

pay scale of Rs.1400-2300 (RPS). Respondent No.1 passed the written test but was declared fail in the interview. Respondent No.1 was working in the post of Chargeman Grade “B” on ad-hoc basis since 2/11/1994. Respondent No.1 contended that the post of Chargeman Grade “B” is a selection post and he being senior most employee was within the zone of consideration for the said post.

3. The Tribunal considered the circular issued by the Railway Board dated 19/3/1976 which provides that while forming panels care should be taken to see that the employees who are working on ad-hoc basis quite satisfactorily are not declared unsuitable in interview. The Apex Court considered the said circular in SLP No. 9866 of 1993 and it is held as under :-

“It must therefore be held that the appellant was entitled to the benefit of direction contained in the circular dated March, 19, 1976. Applying the said circular, it must be concluded that the appellant was wrongly denied the selection on the basis of the marks given to him in the viva – voce test”.

4. The Tribunal was of the opinion that the decision rendered by the Apex Court clearly holds that the circular dated

19/3/1976 is a guidance issued to the selection Committee and guidance issued by the Railway Board itself. It is in this light of the matter that the Tribunal has allowed the O.A. by issuing following directions :

“(a) Panel dated 8.9.97 is hereby quashed and set aside.

(b) Respondents are directed to hold a review DPC as per rules and while holding a review DPC they shall also consider the circular dated 19.3.1976 as rule of guidance as observed by the Hon'ble Supreme Court and after examining the records of all the applicants shall form a fresh panel.

20. This exercise shall be completed within 3 months of the receipt of a copy of this order. However, in the meanwhile the promotions given to the persons who had been empanelled earlier shall be treated as ad hoc promotions and they shall continue to work on the same post till the result of review DPC is declared. No costs”.

5. Having heard learned Counsel for the petitioner and on going through the order passed by the Tribunal, we do not find any infirmity in the approach adopted by the Tribunal. The circular was considered by the Apex Court. The Tribunal referring to the decision of the Apex Court has held thus :-

“16. We have considered this aspect but on going through the judgment we find that the Hon'ble Supreme Court had also considered the nature of the letter dated 19.3.76 and commented as follows :-

“It is no doubt true a circular of the Railway Board cannot override a statutory rule but a circular, which is in the nature of administrative direction, can certainly supplement the rules on matters on which the rules are silent. A reading of the circular dated March 19, 1976, would show that it does not run contrary to any statutory rule. Indeed, the said circular only gives guidance in the matter of exercise of the power by the Selection committee while considering the suitability at the stage of interview and says that a person who has been working on the post for which selection is being made on ad hoc basis and whose working is quite satisfactory should not be declared unsuitable in the interview.

The Learned Counsel for the respondents has not been able to show that this direction is inconsistent with any statutory rule. We are therefore, unable to hold that the said direction in the circular dated March, 19, 1976 is inconsistent with any statutory rule. (Emphasis supplied).

17. From the reading of the above portion as commented by the Hon'ble Supreme Court we find that the Hon'ble Supreme Court has in unequivocal terms laid down that the

circular dated 19.3.1976 issued by the Railway Board is not inconsistent with any statutory rules. The Hon'ble Supreme Court had also compared with the similar rule which also provide written test and viva voice test and there is also a candidate was reacquired to secure not less than 60% marks in the profession ability and not less than 60% marks to be eligible in the personality address. The circular dated 19.3.1976 is in general terms and it applied to all the posts and it cannot be exclusively applicable to the excadre post as argued by the learned counsel for the respondents so we find that this contention of the learned counsel for the respondents has no merits”.

6. In this light of the matter we are not inclined to interfere with the order passed by the Tribunal in the exercise of our writ jurisdiction under Article 226 of the Constitution of India. The petition is devoid of any merits and the same is dismissed.

7. Rule is discharged with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)