

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant(s)

Respondent(s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

26.09.2007

OA No. 511/2003 with MAs 208/2006 & 231/2007

None present for applicant.

Mr. P.V. Calla, Counsel for intervener. (Sita Ram)

Mr. V.S. Gurjar, Counsel for respondents.

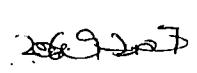
Heard the learned counsel for the parties.

ORDER RESERVED.


(M.L. CHAUHAN)
MEMBER (J)

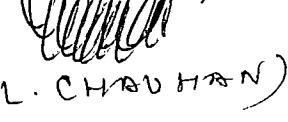
(J.P. SHUKLA)
MEMBER (A)

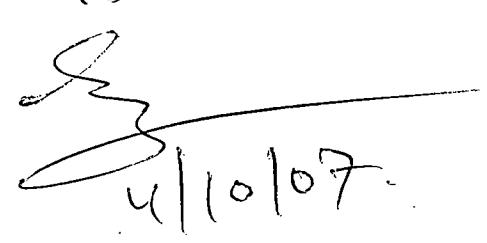
AHQ


26.9.2007

Later, Mr. P.P. Mathur, Counsel for the applicant appeared and submitted written submissions.


(J.P. SHUKLA)
Member (A)


(M.L. CHAUHAN)
Member (J)


Order pronounced today in the
open court by the aforesaid Bench
3
4/10/07.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 4 th day of October, 2007

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

ORIGINAL APPLICATION No.119/2003

1. Suresh Chand Maurya s/o Shri Banarshi Maurya, aged around 31 years, r/o Village Bangalipur Post Rajatalab District Varanasi (UP), presently working as Signal Inspector (Gr.II) at Iqbalgarh under C.S.I. Aburoad.
2. Satish Kumar s/o Shri Srichand, aged around 29 years r/o L-89-A, Railway Colony, Palanpur, Gujrat, presently working as S.I. Gr.III at Palanpur under C.S.I., Aburoad.

.. Applicant

(By Advocate: Shri P.P.Mathur)

Versus

1. The Union of India through the General Manager, North-West Railway, Station Road, Jaipur.
2. The Chairman, Railway Board, Rail Bhawan, Raisina Road, New Delhi.
3. The Divisional Railway Manager (Establishment), DRM Office, North West Railway, District Ajmer
4. Rajendra Kumar Saxena, Signal Inspector Grade- III, O/o Chief Signal Inspector, Ajmer.
5. Mahesh Kumar Ranwal, Signal Inspector Grade- III, O/o DRM, Ajmer.

.. Respondents

(By Advocate: Mr. V.S.Gurjar ACGSC)
 (Shri P.V.Calla, on behalf of intervener Shri Sita Ram)

ORIGINAL APPLICATION No.511/2003

Rajeev Saran s/o Shri Gyan Chand Saran, aged around 28 years, r/o 2265, Deenanath Ji Ka Rasta, Purani Basti, Jaipur, presently serving as JE-I-Sig or SI (Gr.II) in the office of Chief Signal and Telecom Engineer, North-West Railway, Jaipur

.. Applicant

(By Advocate: Shri P.P.Mathur)

Versus

1. Union of India through the General Manager, North-West Railway, Station Road, Jaipur.
2. The Chairman, Railway Board, Rail Bhawan, Raisina Road, New Delhi.
3. The Divisional Railway Manager (Establishment), Divisional Railway Manager Office, North West Railway, District Ajmer
4. Rajendra Kumar Saxena, Signal Inspector Grade-II, Office of the Chief Signal Inspector, Ajmer.
5. Shri Mahesh Kumar Rawal, Signal Inspector Grade-II, Office of Chief Signal Inspector, Sojat Road, Railway Station, Pali.

.. Respondents

(By Advocate: Mr. V.S.Gurjar ACGSC)
 (Shri P.V.Calla, on behalf of intervener Shri Sita Ram)

46

O R D E R

Per M.L.Chauhan, Member (J)

By way of this order we propose to dispose of both these OAs as a common question of law and fact is involved.

2. Briefly stated facts of the case are that applicants in OA No.119/2003 namely, Suresh Chand Maurya and Satish Kumar and applicant in OA No.511/2003, Rajeev Saran were initially appointed on the post of Signal Inspector Grade-III, scale Rs. 5000-8000, after being selected by the Railway Recruitment Board (RRB), Ajmer in the year 1996. It may be stated here that appointment in the cadre of Signal Inspector Gr.III is made 40% by direct recruitment through RRB and 60% by promotion from (a) 40% on the basis of seniority from in service candidates (hereinafter referred to as ranker quota) and (b) 20% on the basis of selection by limited departmental competitive examination from amongst in service candidates. The main dispute in this case is regarding seniority among direct recruit candidates as well as in service candidates who were given appointment after completion of training. It may be stated here that as per Para 302 of the Indian Railway Establishment Manual, Vol.I, the seniority has to be reckoned from the date of regular promotion after due process in the case of promotees and the date of

ul

joining the working post after due process in the case of direct recruits. It may be stated that different period of training has been stipulated for direct recruits as well as in service candidates and in this regard number of circulars were issued by the Railway Board from time to time. In the present case, when the applicants were sent for training, the Railway Board circular dated 31.1.1981 was in force, according to which 24 months training period was prescribed for the candidates who were recruited through RRB whereas for intermediate apprentices i.e. in service candidates belonging to ranker quota, training period prescribed was 8 month. However, the Railway Board vide RBE No. 11/1998 dated 9.1.1998 decided to maintain parity in the initial training of Signal Inspector Gr.III and as per this circular period of training so far as direct recruits were concerned was reduced from 24 months to 18 months whereas in the case of intermediate apprentices/ranker quota it was increased from 8 months to 18 months. It may be added that when the private respondents were sent for training the RBE No.11/98 had come into operation. At this stage, it may be stated that this RBE Mo. 11/1998 was superseded vide another RBE No.150/1998 dated 30.7.98 and the period of training for intermediate apprentices which was previously 8 months was restored. It may also be relevant to mention here that when the applicants as well as the respondents completed the training, the

RBE No. 150/1998 dated 3.7.98 was in operation which provided 18 months training for RRB candidates and 8 months training for intermediate apprentices. Since as per Para 302 of IREM Vol.I the period of training is not to be counted for the purpose of seniority and seniority has to be determined on the date of regular promotion after due process in the case of promotees and from the date of joining on the working post after due process in the case of direct recruits, accordingly, the respondents issued a seniority list dated 28.3.2001 whereby the respondent No. 5 and 6 were shown senior to the applicants in both the OAs. It is also born out from the record that representations against this seniority list were filed by the applicants in OA No. 119/03 and subsequently the official respondents issued another seniority list dated 17.5.2002 (Ann.A6) whereby the applicants were shown at Sl. Nos. 2,3 and 4 whereas private respondent Nos. 4 and 5 who were earlier shown senior to the applicants, were shown at Sl.No. 8 and 15. Feeling aggrieved by this action of the official respondents, private respondents also agitated the matter as their case was not decided in terms of RBE No.150/1998 dated 3.7.1998 whereby their training period has been reduced from 18 months to 8 months. The official respondents realizing that the seniority list Ann.A6 dated 17.5.2002 has been issued in contravention of RBE No. 150/1998 again issued a show cause notice to

the applicants thereby proposing to modify the seniority list and to restore the seniority position as was maintained vide seniority list dated 28.3.2001. Feeling aggrieved by this action, some persons including applicants in OA No. 119/2003 filed OA before this Tribunal and this Tribunal vide order dated 21.11.2002 passed in OA No. 399/2002 disposed of the OA with directions to the applicants to make fresh representation to the respondents and the respondents will pass reasoned and speaking order as per rules and regulations. It was further observed that pending decision on representation and communication of the same to the applicant, interim order granted to the applicants shall remain operative. It may further be stated here that applicant No.1 in OA No. 119/2003 i.e. Suresh Chand Maurya and applicant in OA No. 511/2003, Rajeev Saran were given promotion in the grade of Rs. 5500-9000 as Signal Inspector Gr.II vide order dated 24.5.2002 (Ann.A7) when the official respondents revised the seniority list dated 28.3.2001 vide seniority list dated 17.5.2002 thereby assigning them higher place than respondent No. 4 and 5. The applicant in OA No. 119/2003 filed representation pursuant to the decision rendered by this Tribunal in earlier OA and the respondents vide order dated 5.2.2003 (Ann.A1) have rejected the representation of the applicant and issued another seniority list dated 11.2.2003 (Ann.A2) whereby respondent Nos. 4 and 5 and

10/

other persons who belong to ranker quota have been assigned seniority on the basis of their completion of training of 8 months by relying RBE circular No. 150/1998 dated 3.7.98. It is these orders which are under challenge in OA No. 119/2003 as well as OA No. 511/2003. In OA No. 511/2003 the applicant has also prayed for quashing the order dated 17.9.2003 amending the eligibility list dated 22.8.2003 whereby name of the applicant in that OA has been deleted from the list of Signal Inspectors Gr.II and also from the eligibility list for promotion to the post of Signal Inspector Gr.I on account of his lower position in the seniority list dated 11.2.2003. It is on the basis of these facts, the applicants have filed these OAs thereby praying for quashing of the impugned orders.

3. Notice of these applications were given to the respondents. Facts as stated above, have not been disputed by the respondents. In nutshell, the stand taken by the respondents in the reply is that as per prevailing system, direct recruits have to complete 18 months of training before they can be appointed against a working post whereas persons belonging to ranker quota which is also called intermediate apprentices they have to complete 8 months of training before they can be given promotion and appointed against a working post after completion of training.

Yan It is stated that vide RBE No. 11/ 1998 dated 9.1.1998

the training period of direct recruits was reduced from 24 months to 18 months, whereas in the case of ranker quota, the same was increased from 8 months to 18 months. Since there was a consistent practice with the department that the persons belonging to ranker quota have to undergo 8 months training and there was disparity regarding training period between direct recruits and intermediate apprentices on account of RBE No. 11/1998, the matter was considered by the Railway Board and it was decided that the training period of the promotees/ranker quota should be reduced from 18 months to 8 months. It is further stated that the main logic for restoration of the training period of promotees/intermediate apprentices was that the promotee/intermediate apprentices were well aware of the technical knowledge because they have already worked in the lower grade, therefore, their training period was rightly prescribed as 8 months whereas the direct recruits were fresh appointee and have no knowledge of the initial technical knowledge, hence training period for direct recruit was maintained as 18 months and accordingly another order RBE No. 150/1998 dated 3.7.1998 was issued by superseding the RBE 11/1998 dated 9.1.98. Since the criteria for assignment of seniority is on the basis of completion of training, hence the seniority of promotee and intermediate apprentices has been assigned on completion of 8 months whereas the seniority of direct

recruit has been assigned on completion of 18 months training as per para 302 of the IREM Vol.I. Thus, according to the respondents, there is no infirmity in the action taken by them and the impugned seniority list has been rightly issued, for which purpose, the applicants have no grievance whatsoever.

4. We have heard the learned counsel for the parties and gone through the material placed on record. We have also permitted Shri P.V.Calla, Advocate to intervene in this matter as according to him, one Shri Sita Ram Sharma, who has not been impleaded as party-respondent in this case by the applicants shall be affected by the decision of this case.

5. The main issue which requires our consideration in these cases is regarding interpretation of RBE No. 150/1998 dated 3.7.1998 vis-à-vis other RBE No. 11/1998 dated 9.1.98 and their effect on para 302 of the IREM which deals with seniority in the grade.

5.1 Before reproducing the aforesaid RBE, we wish to state few facts which are not in dispute. Admittedly, applicants were sent for training before issuance of RBE No.11/98 dated 9.1.98 and in their case training commended on 3.5.97 in the case of Suresh Chand Maurya, 25.4.97 in the case of Satish Kumar and 16.6.97 in the case of Rajeev Saran. When these persons were sent for training the old provisions were

applicable and they were required to complete 24 months training. However, vide RBE No. 11/1998 dated 9.1.98 the period of training in respect of persons like the applicants, who were recruited through RRB was reduced to 18 months and the applicants were allowed the benefit of this changed training period, and for the purpose of seniority, the date was computed when they completed 18 months training i.e. 2.11.1998 in the case of Suresh Chand Maurya, 24.10.98 in the case of Satish Kumar and 15.11.98 in the case of Rajeev Saran, although all of them actually completed training on 5.10.98. It may also be relevant to state here that the period of training, so far as direct recruits like the applicants are concerned, was maintained as 18 months even in the subsequent RBE No. 150/98 dated 3.7.98 but in the case of intermediate apprentices, the same was reduced to 8 months. Thus, in the case of applicants, it was RBE No. 150/98 dated 3.7.98 which was made applicable for the purpose of determination of seniority as well as for the purpose of reckoning the training period as by this circular RBE No. 11/98 dated 9.1.98 was superseded. Similarly, in the case of intermediate apprentices/rankers, though they were sent on training after 9th January, 1998 when RBE 11/1998 has come into operation, which prescribes revised period of training of 18 months for them instead of 8 months training period which was the practice prevalent with the department but they

actually completed the training after the date when RBE No. 150/1998 dated 3.7.98 has come into operation and the period of training for such category was revised to 8 months. Thus, both for direct recruits as well as ranker quota candidates training period as was stipulated in RBE No.150/98 dated 3.7.1998 was made basis for the purpose of seniority in terms of para 302 of IREM Vol.I.

5.2 The grievance of the applicants is that in the case of private respondents/intermediate apprentices period of 18 months should be reckoned as training period for the purpose of seniority and they are not entitled to the benefit of 8 months training in terms of RBE No. 150/98, as this circular is prospective in nature and applies to the candidates who were required to be sent for training after that date, and if so, they are not entitled to the seniority over and above the applicants.

5.3 In order to appreciate the matter in controversy, it will be useful to quote relevant portion of RBE No. 11/98, which reads as under:-

"Subject: Reduction in the period of Initial Training for Signal Inspector Grade-III and Telecommunication Inspector Grade-III.

.....

2. The matter has been further considered by Board on the request of NFIR and it has been decided that the initial training for:

(a) Signal Inspector Grade-III
directly recruited through RRB
and the intermediate Apprentices;

4

(b) Telecom Inspector Grade-III directly recruited through RRB and the intermediate Apprentices;

(c) Chargeman 'B' of Railway Printing Presses recruited through RRB and the Intermediate Apprentices;

may also be reduced from 2 years to 1 ½ years."

5.4 It may be added that Advance Correction Slip No. 32 and 33 were also issued for modification in sub-para 2(iii) of Para 147 of Sub-Section III of Section 'B' of Chapter I of the Indian Railway Establishment Manual Vol.I as well in sub-para 2(iii) of para 148 of Sub-Section III of Section 'B' of Chapter I of IREM Vol.I. Since there was patent defect in the RBE No.11/98 which deals with the reduction in the training period of Signal Inspector Grade-III whereas the said training period was reduced from 24 months to 18 months in the case of direct candidates recruited through RRB, but in the case of intermediate apprentices the training period was not reduced but increased from 8 months to 1 ½ year (18 months) which was not the intention of the Railway Board, as such this RBE was superseded by another RBE No.150/98, which reads as under:-

"Refer instructions contained in Ministry of Railway's letter of even number dated 9.1.98 inter-alia advising the revised period of initial training for the Intermediate apprentices SI Grade-III and Intermediate TI Grade-III.

2. The matter has been reconsidered in the light of reference received from the Railways/Production Units as also the AIRF and it

10

has been decided that the initial period of training for the above Intermediate Apprentices be retained as 8 months as detailed in Board's letter No. E(NG) III/76-RC1, dated 4.2.81.

3. IRISET/Secunderabad may kindly prepare the training modules and the course content for the Intermediate SI Grade-III and Intermediate TI Grade-III and submit the same for Board's consideration.

4. The Ministry of Railways have decided that the previous correction slip No.32 and 33 may be superseded by the enclosed Advance Correction Slips making necessary amendments in the Indian Railway Establishment Manual Vol.I (1989 Edition).

ADVANCE CORRECTION SLIP NO.54
INDIAN RAILWAY ESTABLISHMENT MANUNAL VOL-I,
(REVISED EDITION 1989)

Sub-para 2(iii) of Para 147 of Sub-Section III of Section 'B' of Chapter I of the Indian Railway Establishment Manual Vol.I (Revised Edition, 1989) may be modified as under:

"(iii) Training : 18 months.

Note: The periof of training for Intermediate Apprentices will be 8 months.

[Authority Railway Board's letter No. E(MPP) 94/3/17/Pt./RE-CONST. dated 3.7.98]

ADVANCE CORRECTION SLIP NO.55
INDIAN RAILWAY ESTABLISHMENT MANUAL VOL-I
(REVISED EDITION 1989)

Sub-para 2(iii) of para 148 of Sub-Section III of Section 'B' of Chapter I of the Indian Establishment Manual Vol.I (Revised Edition, 1989) may be modified as under:-

"(iif) Training : 18 months.

Note: The period of training for Intermediate Apprentices will be 8 months.

[Authority: Railway Board's letter No. E(MPP) 94/3/17/Pt./RE-CONST. dated 3.7.98]

From the portion as quoted above, it is evident that initial period of training in the case of intermediate apprentices was 8 months and the same was enhanced to 18 months vide RBE 11/98 dated 9.1.98 by making amendment in the relevant sub-para of para 147 and 148 of IREM Vol.I by inserting correction slip No. 32 and 33. It is further clear vide RBE No. 11/98 whereby by way of advance correct slip No. 32 and 33, necessary amendments in the IREM Vol.I was made was superseded vide another RBE No. 150/98 dated 3.7.98 whereby retaining the period of training in the case of intermediate apprentices as 8 months as was prevalent practice in the department. Thus, from what has been stated above, it is quite clear that the official respondents adhered to their past practice of retaining 8 months training period in the case of intermediate apprentices whereas it was only in the case of direct recruits selected through RRB that the reduction in training period was under contemplation and such period was in fact curtailed from 24 months to 18 months vide RBE No. 11/1998 dated 9.1.98 and the category of intermediate apprentices appears to have been wrongly incorporated in para 2(a) along with direct recruit Signal Inspector as in the case of intermediate apprentices question of reduction of initial period of training was not involved. Rather in

their case training period was enhanced from 8 months to 18 months. The said position was maintained in another RBE No. 150/98 dated 3.7.98 which circular has superseded RBE No. 11/98 dated 9.1.98. Admittedly, the applicants have been given the benefit of reduction of their training period from 24 months to 18 months in consonance with RBE No. 150/98 and their seniority has been reckoned admittedly on this basis. Thus, the grievance of the applicants that seniority of the private respondents/intermediate apprentices should be determined on the basis of RBE No. 11/98 dated 9.1.98 which circular has been superseded vide RBE No. 150/98 dated 3.7.98 cannot be accepted.

5.5 Further, we see no considerable force in the arguments of the learned counsel for the applicants that circular dated 3.7.98 has been given retrospective effect whereas it is prospective in nature. It may be stated that the applicants had completed the training of 18 months much after 3.7.98, when RBE No. 150/98 has come into force. No right much less vested right has accrued in favour of the applicants on or before that date. When they were sent on training, they were governed by the circular which stipulated 24 months training. Till the training is not completed no right has accrued in favour of the applicants. In terms of Para 302 of IREM Vol.I, the candidates who have been selected by the RRB and sent for training, the seniority will be

reckoned from the date when they are posted against the working post after completion of training. In their case also, the respondents have applied the circular dated 3.7.98 for the purpose of assigning seniority. Thus, there was no vested right of the applicants which has been affected in case the respondents have decided to determine the issue of seniority on the basis of circular dated 3.7.98, rather the applicant should be happy in case they are getting seniority after completion of 18 months training whereas admittedly, they were required to complete 24 months training as per the provisions which were in vogue when they have commenced the training. Thus, according to us, no injustice has been caused to the applicants.

5.6 Similarly, we do not agree with the submissions of the learned counsel for the applicants that in the case of intermediate apprentices/rankers (respondent No. 4 and 5) the training period of 18 months should be computed for the purpose of seniority. As already stated above, there has been consistent practice with the department that training period of intermediate apprentices/rankers quota will be 8 months. The respondents have also given reasons why the training period of direct recruits and in service candidates have been fixed as 24/18 months and 8 months. It has been stated that in service candidates have got technical knowledge as against direct recruits who are

19

afresh appointees. The private respondents have categorically stated that the training period in the case of intermediate apprentices was wrongly enhanced from 8 to 18 months vide RBE No. 11/98 dated 9.1.98 which was subsequently superseded vide RBE No. 150/98 dated 3.7.98 much before completion of the training either by the applicants or by intermediate apprentices and their cases were rightly considered in the light of RBE No. 150/98 dated 3.7.98 which notification was in force when the applicants as well as private respondents completed their training period. Thus their cases were required to be considered in the light of the provisions which were in force when they completed training. As already stated above, since RBE No. 11/98 dated 9.1.98 stands superseded vide RBE No. 150/98 dated 3.7.98, and RBE No. 11/98 deals with reduction in the initial period of training which period has been reduced from 2 years to 1 $\frac{1}{2}$ years in the case of direct recruits, reference to 'intermediate apprentices' in para 2 (a) has been wrongly made as in their cases period of training has not been reduced but increased from 8 to 18 months. Thus the applicants cannot harp on this superseded notification in order to deny the benefit to private respondents.

5.7 Yet for another reason, the applicants are not entitled to any relief. The validity of RBE No. 150/98 which has retained training of intermediate

apprentices as 8 months has not been challenged by the applicants in both these OAS, as such, the validity of this circular cannot be gone into. Facts remained that this circular RBE No. 11/98 dated 9.1.98 has been superseded, thus such circular cannot be looked into and it is only RBE No. 150/98 dated 3.7.98 which still hold the ~~fixed~~ ^{fixed} for the purpose of determination of seniority in terms of Para 302 of IREM. Thus, on this score also, the applicants are not entitled to any relief.

5.8 Yet for another reason, the applicants are not entitled to any relief. From the material placed on record, it is evident that when the applicants as well as persons belonging to ranker quota were sent on training and after completion of training, the official respondents issued a seniority list dated 28.3.2001 in which name of the applicants were shown at Sl.No. 23, 24 and 25 whereas name of respondent No.4 was at Sl.No.14 and respondent No.5 at Sl.No.21. Thereafter this seniority list was superseded vide another seniority list dated 17.5.2002 (Ann.A6) whereby name of the applicants were shown at Sl.No. 2, 3 and 4 and other persons who were senior to the applicants in the seniority list dated 28.3.2001 were shown junior to the applicants. This infirmity was again rectified vide impugned seniority list dated 11.2.2003. The applicants have impleaded only two persons as respondents, namely, respondent No. 4 and 5

whereas the applicant have not impleaded other persons as party respondents in this case who will be materially affected in case relief is granted to the applicant. The learned counsel for the applicants submit that since he has impleaded two persons as respondents, as such, other persons' case is being defended by them, such a plea cannot be accepted. From the memo of parties, it is seen that respondent No. 4 and 5 have been made party in these OAs, but they have not been impleaded in the representative capacity. Further, there is no such averment in the pleadings that they are being sued in the representative capacity. Thus, the present OA is liable to be dismissed on account of non-joinder of necessary parties.

5.9 At this stage, it will be useful to quota the judgment of the Apex Court in the case of Rashmi Mishra vs. M.P. Public Service Commission and ors., (2007) 2 SCC (L&S) 345 whereby the Apex Court has held that if all the selected 17 candidates not impleaded as parties in the writ petition but only respondents 3 and 4 against whom allegation of irregularities made impleaded, purportedly in their representative capacity, it was held that all the 17 candidates were necessary party in the writ petition as the result could have effected them. Moreover, their number was not large and appellant had no difficulty in impleading them. Further, no steps were taken in terms

of Order 1 Rule 8 of Code of Civil Procedure or the principles analogous thereto, so the appellants were not entitled to any relief. In the instant case also, the respondents to be impleaded are not large in number, only 9-10 persons were affected parties who could have been very easily impleaded as party respondents. Further, the applicants has also not taken steps in terms of Order 1 Rule 8, as such the decision of the Apex Court is squarely applicable in the facts and circumstances of this case.

5.10 Since there is no infirmity in the seniority list issued by the respondents, deletion of name of the applicants vide order dated 16.9.03 from the seniority list of Signal Inspector Gr.II and also from the eligibility list for promotion to the post of Signal Inspector Gr.I is perfectly valid.

6. For the foregoing reasons, both the OAs are ~~be~~ of merit, which are accordingly dismissed with no order as to costs.

6.1 In view of the order passed in the OA, the MA No.208/06 and 231/07 are also disposed of accordingly.

(J.P.SHUKLA)
Admv. Member

(M.L.CHAUHAN)
Judl. Member