

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATANo. O.A. 1489 of 2018
M.A. 729 of 2018Reserved on : 21.1.2020
Date of order: 07-02-2020Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Abhijit Bhadra,
Son of Late J.N. Bhadra,
Aged about 54 years,
Residing at P.O. Hindustan Cables,
P.S. Salanpur,
District – Burdwan,
Pin – 713 335.
2. Nemai Charan Sarkar,
Son of Bemala Charan Sarkar,
Aged about 56 years,
Residing at Street No. 3C,
Quarter No. 9B, Chittaranjan,
District Burdwan,
Pin : 713335.
3. Debashis Misra,
Son of Late Birendra Nath Misra,
Aged about 54 years,
Residing at Street No. 68,
Quarter No. 16B,
Chittaranjan,
District : Burdwan,
Pin : 713335.
4. Ashok Prasad,
Son of Bindshwari Prasad,
Aged about 55 years,
Residing at Street No. 1A,
Quarter No. 12A/A,
Chittaranjan,
District – Burdwan,
Pin : 713 335.
5. Prem Kumar,
Son of Kedarnath Ram,
Aged about 54 years,
Residing at Street No. 24, Quarter No. 28 A,
Chittaranjan,
District – Burdwan,



A handwritten signature in black ink, appearing to read 'W.H.' followed by a stylized signature line.

Pin : 713 335.

6. Satyabrata Seal,
Son of Late Nani Gopal Seal,
Aged about 56 years,
Residing at Street No. 41,
Quarter No. 1/14A,
Chittaranjan,
District – Burdwan,
Pin : 713 335.

7. Nilanjan Ganguly,
Son of Late Monaranjan Ganguly,
Aged about 58 years,
Residing at Street No. 73,
Quarter No. 35A/E,
Chittaranjan,
District – Burdwan,
Pin – 713335.

8. Ashim Majumder,
Son of Nihar Ranjan Majumder,
Aged about 55 years,
Residing at Ranga Matia,
Rupnarayanpur,
District – Burdwan,
Pin : 713335.

9. Samerendra Narayan Roy,
Son of Late Khagendra Nath Roy,
Aged about 55 years,
Residing at Street No. 10,
Quarter No. 10A,
Chittaranjan,
District – Burdwan,
Pin – 713335.

10. Surendra Nath Biswas,
Son of late Gopal Biswas,
Aged about 54 years,
Residing at Street No. 73,
Quarter No. 35A,
Chittaranjan,
District – Burdwan,
Pin : 713335.

11. Rajdeo Pandit,
Son of Jamuna Pandit,
Aged about 53 years,

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Residing at Asansol,
District – Burdwan,
Pin : 713335.

12. Sudip Kumar Sanyal,
Son of Late Susanta Sanyal,
Aged about 56 years,
Residing at Street No. 29,
Quarter No. 22B,
Chittaranjan,
District – Burdwan,
Pin – 713335.
13. Anup Kumar Roy,
Son of Late N.C. Roy,
Aged about 55 years,
Residing at Street No. 32,
Quarter No. 18/A,
Chittaranjan,
District : Paschim Barddhaman,
Pin – 713335.

All working as Junior Engineer,
Chittaranjan Locomotive Works,
Chittaranjan, District – Burdwan.

... Applicants

- V E R S U S -

1. Union of India,
Through the General Manager,
Chittaranjan Locomotive Works,
Chittaranjan,
District – Burdwan,
Pin : 713 335.
2. The Secretary,
Railway Board,
Rail Bhawan,
New Delhi – 110 001.
3. The General Manager,
Chittaranjan Locomotive Works,
Chittaranjan,
District – Burdwan,
Pin : 713 335.
4. The Principal Chief Personnel Officer,

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Chittaranjan Locomotive Works,
 Chittaranjan,
 District – Burdwan,
 Pin : 713335.

... Respondents

For the Applicant : Mr. S.K. Dutta, Counsel
 Mr. B. Chatterjee, Counsel

For the Respondents : Mr. K. Sarkar, Counsel

O R D E R

Per Dr. Nandita Chatterjee, Administrative Member:

The applicants have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

(a) An Order do issue directing the respondents to quash the impugned Provisional Seniority List of Junior Engineer (Electrical) dated 15.6.2018 issued by Senior Personnel Officer (W)/E, CLW/Chittaranjan.

(b) An Order do issue directing the respondents to quash the impugned Speaking Order dated 14.9.2018 being No. MW/E-XI/S-20/Court Case passed by the Dy. Chief Personnel Officer/Admn.

(c) An order directing the respondents to rescind/recall the impugned order dated 12.6.2018 and/or an order quashing and/or setting aside the impugned order dated 12.6.2018.

(d) An order holding that the applicants are entitled to be treated as regular Junior Engineers with effect from 3.2.2015 with consequential seniority and other benefits.

(e) An order directing the respondent authorities to issue a fresh order treating the applicants as regular Junior Engineers with effect from 3.2.2015 and further directing them to grant seniority and other consequential benefits thereof within a period as to this Hon'ble Tribunal may seem fit and proper.

(f) An order directing the respondents to produce/cause production of all relevant records.

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

2. An M.A. bearing No. 729 of 2018 has been filed by the applicants for jointly pursuing the instant O.A. Upon being satisfied that the applicants share a common interest and are pursuing a common cause of action, we hereby grant such liberty under Rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987.

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3. Heard rival contentions of both Ld. Counsel, examined pleadings, documents on record. Written notes of arguments have been furnished by Ld. Counsel for the applicant.

4. The facts of the matter are as follows:-

The applicants had appeared in the selection process of Inter Stage Apprentice Mechanics for filling up 22 vacancies of JE/Electrical. Candidates from different seniority units of Electrical Department appeared in such examination and 230 candidates were found as eligible for participating in the said examination.

The panel was published and arranged according to marks on seniority of the candidates. Some of the aggrieved candidates, however, challenged the said panel dated 21.2.2006 through O.A. No. 209 of 2006 (**Ashim Kr. Sinha & ors. v. Union of India & ors. & Abhijit Bhadra & ors.**) on the grounds that the panel has not been drawn up as per merit.

The Tribunal decided on the matter, and, vide its order dated 29.7.2008, quashed the said panel dated 21.2.2006 with directions to redraw a fresh panel. A fresh panel was thereafter redrawn vide Office Order dated 5.1.2009 which was again challenged before this Tribunal in O.A. No. 1631 of 2009 in the matter of (**Ashim Kr. Sinha & ors. v. Union of India & ors. & Abhijit Bhadra & ors.**) alleging that the names in the panel were not arranged as per merit. The Tribunal disposed of the said O.A., quashing the said panel dated 5.1.2009 and directed the respondent authorities to again redraw the panel strictly as per merit.

The applicant No. 1 in the instant O.A., Shri Abhijit Bhadra along with others, filed a Writ Petition before the Hon'ble High Court at Calcutta in WPCT No. 291(W) of 2010 (**Abhijit Bhadra & ors. v. UOI**)

Abhijit Bhadra

against the cancellation of the panel dated 5.1.2009. The respondent authorities also filed a Writ Petition bearing No. WPCT No. 198(W) of 2010 for clarification. The Hon'ble High Court clubbed the above Writ Petitions, and, in its judgment dated 18.5.2011, directed the authorities to redraw the panel as per merit thereby upholding the orders of the Tribunal dated 14.5.2010 in O.A. No. 1631 of 2009. In compliance to the orders of the Hon'ble High Court, a fresh panel dated 9.11.2011 was drawn for 22 posts wherein Sri Abhijit Bhadra (applicant No. 1 in the instant O.A.) & 14 other candidates did not find their place in the panel drawn as per merit. Consequently, they were reverted to the Artisan category vide orders dated 9.11.2011, but were allowed to work on adhoc basis as JE (Elect.) upon the condition that such adhoc promotions will not confer them with any claim for absorption in the cadre of JE on regular basis and also with respect to seniority.

The applicant No.1 (Shri Abhijit Bhadra) & 14 others (including some of applicants herein) thereafter filed a SLP before the Hon'ble Supreme Court bearing SLP No. 31627 of 2011 and the Hon'ble Apex Court, vide its order dated 3.2.2015, concluded that there were no infirmities in the orders passed by the Hon'ble High Court, but, as the petitioners therein had been continuing in service since long, their appointments should not be disturbed, and, their cases should be considered for future promotion in accordance with law. In compliance, Abhijit Bhadra & other petitioners were allowed to continue as adhoc JEs and their names were also included in the seniority list of Sr. Technician in which their designations were shown as adhoc JEs.

Applicant No. 1, Shri Abhijit Bhadra, and applicant No. 11, Shri R. Pandit, were also called to participate in an examination for JE (Elect.) against promotional quota post on the basis of their position in the list

Abhijit Bhadra

for Sr. Technician. They, however, chose not to appear in the examination on the ground of pendency of a Contempt Petition bearing No. 821(C) of 2015 filed by Abhijit Bhadra & 14 ors. before the Hon'ble Apex Court. This Contempt Petition was finally disposed of by the Hon'ble Supreme Court vide its orders dated 5.9.2017 in which the Hon'ble Apex Court directed that the petitioners will hold the post of Jr. Engineer as directed vide Court's order dated 3.2.2015 and shall be duly considered for promotion to the post of Senior Section Engineer / Elect. Their seniority, however, shall be considered prospectively and the persons who have already been promoted shall be treated as senior to them.



The respondents would aver that from the date of disposal of the SLP i.e. 3.2.2015, to the date of disposal of Contempt Petition, i.e. 5.9.2017, almost 30 numbers of JE (Electrical) have been inducted/absorbed in the cadre of JE/Elect. from different sources, a fact brought to the notice of the Hon'ble Apex Court during the date of hearing of the Contempt Petition on 5.9.2017.

Thereafter, in compliance to the Hon'ble Apex Court's directions, the authorities, after obtaining a clarification from the Railway Board, treated the petitioners before the Hon'ble Apex Court as regular Jr. Engineers w.e.f. 5.9.2017 and their names were also placed accordingly in the list of JE (Elect.) to be considered for the promotional post of Sr. Electrical Engineer in due course as per extant rules.

Upon implementation of the orders dated 5.9.2017 of the Hon'ble Apex Court, the applicants No. 1 and 12 other candidates filed O.A. No. 955 of 2018 challenging the Office Order dated 12.6.2018 whereby they were regularized as regular JEs w.e.f. 5.9.2017. The Tribunal disposed of the matter on 18.7.2018 with directions to the respondents to pass a

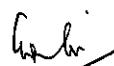
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speaking order. In compliance thereof, a speaking order was passed by the respondent authorities on 14.9.2018. The applicants have filed the present O.A. challenging the said speaking order. The respondents, however, would aver that two candidates, who were also petitioners in the SLP before the Hon'ble Apex Court, have accepted the impletion of orders dated 12.6.2018 as valid, and, have not impleaded themselves as applicants in the present O.A.

To abide by orders dated 18.5.2011 in WPCT No. 291(W) / 2010, a fresh panel was drawn up strictly in order of merit vide orders dated 9.11.2011. The empanelled incumbents were sent for training and thereafter posted as JE (Electrical) vide orders dated 21.11.2012, which the Ld. Counsel for the respondents would furnish during hearing in response to directions of this Tribunal.

5. The following grounds, inter alia, have been advanced by the applicants to support their claim:-

- (i) That, from the orders of the Hon'ble Apex Court dated 3.2.2015, it is established that the Hon'ble Court was pleased to direct the authorities to treat the applicant/petitioners as regular Jr. Engineers as otherwise the Hon'ble Court would not have directed that the applicant/petitioners should be considered for future promotions in accordance with law. It is a necessary corollary that, until an employee is regularized in the feeder post, he cannot be considered for further promotion. Hence, it was the intent of the Apex Court that the petitioners had to be regularized w.e.f. 3.2.2015 i.e. the date of issue of the Hon'ble Apex Court's orders.
- (ii) That, the authorities erroneously regularized the applicants as Jr. Engineers from the date of the orders of the Hon'ble



Apex Court in the Contempt Petition i.e. 5.9.2017 by treating the same as a fresh order. As an order passed in Contempt proceedings cannot be treated as a fresh order, the respondent authorities misconstrued and misinterpreted the orders of the Hon'ble Court dated 5.9.2017.

- (iii) What the respondent authorities ought to have understood is that the Hon'ble Apex Court had already passed an order in the SLP on 3.2.2015 that the petitioners shall hold the post of Jr. Engineer. Accordingly, instead of misconstruing the said orders issued in the Contempt proceedings, the authorities should have confined themselves to compliance of orders dated 3.2.2015.
- (iv) That, vide orders dated 3.2.2015, the Hon'ble Apex Court had made it clear that the applicants would be considered for future promotions in accordance with law. It is apparent therefrom that the Hon'ble Apex Court had intended that the applicants should be treated as regular JE from the date of passing of its orders dated 3.2.2015, as unless regularized, no employee can be considered for promotion.
- (v) Almost 30 JE (Electrical) have joined the department between 3.2.2015 and 5.9.2017 and the grievance of the applicants is that, if they were treated as regular JEs from 3.2.2015, they would have been senior to such promotee JEs.

6. According to the applicants, who have challenged the speaking order dated 14.9.2018, the said speaking order was not maintainable as

- (i) It was passed by an incompetent authority;
- (ii) That the spirit of the order of the Tribunal dated 18.7.2018 was lost sight off.

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(iii) That, the orders of the Hon'ble Supreme Court have been misconceived and misinterpreted culminating in an irregular order dated 12.6.2018 as issued by the respondent authorities.

(iv) And, that the applicants deserve to be regularized w.e.f. 3.2.2015 with commensurate seniority and consequential benefits.

7. The two orders primarily under challenge are:

(i) That, dated 12.6.2018 which is the order regularizing the applicants, as JE (Elect.) w.e.f. 5.9.2017, purportedly in compliance of the Hon'ble Apex Court's orders and Hon'ble High Court's orders dated 18.5.2011 in WPCT No. 198 of 2010 with WPCT No. 291 of 2010;

and

(ii) Speaking order dated 14.9.2018 issued in compliance to this Tribunal's orders dated 18.7.2018 in O.A. 955 of 2018.

8.1. At the outset, we would proceed to examine the speaking order which is reproduced below for record:-

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No. MW/E-XI/S-20/Court Case

Dated: 14.09.2018

Sri Abhijit Bhadra
Junior Engineer T/No-23/039
& 12 Other CandidatesSub: Implementation of Hon'ble CAT/Kolkata's Order dated 18.07.2018.
(O.A.No.350/00955 of 2018 (Abhijit Bhadra & Ors-Vs-U.O.I. & Ors.)

Hon'ble CAT/Kolkata, vide Order dated 18.07.2018, directed to the respondent No. 4, i.e. the Principal Chief Personnel Officer/CLW/Chittaranjan to consider and dispose of the representation of the applicants dated 18.06.2018 (Annex-A/10) by way of passing a well-reasoned order. Accordingly, the Principal Chief Personnel Officer has passed the Speaking Order on 14.09.2018, in compliance with the said Hon'ble Tribunal's Order.

The verbatim of the said orders is as under :-

SPEAKING ORDER

"Shri Abhijit Bhadra and others had filed O.A.No.350/00955/2018 before Hon'ble CAT/Kol requesting to set aside the impugned order dated 12.6.2018 as per which the services of the applicants were regularized in the category of JE/Elect from 05.09.2017. They have however requested for regularization w.e.f. 03.02.2015 with consequential seniority and other benefits. Hon'ble CAT/Kol decided the matter at the admission stage itself, vide order dated 18.7.2018 and directed to PCPO/CLW, the Respondent No. 4 to consider and dispose of the representation dt. 18.6.2018 (Annexure A/10) submitted by the applicants by passing a well-reasoned order keeping in view the orders of the Hon'ble Supreme Court and also in view of the rules and regulations governing the field within a period of six weeks.

2. Accordingly, I have considered the points raised in the representation dt. 18.6.2018 and perused the facts available on record including the orders dt. 03.2.2015 passed by Hon'ble Supreme Court in SLP No. 31627 of 2011 & Orders dt. 05.9.2017 passed in the Contempt Petition No. 821 of 2015

3. It is seen from the record that Shri Abhijit Bhadra and others had appeared in the selection conducted against the Inter Stage Apprentice Mechanics quota, vide Notification No.GMA/TTC/03/1 Pt.XII, dated 01.02.2005 for filling up of 22 vacancies of JE/Elect. The selection of Inter-Stage Apprentice Mechanics is a Competitive Examination, wherein 23 candidates had appeared. The Panel was published, vide letter no. GMA/TTC/03/1 Pt. XII, dated 21.02.2006 and it was drawn by giving the 'Marks of Seniority' and names of the candidates were also arranged as per their 'Seniority' in which Shri Abhijit Bhadra & others were empanelled. After publication of the Panel dated 21.02.2006, the selected candidates were sent for prescribed training before their appointment as JE/Elect. Being aggrieved, the Panel dated 21.02.2006 was challenged by Shri Ashim Kr.Sinha before Hon'ble CAT/Kol as O.A.No.209 of 2006 (Ashim Kr. Sinha -Vs-UOI & Abhijit Bhadra & Ors) on the ground that the Panel has not been drawn as per 'Merit'. Hence, after completion of training on 15.10.2007 the candidates were posted as JE/Elect. Provisionally, subject to the final disposal of O.A.No.209/2006, vide Establishment Order No. 911 dated 16.10.2007. The Hon'ble CAT/Kol vide their orders dated 29.07.2008, quashed the panel dt. 21.2.2006 and directed to redraw the panel strictly according to merit only.



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3.1 Accordingly, a fresh Panel was re-drawn on 05.01.2009. Sri. Abhijit Bhadra & others were also empanelled; but, the said Panel was again challenged by Shri. Ashim Kr. Sinha before Hon'ble C.A./Kolkata as C.A. No. 1631 of 2009 on the grounds that the Names in the Panel were not arranged as per Merit. The Hon'ble Tribunal vide their orders dated 14.05.2010 quashed the panel of 05.01.2009 and directed to re-draft the Panel strictly as per Merit.

4. Sri. Abhijit Bhadra filed a WPCT No.291(W) of 2010 before Hon'ble High Court/Kolkata. CLW Administration had also filed a Writ Petition as WPCT No.198(W) of 2010 (U.O.I. Vs. Ashim Kr. Sinha & Ors). The Hon'ble High Court/Kolkata clubbed both the Writ Petitions and passed the Judgment dated 18.05.2011 directing to re-draw the panel. It is also mentioned that on a proposal for SLP sent by CLW against the orders dt. 18.5.2011, passed by Hon'ble High Court / Kol. the matter was examined by Rly. Board in consultation with the Ministry of Law & Justice and it was decided vide Rly Board's L/No. E(NG)I-2011/PM/8CC dt. 01.9.2011 not to file SLP in the matter.

4.1 Thus, the Order dated 18.05.2011 of Hon'ble High Court/Kol. was complied with and a fresh Panel was drawn as per orders of Hon'ble High Court/Kol. for 21 posts, vide letter no.GMA/TTC/3/1 Pt.XII(Panel), dated 09.11.2011, wherein Sri. Abhijit Bhadra & others did not find place. Accordingly, Sri. Abhijit Bhadra & others were reverted back to their parent cadre in the Artisan Category, vide order dated 09.11.2011. However, Sri. Abhijit Bhadra & others were allowed to continue on ad-hoc basis as JE/Elect. with the condition that such Ad-hoc promotion will not confer on them any claim for absorption in the cadre of JE on regular basis and of seniority, vide letter no.GMA/TTC/3/1 Pt.XII(Adhoc), dated 09.11.2011.

5. Sri. Abhijit Bhadra & others had filed SLP No.31627 of 2011 before Hon'ble Supreme Court. Hon'ble Supreme Court passed order on 03.02.2015 directing :-

"Having heard the Learned Counsel for the parties, we are of the considered opinion, that there are no infirmities in the order passed by the High Court. However, regard being had to the fact that the petitioners have been continuing in service since long, their appointment shall not be disturbed. Needless to say, their cases shall be considered for future promotion in accordance with law."

5.1 Thus, in compliance with the order dated 03.02.2015 of Hon'ble Supreme Court, vide letter No.GMA/LAW/Representation/A.Bhadra, dated 25.07.2015, the status of Shri. Abhijit Bhadra & others was not disturbed. They were allowed to continue as Ad-hoc JEs, till they regularly get promoted to JEs and equal no. of post of Sr.Tech. (Artisan Category) in the relevant trade were kept unfilled, and their names were maintained in the Seniority List of Sr.Tech., showing them working as Ad-hoc JEs. In the said order dt. 25.07.2015, it was made clear that it will not confer any claim for absorption in the cadre of JEs and of seniority.

6. It is also pointed out that a selection against promotion quota was initiated during the year 2015. But, Shri. Abhijit Bhadra & Shri. R.P. Pandit did not participate on the ground of the pendency of Contempt Petition bearing No. 821 (C) of 2015, which was filed by Sri. Abhijit Bhadra & others before Hon'ble Supreme Court. The contempt petition was disposed of, vide judgement dated 05.09.2017, with the following direction :-

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"Having heard Ms. Madhavi Divan, learned counsel appearing for the petitioners and Ms. Kiran Suri, learned senior counsel appearing for the respondents, it is directed that the petitioners shall hold the post of Junior Engineer as directed vide order dated 03.02.2015 and they shall be considered for the promotional post, i.e. Senior Sectional Engineer(Electrical). However, their seniority shall be considered prospectively and the persons who have already been promoted shall be treated senior to them".

6.1 It will not be out of place to mention here that in the Cadre of JE/Elect, from the date of disposal of SLP, i.e. 03.02.2015 and to the date of disposal of Contempt Petition, i.e. 05.09.2017, almost 30 no. JE/Elect have joined in the Cadre of JE/Elect from different sources. The seniority of Shri Abhijit Bhadra & others is therefore required to be considered prospectively and the persons who have already been promoted shall be treated senior to them as directed by Hon'ble Supreme Court.

7.1 It is also pertinent to mention here that, for fixing the effective date of Seniority, in the light of Hon'ble Supreme Court's Order dated 05.09.2017, a reference was made to Railway Board vide PCPO's letter No. MW/Court Case/CP/821 of 2015 dated 05.04.2018 mentioning the following remarks under Para - 5.

"As per CLW views, since the orders are prospectively and it is also mentioned therein that the persons who have already been promoted shall be treated as senior to the petitioner, (as per record, 30 Nos. JEs have joined in the cadre from different sources between 03.02.2015 to 05.09.2017), therefore, the seniority of these 15 (fifteen) petitioners shall be reckoned below all the regular JEs, who have already joined in the cadre on or before 05.09.2017. However, if any other view is considered, in this case by Railway Board, the same may kindly be advised".

7.1 In reply, Railway Board vide letter No. E(NG)1/2018/SR 6/2 CC dated 18.05.2018 advised as under:-

"The issue raised in CLW's letter cited above has been examined in consultation with the Legal Directorate of this office.

"CLW's appreciation of the matter as contained in Part-5 of the letter under reference is hereby confirmed"

7.2 Accordingly, the CLW Administration, vide Office Order No. CPC No. 821/2015 dated 12.06.2016 regularised Sri Abhijit Bhadra & others as regular Junior Engineer/Elect. w.e.f 05.09.2017 and their names have also been placed in the Seniority list of JE/Elect.

8. It may be seen from the above that Hon'ble CAT/Kolkata, Hon'ble High Court/Kolkata and Hon'ble Supreme Court of India did not uphold the selection on the basis of seniority for the post of JE/Elect as per which Shri Abhijit Bhadra & others were selected against the Interstage Apprentice Mechanics quota. Moreover, the applicants' initial posting to the post of JE/Elect on 16.10.2007 was provisional, since the Panel dated 21.02.2006, by which the initial appointments were made to the post of JE/Elect, was under challenge before Hon'ble CAT/Kolkata, vide O.A.No.209 of 2006, and subsequently the Panel dated 21.2.2006 was quashed, vide Order dated 29.07.2008, with the direction to re-draw a fresh Panel, as explained above. Further, the applicants had also challenged the Hon'ble CAT/Kol's order dated 14.5.2010 passed in the OA No. 1631 of 2009, before Hon'ble High Court/Kolkata, by way of filing writ petition W.P.C.T. No.291(W) of 2010, against the direction of Hon'ble Tribunal, according to which the panel was to be redrafted strictly according to Merit. The Hon'ble High Court/Kolkata passed the Order on 18.05.2011, wherein the Hon'ble CAT/Kolkata's Order was upheld.

6/6/2018

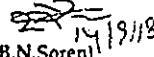
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8.1 It is reiterated that the applicants did not find place in the Panel of 21 candidates which was drawn in accordance with the orders passed by Hon'ble CAT and Hon'ble High Court / Kolkata. Hence, the applicants had been reverted alongwith others to the parent cadre of Artisan Category. Even, Hon'ble Supreme Court while disposing of the SLP on 03.02.2015 pointed out that there are no infirmities in the order of Hon'ble High Court/Kolkata. While making observation on the issue of seniority, Hon'ble Supreme Court, vide their order dt. 05.9.2017 directed that " Their seniority shall be considered prospectively and the persons who have already been promoted shall be treated senior to them".

9. In view of the facts mentioned above, it is clear that the regularization of the applicants to the post of JE/Elect from 05.9.2017 is in accordance with the orders passed by Hon'ble Supreme Court of India in the Contempt Petition No. 821 of 2015. The representation dt. 18.6.2018 filed by the applicants is accordingly disposed of."

The Speaking Order passed by the respondent No. 4, i.e. Principal Chief Personnel Officer / CLW / Chittaranjan is communicated herewith.

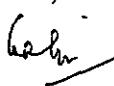
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(B.N.Soren)
Dy. Chief Personnel Officer/Admin


A.P. Bhattacharya

8.2. The following is inferred therefrom:

- (i) The speaking order, at the outset, narrates the sequence of judicial pronouncements in connection with the LDCE examination conducted as per notification dated 1.2.2005 for filling up 22 vacancies of JE (Elect.).
- (ii) That, in compliance with the orders of the Hon'ble Apex Court dated 3.2.2015, the status of the applicants was not


A.P. Bhattacharya

disturbed. They were allowed to continue as adhoc JEs, till they were regularized in the substantive post of JEs and equal no. of posts of Sr. Tech. in the Artisan category in the relevant trade were kept unfilled. Their names were maintained in the Seniority List of Sr. Tech, showing them as those working as Ad-hoc JEs. The said order, however, made it clear that it would not confer any claim for absorption in the cadre of JEs and in seniority (Annexure "A-7" to the O.A.).

- (iii) That, Shri A.Bhadra and Shri R. Pandit did not participate in a selection process against promotional quota on the ground of pendency of their Contempt Petition bearing No. 821 (C) of 2015. In the said Contempt Petition, the Hon'ble Apex Court had directed that, while the petitioners shall hold the post of Jr. Engineer as directed vide order dated 3.2.2015 to be considered for promotion post of Sr. Section Engineer (Elect.), their seniority, however, shall be considered prospectively and persons who have already been promoted shall be treated as senior to them.
- (iv) Accordingly, the respondent authorities regularized the applicants prospectively w.e.f. 5.9.2017 i.e. the date of disposal of the Contempt Petition. As the Hon'ble High Court, while passing its order dated 18.5.2011 in WPCT No. 291(W) / 2010, upheld the Tribunal's orders in O.A. No. 1631 of 2009, the earlier panels were redrafted strictly according to merit upon which the applicants did not find place in the panel of 21 candidates which were redrawn in terms of merit culminating in the reversion of the applicants to Artisan category vide orders dated 9.11.2011.

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(v) The orders of the Tribunal dated 18.7.2018 in O.A. No. 955 of 2018 reads as follows:-

“7. Accordingly the Respondent No. 4 i.e. the Principal Chief Personnel Officer, Chittaranjan Locomotive Works, Chittaranjan, District - Burdwan is directed to consider and dispose of the representation of the applicants dated 18.6.2018 (Annexure A/10) by passing a well reasoned order keeping in view the orders of the Hon'ble Supreme Court annexed at page 54 and 59 of the O.A. respectively and in view of other relevant rules and regulations governing the field within a period of six weeks from the date of receipt of this order and communicate the result to the applicant forthwith. After such consideration if the grievance of the applicant is found to be genuine, then the respondents shall take expeditious steps for granting the consequential benefits to him within a further period of six weeks from the date of taking decision in the matter.”

The order was passed by the Principal Chief Personnel Officer/CLW/Chittaranjan as directed by this Tribunal while disposing of O.A. No. 955 of 2018.

The Tribunal had only directed disposal of the representation by a well reasoned order keeping in view the orders of the Hon'ble Apex Court and other relevant rules and regulations. The speaking order has dealt with the orders of the Hon'ble Apex Court as well as applicable and extant rules in their speaking order.

8.3. The issue before us is therefore to examine the legality of actions of the respondent authorities in complying with the Hon'ble Apex Court's orders. Herein, we refer to the orders of the Hon'ble High Court at Calcutta in WPCT No. 198 of 2010 (**Union of India & another v. Ashim Kumar Sinha & ors.**) read with WPCT No. 291 of 2010 (**Abhijit Bhadra & ors. v. Union of India & ors.**) whereby the Hon'ble Court had clearly upheld the orders of the Tribunal in O.A. No. 1631 of 2009 by directing as follows:-

“ We have considered the rival contentions. In our view, the Tribunal approached the problem in a right direction.

Paragraph 219 prescribed the procedure for filling up the post whereas paragraph 320 was a general clause for determination of inter se seniority and/or relative seniority when persons from different cadres are considered for selection in any post (selection or non-selection). In our view, once a specified guideline is prescribed in the Recruitment Rule the generalized rule would not prevail. Paragraph 219 prescribed the rule for selection of the concerned post. The said rule came up for consideration before the Apex Court in the case of

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Ramjayaram (supra). The Apex Court struck down allotment of fifteen marks in seniority category by observing that the selection must be based upon merit. Such decision was followed by Punjab and Haryana High Court that reached finality on dismissal of the special leave petition. It is true that mere dismissal of special leave petition would not amount to approval of the said decision by the Apex Court. Even if we ignore the decision of the Punjab Haryana High Court, on the strength of the ratio decided in the case of Ramjayaram (supra) we can safely conclude that the tribunal approached the problem in a right direction. The Apex Court considered paragraph 219 and observed that the selection must be on merit. The Tribunal followed the said decision and directed redrawing of the panel. The order of the Tribunal was passed on July 29, 2008 whereas the amendment was done on June 19, 2009. We fail to appreciate as to how the said amendment could be made applicable for a panel re-drawn on January 5, 2009. In any event, a fresh panel must be drawn on the basis of the original paragraph 219 as it stood immediately after the decision in the case of Ramjayaram (supra).

It is established therefore, that the Hon'ble High Court, while upholding the orders of the Tribunal in O.A. No. 1631 of 2009, had directed a fresh panel to be drawn strictly in terms of merit. While doing so, the Hon'ble High Court at Calcutta had referred to paragraph 219 in ***Union of India - vs- Jaipal Singh reported in 2004 Volume - I Supreme Court Cases Page - 121.***

8.4. The Hon'ble Apex Court took up SLP No. 31627 of 2011 in which the petitioners had challenged the above noted orders of the Hon'ble High Court Calcutta and on 3.2.2015, while disposing of the SLP, held as follows:-

“ Having heard learned counsel for the parties, we are of the considered opinion that there are no infirmities in the order passed by the High Court. However, regard being had to the fact that the petitioners have been continuing in service since long, their appointments shall not be disturbed. Needless to say, their cases shall be considered for future promotion in accordance with law. We may hasten to clarify, we have passed this direction to avoid any kind of confusion by the railways that the petitioners would never be eligible for consideration for the next promotional post.”

A detailed reading of the orders of the Hon'ble Apex Court leads us to the following inferences:-

- (i) That, there are no infirmities in the orders passed by the Hon'ble High Court, meaning thereby, that the panel had to be redrawn strictly in terms of merit.
- (ii) As the petitioners have been continuing in service since long, their appointments shall not be disturbed. It is not disputed

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that the applicants were working as adhoc JEs on 3.2.2015, and, such appointments were not to be disturbed as per directions of the Hon'ble Apex Court meaning thereby that the petitioner/ applicants were to continue working as adhoc JEs till the point of their regularization.

- (iii) The Hon'ble Apex Court did not refer to or issue any dicta on regularization of the petitioners/applicants.
- (iv) It was also ordered that the cases of the petitioners/applicants shall be considered for future promotion in accordance with law. Extant rules require that firstly the petitioner/applicants were required to be regularized in substantive posts as JEs, and, thereafter, promoted as per the extant rules to the next hierarchy of posts. The Hon'ble Apex Court had accorded liberty to the respondent authorities to consider their cases for future promotion in accordance with law and none of the extant provisions or rules relating to such promotion were ordered to be amended by virtue of such orders.
- (v) That, the Hon'ble Apex Court had also ruled that their directions dated 5.9.2017 was to avoid any sort of confusion of the authorities that the petitioner will never be eligible to be considered for the next promotional post. This would imply that the petitioners, *prima facie*, will continue working in the same posts as adhoc JEs until their regularization, and, once regularized, they would be considered for promotion as per their seniority and eligibility for the same.

The petitioners therefore would be eligible in due course of time for consideration for the next promotional post, namely, SSE, once they have

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acquired such eligibility after being regularized as JEs in substantive posts.

8.5. We would next refer to the orders of the Hon'ble Apex Court in Contempt Petition (C) No. 821 (C) of 2015 arising out from Special Leave Petition arising from Special Leave Petition No. 31627 of 2011 whereby the applicant/petitioners had approached the Hon'ble Apex Court in its contempt jurisdiction after being aggrieved with the orders dated 9.11.2011 vide which the applicants were purportedly deregularized and made adhoc Junior Engineers to the violation of the orders of the Hon'ble Apex Court dated 3.2.2015. The Hon'ble Apex Court passed the following orders:-

“ Having heard learned counsel for the parties, we are of the considered opinion that there are no infirmities in the order passed by the High Court. However, regard being had to the fact that the petitioners have been continuing in service since long, their appointments shall not be disturbed. Needless to say, their cases shall be considered for future promotion in accordance with law. We may hasten to clarify, we have passed this direction to avoid any kind of confusion by the railways that the petitioners would never be eligible for consideration for the next promotional post.”

From the above orders, it is deciphered that the Hon'ble Apex Court had directed as follows:-

(i) That, the applicant/petitioners would hold the post of Jr. Engineers as directed vide orders dated 3.2.2015. As nowhere in the orders dated 3.2.2015, the Hon'ble Apex Court had issued a mandate on regularization, the service of the applicants/petitioners in the post of ad hoc Jr. Engineers was allowed upon the direction that their services were not to be disturbed as they had been continuing in their service as adhoc JEs for a long time. Hence, while issuing its orders in a Contempt Petition (Civil) No. 821 (C) of 2015, the Hon'ble Apex Court reiterated that the applicants would continue to remain in their present capacities as adhoc Jr. Engineers and would be eligible to be considered for their promotional posts

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as Senior Sectional Engineers (Electrical) as per law. The logical inference is that the Hon'ble Apex Court had confirmed its directions that, even if the applicants were continuing as adhoc Engineers, they would be considered for the promotional post of Sr. Sectional Engineer whenever they acquired eligibility towards such promotion as per law.

8.6. The Hon'ble Apex Court also directed that the seniority of the petitioners/applicants shall be considered prospectively. As the orders of the Hon'ble Apex Court were issued on 5.9.2017, prospective application would imply that the seniority of the petitioners/applicants vis-à-vis other promotes would not lead to their superseding all those who have already been promoted earlier to such petitioners/applicants. The Hon'ble Apex Court therefore ruled that all those, who had already been promoted to the post of SSE prior to 5.9.2017, would be treated as senior to the petitioners/applicants.

The applicants in the instant O.A. have alleged that the respondent authorities have misinterpreted and misconstrued the direction of the Hon'ble Apex Court as the Hon'ble Apex Court had granted them the status of regular JEs w.e.f. 3.2.2015 and any reference to the dicta on prospective seniority as issued in the Contempt Petition arising therefrom would not imply that the Hon'ble Apex Court intended that such directions will be treated as fresh orders modifying the earlier directions dated 3.2.2015.

8.7. In **Midnapore Peoples' Coop. bank Ltd. and others v. Chunilal Nanda and others (2006) 5 SCC 399**, it has been held that, if the Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties in a contempt proceedings, the aggrieved person is not without remedy. The petitioners

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in Contempt Petition No. 821 (C) of 2015 admittedly did not seek any remedy to the orders on prospective seniority.

In ***Director of Education Uttarakhand v. Ved Prakash Joshi (2005) 6 SCC 98***, in ***K.G. Derasan and anr. v. Union of India & ors. JT 1999 (10) SC 486*** in ***Rajasthan State Road Transport Corporation v. Shyam Bihari Lal Gupta 2005 (7) SCC 406***, and, in ***Sudhir Vasudev, Chairman & MD, ONGC v. M. George Ravishankaran 2014 (3) SCC 373***, the Hon'ble Court formulated the principles which must govern contempt jurisdiction, namely, that decided issues cannot be reopened.

8.8. In this context, we do not find any infirmity in the orders of the respondent authorities. The respondent authorities carried out the orders of the Hon'ble Apex Court by:

- (i) Allowing the petitioners to continue as adhoc JEs;
- (ii) Considering them for promotion in due course as per extant rules;
- (iii) Considering the petitioners/applicants' seniority prospectively from the date of the Hon'ble Apex Court's orders dated 5.9.2017.
- (iv) Allowing precedence to the such officials who have been promoted in the interim period.

Accordingly, in our considered view, order of the Hon'ble Apex Court in Contempt Petition No. 821 (C) of 2015 dated 5.9.2017 and that dated 3.2.2015 issued in SLP No. 31627 of 2011 have to be read conjointly. While it is agreed that the orders dated 5.9.2017, essentially being issued in Contempt jurisdiction cannot be interpreted as a fresh order, it should, in fact, be considered to be a reiteration of the orders dated 3.2.2015. We also note that nowhere in its orders dated 3.2.2015,

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the Hon'ble Apex Court had issued any dicta on regularization of the petitioners/applicants but had merely permitted them to continue in their present position which admittedly were that of adhoc JEs.

Accordingly, we conclude that the respondent authority's actions are not liable for judicial intervention as they have been issued in strict compliance to the orders of the Hon'ble High Court at Calcutta as well as that of the Hon'ble Apex Court.

9. Accordingly, the claim fails. The O.A. is dismissed on merit. No costs.



(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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