CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

ORIGINAL APPLICATION NO.334/2016 AND
M.A.NO.177/2016

DATED THIS THE 27th DAY OF MAY, 2016

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE MS.MEENAKSHI HOOJA, MEMBER (A)

1.Mohan Lal,
Son of Shri Ganeshi Lal,
aged about 61 years,
resident of 4/30,
Raju Painter Ki Gali,
Petrol Pump No.9,
Bhajanganj, Nasirabad Road,
Ajmer, Rajasthan.

2.Devendra Pal,
Son of Shri Mohan Lal,
aged about 30 years,
resident of 4/30,
Raju Painter Ki Gali,
Petrol Pump No.9,
Bhajanganj, Nasirabad Road,
Ajmer, Rajasthan. .....Applicants

(By Shri R.D.Tripathi, Advocate)

Vs.

1.Union of India,
Through General Manager,
North Western Railway,
Near Jawahar Circle, Jaipur,
Rajasthan.

2. Divisional Railway Manager (Estt.),
Divisional Office,
North Western Railway,
Ajmer, Rajasthan.

3. Divisional Personnel Officer,
North Western Railway, Ajmer,
Rajasthan. .....Respondents

ORDER

DR.K.B.SURESH, MEMBER (J):

All these cases were heard together as basically they related to a Scheme called conferment of LARGESS on the ground that their occupation is strenuous and therefore either on medical de-categorisation or on voluntary retirement they are eligible at the fag end of their career to propose their wards as successor - in - interest.

In the year 2004, in a marked deviation from the Constitutional principles, the Railway Board had issued a Scheme which was followed up by several other amending Circulars in the same stream which canvassed a view that, that there can be hereditary employment under the Indian governance system. It was apparently following the principles of compassion to which employees who were taking a voluntary retirement from service almost at the fag end of their career on the guarantee that their Sons or Daughters will be given an employment.

Embellishment are seen made in the Scheme relating to some form of a qualificatory barrier to be succeeded in order to obtain this employment but then even though posted as an expansion of the compassion in compassionate appointment following the death of the bread winner which is **restricted to 5% direct recruitment quota** and then also limited to from amongst the most indigent among them. **This Scheme was characterised by 100% fulfilment.**

2. Article 13 of the Constitution of India secures the paramountcy of Constitution in regard to fundamental rights. It prescribes the line in which the laws already existing or to be brought in and its limits as otherwise it will defeat the concept of fundamental rights. Article 309 to 311 of the Constitution of India upholds the critical entitlement of the competitively meritorious to be selected for employment under governance both as a recognition of merit and requirement of general public to have the services of the best. The Hon'ble Apex court while considering the impact of Article 13 held in these decisions:-

1.***I.C.GOLAK NATH AND OTHERS VS. STATE OF PUNJAB AND ANOTHER*** reported in AIR 1967 SC 1643

2.***KESHAVANANDA BHARATI VS. STATE OF KERALA*** reported in AIR (1973) 4 SC 225

3.***MINERVA MILLS LIMITED AND OTHERS VS. UNION OF INDIA AND OTHERS*** reported in AIR 1980 SC 1789

4.***WAMAN RAO VS. UNION OF INDIA*** reported in AIR 1881 SC 271.

5. ***BHIM SINGH VS. UNION OF INDIA*** reported in AIR 1981 SC 234

6.***S.P.GUPTA VS. UNION OF INDIA*** reported in AIR 1982 SC 149

and had cumulatively a view that

1.There are certain basic features of Constitution of India which cannot be touched.

2.If any illegal stipulation is brought into existence which militates against the fundamental right of a citizen, such illegal stipulation would be quashed

3.Where even by a constitutional amendment is brought any such illegal/ ultra vires action such illegal stipulation cannot be brought into existence.

3. Therefore the said Scheme of the Railway Board militates against the fundamental rights of the competitively meritorious of obtaining employment under Government, and therefore at the first glance itself the Scheme that is propounded by Railways of which we will explain later, is opposed to Article 13 of the Constitution of India.

4. But the Calcutta Bench of the Tribunal in its Full Bench had held that the Tribunal was correctly exercised its judicial responsibility under Article 226 of the Constitution of India when it had taken the debate as largess and has found by the Hon'ble Apex Court in ***S.P.SAMPATH KUMAR Vs. UNION OF INDIA*** reported in (1985) 4 SCC 458 and L.***CHANDRA KUMAR Vs. UNION OF INDIA AND OTHERS*** reported in (1995) 1 SCC 400 and other similar cases. The power exercised by the Tribunal is same and similar as of a High Court which prior to 1985 had exercised these powers earlier but in the second limb of its consideration the Full Bench held that the Scheme can be held to be a classification and since classification is an element of Article 14 there may not be any worthy objection to the Scheme being implemented.

Therefore twin objections need to be satisfied.

1.***This equalisation under Article 14 of the Scheme is to be in equality of what and with whom?***

2. ***Has not been these issues been settled by UMA DEVI's judgment of the Hon'ble Apex Court?***

3.***Since UMA DEVI judgment had categorically held that there cannot be any back door entry in Government appointment. Any Scheme which would uphold the back door entry is proscribed and***

defeated and that being so, is not the Full Bench to be deemed to be irrelevant on the basis of principles of per-in-curium.

5. In an amplification and examination of the Constitution thus let us thereby consider the Article 14 and what its elements?

"Ärticle14 – the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".

6. Therefore what is the equality to be sought for in the matter of hereditary employment by the Railways? Is it equality with whom? Or is it that as an exception of Article 14 that a discriminatory stipulation can be put forth to, even in this situation, there must be one other party with whom some sort of equality is claimed for the beneficiary of the Scheme. Competitively they are not adjudged to be equal to the competitively meritorious who stands out side. The secrecy which prevailed over the Schemes and the way it was being implemented was such that it was not possible for the general public and the job seekers to be aware that such a Scheme was in existence. It is now estimated conservatively that at least more than 5 % of 13 lakh of employees of the Railways now belongs to this illegitimate category. It is submitted that this is only a conservative estimate and may be even more. But as a part of the internal arrangement between the Senior employees of Railways and

Unions, this arrangement was brought into focus with utmost secrecy that it took more than 10 years for the Scheme to be subjected to critical scrutiny. Therefore, how does Article 14 come into play in the enactment of the Scheme which will guarantee hereditary employment to some categories of Railway employees. At this point of time, we are not looking into Scheme as such as we will be doing it in greater detail later on. So what is this discrimination, hereditary employments are seeking to avoid by usage of Article14 as if it is a class of beneficiaries arising from the class of the employees and thus taking the employees as one class it will be illegal as held by Hon'ble Apex Court in ***STATE OF UTTARANCHAL Vs. BALWANT SINGH CHAUFAL*** reported in AIR (2010) 3 SC 402. That being so the question of classification of employees as a whole and a said class of beneficiaries to arise under the employees cannot satisfy the element of intelligent differentia at all let alone it is reasonable.

7. But then assuming that the Railways are viewing the employees as the same class and want to benefit them as part of their employment prospects and therefore it granted hereditary employment to select employees on the verge of their retirement, and if so, How are these elements satisfied?

8. The Hon'ble Apex Court in ***HUMANITY AND ANOTHER Vs. STATE OF WEST BENGAL*** reported in AIR 2011 SC 2308 and ***AKHILA BHARATIYA UPBHOKTA CONGRESS Vs. STATE OF M.P.*** reported in AIR 2011 SC 1834 had categorically held that the Government has to act fairly and without any semblance in matters of granting LARGESS it cannot act arbitrarily in a matter which would benefit a private party. Here in this case a private party is benefitted secretly and there is no stipulation as to any classification which is available, therefore, without any doubt, the Scheme as propounded now is illegal. But since the Full Bench had found reason to believe that Article 14 may have a play in it but as we have now already found it is unreasonable and subject to Article 13 and therefore, it is completely illegal, then we may have to see whether to perpetuate an illegality, the equality class can be applied. The Hon'ble Apex Court in ***EKTA SHAKTI FOUNDATION VS. GOVERNMENT OF NCT OF DELHI*** reported in 2006 (7) TMI 577 had held that it cannot be so. There cannot be equality in illegality nor can Article 14 be applied to legitimise illegal action besides which there cannot be any application of Article 14 as for the application of Article 14 there must be two parties seeking equivalent of each other and only then such a view can be canvassed. There must be equality in equity between two groups of people. Here there is no such group available as employee of the beneficiary of the

Scheme is for only one group and therefore there cannot be an application of Article 14 even de-hors the ***UMA DEVI*** judgment in this case. The Hon'ble Apex Court in ***VISHAL YADAV Vs. STATE OF U.P*** reported in AIR (2012) 8 SCC 263 has held that ***by attempting to bring in Article 14, no illegality can be allowed to be perpetuated.***

9. Assuming that this is a procedure evolved for imparting some benefits to a section of employees, even then Article 14 cannot be brought into play as procedural discrimination also is found to be liable to be quashed as declared in the judgments.

1.***STATE OF WEST BENGAL Vs. ANWAR ALI SARKAR*** reported in AIR 1952 SC 75.

2.***STATE OF ORISSA Vs. SUDHANSU SEKHAR MISRA AND OTHERS*** reported in AIR 1968 SC 647

10. Therefore if it is to be made out as a classification, this classification is unreasonable as found by Hon'ble Apex Court in these decisions.

1.***NORTHERN INDIA CATERERS PRIVATE.....Vs. STATE OF PUNJAB AND ANOTHER*** reported in AIR 1967 SC 1581

2. ***NEW MANEK CHOWK SPINNING AND WEAVING MILLS COMPANY LIMITED ETC. Vs. MUNICIPAL CORPORATION OF THE CITY OF AHMEDABAD*** reported in AIR 1967 SC 1801

3.***NATIONAL COUNCIL FOR TEACHER EDUCATION AND OTHERS Vs. SHIKSHA PRASHIKSHAN SANSTHAN AND OTHERS*** reported in (2011) 3 SCC 238.

11. ***The Hon'ble Apex Court had categorically held that there cannot be any reasonableness in granting benefit to the un meritorious.*** Just because X is the Son of Y, who is an employee of Railways, X cannot be conferred any merit under LARGESS as hereditary employment is illegal parse but then the question arise as to what about the other benefits given to the family of the employee? Seeking both the applicant and respondents. Will it become illegal? Let us take that issue of free passes of travelling. But then even though this is also a LARGESS it normally does not affect anybody else except in a rare situation of reservation denied to the common man, but then, even then it may not be seen as a part of service condition, but then to get an employment on the artificially created vacancy of the employee at the fag end of his career ***and in some of the cases just a few days before the actual retirement, seeks voluntary retirement on the guarantee***

that his son will be getting an employment is unreasonable in extreme.

12. The Hon'ble Apex Court ***in STATE OF ORISSA Vs MAMATA MOHANTY*** reported in 2011 (3) SCC 436 had held that all action of the State or an institution under it must not only be legitimate but above all it also should be without any affection or aversion. It could neither be restrictive to disbursing nor could be biased and tinged with favouritism and nepotism. These principles were upheld in ***STATE OF MAHARASHTRA Vs. SARABGDHARSINGH SHIVDASSING*** reported in 2011 (1) SCC 577 by the Hon'ble Apex Court and hence the illegality and unconstitutionality of the Supreme Court be explained away.

13. It is unfortunate that even though straining to explaining how Article 14 is applicable that the Scheme may be allowed to be held as a classification, ***it is crystal clear there cannot be un reasonable or irrational classification.*** The Hon'ble Apex Court in ***U.P. STATE SUGAR CORPORATION LIMITED AND ANOTHER Vs. SANT RAJ SINGH AND OTHERS*** reported in AIR 2006 SC 2296 has held that Article 14 is a concept nobody can claim based on any illegality and due to the application of Article 13 by the denial of the competitively meritorious, the Scheme is illegal. Therefore under whatever notion the illegal Scheme cannot be cope with constitutional compliance. In fact the

Hon'ble Apex Court in ***GOVERNMENT OF ANDHRA PRADESH Vs. THUMMALA KRISHNA RAO AND ANOTHER*** reported in AIR 2003 SC 296 had held that Article 14 guarantee equality only who are equally situated but**" there cannot be any equality between Sons and Daughters of the employees and competitively meritorious standing out side"**

14. Therefore the question is what will be intelligible difference which defeats that those who are grouped together to confirm a classification? There can only one classification that they are children or wards of the existing employees. It may be that at the fag end of their career either as medical de-categorisation or on the basis of voluntary retirement, the benefit is sought to be conferred upon them but then for medical de-categorisation there need not be any Scheme because it is covered by so many benefits that no employee on medical de categorisation face even the meanest of a problem. Being so, there cannot be any viable classification in it, for this kind of benefits and as for illegal occupants of LARGESS, there is no other intelligible difference distinguished or obtaining for the benefit from the governance.

15. Therefore what is the object to be achieved out of this Scheme other than the pressure of the Unions which says that in some category of work man the work is so difficult and therefore after period of work

they are tired out and therefore has to be compensated extra ordinarily but then if they are tired out after their work to grant them compensation or give more pay for such work may be more suitable. In the Full Bench judgment reported in All India Law Journal II-2016 in page 236 several categories are mentioned. Let us therefore examine the applicability of this decision.

1.Points man (Nobody in their right senses will be able to understand what is the extreme working condition available to points man)

2.Shunt man (Nobody in their right senses will be able to understand what is the extreme working condition available to points man)

3.Lever Man (Nobody in their right senses will be able to understand what is the extreme working condition available to lever man)

4.Gate man (Nobody in their right senses will be able to understand what is the extreme working condition available to Gate man)

5.Traffic Porter (Nobody in their right senses will be able to understand what is the extreme working condition available to Traffic porter)

6.Gateman (Nobody in their right senses will be able to understand what is the extreme working condition available to Gate man)

7.Control Man (Nobody in their right senses will be able to understand what is the extreme working condition available to Control man)

8.Key man (Nobody in their right senses will be able to understand what is the extreme working condition available to Key man)

9.Khalasi (Nobody in their right senses will be able to understand what is the extreme working condition available to Khalasi).

10.Jamadar (Nobody in their right senses will be able to understand what is the extreme working condition available to Jamadar)

11.Crane Jamadar (Nobody in their right senses will be able to understand what is the extreme working condition available to Crane Jamadar)

16. ***This type of work is normally done by any industrial employee and in none of the Government establishment such people are to be at a pedestal and granted the benefit of the hereditary employment.*** Therefore if at all these people are classified as specific grouping, the question would then be what is reasonable in these classification to attract Article 14 and to which group of classification is Children of such employees will come so as to come into benefit of ***equality to be claimed with whom?*** The Children's equality can be claimed only with the competitively meritorious who is standing out side. The Full Bench relies on ***V.K.SOOD Vs. SECRETARY, CIVIL AVIATION AND OTHERS*** reported in AIR 1969 SC 118. These and other like it were submerged in the UMA DEVI judgment of the constitution Bench of its Hon'ble Apex Court but even otherwise also it only mentions ***that the Railway Board has the power to propound any Rules but it does not say that the Railway Board has the power to institute an illegal Scheme. Even otherwise also all the points raised by the Hon'ble Full Bench of the Calcutta Bench is covered by the decision of the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs. Uma Devi and Others reported in 2006 (4) SCC which is a Constitutional Bench decision of the Apex Court where there cannot be any Scheme for back door entry and competitive assessment of merit shall be the only criteria for***

appointment under Article 309 that being so, the Full Bench decision has no validity, nor relevancy and it is hit by per-in-curium.

17. Article 16 of the Constitution of India stipulates there shall be equality in opportunity in matters of public employment. ***Therefore by issuing such a Scheme the opportunity of employment to be obtained by competitively meritorious is being usurped by the hereditary employment.*** Neither Article 16(1) nor Article 16(2) nor Article 16(3) nor Article 16(4) and the consequences of such canvassed a view that the competitively meritorious should be eschewed from public employment.

18. The Hon'ble Apex Court in ***DELHI TRANSPORT CORPORATION Vs. D.T.C.MAZDOOR CONGRESS*** reported in AIR1991 SC 101 has upheld the view that non arbitrariness is a basic element of Article 16 and the preferment of employees' wards at the fag end of their career to be eligible for preferential employment thus militate against the equal opportunity policy under Article 16(1).

19. Article 21 of the Constitution of India defines law as being always just, fair and reasonable. ***The Hon'ble Apex Court in Delhi AIRTECH SERVICES PRIVATE LIMITED Vs. STATE OF UTTAR PRADESH reported in AIR 2012 SC 573 explained it as "the scope of ambit of a***

legal stipulation must be within the parameters of just, fair and reasonable. Whenever it transgresses any elements of these stipulations, it is arbitrary and liable to be quashed. Thus the scheme now enunciated by the Railway Board is neither just nor reasonable because it denies the equal opportunity guaranteed under Article 16.1 to the competitively meritorious while on wrong premises it grants it to the children of employees who opt to take a voluntary retirement at the fag end of their career. By then, they would have received all the benefits of their employment and since not much time is there to elapse between their ordinary superannuation and either medical de-categorization or voluntary retirement, they retire with all benefits and also their children are given employment by the Railways. The scheme has some methodology worked in it to point out that some form of a qualificatory barrier exist but after examining at least 50 cases all over India we could not find a single case in which an employment was denied only on the basis of not passing qualificatory barrier. **In some of the cases, the request for employment was made just 20 days before actual superannuation. In some cases, a childless couple had adopted the son of his elder brother who is 35 years old and married and then sought for an employment. Such being so, the scheme violates the right to livelihood and life of the competitively meritorious standing outside.** The Hon'ble Apex Court

in ***NARENDER KUMAR Vs. STATE OF HARYANA*** reported in AIR 1995 SC 519 had categorically stated that right to livelihood is an integral facet of right to life. Therefore, the violation of right to livelihood of the competitively meritorious is required to be remedied. The question then would be in this situation how can the scheme be allowed to be in existence.

20.Therefore, where lies the duty of the sensitive adjudicator?

21. The Hon'ble Apex Court in ***HIMMATLAL Vs STATE OF MADHYA PRADESH*** reported in AIR 1954 SC 403 had held that certiorari is to be issued where the law under which a decision was taken is void. The scheme as propounded by Railways militate against Article 13, Article 14, Article 16 and Article 21 and, therefore, according to the Hon'ble Apex Court a certiorari has to be issued. The Hon'ble Apex Court in ***RANJIT SINGH Vs. UNION TERRITORY OF CHANDIGARH*** reported in AIR 1991 SC 2296 had stated that if any decision violates the law or if without jurisdiction, then a certiorari must be issued. The Hon'ble Court held that if the decision is against natural justice, mala fide, perverse or based on non-applicability of avenue, a certiorari must be issued.

22. Therefore, the question arises as management of the Railways is carried on through several almost independent Railways and if a mandate against the Railway Board would seemingly affect them. The

Hon'ble Apex Court held in ***VINEET NARAIN Vs. UNION OF INDIA*** AIR 1998 SC 889 that ***where the issue of a mandamus would be futile against public agency guilty of continuous inertia or action a continuing mandamus also can be issued to defeat it.***

23. Since the Full Bench had relied on a dictum that the policy decision of the government cannot be interdicted by Courts and Tribunals, this also has been examined. It is correct that normally government policies need not be interfered but then wherein sufficient grounds exist like interference in constitutional guarantees, discrimination, mala fide action, action against natural justice, denial of Fundamental Rights of others, intersession and interdiction are the rule of the day. The Hon'ble Apex Court in ***M.S.I.A. Vs. STATE OF KARNATAKA*** reported in AIR 1994 SC 1702 had held that the Court ***is having duty and a jurisdiction to interfere in implementation of a government policy which is tainted.*** The Hon'ble Apex Court in Hindi ***HITRAKSHAK SAMITI Vs. UNION OF INDIA*** reported in AIR 1990 SC 851 had held that whenever a question of fundamental rights is involved, the ***Court can either direct enforcement of employment of government policy or disbar the government from implementation of a government policy.*** That being so, on the ground of

constitutionality or otherwise, the scheme propounded by the Railway Board is thus amenable to judicial review.

24. This Scheme hardly came to judicial notice or even to the notice of the competitively meritorious who are negatively effected by this. This is a strange case in which most of the time both parties in the litigation together support the illegal scheme, as both of them derive benefit in the scheme. This was found out once in Jaipur when the Railways will not file the reply consistently for more than a year, even after the Bench having insisted for it. At that time only it was found out that view taken by the railways is that "**if the court orders, we will implement it.**" This is the sad stand taken by the counsel for the railways also. That being the stand, the pleadings were examined and then only it came to the notice that such immoral unethical scheme is being brought about and implemented, ***wherein now at least 5% of the total employees i.e. 65000 to 75000 is now back door employees***. It was found that only in a few cases the Railways have rejected and that alone come to Court. But normally when it is told that there is a scheme the judicial inclination was also to follow the scheme. But the when the Railways and the applicants were travelling together, it was found necessary to examine it and the immorality of the scheme came out and it was felt as unconstitutional and was quashed. There upon ***both the Railways and***

the applicants went to Hon'ble High Court and submitted before the High Court that without even allowing the Railways to file a reply the Tribunal had held the scheme to be unconstitutional. Believing the statement made by both, the High Court promptly sent back the file for a second look. It was at this time we discovered that all over India the same thing is in operation and that probably the earlier figure of 5% is subject to amendment.

25. But then, while dealing with similar matters in Bilaspur the Administrative Member had a doubt to propose before the Judicial Member, who was the author of the Judgment, that even though he agrees with the principle of the judgment, since only the General Manager was being heard, would it not be more proper to give an opportunity to the Railway Board as well. Therefore it was decided as similar other cases are available in one of these the Railway Board must specifically be heard. Therefore in O.A.NO.1332/14 & 758/15 we had issued notice to the Railway Board as well and as to the available trade Unions of the Railways as it was at their behest the scheme was promptly promulgated. Time was made available to these parties to file their response to the query. The union did not even bother to appear, even though some of the unions have appeared in other cases. Finally the Railway General Manager himself personally appeared and requested for some more time to file the reply. Even though that many a

time was extended, but no reply was filed till now. Therefore, on this matter was reserved for judgment on 24.06.2016 and thus being considered on the basis of whatever replies filed by the Railways elsewhere also. It appears that the Railways had filed Writ Petition against the order of the Principal Bench with the Delhi High Court. We had sought for a copy of the said Writ Petition for it will explore the stand taken by the Railway Board. Even though it was promised that it will be produced, even after several attempts it is not produced. Therefore we have tried our level best to figure out at least the defence of the railways in this, so that justice can be made available not only to the railways and their employees but the unemployed but competitively meritorious waiting outside. Since the railways and employees go together, the rights of the competitively meritorious stand trashed and abused.

26. Having found that because of the illegal and illegitimate scheme drawn up by the Railways about 65000 – 70000 illegitimate employees would have resulted for the Railways which in other words translate to at least 65000 families with legitimate expectations for livelihood lost their livelihood. But then because of the extreme secrecy maintained in the operation of the scheme nobody without the Railways was apparently aware of that except in rare occasions when the matters come to court and then also a sort of palliative stand was taken by the Railways also

as we have found in many cases the Railways will not file reply and the court would be tending to believe that the scheme might be proper and would grant relief. But then the real extent of the scheme came only on discussion at the Bar when it was found between 5% to 7% employees of the Railways constitute this group. This has caused general public not only in diminishment of livelihood but competitively meritorious efficacy of service which is constitutionally guaranteed right of general public.

Misplaced mercy is another form of denial of justice. This is the sum and substance of this case as illegitimate benefit to one would defeat the legitimate claim of another

27. The facts of this case and the arena of illegality which it exposed is shocking to the conscience of any right thinking person utilising the good offices of judicial determination; but which was not supplied with the full extent of the scenario, gross inequity seems to have been canvassed at the expense of the competitively meritorious, who, under the constitutional compulsions, who alone are entitled for LARGESSE of the State in terms of employment under the Government both as a personal entitlement and as an expression of requirement of the general public to have the best person to serve them in order to sub serve the public interest best. The fine principles underlining this proposition

seems to have been thrown to the winds on the basis of an agreement made in the Joint staff council as a part of management strategy between the management and the Unions which may have a binding effect in a private company, wherein a private company may take any financial decision regarding the company relying on the profit motive alone. If he feels that he can give some dole to the Unions and extract better work from workers, he is free to do so, but then in a Government entity it is not the case. **As the State funded instrumentality operates within the constitutional constraints and therefore deployment of LARGESSE shall depend only on constitutional compulsions alone.** The allegations made by the applicant relating to many persons having been selected and him have been excluded for extraneous reasons are most telling even though **the applicant had been proposed for a compassionate appointment after 4 years of the voluntary retirement of his father speaks volumes about illegality and perverse thinking** that had motivated these Schemes. **If that be adopted as a yardstick, henceforth none else would hope to get a government employment, as 100% of the post will be reserved only for the current employees as hereditary employment.**

28. The applicant produces Annexure-A7 wherein he produces a list of 109 people appointed under LARGESS Scheme in the last 2 years.

Therefore on grounds of parity with them, applicant claims the second applicant must be appointed as Loco Pilot. Apparently the Railways held that the applicant is not entitled to an appointment under LARGESS as per Annexure-A1 and challenging this the applicant is before the Court. But besides the reasons enunciated by the Railways in their impugned order, the Scheme itself is suspect as explained further in the following paragraphs:

29. He relies on the order of the Tribunal in O.A.NO.777/2011 (***V.KALADHAR Vs. UNION OF INDA)*** order dated 30.01.2013, on order in O.A.NO.290/2013 dated 05.02.2014, on O.A.NO.292/13 order on 05.02.2014, in O.A.657/13 Order on 05.02.2014, O.A.NO.258/14 order on 21.11.2014 and the decision of the Hon'ble Chattishghar High Court, Bilaspur in Writ Petition No.6542/2008 vide order dated 02.07.2010 which was issued by setting aside the order of the tribunal and directed consideration of compassionate appointment on the basis of the Policy available. He also relies on the decision of the Chandigarh Bench of the Tribunal dated 28.08.2014 in ***DAVINDER KUMAR VASESI VS. COMPTROLLER AND AUDITOR GENERAL OF INDIA AND OTHERS*** reported in AISLJ 2015 (1) 152 **" similar case should be given similar treatment".** On this he would say that since these authorities have allowed the Policy and the Scheme to be placed on the pedestal and

accepted and on the further ground that the Hon'ble Apex Court in ***BIHAR STATE GOVERNMENT SECONDARY SCHOOLS TEACHERS ASSOCIATION Vs. BIHAR EDUCATION SERVICE ASSOCIATION AND OTHERS*** reported in 2013 (3) AISLJ page-38 held that

1) A Judge must respect the Judgment earlier by other Judge and cannot rewrite the overruled judgment.

2) No judge could wish away the earlier judgment of higher Court/ judge.

But in this case the Constitution Bench of the Hon'ble Supreme court in UMADEVI's case had already clarified the situation. So any other view will be hit by per incuriam.

The applicant would say that the Hon'ble Supreme Court in the case of ***DONESH RAJPUT AND OTHERS VS PRADEEP KUMAR SHUKLA AND OTHERS*** reported in 2015 (1) SCC 628 held on 29.03.2014 held that " **the word similarly placed must be understood by the applicable rules and not de hors the same."** Applicant relies on the decision of the Bombay Bench of the CAT in ***CENTRAL EXCISE, CUSTOMS AND SERVICE TAX AND ANOTHER Vs. UNION OF INDIA AND OTHERS*** reported in AISLJ 2015 (1) 217 held that

1) Doctrine of precedent applies to CAT also

2) Where the Bench does not differs with decision of earlier Bench, there is no need to go to higher Bench

3) Administration of justice demands that all cases should be decided alike.

"Reason hath no precedent for reason is the

Fountain of all just precedents"

.....Levellers

He also raised the question that when two Benches have two different opinions the case can be referred to a Division Bench. He would say as in case of Bombay Bench of the Tribunal ***MOHAMMED SALIM AND OTHERS Vs. UNION OF INDIA AND OTHERS*** reported in AISLJ 2014 (3) 371 "**when a person approaches Court and obtain a favourable relief, others in similar circumstances should also benefit of that relief".** In fact in another case the author of the judgment relied on coordinate Bench's decision and followed it scrupulously and that has been produced as Annexure-10 to indicate that if the author of the judgment follows the judgment of the coordinate Bench scrupulously normally and therefore why is that he is insistent on a different course of action now is the question raised by the applicant by producing all these orders.

"Justice without power is unavailing; power without justice is tyrannical. Justice without power is gainsaid, because the wicked always exist; power without justice is condemned. We must therefore combine justice and power, making what is just strong, and what is strong just".

.....Cicero

30. **The Hon'ble Apex Court had time and again held that the genesis of Article 14 is not to be found in illegality by bringing in another illegality .**

31. We have carefully and scrupulously gone through all the above orders of the High Courts and coordinate Benches, but in none of these cases we could find a word about the illegality of the Scheme, all we could see is it is the safety related or the LARGESS of the Railway Board and therefore a policy which may be followed. ***The fact is that the Constitution Bench of the Hon'ble Apex Court in UMADEVI's case has categorically held that back door entry in Government employment is not possible and thereafter no Tribunal or Court in India can enunciate the law or legal position which will endeavour to support the back door entry in the government employment. Therefore***

all these judgments suffer from the lacunae of per-incuriam.

32. Relating to the Supreme Court judgment in Bihar case it is only mentioned that the High Court is bound by the orders of the Hon'ble Supreme Court **but no decision of coordinate Benches can be held to be subservient to the earlier judgment if there is a distinction.** In this case also we wish to abide by the decision of the Hon'ble Supreme Court's Constitution Bench in UMADEVI'S case as it is only lawful to do so. **We have no doubt that similarly situated people must be treated alike but at the same time perpetuation of illegality is not to be encouraged and that is what is contemplated under Article-14. Just because an illegal order has been passed once by an authority it will not come down as a bounden right for anybody that this illegality must be perpetuated on the ground of equality principle contemplated under Articule-14, It would appear to us that the coordinate Bench and Chattishgarh High Court have not considered the effect of UMADEVI which is rendered by the Constitution Bench of the Hon'ble Supreme Court and on the basis of its binding effect it supersedes all other judgment.** In ***EKTA SHAKTI FOUNDATION Vs GOVERNMENT OF NCT OF DELHI.*** reported in AIR 2006 SC 2609 Hon'ble Apex Court held that equality

clause cannot apply to illegitimate and illegal action. In ***MESSRS.VISHAL PROPERTIES PRIVATE LIMITED Vs. STATE OF UTTAR PRADESH*** reported in AIR 2008 SC 183. Hon'ble Apex Court had held that **"nobody can claim that benefit extended to others though illegality should be extended to him"**

33. ***Therefore if the Scheme is illegal and void under constitutional parameters then there cannot be any claim to equality. Applicant and others like him were ineligible to get a secured job as part of reservation.***

34. We have carefully gone through the coordinate Bench's decision and found that the effect of Article 13 being violated in respect of the competitively meritorious, is not seen discussed anywhere and it seems to us that there is a misconception that under jurisdiction of Article 226 of the Constitution of India in deciding administrative jurisdiction only matter pertaining to the Scheme and the employees and their concern must only be looked into. It is not correct, ***but in visitorial jurisdiction all elements which have a national importance are to be considered and especially it is the duty of the adjudicatory process that the general public must always remain foremost in the mind of the any adjudication when he admits to resolve any constitutional issue. Constitution is the paramount law for all and its application is not limited to the litigant alone. Even though by his pleadings the***

litigant frames the bar for himself, in the areas above this artificial horizon and for determining the issue on the parameters provided by the Constitution of India, it should not be limited to the pleadings alone as even if it were so, then a colluding party can compromise judicial determination by careful adjustment of parameters and reliefs and grievance. We need to understand that even though the applicant is masquerading as a victim of administrative incapacity, the actual victim is the common man who is competitively more meritorious than the applicant and therefore actually entitled for the employment but who is cheated against by clever strategies and stratagem. These seems to us the combination by which undesirable effect have been brought in.

35. We must reiterate that misplaced mercy will also be a denial of justice. Mercy is now understood as a coin to be thrown to a beggar who through his begging style and the sentiments he may evoke be able to play upon the sympathy of the tithe giver to elucidate more and at the level of sympathy he is able to raise in the giver. But the tithe giver not knowing that the beggar is pretending about his misfortune walks into the trap and thus denies it to who thus, actually needs it and pays out to the not so needy and thereby commits a mistake of giving

alms to the illegitimate and thereby denies the legitimate. This appears to be what has been happening in these issues cumulatively. ***Therefore we do not propose to accept the coordinate bench's decision which has been highlighted above as it is hit by a lacunae of per-incuriam and also it has not considered the effect of Article 13, 14,15 and 16 and the effect of the UMADEVI'S judgment of the Hon'ble Apex Court. Therefore we have to follow the dictum of the Hon'ble Apex Court and not of any other Court.***

36. In the play King John by William Shakespeare a character by the name Phillip remarks that our general evaluation of the world is often influenced by our own initial interest.

"Well, whiles I am a beggar, I will rail
And say there is no sin but be rich;
And being rich, my virtue then shall be
To say there is no vice but beggary"

37. A similar situation is postulated here the Railway Board thinks that some special benefits may be made available to certain categories of people under the feeling that their work is strenuous and because of that they are subjected to vagaries of extreme weather condition and as a result infirmity associated with an early ageing process sets on along with other diminishment. When the body process thus catches up quite

early in life and to ameliorate its effect issue some Schemes which are reproduced herein. But we must examine these openly in the configuration of morality and legality. But even prima facie, what might be better is to adjust they pay to work done.

The Hon'ble Apex Court in ***STATE OF MAHARASHTRA Vs. PRABHU reported in 1994 (2) SCC 481 and ANDHRA PRADESH STATE FINANCIAL CORPORATION Vs. MESSRS. GAR-RE-ROLLING MILLS AND ANOTHER*** reported in AIR 1994 SC 2151 has noted ***"Courts must do justice by promotion of good faith and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good".***

Hon'ble Apex Court in ***HARI LAL Vs. SAHODAR*** reported in AIR 2010 SC 3515 had held ***"in a case of quo-warranto even PILs are maintainable in service jurisprudence".*** Therefore the matrix of the correct person occupying the correct position under governance system is so crucial and focal to the justice delivery system that the Hon'ble Apex Court held that even in administrative matters public interest litigations are maintainable.

In the issuance of the Writ of quo-warrranto in the present case the issue is of persons who are not eligible defeat the eligible by ***a consensual illegal process in which the victim is the competitively meritorious who is a stranger to the issue.*** In Fibroso Vs.Fairbairn reported in (1942) 2 All England Reporter page-***121 "any civilised system of law is bound to provide remedies for cases of what has been called un just enrichment or un just benefit, that is , to prevent a man from retaining the benefit derived from another which it is against conscience that he should keep"***

How small of all that human hearts endure,

That part which laws or kings can cause or cure!

Still to ourselves in every place consigned,

Our own felicity we make or find

In the quest for ultimate justice

.....Anonymous

The question arising in this matter is whether by violation of Articles of 13,14,15 and 16 can a section of Railway employees compell the Railway Board to issue a Scheme ***whereby a preferential hereditary appointment could be obtained for their wards?***

In ***UNION OF INDIA Vs. RAMESH RAM AND OTHERS*** reported in (2010) 7 SCC 234 Hon'ble Apex Court had held ***"Affirmative action measures should be scrutinised as per standard of proportionality. Criteria for any form of differential treatment should have a rational correlation with legitimate governmental objective." Therefore the Constitutional legitimacy is focused on legitimate competitively meritorious being promoted as it is the only yardstick available to promote merit otherwise also this concept is meritorious because it promotes public interest as only the competitively meritorious can provide the best public services even though the question of morality versus illegality can be termed as a value judgment.*** Hon'ble Apex Court in ***DEENA Vs. UNION OR INDIA*** reported in AIR 1983 SC 1155 held ***"when pronounced upon on constitutionality of law it is not legislation even when it is value judgment.***

To quote Sir Edward Cork ***"Rule of law eschew arbitrariness and decision according to his caprice of authority. Government must be subject to law and not law subject to Government. However high you may be, law is above you. when law ends tyranny begins. In the rule of law an area of discretion is to be the minimum".***

To quote Dr.Ambedkar in the concluding remarks made on 26.11.1949 ***"However good a Constitution may be, it is sure to be to turn out to be bad because those who are called to work it happened to be a bad lot. However bad a Constitution may be, it may turn out to be good, if those who are called to work it happen to be a good lot".*** Therefore the law must be interpreted in tune with the spirit and philosophy of the Constitution.

In tune with this the Hon'ble Apex Court in ***ARUNA ROY Vs. UNION OF INDIA*** reported in AIR 2002 SC 3176 held ***"Bereft of moral values secular society or democracy may not survive"*** Therefore morality is the yardstick to measure legitimacy and legality and this Scheme is unethical and immoral in the extreme.

In ***KULDIPSINGH NAYYAR Vs. UNION OF INDIA*** reported in AIR 2006 SC 2167 Hon'ble Apex Court had held "in a democracy welfare of the people at large is important and not merely of a small sections of society, and the responsibility of Government is to promote public good

On these terms we will have to examine the two Schemes issued by the Railway Board of India

RBE No.04/2004
Sub: Safety Related Retirement Scheme Drivers and Gangmen.
No..E(P&A)I/2001/RT-2(KW) dated 2.1.2004]

Arising out of deliberations in the Workshop on Safety on Indian Railways conducted on 12th and 13th of July, 2003 the Ministry of Railways have decided to introduce a Safety Related Retirement Scheme for the categories of Gangmen and Drivers.

2. The main features of the Scheme are as follows:-

(i) The Scheme may be called Safety Related Retirement Scheme. The Scheme will cover two safety categories viz., Drivers (excluding shunters) and Gangmen whose working has a critical bearing on safety of train operations and track maintenance. The scheme has been framed on the consideration that with advancing age, the physical fitness and reflexes of staff of these categories deteriorate, thereby causing a safety hazard.

Drivers: This category is directly responsible for the running of trains. Running duties demand continued attention and alertness. The element of stress combined with uncertain hours of work entailed in the performance of running duties over long periods of time tend to have a deleterious psychosomatic effect on their health. There is a slowing down of reflexes with the passage of time making them vulnerable to operational lapses.

Gangmen: This category is responsible for the proper maintenance of tracks. Their duties involve heavy manual labour in the laying of tracks, repair of tracks, patrolling etc. Unlike Workshops/locosheds, all this labour is performed in the open environment, they are subjected to the vagaries of extreme weather conditions, non-availability of fork lifts, EOT cranes, wheel barrow etc. As a result the infirmities associated with the aging processes and spinal and back problems catches up quite early in life.

These categories, work in conditions, in which fatigue sets in earlier, than in the case of staff who work indoors or within station limits or in depots and workshops. Although the other categories nomenclature as safety categories also have a vital role to play in ensuring operational safety, the nature of their duties, is less arduous. Therefore no other category other than gangmen and Drivers is included in the Scheme. For the same reason, shunters who perform less strenuous, shift wise, duties within station yards, will also not be included in the scheme.

(ii)Under the Scheme, Drivers and Gangmen in the age group of 50 to 57 years may seek retirement.

(iii)Employment to a suitable ward of the employee, whose application for retirement under the scheme is accepted, will be considered.

(iv)The employee should have completed 33 years of qualifying service in order to be eligible for seeking retirement under this scheme.

(v)The request for retirement will be on a voluntary basis and there will be no element of compulsion on the part of the Administration.

(vi)The ward will be considered for appointment only in the lowest recruitment grade of the respective category from which the employee seeks retirement, depending upon his/her eligibility and suitability, but not in any other category.

(vii)Applications from those who propose to retire under this scheme will be taken once in a year. The cut off date for reckoning the eligibility of employees for seeking retirement under this scheme will be 30th June of the respective year. All conditions of appointment for the ward of such retires such as age limits, educational qualifications etc. will also be determined with reference to that date.

(viii)The last date for submission of requests for retirement and consideration of a ward for appointment under the scheme, will be the 31st of July of the respective year.

(ix)Employees who desire to withdraw their requests for retirement may be allowed to do so, not later than 30th September of the respective year. No request for withdrawal of request will be entertained thereafter.

(x)The direction to accept the request of retirement will vest with the administration depending upon the shortage of staff, physical fitness and the suitability of the ward for appointment in the category of Driver/Gangmen as the case may be

(xi)Those who have completed 33 years of qualifying service and are in the age group of 55 to 57 years would be considered in the first phase of

the scheme to be followed by those in the age group of 53 years onwards but less than 55 years.

(xii)The conditions of eligibility, in the case of wards, being considered for appointment would be the same as prescribed for direct recruitment from the open market.

(xiii)Suitability of the wards will be assessed in the same manner as is being done in the case of direct recruitment. The assessment will be done through respective Railway Recruitment Boards. The request of the employee for retirement under this scheme would be considered only if the ward is considered suitable for appointment in all respects including medical fitness.

(xiv)Since the Safety Related Retirement Scheme is a package having no nexus with any of the existing scheme, no weightage towards qualifying service will be admissible to the employee who seeks retirement under this scheme. The wards appointed under this scheme will not be allowed to change their category, except as is being allowed under the already existing rules.

(xv)For the purpose of reckoning eligibility for residential accommodation, wards appointed under this scheme will be treated at par, with those appointed through direct recruitment from the open market; the terms of regularisation of accommodation as applicable to the wards of employees appointed on compassionate basis, will not be applicable in their case.

3. After the successful implementation of the first phase of the scheme, the implementation of the second phase covering employees with less than 33 years of qualifying service would be considered for clearance by the Railway Board.

4. The Scheme will come into force from the date of issue of this letter.

5. This issues with the concurrence of the Finance Directorate of the Ministry of Railways".

II) Later on, vide RBE No.131/2010 [No.E(P&A)I-2010/RT-2 dated 11.09.2010. the Railway Board modified the SRRC with the nomenclature Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARGESS) and extended the benefits to other safety categories of the staff with Grade Pay of Rs.1800 per month. The qualifying service has also been reduced from 33 years to 20 years and the eligible age group has been reduced from 55-57 years to 5—57 years. However, the condition of qualifying service (i.e. 33 years and age group (i.e. 55-57) for drivers remained unchanged. The said order is also reproduced as under:-

"RBE No.131/2010

Subject: Safety Related Retirement Scheme covering safety categories with Grady Pay Rs.1800/-

[No.E9P&A)I-2010/RT-2 dated 11.09.2010)

Please refer to Boards letter No.E(P&A)I-2001RT-2 (KW) dated 02.01.2004 (Bahri's RBO 4/2002, p-5) regarding introduction of Safety related retirement scheme (SRRS) for Drivers and Gangmen.

2. It has now been decided to extend the benefit of scheme to other safety categories of staff with a grade pay of Rs.1800/-pm. The qualifying service has been reduced from 33 years to 20 years and the eligible age group of 55-57 years to 50-57 years for seeking retirement under the scheme in the case of safety categories with grade pay of Rs.1800. The list of safety categories covered under the scheme is enclosed as Annexure.

3. It has also been decided to modify the nomenclature of the scheme as Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARGESS) with grade pay of Rs.1800. However, the employment under the scheme would be guaranteed only to those found eligible/suitable and finally selected as per procedure.

4. The condition of qualifying service (i.e. 33 years and age group (i.e. 55-57) for drivers will remain unchanged.

5. The other terms and conditions of the Scheme will remain unchanged.

6. This issues with the concurrence of the Finance Directorate of the Ministry of Railways".

15. Further, the Government of India has already enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 to safeguard the interests of any employee who acquires disability during his service. The said act is equally applicable for the employees of the Railways. Section 47 of the said Act reads as under:-

"47. Non-discrimination in government Employment – (I) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, fi any, as may be specified in such notification, exempt any establishment from the provisions of this section.

16. Moreover, the Railways themselves have their separate statutory rules to protect the disabled/medically decategorised employees of any particular post. They are given alternative employments. The relevant rules in Chapter XIII of the Indian Railway Establishment Manual Volume-I are reproduced as under:-

"CHAPTER XIII

Absorption of disabled/medically decategorised staff in Alternative Employment.

1301. A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service becomes physically incapable of performing the duties of the post which he occupies should not be dispensed with or reduced in rank, but should be shifted to some other post with the same pay scale and service benefits.

1302. Classification of Railway Servants declared medically unfit – Railway servants acquiring disability during service and declared medically unfit are divisible into two groups:-

I Those completely disabled for further service in any post in the Railway, i.e. those who cannot be declared fit even in the "C "medical category; and

ii. Those disabled/incapacitated for further service in the post they are holding but declared fit in a lower medical category and eligible for retention in service in posts corresponding to this lower medical category.

1303. The railway servants both in groups(i) and group(ii) of Para 1302 cease to perform the duties of the posts they are holding from the date they are declared medically unfit for the present post. No officer has the authority to permit the Railway Servant concerned to perform the duties in the post beyond that date. If such a Railway Servant cannot be immediately adjusted against or absorbed in any suitable alternative post he may be kept on a special supernumerary post in the grade in which the employee concerned was working on regular basis before being declared medically unfit pending location of suitable alternative employment for him with the same pay scale and service benefits, efforts to locate suitable alternative employment starting immediately. The special supernumerary post so created will stand abolished as soon as the alternative employment is located.

(Authority: Ministry of Railway's letter No.E(NG)I-2004/RE-3/9 dt. 7.12.2005)

1304: Disabled Medically decategorised staff to be absorbed in posts they can adequately fill:- In the matter of absorption of disabled/medically decategorised staff in alternative posts, Railway administrations should take care to ensure that the alternative employment offered is only in posts which the staff can adequately fill and as far as possible should broadly be in allied categories where their background and experience in earlier posts could be utilised. While finding alternative posts for absorption of disabled/medically decategorised staff, the Railway Administration should ensure that the interests of other staff in service are not adversely affected and no reversion of any officiating Railway servant is made to absorb the disabled/medically decategorised staff. For this purpose, attempts should be made to absorb the disabled/medically decategorised Railway servant not only within the Unit/Division or Department, but in other Unit/Division or Department.

1305. Absorption in posts identified for employment of physically handicapped persons/creation of supernumerary posts. The Railway servants falling in group (i) mentioned in para 1302 i.e. those who are declared unfit even for the lowest medically category, may be absorbed in a post/category identified as suitable for employment of physically handicapped persons and fresh recruitment to that post/category from open market from amongst physically handicapped withheld. In case the alternative post is not carrying the requisite pay scale, a supernumerary post may be created in appropriate scale of pay and the employee adjusted against the same keeping the lower grade post vacant by withholding fresh recruitment thereto. The supernumerary post so created to accommodate a disabled/medically incapacitated employee shall stand abolished as soon as a suitable post in the appropriate scale is found for the Railway servant concerned or the post is vacated by him for other reasons, whichever is earlier.

(Authority: Ministry of Railway's letter No.E(NG)I-2004/RE-3/9 dt. 7.12.2005)

1306. Steps to be taken for finding alternative employment

1. With a view to determined the categories in which the disabled/medically decategorised Railway servant is suitable for

absorption, a committee should examined him. The committee may consist of two or three officers posted at the headquarters of the officer under whom the disabled/medically decategorised Railway servant was working, the Railway servant's immediate officer being one of the members of the committee. After the committee has examined the Railway servant and determined his suitability for certain categories of posts, the officer under whom the Railway servant was working will proceed to take further action to find suitable alternative employment for him.

2. The officer concerned will prepare a list of vacancies within his jurisdiction in the categories for which the disabled/medically incapacitated Railway servant has been found suitable and a post with same scale of pay as was attached to the post he was holding on regular basis before being declared medically unfit, will be offered to him.

3. It will be the responsibility primarily of the officer under whom the concerned Railway servant was directly working to find suitable alternative employment for him. This will be done first by trying to find alternative employment in the officer's own unit/division, office, workshop etc. and a register with the details as mentioned in sub para (6) below will be maintained for this purpose.

4. If there is no immediate prospect of employment in his own unit/division, officer etc/. the name of the Railway servant with particulars as given in sub-para (6) below will be circulated to all other offices or establishments where suitable employment is likely to be found.

5. Nothing in the previous paragraphs, however, debars a Railway servant from applying for a particular post for which he is likely to be deemed suitable and it is known to be vacant under any officer. Such an application must be addressed through the immediate officer of the Railway servant concerned and must contain full particulars of his service and must be forwarded to the officer to whom addressed or to the authority competent to make the appointment. The result of the application must be intimate to the Railway servant.

6. A register containing the names of all Railway servants declared medically unfit and to be absorbed in alternative post will be maintained by Headquarters, Divisional and other extra-Divisional offices. These

registers will contain not only the names of the staff of the particular division, etc. but also the names notified to the unit Officer concerned by other unit/offices. This will not, however, absolve officers under whom the Railway servant was last working from continuing their efforts to find suitable employment for the disabled/medically decategorised employee. The particulars required to be maintained in registers and notified to other officers in accordance with the instructions above are as follows:

i. Serial number

ii Date on which incapacitated

iii Name and Father's name

iv Post last held on regular basis with scale of Pay and rate of pay.

v. Educational qualifications? If no educational qualifications, then general remarks regarding knowledge of English, regional language etc.

vi. Medical category in which placed.

vii. Details of special supernumerary post till absorption in alternative appointment (Para 1303).

viii. Date from which absorbed in alternative appointment.

ix. Nature and category of alternative appointment.

x. Scale of Pay of the alternative post and the pay fixed at.

xi. Details of supernumerary posts, if any after absorption in Alternative appointment (Para 1305).

xii Remarks .

7. If and when a Railway servant is absorbed in an alternative post, intimation will be sent by the officer under whom he was previously working to all other officers to whom his name was notified. On receipt of such intimation, his name will be deleted from the registers.

8. Before any post is filled or a promotion is ordered, officers concerned will refer to their registers and satisfy themselves that no disabled medically incapacitated Railway servant who is suitable for the

post is available. If any such disabled/medically incapacitated employee is available, he will be given preference over all other categories of staff for appointment.

1307. Reckoning of element of Running Allowance for the purpose of fixation of pay of disabled/medically unfit running staff. While determining pay for the purpose of fixation of pay of medically unfit running staff in an alternative (stationary) post, an amount equal to such percentage of basic pay representing the pay element of running allowance as may be in force from time to time, may be added to the existing pay in Pay Band and the resultant figure (ignoring the fraction of rupee, if any) rounded off to the next multiple of 10 would be the pay in the Pay Band in the alternative post with no change in the Grade Pay of substantive post, in suitable alternative post.

(Authority: Railway Board's letter No,E(NG)I-2008/RE-3/4 dated 30.04.2013)? ACS No.224.

1308. Fixation of Pay (other than Running Staff): The pay in Pay Band of the disabled/medically unfit Railway servants (other than Running Staff) will be fixed in the alternative post as previously drawn in the post held by them on regular basis before acquiring disability.

(Authority: Railway Board's letter No.E(NG)-2008/RE-3/4 dated 30.04.2013? ACS No.224.

1309. Benefit of past service to be allowed: A disabled/medically decategorised Railway servant absorbed in alternative post, will for all purposes, have his past service treated as continuous with that in the alternative post.

1310. Fixation of seniority of disabled/medically decategorised staff absorbed in alternative employment: The disabled/medically decategorised staff absorbed in alternative posts should be allowed seniority in the grade of absorption with reference to the length of service rendered on non-fortuitous basis in the equivalent or

corresponding grade before being declared medically unfit. This is subject to the proviso that if a disabled/medically decategorised employee happens to be absorbed in the cadre from which he was originally promoted, he will not be placed above his erstwhile seniors in the grade of absorption.

1311. Other types of cases:-

(I) The staff who get their cases recommended for a change of category on medical grounds will not get the benefit of these rules, but will be treated as staff transferred on their own request.

(2) The staff declared as malingerer in terms of Note (ii) below para 512(2) of Indian Railway Medical Manual will also not be covered by these rules. They will continue to be governed by the provisions in the IRMM ibid.

(Railway Boards letter no. E(NG)I/96/RE3/9(2) Dated 29.04.99, E(NG)I-2000/RE-3/5 Dated 31.07.01, E(NG)I-2000/RE-3/5 Dated 01-07-03 and E(NG)I-2004/RE-3/9 dt. 7.12.2005)".

38. This Scheme is proposed as a just and fair one but then when we have dealt with it a little more deeply, we find conflicts which are not amenable to solution and what moves us, reasonably enough, is not that the word fall short of completely just and which few of us could accept but that there are clearly remarkable injustice in several areas which we want to eliminate. The great author Charles Dickens notes in his "Great Expectations" ***"there is nothing so finely perceived and finely felt as injustice".*** It is fair to assume that if it were not so, Parisians would not have a bastille./Gandhiji would not have challenged the empire. Martin Luther King would not have fought white supremacy,

without a sense of manifest injustice that should be overcome. While we cannot assume that they were trying to achieve a perfectly just world, but they did want to remove injustice to the extent that it could be and should be.

Some men with swords may reap the field

And plant fresh laurels where they kill;

But their strong nerves at last must yield;

They tame but one another still;

Early or late

They stoop to fate tempted

.....Anonymouse

39. This matter relates to preferential employment to his ward, as prayed for by the applicant, on the ground that he was an employee with the Railway respondents and he took voluntary retirement/medical decategorisation on the ground of his medical de-categorisation and now the applicant is claiming employment of his son in the nature of a compassionate appointment, which he claims as a matter of right. Several schemes had been framed by the Railways from 2004 onwards, ostensibly to help out employees whose particular nature of work is held

to be especially tiresome but we have find it to be net so even in comparison with others and, therefore it might be advisable to allow them to retire early and in their place to grant an appointment to their wards. This was for two categories at first but later on it was extended to cover about ten categories now. ***Besides as against the 5% quota in Direct recruitment for compassionate appointment, this is a 100% replacement of an employee who retires on full benefits and as found in most of the cases within one year of the superannuation. This sort of hereditary appointment had queered the pitch for the actually qualified and meritorious candidates for an employment and consequent livelihood which the State is bound to protect as they may be competitively more meritorious.*** If the likely back door entries can claim more merit, nothing will stop them from actually competing in the regular selection process. Therefore, these Schemes, as it now stand do not represent the extreme variety represented by the 5 % determination for compassionate appointment. Thus these issues are to be disposed to secure ultimate justice for all.

40. The factor of compassionate appointment is different. The factor which led the liberalised retirement Scheme for guaranteed employment for safety staff (LARGESSE) scheme is that the employee of the Railway took voluntary retirement and then suggests/proposed his son/daughter for giving appointment in his/her place. This scheme solely defeats

Article 13,14,16 & 21 of the Constitution of India which cumulatively speak that a government appointment should be given on competitive merit amongst the candidates. The scheme is also against the credence of equality amongst all the citizens of India prevailing for the last sixty years. It is not reflected in the present case. Nobody can claim such appointment as a matter of right as it is squarely against constitutional matrix and devoid of any mechanism to prevent fraud.

41. There is great distinction/difference between compassionate appointment and these types of appointment. It can also be said that in some cases it will be open for the railway to grant compassionate appointment to the dependents of the Railway servant who has been injured in or during government job, duty or retired due to serious illness/grievous injury caused solely by the effect of the duty. But in the present case appointment can be claimed as a matter of right. The whole scheme as now available is unconstitutional as it takes away the competitive spirit to grant a government job and is only a back door entry to secure a government job as it destroys the fundamental right of the competitively meritorious and thus a violation of Article 13 which prohibits any law which will defeat fundamental right.

42. ***The Railway Board seems to have decided at one stage to provide an employment to the wards of medically de-categorised employees but under which power or from which Statutory***

provision that this can be done is not indicated. It is to be remembered that the Railways being the largest employment body of the Government and being its agency cannot be seen to indiscriminately and without supportive power and requirement of law and greater Public interest be allowed to issue such prejudicial schemes detrimental to Article 13 and 14 as the Railway Board will be powerless to issue such orders even though generally it is to be assumed that at least it is supposed to have all normal power, for normally regulating employment regarding its servants. But it cannot transgress Article 13,14, 15,16 & 21 of the Constitution

43. The Hon'ble Apex Court in Uma Devi's case had come down heavily on such back door entries, now it seems that against the soul and spirit of that judgment and many other judgments are equally violated by these Schemes. The Railway Board had devised one Scheme and thereafter amended the Scheme and even thereafter vide another Scheme excluded some class in other Scheme whereby only a person belonging to the medically de-categorised of the time frame of 2001 to 2006 would be included but thereafter people who are medically de-categorised will be covered under the earlier pre amended Rules with reference to decision taken. But the entirety of the scheme itself is against the constitutional mandate.

44. It is noted that whenever strong Unions demands one thing the

administration crumble as if it is powerless to take any decision. Union demands are considered to be religiously met and this will be again amended if another strong Union make another demand to suit its recommendations which is pertinent to that and their time frame alone. **The Railways and Railway Board thus cause Public interest a great harm and prejudice as all these schemes seems to emanate from Union pressure alone.**

45 While the Railways is a largest employer under the Government, and it is necessary to have fair labour relations and it is a welcome step but then by extreme welfare measures like this others must not be prejudiced ***as the ordinary citizen must also be allowed to earn a livelihood in the Railways. The Railways must offer a focus on Public good and public interest. Public interest may not always be with the individual employees causes or their strong Union causes. The scheme thus militates against the interest of the competent common man by promoting the incompetent. Thus extremis welfare and hereditary employment are illegal, arbitrary and beyond jurisdiction of the Railway Board***

46. This is a case wherein an employee who had been medically de-categorized/voluntarily retired just prior to his retirement requests that following the Rule and the Circulars his son/ward may be appointed in the Railways. **This is clearly a back door entry and the Railways do**

not have the power to create opportunities for back door entry without significant reasons present in it as it is against public interest without any redeeming features. The Scheme for compassionate appointment is promulgated as an exception with the intention to provide immediate help to those family who are in penury after the Government employee suddenly passed away leaving his family in penury and hardship. There is also sufficient safeguards which are working for it to ensure that only 5% of direct quota goes to the most eligible among them all and in a pragmatic manner so that there cannot be any complaints or violation of public interest at any stage. But this Scheme of providing employment to the wards medically de-categorised, being without any competitive assessment will lead to hereditary employment through back door and can be manipulated by one Railway employee so that he can engineer himself to be medically decategorised/voluntarily retire just before superannuation and the Railways have found it necessary to set apart this medically de-categorised/retired post on recommendations subject to scrutiny as well in other words **whereby an employee at the verge of retirement can claim medical de-categorisation and then claim appointment for his son or daughter. This will definitely take away the rights which are available to the unemployed young men and women of this Country who are competitively more meritorious to get that particular job.**

Therefore without any doubt the action of the Railways in issuing these Circulars is ultra vires, un constitutional and also against the provisions of the Constitution besides being arbitrary, illegal and against reason and logic.

47. The learned counsel for the applicant submits that under Article 309 of the Constitution the Government and its functionaries have the power to frame the Rules for its functioning. This is another aspect reflecting the lacunae in the governance to be urgently redressed by the Government. Under Article 309 of the Constitution it is envisaged only as a temporary situation so in the interregnum of administrative process proper statutory formations would be laid down. But un knowingly even after 66 years of independence and the formation of the Republic such has not been done and administration and government have been acquainted of Rules which are contrary to each other. It appears that some of this strategy is being adopted herein also wherein contrary circulars are issued by the Railway Board. All the Circulars against principles of fairness and reasonableness must be held to be invalid under law. Further if a retiring employee, can, on the verge of retirement seek employment for his son or daughter it would provide for a hereditary Government employment and in that case there will be hereditary continuation in governance and as such in any case it is not the intention of the Constitution. Such adventures must be treated as

unconstitutional and ultra vires. Any Circular which deals with stipulations for hereditary employment, whether provided in this case or not is thus held to be unconstitutional and invalid.

48. Articles 13 of the Constitution of India makes it clear that laws inconsistent with fundamental rights be void and that State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause been held to be void. Therefore by dint of this constitutional provision the Railway Board do not have the power vested within it to create a Rule or Circular whereby back door entry can be encouraged but then compassionate appointment process can be appropriate as a reasonable classification emerges out of it which is significantly absent in this case.

49. Article 14 of the Constitution of India specially stipulate that the State or its functionaries shall not deny any person equality before the law which means that equality shall not also be denied to him. Therefore if such employment is to be granted to applicant's son, surely it will defeat the claims of the competent persons who would fare better in competitive examination than the applicant's son/ward. The learned counsel for the applicant would submit that the applicant forms himself in to a separate class of already existing employees and therefore it will not be applicable to a stranger, the benefit of circulars are to be given to a particular group of employees who are medically de-categorised but

then employees whether present or future or even past are put in to as one class in classification in adjudicating their merits or demerits in the true sense. Since the applicant is not seeking protection for himself but a benefit for his son who is not yet an employee he can only be equated with a person standing out side and denied opportunity, if this would be continued it will be ultra vires and unconstitutional. This is especially so since the alleged classification is artificial and against the stream of constitutionality.

50. No reason is apparent on the fact of records to establish that this is not an arbitrary measure and for welfare in general of those who are appearing for the examination for appointment but it is clear from the fact that the Board had acted as a pendulum by force of compulsion and not on the basis of fair application of mind. Hon'ble Supreme Court in ***AJAY HASIA KALIF AND OTHERS*** reported in 1981 1 SCC 722 had held that whenever there is an arbitrary State action, Article 14 brings itself in to action and strike down such State action. The Hon'ble Apex Court in ***BACHAN SINGH VS. STATE OF PUNJAB*** reported in 1982 (3) SCC 24 have held that ***under our Constitution, law can not be arbitrary or irrational and if it is, it would be clearly be invalid whether under Article 14 or Article 19 or Article 21.***

51. **Besides by virtue of Article 21 if the applicant's son has to be allowed to enter through the back door it will definitely undermine,**

diminish and curtail the livelihood and the right to live of the more competent persons and therefore would be a violation of constitutional provisions. Hon'ble Justice Bhagawathi in ***BANDHUA MUKTI MORCHA reported in 1984 3 SCC 161*** has ***held there must be stipulated in any State action a certain minimum requirements of fairness under law or else arbitrary decisions will arise which will deprive and will be violative of the constitutional provisions.***

52. Article 39 of the Constitution of India clause (a) stipulate that all citizens, men and women equally, must have the right to an adequate means of livelihood. It says that operation of the system must see to it that it does not result in the concentration of wealth to common detriment. Therefore any back door entry to be provided to applicant's son would defeat the finer solution principles because if when equality of right in employment is present such right is to be guarded by competence itself and when competition is suppressed by discriminating methodology that itself is against the constitutional provisions. The system shall not be so operated so that there will be concentration of wealth as such hereditary employment facility are not therefore in the constitutional interest.

53. Whether be of compulsion or irrational application of mind such Circulars have been issued and apparently, made use of by interested parties by denying rightful protection to competitively meritorious

persons and therefore we find that there was no rhyme or reason apparent in the records pleadings and submissions to indicate that principles of fair governance have been followed. In short all these schemes are bereft of legality and tantamount to a criminal offence.

54. But then the complexity and complicity of the Railways cannot be over looked, wherein even after Uma Devi's judgment back door entry in Government employment can flourish thereby denying opportunity to competitive, meritorious persons and in such situation any adjudicative authority will have to have an appropriate approach complaint to constitution. Therefore all such back door entry schemes, except the compassionate appointment scheme are hereby declared to be arbitrary, illegal, formed out of unreasonable confusion, ultra vires and unconstitutional and are all quashed enmasse. All such Schemes shall be immediately stopped.

55. In terms of the decision of the Hon'ble Supreme Court in the matters of ***SECRETARY, STATE OF KARNATAKA VS. UMADEVI (3),*** (2006) 4 SCC 1, under no circumstances the applicant's son can take a back door entry to a Government Department. **The claim of the applicant is, therefore, held to be totally unconstitutional. If the people like the son of the applicant get back door entry to the government department, it will defeat the way for a more suitable person.** We therefore hold the applicant has no vested right to seek

appointment of his son for his livelihood to claim under medical decategorisation and no fundamental rights are infringed if his request for compassionate appointment to his son is rejected by the respondents as it is squarely covered by several Apex Court judgment. In short, this is correct approach.

56. In fact, in a similar case at Jaipur Bench, in O.A.NO.654/13 it was found that the Railways did not file a reply for more than a year and finally it had to be heard. But, in judicial review in High Court, the Railways took a stand that they did not get an opportunity to file reply and as both parties wanted a remand, the High Court had granted it. . It is this reluctance which was under challenge. **The question thus raised is even in this scenario will it be necessary to hear the Railways also while apparently accepting their reluctance as legitimate and correct?** In view of a doubt which is pointed at, this case and its cause and effect also have to be examined. So we tried our best to hear Railway Board and the Unions. But both refused to co-operate leading to an adverse presumption.

57. Doubtlessly so, the right to be heard before an adverse order is passed against them is most fundamental legal position under Constitutional process. But apparently even if the word adverse may be stretched to include all elements of adversity also, as we had tried to analyze and distinguish the contentions of the applicant vis-a-vis certain

decisions Railways thus had taken and while a coordinate Bench, had opportunity to question, those enlarged grounds also after both sides were heard, which of-course can be under challenge and review in a High Court. **But then these decisions has its genesis acknowledgeable by and from the consolidated expressions of many Hon'ble Supreme Court judgments which are ipso-facto acknowledgeable by all Sub-ordinate Courts and Tribunals. There is no way that Hon'ble Supreme Court judgments can be ignored by any Hon'ble High Court or Tribunal.** Therefore, even though by a stretch of imagination, in the light of reluctance of the Railways to concede to the applicant but again if its finer elements can also be considered as adverse. Let us examine the elements of the concept of **"to be heard"** in this case under various streams; so as to clear the situation.

1)**The applicant:** The case of the applicant is unfolded. In the original application he has filed and when he was heard through his counsel, he had espoused his cause with great vigour and verve. Fundamental of this issue has thus already been amplified by a coordinate Bench. Therefore what would remain for him is only chances to file a rejoinder after the reply of the respondent comes in. But then if any Court or Tribunal feels that when the question of law as laid down by the Hon'ble Apex Court, seems to be adequate, as the matter seems to be already

settled, by Umadevi judgment and other judgments then the question of reply and rejoinder will not arise as all these issues relate to question of reply and rejoinder will not arise as all these relate to question of fact. **The issue here is only whether protective discrimination which will actually militate against Article 13 and 14 can be made available to this applicant under Article 15 and 16 of the Constitution of India in the light of decisions of Hon'ble Supreme Court. If the principle of law as found by the Hon'ble Apex Court in Umadevi case and other cases is at variance with the fundamental praxis and legality as espoused by the applicant, therefore already completed judicial determination by the Hon'ble Apex Court will bar further consideration of the issue if you understand Article 136-142 of Constitution of India. Therefore it cannot invite more chances of hearing to the applicant. As the applicant is already heard and in his presence only an order was dictated in the Court itself.**

2)The Railways: In the case of the Railways there is no question of any adversity involved against their contention. Therefore since their contentions seems to be that they are not willing to appoint the applicant on compassionate ground. But then the larger elements involved in it are also to be considered on basis of coordinate Benches decision at a similar matrix and in which Railways were properly heard and of-course challenge can be under way against it. Since Railways is an all India

entity they are entitled to challenge it through Hon'ble Supreme Court if they feel that even minor elements of a decision are against their avowed principles of operation. **But unless the principles enunciated by the Hon'ble Apex Court in a constitution bench decision are set aside even its policy formation will not have any solid foundation behind it as the laws espoused by the Hon'ble Supreme Court will be final. But in the factual element involved there is no adversity or adverse reaction placed on the shoulders of the Railways as the judgment supports, essentially, the view taken by the Railways themselves. To say yes to them you don't need to consult them again. Therefore hearing of the Railways, when the Court accept their contentions is not required.** But then it will not deny the right of the Railways to challenge, even that decision, if they feel that even smallest element of said decision is against their interest. This is the right of any litigant before the Court.

3)**The poor Souls who are left out:** There may be hundreds of people left out who are competitively more meritorious than the applicant. 65,000 - 75,000 families lost their right for the employment by these hereditary appointment. They have no voices and no counsel to advise them. They have no nexus or juncture with an authority and therefore it is natural and normal under Anglo Saxon jurisprudence for these poor souls to lose out. But then principles of dynamic adjudication are such

that, even when unheard and unseen these elements also must be taken note of by adjudication acting under justice. **No Court can shut their eyes to the pregnant fears of the unseen. Their blindness, their deafness and their dumbness shall not fall to ignite in you an element of caution but then all judicial decision of Superior Courts and Tribunals are to be undertaken in a spirit of dynamic understanding as it cannot become an engine of oppression.** It is no wonder that basic legal treatises of India, i.e. Code of Civil Procedure and Code of Criminal Procedure contains elements in it to encompass this in Court as virtue to be upheld and as well from Macauley's time onwards this essential feature in justice delivery system is apparent in any adjudicatory situation. Therefore these elements are also relevant even though silent.

4)<u>Elements of Larger Public Interest:</u> **The question of inheritance claimed by the applicant is abhorrent to all principles of fairness and probity.** But in Indira Salvey case the Hon'ble Apex Court had explained and examined the parameter of protective discrimination. But a reading of Article 13 would be relevant before we consider it. **All laws of State which are inconsistent with fundamental rights, shall to the extent of such inconsistency be void. Positively also State shall not make any law which takes away or abrades fundamental rights of any citizen. It is the fundamental right of competitively**

meritorious to be the recipient of the largesse of the Government as Jobs. In certain situations, as exceptions, some deviance is allowed. But as it is only an exception and it can only be applied in such exceptions alone. In this case, thus larger public interest will be decimated if the applicant's contentions are applied. It will also run counter to the principles espoused by Uma Devi judgment of the Hon'ble Apex Court. **Therefore, when must one commence the acceptance of the legal principles espoused by the Hon'ble Apex Court? Surely, at the first opportunity.**

59. Article 14 of the Constitution of India guarantee right of equality of all Citizens. In ***MOTOR GENERAL TRADERS VS. STATE OF ANDHRA PRADESH*** reported in 1984 (1) SCC 222 the Hon'ble Apex Court categorically held that, to establish a classification there must be a nexus between basis of classification and the object under consideration. Without any doubt in this case the **retired employees cannot aspire to a classification of being able to legitimize an inheritance for their offspring for their Government Employment.**

60. The Hon'ble Apex Court had held in the case ***SHRILEKHA VIDYARDHI VS. STATE OF UTTAR PRADESH*** reported in 1991 (1) SCC 12 that even overtures of the State to provide private parties are to be governed by Article 14. Therefore even if Railways decides to grant some benefits to the employees and their children it will be gathered

under the ambit of Article 14 only. This is especially true as Article 15 and inclusionary clauses expressly prohibit such ingredients. Article 16 determines that only for backward classes of citizens to be eligible for such protective discrimination and hence might not fall within this classification. **Even though in the course of duty if grievous injuries are suffered by the Government employee provision can be made for his protection because it is for public interest that he has sacrificed. But if a Government employee on the eve of his retirement seeks for medical de-categorization after having full benefit of employment seeks voluntary retirement and then seeks for compassionate appointment for his offspring it will be obnoxious and violative of fundamental rights of competitively meritorious and thus unconstitutional.** It will be so arbitrary and illegal that it defies belief even though **the applicant claims that this is being made available to others on suitable terms. There cannot be equation in illegality.**

61. If we consider the right for proper defense as part of Article 19 then the Hon'ble Apex Court expresses in ***INDIAN EXPRESS NEWSPAPERS VS.UNION OF INDIA*** reported in 1985 (1) SCC 641 stating that this right exists for upholding truth. **If truth is already described by the Hon'ble Apex Court then the variety and validity of truth cannot be taken** up in further contemplation by other Courts or Tribunals in corollary

proceedings and at a Tangent. In ***BACHCHAN SINGH VS. STATE OF PUNJAB*** reported in 1982 (3) SCC 384 the Hon'ble Apex Court held that as in R.C.Kapur case and in Maneka Gandhi case the Hon'ble Apex Court held that to locate fundamental right the Court must consider direct consequences of the issue. **"without any doubt the direct consequences of the issue is denial of the right of competitively meritorious".**

62. If allowed the contention of the applicant, it would be a negation of Article 39 of Constitution of India which guarantee an equal right of livelihood to the citizens. This right shall always pervade and permeate decision making process and there cannot be any decision of local authorities or administrative authorities which shall negate this principle. Therefore the Railways themselves had not granted benefits to the applicant as it is cleared by the Hon'ble Apex Court's judgment in ***AKHIL BHARATIYA SOSHIT KARAMCHARI SANGH VS. UNION OF INDIA*** reported in 1981 (1) SCC 246. **Thus even if the Railway wants it, it cannot grant such illegal bequests as back door entry is already barred by Uma Devi judgment.** The contention of the applicant is that, some sections in the Railways is promoting this activity, **and only because his inability to appease them that he is unable to get it.** If the Railways are violating the Hon'ble Supreme Court's order and creating avenues for illegal activities, it will constitute an offence, **but**

even then an illegality cannot claim acceptance, just because of co-ordinate illegality.

63. In ***UNION OF INDIA VS.C.DANIAN COMPANY*** reported in 1980 Supplementary 707 held that power of the Apex Court under Article 136 to Article 142 was explained as this decision would be on the basis of the justice, equity and good conscience. Therefore as the Hon'ble Apex Court had already found that back door entry must be prevented, Constitution must be up held and this bounden duty of the authorities to consider and agree that decision and analogy are on the basis of justice, equity and good conscience. This found more impression in ***CHANDRA BANSI SINGH VS. STATE OF BIHAR*** reported in 1984 (4) SCC 316 when the Hon'ble Supreme Court held that, it is also a Court of equity. In ***RAFIQ VS STATE OF UTTAR PRADESH*** reported in 1980 (4) SCC 262 the Hon'ble Apex Court held that concurrent findings of fact originally are for conclusion in sanctity and tentative finality. Therefore question under consideration as it comes is **what is the preferential right of the applicant for compassionate appointment?** in all normal consideration compassionate appointment is extended to family of government servant who leaves life early in service and is in such indigent circumstances and even then could be appointed only under rigorously held matrix and after comparative analysis of other similarly situated and even then within 5% of direct recruitment quota. **Therefore**

even mercy under extreme circumstances are constrained and distrained as constitutional matrix in this issue is promotion of competitive merit as otherwise found Article 50(A)(J) of providing for signorial excellence cannot be attained by India Thus, even under best condition, protective discrimination has its limits. In the manipulated situation of this kind, it will lead to a new law of succession.

64. Therefore there need not be additional chances of hearing being granted to either applicant or the Railways as the applicant had been granted full opportunities and in the case of railways the order only supports contention already taken by railways. **The other two important elements must remain always submerged but even present in the equitable conscience of the judges when they adjudicate, the general public interest, therefore will be present as a brooding Omni presence in the adjudicatory Horizon. It is the duty of all Courts to ensure that laws and its implementation do not emerge as engines of oppression. If this matter is delayed for unseemly and unnecessary reasons, if what the applicant say is true to an extent, people with competitive merit would be supplanted by the less meritorious. Thus it is necessary to pass an immediate order of dismissal. Even otherwise, no Court can over look Uma Devi judgment, lest a situation of Contempt of Court**

arises.

65. It may be argued that if the Railways had granted similar benefits to others and the Railways admit such an infraction as permitted by its own internal arrangements what will be the issue at hand? Can the applicant rely on such an illegal proposition of the Railways also to claim a benefit? In such a situation should we not allow the Railways to prove that the illegality apparent in such policy formulation is actually justifiable is the question that can possibly be floated? In other words could it not be a view of onset of doctrine of eclipse. But in ***BECASI VS. STATE OF MADHYA PRADESH*** reported in AIR 1955 (SC) 781 the Hon'ble Apex Court held that the doctrine of eclipse is available only to pre-constitutional laws and their ambit is limited to the time frame of coming into operation of Constitution of India at which time it becomes abinitio void. This is further considered in ***DEEPCHAND VS. STATE OF UTTAR PRADESH*** reported in AIR 1959 (SC) 648 wherein the ***Hon'ble Apex Court held that a post constitutional law which contravene Article 13 is a nullity.*** Therefore it is a law which is still born. It is further held by the Hon'ble Apex Court in ***MAHINDARLALA JAIN VS. STATE OF UTTAR PRADESH*** reported in AIR 1963 SC 1019 **that the voidness of such post constitutional law which abrades fundamental rights of the eligible is thus void from the beginning and as such it cannot be there in existence for any parties.**

Therefore Railways cannot bring any formulation whether statutory or regulatory against Article 13 or 14 or 16 or 21 as it will abrade the fundamental rights of the competitively meritorious. That being so, Railways cannot be asked to justify an illegality on whatever basis as such illegality would have effect of diminishing any fundamental rights of the competitively meritorious to be aspiring for employment under it without any doubt. But inheritance contingency of the applicant or any of the others like him will defeat fundamental rights of the competitively meritorious. Therefore by no stretch of imagination can it be held that the Railways would have a subsisting right to justify an illegality in the light of the Hon'ble Supreme Court judgments and its consolidations as stated above.

66. In ***B.S.NAJIR VS. UNION OF INDIA*** reported in AIR 1983 SC 1030 the Hon'ble Supreme Court struck down as unconstitutional rule 34 of Pension Rules on the ground of artificial classification which has been canvassed and as the principles was not based on any rational principle and both doctrine of arbitrariness and doctrine of classification has been assimilated in the judgments as it found that classification was not based on intelligible differentia and therefore if persons similar to applicant were to be preferred, it would be a penal offence as well, **<u>if we were to believe the allegation made by the applicant and such persons</u>**

were appointed within confines of the Railways on the terms as now put up by the applicant it is not based on intelligible differentia which is necessary for creating a separate valid classification. Therefore even if we are to assume that the Railways can be given an opportunity of challenging such a postulation against it, it cannot be so as Railways as en agency of the State is still bound by the finality of the dictum laid down by the Hon'ble Apex Court in relation to Article 13,14, 15 and 16. **Therefore this having been finally settled by the Hon'ble Apex Court on these issues it is not necessary to invite a justificatory view from the Railways as a respondent.** It will be better to leave the matter for the Railways to decide on prospective action on the basis of judicial determination made this day that such infractions are not having constitutional value. Correctness or incorrectness of application of constitutional provisions will not substantially vary the law of pendulum with slight variations of factual premises as for misapplication there must be substantial variance and other connected matrixes as well. Therefore for an imaginary situation we cannot assume that the Railways would want to commit an infraction. **Therefore for an imaginary situation we cannot assume that the Railways would want to commit an infraction. Therefore even to delay a second more will defeat constitutional provision and the**

decision of the constitutional bench of the Hon'ble Apex Court and dealing against the stream of contempt laws.

67. Commenting on this the Hon'ble Apex Court in ***AIR INDIA STATUTORY CORPORATION VS. UNITED LABOUR UNION*** reported in 1991 (1) ACC 283 spoke about Article 38 and 39 of Constitution of India in the context of social justice which is dynamic as to alleviate sufferings of the poor, weak and held that **adjudicatory bodies must be, if not the champions of the needy be at-least their supporters.** Social justice and equality are complementary to each other and for existence of rule of law they should maintain their vitality. Thus the Hon'ble Apex Court held that equality in matters of livelihood are part of the fundamental process of constitution. **Therefore if the competitively meritorious are denied an equality for consideration for livelihood for extraneous reasons as has been up held by the applicant in his pleadings, without any doubt it will be an absolute negation of constitution and rule of law.** Therefore for this purpose it is **not necessary to hear the respondents-Railways to see whether they would like to justify an illegality if it had been committed.** The laws relating to presumption dictate that no illegality need to be presumed on acts of governance. We will also thus accept this salient principles and assume that no illegality is being conducted by the Railways especially

as specific instances are not available in the pleadings of the applicant along with an opportunity to those, thus benefited by it are put into party array so as to form the bulwark of challenge as an opportunity. Therefore from both these angles no further consideration would be required and any further delay in dismissing this contention may also result is a feeling in the respondent that what has been assailed by the applicant may be legally correct also. ***Therefore it is the bounden duty of the Courts and Tribunals to dispose of the matters in the first instance itself if it is thus available to them. In the consolidation of the Hon'ble Apex Court rulings which are available on the issue there cannot be any doubt for judicial determination. If we imagine it out then we diminish the process.***

68. The issues to be determined will thus be

1) In devising any principle of law, if the Hon'ble Apex Court had indicated its mind on a issue, what shall be the approach of subordinate Courts and Tribunals to it?

2) Is it possible to have corollary consideration against the principles already laid down by the Hon'ble Apex Court on a variant shape of factual matrix and will any step in corollary consideration be in negation of constitutional Bench's findings?

3) What is the nature of wilful sanctity and finality of the Hon'ble Apex Court judgment?

4) For slightly different factual parameters, to what extent can subordinate courts judicial discretion weigh-in for such additional consideration?

69. But then in a similar matter a Co-ordinate Bench of Jaipur has passed an order in O.A.NO.654/2013 in ***GANNI KHAN and another VS.UNION OF INDIA AND ANOTHER*** had been challenged by two Writ Petitions by both the parties. i.e. the Railways as well as the affected party. In Writ Petition No.2279 and 2452/2014 vide order dated 16.04.2014 wherein it has been said as both parties suppressed the fact that even after more than an year, the Railways did not file any reply.

> "We have heard counsel for the parties. As both the parties are aggrieved by the order of the tribunal, in our considered view, the procedure followed by the tribunal in recording the finding in respect of the preferential scheme introduced by the Railways seeking employment without affording reasonable opportunity to the UOI cannot be approved by this Court and that is also not in conformity with the basic tenets of law where the parties to be afforded with the reasonable opportunity of hearing before any adverse order being passed, indisputably in the instant case the finding which has been recorded by the tribunal certainly adversely affects rights of Union of India to whom opportunity was not afforded to comply with basic requirement of law"

70. But then the explanation to this is available in the foregoing paragraph. The Hon'ble High Court of Rajasthan at Jaipur had touched on the normal basis of any judicial determination wherein right to be

heard is made available to the parties but then in this case the actuals to be affected are outside the purview of the Tribunals jurisdiction but which the Tribunal cannot forget in view of general public interest. **The actual meritorious are outside and this is a case wherein because of Trade Union militate activism and the pressure which can be extracted by them, the applicant on the one side and the respondents on the other side seek the same culmination as even though the Railways have not initially agreed to the proposal of the applicant, they have not actually rejected it, but only expressed their dis agreement.** But at the same time it was said that they are accepting this view as correct. But then they are only flouting the Umadevi's case of the Bench of the Hon'ble Apex Court. It may be noted that in O.A.No.855/2013 on 24.10.2013, the respondents have already appeared. On 25.10.2013 it was already mentioned that the claim for compassionate appointment which is a Scheme LARGESS which is similar to LARGESSE has already been rejected by the respondents. **Therefore, since the Bench had already found that the claim had already been rejected earlier itself then even if the respondents are not allowed to file further reply, no prejudice will happen to them as their defence is exposed already.** The Bench will be echoing only their decisions. On 13.02.2014 also no reply was filed. But on 07.05.2014 we have heard the issue and decided that **it**

does not merit any further consideration in view of the Hon'ble Apex Court's judgment.

71. There is no question of respondent to be allowed a chance to be heard as in this matter only the applicant need be heard. Since unlike in the other cases of the Jaipur Bench, the respondents had already rejected the application of the applicant's claim even though the applicant stated that in several other cases the respondents had not done so. **But then the Constitutional Bench of the Hon'ble Apex Court having settled the matter and following the other decisions of the Hon'ble Apex Court there cannot be any prejudice caused to them even if they were not heard.** In ***AIIMS VS.AIIMS STUDENTS UNION*** reported in JT 2001 (8) SC 218 the Hon'ble Apex Court has held that no authority has the right to discriminate between citizens in the matter of grant of LARGESSE. **Therefore the Railways cannot over ride the Hon'ble Apex Court's decision to disgrace merit and grant any special benefits to any of the meritless on the matter of compassionate appointment, who is at the verge of retirement as it will make the Supreme Court decision regarding compassionate appointment negative and meaningless.**

72. When the Hon'ble Apex Court upheld the provisions for compassionate appointment it had limited it to the 5% of the direct recruitment quota and was based only on the question of indigent

condition of the family. **It is a situation wherein the bread winner of the family dies suddenly leaving the family in penury such is not the condition of an employee at the fag end of his career deciding to take voluntary retirement.** It may be that in certain levels of employment which may be so harsh that some arrangements can be made but then it cannot be applied cutting across the Board. The discrimination in LARGESSE was taken up in ***R.V.SHETTY VS.UNION OF INDIA*** reported in 1979 SC 1628, In ***E.P.ROYAPPA VS. STATE OF TAMILNADU*** reported in 1974 SC 585 and in ***MANEKA GANDHI VS. UNION OF INDIA*** reported in 1978 SC 597. The Hon'ble Apex Court had described how a classification can be formulated. In the LARGESSE Scheme postulated by the Railways the rationale is the same to all such Schemes. No intellectual ratio is available to focus a light on a son of an employee to allegedly to take voluntary retirement immediately before his normal superannuation, thereby he destroy the chance of actual meritorious candidate. **None of the Government authorities can be party to such prevarication of law and justice in any way.**

73. ***Unless we quash the whole thing and tell the world, we diminish in our judicial responsibility, If the Railways wanted to review the applicant's case they could have done so in the seven months which they had before, this matter had been in the ambit of***

the Railways at the highest level for since long but based on the technicalities of application it had been elasticised all along thereby denying the rights of the rightful and granting merit to the unmerited. Judicial conscience cannot agree to subverting of law and Hon'ble Apex Court's judgments.

74. It is significant to note that emphasis now is on review of legality in State action because it tempts not from the nature of functioning from the public nature or the bad exercising of that function. As all power possessed by a public authority are only to be used fairly. Thus Railway Board when they exercise its power it must necessarily exercise it for the good of the general public even though the good of the employees may also constitute public good, but when it comes to undue distinction placed and merit conferred without right such will become ultra vires and that authority and its exercise therefore becomes unconstitutional. Even otherwise the only exception limiting the same is to be found only in special cases whether such execution can be desirable for strong reasons of public policy. Thus if the judgment of the Hon'ble Apex Court relating to compassionate appointment has to be watered down it can only be for very significant exceptional reason as otherwise it will attract contempt of the Hon'ble Apex Court. But even such decisions are reviewable as none of the matters of State are seen as private activity to be excluded from public view or scrutiny. Unlike a

private party whose acts are influenced by personal predilection which may not create adverse consequences and without affecting the public interest, any such act of the State or public body will adversely affect the public interest. **In these cases whatever is being appropriated illegitimately by bending of rules for Railway employees are taken out of the pockets of the poor but qualified persons standing outside**. However, a holder of public office by virtue of which he acts on behalf of the State or Public body is intimately accountable to the people on whom the sovereign powers are vested and meant to be exercised for public good and for promoting public interest.

75. It can therefore no longer be doubted at this point. Article 14 of the Constitution of India applies whatever be the matters of governmental policy are and even if any government failed the test of reasonableness it will be unconstitutional as held in ***DAYANA VS AIRPORTS AUTHORITY OF INDIA*** reported in 1979 (3) SCC 489 and ***KSTLA LAK REDDY VS. JAMMU AND KASHMIR*** reported in 1980 (4) SCC 1 and in ***COLONEL SANGWAN VS UNION OF INDIA*** reported in 1980 supplementary SCC 559. **It thus postulated that there is no untrammelled power which resides in any authority to do as they please.**

76. But therefore what are the issues resident in it which will defeat the constitutional purpose?

The assumption that these particular categories of employees are performing such an extremely hazardous employment and that a hereditary continuance must be granted to them as some sort of the compensation is the first one to be taken up

Assume the case of Soldier or a Sailor. Their profession is also an extremely hazardous one and many a time extremely physically taxing as well. As a compassionate process State had granted them some benefits but has not thought it fit that a General's son could be a General following him. A Colonel's son should be a Colonel following him or at least they should start at the bottom of the totem pole but to do so would be a negation to constitutional justice of equality principles. Employment generated under the sovereign power of the State can only be granted to people to eke out through competitive assessment procedure subject to the just equations of reservation under their policies. While it is correct that for the disabled some reservations are kept alive, but those are within the constitutional conspectus and nothing more. But if a State funded instrumentality has chosen a new perspective to employment that if the employment under the Sun and the Wind and the Rain is to be considered as harsh and then it should

be possible after 20 years of service to take a beneficial voluntary retirement and post one's progeny to continue the employment under the Government, it will be arbitrary and illegal.

77. At the request of the respondents, we have carefully gone through Provisions under Articles 13 and 14 ,15, 16 Article 19, 20 and 21 and to find any effect through the whole gamut to see any power would exist for any administrative authority to discriminate between the current employee and an outsider who may be seeking an employment but who may be competitively meritorious than the progeny of the current employee and grant them as a special benefit for progeny of the employee only on the ground the work done by the father was perceived to be difficult to perform. **We have already seen that physical work of the Farmer or the Bus Driver or a Truck Driver under employment of the Government itself can be more strenuous and in any case more risky as driving in the road is more risky than on the tracks. Therefore what prompted the concerned authority to create an access between the current employment to a new genesis in view of the prospect for the progeny of the current employee would be the question.**

78. It is stated at the Bar that the Unions espouse this Scheme because the employees of the Railways in the process of being a model employer had got recognised their demands and had devised such

LARGESSE to be doled out to the current employee but **then the great monolith of the State is not empowered to deviate in any way from constitutional compulsions and cannot act arbitrary and without due compliance to constitutional compulsions,** it cannot deviate an inch beyond provisions of equality principles and even when if reservations are to taken up,, it has to be only within the parameters set by constitutional compulsions alone and **therefore under these premises what is the power of the concerned authority to issue such Schemes or Circulars by which the progeny of current employee is to be in favour as against the competitively meritorious candidate standing out side.?**

79. **Therefore is there a conflict between the equality premise in the Constitution and the welfare conspiracy now allegedly being done by the Railways as they feel that the Loco Driver has to drive for 12 to 13 hours and thereby suffering a physical diminishment to be specially compensated by the offer of an employment to the son after he seeks to get voluntary retirement in many a case immediately prior to his normal superannuation or on a medical de-categorisation etc. It is to be noted on a medical de-categorisation no prejudice will visit an employee as his pay and prospects are protected and further physical diminishment is covered by the medical facilities of the Railways. These are travails which avail to**

a normal State transport bus driver who takes up his employment in the morning and finish up in the evening or night and due to circumstances of their job it is not possible to curtail their services in between the duty hours and thereby, to compensate they are made to work only on either alternate working days or sufficient gap between rest and duty are provided before next tranche of duty. Therefore we find that regardless of the explanations the amount to mercy now being powered by the employees of Railways might appear to the dis proportionate as be misplaced as a physical infirmity, disability, diminishment which are effectively covered by a special process of an employment incorporating provisions of the Railway employees themselves. Therefore, if every diminishment is covered, why this extra benefit?

80. Therefore why the special dispensation? and what is the negative consequence of it? It is to be understood that by several procedures that a large number of employees are now being brought into the ambit of these schemes. Alarmed by the level of compassion which was allegedly being meted out on even compassionate appointment following the death of the bread winner The Hon'ble Supreme Court has limited it to 5 % of direct recruitment quota alone and even then on special parameters of measurement of indigency and other suitable measures. It is to be noted in this connection that the present Schemes envisaged

does not encompass any such protective parameters. It is so liberally construed and constructed that it is possible that a large number of employees might choose this methodology of hereditary of employment. Thus this level of employment now enjoyed by the progeny of the current employee will inequitably destroy the life of competitive meritorious candidate standing outside and thereby destroy their livelihood even though constitutional schemes ought to give prominence to merit only.

Therefore while legitimates are ousted through these schemes; illegitimates are in. Therefore the crucial question which would be under the constitutional context of India would be; what is the extent of power of administrative authorities to devise a plan which will defeat the constitution?

Therefore what is the Scheme?:

81. There was an early safety Scheme for Drivers and Gangmen in 2004 wherein Shunting Porter or Shunting Drivers were all dis allowed to participate as their job do not involve any strenuous activity. Later on the liberal Scheme was brought in as LARGESS in that safety related retirement Scheme has been enlarged by including others also and bringing down 33 years of service to 20 and reducing the age on the ground that stress of work grants them a special status. **<u>But then if these people are to be medically found unfit or they became</u>**

disabled in any manner, there is a Scheme for disability/ medically decategorisation and effective remedy for all stress relating to the Drivers on the basis of it require more alertness but then these days in many a train Driver's cabin is air conditioned and there are more than one person in a cabin and driving on a track is entirely different from driving on the roads. Imagine then the plight of the State transport Driver who had still to reach his destination. Even in traffic brawls. Driving on a road requires at least 5 times more alertness and continual attention than on a track. It may be noted in this connection that the Loco Pilots are among the highest paid in the Railways as along with their running allowance many of them collect much more take home pay than the head of the division. Their working hours are regulated in such a manner as to provide effective rest between stints of duties.

82. Regarding Gangmen who work and manned the tracks it involves heavy work when they are laying tracks which is not all the time but normally this is done by contract employees and not Railway employees **when they are manning the tracks they have to walk long distances in rain or shine. But then the Farmer or a Gangman of a road repairing unit has to suffer much more than these people. It is to be noted that medical facilities offered by the Railways and the**

medical decategorisation facility are among the best in the world and going by what is available to those similarly situated people of other spheres to governance they are much better placed than soldiers/Policemen/Drivers etc.

83. In this Scheme it is noted that under clause-6 the son or daughter will be considered in the list of recruitment group of the respective category from which the employee seek retirement. **The only case is wherein an officer in the army can hope to have his Son made an officer directly without going through any of the competitive assessment procedures. The only parameter required is vacancy, health of the ward and the basic qualification. Even in the compassionate appointment Scheme there is a limit to 5% of the direct recruitment quota and it will only be eligible to be considered along with all other suitable candidates of similar nature in a competition. This is 100%**

84. This Scheme was later expanded and also quite more shockingly it is stipulated, still more liberalised Schemes which are now offered as LARGESS which is a Scheme which was issued which thereafter require only 20 years of service in lieu of the earlier 33 years of qualifying service and that they should be within 50 to 57 years of age. It must be remembered that they are retiring with all the normal benefits

and then be able to nominate the son or daughter for a back door entry contrary to ***UMA DEVI's*** judgment and other Hon'ble Supreme Court's judgments.

How does these Schemes violate Article 13 of the Constitution of India?"

85. Article 13 sub clause 2 ; ***"The State shall not make any law which takes away or abridge the rights conferred by this part and any law made in contravention of law, be void.***

86. Sub clause (a) law includes any Ordinance, orders, bye- laws , rule, regulations, notification, custom having the force of law. The main object of Article 13 is the paramountcy of Constitution and the fundamental rights. It prohibits the State from making a law which will take away or abrogate in part a fundamental right. ***It is to be remembered that the silent majority of competitively meritorious has the fundamental right to be considered for appointment in the Railways. Going by the constitutional compulsions it is they who have this right. Certain employees on the other hand cannot be held to able to diminish the fundamental right of competitively meritorious as to nominate their progeny to be their successor in the Government employment.*** In ***PARVEEN HANS Vs. REGISTRAR*** **AIR 1990 notes of cases 107 PUNJAB AND HARYANA the High**

Court held that for admission to LLB course in Punjab University ; reservation for employees of University and their wards is unconstitutional even though they are submitted as a measure of welfare. In ***HUMANITY Vs. STATE OF WEST BENGAL*** reported in AIR 2011 SC 2308 and ***AKHIL BHARITYA UPBHOKTA CONGRESS Vs. STATE OF MADHYA PRADESH AND OTHERS*** reported in AIR 2011 SC 1834 the Hon'ble Apex Court held that the **Government cannot act indiscriminately in matters of granting LARGESS, it cannot act arbitrarily in a manner which would benefit a private cause without any hindrance and a hereditary succession of the Government employment as a private cause to be apportioned.** It is the case of the applicant that it is to be noted in this connection that **many similarly situated persons were granted employment by the Railways on extraneous conditions and if the applicant also met those conditions, he would have been appointed but that cannot be a ground as illegalities cannot be perpetuated.** The Hon'ble Apex Court in ***MESSRS.VISHAL PROPERTIES (P) LIMITED Vs. STATE OF UTTAR PRADESH AND OTHERS*** reported in AIR 2008 SC 183 had made it clear that while administrative authority had committed an illegality that cannot be called as a ground for the imposition of the same on others as well. ***In STATE OF ORISSA AND ANOTHER Vs. MAMATA MOHANTY*** reported in 2011(3) SCC 436 Hon'ble Apex Court

held that an action of the State and any of its instrumentality should not only be fair, legitimate and above all it should also be without any favour or aversion. It should never be discriminatory nor based on .favouritism and nepotism and that being so the Railway would not have any power to create a Scheme as LARGESS or the earlier forms as it would be absolute favouritism.

87. The respondent claims that it was within the discretionary powers of the administrative authority and Railway Board to create such a Scheme as it were done as part of man management strategy after discussion with the Unions, in other words as in compliance to Trade Union's demands. **Trade Union may make a demand of its members but then institutional authority has to consider the effects it would have on the general public because the Railways in its magnanimity and its magnificence exists for the citizens of the country as a whole and not for a part of it.** In ***DELHI TRANSPORT CORPORATION Vs. D.T.C.MAZDOOR CONGRESS*** reported in AIR 1991 SC 101 the Hon'ble Apex Court had held that discriminatory exercises itself is not permissible under constitutional parameters. Hon'ble Apex Court in ***JOHN VALLAMATTAM AND ANOTHER Vs. UNION OF INDIA*** reported in AIR 2003 SC 2902 had held that the protective discrimination can only be canalised under the sub clauses

of Article 15 and 16 and the Scheme which is effected is against it, as in this instant case it will be hit by the provisions of Article 13 and therefore beyond powers of constitution and its application. In ***MESSRS. DELHI AIRTECH SERVICES (P) LIMITED AND ANOTHER Vs. STATE OF UP AND ANOTHER*** reported in AIR 2012 SC 573 the Hon'ble Apex Court held that all the law which is enacted or brought into force must be just, fair and reasonable and in the absence of these elements it must be struck down. The greater element which is in issue is how the employment LARGESSE is to be dealt out by the Railways as it can be said that while the Scheme eschews the presence of the competitively meritorious, the said regulation or circular is un just, un fair and unreasonable. Therefore it militates against Article 13 and 14 of the Constitution of India and it is not even within the protective parameters of 15 (4) and 16 (4).

88. Going by Article 21 it cannot be seen that it can be stretched to mean that every one must be given a job even though the provision of Article 41 and 42 are un **enforcible but it is certainly aimed to mean that only the best among the seekers can only aspire jobs under the Government.** The Hon'ble Apex Court in ***INDIAN DRUGS AND PARMACEUTICALS LIMITED Vs. WORKMAN INDIA PARMACEUTICAL LIMITED*** reported in (2007) 1 SCC 408 had made it

very clear that **in the legislative Scheme of governance in India the right to livelihood is on a higher pedestal than a legal right. Therefore any infringement or abrogation of who are competitively meritorious be thus hit by ultra vires.**

89. So far as it relates to Article 13,14,15 and 16 the tenor of equality and non arbitrariness is the basic thing and the Hon'ble Apex Court in ***LOCAL ADMINISTRATIVE DEPARTMENT AND ANOTHER Vs M.SELVAM*** reported in AIR 2011 SC 1880 held that appointment of the son after 7 !/2 years after the death of the father on compassionate ground is against the provisions of Article 14,16 of the Constitution and hence held it to be bad and illegal. This is on the principle that even the compassionate appointment can be granted only on certain well measured parameters and beyond that even that would be illegal. **That being so the present two Schemes are illegal in the nth degree.** In ***FOOD CORPORATION OF INDIA WORKERS Vs. FOOD CORPORATION OF INDIA*** reported in AIR 1990 SC 2178 the Hon'ble Apex Court held that when fundamental right of a person are impaired by Government rules or government orders, Court should interfere in matters concerning service. Clearly the fundamental right of livelihood of the competitively meritorious who are eligible to employment are

abborated and curtailed by these two schemes which are illegal in extremis.

90. The Hon'ble Apex Court in a judgment by Hon'ble Justice Bhagawathi in ***BANDHUA MUKTI MORCHA Vs. UNION OF INDIA reported in (1984) 3 SCC 161*** held that when fundamental rights of an employee are concerned, any abridging of it is sufficient for judicial intervention as in matters of irrational classification. The Hon'ble Apex Court held in ***GRIH KALYAN KENDRA WORKERS'UNION Vs. UNION OF INIDIA AND OTHERS*** reported in 1991(1) SCC 619 that judicial intervention is required most. In such situations. ***Therefore these Schemes violate Article 13, 14, 15, 16 and 19 of the Constitution of India. They were framed on no intelligent differentia as we have already seen that the element of extreme hardship which is said to be the basis of the Scheme does not in fact exist or in comparison with other similarly situated, these are better compensated by alternative methodology, so as to render inequities negligible. The process of hereditary succession in government employment is abhorrent to all principles of law and justice. Therefore any adjudication has to hold these two Schemes as mentioned above to be devoid of fundamental acceptance in constitutional parlance. These are illegal, arbitrary, discriminative and deliberately showering LARGESS on a few without intelligible reference on a wrong and illegal classification. Railway Board has no power to issue such Schemes or notifications which barred by Article 13 which is fully explained in the constitutional Bench's decision in SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI (3) reported in (2006) 4 SCC 1.***

91. ***Therefore these two Schemes reported in pages 47 to 51 and all other corollary Schemes akin to this issued by Railways are hereby quashed as un constitutional, ultra vires, illegal, arbitrary and opposed to reason, logic and greater public interest of maintaining efficiency in service***

92. In terms of this declaration a mandate is issued to the Railway Board to, by itself or through its constituent authority to issue show cause notice to who are benefited under this illegal Scheme to find out whether they have in any way escaped the bar of Article 13 and of the shadow of Article 14,15 and 16 and pass an appropriate speaking order within 6 months after hearing the concerned so that only the rightful can aspire to employment under the governance lest the Constitution fail. This all the Railways shall limit to all those who are appointed after the date of Jaipur order quashing the Scheme as at least on that day the Railways became aware that Scheme is ultra vires and unconstitutional.

93. The applicant has no right to claim any of these reliefs as Shunting Porter or similar jobs even according to the Railway's findings is not doing any strenuous job and the fact the Railways had allowed him to write examination is illegal and beyond their power and competence.

94. It is made clear that all such similar applicants have no such right in him to claim hereditary successor ship and because of this frivolous claim the hours spent on it could have been utilised for other people who need justice delivery system more. **His defence that it is the Railways who framed such a Scheme may not be of such great credence as it is a culmination of cumulative voice through Trade Unions which express themselves as this illegal Scheme.** Misplaced mercy tantamounts to denial of justice as the illegitimate claim of the applicant and others like him defeat the claim of the righteous and defeat society as well. Therefore these contentions are frivolous and vexatious in the extreme. A copy of this order is to be send immediately to the Railway Board and the Chairman and all Members of the Railway Board in their name for immediate compliance. For effective consideration of this issue, the Registry to send a copy of this order to the Cabinet Secretary, Secretary Labour, and the Law Secretary so that illegitimate bargaining and unconstitutional man management system shall be curtailed. Registry to make available a copy of this order to the Hon'ble Chairman, CAT and all Hon'ble Members for their study.

Hence the OA is dismissed. No order as to costs

(MS.MEENAKSHI HOOJA)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER(J)

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