

27.3.2012

(90)

OA 34/2009 with MA 330/2009

Mr. Ramesh chand, Counsel for applicant

Mr. Anupam Agarwal, Counsel for respondents
Nos. 1 to 4

None present for respondents Nos. 5 to 13.

Heard. The OA is disposed
of by a separate order.

Anil Kumar
(Anil Kumar)
M(A)

K. S. Rathore
(Justice K. S. Rathore)
M(J)



**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

**ORIGINAL APPLICATION NO. 34/2009
WITH
MISC. APPLICATION NO. 330/2009**

DATE OF ORDER: 27.03.2012

CORAM

**HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Roop Narain S/o late Shri Hanuman Singh, aged about 51 years, R/o Aam Ka Talab, Shakti Nagar, Ajmer, presently working on the post of TTE under Divisional Rail Manager, North Western Railway, Ajmer.

...Applicant

Mr. Ramesh Chand, counsel for applicant.

VERSUS

1. Union of India through General Manager, North Western Railway, Jaipur.
2. Divisional Rail Manager, North Western Railway, Divisional Office, Ajmer.
3. Senior Divisional Commercial Manager, North Western Railway, Divisional Office, Ajmer.
4. Senior Divisional Personnel Officer, North Western Railway, Divisional Office, Ajmer.
5. Shri Sanjeev Sharma, at present working on the post of HTC Abu Road under control of DRM, Ajmer.
6. Shri Rajesh Soni, at present working on the post of HTC Ajmer under control of DRM, Ajmer.
7. Shri Ranveer Singh, at present working on the post of TNCR Ajmer under control of DRM, Ajmer.
8. Shri Sandeep Sharma, at present working on the post of HTC at Ajmer under control of DRM, Ajmer.
9. Shri Om Prakash Soni, at present working on the post of HTC, at Marwad Junction under control of DRM, Ajmer.
10. Shri Mangi Lal Meena, at present working on the post of HTTE at Udaipur under control of DRM, Ajmer.
11. Shri Rajesh Kumar Ganga Prasad Singh, at present working on the post of HTC at Abu Road under control of DRM, Ajmer.
12. Shri Shiv Charan at present working on the post of HTC at Ajmer under control of DRM, Ajmer.
13. Shri Yad Ram Singh at present working on the post of HTC at Ajmer under control of DRM, Ajmer.

...Respondents

Mr. Anupam Agarwal, counsel for respondent nos. 1 to 4.
None present for respondent nos. 5 to 13.

ORDER (ORAL)

The applicant has filed the present Original Application claiming for the following reliefs:

- "(1). Allow this original application in the interest of justice and fair play and impugned order of Annexure A/1 and Annexure A/2 may kindly be quashed and set aside.
- (2). This Hon'ble Tribunal is requested to kindly issue necessary direction to respondents No. 2, 3 & 4 to consider applicant service in scale Rs. 4000-6000 with effect from 18.12.1992 as per Annexure A/3.
- (3). By an appropriate order or direction, the respondent may be directed to follow the procedure of allotting marks of seniority as laid down by Railway Board letter No. E/NG/169 PMI/126 dated 18.9.69 and applicant be considered to have been selected for the post of HTTE scale Rs. 5000-8000 in the notified panel dated 25.6.2008 (Annexure A/1).
- (4). By an appropriate order or direction the respondents may be directed to follow the order passed by Hon'ble Supreme Court in the case of R.C. Srivastava Versus Union of India arising out of SLP (C) No. 9866 of 1993 and similarly in the case of Pritpal Singh V/s UOI Appeal No. 3155 of 2005 decided on 6.5.2005.
- (5). Any other order/direction or relief may be granted in favour of humble applicant which may be deemed just, fair and proper under the facts and circumstances of case.
- (6). That the cost of application may be awarded."

2. The main controversy involved in the present case is with regard to the calculation of marks of seniority as per Railway Board's letter dated 18.09.1969 (Annex. A/6) with regard to the procedure for filling up selection posts, and how to calculate marks for seniority. The applicant was initially appointed as a Khallasi in the pay scale of Rs. 196-232 (old) with effect from 16.02.1981 and was promoted as TC in the pay scale of Rs. 950-1500 vide office order dated 06.07.1990 and was further

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promoted on the post of Senior T.C. in the pay scale of Rs. 1200-2040 vide office order dated 18.12.1992.

3. The official respondents had proposed to hold selection for promotion to the post of Head TTE/TNCR etc. in the pay scale of Rs. 5000-8000 for 29 vacancies vide notification dated 01.10.2007, and for the purpose of selection, employees' eligibility list 'A' and 'B' was circulated in order of seniority. Pursuant to the notification dated 01.10.2007, written test for the above selection was held on 11.03.2008. The applicant was also appeared in the written examination.

4. The result of the written examination was circulated vide order dated 18.05.2008 in which name of 52 employees were appeared, who qualified the written test. The applicant was also qualified the written test and his name was appeared at Sl. No. 19.

5. Thereafter, the panel was notified vide order dated 25.06.2008 (Annex. A/1) in which name of 27 employees were placed in the said panel. The name of the applicant did not find place in the said panel.

6. Aggrieved and dissatisfied with the non-inclusion of the name of the applicant, he submitted a representation dated 03.07.2008 before the respondents and had made request to consider his case and include his name in the said panel, but the respondents vide order dated 24.07.2008 (Annex. A/2) issued



promotion order of 27 employees for promotion on the post of HTC/TNCR in the pay scale of Rs. 5000-8000 without consider the name of the applicant.

7. Aggrieved and dissatisfied with the non-consideration of the name of the applicant, the applicant has preferred the present Original Application on the ground that the action of the respondents in issuing the order dated 25.06.2008 (Annexure A/1) and order dated 24.07.2008 (Annexure A/2) is not only arbitrary but also is illegal, and is also against the rules, regulations and instructions on the subject issued by the respondents from time to time, and because of wrong action of the respondents, the applicant has been deprived for further placement in the higher pay scale of Rs. 5000-8000.

8. It is also stated by the applicant that the respondents are acted against the rules while awarding 18 marks out of 30 marks for service record, whereas service record of the applicant is unblemished and spotless in comparison to other employees. It is further stated that no disciplinary action is pending against the applicant and also no adverse remarks whatsoever has been communicated to the applicant.

9. It is also contended on behalf of the applicant that the respondents have not rightly awarded the marks for service record as the respondents have only considered 4 years' service in the pay scale of Rs. 4000-6000, whereas the applicant is working in the pay scale of Rs. 4000-6000 with effect from

18.12.1992 without any break. Hence, applicant has rendered 15 years, 06 months and 07 days' service. Further, the respondents/section committee has miserably failed to peruse the applicant's service sheet in which the applicant is shown working in the pay scale of Rs. 1200-2040 / 4000-6000 with effect from 01.01.1993 i.e. the date of resumption.

10. Learned counsel appearing for the applicant referred Annexure A/3 order dated 18th December, 1992 wherein the name of the applicant is find place at Sl. No. 9. Learned counsel for the applicant has also referred the eligibility list 'A' for selection of HTTE/HTC/TNCR, pay scale Rs. 5000-8000, which has been prepared by the respondents, in which the name of the applicant finds place at Sl. No. 30. He further referred the Annexure A/6 order dated 16.10.1969, and more particularly referred 'note portion', which reads as follows: -

"Note explaining how to calculate marks for seniority.

In allotting marks for seniority to staff appearing before Selection Board, the total length of service, officiating and substantive in the grade, or of all the employees appearing before the Selection Boards is worked out. In this connection, the following procedure has been evolved in working out the marks: -

(a). If the Selection is confined to employees in one grade, the marks to be given to each employee are determined by the formula $X/A \times 15$ where -

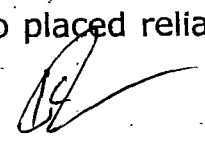
- (i) X - Denotes the length of total service in the grade of the employee in question.
- (ii) A - denotes to length of total service in the grade of the senior-most employee appearing before the Selection Board."



The aforesaid order laid down the criteria for calculation of the marks of the service record.

11. In support of his submission, learned counsel appearing for the applicant placed reliance upon the judgment rendered by the Honble Supreme Court in the case **T. Vijayan & Ors. vs. Divisional Railway Manager & Ors.** (SC) reported in All India Services Law Journal 2000 (3) page 325 to demonstrate that the entire period of adhoc promotion as per rules will have to be counted towards seniority. On the same issue, learned counsel appearing for the applicant placed reliance upon the judgment rendered by the Hon'ble Supreme Court in the case of **Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and Others** reported in 1990 Supreme Court Cases (L&S) 339 wherein the Hon'ble Supreme Court has held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

12. In support of his submission, learned counsel appearing for the applicant further placed reliance upon the judgment rendered by the Hon'ble Supreme Court in the case of **Narender Chadha and Ors. Vs. Union of India & Ors.** reported in 1986 Supreme Court Cases (L&S) 226, further in the case of **Ajit Kumar Rath vs. State of Orissa & Ors.** reported in All India Services Law Journal 2000 (2) 108, and in the case of **Union of India & Another vs. Lalita S. Rao and Ors.** reported in 2001 Supreme Court Cases (L&S) 829. He also placed reliance upon



the judgment rendered by Central Administrative Tribunal in the case of **S.C. Jain vs. Union of India & Ors.** reported in All India Services Law Journal 1986 (3) CAT 124, and also in the case of **Roshan Lal Agarwal & Ors. vs. Union of India & Anr.** reported in All India Services Law Journal 2005 (2) (CAT) 61, and further placed reliance upon the judgment rendered by the Himachal Pradesh Administrative Tribunal, Shimla in the case of **Dr. Arun Sharma & Ors. vs. State of H.P.** reported in All India Services Law Journal 1992 (2) CAT 153.


13. Per contra, the official respondents have raised the preliminary objections regarding maintainability of this Original Application on the ground that the applicant has filed the present Original Application challenging the Annexure A/1 and Annexure A/2. Annexure A/1 order dated 25.06.2008 is a provisional panel and Annexure A/2 order dated 24.07.2008 is a promotion order. As per Annexure A/1, 27 employees were placed on the panel and as per Annexure A/2, 27 employees were promoted in the pay scale of Rs. 5000-8000. The applicant has sought relief for quashing the said Annexure A/1 and Annexure A/2, but the applicant has impleaded only 9 employees, as respondent nos. 5 to 13 in the OA. Thus, remaining 18 employees have not been impleaded as party respondents in the present Original Application. Therefore, the OA is not maintainable for non-impleadment of all the remaining 18 employees as party respondents, because without impleading all of them as respondents, Annexure A/1 and Annexure A/2 cannot be



quashed or set aside without giving opportunity of hearing to them. Thus, the OA may be dismissed on this ground alone.

14. The official respondents have also challenged the maintainability of this OA on the ground of territorial jurisdiction as the applicant was working on the post of TTE in the pay scale of Rs. 4000-6000 at Abu Road when he appeared in the selection of Head TTE/TNCR/Head TC in the pay scale of Rs. 5000-8000, but he could not be placed on panel, as he had not succeeded in the said selection. As the applicant is still working in the pay scale of Rs. 4000-6000 at Abu Road, he should have filed OA under the territorial jurisdiction of CAT, Jodhpur.

15. It is also contended on behalf of the official respondents that the selection for the post of Head TTE/TNCR/Head TC in the pay scale of Rs. 5000-8000 was conducted on the basis of written examination as well as marks of service record and seniority marks. As per notification dated 01.10.2007 (Annex. A/4), the selection for the post of Head TTE/TNCR/Head TC in the pay scale of s. 5000-8000 was conducted by written examination. The selection committee vide order dated 18.05.2008 (Annex. A/5) placed the name of the applicant at Sl. No. 19 whereas the name of the respondent nos. 5 to 9 are placed at Sl. No. 20 to 24, name of the respondent nos. 10 to 11 are placed at Sl. No. 30 to 31, name of respondent no. 12 is placed at Sl. No. 37 and name of respondent no. 13 is placed at Sl. No. 32. After awarding marks for record of service and seniority, the applicant did not get 60% marks in aggregate, but



got 55 marks in aggregate (Annex. A/8), hence, the name of the applicant has rightly not been placed on the panel vide Annexure A/1.

16. So far as the promotion of the applicant in the pay scale of Rs. 4000-6000 on regular basis is concerned, the applicant was regularly promoted on 24.11.2003 whereas the respondent no. 5 was regularly promoted in the pay scale of Rs. 4000-6000 on 25.01.2000 in Jaipur Division. In view of the seniority list of pay scale of Rs. 4000-6000 published on 01.10.2007, the name of the applicant was placed at Sl. No. 31 whereas the name of the respondent no. 5 was placed at Sl. No. 95. Against the seniority list dated 01.10.2007 and eligibility list declared vide notification dated 01.10.2007 (Annex. A/4), the respondent no. 5 has represented and the matter for assignment of seniority of respondent no. 5 was examined and it was found that seniority of respondent no. 5 had not been assigned on his mutual transfer; hence his seniority was correctly assigned on mutual transfer and his name was placed from 95 to 31-A in seniority list (Annex. R/1) and accordingly in notification dated 01.10.2007, the name of respondent no. 5 was placed from Sl. No. 7 in 'B' list to 31-A in 'A' list of eligibility list published on 01.10.2007 (Annex. A/4).

17. The official respondents further submitted that it is not disputed that the applicant is senior to the respondent nos. 5 to 9 but the applicant did not succeed in the selection as the applicant has not been able to secure the aggregate marks. The

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seniority marks is 20, and out of 20 marks, the applicant had got only 6 marks.

18. Learned counsel appearing for the official respondents has referred para 4.8 of the reply, which reads as under: -

"4.8 xxxxx However, it is submitted that in terms of Railway Board's letter dated 18-9-1969 (Annex. A/6) and as per formula laid down in the seniority marks have been calculated as under:

- (15 marks as per Board's letter dated 18-9-69) and now 20 marks of seniority as per Board's letter dated 22-3-2006)

$$\text{Formula} = \frac{X \times 20}{A}$$

$$= \frac{4 \times 20}{13} = \frac{80}{13} = 6.15 \text{ (R/o 6 Marks)}$$

X - Applicant - 4 years service in scale 4000-6000

A - 13 Sr. Most employee - 13 years service in pay scale 4000-6000.

Thus the seniority marks have correctly been awarded to the applicant in terms of the above formula."

19. Learned counsel appearing for the official respondents have also referred para 4.13 of the reply, which reads as under: -

"4.13 xxxxx It is submitted that the applicant was promoted in pay scale 4000-6000 on regular basis on 24-11-2003 and up to May 2008 he had rendered 4 years 5 months service, hence seniority marks have correctly been calculated on the basis of 4 years service. The ad hoc service of applicant in pay scale 4000-6000 could not be counted for calculation of seniority marks. It is further submitted that Sh. Hem Chand was promoted in pay scale 4000-6000 purely on ad hoc basis vide order dated 18-12-92 (Annex. A/3) but subsequently Sh. Hem Chand was promoted on regular basis in pay scale 4000-6000 w.e.f. 18-7-95. Thus Sh. Hem Chand has rendered 13 years regular service in pay scale 4000-6000 and according to formula the seniority marks of applicant has correctly been calculated as under:

$$\text{Applicant} : \frac{4 \times 20}{13} = 6.15 \text{ (R/O 6 Marks)}$$

$$\text{Sh. Hem Chand P} : \frac{13 \times 20}{13} = 20 \text{ Marks}"$$



20. To meet out the submissions advanced on behalf of the applicant, the official respondents have referred the legal definition of 'officiating', which reads as under: -

"Officiating : - According to its ordinary connotation, the word 'officiating' is generally used when a servant having held one post permanently or substantively is appointed to a post in a higher rank, but not permanently or substantively, while still retaining his lien on his substantive post i.e. officiating in that post till his confirmation. Such officiating appointment may be made when there is a temporary vacancy in a higher post due to the death or retirement of the incumbent or otherwise.

Arun Kumar Chatterjee vs. South-Eastern Railway, AIR 1985 SC 482 at p. 485."

After referring this definition of 'officiating', learned counsel appearing for the official respondents have submitted that the judgments relied upon by the applicant are not applicable to the facts and circumstances of the present case.

21. Learned counsel appearing for the official respondents placed reliance upon the judgment rendered by the Hon'ble Supreme Court in the case of **Swapan Kumar Pal & Ors. etc. vs. Samitabhar Chakraborty & Ors.** reported in 2001 (2) (S.C.) S.L.J. page 1, wherein the Hon'ble Supreme Court while dealing with Para 302 of Railway Establishment Manual, has held that Seniority – Ad hoc Promotion – Adhoc promotion of Office Clerks (Clerk Grade II) against their quota to the post of Senior Clerk – Later regular promotion given – Service rendered by the promotees on ad hoc basis in the post of Senior Clerk before their regular promotion cannot be counted for the purpose of seniority in the cadre of Senior Clerk. He has also placed reliance upon the judgment rendered by the Hon'ble Supreme



Court in the case of **Chief of Naval Staff & Anr. vs. G. Gopalakrishna Pillai & Ors.** reported in 1996 (1) ATJ 275 wherein the Hon'ble Supreme Court has held that seniority to be counted from the date of regularization. He has further placed reliance upon the judgment rendered by the Central Administrative Tribunal, Principal Bench, New Delhi in the case of **Shri N.G.L. Goswami & Ors. vs. the General Manager, Western Railway & Ors.** reported in 1999 (2) (CAT) All India Services Law Journal, page 78.

22. We have heard the rival submissions made on behalf of the respective parties and carefully gone through the material available on record and also perused the judgments relied upon by the respective parties.

23. The main controversy involved in the present Original Application is with regard to allocation of marks for service rendered by the applicant. As per applicant, the applicant has rendered 15 years 6 months and 7 days' service in the pay scale of Rs. 4000-6000, whereas the respondents have awarded marks only on the basis of 4 years' service, and ad hoc service of the applicant in the pay scale of Rs. 4000-6000 has not been counted by the official respondents for the purpose of calculating the seniority marks.

24. We have thoroughly considered the judgments relied upon by the respective parties. The Hon'ble Supreme Court in the case of **T. Vijayan & Ors. vs. Divisional Railway Manager &**


Ors. (supra) is of the view that 'ad hoc promotion as per rules will count for seniority'. In this case, the Hon'ble Supreme Court has dealt with para 216 of Railway Establishment Manual. Para 216 (i) of the Railway Establishment Manual provides as under: -

"216. A adhoc promotion against selection and non-selection posts: -

(i) Ad hoc promotions should be avoided as far as possible both in selection and non selection posts, and where they are found inescapable and have to be made in the exigency of service, they should be resorted to only sparingly and only for a short duration of 3 to 4 months. The ad hoc promotion should be ordered only from amongst senior most suitable staff. As a rule a junior should not be promoted ignoring his senior."

In this case, the Hon'ble Supreme Court has observed that the entire period of adhoc service will have to be counted towards the seniority.

25. The Hon'ble Supreme Court in the case of **Direct Recruit Class-II Engineering Officers' Association vs. State of Maharashtra and Ors.** (supra) has held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.



26. Further in the case of **Narender Chadha and Others vs. Union of India and Others** (supra), the Hon'ble Supreme Court has held that if adhoc promotees or appointees are allowed to continue as such for long years without being reverted or challenged, they would be deemed to have been regularized. Where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation, it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belong to the service at all. In the case of **Ajit Kumar Rath vs. State of Orissa & Ors.** (supra) the Hon'ble Supreme Court has held that 'one promoted ad hoc though fully eligible and made regular later, is entitled to seniority from the date of ad hoc promotion.' The same ratio has been decided by the Hon'ble Supreme Court in the case of **Union of India & Anr. vs. Lalita S. Rao and Others.** (supra), and also by the Central Administrative Tribunal in the case of **S.C. Jain vs. Union of India & Ors.** (supra), in the case of **Roshan Lal Agarwal & Ors. vs. Union of India & Anr.** (supra) and in the case of **Dr. Arun Sharma and Others vs. State of H.P.** (supra).

27. The official respondents have placed heavily reliance upon the judgment rendered by the Hon'ble Supreme Court in the case of **Swapan Kumar Pal & Ors. etc. vs. Samitabhar Chakraborty & Ors.** (supra) and more particularly referred para '7' of the judgment, which reads as under: -




"7. So far as the first question is concerned, the post of Senior Clerk in the scale of pay of Rs. 1200-2040 being filled up by direct recruitment, by promotion and by promotion and by limited departmental competitive examination from amongst serving graduates, the provisions of paragraph 302 of the IREM would govern the seniority in the grade. The aforesaid provision is extracted herein below in extenso:

"302 Seniority in initial recruitment grades: - Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of post partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotees and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-se seniority of promotees and direct recruits among themselves. When the date of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits; maintaining inter-se seniority of each group.

Note: - In case the training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training."

On a plain reading of the aforesaid provision, it is crystal clear that date of regular promotion after due process of selection would be the date from which seniority in the cadre of Senior Clerk would count. In the case in hand, the appointment of the respondent in the cadre of Senior Clerk against 66-2/3% quota as well as the appointment of the appellants in the said grade against 13-1/3% quota, through limited departmental competitive examination are by way of promotion from the cadre of Office Clerk. The inter se seniority, therefore, of these two category of personnel in the cadre of Senior Clerk, would be from the date on which each one of them were promoted after their regular selection by due process of selection. In other words, when promotion is given after holding the suitability test on adjudging the suitability of the employee, then the promotion can be held to be a regular promotion and not earlier. In the case in hand, so far as the appellants are concerned, the relevant date would be 18.1.1985 and so far as the respondents are concerned, the relevant date would be 28.2.1985. The ad hoc services rendered by the respondents for different periods from 9.12.1985 till they

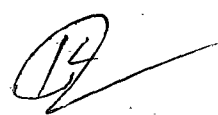


were regularly absorbed on adjudging their suitability by holding tests, cannot be reckoned for the purposes of their seniority in the cadre of senior clerk. The conclusion of the tribunal is contrary to the aforesaid provision of the Railway Establishment Manual and cannot be sustained."

In this judgment, the Hon'ble Supreme Court is of the view that the service rendered by the promotees on ad hoc basis in the post of Senior Clerk before their regular promotion cannot be counted for the purpose of seniority in the cadre of Senior Clerk.


28. Having considered the ratio decided by the Hon'ble Supreme Court in the cases referred by the respective parties, and having considered the legal definition of 'Officiating', which has been referred by the official respondents, but the respondents are utterly failed to produce the definition of 'ad hoc', we are of the view that the majority of the views expressed by the Hon'ble Supreme Court is that the 'ad hoc promotion as per rules will count for seniority' and for that purpose we are of the considered view that the case of the applicant deserves to be re-examined afresh by the official respondents.

29. We have also considered the preliminary objections raised by the official respondents. So far as the territorial jurisdiction is concerned, that the applicant failed to invoke the proper territorial jurisdiction as he was working on the post of TTE in the pay scale of Rs. 4000-6000 at Abu Road when he appeared in the selection of Head TTE/TNCR/Head TC in the pay scale of Rs. 5000-8000, as the Original Application is pending since 2009 and after elapse of about 4 years of its admission, we are not



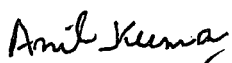
inclined to dismiss this Original Application on this count alone. But with regard to the objection of the official respondents relating to non-joinder of necessary party respondents, we are satisfied with the submissions made on behalf of the official respondents as the applicant has only impleaded 9 employees, as respondent nos. 5 to 13, but has failed to implead remaining 18 employees, who were given promotion vide impugned order dated 25.06.2008 (Annexure A/1) and vide impugned order dated 24.07.2008 (Annexure A/2), and as per the settled preposition of law, no adverse orders can be passed against 18 remaining employees, who have not been impleaded as party respondents in the OA without giving them opportunity of being heard. Thus, this Original Application deserves to be dismissed for non-joinder of the party respondents.

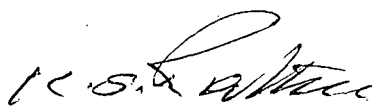
30. But in the interest of justice, as discussed hereinabove, in view of the ratio decided by the Hon'ble Supreme Court that the 'entire period of ad hoc service will have to be counted towards seniority', without quashing and setting aside the impugned order dated 25.06.2008 (Annexure A/1) and impugned order dated 24.07.2008 (Annexure A/2), we only give the liberty to the applicant to represent afresh before the respondents in view of the observations made hereinabove, and it is for the respondents to consider the same and shall pass a reasoned and speaking order in accordance with the provisions of law and also in view of the ratio decided by the Hon'ble Supreme Court, after affording the opportunity of being heard to the persons who were given promotions vide impugned order dated 25.06.2008



(Annexure A/1) and vide impugned order dated 24.07.2008 (Annexure A/2).

31. With these observations and directions, the Original Application stands disposed of with no order as to costs. In view of the order passed in the OA, the Misc. Application also stands disposed of.


(ANIL KUMAR)
MEMBER (A)


(JUSTICE K.S. RATHORE)
MEMBER (J)

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