

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

Date of Order: 29/8/18

Present: Hon'ble Mrs. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. O.A. No. 350/00583/2016 :-

1. P. Satish Kumar, son of Late P.V. Rao, aged about 32 years, residing at near Mamamre, P/274, Post Office – Adra, District – Purulia, Pincode – 723121.
2. Balaji Yadav, son of Nageshwar Yadav, aged about 26 years, residing at Village – Missionpara, Post Office – Adra, District – Purulia, Pincode – 723121.
3. B. Muri, son of B. Raja Rao, aged about 32 years, residing at Rly. Quarter No. 122, Post Office – Adra, District – Purulia, Pincode – 723121.
4. Rajesh Kumar, son of Ram Sagar Rabidas, aged about 30 years, having address at BMC Rubber Chemical Pvt. Ltd., 103, G.T. Road West, Post Office – Rishra, District – Hooghly, Pincode – 712243.
5. Robi Sharma, son of Late Bindeswari Sharma, aged about 25 years, residing at C/o Bhagat Prasad Gope, Village – West Palaskola, Post Office – Adra, District – Purulia, Pincode – 723121.
6. Rathin Kumar Chattopadhyay, son of Sanat Kumar Chattopadhyay, aged about 26 years, Village – West Palaskola, Post Office – Adra, District – Purulia, Pincode – 723121.
7. Prasenjit Mukherjee, son of Nimai Mukherjee, aged about 28 years, residing at Rly. Quarter No. TY 12/F Engg Colony, Adra, Post Office – Adra, District – Purulia, Pincode – 723121.

8. Partha Chowdhury, son of Animesh Chowdhury, aged about 26 years, residing at Village – Chakalta, Post Office – Adra, District – Purulia, Pincode – 723121.
9. Bipur Singh Sardar, son of Radha Govind Singh Sardar, aged about 23 years, residing at Rly. Quarter No. A/32/B, Near Children Park, South Side, Adra, Post Office – Adra, District – Purulia, Pincode – 723121.
10. Panchanan Mahato, son of Siddheswar Mahato, aged about 32 years, residing at Village – Ketunga, Post Office and Police Station – Nimdih, District – Serai Kella Kharswan, Jharkhand, Pincode – 832401.
11. Pitambar Mahato, son of Late Kalipada Mahado, aged about 35 years, residing at Village – Ketunga, , Post Office and Police Station – Nimdih, District – Serai Kella Kharswan, Jharkhand, Pincode – 832401.
12. Ujjwal Bandyopadhyaya, son of Tarak Brahma Bandyopadhyaya, aged about 35 years, residing at Kankata, behind Lake View Lodge, Post Office – Kenduadihi, District – Bankura, Pincode – 83102.
13. Biswajit Dutta, son of Jinkary Dutta, aged about 35 years, residing at Village – Shyamapur, Post Office – Anara (R.S.), District – Purulia, Pincode – 723126.
14. P. Venkat, son of P. Ram Babu, aged about 30 years, residing at Rly. Quarter No. O/158/4Porterkholi, Chakradharpur, Post Office and Police Station – Chakradharpur, Dist – West Singhbhum, Jharkhand, Pincode – 833102.
15. Biswajit Majee, son of Mihir Kumar Majee, aged about 35 years, residing at Village – Bagatbari, Post Office – Joreberia via Anara (R.S.), District – Purulia, Pincode – 723126.
16. Ujjwal Mishra, son of Satyaranjan Mishra, aged about 33 years, residing at Village – Haraktore, Post Office – Udaypur, Police Station – Para, District – Purulia, Pincode – 723155.
17. Angshuman Banerjee, son of Late Kalipada Banerjee, aged about 36 years, residing at Post Office and Police Station – Para, District – Purulia, Pincode – 723155.



18. Rajib Chowbey, son of Lalan Chowbey, aged about 32 years, residing at Village – Anara New Colony, Quarter No. ELC/184/A, Post Office –Anara (R.S.), District – Purulia, Pincode – 723126.
19. P. Rajesh Rao, son of P. Venkat Rao, aged about 28 years, residing at C/o Bappa Rao, Anara New Colony, Quarter TY/T2 B, Post Office – Anara RS, Police Station – Para, District – Purulia, Pincode – 723126.
20. Jayanta Chakraborty, son of Sunil Chakrobarty, aged about 27 years, residing at Village and Post Office - Anara, District – Purulia, Pincode – 723126.
21. Biswanath Deoghoria, son of Sunil Kumar Deoghoria, aged about 25 years, residing at Village and Post Office - Anara, District – Purulia, Pincode – 723126.
22. Biman Mondal, son of Prahlad Mondal, aged about 25 years, residing at Village – Chinchuria, Post Office – Nuni, Police Station – Barabani, District – Burdwan, Pincode – 713341.
23. Arsad Ansary, son of Md. Sabir Ansary, aged about 30 years, residing at Village – Mubandih, Post Office – Jorberia, Police Station – Para, District – Purulia, Pincode – 723126.
24. Tarun Kumar Dubey, son of Amarnath Dubey, aged about 35 years, residing at Village and Post Office – Anara, District – Purulia, Pincode – 723126.

2. O.A. No. 350/00599/2016 :-

J. Kumar Rao, son of Late J.S. Rao, aged about 31 years, residing at Loco Shed Para Railway Colony, Quarter No. LT119/B, Post Office – Namo Para, District – Parulia, Pin Code No. 723103, West Bengal.

3. O.A. 350/00600/2016:-

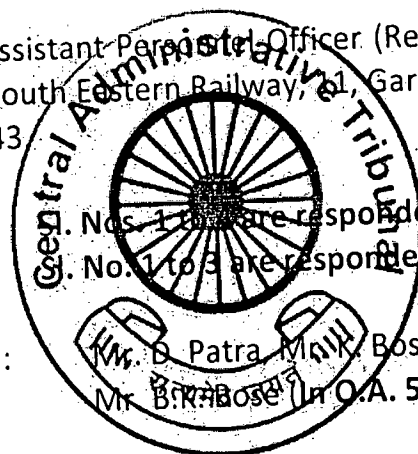
Tapas Kumar Chowni, S/o of Swapan Kumar Chowni, aged about 25 years, residing at Village and Post Office – Araldihi, P.S. – Indpur, District – Bankura, Pin Code – 722121, West Bengal.

4. O.A. 350/00601/2016:-

Uttam Kumar Das, son of Gouranga Sundar Das, aged about 32 years, residing at Village and Post Office – Hettyagarh, P.S. – Simlapal, District – Bankura, Pin Code – 722151, West Bengal.

-VS-

1. The Union of India, through the General Manager, South Eastern Railway 11,, Garden Reach Road, Kolkata – 700043.
2. Chairman (Rectt.), Railway Recruitment Cell, South Eastern Railway, 11, Garden Reach Road, Kolkata – 700043.
3. Chief Personnel Officer (Rectt.), Railway Recruitment Cell, South Eastern Railway, 11, Garden Reach Road, Kolkata – 700043.
4. The Assistant Personnel Officer (Rectt.), Railway Recruitment Cell, South Eastern Railway, 11, Garden Reach Road, Kolkata – 700043.



. Nos. 1 to 3 are respondents in O.A. No. 583/2018
 . No. 1 to 3 are respondents in the other 3 O.A.s

For the Applicant :

For the Applicants :

For the Respondents :

Mr. S.K. Dutta, Mr. A. Chakraborty
 & Ms. P. Mondal
 (In O.A. Nos. 599/2016, 600/2016 & 601/2016)

Mr. S.K. Dutta in all the O.A.s

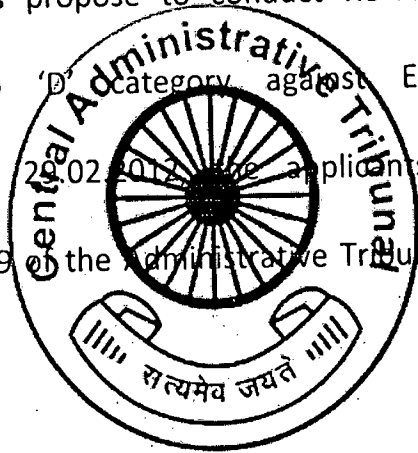
Mr. S. Banerjee, Ms. G. Roy & Mr. B.P. Manna
 (In all the O.A.s)

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ORDERPer Mrs. Manjula Das, Judicial Member:

Since identical facts are pleaded and issues are involved, the applications are taken up analogously for hearing with the consent of the parties. For the sake of brevity of application, facts are delineated and taken from O.A. No. 350/00599/2016.

2. Being aggrieved with the Speaking Order dated 18.03.2016 by which the Railway respondents propose to conduct Re-Test of 47 candidates for appointment in Group 'D' category against Employment Notice No. SER/RRC/02/2012 dated 29.02.2012, the applicants have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-



"8.(i) Office order date 18.03.2016 issued by Chairman, Railway Recruitment Cell, South Eastern Railway, cannot be tenable in the eye of law and therefore the same may be quashed.

(ii) An order do issue directing the respondents to recommend his name for appointment in group 'D' in South Eastern Railway since he was declared suitable for appointment and to grant all the consequential benefits."

3. The facts in a nut shell as per the learned counsel for the applicants are that all the applicants are eligible for being appointed to the Group 'D' category and in pursuance of the Employment Notice No. SER/RRC/02/2012 dated 29.02.2012, they applied for their candidature and thereafter on different

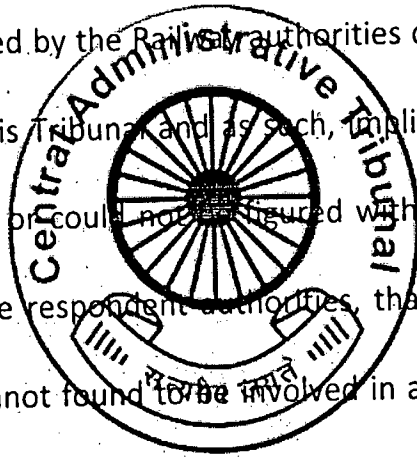
dates, the written examination was held on 27.10.2013, 24.11.2013 and 01.12.2013 where the applicants appeared and came out successful. Thereafter, they were called by the Railway Recruitment Cell for Physical Efficiency Test where they are declared fit for appointment. However, the Railway Recruitment Cell neither approved the list of successful candidates nor appointment letter was issued to them. Hence this O.A. has been filed by the applicants for redressal.

4. Heard Mr. D. Patra, Mr. K. Bose, Mr. A.K. Basu and Mr. B.K. Bose, learned counsel for the applicants in O.A. 583/2016, Mr. A. Chakraborty & Ms. P. Mondal, learned counsel for the applicants in O.A. Nos. 599/2016, 600/2016 & 601/2016 and Mr. S. Banerjee, Ms. G. Roy & Mr. B.R. Manna, learned counsel for the respondents in all the for O.A.s.

5. The learned counsel for the applicants submits that earlier the applicants approached this Tribunal vide O.A. No. 350/01476/2015 where this Tribunal vide order dated 21.09.2015 disposed of the said O.A. by directing the respondents to give a detailed reply individually to those applicants in this regard after scrutinizing their cases within a period of three months from the date of receipt of the copy of the said order.

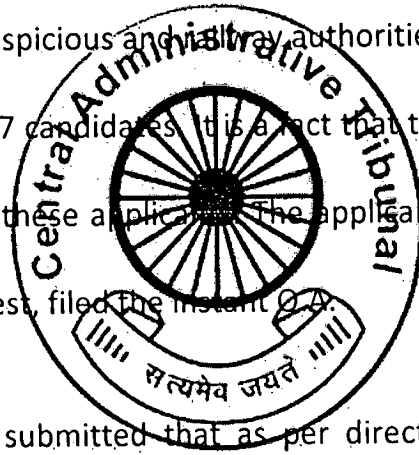
6. The learned counsel submits that in compliance with the said order dated 21.09.2015, the respondent No. 2 passed the impugned speaking order dated 18.03.2016 wherefrom it appears that the Railway proposes to conduct Re-Test of these 47 candidates in view of the judgment of Hon'ble Supreme Court of

India in Civil Appeal No. 5675-5677 of 2007, dated 06.05.2010, in the case of K. Shyam Kumar & Ors. Vs. Chairman, All India Railway Recruitment Board & Ant. and according to learned counsel, said decision of Hon'ble Apex Court is not applicable in the present case. As such, impugned Speaking Order dated 18.03.2016 suffers from non-application of mind inasmuch as the applicants were never been implicated in any proceedings of Railway's Vigilance Department and with regard to the raid, which conducted by Railway's Vigilance Department was for other candidates as the applicants' written examination was completed earlier. Other more, no report or conclusive finalized from the Railway Vigilance Department was submitted by the Railway authorities during proceedings of O.A. No. 1476/2015 before this Tribunal and as such, implication of the name of the applicants should not be or could not be figured with this 47 candidates. If any enquiry was made by the respondent authorities, that was an ex parte and for those, the applicants cannot found to be involved in any malpractice. Applicants names never been appeared either in FIR or proceedings of Vigilance and the documents contained in details of Roll Numbers are not in the list of FIR.



7. By countering the argument advanced by learned counsel for the applicants, the learned counsel for the railways/respondents Mr. B.P. Manna submitted that while conducting the Pre-Examination Checks, the Vigilance Department of the Railways, had conducted a raid in a lodge near Santragachi Railway Station, during the course of investigation it was found that the list of names of candidates recovered from the raid, 47 candidates have finally managed

to qualify in the written examination. The result of these 47 candidates was withheld as decided by the competent authority. Vigilance Investigation has now been completed. Vigilance Department has directed RRC-SER to take appropriate action against these 47 candidates. The applicants earlier filed an O.A. being registered as O.A. No. 350/1435/2015 with the prayer for preparation and publishing the results. This Tribunal, as per its order dated 21.09.2015, directed ^{he} upon the respondents to finalize the scrutiny^y and ^{to} shall give a detailed reply individually. According to Mr. Manna, as per direction of this Tribunal, the authorities passed a Speaking Order dated 18.03.2016 stating that all 47 candidates were found suspicious and ^{by} authorities decided to conduct a re-test of these suspicious 47 candidates. It is a fact that the authorities did not take any harsh action against these applicants. The applicants being aggrieved by the order for decision of re-test, filed the instant O.A.



8. Mr. Manna submitted that as per directions of this Tribunal, the Original Vigilance Record has already been submitted in sealed cover for adjudication. The Hon'ble Apex Court has held that persons who appeared and were successful in the examination, have no right claiming ^{he} for appointment. Out of lakhs of candidates only 47 persons were suspected and detected due to some elementary evidence.

9. ^{he} The category ^{ical} stand taken by the respondents in their written notes of argument that out of 47 suspected candidates, 2 applicants filed a W.P.C.T. application before the Hon'ble High Court, Calcutta where the Hon'ble High Court

passed an order dated 27.04.2016 holding that "Railway administration has decided to hold a re-test for these 47 candidates including the petitioner, in the circumstances we do not see any reason to interfere with the impugned order." According to Mr. Manna, when the issue involved in this case has already been adjudicated by the Hon'ble High Court, nothing remains in the present O.A. for adjudication and the same is liable to be dismissed.

10. In reply to the submission advanced by Mr. B.P. Manna, learned counsel for the respondents, Mr. S.K. Dutta, learned counsel for the applicants submitted that the factual aspects of the present case are not similar to the referred case of K. Shyam Kumar of Hon'ble Supreme Court passed in **Civil Appeal No. 5675 of 2007** and no connection with the present case of the applicants and it is not only distinguishable with the facts and circumstances of the present case of the applicants herein but also with the procedural facts such as Departmental proceedings, Enquiry by CBI authority, protection of the Natural Justice by supplying of Enquiry Report to the applicants to deal before come to any conclusion. By distinguishing the case of **K. Shyam Kumar (supra)**, Mr. Dutta submitted that in the present case of the applicants, it was never appeared from any of the documents and/or reports also from the said impugned order that the applicants are ^{possessing} obtaining minimum qualification. In the present case of the applicants, final select list was already published and appointment has been given to the empanelled candidates. Present applicants have been declared successful



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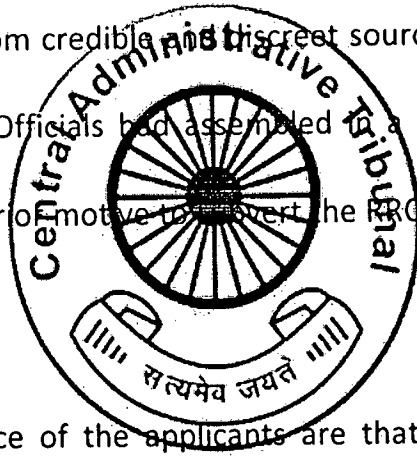
and final list of successful candidates had already been published by the concerned authority.

11. Mr. Dutta further submitted that in the present case of the applicants, it was never put forward^{by} by the Railway Authority that the matter was ever referred to the CBI as defined in the Indian Railway Vigilance Manual, 2006 or Central Vigilance Manual though the concerned Railway Authority through the said impugned order, trying to establish their stands of re-test because of allegations of mass copying, leakage of question papers despite there is no conclusive evidence against the applicants. As the RRC examination pertaining to these seized question papers was already over much before Vigilance raid, their presence on Vigilance site cannot be considered as direct proof of question paper leakage. However, the fact of their presence when put together with confession of Sri J.P. Gupta, it strongly points towards criminal conspiracy on the part of Sri J.P. Gupta and Ors. The respondent authorities have victimized the applicants without any enquiry till date against the applicants by any independent authority like CBI as per provisions of the Indian Railways Vigilance Manual, 2006 and without corroborating the J.P. Gupta's confession as alleged, arbitrarily made the conclusion as drawn in Report.

12. We have heard the learned counsel for both sides. Perused the pleadings and the decisions relied upon. The Railway Recruitment Cell, South Eastern Railway, vide Employment Notice No. SER/RRC/02/2012 dated 29.09.2012 invited applications from eligible candidates for recruitment to

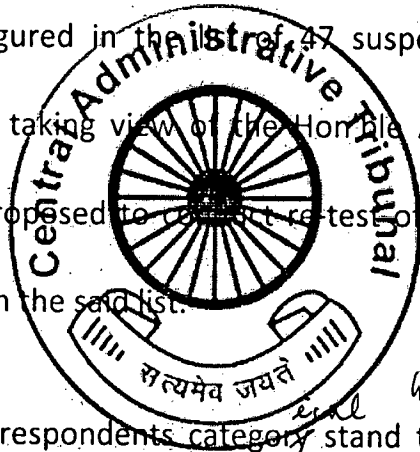


erstwhile Group 'D' category in South Eastern Railway. A total number of 1,31,179 applications were found provisionally eligible as against 6,74,341 applications submitted by candidates in response to the said notification. Written test of which was held in 5 phases i.e. on 27.10.2013, 17.11.2013, 24.11.2013, 01.11.2013 and 08.12.2013. 6899 candidates out of 1,31,179 candidates were qualified in the written test, the pass percentage of which is merely 5%. The present applicants who were appeared in the written test was declared suitable were called to appear in connection with PET. They were declared successful in the PET. Medical test was also conducted and declared fit in the medical test. On receipt of information from credible and discreet source that a group of persons including some Railway Officials had assembled at a lodge near Santragachi of Howrah District with ulterior motive to subvert the PET examination scheduled to be held on 08.12.2013.



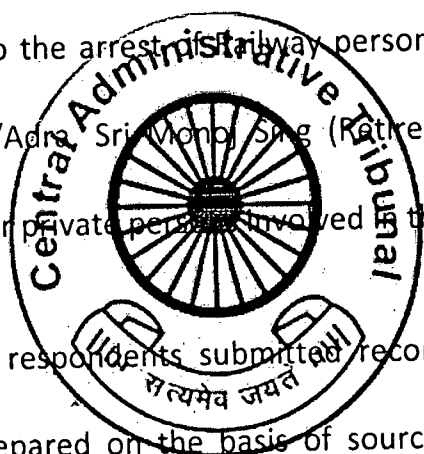
13. The grievance of the applicants are that the total vacancies were 2461 out of which only 1506+49 vacancies were filled up. A part panel was published twice. Although the applicants were declared successful but they have not been empanelled. Being aggrieved, present applicants along with other filed an O.A. No. 350/01433/2015 and O.A. 350/01476/2015 praying for a direction to publication ^{of the} panel and offer appointment to the applicants and others strictly in accordance with their order of merit, provided in the vacancy notice of 2012. This Tribunal vide common order dated 21.09.2015 disposed of the said O.A. with a direction to the Railway Administration to give a detailed reply individually to

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Ans shoes applicants in this regard after scrutinizing their cases within a period of three months from the date of receipt of the copy of the order. Thereafter, the respondent authority vide impugned Speaking order dated 18.03.2016 informed the individual that a raid was conducted by this Railway's Vigilance Department in the night of 06/07.12.2013, in which documents containing a list of several names and roll numbers of many candidates were recovered. During the raid conducted and on further investigation by the Vigilance Department, it was found that, from the list of candidates recovered during the vigilance raid, 47 candidates have finally qualified in the Written Test, followed by PET and Document verification. The applicants' name figured in the list of 47 suspected candidates and the respondent authority by taking view of the Hon'ble Apex Court decision of **K. Shyam Kumar (Supra)** proposed to conduct re-test of 47 candidates where the individuals were figured in the said list.



14. The railway respondents *Ans* stand that while conducting the Pre-Examination Checks, the Vigilance Department of the Railways, had conducted a raid in a lodge near Santragachi Railway Station in which documents containing several names and roll numbers of candidates involved in the Employment Notice No. SER/RRC/02/2012 dated 29.09.2012 were recovered from one of the serving Railway servant^s. During the course of the investigation, it was found that from the list of name of candidates recovered from the raid, 47 candidates have finally managed to qualify in the written examination. Accordingly, the result of these 47 candidates were withheld as decided by the

competent authority. Vigilance department of the Railway has now intimated that the said vigilance investigation has ^{been} now completed in all respect at the Zonal Railway level and the same has been sent to Railway Board with GM's comments. The appropriate Vigilance authority has directed RRC-SER to take appropriate action against these 47 candidates. Vigilance department has suggested for taking necessary action against these 47 candidates citing a judgment issued by Hon'ble Apex Court vide Civil Appeal No. 5675-5677 of 2007 dated 06.05.2010 wherein Railway's proposal for conducting re-test for these 47 candidates is awaited from Railway Board. The raid was followed by lodging of FIR with the Domjur P.S. of West Bengal which led to the arrest of railway personnel, Sri Jagmohan Prasad Gupta, Loco Pilot/Anara/Adra Sri Monoj Singh (Retired Railway Guard of Adra Division) and certain other private persons involved in the racket.



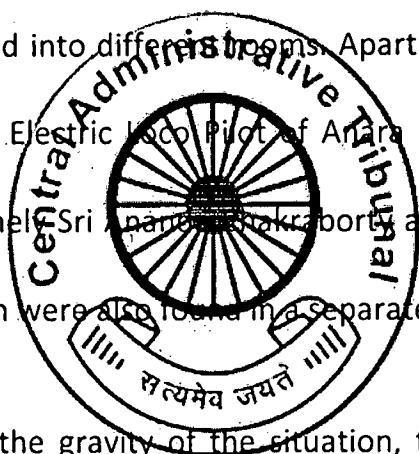
15. The railway respondents submitted records. It contains the 'Final Investigation Report' prepared on the basis of source of information received from a credible and discreet source that a group of persons including some railway officials had assembled in a lodge near Santragachi in Howrah District with ulterior motive to subvert the RRC examination scheduled to be held on 08.12.2013 among prospective candidates. Written test for recruitment of Group 'D' under Railway Recruitment Notice No. SER/RRC/02/2012 dated 29.09.2012 was held in 5 phases i.e. on 27.10.2013, 17.11.2013, 24.11.2013, 01.11.2013 and 08.12.2013. 6899 candidates out of 1,31,179 candidates were qualified in the written test, the pass percentage of which is merely 5%.

16. From the report, it reveals that one of the Chief Vigilance Inspector was instructed to travel by Down Rupasi Bangla Express (12884 Dn) on 06.12.2013 to identify and follow one of the suspected racketeer namely Sri Monoj Singh who was travelling by the same train and coming to Santragachi. The Chief Vigilance Inspector identified Sri Monoj Singh with the help of the source informer at Kharagpur Railway Station and followed him till Santragachi. Sri Monoj Singh got down at Santragachi Railway Station at 21:30 hrs, moved around the locality in a meandering manner and ultimately entered into Welcome Lodge situated outside Santragachi Railway Station. The Chief Vigilance Inspector also followed him up to Welcome lodge. The Chief Vigilance Inspector kept relaying information to other team members who remained in background and were keeping eye on candidates who were supposed to arrive at Santragachi. At 01.30 hrs on 07.12.2013 i.e. at the dead of night, a raid was conducted at Welcome Lodge with the assistance of RPF personnel of Santragachi and local Police from Jagachha Police Station. During raid, it was found that those young men who were loitering in small groups in the outskirts of SRC Railway station near the car parking area had actually checked into the Lodge. Chief Vigilance Inspector learned from them that they were actually the examinees of RRC for the next day's RRC examination i.e. on 08.12.2013.

17. Report further reveals that during the raid, it was further found that those candidates had huddled into two rooms of the said Welcome Lodge at Santragachi, Howrah. One of the suspects, namely Sri Monoj Singh, a retired



Railway Guard of Adra Division was found to be staying in a separate room in the same lodge. Since Sri Monoj Singh who was a retired railway employee, SER Vigilance immediately took his statement wherein he admitted that he knew Sri Jagmohan Prasad Gupta, Loco Pilot/Anara/Adra. On verbal examination of the assembled candidates at Welcome lodge, it came to the notice of the vigilance team that Sri Jagmohan Prasad Gupta, Loco Pilot/Anara/Adra, who was playing a vital role in the leakage of answers to RRC question paper was staying in A1 Plaza, another lodge situated nearby. It was also found during vigilance raid at A-1 Plaza that about 70 candidates who would be appearing in the next day's RRC Examination were huddled into different rooms. Apart from these candidates Sri Jagmohan Prasad Gupta, Electric Loco Pilot of Anara of Adra Division with two non-Railway persons namely Sri Anand Chakraborty and Sri Deepak Kumar who were acting as middlemen were also found in a separate room.



18. Considering the gravity of the situation, the raiding vigilance team contacted the Control Room monitoring the situation from HQ for reinforcement. Responding to the request received from the first raiding vigilance team, another vigilance team comprising of two Vigilance Officers and three Chief Vigilance Inspectors also rushed to the spot and reached A1 Plaza of Santragachi, Howrah at around 4.30 hrs on 07.12.2013 and following items were recovered from possession of suspects:-

- (i) Vigilance team recovered cash worth of Rs. 4,93,380/- (Rupees Four Lakh ninety three thousand three hundred eighty only);
- (ii) 78 mobile phones of different make;

- (iii) One Digital Tablet;
- (iv) HP three in one – 1510 printer-scanner-copiers;
- (v) Photocopies of purported answers to questions;
- (vi) Several ATM cards;
- (vii) 36 nos. of original mark-sheets/certificates of different "State Secondary Board of Examination";
- (viii) 59 Nos. of original Admit cards of RRC examination;
- (ix) Complete Tool Kit of Loco Driver including Detonators, Tri colour torch, Flag etc;
- (x) Service particulars of Sri J.P. Gupta, ELP/Anara, Staff No. 095652;
- (xi) One Card reader;
- (xii) Railway Identity Card of Sri J.P. Gupta;
- (xiii) One Data Card;
- (xiv) Four nos. of mobile Sim card;
- (xv) EPIC of Sri J.P. Gupta
- (xvi) Driving license of Sri J.P. Gupta;
- (xvii) One Railway privilege Pass No. 110818;
- (xviii) Documents containing details of Roll numbers and Names of Various RRC candidates who have appeared in the previously held RRC examinations.

In addition to the above, two question booklets of previous day's examinations along with its hand written answer of the questions recovered from the site during the course of vigilance raid at A1 plaza. As the RRC examination pertaining to these seized question papers was already over much before Vigilance raid, their presence on Vigilance site cannot be considered as direct proof of question paper leakage. However, the fact of their presence when put together with confession of Sri J.P. Gupta, it strongly points towards criminal conspiracy on the part of Sri J.P. Gupta and others.

19. Thereafter, Vigilance Investigation came into a conclusion as here under:-

8.0 CONCLUSION:

8.1 From the analysis of seized documents/records/evidences and clarification of involved officials and private persons found in the Vigilance raid, the irregularities outlined at para 3.1.1. to 3.1.4 stands proven. In accordance with role and responsibility

enumerated in para 7, the culpability of following officials for committing aforesaid irregularities.

1. Sri Jagmohan Prasad Gupta, Electric Loco Pilot/ANR
2. G. Haranath, Trackman under SSE/PWAY/PRR.
3. Sri K. Babu Rao, Tech. Gr. I under SSE/Wagon Repair Shop/ADRA. It is also concluded that role of following officials needs to be re examined when the Police of West Bengal finalize the investigation into alleged irregularity brought to their notice vide FIR No. 450/13 Dt. 11.12.2013, which was lodged by SER vigilance after raid at Welcome lodge and A 1 Plaza at Santragachi.

1. Sri Monoj Singh, Retd. Mail/Express Guard/Adra.
2. Manoj Kumar Gupta, Helper under SSE/S&T/Burnpur/Adra.

8.2 The irregularities enumerated at Para 3.2.1, 3.2.2 & 3.2.3 could not be sustained. As regards the information highlighted by complainant enumerated at Para 3.2.4, it is found that 47 candidates from the list of candidates recovered from possession of Sri J.P. Gupta at the time of the vigilance raid were found to have qualified the written examination and PET Examination. CPO/SER has been provided with the details of these suspicious 47 candidates and final result of these suspicious 47 candidates is still kept withheld. Thereafter, Vigilance Department has also issued detail advice regarding action to be taken in case of these 47 doubtful candidates vide this office letter No. G/130/PC/2013/12/00824/2YN/ADA dated 26.03.2015, 25.05.2015, 19.01.2016, three. Hence, request to act on the information provided by complainant as enumerated at 3.2.4 stands also complied with. //

20. It is noticed that a criminal case is presently under trial at Howrah

District Court vide Jagachha PS Case No. 450/13 Dt. 11.12.2013 under Section

406/409/417/418/420/465/469/120B, IPC & 7 pc Act, 1988 and subsequently

transferred to Domjur P.S. and recorded by PS case No. 962/2013 dated

07.12.2013. During the course of the arguments, learned counsel appearing for

the applicants relied ^{upon} a decision of Hon'ble Supreme Court rendered in the case of

East Coast Railway and Another Vs. Mahadev Appa Rao and Ors. reported in

(2010) 7 SCC 678. Mr. Dutta referred Para 14 of the said judgment which is being reproduced below:

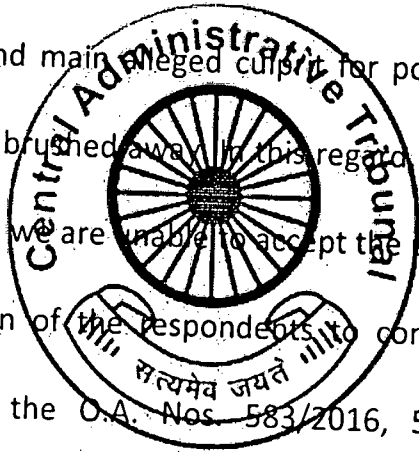
"14. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent Writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter."

21. In our view, the decision relied by the learned counsel for the applicants in **Mahadev Appa Rao** is not applicable in the present case inasmuch as record of the instant case revealed some evidentiary material facts through Vigilance Investigation about leakage of question papers, available of hand written in answer scripts, cash money, photocopies of purported answers to questions, mark sheets/certificates of different "State Secondary Board of Examination", 59 nos. of original Admit cards of RRC examination, documents containing details of Roll numbers and names of various RRC candidates who have appeared in the RRC examinations held in pursuance of Employment Notice No. SER/RRC/02/2012 and more importantly a list of 47 candidates who are in suspected list, recovered from the possession of accused Sri J.P. Gupta, Loco Pilot/Anara/Adra who played an important roll for alleged selling of Govt. jobs in the Railway, Govt. of India on consideration of money. It is a serious issue



involving huge malpractices, corruption at the cost of depriving meritorious candidates which is not acceptable at any rate, otherwise the very system of recruitment to choose the suitable candidates will be spoiled and infected and if it is not restrained, the life and career of meritorious candidates will be doomed and the Govt. machineries will fail to render optimum services.

22. The very basic purpose for conducting recruitment process is to obtain the suitable and eligible candidates from the fray of the competition of the employment. If the basic purpose is defeated, the entire system of recruitment will fail. Once the list of 47 candidates is recovered from the possession of J.P. Gupta who is accused and main alleged culprit for pollution of the system, the Vigilance view cannot be brushed away. In this regard, criminal is pending before the criminal court. Hence, we are unable to accept the prayer of the applicants for setting aside the decision of the respondents to conduct retest for those 47 candidates. Accordingly, the O.A. Nos. 583/2016, 599/2016, 600/2016 and 601/2016 are dismissed. No order as to costs.



23. The interim orders passed earlier in these four cases stand vacated.

(Dr. Nandita Chatterjee)
Member (A)

(Manjula Das)
Member (J)