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

Date of 3rd March, 2023

+ **W.P.(C) 11835/2022 and CM APPL. 35298/2022**

RAIL DAWA BAR ASSOCIATION, LUCKNOW Petitioner

Through: Mr. Ashok Pandey with Mr.
Dashmesh Tripathi, Advocates. (M:
9936691991)

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Chetan Sharma, ASG, Mr.
Apoorv Kurup, CGSC, Ms. Kirti D.,
Ms. Nidhi Mittal & Mr. Ojaswa
Pathak, Advocates. (M: 7434045408)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh(Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Rail Dawa Bar Association, Lucknow, through its Secretary against the Respondent Nos.1, 2 and 3 i.e., Union of India, Railway Board, and the present incumbent/Chairman Railways Claims Tribunal, respectively. The petition seeks the following prayers:

“a) A writ of certiorari calling the entire official records from Respondents leading to the decision to again appoint Mr. Justice (Retd.) K.S. Ahluwalia (Respondent No. 3) as the Chairman, Railway Claims Tribunal, New Delhi.

b) An appropriate writ, order, direction and/or declaration in the nature of certiorari/ mandamus quashing and setting aside the impugned decision to

again appoint Mr. Justice (Retd.) K.S. Ahluwalia (Respondent No. 3) as the Chairman, Railway Claims Tribunal, New Delhi;

c) writ of mandamus directing the Respondent to immediately frame, rules/regulations laying down a fair and transparent selection procedure for appointment to the posts of Chairman, Vice Chairman (Judicial), Vice Chairman (Technical), Member (Judicial) and Members (Technical) in Railway Claims Tribunal i.e. ., which are posts of public importance in a quasi judicial authority.

d) An appropriate writ, order, direction in the nature of prohibition restraining the Respondent from again offering appointment to Mr. Justice (Retd.) K.S. Ahluwalia (Respondent No. 3) to the post of Chairman, Railway Claims Tribunal, Delhi;

e) Any other writ, order or direction which may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.”

3. The matter was first listed on 8th August 2022 when the Ld. ASG appearing for the UOI was asked to obtain instructions with respect to the allegations raised in the writ petition. Initially, an application was filed seeking stay of the proposal to appoint Respondent no.3 as the Chairman, Railway Claims Tribunal. The said application was dismissed on 5th September, 2022, with the following observations:

“ The Court finds no ground to grant the prayers as raised in the present application which seeks the operation of the order dated 01 September 2022 being placed in abeyance for the reason that the matter has already been entertained and the respondents had been duly asked to obtain instructions with respect to the challenge raised in the writ petition. Any steps that the respondents may have taken in the meanwhile and during the pendency of the present writ petition would in any case abide by its final result.

Consequently, and subject to the aforesaid observation, this application shall stand dismissed.”

4. Thereafter, on 13th January, 2023, the following order was passed:

- “1. This hearing has been done through hybrid mode.*
- 2. This is a petition challenging the re-appointment of the Chairman of the Railway Claims Tribunal, Delhi.*
- 3. Mr. Chetan Sharma, ld. ASG submits that the appointment of Respondent No. 3 as the Chairman of the Railway Claims Tribunal has been made in accordance with the prescribed procedures.*
- 4. The ld. ASG submits that insofar as prayer (c) of the petition is concerned, the Rules already exist for the conditions of service and the manner of selection of Chairman, Vice Chairman and other members of the Railway Claims Tribunal. The said prayer reads as:*
 - “c) writ of mandamus directing the Respondent to immediately frame, rules/regulations laying down a fair and transparent selection procedure for appointment to the posts of Chairman, Vice Chairman (Judicial), Vice Chairman (Technical), Member (Judicial) and Members (Technical) in Railway Claims Tribunal i.e., which are posts of public importance in a quasi judicial authority.”*
- 5. Let an affidavit along with all necessary documents be placed on record by the next date of hearing.*
- 6. List on 7th February, 2023.”*

5. Pursuant to the above order, an affidavit has been filed by the Union of India deposed by the Under Secretary, Ministry of Railways. A rejoinder is also stated to have been filed by the Petitioner, a copy of which has been handed over in Court today.

6. Initially, the matter was passed over in the morning at the request of

ld. counsel for the Petitioner- Mr. Tripathi. Thereafter, Mr. Ashok Pandey, ld. Counsel appeared and made submissions on behalf of the Petitioner. The only submission that has been made on behalf of the Petitioner is that under Article 133(3) read with Article 134A of the Constitution of India, the present writ petition ought not to be heard by a Single Judge Bench of the High Court and the matters would have to be necessarily heard by a ld. Division Bench.

7. The Court after hearing the submissions of ld. Counsel for the Petitioner requested the counsel to make any other submissions which he had to make on the merits of his case. In response to the same, ld. Counsel submits that the incumbent Chairman transferred about 4000 cases from the Lucknow Bench. He also seeks an adjournment to make further submissions.

8. The ld. ASG, Mr. Chetan Sharma along with Mr. Apoorv Kurup, ld. CGSC object to the grant of repeated adjournments considering the nature of the matter. It is submitted on the basis of the counter affidavit that the process of appointment was in accordance with the prescribed procedures. It is further submitted that the writ petition is a *mala fide* attempt by the Petitioner to raise a campaign against the Tribunal without any basis.

9. The order sheet in this matter would show that even on 7th February, 2023, initially, a passover was sought and, thereafter, on second call time was sought to file a rejoinder.

10. The challenge in this petition, is to the reappointment of Respondent No.3 as the Chairperson of the Railway Claims Tribunal. The pendency of such petitions affects the dispensation of justice in such Tribunals. Hence this Court is not inclined to grant an adjournment once again. The grounds

raised in this writ petition are that the Respondent No.3 is not eligible for the said reappointment and was not qualified for the said reappointment. It is also alleged that the proper procedure was not followed in the said appointment process.

11. The, first and foremost submission in respect of hearing by a Single Bench is concerned, in terms of the Roster which is prepared by the Delhi High Court w.e.f. 9th January, 2023, this Court's Roster is as under:

- "1. Civil Writ Petitions Misc. including those involving statutory authorities, DTC, Urban Arts Commission, Airport Authority of India etc. of the years 2020, 2021, 2022 and 2023.***
2. Civil Writ Petitions (RTI).
3. Civil Writ Petitions (S.H. at Work place and mines).
4. Regular hearing matters of the above categories"

12. The writ petition has been filed against the Railway Board which is a statutory authority and, thus, the matter has been listed as per Roster.

13. Insofar as the question of appeals from any orders passed by this Court is concerned, the same would be governed by the Delhi High Court Act, 1966 and Rules framed thereunder. A Letters Patent Appeal would lie if a challenge is to be raised against an order of the Single Judge, under Clause 10 of the Letters Patent governing the Delhi High Court, which reads as under:

- "10. Appeals to the High Court from Judges of the Court – And we do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the Superintendence of the said High Court, and not being an order made in the***

exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of Superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of one Judge of the Said High Court or one Judge of any Division Court, pursuant of Section 108 of the Government of India Act, made on or after the first day of February, one thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the Superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, our heirs or successors in our or their Privy Council, as hereinafter provided.”

14. The said clause has been considered in several judgements which hold that appeals would lie against orders passed in civil cases but not in criminal cases. The decision of the Full Bench of this Court in **C.S. Agarwal v. State & Ors, 2011 (125) DRJ 241 (FB)** which deals with a criminal case is relevant. The said decision authored by Justice A.K. Sikri holds as under:

“5. Before we analyze the respective contentions it would be appropriate to mention at the outset that the Delhi High Court was constituted not by the Letters Patent but by the Delhi High Court Act, 1966 (in short ‘the DHC Act’). The counsels have proceeded on the premise that the Letters Patent as applicable to the erstwhile Punjab and Lahore High Courts are

applicable to the Delhi High Court. Section 5 of the DHC Act confers original jurisdiction to the Delhi High Court while Section 10 thereof confers appellate jurisdiction. These provisions read as follows:

“5. Jurisdiction of High Court of Delhi.—

(1) The High Court of Delhi shall have, in respect of the territories for the time being included in the Union territory of Delhi, all such, original, appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of the said territories by the High Court of Punjab.

(2) Notwithstanding anything contained in any law for the time being in force, the High Court of Delhi shall also have in respect of the said territories ordinary original civil jurisdiction in every suit the value of which exceeds rupees twenty lakhs.

10. Powers of Judges.—

(1) Where a single Judge of the High Court of Delhi exercises ordinary original civil jurisdiction conferred by sub-section (2) of section 5 on that Court, an appeal shall lie from the judgment of the single Judge to a Division Court of that High Court.

(2) Subject to the provisions of sub-section (1), the law in force immediately before the appointed day relating to the powers of the Chief Justice, single Judges and Division Courts of the High Court of Punjab and with respect to all matters ancillary to the exercise of those powers, shall, with the necessary modifications, apply in relation to the High Court of Delhi.”

6. In addition to the appeals that can be filed under section 10 of the DHC Act, three more categories of appeals lie to this Court. Thus the following four categories constitute appellate jurisdiction of the Delhi High Court:

- (a) Firstly, appeals under Section 10 of the DHC Act but they are limited only to those judgments referable to Section 5(2) thereof.
- (b) Secondly, appeals under the Code of Civil Procedure.
- (c) Thirdly, appeals under different statutes, which itself provides for an appeal.
- (d) Fourthly, appeals under Clause 10 of the Letters Patent.
7. Here we are concerned only with the fourth category. Clause 10 of the Letters Patent reads as follows:

“10. Appeals to the High Court from Judges of the Court — And we do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the Superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of Superintendence under the provisions of Section 107 of the Government of India Act or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant of Section 108 of the Government of India Act, made on or after the first day of February, one thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment

declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our heirs or Successors in our or their Privy Council, as hereinafter provided.

8. This clause clearly prohibits maintainability of an intra-court appeal if the impugned judgment is passed in exercise of:

- 1. Revisional Jurisdiction*
- 2. The power of superintendence*
- 3. Criminal Jurisdiction”*

15. Article 133 and 134 of the Constitution of India deal with appeals to the Supreme Court. Article 134A of the Constitution of India deals with the situation when a High Court grants a certificate of appeal to the Supreme Court. The ld. Counsel for the Petitioner reads Article 133 and Article 134A, as a bar on Single Judges hearing a writ petition, on the ground that Single Judges would not be able to grant a certificate of appeal. This submission would not be tenable in as much as the question as to before which forum an appeal would lie, in the context of the Delhi High Court, would depend upon whether the matter is civil or criminal in nature. It would also depend upon the nature of jurisdiction which is being exercised by the Court. Moreover, the question as to whether an appeal would lie or not would not govern the exercise of writ jurisdiction by this Court. Thus, the submission that under Article 133, this Court would not have the jurisdiction to hear the present petition is untenable.

16. Insofar as the eligibility and the procedure for appointment of Respondent No.3 is concerned, the Petition raises the following grounds to challenge the appointment of Respondent no.3 –

- That the age of superannuation for the post of Chairman is 70 years in

terms of the Tribunals Reforms Act, 2021;

- Upon the retirement of the earlier Chairman, a Selection Committee was constituted and a list was prepared. Mr. Justice Ajit Singh was selected and offered the appointment. However, he declined the same;
- That instead of offering appointment to other persons who had applied, Justice Ahluwalia (retired) was straight away offered appointment without following any procedure and without having applied;
- That on 10th July, 2019, he joined as Chairman, Railway Claims Tribunal. However, he retired on 30th May, 2022 upon attaining 65 years of age and the post fell vacant w.e.f. 1st June, 2022;
- He was again offered appointment as the Chairperson in the first week of August without calling any further applications;
- The required consultation with the Chief Justice of India has not been done;
- Hence the appointment is liable to be set aside.

17. The counter affidavit on behalf of the Respondents 1 and 2, has been deposed by the Under Secretary in the Ministry of Railways. The counter affidavit states:

- That as per Section 5(1) of the Railway Claims Tribunal Act, 1987, for appointment as the Chairman of the RCT, the person has to be a Judge of a High Court or a Vice-Chairman of RCT for at least two years.
- Under Section 5(5) read with section 5(6) of the Act, the Vice-Chairman and other members of the RCT are to be appointed by the

President after consultation with the Chief Justice of India;

- The Finance Act, 2017 effected amendments to laws dealing with appointments, conditions of service in various Tribunals including the RCT Act, 1987. Thereafter, the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 were notified with effect from 1st June, 2017. These Rules were challenged before the Supreme Court in **W.P.(C) 279/2017** titled **Kudrat Sandhu v. Union of India**. Vide order dated 22nd February, 2018, the Supreme Court directed as under:

“1. On 9 February 2018, an interim order was passed by this Court after considering the suggestions filed during the course of hearing. The suggestions read as follows:

- 1. Staying the composition of Search-cum-Selection Committee as prescribed in Column 4 of the Schedule to the Tribunal, Appellate Tribunal and Other Authorities (Qualification, experience and other conditions of service of members) Rules, 2017 both in respect of Chairman/Judicial Members and Administrative Members. A further direction to constitute an interim Search-cum Selection Committee during the pendency of this W.P. in respect of both Judicial/Administrative members as under:*
 - a. Chief Justice of India or his nominee-Chairman*
 - b. Chairman of the Central Administrative Tribunal-Member*
 - c. Two Secretaries nominated by the Government of India-Members*
- 2. Appointment to the post of Chairman shall be made by nomination by the Chief Justice of India.*

3. Stay the terms of office of 3 years as prescribed in Column 5 of the Schedule to the Tribunal, Appellate Tribunal and other Authorities (Qualification, experience and other conditions of service of members) Rules, 2017. A further direction fixing the term of office of all selectees by the aforementioned interim Search-cum Selection Committee and consequent appointees as 5 years.

4 . All appointments to be made in pursuance to the selection made by the interim Search-cum-Selection Committee shall be with conditions of service as applicable to the Judges of High Court.

5. A further direction to the effect that all the selections made by the aforementioned interim selection committee and the consequential appointment of all the selectees as Chairman/Judicial/Administrative members for a term of 5 years with conditions of service as applicable to Judges of High Court shall not be affected by the final outcome of the Writ Petition.

2. The learned Attorney General had no objection to the above suggestions being adopted as an interim arrangement to govern the selections to all tribunals, except for the fourth and fifth suggestions recorded above. The Learned Attorney General suggested that the above two suggestions may be re-cast as follows:

4. All appointments to be made in pursuance to the selection made by the interim Search-cum-Selection Committee shall abide by the conditions of service as per the old Acts and the Rules.

5. A further direction to the effect that all the selections made by the aforementioned

interim selection committee and the consequential appointment of all the selectees as Chairman/Judicial/Administrative members shall be for a period as has been provided in the old Acts and the Rules.

3. The Court accepted the suggestions together with the modifications which were desired by the Attorney General. The operative direction reads thus:

In view of the aforesaid, we accept the suggestions and direct that the same shall be made applicable for selection of the Chairpersons and the Judicial/Administrative/Technical/Expert Members for all tribunals.

4. Since some of the Search-cum-Selection Committees (SCSC) have already proceeded with their work prior to the above order, the case was listed for further hearing on 12 February 2018. The following order was passed:

As some Committees had proceeded, the matter was listed for further hearing. We have heard learned Counsel for the parties. Mr. Rohit Bhat, learned Counsel assisting the learned Attorney General for the Union of India shall file the status of the selection process by the Committees, by 13.2.2018.

Mr. Arvind Datar, Mr. C.A. Sundaram and Mr. Mohan Parasaran, learned senior Counsel shall also file through their Advocates-on-Record a joint memorandum with regard to which tribunals are covered and not covered. The same shall be filed by 10.30 a.m. on 13.2.2018.

Orders reserved.

5. The Attorney General has in pursuance of the proceedings which took place on 12 February 2018

filed a tabular chart indicating the status of the selection process in respect of 19 tribunals. Written notes have been filed by Mr. Vikas Singh, Senior Advocate and by Mr. Vijay Kumar Verma, Advocate (appearing respectively in Writ Petition (Civil) No. 279 of 2017 and companion cases and Writ Petition (Civil) No. 640 of 2017).

6 . The tabular chart submitted by the Attorney General indicates the following details individually in respect of 19 tribunals:

- (i) Whether the SCSC has been constituted;
- (ii) Whether advertisements have been issued for judicial and/or technical (or expert) members;
- (iii) Whether applications have been received;
- (iv) Whether the process of shortlisting or, as the case, may be holding interviews has been completed; and
- (v) Whether appointments have been made.

The written submissions filed by Mr. Vikas Singh, Learned Senior Advocate and Mr. Verma, Advocate indicate that substantial steps have taken place in the selection process for the Central Administrative Tribunal and it is desirable that appointments be made expeditiously.

7. We will now analyse the position in regard to the selections, tribunal-wise.

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DRT and DRAT

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CAT

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NCLAT

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NCDRC

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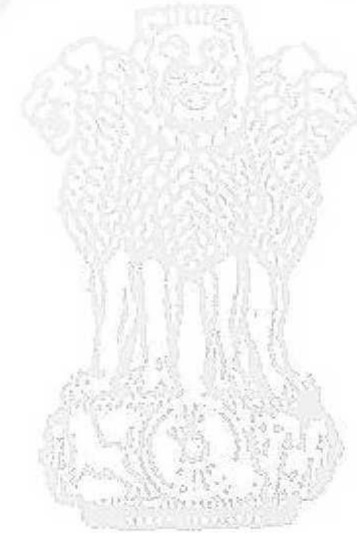
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16. In the case of certain other tribunals, the chart submitted by the Attorney General is extracted below:



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<i>Sl No.</i>	<i>Tribunal/ Appellate Tribunal and Other Authorities</i>	<i>Existing Vacancy</i>	<i>Whether SCSC Constitute under New Rules. If Yes, its composition</i>	<i>Status of selection process</i>	<i>Total Number of applications as received</i>	<i>Interviews conducted</i>	<i>Selection made / Final Appointment</i>
xxxx							
2	<i>Railway Claims Tribunal</i>	<i>02 Vacancies to the post of Vice Chairman – Technical 3 vacancies to the post of Technical Member Judicial Member-08 posts</i>	<i>SCSC Constituted</i>	<i>VC/Tech- Proposal put up to Board for circulation of Vacancy Notice For post of Technical Member- 1st Round meeting held on 7.02.2018 and IB clearance sought Proposal put up to Board for circulation of Vacancy Notice</i>	NA	NA	NA
xxxx							

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17. As regards the selection of the President of the ITAT, a recommendation has already been made.

Hence, the selection process will be taken to its logical conclusion. The SCSC for the rest of the tribunals in the above chart (other than Serial No. 8) shall be governed by the interim directions dated 9 February 2018.

18. In all cases where the CJI has nominated the Chairperson of the SCSC for making recommendations for appointment of Chairperson/President/Presiding Officer of any tribunal and the Committee has begun its work by holding a meeting, the process will continue on the basis of the terms and conditions and eligibility stated in the advertisement issued or, as the case may be, as notified on the directions of the SCSC for ascertaining expression of interest.

19. All recommendations made or to be made by any SCSC as referred to above for appointment of Chairperson and/or members shall be processed further without being affected by the order dated 9 February 2018.”

- From the above order the following conclusions are drawn:
 - i. The composition of Selection Committee/Search-cum-Selection Committee ("SCSC") as prescribed in the Tribunal, Appellate Tribunal and other Authorities Rules, 2017 was stayed and it directed constitution of an interim Search-cum-Selection Committee as prescribed in respect of both Judicial and Administrative Members with the following composition in respect of the RCT:
 - a) Hon'ble Chief Justice of India or his nominee Chairman.
 - b) Chairman/RCT.
 - c) Two Secretaries nominated by the Union

Government as Members.

ii. Directed that the appointment to the post of Chairman shall be made by nomination by the Hon'ble Chief Justice of India.

iii. All appointments to be made pursuant to the selection made by the interim SCSC shall abide by the conditions of service including the tenure as per the old Acts and the Rules.

- The appointment to the post of Chairman was by nomination by the Chief Justice of India.
- In pursuance of orders dated 9th February, 2018 and 22nd February, 2018, the Ministry requested the Hon'ble the Chief Justice of India for a suitable nomination.
- In response to the request, the Hon'ble Chief Justice nominated Mr. Justice Ajit Singh, former Chief Justice of the Guwahati High Court. However, he was appointed as the Lokayukta of the State of Orissa. Thus, fresh nomination was sought.
- Justice K.S. Ahluwalia (retired), Judge, Rajasthan High Court was then appointed in terms of the nomination received from the Secretary General, Supreme Court of India dated 9th April, 2019.
- The ACC then approved the appointment of Justice K.S. Ahluwalia (retired) to the post of Chairman, RCT for the period of five years or till he attains 65 years of age with effect from 10th July, 2019.
- In the meantime, the Tribunal (Condition of Service) Rules of 2021 came into force on 15th September, 2021. The appointment to all

Tribunals, including the RCT was to be regulated as per the provisions of the Tribunal Reforms Act, 2021. Thereafter, the process of filing up the post of Chairman, RCT was again initiated.

- In terms of Section 3(2) of the Tribunal Reforms Act, 2021, the Chairperson and the Members were to be appointed by the Union of India on the basis of the recommendations of the Search-Cum-Selection-Committee (SCSC).
- The relevant paragraphs of the counter affidavit *qua* the search-cum-selection committee are set out below:

“18. That, section 3(2) of the Tribunals Reforms Act, 2021 provides that as per the Chairperson and the Member shall be appointed by the Union Government on the recommendation of an SCSC constituted under sub-section (3), in such manner as the Central Government may, by rules, provide. Further, as per section 3(3) of the Tribunals Reforms Act, 2021, the SCSC, except for the State Administrative Tribunal, shall consist of:

- (a) A Chairperson, who shall be the Chief Justice of India or a Judge of Supreme Court nominated by him;*
- (b) Two Members, who are Secretaries to the Government of India to be nominated by the Government;*
- (c) One Member, who:*
 - i. In case of the appointment of a Chairperson of a Tribunal, shall be the outgoing Chairperson of that Tribunal; or*
 - ii. In case of appointment of a Member of Tribunal, shall be the sitting Chairperson of that Tribunal; or*
 - iii. In case of the Chairperson of the Tribunal seeking re-appointment, shall be retired Judge of the Supreme Court or a retired*

Chief Justice of a High Court, to be nominated by the Chief Justice of India;

(d) The Secretary to the Govt. of India in the Ministry or Dept. under which the Tribunal is constituted or established as the Member Secretary.

19. That, accordingly, the Ministry of Finance, released the list of Secretaries to be nominated in the SCSC which provided that the Secretary, Dept. of Consumer Affairs, and the Secretary, Dept. of Legal Affairs, shall be nominated for selections in RCT.”

- The Search-Cum-Selection Committee was then constituted under the Chairmanship of a Hon’ble Supreme Court Judge, consisting of the outgoing Chairman of the RCT, Secretary, Department of Consumer Affairs and Secretary, Department of Legal Affairs as Members and Member (Operations & Business Development), Railway Board, as Member Secretary.
- Since the outgoing Chairman expressed his willingness to be considered for reappointment, the Search-Cum-Selection Committee had to be reconstituted with the approval of the Hon’ble Minister of Railways. The relevant pleading in the counter affidavit is reproduced hereinbelow:

“23. That, accordingly, the SCSC was re-constituted with the approval of the Hon’ble Minister of Railways under the chairmanship of Hon’ble Justice B.R. Gavai, Judge, Supreme Court of India with Hon’ble Mr. Justice Vineet Saran, Judge (Retd.) Supreme Court (nominated by Hon’ble CJI), Secretary, Dept. of Legal Affairs and Secretary, Dept. of Consumer Affairs as Members and Member (O&BD), Railway Board, as Member-Secretary.”

- A meeting of the Search-Cum-Selection Committee was held on 24th April, 2022. Since the 2021 Rules permitted Search-Cum-Selection Committee to either issue a vacancy circular or call for application or search for suitable person eligible for appointment. The Search-Cum-Selection Committee decided to search for suitable persons eligible for appointment to the post of Chairperson, and drew up a list of six judges of various High Courts. Some of the Judges expressed their unwillingness. Finally, a panel of two judges was suggested to the Government in the order of preference.
 - The name of Justice Ahluwalia (retired) was number one on the said panel.
 - The appointment of Justice Ahluwalia (retired) was then accepted and notified.
18. In response to the counter affidavit, a rejoinder that has been handed over, some paragraphs of which are set out below:

“1. It is clear from the facts disclosed in the counter affidavit that the search cum selection committee just handpicked out of a hat, 5 eligible candidates even though there were more than 60-70 eligible persons i.e. retired and retiring Judges in various High Courts at that time. The whole exercise as disclosed in the counter affidavit is fishy & clearly smacks of favoritism & nepotism since respondent No. 3 is the Samdhi (Father of child's spouse) of a sitting Judge of the Supreme Court of India i.e. Mr. Ajay Rastogi and even the 1st/Initial appointment of the Respondent No.3 as Chairperson of Railway claim Tribunal, was made in such a manner, which is clear from the facts disclosed in relation to that R-1 & R-2 in the counter affidavit. In fact the process adopted and the manner in which both the above said appointments of Respondent No.3

were /have been made is a clear case of 'Res Ipsa Loquitur' i.e. the thing speaks for itself.

2. Even otherwise, the search cum selection committee does not seem to have acted, though claimed, with the mandate of rule 4(3) of the Tribunals (Conditions of Service) Rules, 2021 which provides for the work of 'Search' in 'letter and spirit' and so called search was nothing but a farce inasmuch as

(1) The meaning of word 'search' is "trying to find something by looking or otherwise seeking carefully and thoroughly"

(2) The manner in which the search cum selection committee has done the said 'search' is a 'slap on the face' to the term 'search', and in the process throwing all norms and principles thereof to the winds and acting like an autocrat. The selection of respondent no. 3, though alleged to be in accordance with the rules, was actually a colourable exercise of power, to achieve the aim and objective already decided upon.

3. That the appointment of Chairperson in terms of the provisions of Rule 4(3) of the Tribunals (Conditions of Service) Rules, 2021 was being made for the first time and while making the selection of Chairman the selection and search committee by way of 'secret parlays' and 'behind closed door manner' by abusing and misusing the words/terms 'or search', occurring in Rule 4(3) of Tribunals (Conditions of Service) Rules, 2021 (ANNEXURE P-2).

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5. This averment besides being funny, is deliberately vague and ambiguous and a roundabout answer, and nothing but an attempt to 'pull the wool' (and befool) over the eyes of this Hon'ble Court and a clumsy attempt to put the 'paint of legalit,' over the otherwise illegal acts and arbitrary actions of the selection and search committee."

19. A perusal of the counter affidavit shows that the Search-Cum-Selection Committee was duly constituted in accordance with the orders passed by the Supreme Court as also the applicable Act and Rules. However, the language used in the rejoinder clearly shows that the intention is to simply raise baseless and scandalous allegations. The rejoinder smacks of sensationalism which uses completely unbecoming language. Wild allegations are made by the Petitioner without verification of facts or law. The intention appears to be simply to besmirch various individuals for some inexplicable reason, rather than to raise grounds within the confines of law. The entire process which has been explained in the counter affidavit shows that all the requisite safeguards have been followed and the appointment process has been done in accordance with the applicable Act and Rules.

20. After having perused the counter affidavit and the rejoinder filed by the Petitioner, this Court has noted that the present writ petition, in fact, is a *mala fide* attempt to throw mud on the reputation of the incumbent and is a gross abuse of process. Unnecessary and scandalous allegations have been made in the rejoinder which this Court does not condone. The process of appointment has been explained in the counter affidavit and has been perused by the Court. None of the grounds which have been raised in this writ petition are made out for setting aside of the said appointment/re-appointment.

21. In the overall facts and circumstances of this case, it is clear that the petition and the pleadings filed by the Petitioner are nothing but an attempt towards undermining the dignity of the current Chairman of the Railway Claims Tribunal and impede in the functioning of the Railway Claims Tribunal. The Supreme Court, in the judgement of *In Re: Roshan Lal*

Ahuja, 1993 Supp(4) SCC 446, while dealing with a case of Contempt of Court also ruled aspersions and allegations raised against Judges in the discharge of their judicial functions has an effect of scandalising the Court. The relevant extract of the said judgement is extracted as under:

15. The aspersions and allegations made by the contemnor in the offending documents, including the 'note for directions' undoubtedly have the effect of scandalising the court in relation to its judicial functioning and undermining its dignity. They are an affront to the majesty of law. He has permitted himself the liberty of casting aspersions, wholly unjustified and uncalled for, on the integrity and fairness of the Judges of this Court in the discharge of their judicial functions. He has, thereby, attempted to interfere with the administration of justice. The contemnor appears to be addicted to using contemptuous language so as to browbeat the court. We find, in the facts and circumstances of the case, the contemnor guilty of having committed a gross criminal contempt of this Court.

16. If a person committing such gross contempt of court were to get the impression that he will get off lightly it would be a most unfortunate state of affairs. Sympathy in such a case would be totally misplaced - mercy has no meaning. His action calls for deterrent punishment so that it also serves as an example to others and there is no repetition of such a contempt by any other person.

22. This view was reaffirmed by the Supreme Court in the judgement dated 31st August, 2020 in *In Re: Prashant Bhushan and Ors., (2021) 3 SCC 160*. The relevant extract of the said judgement is extracted as under:

42. Roshan Lal Ahuja, In Re:, (1993) Supp. 4 SCC 446, it was held that pleadings made had the effect on scandalizing and lowering the authority of the Court in

relation to the judicial matters but also had the effect of substantial interference with obstructing the administration of justice. Unfounded and unwarranted aspersions had the tendency to undermine the authority of the Court and would create distrust in the mind of the public and on the capacity to impart fearless justice.

23. Recently, a Id. Single Judge of this Court, in order dated 14th July, 2022 in *Crl. A. 107/2022* titled *M. Victim v. State of NCT of Delhi and Ors.* held that vilification of judges has a direct effect on the administration of justice. The relevant extracts from the said order are extracted as under:

8. A bare perusal of the averments made hereinabove show that they are scandalous and aimed at lowering the dignity and majesty of this Court. They have been made malafidely and interfere with administration of justice and amount to contempt. The allegations made in the petition are intrinsically contemptuous in nature and fall within the definition of "Criminal Contempt" of the Contempt of Courts Act, 1971 under Section 2(c)(i).

9. There is a direct attack on the reputation and functioning of not only one Judge, but several Judges of this Court. This vilification of Judges can affect the administration of justice as it becomes a form of public mischief. An unwarranted attack on a Judge, citing and unscrupulous administration cannot be ignored by this Court.

10. For a healthy democracy, there must be impartial Judiciary, however, it cannot be impaired by vindictive criticism. The Judiciary is not immune from criticism, but when the criticism is based on distorted facts or gross misrepresentation of material averments, to intentionally lower the dignity and respect of this Court, it must be taken cognizance of.

24. This Court notices that there have been apprehensions expressed in

the past relating to false claims filed before Railway Tribunals. During the course of submissions in this petition it was stated that several cases were transferred from the Lucknow Bench. Thus, the petition appears to have been filed due to some oblique motives.

25. In the opinion of this Court, the entire attempt in this petition on behalf of the lawyers' association is to raise aspersions against the duly constituted Tribunal. Accordingly, considering the nature of submissions made in Court and in the pleadings, the writ petition is dismissed. It is made clear that any attempt to vilify Judges, without any reasonable basis, be it Judges of Constitutional Courts, Trial Courts or judges presiding over Quasi-Judicial bodies cannot be permitted.

26. In the facts and circumstances of this case, costs of Rs.50,000/- are imposed upon the Petitioner. The same shall be paid by the Petitioner, to the Delhi High Court Legal Services Committee within a period of four weeks from today.

27. With these observations, the present petition, along with all pending applications, is disposed of.

भारतमेव जयते

**PRATHIBA M. SINGH
JUDGE**

MARCH 3, 2023

dj/am/sk

(corrected & uploaded on 10th March, 2023)