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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7705/2015 & CM 15105/2015

UNION OF INDIA AND ORS. Petitioners

Through: Mr. Jitendra Kumar Singh, Standing
Counsel for the Railways

versus

SURENDER MOHAN PRASHAD AND ANR. Respondents

Through

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

O R D E R

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28.02.2017

The respondents have been served, but there is no appearance on their behalf.

2. The impugned order dated 10.12.2014 allows OA No.2122/2012 filed by the two respondents, holding that the Correction Slip No.47 incorporated in the Indian Railway Establishment Manual Vol. II 1989 having been enacted under the proviso to Article 309 of the Constitution, would override the Circular dated 11.8.2011, which is to the contrary. The observations of the Central Aministrative Tribunal, Principal Bench, Delhi (Tribunal, for short) read:-

“4. It is a well settled position that the circulars/office memorandum of the Government cannot override the provisions in

the Recruitment Rules already published under Article 309 of the Constitution of India. Therefore, the Circular dated 11.8.2011 stating to the contrary that the officials having the same grade pay cannot be allowed to appear in the selection is not maintainable. For the sake of convenience the said circular is reproduced as under:-

*“GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)*

*NO.E(NG)I-2010/PM2/6 New Delhi, dated 11-08-
11*

*The General Manager (P)
East Central Railway,
Hajipur.*

{Kind att: Shri Sushant Jha, CPO/A}

Sub: Eligibility of Staff working as Sr. Commercial Clerk in grade pay Rs.2800 (earlier in grade Rs.4000-6000) for promotion to the Post of Goods Guard in Grade Pay Rs.2800.

Reference East Central Railways letter No.ECR/HRD/254/Selection/Goods Guards/Trains dated 21.7.2010 on the above subject.

2. At the out set it may be pointed out that Railways reference is not as per extant procedure in terms of which references to Board, other than routine one and reminders, should be sent under the signature of an officer not below the rank of SAG, which has not been followed by the Railway while sending letter under reference. This should be noted for future

compliance. Nonetheless, the matter has been carefully considered. The Railway should not have any doubt about the eligibility of staff for appearing in selections, as in terms of extant instructions only the staff in the grade lower than the grade for which selection is being held are eligible to appear in the selection. It would also be clear from the extant instructions for filing up of posts of Goods guards in terms of which only the staff working in grade lower than grade Rs.4500-7000 were made eligible to appear in the selection. The Railway may take further necessary action accordingly.

Please acknowledge receipt.

*(Kajal Mukherjee)
Dy. Director Eatt (NG)
Railway Board”*

5. We, therefore, declare that the impugned letter dated 11.8.2011 is unconstitutional and it is accordingly quashed and set aside and the prayer clause 8.1 in this OA is allowed. However, we make it clear that this order will not come in way of the respondents to amend the aforesaid provision contained in IREM (Vol. II) suitably incorporating the provision contained in this circular dated 11.8.2011, if so advised.”

3. The aforesaid reasoning is untenable and contrary to the ratio expressed by the Supreme Court in ***The Railway Board & Ors. v. P.R. Subramaniyam & Ors., (1978) 1 SCC 158*** and ***Union of India & Anr. v. Devaram & Anr., (2009) 16 SCC 381***. These decisions, inter alia, hold and opine that the Indian Railway Establishment Code are the rules framed by

the President of India under the proviso to Article 309 of the Constitution. Further as per Rule 157 of the said Code, the Railway Board is authorised and has “full powers to make rules of general applications to non-gazetted government servants under their control”. This power could be exercised by the Railway Board in framing rules from time to time. These “rules” framed by the Railway Board would have the force of rules framed under the proviso to Article 309 of the Constitution. Lastly, the Indian Railway Establishment Manual does not supersede the Rules contained in any of the Indian Railway Code and in case of conflict, the latter would prevail. The Manual should not be referred to as the final authority and a reference must always be made to the original order on the subject.

4. The respondents herein were working as Senior Commercial Clerks and had applied for selection as Guards Goods under the 60% quota fixed for serving regular employees. They had relied upon the Correction Slip No.47 in the Indian Railway Establishment Manual Vol.II 1989 Edition to establish their claim. Correction Slip No. 47 reads:

“Substitute the following for the existing Para 124 (1) & (2):-

124 (1) The posts in the category of Goods Guards in the Pay scale of Rs.4500-7000 (RSRP) will be filled is under:-

i) 60% by general selection from amongst serving regular

employees with a minimum of three years service working in grade (s) Rs.3050-4590/3200-4900/4000-6000 in the categories of Train Clerks/Sr. Train Clerks, Commercial Clerks/Sr. Commercial Clerks, Ticket Collectors/Sr. Ticket Collectors, Switchmen, Asstt. Guards/Sr. Asstt. Guards and Yard staff;

ii) 15% by LDCE plus shortfall, if any, against. (i) above, from amongst serving regular non-ministerial Group 'C' employees in the Operating and Commercial Deptts with a minimum of three years service, working in grade (s) Rs.3050-4590/3200-4900/4000-6000, upto 40 years of age (45 years in the case of SC/ST) and having the qualification of Gradation; and

iii) 25% by direct recruitment through Railway Recruitment Boards plus shortfall, if any, against (ii) above.

(2) Qualification etc. for direct recruitment are as under:-

(i) Educational: A University degree or its equivalent.

(ii) Age: Between 18-28 years

(iii) Training & stipend period of training will be for a duration (upto one year) as decided by the Railway Administration on a stipend of Rs.4500/- (Authority, Ministry of Railways, letter No.E(NG) I-96/PM2/3 dt. 5.6.98)."

5. However, the aforesaid correction slip was superseded vide Circular dated 11.8.2011, issued by the Railway Board which has been reproduced in the quotation of the impugned order.

6. The reason why the Circular dated 11.8.2011 was issued is apparent.

The post of Senior Commercial Clerk had been upgraded from the pay scale of Rs.4,000-6,000 to that of Rs.5,200-20,200, i.e. grade pay of Rs.2,800 in PB-1, which was the same pay band and grade pay as applicable and payable in the post of Guard Goods.

7. The legal effect of the Circular was and would be the amendment of the Correction Slip No.47. Thus, there is no conflict between the Circular dated 11.8.2011 issued by the Railway Board under Rule 157 of the Indian Railway Establishment Code and the Correction Slip No. 47. The Tribunal has erroneously held that the circular dated 11.8.2011 would not override the Correction Slip No.47. The Correction Slip No.47 has to be treated as amended, by and in terms of the Circular dated 11.8.2011.

8. In view of the aforesaid provision, the present writ petition is allowed. The impugned order dated 10.12.2014, allowing OA No.2122/2011 is set aside. The said OA would be treated as dismissed. No order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J
FEBRUARY 28, 2017/tp