

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**Original Application No.200/251/2020**Jabalpur, this Friday, the 23rd day of July, 2021**HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER**
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBER

Jai Kumar Naidu, S/o Shri J.R. Naidu, aged about 53 years, presently working as Chief Law Assistant, West Central Railway, Jabalpur (M.P.) – 482001; R/o H.No.787, Street No.1, Cant., Jabalpur (M.P.) – 482001 **-Applicant**

(By Advocate – Shri Manoj Sharma)**V e r s u s**

1. Union of India through its General Manager, West Central Railway, Opposite Indira Market, Jabalpur (M.P.) – 482001.

2. Principal Chief Personnel Officer, West Central Railway, Opposite Indira Market, Jabalpur (M.P.) – 482001.

3. Shri C.P. Pandey, Chief Commercial Inspector/Chief Commercial Supervisor, Habibganj Railway Station, Bhopal.

4. Shri B.L. Meena, Chief Commercial Inspector/chief Commercial Supervisor, Itarsi Railway Station, Itarsi, District – Hoshangabad.

Respondent No.03 & 04 through respondent No.02, Principal Chief Personnel Officer, West Central Railway, Opposite Indira Market, Jabalpur (M.P.) – 482001. **-Respondents**

(By Advocate – Shri N.S. Ruprah along with Shri Aditya Pratap Singh)*(Date of reserving order : 08.04.2021)*

ORDER**By Naini Jayaseelan, AM.**

The present Original Application has been filed against the final eligibility list dated 27.02.2020 (Annexure A-1) for selection to the post of Assistant Commercial Manager under 70% Limited General Selection (LGS) quota, wherein name of the applicant has not been included in the said list.

2. The applicant has sought for the following reliefs:

“8.1 Call for the entire original material and record.

8.2 To command and direct respondent authorities to permit participation and promote the applicant to the post of Assistant Commercial Manager, Group B under 70% LGS quota along-with all other consequential benefits;

8.3 To kindly Grant any other relief/s, which this Hon’ble Tribunal deems fit and proper;

8.4 Award the cost of the instant lis to applicant.”

3. The applicant was initially appointed as Telecommunication Maintainer (TCM) ‘C’ w.e.f. 16.08.1988 and thereafter the applicant along with 10 others was placed in the provisional panel for promotion to the post of Law Assistant vide order dated 12.05.1997 (Annexure A-2). The applicant was posted as Law Assistant at Jabalpur Division vide order dated 25.07.1997 (Annexure A-3). Subsequently, the applicant was confirmed in the post of Law Assistant vide order dated 23.12.1999 (Annexure A-5). The promotion order dated



12.05.1997 (Annexure A-2) was challenged by one Shri N.K. Shrivastava before this Tribunal in Original Application No.689/1997 and thereafter in Contempt Petition No.51/1999, wherein the General Manager, Central Railway was directed to take a fresh decision on the representation of Shri N.K. Shrivastava. The General Manager, in compliance of the Bench's order in CCP and OA had decided to recast the panel dated 12.05.1997 (Annexure A-2) by excluding the seniority marks allotted under para 320 of IREM. The applicant challenged the same by filing OA No.565/2000 before this Tribunal, wherein vide order dated 04.07.2000, this Tribunal directed to maintain status quo of the applicant. Ultimately, the said OA was dismissed on 03.01.2001 (Annexure A-7). The applicant assailed the order of this Bench before the Hon'ble High Court of Madhya Pradesh at Jabalpur in Writ Petition No.174/2001 and the Hon'ble High Court initially passed interim protection in favour of the applicant vide order dated 15.01.2001 (Annexure A-8). The WP was finally dismissed on 19.03.2008 (Annexure A-9). In SLP No.14300-1/2008 filed by similarly placed employees, the Hon'ble Supreme Court granted interim protection vide order dated 02.06.2008 (Annexure A-10). Later on, the SLP was converted into Civil Appeal No.6067-8/2011 and the same was disposed of vide order dated 23.07.2019 (Annexure A-11) with the direction not to



revert the applicants therein and to permit them to continue in the same post till retirement. The order of the Hon'ble Supreme Court reads as under:

“We are informed that out of five appellants, two of them have already retired while one of them has been promoted, qua the other two, there are couple of years of service left.

We are only concerned with the question of reversion of the appellants. We do not think that after a lapse of two decades, it is fair to revert them.

We, thus, direct the while leaving the question of law open, the direction not to revert the appellants would apply to all the appellants before us i.e. qua people who retired there will be no recovery and qua the two who are still on the same post, they would be permitted to continue in the same post till retirement.”



4. It is the contention of the applicant that the applicant was never reverted and he continuously worked on the post of Law Assistant/Chief Law Assistant since 1997. In the order dated 23.07.2019 (Annexure A-11), the Hon'ble Supreme Court has not stated anything that the applicant cannot be promoted to the higher post. Hence, the decision of the respondents in not including the name of the applicant in the impugned final eligibility list dated 27.02.2020 (Annexure A-1) for selection to the post of Assistant Commercial Manager under 70% LGS quota, is bad in law. The applicant has submitted a representation on 28.02.2020 (Annexure A-13). However, no decision has been taken by the respondent authorities.

5. Vide order dated 06.03.2020, this Tribunal has directed the respondents to provisionally allow the applicant to appear in the examination scheduled on

22.03.2020. However, result of the examination was not to be declared till the next date. It was also made clear that filing of this O.A will not come in the way of the respondents in deciding the representation dated 28.02.2020 of the applicant.

6. In the reply statement, the official respondents have submitted that after dismissal of the Original Application No.565/2000, the respondents have recast the panel of Law Assistants on 12.01.2001 by excluding the seniority marks under Para 320 of the IREM. However, the order of this Tribunal was stayed by the Hon'ble High Court on 15.01.2001 passed in Writ Petition No.174/2001 (Annexure A-8). But the WP was ultimately dismissed on 19.03.2008 (Annexure A-9). Further, in the order dated 23.07.2019 (Annexure A-11), the Hon'ble Supreme Court has not reversed the finding of the Hon'ble High Court as well as order passed by this Tribunal in OA No.565/2007. Therefore, the status of the applicant as a Law Assistant was not recognised by the Courts of Law. Hence, the non-inclusion of the name of the applicant in Annexure A-1 eligibility list is in consonance with the legal position. The interim order dated 06.03.2020, was challenged before the Hon'ble High Court of Madhya Pradesh in MP No.2068/2020, wherein vide order dated 06.03.2020 (Annexure R-4), the Hon'ble High Court directed to continue with the



selection process and permit the applicant to appear in selection provisionally subject to the condition that his result shall not be declared until further orders.

7. In the rejoinder, the applicant has stated that the seniority list was determined as per para 203.6 of IREM Vol-I and the employees who were appointed in Grade Pay Rs.6500-10500 were considered in the eligibility list dated 22.02.2020 (Annexure A-1). The applicant is working in the grade pay of Rs.6500-10500 from 24.07.1997 and his juniors who were promoted after him, have been included in the eligibility list dated 22.02.2020. It has also been stated by the applicant that every Government servant has a fundamental right to be considered for promotion and the applicant too deserves to be considered for promotion to the post of Assistant Commercial Manager. Learned counsel for the applicant has placed reliance on a judgment of Hon'ble Apex Court in the case of **Ajit Singh (II) vs. State of Punjab**, (1999) 7 SCC 209, wherein it has been held that, "if a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right."

8. The respondents have filed additional reply to the rejoinder filed by the applicant and the applicant has also filed additional rejoinder. Subsequently, an



additional reply has also been filed by the respondents Nos.1 & 2. In all the additional pleadings both by the applicant as well as respondents, it has been reiterated what has been stated in the Original Application, reply and rejoinder. In addition, it has been stated by the respondents Nos.1 & 2 that the applicant was promoted to the post of Law Assistant/Chief Law Assistant giving him 15 marks for seniority, which is contrary to the law laid down in the case of **M. Ramjayaram vs. General Manager, South Central Railway and others**, (1996) 8 SCC 266.



9. We have heard the learned counsel for the parties and perused the pleading and the documents available on record.
10. The issue relating to awarding additional marks for seniority as per Para 320 of the Indian Railway Establishment Code under which the applicant was also awarded 15 marks for seniority, has already been adjudicated upon by the Hon'ble Apex Court in **M. Ramjayaram** (supra), wherein it has been held as under:

“3. The only controversy in this case is: whether the contesting respondents are entitled to be given preferential 15 marks over the appellant in selection as Law Assistants. It is an admitted position that in the written examination held by Respondents 1 and 2, the appellant had secured more than 60% in written examination and in viva voce he had fared well. In view of the fact that the contesting respondents have been assigned 15 marks for their seniority, he could not get selected. The appellant has challenged awarding of 15 marks as

discriminatory and violative of Article 14 of the Constitution. This Court has issued notice on 28-8-1995 to the following effect:

“It would appear that Rule 219(g) of the Railway Establishment Code provides procedure for selection on the basis of overall merit. The Tribunal in this case proceeded on the basis of awarding marks to find the suitability of the candidates for selection, awarded 50 per cent of marks to professional ability; personality, academic qualifications, leadership quality — 20 marks; record of service — 15 marks; seniority — 15 marks. The grievances of the petitioner, though he is having requisite five years’ service other persons, having higher scale of pay are preferred. He cannot be discriminated on the basis of having higher scale of pay and seniority cannot be adjudged on that basis. It is contended by Mr C. Sitaramiah, the learned Senior Counsel for the petitioner that the seniority has to be adjudged with reference to the length of service but not on the basis of scale of pay being drawn and the persons drawing higher scale of pay cannot be put above the candidates who are drawing lesser scale of pay by reason of the fact that the persons now made in the list have been drawn from different sources. ... disability and discrimination to some of the departments. The test laid down is arbitrary and unconstitutional. To consider this question, notice is issued.”

4. Respondents 1 and 2 have filed counter-affidavit. It is admitted therein that the appellant had secured higher marks in the written and viva voce test. It is stated that in view of Rule 320 of the Indian Railway Establishment Code, the respondents are seniors to the appellant. While the appellant is drawing scale of pay of Rs 1200-2040 the respondents are drawing scale of pay of Rs 1400-2660 and thereby they became seniors. On that premise they were given 15 marks over the appellant. As a consequence, they came to be selected.

5. Rule 320 of the Indian Railway Establishment Code reads as under:

“320. Relative Seniority of Employees in an Intermediate Grade Belonging to Different Seniority Units Appearing For a Selection/Non-Selection Post In Higher Grade.— When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter-seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to the proviso that only non-fortuitous service should be taken into account for this purpose.”



A reading of that rule would indicate that in assigning inter se seniority irrespective of the date of confirmation of an employee the continuous length of service in the higher scale of pay was given preference to the seniority over the persons who are drawing lesser scale of pay in a selection as well as non-selection post to be filled by considering the staff of different seniority units. The said rule has no application to the facts in this case. The selection is required to be done on the basis of the criteria laid down under Rule 219(g) of the Railway Manual. Selection should be made primarily on the basis of overall merit but for guidance of Selection Board the factors to be taken into account and the relative weightage laid down was as under:

“219(g) of the Indian Railways Manual states selection should be made primarily on the basis of overall merit but for guidance of Selection Board the factors to be taken into account and their relative weightage are laid down as below:

		<i>Maximum Marks</i>	<i>Qualifying Marks</i>
(i)	<i>Professional ability</i>	50	30
(ii)	<i>Personality, address leadership and academic qualification</i>	20	—
(iii)	<i>A record of service</i>	15	—
(iv)	<i>Seniority</i>	15	—

In this case since the contesting respondents are not from the same unit but of different units, Rule 320 stands excluded, weightage of 15 marks for seniority given to the respondents obviously is illegal. Therefore, there is force in the contention of the appellant that his non-selection tantamounts to arbitrary exercise of power on the part of Respondents 1 and 2. We set aside the order of the CAT, Hyderabad made in OC No. 1039 of 1992 dated 21-3-1995. The respondents are directed to consider the selection according to rules and make appointment according to law.

6. The appeal is accordingly allowed. No costs.”



11. It is true that in pursuance to the selection held on 15.04.1997, a list of employees was published vide order dated 12.05.1997 (Annexure A-2) by placing them in the provisional panel for promotion to the post of Law Assistant and the applicant's name is also reflected at serial no.04 of the list. The order dated 12.05.1997 *inter alia* states that the panel is provisional and subject to the final outcome of pending Court cases in different CATs and the position of the status can be altered depending upon the result of the proceeding. The said order dated 12.05.1997 was challenged by one Shri N.K. Shrivastava in Original Application No.689/1997 as well as in Contempt Petition No.51/1999. In the meantime, the respondent department had proposed to change the panel dated 12.05.1997, which was challenged by the applicant and one Shri V.S. Sisodia in Original Application No.565/2000 and the said Original Application was dismissed vide order dated 03.01.2001 directing the respondents to prepare a panel of those who have secured 51 marks out of 85 marks and promote as per panel keeping in view the vacancies notified. In pursuance to the orders passed by this Tribunal in OA Nos.689/1997 and 565/2000, the respondent department has issued an Office Order No.11/2001 dated 12.01.2001 (Annexure MA-1 with the application for



recall/review the order dated 06.03.2020), reverting the applicants and five other officials to their parent cadre.

12. The Writ Petition No.174 of 2001 filed by the applicant and Shri V.S. Sisodia against the orders passed by this Tribunal in OA No.565/2000 was also dismissed by the Hon'ble High Court of Madhya Pradesh vide order dated 19.03.2008 (Annexure A-9). The operative part of the order of Hon'ble High Court reads as under:



“3. Once the Bench of Tribunal at Bombay observed and directed that the select list is to be again prepared after deleting 15 marks relating to seniority and the order has been approved by the Supreme Court then this Court cannot go against the judgment of the Supreme Court. If the petitioners have any grievance then they have a remedy of making application for review in the earlier matter and may raise their grievance before the Supreme Court.”

13. In Civil Appeal No.6067 of 2011 filed by some similarly situation employees of the other Divisions, the Hon'ble Apex Court dealt with the reversion of the appellants therein and vide order dated 23.07.2019 (Annexure A-11) has directed not to revert the appellants and permit to continue them till retirement. It is pertinent to mention that the direction not to revert the appellants was given in respect of the appellants before the Hon'ble Apex Court leaving the question of law open and the finding arrived at by this Tribunal in Original Application No.565/2000 directing to prepare the select

list after deleting 15 marks of seniority, which has also been affirmed by the Hon'ble High Court of Madhya Pradesh in Writ Petition No.174 of 2001, has not been set aside in the order dated 23.07.2019 by the Hon'ble Apex Court. The Hon'ble Apex Court has only granted the relief that the appellants will be permitted to continue on the post of Law Assistant till retirement. However, this does not entitle the applicant to claim the other benefits on the basis of order dated 12.05.1997 (Annexure A-2) especially when he was provisionally placed in the panel dated 12.05.1997, which was always subject to the final outcome of pending court cases before the various Benches of this Tribunal.

14. In view of the above, we do not find any merit in this Original Application. Accordingly, the Original Application is dismissed being devoid of merit. Consequently, the interim order dated 06.03.2020 is hereby vacated.

No order as to costs.

(Naini Jayaseelan)
Administrative Member
 am/-

(Ramesh Singh Thakur)
Judicial Member

