

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.10.2019

DELIVERED ON : 14.11.2019

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.Nos.14329 and 14333 of 2019
and WMP.No.14391 of 2019

1.S.Balakrishnan,
2.S.Dellibabu,
3.K.P.Harikrishnan,
4.Perumal Prabhu .. Petitioners in both W.Ps.
Vs.

1.The Central Administrative Tribunal,
Rep. by its Registrar,
Chennai Bench, City Civil Court Complex,
High Court Building, Chennai.

2.Union of India represented by
The Chairman,
Railway Board, Ministry of Railways,
Raisina Road, Rail Bhavan, New Delhi.

3.The General Manager,
Southern Railways, Park Town,
Chennai-600 003.

4.The Chief Personnel Officer,
Southern Railway, Park Town,
Chennai-600 003.

5.K.Nageswara Rao,

6.Inbaraj,

7.A.Sivalingam,

8.S.Sivalingam, .. Respondents 1 to 8
in both W.Ps.

9.S.Sampath Kumar,

10.R.Kanchana Devi. .. Respondents in
W.P.No.14333 of 2019

Prayer in W.P.No.14329 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the Central Administrative Tribunal, Chennai Bench, viz., 1st respondent in OA.No.310/00294/2017 dated 30.04.2019 and quash the same and consequently direct the respondents to complete the process of selection initiated, vide Notification dated 18.10.2016 to the post of Law Officer by calling the petitioners for Viva Voce and complete the process of selection.

Prayer in W.P.No.14333 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in Circular E(GP) 2005/2/26 dated 25.08.2017 as confirmed by the Hon'ble Central Administrative Tribunal, Chennai Bench viz., 1st respondent in OA.No.310/00216/2018 dated 30.04.2019 and quash both orders and consequently direct the respondents to complete the process of selection initiated vide Notification dated 18.10.2016 to the post of Law Officer by calling the petitioners for Viva Voce and complete the process of selection.

For Petitioner : Mr.V.Vijay Shankar
in both W.Ps.

For Respondents: Tribunal (R1)
Mr.V.Radhakrishnan, Senior Counsel
assisted by M/s.A.Srijanthy
Standing Counsel for R2 to R4 (Railways)

Mr.L.Chandrakumar
for R5 in W.P.No.14329 of 2019
for R5, R9 & R10 in W.P.No.14333 of 2019

Mr.C.K.Chandrasekar for R7
in boht WPs

C O M M O N O R D E R

M.SATHYANARAYANAN, J.

The applicants in O.A.No.216 of 2018, on the file of the Central Administrative Tribunal, Madras Bench, are the writ petitioners herein and they filed the said Original Application to call for the records and quash the communication of the second respondent dated 25.08.2017, in and by which, instructions have been given for upgradation of Grade 'B' posts of Law Officers. As per the said communication, Grade 'B' posts of Law Officers to be upgraded in terms of the third respondent's earlier instructions dated 30.05.2016, wherein filling up of the posts is to be done through seniority cum suitability.

2. The private respondents in O.A.No.216 of 2018, also filed O.A.No.294 of 2017, praying for setting aside the proceedings of the third respondent dated 18.10.2016 and 21.02.2017 as well as the proceedings of the second respondent dated 21.11.2016, with a consequential direction directing the second respondent herein

to promote them as Law Officers on the basis of seniority with all consequential, monetary and other benefits.

3. Both the Original Applications were taken up together and were disposed of, vide impugned common order dated 30.04.2019 passed by the first respondent / Tribunal. The first respondent / Tribunal had take note of the judgment of the Hon'ble Supreme Court of India dated 12.05.2017 made in Civil Appeal No.2565 of 2009 [Union of India & another v. H.K.Tiwari (Dead) through LR. & another] and disposed of both the Original Applications and thereby quashed the order of the second respondent dated 21.11.2016 and consequently issued a direction, directing the official respondents to complete the selection process in accordance with the law laid down by the Hon'ble Supreme Court in Civil Appeal No.2565 of 2009.

4. The applicants in O.A.No.216 of 2018, aggrieved by the dismissal of their Original Application as well as the manner of disposal of O.A.No.294 of 2017, filed by the private respondents in terms of the impugned common order passed by the first respondent / Tribunal, had filed these writ petitions.

5. Facts leading to the filing of these writ petitions relevant for the disposal are as follows. For the sake of convenience, the applicants in O.A.No.216 of 2018 will be referred as petitioners / writ petitioners.

5.1. The writ petitioners are working as Chief Law Assistants in the services of the third respondent, namely Southern Railway and the said post carries Pay Band of Rs.9300-34800 with Grade Pay of Rs.4,600/-. As per the Recruitment Rules, the next higher post is Law Officer, carrying Grade Pay of Rs.4,800/-. The relevant rules require that the post of Law Officer has to be filled up by Written Examination and Viva Voce.

5.2. On 30.05.2016, 43 posts of Law Assistants (Group 'C') were upgraded to Group 'B' i.e., Law Officers by surrendering 7 posts from old zones and insofar as the Southern Railway is concerned, 4 posts were allotted.

5.3. The third respondent has issued a notification dated 18.10.2016, proposing to fill up 6 posts of Law Officers (4 upgraded posts and 2 existing vacancies) and as per the said notification, the manner of selection was by Written Examination and Viva Voce.

5.4. The writ petitioners as well as the private respondents had applied for the said post in terms of the said notification dated 18.10.2016. The written examination was held on 19.01.2017 and results were published on 21.02.2017. The writ petitioners/original applicants in O.A.No.216 of 2028 were declared to have been successful in the Written Examination and qualified for the next stage i.e., Viva Voce. However, the private respondents 4 to 7 were unsuccessful and therefore, they filed O.A.No.294 of 2017 before the first respondent / Tribunal,

challenging the notification of the third respondent dated 18.10.2016.

5.5. The first respondent / Tribunal, vide orders dated 27.02.2017, had allowed the said Original Application at the admission stage itself without ordering notice to the private respondents therein/writ petitioners and it was put to challenge by filing W.P.No.7209 of 2017 by the petitioners. This Court had entertained the writ petition and granted interim stay of the order passed by the Tribunal, vide order dated 24.06.2017. This Court has passed final orders dated 16.08.2017 in W.P.No.7209 of 2017 by setting aside the order dated 27.02.2017 passed by the first respondent / Tribunal and remanded the matter to the Tribunal for fresh adjudication.

5.6. The second respondent / Railway Board has issued a proceedings / Circular dated 25.08.2017, changing its earlier stand as to the filling up of posts of Law Officers through Written Examination and Viva Voce and modified the same by stating that those posts will be filled on the basis of seniority as a special case.

5.7. The writ petitioners, aggrieved by the said proceedings, filed O.A.No.216 of 2018. The first respondent/Tribunal took up O.A.No.294 of 2017 filed by the private respondents and O.A.No.216 of 2018 filed by the writ petitioners and passed the common impugned order dated 30.04.2019, upholding the impugned circular of the second respondent / Railway Board dated 25.08.2017. Challenging the legality of the common order passed in the original applications, the present writ petitions are filed by the applicants in O.A.No.216 of 2018.

6. Mr.V.Vijay Shankar, learned counsel appearing for the petitioners made the following submissions:

- i. The impugned circular / letter of the second respondent / Railway Board dated 25.08.2017 is per se unsustainable in law for the reason that it is in violation of relevant Recruitment Rules of 1992 and it also runs contrary to the impugned circular issued by the very same entity, in and by which, Group 'B' posts of Law Officers have to be filled up only by Written Examination and Viva Voce.
- ii. The private respondents/applicants in O.A.No.294 of 2017 admittedly participated in the selection process in terms of the third respondent's notification dated 18.10.2016 and having become unsuccessful, as they have failed to clear the Written Examinations, cannot turn around and make a challenge to the selection process and the same is impermissible.
- iii. The second respondent / Railway Board having commenced the selection process and also declared the results of the Written Examination, cannot change their stand quite contrary to the selection process indicated in the Notification dated 18.10.2016 by stating that as a Special

Case, Group 'B' posts is to be filled up on the basis of seniority.

- iv. The impugned circular of the second respondent dated 25.08.2017 can be applied prospectively and however, it has been given retrospective effect and therefore, it is against the well settled administrative jurisprudence.
- v. The Hon'ble Supreme Court of India in *Bharat Sanchar Nigam Limited v. R.Santhakumari Velusamy and Others* [(2011) 9 SCC 510] which dealt with the issue relating to upgradation / promotion and admittedly, upgradation of Law Assistants [Group 'C'] to Law Officers [Group 'B'] is a promotion, as the upgradation results in advancement to higher posts with higher pay scale and rule of reservation is also applied and as such, it cannot be filled up by seniority basis even as a special case / one time measure.

The learned counsel appearing for the petitioners, in the light of the above submissions, prayed for setting aside the impugned common order passed by the first respondent / Tribunal as well as the impugned proceedings of the official respondents by allowing the writ petitions with a consequential direction to complete the selection process by conducting Viva Voce / oral interview. The learned counsel appearing for the petitioners, in support of his submissions, has placed reliance upon the following decisions:

- (1) *Punjab State Warehousing Corpn. Chandigarh v. Manmohan Singh and Another* [(2007) 9 SCC 337]
- (2) *K.Nehru v. State of Tamil Nadu* [(2008) 7 MLJ 417]
- (3) *Bharat Sanchar Nigam Limited v. R.Santhakumari Velusamy and Others* [(2011) 9 SCC 510]
- (4) *Parmender Kumar and Others v. State of Haryana and Others* [(2012) 1 SCC 177]
- (5) *Public Service Commission, Uttaranchal v. Jagdish Chandra Singh Bora and Another* [(2014) 8 SCC 644].

7. Mr.V.Radhakrishnan, learned Senior Counsel assisted by Mrs.A.Srijayanthi, learned Standing Counsel appearing for the Railways made the following submissions:

- i. One Mr.Hrishikesh Tiwari, who was working as Chief Law Assistant in North Central Railways, Allahabad, filed O.A.No.906 of 2006 on the file of the Central Administrative Tribunal, Allahabad Bench at Allahabad against the General Manager, North Central Railway, Allahabad and Senior Divisional Personnel Officer, North Central Railway, Allahabad, praying for suitable direction for quashing the impugned order / letter dated 14.08.2006 in and by which selection process was to be done through written examination to fill up 3 vacancies of Assistant Law Officer in the Pay Scale of Rs.7500-12000/- and for issuance of suitable direction for filling up the same by

way of upgradation from the post of Chief Law Assistant.

ii. The Tribunal, vide order dated 02.02.2007, had taken note of the circular dated 09.03.2006 of the second respondent/Railway Board, wherein upgradation was ordered and held that the existing Chief Law Assistant posts have been surrendered and in place, they are being upgraded to Group 'B' level post of Law Officers and there is a change in the grade being from Rs.7450 - 11500 to Rs.7500 - 120000. The CAT, Allahabad Bench, having taken note of the said letter of the second respondent, had issued suitable directions for upgradation by modifying the selection procedure.

iii. The official respondents in O.A.No.906 of 2006 made a challenge to the said order of the CAT, Allahabad Bench, by filing Civil Misc. Writ Petition No.48471 of 2007 before the High Court of Allahabad and vide order dated 03.10.2007, it was dismissed. The official respondents/writ petitioners, further made a challenge to the above cited order of the High Court of Allahabad by filing a Special Leave Petition and it was converted as Civil Appeal No.2565 of 2009. The Hon'ble Supreme Court, vide judgment dated 12.05.2017 had dismissed the Civil Appeal and thereby confirmed the order of the High Court of Allahabad and in order to comply with the said order only, the second respondent / Railway Board has issued the impugned circular dated 25.08.2017 and even in the said impugned circular, it has been clearly indicated that it is only an one time measure.

iv. Admittedly, selection process in terms of the Notification dated 18.10.2016 was not complete for the reason that only Written Examination was held and Viva Voce was not held and even for the sake of arguments the selection process was completed, still it is not open to the writ petitioners to have their claim as a matter of right and hence prays for dismissal of these writ petitions.

The learned Senior Counsel appearing for the official respondents, in support of his submissions, placed reliance upon the following decisions:

- (1) General Manager, North West Railway and Others [(2008) 2 SCC 108]
- (2) Chairman All India Railway Recruitment Board and Another v. K. Shyam Kumar and Others [(2010) 6 SCC 614].

8. Mr. C.K. Chandrasekar, learned counsel appearing for the seventh respondent in both writ petitions and Mr. L. Chandrakumar, learned counsel appearing for the fifth respondent in W.P.No.14329 of 2019 and for the respondents 5, 9 and 10 in W.P.No.14333 of 2019 would submit that in the light of the judgment of the Hon'ble Supreme Court dated 12.05.2017 made in Civil Appeal No.2565 of 2009, the impugned proceedings of the second respondent came to be issued and being the Law of the Land, Railway Administration is bound to implement the same and

accordingly, they have done so. It is also pointed out by the respective learned counsel appearing for the private respondents that it is only an one time exercise as indicated in the impugned proceedings of the second respondent dated 25.08.2017 and further pointed out that as of now, 7 vacancies are available and four vacancies are meant for upgradation and for 3 vacancies, selection process is to take place and the fifth respondent in W.P.No.14333 of 2019, namely Mr.K.Nageswara Rao retired and so also the respondents 9 and 10, namely Mr.S.Sampath Kumar and Mrs.R.Kanchana Devi and in the light of the impugned proceedings passed by the second respondent, they have to be given notional benefits and therefore, in real and technical sense, the writ petitioners cannot said to be aggrieved persons.

9. The respective learned counsel appearing for the private respondents has drawn the attention of this Court to the extract of Master Circular on Instructions governing promotion from Group 'C' to Group 'B' and would submit that in the light of the judgment in General Manager, North West Railway and Others v. Chanda Devi [(2008) 2 SCC 108] (cited supra), which in-turn refers to the decision of the Hon'ble Supreme Court in Khem Chand v. Union of India [AIR 1958 SC 300], wherein it was opined that the Railway Manual was an amalgam of various circulars issued from time to time and such executive instructions or rules framed would be statutory in nature and though Indian Railway Establishment Manual (IREM) is having statutory rules, still the above cited Master Circular would not come to the aid of the writ petitioners for the reason that it pertains to the method of filling up of vacancies in Group 'B' posts by way of promotion and admittedly, in this case, it was merely an upgradation and as such, the said Master Circular has no application to the case on hand and also would not come to the aid of the writ petitioners.

10. The respective learned counsel appearing for the private respondents have invited the attention of this Court to the judgment in Bharat Sanchar Nigam Limited v. R.Santhakumari Velusamy and Others [(2011) 9 SCC 510] and would submit that the Hon'ble Supreme Court has dealt with the issue relating to (a) Promotion, (b) Upgradation involving selection and (c) Upgradation simpliciter and would submit that the impugned circular issued by the second respondent in compliance of the Hon'ble Apex Court judgment did not involve creation of any additional posts, but merely done restructuring, which resulted in some posts placed in higher grade especially to give relief against stagnation and as such, it cannot be faulted with and prays for dismissal of these writ petitions.

11. This Court paid it's best attention to the rival submissions and also perused the entire materials as well as the decisions relied on by the respective learned counsel appearing for the parties.

12. The Deputy Chief Personnel Officer/Gazetted, Head Quarters Office, Southern Railway, Chennai had filed a counter

affidavit on behalf of the respondents 2 to 4 in W.P.No.14333 of 2019 and the contents of the said counter affidavit would disclose the following facts:

12.1. The second respondent Railway Board formed a Committee to suggest ways and means to revamp and streamline the legal set up of Zonal Railway / Production Units and the said Committee submitted its report to the Railway Board on 04.10.2002 and one of the recommendations was that each Zonal Railways should have at least one Junior Administrative Grade Officer in the Law Department with one senior grade and two assistant level officers with requisite non-gazetted set up and further suggested that the post of Chief Law Assistant in the Pay Scale of Rs.7,450 - 11,500 should be merged with Group 'B' level post of Law Officer in the Pay Scale of Rs.7,500 - 12,000/- after following due selection procedure.

12.2. The recommendations made by the Committee was not accepted by the second respondent Board and sanction was accorded for creation of two posts in Junior Administrative Grade and 6 posts in Senior Scale and upgradation of 11 posts of Chief Law Assistants to Group 'B' by surrender of 12 posts of Chief Law Assistants in grade Rs.7,450-11,500/-. Accordingly, North Central Railway initiated recruitment process to fill up three posts of Assistant Law Officer through Written Examinations followed by Viva Voce and it was put to challenge by one Mr.Hrishikesh Tiwari by filing O.A.No.906 of 2006 on the file of the Central Administrative Tribunal, Allahabad Bench and it was allowed with a direction, directing the respondents therein to take necessary action for issuance of suitable upgradation orders in respect of the said application by applying the modified selection process on the basis of seniority.

12.3. The official respondents in the said Original Application, challenging the legality of the said order of the CAT, Allahabad Bench dated 02.02.2007, filed CMWP.No.48471 of 2007 before the High Court of Allahabad. The Division Bench of Allahabad High Court, vide order dated 03.10.2007, had dismissed the writ petition and thereby confirmed the order passed by the CAT, Allahabad Bench.

12.4. The writ petitioners / respondents in the said Original Application made a further challenge by filing a Special Leave Petition before the Hon'ble Supreme Court and it was entertained and converted as Civil Appeal No.2565 of 2009. The Hon'ble Apex Court, vide order dated 12.05.2017, has dismissed the Civil Appeal by confirming the order of the High Court of Allahabad passed in the writ petition.

12.5. According to the respondents 2 to 4, when the said Civil Appeal was pending before the Hon'ble Supreme Court, streamlining the legal set up of Zonal Railway / Production Units, the gazetted cadre of Indian Railways on old zones and Railway Board has been reviewed again and with the sanction of the President, 3 posts in Junior Administrative cadre, 3 posts

in Senior Scale, one post in Group 'B' and 2 posts in Group 'C' were created and 43 group 'C' posts of Chief Law Assistants were upgraded to Group 'B' by surrendering 7 posts of Chief Law Assistants from old zones, vide letter of the second respondent dated 30.05.2016. As per the upgradation in respect of Southern Railway / third respondent, 4 posts were upgraded to Group 'B' and a memo dated 11.07.2016 for upgradation of four posts of Chief Law Assistants as Group 'B' was issued.

12.6. It is further averred in the said counter affidavit that the second respondent, vide letter dated 21.11.2016, advised that in supersession of earlier instructions on the matter, Group 'B' posts of Law Officers may be filled up as per the provisions of IREM, Volume-I by conducting selection process comprising of Written Test and Viva Voce and it was also indicated that the said procedure is subject to the outcome of the pending litigation before the Hon'ble Supreme Court.

12.7. In terms of the instructions of the Railway Board dated 21.11.2016, selection process was over and in the Written Examination, the writ petitioners had cleared and the private respondents did not clear and at this juncture, the private respondents and three others had filed O.A.No.294 of 2017 before the Central Administrative Tribunal, Madras Bench praying for setting aside the proceedings dated 18.10.2016, 21.11.2016 and 21.02.2017 passed by the Chief Personnel Officer / Southern Railways and the Chairman, Railway Board respectively and it came to be allowed straight away and the writ petitioners had filed W.P.No.7209 of 2017 and by final orders dated 16.08.2017, it was set aside and remanded to the CAT, Chennai for fresh adjudication.

12.8. In the interregnum, Civil Appeal No.2565 of 2009 preferred by the Railway Administration was dismissed by the Hon'ble Apex Court on 12.05.2017 and in compliance of the same, the second respondent had issued the impugned proceedings dated 25.08.2017. Thus, it is the stand of the respondents 2 to 4 that in the light of the same, the impugned proceedings of the second respondent dated 25.08.2017 cannot be faulted with.

13. Let this Court considers the decisions relied on by the learned counsel appearing for the petitioners.

13.1. In Punjab State Warehouse Corpn. Chandigarh v. Manmohan Singh and Another [(2007) 9 SCC 337], it was held in paragraph No.12 that "when the terms and conditions of the service of an employee are governed by the rules made under a statute or the proviso attached to Article 309 of the Constitution of India laying down the mode and manner in which the recruitment would be given effect to, even no order under Article 162 of the Constitution of India can be made by way of alterations or amendments of the said rules".

13.2. In K.Nehru v. State of Tamil Nadu [(2008) 7 MLJ 417], it was held that "once the selection process has commenced by applying a set of rules that was prevailing as on the date of

such commencement, it cannot be changed in the midway".

13.3. In *Parmender Kumar and Others v. State of Haryana and Others* [(2012) 1 SCC 177], it was held that "it is not open to the State Government in carrying out the recruitment process to alter the terms and conditions just a day before counselling was to begin, so as to deny the candidates who had already been selected an opportunity of admission".

13.4. In *Public Service Commission, Uttaranchal v. Jagdish Chandra Singh Bora and Another* [(2014) 8 SCC 644], it was held that "the executive orders cannot supplant the Rules framed under the proviso to Article 309 of the Constitution of India. Such executive orders/instructions can only supplement the Rules framed under the proviso to Article 309 of the Constitution of India and it cannot be amended by issuing notification under Article 162 of the Constitution of India and the same cannot be done by way of Circular/Letter".

14. The learned counsel appearing for the petitioners would submit that as per the counter affidavit of the respondents 2 to 4 in W.P.No.14333 of 2019, the notification dated 18.10.2016 was issued by the third respondent / Southern Railway for filing up 6 posts of Law Officers in Pay Band-2 i.e., Rs.9300 - 34800 + Grade Pay Rs.4,800/- and the selection process consists of Written Examination and Viva Voce and apart from the petitioners, the private respondents had also participated and the petitioners were successful in the Written Examination and whereas the private respondent were unsuccessful and despite participating in the selection process in terms of the notification of the third respondent dated 18.10.2016, made a complete turn around and filed O.A.No.294 of 2017 by making a challenge to the proceedings of the respondents 2 and 3 dated 18.10.2016, 21.11.2016 and 21.02.2017 respectively and the same is impermissible. It is also the submission of the learned counsel appearing for the petitioners that once selection process has commenced by applying a set of rules in terms of the Master Circular on Instructions Governing Promotion from Group 'C' to Group 'B', it cannot be altered in the midway by the second respondent, vide impugned proceedings dated 25.08.2017.

15. It is to be noted at this juncture that in Paragraph No.10 of the said counter affidavit, it is the stand of the respondents 2 to 4 that the second respondent / Railway Board, vide letter dated 21.11.2016, advised that in supersession of earlier instructions on the matter, Group 'B' posts of Law Officers may be filled as per the provisions of IREM, Volume-I by conducting Written Examination and Viva Voce and the said letter also made it clear that upgraded Group 'B' posts of Law Officer may be filled subject to the outcome of Civil Appeal No.2565 of 2009 preferred against the order passed in CMWP.No.48471 of 2007 on the file of the Allahabad High Court.

16. The third respondent / Southern Railway, in the light of the above cited letter of the second respondent dated 21.11.2016, had issued a notification dated 18.10.2016 to fill

up 6 vacancies of Law Officers [4 upgraded vacancies and 2 anticipated vacancies] by applying communal reservation also.

17. In the considered opinion of the Court, selection process done by the third respondent in the light of the notification dated 18.10.2016 was subject to the outcome of Civil Appeal No.2565 of 2009 pending on the file of the Hon'ble Supreme Court and it also came to be dismissed on 12.05.2017.

18. It is very pertinent to point out at this juncture that the Extract of Master Circular on Instructions Governing Promotion from Group 'C' to Group 'B' available at Page No.133 of the typed set would indicate that vacancies in Group 'B' posts are filled up by promotion on the basis of selection of Group 'C' employees and also on the basis of Limited Departmental Competitive Examination (LDCE), where applicable. In the case on hand, admittedly the second respondent / Railway Board, through its letter dated 18.05.2007, contemplated upgradation of Group 'B' post of Law Officers, which may be filled up through Seniormost Law Assistants. With regard to the filling up of the said post through the process of Written Examination and Viva Voce, an aggrieved employee namely, Hrishikesh Tiwari filed O.A.No.906 of 2006 praying for quashment of the selection process done on those lines with a consequential direction by resorting to selection procedure on the basis of seniority cum fitness. O.A.No.906 of 2006 came to be allowed and challenge made by Railway Administration by filing CMWP.No.48471 of 2007 before the High Court of Allahabad also came to be dismissed and subsequent challenge made to the said order in Civil Appeal No.2565 of 2009 also came to be dismissed before the Hon'ble Apex Court and as such, the Railway Administration is bound to abide by the decision of the Hon'ble Supreme Court.

19. It is not in doubt that in the light of the judgment of the Hon'ble Supreme Court in General Manager, North West Railway and Others v. Chandra Devi [(2008) 2 SCC 108], IREM is statutory in nature, but it is having application if Group 'B' posts are filled up by promotion and also on the basis of Limited Departmental Competitive Examination. Admittedly, the present case is a case of upgradation and as such, the said communication / circular has no application.

20. There cannot be any difficulty in accepting the legal proposition that if the selection process is governed by Statutory Rules, it should be done in compliance of the same and that, once the selection process has commenced, the rules governing the same cannot be changed.

21. In the case on hand, admittedly, the third respondent/Southern Railway had issued a notification dated 18.10.2016 and thereafter the second respondent/Railway Board has issued a communication dated 21.11.2016 to the General Manager of Indian Railways and Production Units clarifying that filling up of upgraded Group 'B' post of Law Officers may be filled subject to the outcome of Civil Appeal No.2565 of 2009

pending on the file of the Hon'ble Supreme Court and accordingly, the selection process went on and in the Written Examinations, the petitioners were successful.

22. As pointed out earlier, before the interview/Viva Voce to be held, the Hon'ble Supreme Court of India has dismissed C.A.No.2565 of 2009 on 12.05.2017 and accordingly, in compliance of the same, the second respondent has issued the impugned communication and it cannot be faulted with.

23. In *Shankarsan Dash v. Union of India* [(1991) 3 SCC 47], a Constitution Bench of the Hon'ble Supreme Court held that despite candidates having successful in the selection process, they would not acquire any right against existing vacancies.

24. The Hon'ble Supreme Court, in a latest decision in *Dinesh Kumar Kashyap and Ors. v. South East Central Railway and Ors.* [2018 (15) Scale 213], after taking into consideration various decision including the decision in *Shankarsan Dash* case (cited supra), has reiterated its earlier view by observing that "merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as well".

25. Admittedly, in the case on hand, the selection process was not completed and while it was in midway, after declaration of results of the Written Examination, the second respondent/Railway Board, in the light of the above cited order of the Hon'ble Supreme Court dated 12.05.2017 in C.A.No.2565 of 2009, thought fit to fill up the connected posts through seniority / suitability and also made it clear that it is an one time exercise.

26. In *Bharat Sanchar Nigam Limited v. R.Santhakumari Velusamy and Others* [(2011) 9 SCC 510], in paragraph No.29, the Hon'ble Supreme Court has culled out the principles relating to promotion / upgradation and it is also relevant to extract paragraph No.32 of the said decision:

"32. To sum up, the BCR Scheme was an upgradation scheme to give relief against stagnation. It did not involve creation of any new posts. It did not involve advancement to a higher post. It did not involve any process of selection for conferment of the benefit of a higher pay scale. The upgradation was given to the seniormost 100% of the BCR scale employees in Grade III strictly as per seniority. The BCR Scheme as per Circular dated 16.10.1990 was thus a scheme for upgradation simpliciter without involving any creation of additional posts or any process of selection for extending the benefit. Such a scheme of upgradation did not invite the rules of reservation."

27. It is also brought to the notice of this court by the learned Senior Counsel and learned counsel appearing for the respondents during the course of arguments that the respondents 5, 9 and 10 in W.P.No.14333 of 2019 got superannuated and they

should be given only notional benefits and rest of the private respondents are likely to retire shortly and even otherwise, out of 7 vacancies, 4 vacancies are meant for upgradation and in respect of 3 vacancies, selection process is to take place.

28. In the light of the factual aspects and legal position and the reasons assigned above, this Court is of the considered view that the impugned common order dated 30.04.2019 passed by the CAT, Madras Bench in O.A.Nos.294 of 2017 and 216 of 2018 warrants no interference. However, the official respondents are directed to take immediate and necessary steps to fill up the posts on upgradation in respect of vacancies reserved under the said head and for remaining vacancies resort to selection process as expeditiously as possible for the betterment of administration.

29. In the result, these Writ Petitions are dismissed, confirming the order dated 30.04.2019 made in O.A.Nos.294 of 2017 and 216 of 2018, subject to above observations. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Jvm

To

- 1.The Registrar,
The Central Administrative Tribunal,
Chennai Bench, City Civil Court Complex,
High Court Building, Chennai.
- 2.The Chairman,
Railway Board, Ministry of Railways,
Raisina Road, Rail Bhavan, New Delhi.
- 3.The General Manager,
Southern Railways, Park Town,
Chennai-600 003.
- 4.The Chief Personnel Officer,
Southern Railway, Park Town,
Chennai-600 003.

+1cc to Mr.A.Srijayanthi , Advocate SR.No. 94327
+1cc to Mr.V.Vijay Shankar , Advocate SR.No. 94361
+1cc to Mr.C.K.Chandrasekar , Advocate SR.No. 94352
+1cc to Mr.L.Chandrakumar , Advocate SR.No. 94866

W.P.Nos.14329 and 14333 of 2019

A.SK(20/12/2019)