

INDEX SHEET

CAUSE TITLE OA 69 OF 1987

NAME OF THE PARTIES R.K. Ahirwar Applicant

Versus

Union of India Respondent

Part A.

Sl.No.	Description of documents	Page
1	Case list	A-1 to 2 ✓
2	Order sheet	A-3 to 10 ✓
3	Judgement 4/10/91	A-11 to 31 ✓
4	Supreme court of India 20/4/90	A-32 to 39 ✓
5	Retition on copy	A-40 to 53 ✓
6	Annexure	A-54 to 75 ✓
7	Order	A-76 ✓
8	Contract Affidavit	A-77 to 99 ✓
9	Rejoinder Affidavit	A-100 to 135 ✓
10	Supplementary Rejoinder	A-137 to 149 ✓
11	supplement counter	A-150 to 154 ✓
12	Misc. Appeal No. 835/90	A-155 to 162 ✓
13	condonation of delay, 854	A-163 to 165 ✓
14	condoning Affidavit	A-166 to 168 ✓
15	Order	A-169 to 171 ✓
16		
17		
18		

CERTIFICATE

Certified that no further action is required to be taken and that the case is fit for consignment to the record room (decided)

weeded out

Dated 19.4.2011

B/c. destroyed on 09-5-12

Counter Signed.....

[Signature]

Section Officer/In charge

[Signature]
Signature of the
Dealing Assistant

ORDER SHEET

(AB)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

87 NO. 69 OF 198

K. K. Sharma vs. U.O. D.D. & Others

SL NO of order	Date of order	ORDERS WITH SIGNATURE	Office Notes as to action taken on order
16	2/87	<p>Hon. Justice Shri C. Ramamyan. Hon. Shri. Ajay Johri, AM</p> <hr/> <p>Mr. G.C. Dhattacharya for applicant</p> <p>Mr. Anand for respondents</p> <p>learned counsel for the respondents present for two weeks' time to file counter affidavit. Put up @ 9-3-1987. The interim order already passed will continue till further orders.</p> <p>SM VS</p> <p>J AM</p>	<p>OR</p> <p>Notice fixing 16.2.87 for filing reply has been issued to the parties on the question of Interim matter have been issued to the respondents under 85 cover.</p> <p>Further notice acknowledging has been received in the office of the respondents have not filed any reply submitted for hearing Interim matter.</p> <p>Comp. 12/2</p> <p>Order issued.</p> <p>OR</p> <p>Time granted for filing reply has expired but counsel for respondents has not filed any reply for submitted for orders.</p> <p>Comp. 4/3</p>

आदेश पत्रक
ORDER SHEET

AM

अपील
निर्देश आवेदन रजिस्टर में सं०

OA. 69/87

No. in Reference Application Register
Appeal

अपील अनिकरण
Appellate Tribunal

अपीलार्थी
आवेदक

Appellant
Applicant

अपीलार्थी
आवेदक द्वारा

बनाम

प्रत्यर्थी

Appellant
Applicant

Vs.

Respondent

प्रत्यर्थी द्वारा
Respondent

आदेश की क्रम संख्या
और तारीख
Serial number of
order and date

संक्षिप्त आदेश, निर्देश देते हुए, यदि आवश्यक हो
Brief order, mentioning reference, if necessary

पालन कैसे हुआ और पालन
करने की तारीख
How complied with and
date of compliance

17/7/87

Hon. Ajay Johai - AM.
Hon. G. S. Sharma - JM

On the request of applicant's
counsel, the case is adjourned
to 31/7/87 for hearing.

Sp.
AM.

JM.

31/7/87

Hon. D. S. Mishra - AM.
Hon. G. S. Sharma - JM

On the request of
applicant's counsel, the case
is adjourned to 4/8/87 for
hearing.

AM.

JM.

18.10.89 Hon. G. S. Sharma, JM
Hon. K. J. Raman, Am

Heard Sri G. C. Bhattacharya, learned Counsel for the Applicant and Sri A. V. Srivastava, learned Counsel for the Respondents.

Judgment reserved.

87

19/10

Am

JM

18.10.89

Am

O.R.

7/5/90.

An order dt. 9/4/90 for Hon'ble Supreme Court of India in civil Appeal no. 1887 of 1990 is put up before ~~Hon'ble~~ Court for orders. Dy. P. (J) for filing & date for listing before Hon'ble Court.

7/5/90

SO (S)

7-5-90 DR

Placed before me today. List this case before court for orders on 28-5-90 for hearing the case in light of Hon'ble Supreme Court's order dt. 9-4-90, setting aside the judgment & order dt. 6-11-89 passed by this tribunal.

DR(S) 07-5-90

OR 18/5

Two SLP letters kept on record as ordered by

DR(S)

O.A. 69-87

27-1-89

Hon. G. S. Sharma - J.M.
Hon. K. J. Raman - A.M.

On the request received from the both parties counsel the case is adjourned to 21-4-89 for hearing.

W.R.
A.M.

J.M.

21-4-89.

Hon. G. S. Sharma, J.M.
Hon. K. J. Raman A.M.

Shri. A. V. Srivastava for the respondent is present. On the request received from Shri. G. C. Bhattacharya learned counsel for the applicant, case is adjourned to 19-7-89 for hearing.

W.R.
A.M.

J.M.

Per

19-7-89

Hon. K. Nath - VC
Hon. K. J. Raman - AM

For orders see my order of date passed in O.A. 260/89.

W.R.
AM.

VC

26-7-89

No 85

85

ORDER SHEET

A8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD/C.B. LUCKNOW

Misc 835/90

OA 69 No. 07 OF 1950

B.P. Sharma Vs. Govt

Sl.No.	Date	Office Report	Orders
		<p><u>OR</u></p> <p>This case has been recd. on 10/9/90. In CAT, Ahd.</p> <p>Two S&P letters has also kept in record S. & O.</p> <p align="right">5/12/90</p>	<p>8/11/90 No Selly. Sdly to. 6/11/90</p> <p>6/11/90 Hon. Mr. M.V. Prasad AM Hon. Mr. D. & Agastya JM</p> <p>Due to resignation of Ben Association. Case to adj. to 10/12/90</p> <p align="center"><u>10/12/90</u></p> <p>Hon. Mr. Justice K. Math, Jr. Hon. Mr. K. Chatterjee, AM.</p>
		<p>Amendment made tdly 2/12</p>	<p align="center">AM</p> <p align="right">A ve</p>

By this application, the applicant wants to introduce ~~the~~^{his} case in respect of letters dt. 2/12/85 & 14/3/85 Annexures RA-5 & RA-6/contd with the question of limitation. The amendment prayed for is allowed. The respondents may file a reply to the same as also a reply to the Misc. Appln. No. 835/90 for explanation of delay within a period of four weeks, dist before the DR (T) on 14/1/91 for fixing a date for final hearing if possible after completing the record.

OA 69/89 J

10.4.91

No-Sitting Adj to 22.4.91
a

AP

OB

no ea filed
S.P.N. / Ex parte
h
19/4

22.4.1991

Hon'ble Mr. D.K. Agrawal, J.M.
Hon'ble Mr. K. Obayya, A.M.

None appears on behalf of the applicant.
Sri Sanjiv Kumar brief holder of Sri A.N.
Verma appears on behalf of the respondents
and informs us that the case ^{was} noted in his
diary ^{for} ~~is~~ on 24.4.1991. Therefore, it may be
listed on 24.4.1991 for hearing.

[Signature]
A.M.

[Signature]
J.M.

(n.u.)

24.4.91 Hon Mr. D.K. Agrawal, J.M.
Hon Mr. K. Obayya, A.M.

Mr. Mehd. Jigars for Applicant.
Mr. A.N. Verma for Respondents

Heard the learned counsel
for the parties. Judgment reserved.

[Signature]
A.M.

[Signature]
J.M.

Order Sheet

in Misc Appn 053/90 / 054-90 / 055/90
in
OA 69/87

(A.C.)

① 28.5.90. Hon D.K. Agrawal AM / Honk. Obeyya AM.
No time left adj for
23.7.90 for orders

J.S.M.
to
Buz

② 23.7.90. Honk. J. Raman AM / Hon D.K. Agrawal AM.
Not reached adj for
27.8.90 for orders.

J.S.M.
to
Buz

Hon' Mr K.J. Raman, A.M.

Hon' Mr J.P. Sharma, J.M.

27/8/90

By the Misc. Application No. 855 of 1990 the applicant has sought for the transfer of the original application No. 69 of 1987 to Lucknow, since he is posted there. Shri Mohd Ilyas, Advocate on behalf of the applicant reiterated the request today. Shri A.V. Srivastava learned counsel is present and he has no objection. The case is accordingly directed to ^{be} transfer ^{red,} together with all the connected records, to Lucknow immediately. It is also noticed that the ^{Hon'} Supreme Court by its ^{r case} order dated 9-4-90 has directed this Tribunal to dispose of this matter within 3 months from that date. That date has since expired. There is need to dispose of the case with utmost urgency. The case is listed at Lucknow on 24-9-90.

J

J.M.

AM

A.M.

24.9.90

(sns)

No

Silby Adj to 0 X 90

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

O.A.NO. 69 1987.
I.A.NO.

DATE OF DECISION _____

K.R. Ahirwar PETITIONER

Sri G.C. Shettacharya Advocate for the
Petitioner(s)

VERSUS

U.O. 1 & another RESPONDENT

Mr. Lalji Sinha Advocate for the
Respondent(s)
connected with

OA No. 260 of 1989
K.R. Ahirwar v. U.O. 1, 2 and Mr.

CORAM :

The Hon^{ble} Mr. G. S. Shasna, J.M.

The Hon^{ble} Mr. K. J. Ramer, A.M.

- ✓ 1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
- ✓ 2. To be referred to the Reporter ~~or not~~ ? ✓
- × 3. Whether their Lordships wish to see the fair copy of the Judgement ? ×
- × 4. Whether to be circulated to other Benches ? ×

Dinesh/

AN

Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No.69 of 1987

K.R.Ahirwar ... Applicant
Vs.

1.Union of India
2.General Manager,N.E.Railway... Respondents.

Connected with

Registration O.A.No.260 of 1989

K.R.Ahirwar ... Applicant
Vs.

1.Union of India,
2.General Manager,
N.E.Railway and
3.K.B.Lal ... Respondents.

Hon.G.S.Sharma, JM
Hon.K.J.Raman, AM

(By Hon.G.S.Sharma, JM)

These are two Original Applications filed by the same person and as the fate of the second case depends on the fate of the first case, they were heard together and are proposed to be disposed of by this single order.

2. The undisputed facts of this case are that the Applicant had initially joined North Eastern Railway as a Guard and in 1977 he was promoted as Traffic Inspector (lower grade) and in 1982 he was promoted to the highest grade of Rs.840-1040 of the Traffic Inspector. On 11.5.1983, a notification was issued for filling up 6 posts of Asstt. Operating Superintendent (for short AOS) and Asstt. Traffic Officer (for short ATO)

AW

.2.

against 25% vacancies through Limited Departmental Competitive (for short LDC) Examination and the written test for the same was held on 2.7.1983 and 3.7.1983. The posts of AOS/ATO are safety category posts and under the instructions dated 14.2.80 of the Railway Board, a candidate appearing in the LDC Examination has to secure minimum 60% qualifying marks in each paper of the written examination as well as in the aggregate. The Applicant had appeared in the written test but he could not secure the minimum qualifying marks in the non-professional paper- Financial and Establishment Rules and Procedure- and as such, he was not called for interview held on 1.11.1983 and on the basis of the result of that examination a provisional panel of two general candidates- V.K.Jain and K.N.Prasad- was approved by the General Manager. The Applicant belongs to a Scheduled Caste and on 11.11.1983 he had made a representation to the Railway Board against his non-selection, which was sent by the Railway Board to the General Manager on 24.11.1983 for the needful. The General Manager, thereafter, applying circular letter dated 15.11.1983 of the Railway Board under which a lower limit of qualifying marks for the SC and ST candidates was set at 3/5th of the qualifying marks prescribed for general community candidates for selection in the non-safety posts, relaxed the qualifying marks for the Applicant and he was called in supplementary viva-voce test held for him on 12.1.1984 and the Applicant was provisionally empanelled on 19.1.1984 and posted as AOS(General) vide order dated 1.2.1984. The Applicant was called to appear in the EB test held on 2.4.1986 and on his passing the test he was allowed to cross the efficiency bar vide order dated 3.4.1986.

3. It appears that some persons brought the matter of relaxing the qualifying marks by the General Manager in the case of the Applicant to the notice of the Railway Board and a report from the General Manager was called for in that connection. After taking into consideration the necessary facts, the

A13

Railway Board advised the General Manager that no moderation was admissible in any type of selection to Gr.'B' posts and the application of lower limit of qualifying marks in the case of the Applicant was not correct and as a special case, he was allowed to continue purely on an adhoc basis in Gr.'B' service against the general quota of vacancies (not against 25% quota of LDC Examination) till the next normal selection/~~and~~ the Applicant was required to appear in the next normal selection with a clear direction that ~~his~~ his failure to get empanelled will result in the adhoc promotion being terminated. The Applicant was informed of this decision of the Railway Board by the General Manager vide his letter dated 14.3.1985, copy annexure RA-6 to the reply of the Respondents in the first case.

4. A written test for the post of AOS/ATO against 75% vacancies was notified to be held on 6.7.86/14.7.86. The Applicant did not appear in the test and had made detailed representation on 1.7.86 to the Railway Board to which he did not seem to have received any reply. Another supplementary written test was thereafter notified on 22.1.1987 and the Applicant was required to appear therein on 6.2.1987. The Applicant initially showed his inclination to appear in the said test and vide his application dated 4.2.1987, copy Annexure RA-2 to the reply in the first case, he requested the General Manager (P) to arrange pre-selection coaching but instead of appearing, he filed the first Petition on 30.1.1987 for setting aside the impugned order dated 22.1.1987 asking him to reappear in the written test with a direction to the Respondents not to ask him to appear in any written test or the selection process for class II post of AOS in future. The Applicant had also prayed for an interim relief to restrain the Respondents from holding the ^{supplementary} written test on 6.2.1987, but ~~it~~ ^{the Tribunal} had granted the limited relief ~~to the extent~~ that the result of the Applicant of the said written test shall not be announced.

AW

5. The Applicant, however, did not appear in the supplementary selection test held on 6.2.1987 for getting his regular promotion and as such, one K.B.Lal (Respondent no.3 in the second case) who was empanalled on the basis of this selection was appointed in place of the Applicant on 27.3.1989 and the Applicant was ordered to be reverted to ^{his} substantive post with immediate effect. The Applicant thereafter filed the second petition on 30.3.1989 for setting aside the impugned order dated 27.3.1989 of his reversion and for a direction to the Respondents for not interfering with his functioning as AOS (C) and prayed for maintaining the status quo. The interim relief was, however, refused after hearing the other party on 26.5.89 when it was found that his successor K.B.Lal had already taken over charge of his post.

6. The case of the Applicant is that he belongs to a Scheduled Caste and by applying the policy of relaxation in the case of SC/ST candidates, the General Manager, who was the appointing authority of class II posts, had given him the appointment as AOS on his being found suitable for the post and after his appointment as AOS on 1.2.1984, he had already worked satisfactorily on this post for a period of about 5 years and in the meantime, he had passed the efficiency bar test and he was duly allowed to cross the efficiency bar. ~~His~~ He placed his reliance on the decision dated 6.10.1986 of a Bench of this Tribunal in T.A.Nos.21 of 1986 and 22 of 1986 (M.A.A.Usmani Vs. Union of India in ~~TA No. 21/86~~), copy annexure 8, and it has been contended on his behalf that the General Manager being the competent person for making his appointment as AOS The Railway Board could not interfere in the matter and he could neither be reverted from his post nor could be asked to reappear in any fresh selection.

115

.5.

7. Both the petitions have been contested on behalf of the Respondents and their defence in short is that the Applicant was depanelled by the Railway Board in 1985 and the decision of the Railway Board was communicated to him by the General Manager vide his letter dated 14.3.1985, his first petition is barred by limitation. It has been further alleged that the Applicant had accepted his reversion by showing his willingness to appear in the supplementary test on his requesting the General Manager (P) on 4.2.1987 for arranging pre-selection coaching for the selection and he is now estopped from challenging the same after a lapse of several years. The Applicant did not appear in the supplementary written test in accordance with the directions of the Railway Board and as such, he had no right to continue on the post of AOS on adhoc basis any more and he was rightly reverted to his substantive post and the decision in the case of M.A.A.Usmani (Supra) has no application to his case and in any case, the matter is still subjudice before the Hon. Supreme Court and has not become final and no relief can be granted to the Applicant on its basis.

8. The Applicant has heavily relied on ^{the} ~~a~~ decision of ~~another~~ ^{the} Allahabad Bench of the Tribunal in two connected cases (T.A.Nos.21 and 22 of 1986) M.A.A.Usmani (Supra). Its copy is available as annexure 8. They were the cases of the employees of the North Eastern Railway who were selected along with some others for ~~the~~ Gr.'B' post of Asstt. Signal and Telecommunication Engineer in LDC Examination held in 1983. In that selection only one candidate had qualified in the written

Alb

test. All the Applicants had failed in the non-~~professional & provisional~~ paper. That selection was also for a safety oriented post as is the case before us and the General Manager, N.E.Railway had relaxed the qualifying marks in the non-professional paper to the extent of 45 per cent in the case of general candidates and to the extent of 40 per cent in the case of SC/ST candidates and after such relaxation the Applicants in the said cases were empanelled and were given the appointments on 29.11.1983, 2.12.1983 and 10.5.1984. The action of the General manager was, however, not approved by the ~~General~~ ^{Railway} Board ~~Manager~~ as no moderation in qualifying standards was admissible in the case of safety oriented posts. However, the promotees were allowed to continue on adhoc posts till next selection. Thus, in the similar circumstance, the aforesaid two petitions were filed for quashing the order dated 5.9.1985 of the Railway Board cancelling the panel approved by the General Manager. The Bench before which the said cases came up for hearing was of the view that the General Manager of the Railways has wide powers. He is the authority who approves a Gr.B selection. He is responsible for the efficient and proper running of the railways and he being the man on the spot, his powers and decisions cannot be fettered in day to day working by the interference of the Railway Board. It was further observed that for all practical purposes, he works in an autonomous manner and he has to work within the guidelines and instructions available. The General Manager had taken the decision relaxing the qualifying marks in the non-professional paper in full knowledge of the instructions of the Railway Board after seeing the poor result of the examination and the necessity of filling up the vacancies.

ALP

.7.

The General Manager had used his discretion which was neither arbitrary nor capricious. The Bench further observed that there was no procedural irregularity committed by the Selection Board and as the Applicants have worked for sufficiently long period in their posts, their reversion will see them with evil consequences. The impugned order was accordingly quashed and the petitions were allowed.

9. In the cases before us, the Applicant had secured 60% marks in two professional papers and more than 60% marks in General Knowledge and in ~~his~~ ^{3 more} professional paper, he had secured 21.5% marks out of 50 marks. He had, thus, scored more than 40% marks even in this paper. He was promoted and posted as AOS vide order dated 1.2.1984. Thereafter he passed the efficiency bar test and was allowed to cross the efficiency bar vide order dated 3.4.86 and by the time he was asked to appear in the fresh test vide order dated 14.7.86, he had served on the promotion post for more than 2 years. In this way, the decision in the case of M.A.A.Usmani (Supra) applies to the case of the Applicants in all fours.

10. It has been contended on behalf of the Respondents that no moderation was possible in the case of the Applicant and by granting relaxation in the qualifying marks, he was wrongly empanelled by the General Manager and it being a safety oriented post, the Railway Board rightly depanelled the Applicant and as the SLP against the decision of the Tribunal in the case of M.A.A.Usmani (Supra) has been admitted by the Hon. Supreme Court, that

(AIB)

.8.

judgement is not final and this petition is ^{also} barred by time. It is true that vide its order dated 12.9.88 the Hon. Supreme Court condoned the delay and granted the Special Leave to the Union of India to appeal against the decision dated 29.9.86 of the Allahabad Bench of the Tribunal in the said case but did not stay the operation of that order. On the other hand, it was ordered that the status quo will be maintained as is apparent from the copy of the order annexure 9 to the petition. Merely on the basis of the fact that an appeal is pending against the decision of the Tribunal in the said case, we cannot ignore the said decision. The position may be different when res judicata is set up by one party and the other party raises a plea that the decision in the earlier case is not final and is still sub judice. However, in the case of the decision of a High Court or a Tribunal, which has the effect of a precedent, the plea of the earlier decision being sub judice is not available. We are bound by the judicial discipline and ^{so long as} ~~unless~~ the decision of a Bench of ^{the} ~~A~~ Tribunal is not set aside by a larger Bench or by the Hon. Supreme Court in appeal, no Bench can afford to ignore it. We are, therefore, bound to follow the principle of law laid down in the case of M.A.A. Usmani (Supra) that the General Manager who is the appointing authority of gr. 'B' officers is competent to make the relaxation in qualifying marks after a due consideration of the material facts. In the present case, the Applicant was not only found suitable for empanelment after relaxation but he was also found fit to cross the efficiency bar after his promotion in the higher grade. We, therefore, find no reason to take a different view in the present case.

11. Now coming to the other pleas raised by the Respondents, we find that the Railway Board vide its letter

199

dated 21.2.1985 had ordered deletion of the name of the Applicant from the panel. This order was intimated to the Applicant on 14.3.85 vide annexure 6 to the reply in the second case. This fact has not been denied by the Applicant anywhere. After deletion of the name of the Applicant, he was served with the impugned order dated 22.1.1987, annexure 7 to the petition in the first case wherein it was stated that as a special case, it was decided to hold second supplementary test on 6.2.1987 and the Applicant and one other person were allowed to appear with a clear warning that no further written test was to be held for the selection of AOS/ATO. It is against this order the Applicant filed the first petition on 30.1.1987. The order dated 21.2.1985 of the Railway Board communicated to the Applicant on 14.3.1985 by the General Manager was thus not challenged before 30.1.1987. According to the provisions of S.21 of the Administrative Tribunals Act XIII of 1985, the Applicant should have challenged the same either by 13.3.86 i.e. within one year from the date of communication or by 30.4.86 i.e. ^{within 6} 6 months from the date the Central Administrative Tribunal assumed jurisdiction over this dispute, ^{whichever} was later and the petition having been filed much thereafter is, thus, clearly barred by ^{the special} law of limitation prescribed under this Act. There is no application for condonation of delay before us nor any such ground was made out before us at any stage. The petition is, therefore, bound to fail on this ground.

12. There is yet another ground which goes against the Applicant. After ^{the} deletion of the name of the Applicant from the panel the first written examination was notified to be held on 6.7.86 vide notice dated 20.5.86 annexure 8 to the reply in the second case. Even against this order, the Applicant did not approach the Tribunal. He had approached the Tribunal only after his receiving the second notice dated 21.1.1987 for the supplementary test to be held on 6.2.1987. After receiving this notice, the Appli-

A20

.10.

cant had requested the General Manage vide his letter dated 4.2.1987, copy annexure 7 to the reply in the second case, for arranging pre-selection coaching for a period of 20 working days for appearing in the supplementary test. The contention of the Respondents is that by writing this letter the Applicant accepted the orders of the Respondents and showed his willingness to appear in the supplementary test and he is now estopped from challenging the validity of the said orders. There may be some force in this contention but in view of the fact that before writing this letter on 4.2.1987, the Applicant had already filed his first petition on 30.1.1987, we are not inclined to take it seriously and it will not have any adverse effect on the case already filed before.

13. In the end, by way of abundant precaution we would like to make it clear that we are not dealing with the merits of the case of the Applicant as the fate of the S.L.P filed by the Union of India in the case of M.A.A.Usmani (Supa) will govern even this case on merits and as such, it is not necessary for us to go into the merits of the case in detail.

14. Regarding the second petition, we are of the view that no doubt, the order of reversion of the Applicant was passed on 27.3.1989 and the second petition was filed within time, the Applicant had ~~been~~ failed to challenge the order regarding the deletion of his name from the panel in time and he had ^{also} failed to appear in the special selection arranged for him, he was bound to be reverted and as such, on merits, his second petition is liable to fail.

15. In view of the above considerations, both the cases are hereby dismissed without any order as to costs.



MEMBER (A)

Dated: 6 Nov 1989
kkb



MEMBER (B)

A21

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

....

Registration O.A. No.69 of 1987

K.R. Ahirwar Applicant.

Versus

Union of India and others Respondents.

Connected With

Registration O.A. No. 260 of 1989

K.R. Ahirwar Applicant.

Versus

Union of India and others Respondents.

Hon'ble Mr. D.K. Agrawal, Member (J)
Hon'ble Mr. K. Obayya, Member (A)

(By Hon'ble Mr. K. Obayya, Member(A))

These two applications under Section 19 of the Administrative Tribunals Act, 1985 are by the same applicant. The prayer in O.A. No. 69 of 1989 is for setting aside the orders dated 21.2.1985 and 14.3.1985, contained in Annexures R.A. 5 and R.A.6 to the counter affidavit and order dated 21.1.1987(Annexures-7 to the claim petition), requiring the applicant to appear for fresh selection for promotion to Group-B post i.e. Assistant Operating Superintendent(A.O.S.)/ Assistant Traffic Officer (A.T.O.) by cancelling his earlier selection which was held to be not in order. In O.A. No.260 of 1989, the challenge is to the order dated 29.3.1989 reverting the applicant from the post of A.O.S. to his substantive post of in Group-C.

2. As the subject matter of these cases is in the nature of a cause and consequence and the fate of the second case would depend upon the decision in the first one, they were heard together and disposed of by a common order and judgment dated 6.11.1989 by a previous bench of the Tribunal. Both the claim petitions were dismissed; O.A. No. 69 of 1989 on the point of limitation and O.A. No. 260

A22

of 1989 on merits. Aggrieved by the said order, the applicant filed S.L.P. No. 1887 of 1990, in the Supreme Court which set aside the order of the Tribunal and remanded the case to the Tribunal to decide the question of limitation afresh. The Supreme Court observed that there was infirmity in the reasoning of the Tribunal, in holding that the fact of service of the order dated 14.3.1985, on the applicant has not been denied any way, as the applicant had denied the receipt of the order in para 3(k) of the rejoinder and as such there should be fresh finding whether the applicant has or has not received the impugned order for purposes of determining the point of limitation.

3. We have heard the learned counsel of the parties and perused the record. Before we proceed further, we would like to refer briefly to the relevant facts of the case. The applicant who is employed in the N.E. Railway appeared for the Limited Departmental Competitive Examination (L.D.E.C.) held in 1983 for promotion to Group-B posts of A.O.S./A.T.O. against 25% departmental quota. The posts available were six and promotion was by selection, which consisted of a written examination and viva-voce. The written examination was in 4 papers ;

- (i) General Knowledge.
- (ii) Professional Subject-I
- (iii) Professional Subject-II
- (iv) Financial and Establishment Procedure, Rules etc.

The candidates were required to secure 60% marks in each paper in the written examination and also 60% aggregate, including interview marks. 110 candidates took the written examination out of which only 3 candidates were declared qualified for interview, at the end of which a panel of 2 successful candidates was formed on 1.11.1983. The panel candidates were

123

duly promoted. The applicant was among the candidates who failed to secure 60% marks in the written examination, hence he was not called for interview. However, he represented to the Railway Board (Board) that being a S.C. candidate, his case needs consideration, as no S.C. candidate was declared successful. The matter was referred to the General Manager (G.M.). The G.M. relaxed the qualifying marks in terms of Railway Board's Circular No. 82-E(SCT)41/6 dated 15.11.1983, according to which a lower limit of 3/5ths of the marks prescribed for general candidates, should be set for S.C. and S.T. candidates both in written examination and viva-voce. The applicant was declared successful in the written examination. A supplementary interview was held on 12.1.1984, he was put in a provisional panel and promoted to Group-B post of A.O.S. The Board was informed of the action taken by G.M. The Board did not approve the action of the G.M. In its letter dated 21.2.1985, addressed to G.M. N.E. Railway. The Board clarified that lower limit in the qualifying marks in respect of S.C.; S.T. employees, is not provided for departments classified as 'Safety Oriented' hence it did not approve the relaxation given by the G.M. in favour of the applicant. The Board directed that the applicant should be ^{asked} to appear for next selection and he should be continued without reversion on the same post on adhoc basis till the next selection against the general quota or the departmental quota as the case may be and failure to qualify in the examination will entail in reversion. In the year 1986, selection for general quota was held but the applicant did not appear. In the year 1987, the supplementary test was held to which the applicant expressed his willingness to appear and also requested for arranging pre-selection training but he did not appear in the

2

X O R

R

124

- 4 -

test. One K.B. Lal was selected in the same test and he was empanelled and the applicant was reverted on 27.3.1989. The orders requiring the applicant to appear in fresh selection examination as also his reversion order are under challenge in these applications.

4. The first question that arises for a decision is whether the application O.A. No. 69 of 1989 is within time. The application was filed on 30.1.1987. The contention of the respondents is that the order of the Railway Board dated 21.2.1985 cancelling the relaxation given by the G.M. was communicated to the applicant on 14.3.1985. Prima facie, this was not within time as under Section 21 of the Administrative Tribunals Act, 1985 the application lies within 1 year from the date of the cause of action and in case of appeal, thereafter another 6 months time is allowed and taking this into account, the application should have been filed on or before 14.9.1986 ^{reckoning limitation} from the date of service of the impugned order on the applicant. The applicant in para-3 (k) of his rejoinder has denied the receipt of the said order. He also contended that if G.M. was aware of that order, he would not have allowed the applicant to Cross Efficiency bar in 1986 and that for the first time he came to know that he was required to take the written examination again by communication of the letter dated 20.5.1986 (Annexure-C.A.8). The respondents have not showed us any record to establish that the order dated 14.3.1985 was infact served on the applicant. This would mean that the applicant came to know about the impugned order only on 20.5.1986. If this is considered as the date of the order giving rise to the cause of action, then the application which was filed on 30.1.1987 would be well within time.

R

Contd ... 5p/-

A25

Having regard to these circumstances, we consider that the application is in time.

5. Coming to the merits of the case, there is no dispute so far as facts are concerned. The applicant failed to secure the minimum prescribed marks in the written examination therefore, he was not eligible to be called for interview. His name does not figure in the list of successful candidates empanelled in the first instance. The G.M. relaxed the rule relating to the minimum marks, considering the fact that the applicant was a S.C. candidate and lower limit of i.e. 3/5ths of the prescribed marks for general candidates could be applied to his case. The applicant became eligible by lowering the limit; He was asked to take a supplementary viva-voce test and on being successful was put in the panel provisionally and was promoted to the post of A.O.S. Thereafter the matter was referred to the Board which did not agree with the G.M. The case of the applicant rests on two premises. That being a S.G. employee he had to be adjudged qualified or not qualified on the basis of lower minimum prescribed for S.C. employees and not by applying general standard. Secondly, the G.M. who has considered the matter, relaxed the rule and declared the applicant successful in the written examination. G.M. was competent to pass such order and the Board can not interfere and set aside a validly passed order.

6. The above contentions of the applicant raise two questions;

- (i) Whether the applicant was eligible for the benefit of lower minimum of the Prescribed qualifying marks being a S.C. candidate.
- (ii) Whether the G.M. was competent to relax the rule relating to minimum marks in respect of Safety Oriented- Group B Posts.

A26

7. From the circular^s issued over a period of time, it would appear that the Board was seized of the problem as to how to fill up the reserved category vacancies to "Selection Posts" where vacancies remained unfilled as S.C. and S.T. employees were not qualifying at the competitive examinations, or where they qualified, their numbers were small, as to leave large number of vacancies, which were decategorised and thrown open^{to} the general category. To start with, the 'best among failures' among S.C., S.T. employees, were promoted on adhoc basis for 6 months, given "in service training" and their^{work} reviewed periodically, if they were found to be performing well, they were confirmed or reverted in case they were not upto the mark. Relaxation of the examination rules, was considered next and a lower limit of qualifying marks was set for S.C. and S.T. employees. This lower limit was qualified^{to} 3/5ths of the prescribed minimum marks set for general category employees; in each of the written papers and viva-voce and also in the aggregate. In other words, while a general candidate was required to get 60% in each of the written papers, 60% in the interview and 60% aggregate to be declared successful at the selection. S.C. or S.T. candidate was required to get only 3/5ths of the qualifying marks to be declared successful. The lower qualifying limit was extended to departmental promotions through L.D.C.E. The Board's instructions on this subject, invariably underlined one aspect namely that relaxation rule will not be applicable to selections of "Safety Category Posts" Safety categories were identified as posts in Civil Engineering, Mechanical Engineering, Signal and Telecommunication, Electrical Engineering and Transport (Traffic) Departments. There is a reiteration of this instruction in Board's letter No. 82-E (SCT) 41/6 dated 15.11.1983, annexed to rejoinder of the applicant as R.A.3. The G.M. appears to have interpreted the

123

examination rule, in his own way, by distinguishing professional subjects and non-professional subjects and held that since the applicant has secured 60% or more in professional subjects, his failure to get 60% marks in Financial and Establishment Procedure Rules need not be held against him. He relaxed the rule to that extent and declared the applicant successful in the written examination. On this, the Board clarified that splitting up the subjects as Professional and non-professional, is not provided in the rules and the written examination has to be taken as a whole for declaration of the results. The Board in its wisdom considered that all papers are equally important and carry equal weightage, since in most cases the Railway employees function as 'one man office' dealing with cash transactions, rendering reports, monitoring the work of the field staff down the line, and Railway Servants are expected to be acquainted with rules, procedure etc. To sum up, it may be stated that rule relating to lower limit of the qualifying marks is not applicable to promotion to safety categories and that the posts of A.O.S./A.T.O. are identified as Safety Categories posts in the Transport (Traffic) department and that the relaxation given by the G.M., was by wrong application of the relaxation rule. In these circumstances we hold that the applicant was not eligible for the benefit of a lower minimum of qualifying marks, available to S.C., S.T. candidates, in categories of posts other than safety oriented posts. We answer the question in para-6(i) above in the negative.

8. On the question whether G.M. is competent to relax the examination rules, the contention on behalf of the applicant is that G.M. is the appointing authority for Group-B posts, as such he was competent to relax the rules,

(A28)

and the Board has no jurisdiction to interfere in such matters. We consider that there are two aspects to this. One is 'Competency' in terms of making appointments, and the other 'Competency' in regard to relaxation of rules. The submission on behalf of the respondents is that the posts in question A.O.S./A.T.O. are Group-B posts, which are gazetted posts and for the gazetted cadre, it is only the Board which is competent to relax the rules, exercising the delegated powers of the President to frame rules, and not the G.M. The G.M. has powers to make rules for Group-C and D posts.

9. We have given our anxious consideration to the rival contentions and carefully examined the relevant provisions in the Railway Establishment Code (Vol.1) (Code in short). Chapter-2 of the code deals with 'General Conditions of Service' and recruitment to Group-A and Group-B posts. Rule 207 lays down that promotions to Group-B posts may be made by G.M. such promotions, however should be made in strict order of the placement in the panel recommended by the selection Board (Rule-210). Rule 214 further lays down that approval of the Ministry of Railways is required in cases where an officer is promoted for the first time to this grade. The above provisions of the code clearly indicate that G.M. can make appointments to Group-B posts by promotion, but such appointments should be from the approved panel, and with the prior approval of the Ministry. In the case of the applicant, his name was included in a panel which was a provisional panel (Annexure-2) and on a reference to the Board, his empanelment was not approved and he was directed to appear at the next selection. From this, it follows that the appointment of the applicant to Group-B post was not in order, as it was not from an approved panel and the applicant acquired no right to continue in the post as his name ceased

129

to be on the panel, his selection being set aside on the ground that he failed to secure the prescribed minimum marks to ^{be} declared qualified. In our opinion, what is more relevant and important is not the question, whether or not G.M. is competent to make appointment to Group-B posts, but whether it lies in his powers to relax the rules. Rules 123 and 124 of the Code confer on the Board and the G.M. power to make such rules in respect of Group-C and D Railway Servants under their control, provided that the rules by the G.M. should not be inconsistent with the Rules made by the President or the Railway Ministry. The Board, as the apex body of Railway Administration has notified the examination rules, instructions, laying down procedures to be followed for 'Selections' and maximum marks in different segments i.e. written examination, viva-voce, record, seniority etc and also minimum marks required for selections. The Board has also identified posts which are treated as Safety Category Posts. In all its circulars, the Board clarified that lowering of the maximum marks is available to S.C. and S.T. candidates in all selections except selections to 'Safety Categories'. These rules are made by the Board, and the G.M. who is a subordinate authority to the Board is not vested with powers to relax the rules, or apply the lower minimum to 'Safety Categories' contrary to the provisions of rules. In our view, G.M. can not go behind or beyond the rules. It does not lie within his power, to apply a rule or instruction, contrary to the directions of the Board. We have no doubt, whatsoever, in our mind, that rules notified by the Board, can be relaxed only by the Board and not by G.M.

and in this view of the matter we hold that the G.M. was not competent to relax the rule relating to the qualifying marks, in favour of the applicants, provisions, and clarifications question raised in

130

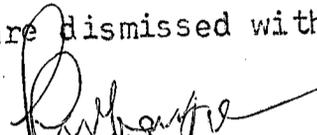
10. We would also like to observe, that we fail to appreciate the attitude of the applicant, in avoiding the selections held subsequently in 1986, and 1987. His name appears in the lists of eligible candidates, in fact, he requested the administration to arrange pre-selection coaching for 1987 selection, but he seems to have changed his mind and did not appear for the examination. One would expect an officer to prove his 'mettle' at the selections and always look back with sense of achievement, that he came out successful in a competitive and rigorous selection; but he seems to have been bent on striking to the promotion given to him, though not by proper selection. The G.M. is a highly placed functionary in the Railway Administration, he should have exercised his powers with due diligence and care, considering the repercussions. His action has embarrassed the Board and resulted in litigation; though in fairness to him, it may be said that he apprised the Board of his action and awaited instructions. We also notice that the administration has been fair and accomodating; while holding his selection was not proper, the applicant was allowed to continue on the post, without reversion, till next selection. But the applicant did not choose to go on the right path and failure to appear at the selections and not getting selected is his own making. His reversion in these circumstances can not be questioned.

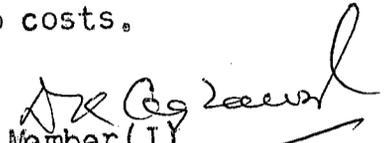
11. To sum up we consider, that the impugned orders on 21.1.1985, 4.3.1985 and 22.1.1987 were issued in the interests of the applicant to enable him to get qualified and secure promotion to Group-B post on proper selection, but he failed to avail the opportunities provided, consequently, the order of reversion dated 29.3.1987 followed.

[Handwritten signature]

131

In these circumstances, we see no merit in the applications both the applications O.A. No. 69 of 1989 and O.A. No. 260 of 1989 are dismissed with no order as to costs.


Member (A)


Member (J)

Dated: 4th October, 1991.

(n.u.)

ABZ

SO(5)
for wa

Regd.A.D.

D.No. 164/90/xi
SUPREME COURT OF INDIA
DATED: 20th April, 1990

From

The Assistant Registrar
Supreme Court of India.

To

The Registrar,
High Court of Judicature,
Allahabad.

✓ The Deputy Registrar
Central Administrative Tribunal,
at Allahabad.

CIVIL APPEAL NO. 1887 OF 1990
(From ~~High Court~~ Judgment and Order/Decree dt. 6.11.89
~~xxx~~ passed by Central Administrative Tribunal at Allahabad
in O.A. No.69 of 1987)

K.R. Ahirwar

versus

... Appellant(s)

Union of India & Ors.

... Respondent(s)

Sir,

In pursuance of Order XIII, Rule 6, S.C.R. 1966, I am directed by their Lordship of the Supreme Court to transmit herewith a certified copy of the Judgment/Order dated the 9th April, 1990 in the appeal above mentioned.

The Certified copy of the decree made in the said appeal and ~~the original records~~ will be sent later on.

Please acknowledge receipt.

Yours faithfully,

[Signature]
ASSISTANT REGISTRAR

URGENT

Encl: as above

SO(5)

kc/xi

Keep a record. Comply with the orders and make an entry in the file and relevant register and put up with office report by tomorrow.
Dec 02-5-90
DR(5)

Recd. on 21/5/90
by
External
Trib. Reg.
at: 130.

A33

245401

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Certified to be true copy,
[Signature]
Assistant Registrar (Judl.)
21/2/1990
Supreme Court of India

Civil Appeal No. 1887 of 1990
[Arising out of Special Leave Petition (Civil)
No.761 of 1990]

K.R. AhirwarAppellant

Versus

Union of India & Ors.Respondents

ORDER

Heard both the parties. Special Leave granted.

The Central Administrative Tribunal, Allahabad, by its order dated 6.11.1989 dismissed O.A. 69 of 1987 filed before it by the appellant holding that the order dated 21.2.1985 assailed in the proceedings had been duly communicated to the appellant on 14.3.1985 and that, therefore, the application filed before the Tribunal after a considerable lapse of time was barred by time. The Tribunal observed that the fact that the communication of 14.3.1985 had been duly served on the appellant "had not been denied anywhere". But Sri Ramamurthi,

[Signature]

A3W

learned counsel, pointed out that appellant in his rejoinder before the Tribunal had, in para 3(K) thereof, expressly denied that the letter dated 14.3.1985 was served on him.

In view of this infirmity in the reasoning of the Tribunal, learned counsel for both sides stated before us that the order dated 6.11.1989 of the Tribunal be set aside and the matter remitted to it to decide the question of limitation afresh. Accepting this submission, we set-aside, the order under appeal and remit the matter to the Tribunal for such fresh disposal. The Tribunal is directed to dispose of the matter within three months from today.

Sd/- J.
(M. N. Venkatachali)

Sd/- J.
(K. Jayachandria Reddy)

New Delhi;
April 9, 1990.

135

D. No. 164/90/Sec.XI

All communications should be addressed to the Registrar, Supreme Court, by designation, NOT by name. Telegraphic address :- SUPREMECO

SUPREME COURT INDIA

Dated New Delhi, the 14th May, 1990.

FROM:

The Registrar(Judicial), Supreme Court of India, New Delhi.

TO:

The Deputy Registrar, Central Administrative Tribunal Allahabad.

CIVIL APPEAL NO. 1887 OF 1990.

K.R.Ahirwar

...Appellant.

Versus

Union of India & Ors.

...Respondents.

Sir,

In continuation of this Registry's letter of even number dated the 20th April, 1990, I am directed to transmit herewith for necessary action a certified copy of the Decree dated the 9th April, 1990, of the Supreme Court in the said appeal.

Please acknowledge receipt.

Yours faithfully,

J. M. [Signature] 19/5/90 for Registrar(Judicial)

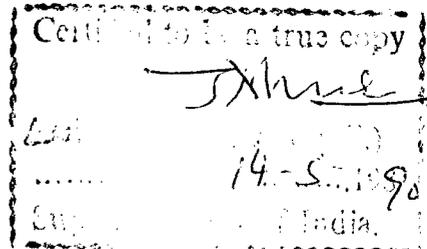
So (5) to na. 19/5/90

Entered against Section 135. Shri. Alok Nath to be kept on record.

10/5

IN THE SUPREME COURT OF INDIA

CIVIL/CRIMINAL/APPELLATE JURISDICTION



CIVIL APPEAL NO. 1887 OF 1990.

(Appeal by Special Leave granted by this Court by its Order dated the 9th April, 1990, in Petition for Special Leave to Appeal (Civil) No. 761 of 1990 from the Judgment and Order dated the 6th November, 1989 of the Central Administrative Tribunal, Allahabad in Registration O.A.No. 69 of 1987).

K.R. Anizwar, Age about 49 yrs.
 son of Smt Param Lal,
 resident of 11-B, Rafi Ahmed
 Kidwai Marg, Bandra Bagh,
 Lucknow (U.P.).

...Appellant.

Vereus

1. Union of India,
 Through the Chairman,
 Railway Board, Ministry of Railways,
 Rail Bhavan, New Delhi.
2. General Manager, N.E. Railway,
 Gorakhpur.
3. Traffic Inspector, N.E. Railway,
 Gorakhpur.

...Respondents.

9th April, 1990.

CORAM:

HON'BLE MR. JUSTICE M.N. VENKATACHALIAN
 HON'BLE MR. JUSTICE K. JAYACHANDRA REDDY

For the Appellant: Mr. P.F. Rao, Senior Advocate,
 (Mr. S.C. Birla, Advocate with him).

For the Respondents: M/s. R.P. Srivastava and B.K. Persad,
 Advocates.

The Appeal above-mentioned being called on for hearing before this Court on the 9th day of April, 1990, UPON perusing the record and hearing counsel for the parties herein, THIS COURT DOETH in disposing of the Appeal ORDER:

THAT the Judgment and Order dated the 6th November, 1989 of the Central Administrative Tribunal, Allahabad in Registration

SUPREME COURT

CIVIL/CRIMINAL/APPELLATE JURISDICTION

CIVIL APPEAL NO. 1887 OF 1990.

K.R.Ahirwar

Appellant
Petitioner
~~XXXXXX~~

Versus

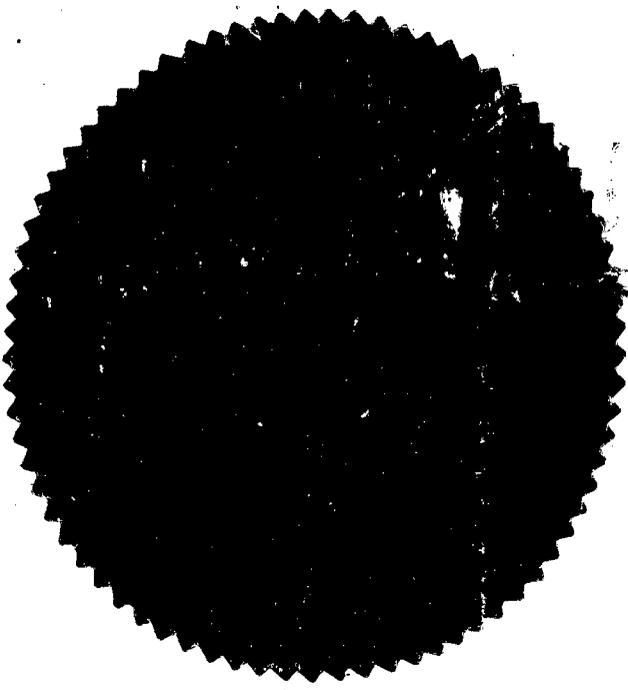
Union of India & Ors.

Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.
Regn.O.A.No.69 of 1987.

~~ORDER DISPOSING OF THE APPEAL AND~~
ORDER REMANDING THE CASE WITH DIRECTIONS.

Dated the 9th day of April, 198 1990.



Engrossed by
Examined by AT/-
Compared with
No. of folios

SHRI S.C.Birla,
Advocate-on-Record for the Appellant.

SHRI B.K.Prasad,
Advocate-on-Record for the Respondents.

SHRI
Advocate-on-Record for

SEALED IN MY PRESENCE

CA 69/87

A38

TELE ADDL: "SUPREMECO"ND

D. NO. 1117/92/XI
SUPREME COURT OF INDIA
DATED: 21st April, 1992

From

THE REGISTRAR
SUPREME COURT OF INDIA
NEW DELHI.

To

THE DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, unknown

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 5089 OF 1992
(Petition under Article 136 of the Constitution of India for
Special Leave to Appeal to the Supreme Court from the Judgment
and Order dated 4th Oct., 1991 of the Central Administrative
Tribunal, Allahabad Bench, at unknown
in Regl. O.A. No. 69 of 1987)

K.A. Ahirwar

... PETITIONER (S)

VERSUS

Union of India & Ors.

... RESPONDENT(S)

Sl. No. 10

Sir,

I am to inform you that the Petition above mentioned
for Special Leave to Appeal to this Court was filed on behalf
of the Petitioner above named from the Judgment and Order of
the Central Administrative Tribunal, Allahabad noted above and
that the same was dismissed by this Court on the 1st

day of April, 1992. A Certified copy of Court's Proceedings
dated 1.4.92 is enclosed herewith for your information and necessary
action.

Yours faithfully,

[Signature]
for REGISTRAR

*Sl. No. 10
for na. pt.*

*NB
7/5/92*

*282
1115*

kc/xi

ITEM No.
10

COURT No.
2

SECTION
XI

A39

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil/Cr) No.(s) ⁵⁰⁸⁹ /92 CC 16267

(From the judgment and order dated 4.4.91
Allahabad Bench in OA No. 69/87)

of the High Court C.A.T.

K.A. Ahirwar

Petitioner (s)

376329

Versus

Union of India & Ors.
WITH IA No. 1 (Appln. for c/delay in filing SLP) Respondent (s)

Date: 1.4.92 This/these petition (s) was/were called on for hearing today.

CORAM:

Hon'ble Mr. Justice LALIT MOHAN SHARMA
Hon'ble Mr. Justice A.S. ANAND
Hon'ble Mr. Justice

For the petitioner (s) Mrs. Shyamala Peppu, Sr. Adv.
Mr. DB Vohra, Adv.

For the respondent (s)

Certified to be true copy
Assistant Registrar (Judicial)
.....199
Supreme Court of India

**UPON hearing counsel the Court made the following
ORDER**

The delay is condoned. We have heard the learned counsel for the petitioner and examined all the relevant facts and circumstances of the case. In our view, there is no merit in the Special Leave Petition, which is accordingly dismissed.

ALKA

A. Hirwani
(A. HIR WANI)
COURT MASTER

AM
3/4

Reg No 69 of 1987
 Central Administrative Tribunal
 Additional Bench
 ALLAHABAD/PATEL NAGAR ALPUR
 Date of Filing... 30.1.87 OR
 Date of Receipt by Post

(AFO)

Deputy Registrar.

[Signature]
 Reg No 69 of 87

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
 BENCH ALLAHABAD

INDEX

IN

APPLICATION

REGISTRATION NO.

K.R. Ahirwar. Applicant.

Vs.

Union of India and others. .. Opp. Parties.

 Sl.No. Particulars. Page No.

- | | | |
|-----|--|-------|
| 1. | Application. | 1-7 |
| 2. | Appendix-A. | 8-13 |
| 3. | Annexure 1.
Radiogram dated 10.1.84. | 14 |
| 4. | Annexure 2.
Order dated 19.1.84. | 15-16 |
| 5. | Annexure 3.
Order dated 1.2.84. | 17-18 |
| 6. | Annexure 4.
Telegram dated 21.3.86. | 19 |
| 7. | Annexure 5.
Order dated 3.4.86. | 20-21 |
| 8. | Annexure 6.
Order dated 14.7.86. | 22-33 |
| 9. | Annexure 7.
Impugned order dated 22.1.87. | 34-35 |
| 10. | Vakalatnama. | 36 |
-

Central Administrative Tribunal
 Additional Bench Allahabad
 Date 30.1.87
 Deputy Registrar.
[Signature]

To be listed on
 2nd Feb. 1987
 M. L. Shukla
 Adv.

(G. C. BHATTACHARYA)
[Signature]
 COUNSEL FOR THE APPLICANT.

Dated:

(AW)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH ALLAHABAD

Application under Section 19 of the Administrative
Tribunal Act 1985.

For use in the Tribunal office:

Date of filing:.....

Or

Date of Receipt by post.....

Registration No.....

Signature

Registrar.

In the Central Administrative Tribunal

Principal Bench: New Delhi.

Add. Bench at Allahabad.

.....

Between

Raj K.R.Ahirwar.

Applicant.

AND

1. Union of India through the Chariman Railway
Board, Ministry of Railways, Rail Bhawan,
New Delhi.

2. General Manager, N2B2Railway, Gorakhpur.

Copy

Shukla
Com. L.L. B.
High Court

(142)

: 2 :

DETAILS OF APPLICATION:

1. Particulars of applicant:

(i). Name of the applicant: K.R. Ahirwar,

Assistant Operating
Superintendent (Coaching)
N.E. Railway, Lucknow.

(ii). Name of father: Sri Param Lal.

(iii). Designation and office

in which employed: Assistant Operating
Superintendent (Coaching),
Office of Divisional Manager
North Eastern Railway
Lucknow.

(iv). Office address: -do-

(v). Address of services of
all notices: C/o. Sri G.C. Bhattacharya,
Advocate, 10, Sapru Road,
Allahabad.

2. Particulars of respondents:

(i). Name and/or Designation of
the respondents:

1. Union of India through
Chairman Railway Board,
Ministry of Railway, Rail
Bhawan, New Delhi.
2. General Manager,
N.E. Railway Gorakhpur.

True Copy

Mewa Lal Shukla
M. Com. L.L. B.
Advocate High Court

AVG

: 3 :

(ii). Office address of the respondents:

1. Union of India, through the Chairman
Railway Board, Ministry of Railways,
Rail Bhawan, New Delhi.
2. General Manager, N.E. Railway,
Gorakhpur.

(iii). Address for services of all notices:

-do-

3. Particulars of the order against which
application is made:

1. Order No. E/254/4/Optg/85(I).
2. Date: 22.1.87.
3. Passed by: General Manager (P) N.E. Railway Gorakhpur
4. Subject in brief: compelling the applicant to
appear in the written test for the post of AOS/ATO
(Group 'B') against 75 % vacancies to be held on
6.2.87 although the applicant is already selected
for the said post and is working for the last about
3 years since 4.2.84 and has also crossed Efficiency
Bar in class 2 post of A.O.S.

5. Jurisdiction of the Tribunal:

The applicant declares that the subject
matter of the order against which he wants redressed
is within the jurisdiction of the Tribunal.

True Copy

Mewa Lal Shukla
M. Com. L.L. B.
Advocate High Court



Am

6. LIMITATION:

The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunal Act 1985.

7. Facts of the case:

Facts of the case have been given in appendix 'A'.

8. RELIEF SOUGHT:

In view of the facts mentioned in para 7 above the applicant prays for following relief(s).

- (a). setting aside impugned order dated 22.1.87 contained in Annexure 7 to the application.
- (b). Directing the respondents not to ask the applicant to appear in any written test of selection procedure for class II post of AOS in future.
- (c). Any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of present case.

amended as per order of 10-12-90.
 21/12/90
 (a) that the order concerned in letter dated 22-1-85 and 4-3-85 as Annexure R.A-5 and R.A-6 to the counter affidavit is quashed.

True Copy

M. Govil Shakla
 M. Com. L.L. B.
 Advocate High Court

9. INTERIM ORDER IF PRAYED FOR:

Pending final decision of the application

(Signature)

ACIS

: 5 :

the applicant seeks issue of following interim order:

Staying operation of impugned order dated 22.1.87 and directing the respondents not to ask the applicant to appear in any written test or selection procedure for class II post of A.O.S. in future.

10. Details of remedies exhausted:

Although there is no provision for any appeal, the applicant made representation to the Secretary Railway Board which has not been decided and there is no chance of the same being decided in near future; further no railway authority has power and jurisdiction to grant stay order during the pendency of the appeal and representation and therefore the applicant will be compelled to appear in the test as directed vide impugned order dated 22.1.87., which may ~~ultimately~~ ultimately amount reduction in rank therefore it is a fit case in which this Hon'ble Tribunal be pleased to waive the condition laid down in Sec. 20 of the Administrative Tribunal Act 1985 and admit the application and grant the interim stay as prayed above.

True Copy

Mewa Lal Shukla
B.A. Com. L.L. B.
Advocate High Court

AME

: 6 :

11. Matter not pending with any other courts etc;

The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench.

12. Particulars of Bank Draft/Postal order in respect of the application fee:

- 1. Name of the Bank on which drawn:
- 2. Demand Draft No.

or

- 1. Number of Indian Postal order. *DD 813291*
- 2. Name of the issuing post office. *City P.O. Alled*
- 3. Date of issue of postal order. *28/1/87*
- 4. Post office at which payable. *Any where*

13. Details of Index:

An index in duplicate containing the details of document to be relied upon is enclosed.

14. List of enclosures:

Annexures 1 to 7.

True Copy

Mewa Lal Shukla
M. Com. L.L. B.
Advocate High Court

AM7

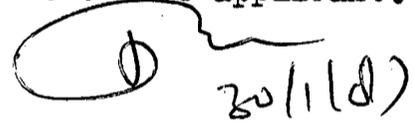
: 7 :

In verification:

I, K.R.Ahirwar, son of Sri Param Lal, aged about 49 years, resident of 11-B, Rafi Ahmad Quidavai Marg, Bangariya Bagh, Lucknow, Assistant Operating Superintendent (Coaching) N.E.Railway, Lucknow do hereby verify that the contents of paras 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material fact.

Signature of the applicant.

Place: Allahabad

 30/1/87

Dated: 30.1.87

To

The Registrar,
Central Administrative Tribunal
Additional Bench Allahabad.

True Copy

Mewar Col Shukla
M. Com. L.L. B.
Advocate High Court



1448

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH ALLAHABAD

APPENDIX- A.

Facts of the case are given below:

1. That the applicant was selected as Guard in the year 1959 by the Railway Service Commission. The applicant is graduate.

2. That the applicant's work and conduct has been wholly satisfactory, spotless and there has been no complaint whatsoever against the work and conduct, character and integrity of the applicant during his entire service period.

3. That the the applicant thereafter was selected for the post of Mail and Express Guard in the year 1971 and worked as such till 1977, thereafter the applicant was promoted to the post of Traffic Inspector in the scale of 455-700 and worked as such till he was promoted to the next higher scale of 550-750 as Traffic Inspector. Thereafter the applicant was promoted to the post of Traffic Inspector 700-900 in the year 1978

True Copy

Mewa Lal Shukla
M. Com. LL. B.
Advocate High Court

AUG

9

: 2 :

and thereafter the applicant was promoted to the next higher scale of 840-1040 as Traffic Inspector in the year 1982 and worked as such till 1984 when he was selected and promoted to the class 2 post of Assistant Operating Superintendent.

3. That on 11.5.83 there was a notification for promotion to class 2 posts (for 6 class II posts) against 25 % vacancies through Limited Departmental Competitive Examination(L.D.C.E.).

4. That written test for the same was held on 2.7.83 and 3.7.83 and the applicant was called and appeared in the written test.

5. That the applicant was successful in the written test and was called for viva-voce test on 12.1.84 vide radiogram dated 10.1.84 a true copy of which is attached herewith as Annexure 1 to the application.

6. That the applicant was finally selected for class II Posts of AOS/ATO (Group 'B') against 25 % vacancies by order dated 19.1.84, a true copy of which

True Copy

Col Shukla
Advocate High Court

(Signature)

450

: 3 :

is attached herewith as Annexure 2 to the application.

7. That thereafter the applicant was posted as Assistant Operating Superintendent (General) at N.E. Railway Lucknow vide order of the General Manager dated 1.2.84, a true copy of which is attached herewith as annexure 3 to this application.

8. That since then the applicant is working on that post to the satisfaction of his superiors and there has been no complaint against his work and conduct from any quarter whatsoever.

9. That the applicant was called for E.B. test by telegram dated 21.3.86 to be held on 21.4.86, a true copy of which is attached herewith as Annexure 4 to the application.

10. That on the basis of the aforesaid test the applicant was allowed to cross efficiency bar vide order of the General Manager N.E. Railway Gorakhpur dated 3.4.86, a true copy of which is attached herewith

True Copy

Cal Shukla
Advocate High Court
L.L. B.

(Signature)

AST

as Annexure 5 to the application.

11. That without any reason or justification and against all provisions of law the applicant was asked to appear in the written test for class II posts again by the order dated 14-7-86 against which the applicant made a representation dated 1.9.86 to the Secretary Railway Board New Delhi, a true copy of which is attached herewith as Annexure 6 to the application.

That thereafter the applicant sent several reminders but the applicant did not get any reply and the applicant is now convinced that he will not get any reply to the same in near future.

13. That again the General Manager (P) N.E. Railway Gorakhpur by impugned order dated 22.1.87 asked to the applicant to appear in the test scheduled to be held on 6.2.87 for the post of class II AOS/AIO (Group 'B') for which the applicant has already been duly selected and is working for the last about 3 years. A true copy of the impugned order dated 22.1.87 is attached herewith as Annexure 7 to the application.

Para 12 (a) The letter dated 21-2-85 and 14-3-85 as Annexure R.A.S R.A-1 in the counter-official served on the applicant and in fact the applicant has 12 yrs of service of these letters or the applicant. In fact the General Manager, Gorakhpur, sent these letters. Had he known about them, he would have allowed the applicant to pass the efficiency test and allowed the applicant to pass the orientation course, which is only permissible for regular class II officers on 25.9.87. This shows that there is no doubt that the applicant is a regular employee of M. Coy. L.T. B. and when not called upon by the opposite party and reminded, he would have not been treated as regular employee of M. Coy. L.T. B. in these letters.

True Copy

True

AS2

12

: 5 :

12 (b) that the orders contained in the Army and R.A-5 and R.A-1 were passed without the head of the applicant and no opportunity was given to the applicant for deleting the name of the applicant from the approved panel.

14. That impugned order dated 22.1.87 asking the petitioner to appear again in the test for the post on which the applicant is working for the last 3 years after having been duly selected is totally arbitrary and without any basis or authority of law and is wholly unjust, unreasonable and unfair.

15. That the applicant belongs to Schedule caste and he is being harassed due to prejudice and malice and the impugned order dated 22.1.87 is liable to be set aside on this ground also.

16. That the applicant after having been duly selected and having worked continuously for the last 3 years, has a right to the class II post of AOS and he cannot be compelled to appear in any written test for same post again and that will amount to punishment and reduction in rank without any procedure being followed including chargesheet or show cause notice, which is not permissible in law.

17. That the impugned order dated 22.1.87 is violative of Articles 14 and 16 of the Constitution and relevant provisions

True Copy

Mew
 Advocate High Court
 M. Com. I.L. B.

10

ASB

13

: 6 :

of the Rules including Article 311 of the Constitution and para 216 (J) of Railway Establishment Manual.

18. That this Hon'ble Tribunal by its order dated 26th September 1986 has set aside the similar order in the Registration No. 21 of 1986 (T) and Registration No. 22 of 1986 (T).

19. That it is, in the interest of justice that impugned order dated 22.1.87 be stayed so far as the applicant is concerned during pendency of the applicant otherwise the applicant shall suffer irreparable loss.

20. That it is in the interest of justice that the impugned order dated 22.1.87 be set aside and the respondents be restrained from asking the applicant to appear in the written test or to appear in any selection procedure for class II post of A.O.S. in future.

True Copy

M. Com. L.L. B.
Advocate High Court
M. Com. L.L. B.
Advocate High Court

AS4

14

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH ALLAHABAD

ANNEXURE.1.

K.R.Ahirwar. Applicant.

Vs.

Union of India and others. .. Opp.Parties.

GKP

GMP

DRM Sri DPO SR DOS DSO LSN.

E/254/4-78/PTG(*) (.) Direct K.R.Ahirwar (SC)

TI Safety LSN for viva voce test on 12.1.84 in the
chamber of CPO/6 KPat 11 Hors. HRS(.)Send SPE/
dar 7 vigilance clearnace under sealed cover to
By CPO (GAZ) GKP positively before 10.1.84.

GEMNER

GKP SLIV 34/1949/7/1/PJC/HNW PLC Attend CW at
20/ RT.

TRUE COPY.

True Copy

Mewar Shukla
M. Com. L.L. B.
Advocate High Court

155

15

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH ALLAHABAD.

Annexure 2.

IN

APPLICATION:

K.R. Ahirwar. Applicant.

Vs.

Union of India and others. .. Respondents.

NORTH EASTERN RAILWAY

NO. E/254/4-Optg. LDCE(I)

Office of the General
Manager(P) Gorakhpur;
dated 19.1.1984.

The COPS, CPTS, CTSS/GKP,

The ACOPS(G), Dy. COPS(G), Dy. COPS/(Con-BG) /GKP.

The SPO(C)/GKP, STO/CON-BG/GKP, PT to COPS/GKP,

The Sr. DOS/LJN, BSB, IZN & SEE, The Mela Officer/Aly.

The DCS/~~GH~~ GHZ, DOS/LJN, SPJ, DSO/LJN, SPJ, IZN & BSB,

The DSO/Safety/BSB, The Principal, & ZTS/MFP,

The SGA/GKP, SGA, DTS/Gonda, ATO ~~1~~/TT/GKP, ATO(M)/ATO
Transit/GKP

The ATO(T&W)/GKP, ATO(Budget & Stores)/GKP,

The AOS/G, LJN, IZN, The AOS (M)/IZN, BSB,

The ATS/SEE & GHZ, The AOS(M)/SPJ, SEE,

The SS/GKP, The SS/LJN & COP, The AOS(G)/SEE, The AOS
(CTC)/GKP.

True Copy

M. Shukla
Advocate High Court
M. Com. L.L. B.

: 2 :

The ACS(Tools)/GKP, The AOS/E FGR, The AOS(G)/SPJ,
The DRMs/SPJ, SEE,BSB,IJN & ~~XXX~~ IZN.

SubP: LDCE for formation of a panel for
promotion to the post of AOS/ATO
(Group 'B') against 25 % of vacancies

Ref: This office letter No. E/254/4-Optg.-LDCE(EI)
dated 15.6.83 and 1.11.1983 and XXR Radiogram
No.E/254/4-78-Optg.(I) dated 7.1.1984.

As a result of writtant test for the above compe
titive examination held on 2.7.83 and 3.7.83
and supplementary viva-voce test on 12.1.84 for the
post of AOS/ATO(Group 'B') against 25 % vacancies,
Shri K.R.Ahirwar, (SC),SC(T)/LJN has been selected
and empanelled in the provisional panel of AOS/
ATO(Group 'B') against 25 % of vacancies. The
provisional panel of AOS/ATO (Group 'B') will be
as under:-

1. Sri K.N.Prasad, TI(PIG)/GKP.
2. Sri V.K.Jain, TI/GKP(L)/LJN.
3. Sri K.R.Ahirwar (SC),SC(T)/LJN.

2. The above panel is provisional General
Manager has approved this provisional panel on 17.1.84
3. Candidates concerned may be informed accordingly.

Sd/19.1.84
(P.C.Maulik)
By CPO/GAZ
For General Manager.

True Copy

M. S. Shukla
Advocate High Court
L.L.R.

True Copy.

433

17

इन दी सेन्ट्रल ऐडमिनिस्ट्रेटिव ट्रिब्यूनल एडिशनल बेंच इलाहाबाद ।

ओक्वर ॥ 3 ॥

इन

अप्लीकेशन नम्बर

आफ 1987

इन

रजिस्ट्रेशन नम्बर

आफ 1987

के० आर० अहिरवार - - - - - श्रीलान्त

काम

मिनिस्ट्री आफ रेलवे आदि - - - - - अमोजिट पार्टीज

पूर्वोत्तर रेलवे

कार्यालय आदेशसंख्या 53

श्री के० आर० बरे अहिरवार, सेप्टी काउन्सिल ॥टी॥ लखनऊ

॥तृतीय श्रेणी॥ की पदोन्नति द्वितीय श्रेणी में स्थानापन्न रूप से डाक्टरी

परीक्षा में पास होने की शर्त पर करके उनकी नियुक्ति सपाधी ॥स०॥

लखनऊ के पद पर श्री डी० जे० शर्मा के स्थान पर की जाती है ।

श्री के० आर० अहिरवार डाक्टरी परीक्षा पास करने पर ही

द्वितीय श्रेणी में पद ग्रहण करने में ।

True Copy

Advocate High Court

A58

18

-2-

उपरोक्त आदेश महाप्रबन्धक द्वारा अनुमोदित है ।

ह0/- अठनीय
॥ पी०सी०मौलिक॥
कृते महाप्रबन्धक

सं० का/210/4/भाग-7॥१॥ गो रञ्जपुर दिनांक 1.2.1984

प्रतिलिपि सूचना एवं आवश्यक कार्यवाही हेतु प्रेषित:-

- 1:- वित्त सहायक स्लाहकार एवं मुख्य लेखाधिकारी/गो रञ्जपुर ।
- 2:- महा प्रबन्धक के सचिव/व०स०/गो रञ्जपुर ।
- 3:- अतिरिक्त महा प्रबन्धक ॥आपेशन/टेकीकल॥/गो रञ्जपुर ।
- 4:- प्रवर उप महा प्रबन्धक/उप महा प्रबन्धक॥सामान्य॥/गो रञ्जपुर ।
- 5:- मं०रे०प्र०/म्योधि/मुकाधि/समस्तीप , सोनपुर, वाराणसी, लखनऊ
इज्जतनगर ।
- 6:- नगर इंजीनियर/प्रविई॥कालोनी॥/गो रञ्जपुर ।
- 7:- श्री के० आर० अहिरवार, सेफ्टी काउन्सलर॥टी॥/लखनऊ जंक्शन ।

अतिरिक्त प्रतिलिपि:-

=====

मुमाधी/मुवाधी/मुकाधि/अमुकाधि/मुयोधि तथा इनके गो०स० ।

सकाधि ॥मुख्यालय॥/गो रञ्जपुर ।

सत्य प्रतिलिपि
=====

True Copy

M. Subla
M. Com. LL. B.
Advocate High Court

①

AS9

19

IN THE CENTRAL ADMINISTRATIVE ALLAHABAD
ADDITIONAL BENCH ALLAHABAD.

ANNEXURE (4)

IN

APPLICATION NO. OF 1987.

IN

REGISTRATION NO. of 1987.

K.R.Ahirwar - - - - -Appellant.

Versus

Ministry of Railways and others----Opp.Parties.

C-64/65

XR 1850 GKP 21/3

KR AHIRWAR/AOS/LJNC/DRM/P/LJN

E/87/4-T(1)(.) ATTEND E.B.TEST ON 2-4-86 IN AOO'S

CHAMBER (.) GPSLN 39/1922/21/3/JNG P2 - GM(P)-

C2

True Copy.

True Copy

[Handwritten Signature]
Advocate High Court

[Handwritten Signature]

इन दी सेन्ट्रल प्रेसिडेंसियल ट्रिब्यूनल एडिशनल बेंच इलाहाबाद ।

=====

अंश ॥ 5 ॥

इन

अपील नम्बर

आफ 1987

इन

रजिस्ट्रेशन नम्बर

आफ 1987

के० आर० अहिरवार- - - - - अपीलान्त

बनाम

मिनिस्ट्री आफ रेलवे आदि- - - - - अजित पार्टीज

=====

पूर्वोत्तर रेलवे

=====

ज्ञापन

श्री के० आर० अहिरवार, ए०ओ०एस०/लखनऊ की दक्षता अवरोध

परीक्षा दिनांक 2.4.86 को एक गठित परीक्षा जिसमें

- 1:- अतिरिक्त मुख्य कार्मिक अधिकारी
- 2:- सी.पी.टी.एम.
- 3:- मुख्य दावा अधिकारी

संशोधित क्तमान रूपया 650-1200 के अन्तर्गत रूपया 1000-1070

स्तर पर रखे गये द्वितीय दक्षता अवरोध स्तर परीक्षा में सफल घोषित होने

की उ

True Copy

Mewar Lal Shukla
M. Com. L.L. B.
Advocate High Court



की उनकी योग्यता का निर्धारण करने के लिये की गयी और उन्हें इस दक्षता अवरोध को पार करने के योग्य घोषित किया गया ।

महा प्रबन्धक ने परीक्षा मण्डल की सिफारिश को स्वीकार कर लिया है । श्री के० आर० अहिरवार ए० ओ० एस० लखनऊ का वेतन वृद्धि भी मंजूर कर ली है जिसमें दिनांक देय तिथि से उनका वेतनरूपया 1000/- से बढ़ा कर रूपया 1040/- हो जायेगा ।

स्वाभाविक तौर पर यह मंजूरी सलाहकार एवं मुख्य लेखाधिकारी द्वारा वेतन वृद्धि की मंजूरी सत्यापित किये जाने की शर्तों के अधीन है ।

सं० का/ 87 पटी ॥१॥ गोरखपुर, दिनांक 3.4.1986

प्रतिलिपि सूचना एवं आवश्यक कार्यवाही हेतु प्रेषित:-

- 1:- मण्डल रेल प्रबन्धक/कार्मिक/ लखनऊ
- 2:- मण्डल लेखाधिकारी/ लखनऊ
- 3:- मण्डल कार्मिक अधिकारी/ लखनऊ ।
- 4:- श्री के आर० अहिरवार ए० आर० एम० लखनऊ ।

कृते महाप्रबन्धक/कार्मिक

सत्य प्रतिलिपि
=====

True Copy

M. Com. L.L. B.
Advocate High Court

(30)

92 (A&Z)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH ALLAHABAD

ANNEXURE 6.

K. R. Ahirwar. Applicant.

Vs.

Union of India and others... Opp. Parties.

The Secretary
Railway Board
New Delhi.

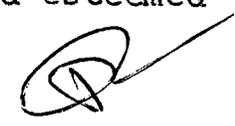
THROUGH PROPER CHANNEL

Sub: Great harassment caused and created for non-consideration of my qualifying in LD CE conducted by N.E. Railway in 1983, duly empanelled and posted since 2.4.84 on the post of Assistant Operating Superintendent (General) at Lucknow, at the stage of completing 30 months service on the post.

Ref: Senior DOS Letter No. T/Optg./Misc./86 dated 14.7.86 which received on 21.7.86 while in sick.

Sir,

I may be excused for taking the liberty of approaching your goodself with the following few lines for favour of your kind and esteemed considerations:



True Copy

M. Lal Shukla
M. Com. L.L. B.
Advocate High Court

23 (A63)

: 2 :

1. That based on General Manager (personal) N.E. Railway Gorakhpur's Notification No. E/254/4-Operating-LDCE (1) dated 11.5.1983 and call letter of even number dated 15.6.83 I appeared in the limited Departmental Competitive Examination for the formation of a panel for the post of Assistant Operating Superintendent/Assistant Transportation Officer (Group 'B') posts against 25 % of the vacancies. The written test for this examination was held on 2.7.83 and 3.7.83.

2. That the result of the written test was published by the General Manager, N.E. Railway Gorakhpur vide his letter No. E/254/4 Operating-LDCE(1) dated 22.10.1983 in which no candidate belonging to Scheduled Caste/ Scheduled Tribe was declared successful out of 35 SC/ST candidates who had appeared. Only 3 general candidates were declared successful out of 100.

3. That aggrieved by the result I made a representation to the worthy General Manager, N.E. Railway inter-alia stating that the paper constituting Accounts and Financial rules portion was unduly harsh and beyond the standard prescribed resulting my having

True Copy

M. Com. L.L. B.
Advocate High Court
M. Com. L.L. B.
Advocate High Court

Q

24 (AKU)

: 3 :

secured may be less marks whereas I had obtained more than 60 % marks required in other subjects viz. General Knowledge 50 Professional subject full marks 100 (b) Professional subject full marks 100. In consideration of my representation the General Manager passed instructions for re-valuation of the answer book's of the failed subject full marks 25 as per the provisions contained in the Railway Board's orders. On re-valuation and sympathetic consideration I was declared successful.

4. That I was called to appear before the Selection Board consisting of COPS, CCS, CPO and Additional Chief Engineer for a viva-voce test and was declared successful. My name was accordingly included in the panel after due approval of the General Manager as per G.M.(P) N.E.Railway Gorakhpur's No. E/254/4-Operating-LDCE(1) dated 19.1.84. I was thereafter, posted as Assistant Operating Superintendent (General under the Divisional Railway Manager, N.E.Railway ~~Gorak~~ Lucknow where I joined my new assignment on 4.2.84 and am working even since to the entire satisfaction of my superior I also crossed the Efficiency Bar test held on ~~2x4x86~~ 2.4.86 in my class II scale of pay as advised vide G.M.'s Railway Gorakhpur's letter No.E/81/4 (1) dated 3.4.86.

True Copy

Mewa Lal Shukla
M. Com. L.L. B.
Advocate High Court

23 (AES)

: 4 :

5. That contrary to the fact that I had already been empanelled in class II and had been duly posted I received yet another communication from the Senior Divisional Operating Superintendent N.E. Railway Lucknow (NOT/OPTG./MISC./86 dated 14.7.1986) asking me to appear for the examination for class II post against 75 % vacancies. I could not reconcile with this situation and wrote back to the G.M. stating the facts brought out *ibid*.

6. That in formal enquiries made into the matter brought to light a startling fact that the railway board vide their letter No. 34-E(SCT) 41/2 dated 21.2.1985 had ordered deletion of my name from the panel. This was certainly a crude shock for niether the Railway Board asked me to show cause for their proposed action nor the N.E. Railway considered it prudent to apprise me till date of the position. Had there been no communication from the Sr. D.O.S. Lucknow asking me to appear in the examination. I would have lurched in the dark and would never have been in a position to know the back ground of the Sr. D.O.S.'s communication.

7. That the Railway Board vide dealing with the case seem to have seriously

True Copy

M. Com. L.L. B.
Advocate High Court

(Signature)

26 (ACC)

: 5 :

erred in arriving at the conclusion on the face of the fact that the learned General Manager, N.E. Railway acted correctly in allowing re-valuation and consideration as he was empowered to do so in terms of para 3 of Board's letter No. 82-E(SCT) 41/6 dated 15.11.83 which interalia reads as under:

"The instruction issued by the Department of Personnel and Administrative Reforms, Ministry of Home Affairs provide that in promotion through limited Departmental Competitive Examination, SC/ST candidates who have not acquired general qualifying standard should also be considered for promotion provided they are not found unfit for such promotion...."

8. That the Railway Board also seem to have erred in not taking the relevant facts instructions into consideration while arriving at a decision. The fact and instruction are that such of the candidate who have obtained 60% marks in 'Safety aspect subject' and less qualifying marks in non safety subjects cannot be debarred for promotion this being particularly so in the case of SC/ST candidates.

True Copy

M. Com. L.L. B.
Advocate High Court

: 6 :

9. That Railway Board while dealing with the case did not take a little care, while deciding a fate and prospect of a Schedule Caste Officer, about the instructions of Ministry of Home Affairs Department of personnel contained in their order No. 8/12/69-Estt (SCT) dated 23.12.1970 and no 36011/6/79 Estt. (SCT) dated 19.4.1979 in which it was been very clearly instructed that SC/ST candidate who have not acquired the general qualifying standard in such examination could also be considered for promotion provided they are not found unfit for such promotion. In other words, the qualifying standards in these examination could be relaxed in favour of ST/SC candidates in keepin with the above criterion."

10. That there has been a serious miscarriage of justice in my case as I had obtained more than 60 % marks in all the & 'Safety aspect subject and other and was declared failed in Financial Paper of 25 mark only which on revaluation was found to be within the proximity of the satisfactory standard.

11. That the fact that the N.E.

True Copy
 Meena Lal Shukla
 M. Com. L.L. B.
 Advocate High Court

: 7 :

Railway had acted in violation of the rules the financial and Estt. paper segretating seem to have escaped the consideration of Railway Board. The rules pure and simple provides that there will be one and the only one paper of 50 marks for financial matter and Estt. matters. Since there has been a patent wrong and clear cut violation of the Board's instruction, poor SC/ST should not be penalised. The fact that the financial segriated papers of 25 marks only was tough and above the standard has been admitted to be correct by the N.E.Railwaythe then General Manager.

12. That had there been onepaper consist of Financial matter and Estt. matter as per Boards order and evaluated by one and only one examiner, I would have certainly secured more than required marks, which effected me adversely and put me in trouble for a while but on my representation of November 1983 addressed to G.M. N.E.Railway for the above violation. The G.M. personally intervned the matter very minutely and carefully and found that the so segregated paper of only 25 marks of Financial Rule was

True Copy

M. Sakla
Advocate High Court
vi. Com. L.L. B.

29

169

: 8 :

above the standard as only 3 General Candidate could hardly pass out of 135 appeared in the examination. The G.M. accordingly instructed FA & CAO to reevaluate the answer books of this segregated paper as I have secured more than 60 % marks in each subject except this segregated paper of 25 marks only of non safety aspect subject. Accordingly I was empanelled and posted on the post with the approval of the then G.M. who was competent authority after revaluation of the above paper.

13. I would like to express my heart touching feeling which may kindly may not be treated as indiscipline being very much aggrieved and troubled person that the officer H.O.C. level may found himself unable to set a single paper for financial and estt. matter and evaluated the answer books by the very person for the promotion from class III to class II. I am very sorry to point out that is it expected from class III employee rather belonging to SC like me, must know both the subject, financial and establishment of the standard of FA & CAO and CPO level separately with too high standard without any relevance with the working post of past and present

True Copy

M. L. Shukla
Advocate High Court
B.A. Com. L.L. B.



: 9 :

which is rather not possible in general. Such action of N.E. Railway Administration by segregating one paper into two separately one for CPO and other for FA & CAO cause three tier losses.

- (a). Vilation of Railway Boards orders.
- (b). Leackage of Railway revenue.
- (c). Damaging of further prospect of Railway employees in General and particularly of the SC.

14. That there have been many instances in the past where such a situation have arisen on the Indian Railway and the Board have liberally permitted the recourse adopted by the G.M.'s during the relevant period when Shri D. Hari Ram was the G.M. of N.E. Railway there have been 2 cases on the N.E. Railway itself and one case on the southern Railway. The relative details are available in the Boards office.

In view of the precedents on record, I wonder why I have been discriminated and isolated for no fault when my case is governed by the rules and I have not obtained any undue benefit.

True C.
M. Lal Shukla
Advocate High Court
M. Com. L.L. B.

: 10 :

My case is adequately covered by para 3 of the Board's letter No. 82-E (SCT)/41/6/ dated 15.11.1983 and not para 4 of the letter *ibid* as seem to have been wrongly applied in my case by N.E. Railway Zone as well Railway Board.

15. Incidentally it may also be worthwhile mentioning that the Department of Personnel, Government of India has categorically decided that a panel once formed and approved by the Competent authority cannot be modified. The authenticity of this fact may kindly be get verified from the D.O.P. if the relevant instruction are not available or traceable in the Board's office.

16. That further, the instructions issued by the E(D&A) Branch of the Board's office that any person who has worked in post of 18 months cannot be reverted without affording him reasonable opportunity to show cause. Since, I resumed my duties in February 84 in class II and has worked for more than 30 months these instructions also ip-so-facto applies to my case.

True Copy

M. S. Shukla
Advocate High Court
Cor. E.L.R.

32

A72

: 11 :

17. I have worked on most safety aspect post since my appointment as working class, but from 1977 I performed my duty as Transportation Inspector in different grade including Chief Instructor in Safety Camp and as safety Councilor (Traffic) upto the last grade of 840-1040. I always qualify in all the past examination. In this particular examination conducted through LDCE the same knowledge was also tested in which I got through so far my ability regarding safety aspect is concerned is upto the mark as required by the administration hear. If ,I do not consider fit for the post of Assistant Officer where the working is not required expect administrative control than how can I be considered on a lower post where working is involved. On each supervisory/administrative post the valocity of safety is reduced not increased, therefore this terror of safety should also be reduced by the Board's to avoid the harassment of SC/ST employee and there greater in take in the services.

True Copy

R. Shukla
Advocate

It is, therefore, requested that your gracious self be pleased to call for the relevant paper and examine the case do novo and do justice a poor SC

33

ARB

: 12 :

candidate who has aspired long for a career
I need not repeat that there has been a wrong
application of rules in my case and the
various facts brought out above have escaped
the valued consideration of the Board.

It is, further requested that during
the pendency of my representation at yours
I may not be subjected for any examination
and dislocation, in this connection necessary
instructions may kindly be issued to N.E.
Railway, Please.

Soliciting your kind and favourable
orders.

Yours faithfully

Sd

(K.R. Ahirwar)
A.O.S.(G)
N.E. Railway,
Lucknow.

True Copy

True copy

M. Lal Bahadur
M. Com. L.L. B.
Advocate High Court

34

34

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH ALLAHABAD

* * * * *

ANNEXURE 7

IN

APPLICATION

Registration No.

K.R.Ahirwar. Applicant.

Vs.

Union of India and
others. General Manager.

NORTH EASTER RAILWAY

No. E/254/4/Optg/85(I) Office of the General
Manager(P) Gorakhpur:
dated 22.1.87.

The Sr.DCS/LJN & SPJ,
N.E.Railway.

Sub: Second supplementary written test for
the post of AOS/ATO(Group'B') against 75%
of vacancies.

As a special case it has been decided to hold
second supplementary written test on 6.2.87 for the
post of AOS/ATO(Group'B'). The following staff
working under you may please be directed to report
to CCPS/GKP for the written test at 10.00 hrs. on
the same date:

True Copy

Messrs Lal Shukla
M. Com. L.L. B.
Advocate High Court

35

PPS

: 2 :

1. Sri A.C.Ghosh, CTNL/II/SPJ
2. Sri K.R.Ahirwar, Adhoc AOS/LJN

The above candidate should also informed that no further writtan test will be held for the above selection.

(KR.K.DHUSIA)

Dy CPO/Gaz

For General Manager (P)

Copy to:

1. Sri A.C.Ghosh, CTNL/II/SPJ.
2. Sri K.R.Ahirwar, adhoc AOSp/LJN.

For General Manager(P)

True Copy

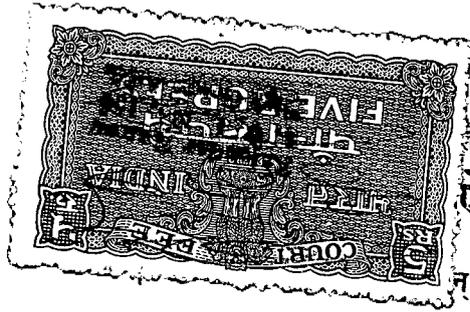
True copy

Mewan Lal Shukla
M. Com. L.L. B.
Advocate High Court

In the Central Tribunal (All)

36

876



(नामा)

एट इलाहाबाद

नं १९

हस्ताक्षर

K. R. Ahirwar

वादी प्रतिवादी

अपीलान्ट

बनाम

वादी प्रतिवादी

रेस्पॉन्डेंट

मैं
कि
हम

K. R. Ahirwar & Son, Parangul
11 B Rafi Ahmad Kidai Marg

उपरोक्त प्रकरण में मैं अपनी ओर के पक्ष समर्थन के हेतु

Bardua Bagh
Lucknow

G. C. Bhattacharya, Ex. M. P.

Advocate High Court & Supreme Court

Office : 1, Mahatma Gandhi Marg (Opposite New High Court) Allahabad.

Residence : 10, Tej Bahadur Sapru Road. Civil Lines, Allahabad.

को कानूना शुल्क (महनताना) नियत करके अपना अभिभाषक वकील (वकील) नियुक्त करता हूँ निश्चित करते हैं

और (यह स्वीकार) करता हूँ कि उक्त सज्जन हमारी ओर से वाद-पत्र (अर्जीदावा) प्रतिवाद-पर करते हैं

(बयान तहरीरी), वाद स्वीकार पत्र, विवाद पत्र पुनरावलोकन एवं पुनर्निर्णय प्रार्थना पत्र दरखास्त), शापथिक कथन (हलफनामा) प्रवर्तन पत्र (दरखास्थ इजराय), मूजवात अपील, निगरानी इत्यादि हर प्रकार के अन्य प्रार्थना पत्रादि एवं लेखादि की प्रतिलिपियां अपने हस्ताक्षर करके न्यायालय में प्रस्तुत करें अथवा किसी पत्र पर आवश्यकतानुसार शापथिक पुष्टीकरण करें और आवश्यक सवाल जवाब करें और लेखादि की प्रतिलिपियां एवं हमारे प्राप्यधन को अपने हस्ताक्षरी पावती देकर प्राप्त करें हमारी ओर से किसी को मध्य पत्र तथा साक्षी (गवाह माने और उससे सम्बन्धित प्रार्थना पत्र प्रस्तुत करें तथा उसका समर्थन करें, तथा तसदोक करें वाद-पत्र उठावे छोड़े अथवा समझौता करें तथा सुलहनामा दाखिल करें तथा उसके सम्बन्ध में प्रार्थना पत्र दाखिल कर के उसका समर्थन करें, अर्थात् प्रकरण से सम्बन्ध रखने वाली कुल कार्यवाही डिग्री के भर पाई होने के समय एक स्वतः या संयुक्त करे आवश्यकता होने पर किसी अन्य वकील महोदय को वकील करें। अर्जी दावा, बयान तहरीरी या मुकदमे से सम्बन्धित कोई कागज पर मेरी ओर से हस्ताक्षर करने का अधिकार देता हूँ और नियुक्त करता हूँ।

उक्त सभी कार्यवाही जो उक्त सज्जन करने प्रत्येक दशा में अपने किये की भांति हमको सर्वथा स्वीकार होगी अगर मैं कानूनी शुल्क तथा विशेष शुल्क आखिरी बहसके वक्त उक्त सज्जन को हम निश्चित मुझको न दूँ/देँ तो उनको अधिकार होगा कि वह हमारी ओर से मुकदमे की पंरवी न करें। उपरोक्त दशा में सज्जन का कोई उत्तरदायित्व न रहेगा। अतएव यह अभिभाषक पत्र लिख दिया कि प्रमाण रूपसे समय पर काम आये।

तिथि

मास

सं०

स्वीकृत है

हस्ताक्षर

हस्ताक्षर

साक्षी

साक्षी

(A77)

In the Central Administrative Tribunal at
Allahabad.

Reply on behalf of Respondents in Registration
No. 69 of 1987

K.R.Ahirwar V/s U.O.I.

I, A.Tete S/o Sri Ignace Tete aged 46 years presently
posted as Dy.Chief Personnel Officer(Gazetted)/N.E.Railway,
Gorakhpur most respectfully sweth as under:-

1. That I am presently posted as Dy.Chief Personnel
Officer(Gazetted)/N.E.Railway, Gorakhpur and has been duly
authorised on behalf of the Respondents to file the instant
reply. I have carefully perused the relevant records re-
lating to the instant case and is thus fully acquainted
with the facts deposed to below:-

2. That I have carefully read the contents of the
application alongwith the Annexures under reply and has
understood the contents thereof.

3. That paragraphs 1,2 & 3 of the application being
matter of record needs no comments.

4. That the contents of para 4 of the application are
not admitted and are denied. Reply thereof it stated as
under:-

(a) That the post of AOS/ATO has been classified as
"Safety Category ~~xxx~~" by the Railway Board. A true
copy of the said circular is enclosed herewith
and marked as Annexure-RA-1.

Received copy
M.L. Shukla
Adv.
9/3/87

(b) That in terms of Railway Board's letter No.E(GP)
79/2/12 dated 2.3.79 a candidate has to secure
a minimum of 60% marks in each paper of written
examination in order to qualify the Limited De-
partmental Competitive Examination for the post
of AOS/ATO. A true copy of the said letter is


y. C.P.O. (Gazetted),
N.E.Railway, Gorakhpur

A-28

enclosed herewith and marked as Annexure RA-2. However it is pertinent to point out here that no rules have so far been prescribed by the Railway Board in regard to the quantum of relaxation to be given to these SC/ST candidates who appeared in L.D.C.E. in Safety Category but fail to qualify in the written test by obtaining the minimum marks of 60% prescribed by the Railway Board.

(c) That in terms of Railway Board's instructions contained in their letter no.E(GP)76/2/96 dated 14.2.80 the subject for the written examination and the marks to be allotted to each of the papers set for written examination for the post of AOS/ATO are as under:-

		<u>Marks</u>
Paper - I	General Knowledge	50
(Paper - II(a)	Professional subject	100
(Paper - II(b)	Professional subject	100
Paper - III	Financial & Establishment Rules & Procedure	50

A true copy of the said letter is enclosed herewith and marked as Annexure RA-3.

(d) That the applicant appeared in the written test for the selection of the post of AOS/ATO but could not secure minimum qualifying marks(60%) in each paper of written examination. The details of the marks obtained by the applicant in each of the paper are as under:-

<u>Paper</u>	<u>Max.Marks</u>	<u>Min.Marks</u>	<u>Marks obtained</u>
Paper-I General Knowledge	50	30	36

Dy. C.P.O. (Jazettea)
N.E.Railway, Gorakhpur

179

Paper	Max.Marks	Min.Marks	Marks obtained
Paper-II (a) Professional subject	100	60	60
Paper-II (b) Professional subject	100	60	60
Paper-III Financial & Establishment Rules & Procedure.	25 } 25 }	15 } 15 }	9 1/2 } 21. 12 } 5

- (e) That however the General Manager, North Eastern Railway, Gorakhpur released the qualifying marks in case of the applicant and as such he was called to appear the supplementary viva-voce test and was empanelled provisionally on 19.1.84 and was posted to officiate as AOS/Lucknow.
- (f) That it is pertinent to point out here that as the General Manager was not empowered to grant such relaxation in minimum qualifying marks for the selection of Group 'B' post. The entire matter was referred to Railway Board for their approval in regard to the applicants empanelment for group 'B' post as AOS. A true copy of said letter is enclosed herewith and marked as Annexure RA-4.
- (g) That the Railway Board vide their letter no. 84-E(SCT)41/2 dated 21.2.85 did not approve the empanelment of the applicant for group 'B' post. A true copy of the said letter is enclosed herewith and marked as Annexure RA-5.
- (h) That it was further decided by the Railway Board that since the applicant was promoted

(Signature)
Dy. C.P.O. (Gazetted)
N.E. Railway, Gorakhpur

Ado

to Group 'B' post, as a special case, he should be allowed to continue on ad-hoc basis in Group 'B' against general quota of vacancies till the next normal selection (75%) or LDCE (25%) for which he gains eligibility, whichever is held earlier. Failure to get empanelled in the next normal selection/LDCE for which he is eligible, will result in the adhoc promotion being terminated.

- (i) That after the receipt of the said decision of the Railway Board the name of the applicants was deleted from the provisional panel of AOS/ATO (Group 'B') on 14.3.85 intimation regarding which fact was sent to the applicant vide letter no. E/254/4-Operating/LDCE(I) dated 14.3.85. A true copy of the said letter is enclosed herewith and marked as Annexure RA-6. However it is further stated that in terms of Railway Board's decision the applicant was allowed to continue to officiate as AOS/ on purely adhoc basis till the next normal selection/LDCE whichever is earlier.
- (j) That thereafter it was decided to hold the next selection for forming a panel of AOS/ATO (Group 'B') against 75% of vacancies. And since the ~~applicant~~ applicant has been working on adhoc basis as AOS, in terms of Board's decision he has considered for this selection and was called to appear in said selection. It is pertinent to point out that the applicant vide his


Dy. C.P.O. (Gazetted)
N.E. Railway, Gorakhpur

Contd....

ADJ

representation dated 4.2.87 has requested the Railway Administration to impart him 20 days pre-selection coaching so that he may perform well in the written examination. A true copy of the said representation is enclosed herewith and marked as Annexure RA-7. Thus from the above it is evident that the applicant had expressed his willingness to appear in the written examination for the selection of AOS/ATO (Group 'B').

(1) That it is pertinent to point out here that after the decision of the Railway Board dated 21.2.85 communicated to the applicant vide letter dated 14.3.85. Applicant did not challenge the same at that time and on the contrary accepted the same and ~~maintain~~ continued to work as AOS on purely adhoc basis.

5. That in reply to para 5 of the application it is stated that the applicant is put to strict proof regarding the averments made thereon.

6. That the contents of para 6 of the application are not admitted and are denied. In reply thereof it is stated that the instant application is not maintainable in view of ~~section~~ section 20 and 21 of Act No. 13/85.

7. That the contents of para 7(i) of the application being matter of records no comments.

8. That in reply to the contents of para 7(ii) of the application it is stated that the applicant was awarded several punishment from time to time during his non-gazetted service period.

Dy. C.P.O. (Gazetted)
N.E. Railway, Gorakhpur

182

and any allegation to the contrary are not admitted and are denied.

9. That in reply to para 7(iii) of the application it is stated that the applicant was selected as Guard 'A' (425-600) in 1971. Thereafter he was selected as Traffic Inspector as under:-

- (A) TI in scale Rs.455-700 from 19.7.77
- (B) TI in scale Rs.550-750 from 7.4.1978
- (C) TI in scale Rs.700-900 from 31.1.1979
- (D) TI in scale Rs.840-1040 from 18.3.1982

and any allegation to the contrary are not admitted and are denied.

10. That the contents of para 7(iv)& (v) of the application being matter of records needs no comments.

11. That the contents of para 7(vi) and 7(vii) and 7(viii) of the application are not admitted and are denied in the truth stand. In reply thereafter contents of para 4 of the instant reply are reiterated.

12. That in reply to para 7(xix) of the application it is stated that the averments made therein are not at all relevant for the purpose of the instant case.

13. That the contents of para 7(x) and 7(xi) of the application being matter of record needs no comments.

14. That in reply to para 7(xii),(xiii) & (xiv) of the application the contents of para 4 of the instant reply are ~~reiterated~~ reiterated and any allegation to the contrary are not admitted and are denied. In reply thereof it is stated that in terms of Railway Board's instructions the applicant was called to appear in the test vide letter dated 14.7.86. A true copy of the said letter is enclosed herewith and marked as Annexure RA-8. Against this the applicants representation

Dy. G.P.O. (Gazetted)
N.E. Railway, Gorakhpur

APB

dated 1.9.86 has been received and is pending decision. As the applicant failed to appear vide letter dated 14.7.86 as a special he was directed again to appear in the written test vide letter 22.1.87.

15. That the contents of paras 7(xv),7(xvi),7(xvii) and 7(xviii) of the application are not admitted and are emphatically denied. In reply ~~thereof~~ thereof the contents of para 4 of the instant reply are reiterated. However it is further submitted that no illegality has been committed by the authorising respondent and the entire action taken in the matter is perfectly legal and in conformity with rules.

16. That in reply to the contents of para 7(xix) of the application it is stated that against the order dated 26th September, 1986 in Registration no.21 of 1986(F), a review petition has been filed by the Authorising Respondent is still pending disposal.

17. That the contents of para 7(xx) & 7(xxi) of the application are not admitted and are denied. In reply thereof it is stated that the balance of *convenience* does not lie ^{in favour} of the applicant and in view of the interim order great administrative difficulty and hardship is being faced and as such it is expedient ⁱⁿ ^{ends} on the order of justice that the interim order be vacated.

18. That the contents of para 8 and 9 of the application are not admitted and are denied. In reply thereof the contents of para 4, 14, 15 & 17 of the instant reply are reiterated and as such the applicant is not entitled for any relief or interim relief prayed for and the instant application is liable to be rejected.

ADY

19. That in reply to the contents of para 10 of the application it is submitted that on the representation of the applicant parawise comment have been sent to Railway Board for consideration of the representation of the applicant and thus the application of the applicant is pre-mature and liable to be dismissed on this score only.

20. That the contents of paras 11,12,13,14 of the application being matter of record needs no comments.

Deponent

Union of India
Dy. C.P.O. (Gazetted)
N.E. Railway, Gorakhpur

Verification

That the contents of para 1 and 2 of the reply are based on personal knowledge and contents of paras 3 to 20 are based on perusal of the records.

Deponent

Union of India
Dy. C.P.O. (Gazetted)
N.E. Railway, Gorakhpur

In the Central Administrative Tribunal at Allahabad

Reply on behalf of Respondents in Registration
No. 69 of 1987.

K.R.Ahirwar V/s U.O.I.

Government of India
Ministry of Railways
(Railway Board)

No.81.E(SCT)15/26

New Delhi, dated 23.1.1981

The General Managers,
All Indian Railways, CDM, DLW, ICF, MTP (Railways), Calcutta
General Manager (Const.) Southern Railway, Bangalore.
and N.F. Railway, Gauhati.
G.M. Wheel & Axle Plant, Bangalore.
The Director General, RDSO, Lucknow.
The Principal, Indian Railway Institute of
Signal Engg. & Telecom., Secunderabad.
The Principal, Railway Staff College, Baroda
The Principal, Indian Railways Institute of
Mechanical & Electrical Engg., Jamalpur.
The Chief Administrative Officer, MTP (Railways), New Delhi.
Bombay, Madras & Indian Railways Diesel Component Works,
Nabha Road, Patiala (147001).
The Railway Liaison Officer, New Delhi.
The General Secretary, IRCA, New Delhi.

Sub:- Promotion of Scheduled Caste and Scheduled
Tribe employees against reserved vacancies.
Inservice training to the best amongst the
failed candidates.

...

Reference is invited to Board's letter of even
number dated 19.6.1978 regarding ad hoc promotion of the best
amongst the failed SC/ST employees for a period of six
months against the vacancies reserved for them for the
purpose of imparting inservice training.

2. In para 2 of the above quoted letter, it was stated
that the Board's instructions contained in their letters
No.E(SCT)74CM 15/34 dated 31.8.1974 and 7.12.1976 would
continue to apply in all categories of posts except in the
"Safety category" posts as enumerated in Board's letters
No.E(NG)I-71PML/61 dated 30.9.74 and E(NG)I-75 PML/44
dated 4.8.1975. The Board have now decided that Group B
posts in the Civil Engineering, Mechanical Engineering,
Signal and Tele-communications, Electrical Engineering

(186)

and in the Transportation (Traffic) Departments should also come under the purview of "Safety category". The scheme of promoting the best among failures will, therefore, not apply while filling the reserved vacancies in Group B posts in these Departments. The Scheme will, however, continue to apply in all other Departments.

3. The cases of SC/ST employees who have already been promoted on adhoc basis for a period of six months under the above scheme against Group B posts in the above mentioned Departments prior to the issue of this letter may be reviewed in accordance with the decision contained in para 3 of Board's letter No.E(SCT)74CM15/34 dated 19.6.1978, namely, such candidates as have acquired the requisite degree of professional ability to work in safety posts, may be included in final panel/select list.

4. It has also been decided that the instructions issued vide Board's letter No.E(SCT)70CM15/9 dated 5.6.73 to the effect that the cases of the reserved community candidates who were there in the zone of consideration but have not been empanelled for promotion to Group B posts in the above mentioned 5 Departments against reserved vacancies should be put up to the General Manager for review in cases where the reserved quota remains unfilled, should continue to be followed. While filling up reserved vacancies by general candidates involving de-reserved of reserved vacancies in posts in safety category, the General Managers should satisfy themselves that the SC/ST candidates were given the requisite amount of pre-promotion coaching as enjoined in Board's letter No.E(SCT)71CM15/40 dated 28.8.1971 and E(SCT)74CM15/1 dated 26.1.1974 enabling the SC/ST employees to qualify for promotion and that inspite of that they could not qualify in the selection.

Hindi version will follow.

Please acknowledge receipt.

DA/Nil.


Dy. C.P.O. (Gazetted)
N.E.Railway, Bikaner

Sd/- Gulzar Chand
Jt. Director Establishment
(R)II
Railway Board.

In the Central Administrative Tribunal at Allahabad.
Reply on behalf of Respondents in Registration
No. 69 of 1987

K.R.Ahirwar V/s U.O.I.

Government of India/Bharat Sarkar
Ministry of Railways/Rail Mantralaya
(Railway Board)

No.E(GP)79/2/12

New Delhi, dated 2.3.1979

The General Managers,
All Indian Railways including
CIW, DLW & ICF.

General Manager, Wheel & Axle Project, Bangalore.

Sub:- Limited Departmental Competitive Examination
for filling 25% vacancies in Class II Service.

The Ministry of Railways have issued instructions from time to time regarding Limited Departmental Competitive Examination for filling in 25% vacancies in Class II Service. For facility of reference these instructions are being consolidated and reiterated below:

- (i) Railway employees working in grade the minimum of which is Rs.425/- and above in the revised scale and have put in a minimum of five years of regular service in the grade are eligible to appear at the written examination. For Accounts Department, the employees should have qualified in Appendix IIIA Examination and hold the post of Accountant/TIA/ISA in revised scale of Rs.500-900 or sub-head in the revised scale of Rs. 425-700 on a regular basis and should have put in a minimum of five years of regular service in the grade;
- (ii) all candidates fulfilling the conditions of eligibility, irrespective of their number, are to be allowed to appear at the written examination ;

Dy. C.P.O. (Gazetted)

N.E. Railway, Gorakhpur

1000

- (iii) there is no restriction as to the number of chances a candidate can avail of for getting selected ;
- (iv) the examination will be in the nature of a rigorous test for assessing the professional ability of the candidates ;
- (v) in order to qualify, a candidate has to secure a minimum of 60% marks in each paper of written examination, in the record of service, and in the viva-voce separately and also in the aggregate ;
- (vi) there will be no supplementary examination for absentees etc..
- (vii) the officers entrusted with the work of setting question papers and evaluating answer books may be paid honorarium at the following rates;

Setting question papers	Rs. 100/- per paper
Evaluation of anser books	Rs. 1.75 per answer book
- (viii) the examination will be held once in two years;
- (ix) rules for reservation of vacancies for SC/ST candidates will apply and a separate roster should be maintained for reckoning the quota of vacancies due.

DA/Nil.

Sd/- N.Anantaraman
Deputy Director, Establishment(Trg)..
Railway Board.


Dy. C.P.O. (Gazetted)
N.E. Railway, Gorakhpur

In the Central Administrative Tribunal at Allahabad.

Reply on behalf of Respondents in Registration
No. 69 of 1987

K.R.Ahirwar V/s U.O.I.

Government of India/Bharat Sarkar
Ministry of Railways/Rail Mantralaya
(Railway Board)

No. E(GP)76/2/96

New Delhi, dated 14.2.1980

The General Managers,
All Indian Railways,
including CIM, DLW & ICF.
Wheel & Axle Plant, Bangalore.
DG/RDSO, Lucknow.

Sub:- Limited Departmental Competitive Examination
for promotion in 25% Group B (Class II) vacancies
on Railways.

Please refer to this Ministry's letter of even number
dated 3.6.1977 on the above subject.

After reconsideration the Board have decided that
allotment of marks for various papers for the Limited Depart-
mental Competitive Examination, which was given in Para II of
the Annexure to above quoted letter, for selection against 25%
vacancies in all Departments (except Accounts Department for
which the existing procedure as laid down in Board's letter
No.E(GP)76/2/96 dated 3.8.77 will continue) should be as under:-

- | | | |
|--------------|---|------------|
| I. Paper- | General Knowledge | 50 marks |
| | (There will now be no paper
on English Language) | |
| II(A) Paper- | Professional Subject | 100 marks. |
| II(B) Paper- | Professional subject | 100 marks |
| III Paper- | Financial & Establishment | 50 marks |

Rules.

Dy. C.P.O. (Gazetted)

N.E.Railway, Gorakhpur

...2/-

APC

Besides the written examination, the viva-voce will carry 100 marks against Confidential Reports, personality, ~~address~~ address and leadership.

The syllabus for Paper I, which was communicated in this Ministry's letter No.E(GP)79/2/30 dated 7.12.79 may please be amended accordingly to exclude Part I on noting, drafting and precis.

The above changes need not, however, be given effect to selections for which written examinations have already been held. These would apply to future selections.

Please acknowledge receipt.

Sd/- G.C.Malik

Deputy Director, Establishment (Trg)
Railway Board.

DA/Nil.


Dy. C.P.O. (Gazetted)
N.E. Railway, Gorakhpur

In the Central Administrative Tribunal at Allahabad.

Reply on behalf of Respondents in Registration

No. 69 of 1987

K.R.Ahirwar V/s U.O.I.

C.Chakraborty

C.P.O.

Confidential

D.O.No.E/254/4-78/Pt.I(I)Optg. Dated: 31/3/1984

My dear Datta,

Sub:- Representation regarding irregularities
in the LDCE for the post of AOS/ATO
(Group 'B').

Ref:- Your D.O. letter no.E(GP)84/2/5 dated
21.3.1984. ...

Remarks on the note and the representation forwarded
by Sri P.K.Prajapati, M.P. and received under Railway Board's
D.O.letter no.E(GP)84/2/5 dated 25.1.84, are given as under :-

- i) In order to form a panel of six candidates(4 UR, 1 R
for SC and 1 R for ST) for the posts of AOS/ATO through
LDCE against 25% vacancies, a notification was circula-
ted on 11.5.83. The Syllabus as prescribed by the
Railway Board was also circulated on 21.5.83.
- ii) 172 candidates who were found eligible for this LDCE
were called to appear at the written test. Out of
these 172 candidates, 110 appeared at the written test
held on 2.7.83 and 3.7.83.
- iii) Only 3 candidates viz. S/Shri R.S.Choubey, V.K.Jain
and K.N.Prasad from general community could qualify
in the written test. The three candidates were inter-
viewed on 1.11.83. A provisional panel of two general
candidates viz. S/Shri V.K.Jain and K.N.Prasad, Traffic
Inspectors was approved by the General Manager on 1.11.
83 and the same was published on the same date. The
empanelled candidates were promoted subject to their
passing medical examination.


Dy. C.P.O. (Gazetted)
N.E.Railway, Gorakhpur

...2/-

(A32)

- iv) Railway Board vide their D.O. letter No.83-E(SCT)4/81 dated 24.11.83 forwarded a representation dated 11.11.83 preferred by Shri K.R.Ahirwar (SC), Safety Counsellor, In this representation, among other things, Shri Ahirwar pointed out that he qualified in all the written papers except in the paper III (Establishment and Financial Rules) and despite this he was not selected. He further requested to empanel his name in the panel of AOS/ATO (Group 'B') against 25% vacancies formed on 1.11.83 granting him relaxation meant for SC/ST candidates.
- v) Railway Board vide their letter no.82-E(SCT)41/6 dated 15.11.83 decided that the lower limit of qualifying marks be set at 3/5th of the qualifying marks prescribe for general community candidates in individual papers/ viva-voce excluding marks for record of service based on confidential reports. For the aggregate also, this lower limit will be applicable. Board's above instructions would however, be applicable for LDCEs in non-safety categories.
- vi) The case of Sri Ahirwar was considered by the General Manager in the light of Board's instructions dated 15.11.83 referred to above and it was decided by the General Manager that since the candidate (Shri K.R.Ahirwar) had secured qualifying marks in departmental papers concerning "Safety" as well as in the General Knowledge paper and more than 36% marks in establishment and Finance paper, he should be deemed to have passed the written test and he should be called for the viva-voce test.
- vii) Accordingly, Sri Ahirwar was interviewed on 12.1.84 and he having been found suitable was placed in the above provisional panel. The Board have already been intimated of the position vide this Railways letter no.PER/C/1/AOS-ATO-LDCE dated 4.1.84 in reference to their D.O.No.83-E(SCT)4/8 dated 24.11.83.

By. C.F.O. (J. Zetter),
M.R. Railway, ...

viii) As regards the representation forwarded by the M.P. it is mentioned that a bunch of similar representations was received on 28.10.83. These were considered by the G.M. and it was decided by him that proceedings of the selection be finalised.

ix) The enclosures to Board's D.O. letter no. E(GP)84/2/5 dated 25.1.84 are returned herewith, as desired.

DA/As above.

Yours sincerely,

Sd/- C. Chakraborty

Shri S.K. Datta,
Director, Management Services,
Railway Board,
New Delhi.


Y. C. P. O. (Gazettee)
N.E. Railway, Gorakhpur

In the Central Administrative Tribunal at Allahabad
Reply on behalf of Respondents in Registration
No. 69 of 1987

K.R.Ahirwar V/s U.O.I.

Government of India/Bharat Sarkar
Ministry of Railways/Rail Manatralaya
(Railway Board)

No.84-E(SCT)41/2

New Delhi, dated 21.2.1985

The General Manager,
North Eastern Railway,
Gorakhpur.

Sub:- Promotion from Group 'C' to Group 'B' on the
basis of Limited Departmental Competitive
Examination.

...

Reference is invited to Ministry's letter No.E(GP)76/
2/96 dated 3.6.77 introducing the scheme of Limited Department
Competitive Examination to fill 25% of the vacancies in
Group 'B'. The Examination consists of four written papers
followed by viva-voce and assessment of records. In order to
qualify for viva-voce on employee should secure a minimum of
60% in each paper of the written examination. Reservation in
favour of SC/ST employee is applicable in filling the vacanc
on the basis of L.D.C.E. For SC/ST employees, a lower limit
of qualifying marks has been set at 3/5 of the qualifying
marks prescribed for general community candidates in the
individual paper of the written examination and in the v/
voce. This lower limit will apply only where the workin
the department has not been classified as safety orier
namely Accounts, Stores and Commercial.

It has been reported vide your CPO's D.O.
E/254/4-78/Pt.I(I)Optg. dated 31.3.84 that in the
conducted for filling vacancies in the Operatin/
lower limit of marks prescribed for qualifying
departments has been applied in the case of

so far as his performance in the non profes'
concerned and he has been deemed as having pas.

Similarly in an other case relating to the Electrical Engineering Department, Sri Kanhaiya Lal who failed to secure the minimum of 60% marks in the written test in other than the two departmental papers has also been declared as having passed by applying the lower limit of 36%. These cases were recently reviewed by the Ministry. The L.D.C.E. is only a segment of the whole selection and it cannot be treated differently from the standards prescribed for selection against 25% vacancies. No moderation is admissible in any type of selection to the Group 'B' posts of departments, where the working has been classified as safety oriented. Therefore the application of a lower limit of qualifying marks in the cases of S/Shri K.R.Ahirwar and Kanhaiya Lal is not correct and the Ministry do not approve of the same. Since however both these employees have been promoted to Group 'B', it has been decided as a special case that they should be continued on adhoc basis in Group 'B' against general quota of vacancies (and not against 25% quota of L.D.C.E.). These employees will continue in Group 'B' on adhoc basis till the next L.D.C.E. or the selection against 75% vacancies for which they gain eligibility whichever is held earlier. Failure to get empanelled in the next IDCE/first selection against 75% vacancies for which they are eligible will result in the adhoc promotion being terminated.

The vacancies of AOS and AEE released by S/Shri K.R.Ahirwar and Kanhaiya Lal in the L.D.C.E. quota should be filled by the next qualified employee after obtaining the sanction for dereservation as per extant rules.

Please acknowledge receipt of this letter.

Sd/- D.S.Nigah
Addl. Director, Estt(R)
Railway Board.

Dy. G.P.O. (Gazetted)
N.E. Railway, Gorakhpur

ACS

In the Central Administrative Tribunal at Allahabad.
Reply on behalf of Respondents in Registration
No. 69 of 1987.

K.R.Ahirwar V/s U.O.I.

North Eastern Railway

Office of the
General Manager (P)
Gorakhpur.

No. E/254/4-Optg-LDCE(I)

Dated: 14.3.1985

Shri K.R.Ahirwar,
AOS/Lucknow Area,
N.E. Railway,
Lucknow.

(Through: Divisional Rail Manager/LJN)

Sub:- Limited Departmental Competitive Examination
for formation of a panel for promotion to
the post of AOS/ATO (Group 'B') against 25%
of the vacancies.

...

In the Limited Departmental Competitive Examination
held in the year 1983 for the post of AOS/ATO (Group 'B') which
is a "Safety" oriented category, the lower limit of marks pres-
cribed for qualifying in the non-safety departments was wrongly
applied in your case so far as your performance in the non-
professional papers are concerned and you were deemed as having
passed in the above L.D.C.E. and were empanelled and promoted
to officiate in Group 'B' service as AOS/LJN.

2. Your case has now been reviewed by the Railway Ministry
and they have communicated their decision that no moderation is
admissible in any type of selection to the Group 'B' posts and
therefore, the application of a lower limit of qualifying marks
in your case was not correct. They have further decided that you
however, ~~will~~ as a special case, will continue purely on an
ad hoc basis in Group 'B' service against general quota of
vacancies (and not against 25% quota of L.D.C.E.) till the next
normal selection against 75% of the vacancies or L.D.C.E.
against 25% of the vacancies for which you gain eligibility

whichever is held earlier. Failure to get empanelled in the next normal selection/L.D.C.E. for which you become eligible, will result in the adhoc promotion being terminated.

3. Please acknowledge receipt of this letter.

DA/Nil.

Sd/- P.C.Maulik
Dy.CPO/Gaz.
for General Manager

Copy forwarded to the COPS/NER/GKP for information.

Sd/- P.C.Maulik
Dy.CPO/Gaz
for General Manager

whichever is held earlier. Failure to get empanelled in the next normal selection/L.D.C.E. for which you become eligible, will result in the adhoc promotion being terminated.

3. Please acknowledge receipt of this letter.

DA/Nil.

Sd/- P.C.Maulik
Dy.CPO/Gaz.
for General Manager

Copy forwarded to the COPS/NER/GKP for information.

Sd/- P.C.Maulik
Dy.CPO/Gaz
for General Manager


Dy. C.P.O. (Gazetted)
N.E. Railway, Gorakhpur

In the Central Administrative Tribunal at Allahabad.

Reply on behalf of Respondents in Registration
No. 69 of 1987.

K.R.Ahirwar V/s U.O.I.

To,
The General Manager (P),
N.E.Railway,
Gorakhpur.

Sub:- Second Supplementary test on 6.2.87.

Ref:- Your letter dated 22.1.1987.

....

Kindly arrange pre-selection coaching vide your
letter no.E/50/1/Part 3(IV) dated 22.10.83 and let me know
the date of this coaching for a period of 20 working days
so that I may be able to perform well in the written examina-
tion directed by Railway Board.

Sd/- K.R.Ahirwar
Asstt.Optg. Supdt/Chg.
N.E.Rly./Lucknow.
4.2.87.


By. C.P.O. (Gazettee)
N.E.Railway, Gorakhpur

North Eastern Railway

Office of the General Manager

No. E/254/4-Optg./85 (I) Gorakhpur. Dated: 20/5/86

The COPS, CPTS, CTSS, CFTS, Addl. COPS/Coaching, CPLO.
The Dy. COPS/Goods, Dy. COPS/Coaching, Dy. COPS/BG-Con,
The Sr. DOS/SPJ, SEE, BSB, LJM & IZN.
The DOS/SPJ, SEE, BSB, LJM & IZN
The DRM/SPJ, SEE, BSB, LJM & IZN.
The DRM/Optg./SPJ, SEE, BSB, LJM & IZN.
The DRM(P)/SPJ, SEE, BSB, LJM & IZN.
The DSO/Safety Officer/BSB, IZN, SPJ, SEE & LJM.
The Principal, ZTS/MFP, and STS/NER/GKP.
The STO/GKP, DOS/Plg./GKP, STO/Safety/HQ/GKP, DTS/BC.
The AOS/Coaching and IT/GKP, AOS/Movement, AOS/Transit,
The PA to COPS, ATO/TW/GKP, Area Manager/GHZ, AOS/LKO.
The AOS/G/LJM, IZN, BSB, SPJ, AOS/Movement/BSB, LJM, SPJ.
The Area Supdt./GKP, AOS/FGR.
North Eastern Railway.

Sub:- Selection for the post of AOS/ATO (Group 'B')
against 75% of vacancies.

...

It has been decided to hold a normal selection (which will include a written test and viva-voce test) forming a panel of 15 (fifteen) persons (12 UR + 2 R for + 1 R for ST) for promotion to the post of AOS/ATO (Group against 75% of vacancies. The written test will be held on 06.07.1986 at 10.00 hours in CTS/NER/Gorakhpur

2. Accordingly, a list of 45 candidates of Operating is enclosed as Annexure 'A'. These candidates must spare directed to appear at the above selection on the date, place and time specified as above.

3. A list of further employees who may be called at written test in case some of candidates from list 'A' or unwilling for the selection, is also enclosed as Annexure 'B'. The employees of list 'B' please also be advised to keep selves in readiness to appear at the above selection. They may be called at the written test at short notice upto the number of List 'A' candidates who express their unwillingness for the above selection.

4. The candidates who are willing/unwilling to appear at this selection should give their willingness/unwillingness on the proforma enclosed and their willingness/unwillingness so obtained should be forwarded under sealed D.O. Cover addressed to Dy. CPO/Gaz/NER/GKP so as to reach this office on 15.06.86 positively.

5. If any employee mentioned in the list enclosed is leave/training/deputation or has been transferred, this advice should be sent to him at his present address immediately by Registered Post with A/D and he should be asked to appear at the written test to be held on 06.07.86 in Meeting Room/NER/GKP at 10.00 hours.

...2/-


Y. C. P. O. (General),
N.E. Railway, Gorakhpur

A-90

Annexure-A

List of candidates who are required to appear in the written test for the post of AOS/ATO(Group 'B') against 75% of vacancies to be held on 6.7.86.

S. No.	Name (S/Shri)	Designation/place of posting
1.	Raj Ransi Prasad(SC)	CTNLI Adhoc AOS
2.	Har Bhajan Singh	CTNLI Adhoc AOS
3.	Manohar Lal(SC)	CTNLI Adhoc AOS
4.	G.P.Singh Gond(ST)	CTNLI/CT/GKP
5.	S.D.Singh	CTNLI Adhoc AOS
6.	S.R.Dohre(SC)	TI/LJN Adhoc AOS but jot joined
7.	K.R.Ahirwar(SC)	TI/Adhoc AOS
8.	B.K.Singh	TI/Adhoc AOS
9.	R.K.Ram(SC)	CYM/Adhoc AOS
10.	G.C.Bhatnagar	TI/Adhoc AOS
11.	V.L.Sachdeo	SS/Adhoc AOS
12.	L.N.Mahto(SC)	SS/SPJ
13.	Trilok Singh	CTNL/LJN
14.	K.S.Kapoor	TI/IZN
15.	V.N.Mishra	TI/SPJ
16.	Garjuo Ram(SC)	TI/SEE
17.	S.D.Singh	TI/SEE Transferred to SPJ
18.	R.B.Mathur	SS/LJN
19.	S.P.Pandey	SS/LJN
20.	S.N.Srivastava	SS/BSB
21.	D.Shukla	CYM/LJN
22.	R.D.Ram (SC)	SS/IZN
23.	Durga Prasad(ST)	SS/IZN
24.	B.D.Jaiswal	CYM/LJN
25.	Chotoo Ram	CYM/SEE
26.	Saudagar Ram(SC)	Dy. CYM/SEE
27.	Jaddish Saran	CTNLI/LJN
28.	Sita Ram Mahto(SC)	CTNLI/SPJ
29.	H.N.Singh	CTNLI/BSB
30.	R.C.Verma	CTNL/SEE
31.	B.Dutta	CTNL/IZN
32.	Gun Sagar Singh(ST)	OS/SPJ
33.	Raja Ram(SC)	CTNL-II/BSB
34.	R.R.Sankhwar(SC)	CTNL-II/LJN
35.	M.K.Mitter	CTNL-II/LJN
36.	S.S.P.Sinha	CTNL-II/SPJ
37.	A.C.Ghosh	CTNL-II/SPJ
38.	S.P.Ram(SC)	CTNL-II/BSB
39.	M.P.Chaudhary (SC)	OS/COPS
40.	Jai Ram(SC)	Chief Telegraph Inspector/ GKP
41.	S.P.Shukla	TI/COPS office/GKP.
42.	J.K.Srivastava	TI/LJN Wkg.as CI(Safty Camp Gonda)
43.	Fakhraddin	TI/BSB
44.	K.B.Lal	TI/COPS/GKP.
45.	O.P.Yadav	TI/BG-Con/GKP.

[Handwritten signature]

To
The General Manager (P),
North Eastern Railway,
Gorakhpur.

149

Sub:- Selection for formation of a panel for
promotion to the post of AOS/MTO (Group 'B')
against 75% of vacancies.

Ref:- Your notification No. E/254/4-Optg./85 (I)
dated

Sir,

I, _____
(Full Name in Block Capitals)
Designation _____ Station _____
(Place of Posting)

hereby acknowledge the receipt of your notification under
reference quoted above. I hereby declare that _____

- (i) I am willing/unwilling to appear at the above selection.
- (ii) (a) I am married and have only one spouse living.
(b) I am unmarried/a widower.
(c) I have entered into and contacted a marriage with another person during the life time of my spouse. Application for grant of exemption is enclosed.

I solemnly affirm that the above declaration is true. I understand that in the event of the declaration being found to be incorrect after my promotion, I shall be liable to be reverted from Group 'B' service.

Yours faithfully,

Dated: _____

(Signature of candidate) _____
Sr. No. of the List _____

Forwarded by :-

(Signature of Controlling Officer)

Designation _____

Office Seal _____

(Strike out which is not applicable)

Dy. C.P.O. (Gazettee),
N.E. Railway, Gorakhpur

(1100)

In the Central Administrative Tribunal (Allahabad)

Rejoined Affidavit
in

Registration No. 69 of 1987

K. R. Ahirwar
vs

Union of India and Others

MI

Above

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH ALLAHABAD

REGISTRATION NO. 69 of 1987.

K.R.Ahirwar Applicant.

Vs.

Union of India

and others.

... OppParties.

Rejoinder on behalf of applicant
is as below:

*X.P. Prasad Chaturvedi
Adv. Sonapur
16/4/87*

1. That the applicant has read the reply filed by A.Tete, Deputy Chief Personnel Officer N.E.Railway Gorakhpur in the aforesaid case and has fully understood the contents of the same.

2. That the contents of paras 1,2 and 3 of the reply need no comments.

3. That the contents of para 4 of the reply are denied in the form stated. It may be stated that as per position of Section 3 (6) of the Indian Railways Act 1890 (Railway Administration) or (Administration) in the case of Railway Administration

K.R. Ahirwar

(16)

: 2 :

by Government means the Manager of the Railway and includes the Government and in the case of Railway Administration by Company means the Railway Company. It is relevant to state here that the Manager mentioned there means General Manager of Zonal Railway as there is no Manager in the Railway Board or in the Railway Ministry, therefore for all purposes Manager of Zonal Railway will be head of the Railway Administration in the Zonal Railway and the Railway Ministry is merely a coordinating body. Again as per provisions of Rule 110 of Indian Railway Establishment Code, General Managers of Indian Railways will have powers to create Gazeted post in Group A and Group B subject only to the restrictions mentioned in the Indian Railway Financial Code volume 1. Again as per provisions of Rule 207 of the aforesaid Code appointment of Group B service by promotion of the staff employed on the Railway are to be made by the General Manager.

3-A. That again only the Rules framed under Article 309 of the Constitution are applicable to the service ~~and~~ conditions of Group B service of the Railway.

K.R. Aluwa

A162

: 3 :

3-B. That if any service conditions is not covered by rules framed under Article 309 of Constitution, the decision of General Manager in that regard shall be final.

3-C. That the allegations made in para 4B of the reply are not correct and the Board letter dated 2.3.79 is not applicable to the facts of the present case as the applicant is a schedule caste candidate, and is entitled to relaxation and therefore relaxation granted by general Manager is not contrary to any rule framed under Article 309 of the Constitution. Even the Board letter dated 2.3.79 requiring 60 % marks in each paper is not rule made under Article 309 of the Constitution as the same has not been approved by the President of India.

3-D. That moreover there is a constitutional mandate under Article 335 for giving preferential treatment to the members of scheduled caste and schedule tribe and the action of the General Manager in the present case is therefore, ~~is~~ also perfectly in accordance with the provisions of the Constitution and anything contrary to it is clearly violation of Article 335 of the Constitution of India.

K.R. Alurwar

8103

: 4 :

3-E. That the Railway Board letter dated 14.2.80 which is mentioned in para 4-C in the reply is also not rule under Article 309 of the Constitution. It is only administrative instruction which is not mandatory and the general manager being head of the Railway administration and the Zonal Railway is entitled to make relaxation in the case of schedule caste candidate.

3-F. That the contents of para 4-D of the reply are denied in the form stated. ^{III} The paper being ~~one~~ paper could not be split into two which was clear irregularity ^{along others} against which the applicant was representing which is filed as Annexure 1 to this rejoinder.

3-G. That the contents of para 4-D of the reply are denied and correct facts have been stated in Chief Personnel Officer's letter dated 31.3.84 which has been filed as annexure 4 to the reply.

3-H. That the contents of para 4-f of the reply are denied. The General Manager was full empowered to grant such relaxation. There was no need to send the matter ~~again~~ to the

K.R. Aluwar

16/4

: 5 :

Railway Board again . The General Manager granted the relaxation and held the applicant to be successful in the written test and called him in viv-voce test and selected him for the post of A.O.S./A.T.O. (Group B). Annexure 4 is only reply to the Railway Board letter dated 31.3.84 and there is nothing to show that there was any request for approval on the applicants relaxation to class II post was subject to Railway Board's approval.

3-I. That the contents of para 4-g of the reply are denied in the form stated. There was no question of approval of applicant's post for class II. The General Manager's order is final and Railway Board has no power or jurisdiction to set aside the same. There is nothing on the record to show that General Manager has no power to grant relaxation to S.C. candidate. Moreover action of the General Manager is perfectly in accordance with order of Department of Personnel and Administrative Reforms dated ^{Dec} 23rd ~~Jan~~ 1970 which is binding on Ministry of Railway, also. A true copy of the order dated 21.12.1970 is attached herewith as Annexure 2 to this rejoinder and a true copy of letter dated 19.4.1979 is attached herewith as annexure 2-A to this rejoinder.

K.R. Alwar

(A/C/S)

: 6 :

The action of General Manager is also in accordance with the Railway Board's order dated 15.11.83, a true copy of which is filed as Annexure 3 to this rejoinder.

3-J. That the contents of para 4-H of the reply are denied in the form stated. The case of the applicant was not a case of adhoc appointment/ ^{but} regular appointment. It was not a special case but regular case and the applicant was selected and promoted in accordance with the law and the Railway Board erred in holding contrary, and therefore the order of the Railway Board is illegal and is liable to be set aside.

3-K. That the contents of Para 4-I of of the reply are denied in the form stated. Letter dated 14.3.85 was never served upon the applicant. Moreover the Railway Board had no authority to review the case of the applicant as the applicant was selected in accordance with the law. Moreover the applicant was not given any opportunity before the Railway Board reviewed the case of the applicant. Moreover, this not a case of punishment and therefore question of review does not arise. As the said letter dated 14.3.85

R. R. Aluwan

A106

is based on the illegal order of the Railway Board the same is also illegal and liable to be set aside.

3-L. That the contents of paragraph 4-J of the reply are denied in the form stated. As the applicant was duly selected and promoted there was no question of his selection on the post of AOS/ATO (Group B) again. So far as letter dated 4.2.87 is concerned the same was given after this Hon'ble Tribunal passed order dated 2.2.87 in the case of the applicant, a true copy of which is attached herewith as Annexure 4 to this rejoinder. Therefore it cannot be said that the applicant expressed his willingness to appear in examination for the selection of AOS/ATO (Group B).

3.M. That the contents of para 4-L of the reply are denied in the form stated. As stated the earlier alleged letter dated 14.3.85 was never served on the applicant, therefore there was no question of challenging the same or accepting the same. It is incorrect to say that the applicant continued to work on the post of AOS on purely adhoc basis.

4. That the contents of para 5 and 6 of the reply are denied.

K. R. Aluwa

5. That the contents of para 7 of the ~~reply~~ reply are denied and that of para 7(1) of the application are reiterated.

6. That the contents of para 8 of the reply are denied in the form stated and that of para 7(2) of the application are reiterated. The allegations are also vague. It is irrelevant to state here that the applicant was given his due promotion and awards when it became due.

7. That the contents of para 9 and 10 of the reply need no comments.

8. That the contents of para 11 of the reply are denied and that of paras 7(6) to 7(8) of the application are reiterated.

9. That the contents of para 12 of the reply are denied and that of para 7 (9) of the application are reiterated.

10. That the contents of para 13 of the reply need no comments.

11. That the contents of para 14 of the reply are denied and that of paras 7(12) to 7(14) of the application are reiterated.

K.R. Alurwa

A100

The letter dated 4.7.86 does not apply to the applicant. There was no question of applicant appearing for selection again when he was already legally and validly selected. There was no question of applicant appearing again vide letters dated 14.7.86 and 22.1.87.

12. That the contents of para 15 of the reply are denied and that of paras 7 (15) to 7 (17) of the application are reiterated. It is incorrect to say that the action taken in the matter is legal and is in conformity with the Rules.

13. That in reply to the contents of para 16 of the reply, contents of para 7 (19) of the application are reiterated.

14. That the contents of para 17 of the reply are denied and that of paras 7(20) and 7(21) of the application are reiterated. It is incorrect to say that balance of convenience does not favour the applicant. It is incorrect to say that in view of the interim order there is any difficulty or hardship being ~~xxx~~ faced by the administration. These allegations have been made only for the purpose of the case.

It is incorrect to say that interim order may be vacated.

K.R. Aluwa

I, K.R.Ahirwar, the applicant in this case do hereby declare that the contents of paras 1, 2, 3^{to par}, 3H, 3J^{in mt}, 3M, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of this rejoinder are true to my personal knowledge; and those of paras 3K, 3L, 3I, 3L of the rejoinder are based on the record and those of paras 3, 3A, 3B, 3C^{in mt}, 3D, 3E, 3J^{in mt} of the rejoinder are based on legal advice of my counsel which all I believe to be true; that no part of it is false and nothing material has been concealed.

So help me God.


 K.R. Ahirwar
 Applicant.

31/3/87

110

11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD-BENCH,
ALLAHABAD.

ANNEXURE (R.A.I)

IN

REJOINDER AFFIDAVIT

IN

Registration No. 69 OF 1987.

K.R. Ahirwar. Petitioner.

Versus

Union of India and others. Respondents.

.....

To,

The Hon'ble General Manager,
North Eastern Railway,
Gorakhpur :

Sub: ~~xxxxxx~~ Limited Departmental Competitive Examination for the Post of Assistant Operating Superintendent/Assistant Transportation Officer (Group 'B') against 25% of vacancies, in which reservation rules for Scheduled Castes and Scheduled Tribes Communities candidates have not been observed.

Ref: G.M(P)Gorakhpur notification No.E/254/4-
Optg-LDCE(1) dated 11.5.83 No.E/254/-4
Optg LDCE(1) dated 21.5.83 Call letter
No.E/254/4-Optg-LDCE(1) dated 15.6.83

Attended
M.L. Sharma
Adv.

K.R. Ahirwar

1111

12

(2)

and result of Written Test held on 2.7.83 and 3.7.83 vide letter no. E/254/4-Opt g-LDCE(1) dated 22.10.83.

.....

Most Hon'ble Sir,

I would like to encroach upon your precious time to have a glance on my pity request in connection with the subject matter under reference being a Scheduled Caste candidate Chamar by community to whom no sympathy and relaxation is granted in this selection to fill up the quota reserved for Scheduled Castes and Scheduled Tribes employees.

With a great hope and expectation of justice to be awarded by your honour being a justified and kind hearted, towards the betterment of the employees, particularly for the prosperity and safeguarding the interests of Scheduled Castes and Scheduled Tribes. This helping attitude, kind and peacefull tendency of yours, is videly prevailing on the surface of the N.E. Railway Administration as well as in the circle of Railway employees as a whole.

Ates (S)
M.L. Sh. (K)
Adv.

Due to above human qualities having a wordly

K.R. Aravind

(3)

very high powers I came forward to point out that how I have been mercilessly crushed by ignoring all directives of the Railway Board issued time to time on the name of FA & CAO and suppose to have very high knowledge about financial rules.

Kindly grant me an interview or go through the contents of my representation. Your only two minutes will suffice to grant me justice by which I can attain my prosperity betterment to my family and society as a whole of my community.

The following irregularities and ~~non~~ non-observance of rules and directives of Railway Board and instructions of G.M.(P) have been done in this selection proceedings while finalising the said selection with the only view and intention so that the Scheduled Castes and Scheduled Tribes candidates may not be taken into account and quota reserved for them remained unfilled being the availability of the candidates from these communities, which are as under:-

Attested
M.L. Shukla
Adv. (I)

The prescribed syllabus for written examination issued vide G.M.(P) Gorakhpur

K.R. Aluwa

AIB

14

(4)

letter No.E/254/4-Optg-LDCE(1) dated 21.5.83 has not been supplied to me.

(II) The following recommended books notified vide above letter have not been issued to me, which were and are not available in the market.

- (a) Indian Railway General Code-Vol. I & II.
- (b) Indian Railway Code for Accounts Department
- (c) Indian Railway Administration and Finance- An Introduction. First Edition.
- (d) Indian Railway Code for the Engineering Deptt.
- (e) Indian Railway Code for the Stores Deptt.
- (f) Reports of the Tank Force on Budgetary Accounting and Management Practices on Railways First and Second Reports.
- (g) Report by the Committee on Technique of Financial Appraisal of Railway Projects.
- (h) Indian Railway Code for Mechanical Department.

(III)

Pre-selection Coaching of 20 working days duration subject and paper wise as per syllabus, vide Railway Board directive No.

Attested
M.L. Ghosh
Adm.

K.R. Aluwa

AMM

15

(5)

81-E(SCT)15/58 dated 16.1.82 and circulated by GM(P)/GKP letter No.E/50/2 (Res) Policy I Pt.II (V) dated 26.2.82 and 1.3.82 . has not been given to me and any other Scheduled Castes and Scheduled tribes candidates too, before conducting this selection which was very essential for fulfillment of reserved quota.

(IV) The separate written test and evaluation of answer books by another examiner vide Railway Board directives letter No.E(NG)III-72 RSC/10 dated 4.8.72 has not been done in this selection for the candidates belonging to the Scheduled Castes and Scheduled tribes Communities.

(V) Due to above, no relaxation of Standards has been made and given to me in this selection as provided and permitted by Railway Board's directives vide its letter No. E 55CM 1/3 dated 5.10.55.

(VI) The scheme of the written examination for this selection as per Railway Boards' letter No.E(GP) 76/2/96 dated 3.6.77 and 14.2.80 circulated vide G.M.(P) Gorakhpur vide his letter No.E/254/4-Optg.

Attended
M.L. Singh
Adv.

K.R. Aluwa

115

16

(6)

LDCE(1) dated 11.5.83 and even No. dated 21.5.83 has not been followed. According to rules quoted here there ought to be set up only 4 papers each as :-

- Sl.No. (1) Paper I- General Knowledge 50 marks
(2) Paper II-(A) Professional subject
100 marks
(3) Paper II-(B) Professional subject
100 marks
(4) Paper III- General Finance and
Establishment Rules } 50 Marks.
and Procedures

But the administration has violated the directives of Railway Board and its own commitment made as quoted in the above letters by modifying these orders and managed to set up 5 papers as under:-

- Sl.No. (1) Paper I - General Knowledge... 50 marks.
(2) Paper II- (A) Professional subject 100 marks.
(3) Paper II- (B) Professional subject 100 marks.
(4) Paper III- Establishment Ruling
and Procedures.. 25 marks.
(5) Paper IV - General Financial Rules 25 marks.

this manipulation effected upon as if conspired

Attended
M.L. Shukla
Adv.

K.R. Aliwan

116

17

(7)

only for me by declaring disqualified in the manipulation paper of 25 marks for the subject General Financial Rules, which is not a subject of safety aspect, hence requires relaxation to the candidates belonging to Scheduled Casts and Scheduled Tribes where a very high rigidity applied to declare them unfit by strick marking in the paper of 25 marks value that too manipulated one against the standing orders of the Railway Boards inspite of the fact I assure your honour that I have certainly qualified in the all professional safety aspects subjects, though I have been debarred from all the relaxations and coaching facilities etc. provided by the Railway Board.

(VII) The administration intensily brought the learned FA & CAO to set up illegal and unconstitutional paper for 25 marks to judge the knowledge of general financial rules, which are not required in the day to day working of of Assistant Operating Officers as at all level Assistant Accounts & other higher officers

Attested
M. S. Shukla
Adv.

K. R. Alwar

1117

(8)

are posted over the RAILway only with the
 vies to deny the justice to the Scheduled
 Castes Candidates like me. I can forcaste that
 I have qualified in the subjects of Safety
 aspect of 275 markds, but disqualified in the
 manipulated subject of non-safety matters that
 too merely 25 marks which has been judged
 unduly high, with too rigid standard revengefull
 prejudicial manner just against sympathetic
 manner, by violating the Boards directive .
 The general candidates so declared qualified
 in this manipulated paper of 25 marks are not
 of very extra-ordinarycalibre, but they are got
 superseded over the meritorious candidates in
 the subjects of professional abllities of 275
 marks by the FA & CAO and paper of financial
 rulings. Favourism is standing before the eyes
 but even not visible to the administration due t
 to his own creation.

(VIII) Question papers have not been prepared in Hindi
 as per Railway Board's instructions contained in
 their letter no. Hindi/74/G.20/5 dated 15.11.74,

Attested
 M.L. Shukla
 Adv.

K.R. Alukwar

19
MID

(9)

Hindi/75-G-20/19 dated 24.11.75 and Hindi /79/OL/14/8 dated 31.8.81 as such the rules have been kept in obedience in this selection.

(IX) It will not be out of place if I would like to explain to your goodself as under:-

(a) I have faced the Railway Service Commission,

Allahabad in the year 1957 after having been Graduated from Lucknow University and appointed as Guard on 27.1.1959.

(b) In the year 1971 faced the selection (written and Viva-Voce test) for the post of Guard grade 'A' for Mail & Express Trains only and declared selected against reserve quota.

(c) In the year 1977 faced the selection (Written and Viva-Voce test for the post of Traffic Inspector grade (Rs.455-700) and (Rs.550-75) and declared selected.

(d) In the year 1978 again faced the selection of Traffic Inspector (Rs.700-900) written and Viva-Voce and declared selected against reserved quota.

M. S. Shrivastava
Adv.

K. R. Alwar

(10)

- (e) I worked as Chief Instructor Safety Camp, Gonda for a year and called by the then DRM, Sri L.M. Bhaskar to utilise my better services on the post of Safety Counsellor for whole Lucknow Division.
- (f) I have been recommended for G.M. award for my gallantry work during the agitation in the year 1978 and cash awarded by COPS for the same I have also been rewarded at DRM level also many occasions.
- (X) Perhaps your honour shall not be happy but not unhappy to know about the selection of two candidates by F A & CAO who got qualified in the paper of 25 marks value leaving aside the merit position for 275 marks of professional and safety aspects subjects .One of them Sri V.K.Jain recruited as Traffic Apprentice in the year 1973 against sports quota while his father, Sri G.B.K.Jain now Chairman Railway Service Commission, Muzaffarpur was the Sports Officer on this railway. Since then he never represented in any stage in the sports for which he was recruited. He did not so far faced any selection during his only 9 years of service

Attended
M.L. Shukla
Adm.

K.R. Aluwa

120

21

(11)

at all except this selection, in which he anyhow got managed to get through in the manipulated paper of 25 marks on the name of FA & CAO, which is not fair one.

(XI) This selection being a scoundel over the Railway environment is the first and last instance to be quoted ever that:-

- (a) Viva-Voce test held on .. 1.11.1983
- (b) Panel prepared on .. 1.11.1983
- (c) Panel approved on .. 1.11.1983
- (d) Posting done on .. 1.11.1983
- (e) Posting Order issued on .. 1.11.1983
- (f) Medical examination order issued on .. 1.11.1983
- (g) Medical examination completed on .. 1.11.1983
- (h) Medical Fit Certificate issued on .. 1.11.1983
- (i) The vacancies created by giving force leave to Scheduled Caste Officers on .. 1.11.1983
- (j) Candidates allowed to join their duties at Gorakhpur at early in the morning at 10'0' Clock on .. 2.11.1983.

Sir, these all are done only to justify the all anomalies committed in this selection.

Attk (M.L. Shankh Adv.)

K.R. Alurwa

(A121)

22

(12)

(XII) The N.E. Railway Administration by way of giving undue advantage and relaxations to the general candidates and crushing the legitimate claims of Scheduled Castes and Scheduled Tribes employees though the rules are in the favour of SC/ST. Sri K.B. Srivastava was appeared for the written test for Group 'B' against 75% vacancies i.e. 25 posts for which the selection was conducted to fill in as advertised by the Railway Administration. The provisional result of 22 posts was declared in which Sri K.B. Srivastava has got a place in the panel, with posting order of all the 22 candidates vide OM(P) Gorakhpur's letter No. E/254/4-78 Pt. I(1) Optg. dated 20.5.83. 3 vacancies could not be filled in due to stay order from Patna High Court. Thus all 25 posts are filled up as advertised but Sri K.B. Srivastava is still allowed to continue on adhoc basis despite non-qualified in the selection held. Though other Scheduled Castes Officers were reverted who were working on adhoc basis as soon as the provisional selection result was declared, though the shortfall for SC/ST exists. This can be easily seen.

(XIII) Your honour shall believe upon me if I say confidently that I have qualified in the all subjects of Safety aspect of 275 marks except

Attd
M.L. Sarkar
Adv.

K.R. Alwar

A122

23

(13)

in the manipulated subject of 25 marks which has been evaluated by F A & CAO by ignoring Railway Board's directives for Scheduled Castes and Scheduled tribes employees.

Thus I may be promoted if a little relaxation is granted by your special power delegated to you by the Railway Board particularly to wipe out the shortfall quota for Scheduled Castes and Scheduled Tribes in service, in the spirit of following rules :

(a) Railway Board's directive vide its letter No.E(NG 55 CM 1/3 Pt. dated 21.12.56 clearly speaks, "In para 1 (a) of the Board's letter No. E 55 CM 1/3 dated 5.10.55 they paid down that even when Scheduled Castes and Schedule Tribes candidates fall slightly below the standard, but are not unsuitable, they may be recommended for appointment and in such cases the Railway Administration should arrange some additional training.

(b) Ministry of Home Affairs Memorandum No. 5/4/55 SCL-1 dt. 4.1.57 speaks. "As the Ministry of Finance, etc. are aware, reservation in the public services are made in favour of members of the Scheduled Castes and Scheduled Tribes in posts which are filled by

Attested
M.L. Chakravarty
AM

K.R. Alwar

(14)

direct recruitment from the open market but not in those filled by departmental promotion. The procedure to be followed in making selections against the reserved vacancies filled by direct recruitment from the open market as well as against the vacancies filled by departmental promotion in the case of members of Scheduled Castes and Scheduled tribes has been laid down in this Ministry's office Memorandum No.2/11/55 RPS dt. 7.5.55 where promotion is made on the Principal of seniority subject to the rejection of the unfit or subject to the passing of departmental tests of a qualifying nature, the instructions are that officers belonging to the Scheduled Castes and Scheduled tribes should be judged in a sympathetic manner and the standards applied to them need not be unduly high.

- (c) Ministry of Home Affairs Office Memo No.1/1/58- RPS dated 17.5.58 speaks " On the other hand the Government of India agrees with the report of the Commissioner for Scheduled Castes and Scheduled tribes that it would be desirable to ensure that candidates belonging to Scheduled Castes and Scheduled tribes are not superseded for promotion to selection posts by the

Attested
M.L. Sankar
Adm

K.R. Sharma

25 → (ADY)

application of too rigied a standard of suitability."

(XIV) Despite of the above relaxation and directives of Govt. of India I also draw your kind attention towards the 20 points programme launched by our Hon'ble Prime Minister to acceberate the development of weaker section of the Society particularly belonging to Scheduled Castes and Scheduled tribes communities which was also not observed in this selection. The depression and oppression have been created in the mind of Scheduled Castes and Scheduled tribes candidates on the ignorance of several relaxation provided in the several aforesaid rulings.

In the end, I pray your judicious honour to look into the matter personally and award justice to me under the provisions provided to safeguard the interest and claim of Scheduled castes and Scheduled Tribes communities officers by empaelment of my name in this selection in the light of the above quoted paras.

With best regards.

Yours faithfully,

(K.R. Ahirwar)
Safety Counsellor,
Noeth Eastern Railway
Lucknow.

Dt/- 11.11.1988.

Atty
m.l. - Shukla
Paw.

TRUE COPY.

K.R. Ahirwar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD -BENCH,
ALLAHABAD.

ANNEXURE (R.A.2)

IN

REJOINDER AFFIDAVIT

IN

REGISTRATION NO. 69/87

.....

K.R, AnipwarPetitioner.

Versus

Union fo India and othera Respondent .

.....

Department of Personnel O.M. No. 8/12/69.Estt (SCT)
dated 23rd December, 1970 to all Ministries etc.

Subject:-- Relaxation of standards in favour of
Scheduled Castes/ Scheduled Tribes candidates in depar-
tmental competitive examinations for promotion and
in departmental confirmation examinations.

Attention of the Ministry of Rinance etc is
invited to Ministry of Home Affairs O.M. No. 1/1/70-Estt
(SCT) dated the 25 July 1970, in which it has been
provided that in the case of direct recruitment , whet
er by examination or otherwise, if sufficient number
of Scheduled Castes / Scheduled Tribes candidates
are not available ot the basis of the general standard
to fill all the vacancies reserved for them candidates
belonging to these communities may be selected to
fill up the remaining vacancies reserved for them

Attended
M.L. Singh
Adv.

K R A M

27
A126

provided they are not found unfit for appointment to such post of posts. A question has been raised whether relaxations in the qualifying standards could be granted to Scheduled Castes/ Scheduled Tribes candidates on the same basis in promotions made through departmental competitive examinations and in departmental confirmation examinations where such examinations are prescribed to determine the suitability of candidates for confirmation. This matter has been carefully considered and it has been decided that in promotions/ confirmations made through such examinations, Scheduled Castes/Scheduled Tribes candidates who have not acquired the general qualifying standard in such examinations could also be considered for promotions/ confirmations provided they are not found unfit for such promotions/ confirmations. In other words, the qualifying standards in these examinations could be relaxed in favour of Scheduled Castes/ Scheduled Tribes candidates in keeping with the above criterion.

K.R. Alwar

TRUE COPY

Attested
M.L. Shrivastava
Adv.

28 (ADP)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD-BENCH,
ALLAHABAD.

ANNEXURE ^{R.A} (2A)

IN
REINDER AFFIDAVIT

IN
REGISTRATION NO. 69/87

.....
K.R. AhlawarPetitioner.

Versus

Union of India and othersRespondent .

.....

Department of Personnel & A.R. O.M. No. 36011/6/79-Estt.
(SCT), dated the 19th April, 1979 to all Ministries etc

Subject:--- Relaxation of standards in the case of Schedules Caste/ Tribe candidates in qualifying examinations for promotion.

The undersigned is directed to refer to this Department's O.M.No. 36021/10/76- Estt. (SCT), dated 21-1-77 in which it has been provided that in promotions for-Scheduled made on the basis of seniority subject to fitness where there in reservation for Scheduled Castes and Scheduled Tribes in accordance with the Department of Personnel & A.R. O.M. No. 27/2/71- Estt.(SCT), dated the 27th November, 1972, and where a qualifying examination is held to determine the fitness of candidates for such promotion. suitable relaxation in the qualifying standards in such examinations should be made in the case of Scheduled Caste/ Scheduled Tribe candidates. The extent of relaxation in such cases is to be decided on each

Attested
M.L. Shukla
Adv.

1000

each occasion taking into account all relevant factors including (i) the number of vacancies reserved; (ii) the performance of Scheduled Caste/Scheduled Tribe candidates as well as general candidates in that examination; (iii) the minimum standard of fitness for appointment to the post; and also (iv) the overall strength of the cadre and that of the Scheduled Castes and Scheduled Tribes in that cadre. A question has been raised whether similar relaxation of standards could be made in favour of Scheduled Caste/Scheduled Tribe candidates in departmental qualifying examinations for promotion in cases where promotion is made by selection (and not on the basis of seniority subject to fitness). It has now been decided that in the case also of departmental qualifying examinations held for promotion to be made on the basis of selection in which there is reservation for Scheduled Castes and Scheduled Tribes in accordance with para 2(B) (b) of this Department's O.M.No. 1/12/67- Estt.(C) dated 11-7-68 and No. 10/41/73-Estt. (SCT), and dated 20-7-74 (read with relevant amending orders viz. O.M.No. 27/25/68 - Estt.(SCT), dated 25-3-70 and O.M.No. 36021/7/75- Estt, (SCT), dated 25-2-76) suitable relaxation should be made in the case of Scheduled Caste/ Scheduled Tribecandidates in the Departmental qualifying examinations in question. In such cases the extent of relaxation should be decided on each occasion whenever a qualifying examination is held taking into account all relevant factors such as those referred to at items (i) to (iv) in this office Memorandum.

Attested
M.L. Singh
A.M.

TRUE COPY

K.R. Alwar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD-BENCH
ALLAHABAD.

ANNEXURE (R.A.3)

IN

REJOINDER AFFIDAVIT

IN

Registration No.69 of 1987.

K.R. Ahirwar. Petitioner.

Versus

Union of India and others. Respondents.

.....

Government of India

Ministry of Railways

(Railway Board)

No. 82- E(SCT) /41/6

New Delhi, dated 15.11.83

The General Managers,

All Indian Railways including CLW, DLW ICF

MTP (Railways) Calcutta and G.M. (Const.)

Southern Railway, Bangalore

Wheel & Axle plant, Bangalore

The Director General, RDSO, Lucknow

The Chief Administrative Officer, Indian Railways, Diesel

Component Works, Nabha Road, Patiala (147001)

The Chairman, Railway Service Commission, Allahabad/

Bombay/Calcutta/ Madras/ Muzaffarpur/Gauhati/Secundarabad

Bangalore/Patna

The Member Secretary /RSCs

K.R. Ahirwar

Attested
M.L. Srikler
Adv.

31

A/30

-2-

The Member Secretary/ RSCs/ Trivandrum/ Bhopal/Bhuvaneshwar/
Chandigarh/ Ajmer/Ahmedabad/Ferozpur

The Principal, Railway Staff College, Vadodra

The Principal, Indian Railway Instt. of Signal Engg. &
Telecom, Secunderabad

The Principal, Indian Railway Institute of Mechanical
and Electrical Engineering, Jamalpur

The Principal, Indian Railway Institute of Advanced
track Tech., Pune

The Director, Rail Movement, Calcutta

The Joint Director, Rail Movement, Mughal sarai

The Chief Administrative Officer, MTP(Railways), New Delhi
Bombay, Madras

Rates

The Secretary, Railway/Tribunal, MTP(Rlys) Buildings,
P.H. Road, Madras-8

The Joint Director, Iron&Steel, 3 Koilaghat Street,
Calcutta

The Railway Liaison Officer, New Delhi

The General Secretary, IRCA, New Delhi

The Chief Engineer, Railway Electrification, Allahabad

The Managing Director, IRCON, 18 Rattan Jyoti, Rajendra
Place, New Delhi-110065

The Managing Director, Rail India Technical & Economic
Services Ltd., 27, Barakhamba Road, New Delhi House, New
Delhi-110001

Sub: Promotion of SC/ ST candidates against
reserved vacancies in Group 'B' (Class II)
posts- laying down minimum pass marks
for Class II in L.D.C. Es.

Attested
M. S. Shukla
Deputy

K. R. Alwar

32 ✓
#151

Attention is invited to the instructions issued vide Board's letter No.81- E (SCT)/15/26 dated 23.3.81 where in Railways were advised that Group 'B' posts in Civil Engineering, Mechanical Engineering, OSignal & Telecommunication, Electrical Engineering and in the T Transportation (Traffic) Departments should come under the purview of 'safety category' and the scheme of promoting best amongst the failures ' and the scheme of promoting best amongst the failures will not apply while filling the reserved vacancies in this group, in these Departments. The scheme was, however, to continue to apply in all other Departments.

2. On a reference made by the General Manager, Southern Railway, he was advised vide Board's D.O. No. 82-E (SCT)/41/6 dated 4.1.83 with copies endorsed to other Railways that the scheme of promoting best amongst the failed SC/ ST candidates for selection to Group 'B' posts through LDCEs would not apply to the said five safety departments. In so far as other departments are concerned, the Railways were advised that the matter was being examined further in consultation with the Department of personnel and Administrative Reforms, Ministry of Home Affairs.

3. The Instructions issued by the Department of personnel and Administrative Reforms, Ministry of Home Affairs, provide that in promotions ~~through Limited Departmental Competitive Examinations~~, through Limited Departmental Competitive Examinations, SC/ST candidates who have not acquired general qualifying standard

Attested
M.L. Ghosh
Adm.

should also be considered for promotion provided they

4132

33

-4-

are not found unfit for such promotions. The qualifying standard in such examinations could be relaxed in faour of SC/ST candidates in ~~keeping~~ with this criterion. That Department has further advised that they have not issued any instructions quantifying the amount of relaxation, which is the discretion of the appointing authority , keeping in view Article 335 of the Constitution.

4. The scheme of LDCE was introduced by the Govern- ment to encourage a faster rise of qualified junior persons and to provide some measure of job entitlements and reservation fules for SC/ST were applied to the promotions made through this scheme. No rules have so far been pres- cribed in fegard to the quantum of relaxations to be given to -SC/ST candidates in this scheme in non-safety categories. As the essence of LDCE is to recognise and award the talent, it is considered necessary to prescribe a limit for qualifying marks at these examinations in respect of SC and ST candidates. The matter has, therefore, been considered and it has been decided that the lower limit of qualifying marks be set at 3/5th of the qualifying marks prescribed for general community candidates in individual papers/ viva voce excluding marks for Record of Service based on confidential reports. For the aggre- gate also, this lower limit will be applicable . With this, the schéme of promoting the best amongst the failed SC and ST candidates should be discontinued in promotins to Group 'B' posts through LDCEs.

Please acknowledge receipt.

(D.S.NIGAH)
Addl. Director, Estt.(R)
Railway Board

.....3/-

Atty Gen
M.L. Shukla
Adm

K.R. Arora

A33

34

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD-BENCH,
ALLAHABAD.

ANNEXURE (R.A.4)

IN

REJOINDER AFFIDAVIT

IN

REGISTRATION NO.69/87

.....

K.R. Ahirwar.Petitioner.

Versus

Union of India and others. Respondent

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

23- A, THURNHILL ROAD, ALLAHABAD.

Registration No . 21 (A) of 1987

K.R. Ahirwar Union of India and others

Present :

Hon. S.S. Misra AM

Hon G. S. Sharma JM

Heard learned counsel for the applicant , He
relies on a judgement of this Tribunal in TA NOS. 22 and
22 of 1986 for admission and interim orders,

We have gone through the copy of the order placed
before us. The facts of both the cases are altogether
different . We, however, admit this petition for interim
relief. Issue notice to the respondents to shew cause

by 16.2.1987

K.R. Ahirwar

ATS
M.C. Singh
Adv

A13W

32

-2-

as to why the interim relief prayed for be not granted. In the meantime, the result of the second supplementary written test for the post of AOs/A.T.O. (Group-B), going to be held on 6-2-1987, so far as it relates to the applicant, shall not be announced.

Sd/-

AM

2.2.87

Sd/-

JM

2.2.87

K. R. Alvin

TRUE COPY

*Attested
M. L. Finkle
Adv*

137

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH AT ALLAHABAD

.....

SUPPLEMENTARY REJOINDER

IN

REGISTRATION NO.69 of 1987

R
K. R. Ahirwar - - - - - Applicant.

Versus.

Union of India - - - - - Opposite-Parties.

Supplementary Rejoinder on behalf
of the applicant is as follows :-

1. That in paragraph no.4(a) of the Reply on behalf of the opposite parties, it is stated that the post of A.O.S./A.T.O. have been classified as "Safety Category" by the Railway Board as per Railway Board's letter No.81-E(SCT)15/26 dated 23.3.1981 (wrongly mentioned as 23.1.1981).

2. That the said assertion is totally incorrect, the post of A.O.S./A.T.O has not been classified "Safety Category" and this will be clearly establish from the Railway Board letter No.E(NG)1-75/PMI/44

*Recd Copy
Anand
Aa.
3/8/87*

*ALLAHABAD
Anand
Ad 3/8/87*

*b
3/8/87*

AV38

dated 31.5.1982. A true copy of the said letter dated 31.5.1982 is annexed herewith and is marked as Annexure 'SR-I' to this Supplementary Rejoinder.

3. That it may be stated that the job of A.O.S./A.T.O. is administrative and is not connected with ~~communicated that~~ ^{directly in the working of} train operation at all. Moreover the A.O.S./A.T.Os are not inspecting officials. Further they can not be classified as Safety Categories as the same is restricted to open line (operating and maintainance staff) and loco/ Diesel/ Electricix Shed and work shops dealing with repair and maintainance. The A.O.S./A.T.O. are not covered by any of these categories. Therefore, the y can not be classified as safety categories.

Alleged:
Aunt
Adv (8/8)

4. That moreover, medical examination of who A.O.S./A.T.O.s ~~is should~~ have been promoted from Class III is different from that of the safety category staff. The medical examination of A.O.S./ATOs is done in accordance with the para 1015 of the Indian Railway ~~Exxx~~ Establishment Manual whereas for safety categories the medical examination is done in accordance with para 1018 of the ~~Rax~~ Indian Railway Establishment Manual. It is relevant to

6
31/1/82

A139

state that from para 1018 of the Indian Railway Establishment Manual which is exclusively applicable to the Class III Safety Category staff. It will be clear that the said test has not been made applicable to the A.O.S./A.T.O.S. promoted from Class III Staff who were governed by para 1015 of the Indian Railway Establishment Manual regarding their medical examination. This will also clearly established that the A.O.S./A.T.O.S. are not safety category post.

Allo...
A...
A.../18/10

5. That as per Railway Board's order circulated by N.E.Railway vide letter dated 23.6.1964. A true copy of which is attached herewith and is marked as Annexure 'SR-II' to this Supplementary Rejoinder. The Railway Officials who has worked for more than 18 months either in Selection post or non selection post can not be reverted without following the D.A.R. procedure. The applicant is working as A.O.S. since 4.2.1984 and has thus worked much more than 18 months and thus can not be reverted without following the DAR procedure. Therefore, the applicant should be deemed to have been regularised as A.O.S. and can not be reverted on the ground of non-selection as A.O.S.

01/11/0

Alto

I, verify that the contents of paragraphs nos. 1, 3, 4, of this Supplementary Rejoinder are true to my personal knowledge, and that those of paragraphs nos. 2, 5(A) of this Supplementary Rejoinder are based on perusal of record, and that those of contents of paragraphs nos. 5(B) of this Supplementary Rejoinder are based on legal advice, which all I believe to be true, that no part of this affidavit is false and nothing material has been suppressed in it.

Alto
 [Signature]
 Adv (3/8/87)

verified on this 3rd day of August, 1987 at Allahabad.

AW

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH AT ALLAHABAD

ANNEXURE- 1

IN

SUPPLEMENTARY REJOINDER

IN

REGISTRATION NO. 69 of 1987

K.R. Ahirwar Applicant.

Versus.

Union of India Opposite- Parties.

Railway Board's letter No. E(NO) 1-75/RH/44 dated 31st
May 1982.

Sub:-Filling up non-gazetted posts on Railways-
Classification of posts as Safety Categories.

*Alleged
K.R. Ahirwar
Adv (31/8/87)*

The Ministry of Railways have reviewed the posts already notified as Safety Categories posts under Board's letter of even number dated 6th June 1980 and 21st January 1981, and have decided to classify the posts as enumerated in the enclosed Annexure 'A' as Safety Categories, in ~~the~~ supersession of the above letters. Accordingly no relaxation be allowed in the prescribed qualifications, period of service and other criteria while filling up these posts. The guidelines adopted for notifying the posts as Safety Categories are as under-

- (i) The classification into Safety Categories ~~xxxxxx~~ ~~xxxx~~ should be restricted ~~Op~~ Line (Operating and Maintenance Staff) and Loco/Diesel/Electric Sheds and Workshops dealing with repair and maintenance and should not cover production units;

⓪
71.01/87

AMU

ii) The staff should be directly connected with safety in train operation ;

iii) The staff should, for most part of the time, be working independently;

iv) Entire category, irrespective of the various grades available, in the category, should be classified as Safety Category e.g., Station Masters/A.S.Ms.etc. of all ranks are included in the category of S.M. & A.S.Ms;

v) It should be restricted to Class III and Class IV posts only;

vi) Only important Inspecting Officials should be included;

vii) In Workshops only such staff should be deemed to belong to Safety Category as are directly responsible for checking the quality of workmanship.

2. It has also been decided by the Ministry or Railways that in the safety categories, the staff will be required to put in a minimum of 2 years of service in each grade before promotion to higher grade.

Operation Department:-

1. Transportation Inspectors.
2. A.S. Ms/Cabin A.S. Ms./Station Superintendent
(Non-gazetted) S.Ms./Dy. S.S.
3. Guards.
4. Yard Masters/Assistant yard Masters/Yard Foreman.

AMU
3/18/18

AWB

5. Switchmen and Shunting Jamadars.
6. Section Controllers/Dy. Chief Controllers/Chief Controllers.
7. Safety Counsellors/ Dxx Safety Inspectors.

Civil Engineering Department:-

8. Bride Inspectors.
9. Permanent way Inspectors.
10. Assistant Foreman-cum-Operator (Plassermatic Tie Tamping)
11. Operator-cum-Chargeman(Tie Tamping)
12. Section Mate, Keyman and Permanent Way Mistry.
13. Assistant Shop Superintendent (Bride Workshops).

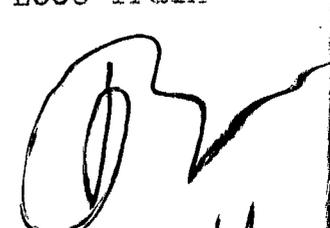
Signal and Telecommunication Department:-

14. Signal Inspectors.
15. Electric Signal Maintainer and Mechanical Signal Maintainers.
16. Assistant Shop Superintendent (Asle Counter Production and Inspection, Production and Overhauling of Relays, Tokenless Block Instrument Testing).
17. Relay Inspectors.

Mechanical/Electrical Department:-

18. Driver/ Assistant Driver/Diesel Assistant/Motorman /Tower Wagon Driver/Motor Trolley Driver.
19. Loco Foreman/Assistant Loco Foreman/Electric Foreman/Assistant shop Superintendent/Chargeman (OHE Sub-station/Remote Control/Loco Train

Approved
Date 3/10/87


21/11/87

20/2

Lighting, Air conditioning (Coach) Mech. Foreman/
Chargemen (Loco)/E. M. U. Running Sheds).

- 20. Carriage Foreman/ Wagon Foreman.
- 21. Tr Loco Inspectors/Driving Instructors.
- 22. Train Examiner (Mech./Elec./F. M. U./Loco).
- 23. Shunter.
- 24. Carriage and Wagon Inspector.
- 25. Power Controller/Traction Loco Controller/
Traction Power Controller.

Traction Sub-station Operator-

- 26. Traction Foreman/Traction Foreman (Funning).
- 27. Engine Examiner/Lubricating Supervisor.
- 28. Boiler Inspector, Boiler Foreman/Assistant
Boiler Foreman, Boiler Maker Chargemen.
- 29. Assistant Shop Superintendent concerned with
Train Lighting and Air-conditioning only.
- 30. Safety Inspectors.
- 31. Laboratory Superintendent/Chemical and Met.
Assistant.

Attested
[Signature]
[Signature]

True Copy.
.....

[Signature]
3/10/12

1145

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH AT ALLAHABAD

ANNEXURE-S.R.2

IN

SUPPLEMENTARY REJOINDER

IN

REGISTRATION NO.69 of 1987

K.R. Ahirwar Applicant.

Versus

Union of India Opposite-Parties.

~~Supplementary Rejoinder on behalf~~
~~of the applicant is as follows:-~~

North Eastern Railway

E/32/7

Office of Regional Manager
(Personnel Branch)

Gorakhpur dt. 23.6.1964.

Handwritten notes:
Dues
3/8/87

All Officers as per list 'B'

Subject:- Reversion of Employees Officiating
in Higher Grades.

Under this office letter No. E (ss) 19-71 pt VI(c)
Dated 6.2.63, copy of Board's confidential Letter No.
E(D&A) ENG-6-36 dated 30-11-1961 was sent to all officers.
As per Board's directions, efforts are to be made to ~~confirm~~
confirm staff officiating in higher grades in clear
vacancies, if they are found suitable, after trial. Over a
reasonable period not exceeding 18 months,

observed that ~~in practice~~ no proper system is ~~in~~ *It is however*

File

-2-

followed in this respect with the result that staff continue to officiate in higher grades for long periods and in several cases staff who have officiated for a number of years have been reverted on account of inefficient working. Such reversions contrary to the extant orders.

2. With a view to ensure that a proper assessment of the working of Staff officiating in higher grades is made and action to revert such employees, as are found to be unsatisfactory in work in the higher grade, is taken in time, the following procedure is being introduced for strict compliance by all concerned.

3. Whenever an employee is put to officiate in a higher post, which may be a selection post or non-selection post, his immediate superior should send an assessment report as soon as the employee has completed 6 months of officiating period. If this report is unsatisfactory a similar further report should be sent 3 months after, i.e. at the end of 9 months officiating period and again 3 months later i.e. at the end of 12 months officiating period. If the first report is satisfactory further reports need not be sent unless the employee deteriorates in the subsequent months.

4. These assessment reports should be sent on to the authority who had ordered the promotion.

ALL
Amended
Dec 27/810)

b

1147

In the case of the first and/or second report being unsatisfactory, the employee should be warned that the report on his working has been unsatisfactory and unless he makes a substantial improvement he will be liable to be reverted.

5. If the third report, at the end of 12 months period, is also unsatisfactory, he should be promptly reverted and if he is to be given a further chance even after the third unsatisfactory report, the personal sanction of a senior scale officer in the case of class IV employees and of a head of department in the case of class III employees should be obtained. Even after such sanction has been obtained and the opportunity given to the employee is of no avail, he must be promptly reverted before completing 18 months of officiating period. Orders for reversion in such cases should not be passed by an authority lower than the authority who had ordered the promotion, when an employee is reverted for inefficient working from a selection post, his name will be automatically deleted from the panel. For promotion he will have to appear before a selection board afresh. Where an employee is reverted for inefficient from a non-selection post his case should be reviewed at intervals of 6 months and if he is considered fit for promotion, he should be promoted against the next vacancy.

Atty
S. S. S. S. S.
(18/8)

6. If it is proposed to revert an employee who has completed more than 18 months officiating period other than by following the D.A.R. procedure, the personal sanction of a head of department must be obtained in the case of class IV employees and G. Ms personal

① 21/1/72

1140

sanction must be obtained in the case of class III staff.

7. Since no officiating individual whose working is unsatisfactory could have been allowed to continue beyond 18 months except under very special circumstances, confirmation must be made after 2 years of officiating period has been completed subject to permanent post being available for the purpose. In the case of staff with satisfactory reports, confirmation against available vacancies can be ordered after one year. If it is proposed to defer the confirmation of an individual after 2 years, General Manager's prior sanction should be obtained.

Handwritten signature and initials
 7/8/81

8. If an employee is not confirmed in higher grade that for want of permanent vacancy, he can not be reverted after he has completed 18 months of officiating period on the charge of unsatisfactory working except after following the D.A.R. procedure the procedure being same for a confirmation employee or an officiating employee.

9. The assessment reports referred to above should be marked "confidential" and a proper record kept of these communication. The establishment section should watch the case of each employee and initiate action when the employee completes 18 months of officiating

↑

11/19

period by putting up a note to the executive officer for the purpose.

10. The above procedure should also be followed in the case of class III employee promoted to officiate in class II. In their case , the assessment report should be sent to the Head of Department and where an officer has been reported an adversely , the paper should be to the G.M. personally for his information and orders.

Please acknowledge receipt.

Sd. S. S. Muthukrishna
for General Manager.

True Copy

Handwritten signature and date: 28/8

Handwritten signature and date: 30/10/83

Also

In the Central Administrative Tribunal Additional Bench
at Allahabad.

Supplementary Counter
On behalf of the Respondents.
To
Supplementary Rejoinder

Registration No. 69 of 1987

~~KYHK~~ K.R. Ahirwar Applicant.

vs.

Union of India and others . . . Respondents.

I, A. Tete aged about 46 years son of Sri Ignace
Tete, presently posted as Deputy Chief Personnel
Officer (Gazetted) / N.E. Railway, Gorakhpur Most
Respectfully Showeth as under :-

① 11/12/87

1. That I am presently posted as Deputy Chief
Personnel Officer (Gazetted) / N.E. Railway, Gorakhpur and
has been duly authorised on behalf of the respondents
to file the instant reply. I have carefully perused the
relevant records relating to the instant case and I am
thus fully acquainted with the facts deposed to below.

②
y. C.P.O. (Gazetted)
N.E. Railway, Gorakhpur

2. That I have carefully read the contents of the
~~application~~ ^{supplementary Rejoinder} alongwith the Annexures under reply and I
have understood the contents thereof.

AK

151

2.

3. That in reply to the contents of paragraph 1 of the supplementary rejoinder it is stated that due to inadvertance and typographical error in the Annexure, ~~rejoinder~~ R.A.-1 annexed and referred to in para 4 (a) of the earlier reply filed by the respondents, the date of the circular has been mentioned as 23.1.81 instead of 23.3.81. As a matter of fact the correct date of the issuance of such circular (Annexure R.A. 1 to the earlier reply) is 23.3.81 and the same should be read as the same.

4. That in reply to the contents of paragraph 2 of the Supplementary Rejoinder it is stated that the circular referred to therein is not at all relevant for the purposes of the instant case because in the instant case the matter in controversy relates to promotion from Class III to Class II post i.e. from Non-Gazetted to the Gazetted post and for that purpose the guidel-ines issued by the Railway Board vide Circular dated 23.3.1981 (Annexure R.A.-1 to the earlier reply) is applicable and not the one referred in paragraph 1 under reply. In this regard the subject of the letter (Annexure 1 to the

C.P.O. (Gazetted)
Railway, Gorakhpur

AD

[Handwritten signature]

1152

3.

rejoinder which s-tates that the ~~letter~~ ~~Annexure~~ ~~is~~
~~in the supplementary rejoinder~~

same is for filing up " Hon.Gazetted post on
 Railway's - classification of post as Safety Categories
 " and para 1 (v) of the said circular (Annexure 1
 to the supplementary rejoinder) which further stipulates
 that " It should be restricted to class III and Class
 IV post are referred to which duly establishes the
 point tha t the same is meant for Class III post only.

5. That the contents of para 3 of the supplemen-
 tary rejoinder are not admitted and are emphatically
 denied in the form they stand. In reply thereof the
 contents of para 4 of the earlier reply are reiterated.
 However it is further submitted that the post of
 A.O.S./A.T.O. being a Gazetted post of the Transportation
 department the incumbent is required to perform various
 other open line Inspection and duties besides
 Administrative functions and it is entirely incorrect
 to allege the contrary and they are denied.

(Signature)

(Signature)

MS

4.

6. That in reply to the contents of paragraph 4 of the supplementary rejoinder it is stated that in the selection in question the medical examination was done as per extent rules prescribed for the post in question and any allegations to the contrary are not admitted and are denied.

7. That in reply to the contents of paragraph 5 of the supplementary rejoinder are not admitted and are emphatically denied in the form they stand. In reply thereof the contents of para 4 of the earlier reply filed on behalf of the respondents are reiterated. However it is further submitted that as the petitioner was promoted provisionally subject to the approval of the Railway Board, the benefit of circular in question as referred to in paragraph 4 of the reply is not legally available to the petitioner. Any allegations to the contrary are and are denied.

Dy. G.P.O. (Gazetted)
W. Hallway, Gorakhpur

I, A. Tete, Deputy
Officer (Gazetted) / N.E.
do hereby

verify and declare

A134

5.

contents of paragraphs 1 and 2 of the supplementary counter are true to my personal knowledge, and those of paragraphs 3 to 7 of this affidavit are true according to the records of the case which all I believe to be true that no part of it is false and nothing material has been concealed in it.

Dy. C.P.O. (Gazetted,
N. Malviya, Gorakhpur

Anant Kumar Singh
Kler
10.12.87

1st Copy for Tribunal

21/5

In the Central Administrative Tribunal, Allahabad

Misc. Appeal No. 835 of 1990

Original application no. 69/87 connected with

Original application no. 260/89

K.R. Dhirwar

Vs.

Union of India and others

... Applicant

... Respondent

*Filed today
21/5/90*

Take notice that the court will be moved on 28/5/90 at 10.30 O'Clock in the forenoon or soon thereafter as the parties or their Counsel shall be heard.

The object of the motion is enclosed.

Dated: 19 -5-1990

(Signature)

Applicant.

*Pradyumn
Ahoorah*

To:

1. Sri A.V. Srivastava,
Advocate Central Administrative Tribunal Allahabad
Counsel for the Respondent.
2. Sri Lalji Sinha,
Advocate Central Administrative Tribunal, Allahabad
Counsel for the Respondent.

*Received Note
21/5/90
Counsel for Respondent*

*Received copy
Pratik S. Thakur
for Sri Lalji Sinha
21.5.90*

*SO (J)
Put up this appli.
before court for orders
on 28-5-90 as prayed*

*21/5/90
DR (J)*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

Misc. Application No. 835 of 1980

in

Original application No. 69/87

K.R. Ahirwar

... Applicant

Vs.

Union of India and others

... Respondent

Decided on 6.11.1989

INDEX OF PAPERS FILED

<u>S. No.</u>	<u>Description</u>	<u>Pages from - to</u>
1.	(a) Application in terms of orders passed by Hon'ble S.C. dated 9.4.1990.	1 -
	(b) Copy of order dated 9.4.1990 passed by Hon'ble Supreme Court.	2 - 3
2.	Application for amendment of original application.	4 - 6
3.	(a) Application for condoning delay in filing amendment in original application.	7 - 9
	(b) Affidavit.	10 - 11
4.	Application of transfer of case for hearing at Lucknow.	12
5.	Vakalatnama.	13

Dated: 19-5-1990

Applicant.

(Signature)
Totallyas
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH,
ALLAHABAD.

Misc. Application No. 835 of 1990

in
Original application No.69/87 connected with
Original application No.260/89

K.R. Ahirwar

... Applicant

Vs.

Union of India & others

... Opp. Parties

Decided on 6.11.1989

Application in terms of order passed by Hon'ble Supreme Court in Civil appeal No. 1887 for SLP No.761 of 1990.

The applicant most respectfully begs to submit as under:-

1. That the Hon'ble Supreme Court on 9.4.1990 has set aside the order passed by the Hon'ble Tribunal on 6.11.89.
2. That in view of the order passed by the Hon'ble Supreme Court the case has to be heard afresh as directed. The copy of the order is filed herewith.

Wherefore, it is respectfully prayed that the O.A. No.69/87 may be heard afresh as directed by the Hon'ble Supreme Court.

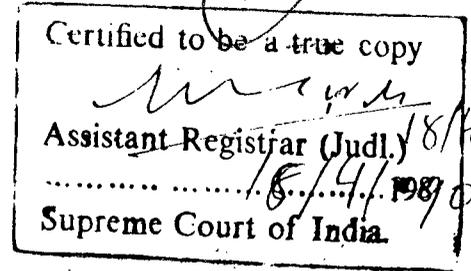
Dated: 19.5.1990

Encl: Copy of the judgement of Hon'ble Supreme Court dt. 4.9.90


Applicant

Roshly
Ahwar

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION



Civil Appeal No. 1887 of 1990
(Arising out of Special Leave Petition (Civil)
No.761 of 1990)

244567

K.R. Ahirwar

....Appellant

Versus

Union of India & Ors.

....Respondents

O R D E R

Heard both the parties. Special Leave granted.

The Central Administrative Tribunal, Allahabad, by its order dated 6.11.1989 dismissed O.A. 69 of 1987 filed before it by the appellant holding that the order dated 21.2.1985 assailed in the proceedings had been duly communicated to the appellant on 14.3.1985 and that, therefore, the application filed before the Tribunal after a considerable lapse of time was barred by time. The Tribunal observed that the fact that the communication of 14.3.1985 had been duly served on the appellant "had not been denied anywhere". But Sri Ramamurthi,

[Signature]
Applicant

True copy filed
Alles Locally
A. Venk

3
A/S

learned counsel, pointed out that appellant in his rejoinder before the Tribunal had, in para 3(K) thereof, expressly denied that the letter dated 14.3.1985 was served on him.

In view of this infirmity in the reasoning of the Tribunal, learned counsel for both sides stated before us that the order dated 6.11.1989 of the Tribunal be set aside and the matter remitted to it to decide the question of limitation afresh. Accepting this submission, we set-aside, the order under appeal and remit the matter to the Tribunal for such fresh disposal. The Tribunal is directed to dispose of the matter within three months from today.

Sdf
.....J.
(M.N. VENKATACHALIAH)

Sdf
.....J.
(K.JAYACHANDRA REDDY)

New Delhi;
April 9, 1990.

*True copy of order
K. Jayachandra Reddy
A/S*

[Signature]
Applicant

4
A/c

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Amendment

Misc. Application No. 853 of 1990

in

Original application No. 69/87

K.R. Ahirwar

... Applicant

Vs.

Union of India and others

... Opp. Parties

Decided on 6.11.1989

Application for ammendments in original application.

It is most humbly submitted as under:-

1. That the letters dated 21.2.85 and 14.3.1985 were never served upon the applicant and it is through counter affidavit that the applicant came to know about them for the first time on 31.3.1987 when the copy of the counter affidavit was delivered to the applicant.
2. That since during the pendency of the O.A. No.69/87 reliance has been placed on the letters dated 21.2.85 and 14.3.1985 therefore it is necessary to make suitable consequential amendments in the original application no. 69/87 in para 7 Appendix A and relief para so that no complication or technical defect may arise.
3. Wherefore it is most humbly prayed that the following amendments may kindly be allowed to be incorporated in the O.A. No.69/87.

(Handwritten mark)

contd ... 2

5
A/12/

List of amendments

- (a) That the following may be allowed to be added in para 7 Appendix A by way of para 12(a) & 12(b):-
- "Para 12(a) that the letter dated 21.2.1985 and 14.3.1985 as annexure RA 5 and RA 6 in the counter affidavit were never served on the applicant and in fact ~~no proof have no proof~~ the opposite party have no proof of service of the these letters on the applicant. In fact the General Manager, opposite party no.2, did not know about these letters. Had he known about them he would have never allowed the applicant to pass efficiency bar test on 3.4.86 and allowed the applicant to pass the Orientation course, which is only permisble for regular class II officers on 25.9.87. This shows that these letters were not sent to the applicant and were not acted upon by the opposite parties and remain idle otherwise the applicant would have not been treated as regular incumbant, subsequent to these letters".
- "Para 12(b). That the orders contained in the Annexure RA 5 and RA 6 were passed behind the back of the applicant and no opportunity or show cause was given to the applicant for deleting the name of of the applicant from the approved Panel."
- (b) That the following may be allowed to be incorporated in the application in relief para 8 by way of relief (aa) after relief (a):-

①

6
A/62

"(aa) That the orders contained in letter dated 21.2.85 and 14.3.1985 as annexure RA 5 and RA 6 and to the counter affidavit may also be quashed."

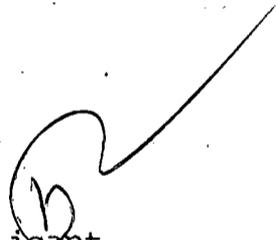
Dated: 19. 5. 1990


Applicant.

VERIFICATION

K.R. Ahirwar
Witness
Present for the Applicant

I, K.R. Ahirwar, the applicant above named do hereby verify that the contents of para 1 to 3 of the application are true to my personal knowledge. Signed and verified this 19th day of May 1990 in the court compound at Lucknow.


Applicant.

7
A/EB

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Condonation of delay

Misc. Application No. 254 of 1990

in

Original application No. 69/87

K.R. Ahirwar

... Applicant

Vs.

Union of India and others

... Respondent

Decided on 6.11.1989

Application for condonation of delay u/s 21 of the
Administrative Tribunal Act 1985.

The applicant most respectfully begs to submit
as under:-

1. That Hon'ble Supreme Court has remanded the case for fresh decision on the question of limitation.
2. That in counter affidavit the opposite parties filed letters dated 21.2.85 and 14.3.1985, but the applicant in his rejoinder affidavit denied the receipt of these letters. In fact these letters were never given to the applicant and the applicant never received them. No mention of these letters was made in letter dated 20.5.1986, 14.7.86 and 22.1.87 since no letter was given to the applicant. Therefore there was no question of challenging it. The letter dated 21.2.85 was for the first time shown to the applicant on 31.3.87 when counter affidavit was filed, thereby knowing that the name has been deleted by Railway Board's letter dated 21.2.1985 was not sufficient for challenging the same unless the letter was shown and given to the applicant.

contd ... 2

3

1164 8

3. That on 31.3.87 when the copy of the counter affidavit was delivered to the applicant the letter dated 21.2.1985 and 14.3.1985 were found annexed to counter affidavit as annexure RA 5 and RA 6 and it is for the first time that the applicant saw these letters on 31.3.87 when the copy of the counter affidavit was given to the applicant and prior to it the applicant had no knowledge about it.

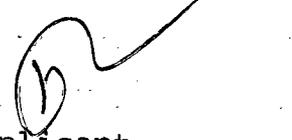
4. That it also appears from the conduct of the opposite parties that they had no knowledge about these letters dated 21.2.85 and 14.3.85 as they did not act upon it and treated applicant as regular incumbent for which purpose they allowed the applicant to pass Efficiency Bar Test on 3.4.86 and allowed the applicant to pass Orientation Course which is meant for regular incumbents. The applicant passed the E.B. Test and passed the Orientation course on 3.4.86 and 25.9.87 respectively. Thus these letters remain idle and were not acted upon and as such the applicant had no knowledge of these letters.

5. That on 31.3.1987 the petition was pending and since the applicant had no knowledge about the said two letters, therefore these letters were not challenged. It is pertinent to mention that the letter dated 14.3.85 which is alleged to have been endorsed to the applicant and which was not received by the applicant does not mention the reference of letter dated 21.2.85.

9
A/65

6. That the applicant has moved for the suitable amendment in the application for challenging these said two letters which were in fact challenged in the rejoinder affidavit immediately after.
7. That for the reasons mentioned above no application for condonation of delay could be made.
8. That if at all there is delay in challenging the letters dated 21.2.85 and 14.3.1985 subsequent to 31.3.87, the same is liable to be condoned.
9. Therefore it is respectfully prayed that the delay if any in challenging the letters dated 21.2.85 and 14.3.85 annexed as RA 5 and RA 6 may be condoned.

Dated: 19. 5. 1990


Applicant.

*Tracy
Ahirwar*

VERIFICATION

I, K.R. Ahirwar, applicant above named do hereby verify that the contents of para 1 to 9 of the application are true to my personal knowledge. Verified and signed on this 19th day of May 1990 in the court compound at Lucknow.


Applicant.

AKG 10

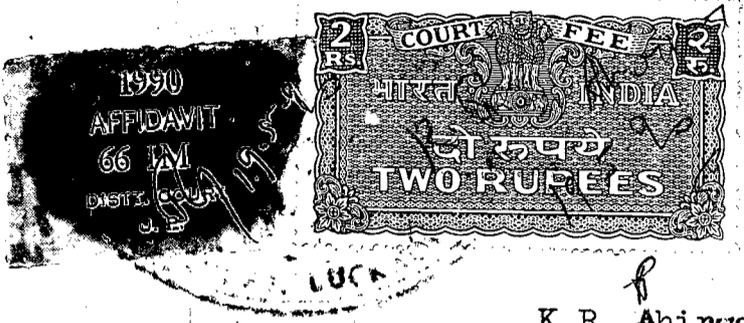
Affidavit in support
of Application

In the Central Administrative Tribunal, Allahabad.

Misc. application No. 85 of 1990

In

Original application No. 69/87



K.R. Ahirwar

Applicant

Versus

Union of India & others Respondent.

AFFIDAVIT

In support of application for condoning delay
in filing application for ammendment in original
application.

I, K.R. Ahirwar aged about 53 years son of
Late Sri Param Lal r/o 11 B, Rafi Ahamed Kidwai
Marg, Lucknow do hereby affirm and state on oath
as under :-

1. That the deponent is applicant and he is
conversant with the facts of the case.
2. That the contents ~~surex~~ of paras 1 to 9 of the
application for Condenation of delay in
filing ammendments in original application
are true to the personnal knowledge of the
deponent.

Lucknow

Dated : 19.5.1990


Deponent.

Verification

I, K.R. Ahirwar, the deponent above2/



8163 / 11

named do hereby verify that the contents of para 1 to 2 of this affidavit are true to my personal knowledge.

Virified and signed on this 19th day of May 1990 in the court compound of Lucknow.

Deponent

I, Mohd Ilyas Advocate, 5- RABazar Centt Lucknow know the Deponent ~~KK~~ R.R. Ahirwar who has signed before me.

BS
19.5.90

Mohd Ilyas
(Mohd Ilyas)

Advocate)

C.N. 66IM

11:00 P.M. K.R. Ahirwar
Mohd. Ilyas Advocate

19.5.90

ATC
ATC
12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD

Transfer

Misc. application No. 855 of 1990

in

Original application No. 69 of 87

K.R. Ahirwar

... Applicant

Vs.

Union of India and others

... Respondent

Decided on 6.11.1989

Application for transfer of case for hearing at
Circuit Bench, Lucknow.

The applicant most humbly begs to submit as under:-

1. That the applicant is resident of Lucknow and the cause of action accrued to the applicant while he was posted at Lucknow.
2. That Mohd Ilyas Advocate, Counsel for the applicant has to come from Lucknow to Allahabad for attending the hearing.
3. That the cause of action accrued to the applicant at Lucknow.
4. That it is just and expedient for the convenience of the applicant and transfer the case for hearing at Circuit Bench, Lucknow.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD

MCC ATC 12

Transfer

Misc. application No. 855 of 1990

in

Original application No. 69 of 87

K.R. Ahirwar

... Applicant

Vs.

Union of India and others

... Respondent

Decided on 6.11.1989

Application for transfer of case for hearing at
Circuit Bench, Lucknow.

The applicant most humbly begs to submit as under:-

1. That the applicant is resident of Lucknow and the cause of action accrued to the applicant while he was posted at Lucknow.
2. That Mohd Ilyas Advocate, Counsel for the applicant has to come from Lucknow to Allahabad for attending the hearing.
3. That the cause of action accrued to the applicant at Lucknow.
4. That it is just and expedient for the convenience of the applicant and transfer the case for hearing at Circuit Bench, Lucknow.
5. Wherefore it is prayed that the Hon'ble Tribunal be pleased to transfer the case for hearing at Circuit ~~House~~ Bench, Lucknow.

Dated: 19 -5-1990

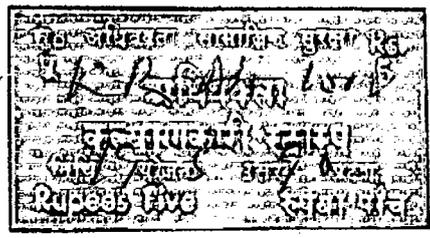
Applicant

*Mohd Ilyas
Advocate*

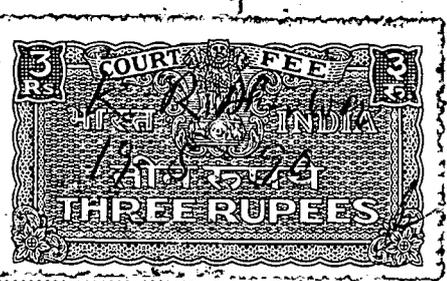
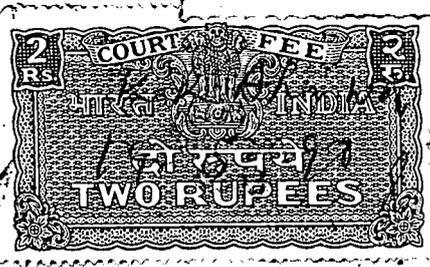
In the Central Administrative Tribunal Allahabad

ब अदालत श्री
[वादी अपीलान्ट]
प्रतिवादी [रेस्पांडेन्ट]

महोदय 169



का वकालतनामा



वादी (अपीलान्ट)

K. R. Aherwar

Applicant

Union of Indecis Sokers बनाम

प्रतिवादी (रेस्पांडेन्ट)
Respondent

नं० मुकद्दमा

सन्

पेशी की ता०

१६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री Mohd. Ilyas Advocate

5. R.A. Baxay Cauth. Quelnow

वकील

महोदय एडवोकेट

नाम अदालत
मुकद्दमा नं०
नाम फरीकन

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया लसूव करें या मुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करे मुकद्दमा उठावे या कोई रुपया जमा करे या हारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करे—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसको जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

Acceptance
K. R. Aherwar
Respondent

हस्ताक्षर...
(K.R. Aherwar)

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक
स्वीकृत

17

महीना

5

सन् १९९०ई०

VAKALATNAMA

Central Administrative Tribunal
Add. Bench, Allahabad

Before
in the Court of

Registration No 67 of 1987

K.R. Aherwar Plaintiff
Defendant

Claimant
Appellant

Versus

Union of India & ors Defendant
Plaintiff

Petitioner
Respondent

The President of India do hereby appoint and authorise Shri. A.V. Srivastava
Railway Advocate, Allahabad

..... to appear, act, apply, plead in and prosecute the above described suit/appeal/proceeding on behalf of the Union of India to file and take back documents, to accept processes of the Court, to appoint and instruct Counsel, Advocate or Pleader, to withdraw and deposit moneys and generally to represent the Union of India in the above described suit/appeal/proceedings and to do all things incidental to such appearing, acting, applying, Pleading and prosecuting for the Union of India SUBJECT NEVERTHELESS to the condition that unless express authority in that behalf has previously been obtained from the appropriate Officer of the Government of India, the said Counsel/Advocate/pleader or any Counsel, Advocate or Pleader appointed by him shall not withdraw or withdraw from or abandon wholly or partly the suit/appeal/claim/defence/proceeding against all or any defendants/respondents/appellant/plaintiff/opposite parties or enter into any agreement, settlement, or compromise whereby the suit/appeal/proceeding is/are wholly or partly adjusted or refer all or any matter or matters arising or in dispute therein to arbitration PROVIDED THAT in exceptional circumstances when there is not sufficient time to consult such appropriate Officer of the Government of India and an omission to settle or compromise would be definitely prejudicial to the interest of the Government of India and said Pleader/Advocate or Counsel may enter into any agreement, settlement or compromise whereby the suit/appeal/proceeding is/are wholly or partly adjusted and in every such case the said Counsel/Advocate/Pleader shall record and communicate forthwith to the said officer the special reasons for entering into the agreement, settlement or compromise.

The President hereby agree to ratify all acts done by the aforesaid Shri. A.V. Srivastava
Railway Advocate, Allahabad

in pursuance of this authority.

IN WITNESS WHEREOF these presents are duly executed for and on behalf of the President of India this the day of Feb 1987

Dated 198

(A. Tette)
Dy. Chief Personnel Officer (2)
Designation of the Executive Officer,
N.E. Railway
Gwalchpur

170
CN
168
16/2/87

NS/CCS

VAKALATNAMA

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL CIRCUIT BENCH,
LUCKNOW.

Before
in the Court of

M.A. No.

fo 1990

Plaintiff
Defendant

K.R. Ahirwar

Claimant
Appellant

Versus

Defendant
Plaintiff

Union of India and others.

Petitioner
Respondent

The President of India do hereby appoint and authorise Shri... A.N.Verma, Railway.....
Advocate, Lucknow

.....to appear, act, apply, plead in and prosecute the above described suit/appeal/proceeding on behalf of the Union of India to file and take back documents, to accept processes of the Court, to appoint and instruct Counsel, Advocate or Pleader, to withdraw and deposit moneys and generally to represent the Union of India in the above described suit/appeal/proceedings and to do all things incidental to such appearing, acting, applying, Pleading and prosecuting for the Union of India SUBJECT NEVERTHELESS to the condition that unless express authority in that behalf has previously been obtained from the appropriate Officer of the Government of India, the said Counsel/Advocate/pleader or any Counsel, Advocate or Pleader appointed by him shall not withdraw or withdraw from or abandon wholly or partly the suit/appeal/claim/defence/proceeding against all or any defendants/respondents/appellant/plaintiff/opposite parties or enter into any agreement, settlement, or compromise whereby the suit/appeal/proceeding is/are wholly or partly adjusted or refer all or any matter or matters arising or in dispute therein to arbitration PROVIDED THAT in exceptional circumstances when there is not sufficient time to consult such appropriate Officer of the Government of India and an omission to settle or compromise would be definitely prejudicial to the interest of the Government of India and said Pleader/Advocate or Counsel may enter into any agreement, settlement or compromise whereby the suit/appeal/proceeding is/are wholly or partly adjusted and in every such case the said Counsel/Advocate/Pleader shall record and communicate forthwith to the said officer the special reasons for entering into the agreement, settlement or compromise.

The President hereby agree to ratify all acts done by the aforesaid Shri.. A.N.Verma, Railway
Advocate, Lucknow

in pursuance of this authority.

IN WITNESS WHEREOF these presents are duly executed for and on behalf of the President of India this theday of.....198 .

Dated198

NER-84850400-8000-4 7 84

Accepted

.....
Designation of the Executive Officer,
(K.N.Dhusia)

.....
Chief Personnel Officer (Gaz
North Eastern Railway,
Gorakhpur.

Adn

169

171

169

21/10/90