

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

JAIPUR, this the 10<sup>th</sup> day of December, 2008

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)  
HON'BLE MR.B.L.KHATRI, MEMBER (ADMINISTRATIVE)

ORIGINAL APPLICATION No.124/2007

Mohd. Jamal  
s/o Sh. Mohd. Ibrahim,  
r/o Tullapura, Nai Basti,  
Kota Junction, Kota,  
presently Assistant Foreman in the  
office of City Chief Train Controller, Kota.

.. Applicant

(By Advocate: Mr. M.I.Beg)

Versus

1. Union of India  
through the Secretary to Govt.  
Ministry of Railway,  
Shastri Bhawan,  
New Delhi.
2. The General Manager,  
Western Central Railway,  
Jabalpur,  
Madhya Pradesh.
3. The Divisional Railway Manager,  
Western Central Railway,  
Kota Division, Kota
4. The Senior Divisional Electric Engineer  
(Personnel), Estt.  
Western Central Railway,  
Kota Division, Kota
5. The Traction Running Officer,  
Western Central Railway,  
Kota Division, Kota
6. Rambharosi C. s/o Sh. Chottu mal G.,

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r/o near Kamal-Niwas, Ramchandrapura,  
Chhawani, Kota.

7. Raghuraj Sikarwar s/o Shri Ranveer Singh,  
r/o Chopra Farm, last House of street No.02,  
Dadwara, Kota Junction, Kota.
8. Mohan Lal S. s/o Sh. Sadhu Singh,  
r/o Near Khumharon Ki Hathai,  
Chawani, Kota
9. Bhura Lal Meena s/o Sh. Moti Lal Meena,  
r/o Pratap Colony, Rangpur Road,  
Kota Junction, Kota.
10. Babu Lal Ahirwal s/o Sh. Ram Kishan Ji,  
r/o Adersh Nagar, Rangpur Road,  
Kota Junction, Kota.
11. Kamal Singh K. (Senior Loco Pilot),  
c/o the Chief Traction Crew Controller,  
Gangapur City (TRO), Western Central Railway,  
Distt. Sawai Madhopur.
12. Rajan Singh R. (Senior Loco Pilot),  
c/o the Chief Traction Crew Controller,  
Gangaputty City (TRO), Western Central Railway,  
Distt. Sawai Madhopur.
13. Usman Ali Ansari s/o Sh. Kallu Ji,  
r/o Talehati, Kaithun,  
Kota Junction,  
Kota
14. Vijay Kumar Sheshodiya  
s/o Sh. Harpal Singh,  
r/o Chopra Farm, Street No.05,  
Dadwara, Kota Junction, Kota.
15. Mukesh Upadhyaya s/o Sh. Prem Chandra,  
r/o P.No.05, Friend Colony, Macheis Factory,  
Dadwara, Kota Junction, Kota.
16. Nazim Hussain s/o Sh. Tahir Hussain,  
r/o Mansarovar Colony,  
Nainwa Road, Bundi.
17. Subhash Nayak s/o Sh. Damodar Nayak,  
r/o Station Road, Bhimganj Mandi,  
Kota Junction, Kota.
18. ~~Ramashwar Dayal Meena s/o Sh. G.L. Meena,~~  
r/o P.No.01, Near Shiv Mandir, Subhash Colony,  
Khaidli Phatak, Kota.

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19. Manoj Kumar Meena s/o Bhajan Lal Meena,  
r/o Mahatma Gandhi Colony, Mala Phatak,  
Kota Junction, Kota.
20. Pushpendra Kumar Jain s/o Sh. Amolak Chand Jain,  
r/o Sangani Sadan, Bhawani Cinema,  
Sawai Madhopur City.
21. Bhagwan Singh Chouhan (Senior Loco Pilot),  
c/o The Chief Traction Crew Controller,  
Gangapur City (TRO), Western Central Railway),  
Distt. Sawai Madhopur.
22. Santosh Kumar Sharma s/o Vishambhar Dayal Sharma  
R/o 37, Raju Kirana Store, Adresh Colony,  
Mala Road, Kota Junction, Kota.
23. Mohan Lal N. s/o Sh. Narayan,  
r/o Behind Dev Narayan Temple & Civil Line,  
Khan Gawadi, Nayapura, Kota.
24. Brij Narayan Singh s/o Sh. Jai Narayan Singh,  
r/o 04-F, Mahaveer Nagar-III, Kota
25. Babu Lal R. (Senior Loco Pilot),  
c/o The Chief Traction Crew Controller,  
Gangapur City (TRO), Western Central Railway,  
Distt. Sawai Madhopur.
26. Vasu Dev Singh s/o Sh. Shree Ram Singh,  
r/o Mahaveer Colony, Rangpur Road,  
Kota Junction, Kota.
27. Ram Pal M. s/o Sh. Mohan Pal Singh,  
r/o H.No.1016, Main Road Gali No.03,  
Chopra Farm, Dadwara, Kota Junction,  
Kota.
28. Murari Lal Meena s/o Sh. Ram Swaroop Meena,  
r/o P.No.33, Chopra Farm, Adresh Colony,  
Dadwara, Kota Junction, Kota.

... Respondents

(By Advocate: Mr. V.S.Gurjar and Mr. Anupam Agarwal)

**ORIGINAL APPLICATION No.125/2007**

Har Govind G.  
s/o Sh. Galaba,  
r/o & c/o Jamna Kanjar Ka Makan,  
Near Samudayik Bhawan,  
Hussain Nagar,

Kota Junction, Kota, presently  
Senior Goods Train Driver at Kota.

.. Applicant

(By Advocate: Mr. M.I.Beg)

Versus

1. Union of India  
through the Secretary to Govt.  
Ministry of Railway,  
Shastri Bhawan,  
New Delhi.
2. The General Manager,  
Western Central Railway,  
Jabalpur,  
Madhya Pradesh.
3. The Divisional Railway Manager,  
Western Central Railway,  
Kota Division, Kota
4. The Senior Divisional Electric Engineer  
(Personnel), Estt.  
Western Central Railway,  
Kota Division, Kota
5. The Traction Running Operator,  
Western Central Railway,  
Kota Division, Kota
6. Rambharosi C. s/o Sh. Chottu mal G.,  
r/o near Kamal-Niwas, Ramchandrapura,  
Chhawani, Kota.
7. Raghuraj Sikarwar s/o Shri Ranveer Singh,  
r/o Chopra Farm, last House of street No.02,  
Dadwara, Kota Junction, Kota.
8. Mohan Lal S. s/o Sh. Sadhu Singh,  
r/o Near Khumharon Ki Hathai,  
Chawani, Kota
9. Bhura Lal Meena s/o Sh. Moti Lal Meena,  
r/o Pratap Colony, Rangpur Road,  
Kota Junction, Kota.
10. Babu Lal Ahirwal s/o Sh. Ram Kishan Ji,  
r/o Adersh Nagar, Rangpur Road,  
Kota Junction, Kota.

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11. Kamal Singh K. (Senior Loco Pilot),  
c/o the Chief Traction Crew Controller,  
Gangapur City (TRO), Western Central Railway,  
Distt. Sawai Madhopur.
12. Rajan Singh R. (Senior Loco Pilot),  
c/o the Chief Traction Crew Controller,  
Gangaputty City (TRO), Western Central Railway,  
Distt. Sawai Madhopur.
13. Usman Ali Ansari s/o Sh. Kallu Ji,  
r/o Talehati, Kaithun,  
Kota Junction,  
Kota
14. Vijay Kumar Sheshodiya  
s/o Sh. Harpal Singh,  
r/o Chopra Farm, Street No.05,  
Dadwara, Kota Junction, Kota.
15. Mukesh Upadhyaya s/o Sh. Prem Chandra,  
r/o P.No.05, Friend Colony, Macheis Factory,  
Dadwara, Kota Junction, Kota.
16. Nazim Hussain s/o Sh. Tahir Hussain,  
r/o Mansarovar Colony,  
Nainwa road, Bundi.
17. Subhash Nayak s/o Sh. Damodar Nayak,  
r/o Station Road, Bhimganj Mandi,  
Kota Junction, Kota.
18. Rameshwer Dayal Meena s/o Sh. G.L. Meena,  
r/o P.No.01, Near Shiv Mandir, Subhash Colony,  
Khaidli Fhatak, Kota.
19. Manoj Kumar Meena s/o Bhajan Lal Meena,  
r/o Mahatma Gandhi Colony, Mala Phatak,  
Kota Junction, Kota.
20. Pushpendra Kumar Jain s/o Sh. Amolak Chand Jain,  
r/o Sangani Sadan, Bhawani Cinema,  
Sawai madhopur City.
21. Bhagwan Singh Chouhan (Senior Loco Pilot),  
c/o The Chief Traction Crew Controller,  
Gangapur City (TRO), Western Central Railway),  
Distt. Sawai Madhopur.
22. Santosh Kumar Sharma s/o Vishambhar Dayal Sharma  
R/o 37, Raju Kirana Store, Adresh Colony,  
Mala Road, Kota Junction, Kota.
23. Mohan Lal N. s/o Sh. Narayan,  
r/o Behind Dev Narayan Temple & Civil Line,  
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Khand Gawadi, Nayapura, Kota.

24. Brij Narayan Singh s/o Sh. Jai Narayan Singh,  
r/o 04-F, Mahaveer Nagar-III, Kota
25. Babu Lal R. (Senior Loco Pilot),  
c/o The Chief Traction Crew Controller,  
Gangapur City (TRO), Western Central Railway,  
Distt. Sawai Madhopur.
26. Vasu Dev Singh s/o Sh. Shree Ram Singh,  
r/o Mahaveer Colony, Rangpur Road,  
Kota Junction, Kota.
27. Ram Pal M. s/o Sh. Mohan Pal Singh,  
r/o H.No.1016, Main Road Gali No.03,  
Chopra Farm, Dadwara, Kota Junction,  
Kota.
28. Murari Lal Meena s/o Sh. Ram Swaroop Meena,  
r/o P.No.33, Chopra Farm, Adresh Colony,  
Dadwara, Kota Junction, Kota.

... Respondents

(By Advocate: Mr. V.S.Gurjar and Mr. Anupam Agarwal)

**ORIGINAL APPLICATION No.129/2007**

Anandera Prakash Madnawat  
s/o Damber Singh Madnawat,  
r/o Chopra Farm Gali No.05,  
Dadwara Kota, presently Senior Goods Train  
Driver at Kota.

.. Applicant

(By Advocate: Mr. M.I.Beg)

Versus

1. Union of India  
through the Secretary to Govt.  
Ministry of Railway,  
Shastri Bhawan,  
New Delhi.
2. The General Manager,  
Western Central Railway,  
Jabalpur,  
Madhya Pradesh.

*W*

3. The Divisional Railway Manager,  
Western Central Railway,  
Kota Division, Kota
4. The Senior Divisional Electric Engineer  
(Personnel), Estt.  
Western Central Railway,  
Kota Division, Kota
5. The Traction Running Operator,  
Western Central Railway,  
Kota Division, Kota
6. Manoj Kumar Meena s/o Bhajan Lal Meena,  
r/o Mahatma Gandhi Colony, Mala Phatak,  
Kota Junction, Kota.
7. Pushpendra Kumar Jain s/o Sh. Amolak Chand Jain,  
r/o Sangani Sadan, Bhawani Cinema,  
Sawai madhopur City.
8. Bhagwan Singh Chouhan (Senior Loco Pilot),  
c/o The Chief Traction Crew Controller,  
Gangapur City (TRO), Western Central Railway),  
Distt. Sawai Madhopur.
9. Santosh Kumar Sharma s/o Vishambhar Dayal Sharma  
R/o 37, Raju Kirana Store, Adresh Colony,  
Mala Road, Kota Junction, Kota.
10. Mohan Lal N. s/o Sh. Narayan,  
r/o Behind Dev Narayan Temple & Civil Line,  
Khand Gawadi, Nayapura, Kota.
11. Brij Narayan Singh s/o Sh. Jai Narayan Singh,  
r/o 04-F, Mahaveer Nagar-III, Kota
12. Babu Lal R. (Senior Loco Pilot),  
c/o The Chief Traction Crew Controller,  
Gangapur City (TRO), Western Central Railway,  
Distt. Sawai Madhopur.
13. Vasu Dev Singh s/o Sh. Shree Ram Singh,  
r/o Mahaveer Colony, Rangpur Road,  
Kota Junction, Kota.
14. Ram Pal M. s/o Sh. Mohan Pal Singh,  
r/o H.No.1016, Main Road Gali No.03,  
Chopra Farm, Dadwara, Kota Junction,  
Kota.
15. Murari Lal Meena s/o Sh. Ram Swaroop Meena,  
r/o P.No.33, Chopra Farm, Adresh Colony,  
Dadwara, Kota Junction, Kota.

.. Respondents

(By Advocate: Mr. V.S.Gurjar and Mr. Anupam Agarwal)

**ORIGINAL APPLICATION No.130/2007**

Vishnu Dutt Rawat  
 s/o Late Sh. Bhanwar Lal Rawat,  
 r/o 05, Pratap Nagar, Ganesh Bhag Road,  
 Devpura, Zila Bundi,  
 at present Plot No.C-21,  
 Mahaveer Nagar-03, Kota, presently  
 working as Senior Goods Train Driver  
 at Kota.

.. Applicant

(By Advocate: Mr. M.I.Beg)

**Versus**

1. Union of India  
     through the Secretary to Govt.  
     Ministry of Railway,  
     Shastri Bhawan,  
     New Delhi.
2. The General Manager,  
     Western Central Railway,  
     Jabalpur,  
     Madhya Pradesh.
3. The Divisional Railway Manager,  
     Western Central Railway,  
     Kota Division, Kota
4. The Senior Divisional Electric Engineer  
     (Personnel), Estt.,  
     Western Central Railway,  
     Kota Division, Kota
5. The Traction Running Operator,  
     Western Central Railway,  
     Kota Division, Kota
6. Ram Chandra M. s/o Sh. Madho Lal,  
     r/o J.P.Colony, Kota Junction,  
     Kota.
7. Rambharosi C. s/o Sh. Chottu Mal G.,  
     r/o near Kamal-Niwas, Ramchandrapura,  
     Chhawani, Kota.

V

8. Raghuraj Sikarwar s/o Shri Ranveer Singh,  
r/o Chopra Farm, last House of street No.02,  
Dadwara, Kota Junction, Kota.
9. Mohan Lal S. s/o Sh. Sadhu Singh,  
r/o Near Khumharon Ki Hathai,  
Chawani, Kota
10. Bhuram Lal Meena s/o Sh. Moti Lal Meena,  
r/o Pratap Colony, Rangpur Road,  
Kota Junction, Kota.
11. Babu Lal Ahirwal s/o Sh. Ram Kishan Ji,  
r/o Adersh Nagar, Rangpur Road,  
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c/o the Chief Traction Crew Controller,  
Gangapur City (TRO), Western Central Railway,  
Distt. Sawai Madhopur.
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Kota Junction,  
Kota
15. Vijay Kumar Sheshodiya  
s/o Sh. Harpal Singh,  
r/o Chopra Farm, Street No.05,  
Dadwara, Kota Junction, Kota.
16. Mukesh Upadhyaya s/o Sh. Prem Chandra,  
r/o P.No.05, Friend Colony, Macheis Factory,  
Dadwara, Kota Junction, Kota.
17. Nazim Hussain s/o Sh. Tahir Hussain,  
r/o Mansarovar Colony,  
Nainwa Road, Bundi.
18. Subhash Nayak s/o Sh. Damodar Nayak,  
r/o Station Road, Bhimganj Mandi,  
Kota Junction, Kota.
19. Rameshwer Dayal Meena s/o Sh. G.L. Meena,  
r/o P.No.01, Near Shiv Mandir, Subhash Colony,  
Khaidli Phatak, Kota.
20. Manoj Kumar Meena s/o Bhajan Lal Meena,  
r/o Mahatma Gandhi Colony, Mala Phatak,  
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21. Pushpendra Kumar Jain s/o Sh. Amolak Chand Jain,  
r/o Sangani Sadan, Bhawani Cinema,  
Sawai Madhopur City.
22. Bhagwan Singh Chouhan (Senior Loco Pilot),  
c/o The Chief Traction Crew Controller,  
Gangapur City (TRO), Western Central Railway,  
Distt. Sawai Madhopur.
23. Santosh Kumar Sharma s/o Vishambhar Dayal Sharma  
R/o 37, Raju Kirana Store, Adresh Colony,  
Mala Road, Kota Junction, Kota.
24. Mohan Lal N. s/o Sh. Narayan,  
r/o Behind Dev Narayan Temple & Civil Line,  
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25. Brij Narayan Singh s/o Sh. Jai Narayan Singh,  
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c/o The Chief Traction Crew Controller,  
Gangapur City (TRO), Western Central Railway,  
Distt. Sawai Madhopur.
27. Vasu Dev Singh s/o Sh. Shree Ram Singh,  
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Kota Junction, Kota.
28. Ram Pal M. s/o Sh. Mohan Pal Singh,  
r/o H.No.1016, Main Road Gali No.03,  
Chopra Farm, Dadwara, Kota Junction,  
Kota.
29. Murari Lal Meena s/o Sh. Ram Swaroop Meena,  
r/o P.No.33, Chopra Farm, Adresh Colony,  
Dadwara, Kota Junction, Kota.

... Respondents

(By Advocate: Mr. V.S.Gurjar and Mr. Anupam Agarwal)

### O R D E R

Per Hon'ble Mr. M.L.Chauhan.

By way of this common order, we propose to  
dispose of these QAR as common question of facts and  
law is involved.



2. Briefly stated, facts of the case are that respondent No.4 notified 30 posts including 4 posts reserved for ST and one post for SC community for regular promotion to the post of Passenger Train Driver in the scale of Rs.5500-9000 in Kota Division vide notification dated 12.7.2006 (Ann.A5). Vide Ann.A3 dated 6.8.2005, the Railway Board modified the procedure and issued a circular to all the General Managers for holding selection for promotion to the posts classified as Selection in cases of running staff. Pursuant to notification Ann.A5, the respondents prepared a panel in respect of persons who have qualified the viva-voce test vide letter dated 30.3.2007 (Ann.A1) and subsequently vide order dated 5.4.2007 (Ann.A2) out of 28 persons whose names find mention in Ann.A1, 15 persons were granted promotion. The grievance of the applicants in these cases is that the applicants being meritorious having excellent service record amongst regular running members of Kota Division of Western Central Railway ought to have been selected whereas on account of arbitrary action on the part of the respondents, the persons junior to the applicants have been empanelled. For that purpose, the main grievance of the applicants is that in terms of Railway Board circular dated 6.8.05 (Ann.A3) requisite promotion to the post of Passenger Train Driver was to be made on the basis of written test and also per-

training was necessary requirement before holding selection for regular promotion. It is on the basis of these facts, the applicants have filed these OAs thereby praying that the impugned orders dated 30.3.2007 and 5.4.2007 promoting junior persons to the applicants may be quashed and set aside and respondent Nos. 3 and 4 may be directed to give regular promotion to the applicants as Passenger Train Driver from the date when their junior have been promoted with all consequential benefits.

3. Notices of these applications were given to the respondents. The respondents have filed reply. In the reply, the specific stand taken by the respondents is that selection was made strictly in conformity with the Railway Board instructions dated 6.8.2005 (Ann.A3). It is further stated that all persons selected have qualified the DRGP course examination. According to the respondents, the selection has to be made on the basis of viva-voce only provided the candidate has cleared the DRGP examination and it was only after successful completion of DRGP course examination that promotion was granted. Since there were some contradictions in the reply filed by the respondents and the question whether the promotional training was to be imparted prior to the viva-voce test or after viva-voce test, this Tribunal passed a detailed order dated 6.8.2008. Pursuant to the order

passed by this Tribunal, the respondents have filed additional affidavit. In the additional affidavit the respondents have explained the circumstances why holding of written test was dispensed with and the selection was to be made only on the basis of viva-voce in order to judge the professional ability, capability and suitability of the person concerned by the Selection Committee. The respondents have also placed on record Annual Training Programme 2007-2008 on record as Ann.AR/1 and also explained the circumstances regarding filing of the earlier counter reply. It is further stated that as per Railway Board instructions based on the recommendation of the Railway Safety Review Committee, periodicity and duration of training for loco pilot has been fixed as 8 weeks (48 days) once at the time of promotion and so far the candidates who have not successfully completed the said training have not been accorded promotion and have been sent for training since it has been provided for training as aforesaid once at the time of promotion.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. In order to resolve the matter in an appropriate manner it will be useful to quote relevant paragraphs of Railway Board circular dated 6.8.2005 (Ann.A3) which

prescribes the procedure to be adopted for the purpose of selection in the case of loco running staff. From perusal of these instructions, it is evident that earlier procedure for selection to the post of Goods Driver and Passenger Driver which posts were required to be filled by positive act of selection i.e. on the basis of written test and/or viva-voce and condition of written test was mandatory, has been dispensed with. The reason for dispensing with the earlier procedure has been explained in Para 2 of this circular as in case the written test is insisted upon this will cause difficulty as sparing of eligible staff at the same time to appear in the written examination will affect directly the daily routine of train operation. Ultimately, the Railway Board vide Para 3 has laid down revised procedure for filling up the post of Goods Driver and Passenger Train Driver, which thus reads:-

"3. The matter has been considered carefully by the Ministry of Railways after obtaining views of the Railways. It has been decided that while written test may be continued for promotion as Goods Drivers for promotion as passenger Driver selection may be on the basis of viva-voce after prescribed promotional course."

It has further been made clear in Para 4 that the revised procedure will be applicable in respect of selections notified on or after the date of issue of this letter. Admittedly, the selection for filling up the post of Passenger Train Driver was notified vide notification dated 12.7.2006 (Ann.A5) almost one year

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after the revised procedure came into force. As can be seen from the revised procedure, the selection to the post of Passenger Train Driver was to be made on the basis of viva-voce after passing the prescribed promotional course. Thus, from reading of Para 3 this circular it is clear that written test was mandatory in respect of promotion to the post of Goods Driver but in the case of Passenger Driver selection was to be made solely on the basis of viva-voce and persons can be promoted only after they have passed the prescribed promotional course. This circular does not specifically state that promotional course was to be undertaken before appearing in the viva-voce test. The respondents have categorically stated that condition of passing the promotional course which is of 8 weeks' duration has to be seen at the time of granting promotion to a candidate and such training has to be undertaken once at the time of promotion. It is further stated that candidate who have not qualified 8 weeks training, they have not been accorded promotion and they have been sent for training, since it has been provided for training as aforesaid once at the time of promotion. Thus, according to the respondents, there is no infirmity in the action of the respondents. The promotion granted to the persons vide Ann.A2 has been granted after qualifying the viva-voce test and also after undertaking 8 weeks promotional training. Thus, the submission made by the learned

counsel for the applicant that selection has to be held on the basis of written test and also that pre promotional training was necessary to be held prior to viva-voce cannot be accepted as in the instant case there was no requirement for written test for the post of Passenger Driver and the second condition of pre promotional training has been complied with in the instant case as admittedly, the promotion has been granted only to those persons vide Ann.A2 who have qualified 8 weeks promotional training course, as per the stand taken by the respondents, which fact has not been controverted by the applicants by filing rejoinder. Thus, we are of the view that the applicants are not entitled for any relief.

6. At this stage, it will be useful to quota Para 5 of the Annual Training Programme 2007-2008 (Ann.AR/1) which is in the following terms:-

"5. Similarly, the employees should be deputed for promotional course only after completion of the final selection and subsequent formalities."

From this Para, it is evident that the condition of undertaking promotional training prior to selection is not a condition precedent and such training has to be undertaken only after completion of the final selection and subsequent formalities.

7. The judgments relied upon by the applicant that promotion can not be made solely on the basis of viva-voce test is not applicable in the facts and circumstances of this case. As can be seen from para 3 of Ann.A3 which prescribe revised procedure for filling up the post of Passenger Driver, it is clear that such selection will be made on the basis of viva-voce and promotion should be given only when prescribed training is completed. There is no requirement that selection has to be made on the basis of written test as contended by the applicants. The applicants have not challenged validity of this circular, as such, it is not open for the applicants to contend that revised criteria adopted by the respondents in filling up the post of Passenger Driver is not valid.

8. For the purpose that selection cannot be confined only on the basis of viva-voce, the applicants have placed reliance on two decisions of the Hon'ble Apex Court in the case of Praveen Singh vs State of Punjab and others, (2000) 8 SCC 633 and another decision of the Apex Court in the case of K.H.Siraj vs. High Court of Kerala and Ors., 2007 (1) AISLJ 164. We fail to understand how the applicants can draw any assistance from these judgments. In the case of Praveen Singh (supra) selection was to be made on the basis of written test and persons who have qualified the

written test have to appear in viva-voce/interview. For the purpose of selection 400 marks were allotted for written and 50 marks for viva-voce. The Selection Committee ignored marks of written test and made selection solely on the basis of viva-voce. It was in that context, the Apex Court held that selection could not have been held solely on the basis of interview leaving room for suspicion. In the case of K.H.Siraj (supra) also, the selection was to be made on the basis of written and oral examination. As per scheme of examination, the candidate who secured not less than 35 % marks of each of the papers of the written examination with an overall minimum marks of 45% of the written examination and 30% of the marks for the oral examination was made eligible for appointment. However, the High Court assessed the suitability of the candidate for selection as Magistrate based on viva-voce test as at that time marks of written examination were not available) and found that the appellants therein have not been able to secure even 30% marks which have been prescribed as minimum eligibility for interview. The learned Single Judge held that selection as illegal. On appeal the Division Bench set aside the judgment of the learned Single Judge. The matter went to the Apex Court. As can be seen from Para 53 of the judgment, the Apex Court has held that the appellants/petitioners are not entitled to any relief for more reasons than one. They have

participated in the written test and in the oral test without raising any objection. They knew well from the High Court's notification that a minimum marks had to be secured both at the written test and in the oral test. Thus, according to the Apex Court, as per findings recorded in para 54 once the appellants/petitioners having participated in the interview, it not open for them to turn round thereafter when they failed in the interview and contend that the provisions of minimum mark for the interview was not proper. Thus, according to the Apex Court the writ petition filed by the appellants/petitioners should be dismissed on the ground of estoppel is correct and decision of the High Court holding to the contrary is in per curiam without reference to the decision in the case of Madan Lal and ors. vs. State of J&K and ors, 1995 (2) SLJ 161 and another ground which weigh with the Apex Court to dismiss the Writ Petition was that appellants/petitioners have not impleaded the selected persons as party-respondents. Thus, according to us, the applicants cannot draw any assistance from this judgment. Rather the ratio as laid down by the Apex Court in the case of K.H.Siraj (supra) is against the applicant, inasmuch as, the applicants once have participated in the interview as per the scheme of the examination (Ann.A3), now they cannot turn around and argue that such scheme is bad and selection should

have been held on the basis of written test as was prevalent earlier to this modified scheme. As already stated above, in the cases before the Apex Court the issue involved was regarding interpretation of the scheme for examination which provided selection on the basis of written as well as viva-voce test and judgment(s) were rendered in that context whereas in the instant case, as per examination scheme applicable to the category of the applicants, selection has to be made solely on the basis of viva-voce. Thus, the judgment cited by the applicants is not applicable in the facts and circumstances of this case.

9. For the foregoing reasons, all these OAs are dismissed with no order as to costs.

(B.L.<sup>Kh</sup> KHATRI)

Admv. Member

(M.L. CHAUHAN)

Judl. Member

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