

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

THIS THE 23 DAY OF 02, 2011

HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)

Original Application No. 902 OF 2000
(U/S 19, Administrative Tribunal Act, 1985)

Sudama Ram S/o Late Sunder Ram working as S.P.O./ Law
Officer, N.C. Railway, Headquarter, Allahabad.

.....Applicant

V E R S U S

1. Union of India through Secretary, Ministry of Railways,
Railway Board, Rail Bhawan, New Delhi.
2. General Manager, Northern Railway, Baroda House,
New Delhi.
3. Divisional Railway Manager, Northern Railway,
Allahabad.

.....Respondents

Present for the Applicant: In Person

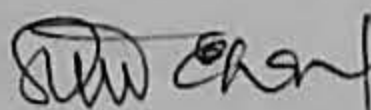
Present for the Respondents: Mr. Prashant Mathur

O R D E R

(DELIVERED BY HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER (J))

Instant O.A. has been instituted for the following
reliefs:-

*"(a). The Hon'ble Tribunal may graciously
be pleased to direct the respondents to
interpolate the name of the applicant in the
1984 panel of Asstt. Personnel Officer
(Group 'B') giving all consequential benefits
including due higher promotion in IRPS (Jr.
Scale)/J.A. Grade and quash the decisions
of the respondents dated 19.08.1999 and
09.09.1999 communicated by the*



respondents vide Annexure A-1 and A-2 of compilation No.1.

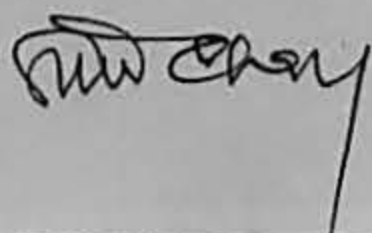
(b). The Hon'ble Tribunal may be pleased to set aside the clarification of Railway Board issued on 19.08.1999 (Annexure-3)."

The pleadings of the parties may be summarized as follows: -

2. That while applicant was working as U.D.C.-cum-Typist he had also appeared in the Zonal Departmental Competitive Examination for the post of Welfare Inspector in the Gr. ₹425-640(AS) and he was finally selected for the said post and placed in the panel of Welfare Inspector at Sl. No.13. That the applicant was not spared from the office of the DMO/N. Railway Allahabad on administrative ground in September, 1979 and joined as Welfare Inspector w.e.f. 17th December, 1981 in the office of Respondents No.3 i.e. Divisional Railway Manager, Northern Railway, Allahabad. After joining as Welfare Inspector in the scale of ₹425-640 (RS) applicant requested to fix and raise his pay by stepping of pay in reference to his junior but no response was made. That while applicant was working as Welfare Inspector in the scale of ₹425-640 (RS) D.R.M., Northern Railway Allahabad vide his letter No. E.O./Selection/APO dated 30th September, 1982 circulated a copy of instruction of General Manager (P) Northern Railway, New Delhi dated 21st September, 1982

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inviting applications from desirous staff eligible for the selection for the Post of Assistant Personnel Officer (Class-II). That eligibility for promotion to the post of Assistant Personnel Officer (Class-II) laid down was that the candidate must be Group 'C' Staff of the Personnel Department. That the group 'C' staff of the Stores and Transaction (Traffic) and Commercial Department who have avenue for promotion to Group 'B' in their own department but not on the basis of option being given to them and have elected to be considered for promotion to the post of Assistant Personnel Officer. Group 'C' Ministerial Staff working in the cadre post in any other department, excluding Hindi Organization and Accounts Department but including cash and pay and time office who have no avenue for promotion to Group 'B' in their own departments subject to certain conditions. That the staff holding post in the grade the minimum of which is ₹425 in the revised scale and in higher Group 'C' grades on a regular basis provided that they have rendered a minimum of three years non-fortuitous service and have reached the stage of ₹560/-. It has also been provided that in case junior employees considered for selection by virtue of his satisfying the relevant minimum service conditions, all persons senior to him shall also be held to be eligible notwithstanding that they may not satisfy the requisite minimum service condition. The applicant on 22nd October, 1982 applied on prescribed proforma for the above said post of Assistant



Personnel Officer (Class-II) as he had completed continuous service 4 years 138 days in grade ₹425-640/425-700 on the cut of date of eligibility as on 30th June, 1982 which is more than the minimum required service condition of three years in the grade the minimum of which is ₹425. The applicant was also covered under the monetary condition laid down in para II(1) note of G.M.(P) New Delhi's letter dated 21st September, 1982 circulated by D.R.M. (P), N. Railway, Allahabad vide his letter dated 30th September, 1982. That the monetary condition was not legally tenable in view of Apex Court Judgment. The applicant's assumed pay could reach also above the stage of ₹560, if it might have been fixed correctly in reference to his juniors as rendered in similar other Welfare Inspectors' panel. The cut off date for the eligibility of the above said post was fixed as on 30th June, 1982. Annexure A-8 and A-9 are the letters of the D.R.M. A representation was also made by the applicant against the Monetary condition attached to experience as a condition for eligibility has since been turned down as a judicious condition for a competitive selection by the Hon'ble Apex Court. The condition for eligibility for the post of A.P.O. Class-II that the candidates in the grade the minimum of which is ₹425 should have been reached the stage of ₹560 is void and illegal in view of the observation of the Hon'ble Apex Court. That the pay of the applicant could have reached at the stage of ₹560

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in grade ₹425-640(RS) as Welfare Inspector provided his pay had been stepped up in reference to his junior persons viz. Sri R.P. Bhatia as stepped up in reference to his juniors as well as Divisional Seniority of Welfare Inspectors but it was denied arbitrarily. That stepping of pay of the applicant in reference to his juniors S/Sri R.P. Bhatia and S.R. Sarswant, WLIs would have been provided, then the applicant could have reached the stage of initial pay of ₹560 on the cut off date finally fixed by the respondents. The representations were submitted to the respondents narrating all these fact and the General Manager (P) Northern Railway, New Delhi extended pay up to 22nd December, 1983 and further extended the zone of consideration of eligibility for the staff who become eligible up to 20th November, 1982 and invited fresh applications so as to reach by 10th January, 1984. The written test was conducted on 29th January, 1984 at Northern Railway, Headquarters Office, New Delhi. That the applicant was promoted in the Grade ₹550-750 (RS) as Senior Welfare Inspector w.e.f. 1st January, 1984 and he was eligible for the above said selection as on 1st January, 1984 without any condition. That the applicant represented the respondents on 7th January, 1984 and 30th January, 1984 but no response was made about the fate of his representations. Certain junior persons approached the Hon'ble High Court and they were allowed to appear in the written test for the post of

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A.P.O. But the applicant was not allowed even on provisional basis. The junior persons namely J.N. Vyas, WLI, Sri S.C. Sharma, WLI and Sri Daya Ram, WLI etc. of the same panel of WLIs and other persons junior in the integrated seniority were allowed to appear in the written test whose panel position in WLI were 17th and 21st whereas the applicant placed at serial no.13 was not allowed to appear in the test. Respondent no.2 did not prepare and circulate any inter-se-seniority of the eligible candidates for zone of consideration for the above said selection before conducting the written test for the post of A.P.O. That within a stream the inter-se-seniority should be regulated for the integrated seniority for eligibility in the selection of A.P.O., and it should be decided by the headquarters office in comparison to those who are not yet confirmed and are junior to the applicant. The respondents paid no attention to the letter dated 6th September, 1984 and no decision was communicated or taken. The respondent no.2 without deciding and communicating the decision of the applicant's representation conducted the selection of A.P.O. Class-II and declared the provisional panel of 18 candidates for the post of A.P.O. (Group 'B') vide letter dated 3rd September, 1984. Whereas it was obligatory on the part of respondent no.2 to decide the representation of the applicant on the issue of zone of eligibility conditions before holding the said selection. That the respondents extended the provisional panel of A.P.O. Class-II in which three general

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candidates Sri A.P. Srivastava, DPI/ALD, Kishan Lal, Supdt./DLI and J.P. Jain SS/HQ were included by G.M.(P)/N. Railways, New Delhi, letter dated 28th April, 1987. And the representation of the applicant was not decided for the reasons best known to the respondents. Later on a representation was also submitted to the General Manager, Northern Railway, New Delhi while he was on ^{impediment} extension at Allahabad and reply was communicated to the applicant vide letter dated 19th October, 1987 about the fact that "*There is no proposal to hold supplementary examination for A.P.O. Sri Sudama Ram inform suitably.*" No chance was allowed to the applicant as there was no proposal to hold supplementary examination for A.P.O. Later on applications were called on 19th November, 1987 by respondent no.2 for the post of A.P.O. Group 'B' and the zone of consideration for eligibility was also revised. At this time applicant also applied on 1st December, 1987 but the request of the applicant was not considered due to the pay limit of at the stage of ₹2050 fixed for eligibility to appear in the A.P.O. Selection which had already been held by the Hon'ble Apex court as not a reasonable eligibility condition. That in case stepping up of pay might have been granted to the applicant by the respondents then applicant would have also reached at the stage of pay @ ₹2050 on the cut of date and become eligible in respect of monetary conditions and the written test were conducted on 2nd July, 1988 and 16th July, 1988 and interview

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on 4th/5th/6th January, 1989 and result was declared on 7th February, 1989. In the year 1990 again respondent no.2 invited fresh applications for the post of A.P.O. And at this time applicant was permitted to appear for the first time and the result of the written test was declared and the applicant qualified and he was called for interview on 9th October, 1990 but due to some administrative reasons he was not allowed to appear in the interview held on 9th October, 1990. Later on after clearance of the validity of the panel of the WLI applicant along with Sri S.R. Paeek, SLWI/Bikaner was asked to appear in the interview and after being successful his name was interpolated at serial no.10 in the select list in the panel of A.P.O. That applicant was selected for the first time in the selections of A.P.O. Group 'B' and joined on 18th May, 1992 thereafter representations were also made in order to interpolate the name of the applicant in the panel of 1984 and as he was selected in the first attempt and he was not allowed to appear in the selection of A.P.O. due to administrative error whereas juniors to the applicants were permitted to appear in the test and as the name of the applicant was not interpolated hence the O.A. Although, several representations were made thereafter also.

3. Respondents contested the case and filed the Counter Reply. It has further been alleged that the applicant Sri Sudama Ram while working as Extension Educator in the

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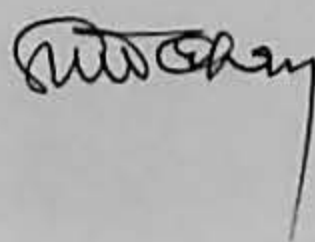
Grade of ₹425-640/700 had switched over to the stream of Welfare Inspector in the Grade of ₹425-700/-. The post of Welfare Inspector was decentralized. That in terms of the instructions as contained in the office letter No. 732-E/508/ETA dated 21st September, 1982 the applications were invited from the eligible concerned from all Group 'C' employee working in the grade of minimum of which is ₹425/- in the revised scale and in the higher Group 'C' on a regular basis who had rendered not less than three years of non-fortuitous service and had reached to the stage of ₹560/- per month for the post of Assistant Personnel Officer. There was no restriction between the permanent and temporary employees and the post of Assistant Personnel Officer is a general post for which ministerial staff of different departments, who fulfill the general condition of the eligibility, may apply for the same. And the applicant was working as Welfare Inspector in Allahabad Division in the Grade of ₹425-640/-. He also applied for the post alongwith other eligible staffs. That as the application was filled by the applicant as concerned from the record; it was revealed that the applicant was drawing pay @ basic of ₹500/- per month in the grade of ₹425-640/- on 30th June, 1982. It was also provided in the eligibility condition for being a person working at the basic of ₹560/-/per month in the grade, minimum of which is ₹425/- and above grades the

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applicant was found ineligible for appearing in the said selection which, however, was finalized in the year 1984 and accordingly the panel was also announced on 03rd September, 1984. That applicant made representations to the effect that person juniors to him before decentralization of Welfare Inspector, now working in other Division in the respective seniority units, were made eligible and as such he may also be allowed to appear in the said selection. That the seniority has no role in the matter of selection and the condition precedent for the eligibility is that the concerned officer is specifically required to fulfill the general condition of eligibility with regard to the basic pay. That no junior to the applicant of his own seniority unit was allowed to appear in the ensuing selection. That the candidates who were fulfilling the eligibility were permitted to appear. The name of the applicant was placed in the panel for the post of Assistant Personnel Officer in the year 1990. But at the time of selection in the year 1984 the applicant was not fulfilling the requisite qualification and hence he was not called for written examination. A decision was taken on representation of the applicant dated 23rd December, 1996 and decision was communicated to the applicant. That the applicant was eligible for the post of

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A.P.O. in the year 1990 and he was declared selected but a prayer has also been made by the applicant in order to interpolate his name in the panel of 1984 but as the applicant was not fulfilling the basic eligibility conditions hence his name could not be interpolated in the panel of 1984. That the O.A. is excessively time barred as the relief claimed by the applicant for interpolation of his name in the panel of 1984 after lapse of about 17 years. The persons who are directly affected with the interpolation have not been made party to the O.A. The grounds mentioned in the O.A. are not tenable. And the applicant was not fulfilling the requisite eligibility qualification for which he had already been appraised and it is only in the subsequent selection of 1990 and applicant since was eligible and as such after due selection his name was placed on the panel. It has also been alleged that the applicant was appointed as Clerk in the grade of ₹110-180 as on 1st February, 1964 and subsequently he was permitted to officiate as Upper Divisional Clerk cum Typist in the grade of ₹330-560 and thereafter he was regularized. Afterwards the applicant also appeared in the zonal departmental competitive examination for the post of Welfare Inspector in the grade of ₹425-640. That the UDC-cum-Typist who opt for



the cadre of Welfare Inspectors becomes entitled for the avenue of promotion in the respective category. The applicant opted for the cadre of Welfare Inspector and as such after qualifying in the examination he was placed on the panel for the post of Welfare Inspector. That it has also been provided in the Railway Board's letter dated 15/17th September, 1964 that if an employee is not spared from the existing post to appear in the promotion, he is not entitled to get his pay raised by stepping up of pay with reference to his junior. That the selection for the post of A.P.O. is General in nature in which all eligible staff of different departments fulfilling the general conditions of the eligibility may apply and the seniority is determined at the time of viva-voce against 70% quota vacancies. The matter relates to the year 1982 and at that time there used to be only one selection for the post of A.P.O. In the year 1992 the selection for the post of A.P.O. was bifurcated into 75% and 25% which now has been changed to 70% and 30%. The contents cannot be read in isolation. As pay of the applicant was less than ₹560/- per month hence he was not found eligible to appear in the selection as notified by the Railway Administration and hence there is no justification to interpolate the name of the applicant in

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the panel of 1982-84 and the O.A. is liable to be dismissed. The applicant also filed Rejoinder denied from the allegations made in the Counter Reply. Supplementary Counter Reply was also filed by the Respondents and Supplementary Rejoinder Affidavit was also filed by the applicant.

4. We have heard Mr. Sudama Ram applicant in person and Mr. Prashant Mathure, Advocate for the respondents and perused the entire facts and material available on record. From the pleadings of the parties it appears that certain facts are admitted by the parties. This is an admitted fact that earlier applicant was appointed as clerk in the scale of ₹110-180/- on 01st February, 1964. It is also an admitted fact that subsequently applicant was promoted as U.D.C.-cum-Typist. It is also admitted that applicant submitted an application for selection for the post Welfare Inspector in Grade ₹425-640(RS). It has also been admitted that applicant was finally selected for the said post and placed in the panel of Welfare Inspector at Sl. No.13 declared by the General Manager (P), Northern Railway, New Delhi dated 26th June, 1979 and the fate was declared vide letter dated 19th September, 1979. It has

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been alleged by the applicant that that after selection he was not spared from the office of the DMO/N. Railway Railway/Allahabad on administrative ground in September, 1979 and finally applicant joined as Welfare Inspector in the scale of ₹425-640 (RS) w.e.f. 17th December, 1981 in the office of Respondents No.3 i.e. Divisional Railway Manager, Northern Railway, Allahabad. That the applicant was not relieved from the office of the DMO/N. Railway Railway/Allahabad in order to join on the post of Welfare Inspector in the month of September, 1979 hence applicant joined as Welfare Inspector on 17th December, 1981 and that is why he could not reach at the pay of ₹560/- so as to appear in the selection of A.P.O. A request was made by the applicant in order to fix and raise his pay by stepping of pay in reference to his junior but nothing has been done in this connection. Although, this fact has not been specifically alleged by the respondents that there had been delay in the applicant's joining on the post of Welfare Inspector. It is admitted that the panel was prepared on 19th September, 1979 but applicant not permitted to be relieved from the post of U.D.C.-cum-Typist in the month of September, 1979 so as to join on the post of Welfare Inspector. Rather applicant was

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relieved in order to join on the post of Welfare Inspector w.e.f 17th December, 1981. The scale of pay for the post of Welfare Inspector was ₹425-640/- (RS). It is to be decided whether the applicant suffered monetarily as he was not spared in order to join on the post of Welfare Inspector in the month of September, 1979. D.R.M., Northern Railway Allahabad vide his letter dated 30th September, 1982 circulated copy of instruction of General Manager (P) Northern Railway, New Delhi dated 21st September, 1982 inviting applications from desirous staff eligible for the selection for the Post of Assistant Personnel Officer (Class-II) and certain eligibility conditions were imposed for promotion to the post of A.P.O. (Class-II) and this is also not disputed that there were these conditions for appearing in the selection of A.P.O. following were the conditions:-

- "(a). Group 'C' Staff of the Personnel Department.*
- (b). Group 'C' staff of the Stores and Transaction (Traffic) and Commercial Department who have avenue for promotion to Group 'B' in their own department but not on the basis of option being given to them and have elected to be considered for promotion to the post of Assistant Personnel Officer.*
- (c). Group 'C' Ministerial Staff working in the cadre post in any other department,*

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excluding Hindi Organization and Accounts Department but including cash and pay and time office who have no avenue for promotion to Group 'B' in their own departments.

5. It has also been provided in the instructions of General Manager (P) Northern, Railway, New Delhi that the three general category staff were permitted to participate in the selection of A.P.O.. And personnel of general category candidates were also required to fulfill the following conditions:-

"(i). That the staff holding post in the grade the minimum of which is ₹425/- in the revised scale and in higher Group 'C' grades on a regular basis provided that they have rendered a minimum of three years non-fortuitous service and have reached the stage of ₹560/-."

A Note was also prepared of the notification that "*In case junior employees considered for selection by virtue of his satisfying the relevant minimum service conditions, all persons senior to him shall also be held to be eligible notwithstanding that they may not satisfy the requisite minimum service condition.*" From perusal of the eligibility conditions it is evident that the candidates must be in the grade the minimum of which is ₹425/- in the revised scale and in higher Group 'C' grades on a regular basis.

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(ii). That the candidate must have rendered minimum of three years non-fortuitous service.

(iii). And have reached the stage of ₹560/-. The cut of date of eligibility condition was also 30th June, 1982."

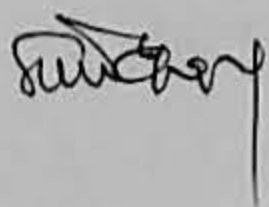
6. It has been alleged by the applicant that he submitted an application in the prescribed proforma for the post of A.P.O. on 22nd October, 1982. It is also undisputed fact that the applicant had completed continuous service of 4 years 138 days in grade ₹425-640/425-700 on the cut of date of eligibility, whereas, the minimum required service was three years in the grade the minimum of which is ₹425. That the applicant was fulfilling these eligibility conditions but the applicant was not fulfilling one eligibility condition. It was provided in the notification that the candidates must reach the stage of ₹560/- and as the applicant was not fulfilling this eligibility condition hence he was not permitted to appear in the written test held in the year 1982-84 of the A.P.O.. Several representations were made by the applicant in order to appear in the selection process but the respondents did not permit the applicant to appear in the test.


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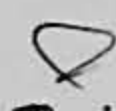
7. It has been alleged by the applicant that firstly this conditions of minimum of ₹560/- is illegal in view of the judgment of Hon'ble Apex Court and secondly, it has also been alleged by the applicant that he was selected and his name appeared in the panel of Welfare Inspector at Sl. No.13 declared on 19th September, 1979. That the applicant was entitled to assume the post of Welfare Inspector in the Gr. ₹425-640/-(RS) in the months of September, 1979 itself but the applicant was not permitted and he was relived from the post of U.D.C.-cum-Typist in the month of December, 1979 and hence the matter of joining of the applicant was delayed and instead of joining in the month of September, 1979 he joined on 17th December, 1981 as Welfare Inspector and that is why the applicant could not reach the scale minimum of which is ₹560/- which was the eligibility condition. That it was due to the fault of the respondents administration and the applicant cannot be held responsible for this. It has also been alleged that certain junior persons to the applicant were permitted to in the selection. It has also argued by the learned counsel for the respondents that the junior persons of different stream were permitted to participate in the selection. It has also been alleged by the respondents that as per

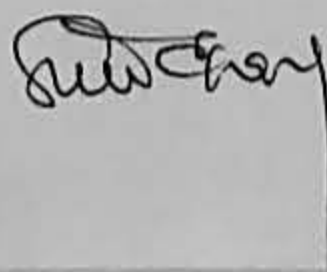
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instructions contained in the Railway Board's letter No. E(NG)/63/EM/92 dated 15th/17th September, 1964 it was contemplated that if an employee is not spared from the existing post to appear in the promotion, he is entitled to get his pay raised by stepping up of pay with reference to his junior. That the selection for the post of A.P.O. is General in nature in which all eligible staff of different departments fulfilling the general conditions of the eligibility may apply and the seniority is determined at the time of viva-voce against 70% quota vacancies. That the alleged juniors working in the different department at the time of promotion as Welfare Inspector and their pay was fixed on the basis of pay which they were drawing in the substantive capacity and the pay of the applicant was accordingly, fixed as per rules. No undue benefit was extended as alleged under para reference which warranted stepping up of pay of the applicant. That the name of J.N. Vyas, WLI, Bikaner was promoted from the Gr. of ₹425-640/- to ₹550-750/- and his basic pay was fixed @ ₹590/- per month as on 06th August, 1982. A civil suit was also instituted by Sri J. N. Vyas seeking relief that crucial date eligibility may be reckoned from the date of issue of the notification dated 21st September, 1982 instead of 30th June, 1982 and this

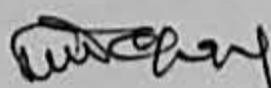


fact was not considered at the time of consideration as the applicant was drawing the pay at the basic of ₹500/- per month in the Grade of ₹425-640/- and hence he was not eligible to be considered. That so called juniors were the evidence of this fact that the basic pay of the applicant was ₹500/- on the cut of date i.e. 30th June, 1982 whereas, the eligibility condition regarding basic pay was ₹560/-. And it has been alleged by the respondents that the interpolation of the name of the applicant in the panel of 1984-82 cannot be permitted according to law as he was not eligible for the selection in the year 19⁸²⁻⁸⁴~~84-82~~/-. 

8. Annexure-A- is the circular letter of Northern Railway dated 30th September, 1982 and it was circulated inviting the application from desirous staff eligible for the selection for the Post of Assistant Personnel Officer (Class-II) and it was circulated by the D.R.M., Allahabad. It has been provided in this circular letter that the candidates must acquire certain eligibility criterion. Firstly, staff holding the post in the grade minimum of which is ₹ 425/- although, in higher Group 'C' grades on a regular basis provided that they have rendered a minimum of three years non-fortuitous



service and have reached the stage of ₹560/-. The first condition for being eligible to be the candidate of selection of A.P.O.(Class-II) must be having worked in the minimum of which is ₹425/- in the revised scale the applicant was also fulfilling the second condition of eligibility and that the candidate must have rendered minimum three years non-fortuitous service. It is also undisputed fact that on the cut off date applicant completed his 4 years non-fortuitous service in the scale of ₹425/-. But the third condition required that the candidates must have reached at stage of ₹560/- in the scale of 425/- and these conditions were must in order to become eligible candidate for the selection of A.P.O. (Class-II). On the relevant period the applicant had not reached at the stage of ₹560/- per month and hence the candidature of the applicant was rejected. Several representations were made in order to consider the candidature of the applicant in view of the judgment of Hon'ble Apex Court but no reply was submitted and lastly when a representation was made for interpolation of the name of the applicant in the panel of 1984 reply was submitted which is Annexure-A-1 dated 08th/09th September, 1999 and it has been stated *"the matter has been examined and it is regretted that to say that the*



same has not been agreed by the Railway Board." But when the matter was pending for selection in the year 1982-84 no reply was given by the respondents on the representation of the applicant and it was kept pending and later on the panel was declared in the year 1984 and as the applicant was not permitted hence he was not selected and, thereafter, the representations were made by the applicant for interpolation of his name in the panel of 1984. From the perusal of Annexure-A-8 of the circular letter of the Northern Railway, dated 30th September, 1982 it is evident that the respondents were aware that junior person may not get through viz-viz the senior persons and note has been added in the notification which is reproduced as follows:-

"Note:-

In case junior employees considered for selection by virtue of his satisfying the relevant minimum service conditions, all persons senior to him shall also be held to be eligible notwithstanding that they may not satisfy the requisite minimum service condition."

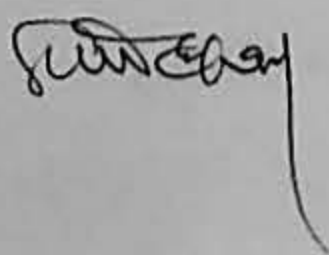
9. Regarding the minimum service condition above note has been added in the circular letter of the Railway. There may be example in which certain employees have

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not put in minimum numbers of years required by circular letter in comparison to the junior persons and whereas, there will be such circumstance even notwithstanding that they may not satisfy the requisite condition of minimum service of three years then they will be eligible to appear in the selection. But nothing has been considered in this circular letter Annexure-A-8 as to what will be the position if the senior persons have not reached the stage of ₹560/- in that scale of 425/- in the revised scale because numerous persons of different department were permitted to apply for the selection of the A.P.O. as there can be chances that junior persons might have reached the stage of ₹560/-per month and a senior could not reach to that stage of ₹560/- then whether irrespective of this fact junior that is getting less than that amount in comparison to his senior then the senior person will not be permitted to participate in the selection process. The main argument of the respondents is that although applicant was senior to some of the employees who participated in the selection in pursuance of the, Northern Railway, circular but as he had not reached this stage of ₹560/- in comparison to his juniors hence he was not permitted to participate in the selection. Applicant argued that great injustice has been

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not put in minimum numbers of years required by circular letter in comparison to the junior persons and whereas, there will be such circumstance even notwithstanding that they may not satisfy the requisite condition of minimum service of three years then they will be eligible to appear in the selection. But nothing has been considered in this circular letter Annexure-A-8 as to what will be the position if the senior persons have not reached the stage of ₹560/- in that scale of 425/- in the revised scale because numerous persons of different department were permitted to apply for the selection of the A.P.O. as there can be chances that junior persons might have reached the stage of ₹560/-per month and a senior could not reach to that stage of ₹560/- then whether irrespective of this fact junior that is getting less than that amount in comparison to his senior then the senior person will not be permitted to participate in the selection process. The main argument of the respondents is that although applicant was senior to some of the employees who participated in the selection in pursuance of the, Northern Railway, circular but as he had not reached this stage of ₹560/- in comparison to his juniors hence he was not permitted to participate in the selection. Applicant argued that great injustice has been



done with the applicant in not permitting him to appear in the selection process of A.P.O. merely due to reasons that applicant's pay has not reached at the stage of ₹560/- on the cut off date. Applicant also argued that he had been working as Welfare Inspector in the scale of ⁴²₹25-640(RS). He also argued that according to rules the seniority is to be prepared on the basis of zonal as well as divisional of the Welfare Inspector although, he also applied for stepping up of his scale for the post of Welfare Inspector but the respondents did not agree to that and in case stepping up of pay might have been granted to the applicant then he could have participated in the selection panel of 1982-84 of the A.P.O. (Class-II). There were several junior persons namely Sri R. P. Bhatiya, Sri S. R. Sawant, Welfare Inspector who were junior to the applicant and they had reached the stage of pay @ ₹560/- on the cut off date.

10. Applicant also argued that S/Sri J. N. Vyas, S. C. Sharma, and K. K. Mishra and the Welfare Inspectors of the same panel were juniors to the applicant. Sri R. Chaddha was the Head Clerk at Allahabad Division and they have been permitted as they fulfilled the monetary condition with three years minimum service. There is no

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denial of this fact that these persons were junior to the applicant or not or whether integrated seniority list was prepared or not. But learned counsel for the respondents argued that as he challenged the order on the basis of integrated seniority and that certain junior persons namely S/Sri J. N. Vyas, S. C. Sharma and Dayaram who were working as Welfare Inspector were permitted to appear in the selection as they were fulfilling the monetary condition as well as three years minimum non-fortuitous service in that scale. It has also been argued by the learned counsel for the respondents that the applicant while working as Extension Educator in the Grade of ₹425-640/- had switched over to the stream of Welfare Inspector, which was decentralized, as the lien of the applicant was maintained at Allahabad Division. That the post of A.P.O. is a general post for which the ministerial staff of different departments, who fulfill the general eligibility condition for appearing in the said selection. That the applicant as per his service records maintained in the Allahabad Division was in the grade of ₹425-460/- was drawing pay at the basic of ₹500/- per month. And as the applicant was not drawing pay at the basic of ₹560/- per month hence he was not fulfilling the requisite qualification. And the panel of 1984 was

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finalized and prepared on 30th September, 1984 and that the seniority has no role to play in the matter and that the seniority was maintained within the division and it was filled on the basis of eligibility condition of basic pay that the individuals were permitted to appear selection. That no junior to the applicant in his own seniority unit was allowed to appear in the selection. It has not been alleged whether the above persons were junior to the applicant or not. But the main thrust of the learned counsel for the respondents is that the seniority of the Welfare Inspectors is maintained at the Divisional level and hence the seniority is to be considered of the unit. But the applicant argued that the integrated seniority is to be prepared of the employees in view of para 321 of IREM. It has been provided in this para that relative seniority of the employees in an intermediate grade belongs to different units appearing for a selection/non-selection post on higher grade has been laid down. When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of employee shall be the determining factor the assigning inter-seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed

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employee with longer length of continuous service. This is subject to proviso that only non-fortuitous service should be taken into account for this purpose. The applicant further argued that in view of para 202 (a) Note (III) of IREM *"In case a junior employee is called up for a selection by virtue of his satisfying the relevant minimum service conditions, all his seniors should be held to be automatically eligible, irrespective of whether or not they satisfy the relevant minimum service conditions."*

11. Applicant argued that in view of this provision of IREM the length of service must have been considered in preparing the integrated seniority list and in view of 202 (a) Note (iii) that in case the minimum service condition required then all his seniors should be held to be automatically eligible. That this condition that candidate must have reached at basic pay of ₹560/- per month was against article 14 and 16 of the Constitution of India. In this connection applicant stated that the judgment of the Hon'ble Apex Court reported in **AIR 1977 S.C. 1237 State of Orissa Vs.**

N. N. Swamy and it has been held by the Hon'ble Apex Court that *"it is thus clear that the condition of drawing*

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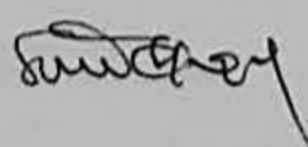
of ₹600/- or more on the date of taking over, which has been laid down in the said circular as a particular qualification for eligibility for appointment as Reader and later for consideration of their suitability by the Public Service Commission for appointment as Reader, is arbitrary and discriminatory. This condition has no nexus, whether, with the object underlying the qualification test in an educational institution having regard to the most essential condition of intrinsic quality and efficiency of the teachers. Hon'ble Apex Court further held that "Thus even amongst Readers in the private collage, similarly situated, the only ground for ignoring the claims of the said was drawing of a lesser pay, even though it may be less by ₹30/-, on March 9, 1971. This ground for a most unreasonable differentiation in picking and choosing from amongst the employees similarity situated on an absolutely artificial and irrelevant consideration result in denial of equal opportunity to the respondents in the matter of employment under the Government under Article 16 of the Constitution.". Hence the Hon'ble Apex Court held that there can be no discrimination on the basis of minimum basic pay and one cannot be deprived even otherwise fulfilling the requisite qualification merely on

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the ground that he has drawn certain amount less than the minimum monetary benefits. In the present case one of the eligibility condition for appearing in the selection for the post of A.P.O. was that the candidates must have reached a minimum of ₹560/- in the scale of ₹425/- and because the applicant was in the scale of ₹425/- but on the cut of date his basic salary was ₹500/- per month whereas, minimum required basic salary was ₹560/-, there was a shortage of ₹60/- otherwise applicant was also fulfilling rest of the requisite qualification, he had put in about four years non-fortuitous service in that scale whereas, the minimum years required are three years, and the applicant was also in the scale which was required. And certain juniors persons were drawing ₹560/- but so far as the seniority position is concerned applicant was senior to them. Applicant also cited (1997) 35 Administrative Tribunal's Cases 469 Rajendra Prasad Vs. Union of India and Ors. It has been held by the C.A.T. Jabalpur Bench *"Since employees belonging to different Grades have been empanelled on the basis of suitability, total service with reference to the entry in the Grade common to all of them should have been ascertained by drawing up a common seniority list for all the candidates."* In view of this decision also applicant's

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integrated seniority list ought to have been prepared. Learned counsel for the respondents has not cited judgment contrary to it. Hence in view of the judgment of the Apex Court the condition of minimum monetary pay was violative of article 14 & 16 of the Constitution of India. Under these circumstances in view of the judgment of Hon'ble Apex Court the candidature of the applicant has wrongly been refused. He made representations agitating this point and judgment of Hon'ble Apex Court was cited but no decision was taken on the representation of the applicant. Although, it is a fact that the applicant was selected subsequently as A.P.O.. But applicant argued that he was wrongly refused permission to participate in the selection process of the year 1982-84 and even in the 1987. It is a fact that applicant appeared in the selection of A.P.O. in the year 1989 and the applicant was permitted to appear in the selection during that year and result was declared on 04th September, 1990 and the applicant assumed office as A.P.O. w.e.f. 18th September, 1992. As he was not permitted in the panel of 1990 then benefit was given to him of proforma fixation in Group 'B' w.e.f. 10th October, 1990 when his juniors were promoted. Under these circumstances we are of the opinion that the applicant



was entitled for interpolation of his name in the panel of 1984. Applicant also argued that vide Annexure-A-1 letter dated 08th/09th September, 1999 applicant was informed that his name in the panel of 1984 of A.P.O. can not be interpolated and that this cannot be agreed by the Railway Board. In the letter dated 19th August, 1999 Annexure-A-2 the same information was given by the respondents. Applicant has also argued that it was wrongly alleged that there can be no supplementary examination for the post of A.P.O.. Applicant also argued that there are several examples in which supplementary examination was conducted as per direction of the Tribunal. Applicant also argued that Railway Board's circular letter dated 11th July, 1977 is also material and in view of this letter it has been provided that the seniority of the employees is to be determined.

"(i). It has been held that within a stream the inter-se-seniority should be regulated on the basis that those in the higher scale would be senior to those in a lower scale. For example, if in a stream, the top scale is ₹840-1040 and the next scale below are ₹700-900, ₹550-750 and so on.

(ii). For the purpose of drawing up an integrated seniority list of staff belonging to various streams, service in

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the top most scale in stream should be considered equivalent to such service in the top most grade in the other, irrespective of whether such grades are in different scales of pay. For example, if one stream, the top scale carries ₹700-900/- in another stream, the top scale carries 550-750/- and in the third stream the top scale carries ₹840-1040, the length of service rendered in these different streams i.e. 700-900, 550-750 and 840-1040, will be the basis on which to on which to determine the inter-se-seniority of staff in these grades."

12. Applicant argued that the seniority is to be prepared in view of this circular of the Railway Board but the integrated seniority was not prepared by the respondents in the selection of 1982-84/- and nothing has been alleged by the counsel for the respondents in this connection. Under these circumstances the integrated seniority was not prepared and junior persons were permitted to participate in the selection of A.P.O. in the panel of 1982-84 whereas, applicant was not permitted to participate on the ground that he has not reached the scale of ₹560/- per month and in view of judgment of Hon'ble Apex Court this condition was violative of article 16 of the Constitution of India, hence respondents were not justified in not permitting the

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applicant to participate in the selection of A.P.O. in the year 1982-84 whereas, juniors to the applicant were permitted to participate in the selection and the applicant had already put in more than three years of service in comparison to the juniors and there is no denial of this fact from the side of the respondents.

13. Applicant also cited para 228 of the I.R.E.M. Vol-I circular dated 16th October, 1964 and applicant argued that in case there is administrative error then the employees cannot be permitted to suffer. It will be just and proper to reproduce para 228 of the I.R.E.M. Vol.-I:-

"228, Erroneous Promotions.-(I) Sometimes due to administrative errors, staff are overlooked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the Competent Authority at the time of ordering promotions or some other reasons. Broadly, loss of seniority due to administrative errors can be of two types:-

(i). Where a person has not been promoted at all because of administrative errors, and

(ii). Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

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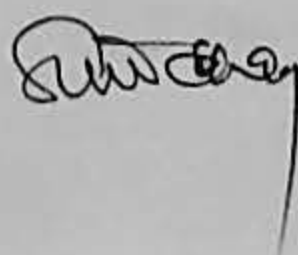
Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts."

14. Hence in case the person has not been promoted on due date then person is to be promoted from his due date and in the present case applicant alleged that due to the discriminatory act of the respondents he was not permitted to appear in the selection of ¹⁹⁸²⁻⁸⁴ ~~1984-88~~ imposing the monetary condition of drawing a minimum basic pay with experience for eligibility which was contrary to Law laid down by the Apex Court and that the juniors were permitted to appear in the selection process. Under these circumstances applicant is entitled to be promoted as A.P.O. (Class-II) in the panel of 1982-84 from the date when his juniors were promoted. That the representation of the applicant was not rejected rather reply was given to the effect that there is no proposal to hold supplementary examination.

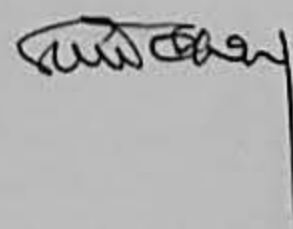
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15. Under these circumstances we are of the opinion that the applicant was eligible and entitled to participate in the selection of the year 1982-84 and he was denied from appearing in the selection because he had not reached the stage of ₹560/- and in view of the judgment of Hon'ble Apex Court this condition is void and illegal. It was also material that the juniors persons to the applicant were permitted to participate in the selection on the ground that they had reached the minimum basic pay of ₹560/-. And in our opinion it can be an administrative error and the applicant is entitled to be promoted from the date when his juniors were promoted. It is wrong to allege that there is no provision for holding supplementary examination. In the selection panel of 1990 applicant was selected in the first attempt.

16. It has also been argued by the learned counsel for the respondents that O.A. is barred by limitation and after about 15-20 years the matter has been agitated before this Tribunal. That the cause of action in favour of the applicant was when he was not permitted to participate in the selection process of the year 1982-84



but the O.A. was filed in the year 2000 and the matter relates to the year 1982-84. But applicant argued that the final reply was given by the respondents on 19th August, 1999 and 09th September, 1999 and then only applicant filed present O.A. hence it is not barred by limitation. Although, this matter was agitated at the time of filing the O.A. by the learned counsel for the respondents but at that time respondents were permitted to file objection against this plea and in the Counter reply also this plea has been taken. It is a fact that several representations were made by the applicant for permitting him to appear in the selection process of and thereafter, representations were made for interpolation his name in the panel 1982-84 and when final reply was given by the respondents that it is not possible to interpolate the name of the applicant then he filed O.A.. Several representations were made to the respondents as is evident from perusal of the record and it will be a futile exercise to mentioned all the representations but there are various representations made by the applicant for permitting him to appear in the selection but no reply has been



submitted and no speaking order was passed to the effect as to why applicant is not entitled to participate in the selection process of the year 1982-84. And in the year 1989 an evasive reply was given and neither the categorical reply was submitted whether junior persons to the applicant were permitted to participate in the selection or whether the integrated seniority was prepared showing the name of the applicant or other candidates. Under these circumstances taking into account all circumstances of the case as stated above we are of the opinion that it can't be said that the O.A. is barred by limitation.

17. For the reasons mentioned above we are of the opinion that otherwise applicant was entitled and eligible to participate in the selection of A.P.O. (Class-II) of the year 1982-84. But he was not permitted to participate in the selection as he was not fulfilling the requisite condition to the effect that he had not reached to the minimum basic pay ₹560/- in the scale of ₹425. Rest of the conditions were fulfilled by the applicant. The precaution was taken by the Railway Authorities that some juniors may not participate in

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the selection by superseding the senior persons but in the present case the applicant was not permitted to participate in the selection due to the reason that he had not reached the minimum monetary pay of ₹560/- per month but his juniors were permitted to participate in the selection as they have reached that minimum monetary scale. And in view of the judgment of the Hon'ble Apex Court this condition of the respondents was violative of article 16 of the Constitution of India. And representations were made to the respondents' alongwith the judgment of the Hon'ble Apex Court but no decision has been taken by the respondents in this connection. Hence we are of the firm opinion that the candidature of the applicant was illegally rejected and his juniors were permitted to participate in the selection. The name of the applicant must be interpolated in the panel of 1982-84 just above to the person junior to the applicant. And the applicant is also entitled to proforma promotion w.e.f. 1984 when his juniors were ^{permitted} ~~permitted~~, the O.A. deserves to be allowed.

Suresh Chandra

and order dated 19.8.1999 and 9.9.1999 are quashed and

18. O.A. is allowed, respondents are directed to interpolate the name of the applicant in the selection panel of 1982-84 of the A.P.O. (Class-II) from the date when his juniors were promoted. And the applicant is entitled to proforma promotion from the date when his juniors assumed the charge on that post. The respondents shall make compliance of this order within a period of three months from the date when a copy of this order is produced before them. Applicant shall produce copy of this judgment before the respondents forthwith. No order as to costs.

[Signature]
Member-A

/Dev/

[Signature]
Member-J

and order dated 19.8.1999 and 9.9.1999 are quashed and

18. O.A. is allowed, respondents are directed to interpolate the name of the applicant in the selection panel of 1982-84 of the A.P.O. (Class-II) from the date when his juniors were promoted. And the applicant is entitled to proforma promotion from the date when his juniors assumed the charge on that post. The respondents shall make compliance of this order within a period of three months from the date when a copy of this order is produced before them. Applicant shall produce copy of this judgment before the respondents forthwith. No order as to costs.

[Signature]
Member-A

/Dev/

[Signature]
Member-J