

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

This is the 17<sup>th</sup> day of *MAY, 2019*.

ORIGINAL APPLICATION NO. 330/273/2019  
ALONGWITH  
ORIGINAL APPLICATION NO.330/278/2018

HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J).  
HON'BLE MR PRADEEP KUMAR, MEMBER (A).

**Original Application No.330/00278/2018**  
(U/S 19, Administrative Tribunal Act, 1985)

1. Krishna Gopal Singh, S/o Late Vishwanath Singh a/a 59 years, Chief Law Assistant, Chief Commercial Manager Office, N.E. Railway, Gorakhpur.
2. Prem Prakash Dubey S/o Late Vijai Pratap a/a 59 years, Chief Law Assistant, Chief Commercial Manager Office, N.E. Railway, Gorakhpur.

.....Applicants.

**VERSUS**

1. Union of India through General Manager, N.E. Railway, Gorakhpur.
2. General Manager North Eastern Railway, Gorakhpur.
3. Deputy Chief Personnel Officer/Gazetted N.E. Railway Gorakhpur.
4. Yogesh Kumar Srivastava S/o Shiv Shanker Srivastava aged about 52 years-Resident of Ahibaranpur, Lucknow working on the post of Chief Law Assistant, in the office of DRM North Eastern Railway Lucknow.
5. Rahul Srivastava S/o O.P. Srivastava aged about 39 years Resident of 659 Keshav Nagar Lucknow at present working as Chief Law Assistant in the office of DRM NE Railway, Lucknow.
6. Gaurav Dwivedi S/o P.K. Dwivedi Resident of 144 Mega Home Karmchari Nagar Barelli at present working as Chief Law Assistant in the office of DRM North Eastern Railway IzzatNagar.

.....Respondents

**Along with**

**Original Application No.330/00273/2019**  
(U/S 19, Administrative Tribunal Act, 1985)

1. Krishna Gopal Singh, aged about 59 years, S/o Sri Viswanath Singh, R/o House No. 2/9, Labour Colony, Mohaddipur, Gorakhpur.

2. Prem Prakash Dubey aged about 59 years S/o Dr. Vijay Pratap Dubey, R/o 807, Sumer Sagar, Gorakhpur.

.....Applicants.

**VERSUS**

1. Union of India through the General Manager, N.E. Railway, Gorakhpur.
2. Deputy Chief Personnel Officer/Gazetted N.E. Railway Gorakhpur.
3. Raj Kumar Gupta, Chief Law Assistant, D.R.M. Office, N.E. Railway Gorakhpur.
4. Pankaj Kumar Gupta, Chief Law Assistant, D.R.M. Office, N.E. Railway, Gorakhpur.
5. Om Prakash Singh, Chief Law Assistant, D.R.M. Office, N.E. Railway Varanasi.
6. Yogesh Kumar Srivastava, Chief Law Assistant, D.R.M. Office, N.E. Railway Lucknow.

.....Respondents

Advocate for the Applicants : Shri B. Tiwari

Advocate for the Respondents : Shri R.K. Rai  
Shri Anil Kumar

**ORDER**

**(Delivered by Hon'ble Mr. Pradeep Kumar, Member-A)**

The applicants are working as Chief Law Assistants (CLAs) in PB-II plus grade pay Rs.4600 on North Eastern Railway. The applicants pleads that they are working on one of the old zonal railways. In this connection, it is mentioned that earlier, Indian Railways had 9 zonal railways namely Central Railway, Eastern Railway, Northern Railway, North Eastern Railway, North Frontier Railway, Southern Railway, South Central Railway, South Eastern Railway and Western Railway. These 9 railways are collectively referred as old zonal railways for the purpose of this OA. Later on six new zonal railways were also created namely North Central Railway, North Western Railway, South Western Railway, East Central Railway, East Coast Railway and west Central Railway.

These 6 railways are collectively called new zonal railways for the purpose of this OA.

2. The channel of promotion for CLA is to the Gazetted post of law officer in Group 'B' which carries the pay scale of PB-II plus grade pay Rs.4800. Group 'B' posts in this scale exists on all the zonal railways in all departments of railway e.g. Civil Engg., Mechanical, Electrical, operating, Signalling, Account and law etc. and the standing instructions to fill the same are already issued vide Indian Railway Establishment Manual Vol I. This specified procedure is by way of selection which includes written examination by the candidates in the zone of consideration or eligibility followed by viva-voce and assessment of record of service.

3. Applicants plead that a total of 11 number of Group 'B' posts of law officers, including other higher level posts for Law Department, were created vide Railway Board's letter dated 09.03.2006 for the new zonal railways as a result of re-structuring. This letter also specified that the recruitment Rules for the said posts whenever warranted will be issued in due course of time. The relevant para reads as under:-

*" 3. The above posts which are permanent in existing grade shall be treated as permanent in the upgraded scale. The dates of operation of the newly created/upgraded posts may please be intimated to this Ministry in due course.*

*4. The Railway must ensure that the sanction orders for surrender of posts are issued before implementation of the upgradation and this office advised accordingly. The surrender of posts should be finalized duly vetted by FA & CAC.*

*5. The changed mode of working warrant that the Legal Officers and Sr. Legal Officers will attend the Court as and when required by the Court and give*

*advisory work as required by the Departments. The increased workload and responsibilities and duty list of the legal cadre in the changed mode of working as envisaged in the Committee's Report are indicated in Annexure III & IV respectively. Change in the Recruitment Rules wherever warranted will be notified separately in due course.*

*6. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.*

*7. Please acknowledge receipt."*

4. The applicants plead that the said recruitment rules have not been issued till the time he filed OA No.278/2018. Once these 11 posts were created for the new zones one number of said post was allocated to North Central Railway. The normal selection process was initiated by this Railway on 14.08.2006, to fill the same. One Shri H.K. Tiwari who was working as CLA in North Central Railway, preferred an OA No.906/2006 in CAT Allahabad, pleading that the post was created as a result of re-structuring and as such the procedure to fill the same should not be by way of selection as specified in IREM Vol-I, but instead it needs to be done by way of modified procedure of selection based upon seniority cum suitability. This OA was allowed vide order dated 02.02.2007. The relevant para nos. 9 and 10 of this order reads as under:-

*"9. The respondents have cited the recruitment rules of 1992 to support their plea that it envisaged only a due selection procedure by holding Written Test etc. However, as pointed out by the applicant, these rules would not apply here because, we are not dealing with the promotion matter but upgradation, which is explicitly stated by the Railway Board vide letter dated 09.03.2006. In that view of the things, the cited recruitment rules of 1992 would not be applicable here. If the respondents had any doubt regarding the recruitment rules, they ought to have consulted with the Railway Board because Railway Board has specifically stated in the last sentence of letter dated 09.03.2006 that change in the Recruitment Rules wherever warranted will be notified in due course.*

*10. In the light of the above discussion, we set aside the impugned order dated 14.08.2006 with a direction to the respondents to take necessary action for issue of suitable upgradation orders in respect of the applicant by applying the modified selection procedure on the basis of seniority-cum-fitness. The above exercise should be completed within a period of two months. The O.A. stands allowed accordingly with no order as to costs."*

5. This order was challenged by the respondents by filing the writ petition No.48471/2007 in the Hon'ble High Court of Allahabad where the judgment was delivered on 03.10.2007 and decision of CAT Allahabad was upheld. This in turn was challenged by filing the SLP No.2565/2009 in the Apex Court (U.O.I. Vs. H.K. Tiwari).

Meanwhile, another OA No.592 of 2011 seeking similar relief was also preferred by one Shri A.N. Mishra, another CLA on North Central Railway, who was similarly placed as the applicant of OA No.906/2006, and this OA was also allowed vide orders dated 30.09.2011. This was challenged by respondents, filing a writ petition no.11769/2012 in the Hon'ble High Court of Allahabad wherein the judgment of this Tribunal was upheld. This in turn was challenged by department by filing SLP No.25960/2012. Meanwhile, Shri A.N. Mishra was promoted on 23.10.2012, subject to the decision in this SLP.

Both these SLPs were dismissed by the Hon'ble Apex Court vide their common order dated 20.11.2014 for want of prosecution and SLP-2526/2009 was finally dismissed on 12.05.2017. With this the adjudication by CAT, Allahabad, to fill

the posts created under restructuring, as per modified procedure of selection i.e. seniority-cum-suitability, became final.

6. Meanwhile, Railway Board vide their letter dated 30.05.2016 advised creation of 43 posts of law officer in group 'B' and some other higher level posts in Law Deptt., by way of restructuring in the old zonal railways also. Out of this, three Group 'B' posts were allocated to North Eastern Railway where the applicants in instant OAs are working. This sanction order also specified as under:-

*"3. The above posts which are permanent in the existing grade shall be treated as permanent in the upgraded scale. The dates of operation of the newly created/upgraded posts may please be intimated to this Ministry in due course.*

The applicants also plead that by the time this creation was advised on 30.05.2016, the recruitment rules as were envisaged in the earlier sanction dated 09.03.2006 were still not issued. (para 3 supra). These recruitment rules were eventually issued by Railway Board on 22.12.2017. These provided for filling the Group B post of Law Officers by promotion by way of selection process as per IREM Vol. I, and for higher level posts by way of promotion/deputation/short term contract. Meanwhile, Railway Board issued other letters dated 18.5.2007, 04.02.2008, 16.11.2011 and RBE-136/2016 dated 21.11.2016. RBE-136/2016 is to the following effect:-

*"Consequent upon restructuring of gazetted cadre of legal department of new Zones and Divisions, instructions were issued vide Board's letter no.E(P)2005/2/26 dated 18/05/2007 for filling up of those upgraded Group 'B' posts of Law Officers from amongst the senior most Chief Law Assistants after screening process consisting of written examination, viva-voce and assessment of record of service as*

prescribed for Group 'B' selections. Thereafter, vide Board's letters of even number dated 04/02/2008 and 16/11/2011, instructions were issued for filling up of normal Group 'B' vacancies arising in the cadre through Selection from amongst eligible Chief Law Assistants.

2. Vide Board's letter No. 2003 E (GC) 12-14(64) dated 30.05.2016, consequent upon restructuring of Gazetted cadre in the old zones and Railway Board, 43 posts of Chief Law Assistants have been upgraded to Group 'B' posts of Law Officer.

3. The procedure for filling up all Group 'B' posts of Law Officers (including all the upgraded posts) has been reviewed and it has been decided in supersession of the aforementioned earlier instructions on the matter that the Group 'B' posts of Law Officers may now be filled up as per the provisions of Indian Railway Establishment Manual, VOL I and extant Rules i.e. through Selection comprising of written test and viva-voce (including assessment of record of service) from amongst Chief Law Assistants in Level 7 in Pay Matrix (equivalent to Pay Band PB-2 (Rs. 9300-34800) with Grade Pay of 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. It is further advised that the above procedure for filling up of upgraded Group 'B' post of Law Officer may be followed subject to the outcome of SLP filed against Hon'ble High Court/Allahabad's judgement dated 03.10.2007 in CMWP No.48471/2007 arising out against CAT/Allahabad's order dated 02.02.2007 in OA No. 906/2006 filed by Late Shri H.K. Tiwari, CLA, N.C. Railway.

However, subsequently another instruction dated 25.08.2017 (RBE-104/2017) was issued by Railway Board which specified as under:-

*"...The procedure of filling up of Group 'B' posts of Law Officers including the upgraded posts has been outlined in terms of Board's letter no.E(GP)2005/2/26 dated 21.11.2016. However, consequent upon dismissal of SLP(C) No.2565 of 2009 UOI & Others Vs. H.K. Tiwari vide the Apex Court's orders dated 12/05/2017 the matter has since been reviewed.*

2. Accordingly, it has not been decided that the Group 'B' posts of Law Officers upgraded in terms of instructions contained in Board's letters no.2003E (GC)12-14 Pt.1(06) dt.9/3/2006 and No.2003E(GC)12-14(64) dated 30.05.2016, may be filled up by the senior most CLAs working on a non-fortuitous basis in Level 7

*in Pay Matrix through seniority cum suitability. This may, however, be a one time exercise to give effect to the cadre restructuring in the Law Department. After filling up the upgraded posts through seniority cum suitability, these posts may, thereafter, be filled up through Selection procedure as prescribed under Board's letter of even number dated 21/11/2016. Those CLAs who have since been selected and promoted to upgraded Group 'B' posts of law officers in terms of Screening Procedure prescribed earlier vide Board's letter of even number dated 18.05.2007 need not be disturbed".*

The import of these letters is summarized in table in para 15 below.

7. There were three other CLAs namely S/Shri Brijesh Pandey, Ashok Kumar, Hari Ram, working in North Eastern Railway, i.e. the same zonal railway where the instant applicants are working. They also filed OA No.1526/2016 and OA No.1563/2016 in CAT, Allahabad seeking directions that the procedure for filling up of these posts by way of seniority cum suitability process, as decided in OA No.906 of 2006, be adopted as these three posts were also created on account of re-structuring. The Tribunal vide orders dated 21.06.2017 decided that since the posts were created out of re-structuring (i.e. they are not the normal vacancies by way of retirement or further promotion of the existing Group 'B' law officers), the modified procedure of seniority cum suitability, in order of seniority amongst the CLAs be adopted. These posts were accordingly filled vide orders dated 13.11.2017, by way of one time exception as per instructions dated 25.08.2017. However, the promotion was to take effect from 30.05.2016, i.e. the date of creation. This promotion order also specified that this one time exception will not be available to anyone else. These three officials had already retired on 31.12.2016 and 31.01.2017.

8. Meanwhile, the North Eastern Railway had issued a provisional seniority list of CLAs as of 01.04.2016. The following six names appeared in this seniority list in order of seniority from top.

Srl. No.	Name	Remarks
1.	Brajesh Kumar Pandey	They had filed OA no.1526 and OA No.1563, both of 2016, in CAT Allahabad. Both were allowed on 21.06.2017 and they were promoted as per modified selection procedure, on 13.11.2017 w.e.f. 30.05.2016. They had already retired on 31.12.2016 and 31.01.2017.
2.	Ashok Kumar Tiwari	
3.	Hari Ram	
4.	Krishan Gopal Singh	He is applicant no.1 in OA No.278/2018 and in OA No.273/2019. He is seeking to follow the modified selection procedure instead of normal selection.
5.	Raj Kumar Gupta	
6.	Prem Prakash Dubey	He is applicant no.2, in OA No.278/2018 and in OA No.273/2019. He is seeking to follow the modified selection procedure instead of normal selection.

Meanwhile, applicants had also preferred representation to North Eastern Railway vide their letter dated 01.09.2017 and 29.12.2017, to this effect

9. In the wake of retirement of Law Officers at serial no.1,2,3 in the seniority list above and one anticipated vacancy, North Eastern Railway vide their notification dated 01.02.2018 have initiated the process of selection as per IREM Vol-I to fill up these four posts of Law Officers, Group 'B'. The zone of consideration

includes 12 candidates in order of seniority in general category and one candidate in reserved category. The applicant no.1 now appears at serial no.1 and applicant no.2 appears at serial no.3 of the said list out of 12 general candidates.

10. The instant applicants are aggrieved that on the date the posts were created on 30.05.2016, the recruitment rules did not exist and this letter directed the zonal Railways that date of filling up of these posts be advised in due course (para 6 supra). Further, Railway Board vide their letter dated 25.08.2017, have also advised certain directions (para 6 supra) and despite the promotion order 13.11.2017 having not been issued by the time this letter was issued (meaning thereby that three posts were still vacant as of 25.08.2017 as the three senior CLAs had already retired by this date), instead of following the modified procedure for selection namely seniority cum suitability, respondents have initiated action for filling up as per procedure of selection i.e. written test followed by viva-voce. The applicants had filed OA no.278 of 2018 and sought following reliefs:-

*"i) Issue, a writ, order or direction in the nature of Certiorari quashing the impugned order dated 01.02.2018 passed by Respondent no.6/Deputy Chief personal officer/Gazetted, Northern Railway, Gorakhpur.*

*ii) Issue, a writ, order or direction in the nature of Mandamus directing the respondents to decide the Promotion/Up-Gradation of the petitioners according to the seniority list of the department with the guidelines of the letter dated 25.08.2017 issued by Railway Board (as which are earlier the persons namely Shri Brajesh, Ashok Kumar Tiwari, and Hari Ram has already get Promotion/Up-Gradation to them by the guidelines of the Railway Board's letter dated 25.8.2017) (Annexure no.1 to this writ petition) within the prescribed period granted by this Hon'ble Court.*

*iii) Issue any other and further writ, order of direction which this Hon'ble Tribunal 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 Tribunal.*

*iv) Award cost to the applicants from the respondents".*

Interim relief was also sought to stay the operation of letter dated 01.02.2008.

11. Further, once the candidates in the zone of consideration as per letter dated 1.2.2008, gave their options whether they want to appear in the said selection or not, another notification was issued by North Eastern railway on 26.02.2019 wherein the name of 9 candidates has been advised with directions that written examination will be held on 29.03.2019.

It appears that the two applicants in OA No.278 of 2018, did not opt for appearing in the selection notified on 01.02.2018 and hence their names are missing from the list issued by North Eastern Railway on 26.02.2019. This letter also specified that written examination shall be held on 29.03.2019.

Feeling aggrieved, the applicants have also filed another OA No.273/2019 seeking following relief:-

*"(i) To issue an order or direction setting aside the impugned notification dated 26.02.2019 issued by Deputy Chief Personnel Officer/Gazetted, N.E. Railway, Gorakhpur (Annexure No. A-1 to Compilation-I) and the respondents may be directed to give benefit for the post of Group-B Law Officer with Grade Pay-4800/- w.e.f. 25.08.2017 on the basis of restructuring which is based on seniority-cum-suitability.*

*(ii) To grant all the consequential relief which the applicants are entitled for.*

*(iii) To grant any other relief which this Hon'ble Court may deem fit and proper under the circumstances of the case.*

*(iv) To award the cost."*

Interim relief in the form of staying the process of selection in pursuance of letter dated 26.02.2019 is also sought. In this OA, the nine candidates short listed in letter dated 26.02.2019, are made private respondents no.3 to 11.

12. The Tribunal while hearing OA No.273/2019 on 28.03.2019 had given interim direction to North Eastern Railway to hold the written examination but to withhold the result pending adjudication of the OA No.273/2019.

Since the issue raised in OA No.278/2018 and in OA No.273/2019 pertains to the same applicants, the same selection and the same respondents, these 2 OAs and all the MAs have been heard together and a common judgment is being passed. MA No.669/2019 for joining together of applicants is, therefore, allowed.

13. The respondents have pleaded that the said written examination has already been completed and they are unable to declare the result and fill the posts in view of stay. This in turn, is adversely affecting the official work and as such the respondents have also preferred the MA No.984/2019 seeking vacation of this stay order. Several other MAs have also filed by applicants and respondents seeking various reliefs.

14. The respondents have opposed both the OAs. The respondents brought out the historical developments in the case. It was brought out that there was stagnation in the cadre of CLAs. A petition was filed before Hon'ble Apex Court and as per directions of Apex Court, a committee was formed. This

committee recommended for up-gradation of certain posts vide their report submitted on 04.10.2002. These recommendations were accepted and directions were issued by the Railway Board on 31.03.2003. However, the zonal railways did not take steps to implement the same. Accordingly, OA No.860/2005 (N.N. Udainiya and 10 others Vs. U.O.I. and others) was preferred before CAT, Allahabad. Directions were given on 04.08.2005 to comply with the order dated 31.03.2003 by end of March 2006.

In compliance, Railway Board issued the instructions for creation of gazetted post of law officer Group 'B' and other higher posts in two installments. In first installment for the new zonal railway when 11 group 'B' posts were created on 09.03.2006, wherein it was also indicated that recruitment rules wherever warranted shall be issued in due course. This was in the context that higher level posts were created, perhaps for the first time, and the seniority unit for filling up of group 'B' posts is each zonal railway separately who have to conduct their own selection separately.

15. One of the new zonal Railway namely North Central Railway, notified the selection process on 14.08.2006 which was to based upon written examination and viva-voce. One CLA namely Shri H.K. Tiwari who was working on North Central Railway, challenged this notification in OA No.906/2006 in CAT Allahabad which was decided on 02.02.2007 with directions to fill the posts by modified procedure of selection namely seniority cum suitability, since the posts were created on account of restructuring.

This decision was challenged in writ petition No.48471/2007 in Hon'ble High Court of Allahabad where the decision by the Tribunal was upheld. This in turn was challenged by way of Civil Misc. Application No.2565/2009 in Hon'ble Apex Court. During pendency of this SLP, Shri H.K. Tiwari unfortunately expired.

Meanwhile, one another CLA namely Shri A.N. Mishra who was also working on North Central railway filed another OA No.592/2011 seeking same relief as was sought in OA No.906/2006. This was allowed by the Tribunal vide orders dated 30.09.2011. This was challenged in writ petition No.11769/2012 in the Hon'ble High Court of Allahabad, which was dismissed on 02.03.2012. This was challenged in SLP No.25690 of 2012 in Hon'ble Apex Court. Shri A.N. Mishra was promoted vide order dated 23.10.2012 w.e.f. 09.03.2006 subject to the decision in SLP no.25690/2012.

The SLP No.2565/2009 and SLP No.25690/2012 were both dismissed by a common order dated 20.11.2014 for want of prosecution. One IA for early hearing in SLP No.2565/2009 was dismissed on 17.10.2016 and finally SLP No.2565/2009 was dismissed on 12.05.2017.

16. It was pleaded that with this protracted adjudication process, in compliance to various directions, the Railway Board had to issue certain directions at several stages as under:-

Srl. No.	Date	Directions
i)	18.05.2007	To follow modified procedure of selection for filling the post created out of re-structuring.
ii)	04.02.2008 & 16.11.2011	To follow the standard process of selection as per IREM Vol-I for the normal vacancy created on account of retirement / promotion etc.

iii)	30.05.2016	43 posts of CLAs were upgraded to that of law officers Group 'B' in the old Railway zones.
iv)	RBE No.136/2016 issued on 21.11.2016	To hold the selection as per IREM Vol-I subject to the decision in SLP No.2565/2009 (U.O.I. Vs H.K. Tiwari).
v)	RBE No.104/2017 issued on 25.08.2017	But this time, SLP No.2565/2009 was dismissed on 12.05.2017. For posts created on 09.03.2006 and 30.05.2016, seniority-cum-suitability procedure be followed as one time exception. Thereafter follow normal selection procedure as per RBE-136/2016. Those promoted as per 18.05.2007 need not be disturbed.

17. It was in compliance to these directions that the selection was notified by North Eastern Railway on 01.02.2018 for four posts (3 on account of retirement and one on account of anticipated vacancy).

Prior to this, the SLP was already decided by the Hon'ble Apex Court on 12.05.2017. In follow up thereof, the Railway Board issued another letter dated 25.08.2017 which specified that the post created under re-structuring vide letter dated 09.03.2006 and 30.05.2016 are to be filled as per modified procedure for selection as a one time exercise as they were created in re-structuring. It was also specified that the posts already filled up as per Board's letter dated 18.05.2007 need not be disturbed.

18. It was pleaded that on North Eastern Railway, three CLAs namely S/Shri Brijesh Kumar Pandey, Ashok Kumar Tiwari and Hari Ram were already promoted as law officer against the re-structured post (serial no.1,2,3 of the seniority list in para 8 supra) following the seniority cum suitability procedure. This

procedure is as per adjudication at the level of Apex Court for post created in restructuring and in OA No.1526 of 2016 and OA No.1563 of 2016 by these three candidates. These 3 law officers have since retired and one more vacancy has been anticipated. With this there are total 4 vacancies for which selection has been notified vide letter dated 01.02.2018. These four posts are, thus, normal vacancies which cannot be classified as restructuring vacancies.

19. The respondents pleaded that one time exception as was directed in the Railway Board's letter dated 25.08.2017 already stood complied with when in compliance to directions in OA No.1526/2016 and 1563/2016 Shri Brijesh Pandey and 2 others were promoted. The fact is that four vacancies have now occurred on account of retirement of these three officers and one anticipated vacancy. These vacancies are, therefore, not on account of re-structuring but have occurred in normal course and accordingly the selection has to be necessarily held as per the specified procedure which includes written test, viva-voce and assessment of service record. Keeping this in view, there is no merit in the averments made by the applicants and both OAs are required to be dismissed.

The private respondents also opposed both the OAs and pleaded that their rights are adversely affected by the stay order granted by Tribunal on 28.03.2019. They relied upon the judgment by CAT/Bangalore in John Lucas and another Vs. Additional Chief Mechanical Engineer S.C. Railway and others in (1987) 3 Administrative Tribunal Cases 328 decided on 11.02.1987 and pleaded for justice.

The respondents made following averments in their counter reply in OA No.273 of 2019.

*11.4 Respondents also relied upon the case laws of **B.N. Nagaranjan and others Vs. State of Mysore and others reported in AIR 1966 SC 1942. Santam 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)**.*

20. Matter has been heard at length. Shri B. Tiwari, represented the applicant and Shri R.K. Rai, Advocate represented the official respondent no.1 and 2. Shri Anil Kumar, Advocate represented the private respondents.

21. It is noted that certain posts were created under re-structuring scheme. When the process to fill the same as per normal selection process (written examination, viva voce and assessment of service record as specified in IREM Vol I) was initiated, the same was challenged on the plea that the vacancies, were on account of re-structuring and not normal vacancies, and thus the process of normal selection cannot be adopted and instead modified process of selection based on seniority cum suitability is to be followed. This plea came under adjudication by the Tribunal in OA No.906/2006 and was allowed vide decision

dated 02.02.2007 and has since been upheld by the Hon'ble Apex Court on 12.05.2017.

22. The posts under restructuring were created on the new zones on 09.03.2006 and in the old zones on 30.05.2016. The decision on the method to fill the post created on account of restructuring came under question when process to fill the same was started on one of the new zone i.e. North Central Railway. This adjudication process took some time and accordingly instructions were issued by Railway Board at intermediate stages also. This is also to be seen in the context that selection procedure for Group 'B' posts is to be undertaken and completed separately by each of the zonal railway. The instructions dated 25.08.2017 are common instructions for all zonal railways and have to be necessarily seen in this light. They enable the zonal railways that the re-structured posts are to be filled up by modified procedure of selection as a one time exercise. However, once this process of filling is completed, the subsequent occurrence of vacancies on account of normal retirement/promotion etc. are required to be filled as per the process of selection which is based upon written examination and viva voce.

23. On North Eastern Railway for the 3 posts created under restructuring, which are under question in these two OAs, the modified procedure for selection was already followed in compliance of decision dated 21.06.2017 in OA No.1526/2016 and 1563/2016. The three promotion orders were already issued on 13.11.2017 and they were to take effect from 30.05.2016 i.e.

the date these posts were created. It is another matter that these three had already retired on 31.12.2016 and 31.01.2017. This retrospective promotion post retirement, however, cannot alter the fact that vacancies on account of restructuring, had actually been filled as per seniority cum suitability, which is as per adjudication in SLP No.2565/2009 as a general principle and in OA No.1526 of 2016 and OA No.1563/2016 for the three candidates therein and with this the one time exception is completed and is not permissible any more.

The four vacancies for which selection has now been notified on 1.2.2018, includes three vacancies that have now occurred on account of three retirements and in addition, there is one more anticipated vacancy and thus the selection was notified on 01.02.2018 for total four number of vacancies. These four vacancies are normal vacancies for which procedure as per IREM Vol-I is to be followed. The plea of applicants, as per para 10 supra is thus, not acceptable. The applicants are next in seniority and have to be subjected to the process of normal selection.

24. The zone of consideration notified on 01.02.2018 had accordingly included the names of both the applicants in instant OAs. It is another matter that these two applicants have opted not to appear in the said examination and accordingly their names are not included in the notification issued on 26.02.2017. The applicants had chosen this decision on their own volition and are themselves responsible for all due implications. This however, cannot be allowed to come in way of other nine candidates who opted to write the exam as per rules.

25. In view of the foregoing, since the four vacancies to be filled now are normal vacancies and not on account of restructuring, the process of selection as per IREM Vol-I adopted by the respondents North Eastern Railway and notified on 01.02.2008, cannot be faulted. The averments made by the applicants that it is in violation of decision by Tribunal and Apex Court are found to be unacceptable. These decisions were in the context of vacancies due to restructuring. Thus those ratios are not attracted in the instant case by any stretch of imagination.

26. In view of above, both these OAs are dismissed being devoid of merit. The stay order against declaring the result of the examination held in pursuance to notification dated 26.2.2019 is vacated. MA No.984 of 2014 is allowed. All other MAs (MA-696/2018, MA-2232/2018, MA-985/2019, MA-986/2019, MA-994/2019) are accordingly disposed of as being infructuous. There shall be no order as to costs.

**(PRADEEP KUMAR)**  
**MEMBER-A**

**(RAKESH SAGAR JAIN)**  
**MEMBER-J**

/Neelam/