

(1974) 04 DEL CK 0032

In the Delhi High Court

Case No : Civil Writ Appeal No's. 133 and 134 of 1970

Iqbal Singh

APPELLANT

Vs

General Manager, Northern Railway etc

RESPONDENT

Date of Decision : 05-04-1974

Acts Referred:

Citation : (1974) ILR Delhi 359 : (1975) LabIC 295

Hon'ble Judges : T.V.R. Tatachari, J;Rajinder Sachar, J;B.C. Misra, J

Bench : Full Bench

Advocate : R.L. Tandon, G.D. Gupta, Anil Bhatnagar, R.L. Aggarwal and S.P. Aggarwal, for the Appellant;

Judgement

B.C. Misra, J.

(1) This judgment will dispose of two civil writ petitions Nos. 133 of 1970 and 134 of 1970. They raise a common question of law. They came up for consideration before a learned Single Judge of this Court and were referred by his lordship to a Division Bench and the Division Bench by order dated 12th May, 1971 has considered it fit to refer them to a still larger Bench subject to the approval of Hon'ble the Chief Justice. In this way these petitions have been placed before us for disposal.

THE facts as given in the referring order of the Division Bench are that the petitioners in both the writ petitions joined Railway Service in the year 1949 as booking clerks in the grade of Rs. 60-150. In the year 1957, they were promoted as Reservation Clerks in the same grade which was later on revised to Rs. 100-185 and then to Rs. 150-240. They were both confirmed on those posts in the year 1958. Subsequently on 27th June, 1963, Iqbal Singh (petitioner in the first noted writ petition) was promoted to officiate as Anti-Ticket Fraud Inspector in the grade of Rs. 250-380. Eventually selection for the posts of Chief Enquiry and Reservation Clerks in the grade of Rs. 250-380 was held by the relevant department of the Railway between 6th November, 1966 and 23rd September,

1968. Both the petitioners were called for interview for selection to the posts and both of them secured more than 75 per cent marks and were, Therefore, placed in the panel framed by the Selection Committee, Iqbal Singh (petitioner in the first noted writ petition) was placed at No. 3, while Gobind Ram Mehra (Petitioner in the second noted writ petition) was placed at No.4 in a panel of 18 selected candidates (copy Annexure "A" dated 7th January, 1969). It appears that the penal E had been approved. Both the petitioners were consequently promoted to officiate as Chief Enquiry and Reservation Clerks and took over charge of their new posts, however on 29th January, 1970, they were served with the impugned order dated 22nd January, 1970 (Annexure "C") intimating that both of them (along with one Panna Lal Sharma) had been reverted from. their officiating posts to their substantive grade of Rs 150-240 with immediate offer for the reason that the panel had shrunk from 21 to 18. This is the order which has been assailed in both the writ petitions in this Court.

(2) The writ petitions have been opposed on behalf of respondents 1 and 2 and a counter-affidavit has been filed by Shri M. P. Mathur, Senior Personnel Officer of the Northern Railway. The position explained in the counter-affidavit is that to form a penal of 21 persons for the post of Chief Enquiry and Reservation Clerks, a selection was held, as a result of which 21 persons were selected. A provisional panel announcing the names of 18 persons was declared on 7th January, 1969; the name of one person was declared on 14th March, 1969 and the names of the remaining two could not be announced on account of certain pending enquiries; that 21 vacancies had been counted against which 84 persons including 4 Scheduled Castes were eligible in order of seniority and they were called for selection, Iqbal Singh and Gobind Ram (petitioners before this Court) were at item Nos. 72 and 80 respectively in the seniority list of eligible candidates. The 21 vacancies that were counted were 11 actual vacancies and 6 anticipated vacancies and 25 per cent thereof were 4. It is further explained that on receipt of a complaint against the selection, the matter was investigated and it was found that there were only 18 vacancies, namely 11 actual and 3 anticipated and 25 per cent thereof were 4. making a total of 18 and in view of 18 vacancies, only 72 persons in order of seniority, that is to say, 4 Scheduled Castes and 68 others were to be called for selection and as such only the first 68 senior most employees were to be considered. Since Iqbal Singh and Gobind Ram were at Serial Nos. 72 and 80, they could not be called for selection. The matter was brought to the notice of the General Manager, being the authority next above the authority which had approved the panel issued on 7th January, 1969 for deletion of the names of the petitioners and after obtaining the approval of the General Manager, the names of the petitioners were removed from the panel and they were reverted to their lower grade of Rs. 150-240 vide letter dated 22nd January, 1970. It is further stated that out of 18 persons placed on the panel, the names of 16 had been retained on the provisional panel and the cases of two other selected persons were under consideration and the vacancies caused by the reversion of Iqbal Singh and Gobind Ram petitioners to the lower grade were

filled up temporarily. The other material facts are admitted that the petitioners had been selected and that they had been reverted by the impugned notice. The grounds pleaded in the writ petitions are controverted and it is urged that owing to the shrinkage of the panel, it was found that the petitioners were not entitled to hold the posts and the reversion was not arbitrary, discriminatory, illegal or in mala fide. In the counter-affidavit, there is a further reference about the reservation of the quota for the Scheduled Castes and the mistake occurring, there in but. the same is not material for purposes of the decision of the writ petitions. the petitioners have filed rejoinder affidavits in reply and they have controverted the contentions of the respondents. In particular, they have made a reference to a writ petition filed in the Supreme Court where the then Assistant Director (Establishment) Railway Board, filed an affidavit dated 24th April, 1967 in which the break up of 21 vacancies was given as 14 existing, 3 anticipated and 25 per cent unforeseen, making a total of 21 and it is, Therefore, asserted that the allegation about a mistake occurring in the number of existing vacancies I was not correct. It is further asserted that assuming there were 18 vacancies, still the petitioners might have been called for interview and had rightly been called and they had been classed as "outstanding" in the selection test.

THIS shows that the controversy between the parties is this: The selection and appointment of the petitioners as Chief Enquiry and Reservation Clerks was admittedly legal and valid, if there were 21 vacancies and under the rules, four times the number were called to take the selection. Whether the said selection and promotion would not be valid, if the number of vacancies is ultimately discovered to be only 18 and four times its number in the list of seniority of eligible candidates would not include the petitioners (who were at Serial Nos. 72 and 80) and consequently the petitioners have been validly and legally reverted.

THE relevant rules governing the promotion of subordinate staff have not been issued under Article 309 of the Constitution. They are, however, orders, directions and instructions of the Railway Board. They are contained in Section "B" of Chapter II of the Indian Railway Establishment Manual issued on 1st August, 1960, corrected up to 1st April, 1968. They prescribe a procedure for promotion from lower grade to a higher grade (and from one class to another class and from one grade to another grade). Paragraph 212 makes a provision for promotion to non-selection posts out of the suitable seniormost railway servants on the basis of service record or departmental tests, if necessary. They provide that the number of eligible candidates to be considered at a suitability test should be twice the number of vacancies and no hard and fast limit need be prescribed as to the number of candidates to be admitted from each eligible category and the employees passing the suitability test should only be placed on the panel. With regard to selection posts, paragraph 213 prescribes that selection posts shall be filled by a positive act of select corporation made with the help of selection boards from amongst the staff eligible for selection and ordinarily the railway servants considered will not be in grades lower than two grades below the post to which promotion is being made and the selection would be made

primarily on the basis of merit. The competent authority has to accept the recommendation of the Selection Board, but if it is unable to accept the recommendation, reference may be made to the General Manager who may constitute a fresh panel at a higher level and whose decision in the matter will be final. Paragraphs 214 and 215 provide for the constitution of Selection Boards. Paragraph 216 prescribes the procedure to be adopted by the Selection Board. The Board has to hold a written test as well as Viva Voce test and the marks assigned for professional ability are 50, for personality, etc., 25 and for record of service again 25 and it is further stipulated that the candidates must obtain a minimum of 30 marks in professional ability and 60 per cent marks on the aggregate for being placed on the panel. The material clause on the construction of which both the parties before us rely, is contained in clause (d) of paragraph 216. The same is reproduced below for ready reference :-

" ELIGIBLE staff up to four times the number of existing and anticipated vacancies plus 25 per cent thereof for unforeseen vacancies will be called for written and/or viva voce tests. (Anticipated vacancies connote only those which are likely to arise due to normal wastage during the currency of the panel). If this number can be obtained in the grade immediately lower, there would be no need to go to the grades further lower down. If the requisite number of staff on this basis is not available in the grade next to the grade for which the selection is being held. the Administration could go to lower grades in order to make up four times the number required to be called up for selection but in no case can the eligibility be extended to staff in grades lower than the third. Persons employed against fortuitous short-term or stop-gap promotions to the eligible grades made otherwise than in accordance with the regular approved method of promotion will not be eligible for consideration. It is desirable to hold written tests as part of a selection in respect of all initial selection grade posts in the different channels of promotion but in every case a viva voce test shall be held. If a written test is proposed to be held, advance intimation shall be given to all eligible candidates".

THE further provisions are that as a result of the tests held by the Selection Board, the names of the selected candidates are arranged in the order of seniority, but those securing a total of more than 75 per cent marks are to be classed as "outstanding" and are required to be placed at the top of the list and the list is to be put up before the competent authority for approval and where the authority does not approve the same, the matter is referred to the General Manager who may constitute a fresh Selection Board at a higher level or issue such other orders as he considers appropriate. After the competent authority has accepted the recommendation of the Selection Boar.J, the names of the candidates selected are notified to the candidates. Paragraph 218 provides that the retention of a railway servant's name on a panel will be subject to his or her continued suitability for the post in question and notwithstanding anything to the contrary, the removal of a railway servant's name from the panel would require specific approval of the authority next above that winch initially approved the panel.

(3) In this context, reference may be made to paragraph 217 with B regard to the currency of the panel which reads as under:--

" CURRENCY of Panels:-

(A)Panels drawn by a Selection Board and approved by the competent authority shall be current for two years from the date of approval by the competent authority or till these arc exhausted whichever is earlier.

(B)* * * *

(E)In case an employee lower in the panel has officiated whereas one higher in the panel has not officiated for reasons beyond the latter's control, the latter employee will not be required to appear for fresh selection."

(4) The provision which required consideration and construction in these petitions is clause (d) of paragraph 216 quoted above. It states that eligible staff up to four times the number will be called for written and/or viva voce tests. The other provisions in the said clause indicate how the number of eligible staff is to be reached in given situations. If sufficient number of eligible candidates is not found in the next below grade, then provision is made for going to a still lower grade, but not lower than the third grade in any event. This would indicate that four times the number is not the absolute requirement, but efforts are made to obtain the same by and large. The provision for determining the vacancies is that the number of existing vacancies be found and then the anticipated vacancies due to normal wastage be calculated and of them 25 per cent should be added. This would indicate that the rule is, in the nature of things, not absolute. In our opinion the requirement of calling the eligible staff up to four times the number to take the test is only directory and in the absence of any prejudice or infringement of a legal right, any error in calling a larger number of persons for a test will not invalidate the selection. One of us (T.V.R. Tatachari, J.) in *Malkiat Singh vs. Union of India*, Civil writ No. 925 of 1968 decided on 25th July, 1969 (1) held that the provisions contained in rule 9 (d) of Chapter Ii of the Manual (which was to the effect that eligible staff up to four times the number of anticipated vacancies would be called) was directory and not mandatory and, Therefore, Per " :e breach of the rule (unlike a mandatory rule) were not actionable. On the other hand, the directory provisions were intended to be followed and complied with and no deliberate or intentional departure from them was permissible, but if they had been otherwise infringed, the consequent selection could not be said to be invalid. This decision supports our view.

(5) It must not be forgotten that the selection under this rule is on the basis of a written test. as well as viva voce test and to take these tests, a wide range of candidates would be preferable so that the best of the eligible candidates can be discovered. There is no reason to restrict the field of choice to exactly four times the number (except expediency and practical guide in a large administration) but it cannot be raised to the pedestal of a mandatory rule, the breach of which would invalidate the eventual selection. In *Harish Chander vs. Union of India*, A.

I. R. 1967 Delhi 47 K. S" Hegde, C. J. (as he then was) was faced with a problem which was that in a selection held for the post of reservation Supervisor under rule 9(d) of the Indian Railway Establishment Manual, 152 persons had been called for the test whereas only 96 should have been called and the petitioner in the writ petition challenged the result of the test. The petitioner himself had failed to obtain the prescribed minimum marks. The learned Chief Justice held that the petitioner in that case could not be said to be the person aggrieved since the irregularity alleged by him did not in any way affect the result of the test held. In this connection, his lordship construing rule 9(d), (which was to the effect that eligible staff up to four times the number of anticipated vacancies will be called for the test) observed that the said rule merely prescribed the minimum number of persons to be called for the test and that interpretation stood to reason and for a proper selection, the candidates to be interviewed must be sufficiently large and that is why the Railway Board had prescribed that for every single selection, at least four persons should be called for the test, but if more qualified persons were called for test, that could not, in the very nature of things, vitiate the selection and if less number were called, then it was bound to affect the selection. His lordship in this case disagreed with the contrary view of the High court of Calcutta. In our view the observation of the learned Chief Justice on the construction of rule 9(d) are obiter. His lordship had found that assuming an irregularity had been committed, it had not affected the result of the test and so the petitioner was not the person aggrieved and had no Locus standi to challenge the test. In this view of the matter, it was not necessary to make a pronouncement on the interpretation of the rule. We, Therefore, hold that the observations are obiter and are not of a binding nature.

(6) The meaning of the word "up to" given in Oxford Dictionary is "to be in a high or higher place" (for example the birds flew up to the eaves). The word "up to" would, according to the dictionary, mean "as high or as far as". In our opinion, the expression in the relevant rule is used in common parlance and is not intended to convey the meaning of not more than. The Supreme Court in *The State of Andhra Vs. Gaddam Venkatappayya*, was construing rule 3 of the Madras Police Subordinate Service Rules and the expression "up to not more than 3 per cent of the cadre" occurring in It arose for construction. A learned Single Judge of the High Court of Andhra Pradesh had held that the expression " up to" could be exceeded, while the Division Bench on appeal held that it could not be exceeded. The Supreme Court accepted the view of the Division Bench and observed that the learned Single Judge had not given any effect to the words "not more than" and that taken in conjunction with the .provision, it was clear that the words "up to not more than" merely fixed the maximum percentage of ranking the promotees in the category, leaving it to the appointing authorities to adopt any percentage below this figure.

(7) In the above-mentioned Supreme Court decision, the word "up to" was constructed as the maximum by the force of the succeeding expression " not more than". In the case before us, we do not have any such limiting expression.

Up to four times the number of vacancies does not even deal with qualifications of the candidates of being in a particular category included in the seniority list and there is no doubt that the petitioners do not suffer from any lack of qualifications or eligibility. Out of such eligible persons, the test of the persons had to be held. How many persons should be called for the purpose to give the test, had to be prescribed, in the instant rule, four times the number, sometimes thrice the number, sometimes four times the number or six times is prescribed. In the instant rule, four times is prescribed only as a guide and not with a view to arm the candidates with a technicality to challenge an otherwise fair and legal selection. In a case where promotion is to be made only on the basis of seniority cum-merit, by examination of the record, a Government servant may complain of infraction of his legal right to be considered for promotion in view of Article 16 of the Constitution if he has not been considered for any ulterior reasons. But under Article 14 or 16, no grievance can absolutely be made if a larger number of persons have been considered. This is more so where promotion is made on the basis of selection by a written as well as viva voce test. For such persons, the field of choice can easily be very large. Where a person is required to compete for promotion by selection, no legitimate grievance can be found if a large number of (otherwise qualified) persons are allowed to compete. A competitive examination is given to find out the best and if an authority goes to a wide field of choice and bona fide discovers some outstanding person who is otherwise eligible but is at the bottom of the list of the seniority provided all the persons above him in that list are called and allowed to compete, the grievance is absolutely misplaced since in service, the efficiency and best qualities must, consistent with the statutory rules, be always rewarded and no inferior, though senior persons can be allowed to challenge the same.

(8) In the instant case, the petitioners before us were at Serial Nos. 72 and 80 in their seniority list and they were called for selection. They took written test as well as the viva voce examination and were shown as "outstanding", that is to say obtaining more than 75 per cent marks. They were placed at Nos. 3 and 4 in the merit list of successful candidates and were placed on the panel. In this case, absolutely no challenge had been made to the bona fides of the authorities or the merits and fairness of the selection made. The only grievance raised is that in place of the petitioners, only persons up to a lower Serial No. 68 should have been called. In our opinion, when all the persons up to 80 had been called and out of them the petitioners have brightly come out successful, the selection cannot legitimately be struck down. We are of the view that the expression "up to" occurring in this direction of the Railway Manual is only directory. It is certainly intended to be complied with but its unintentional infraction will not invalidate the subsequent results.

(9) It is next contended that the panel was provisional. Reference to Annexure "A" points out that as a result of selection held on various dates, the employees mentioned therein had been placed on the panel in order of merit, and that the panel was provisional. The reason for its being provisional is not that the

authorities had not made v/p their mind with regard to the success of the petitioners, but the reason disclosed in the counter-affidavit is that the names of two other persons were under consideration and on a decision of their case, the panel was going to be final. This is supported by Annexure "B" dated 14th March, 1969 which states that in continuation of the previous letter Annexure "A" Hari Chand, Reservation Clerk, had also been placed on the panel and he would get his position on the panel between the clerks placed at Serial Nos. 12 and 13. The letter further states that the panel is still provisional. Besides there is a note under the name of the selected candidates in Annexure "A" which is to the effect that the staff concerned may please be informed that retention of their names on the panel was subject to their work remaining satisfactory during the currency of the panel and the mere fact that their names were on the panel would not confer upon them any right for permanent absorption as a Chief Enquiry and Reservation Clerk. This foot-note is consistent and in accordance with paragraph 218 of the Railway Establishment Manual which provides that the retention of a railway servant's name on a panel will be subject to his continued suitability for the post in question and that his name could not be removed without the approval of the authority next above the one which initially approved the panel. Under the circumstances, we find that there is nothing in Annexure "A" to warrant the conclusion that the selection was inchoate and by its terms, it failed to confer any rights on the parties.

(10) It is the admitted case of the parties that the petitioners before us in the two writ petitions were promoted to officiate in the posts to which they had been selected and they took charge of their new posts. Paragraph 217 of the Establishment Manual extracted above provides that the panel shall be current for two years from the date of approval by the competent authority or till they are exhausted, whichever is earlier. It is further stated that an employee who officiates against a non-fortuitous vacancy in his turn on the panel shall not be required to appear again for fresh selection. This privilege is also extended to a person higher up in the panel when any employee lower in the panel has officiated for circumstances beyond the higher Officer's control. It is obvious that these provisions confer a valuable right on the employees. Surely the person who has been selected and placed at No. 3 or 4 in the list of successful candidates would not expect the panel to be exhausted without his promotion. He is, Therefore, amply justified in not seeking to take the next selection examination for promotion. In fact the clauses of the paragraph quoted above state that he would not be required to appear for a fresh selection. The petitioners, Therefore, could not think of appearing in any other selection and they continued to officiate in the posts to which they had been legally promoted and they worked there quite for some time. At this stage the petitioners were demoted from the officiating posts and removed from the panel not for any fault of theirs or for any wrong done by them in their selection, but because the authorities discovered that an error had been committed in fixing the number of anticipated vacancies. This is both illegal and unjust. The counsel for the

petitioners contends that if the number of vacancies actually turned out to be less than anticipated or for any other reason whatever, all the persons selected in the panel could not be absorbed in the new posts during the period of currency of the panel, then it was the persons who were lowest in the merit list of successful candidates who had to suffer their removal, but the evil consequences could not be visited on the persons who had qualified with distinction and had practically topped the list. There is force in this submission. The counsel for the respondents, however, contends that this would be the true legal post corporation if the matter had rested with the occurrence of the mistake in the anticipated vacancies, but in this case, the inflation in the number of vacancies had resulted in inviting the petitioners to take the selection which they would not have been allowed to do if only four times the number of vacancies had been called out of the eligible persons. We have already held that the requirement with regard to four times the number is only directory and does not invalidate the selection unless and until some prejudice has been caused or the legal rights of a party have been violated. As observed above, if a lesser number than the prescribed is called and the field of choice is limited, some persons left out may complain of infraction of their fundamental rights of equal opportunity in being considered for the promotion, but if a larger number is called (bona fide and honestly) and all such persons similarly qualified are given an opportunity to take the test and that too a written test together with viva voce examination, no infringement of fundamental right of equal protection can be complained of and it is not shown as to how the other persons who have taken the examination, suffered any legal grievance because some persons, who were junior in service but proved to be brighter, are allowed to take the test. Neither on the construction of the relevant rules mentioned above, nor any other statutory provision or rule of law or even equity, can it be said that the selection of the petitioners who had taken the test along with their other seniors (while they are otherwise fully eligible) have in any way infringed the fundamental or legal right of their seniors or any mandatory rule of law. Therefore, we are of the view that the grounds on which the petitioners have been reverted from the posts are irrelevant, illegal and unjust and the impugned order is not sustainable.

(11) A number of authorities have been cited before us to support the contention that merely being placed on the panel does not confer any right to promotion and that mere reversion from officiating post does not involve any evil consequences and is not actionable. Reference to some of them may be made. In *Shitla Sahai Srivastava Vs. General Manager, North Eastern Railway*, the Court held that where in the panel prepared by the Selection Board, the word "provisional" is specifically noted against the name of a particular railway employee, he does not acquire a right to the post and the deletion of his name from the panel, Therefore, does not attract the provisions of Article 311; if a civil servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank; if, however he has no right to the particular rank, his reduction from an officiating

higher rank to his substantive lower rank will not ordinarily be a punishment. It was further held that the expression "rank" in Article 311(2) has reference to a person's classification and not his particular place in the same cadre in the hierarchy of the service to which he belongs and, Therefore, losing some places in the seniority list is not tantamount to reduction in rank within the meaning of Article 311(2) of the Constitution. In *Sham Sunder Vs. Union of India (UOI) and Others*, the facts were that a panel of 38 persons had been prepared as a result of a test as against 30 vacancies. The Railway Board which was the superior authority found that the vacancies were only 19 and so it reduced the panel from 38 to 24 persons only. The Court found that the amendment of the panel by a competent authority was valid and justified. In that case, the panel was however, not amended by removing the names of the topmost persons from the panel as in the present case. In *Gurdev Singh Vs. State of Punjab*, it was held that reversion from an officiating post on administrative grounds, namely the recall of the senior officers from leave or from deputation, did not amount to punishment if no posts had been left in the cadre to absorb them. There is no quarrel with the proposition of law contended which is well-established. Merely being placed on a panel may not confer a right of absorption and mere reversion from an officiating post may not be a ground of legal grievance by a Government employee. This would be so because absorption from the panel would depend upon the particular circumstances and availability of posts and nobody can claim an enforceable right in this respect. Again, officiating appointments are made for diverse reasons and for any valid administrative reason, an employee may have to be reverted. In *Shyam Behari Lal and others vs. The General Manager, North Eastern Railway*, 1973 (2) Service Law Reporter 168 (7) a Division Bench of the High Court of Allahabad examined the provisions of paragraph 216(j) and 217 of the Indian Railway Establishment Manual. It observed that paragraph 217 furnished a good ground for holding that under paragraph 216, no provisional panel could be prepared once a selection was duly made by the Selection Board, because when a selection was made and the panel prepared was approved by the competent authority, right to the persons selected and put on the panel accrued under clauses (a) and (b) of paragraph 217; those rights may be of a limited character even so it is not possible to hold that paragraph 217 does not confer any right at all to persons who have been selected and whose names have been placed in the approved panel. The Division Bench in this case further observed that if paragraph 217 did not or was not intended to afford any protection to or confer any right on the persons concerned and if by paragraph 216(j) it was intended to confer an absolute and uncontrolled power on the higher authority then merely at the option of the higher authority, some persons could be required to appear at several successive selections by Selection Board by just cancelling or amending the panels prepared earlier and obviously it could never have been the intention of the authority which framed paragraph 216(J) to confer such-unfettered power on the higher authority, nor could it be said that paragraph 217 was framed merely for purposes of embellishment and not for the purpose of affording some safeguard E to or conferring some right on candidates

who were declared to be successful at the selection examination and whose names were included in the panel as such. The legal position, Therefore, seems to be that removal from an officiating appointment is penal or not, depends on the facts and circumstances of each case.

(12) In the instant case. the petitioners were fully qualified and eligible to take the test. They secured very high position in the written test as well as viva voce test and so were placed on the panel. The panel was approved by the appropriate authority and was acted upon and in pursuance thereof, the petitioners were, in due course, promoted in an officiating capacity. Nothing has been said to show .that the petitioners were not found suitable on the new posts or for any administrative reasons, the posts they were occupying ceased to exist. In fact the posts were existing and continued to exist. As a result of the petitioners occupying the said posts, they had, in accordance with the rules been disabled from taking the selection test again. The petitioners do not suffer from any lack of qualification or eligibility. Nor has any fault been found with the conduct or result of the selection, nor have the available posts been reduced to such a number that the selected candidates at the top cannot be absorbed in them. The petitioners were not at the bottom of the list, but they were at the top and sufficient number of vacancies are undoubtedly available to absorb them. The petitioners have been removed only on one ground namely, that a larger number of persons had been called to take the test than was intended. This ground, in our opinion, is not a relevant or a reasonable basis to revert the petitioners. We found the rule fixing the number of candidates to be called at four times to be directory. Hence the petitioners (who are otherwise qualified and eligible) have taken the test and have come out brilliantly at practically top of the list, it cannot be said that their reversion from the officiating posts and from panel does not amount to visiting evil consequences. In the facts and circumstances of the present case, it appears to us that the order of reversion has visited evil consequences on the petitioners and has deprived them of a legal right (howsoever limited) to the post. The order is not sustainable.

(13) The counsel for the petitioners has raised another point. It is that in the circumstances of the case, the petitioners ought to have been afforded an opportunity to show cause against the proposed action and that if they had been heard, they would have shown that the mistake that the authorities pointed out in anticipating the number of vacancies, was really not correct and there was no mistake and that the mistake had only been wrongly cropped up by the persons who were senior in service but got inferior positions or no positions at all in the selected list. We are not prepared to lay it down as a matter of law that an opportunity to be heard is necessary to be given in all cases whenever an administrative authority performs any act or omission. Affording a hearing is necessary in performance of judicial and quasi-judicial functions. It may be necessary when the statute so prescribes or the legal rights of the parties are adversely affected. In the present case, it would have been more appropriate for the authorities to allow the petitioners to explain the true position to them, that

really there was no mistake in anticipation of the vacancies and that the petitioners had been properly and validly called to take the test and that, Therefore, they should not be reverted. It is a matter of surprise that the appropriate authorities, presumably after careful consideration at various stages of the administration, determined the number of anticipated vacancies and thereafter declared the number of vacancies and directed selection for promotion to be valid and this mistake was not discovered till long after the petitioners and other persons had been selected, placed on the panel and allowed to officiate in the higher posts. This shows that there is something wrong in the administrative machinery and it would have been appropriate to hear the petitioner if they could assist the administration in correcting their error. However, we are not prepared to accept the submission of the counsel for the petitioners that the impugned order is legally bad for want of opportunity to the petitioners to show cause against the impugned order.

(14) Before we part with this case, we may point out that the authorities of the respondents must take every decision after careful consideration and thereby avoid injury and injustice to their employees. The number of anticipated vacancies in the instant case ought to have been determined after appropriate care and once determined, they constitute a foundation for a test for promotion and so they should not be altered because of some error in calculations. The reason is that once the legal rights of the employees have arisen according to law, it looks inappropriate and unjust to point out that the authorities had made a mistake in the initial stages prior to selection.

(15) As a result, we allow the writ petitions and issue a mandamus against the respondents directing them to give effect to their order Annexures "C" dated 22nd January, 1970 reverting Iqbal Singh and Gobind Ram petitioners. The writ petitions stand disposed of and the parties are left to bear their respective costs.