

(2014) 02 PAT CK 0061

In the Patna High Court

Case No : CWJC No. 21948 and 20417 of 2013

Sunil Kumar and Others

APPELLANT

Vs

The Chairman, Railways Board and Others
 The Union
of India and Others Vs S.P. Tripathi and Others

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 1 PLJR 731

Hon'ble Judges : S.P. Singh, J;I.A. Ansari, J

Bench : Division Bench

Advocate : D.K. Sinha, Bijay Kumar Sinha in 21948 and P.N. Sahi, Amarendra Narayan in 20417 and 20460, Advocate for the Appellant; Chitranjan Sinha in 21948 and Mr. Anil Kumar Sinha in 20417 and 20460, Advocate for the Respondent

Judgement

I.A. Ansari, J.—Whether an authority, holding and/or conducting a selection process, is wholly debarred from cancelling the selection process or the select list? Whether a selected, in the select list, has an indefeasible right to challenge, in a Court of competent jurisdiction, the cancellation of select list even when cancellation of select list by the authority, holding or conducting a selection process, is reasonable and/or non-arbitrary? Can a candidate, who has participated in a selection process and does not figure in the select list, never challenge the select list on the principal that a candidate, having participated in a selection process and failed, cannot turn back and challenge the selection process or whether such a candidate can challenge process of selection or the select list if the selection process suffers from violation of the relevant rules of recruitment, or suffers from mala fide, bias or prejudice? These are, broadly speaking, some of questions, which the present set of three writ petitions, made under Article 226 of the Constitution of India, have raised. While the writ petition filed by the Union of India and its functionaries have given rise to CWJC No. 21948 of 2013, the two writ petitions filed by those, who had participated in the

selection process, in question, and failed, have given rise to CWJC Nos. 20417 of 2012 and 20460 of 2013.

2. What gave rise to the present set of writ petitions may, in brief, be set out as under:

3. The writ petitioners, in the two writ petitions, namely, C.W.J.C. Nos. 20417 of 2013 and 20460 of 2013, are Group "C" employees of the Railways and posted in the offices of Accounts Department, at different places, under East Central Railway.

4. The vacancies, in Group-B posts of Assistant Financial Advisers (in short, "AFAs"), are to be filled up, on promotion, on the basis of eligible Group-C employees and also on the basis of limited departmental competitive examination (in short, "LDCE"). Where scheme of LDCE is in force, selection is required to be held to fill up 70 per cent of vacancies and LDCE is required to be held to fill up remaining 30 per cent of vacancies.

5. In order to fill up 70 per cent of the vacancies, in the posts of AFAs, for the year 2010-12, notification, dated 8.1.2013, was issued by the competent authority. In terms of the notification, dated 8.1.2013, aforementioned, the competent authority had accorded approval to fill up 23 posts of AFAs and ADFMs, the breakup of these posts being 15 unreserved, 5 reserved for Schedule, Castes (in short, "SC") and 3 reserved for Scheduled Tribes (in short, "ST"). The scheduled date of written test was fixed on 9.3.2013 and names of the shortlisted candidates, numbering 50+1 (from extended zone), eligible to appear in the selection process, contained in Annexure-A, was published. Another list of 23 candidates, contained in Annexure-B, was also published as the list of stand-by candidates.

6. In terms of the consolidated instructions, issued by the competent authority, governing promotion from Group-C to Group-B, zone of consideration for making selection in the quota of 70 per cent vacancies--whenever vacancies are 4 or more--extends to 3 (three) times the number of vacancies. However, if SC or ST candidates are not available for consideration against reserved vacancies, the field of selection, in respect of SC/ST employees, may be extended to 5 (five) times the number of vacancies reserved for SC/ST candidates subject to the condition that only SC/ST employees and no others can be considered within such extended field. The petitioners, in CWJC Nos. 20417 of 2013 and 20460 of 2013, figured in the list of candidates, who were eligible to participate in the selection process.

7. Though the written test was, as indicated hereinbefore, scheduled to be held on 9.3.2013, a letter, dated 12.2.2013, issued by the Secretary to the F.A. and C.A.O., brought out a revised list of 85 candidates in Annexure-A and another list of 85 candidates, contained in Annexure-B, as stand-by candidates, without, however, enhancing the number of posts.

8. While written test consisted of 150 marks, the viva voce consisted of 25 marks. The minimum qualifying marks, in the written test, was 15 and similarly, minimum qualifying marks, in respect of viva voce, was 15 meaning thereby that total qualifying marks was 30. The promotion, under 70 per cent quota, is not made on the basis of open competition and was, therefore, required to remain confined within those eligible candidates, who fell within the zone of consideration or extended zone of consideration as indicated by the consolidated instructions aforementioned.

9. Pursuant to the decision so taken, the candidates, including the writ petitioners, in CWJC Nos. 20417 of 2013 and 20460 of 2013, were allowed to appear in the written test. In the said written test, however, additional candidates were also allowed to appear. A list of successful candidates of the written test was published, on 25.4.2013, containing 16 names of unreserved candidates, who had secured qualifying marks, and 5 candidates of SC/ST each, who were declared qualified, but the declaration of result in respect of SC/ST candidates was made on the basis of best amongst the failed candidates and on relaxed standard. These 21 candidates, in total, were called for viva voce to be held on 10.5.2013. In the select list, which was prepared on the basis of the result of the written test, did not, however, include the names of the petitioners in the two writ petitions, namely, CWJC Nos. 20417 of 2013 and 20460 of 2013, and had, therefore, not been called for viva voce.

10. As per para-13.3 of Master Circular 68 related to selection procedure for Group-C post in Railways and para 204.10 of Indian Railways Establishment Manual (Volume-1), recommendation of the Departmental Promotion Committee, functioning as Selection Committee, should be placed, before the General Manager, for approval and if the General Manager does not approve the recommendation, he is required to record his reasons, in writing, therefor, and he may order a fresh selection. However, once a panel is approved by the General Manager, no amendment or alteration can be made except with the prior approval of the Railways Board.

11. Having failed to qualify in the written test, the present writ petitioners filed, as applicants, on 8.5.2013, O.A. No. 300 of 2013 in the Central Administrative Tribunal, Patna Bench (hereinafter referred to as "the learned Tribunal"), challenging the result of the written test on the ground that the zone of consideration had been extended illegally by bringing in persons, who were not eligible to be brought within the zone of consideration, and ought not to have been allowed to appear in the selection process.

12. By its order, dated 13.5.2013, learned Tribunal directed issuance of notices to the Union of India and others, who are the petitioners in C.W.J.C. No. 21948 of 2013.

13. Before the notices were issued to the Union of India, the Departmental Promotion Committee (hereinafter referred to as "the DPC"), which had

conducted the written test, held viva voce on the scheduled date i.e. 10.5.2013, wherein all the candidates, who had been declared successful in the written test, appeared.

14. The DPC, thereafter, during the course of deliberation, noticed that some infirmities in the selection process had occurred inasmuch as some of the SC/ST candidates, who were not eligible to appear in the said written test, had actually appeared not only in the written test, but even in the viva voce. The DPC, therefore, recommended cancellation of the selection process to the General Manager, who having agreed, a notification was accordingly issued, on 6.6.2006, by the East Central Railway, cancelling the selection process, the selection process having been cancelled on the ground that the selection process had suffered from some inadvertent infirmities.

15. With the help of an application, made in the learned Tribunal, some of the candidates, who had been successful in the written test and had appeared in the viva voce, put to challenge the cancellation of the selection process by the notification, dated 6.6.2013, aforementioned. The application, so made, gave rise to O.A. No. 375 of 2013.

16. The Union of India and its functionaries were obviously impleaded as respondents in both the Original Applications, namely, O.A. No. 300 of 2013, which had been filed by some of the candidates, who had failed in the written test, and O.A. No. 375 of 2013, which had been filed by some of the candidates, who were successful in the written test and had participated in viva voce.

17. The Union of India, as respondents, filed written statements in both, O.A. No. 300 of 2013 and O.A. No. 375 of 2013, bringing on record the reasons leading to cancellation of the selection process, the reason being assigned for cancellation of selection process was that it surfaced, during the course of selection process, that ineligible candidates, belonging to SC/ST categories, had been allowed to participate in the selection process, rendering thereby the selection process itself illegal.

18. Though the applicants, in O.A. No. 300 of 2013, made, in O.A. No. 375 of 2013, a miscellaneous application, which came to be registered as M.A. No. 355 of 2013, seeking to be impleaded, as interveners, in O.A. No. 375 of 2013, learned Tribunal did not allow the intervener application.

19. Both the O.As., namely, O.A. No. 300 of 2013 and O.A. No. 375 of 2013, were heard and disposed of on 9.9.2013. In terms of the order, dated 9.9.2013, aforementioned, while O.A. No. 300 of 2013 was dismissed with cost of Rs. 5,000/-, O.A. No. 375 of 2013 was allowed by setting aside and quashing the notification, dated 6.6.2013, aforementioned, whereby the selection process had been cancelled. The learned Tribunal also directed the Union of India and its functionaries to finalize the result within a period of seven days from the date of receipt of the order, dated 9th September, 2013, and to complete the formalities of promotion within two weeks thereafter.

20. By filing a review application, which gave rise to R.A. No. 43 of 2013, though the Railways, thereafter, sought for review of the order, dated 9.9.2013, passed by the learned Tribunal, whereby the learned Tribunal had allowed O.A. No. 375 of 2013, the learned Tribunal, vide its order, dated 26.9.2013, has dismissed the review application on the ground that the same was not permissible on merit.

21. Aggrieved by dismissal of O.A. No. 300 of 2013, the applicants, in O.A. No. 300 of 2013, have filed the writ petition, which has given rise to C.W.J.C. No. 20417 of 2013.

22. Challenging the correctness and legality of the order, dated 9.9.2013, whereby O.A. No. 375 of 2013 was allowed, setting at naught the notification, dated 6.6.2013, aforementioned and thereby restoring the selection process, which, otherwise, stood cancelled, the applicants, in O.A. No. 300 of 2013, (and, now, petitioners in C.W.J.C. No. 20417 of 2013), have come to this Court with a writ petition made under Article 226 of the Constitution of India. The latter writ petition has given rise to C.W.J.C. No. 20460 of 2013.

23. The challenge, posed, in C.W.J.C. No. 20460 of 2013, to the order, dated 9.9.2013, passed in O.A. No. 375 of 2013, is, in essence, on the ground that the cancellation of the selection process by the Union of India ought not to have been interfered with by the learned Tribunal, when the selection process suffered from incurable infirmities of having included ineligible candidates to compete with the eligible candidates.

24. Aggrieved by the fact that the notification, dated 6.6.2013, whereby selection process had been cancelled, stood set aside by the learned Tribunal, the Union of India and its functionaries, too, have filed a writ petition, under Article 226 of the Constitution, which has given rise to C.W.J.C. No. 21948 of 2013.

25. Because of the fact that the applicants, in O.A. No. 375 of 2013, were successful, they filed a caveat and have, accordingly, resisted passing of any interim order by this Court. Consequent thereupon, this Court, as agreed to by the learned Counsel for the parties concerned, has heard all the three writ petitions, namely, C.W.J.C. Nos. 20147 of 2013, 20460 of 2013 and 21948 of 2013, on merit, for the purpose of final disposal and all these writ petitions are, now, being disposed of by this common judgment and order.

26. While considering the present three writ petitions, what needs to be noted is that the learned Tribunal has not at all entered into merit of the O.A. No. 300 of 2013 and determined the question as to whether the infirmities, pointed out by the applicants in O.A. No. 300 of 2013, were or were not correct and if their contentions were correct, whether these infirmities went to the root of the selection process rendering the selection process illegal and invalid or not. The learned Tribunal did not also determine if the applicants, in O.A. No. 300 of 2013, having been unsuccessful in written test, could have challenged the validity of the selection process if the selection process did suffer from violation of the relevant instructions governing the selection process.

27. With regard to the above, while dismissing O.A. No. 300 of 2013, the only ground, assigned by the learned Tribunal, is that a candidate, who has once appeared in a written test, cannot challenge the selection process/criteria after having participated in the written test and having not qualified therein. Reference, in this regard, has been made by the learned Tribunal to the case of Sanjay Kumar and Others Vs. Narinder Verma and Others, .

28. The learned Tribunal has, therefore, not determined if the Railways were right in cancelling the selection process and in answer to this question, too, learned Tribunal has repeated its view that once a candidate subjected himself to written test, he cannot turn back and challenge the selection process/criteria thereafter if he has failed in the written test.

29. The learned Tribunal has, thus, not determined if the cancellation of the selection process by the impugned notification, dated 6.6.2013, was or was not correct.

30. With regard to the above, it needs to be clarified that it is trite that a candidate, included in the merit list, has no indefeasible right to demand appointment even if vacancy exists. However, State, while filling up vacancy, has to act bona fide and not arbitrarily.

31. The principle that a candidate, who fails in a selection process, cannot turn round and challenge the selection process, is essentially based on the principles of estoppel by conduct or acquiescence.

32. In Madan Lal and Others Vs. State of Jammu and Kashmir and Others, , the Supreme Court has taken the view that having taken a chance to appear in an interview and having remained unsuccessful, one cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal, because he is estopped to question the correctness of selection. The same view has been taken in Sanjay Kumar and Others (supra), which the learned Tribunal has referred to.

33. It is true that a candidate, who appears in a written test, cannot challenge the result of such a test/examination if he is unsuccessful on the ground of infirmity in the selection procedure. This principle is, however, not of universal application. It is, therefore, open to a failed candidate to challenge illegality in a selection procedure if the selection procedure suffers from violation of the principles of natural justice, or when rules of selection are flouted, or when the selection process suffers from mala fide, bias or prejudice, or by such infirmities, which are incurable.

34. Considered thus, it becomes clear that the case of applicants, in O.A. No. 300 of 2013, could not have been dismissed merely on the ground that they, having participated, in the selection process and failed, cannot turn back and challenge the selection process or the result thereof. At the same time, what needs to be noted is that the applicants, in O.A. No. 300 of 2013 (who are petitioners in

CWJC Nos. 20417 of 2013 and 20460 of 2013), could not have challenged the selection process or the result of the written test on the ground of inclusion of ineligible candidates in the selection process, when they had failed to obtain the qualifying marks.

35. Had the selection procedure not prescribed qualifying marks, situation would have, perhaps, been a little different.

36. In the case at hand, every candidate was required to obtain qualifying marks of 15 in the written test. In the performance of the written test, it was irrelevant or immaterial as to whether any eligible candidate had not been permitted to appear in the written test or any ineligible candidate had been allowed to appear. It was not the case of the appellants, in O.A. No. 300 of 2013, who are petitioners in CWJC Nos. 20417 of 2013 and 20460 of 2013, that they could not obtain qualifying marks in the written test, because of inclusion of ineligible candidates.

37. In a case of the present nature, when a candidate fails, on his own, to obtain qualifying marks, he cannot turn round and challenge the result of the written test on the ground of inclusion, in the selection process, of ineligible candidates.

38. To the extent, therefore, that the learned Tribunal has dismissed O.A. No. 300 of 2013, we find no reason to interfere therewith. However, the applicants, in O.A. No. 300 of 2013 (who are, now, petitioners in CWJC No. 20417 of 2013) have been saddled with cost of Rs. 5,000/- by the impugned order, dated 9.9.2013. The imposition of cost is, to our mind, not reasonable and, therefore, the direction to pay cost by the impugned order, dated 9.9.2013, passed in O.A. No. 300 of 2013, needs to be interfered with, but the dismissal of O.A. No. 300 of 2013 does not call for interference.

39. So far as O.A. No. 375 of 2013 is concerned, the learned Tribunal did not make any substantive effort to determine if the selection process suffered from any such infirmity, which rendered the whole or part of the selection process illegal and invalid, particularly, when the Railways had brought on record the infirmities with which suffered, according to the Railways, the selection process, which had been cancelled.

40. The learned Tribunal took the view, with no supporting materials on record, that the selection process, in question, had been cancelled under pressure of the unsuccessful candidates, such as, applicants in O.A. No. 300 of 2013. In this regard, learned Tribunal did not take note of the fact that despite protests raised by the applicants of O.A. No. 300 of 2013, the Railways had held viva voce on the scheduled date, i.e. 10.5.2013. It could not have, therefore, been held that the selection process had been cancelled under pressure of the applicants in O.A. No. 300 of 2013.

41. Moreover, learned Tribunal has observed that the Railways did not produce the relevant records and drew, therefore, adverse inference against the Railways.

Little did the learned Tribunal notice that it had not directed production of records by the Railways and no adverse inference could have, therefore, been drawn against the Railways for not producing the records.

42. At the root of the entire controversy, thus, lies the cancellation of selection process by notification, dated 6.6.2013, aforementioned.

43. The moot question, therefore, is: whether the notification, dated 6.6.2013, cancelling the whole selection process is or is not sustainable?

44. While considering the question posed above, what needs to be borne in mind is that in terms of paragraph 13.3 of Master Circular 68, relating to selection process for Group "C" post in Railways, read with paragraph 204.10 of Indian Railways Establishment Manual (Volume-I), recommendations of DPC are required to be laid before the General Manager for approval if the General Manager does not approve the recommendations, reasons are to be recorded by him and a fresh selection process, thereafter, shall ensue; whereas no amendment or alteration in the panel of selected candidates is permissible if the General Manager approves the panel.

45. No selection process is, thus, final until the time the select list is prepared and the General Manager approves the same.

46. Before, therefore, preparation of the final select list or before final declaration of result, it is within the ambit of the power of the DPC to cancel the selection process if it finds that the selection process suffers from such infirmities, which are either wholly incurable or is partly incurable. The categorical assertion of the Railways, in O.A. No. 375 of 2013, with regard to the above, was that the DPC had noticed that as per existing rules, some SC/ST candidates, who had qualified in the written test and had also appeared in the viva voce, were not eligible to appear in the written test itself. This assertion of the Railways has gone unchallenged.

47. It goes without saying that in respect of a selection process, such as, the present one, viva voce determines the inter se merit of all those candidates, who are called for viva voce. In such a process of determination of merit, some element of subjectivity may inadvertently enter into. In other words, possibility of inter se merit of candidates having entered as a component in the selection process and in drawing up the merit list cannot be confidently excluded. If, therefore, a viva voce includes ineligible persons along with eligible ones, the entire result of the viva voce would be illegal. This aspect of the matter, though never controverted in O.A. No. 375 of 2013, went completely unnoticed by the learned Tribunal.

48. We may also point out, as rightly contended on behalf of the Railways, that though the learned Tribunal has observed that the Railways administration has misread and misinterpreted the Master Circular No. 68 issued by the Railways Board, it has not explained as to what the correct interpretation of Master

Circular No. 68 shall be.

49. The learned Tribunal has also fallen in error in taking the view that cancellation of selection process is impermissible after publication of result of written test and that the selection process, in a case of present nature, must be allowed to reach its legal conclusion.

50. The learned Tribunal has also observed that the cancellation notice, dated 6.6.2013, ought to have stated, in clear terms, as to what the infirmities were. Noteworthy it is, in this regard, that the learned Tribunal has observed that the Railways did not produce the record to support their contention that the selection process suffered from infirmities. However, since no direction was issued to the Railways to produce the records, no adverse inference could have been drawn against the Railways for not producing the record.

51. Coupled with the above, an order of cancellation need not give the details of infirmities and it is enough if the reasons are assigned on the contemporaneous records. Without looking into the contemporaneous records, learned Tribunal could not have drawn adverse inference against the Railways nor could the learned Tribunal have interfered with the impugned order of cancellation, when the infirmities, which had been pointed out by the Railways, remained unchallenged by the applicants in O.A. No. 375 of 2013.

52. What is, now, important to note is that when the qualifying marks had been fixed and while determining the result of the written test, inter se merit of candidates is not determined, a candidate, who had failed, in the present case, to obtain the qualifying marks, in the written test, cannot question the selection of those candidates, who had obtained qualifying marks and had been called for viva voce even if the panel of selected candidates, for viva voce, included name of some persons, who were not eligible. Only those persons, who had been selected for viva voce, could have challenged the inclusion of the name or the names of such person or persons, who were not eligible to be called for viva voce, because viva voce determines inter se merit of the candidates, who are called for viva voce, and, therefore, the merit of an eligible candidate cannot be determined and decided by making him compete with the merit of any ineligible candidate.

53. In the case at hand, no candidate, empanelled in the list of selected for viva voce, has challenged the holding of viva voce.

54. The applicants, therefore, in O.A. No. 300 of 2013, had no right to challenge the panel of selected candidates for viva voce, when they had already appeared in the written test and failed, particularly, when the Railways had admitted that ineligible candidates had competed in the selection process vitiating thereby the selection process.

55. The question, however, is as to what would be the correct procedure under the law in such a situation. In the circumstance of the present case, the

appropriate and better course would be to extricate the illegalities committed from that part of the selection process, which suffers from illegality, and proceed to conclude the selection process by doing the needful in accordance with law. When an illegality, committed in a selection procedure, is curable, it must be cured by doing the needful. When, however, conducting of a selection process suffers from such illegalities, which cannot be cured, the remedy lies in cancelling the whole selection process. These are the effects of the decision in *Raj Kumar and Others Vs. Shakti Raj and Others*, wherein the Supreme Court has pointed out, at paragraphs 16 and 17, as under:--

16.....It is true, as contended by Shri Madhava Reddy, that this Court in *Madan Lal vs. State of J. and K.*, (1955) 3 SCC 486 : (1995 AIR SCW 1109), and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the and also conduct of the selection in accordance with the Rules. Therefore, the principle of estopped by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law.

17. The question then is what would be the correct procedure under the law? Unfortunately, no outside candidate has questioned the selection of the candidates in the interview. In the light of what we have stated in the facts and circumstances, the appropriate and better course would be that SSSB should call the names of all the candidates who were successful in the written examination conducted between April 25 and April 28, 1992, interview the candidates and select them in accordance with law laid down above.

(Emphasis is supplied)

56. For the reasons, which we have assigned above, though we find that DPC is competent to cancel a selection process for valid reasons, we must point out that when the written test has already been held and some of the candidates, who were, otherwise, eligible to participate in the selection process, such as, the applicants, in O.A. No. 300 of 2013, who had appeared in the written test, but had been unsuccessful in the written test, they ought not to have been allowed to take a second chance by cancelling the entire selection process including the result, as a whole, of the written test. Cancellation of the name of only those candidates, who were ineligible to participate in the selection process, but had become successful in the written test, would have sufficed.

57. Similarly, by excluding the ineligible candidates from the panel of selected

candidates of viva voce, a second viva voce ought to have been called. Without assigning any valid reason, a candidate, who was eligible to be included, in viva voce, for the purpose of securing qualifying marks, in viva voce, ought not to have been made to appear, once again, in the written test and, thereafter, viva voce. It is only when it is impossible to cure an infirmity in the selection process that the whole selection process can be set at naught by cancelling the same. Cancellation of a selection process, where the infirmity is curable, would be wholly unreasonable, irrational and arbitrary.

58. In *Anamica Mishra and Others Vs. U.P. Public Service Commission, Allahabad and Others*, , the selection process consisted of written test and interview. Some candidates, with better performance in the written test, were omitted from being called for interview, while others, with inferior performance, not only called for, but got selected as a result of improper feeding in the computer. In such circumstances, cancellation of the entire examination was held unjustified, when cancellation of the recruitment and holding of fresh interviews on the basis of the same written test by verifying the candidates with merit, who had been left out, would have sufficed. The relevant observations made, and the reliefs given, in this regard, in *Anamica Mishra* (supra) read as under:

We allow the appeal, set aside the judgment of the High Court and direct that the order of the Public Service Commission cancelling the written examination shall stand vacated. In lieu thereof we direct that the results of the written examination shall stand sustained and shall form the basis for the interview part of the recruitment and on the basis of the two examinations and in terms of the recruitment rules fresh selections shall be made. We would clarify that with the dismissal of the special leave petitions the selection of the two scheduled caste candidates and five backward class candidates has become final and would not be disturbed.

..... We have also not been able to appreciate the justification for cancellation of the written part of the recruitment examination and drive the candidates to litigation.

(Emphasis is added)

59. We, therefore, direct the Railways to undertake the exercise of excluding the names of those candidates, who were ineligible to participate in the selection process, but have found place in the panel of selected candidates for viva voce and, upon undertaking this exercise, the successful eligible candidates, in the written test, shall be called afresh for viva voce and the result shall, thereafter, be announced with, of course, approval of the General Manager, East Central Railway, Hajipur, if the viva voce is found by the General Manager to have not suffered from any infirmity.

60. The impugned notification, dated 6.6.2013, shall, therefore, stand modified to the extent as we have directed above.

61. Consequently, in terms of the directions, which we have given above, the impugned order, dated 9.9.2013, passed by the learned Tribunal, in O.A. No. 375 of 2013, shall stand modified.

62. So far as dismissal of O.A. No. 300 of 2013, by order, dated 9.9.2013, passed by learned Tribunal, is concerned, the same is not interfered with except to the extent that the cost of Rs. 5,000/-, which the applicants, in O.A. No. 300 of 2013, have been saddled with, is hereby interfered with and set aside.

63. In the light of the observations made and the directions given, CWJC Nos. 20417 of 2013 and 20460 of 2013 shall stand dismissed; whereas CWJC No. 21948 of 2013 shall stand allowed to the extent as directed above. No order as to costs.

S.P. Singh, J.

I agree.