

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application Nos. 26/2012, 130/2012, 190/2012 & 328/2012

*With MA 17/2012 in OA 26/2012, MA 68/2012 in OA 130/2012, MA 83/2012 in OA 190/2012 &
MA 169/2012 in OA 328/2012*

Date of decision: 05.11.2012

CORAM

Hon'ble Mr. G. Shanthappa, Judicial Member

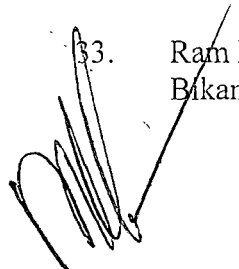
Hon'ble Mr. B K Sinha, Administrative Member

O.A No. 26/2012

1. Anwar Hussain S/o Shri Mukhtiar Ahmed, Aged 35 years, R/o Vyapariyon ka Mohalla, Soorsagar, Jodhpur.
2. Narendra Rekhecha Slo Jaiprakash Rekhecha, Aged 27 yrs, R/o Tripoliya Bazar, Tailor Gali, Jodhpur.
3. Zakir Hussain S/o Mohd. Salim, Aged 31yrs, R/o Aaman Manzil, Newar Hathi nahar Pratap Nagaur, Jodhpur .
4. Mahipal Singh Khichi S/o Jagdish Singh, Agaed 29yrs, R/o In side Shirvala Nohara, Ummed Chok, Jodhpur.
5. Simarpreet Singh Bedi S/o Rajendra Singh Bedi, Aged 26yrs, R/o House No.32, Gulab Nagar, Kheme Ka Kuan, Pal Roal, Jodhpur.
6. Manomohan S/o Satyveer Singh, Aged 31yrs, R/o Gokul Niwas, Ummed Chowk, Jodhpur.
7. Chandreshkhar Gahlot S/o Chatarbhuja Gahlot, Aged 36yrs, R/o Purani Kaga Basti, Radhakrishna Mandir ke pas, Nagori Gate, Jodhpur.
8. Sushil Aasopa Slo Girdhar Gopal , Aged 33yrs, R/o 6 K 46, Chotha Pulua, Chopasni Housing Board, Jodhpur.
9. Mahesh Vaishnav S/o Rameshwar Prasad, Aged 36yrs, R/o Near Mahadev Mandir, Jalap Mohalla, Jodhpur.
10. Premchand S/o Late Rameshwar Prasad, Aged 38yrs, R/o C/16, Rameshwar Nagar Basni Ist Pass, Jodhpur.
11. Ramniwas Bola S/o Jiwan Ram, Agaed 30 yrs, R/o Vill. Po. Khakhaliya Via Tosina, the. Didwana, Dist. Nagaur.
12. Rampal Lakshkar S/o Ramswaroop, Aged 30yrs, R/o Vill. Po. Balunda, the. Jaitaran, Distt. Pali.
13. Mahesh Narayan Bhil S/o Udai Narayan, Aged 33yrs, R/o Out side Chand Pole New bhil Basti , Jodhpur.
14. Vinod Bhati S/o Late Jetharam Bhati, Aged 37yrs, R/o 82, Jawahar Colony, Near Sardar Club, Jodhpur.

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15. Prahlad Ram S/o Khumaram, Aged 35 yrs, R/o Unchi Gali, Marwar Mundawa, Dist. Nagaur.
16. Kamalkishore Sen S/o Ghisulal, Aged 34yrs, R/o 193/ Nehru Colony, Baggikhana Ratanada, Jodhpur.
17. Jatin Haldani S/o Lare Jagdish Kumar, Aged 36yrs, R/o Badriram Bhagwan, Ajay Chowk, Jodhpur.
18. Gajendra Chouhan S/o Manohar Singh, Aged 33, R/o Behind Vaishnav Hostel, Opp.Nagar Plika, Khudala, Dist. Pali.
19. Arvind Dave S/o Ramratan, Aged 30yrs, R/o 7A, Brahampuri, Pali.
20. Ashok Kumar S/o Achlaram, Aged 36yrs, R/o Near Rajaram Park, Rajbagh Soorsagar Road , Jodhpur.
21. Ashok Kumar Bhati S/o Munniram, Aged 38 yrs R/o 3G15, Maduban Housing Board Bani 1st , Jodhpur.
22. Ramesh Bhati S/o Mahanlal, Aged 32yrs, R/o H.No.1 Jh 21, Maduban Housing Board, Basni, Jodhpur.
23. Surendra Singh Solanki S/o Maghsingh Solanki, Aged 32yrs, C/o K.R.Tailor, Railway Gate Ke pas, C/207, Basni Second , Jodhpur.
24. Ramniwas S/o Mangilal, Aged 35yrs, R/o Vill. Po., KhunKuna the. Didwana, Dist. Nagaur.
25. Nemichand Jangid S/o Jagdish Pd., Aged 34yrs , R/o 49, Subhash Colony, Bhagt Ki Kothi, Jodhpur.
26. Sanjeev Choudhary S/o Lalchand, Aged 40yrs, R/o Railway D.S. Colony, H.No.1194, Jodhpur.
27. Pinkesh Bhatni S/o Satayanarayan Bhati, Aged 36 Yrs. R/o Bhati Niwas H.No.100, Ravan Ka Chabotra Ke Samne, 12 Pal Road, Jodhpur.
28. Ramlal S/o Champalal, Aged 32 yrs, R/o Plot No.237 A, Gali, Bhagat ki Kothi, Jodhpur.
29. Ashok Kumar S/o Motiram Aged 29yrs R/o 388, Subhas Nagar , Pal Raod, Jodhpur.
30. Kori Gurcharan S/o Shyamlal, Aged 36 yrs, R/o Shanti Nagar, Harijan Basti, Masoriya , Jodhpur.
31. Dinesh Kumar Mehra S/o Premchand, Aged 44yrs, R/o Behind Nagar Nigam , Mehron Ka Mohalla, Bikaner.
32. Ravi Kumar Sharma S/o Bhagwan, Aged 32yrs, R/o Patel Nagar, Near Haryana Bhawan , Bikaner.
33. Ram Pal Jhakar S/o Guam Ram , Aged 32yrs , R/o Sector 7/5, M.P. Colony, Bikaner.



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34. Adrash Kumar S/o Jagannath Pd. Aged 34yrs, R/o 4/113, IGNP Colony , Bikaner.
35. Rajnarayan Swami S/o Prahlad Das, Aged 30yrs, R/o 11, Adarsh Colony, Nokha Dist. Bikaner.
36. Mohd. Iqbal S/o Babu Khan, Aged 30yrs, R/o Kayam Nagar, RIICK Road No.5, Ravi Bazar, Bikaner.
37. Anil Agarwal S/o Shiv Shanker, Aged 32yrs, R/o House No.9, Navjoyoti Colony, near ITI, Bikaner.
38. Dungar Ram, S/o Hulas Ram, Aged 33yrs, R/o Regaron Ka Mohalla, Ward No.40, Shiv Bari, Bikaner.
39. Mohd. Umar S/o Usaman Gani, Aged 32 yrs, R/o Near Pandit /Dharam Kanta, Gajner Road , Bikaner.
40. Nasir Hussain S/o Fakir Mohd, Aged 32 yrs, R/o Amarsar Well, Sardul Colony, Bikaner.
41. Om Prakash S/o Panna Lal, Aged 29 yrs, R/o Rajpura P.O. Khor, the & Dist. Rawari (Haryana)
42. Yogendra Singh S/o Satendra Vikram Singh, Aged 28yrs, R/o Near Sohanji Ki Chakki, Kanasar Road, Bikaner.
43. Manoj Agarwal S/o Satyanarayan, Aged 29yrs, R/o Rampura Basti Gali No.18, Lalgarh, Bikaner.
44. Narendra Kumar Chouhan S/o Ram Kumar, Aged 28yrs, R/o Rampura Basti Gali No.20, Lalgarh, Bikaner.
45. Madan Dhawal S/o Om Prakash, Aged 30yrs, R/o Dairy Mohalla, Ward No.40, Shiv Bari, Bikaner.
46. Sharvan Kumar S/o Hadumanram, Aged 29 yrs, R/o C/o Sukhram Vishnoi Jambeshwar Nagar, Bikaner.
47. Parmanand Rajput S/o Hari Ram, Aged 30yrs. R/o Rampura Basti, Gali No.17, Bikaner.
48. Rajesh Chouhari S/o Shiv Ram, Aged 30yrs, R/o 2/35, M.P. Nagaur.
49. Mohd. Babar S/o Bhanwar Khan, Aged 37yrs, R/o Kimehan Mine Market, Ward No.18, Suratgarh.
50. Deepak Singh Gohil S/o Amar Singh, Aged 32yrs. R/o Rajiv Gandhi Colony, John's Ganj, Ajmer.
51. Wasim Khan S/o Late Liyakat Ali, Aged 34yrs, R/o Opp. Nath Mandir, Kundan nagar, Ajmer.
52. Nafis Khan S/o Late Liyakat Khan, Aged 31yrs, R/o Opp Nath Mandir, Kundan nagar, Ajmer.

53. Santosh Kumar S/o Gewar Ram, aged 36yrs, R/o Sadar Bazar, Lakhatron Ka Bas, Bhoplagarh, Dist. Jodhpur.
54. Bholu Ram S/o Harkaran, Aged 32yrs, R/o Vill & PO. Sudulpura, Teh. Phulera, Dist. Jaipur.
55. Panna Lal Panwar S/o Mangi Lal, Aged 32 Yrs, R/O Shrinath Marg, Akasha, Phulera, Dist. Jaipur.
56. Hukam Singh S/o Chothmal, Aged 34 Yrs, R/O Balagi Gali, Naya Ghar, Gulab Bari, Ajmer.
57. Dharmendra S/o Goma Rawat, Aged 36 Yrs, R/O Vill. Balupura, Post Adarsh Nagar, Ajmer.
58. Bharat Kumar Chhipa S/o Ramnarayan, Aged 35 Yrs, R/O 9/480, Gali No.1, Rajendra Pura, Hathi Bhata, Ajmer.
59. Prakash Chand S/o Kapoor Chand, Aged 34 Yrs, R/O 9/480, Gali No.1, Rajendra Pura, Hathi Bhata, Ajmer.
60. Prahlad S/o Ratan Lal, Aged 33 Yrs, R/O Vill. Hatikhara, Fay Sagar Road, Ajmer.
61. Ratan Lal S/o Laduram, Aged 31 Yrs, R/O Vill. Govindpura. Teh. Asindh, Dist. Bhilwara.
62. Sanjay Phulwari S/o Pushkar Narayan, Aged 34 Yrs, R/o 330, Arjunlal City Colony, Parwatpura, Ajmer.
63. Vipin Smith S/o E. Smith, Aged 33 Yrs, R/O 98, Veer Tejaji Nagar, Dorai, Ajmer.
64. Ajay Kumar Tanwar S/o Poran Singh, Aged 33 Yrs, R/o Prem Nagar, Nai Basti, Ramganj, Ajmer.
65. Hari Shankar S/o Kajju D, Aged 33 Yrs, R/o D/31, Locoshed, Dhani Karigram, Phulera, Dist. Jaipur.
66. Lalit Kumar Ahir S/o Kishanlal, Aged 34 Yrs, R/O 502/34, Near Laxmi Bakeri, Srinagar Road, Ajmer.
67. Janakilal S/o Sohanlal, Aged 34 Yrs, R/O Behind Shobhraj Hotel, Janakpuriganj, Ajmer.
68. Rupesh Kumar S/o Lal Singh, Aged 37 Yrs, R/o 391/15, Bhagwanganj, Opp. Police Chowki, Hazaribagh, Ajmer.
69. Lokendra S/o Shankarlal, Aged 33 Yrs. R/O 501, Hiranmagri, Sector 11, Udaipur.
70. Vinod Sharma S/o Amrit Lal, Aged 29 Yrs, R/o Ram pol Ki Bari, Opp. Ramdev Mandir, Outside Chand Pole, Jodhpur.
71. Ram Rakh S/o Babulal Meghwal, Aged 33 Yrs, R/o Vill and Po. Kharia Khangar, The. Pipar, Dist. Jodhpur.

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72. Sampat Raj S/o Meghraj Suthar, Aged 33 Yrs, R/o B.R. Adarsh Public School, Bhatti ki Bawri, Chopasni Road, Jodhpur.
73. Ajit Kumar S/o Sukharam, Aged 33 Yrs, R/o Vill. Chachiwas Po. Bawarala, Teh. Degana, Dist. Nagaur.
74. Om Prakash S/o Gomad Ram, Aged 37 Yrs, R/o New Meghwal Basti, Teh. Osian, Dist. Jodhpur.
75. Ravidas S/o Sohan Lal Bakoliya, Aged 32 Yrs, R/o 928/6, Shantinagar, Malusar Road, Ajmer.
76. Budhi Prakash S/o Kailash Chand Sain, Aged 29 Yrs, R/o Vill and Po. Aligarh, Teh. Uniara, Dist. Tonk.
77. Pushkar Narayan S/o Chhagan Lal, Aged 36 Yrs, R/o Chune Ki Bhatti, toptara, Ajmer.
78. Vipin Kumar S/o Paltoo Singh, Aged 36 Yrs, R/o 772, Vasant Vihar, Muzaffarnagar, (U.P.)
79. Mohan Singh S/o Sumer Singh, Aged 34 Yrs, R/o Vill. Jangllo, Teh. Nokha, Dist. Bikaner.
80. Raju Singh S/o Malam Singh, Aged 37 Yrs, R/o Raisar House, Rampura Basti, Opp. Lalgah Station, Bikaner.
81. Shokat Ali S/o Nasirdeen, Aged 35 Yrs, R/o Indra Colony, Near New Masjid, Bikaner.
82. Rakesh Kumar S/o Bhudev Prasad, Aged 34 Yrs, R/o B-167, Near Radhakrishna Ashram, Karninagar, Lalgah, Bikaner.
83. Balbhash Vyas S/o Labhchand, Aged 36 Yrs, R/o Kikani, Vyason ka Chowk, Bikaner.
84. Kartikya Sahram S/o Vinod Kumar, Aged 41 Yrs, R/o 5/3, M.P. Nagar, Bikaner.
85. Yashpal Singh S/o Gopal Singh, Aged 39 Yrs, R/o Udesb House, Mohalla Kuchilpura, Opp. Mahila Mandal, Bikaner.
86. Istiyak Ahmed S/o Mohd. Yusuf, Aged 43 Yrs, R/o Near Meat Market, Bikaner.
87. Girish Kumar S/o Deokinandan, Aged 30 Yrs, R/o Opp. Ram Chand Swami Shop Gali, Gajner Road, Bikaner.
88. Vinod Kumar S/o Subhash Chandra, Aged 33 Yrs, R/o Ram Kishan Pande flour meel, Hanuman Hattha, Jaipuriyon Ki Gali, Bikaner.
89. Mukesh Kumar S/o Bajrang Lal, Aged 36 Yrs, R/o Fad Bazar, Opp. Umrao Singh ki Tal, Bikaner.
90. Rajeshwar Prasad S/o Moolchand, Aged 35 Yrs, R/o Near Shashtri Bal Vidhya Mandir School, Rampura Basti, Bikaner.

91. Mohan Lal Meghwal S/o Chatra Ram, Aged 35 Yrs, R/o Vill. Jalalsar, Po. Jalsar, Dist. Bikaner.
92. Anil Kumar Mehra S/o Panna Lal, Aged 38 Yrs, R/o 5, Karni Stadium Road, Near Arya Niwas Hotel, Bikaner.
93. Naveen Kumar S/o Pritam Singh, Aged 34 Yrs, R/o C/o Ashok Kumar Gotwal, Gali No.4, Rampura Basti Lalgah, Bikaner.
94. Vikash Bhanot S/o Madan Mohan, Aged 32 Yrs, R/o II/E-53, Jai Narayan Vyas Colony, Bikaner.
95. Khushal Chand S/o Magaram, Aged 31 Yrs, R/o Inside Pabupuri, Opp. Pooja Tent House, Bikaner.
96. Manish Vishvakarma S/o Purnachand, Aged 31 Yrs, R/o Near Sector 3, UIT 38, M.P. Nagar, Bikaner.
97. Mohd. Jakir S/o Mohd. Sabir, Aged 28 Yrs, R/o Near Meat Market, Bikaner.
98. Rakesh Kumar S/o Ranveer Singh, Aged 34 Yrs, R/o B-III/251, Sudarsananagar, Bikaner.
99. Nandlal Puri S/o Kishan Puri, Aged 30 Yrs, R/o Outside Ustho Ki Bari, Jogmaya Temple, Bikaner.
100. Prakash Bageria S/o Babu Lal, Aged 32 Yrs R/o Opp. Vidya Bhati School, Rampura Basti, Gali No.7, Lalgah, Bikaner

(By Advocate Mr. Vivek Shah)

Vs.

1. Union of India through General Manger, North Western Railway, Jaipur (Raj).
 2. Chairman, Railway Board, Rail Bhawan, New Delhi.
 3. The Divisional Railway Manager, North Western Railway, Jodhpur (Raj).
 4. The Divisional Railway Manager, North Western Railway, Bikaner (Raj)
 5. The Divisional Railway Manager, North Western Railway, Ajmer (Raj)
-Respondents

(By Advocate Mr. Manoj Bhandari)

OA 130/2012

1. Rajeev Kumar Varaniya S/o Shri Rameshwar Dayal, aged 34 years, R/o 150/27, John's Ganj, Gaddi Maliyan Road, Panchu Chakki, Ajmer (Raj).
2. Murari Lal Sharma S/o Shri Mahesh Chandra Sharma, aged 34 years, R/o Gayatri Colony, Naya Ghar, Gulab Wadi, Ajmer (Raj).

3. Aftab Ahmed S/o Shri Raza Ahmed, aged 35 years, R/o Mohalla Lalcan, Opp.Masjid, Jodhpur (Raj.)

(By Advocates Mr. K.K.Shah/Vivek Shah)

Vs.

1. Union of India through General Manger, North Western Railway, Jaipur (Raj).
 2. Chairman, Railway Board, Rail Bhawan, New Delhi.
 3. The Divisional Railway Manager, North Western Railway, Jodhpur (Raj).
 4. The Divisional Railway Manager, North Western Railway, Bikaner (Raj)
 5. The Divisional Railway Manager, North Western Railway, Ajmer (Raj)
-Respondents

(By Advocate Mr. Manoj Bhandari)

OA 190/2012

1. Pankaj Jangid S/o Shri Suraj Prakash, aged 31 years R/o 3-C-58, Kuri Bhagtasani Housing Board, Jodhpur.
2. Praveen Giri S/o Shri Kailash Nath, aged 34 years, R/o Swami Stret, Ghodo ka Chowk, Jodhpur.
3. Guru Datt S/o Sri Bhagawati Lal Dave, aged 32 years, R/o E/346, Kamla Nehru Nagar, Jodhpur.
4. Ameda Ram S/o Sata Ram Bhinchar, aged 31 years, R/o Vill.& PO Betwasia, Theh.Osian, Dist:Jodhpur.
5. Abhishek Sengar S/o late Shri Surendar Singh, aged 34 eyars, R/o Captain House, Bache Ki Gali, Gulab Sagar, Jodhpur.
6. Ghanshyam Sharma S/o Shri Laxmi Narayan, aged 37 years, R/o 168/A, Ist B Road, Sardarpura, Jodhpur.
7. Surendar Jangid S/o Shiv Karan aged 33 years, R/o Sector-3, Kuri Bhagtasani Housing Board, Jodhpur.
8. Mada Ram S/o Shri Sona Ram, aged 36 years, R/o Laxman Ghati, Soorsagar, Jodhpur.
9. Raj Kumar S/o Shri Khem Raj, aged 33 years, R/o Rajbag, Soorsagar, Jodhpur.
10. Bhavin Rawal S/o Shri Girish Bhai, aged 40 years, Basani, Madhuban Housing Colony, Jodhpur.
11. Prakash Tanwar S/o Shri Bija Ram, aged 40 years, Channa Bhakar, Jyoti Nagar, Jodhpur.

12. Ratan Kansara S/o Shri Atma Ram, aged 33 years, R/o Pagariy ka Bass, Salawas, Jodhpur.

13. Mahendra Panwar S/o Shri Dhanraj aged 32 years, R/o 8/396, Chopasani Housing Board, Jodhpur.

14. Vikram Singh S/o Shri Shanker Singh, aged 33 years, R/o Vill.Modibika, Via.Besroli, The.Makrana, Dist.Nagaur.

15. Ghanshyam Suthar S/o Shri Ganga Raj, aged 31 years, R/o Sutharo Ka Bass, outside Nagauri Gate, Jodhpur.

16. Prem Ram S/o Shri Mega Ram, aged 33 years, R/o Vill.& PO Surani, Theh.Shergarh, Dist. Jodhpur.

...Applicants

(By Advocates Mr.KK Shah & Vivek Shah)

Vs.

1. Union of India through General Manger, North Western Railway, Jaipur (Raj).

2. Chairman, Railway Board, Rail Bhawan, New Delhi.

3. The Divisional Railway Manager, North Western Railway, Jodhpur (Raj).

.....Respondents

(By Advocate Mr. Manoj Bhandari)

OA 328/2012

1. Om Prakash S/o Shri Chhagan Lal, aged 42 years, R/o 136/34, Pal Bichla Chada, Ajmer.

2. Om Prakash S/o Dhanna Lal, aged 48 years, R/o Vill. & PO. Nareli, Via.Srinagar, Dist.Ajmer.

...Applicants

(By Advocates Mr. KK Shah & Mr. Vivek Shah)

Vs.

1. Union of India through General Manger, North Western Railway, Jaipur (Raj).

2. Chairman, Railway Board, Rail Bhawan, New Delhi.

3. The Divisional Railway Manager, North Western Railway, Jodhpur (Raj).

4. The Divisional Railway Manager, North Western Railway, Ajmer. ...Respondents



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ORDER***Per: Hon'ble Mr B K Sinha, Administrative Member***

Since all the applicants are similarly situated and have common cause of action resting upon common arguments and the relief(s) claimed are similar, these applications are being disposed of jointly.

2. These OAs are filed not against any impugned order, but for the grievance that the North Western Railways are going to appoint direct recruits in Group-D posts without appointing the applicants as Group-D substitutes in spite of they being screened in the years 2004 & 2005.

Relief(s) sought:

"(i) In view of the above submissions, it is most respectfully prayed that this Original Application may kindly be allowed and by issuance of an appropriate order or direction, the respondents may please be directed to appoint the applicants from the list of screened candidates in 2004 & 2005 against the vacancies of skilled Group-D posts.

(ii) That applicants may please be awarded any other relief, which this Hon'ble Tribunal deems just and proper in the case."

Case of applicants in OA 26/2012:

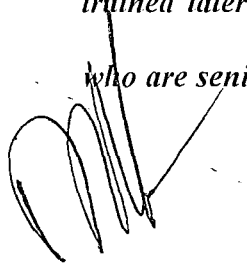
3. All the applicants are Course Completed Act Apprentices eligible for employment as substitutes in Group-D as per Para 179 of IREM as per letter dated 21.6.2004 [A2].

The applicants were screened along with some other persons and out of 606 persons 335 were given appointment and the applicants were left out due to litigation. In pursuance to A2, GM, NWR issued direction to employ Railway Trained Act Apprentices as substitutes in Group-D. This direction was challenged by others, who were not trained by Railways, before the CAT and the CAT at its Jodhpur Bench quashed the order of GM, NWR vide its order dated 24.2.2005. The Writ Petition filed by Railways against the above referred order of CAT was disposed of by the Hon'ble High Court vide order dated 5.12.2007 with a direction that once regular recruitment was completed in 4 months, the already employed substitutes from Railway Trained Act Apprentices would



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be terminated. The course completed Act Apprentices, thereafter, approached the Hon'ble Supreme Court against this order and the Hon'ble Supreme Court which stayed the operation of the order dated 5.12.2007 of the order of the Hon'ble High Court. Hence, those course completed Act Apprentices are continuing in service, whereas the applicants herein who have been screened along with them were not granted appointment on the ground that regular recruitment process has been initiated. The applicants submit that their right for appointment accrued in the year 2004 and 2005 when they were screened and selected and even though more than 1000 vacancies existed at that point of time neither Act Apprentices nor direct recruit candidates were appointed by NWR, whereas in other Railways Act Apprentices of 2010 continued to be appointed. They further contend that Respondent No.1 issued a letter dated 2.12.2010 [A5] addressed to all GMs directing to engage Apprentices as substitutes in Group-D posts, within concerned GMs power. To fortify this they have produced a letter dated 23.9.2011 [A6] vide which Apprentices up to 2010 have been appointed in other Railways. The applicants have relied upon a judgment of the Hon'ble Supreme Court in ***UP State Road Transport Corporation and Ors Vs. UP Parivahan Nigam Shishukhs Berizgar Sangh and others, [1995] 2 SCC-1*** wherein the Hon'ble Court said that the apprentices deserve preference over others in giving appointment. The Hon'ble Court was further pleased to hold: ***"(A) other things being equal, a trained apprentice should be given preference over direct recruits, (B) For this, a trainee would not be required to get his name sponsored by any employment exchange. (C) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the service rules concerned. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentices had undergone training would be given & (D) The training institute concerned would maintain a list of persons trained year-wise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior."*** The applicants further contend that after receipt of Annexures. 5 and 6

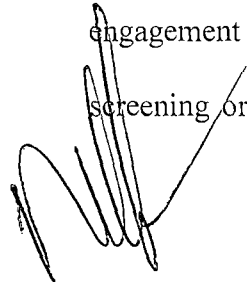


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the respondents initiated the process of selection of Group-D candidates without considering the case of the applicants and without resorting to any written examination as per the provisions of Apprentice Act 1961. The applicants seek that the above cited order of the Hon'ble Supreme Court in *UP State Road Transport Corporation and Ors Vs. UP Parivahan Nigam Shishukhs Berizgar Sangh and others, (Supra)* be given effect to in the instant case as well.

Stand of the respondents in OA 26/2012:

4. The respondents have filed a reply statement in OA 26/2012 but have omitted to file in other three cases. The respondents have taken the preliminary objection that the OA is barred by laches as the applicants have neither been engaged as substitutes pursuant to the notification of the Railway Administration dated 30.8.2004 nor are they eligible and entitled to be considered for engagement. Moreover, the entire engagements which had taken place pursuant to the notification dated 21.6.2004 had been quashed and set aside by the Hon'ble High Court and the case of the applicants before the Hon'ble Supreme Court is pending. The respondents have further stated that the engagement of Course Completed Act Apprentices were made on temporary basis pursuant to the Master Plan dated 21.1.1991 in vogue at the relevant time. The applicants in the instant case were never engaged and only 335 Act Apprentices were engaged on the basis of screening. Some of the persons seeking to challenge the entire process of engagement of the Course Completed Apprentice Act applicants as backdoor entry approached CAT, Jodhpur Bench by filing *OA 243/2006 (Mohit Sharma Vs. Union of India and others)*, which was allowed by the Tribunal vide order dated 12.8.2010. They have stated that engaging the applicants after a period of 8 years from the list which expired does not arise, as the panel prepared expires after a period of two years which could be extended by one year by the GM as per RBE No.230/2001 dated 27.11.2001. Moreover, the engagement in question is a stop gap arrangement. Mere inclusion of any person for screening or keeping in the select list would not confer any right of engagement upon

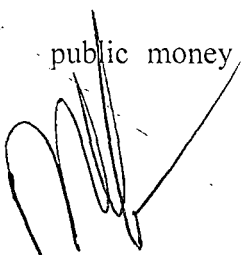


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him. In the order of engagement which was made earlier it is clearly stated that it will have effect till the regular selection takes place and no right would be accrued to them as it is not a regular selection. This engagement also found to be not in order by the Tribunal and the matter is sub-judice before the Hon'ble Supreme Court. Some of the persons are continuing, as averred by the applicants, is only because of the stay order. The regular selections were completed in the year 2008 and 2422 Group-D employees were empanelled on 22.5.2008 [R6]. Again another selection is being held in 2010 for filling up 5020 posts for which advertisement No.72/2010 was issued and the written test of which will be held in May and June, 2012. The respondents have further stated that the process for placement, subsequent to 2004-05 pursuant to policy decision taken on 21.6.2004, had come under cloud as the Vigilance Department of Railway had already seized the entire record of the said engagements made. In the regular selection held in the year 2004 and 2008, 2422 persons have been appointed complying with the orders of the Court. Hence, no right has accrued for the applicants for such a temporary appointment. Since the selection process is already under way, the applicants cannot seek direction to engage them at this stage from the so-called engagement list of 2004. No preference can be given to any Act Apprentices and there is no such guarantee that the substitute shall always be regularized after being engaged by the then General Manager pursuant to the Policy decision because the Hon'ble High Court has already dismissed the entire engagements on the ground that the regular selection have already been undertaken. Respondents pray for dismissal of this OA for the aforesaid reasons.

Stand of applicants in the rejoinder:

5. The applicants filed rejoinder to the reply of the respondents, in which they state that though it is not obligatory on the part of the Railways to give employment to the Apprentices but once huge amount of public money is spent on training of Apprentices, then it would meet the legitimate expectation of the Apprentices if time, energy and public money spent on them is properly utilized and is not allowed to go waste



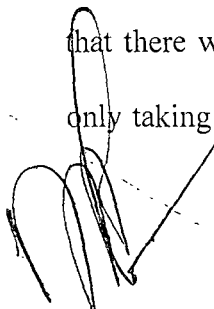
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particularly when the Railways employs huge number of persons. By employing trained persons will the respondent organizations stands to save huge expenditure to be incurred on training of new and direct recruits. On the issue of delay the applicants submitted that since the Railways have not acted in bona fide manner and not accorded appointments to the applicants when vacancies in Group-D posts arose and even now they are in the process of filling up 5020 vacancies, the applicants have a continuing legal right to be considered first. Hence, their claim does not get extinguished with the passage of time. There is no question of lapse of the panel because the names of the Apprentices continue to be maintained by the Railways as per their seniority.

MA. 17/2012 in OA 26/2012, MA 68/2012 in OA 130/2012, MA 83/2012 in OA 190/2012 and MA 169/2012 in OA 328/2012.:

6. These MAs have been filed by the applicants for condoning the delay in filing the OAs. It is submitted that the applicants have waiting for decision of the Hon'ble Supreme Court of India where the matter is lis pendens, therefore, is governed by the maxim of *pendente lite nihil innovetur* (that pending the suit nothing should change). It has recently brought to their notice despite the pendency before the Hon'ble Supreme Court such appointments are being made in most Railways Zones, except the NWR where no recruitment taken place since 2004-05 for Group-D posts. The applicants were not aware that recently at Kota apprentices trained in 2010 have been engaged as substitutes whereas the applicants were trained prior to 2004. No settled position will be unsettled as there are a large number of vacancies in Group-D post in NWR. They, therefore, prayed that in case there is delay, then the matter may kindly be seen in the light of discrimination meted out to poor applicants by NWR in not giving appointment as substitute in Group-D posts.

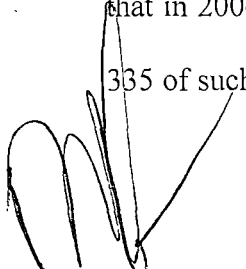
7. During the course of arguments the learned counsel for the applicants admitted that there was no obligation on part of the respondents to appoint the applicant. He is only taking the advantage of the provisions of Apprentice Act as laid down. Railways



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are in the process of making recruitment from open market and the applicants wish to be considered for the same and also given preference of other things being equal without the requirement of their name being sponsored by the Employment Exchange authorities. The applicants have relied upon the *UP State Road Transport Corporation and Ors Vs. UP Parivahan Nigam Shishukhs Berizgar Sangh and others* (supra) wherein the Apex Court had inter alia given a preference to the direct recruits other things being equal. The learned counsel for applicants further submits that the Roadways had trained apprentices and this fact was taken cognizance by the Hon'ble Apex Court. The effect of the order of the Hon'ble Apex Court in that order of the Hon'ble High Court is held in abeyance. Similarly the Railways have their own rules for training apprentices and once trained they are treated as employees. Railways have also prepared a list of batches of apprentices trained. The present batch of Apprentices was trained in 2001 and the list has been maintained batch-wise. It has been a continuing practice that they were being engaged by the General Managers and once having served as apprentices they were being absorbed and did not require to come to the process of recruitment. Learned counsel for the applicants further referred to the orders of the Hon'ble Supreme Court which have restrained the removal of 335 apprentices already engaged and contends that not employing the rest would be tantamount to violation of Articles 14 and 16 of the Constitution of India. Making a reference to Rule 179 of IREM the counsel stated that once the trained people are available they required to be engaged.

8. Learned counsel for the respondents strongly opposed the contention of the applicants on the ground that the relevant provision of the Apprentice Act does not entitle the course completed apprentices to be appointed by virtue of their training. It is admittedly been the practice to engage such apprentices earlier and they were being absorbed on the précis of their performance at the level of General Managers. Following this practice, learned counsel for the respondents drew attention of the Tribunal the fact that in 2004 there was similarly a move to engage the course completed apprentices and 335 of such persons had been actually engaged. However, this was challenged before this



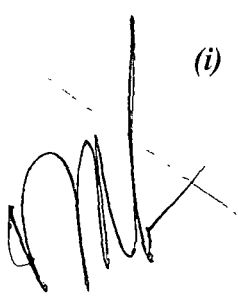
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very Tribunal as being violative of Articles 14 and 16 of the Constitution of India and the Tribunal allowed the OA vide order dated 24.2.2005 with further direction that subsequent proceedings pursuant to the circular/order are quashed and set aside; the Railways would be precluded from taking a recourse to engage fresh substitutes keeping in view the relevant instructions/rules in force and as per the observations made by the Tribunal. Subsequently this order was challenged before the Hon'ble High Court of Judicature at Rajasthan, Jodhpur vide Civil Writ Petition No. 4272 of 2005, 4273 of 2005, 4274 of 2005. Since the Hon'ble High Court directed that the Railways should complete the process of direct recruitment as expeditiously as possible the order of the Hon'ble High Court was subsequently challenged before the Hon'ble Supreme Court by the 335 course completed apprentices who had been engaged and the Hon'ble Supreme Court was pleased to stay the removal of the 335 persons. However, the Hon'ble Supreme Court did not stay the process of recruitment. Subsequently 4000 persons were recruited as direct recruits in 2007 and there have been subsequent recruitments in 2010 and notification has been issued vide notification dated 15.2.2011 [A1] for which applications have already been received and process of recruitment is well under process.

9. Learned counsel for the respondents drew attention of the Tribunal that the engagement made in the year 2004 by the General Manager have been beset with controversies and the matter is already under the scrutiny of the vigilance. The Hon'ble High Court had confirmed the position that the G.M. has no right to make recruitment. The matter continues to remain *sub judice* before the Hon'ble Supreme Court. However, the applicants did not apply for the recruitment of 2007 and 2010 nor they challenge the validity of Rule 179 of IREM. Learned counsel of the respondents was emphatic that till so long as Rule 179 exists no relief can be granted.

10. Having gone through the pleadings of the contending parties and having heard their learned counsels the following facts in issue emerge:

- (i) *Under what rules and procedures that the recruitment under assail from the respondents is being made?*



- (ii) *Having delivered the order dated 24.2.2005 by this Tribunal and considering the stay order granted by the Hon'ble Supreme Court whether this Tribunal is in a position to provide the relief(s) sought by the applicants?*

Under what rules and procedures that the recruitment under assail from the respondents is being made?

11. In so far as the first issue is concerned, the Recruitment of Group-D posts in the Railways are made under the provisions of Rule 179 of the IREM which would apply to all Group-D Railway servants other than Rakashaks employed in the Railway Protection Force. The procedure laid down for employment is given hereunder:

"The following procedure shall apply in respect of recruitment of Group 'D' railway servants [other than Rakshak (Sainiks) employed in the Railway Protecting Force who are governed by the provisions of Railway Protection Force Act, 1957 and the Rules framed there under.

(i) Periodicity of Recruitment:- Recruitment should be made at interval of one year to two years.

(ii) Recruitment Units: - The unit for recruitment shall normally be the Division, major workshops, Loco shed, C&W Sick lines P.W.I. lengths, etc. etc. Recruitment for each category will be made separately. If necessary, there may be more than one unit for recruitment in a Division.

(ii) Eligibility for Recruitment:- No direct recruitment shall be made to higher grades in Group 'D' except -

- a. *In certain categories where serving employees in lower grades do not offer; and*
- b. *.....*
- c. ***(i) The upper age limit is relaxable by 5 years in the case of Scheduled Caste and Scheduled Tribe candidates.***

(ii) Relaxation in age limit for other categories of candidates like physically handicapped, ex-servicemen etc. will be governed by the orders issued by the Board from time to time.

(vi) Procedure of Recruitment:- An employment Notice indicating the total number of vacancies, the no. of vacancies reserved for Scheduled Castes and Scheduled Tribe and ex-servicemen, scale of pay, qualifications prescribed etc. as well as the last date for receipt of applications, should be prepared in due time and issued to Employment Exchanges within the recruitment unit and to the recognised Associations of Schedule castes and Scheduled Tribes so that adequate publicity is given with a view to attracting the maximum number of local residents. The notices should also be sent to Special Employment Exchange and the Vocational Rehabilitation Centre in the case of vacancies reserved for physically handicapped and to Director General

(Resettlement) and the Rajya and the Zila Sanik Boards in the case of vacancies reserved for ex-servicemen. Copies of these notices should be exhibited on notice board outside railway Offices etc. situated in the area of recruitment.

(viii)(a) Where literacy is an essential qualification, applications from the candidates nominated by Employment Exchanges or registered by Employment Exchanges in terms of clause (b) below only will be eligible for consideration. These may be limited in proportion to the total vacancies available in the recruitment unit concerned. In other cases, where literacy is not required for competence in the job and is not prescribed, applicants applying directly to the Railway Administration should also be considered and registration at an Employment Exchange should not be made obligatory.

(b) For the convenience of serving railway employees applications from their sons/ immediate dependents may be received by the Railway Administration direct. They should be got registered in an Employment Exchange by deputing a Welfare Inspector, if necessary, for this purpose and will thereafter be eligible for consideration along with others. It is not necessary that their names should be nominated by the Employment Exchange concerned. In cases where the Employment Exchanges do not accept applications from such candidates and they require the candidate concerned to appear before them in person for registration of his application such applicants may be considered without their getting registered at the Employment Exchange. At the time of selection no discrimination can be made between a candidate applying direct to the administration and the one nominated by the Employment Exchange and only the most suitable ones will be selected for appointment. Applicants belonging to the Scheduled Castes and Scheduled Tribes even though they are not sons/ immediate dependants or serving railway employees may also be given the benefit of getting their applications registered at the Employment Exchanges through a Welfare Inspector as indicated above.

(x) As Group 'D' vacancies generally attract local residents, the applications of such candidates received by the administration should be given full consideration at the time of selection.

(xi)(a) The Selection Board for recruitment of Group 'D' posts including screening of Casual labour/ substitutes shall consist at least three members, one of whom should belong to the SC/ST communities and another to minority communities. No member of the Committee shall be directly subordinate to any of the other members. If such a Committee cannot be constituted from amongst the offices of the Zonal Railway or any Division or Workshop, a person of SC/ST and minority communities from an adjacent Railway or another Department; either of the Central Government or State Governments or person from outside the Railway, like retired Railway or Army Officers or Principals of Educational Institutions or eminent persons belonging to SC/ST and minority communities may be co-opted to serve on the Committees. The Railway Officers will be an Assistant Personnel Officer and an officer of the Branch concerned. The applications will be screened by a Personnel Officer or any other Officer or a committee of officers nominated for this purpose and not by the selection board. Interviews and/or tests shall be conducted by the Selection Board.

(b) Nomination of outsiders co-opted as a members of the Selection Board should be from a panel of names that may be formed by the Government. Non-officials whenever co-opted as members of the Interview Board should not be repeated in every Board. They should also be furnished with a detailed brief indicating the reservation for

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SC/ST according to rules, the procedure to be followed in the Selection and other allied information as may be of help to him in conducting the interviews. The non-official member may be issued a free first class railway return journey pass and also permitted the free use of railway rest house, if available.

(xiv) Group 'D' vacancies in workshops should be filled up in the manner indicated below:

(i) 50% by selection from outsiders including Apprentices trained under 'Apprentice Act':

(ii) 10% by transfer from among regular gangmen etc. as per para (xv) below; and

(iii) 40% from amongst volunteers from amongst regular staff of other departments who may like to come to the workshop cadre on bottom seniority."

It is significant to note that there is an apportionment in the number of recruitments to be made - 40% of the selection is to be made from amongst regular staff of other departments who may like to come to the workshop cadre on the basis of bottom seniority, 10% from amongst regular Gangmen and remaining 50% are to be recruited from outsiders including Apprentices trained under the Apprentice Act as direct recruits. Section 22 of the Apprentice Act provides:

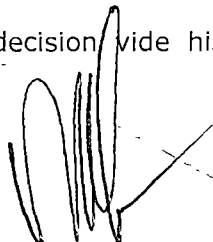
"Offer and acceptance of employment-

(1) It shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment, nor shall it be obligatory on the part of the apprentice to accept an employment under the employer.

(2) Notwithstanding anything in sub-section (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract.

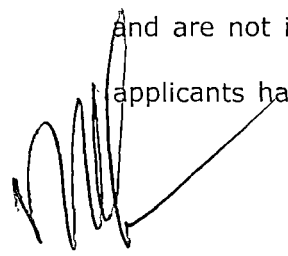
Provided that where such period of remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period or remuneration so as to make it reasonable, and the period or remuneration so revised shall be deemed to the period of remuneration agreed to between the apprentice and the employer. "

According to the Rules, the General Manager of North Western Railway took policy decision vide his communication dated 30.8.2004 and directed all the Divisional



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Railway Managers to consider engagement of Fresh Face Substitutes in Group-D categories from amongst the course completed Act Apprentices who are otherwise eligible for such engagement as per the extant rules with 31.8.2004 as cut off date. The same circular clarified that this exercise should not be construed as a right for their automatic engagement as Fresh Face Substitutes in Group-D category. This was challenged by a group of applicants vide means of three OAs namely OA 265/2004, OA 238/2004 and OA 264/2004 wherein it was contended that the respondents were resorting to recruitment in the garb of engagement as Fresh Face Recruits. They apprehended that such candidates would acquire certain rights with the passage of time and the vacant posts of Group-D would get filled up by them precluding the Course Completed Act Apprentices and others. The Tribunal has relied upon cases including that of *DS Nakara Vs. Union of India*, AIR 1983 SC 130 to hold that **"two conditions must be fulfilled viz (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and (ii) that differentia must have a rational relation to the objects sought to be achieved by the statute in question."** The Tribunal had further relied upon *Union of India Vs. Hargopal*, AIR 1987 SC 1227. The Tribunal held that **"from all angles, we do not find that the action of the respondents could be construed as justified by any stretch of imagination and the same shall have to be declared as arbitrary, discriminatory and offending the equality clause as enshrined in Articles 14 and 16 of the Constitution."** As stated, this order was upheld by the Hon'ble High Court, with a marginal departure, that the respondents were directed to complete the ongoing process of recruitment, vide their order dated 5.12.2007. Subsequently, the matter went up to the Hon'ble Supreme Court which has been pleased to stay the order of the Hon'ble High Court. However, it also needs to be put on record, the respondents organization have carried on with recruitments which have been held in the year 2004, 2010 and is now under progress in an advanced stage in the current year. The applicants as stated are from amongst Course Completed Act Apprentices who were not able to find employment and are not in the 335 persons who are already employed. The arguments of the applicants have already been stated. The organization having spent resources and



time on their training is expected within a reasonable level though as a matter of right to have some preference to them in appointment. The relief that they have sought is that the respondents would be directed to appoint the applicants from the list of screened candidates in 2004 and 2005 against vacancies of skilled Group-D posts. The applicants had further sought to rely upon the case of **UP State Transport Corporation and another** (supra). The Hon'ble Court analyzed the provisions of Apprentices Act 1961 and Apprentices Rules, 1991 on the basis of which it had held that:

7. The aforesaid provisions are sufficiently indicative of the fact of the fact that the training imparted is desired to be result-oriented; and the trainees are treated as akin to employees. Even so Section 22 of the Act states, and it is this provision which has been pressed in to service by the appellants that it shall not be obligatory on the part of the employer to offer any employment to apprentice who has completed the period of his apprenticeship training in this establishment unless there be a condition in the contract to the contrary. The model contract form finding place in Schedule VI of the Rules echoes the voice of section 22(1) In its para 2. The Corporation has placed on record a model contract form entered into between it and the trainees which also states about the aforesaid non-obligation.

8. On the strength of these provisions, the contention advanced is that the High Court could not have directed to give employment to the trainees. Reference to the impugned judgment, however, shows that while giving the direction the Court was conscious of what has been provided in Section 22 of the Act; even so, the direction was given on the basis principally of doctrine of promissory estoppel as already noted. As to this view taken by the High Court, we state that, according to us, the direction in question could not have been given because of this principle, despite what was given out by the Joint General Manager of the Corporation in his Circular letter dated 1977 referred in the judgment.

12. The Hon'ble Court has further pleased to direct a set of concessions and stated as under:

11. The aforesaid being the position it would not be just and proper to go merely by what has been stated in Section 22(1) of the Act, or for that matter, in the model contract form. What is indeed required is to see that the nation gets the benefit of time, money and energy spent on the trainees, which would be so when they are employed in preference to non-trained direct recruits. This would also meet the legitimate expectations of the trainees.

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12. In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of trainees to get employment after successful of their training:-

(1) Other things being equal, a trained apprentice should be given preference over direct recruits.

(2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India. v. Hargopal, AIR 1987 SC 1227, would permit this.

(3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the concerned service rule. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

(4) The concerned training institute would maintain a list of the persons trained year wise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior."

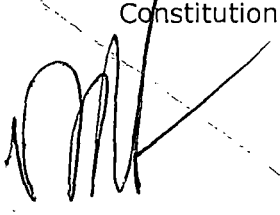
13. The applicants have drawn similarity on the basis of the case of **UP State Transport case** (supra) and have sought similar treatment in the instant case. It is to be remembered that this judgment was available before the Tribunal in 2004. In fact it has referred to a direction given by the Railway Board vide its communication dated 22.7.2002. The paragraph 19.2.1 of which reads:

"For recruitment to the posts of:

Skilled Artisans, Group C posts for which Engineering Degree and Engineering Diploma are the qualification, Diesel Electric Assistants, Group D posts:

Other things being equal between the two candidates the candidate who is course completed Act Apprentice trained in Railway Establishment will be given preference over the candidate who is not such an apprentice. However, there would be no change in the procedure of the Recruitment and the selection for recruitment will be in accordance with the merits of the eligible candidates."

It is apparent from the above that the judgment of **UP State Transport** (supra) had been considered by this Tribunal while passing its order dated 24.2.2005. It was having considered this judgment that the Tribunal had held the circular of the General Manager dated 30.8.2004 as ultra vires against Articles 14 and 16 of the Constitution. The applicants have no case to rely upon the same judgment for fresh



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relief before this Tribunal. In so far as this Tribunal is concerned its order has already attained finality and it cannot go behind that.

Having delivered the order dated 24.2.2005 by this Tribunal and considering the stay order granted by the Hon'ble Supreme Court whether this Tribunal is in a position to provide the relief(s) sought by the applicants?

14. As regards the second point is concerned, it is sufficient to conclude that if this Tribunal decided vide its order dated 24.2.2005 that the direction issued by the General Manager, NWR vide his communication dated 30.8.2004 is bad under law and does not sustain the test of Articles 14 and 16 and this order was sustained by the Hon'ble High Court of Rajasthan and that merged with the order dated 24.2.2005, under such circumstances in simple language, this Tribunal is now estopped from taking any other view except as it is decided until such time it is set aside by the Hon'ble Supreme Court. This only be consistent with the earlier judgment and any other position taken by this Tribunal will be at the cost of consistency.

15. In view of the afore discussions these OAs fail with no order as to costs. However this does not preclude the applicants from participating in the regular process of recruitment subject to the policies of the respondent department.

16. MAs for condonation of delay are allowed in view of the larger issues before the Bench.


(B K SINHA)
ADMINISTRATIVE MEMBER

pps


(G. SHANTHAPPA)
JUDICIAL MEMBER

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