

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**JABALPUR**

**Original Application No.74 of 2008**

Jabalpur, this Friday, the 23<sup>rd</sup> day of August, 2019

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER**  
**HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

M.K. Ahmad, S/o Sri Noor Ahmad Aged about 46 years, presently working as Law Assistant, under Sr. DPO Bilaspur (C.G.)

**-Applicant**

(By Advocate –**Shri S.K. Nandy**)

**V e r s u s**

1. Union of India, Represented through General Manager, S.E. Railway, Garden Reach, Kolkata-43.
2. The Railway Board, Through its Chairman having its office at Railway Bhavan New Delhi 110001
3. Chief Personnel Officer S.E. Railway Garden Reach, Kolkata-43
4. Chief Personnel Officer S.E.C. Railway Bilaspur (C.G.)
5. Sr. Deputy General Manager, S.E. Railway Garden Reach Kolkata-43
6. Shri S.N. Mishra, S/o Shri P.K. Mishra Law Assistant O/o CCM (Claim) E. Co. Railway Bhubhneswar District Kurda
7. Shri P. Papa Rao, S/o Shri Rama Rao, Law Assistant, O/o CCM (Law) South Easter Railway Koyla Ghat 14 Stand Road, Kolkata (W.B.)

8. Subhasis Sarkar Chief Law Assistant, O/o General Manager, Law Office, South East Railway Garden Reach Kolkata-43 (W.B.)
9. B. Jagdishwar Rao, Chief Law Assistant, Estate Office, Under DRM, South East Railway Khadagpur (W.B.)
10. V.V. Raju Chief Law Assistant, Under CCM/E.CO. Railway Bhubaneswar (Orissa)
11. D.K. Chakaraborty, Chief Law Assistant, Under Sr. DCM's Office South Eastern Railway Khargpur (W.B.)
12. R.S. Gajbhiye, Chief Law Assistant, Now Law Officer Under DRM South East Central Railway Bilaspur (CG)
13. Ashim Mishra Chief Law Assistant, under DRM (P) South East Railway Adra (W.B.)
14. P.S. Prakash Mehar, Chief Law Assistant, Under CPM/RE/East Coast Railway, Bhubaneswar (Orissa)
15. Sharat Kumar Sahu, Chief Law Assistant under DRM (P) East Coast Railway Khurda Road (Orissa)
16. Chaturbhuj Jena, Chief Law Assistant DRM S.E. Railway Chakradharpur (Bihar)
17. Shibendra Narayan Sukul Chief Law Assistant under CCM (Law) South Eastern Railway 14 Stand Road, Kolaghat Kolkata (WB)
18. V. Rambabu, Chief Law Assistant, under Estate Office, DRM's Office East Coast Railway Vishakhapatnam (A.P.)

19. Suresh Kumar Pradhan, Chief Law Assistant, Under Estate Officer, DRM's Office/ East Coast Railway, Khurda Road (Orissa)

20. Haradhan Ghosh Chief Law Assistant Under CCM (Law) South Eastern Railway 14 Stand Road, Kolaghat Kolkata (WB)

21. S. Ram Krishna Rao, Chief Law Assistant Now Assistant Personnel Officer under DRM's Office/WALTAIR Vishakhapatnam (A.P.)

22. Arun Kumar Mukherjee Chief Law Assistant under CCM (Law) SE Railway 14 Stand Road, Kolaghat Kolkata (WB)

23. A.V.S. Nehru Chief Law Assistant at present Asstt. Secretary (Conf.) Under GM's office/S.E.C. Railway Bilaspur (CG)

24. Cittaranjan Mishra Chief Law Assistant Under DRM's Office/S.E. Railway Chakradharpur (Bihar)

25. Uday Dey, Chief Law Assistant, Under CCM(Law) Office, South Eastern Railway 14 Stand Road, Kolaghat Kolkata (W.B.)

26. Miss K. Lilly, Chief Law Assistant, O/o Chief Personnel Officer South Eastern Railway Garden Reach Kolkata-43 (W.B.)  
- **Respondents**

(By Advocate –**Shri S. Ganguly for official respondents and Shri Rohit Singh proxy counsel for Shri A.V. Shridhar for intervenors**)

*(Date of reserving the order:-13.11.2018)*

## **ORDER**

### **By Ramesh Singh Thakur, JM:-**

This Original Application has been filed by the applicant challenging the order dated 28.09.2007 (Annexure A/1) passed by CPO/SE Railway/Kolkata, whereby his representation dated 18.07.2007 has been rejected. The applicant has also challenged the order dated 10.08.2006 (Annexure A/2) whereby the respondent has published a fresh panel for the post of Law Assistant.

2. The applicants in this Original Application have prayed for the following reliefs:-

*“8(i) Summon the entire Original records of this case relating to both earlier and fresh selection proceedings for promotion to the post of Law-Assistant against departmental Quota in S.E. Railway, particularly relating to awarding of marks on different head to the applicant and other candidates, as per previous panel dated 27.09.1999 and fresh panel dated 10.08.2006 Annexure A/2.*

*ii) Set aside the order dated 28.09.2007 Annexure A/1.*

*iii)(a) Quash and set aside the order dated 10.11.2008 and 25.11.2008 (Annexure-22 & 23) and consequently command the respondents to consider*

*and promote the applicant as Law Assistant from the date the other candidates who were selected by Annexure A/2 are promoted with all consequential benefits.*

*iii) Set aside the order dated 10.08.06 Annexure A/2 declaring the same as illegal, arbitrary and contrary to order and direction of the CAT/CAL dated 18.11.05 in O.A. No.1484/99, O.A. No.1489/99 and O.A. No.172/2000 and to regularize the applicant in the post of Law Assistant w.e.f.27.09.1999 with seniority and all the consequential benefits.*

*(iv) Direction and/or directions are issued to the respondents to produce any other documents related to the case for justice and inspection of records to the applicant.*

*(v) Any other direction and /or directions be issued as this Hon'ble Tribunal deem fit and proper."*

**3.** Precisely the case of the applicant is that the applicant was selected through a process of selection, the applicant was promoted as Law-Assistant on adhoc basis w.e.f.02.08.1996 against a clear existing vacancy of departmental quota and posted in Sr. DPO/S.E. Railway (now SECR) Bilaspur vide CPO/GRC office order dated 25.07.1996 (Annexure A/3). Due to trifurcation of the zones, S.E. Railway was bifurcated and the Bilaspur

Division comes under a new zone S.E.C. Railway Bilaspur. The applicant continued working on an existing vacancy at the office of Sr. DPO/Bilaspur, as the applicant was working on the post of Law Assistant (Adhoc). So, in the new zone a regular selection was conducted and the post of the applicant has been regularized as Law Assistant and was put under to work under the control of Sr. D.P.O./BSP. Copy of the order dated 21.09.2006 annexed as Annexure A/4.

4. By virtue of the notification dated 06.05.1994, a selection was conducted for filling up of 13 vacancies of Law Assistant (11 UR + 2SC) against departmental quota. The applicant since fulfilled all the eligibility criteria and appeared in the written test and was selected amongst the 35 passed candidates for viva-voce. The viva-voce for the said selection was held in Nov 1994 but the result of the said selection was not published and the complete selection process (written and viva voce) was cancelled for no reason whatsoever. Copy of notification dated 6.5.1994

and result of written test dated 19.11.1994 is annexed as Annexure A/5 and A/6. Vide notification dated 23.08.1995 the CPO has cancelled the selection process for recruitment of Law Assistant which was initiated with the issuance of Notification dated 06.05.1994. Both the written test and viva voce examination were treated as cancelled and 09.09.1995 was fixed for holding fresh written test for selection to the post of Law Assistant against promotional quota.

5. Against the cancellation of the said selection process, one of the successful candidates, filed an Original Application before the Kolkata Bench which was registered as O.A. No.1043/95. However, in pursuance of the fresh schedule, the applicant again appeared in the written examination along with other candidates. The fresh written examination took place on 09.09.1995 and 23.09.1995. CPO vide letter dated 19.01.1996 (Annexure A/8) has published the result of the said written examination and directions were given to take steps for

their viva voce test. Among the candidate (23) candidates were declared successful and the applicant's name find place at Sr. No.3 of said result. The said letter dated 19.01.1996 direction was given to the staff officer concerned to send all the successful candidates (for viva-voce) along with the documents. The inter-se seniority according to which names of the successful candidates had been proposed to be arranged after scrutinizing of the service-sheets, was never been prepared at any time subsequent to issuance of the said letter dated 19.01.1996. The inter-se seniority position of all the successful candidates who had come from different sources and department was required to be prepared before the viva-voce test was held. The applicant thereafter appeared in the viva voce test held on 07.02.1996 along with others, which was taken by a selection committee. Thereafter vide office order dated 24.05.1996 (Annexure A/9) was issued from the office of the CPO/SE Rly/Garden Reach/Calcutta by virtue of which 15 out of 23 successful candidates were



promoted, with immediate effect, as Law Assistant on ad-hoc measure, against clear existing vacancy of departmental quota. The said order was issued with the approval of competent authority i.e. Sr. DGM. The name of the applicant find place at serial no.12 in the said order and the inter-se seniority position was maintained. However, after two months thereafter another office order dated 12.07.1996 of the CPO's office had been issued in which 7 other candidates were also similarly promoted to the post of Law Assistant on adhoc measure.

6. As per memorandum dated 27.09.1999 issued by the office of the CPO/GRC published a provisional panel of 13 candidates for regular promotion to the post of Law Assistant excluding the applicant. The provisional panel for regular promotion was issued in connection with selection process initiated with the issuance of notification dated 06.05.1994. A copy of order dated 27.09.1999 is annexed as Annexure A/12.

**6A.** In the reply the respondent-department has submitted that a notification was issued on 06.05.1994 for filling up 13 posts of Law Assistant. Accordingly the written test was held on 17.09.1994 and supplementary tests on 29.10.1994 followed by viva which was held on 28.11.1994. It has been specifically submitted that the said selection /viva voce was cancelled owing to certain irregularities having been detected and as such the result could not be published. The Hon'ble CAT/CAL even upheld the cancellation of the said examination and permitted the Railway Administration to proceed with the fresh selection. Accordingly, fresh written tests were conducted on 09.09.1995 and 23.09.1995 and viva voce on 07.02.1996 was called for 23 candidates. The result of the selection was kept in abeyance on account of certain unavailable circumstances for further scrutiny. In the administrative interest, all candidates who passed in the written test were given adhoc promotion to the post of Law Assistant. As such 15 candidates out of 23 were

promoted as Law Assistant (adhoc) on 24.05.1996 and 7 candidates were promoted as Law Assistant (adhoc) on 12.07.1996 and 1 SC candidate on 27.09.1996. Finally a provisional panel was published on 27.09.1999 for 12 (11UR and 1 SC) successful candidates and 1 SC on adhoc subject to review of working reports for regularization. Since all the 3 candidates were working on adhoc basis as Law Assistant, posting orders were issued for regularizing 13 candidates and the remaining candidates including others on adhoc basis were allowed to continue as vacancy till further orders. Since the panel of 13 had already been exhausted and vacancy being available, a notification for fresh selection was ordered vide notification dated 27.9.1999 to fill up 13 vacancies. However, the Hon'ble CAT/Kalkatta disposed the related cases and finally vide CAT/kalkatta's order dated 18.02.2005 a fresh selection committee was nominated and awarded marks in respect of record of service and seniority and the result was published on 10.08.2006. Thus, this Original Application

No.74/2008 was filed. This Tribunal has passed the final order on 12.04.2013 and allowed the O.A. and directed the respondents to reconsider the case of applicant, in view of the selection of Shri Chaturbhuj Jena, who though did not get the requisite 60 % marks as per evaluation done in compliance of order dated 18.11.2005 of CAT Kolkata (Annexure RJ-1), but was still continued with the selection, presumably by lowering the 60% level of benchmark for him. If the respondents have lowered the benchmark for Shri Jena, there appears to be no reason to deny the same consideration to the applicant and therefore his case too deserves to be considered with the lowered benchmark.

**6B.** The applicant has filed the rejoinder to the reply filed by the respondents and has reiterated its earlier stand taken in the Original Application.

7. Thereafter five petitioners who were not part of the Original Application No.74/2008 approached the Hon'ble

High Court of Chhattisgarh in Writ Petition (S) No.2270/2013. The Hon'ble High Court vide order dated 24.03.2014 has set aside the order dated 12.04.2013 passed by this Tribunal to decide the question afresh without being influenced vide any of the observations made in this order.

8. This Tribunal has heard the arguments advanced by the learned counsel for all the parties on 13.11.2018 and have also gone through the documents attached with the O.A.

9. The case of the applicants is that CAT Kolkata Bench has clearly held that there were lot of discrepancies in the selection proceedings which were initiated by the notification dated 06.05.1994 for the promotion to the post of Law Assistant were noticed by the Tribunal. So the Tribunal in Para 12 to 17 has dealt with the entire issue in extenso. A bare reading of the aforesaid order passed by the CAT Kolkata Bench will make it luminously clear that

the entire selection proceedings were conducted in a manner which cannot be said to be absolute as per the service rules. So, the Tribunal had allowed the Original Application by quashing the panel dated 27.09.1999. The CAT Kolkata Bench had given a categorical direction that at that particular time, when the aforesaid Original Application was decided on 18.11.2005, it was not possible to conduct a re-examination for the said selection. Thus, the Kolkata Bench of this Tribunal has held as under:-

*“21. Accordingly we dispose of these three applications with the following directions:-*

- (i) The panel dated 27.09.1999 is hereby quashed.*
- (ii) The respondents shall complete the selection process afresh by awarding only the additional marks based on record of service taken into account, the marks obtained by the 23 candidates (including those who are not parties) as noted in Table B above and declare the final result accordingly after reassessing the vacancy position as indicated earlier. It is observed that the selected candidates will be regularly appointed as Law Assistant with effect from the original date i.e. 27.09.1999 and the inter se seniority amongst the regular appointees will be determined as per rules.*

*(iii) This exercise be completed within four months from the date of communication of this order.*

*(iv) Status quo as on date shall be maintained till then.”*

In pursuance to the same, the respondents have arbitrarily prepared a fresh list dated 10.08.2006 and fresh panel of 19 candidates were again published by including the seniority marks, even one of the member of selection committee (Sr.DPO/CKP) had objected and pointed out. The name of certain candidates who were not appearing in the earlier panel of 12 candidates which was quashed by the Tribunal has now appeared in the fresh panel dated 10.08.2006. Such action has been challenged by filing O.A. No.74/2008. In the entire selection there were lacunae conducted by the respondents. The original record of tabulation sheet was not produced before the CAT/Kolkata Bench where arguments were advanced. The respondents produced a concoctive tabulation sheet which was typed in a hasty manner. Thus, CAT Kolkata Bench has taken a conscious decision that as the lapse of time and

much time has gone, it is impossible to direct for re-examination. Thus, the direction given in Para 21 was required to be followed. So, this Tribunal while passing order on O.A. No.74/2008 had minutely observed the entire record produced by the Railway pertaining to the selection proceedings. After perusal of the record it came to the notice of the Tribunal that one candidate Mr. Chaturbhuj Jena who was the applicant in O.A. No.172/2000 before the CAT/Kolkata Bench who was earlier promoted in the fresh panel selection dated 10.08.2006 after awarding seniority marks instead of only records of service. However, when the marks of the seniority was excluded, the circumstances became such that Shri Chaturbhuj Jena was one of the 19 selected candidates including in the first select panel securing 60.87 marks. However, if the mark of seniority 10.52 was excluded, he would not be able to achieve 51 marks i.e. less than the pass marks of 60%. It has been noticed by the Tribunal in Para 9 of the judgment of Tribunal that the



benchmark was lowered in respect of Shri Jena from 51 to 50.35 whereas the applicant has got 50.22 and has been left out. Thus the said parity was ordered to be maintained and the matter was remitted back to the respondents for fresh consideration of applicant's case in view of Shri Jena. Thus the Tribunal has not exceeded its jurisdiction and has stressed the provisions of Article 14 in favour of the applicant. The order passed by this Tribunal was only to consider the case of applicant in the light of observation given in Para 8 and 9 of the judgment passed in O.A. No.74/2008. The respondent authorities have taken a conscious decision, subsequently the order dated 18.07.2013 in compliance to the order passed in O.A.No.74/2008 (Annexure WA/4). Moreover, the applicants before the Hon'ble High Court have no locus standi to challenge the induction of the applicant on the post of Law Assistant w.e.f.27.09.1999 as the applicant has continuously working as Law Assistant on adhoc measure in the clear existing post w.e.f.27.07.1996 after

following the selection conducted by CPO/SE Railway/GRC and had been regularized without break. The implement order dated 18.07.2013 passed by the CPO/S.E. Railway/Garden Reach has also been complied with the CPO/SECR/Bilaspur. Copy of the same is annexed as Annexure WA/5. One more adhoc Law Assistant Shri R. Bhaskar Rao Junior to the applicant has secured only 49.85 marks and declared clearly failed and his name was not figured in the panel dated 10.08.2006, had now been empanelled for the post of Law Assistant as approved by the competent authority. Suffice it to say that senior to applicant got 50.35 which is less than the benchmark i.e. 51 was figured in the empanelled list dated 10.08.2006 and junior to applicant who secured 49.85 which is too less than benchmark had also empanelled in the list dated 10.08.2006. But applicant Shri Ahmad who secured 50.22 marks had not come in the empanelled list dated 10.08.2006. It is stated that CPO/GRC had not regularized as Law Assistant as per the earlier panel of

S.E. Railway after the order passed in O.A. No.74/2008. It has been further submitted by the applicant that as per Para 124 of IREM Vol-II competent authority i.e. GM has power to relax the benchmark in the extra ordinary or special case where panel is not completed due to unavoidable circumstances. So, the competent authority has finalized the whole panel which was still pending since last 27.09.1999 by reducing the benchmark and allow all the Law Assistant who had not secured the 60% benchmarks but has been still working in the clear existing vacancy of Law Assistant on Adhoc measure after being declared suitable in written test and vivo on 25.07.1996. It has been categorically mentioned that IREM is administrative rules in which 60% benchmarks is mentioned, but in a peculiar cases GM of concerned Railway has a power under Para 124 of IREC Vol.II to finalize the panel. The copy of the provisions of Para 124 of IREC Vol.-II is annexed as Annexure WA/6. No one has raised any dispute on the panel in S.E. Railway then

how SECR has a power to cancel the office order dated 18.07.2013 issued by the CPO/SECR/GRC. So by looking to the factual backdrops regarding the entire selection conducted by SE Railway initiated since 1994 and looking into the fact that the applicant is working against the existing clear vacancy post of Law Assistant since 25.07.1996. Apart from it as mentioned in the preceding paragraphs that the entire selection process for promotion to the post of Law Assistant vide notification dated 06.05.1994 has reached its destination only after the last vacancy has been filled out by induction of one Shri R. Bhaskar Rao who was also declared as failed candidate and have approached the CAT/CTC of Tribunal by filing O.A. No.260/0010/2014 (R. Bhaskar Rao vs. Union of India). The said O.A. was disposed of and in pursuance to same vide order dated 16.12.2015 (Annexure WA/7 issued by South Eastern Railway Kolkata Shri R. Bhaskar Rao has been posted on regular basis as Law Assistant.

10. On the other side, learned counsel for the respondents have submitted that as per para 12 of judgment of Hon'ble High Court of C.G. passed in W.P.(S) No.2270/2013 it has been held that petitioners cannot be said to have any cause of action and the writ petition is maintainable. As per Para 5 of order dated 12.04.2013 passed by this Tribunal in O.A. No.74/2008 there was a clear finding that in compliance of the directions of CAT Kolkata, the selection board met on 22.3.06 and 20.07.06 to conclude the selection, which was to be restricted to awarding of marks in respect of 23 candidates as per CAT's order dated 18.11.05. But the board considered the marks under the heading "record of service and seniority" and not just "record of service". After considering the marks as noted in Table-B of the order dated 18.11.2005, and including the marks awarded for service and seniority, 19 candidates out of 23 were declared as passed and 4 failed. In consequence, the

impugned order dated 10.08.2006 (Annexure A-2) was issued.

**11.** The counsel for the respondents has submitted that as per para 15 of the Writ Petition (S) No.2270/2013, the matter has been remitted back to Tribunal to the limited purpose i.e. to the extent that the provision fixing the benchmark can be reduced or not. In case the benchmark cannot be reduced, then merely because someone is given an illegal promotion does not give a right to anyone else to claim parity on the basis of same.

**12.** On the other hand, learned counsel for the applicant has submitted that is no question of negative parity. It is true that the Hon'ble High Court of C.G. has allowed the Writ Petition filed by the persons who were not party before the Tribunal in O.A. No.74/2008. The Hon'ble High Court has allowed the petition vide order dated 24.03.2014 and set aside the order dated 12.04.2013

passed by this Tribunal. The operative portion reads as under:-

*“15. In view of the above, the writ petition is allowed. The order dated 12.04.2013 passed by the Tribunal is set aside and the matter is remitted back to the Tribunal to decide the question afresh without being influenced by any of the observations made in this order.”*

**13.** The Hon’ble High Court has remitted back the case and has directed the Tribunal to decide the question afresh without being influenced by any of the observations made in this order. The main thrust in the order of the Hon’ble High Court of C.G. that has been indicated in Para 14 of the order which reads as under:-

*“14. The Tribunal has not decided whether the provision fixing the benchmark can be reduced or not. In case the benchmark cannot be reduced then merely because someone is given an illegal promotion does not give a right to anyone else to claim parity on the basis of same.”*

**14.** The reasons given by the Hon’ble High Court in Para 14 is based on the submission made by the petitioner in Writ Petition which as been indicated in Para 13 of the order of Hon’ble High Court which reads as under:-

*“13. The counsel for the petitioners submits that:  
The benchmark of 60% has been fixed under  
the provisions provided by the manual of the  
Railway Board.  
It cannot be reduced.”*

As per submissions made by the applicant to the fact that the Hon'ble High Court of C.G. has remitted the case only to the extent whether the benchmark can be reduced. As it is clear from the pleadings that the General Manager has earlier fixed the benchmark to the extent of 60% achievement which was neither fixed at 51 marks after considering the marks as noted in Table B dated 18.11.2005, and including the marks awarded for service and seniority, 19 candidates out of 23 were declared as passed and 4 failed. In consequence the impugned order dated 10.08.2006 (Annexure A/2) was issued. It is pertinent to mention that in compliance of direction of CAT Kolkata, the selection board met on 22.03.2006 and 20.07.2006 to conclude the selection, which was to be restricted to awarding of marks in respect of 23 candidates, as per CAT's order dated 18.11.05. But the board



considered the marks under the heading “record of service and seniority” and not just “record of service”. On realizing that the order dated 18.11.2005 of CAT Kolkata, had only mentioned about “Additional marks based on record of service”, and not for seniority the respondents reworked the panel by excluding the 15 marks awarded for seniority. Thus total maximum marks were reduced to 85, and accordingly the benchmark of 60% achievement was refixed at 51 marks. Thereafter, the case of all the four failed candidates was reviewed by excluding the marks awarded to them for seniority. So in this assessment, two more candidates Shri S.N. Mishra, and Shri P. Pappa Rao who obtained 52.47 and 53 marks respectively were declared as passed and thus notified by the impugned order dated 10.11.2008 (Annexure A-22). However, the applicant got 50.22 marks and the other remaining candidates Shri R.N. Rao got 49.85 marks only. Therefore on account of getting less than 51 marks they were declared as failed and thus not included in the selection

panel. So it is not disputed by the parties that as submitted by the counsel for the applicant in Writ Petition that the benchmark of 60% was fixed under the provisions provided by the manual of the Railway Board.

**15.** Due to the above circumstances, whereby the benchmark of 60% achievement was re-fixed at 51 marks. So the reasons given by the respondent-department that in compliance of direction of CAT Kolkata whereby it has been mentioned that “additional marks based on record of service” and not for seniority. However the respondent-department while complying of the order passed by Cat Kolkata Bench on 22.03.2006 and 20.07.2006 the marks for “record of service and seniority” was given and on realizing the mistake, the proportionate benchmark was reduced which was 60% achievement was re-fixed at 51 marks. So, according to us there is no illegality due to the fact that 60% achievement was fixed as a benchmark as per the provision provided by the manual of the Railway Board. So, such reduction of 60% achievement earlier was

higher and after correcting the mistake when the total marks has reduced to 85 marks from 100 and accordingly the benchmark which was 60% was revised as 51 marks. So we do not find any illegality in the action of the respondent-department.

**16.** Regarding the observation made by Hon'ble High Court in Para 14 of the Writ Petition No.2270/2013 (Annexure WA/1) whereby it has been observed by the Hon'ble High Court that in case the benchmark cannot be reduced then merely because someone is given an illegal promotion does not given a right to anyone else to claim parity on the basis of same, for that as discussed in Para 15 of the judgment the benchmark has been fixed at 51 marks and there is no power vested to the respondents to reduce the 51 marks. So, in view of this, we are of the affirmed view that the benchmark cannot be reduced less than 51 marks. Since the applicant has obtained less than 51 marks (50.22), the averments made by the applicant for reconsidering the case of the applicant in view of the

selection of Shri Chaturbhuj Jena who though did not get the requisite 60% marks as per evaluation done in compliance of order dated 18.11.2005 of CAT Kolkata (Annexure RJ-1), but was still continued with the selection, presumably by lowering the 60% level of benchmark, is not sustainable in the eye of law because the negative parity cannot be claimed by the applicant which is settled principle of law.

**17.** Accordingly, this Original Application is dismissed.

No order as to costs.

**(Ramesh Singh Thakur)**  
**Judicial Member**

**(Navin Tandon)**  
**Administrative Member**

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