

CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

O.A.No.873/1999.

Dated this Friday the 25th Day of June, 2010.

Coram : Hon'ble Shri Jog Singh, Member (J)
Hon'ble Shri Sudhakar Mishra, Member (A).

1. Gyanendra Singh Kushwaha,
working as Inspector of
Works Gr.III under Deputy
Chief Engineer (Const.),
Pune.
Resident of Railway Quarter
No.MS/RB/II/T/13,
Tadiwala Road, Pune (M.S.).
2. Manoj Kumar Shrivastava,
working as Inspector of
Works Gr.III under Deputy
CE (Const.) DR-I.
Resident of Railway Quarter
No.MS/RB/II/1011/5, Waldhuni,
Kalyan (E), Kalyan,
Maharashtra.
3. D.K. Shrivastava,
working as Inspector of Works
Gr.III under Dy. CE(C) Panvel.
Resident of Railway Colony,
Central Railway,
Pandharpur, Dist. Solapur.
Maharashtra.
4. Sandeep Shrivastava,
working as Inspector of Works
Gr.III under Dy. CE (Const.),
Panvel.
Resident of Railway Colony,
Pandharpur, Dist. Solapur,
Maharashtra.
5. Arvind Kumar Gupta,
working as Inspector of Works
Gr.III under Dy. Chief Engineer
(Const.), Pune.
Resident of Railway Quarter
No.MS/RB/II/D/S,
Tadiwala Road,
Pune (Maharashtra).
6. Shri Arun Singh,
working as Inspector of Works
Gr.III under Dy. CE (C) DR-II,
Resident of Railway Quarter
No.MS/RB/I/H/14, Kalwa (West),

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Dist.Thane. Maharashtra.

7. R.S. Sengar,
working as Inspector of Works
Gr.III under Dy. CE (C), Panvel.
Resident of PL-5/51, Flat No.10,
Sector 17, New Panvel-410 206.
8. Balveer Singh,
working as Inspector of Works
Gr.III under Dy.CE (Const.)
DR-I.
Resident of Railway Colony
No.RB/II/D/4, Kalwa (West),
Kalwa Dist. Thane.
9. Arvind Khare,
working as Inspector of Works
Gr.III under Dy. CE (C) DR-II.
Resident of Railway Colony
No.MS/RB/I/H/14, Kalwa (West),
Kalwa, Dist.Thane.

.. Applicants.

(By Advocate Shri R. Ramamurthy).

Versus

1. Union of India, through
the General Manager,
Central Railway, CST,
Mumbai - 400 001.
2. The Chief Personnel Officer,
Central Railway, CST.,
Mumbai - 400 001.
3. The Chief Administrative Officer,
(Const.), Central Railway,
CST., Mumbai - 400 001.
4. The Secretary,
Railway Recruitment Board,
Mumbai Central,
Mumbai - 400 008.
5. The Secretary,
Railway Board,
Ministry of Railways,
Rail Bhavan,
New Delhi - 110 001.
6. The Divisional Railway
Manager, Jabalpur Division,
West Central Railway,
Jabalpur, M.P.
7. N.M. Shinde,
Section Engineer

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(Works Maintenance),
Miraj Railway Station,
Central Railway,
Dist. Sangli,
Maharashtra.

8. S.K. Srivastava,
Jr. Engineer
(Works Maintenance) (South),
C/o.ADEN (Works) (South),
DRM Office Compound,
West Central Railway,
Jabalpur Station,
Jabalpur, M.P.
9. S.K. Vishwakarma,
Jr. Engineer (Works),
C/o.ADEN (Works),
(South), West Central Railway,
Jabalpur Station (South),
DRM Office Compound,
Jabalpur, M.P.

.. Respondents.

(By Advocate Shri S.C. Dhawan).

O R D E R

Per : Shri Sudhakar Mishra, Member (A)

The 9 applicants herein were working as Inspector of Works Grade III (herein after IOW Gr.III) at various stations of the Central Railway, as on the date of filing this application. Though appointed as IOW Gr.III/Jr.Engineer (Works-II) with effect from 01.07.1998, through this O.A. they claim seniority from earlier dates.

2. The factual background of this O.A. is somewhat crowded. The applicants were initially recruited between the year 1985 to year 1987 as daily rated Highly Skilled Technical Mistries (HSTM) under the Gwalior Division of Central Railway. In the year 1988 their services were ordered to be terminated as there was no further sanction for continuation of their posts. Thereupon, alongwith certain other colleagues, the applicants filed Writ Petition No.965/1988 before the Hon'ble Supreme Court of

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India. As claimed before us, in the said Writ Petition the applicants had claimed relief, inter alia, of regularisation of their services as IOW Gr.III because they were actually carrying out duties of IOW. The Hon'ble Supreme Court disposed of that Writ Petition, alongwith a few other apparently similar Writ Petitions, as per judgment and order dated 03.05.1989 which is reproduced hereunder:-

"Learned counsel appearing on behalf of the respondents agrees that the petitioners will be given an opportunity to appear before the Railway Recruitment Board for their selection to posts in accordance with their suitability and qualification for such post. In such selection there will be no question of age bar. So long as such an opportunity is not given, the respondents are restrained to terminate the services of the petitioners. The Writ Petitions are disposed of as above. There will be no order as to costs." (emphasis supplied)

2.1 Pursuant to the Hon'ble Supreme Court's directions the respondents individually advised the applicants through letter dated 25.04.1991 to apply for the post of IOW Gr.III in response to the Railway Recruitment Board, Mumbai Employment Notice No.1/1991. But, however, the applicants did not apply in response to the advice of the respondents. Instead, the applicants filed O.A.161/1994 before the coordinate Bench of this Tribunal at Jabalpur seeking grant of pay scale of IOW Gr.III.

2.2 In connection with that O.A. the applicants had submitted that the advice concerned had not provided for age relaxation to be accorded to the applicants. As such, being afraid of rejection of their application, the applicants had not responded to the aforesaid letter dated

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25.04.1991 of the respondents. The applicants had also pointed out that some similarly situated persons working under the South Eastern Railway and Metro Railway were regularised and absorbed as Inspector of Works through a Selection Board in terms of SE Railway order dated 17.9.1992. Considering this submission and in the facts and circumstances of the case the Jabalpur Bench of this Tribunal had held and directed as under as per its order dated 27.07.1994.

"6. In the conspectus of the facts and circumstances discussed above, it is evident that the prayer of the applicants for grant of the pay scale of Inspector of Works Grade-III cannot be entertained at this stage, as it is dependent upon their regular appointment in that post. However, we are of the view that the respondents have not given an effective opportunity to the applicants in terms of the apex Court inasmuch as age relaxation has not been specifically accorded in terms of that order.

7. Accordingly, we direct the respondents to consider the regularisation of the applicants in the post of Inspector of Works Grade-III by giving them an effective opportunity to appear before the Railway Recruitment Board for regular selection. As an alternative, we direct them to consider extending to the applicants the same treatment as has been meted out to similarly placed persons by the South Eastern Railway. These directions shall be complied with within a period of three months of the communication of this judgment." (emphasis supplied)

2.3 Apparently because the respondents did not do purposive follow up, the applicants filed yet another O.A. before the Jabalpur Bench bearing No.398/1995. The Tribunal disposed of that O.A. as per its order dated 29.02.1996. The Tribunal was of the view that the respondents have not been sincere about following up the

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directions of the Hon'ble Supreme Court of India as given in their order dated 03.05.1989. The Tribunal did notice that in case of appointment to IOW Gr.III the recruitment was to be done by the Railway Recruitment Board but the South Eastern Railway had done the recruitment through a Screening Committee appointed for the purpose. In view of the delay in implementation of the directions of the Hon'ble Supreme Court and seeming lackadaisical approach of the respondents, the Tribunal held and directed as under:-

".....In view of the above facts and circumstances we direct the respondents to constitute a Screening Committee and consider the case of the applicants as permissible under the law as has been done by South Eastern Railway within four months from the date of communication of the order....." (emphasis supplied)

2.4 The above said decision dated 29.02.1996 of the Tribunal was challenged by the respondents before the Hon'ble Supreme Court by filing Civil Appeal No.1769/1997 which was disposed of by the Hon'ble Supreme Court as per judgment and order dated 24.02.1997. The same is reproduced hereunder:-

"Leave granted.

We have heard learned counsel on both sides.

Pending the appeal, the written examination has been conducted by the appellants and the result thereof is awaited. In that view of the matter, without expressing any opinion on merits in the matter, the appeal is disposed of with the direction that the appellants would take further action pursuant to the result of the examination according to rules. No costs."

2.5 The respondents had conducted a written test for the applicants on 12.02.1997 and also a viva-voce test on

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12.05.1997. All the applicants were successful in those tests. The panel of successful candidates was notified on 01.07.1997. In that notification it was declared that the successful candidates have to pass necessary initial training course at the Zonal Training Centre, Bhusawal, during the period of one year and that their eventual seniority will be assigned according to the merit position assigned by the Zonal Training Centre, Bhusawal and not according to the merit list as declared in the panel. It was further declared that if any of them was found unsuitable or failed in Zonal Training Centre, Bhusawal their services were liable to be terminated without notice. The applicants joined the Zonal Training Centre, Bhusawal and all of them successfully completed training. Only after that they were posted on regular basis with effect from 01.07.1998 as per order dated 05.11.1998 of the Central Railway, Mumbai. The applicants had earlier been transferred to the Mumbai Division.

2.6 After joining at their designated posts applicants made a representation dated 14.01.1999 seeking grant of seniority from the respective dates of their initial appointment as HSTM and followed it up with a reminder. Soon thereafter the applicants filed the O.A. presently under consideration. The Tribunal disposed of the O.A. as per order dated 02.07.2003, by dismissing it. The operative part of the order is reproduced hereunder:-

"10. In our view, the contentions as put forth by the learned counsel of the applicants are not tenable because the Hon'ble Supreme Court has given direction to regularise the applicants only by holding screening or selection by interviews.

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11. As far as determination of seniority is concerned, the same has to be determined in accordance with rules which provide for the determination of seniority. In accordance with Rule 303, the respondents had rightly determined the seniority and the application of the said rule has not been assailed to that extent. It is only the question of delay on the basis of which the applicants claim that their earlier service should be counted for the purpose of seniority. Since the rules which govern the seniority do not permit counting of earlier service to which applicants were appointed by not following the due procedure. So we are of the considered view that counting of their service rendered by them prior to regularisation for the purpose of seniority can not be allowed. Thus, we are of the considered opinion that the OA. of the applicants has no merit at all and no interference is called for, accordingly the OA. is dismissed. No costs."

2.7 Being aggrieved by the Tribunal's order dated 02.07.2003 the applicants had filed Writ Petition No.1236/2004 before the Hon'ble High Court of Bombay which was disposed of as per judgment and order dated 11.08.2008 of the High Court. The High Court have remitted the O.A. back to the Tribunal for denovo consideration and decision in accordance with law. The applicants were also granted liberty to amend the O.A. if so advised. Before setting aside the Tribunal's order as aforesaid, the Hon'ble High Court have observed as under:-

"3. We have heard the learned counsel for both sides. We pointed out to the learned Counsel that no fault can be found with the order of the tribunal in declining to grant relief to the Petitioners, because grant of such relief is contrary to Rule 303 of the Rules Regulating Seniority of Non-Gazetted Railway Servants. The learned Counsel, therefore, expressed his willingness to challenge the validity of Rule 303 before the Tribunal, so that the Tribunal can read down the Rule and pass appropriate order thereon. According to the learned Counsel despite specific directions

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issued by the Supreme Court in 1989, by taking technical objections from time to time the Petitioners were not permitted to appear before the Selection Board till 1997 and therefore, according to the learned Counsel there is no justification for excluding the period that was taken by the Railway in implementing the Supreme Court's order. Prima-facie we find substance in the submission of the learned counsel. However, in our opinion, unless the validity of the Rule is challenged, the Tribunal will not be in a position to read down the Rule. Therefore, in view of the willingness of the Petitioners and the submissions noted above, in our opinion, the following order would meet the ends of justice.

O R D E R

(i) The order impugned in the petition is set aside.

(ii) Original Application No.873 of 1999 is remitted back to the Central Administrative Tribunal for denovo consideration and decision in accordance with law.

(iii) In case the Petitioners apply for amendment in their O.A., the Tribunal shall consider that application in accordance with law.

(iv) Rule made absolute accordingly. No order as to costs."

2.8 Pursuant to the Hon'ble High Court's order the applicants have made some amendments in the pleadings. They have also challenged the Rule 303 of the Indian Railway Establishment Manual (herein after IREM) and have made a prayer for reading down the said Rule.

2.9 Before moving on to the pleadings and submissions made by the parties, certain details about the applicants selection and appointment as IOW Gr.III ought to be included in this order. As referred to under Paragraph 2.5 above, after selection of the applicants for appointment as IOW Gr.III the panel of successful candidates was notified

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on 01.07.1997. That was in fact a gazette notification.

The same is reproduced hereunder:-

"(iii) HPB/661/RE/IOW-III.-In pursuant to OA No.398/95 and CAT Jabalpur's orders dated 29.02.1996 and as a result of written test held in this office on 12.02.1997 and Viva-voce test on 12.05.1997, the undermentioned candidates are placed on the panel for promotion to the post of Apprentice IOW/Jr. Engineer-II Gr.Rs.1400-2040 (RPS) against 75% direct recruitment quota, subject to the following terms & conditions.

(i) They will have to pass necessary initial training course at ZTC/BSL during the period of one year,

(ii) Their seniority will be assigned according to the merit position assigned by ZTC BSL and not according to merit declared in the panel.

(iii) If any of them is declared unsuitable or failed in ZTC training their services are liable to be terminated without notice.

GENERAL CANDIDATES :

Outstanding : Nil

Other than Outstanding :

Sr. No.	Name	Place of work	Merit order position
1.	Sandip Srivastava	Dy.CE(C) GWL	01
2.	Arvind Kumar Gupta	Do	02
3.	G.S. Kushwaha	Do	03
4.	Dinesh Kumar	Do	04
5.	Balbir Singh	Do	05
6.	Arvind Khare	Do	06
7.	M.K. Srivastava	Do	07
8.	Arun Singh	Do	08
9.	Ravindra Singh	Do	09
10.	Dashrath Prasad Babal	Do	10

The above panel is provisional and subject to the outcome of various writ petition pending in Supreme Court/CATs. The panel is approved by the Competent Authority on 03.05.1997."

2.10 While the matter was being contested by the

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applicants and apparently there were several connected matters also pending before different higher judicial forums, 12 years after that Notification and after the latest order dated 11.08.2008 of the Hon'ble Bombay High Court in this case as aforesaid, the respondents have issued a corrigendum dated 22.06.2009 to the said Notification dated 01.07.1997 which has also been published in the Railway Gazette. The said corrigendum, apparently issued suo-motu, is reproduced hereunder :-

"Central Railway

FOR RAILWAY GAZETTE

CORRIGENDUM

Sub:- Panel for promotion to the post of IOW/
Jr.Engineer, Gr.II, Gr.Rs.1400-2300
(RPS)

In partial modification to this office panel No.HPB/661/RE/IOW.III dated 02.06.1997, following corrections may please be read as under:-

1) **Subject of the said panel may please be read as under:-**

Sub:- Panel for regularisation to the post of IOW/Jr.Engineer, Gr.II, Gr. Rs.1400-2300 (RPS).

2) **First para of the said panel may please be read as under:-**

In pursuant to OA No.398/95 and Hon'ble CAT Jabalpur's order dated 29.02.96 and as a result of written test held in this office on 12.2.97 and viva-voce test on 12.05.97, the following candidates are placed on the panel for regularisation to the post of Apprentice IOW / Jr.Engineer II, Gr.Rs.1400-2300 (RPS) against 75% direct recruitment quota, subject to the following terms and conditions.

3) Remaining contents in the said panel stands good.

This issues with the approval of Competent Authority.

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(R.K. Parashar)
Chief Personnel Officer

Central Railway.

Headquarters Office,
Personnel Branch,
Mumbai, CST.

No.HPB/661/RE/IOW.III

Date :- 26/08/2009

Forwarded to Dy.CM(P&S) BY together with Hindi version for publishing in the Railway Gazette."

2.11 As can be seen from the original Notification dated 01.07.1997 and the modified Notification dated 26.08.2009, the words "are placed on the panel for promotion to the post of promotees IOW/Jr.Engineer-II" have been replaced by the words "are placed on the panel for regularisation to the post of Apprentice IOW/Jr.Engineer-II". That is, instead of treating the selection of the applicants in 1997 as being a case of promotion, it has now been treated as a case of regularisation to the post of IOW Gr.III, while maintaining other terms of the Notification intact.

3. The applicants claim that since they have been effectively working in the capacity of IOW-III from the respective dates of their joining, their regularisation as IOW Gr.III should be given effect to from those dates. They would argue that in spite of directions given by the Hon'ble Supreme Court of India as per their order dated 03.05.1989, the respondents have only delayed the matter till the eventual regularisation as per order dated 05.11.1998. Claiming that there was no credible justification for such inordinate delay, the applicants have pleaded for granting of the reliefs claimed.

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3.1 By way of challenge to the aforesaid Rule 303 of IREM the applicants have moved the following argument through their pleadings under paragraph 5(h) of the application:-


"h) The applicants submit that Rule 303 IREM applies to normal selection where a person is recruited for the first time as a direct recruit and talks about deciding seniority based on the date of joining the training courses in the training school. It is submitted that the said rule does not contemplate or take into account the situation like in the present case where a person is already working in the same post and cadre and is subsequently regularised by orders passed by the Apex Court and which orders are also implemented only after 7 years. Therefore, in such a situation, the Rule 303 has to be read down to hold that such employees would get the benefit of seniority from the initial date of appointment irrespective of when they go for training in training school. It is submitted that only this interpretation would amount to proper implementation of the letter and spirit behind the orders of the Apex Court dated 03.05.1989 and any other contrary interpretation or action taken would have the effect of nullifying or circumventing the order of the Apex Court and also of the benefits available to the applicants under the order of the Apex Court."

4. On behalf of the respondents it has been submitted that the applicants were initially appointed as HSTM on daily rate basis. After completion of 180 days they were granted 'temporary status' and were given the benefit of monthly rate of pay in the pay scale of Rs.1200-1800 which was later on revised to Rs.1320-2040 and they were designated as HSTM. The applicants were appointed pursuant to their individual applications and without following the normal rules of appointment and without following the normal selection process.

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4.1 It is only after the Hon'ble Supreme Court's directions as per their order dated 03.05.1989 that the applicants were individually advised to apply in response to the Railway Board's Notification for the IOW Gr.III issued in 1991. Such applications were advised to be tendered through proper channel. But none of the applicants applied. Thereafter the respondents on their own invited the applicants to apply to be regularised as Skilled Artisans. But the applicants did not accept the said offer. In 1995 the Railway Recruitment Board issued another Notification for recruitment to the post of IOW Gr.III. The applicants were advised by the respondents to apply through proper channel in order to give benefit of age relaxation. But none of the applicants applied. Instead, the applicants all along have chosen to approach the law Courts. Be that as it may, after the order dated 29.06.1996 of the Tribunal and subsequent filing of Contempt Petition in connection there with, the respondents hurried to absorb the applicants as IOW Gr.III. Thus, there was no delay, deliberate or otherwise, on the part of the respondents. It is only the applicants who have approached law Courts again and again and have asked for the same relief. Since the applicants were casual employees as HSTM, though with temporary status, and their initial appointment was not made by the Railway Recruitment Board, the applicants cannot even claim regularisation of their services.

5. We have perused the pleadings and documents attached thereto and have heard the counsel for the




parties. We have also very carefully gone through the several judgments/orders of the Hon'ble Supreme Court, Hon'ble High Court of Bombay and also the several orders of this Tribunal pertaining to this matter alone. We have also carefully perused the rules and also the pay structure of the Civil Engineering Wing of the Respondents' organisation.

6. The admitted position is that the applicants were initially appointed on daily rate basis as casual workers and were later on given temporary status and designation of HSTM in the pay scale of Rs.1200-1800 subsequently revised by the 4th Pay Commission to Rs.1320-2040. As against that the pay scale of the Inspector of Works-III in the revised scale of pay was Rs.1400-2300. As per Rule 145 of the Rules of Recruitment as given in Volume 'I' of the 1989 Edition of Indian Railway Establishment Manual; the period is relevant; IOW Gr.III posts in the scale of pay Rs.1400-2300 were to be filled up 75% by direct recruitment through Railway Recruitment Board and 25% by promotion, by selection of Works Mistries in the scale of Rs.1400-2300. The applicants obviously were in a lower scale of pay. It had to be a case of appointment through promotion in their case. Prior to their selection as IOW Gr.III with effect from 01.07.1998 the applicants were never formally selected or appointed or formally put in charge as IOW Gr.III, enjoying the pay scale of Rs.1400-2300. Under the circumstances, use of the word regularisation by the applicants through out their claim from 1988 onwards has been stretching the meaning of the word regularisation beyond its legal and semantic limits.



7. In their order dated 03.05.1989, the Hon'ble Supreme Court did not ask the respondents for regularisation. The Hon'ble Supreme Court also did not give any particular direction that the applicants be considered for appointment against any particular category of post. Instead, the Hon'ble Supreme Court had directed the respondents to grant an opportunity to the applicants to appear before the Railway Recruitment Board for selection to such post for which they had required qualification and were otherwise suitable. The only benefit granted to the applicants by the Hon'ble Supreme Court was age relaxation. It is obvious from the Hon'ble Supreme Court's order that the Hon'ble Supreme Court directed the respondents to allow the applicants to be recruited as direct recruits. Effectively the same directions were repeated in the order dated 27.07.1994 of this Tribunal and further enlarged a bit by the order dated 29.02.1996 of this Tribunal, as referred to supra.

8. The respondents conducted written test and viva-voce as is done in the case of direct recruits in which all the applicants participated. After being successful they were eventually appointed as IOW Gr.III against direct recruitment quota. The applicants duly joined their posts and have worked on those posts from 1998 onwards. The applicants cannot dispute that they are direct recruits. To reiterate, as per its order dated 03.05.1989, the Hon'ble Supreme Court had directed the respondents to allow opportunity to the applicants for direct recruitment and that is what has been done. It is another matter that the



applicants had initially been appointed to a lower post and had worked there for years together, effectively discharging the functions of IOW Gr.III. That would not give them any right for appointment as IOW Gr.III from any earlier date than on which they have actually been appointed.

9. Though given several opportunities by the respondents from 1990 onwards the applicants had not responded to those offers. Therefore, it is not the respondents who were the stumbling block but it is the applicants themselves. In its order dated 02.07.2003 this Tribunal has clearly rejected the argument that the respondents had caused delay in screening and selection of the applicants. Therefore, what remains for consideration is the challenge to Rule 303 of IREM and consideration of the prayer for reading down of those provisions.

10. Rule 303 appears in Chapter 3 of the Indian Railway Establishment Manual Vol. I laying down "Rules Regulating Seniority of Non-Gazetted Railway Servants". The said Chapter provides for rules regulating seniority in initial recruitment grades and also seniority on promotion, besides providing for seniority issues under certain specific circumstances. Rule 303 provides as under:-

"303. The seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority should be determined as under:-

(a) Candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts. Those who join the subsequent courses for any reason


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whatsoever and those who pass the examination in subsequent chances, will rank junior to those who had passed the examination in earlier courses.

(b) in the case of candidate who do not have to undergo any training in training school, the seniority should be determined on the basis of the merit order assigned by the Railway Recruitment Board or other recruiting authority."

11. So far as to challenge to Rule 303 is concerned, we find that the said rule is quite neutral. It deals only with the case of initial recruitment and applies to all initial recruits, without being loaded either in favour or against any. But what exactly is challenged as to Rule 303? The applicants are not challenging their inter se seniority as per the examination nor the inter se seniority after the conclusion of their training. In fact, their inter se seniority after the examination has not been disturbed after conclusion of the training. That being so, the applicants cannot have any grievance in so far as Rule 303 is concerned. Their claim for being given seniority for the work done by them in the capacity of HSTM prior to joining of IOW Gr.III is something totally unconnected with Rule 303. Under the circumstances, we are not impressed by the applicants' challenge to Rule 303, particularly because in the facts of the case there is no cause of grievance for the applicants to make such challenge.

12. So far as the prayer for 'reading down' is concerned, the law on this legal principle has been eloquently explained by their Lordships of Hon'ble Supreme Court in their judgment and order dated 08.04.2009 in the case of M. Rathinaswami & Ors. Vs. State of Tamil Nadu &



Ors. [AISLJ I-2010(1) 66]. The relevant paragraphs 28 and 29 thereof is reproduced hereunder:-

"28. It is well settled that to save a statutory provision from the vice of unconstitutionality sometimes a restricted or extended interpretations of the statute has to be given. This is because it is a well-settled principle of interpretation that the Court should make every effort to save a statute from becoming unconstitutional. If on giving one interpretation the statute becomes unconstitutional and on another interpretation it will be constitutional, then the Court should prefer the latter on the ground that the Legislature is presumed not to have intended to have exceeded its jurisdiction.

29. Sometimes to uphold the constitutional validity the statutory provision has to be read down. Thus, In re, Hindu Women's Right to Property Act, AIR 1945 FC 28, the Federal Court was considering the validity of the Hindu Women's Right to Property Act, 1937. In order to uphold the constitutional validity of the Act, the Federal Court held the Act intra vires by construing the word 'Property' as meaning 'property other than agricultural land'. This restricted interpretation of the word 'Property' had to be given otherwise the Act would have become unconstitutional. Similarly, in Kedarnath v State of Bihar, AIR 1962 SC 955, this Court had to construe Section 124-A of the Indian Penal Code which relates to the offences of sedition which makes a person punishable who by words, either spoken or written or by sign or visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law'. This Court gave a restricted interpretation to the aforesaid words so that they apply only to acts involving intention or tendency to create disorder or disturbance of law and order or incitement to violence. This was done to avoid the provisions becoming violative of Articles 19(1)(a) of the Constitution which provides for freedom of speech and expression."

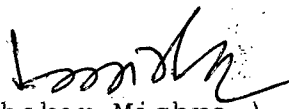
Since we do not find any merit in the challenge to Rule 303

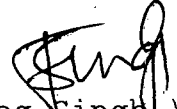


we do not feel to called upon to give a possible meaning to the provisions of the said rules other than what comes through a plain reading of the said provisions.

13. Before parting with this order we cannot help observe that the respondents have chosen to use the word 'regularisation' in the corrigendum dated 26.08.2009 to the earlier Gazette Notification dated 01.07.1997 in place of the word 'promotion' as was used earlier. The respondents would surely be having some reason or justification for issuing that corrigendum. If they choose to further extend that reason for any greater benefit to the applicants, the respondents would be at liberty to do so.

14. We do not find any merit in this O.A. and it is accordingly dismissed. No order as to costs.


(Sudhakar Mishra)
Member (A)


(Jog Singh)
Member (J).

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