

**RESERVED**

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD**  
**BENCH**  
**ALLAHABAD**

**Original Application No. 830 of 2006**

ALLAHABAD this the 9<sup>TH</sup> day of Sept., 2011

Present:

**HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER- J**  
**HON'BLE MR. D.C. LAKHA, MEMBER -A**

Kamlesh Kumar, aged about 40 years s/o late Ram Avtar working as Law Assistant, N.C. Railway, Headquarters Office, Allahabad r/o Village Pawal Dhaira, P.O. Fatehpur District Etah.

.....Applicant

Advocate for Applicant

Shri Shyamal Narayan

**V E R S U S**

1. Union of India through General Manager, North Central Railway Headquarters Office, Allahabad
2. General Manager, North Central Railway Headquarters Office, Allahabad
3. Chief Personnel Officer, North Central Railway Headquarters Office, Allahabad

.....Respondents

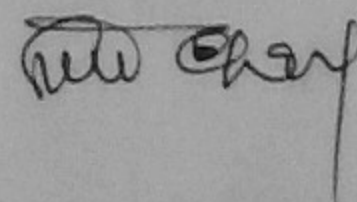
Advocate for Respondents

Shri Prashant Mathur

**ORDER**

Instant O.A. has been instituted for the following relief:

- "i). to quash the selection proceeding which is being held on the basis of the list of eligible



*candidates circulated vide letter dated 11.7.2006 (Annexure-1) in which name of the applicant was arbitrarily not included and/or alternatively direct the respondents to consider the candidature of the applicant for the selection of Assistant Personnel Officer (Group-B) as an eligible candidate.*

*i) (a). To set aside the Railway Board circular dt. 21.092005 (Annexure '1-A' to compilation I)."*

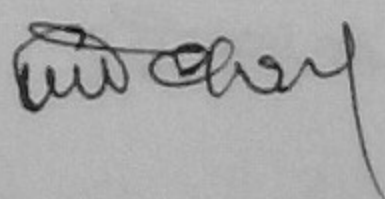
2. Pleadings of the parties may be summarized as follows. It has been alleged by the applicant that he was appointed in Railway serviced as T.C. in Western Railway and joined on 1.8.90 at Mhow in Ratlam Division, further promoted in 1994 as T.T.E. grade Rs. 4000-6000 and further promoted on 23.9.2001 as Head T.T.E. grade Rs. 5000-8000, and subsequently promoted as Law Assistant in the pay scale of Rs. 6500-10,500/- and joined at Rajkot in Rajkot Division of Western Railway on 10.2.2003. Later on, the applicant was transferred to N.C.R. Allahabad on request basis and joined on 26.9.2005, under the control of respondents 2 and 3. The respondents No. 2 and 3 advertised 7 vacancies for the post of Assistant Personnel Officer, (Group B Service) against 70% quota vide notification dated 24.4.2006. Eligibility conditions were provided to appear in the selection and it was Group C 3 years regular service in the grade of Rs. 5500-9000 (RSRP) from the employees mentioned in (A) and

*Subeery*

(G) Not on the date of issue of notification. The relevant conditions have been provided in Para 203.2 of IREM Volume I. Regarding conditions of eligibility of Group C for the post of Group B service Railway Board, vide letter dated 23.1.1979, laid down the procedure and model time table to conduct class II (Group-B) selection. In order to determine the eligibility zone, at first it was directed to draw up the integrated seniority list of all the eligible candidates who had applied for the 70% vacancy quota and then circulate inter-se seniority, the senior grade person would also automatically be eligible to appear in the said selection. It has also been provided that the eligibility should be determined within the stream on the basis that those in the higher scale would be senior to those in a lower scale. The applicant submitted application for the above post on 9<sup>th</sup> May, 2006 on prescribed format duly forwarded on 16.5.2006. The applicant had been working as Law Assistant in the pay scale of Rs. 6500-10500/- (RSRP) since 10.2.2003. The applicant was eligible to appear in the selection due to reason that a good number of junior persons working in the grade of Rs. 5500-9000 (RSRP) were allowed to participate in the said selection. The applicant who had been working in the higher grade, was denied to appear in the said selection due to arbitrariness. Inter se

*Sutcher*

seniority should have been prepared to circulate it before conducting the written test and the applicant senior by virtue of his placement in the high pay scale. Automatically, he will be senior to lower grade pay scale persons i.e. Rs. 5500-9000/- who have been allowed to appear in the selection on conditions of 3 years non fortuitous service in the grade. The Railways, have not prepared the inter se seniority list to determine the eligibility of candidates as per provisions contained in Railway Board's circular dated 11.7.1977. The condition of eligibility of 3 years regular service in the grade of Rs. 5500-9000 is not applicable to the staff who are working in higher grade of Rs. 6500-10500/-. The applicant was senior to the staff who were in the scale of Rs. 5500-9000 and have been made eligible to appear in the selection. It is unjust and unfair on the part of the respondents to deny the applicant the opportunity to appear in the selection whereas the lower grade employees were permitted to participate in the selection. The notification dated 21.9.2005 is also relevant in this connection and according to this circular for purpose of reckoning eligibility for group B selection, cut off date has been made referable against the vacancies to be filled for the said period and according to this circular the eligibility is to be determined from the date of occurrence of the vacancies. The circular



letter dated 21.9.2005 is ultra virus to the extent that it is made applicable from the date of occurrence of the vacancies. Railway Board also issued further notification on 30.8.2006 which is also relevant.

3. The respondents have contested the case and filed Counter reply and denied the allegations made in the O.A. It has further been alleged that a notification was issued on 20.4.2006 followed by a corrigendum dated 26.4.2006 for holding selection for promotion from group C to Group B from the post of Assistant Personnel Officer against 70% promotee quota vacancy for formation of panel for the year 2005-2007 in personnel department consisting of a written test and a list was also notified by the respondents mentioning the names of all the eligible candidates in view of notification. The applicant had not been fulfilling the requisite conditions, hence his name has rightly not been included in the eligibility list as circulated vide letter dated 11.7.2006. A perusal of the letter dated 18.11.2004 reveals that the Railway Board in its letter had decided that so far as promotion to group B post is concerned, only those eligible candidates, who have put in minimum of 3 years of non fortuitous service in the grade of Rs. 5500-9000 and above are eligible for selection against 70% quota vacancies. The applicant had only completed 2 years, one month and

*stw chow 2*

21 days service in the grade of Rs. 6500-10500 as on 1.04.2005 which is the cut off date as per Railway Board circular dated 21.9.2005. Prior to 10.2.2003 the applicant had been working in the grade of Rs. 5000-8000 before his promotion as Law Assistant in the grade of Rs. 6500-10500/- in Western Railway. And from there he joined the present organization and hence on the cut off date, the applicant had not completed 3 years. The applicant was considered as Law Assistant in the pay scale of Rs. 6500-10500/- for his inter railway transfer on accepting bottom seniority from Western Railway. It has subsequently been provided in the notification that what is the eligibility criteria it cannot be changed. The applicant was promoted in the pay scale of Rs. 6500-10500/- in Rajkot Division in the year 2003. Provisions contained in para 203.2 of IREM Volume I are not applicable in the case of Group B selection. The applicant misconstrued the provisions. That the circular of 18.7.77 is applicable for inter se seniority within a stream and not otherwise. That the rest of the allegations made in the O.A. are against the facts.

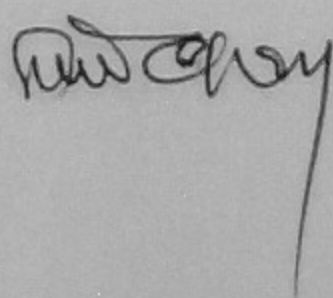
4. In response to the Counter reply of the respondents, the applicant filed Rejoinder Affidavit and reiterated the facts alleged in the O.A. The Supplementary Affidavits were

*Sun Chery*

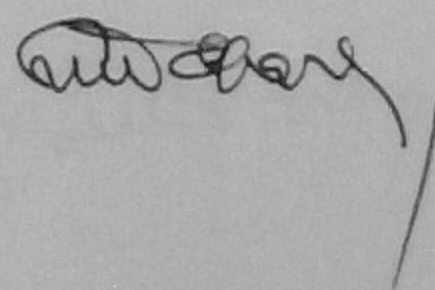
also filed on behalf of the respondents which shall be considered at the relevant place.

5. We have heard Shri Shyamal Narayan Advocate for the applicant and Shri Prashant Mathur, Advocate for the respondents and perused the entire facts of the case.

6. The controversy in the present O.A. is very narrow. It has been alleged by the applicant that the respondents No. 2 and 3 advertised 7 vacancies for the post of Assistant Personnel Officer, (Group B Service) against 70% quota vide notification dated 24.4.2006. It has also been alleged that lastly the applicant was promoted as Law Assistant in the pay scale of Rs. 6500-10500/- and joined at Rajkot Division on 10.2.3003. Under these circumstances, the applicant admittedly had been working in the pay scale of Rs. 6500-10500/- w.e.f. 10.2.3003. Earlier, the applicant had been working as Head T.T.E. in the grade of Rs. 5000- 8000. In the notification dated 24.4.2006, the eligibility criteria for appearing in the selection was laid down. In Annexure A-2 the eligibility criteria had been provided and the eligibility criteria as on 1.4.2005 will be Group C and 3 years regular service in the grade of Rs. 5500-9000 (RSRP) from the employees mentioned in A to G below as on the date of issue of notification. In clause E, it has been provided that Chief Law Assistant and Law Assistant will also be eligible to



participate in the selection of the Assistant Personnel Officer. As we have stated above that on the date of issue of notification of 24.4.2006 the applicant had been working as Law Assistant in the pay scale of Rs. 6500-10500/. According to the applicant, as the applicant had been working in the higher pay scale of Rs. Rs. 6500-10500/ in comparison to the grade of Rs. 5500-9000 (RSRP) hence he was eligible to appear and participate in the selection process. Reliance has also been placed by the applicant on para 203.2 of IREM, Volume I and in this para general instructions for conditions of eligibility for group C staff to Group B service have been provided It has been provided in this provision : "In case a junior employee is considered for selection by virtue of his satisfying the relevant minimum service conditions, all persons senior to him shall be held to be eligible notwithstanding the position that they do not fulfill the requisite minimum service conditions." Hence, on the strength of para 203.2 of IREM, Volume I, the learned counsel for the applicant argued that the junior to the applicant of the scale Rs. 5500-9000 (RSRP) were permitted to participate in the selection of Assistant Personnel Officer, and the applicant had been working in the scale of Rs. 6500-10500/ w.e.f. 10.2.2003, hence he was entitled to participate in the selection in view of this para of the IREM.



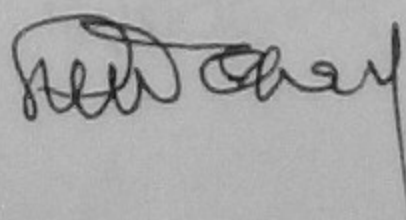
Because if the juniors were permitted to participate in the selection, then automatically all the seniors shall also be eligible to participate in the selection and as the applicant was senior to the employees in the scale Rs. 5500-9000 (RSRP), hence in view of this para, the applicant was eligible to participate in the selection irrespective of the fact that the applicant had not completed 3 years regular service in the grade of Rs. 5500-9000 (RSRP), and the condition of eligibility of Rs. 5500-9000 (RSRP) is not applicable to the applicant who had been working in the higher grade of Rs. 6500-10500/-. But the respondents acted arbitrarily and deprived the applicant from participating in the selection of the Assistant Personnel Officer.

7. The respondents have admitted the fact that the applicant was promoted in the grade of Rs. 6500-10500/- w.e.f. 10.2.2003 in the Rajkot Division and earlier to the promotion the applicant had been working as Head T.T.E. in the grade of Rs. 5000-8000. That the applicant had not completed 3 years regular service in the grade of Rs. 5500-9000/- It is also an admitted fact that as per notification dated 24.4.2006, eligibility criteria for participation in the selection of APO was 3 years regular service in the grade of Rs. 5500-9000 (RSRP). It has also been alleged by the respondents that on cut off date i.e. 1.4.2006, the applicant

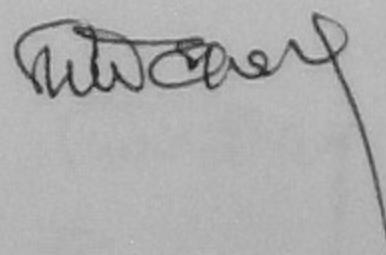
*[Handwritten signature]*

had put in only 2 years, 1 month and 21 days service in the grade of Rs. 6500-10500/- and on the cut off date the applicant was not eligible as per instructions of the Railway Board to participate in the selection. It has also been alleged by the respondents that the applicant was promoted in the grade of Rs. 6500-10500/- w.e.f. 10.2.2003 in Rajkot Division of the Western Railway and the applicant came on transfer from Rajkot Division of the Western Railway to N.C.R. Earlier, the applicant had been working in the grade of Rs. 5000-8000 and whereas the eligibility is of the employees who had worked in the grade of Rs. 5500-9000 (RSRP) at least for a period of 3 years.

8. It has been argued by the learned counsel for the applicant that the grade of Rs. 5500-9000 (RSRP) is below the grade of Rs. 6500-10500/- in which the applicant had been working w.e.f. 10.2.3003 and in this respect the applicant was senior to the employees who had been working in the scale of Rs. 5500-9000 (RSRP) and it has been provided in Para 203.2 of IREM, Volume I that in case junior is considered for selection by virtue of satisfying minimum service condition, all persons senior to him shall be held to be eligible notwithstanding the position that they fulfill the requisite minimum service condition. The applicant was entitled in view of this Para of the IREM to

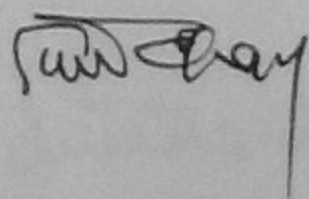


participate in the selection as his juniors were permitted to participate in the selection. The learned counsel for the respondents argued that Para 203.2 of IREM, Volume I is not applicable in the case of the applicant. Although, it has not been provided in this Para of IREM that to whom this para is applicable, it has also not been prohibited that in the selection of APO, Group B service, this principle is not applicable. It is to be considered that the scale in which the applicant is working on the date of issue of notification is of Rs. 6500-10500, which is higher to the grade of Rs. 5500-9000, but it has been provided that who will be eligible for participation in the selection of APO and employee must have put in 3 years service in the grade of Rs. Rs. 5500-9000. Undisputedly, on the date of issue of notification, the applicant had put in more than 2 years in the grade of Rs. 6500-10500 and the applicant had never worked in the grade of Rs. 5500-9000 and straight <sup>way 2</sup> from the scale of Rs. 5000-8000 the applicant was promoted as L.A. in the grade of Rs. 6500-10500. Considering the requirement of the notification dated 24.4.2006 the applicant was not eligible as he had not put in 3 years regular service in the grade of Rs. 5500-9000, although it is a fact that the applicant came on request transfer from Rajkot Division of Western Railway



to Allahabad in the NCR and when he was transferred and joined at Allahabad on 26.9.2005, the applicant was working in the grade of Rs. 6500-10500 and bottom seniority was given to him. This is not the issue in this case that fresh seniority has commenced in the case of the applicant from the date of his joining on 26.9.2005 and taking into account the bottom seniority, the applicant was not entitled. As the respondents have not disputed this fact, hence it is to be believed and accepted that on the date of issue of notification dated 24.4.2006 the applicant had put in more than 2 years regular service in the higher grade of Rs. 6500-10500. We are also of the opinion that there is no prohibitory clause for non application of para 203.2 of IREM, Volume I in the case of the applicant, hence in view of this para also when juniors were permitted to participate in the selection of APO, hence senior person shall also be eligible notwithstanding the position that he had not fulfilled the requisite minimum service condition. Nothing has been cited by the learned counsel for the respondents that this para of the IREM is not applicable in the case of the applicant.

7. The learned counsel for the respondents argued that later on the Railway realized that provision of cut off date is not rational and reasonable. That the respondents issued a



circular No. 131/2006 dated 30.8.2006 in this connection and it has been provided that what will be the cut off date for determining the eligibility of the candidates for appearing in the examination. It has been provided in this circular:

*"2. The question of prescribing a cut-off date for the eligibility of staff for appearing in the selections/LDCEs for promotion within Group 'C' and from Group 'D' to Group 'C' has been raised by AIRF in the forum of PNM. The matter has been discussed with both the federations in a meeting held on 13.07.2006. Pursuant to these discussions it has been decided that for appearing in the selections/LDCEs for promotions within and to Group 'C' the cut-off date for determining the eligibility of the staff should be date of issue of notification for the said selection."*

Hence, in view of the this circular it has been provided that in the case of group C the cut off date for determining eligibility of staff should be the date of issue of the notification for the said selection. The learned counsel for the applicant argued that although vide notification dated 24.4.2006, for fulfilling the eligibility, the cut off date is 1.4.2005<sup>2</sup> whereas for the selection of APO, the future vacancies have also to be taken into consideration. For conducting the examination in the LDCE quota vacancies, the selection was conducted for fulfilling 7 vacancies. On the insistence of the learned counsel for the applicant, the respondents were required to submit the details of the

*Signature*

vacancies alongwith the order which was advertised and categorically it was enquired from the respondents that whether prospective vacancies of the year 2006-2007 were also considered. Alongwith Supplementary Affidavit, the learned counsel for the respondents filed the position of the vacancies and according to this document it has been alleged that "the period of holding Group B selection is 2 years, thus the vacancies assessed for the period from 1.04.2005 to 31.03.2007 for selection to the post of APO Gr. B is as under:

Under 70% quota      07

Under 30% quota      03

The assessment sheet for assessment of vacancies for the period from 01.04.05 to 31.03.07 is enclosed herewith for ready reference."

Hence, for selection to the posts of APOs vacancies were considered upto 31.3.2007. The learned counsel for the applicant argued that if the respondents are considering the posts falling vacant during the year 2006-2007, then the applicant shall be eligible as per notification. In that case the applicant shall complete 3 years regular service in the grade of Rs. 6500-10500. As the earlier stand of the respondents was irrational, hence the respondents themselves reviewed that position and laid down that the cut

*[Handwritten signature]*

off date for determining the eligibility of the staff should be the date of issue of notification for the said selection. The respondents' Advocate also conceded this position but the learned counsel also argued that this circular letter is not applicable in the case of the applicant, rather it is applicable for promotion within group C and from Group D to Group C and regarding APO, the position is entirely different. Undisputedly, the notification was issued on 24.4.2006 whereas, for the purpose of eligibility the cut off date is 1.5.05. If the date of notification will be the date of determining the eligibility, then the applicant shall be eligible for participating in the selection process. Issuing notification in the year 2006 and providing for purpose of the eligibility the cut off date is wholly unreasonable and it is evident from the own circular letter of the respondents. And it cannot be accepted that this notification is applicable regarding promotion from Group D to Group C and it is not applicable for promotion from Group C to Group B.

8. A prayer has also been made by the applicant to declare the circular dated 21.9.2005 (Annexure C A-2) as illegal, null and void and ultra virus as it is unreasonable and irrational and the respondents themselves reviewed the position. In the earlier notification dated 21.9.2005, it was provided that the date of commencement of the vacancy

*Sub Chery*

period should be taken as a cut off date for determining the eligibility of the candidate for appearing in the selection. According to this notification, the date of commencement of the vacancy period was the cut off date whereas by subsequent notification it has been provided that the date of issue of notification will be the cut off date for purpose of eligibility. It will be material to state that Annexure CA 2 is also applicable in the case of selection for promotion from Group C to Group B and cut off date for reckoning eligibility for Group B selection. On the strength of this notification, the learned counsel for the respondents argued that the eligibility criteria has been provided as per instructions of the Railway Board. But in our opinion as this notification was irrational and unreasonable and the respondents themselves considered this anomaly and reviewed the matter and provided that the date of issue of notification shall be the cut off date of eligibility. Undisputedly, the notification was issued for conducting the selection for the post of APO dated 24.4.2006. Under these circumstances, the cut off date for purposes of eligibility must be 24.4.2006 and not 1.4.2005 as has been provided in the notification Annexure A-2. The applicant was eligible to participate in the selection of APO on the date of issue of notification and the

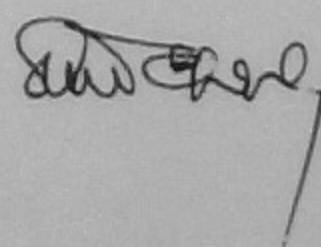
*Sudhanshu*

notification dated 21.9.2005 is violative of the Constitution of India and is liable to be set aside.

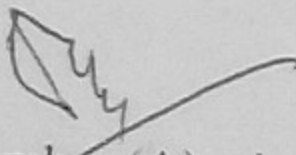
11. The learned counsel for the respondents cited the judgments reported in AIR 1969, S.C., 118, B.S. Vadera vs. Union of India, 1978 SCC (L& S), 35 Railway Board and others vs. P.R. Subramaniam and another and 2010, 2, SCC, 422, Union of India and another vs. K.C. Mondal and another. We have perused the judgments of Hon. Supreme Court and we are of the opinion that these judgments are not applicable to the facts and question involved in the present case and the respondents are not entitled to any benefit on the basis of these judgments.

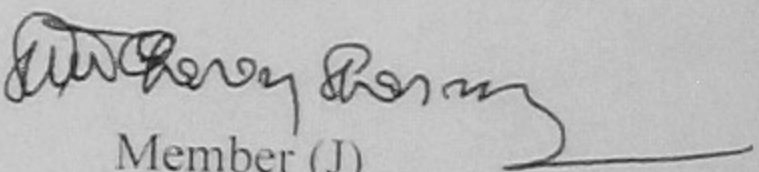
12. We are of the opinion that on the date of issue of notification dated 24.4.2006 the applicant was eligible to participate in the selection of APO as he had been working in the regular service in the scale of Rs. 6500-10500, whereas, as per notification one was required to have put in 3 years service in the grade of Rs. 5500-9000. Moreover, the notification issued on 21.9.2005 by the Railway Board is ultra virus to the Constitution and it is liable to be set aside. The O.A. deserves to be allowed.

13. The O.A. is allowed. Circular of Railway Board dated 21.9.05 is quashed and set aside. The selection proceedings on the basis of the list of eligible candidates circulated vide



letter dated 11.7.2006 Anneuxre-1 is also quashed and the respondents are directed to permit the applicant to participate in the selection. It is also evident from the perusal of the order sheet that vide interim order dated 11.8.2006, the applicant was permitted to appear in the examination provisionally, but the result was kept in sealed cover subject to the ultimate decision of the O.A. In case the applicant succeeds in the selection, then his result may be declared and promotion be given to him vide notification dated 24.4.2006. The respondents shall comply with the order within a period of 3 months from the date a certified copy is produced before them. The applicant shall produce a copy of this order to the respondents at the earliest. No order as to costs.

  
Member (A)

  
Member (J)

s.a./