

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD

(THIS THE 15 DAY OF 5 2010)

HONBLE MR. A.K. GAUR, MEMBER-J
HONBLE MR. S.N. SHUKLA, MEMBER-A

ORIGINAL APPLICATION NO. 727 OF 2003

(Under Section 19, Administrative Tribunal Act, 1985)

Syed Ali Mehdi Abidi son of Shri Syed Mohd. Naeem Abidi, aged about 37 years, resident of 41-A, Hazariganj, Daribabad, Allahabad.

.....*Applicant*

By Advocate: Shri S.S. Sharma

Versus

1. Union of India through the General Manager, Central Railway, Headquarters Office, C.S.T. MUMBAI.
2. The Secretary, Railway Board, Rail Bhawan, New Delhi.
3. The Chief Personnel Officer, Central Railway, Headquarters Office, C.S.T. Mumbai.
4. The General Manager, Central Organization for Railway Electrification, Headquarters Office, Allahabad.

.....*Respondents*

By Advocate: Shri K.P. Singh

O R D E R

DELIVERED BY A.K. GAUR, MEMBER (JUDICIAL)

Through this O.A., applicant has prayed for following main relief(s):

- (i) Hon'ble Tribunal may graciously be pleased to set aside impugned "Speaking Order" issued by the G.P.O./Central Railway, Mumbai Respondent No.3 vide letter No.

HPB/629/R/C/LA dated 28.3.2003 (Annexure A-1, Compilation No.1) to this application.

- (ii) Hon'ble Tribunal may graciously be pleased to set aside impugned order issued vide letter No. HPB/629/R/C/LA dated 12.1.2002 recasting panel dated 12.5.1997 of Law Assistant to the excess of deleting name of the applicant from the panel and be pleased to direct the respondents not to delete name of the applicant from the said panel of Law Asstt.
- (iii) Hon'ble Tribunal may graciously be pleased to direct the respondents to consider the case of the applicant as per Railway Board's order dated 19.3.1976 and as per judgment of Hon'ble Supreme Court in R.C. Srivastava's case, in recasting the panel dated 12.5.1997 of Law Assistant in compliance to the judgment dated 3.1.2001 of Hon'ble C.A.T/Jabalpur Bench.
- (iv) Hon'ble Tribunal may graciously be pleased to direct the respondents to consider the case of the applicant for promotion to the post of Chief Law Assistant in Grade Rs. 7450-11500 (RSRP) from the date juniors to him have been promoted with all consequential benefits".

2. The brief facts of the case are that the applicant was appointed as Commercial Clerk in the grade of Rs. 950-1500 on 16.6.1989. Thereafter he was promoted as Senior Commercial Clerk in the pay scale of Rs.1200-1800. The applicant being a law graduate, was promoted as Law Assistant in the scale of Rs. 6500-10500 on adhoc basis on 28.6.1996. However, the General Manager, Central Railway, Mumbai issued notification dated 5.12.1996 for selection of Law Assistant in the grade of Rs.6500-10500. Written examination was held on 27.3.1997 and viva-voce was held on 15.4.1997. After due process of selection, applicant was selected and empanelled as Law Assistant vide panel dated 12.05.1997, and regularly posted as Law Assistant vide order dated 02.06.1997. Said panel dated 12.5.1997 of Law Assistant was challenged by one Shri N.K. Srivastava by filing O.A No. 689 of

1997 before Jabalpur Bench of the Tribunal, on the ground that allotment of seniority marks in the selection of Law Assistant was illegal and praying for quashing of said panel dated 12.05.1997. The said panel was also challenged by one Shri Girija Shankar by filing O.A. No. 762/97 before Central Administrative Tribunal, Allahabad Bench and by Shri Vineet Khosla, by filing O.A. No. 133/98 before Central Administrative Tribunal, Mumbai Bench. Vide order dated 22.07.1999, Jabalpur Bench of the Tribunal decided the O.A. No. 689 of 1997 with direction to the applicant to submit his representation before Respondent No. 1 i.e. General Manager, Central Railway, within 15 days alongwith certified copies of judgments of Hon'ble Supreme Court and Central Administrative Tribunal, Mumbai Bench in support of his contention that may be raised in his representation, and to the respondents to dispose of the same by a reasoned order within 2 months, by taking into consideration the said judgments, and to communicate the decision to the applicant (Shri N.K. Srivastava). In pursuance of the direction of the Tribunal, Shri N.K. Srivastava submitted his representation dated 26.07.1999 alongwith the judgment dated 22.7.1999 of Central Administrative Tribunal, Jabalpur Bench together with a copy of reported judgment dated 15.3.1996 of Hon'ble Supreme Court and copy of the judgment dated 10.3.1998 of Central Administrative Tribunal, Mumbai Bench. By letter dated 30.11.1999, General Manager, Central Railway decided the representation of Shri N.K. Srivastava,

upheld the procedure followed for formation of panel dated 12.5.1997.

3. Aggrieved by the decision of General Manager, Shri N.K. Srivastava filed Civil Contempt Petition No. 51/99 before Jabalpur Bench of the Tribunal contending that the General Manager, Central Railway while deciding the representation of Shri N.K. Srivastava had not considered the judgments of Hon'ble Supreme Court and Mumbai Bench of the Tribunal. Vide judgment dated 08.05.2000, Jabalpur Bench observed that the said judgments of Hon'ble Supreme Court in M. Ramjayaram's case is binding on all Govt. Departments in view of Article 141 of Constitution of India and directed the respondents No.1 i.e. General Manager, Central Railway to comply with the judgment dated 22.07.1999, keeping in view the decisions of Hon'ble Supreme Court and Mumbai Bench of the Tribunal. Said direction of the Jabalpur Bench was complied with and the General Manager, Central Railway decided to recast the panel dated 12.5.1997, as per the above directions of the Tribunal. Before recasting of the panel dated 12.5.1997 could be done, Shri Jai Kumar Naidu and B.S. Sisodia, who were posted as Law Assistant in the office of D.R.M Jabalpur and Bhopal respectively, filed O.A. No. 565 of 2000 before Jabalpur Bench of the Tribunal contending that, as they had already worked for more than 03 years as Law Assistant, even though Shri N.K. Srivastava may be appointed as Law Assistant, the applicants should not be



reverted in the event of recasting of the panel dated 12.05.1997.

Jabalpur Bench passed interim relief on 04.07.2000 to maintain the status quo in respect of the service conditions of the applicant and finally dismissed the O.A. No. 565/2000 vide judgment dated 03.01.2001 directing the respondents to take further action for preparing the panel of those who had secured 51 marks out of 85 and promote them as per the panel, keeping in view the vacancies published, within a period of 02 months. Accordingly, the panel dated 12.5.1997 of Law Assistant was recasted with the approval of Competent Authority and the recast panel was published vide letter dated 12.01.2001. Certain persons including Shri Abidi's name (the applicant) did not find place in the recast panel dated 12.01.2001. Subsequently, Shri Abidi and four others who had also been de-paneled, filed writ petition No.689/2001 and Writ Petition No. 174/2001 before the Jabalpur High Court against the judgments of Jabalpur Bench dated 03.01.2001 in O.A No. 565 of 2000 and dated 08.05.2000 in Contempt Petition No. 51/1999 in O.A. No. 689/97. Hon'ble High Court, Jabalpur on 05.02.2001 stayed the said orders dated 08.05.2000 and 03.01.2001 of Jabalpur Bench of the Tribunal. Due to grant of interim orders of Hon'ble High Court, Jabalpur, Shri Abidi and 04 others could not be reverted from the post of Law Assistant.

4. The applicant had filed O.A. No. 1446/2002 before this Tribunal and vide judgment and order dated 16.12.2002, this

Tribunal had disposed of the O.A. at the admission stage itself, with a direction to Respondent No. 3, i.e. Chief Personnel Officer, Central Railway, to consider and decide both the representations dated 19.07.2001 and 11.07.2001 of the applicant by a reasoned and speaking order within 03 months from the date of communication of the order. In compliance of the direction of the Tribunal dated 16.12.2002, respondent NO. 3 has decided the representation of the applicant dated 19.07.2001 and 11.07.2002 and passed the impugned order dated 28.3.2003, which is challenged in this O.A.

5. On notice, the respondents have filed counter reply, in which a preliminary objection has been raised that respondent No. 3 had considered his pending representation and passed a detailed speaking order dated 28.3.2003. The applicant has again filed this O.A. on the same issue, so it is submitted that the O.A. is barred by principle of Resjudicata and the O.A. is liable to be dismissed on this ground alone. It has been submitted that the applicant was borne on the original panel of Law Assistant published by Central Railway dated 12.05.1997. However, he was depanelled in the revised panel dated 12.1.2001 in pursuance of order passed in CCP No.51 of 1999, against which the applicant filed writ petition before High Court, Jabalpur and obtained interim order dated 05.02.2001, directing the applicant to maintain status quo and as such he continued to work as Law Assistant. In the meanwhile,

applicant was transferred to Central Organization for Railway Electrification, Allahabad as Law Assistant in the year 1998, which is not a part of Central Railway. Respondents further submitted that posts of Law Assistants are being filled in by positive act of Selection consisting of written test and viva voce amongst the candidates, who are called from different categories, post, department having requisite 05 years regular service and degree in Law and final panel is drawn on the basis of marks obtained in the written and viva voce tests in accordance with the procedure for filling up selection posts. It has further been submitted that the original panel dated 12.5.1997 was prepared as per extant relevant rules in the year 1997 as per Rule 219 (a) to (m) after adding seniority marks. However, the said Rule 219 stood amended by virtue of Hon'ble Supreme Court's decision in

Ram Jayram's case decided on 15.3.1996 reported in 1996 SCC (L&S) 890 by Railway Board vide Advance Correction Slip No. 66 notified under letter dated 16.11.1998.

According to the Respondents, confirmation letter dated 23.12.1999 issued to the applicant only signifies that the applicant and others listed in the said letter had successfully completed the period of probation of Law Assistant after being regularly promoted as Law Assistant. However, with the recasting of the panel dated 12.5.1997 and issue of the recast panel dated 12.1.2001, the regular promotion forming the basis of the said letter of confirmation is no longer in existence, and the promotion has been reduced to an adhoc promotion. With

this, the foundation of the said letter of confirmation was taken away and the said letter of confirmation can no longer grant benefit to the applicant. Applicant was promoted as Chief Law Assistant Grade Rs. 7450-11500, by the General Manager, Central Organization for Railway Electrification (CORE), Allahabad on adhoc basis. It is further submitted that his continuation as Chief Law Assistant after his depanelment on 12.1.2001, is a double adhoc promotion, which though irregular in terms of extant instructions has not been disturbed by Central Organization for Railway Electrification, Allahabad. Railway Board's letter dated 25.1.1976 is only guidelines to the D.P.C and other authorities, who are required to consider and apply the rules, and in any case there was no intention to confer any right on employee officiating on adhoc basis on higher posts, to be selected and included in the panel for those posts.

6. In reply to the counter reply, applicant has filed rejoinder, in which it has been stated that the applicant has been working on the post of Law Assistant since 28.6.1996 i.e. for the last more than 13 years continuously and satisfactorily. The applicant was promoted on the post of Law Assistant after passing the selection for the post as conducted by the General Manager, Central Railway, Mumbai vide notification dated 05.12.1996. The applicant was promoted on this post vide order dated 02.06.1997 issued by the General Manager (P), Central Railway, Mumbai. Before

promotion on regular basis the applicant was working on this post on adhoc basis since 28.6.1996. The applicant was also confirmed on the post of Law Assistant vide order dated 23.12.1999.

7. By filing Supplementary Counter reply, the respondents have denied the averments contained in the rejoinder reply and submitted that the issue involved in the present case i.e. the depanelment of the applicant from the post of Law Assistant subsequent to the recasting of the panel dated 12.05.1997 on 12.01.2001, in compliance of the order of the Tribunal, Jabalpur dated 08.05.2000 in C.P No. 51 of 1999 in O.A. NO. 689 of 1997, is pending before Hon'ble Supreme Court in SLP No. 14300/2008, filed by the applicant jointly with Shri S.N Mishra and Others. Thus the present O.A. is liable to be dismissed on the ground of principle of res-judicata.

8. We have heard Shri S.S Sharma, learned counsel for the applicant and Shri K.P Singh, learned counsel for the respondents and perused the pleadings and written argument filed by both the parties.

9. Learned counsel for the applicant argued that the applicant is a regular and confirmed Law Assistant in the Grade of Rs. 6500-10500 (RSRP) and holding his lien on this post since 2.6.1997 and has been working continuously on this post. He further argues that

the Hon'ble Supreme Court decided Civil Appeal No. 5085 of 1996 (arising out of SLP (C) No. 18560 of 1995 – M. Ramjayram Vs. General Manager, South Central Railway and Ors. vide judgment and order dated 15.3.1996, and upheld the contention that weightage of 15 marks of seniority is obviously illegal and directed the respondents to consider the selection according to Rules and make appointment according to law. Learned counsel for the applicant further argued that in view of Railway Board's decision, treating the judgment of Hon'ble Supreme Court in M. Ramjayram's case as a judgment in personam, the selection for the post of Law Assistant were continued to be held and employees were continued to be empanelled and promoted as per extant rules. Learned counsel for the applicant would contend that being a senior employee on the post of Law Assistant, the applicant is also entitled for promotion to the post of Chief Law Assistant Rs. 7450-11500 (RSRP) from the date persons juniors to him have been promoted. Learned counsel for the applicant also argued that impugned order dated 12.1.2001 recasting the panel dated 12.5.1997 of Law Assistant and deleting the name of the applicant from the panel of Law Assistant is totally illegal and void ab-initio. No copy of this order has ever been served to the applicant so far. The action of the respondents and impugned order dated 12.01.2001 are in gross violation of Articles 14, 16 and 21 of the Constitution of India. All the departments of the Railways are bound to follow the Railway

Board's orders and as such the selection in this case vide notification dated 5.12.1996, was held as per extant rules i.e. 219 (g) of I.R.E.M Vol. I and Railway Board's order in this respect in which the applicant was selected and promoted vide order dated 2.6.1997.

10. Learned counsel for the respondents vehemently argued that the issue raised in this O.A have also been raised in SLP No. 14300/08 filed by Shri S.N Mishra & others, in which the applicant is also a party, as such the present O.A. deserves to be dismissed on this ground alone. Learned counsel for the respondent urged that performance in adhoc services cannot be the criteria for regular selection/promotion in selection posts as applicant has failed to get adequate qualifying marks for appointment. Learned counsel for the respondents further argued that the claim of the applicant for seniority from the date of his adhoc promotion is not tenable because in terms of the extant instructions contained in para 302 of IREM Vol1 1989 edition, in categories of posts partially filled up by direct recruitment and partially by promotion, the criteria for determining seniority should be the date of regular promotion after due process in the case of promotees and the date of joining after due process in the case of direct recruits subject to the maintenance of inter se seniority of promotees and direct recruits amongst themselves. According to the respondents the applicant cannot claim seniority as Law Assistant, on the strength

of longer length of adhoc service, over those who have become regular Law Assistant even though they may have put in shorter length of regular service as Law Assistant.

11. We have heard Shri S.S. Sharma, learned counsel for the applicant and Shri K.P Singh, learned counsel for the respondents and also perused the written argument filed by them.

12. It is seen from the record that the applicant had earlier filed O.A. No. 1446/02 seeking direction to the respondents to consider his case for promotion to the post of Chief Law Assistant grade 7450-11500 and promote him from the date juniors have been promoted by treating his seniority from the date of adhoc promotion i.e. 28.6.1996 with all consequential benefits. The applicant also prayed for a direction to the respondents to consider the case of the applicant under provisions of Railway Board's order dated 19.3.1996 and also in accordance with the observation made in the judgment of Hon'ble Supreme Court rendered in Shri R.C. Srivastava's case while recasting the panel of Law Assistant dated 12.5.1997 in compliance to the judgment dated 3.1.2001 of Jabalpur Bench of the Tribunal. The Hon'ble High Court, Jabalpur stayed the operation of the order dated 3.1.2001. The O.A. No. 1446 of 2002 was finally disposed of by this Tribunal in following terms:-

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"In view of the aforesaid, the O.A. is finally decided with the direction to the respondent NO. 3 i.e. C.P.O. Central Railway, Mumbai to decide both the representation of the applicant dated 19.7.2001 (Annexure A-8) and 11.7.2002 (Annexure A-12) by a reasoned and speaking order within a period of 3 months from the date of communication of this order".

13. Learned counsel for the applicant has placed reliance on Circular No. 831-E/63/2X (E-IV) dated March 19, 1976 of the Railway Board, which reads as follows:-

"Sub: Record Note of the speaking order of the Deputy Minister for Railways and the Railway Board with the Headquarters of the personal Department of the Railway Administration held in New Delhi on 27.11.75.

A copy of an extract from the record note circulated vide Board's letter NO.75-E (SCT) 15/48, dated 9.12.75 as received vide their office letter No. E (NG) I-75 PMI/264, dated 25th Jan, 1976 is reproduced below:-

"2.2 Panels should be formed for selection posts in time to avoid adhoc promotions. Care should be taken to see while forming panels that employees who have been working in the posts on adhoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee reaching the field of consideration should be saved from harassment".

14. The case of the applicant that his work on the post of Law Assistant, on ad hoc basis was quite satisfactory and that cash award and commendation certificates have been issued by the administration in respect of his work as Law Assistant. The applicant is, therefore, entitled to the benefit of aforesaid Circular and he should have been declared successful in the interview.

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15. Learned counsel for the applicant would contend that it is no doubt true that a Circular of the Railway Board cannot override a statutory rule but a Circular, which is in the nature of administrative directions can certainly supplement the rules on matters on which the rules are silent. A reading of the Circular dated March 19, 1976 would show that it does not run contrary to any statutory rule. Indeed, the said Circular only gives guidance in the matter of exercise of the power by the Selection Committee while considering the suitability at the stage of interview and says that a person who has been working on the post for which selection is being made on adhoc basis and whose work is quite satisfactory should not be declared unsuitable in the interview. The Learned counsel for the respondents has not been able to show that this direction is inconsistent with any statutory rule. We are, therefore, unable to hold that the said direction in the Circular dated March 19, 1976 is inconsistent with any statutory Rule.

16. It is not the case of the respondents that work of the applicant on the post of Law Assistant on adhoc basis was not satisfactory. It must, therefore, be held that applicant was entitled to the benefit of the directions contained in Circular dated 19th March 1976. Applying the said Circular following decision of Hon'ble Supreme Court in R.C. Srivastava Vs. Union of India and Ors., it must be concluded that the applicant was wrongly depanelled while recasting the panel dated 12.5.1997. The case of

the applicant is fully covered under the provision of Railway Board Circular dated 19.3.1976 and Hon'ble Supreme Court's judgment in R.C. Srivastava's case. It is settled law that making the employee suffer adversely for default and lapses on the part of Government itself, would be unjust, unreasonable and arbitrary.

17. We have also carefully noticed that in response to notification dated 15.1.1996, the applicant was posted as Law Assistant on adhoc basis w.e.f. 28.6.1996. Subsequently in response to notification dated 15.12.1996, the applicant was selected and empanelled as Law Assistant vide panel dated 12.5.1997. He was also confirmed on the post of Law Assistant vide order dated 23.12.1999. In view of these facts by no stretch of imagination and under no Rule and Law, the services of the applicant since 2.6.1997 till today could be considered as ad hoc on the post of Law Assistant. The Railway Administration under the pretext of judicial order cannot delete the name of the applicant from the panel as it is their duty and liability to take the responsibility in this respect inasmuch as that the Railway Administration itself is responsible for conducting the selection as per existing Rules despite Hon'ble Supreme Court judgment in M. Ramjayaram's case. The applicant should not be allowed to suffer for lapses, default and mistake on the part of Railway Administration. The Railway Board's order dated 19.3.1976, duly confirmed by Hon'ble Supreme Court in R.C.

Srivastava's case (supra) are still intact. As the applicant comes within the purview of Railway Board's Circular, his name could not be deleted from the panel even after recasting it by deleting the seniority marks. The Railway Administration is fully responsible in this matter and they are estopped to act contrary to the action already taken by them in this matter as per extant Rules. It is also submitted that the Railway Board wrongly treated the judgment of M. Ramjayaraman's case (supra) as judgment in personam. The Railway Board due to such wrong advice did not amend the rule of selection upto 16.11.1998 and before this all selections were held as per extant Rules.

18. We are fully convinced that for the lapses, default and mistake on the part of Railway Administration the applicant, who was selected as per extant Rules and promoted and confirmed as Law Assistant, now cannot be reverted under the pretext of recasting of panel. The Railway Administration is liable to adjust such types of employees as they are responsible in this respect. Equity is in favour of the applicant. It is also amazing, that the applicant, who happens to be a confirmed Law Assistant, has been sought to be treated as ad hoc. Further neither any such order has been passed by any of the authority within the knowledge of the applicant nor any opportunity of hearing has been granted to the applicant before treating him to be an ad hoc employee. Learned counsel for the applicant submitted that for the mistake and fault of the Railway Administration which is in flagrant violation of

decision of Hon'ble Supreme Court in Ram Jairam's Case (Supra). In view of the above, the applicant is entitled for the relief purely of acquittal ground without going into any other legal issue. In support of aforesaid contention we may place reliance on the latest decision of Hon'ble Supreme Court reported in **2010 (1) All India Services Law Journal-351 Amarjeet Singh and Ors. Vs. Devi Ratan and Ors**, in which Hon'ble Supreme Court has clearly held that for the fault of the State Authorities, the applicant could not suffer for not fault of his. Had the Railway Board, revised the Rules immediately after decision of Hon'ble Supreme Court in M. Ramjayaraman case, and had the selection of the applicant been conducted as per revised procedure, the applicant would have secured better position as his service record was clean, satisfactory and he was already working as Law Assistant on ad hoc basis at the time of selection having considerable experience of working in legal field since long?

19. Having given our thoughtful consideration to the pleas advanced by the parties counsel, we are firmly of the view that there was grave mistake on the part of the Railway Board in considering the judgment of Hon'ble Supreme Court in M. Ramjayaraman's case as judgment in personam. Even after aforesaid judgment of Hon'ble Supreme Court, the selections were continued to be held as per existing Rules i.e. by considering 15 seniority marks in forming the panel for 'General Selection' post including post of Law Assistant. The eligible staff appeared in the

selection as conducted by the Railway Department as per existing Rules, passed the same, promoted and confirmed on the post. Now deleting name of Law Assistant working on this post since 22.5.1996 and confirmed on this post w.e.f 23.12.1999, under the pretext of recasting of panel as per decision of Jabalpur Bench of the Tribunal is wholly unjustified, unfair and contrary to the provision of Rules. A glance of Railway Board letter dated 25.1.1996 circulated vide letter dated 19.3.1976 clearly provides that care should be taken to see while forming panels that employees who have been working in the posts on adhoc basis quite satisfactorily are not declared unsuitable in the interview. In nutshell, we may observe that at the time of forming panel for the post of Law Assistant, the applicant had already been working on this post quite satisfactorily, since 28.6.1996. Hence he must have been saved from harassment. Similar view was taken by Hon'ble Supreme Court in R.C. Srivastava's case (supra), and the benefit of Circular dated 29.3.1976 was extended to him.

20. We have also carefully seen the record and found that the applicant was allowed to appear in the selection for the post of Law Assistant as he was eligible and fulfilling all the condition as per extant Rules. Under notification dated 5.12.1996, the selection was held as per existing Rules i.e. para 219 (g) of I.R.E.M, the applicant passed the written test and viva voce and his name was included in the panel of Law Assistant. The applicant was, accordingly,

confirmed as Law Assistant vide order dated 2.6.1997 issued by the Chief Personnel Officer, Central Railway, Mumbai and subsequently his services as Law Assistant were confirmed vide order dated 23.12.1999 by Chief Personnel Officer, Central Railway, Mumbai. The applicant was also holding lien as Law Assistant in Central Railway. We may also observe that order of the M. Ramjayaraman's case decided by Hon'ble Supreme Court was sent to the Railway Board for proper direction. The Railway Board in consultation with the legal cell of the Ministry of Railways decided that the case of M Ramjayaraman is applicable amongst the parties alone and hence the General Manager Central Railway, issued notification dated 5.12.1996 as per extant Rules. Later on Railway Board vide letter dated 16.11.1998 amended the said Rule of selection on the basis of M. Ramjayaraman's case and applicant was depanelled vide letter dated 12.01.2001 applying the rule retrospectively. Learned counsel for the applicant vehemently argued that **Rule of law cannot be given retrospective effect unless it is specifically provided for in the rule itself.** In support of aforesaid plea, learned counsel for the applicant has placed reliance on the decision of Hon'ble Supreme Court rendered in the case of ***Baburam Vs. C.C. Jackobs & others, reported in (1993) 3 Supreme Court Cases 362.*** The relevant observation is being reproduced hereunder:-

"The prospective declaration of law is a device innovated by the adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken

contrary to the declaration of law prior to the date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by the Supreme Court are also duty bound to apply such dictum to the cases which would arise in future only. In matters where decision opposed to the said principles have been taken prior to such declaration of law, cannot be interfered with on the basis of such declaration of law."

21. We have also noticed that the applicant has already filed SLP No. 14301 of 2008 against the judgment and order of Jabalpur High Court before Hon'ble Supreme Court on several legal points. Vide order dated 2.6.2008, the Hon'ble Supreme Court has been pleased to grant status quo in favour of reverted candidates. It is also seen from the record that against reversion dated 12.1.2001, the applicant filed O.A. NO. 1446 of 2002 before this Tribunal on the ground of violation of Railway Board's Circular dated 19.3.1976, which clearly establishes that the applicant, who have been working in the post on ad hoc basis, quite satisfactorily is not to be declared unsuitable in the interview. In particular any employee reaching the field of consideration should be saved from harassment.

22. The Tribunal in its order dated 16.12.2002 has clearly and specifically directed the respondent no.3 to decide both the representations of the applicant under the provisions of Railway Board's order dated 25.01.1976 and also as per judgment of Hon'ble Supreme Court in R.C. Srivastava's case (Annexure A-10) while recasting the panel of Law Assistant, dated 12.05.1997, in compliance to the judgment and order dated 03.01.2001 of

Jabalpur Bench of the Tribunal. In the representation of the applicant it is also noticed submitted that because of his satisfactory work as Law Assistant the applicant was honoured with award for the year 2000-2001 and promoted on Ad hoc basis to the post of Chief Law Assistant w.e.f. August, 1999.

23. We have carefully examined the various pleas taken by the applicant in his representation dated 19.07.2001 and in our considered view the representation of the applicant has been rejected without properly considering the dictum of law propounded by Hon'ble Supreme Court in R.C. Srivastava's case (supra). The representation of the applicant has been rejected without taking settled Rule in its true perspective and in accordance with the law while dealing with the decision of Hon'ble Supreme Court rendered in R.C. Srivastava's case (Supra) the Competent Authority has made following observations:-

"On reading of the judgment of Hon'ble Supreme Court in case of Shri R.C. Srivastava Vs. UOI referred to by Shri Abidi, it appears that the Board's letter dated 09.08.1982, which has clarified the intention behind the board's letter dated 25.01.1976 was not brought to the notice of the Hon'ble Supreme Court, when the judgment was passed in that case. In any case, I find that the case of Shri Abidi is not identical to the case of Shri R.C. Srivastava. These two cases are distinguishable on the facts because unlike Shri R.C. Srivastava who had passed in written examination and failed in interview as per the criteria in vogue, Shri Abidi had been declared passed in interview as per the criteria in vogue when he was first empanelled, and has been subsequently de-paneled after the criteria were changed in terms of the orders of the Hon'ble Central Administrative Tribunal, Jabalpur Bench and the orders of the Hon'ble Supreme Court in M. ramjayaram's case, and further the selection committee did not interview the candidates for recommending the name for the recast

Jabalpur Bench of the Tribunal. In the representation of the applicant it is also noticed submitted that because of his satisfactory work as Law Assistant the applicant was honoured with award for the year 2000-2001 and promoted on Ad hoc basis to the post of Chief Law Assistant w.e.f. August, 1999.

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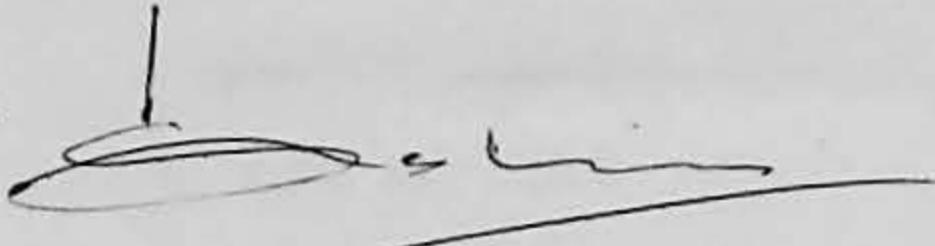
"On reading of the judgment of Hon'ble Supreme Court in case of Shri R.C. Srivastava Vs. UOI referred to by Shri Abidi, it appears that the Board's letter dated 09.08.1982, which has clarified the intention behind the board's letter dated 25.01.1976 was not brought to the notice of the Hon'ble Supreme Court, when the judgment was passed in that case. In any case, I find that the case of Shri Abidi is not identical to the case of Shri R.C. Srivastava. These two cases are distinguishable on the facts because unlike Shri R.C. Srivastava who had passed in written examination and failed in interview as per the criteria in vogue, Shri Abidi had been declared passed in interview as per the criteria in vogue when he was first empanelled, and has been subsequently de-paneled after the criteria were changed in terms of the orders of the Hon'ble Central Administrative Tribunal, Jabalpur Bench and the orders of the Hon'ble Supreme Court in M. ramjayaram's case, and further the selection committee did not interview the candidates for recommending the name for the recast panel as per the changed criteria. Shri Abidi, therefore, cannot get the benefit of said judgment of Hon'ble Supreme Court."

24. Having given our thoughtful consideration to the pleas advanced by the parties counsel, we hereby partly allow the O.A., quash and set aside the order dated 28.3.2003 (Annexure A-1) and

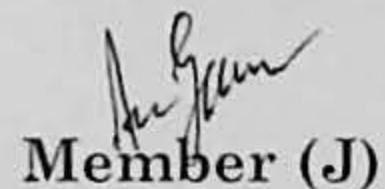
direct the Competent Authority not to delete the name of the applicant from the panel dated 12.05.1997 and reconsider the applicant's case in accordance with the Railway Board's order dated 19.03.1976, dictum of Law enunciated by the Hon'ble Apex Court in R.C. Srivastava's case (Supra) and also in view of the observations made in the judgment (referred to above) within a period of four months from receipt of copy of this order.

25. We may, however, observe that as against the judgment and order of Jabalpur Bench of the Tribunal and High Court SLPs Nos.14300 and 14301 of 2008, filed by the applicant and other aggrieved persons are already pending before Hon'ble Supreme Court, our aforesaid directions are subject to final decision of pending SLP's before Hon'ble Supreme Court.

26. With the aforesaid observations the O.A. is disposed of. No costs.



Member (A)



Member (J)

Manish/-