

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.211/2002

New Delhi, this the 8th day of July, 2002

Hon'ble Shri Kuldip Singh, Member (Judl)
Hon'ble Shri S.A.T. Rizvi, Member (Admn)

Shri S.C. Manchanda
Chief Personnel Officer
Northern Railway
Baroda House,
New Delhi

..Applicant

(By Advocate: Shri B.S.Maine)

Versus

Union of India through

1. The Chairman
Railway Board
Ministry of Railways
Rail Bhawan
New Delhi

2. The Secretary
Railway Board
Ministry of Railways
Rail Bhawan
New Delhi

..Respondents

(By Advocates: Shri H.K.Gangwani & Shri V.S.R.Krishna)

O R D E R

Shri S.A.T. Rizvi:

The applicant, who belongs to the Indian Railway Personnel Service (IRPS) and has been working as Chief Personnel Officer, Northern Railway in the pay grade of Rs.22400-24500/-, has not been considered for promotion/appointment to the higher post of Additional Member (Staff) (AM (S)) in the pay grade of Rs.24050-26000/-. The post of AM (S) fell vacant on 31.1.2002 when Shri A.S.Gupta, the incumbent of the post and belonging to the IRPS, retired on reaching the age of superannuation.

2. The respondents passed a Resolution on 11.10.2000 (A-1) providing, inter alia, as follows:-

d

(2)

"(vi) Post of Additional Member (Staff) is normally to be filled up by a senior and suitable officer of Indian Railway Personnel Service (IRPS). However, since Indian Railway Personnel Service is a new service, in case a suitable IRPS officer of appropriate seniority is not available, the post may be filled up on deputation by a senior and suitable officer belonging to any other Group 'A' service (except IRMS & RPF) working in Grade Rs.22400-24500." (emphasis supplied)

The application of the aforesaid rule has resulted in the non-consideration of the applicant's case for promotion/appointment to the post of AM (S). This precisely is the grievance raised in the present OA.

3. We have heard the learned counsel on either side at length and have perused the material placed on record. Copies of Office Memorandum dated 30.6.1999, Executive Director Estt. Railway Board's letter dated 7.7.1998 and the minutes of the Railway Board meeting held on 27.12.2001 supplied during the course of hearing have also been perused by us.

4. Briefly stated the facts of this case not in dispute are the following.

5. After his initial appointment as Section Officer (Group 'B') in the Railway Board Secretariat Services (RBSS) w.e.f. 18.1.1971, the applicant became Deputy Director Grade-I also in the RBSS w.e.f. 7.11.1979. The latter post is a Group 'A' post. Govt. of India decided to constitute IRPS as a Group 'A' organized service in 1974. The IRPS was to be a specialized service for dealing with the personnel/HRD matters pertaining to the

dr

(3)

Railways employing about 1.5 million persons. In due course, the IRPS Recruitment Rules, 1975 were notified on 20.12.1975 (A-2). Consequently, a number of personnel were inducted in the IRPS at the stage of initial constitution of the service. Later, some more existing personnel were inducted in the IRPS at the maintenance stage of service. One such circular for induction of existing personnel into the IRPS at the maintenance stage was issued on 22.5.1981 (A-3). Vide respondents' Notification dated 18.2.1984 (A-4), the applicant was absorbed in the IRPS. Following his absorption in the IRPS, the applicant was assigned seniority in the service with 12.6.1975 as the date of increment in time scale (DOITS) vide Memorandum dated 17.1.1984 (A-5). The applicant's seniority in the IRPS accordingly takes effect from 12.6.1975. He has thus completed nearly 27 years of service in the IRPS. Since Shri A.S.Gupta, the incumbent of the post of AM (S), was going to retire from service on 31.1.2002 and the applicant was the senior-most available member of the IRPS for promotion/appointment to the post of AM (S), he made a brief representation on 10.12.2001 (A-9) in which he took the plea that since the post of AM (S) has been encadred in the IRPS, his case deserved to be considered for promotion to the said post. There was no response to the aforesaid representation. However, following the receipt of the aforesaid representation, the respondents sought to clarify the concept of 'appropriate seniority' referred to in the aforesaid clause (vi) reproduced in paragraph 2 above. While considering the matter in the meeting of the Railway Board held on 27.12.2001, the Railway Board noted that the words 'appropriate

(4)

seniority" had not been defined in the aforesaid clause (vi) and proceeded to clarify the concept of "appropriate seniority" in the following terms:-

"It was decided that the "Appropriate seniority" with reference to IRPS may be interpreted to mean that officers of IRPS should belong to the same batch as compared to officers of other services or they may belong to subsequent 2 batches."

Thus, by implication, in addition to the aforesaid clause (vi), the aforesaid clarification is also under challenge in the present OA.

6. The Recruitment Rules of 1975 do not include the post of AM (S). The highest post mentioned in clause 2 of the Schedule to the aforesaid Recruitment Rules is that of the Chief Personnel Officer which the present applicant holds. The post of AM (S) will, however, get included in the aforesaid Recruitment Rules on the basis of the respondents' resolution dated 11.10.2000 which has the effect of creating a post of AM (S) as a discipline specific post on the personnel side of the Railways. We were given to understand that the same practice has been followed, more or less, in relation to the other organized services in the Railways.

7. The learned counsel appearing on behalf of the applicant has submitted that the aforesaid clause (vi) of the Resolution dated 11.10.2000 together with the aforesaid clarification issued by the Railway Board is wholly arbitrary and is violative of Articles 14 & 16 of the Constitution. According to him, the said resolution provides that the post of AM (S) is a 'discipline

2

(5)

specific post and the Annexure to the same resolution clearly shows that the said post is to be filled by an officer belonging to the IRPS. The aforesaid resolution further provides that for discipline specific posts, AM (S)'s post included, officers of the relevant discipline in grade Rs.22400-24500/- should be considered in order of their seniority in the grade. These provisions, according to him, in clear enough terms, provide that the post of AM (S) is duly encadred in the IRPS. This view gets further support, according to the learned counsel, from the provisions made in the Office Memorandum dated 30.6.1999 and the Executive Director Estt. Railway Board's letter dated 7.7.1998. Annexure A-1 to the aforesaid Office Memorandum of 30.6.1999 lists the post of AM (S) under the IRPS at No.11 under the heading A. "Central Civil Services (Group 'A')". Furthermore, in the same Annexure, the respondents have listed E. "Other Group 'A' posts in Railways not encadred in any of the organized services". Quite a few posts have been listed under the aforesaid heading. These include the post of General Managers, DG,RDSO, Secretary, Railway Board, etc. The post of AM (S) has not been listed under this particular heading reenforcing the view that the post of AM (S) is a duly encadred post. The statements enclosed with the Executive Director Estt. Railway Board's letter dated 7.7.1998 show that as on 1.1.1998, there were two posts, both regular, on the personnel side carrying the pay grade of Rs.22400-24500/- and that the proposals submitted to the Ministry of Finance for upgradation included 18 posts of Additional Members in Railway Board. These were to be upgraded from the pay scale of Rs.7300-7600/- in the pre-revised scale to the pay grade

(6)

of Rs.24050-26000/- in the revised pay scale. The aforesaid statements also show that the aforesaid two posts on the personnel side in the pay grade of Rs.22400-24500/- as on 1.1.1998 stood divided thereafter into two posts, one in the aforesaid pay grade of Rs.22400-24500/- and the other in the pay grade of Rs.24050-26000/-. The post of AM (S) has again been shown in one of these statements as belonging to the Personnel Department of the Railways. The aforesaid letter of 7.7.1998 issued by the Executive Director Estt. Railway Board clearly brings out the fact that a post in the pay grade of Rs.24050-26000/- was to come in existence on the personnel side of the Railway Administration and that post was to be named as AM (S).

8. Since the fact of encadrement of the post of AM (S) in the IRPS has been vehemently asserted by the learned counsel appearing on behalf of the applicant, we had directed the learned senior counsel appearing on behalf of the respondents during the course of hearing on 19.4.2002 to seek instructions with regard to the implementation of the aforesaid Office Memorandum dated 30.6.1999. The aforesaid direction was given in the context of the following provisions made in paragraph 5 of the aforesaid Office Memorandum dated 30.6.1999:-

"5. In so far as the FCPC recommendations relating to the encadrement of posts in one of the Organized Services are concerned, the administrative ministries and departments concerned may examine the relevant recommendations in consultation with the Department of Personnel & Training and make available specific proposals for the encadrement of such posts as are considered justified."

(7)

9. The learned senior counsel appearing on behalf of the respondents had made a statement that the encadrement of a post involves a separate exercise to be undertaken in consultation with the DOPT. He was not quite sure whether the aforesaid exercise has since been completed by having regard to the recommendations made by the 5th CPC, the relevant portion of which are reproduced below:-

"48.102 Indian Railways Personnel Service is a unique service as it is the only service amongst the Central Group "A" Civil Services catering exclusively to the Personnel Management discipline in the Govt.

48.103 It has been brought to our notice that while officers of IRAS and IRTS have their established channels of promotion to the posts of Additional Member and Member in their respective streams, the Officers belonging to IRPS are devoid of such in-cadre promotional avenues. We recommend the encadrement of the posts of Member and Additional Member (Staff) in IRPS.

xx xxx xx
83.19 The post of Additional Member (Staff) is presently occupied by an IRPS officer. While the post of Additional Member (Management Services) may continue to be available to all organised Group "A" services including IRPS, it is quite legitimate that the posts of Additional Member (Staff) and Member (Staff), Railway Board are encadred for IRPS. Similarly, Railway Board should review the availability of posts in Establishment Directorate of Railway Board for IRPS officers keeping in view functional needs and their legitimate expectations. Likewise there is no further need to laterally induct officers into IRPS in view of regular recruitment being done for the service since 1980."

We are disappointed that despite clear instructions given to the learned senior counsel appearing on behalf of the respondents on 19.4.2002, we have not been informed about the action taken by the respondents in accordance with

dr

(8)

the aforesaid provision made in paragraph 5 of the Office Memorandum dated 30.6.1999 reproduced in paragraph 8 above. In the circumstances, we are left to draw our own conclusions in this regard.

10. We have in the above already noted the relevant provisions made in regard to encadrement of the post of AM (S) by the 5th CPC and subsequently by the respondents themselves in the resolution dated 11.10.2000 preceded by the Office Memorandum dated 30.6.1999. By calling the post of AM (S) as a discipline specific post in the aforesaid resolution of 11.10.2000, the respondents have, in no unmistakable terms, indicated that the said post stood encadred in the IRPS. We hold accordingly.

11. We are aware that despite encadrement in an organized service, the respondents can still proceed to lay down rules providing for the vacancies in an encadred post to be filled by non-cadre officers. Such a rule is to be found in the relevant rules applicable to the All India Services. We are, therefore, now required to see whether and to what extent, the aforesaid clause (vi) of the resolution dated 11.10.2000 read with the clarification of the concept of 'appropriate seniority' given by the respondents, can be held to be arbitrary and violative of Articles 14 & 16 of the Constitution. The admitted position is that the post of AM (S) is normally to be filled by a senior and suitable officer of the IRPS. Despite this position, since in the respondents' view the IRPS is a new service, they have laid down that in the event of a suitable IRPS officer of 'appropriate seniority' not becoming available, the post of AM (S)

(9)

will be filled on deputation by inducting a senior and suitable officer from any other Group 'A' service, excepting IRMS & RPF working in the HAG (Rs.22400-24500). A new concept of 'appropriate seniority' has thus been invented. The IRPS was constituted in 1975 and has, therefore, been in existence for 27 years. According to the 5th CPC, the IRPS, with recruitment thereto through the Civil Services Examination commencing in 1980, has come of age (para 83.17 of 5th CPC), and further that there is no further need to laterally induct officers into IRPS in view of regular recruitment being done for the service since 1980 (para 83.19 of the 5th CPC). In view of these observations made by the 5th CPC, we are unable to understand as to how and on what basis, the respondents regard the IRPS as a new service.

12. Insofar as the concept of 'appropriate seniority' is concerned, our attention has been drawn by the learned counsel appearing on behalf of the applicant to the respondents' resolution dated 16.7.1986 (A-6A) which lays down the scheme for making appointments to the post of General Manager and posts equivalent thereto in the Railways. General Manager's post is admittedly equivalent to the post of Additional Member. The aforesaid resolution renders a member of the IRPS also eligible for holding the post of General Manager. The same resolution also lays down that for being considered for the post of General Manager or to a post equivalent thereto, an officer should have put in 25 years or more of regular continuous service in a Group 'A' service. Out of the aforesaid 25 years of service, such an officer is also required to have put in a minimum of 5 years of

(10)

service in the Senior Administrative Grade including service rendered in a higher grade post. These provisions make it clear that the applicant in the present OA, who has rendered a service of nearly 27 years in the IRPS including more than 5 years in the SAG, is fully and squarely eligible for being considered for appointment as a General Manager in the Railways or to a post equivalent to the post of General Manager. The aforesaid resolution still holds the field and the provisions made therein cannot be said to have been superseded in any manner by the resolution dated 11.10.2000. In these circumstances, we find it strange that while the applicant is, according to the said resolution of 16.7.1986, fully entitled to be considered for being appointed as General Manager or to any post equivalent to the post of General Manager, he cannot be considered eligible for being considered for appointment as AM (S) which is a post equivalent to the post of General Manager on the ground that he does not possess 'appropriate seniority'. This situation by itself supports the view that the concept of 'appropriate seniority' prescribed lately by way of a clarification issued in January, 2002 is arbitrary in its content as well as in its scope.

13. We will now try to find out for ourselves as to what is meant by 'appropriate seniority' in the manner clarified by the Railway Board in January, 2002 on the basis of the Railway Board's decision taken in its meeting of 27.12.2001. The relevant clarification has already been reproduced in paragraph 5 above. It would appear that the concept of 'appropriate seniority' in the

(11)

manner defined by the respondents does not have anything to do with the length of service rendered by the incumbent seeking promotion to the post of AM (S). The aforesaid clarification, unhappily and vaguely worded though it is, we are told, provides that as long as officers senior to the present applicant are available in the other Group 'A' services, they too will remain eligible for being considered for appointment as AM (S) to the exclusion of the applicant if the applicant happens to be junior to those officers belonging to the other Group 'A' services by more than two years. By implication, if it so happens that the senior-most officers belonging to the other Group 'A' services come to possess the same seniority as the applicant or happen to be senior to him by not more than two years, then in that situation, the applicant will also become entitled alongside to be considered for appointment as AM (S). We have bestowed our very careful consideration on the aforesaid clarificatory provision made by the Railway Board and find that it is vague and if the meaning assign to it on behalf of the respondents are to be accepted, it is heavily tilted in favour of the officers belonging to the Group 'A' services other than the IRPS. We have not been able to find any justification in favour of such a provision, specially having regard to what we have just discussed in regard to the applicant's eligibility for being considered for appointment to the post of General Manager, a post equivalent to the post of AM (S) in terms of the respondents' resolution dated 16.7.1986.

d

14. Notwithstanding what we have observed in the preceding paragraphs, the learned counsel appearing on behalf of the respondents has taken pains to draw our attention to the following provisions made in the detailed counter reply filed on 18.2.2002 in support of concept of "appropriate seniority" developed by the respondents through the aforesaid clause (vi) of the resolution dated 11.10.2000 read with the clarificatory provision laid down in January, 2002:-

"... IRPS being a nascent cadre/service, the seniority of its officers cannot be matched with other Organized Services/cadres.

Functioning of the Board depends on a coordinated system of action based on equal participation of equals. Officers with seniority varying widely cannot be expected either to participate freely or contribute properly in decision making process. There is every likelihood of seniors overshadowing the junior Members thereby generating lopsided, unhealthy and arbitrary decisions."

xx

xxx

xx

.... At present there are officers manning the posts of General Managers/equivalent belonging to 1966 seniority whereas the applicant counts his seniority from 1975. It will be appreciated that there is a considerable gap of 10 years between the seniority of the officers holding the posts of General Managers/equivalent and the applicant...."

15. The sum and substance of the averments made by the respondents which we have reproduced in the above imply that the applicant, who has already served in a Group 'A' service, namely, IRPS for nearly 27 years, would, if appointed as AM (S), be seen as a junior person and accordingly would not be taken seriously by the others who are likely to be senior to him by 7 to 9 years

(13)

in a meeting of Additional Members. This is an argument which, we find, impossible to accept. We are inclined to take the view that once appointed as AM (S), the applicant or anyone else in his position would undoubtedly acquire the necessary amount of confidence for dealing with his equals and the difference in service of 7 to 9 years cannot stand in the way of the applicant asserting himself during the course of dialogue or discussion in a meeting of equals. When we say this, we have in view the level of Joint Secretary in the Govt. of India which is a senior level post. We understand that officers linger at the level of Joint Secretary for close to 10 years and some times even more than 10 years. This does not mean that a recently empanelled/appointed Joint Secretary will find himself handicapped in talking to senior Joint Secretaries in a meeting of equals. This is not the way the Govt. functions. Officers derive strength not from the number of years of service put in by them, but from the level of their own competence in terms of knowledge of sphere of work and the mandate given to them by the still higher authorities before they hold discussions and meetings with their equals. When such is the case, we are sure a competent officer with an assigned mandate can always express himself with confidence even in those meetings in which he may happen to be occupying a status/post lower than the posts held by some of the others. The respondents' apprehension enshrined in their pleadings reproduced by us in para 14 above will, in the circumstances, appear to be without any rational basis. Purely on facts, if the applicant in today's scenario is found to be junior to the senior-most officers of the other Group "A" service by 9 years, it is

d/

(14)

certain that he cannot hope to be considered for appointment as AM (S) for another 7 years to come, having regard to the aforesaid clarificatory provision made by the respondents. By that time, he would have completed 34 years of service. In other words, therefore, the implication of the aforesaid clarificatory provision clearly is that a seniority of something like 34 years alone would have to be regarded as "appropriate seniority" in relation to the present applicant. The position will of course vary from person to person. In the case of another officer also belonging to the IRPS, the "appropriate seniority" determined according to the aforesaid clarificatory provision may work out to be less than 34 years or may be more than that. Everything would depend on the availability of senior-most officers in the other Group "A" services and until they remain available, the members of the IRPS will have to content with a maximum of just one HAG post. Clearly this cannot be the intention of the respondents, but if that be so, we will have no hesitation in holding that such an arrangement is arbitrary and violative of Articles 14 & 16 of the Constitution. In any case, in our view, the provision made in clause (vi) of the resolution dated 11.10.2000 read with the aforesaid clarificatory provision has led to a situation where hostile discrimination has come into existence between the officers of IRPS and those belonging to the other Group "A" services.

16. We have noticed that after the constitution of the IRPS in 1975 as a specialized service and one of its own kind (sui-generis), direct recruitment thereto commenced in 1980 only. Prior to 1980, the IRPS was

2

(15)

manned exclusively by the officers drawn from different positions at the stage of initial constitution of service and the early stages of the maintenance phase. All these IRPS officers, barring some 2 or 3 who actually reached the stage of AM (S)/GM are necessarily old people and are likely to fade out in the near future on attaining the age of superannuation, leaving only the direct recruits to claim the senior-most position of AM (S). On the other hand, the other Gr. 'A' organized services having remained in existence for much much longer than the IRPS are likely to go on yielding senior officers regularly and year after year thereby keeping the claims of the IRPS officers suppressed by the application of the 'appropriate seniority' formula devised by the respondents for a long time to come. Things are likely to even out somewhat in favour of the IRPS only after the 1978/1980 batch officers of the other Gr. 'A' organized services start disappearing from the scene due to retirement from service. Having regard to the fact that the RAS officer appointed as AM (S) in May, 2002 belongs to the 1967 batch, this would mean that another about 13 years will elapse before the IRPS starts gaining ground for being able to prefer a valid claim for the post of AM (S). By that time, the earliest direct recruit to the IRPS will be something like 33/35 years old in the service, and the service (IRPS) itself will be 40 years old. This, in our judgement, cannot be said to be in consonance with the legitimate expectations of the members of the IRPS nor with the respondents' own intention behind setting up a specialized and unique service, like the IRPS, for managing the evidently important personnel/HRD related functions of the vast

2

(16)

organization which the Indian Railways is. Viewed this also, the aforesaid/impugned clause (vi) of the 11.10.2000 resolution would stand vitiated along with the impugned clarification of January, 2002.

17. For the reasons brought out by us in the preceding paragraphs, the aforesaid clause (vi) of resolution dated 11.10.2000 (A-1) is quashed and set aside along with the aforesaid clarificatory provision made by the respondents in January, 2002. The respondents will undertake a fresh exercise to lay down the seniority level for appointment to the post of AM (S) in an objective, rational and fair manner, keeping in view the observations made by us in this order. The respondents will also treat the post of AM (S) as a post duly encadred in the IRPS. Having done that, the respondents will proceed to consider the claim of the applicant as also of the others in the IRPS for appointment as AM (S). The aforesaid exercise will be completed by the respondents in a maximum period of three months from the date of receipt of a copy of this order.

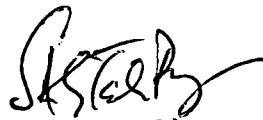
18. During the course of hearing, we are told that one Shri Acharya of the Railway Accounts Service, presumably belonging to the 1967 batch, has already been appointed as AM (S) on 2.5.2002 by following the rules which we have just struck down. Shri Acharya is obviously on deputation. He can always go back to wherever he came from. He may even be considered for any other post of the same rank elsewhere in accordance with the relevant rules. The letter of appointment issued to him, we are told, contains a clause that he was

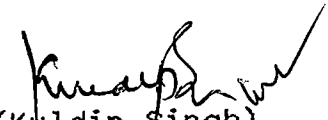
2

(17)

being appointed subject to the outcome of the present OA. He is, therefore, aware of the pendency of the present OA. Despite this, he has not cared to seek impleadment in the present OA. In view of this, it will be in order if after the selection of the applicant or any other officers of IRPS for appointment as AM (S), Shri Acharya is reverted or sent elsewhere as above.

19. The present OA is allowed in the aforestated terms. There shall be no order as to costs.


(S.A.T. Rizvi)
Member (A)


(Kuldip Singh)
Member (J)

{PKR}