

Open Court.

Central Administrative Tribunal,  
Allahabad Bench, Allahabad.

Dated: Allahabad, This The 22nd Day of August, 2000.

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

Original Application No. 1036 of 1999.

1. P.C. Chaturvedi aged about 56 years son of Late Sri S.N. Chaturvedi resident of Quarter No. R B III/708-A Gulam Goss Khan Marg, Railway Colony, Jhansi.
2. C.P. Singh aged about 55 years son of Sri J.S. Thakur r/o 1002 Khati Baba, Jhansi.
3. P.M. Ghosh aged about 53 years son of Sri S.C. Ghosh R/Quarter No. RB III/608-A, Railway Colony, Jhansi.

. . . Petitioners.

Counsel for the Petitioners: Sri R.K. Nigam, Adv.

Versus

1. Union of India through Chairman Railway Board, Rail Bhawan, New Delhi.
2. General Manager, Central Railway, Mumbai CST.
3. Chief Controller of Stores, Central Railway Mumbai CST.
4. Dy. Controller of Stores, Central Railway, Jhansi.
5. K.M. Dubey, Office Superintendent(I), Office of Dy. Controller of Stores, Jhansi.
6. R.S. Raghav, Office Superintendent (I) C/O Asstt. Controller of Stores (D) Central Railway, Itarsi.
7. R.D.P. Chaurasia, Office Superintendent (I) C/O Dy. Controller of Stores, Central Railway, Jhansi.

8. Ramanuj Mishra, Office Superintendent (I)  
C/O Dy. Controller of Stores, Central Railway,  
Jhansi.
9. Vinod Hardikar, Office Supdtt. (I) C/O Asstt.  
Controller of Stores (RSK) Central Railway  
Sithauli (Gwalior).

. . . Respondents.

Counsel for the Respondents: Sri Amit Sthalekar, Adv.

Order (Open Court)

(By Hon'ble Mr. S. Dayal, Member (A.))

This application has been filed for setting aside order dated 17.8.99 and direction to the respondents to consider <sup>the claim of the applicant</sup> on the post of Chief Office Superintendent strictly within the four corners of Railway Board Circular dated 17.2.99 on the basis of their A.C.Rs for the period of three years with consequential benefits.

2. The case of the applicants is that they were senior to the respondent Nos. 5 to 9 who have been empanelled for the post of Chief Office Superintendent. It is contended by the applicants as Office Superintendent Grade-I they stood at serial No. 1, 2 and 5 of the seniority list. The persons who were empanelled as Chief Office Superintendents stood at serial No. 6, 8, 9, 10 and 12. The applicants have claimed that they had unblemished career and no D.A. or proceedings were contemplated or initiated against the

applicants. They have drawn attention to Railway Board's letter dated 17.2.99 and two judgments of Jodhpur Bench in O.A. 258/95 dated 10.2.2000 which interprets term 'Fitness.' On the basis of that the applicants have claimed that they should have been empanelled in preference to the respondents.

3. The arguments of Sri R.K. Nigam for the applicants and Sri Amit Sthalekar for the respondents have been heard. The pleadings on record have been considered.

4. We have perused the letter dated 17.2.99 of the Railway Board in which it is mentioned that the post of Chief Office Superintendent and Depot Store Superintendents were classified as non selection on the demand of the departmental Council under the J.C.M. The Railway Board decided as a measure of immediate relief to the staff and to avoid delay in the implementation of the Board's instructions, the posts of Chief Office Superintendent and Depot Stores Superintendent were to be filled up through the process of modified selection. It is the contention of the applicants that since only service record was to be seen and there was no written test or interview, the officials should have been promoted on the basis of A.C.Rs. and absence of any departmental enquiry against them. The learned counsel for the applicant contended that since the process of modified section has not been laid down anywhere therefore it was only appropriate that the posts should have been treated as non selection and fitness of the

applicant should have been judged on the basis of their service record. The cited case of Jodhpur Bench of Dr. Kailash Narain Gaholot Vs. Union of India and others in O.A. 258/95 decided on 10.2.2000 adopts the definition of fitness given in Hon'ble Supreme Court's Judgment in Dharam Veer Singh Tomer Vs. Delhi Administration and others reported in (1991)17 A.T.C. 925. The Hon'ble Apex Court has held that " Expression Fitness means that there should not be any adverse entry in the character rolls of the concerned person at least for the last three years and no disciplinary proceedings should be pending against him. The applicants should have been empanelled as Chief Office Superintendent on the basis of yard stick laid down by Hon'ble Supreme Court.

5. The respondents have no quarrel with the proposition advanced by learned counsel for the applicant. They have, however mentioned in their counter reply that the entries for relevant period were duly communicated to the applicants and the same were taken into account in adjudging their fitness and it was on the basis of the over all performance of the applicants that they were not found fit for promotion and were therefore empanelled. We find that the fact of communication of adverse remarks has not been denied by the applicants in their rejoinder. It has only been contended in response to paragraph 12 of the counter reply that the applicants on the basis of operative merit are much better than the juniors. Since the respondents have not only made the averments but

also annexed the adverse remarks communicated to the applicants in Annexure C.A-3(i), 3(ii), 3(iii) and 3(iv) hence the very yardstick relied by the applicants does not help them in establishing their contention that they were fit for empanelment.

6. For the facts stated above, the O.A. is dismissed as lacking in merits.

There shall be no order as to costs.

*Rahimuddin*  
Member (J.)

*Ali*  
Member (A.)

Nafees.