

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 906 of 2006

50 day, this the 2nd day of February 2007

Hon'ble Mr. K. Elango, Member 'J'
Hon'ble Mr. M. Jayaraman, Member 'A'

Hrishikesh Tiwari S/o Sri Ram Abhilash Tiwari, R/o Village Kunsugur, P.O. Garapur, Allahabad, presently working as Chief Law Assistant, North Central Railway, Allahabad.

Applicant

By Advocate Sri S.K. Om

Versus

1. Union of India through General Manager, North Central Railway, Allahabad.

2. Senior Divisional Personnel Officer, North Central Railway, Allahabad.

Respondents

By Advocate Sri Anil Kumar

ORDER


By Mr. M. Jayaraman, Member (A)

We have heard Sri S.K. Om, Counsel for the applicant and Sri Anil Kumar, Counsel for the respondents.

2. The applicant has prayed for issue of suitable direction for quashing the impugned Order/Letter dated 14.08.2006 issued by respondent no.2 (Annexure A-1) by which respondent no.2 has announced the selection by Written Examination to fill up 3 vacancies of Assistant Law Officer in the pay scale of Rs.7500-12000/- and for issue of suitable directions for filling up the same post by way of up gradation from the post of Chief Law Assistant.



3. The brief facts of the case here are that the applicant joined the Railway service in February 1976 as Law Assistant in the pay scale of Rs.550-750/- and thereafter he was promoted on 10.03.1986 as Chief Law Assistant in the pay scale of Rs.700-900/-, revised to Rs.7450-11500/-, which post he is holding with the present pay at Rs.11500/- per month. Since there was a lot of stagnation in the cadre of Law Assistant due to lack of promotional avenues, there was much dissatisfaction amongst the staff and a petition was filed before the Apex Court and on the direction of the Apex Court, the Railway Board formed a Committee to suggest ways and means to revamp and streamline the legal set up of Zonal Railways/production units. The Committee so appointed submitted its report to the Railway Board on 04.10.2002. One of the recommendations was (vide paragraph no.4 of the summary) that each Zonal Railway should have atleast one J.A. Grade Officer in the Law Department with one senior grade and two assistant level officers with requisite non-gazetted set up. It was further suggested (paragraph no.15) that the post of Chief Law Assistant in the pay scale of Rs.7450-11500 should be merged with the Group 'B' level post of Law Officer in the pay scale of Rs.7500-12000/- after following the due selection procedure. The above recommendations were accepted by the Railway Board, who issued direction vide Order dated 31.03.2003 (annexure A-3). Since no steps were taken by the respective Zonal Railways, an O.A. No.860 of 2005 was filed by Shri N.N. Udainiya and 11 others in the Allahabad Bench of the Tribunal, which was disposed of by Order dated 04.08.2005 with direction to Divisional Railway Manager to comply with the direction of the Railway Board expeditiously, at least by March, 2006. Subsequently, the Railway Board also issued Order dated 09.03.2006 for restructuring in the cadre of Law department, saying that in all the newly carved zones and divisions, two posts in J.A. Grade and 6 posts in senior scale have been created and 11 posts of Chief Law Assistants have been upgraded to Group 'B' i.e. Law Officer in the scale of Rs.7500-12000/- by surrendering 12 posts of Chief Law Assistant. The North Central Railway having its Headquarter at Allahabad is a newly carved zone consisting of three separate divisions i.e. Allahabad division,



Agra division and Jhansi division. Accordingly, respondent no.2 in order to fill up three vacancies announced by the Railway Board issued the impugned order dated 14.08.2006 specifying a selection procedure under which a written examination would take place on 30.08.2006, for which the list of eligible candidates was also published (the applicant's name figures at serial no.1). It is against this Order that this O.A. has been filed.

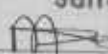
4. The main argument of counsel for the applicant is that as per the recommendation of the Committee, the cadre of Chief Law Assistant and Law Officer has been merged and while implementing the said report, the Railway Board had specifically directed to upgrade the post of Chief Law Assistant (Rs.7450-11500) to Group 'B' post i.e. Rs.7500-12000/- and accordingly the said upgradation cannot be termed as promotion and no selection would be required for the same. According to the applicant, the vacancy should be filled up only by the modified procedure, based upon Seniority-cum-Fitness. The applicant has, therefore, requested for setting aside the impugned order and has prayed for issue of suitable direction to fill up the post only by upgradation.

5. The respondents have opposed the above pleas of the applicant by saying that the impugned order dated 14.08.2006 for selection for the post of Assistant Law Officer has been correctly issued in terms of the Railways Senior Law Officer, Law Officer, Assistant Law Officer and Estate Officer (Group 'A' and Group 'B' post) Recruitment Rules, 1992, which was notified in super session of earlier rules of 1978. vide Notification No.84/E (GR) 14/1, New Delhi dated 30.07.1992 of the Railway Board. Accordingly, the willingness of the 20 Group "C" employees of Chief Law Assistant of North Central Railway was called for, for appearing in the selection for the post of Assistant Law Officer, and the applicant has given his consent vide declaration dated 14.06.2006. It is also pointed out that the applicant had earlier appeared in the selection for the post of Assistant Law Officer but failed and not qualified, which proved that he has no objection against the said selection and he is willing to appear in the same. Accordingly, the respondents say that the applicant is prevented from challenging the



impugned order. As per the settled position, whenever any promotion takes place from lower grade to higher grade, like in the present case, it is always by way of selection on the basis of merit namely written examination etc. They have also pointed out that paragraph no.15 of the summary of recommendation (annexure-2, page 29 of the O.A.) itself says that the Assistant Law Officer post will be filled up after following the due selection procedure. It is further stated therein that all future recruitments should be at the Legal Assistant's level and Law Officer Level will be a promotional post to the gazetted status through a selection process. They have also pointed out that the Railway Board's letter dated 31.03.2003 has referred to recommendations of the Committee report, which ought to be implemented after taking appropriate decision by the competent authority at the Zonal Railway's level. Accordingly, the action taken by the Zonal Railways is in order and in compliance of the Railway Board's instruction.

6. We are afraid that we cannot agree with the submissions made by respondents. In its letter dated 31.03.2003, the Railway Board has specifically mentioned about the implementation of the report of the Committee on revamping and streamlining the legal set up of Indian Railways and has circulated the same for implementation by the Zonal Railways. The Railway Board has issued, subsequently another letter dated 09.03.2006 under the subject, Restructuring of gazetted cadre of the Indian Railways for new zones and new divisions-Legal Department-Creation of two posts in JA Grade and six posts in Senior Scale and upgradation of 11 posts of Chief Law Assistants in Grade of Rs.7450-11500/- to Group 'B' in the scale of Rs.7500-12000/-. In this letter, the Railway Board has specifically stated that with a view to restructure and strengthening the set up to cope with the increased work load and responsibilities, it has been decided to create 2 posts in J.A. Grade and 6 posts in Senior Scale and upgrade 11 posts of Chief Law Assistants to Group 'B' by surrendering 12 posts of Chief Law Assistants from the new zones and new divisions. The details of the posts to be upgraded and created have been indicated in annexure-1 to the above letter. The details of post of Chief Law Assistant surrendered have been indicated in annexure-2. In paragraph no.3 of the



above letter, it is stated further that the above posts which are permanent in existing grade shall be treated as permanent in the upgraded scale. The letter further indicates ^{the} ~~that~~ increased work load and responsibilities and ~~the~~ duty list of the legal cadre in the changed mode of working as envisaged in the Committee's report at annexure-III and IV respectively. Lastly the Railway Board letter specifically says that change in the recruitment rules wherever warranted will be notified separately in due course.


7. On a plain reading of the Railway Board's letter, it is clearly established that the existing Chief Law Assistant posts have been surrendered and in place they are being upgraded to the Group 'B' level post of Law Officers, the change in the grade being from Rs.7450-11500 to Rs.7500-12000. Therefore, plea of the respondents that these are promotional posts is not correct and so any direction for holding the written test etc. for promotion would not be in order and has to be set aside.

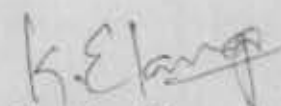
8. Further there is no reference to any post of Assistant Law Officer any where in the Railway Board's letter. Even in the Committee's recommendations, the post mention^{ed} is of Law Officer and not Assistant Law Officer. The respondents' letter seeking to make the selection for the post of Assistant Law Officer, which is challenged by the applicant is, therefore, ab initio not correct and not maintainable.

9. The respondents have cited the recruitment rules of 1992 to support their plea that it envisaged only a due selection procedure by holding Written Test etc. However, as pointed out by the applicant, these rules would not apply here because, we are not dealing with the promotion matter but upgradation, which is explicitly stated by the Railway Board vide letter dated 09.03.2006. In that view of the things, the cited recruitment rules of 1992 would not be applicable here. If the respondents had any doubt regarding the recruitment rules, they ought to have consulted with the Railway Board because Railway Board has specifically stated in the last sentence of letter dated 09.03.2006 that change in the Recruitment Rules wherever warranted will be notified in due course.



10. In the light of the above discussion, we set aside the impugned order dated 14.08.2006 with a direction to the respondents to take necessary action for issue of suitable upgradation orders in respect of the applicant by applying the modified selection procedure on the basis of seniority-cum-fitness. The above exercise should be completed within a period of two months. The O.A. stands allowed accordingly with no order as to costs.


Member (A)


Member (J)

/MM/