

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD

(THIS THE 16 <sup>th</sup> DAY OF July 2010)

PRESENT

**HON'BLE MR. JUSTICE SHIV CHARAN SHARMA, MEMBER-J  
HON'BLE MRS. MANJULIKA GAUTAM- MEMBER-A**

Misc. Application No. 3319 of 2009

Alongwith

Misc. Execution Application NO. 07 of 2009

In

ORIGINAL APPLICATION NO. 1129 OF 2000

(Under Section 19, Administrative Tribunal Act, 1985)

Along With

ORIGINAL APPLICATION NO. 1225 OF 2000

ORIGINAL APPLICATION NO. 1512 OF 2000

ORIGINAL APPLICATION NO. 1480 OF 1998

And

ORIGINAL APPLICATION NO. 1272 OF 2000

1. Santosh Kumar Saxena, aged about 66 years, son of Late Shri B.D. Saxena, Resident of 904, Khati Baba, Dildar Nagar, Jhansi.
2. Om Prakash Tiwari, aged about 67 years, son of late Bitthal Lal, Resident of 61, Pachkuiyan, Jhansi.
3. Harnam Singh, aged about 66 years, son of late S.J. Singh, Resident of 570, Nandanpura, Kund Patha, Jhansi.
4. J.P. Naik, aged about 65 years, son of late Babu Prasad, Resident of C/o O.P Sharma, Khati Baba Jhansi.
5. O.P Chaturvedi, aged about 67 years, son of late Shri Laxmi Narain, Resident of Near Mahant Temple, Jhansi.
6. Abdul Latif, aged about 66 years, son of Abdul Hafiz, Resident of 483, Near Water Tank, Puliya No. 9, Jhansi.

.....Applicants

By Advocate: Shri T.S Pandey

Versus.

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Chief Workshop Manager, North Central Railway, Jhansi.
3. Senior Personnel Officer (Workshop) North Central Railway, Jhansi.

.....Respondents

By Advocate: Shri A.K. Sinha



## O R D E R

### DELIVERED BY MRS. MANJULIKA GAUTAM- MEMBER-A

This is Misc. Application for execution of orders arising out of O.A No. 1129 of 2000 and four other connected O.As, which were jointly decided by the Tribunal. The subject matter of the O.As was selection to the post of Office Superintendent Grade II held in the year 2000. After hearing both the parties and perusing the record, the Tribunal passed the following orders:-

*"Set aside the selection held on 10<sup>th</sup> July, 2000 and set aside the order dated 3<sup>rd</sup> November 2000. We in line with the order of the Principal Bench in the case of R.N Gautam and others Versus Union of India and Others provide for following reliefs:-*

- (i) *Pending the holding of selection on the basis of yearwise vacancies and framing the yearwise panel the candidates who have already been selected and appointed should not be reverted.*
- (ii) *Such candidate should not be subject to any fresh selection.*
- (iii) *The name of such persons would be interpolated for the purposes of inter-se seniority in the yearwise panels of the year in which they would have come in the zone of consideration and qualified. After framing yearwise panel duly incorporating the names of persons who are already in service on above basis if the respondents find that they have more persons on selection list than the number of vacancies available, none of the persons who have already promoted shall be reverted and they shall be adjusted against the future vacancies.*
- (iv) *The respondents shall carry out the aforesaid direction within a period of 4 months from the date of communication of the order".*

2. Instead of implementing the above orders, the respondents filed writ petition NO 35150 of 2001 and 36561 of 2001. Both these were decided by a common judgment and order dated 14.12.2008, which reads as follows:-

*"We have gone through the order of the Central Administrative Tribunal, Allahabad dated 20<sup>th</sup> July 2001 impugned in these writ petition i.e. Civil Misc. Writ Petition Nos. 35150 of 2001, 36561 of 2001 and 37186 of 2001 which are connected with each other and find no justification to interfere with the yearwise selection provided it is done expeditiously by fixing a time bound programme of 6 months from this date. Therefore, with the above observations and orders we disposed off all these writ petitions except writ No. 37186 of 2001 (already dismissed) without imposing any cost. Interim order merged with the final order."*

3. After receipt of certified copy of the order dated 14.10.2008, the applicants served the same on the respondents



on 18.12.2008 requesting for the implementation of the order of the Tribunal dated 20.7.2001.

4. Meanwhile Railway Board Restructuring Scheme dated 9<sup>th</sup> October 2003 became effective from 01.11.2003. The restructuring scheme was given effect to by the orders of the respondents dated 30.7.2009 (Annexure 5 of M.A.) The situation as on 01.11.2003 was that out of the six applicants, applicant No. 5 and applicant NO. 6 had already retired on 31.5.2002 and 31.8.2003. But the benefit of restructuring was very well available to applicants Nos. 1 to 4 who were very much in service.

5. The claim of the applicants is that if the orders of the Tribunal dated 20.7.2001 are implemented in letter and spirit by which the reversion order dated 3.11.2000 reverting them from the post of Office Superintendent Grade II to the Post of Head Clerk was set aside then they would be deemed to be working on the post of Office Superintendent Grade II though on adhoc basis. As per orders of the Tribunal, yearwise selection for the post of Office Superintendent Grade II was to be held from the year 1998 to 2000 and at the time of restructuring in the year 2003, the position which would emerge after yearwise selection would have to be taken into account. But in fact this was not done.

6. As per counter affidavit filed by the respondents, they have stated that the order of the Tribunal was challenged in the High Court and after decision of the High Court in the year 2008, in which six months time has given to complete the selection proceedings, the process of yearwise selection from 1993 to 2000 was completed and order issued on 24.8.2009.

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7. In para 7 of the counter affidavit, which reads as under:

*"7. That as per the order/direction dated 14.10.2008 passed by the Hon'ble High Court, the selection process was started and completed in the year 2008-09. It is stated that there is no rule that retired employees should be called for selection. Since prior to the start of the selection proceedings, all the applicants in the Execution Case had since retired, they were not called for selection. The Hon'ble Tribunal in its order dated 20.7.2001 passed in the Original Applications had also not given any specific direction to call the retired persons for selection or modified selection for them. Hence the action taken by the respondents is as per rule, provision and direction of this Hon'ble Tribunal"*

8. We have heard both the counsel and perused the record on file. It is clear that the order of the Tribunal dated 21.7.2001 was challenged in the High Court by the respondents. No stay was granted by the High Court but respondents did not implement the orders of the Tribunal until the conclusion of the proceeding in the High Court in the year 2008. When the final orders in the matter were passed by the respondents in the year 2009, the stand was taken that all the applicants in the execution application had already retired and, therefore, could not be called for selection. This is a patently incorrect stand taken by the respondents. Firstly they filed writ petition in the High Court and in the absence of the stay order, did not implement the orders of the Tribunal. The matter was finalized after 8 years and after that when the selection was made, the plea was taken that the applicant Nos. 1 to 6 had already retired. This is not a correct view of the matter. A perusal of the record shows that at the time when the restructuring scheme came into operation i.e. 01.11.2003, applicants No. 5 and 6 had retired but applicants No. 1 to 4 were still in service. Their claim for promotion should have been considered as it stood on 1.11.2003 and not as things stood in the year 2008-2009. When the respondents chose to take up the matter of implementing the Tribunal's order dated 20.7.2001, all the



applicants had retired. But their claim has to be considered as it stood at the time of restructuring i.e. 01.11.2003.

9. We are of the opinion that the respondents have not implemented the order of the Tribunal dated 20.7.2000 in the right spirit and therefore, a valid case is made out for starting due process for executing the orders of the Tribunal dated 20.7.2001.

10. For the reasons mentioned above, we are of the opinion that application for execution deserves to be allowed and the same is allowed accordingly. We would like to clarify that in view of law laid down by the Hon'ble Supreme Court, High Court and in the Rule of the Central Administrative Tribunal, the order of the Tribunal is to be executed according to the provision of Order 21 of Code of Civil Procedure. Various provisions has been produced before us by the learned counsel for the applicant. Applicant shall take steps for attachment through an Advocate Commissioner within a week and thereafter writ for attachment shall be issued as prayed. No costs.

  
Member (A)

  
Member (J)

Manish/-