

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00012/2018
(Reserved on 14.02.2019)

Chandigarh, this the 22nd day of February, 2019

...
CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)

...

Pawandeep Singh, age about 34 years, Chief Law Assistant, Group "C" S/o Sh. Gurmukh Singh, R/o # 11 A, New Officials Colony, Patiala.

Applicant

(Present: Mr. Saurash Kapoor, Advocate)

Versus

1. Union of India, through the Secretary, Railway Board, Rail Bhawan, New Delhi.
2. Director Establishment (Gaz. Cadre), Railway Board, Rail Bhawan, New Delhi.
3. The Diesel Loco Modernization Works, Patiala through the Chief Administrative Officer ®
4. Navin Jalota, S/o Sh. Umar Chand Jalota, aged about 60 years, presently working as Chief Law Assistant (CLA), Personnel Branch, Diesel Loco Modernization Works DMW, Patiala (Punjab) Group 'C'.
5. Lalit Mohan Monga S/o Shri Om Parkash Monga, aged 48 years, Chief Law Assistant, Personnel Branch, Diesel Loco Modernization Works, Patiala.

..... **Respondents**

(Present: Mr. Lakhinder Bir Singh, Advocate for Respondents
No. 1 to 3
Mr. Aseem Rai, Advocate, for Respondent No. 4
None for Resp. No. 5)

ORDER

SANJEEV KAUSHIK, MEMBER (J)

1. Applicant has assailed the notification dated 27.12.2017 (Annexure A-1), promoting the Respondents No. 4 and 5 as Law Officer. He has also sought issuance of a direction to the

respondents to fill up the post of Law Officer on the basis of written examination which has already been held.

2. The short question that has arisen for our consideration in this case is as to whether the two upgraded posts of Law Officer in Group B, in the grade pay of 4800 (PB-2) are to be filled up by way of selection or on the basis of seniority cum fitness.

3. The facts are not in dispute.

4. Applicant who initially joined the respondents as Senior Clerk on 14.11.2007 was promoted as Chief Law Assistant. By a circular dated 30.05.2016, the Railway Board ordered restructuring of legal cadre of Old Zonal Railways pursuant to order dated 17.01.2014 in O.A. No. 1294/2011. The respondents have upgraded two posts of Law Officers in DMW, which are to be filled from amongst the Chief Law Assistants on the basis of seniority cum suitability. Pursuant to the circular dated 30.05.2016, the Railway Board issued instructions dated 21.11.2016 whereby they invited application for filling up the posts of Group B Law Officer from amongst the Chief Law Assistant after screening process consisting of written examination, viva-voce and assessment of record of service, as prescribed for Group 'B' selections. By a letter dated 15.12.2016, two posts of Chief Law Assistant were ordered to be upgraded to group B Law Officers and a selection process was initiated, which consisted of written examination, viva voce and thereafter a candidate has to undergo medical examination. Applicant appeared in written test on 12.12.2017. He was declared first in the merit list and after viva voce, he was subjected to medical examination on 03.03.2017, and was found fit vide medical report

dated 02.03.2017. Aggrieved against the action of the respondents in filling up the post on the basis of written examination, one Navin Jalota (Respondent No. 4 herein) filed O.A. No. 060/00250/2017 which was disposed of on 17.11.2017, directing the respondents to consider his claim by passing a reasoned and speaking order. It is thereafter that the respondents issued a notification dated 27.12.2017 whereby they found Respondents No. 4 and 5 suitable for promotion to the post of Law Officer, on the basis of seniority cum suitability, in terms of instructions dated 25.08.2017. Hence the O.A.

5. The respondents, while resisting the claim of the applicant, have filed written statement wherein they submitted that earlier they chose to fill up the vacancy by selection, misinterpreting the instructions, but subsequently in view of law laid down by the Hon'ble Supreme Court, affirming the order of the Allahabad High Court that the upgraded post of Law Officer has to be filled up on the basis of seniority cum fitness, they annulled the earlier process of selection and promoted Respondents No. 4 and 5, in terms of seniority.

6. Applicant has filed rejoinder reiterating what has been stated in the O.A.

7. We have heard learned counsel for the parties.

8. Mr. Saurabh Kapoor, learned counsel for the applicant vehemently argued that once the respondents have started the selection process, held written examination and viva voce, then they cannot switch over and resort to the different mode of promotion i.e. seniority cum fitness. He argued that since the

applicant has been declared at Sr. No. 1 in the order of merit on the basis of written examination and viva voce, for the post in question and only promotion order was to be issued, then the action of the respondents in taking U turn and promoting the private respondents vide order dated 27.12.2017 on the basis of seniority cum fitness, following the instructions dated 25.08.2017 is unfair and liable to be set aside. He prayed that a direction be issued to the respondents to promote the applicant on the basis of earlier selection.

9. Learned counsel for the respondents argued what has been stated in the written statement. Apart from that, he has placed reliance upon a judgment passed in Civil Appeal No. 2565/2009 in the case of **H.K. Tiwari Vs. U.O.I. & Others** wherein the Lordships have already reiterated that the upgraded posts are to be filled on the basis of seniority cum fitness without the element of selection.

10. We have given thoughtful consideration to the entire matter and have perused the pleadings on record, with the able assistance of the learned counsel for the parties.

11. Admittedly, vide order dated 30.05.2016 (Annexure A-2), issued by the Railway Board regarding restructuring of gazetted cadre of legal department of old Zones and Railway Board of Indian Railways, two posts of Chief Law Assistant were upgraded to Group B. By another notification dated 25.08.2017, which has been issued in terms of the decision dated 12.05.2017 in the case of H.K. Tiwari (supra), it was notified that the upgraded group B posts of Law Officer would be filled up on the basis of seniority cum suitability. Then, the respondents decided to stop the process of

selection which they had earlier started and on the basis of seniority and suitability, the candidates, who were eligible as on 30.05.2016 when the posts were upgraded, were considered for promotion to the post of Law Officer. Since both the private respondents were not in service at that time, they are given notional promotion. Therefore, the action of the respondents in promoting the private respondents to the upgraded post of Law Officer was lawful, in view of law laid down by the Hon'ble High Court in the case of H.K. Tiwari (supra), wherein a mandate was given to fill up the upgraded posts by way of seniority cum fitness. Thus, we find no illegality in the action of the respondents in promoting the private respondents.

12. Accordingly, the O.A. is dismissed being devoid of merits. MA No. 060/00093/2018 also stands disposed of. No orders as to costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 22.02.2019

'mw'