

**THE HONBLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD**

**WRIT PETITION Nos. 25668, 34718, 34719, 34720,
34721 and 34723 of 2013**

COMMON ORDER: *(Per the Hon'ble Sri Justice V Ramasubramanian)*

While the first of these writ petitions is filed by the employees, the rest of these writ petitions are filed by the Railway Administration, challenging a common order passed by the Central Administrative Tribunal, allowing the Original Applications filed by the unofficial respondents in each of these writ petitions.

2. Heard Mr. Krishna Devan, learned counsel appearing for the petitioners in the first writ petition, Mr. C.V. Rajeev Reddy, learned Standing Counsel appearing for the Southern Railways, and Mr. D.V. Rao, learned counsel appearing for the original applicants before the Tribunal.

3. For filling up of 12 vacancies of Junior Engineer Grade – II in Carriage and Wagon Department, as against a quota of 25% reserved for Intermediate Apprentices, a notification dated 08.07.2005 was issued. A written examination was conducted on 14.05.2006 and results were published on 10.06.2006. Thereafter, a panel was drawn, as per seniority according to the Railway Administration, in terms of Para 219 (j) of Indian Railway Establishment Manual (hereinafter referred to as 'the IREM'). About 19 candidates,

who were successful in the written test, were included in the panel, from among whom, 12 candidates were granted promotion by order dated 06.07.2006.

4. Some candidates, whose names were included in the panel, but who did not come within the first 12, filed an application under the Right to Information Act, 2005, in the year 2010, questioning as to whether seniority was given preference. Based upon the reply given, two candidates seem to have given a representation on 27.01.2011 and the same was rejected on 28.03.2011.

5. Taking advantage of the rejection order dated 28.03.2011, based on the representation given by two candidates, some candidates, out of those several left out candidates, filed O.A.Nos.780, 816, 822 and 1323 of 2011 as well as O.A.No.1274 of 2012. Their contention in the original applications was that as per the decision of the Supreme Court in ***M. Ramjayaram v. General Manager, South Central Railway & others***¹ and as per the amendment made to Para 219 (g) of IREM in the year 1998, seniority cannot be given preference at all. Accepting the said contention and without looking into the question of limitation, despite the same having been pleaded by the Railway Administration, the Tribunal allowed all the Original Applications forcing the promoted individuals to come up with

¹ (1996 (1) SC SLJ 536

one writ petition and the Railway Administration to come up with the remaining five writ petitions.

LIMITATION:

6. There is no dispute about the fact that the order of promotion, which was impugned in all the Original Applications, was passed on 06.07.2006. In all the Original Applications filed by the unofficial respondents in these writ petitions, they have taken only one position, *namely*, that a person by name Ramana and two others filed a representation on 27.01.2011 and that the same was rejected on merits by the Railway Administration on 28.03.2011 and that therefore, they were forced to come before the Tribunal.

7. The facts pleaded in the Original Applications do not disclose that the original applicants before the Tribunal raised their little finger for about five years after the order of promotion was made.

8. Section 21 of the Administrative Tribunals Act, 1985, clearly stipulates a period of limitation. The Tribunal is no doubt conferred with a power to condone the delay. But it is too long in the day to advise any one that unless an application for condonation of delay is filed and an order of condonation is passed, no one can claim that mere entertainment of the application, however erroneously by the Tribunal, would tantamount to automatic condonation of the

delay. It is also too late in the day to point out that merely because the representation given after a long time by the persons, who woke up from their slumber, got rejected on merits, the question of delay was waived by the respondents. Therefore, we are of the considered view that the Tribunal committed a serious error in first entertaining the applications without any petitions for condoning the delay and later not considering the issue of limitation at all, despite having been raised. Even on this score, the order of the Tribunal is liable to be set aside.

ON MERITS:

9. On merits, the contention of the original applicants before the Tribunal was that the promotions are covered by amendment made to Para 219 (g) of IREM and the ratio of the decision rendered by the Supreme Court in ***M. Ramjayaram***. But in the reply affidavit filed before the Tribunal, the Railway Administration has taken a position that promotions to these posts were covered by Para 219 (j) of IREM. According to the Railway Administration, the selection was based upon the performance in the written test as per Para 219 (j) of IREM and that the arrangement of the selected candidates after they had passed in the written examination, in the order of seniority, cannot be stated to be in violation of Para 219 (j) of IREM.

10. A careful look at the decision in ***M. Ramjayaram*** would show that the Supreme Court was concerned in that case with Para 219 (g) of IREM. As a matter of fact, the facts out of which the decision in ***M. Ramjayaram***, dated 15.03.1996 in Civil Appeal No.5085 of 1996, arose would disclose that the only controversy before the Supreme Court was about the preferential 15 marks given to a person in the matter of selection as Law Assistant. The award of 15 marks for seniority was traceable to Para 219 (g) of IREM. Para 219 (j) of IREM does not even contain a reference to seniority. Therefore, the decision in ***M. Ramjayaram*** does not apply to a case where Para 219 (g) of IREM has no application, but only Para 219 (j) of IREM has application. Hence, even on merits, we do not think that the order of the Tribunal can be sustained.

11. Therefore, all the writ petitions are allowed. The common order of the Tribunal is set aside. There will be no order as to costs.

Pending Miscellaneous Petitions shall stand closed.

(V. RAMASUBRAMANIAN, J)

Date: 10.11.2016

(G. SHYAM PRASAD, J)

va