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O.A.No.350/H34/2017

M.A.No.350/685/2017

In the Central Administrative Tribunal

Calcutta Bench

1. Anup Kumar De, S/o Late Ashok Kumar De, aged about 56 years, at present residing at 161, Ram Krishna Lane, P.S. + Chinsurah, P.O + District - Hooghly, Pin - 712103.
2. Arun Barua, S/o Late Bijan Bikas Barua, aged about 58 years, at present residing at Bankim Nagar, P.O Ichapur-Nawabganj P.S. Noapara, Dist 24 PGS (N), Pin 743144
3. Tarakeswar Mukherjee, S/o Late Basudeb Mukherjee, aged about 56 years, at present residing at 28, Garfa Main Road, Halti, Kolkata 700 078.

All the applicants are working as Chief Law Asstt. under the overall control of General Manager, South Eastern Railway, Garden Reach, Kolkata - 700043.

...Applicants

- Vs -

1. Union of India through the General Manager,
South Eastern Railway,
Garden reach, Kolkata - 700043.
2. Chief Personnel Officer,
South Eastern Railway,
Garden reach, Kolkata - 700043.
3. Secretary,
Railway Board, Ministry of Railways,
Rail Bhavan, New Delhi - 110001.
4. Dy. Director Estt, (GP)-III

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Railway Board, Ministry of Railways,

Rail Bhavan, New Delhi - 110001.

...Respondent

AB

O.A.350/1134/2017
M.A.350/685/2017

Date of order : 10.08.2017

Coram : Hon'ble Mr. A.K. Patnaik, Judicial Member

Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

For the applicant : Mr. C. Sinha, counsel

For the respondents : Mr. P.B. Mukherjee, counsel
Mr. B.L. Gangopadhyay, counsel

ORDER (ORAL)

Mr. A.K. Patnaik, J.M.

The instant O.A. has been filed by three applicants challenging the selection procedure adopted by the respondent authorities to fill up the vacancies of Group 'B' posts of Law Officer arising out of restructuring by way of written test and viva-voce on the ground that such procedure is against the law because as per rules, such vacancies should be filled up by way of seniority-cum-fitness. According to the applicants, they are the senior-most Chief Law Assistants and come within the zone of consideration for promotion to Group-B post of Law Officer.

2. In the O.A. the applicant has prayed for the following reliefs:-
 - a) "Liberty be granted under Rule 4(5) (a) of CAT (Procedure) Rule 1987 to allow the applicants to file & maintain the original application jointly;
 - b) To set aside and quash Impugned RBE No. 136/2016 dated 21.11.2016 issued by Dy. Director Estt. (GP)-III, Railway Board;
 - c) To set aside and quash Impugned Letter No. SER/P-HQ/GAZ-CON/260/5/LO/17(R) dated 03.05.2017 issued by SPO (Gaz) for CPO,S.E. Railway (as regards vacancies arising out of restructuring is concerned);

Abd

- (d) To set aside and quash Impugned letter No. SER/P-HQ/E_Admn/Law Gr.8 dated 15.05.2017 issued by CPO, South Eastern Railway, GRC (as regards vacancies arising out of restructuring is concerned);
- (e) To set aside and quash Impugned letter dated 29.06.2017 issued by SPO (Gaz) for Chief Personnel Officer, South Eastern Railway (as regards vacancies arising out of restructuring is concerned);
- (f) To direct the respondents to grant promotion to the applicants to the upgraded Group "B" post of Law Officer in level 8 pay matrix (equivalent to PB-2 of Rs. 9,300 – 34,800/- with grade pay or Rs. 4,800/- strictly following the process of seniority cum fitness and not following the process of written test and viva-voce granting benefit of judicial pronouncements as highlighted as paras 4.8 to 4.13 of the instant O.A applicants, being similarly situated and similarly circumstanced, forthwith all consequential benefits;
- (g) Any other order or order(s) as the Hon'ble Tribunal deems fit and proper."

(b) The applicants have also filed an M.A.No.350/685/2017 seeking permission to file the O.A. jointly.

3. Heard Mr. C. Sinha, Id. counsel for the applicants. Id. counsel for the respondents Mr. P.B. Mukherjee and Mr. B.L. Gangopadhyay are also present and heard.

4(a) Mr. Sinha, Id. counsel for the applicants has submitted that the point in dispute is no more res judicata in view of several orders pronounced by different coordinate benches of this Tribunal which were upheld by the Hon'ble High Courts of the respective states and subsequently confirmed by the Hon'ble Supreme Court of India. At the first instance he has brought our notice to the order of Central Administrative Tribunal, Allahabad Bench dated 02.02.2007 in O.A.No.906 of 2006(**Hrishikesh Tiwari vs. Union of India & Others**) which was allowed in favour of the applicant and later upheld by the High Court, Allahabad in **WPCT.No.48471 of 2007** and the Supreme Court of India in **Civil Appeal No.2565 of 2009**. He has also drawn our attention to the following orders passed by different benches of Central Administrative Tribunal granting the same



benefits to the applicants which were subsequently confirmed by Hon'ble High Courts of respective States and the Hon'ble Supreme Court of India :-

- (a) Order in O.A.592 of 2011 passed by C.A.T., Allahabad Bench (upheld by Hon'ble Allahabad High Court and subsequently confirmed by Hon'ble Supreme Court of India in Special Leave to Appeal(Civil)No.(s)25690/2012);
- (b) Order in O.A.No.52 of 2007 passed by C.A.T., Jabalpur Bench
- (c) Order in M.A.310/00221/2017 with O.A.310/00294/2017 passed by C.A.T., Madras Bench;
- (d) Order in O.A.No.330/1503/2006 and O.A.No.330/1526/2016 passed by C.A.T., Allahabad Bench

(b) Referring to the aforesaid judgments Mr. Sinha submitted that the applicants have ventilated their grievances through their representations dated 02.06.2017 to the Chief personnel Officer, South Eastern Railway, Garden Reach, Kolkata and 05.06.2017 to the General Manager, South Eastern Railway, Garden Reach, Kolkata(Annexure A/4 to the O.A.), but their case has not been considered by the respondents till today. He has further submitted that the applicants would be satisfied if a direction is given to the respondent authorities to consider the representations of the applicants in the light of the aforesaid judgments of Central Administrative Tribunal as well as the Hon'ble High Courts and also the Supreme Court of India.

5. Ld. counsel for the respondents Mr. P.B. Mukherjee has brought our attention to an internal communication dated 26.07.2017 sent by the Senior Personnel Officer(Gaz) [for General General] to the Dy. Director, Estt.(GP)-111, Railway Board, New Delhi which reads as under:-

"The procedure for filling up all Gr. 'B' post of Law Officers(including all the upgraded posts) has been communicated under RBE No.136/2016 advising that the procedure for filling up of upgraded Gr. 'B' post of Law



Officers may be followed subject to outcome of SLP filed by NCR pending before Hon'ble Supreme Court.

Consequent upon dismissal of Civil Appeal No.2565 of 2009 (UOI & Ors. (NCR) vs. H.K. Tiwari(Dead) vide Supreme Court's orders dated 12.05.2017(**copy enclosed**), Board are requested to advise further procedure to be adopted for the subject case."

6. Considering the facts and circumstances of this case and keeping in mind the aforesaid judgments of different benches of this Tribunal which were upheld by the High Courts of their respective states and confirmed by the Hon'ble Supreme Court as relied on by Id. counsel for the applicants, Mr. Sinha and the internal communication referred to by the Id. counsel for the respondents, Mr. Mukherjee, we think it would not be prejudicial to either of the sides if a direction is given to the Respondent No.1 i.e. the General Manager, South Eastern Railway, Garden Reach, Kolkata and the Respondent No.2 i.e. the Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata to consider and dispose of the representations of the applicants within a time frame.

7. Accordingly, the Respondent No.1 or the Respondent No.2 i.e. the General Manager, S.E. Railway, Garden Reach, Kolkata and the Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata respectively, is directed to consider and dispose of the representations of the applicants dated 05.06.2017 and 02.06.2017 (Annexure A/4 to the O.A.) as per the rules and regulations in force by passing a well reasoned order, if such representations are still lying pending for consideration with the department, within a period of two months from the date of receipt of a copy of this order and communicate the decision to the applicant forthwith. After such consideration, if the applicant is found entitled to the reliefs claimed by them, then expeditious steps may be taken by the respondents to give the consequential benefits to the applicants within a

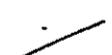
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further period of two months from the date of taking decision in the matter. Till disposal of the representations/till receipt of any reply to the internal communication dated 26.07.2017 referred to by the Id. counsel for the respondents, no further action shall be taken by the respondent authorities in pursuance of the recruitment notification dated 29.06.2017 made under Annexure A/5 to the O.A.

8. It is made clear that we have not gone into the merits of the case and all the points raised in the representations are kept open for consideration by the respondent authorities as per rules and guidelines governing the field.

9. A copy of this order along with the paper book may be transmitted to the
~~he/~~ ^{and 3} Respondent No. 1 and 2 by the Registry for which Mr. Sinha, Id. counsel for the
A applicant shall deposit the cost within one week.

10. With the above observations both the O.A. and M.A. are disposed of. No order as to cost.


(Dr. N. Chatterjee)
Administrative Member


(A.K. Patnaik)
Judicial Member

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