792/2015) and Sunil Kumar (O.A.350/895/2015). It may be recollected that the medical examination of Sri Sunil Kumar was not completed as it appears from the record of O.A.895 of 2015.

8. Accordingly it is directed that all those applicants against Employment Notice No. SER/RRC/02/2012, who are on the same footing as Gyani Prasad, i.e. successfully passed in the written test, PET, document verification as also medical test and empanelled on merit ( may be in part panels ), should be appointed against still remaining vacancies against such employment notice No. SER/RRC/02/2012. If the last part panel is exhausted and vacancies <sup>still remain</sup> shall remain to be filled, medical examination of such candidates who are eligible as per merit should be carried out and those who are successful in medical test should be empanelled as per rules and given appointments against Group 'D'posts. The above exercise should be endeavoured to be completed within three months of the date of receipt of a certified copy of this order as we are in the year 2017 and the Employment Notice pertains to 2012.

9. The O.A. is accordingly disposed of. No cost.

17  
(Jaya Das Gupta)  
Administrative Member

(A.K. Patnaik)  
Judicial Member