

Reserved on 30.5.2017

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD  
BENCH ALLAHABAD**

**Original Application No. 330/01563/2016**

**AW O.A. No. 330/01526/2016**

**Pronounced on 21.6.2017**

**HON'BLE MR. JUSTICE DINESH GUPTA, MEMBER (J)  
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)**

(O.A. No. 1563/2016)

1. Brajesh Pandey son of Sri Kapil Deo Pandey resident of village and Post Baitalpur, District- Deoria.
2. Ashok Kumar Tiwari son of late K.C. Tiwari resident of 7490, Ganeshpuram, Rapti Nagar, Phase-I, Gorakhpur.
3. Hari Ram son of Tamesar, resident of village Gaighat, Tola Paneli, Post Jangal Kauriya, Gorakhpur.

**Applicants**

**By Advocate: Sri T.S. Pandey**

**Versus**

1. Union of India through Secretary (Establishment) Ministry of Railway Board, Rail Bhawan, New Delhi.
2. General Manager, North Eastern Railway, Gorakhpur.

**Respondents**

**By Advocate : Sri R.K. Rai**

(O.A. No. 1526/2016)

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2. Ashok Kumar Tiwari son of late K.C. Tiwari resident of 7490, Ganeshpuram, Rapti Nagar, Phase-I, Gorakhpur.
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2. General Manager, North Eastern Railway, Gorakhpur.
3. Deputy Director Estt. (G.P.) III Railway Board, New Delhi.

## Respondents

**By Advocate : Sri R.K. Rai**

## ORDER

**By Hon'ble Mr. Justice Dinesh Gupta, Member (J)**

Both the OAs involved the same controversy, hence they are being consolidated and decided by a common order.

2. These O.As. are preferred by the applicants u/s 19 of the AT Act, with the following reliefs:-

**(Relief prayed in O.A. No. 1563/2016)**

a) Issue any writ, order or direction in the nature of certiorari quashing the order dated 8/9.11.2016 (Annexure A-1) with exemplary cost, with the further order and direction commanding the respondents to upgrade the applicants in terms of Railway Board's order and orders of this Hon'ble Court, the Hon'ble High Court and Hon'ble Supreme Court, within a stipulated time whatever is fixed by this Hon'ble Court.

b) issue any other and further writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case but may have not been pleaded and is found just and proper to this Hon'ble Court.

c) Award cost to the applicant from the respondents.

**(Relief prayed in O.A. No. 1526/2016)**

a) to quash the impugned order dated 21.11.2016 (Annexure A-1) with all consequential benefits including the payment of arrears, and to command in the nature of mandamus commanding the respondents to promote the applicants on the upgraded post of Group B Law Officer G.P.Rs. 1800 from due date in the light of Board letter dated 9.3.2006 and judgments dated 2.2.2007 and 30.9.2011.

b) to pass any such /other order as deem fit in the facts and circumstances of the case.

c) issue award cost of the petition.

3. The fact emerges from the O.As are that the applicants of these O.As are working on the post of Chief Law Assistant and due for up-gradation for Group B post in P.B.-2 Rs. 9300-34800 with Grade Pay Rs. 4800/- as per seniority.

3.1 As per recommendation of each Zonal Railways, the Law Department merged the post of Chief Law Assistant in Group B Law Officer in P.B., -2 9300-34800 + G.P.Rs.4800 vide Railway Board's letter dated 9.3.2006 and in accordance with the directions of the Railway Board, the law Department of each Zonal Railway did merge the post of Chief Law Assistant in Group B Law

Officers in PB-2 (Rs. 9300-348000 +G.P. Rs. 4800) vide Railway Board's letter dated 9.3.2006.

3.2 Pursuant to Railway Board letter dated 9.3.2006, the Board upgraded 11 posts of CLAs in the grade Rs. 7450-11500 to Group B in scale of Rs. 7500-12000 by restructuring and changed the recruitment Rules.

3.3 Railway board also issued the letter dated 30.5.2016 for restructuring of Gazetted cadre of Legal Department of old zones and consequent upon restructuring 43, posts of Chief Law Assistant have been up-graded to Group B posts of Law Officers. The Dy. Director (Establishment) Railway Board to fill up the posts as per the provisions of IREM (Vol. II) through selection comprising written test and viva voce from amongst chief Law Assistant G.P. which is against the Board's letter dated 9.3.2006

3.4 The order dated 21.11.2016 itself is a conditional order of SLP filed by the respondent No. 1 and 2 of O.A. No. 1526/2016 by which the interim relief sought in the SLP stands dismissed and the Original order stands complied with, accordingly the impugned order of this O.A. itself became meaningless and deserves to be quashed.

3.5 In both the SLPs No.2565 of 2009 which arose out of writ petition No. 4871 of 2007 of O.A.No. 906 and SLP No. 25960 of 2012 arose out of Writ Petition No. 11769 of 2012 of O.A. No. 592 of 2011 have become in effective for

one and the simple reason that one of the order of O.A. allowed by this Tribunal stands implemented. Accordingly, the impugned order of this OAs being order dated 8/9.11.2016 stands in-fructuous and deserves to be quashed. Accordingly, the post of Law Officer has to be filled up through seniority-cum-suitability and not otherwise.

3.6 The applicants are admittedly senior most persons according to respondents own published seniority list dated 10.2.2013, therefore, the impugned order deserves to be quashed and OAs deserve to be allowed.

3.7 There are three posts of Group B in N.E. Railway, Gorakhpur under up-gradation as notified in Board's letter dated 30.5.2016 which should be filled up by seniority cum suitability instead of written and viva voce.

3.8 Applicants submitted the order dated 30.9.2011 passed by this Court in O.A. No. 592/2011 (A.N. Mishra Vs.UOI and others) which was allowed by this Hon'ble Court, after quashing the selection process, given a direction to hold the selection by up-gradation process instead of selection which was assailed by the respondents in writ petition which was dismissed. Consequently, SLP seeking interim relief that too was dismissed but the respondents are still trying to hold the selection by written and viva voce in violation of order of

this Court, the Hon'ble High Court and Hon'ble Supreme Court, that too without any rules to hold the selection.

3.9 The respondents did promote Mr. A.N.mishra vide order dated 23.10.2012 in compliance of order of this Tribunal and Hon'ble High Court on the post of Law Officer Group B in P.B. 4800 w.e.f. 9.3.2006. Therefore, the respondents are barred by principles of 'Estopel'.

3.10 The applicants did file the representation jointly dated 20.6.2016 referring all the aforesaid facts but the same has not been disposed of instead did issue the impugned order. Hence applicants have filed the present O.A.s

4. Notices were issued to the respondents who in turn filed the Counter Reply as well as written statement. In the Counter Reply, respondents submitted that Railway Board RBE NO. 136 of 2016 is in the form of statutory instruction issued under provisions of Indian Railway Establishment Manual and in consonance with the Recruitment Rule dated 20.07.1992 and in supersession of earlier instruction dated 18.5.2007, 4.2.2008 and 16.11.2011.

4.1. That the RBE No. 136 of 2016 dated 21.11.2016 has clearly stated that fact that RBE No. 136 of 2016 dated 21.11.2016 has been issued "..... In supersession of the aforementioned earlier instruction on the matter that the Group 'B' post of Law officer may now be filled up as per

the provision of Indian Railway Establishment Manual Vol-1 and extant Rules.....".

4.2. That the Railway Board's letter dated 21.11.2016 has clearly stated that the fact earlier instruction dated 18.05.2007 and subsequent Board's letter dated 04.02.2008 and 16.11.2011 was issued, "consequent to restructuring of Gazetted cadre of legal department of New Zones and Divisions".

4.3. That in terms of para 201.1 of IREM Vol.1 all Group 'B' posts are to be filled up by promotion on the basis of selection comprising of a written test & viva of eligible Group 'C' employees and also on the basis of Limited Departmental Competitive Examination wherever the scheme is in force. There appears to be no relaxation to these provisions i.e. promotion to Group 'B' posts cannot be made without involving the selection procedure as prescribed.

4.4. That the recruitment rules governing the Group 'B' posts of Law officer also provide for filling up of these posts through selection comprising of written test, viva-voce including assessment of record of service.

11. That as per Railway Board's letter No. 2003E (GC) 12-14 (64) 2016 dated 30.05.2016 (annexure A/3 to the OA No. 1526/2016, consequent upon restructuring of Gazetted cadre in the old zones of legal department, 03

Group 'B" posts of Law Officers (9300-34800), GP 4800)

was upgraded from Group ' C' posts on this Railway.

4.5. That as per provision of IREM Vol. 1 and extant Rules, to fill up aforesaid 03 upgraded post of Law Officer Group 'B' a notification along with a list of eligible candidates has been issued on 08/10.11.2016 (annexure A/1 to the OA No. 1563/2016) by this Railway. Finally, 10 candidates have given their willingness for appearing in the selection. The applicants, who were senior most candidates in the seniority list have not given their willingness for appearing in the selection and filed aforesaid OA No. 1526/2016 before Hon'ble CAT/ Allahabad praying relief to quash the impugned Railway Board's order dated 21.11.2016 (Annexure A/1 to the OA No. 1526/2016) and to promote the applicants on upgraded Group 'B' post of Law Officer (9300-34800 + GP 4800) from due date in the light of Railway Board's letter dated 09.03.2006 (Annexure A/2 to the O.A. No. 1526/2016) and judgment dated 02.02.2017 and 30.09.2011.

4.6. That the Hon'ble Tribunal vide interim order dated 21.12.2016 has stayed the effect and operation of the impugned Railway Board's order dated 21.11.2016 till the next date i.e. 23.01.2017 and subsequently another OA No. 1563 of 2016 (Brajesh Pandey another Vs./ Union of India) has been filed by the applicants challenging the

notification dated 08.11.2016 issued for selection to the post of Assistant Law Officer by the office of respondents, which has been connected along with O.A. No. 1526 of 2016 without passing any interim order.

4.7 That it is pertinent to mention here that applicants of the aforesaid O.A have also filed another O.A. bearing No. 1563 of 2016 before Hon'ble Tribunal, praying to quash the aforesaid notification dated 08/10.11.2016 issued by this Railway6 to fill up aforesaid 03 upgraded Group 'B' post of Law Officer and with further direction to the respondents to upgrade the applicants to the post of Assistant Law Officer in terms of Railway Board's letter dated 09.03.2006 and subsequent orders of Hon'ble High Court dated 03.10.2007 in CMWP No. 48471 arising against CAT/ Allahabad's order dated 02.02.2007 in OA No. 906/2006 filed by Late Shri H.K Tewari, CLA/North Central Railway, which has been affirmed by the Hon'ble Supreme Court vide its judgment dated 17.10.2016 (Annexure A/10 to the OA no. 1526/2016).

4.8. That applicants have further claimed their promotion to the post of Law Officer/Group 'B' in the light of Railway Board's letter dated 09.03.2006 subject to the final outcome of SLP filed in the case citing another judgment dated 30.09.2011 (Annexure A/5 to the OA No. 1563 of 2016) passed by the Hon'ble Tribunal in OA No. 592/2011- (A.N Mishra Vs. UOI & Ors) affirmed by the

Hon'ble High Court/Allahabad vide its judgment dated 02.03.2012 (Annexure A/6 to the OA No. 1563/2016) in compliance of which the applicant Shri A.N Mishra/CLA of N.C Railway/Allahabad has been promoted to the post of Law Officer Group 'B' w.e.f. 09.03.2006 subject to the final outcome of SLP filed in the case vide GM (P)/N.C. Railway's office order No. 797-E/Raj/ Chayan/ALO/UMRe dated 23.10.2012 (Annexure A/7 to the OA No. 1563/2016).

4.9. That in this regard, it is mentioned that SLP No. 2565/2009 against Hon'ble High Court Allahabad's order dated 03.10.2007 in WP No. 48471/2007 arising out against CAT/ALD's order dated 2.2.2007 in OA No. 906 of 2006 filed by Late H.K Tewari is still pending in the Apex Court. An application for early hearing in the case has only been dismissed by the Apex Court vide order dated 17.10.2016.

4.10 That in the instant case, the applicants were working on the post of Chief Law Asstt. (Group 'C') and their names in the seniority list of Chief Law Assistant / Group 'C' (Annexure A/4 to the OA No. 1526/2016) are at Sl. No. 1, 2 & 3 and as per provision of IREM, Vol.I and extant rules affirmed vide Railway Board's letter No. E(GP)2005/2/26 dated 21.11.2016 were required to be considered for promotion to the aforesaid 03 upgraded Group 'B' post of Law Officer in Level 8 in Pay Matrix

(equivalent to Pay Band PB-2 (9300-34800)+GP 4800) from amongst eligible Chief Law Assistants (CLAs) in level 7 in Pay Matrix (equivalent to Pay Band PB-2 (Rs. 9300-34800 with Grade Pay Rs. 4600/- provided they have rendered not less than 2 years of non-fortuitous service in the grade (including non-fortuitous service rendered in the pre-revised scale).

4.11 That the said Railway Board's letter dated 09.03.2006 and 18.05.2007 was applicable for New Zones and New divisions established at that time on India Railways as such the applicant's claim according to these Railway Board's letters is not admissible.

4.12 That it is submitted that the applicant no. 1 Brajesh Pandey has been superannuated on 31.12.2016 after attaining the age of 60 years from the post of Chief Law Assistant. Applicant no. 2 Sri Ashok Kumar Tiwari has also been superannuated on 31.12.2016 from the post of Chief Law Assistant. So far as the applicant Shri Hari Ram has also been superannuated on 31.1.2017 from the post of Chief Law Assistant. It is further submitted that prior to their superannuation they had already got their chance to appear in the previous selection held to the Group 'B' post of Law Officer, however, none of them succeeded finally due to one or another reason.

4.13 That, the Railway Board's letter dated 20.5.2016 (Annexure NO A-3 of the OA) was issued with regard to

restructuring of gazetted cadre legal department of old Zones and Railway Board, on the recommendation of departmental committee for revamping and streamlining the legal set up of Zonal Railway/Production Unit, accordingly, sanction of the President is accorded to the creation of three posts in JAG, 3 post of Senior Scale, 1 of post of Group 'B' and 2 posts of Group 'C' and upgradation of 43 Group 'C' posts of Chief Law Assistant (CLAs) to Group 'B' By surrender of 7 posts of CLAs from Old Zones. The above posts which are permanent in existence grade shall be treated as permanent in the upgraded scale. It is further submitted that there is no post of CLAs has been surrendered by the North Eastern Railway, moreover, there is no change in the cadre strength of the CLAs in the office of NE Railway, which is presence 24 (including 1 adhoc and 1 Work charge post) after issuing of Railway Board's letter dated 30.5.2016.

5. The counsel for applicants filed Rejoinder reply through which he has reiterated the facts as stated in the O.As. and denied the contents of the counter reply.

6. Both the learned counsel were directed to file their written statement and in compliance of order of this Tribunal, the respondents have filed written submission. However, the applicants submitted that they will rely on their oral arguments advanced before this Tribunal.

7. Heard the learned counsel for parties orally.

8. Learned counsel for applicants submitted that applicants filed the present O.As against the order dated 9.11.2016 and also order dated 21.11.2016 passed by respondent No. 1 of O.A. No. 1526/2016, which has already been assailed by the applicants of this O.A., illegally, arbitrarily and in gross violation of order of not only this Tribunal but affirmed by the Hon'ble High Court and Hon'ble Apex Court. This order too has been assailed by the applicants and prosecuted but due to omission, the same could not be assailed and is now being assailed by way of this O.A. because the same facts and common question of law are involved in this O.A. as is involved in O.A.No. 1526 of 2016. The respondents are trying to sit over the order of this Court passed in O.A. No. 592/2011 affirmed by Hon'ble High Court vide order dated 2.3.2012 and also Hon'ble Apex Court while hearing on interim relief, rejected the same. Therefore, the impugned order dated 21.11.2016 is not only contemptuous but is arbitrary and violative of Article 14 and 16 (1) of the Constitution of India and deserves to be quashed and set aside.

9. Learned counsel for applicants placed reliance upon the judgments rendered by this Tribunal passed in O.A. No. 592/2011 decided on 30<sup>th</sup> September, 2011 (A.N. Mishra Vs. Union of India and others) and order passed by the Hon'ble High Court in Writ Petition No. 11769 of

2012 (Union of India Vs. A.N. Mishra and another) dismissing the writ petition vide order dated 2.3.2012 and also order passed by the respondents dated 23.10.2012 claiming the compliance of order of this Tribunal and promoted Mr. A.N. Mishra to the post of Law Officer Group B and order passed by the Hon'ble Apex Court rejecting the appeal No. 2565/2009 (Union of India Vs. H.K. Tiwari wherein the Hon'ble Apex Court vide order dated 20.11.2014 dismissed the appeal for want of prosecution.

10. The counsel or applicants further submitted that the Tribunal while allowing the O.A. filed by Mr.A.N. Mishra clearly held that the respondents have upgraded the post and the applicants are entitled to be appointed on upgraded post and it cannot be said to be a promotion. In the said order, the Tribunal has relied upon the judgment passed in the case of Hrishikesh Tiwari (O.A. No. 906 of 2006) and submitted that the applicants are also entitled to the same benefit and the court arrived on the conclusion that the applicants are similarly situated persons like Hrishikesh Tiwari and allowed the O.A. giving the same benefit to the applicant and directed the respondents to issue suitable upgradation order in respect of the applicant by applying modified selection procedure on the basis of seniority cum fitness. However, in gross violation of both the judgments referred above,

the respondents have issued a fresh notification whereby they again framed a rule that it is a matter of promotion and suitability of the applicants will be judged on the basis of written and viva voce which is against the spirit of the order passed by this Tribunal and affirmed by the High Court and Hon'ble Apex Court and virtually, the respondents have disregard the order passed by the High Court. Counsel also submitted that respondents are aware of this fact that they are doing some thing against the judgment passed earlier. Therefore, they issued the order dated 21.11.2016 and it is mentioned in the said order that the above procedure for filling up of upgraded Group B post of Law Officer maybe followed subject to outcome of the SLP filed against the Hon'ble High Court Allahabad judgment dated 3.10.2007 in CMWP No.48471/2007 arising out of CAT order dated 2.2.2007 in O.A. No. 906/2006 filed by H.K. Tiwari, N.C. Railway which clearly shows that respondents are aware that they are doing something against the order passed by this Tribunal and High Court.

11. Counsel for respondents filed written submission and submitted that written submission may be treated as oral arguments also. It is submitted that Schedule 12 of the Recruitment Rules 1992 provides mode for recruitment by promotion. The applicants are solely relied over the Railway Board Instruction dated 9.3.2006 on the subject

restructuring of Gazetted cadre of Indian Railway for new Zone and New Division. Further relied over the notification dated 14.8.2006 issued by North Central Railway which has been quashed by the learned Tribunal in O.A.No. 592/2011 (A.N. Mishra Vs. Union of India) and affirmed by the High Court in W.P.No. 11769 of 2012. In earlier O.A. No. 592 of 2011, notification dated 14.8.2006 issued by the North Central Railway has been challenged and not the Railway Board instruction dated 9.3.2006 but in the instant O.A. No. 1526 of 2016, applicant has challenged the Railway Board instruction RBE No. 136 of 2016 dated 21.11.2016 as well as in O.A. No. 1563 of 2016, notification dated 10.11.2016 issued by North Eastern Railway for selection of three posts.

11.1 Counsel further submitted that the issue involved in O.A. No. 2/2011 was based on the fact that the applicants be treated on the same post as upgraded on the basis restructuring to the legal cadre in new zone and new division and relied over the judgment passed in O.A. No. 860/2005 M.M. Udainyia Vs. Union of India) and judgment in O.A. No. 06 of 2006 (Hrishikesh Tiwari Vs. Union of India). In the above mentioned OAs, the Tribunal heavily relied over the fact that the post of Chief Law Assistant have been upgraded and merged with the Group B post of Assistant Law Officer/ Law Officer, and it cannot be treated as promotion and no selection is

required for the same. The Tribunal further observed that the Railway Board in the letter dated 9.3.2006 did not suggest for any selection.

11.2 The judgment and order dated 30.9.2011 challenged by the respondents in writ petition No. 11769/2012 (Union of India Vs. A.N. Mishra), the High Court observed that the Tribunal found that the question of law has already been decided by it. The upgradation of the post does not require selection and that its judgment has received the approval of the High Court. The order passed by the Hon'ble High Court dated 2.3.2012 was challenged by the Railway Board before Hon'ble Supreme Court in Special Leave Petition No. 25690 of 2012 which was dismissed in default. However, the restoration application is pending.

11.3 Another Special Appeal No. 2565 of 2009 filed by the respondents against the judgment and order dated 3.10.2007 passed in CMWP No. 48471 of 2007 arising out of CAT's judgment dated 2.2.2007 in O.A. No. 906 of 2006 filed by H.K. Tiwari is pending and connected with the above said SLP. Therefore, both the SLPs are pending and connected together for final hearing on merit.

11.4 Respondents also relied upon the case laws of **B.N. Nagarajan and others Vs. State of Mysore and others** reported in AIR 1966 SC 1942, **Sant Ram**

**Sharma Vs. State of Rajasthan and others reported in AIR 1967 SC 1910.**

11.5 Counsel for respondents further submitted that law laid down in the above judgments has consistently been followed by the Court and a Constitution Bench of Hon'ble Supreme Court in the case of **Secretary, State of Karnataka Vs. Umadevi reported in AIR 2006 SC 1806** also held the same.

11.6 The counsel for respondents relied upon the case of **Bharat Petroleum Corporation Ltd. Vs. N.R. Vairamani and another reported in 2004 (8) SCC 579** and also a recent judgment passed in the case of **Bharat Sanchar Nigam Ltd. Vs. R.Santakumari Velusamy reported in (2011) 9 SCC 510** which considered the case of **Pushpa Rani (2008 9 SCC 242)**.

11.7 The counsel further submitted that the impugned Railway Board Notification RBE No. 136 of 2016 dated 21.11.2016 issued on the subject of selection for promotion to Group B post of Law Officer which consists of written examination, viva voce and assessment of service record. Impugned RBE No. 21.11.2016 has been issued in supersession of the earlier instruction on the matter with a direction for the Group B post of Law officers may now be filled up as per the provision of IREM Volume I and extant rules.

11.8 It is further submitted that Railway Board instructions dated 9.3.2006 does not provide methodology for filling up of up-graded Group B post of Law officers. Therefore, the notification issued by the North Central Railway dated 14.8.2006 holding selection to written examination and viva voce was quashed by the Tribunal and Hon'ble High Court. The ratio held by the Tribunal and by the Hon'ble High Court ongthe question of law that up-gradation of post does not require selection has been decided by the Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Limited Vs. R. Santakumari Velusamy.

11.9 The post of Chief Law Assistant Group C which are upgraded to the Assistant Law Officer requires element of selection to the promotional post after going through written examination , viva voce as per IREM Volume I . The counsel for respondents lastly submitted that the applicants are not entitled for any relief.

12. We are unable to accept the contentions raised by the learned counsel for respondents.

13. The respondents themselves while issuing the Railway Board Notification dated 21.11.2016 have admitted that this issues are subject to outcome of the SLP filed by H.K.Tiwari against the judgment of this Tribunal and judgment of Hon'ble High Court. The respondents have admitted this fact that in the case of

H.K. Tiwari, the SLP was filed but the Hon'ble Apex Court has declined to grant any stay. Further, in the relied upon judgment, the Tribunal allowed the O.A. which has not been disputed by the respondents and on the up-gradation, the law does not provide any selection through written examination, viva voce and screening of record of the candidate and on the same ratio, the respondents were directed to promote the applicant of the O.A. through modified selection procedure on the basis of seniority-cum-fitness and respondents have complied the order in the case of A.N. Mishra (applicant of earlier O.A.).

14. The respondents have again issued a notification dated 21.11.2016 on the basis of relevant rules given in IREM which clearly provides that promotion of Group B post, requires written examination, viva voce and screening of service records whereas this notification are not in pursuance of order passed by the Tribunal and Hon'ble High Court and also against SLPs which are pending. Respondents themselves mentioned this fact in the notification dated 21.11.2016 that these orders are subject to outcome of SLPs and as per record, these two SLPs are still pending for decision on merit and there is no stay was granted by the Hon'ble Apex Court and the order passed by this Tribunal in both the OAs have also affirmed by the Hon'ble High Court having a binding upon the respondents and respondents in the garb of

mentioning single word that this orders are subject to outcome of SLPs cannot bypass the ratios and decision passed by this Tribunal and by Hon'ble High Court . Learned counsel for respondents tried to raise a plea that another case of Hon'ble Supreme Court in the case of Pushpa Rani explained the meaning of upgradation and promotion. However, since the matter is still pending before the Hon'ble Apex Court, we are unable to consider the fact of this judgment. The Court is of the view that on the basis of judgment rendered in earlier O.A. by the Tribunal and High Court affirmed the ratio, the present cases are also for upgradation and not for promotion and in case of upgradation, no written examination, viva voce and screening of service records is required and applicants are to be selected by modified selection procedure on the basis of seniority cum fitness. The Court also found that applicants of these O.As be also considered in the same manner as of the applicant of previous O.A (A.N. Mishra) was treated and they should also be given promotion on the basis of seniority cum fitness and Railway Board notification dated 21.11.2016 is not applicable in the case of applicants of present O.As.

13. In view of the above, both the O.As are allowed to this extant. Respondents are directed to promote the applicants of both the O.As on the basis of modified selection procedure which involved seniority cum fitness

and not on the basis of written examination, *viva voce* and screening of service records.

14. With the above observations, both the O.As are disposed of. No order as to costs.

**(NITA CHOWDHURY) (JUSTICE DINESH GUPTA)**  
**MEMBER (A) MEMBER (J)**

**HLS/-**