

(Reserved on 05.10.2020)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

Allahabad, this Thursday, the 26th day of November, 2020

Original Application No. 330/01147/2019
(U/S 19, Administrative Tribunal Act, 1985)

Present:

**Hon'ble Mrs. Justice Vijay Lakshmi, Member-J
Hon'ble Mr. Navin Tandon, Member-A**

Sarwar Ali, aged about 58 years, S/o Shri Ishtiaq Ali, presently posted as Assistant Operation Manager, Headquarter, North Central Railway, Subedarganj, Allahabad.

.....**Applicant.**

By Advocate : Shri Ashish Srivastava (in Court)

V E R S U S

1. Union of India, through the Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. The Chief Personnel Officer, North Central Railway, Headquarter, Subedarganj, Allahabad.
3. General Manager, North Central Railway, Headquarter, Subedarganj, Allahabad.

.....**Respondents.**

By Advocate : Shri L.M. Singh (in Court)

O R D E R

Delivered by Hon'ble Mr. Navin Tandon, Member (Administrative) :

Through video conferencing.

1. The applicant is aggrieved that he has not been considered for induction in Group 'A' of Indian Railway Traffic Service (for brevity, IRTS hereinafter)
2. The applicant has made the following submissions in the OA. :-
 - 2.1 He was working as Chief Controller (Group 'C' post) with the respondent department in the pay scale of Rs.7450-11500/- at the relevant time, when a selection for promotion to

the post of AOM in Group 'B' category for the year 2005-07 was notified. However, he was not included in impugned eligibility list, which was prepared on the basis of seniority in the scale of Rs.6500-10500/-

2.2 He approached the Principal Bench of this Tribunal in OA No.723/2008, which was allowed on 05.12.2008 (Annexure-A-1) wherein the respondents were directed for a separate assessment of the case of the applicant for consideration for promotion to Group 'B' post.

2.3 The respondents approached Hon'ble High Court of Delhi in WP(C) No. 10011/2009, which was dismissed on 18.07.2011 (Annexure A/2). The respondents filed SLP no. 25752/2012 before Hon'ble Supreme Court, which was also dismissed on 06.12.2013 (Annexure A/3).

2.4 Meanwhile, the respondents again notified the selection for promotion for the post of AOM Group 'B' in 2011. His name was included in the eligibility list based on the seniority in the pay scale of Rs.6500-10500/. He passed the examination.

2.5 The respondents department issued orders on 13.01.2014 and 23.01.2014 directing the applicant to appear in the written test in compliance of the order passed by the Principal Bench of the Tribunal in OA No.723 of 2008.

2.6 He again approached the Principal Bench of the Tribunal in OA No.642/2014, which was allowed on 19.03.2015 (Annexure-A-4) wherein the respondents were directed to treat the applicant as having qualified the assessment for promotion to Group 'B' post on the basis of the performance in the examination held in 2011 and consider his appointment to

Group 'B' post in terms of the orders of the Tribunal dated 05.12.2008 and Hon'ble High Court of Delhi dated 18.07.2011.

2.7 The respondents challenged this order of the Tribunal in Hon'ble High Court of Delhi in Writ Petition No.11455/2015, which was dismissed on 30.01.2019.

2.8 Accordingly, his promotion order as AOM in Group 'B' for assessment year 2005-07 was issued on 23.08.2019 (Annexue-A-5) and posting order on 12.09.2019 (Annexure A/8).

2.9 He represented to the respondents to include his name for consideration for induction in Group 'A' service, for which the D.P.C. was going to be held shortly.

2.10 The relevant seniority lists have been annexed by him to show that his name should be placed between Sl. No.63 and 64 in the "Final Seniority Lists of Group 'B' officers of Traffic Department of Indian Railways as on 01.04.2016 and 01.04.2017 " published on 24.04.2017 (Annexure A/10), based on his promotion to Group 'B' on 01.03.2007. Officers up to sl. no. 61 in the said seniority list have already been inducted in to Group 'A'/IRTS panel of 2015-16 vide orders 18.12.2018 (Annexure A/11), and his name should fall within zone of consideration for the subsequent year 1016-17.

3. The applicant has prayed for the following relief(s) :-

"8. RELIEF(S) SOUGHT : In view of the facts mentioned in paragraphs No.4 and 5 of the applicant prays for the following reliefs:-

"(i) This Hon'ble Tribunal may be pleased to the respondents to forward the applicants service particulars before the UPSC through Railway Board for

his induction in Group -A/IRTS for the vacancy year 2016-17 after placing the name of the applicant in the integrated all India seniority of AOM dated 24.04.2017 in between serial no.63 and 64.

- (ii) This Hon'ble Tribunal may be pleased to direct the respondents to re-fix the pay after awarding him relief No.1 and pay him all consequential benefits and arrear of salary.***
- (iii) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, may be given in favour of the applicant.***
- (iv) Award the costs of the original application in favour of the petitioner."***

4. The respondents have filed their reply in which their main emphasis is that the Principal Bench of this Tribunal and Hon'ble High Court of Delhi have failed to appreciate the provisions of Para 203.5 of Indian Railway Establishment Manual (IREM) wherein it has been clearly mentioned that the eligibility list for promotion to Group 'B' has to be prepared on the basis of seniority in the scale of Rs.6500-10500/-. Further being qualified in the promotion examination does not guarantee the promotion, as the same is dependent on number of vacancies. No remarks have been given about correctness or otherwise regarding positioning him between sl. no. 63 and 64 of seniority list dated 24.04.2017 (Annexure A/10). It has been stated that he has been promoted to Group 'B' only on 23.08.2019, and even that has not attained finality as the judgment of Hon'ble High Court of Delhi in WP no. 11455/2015 has been challenged in a Review Petition before the Hon'ble High Court of Delhi, which is still pending for consideration. This fact of review petition has been mentioned in the promotion order dated

23.08.2019. As such his induction to Group 'A'/IRTS may not be given effect at this stage. The present status of review petition is "Certificate of Fitness be filed".

5. The applicant has filed his rejoinder wherein the same points have been reiterated.

6. This Tribunal has granted the interim relief on 11.11.2019 as follows :-

....7. Looking to the stand of both the parties, the respondents are directed to forward the applicant's service record before the UPSC through Railway Board for provisionally considering his induction in Group A/IRTS for the vacancy year 2016-2017 prior to convening of said DPC subject to the condition that result of applicant be not declared and the same would be the subject to the outcome of the present O.A."

7. Heard the argument of learned counsel for both the parties and perused the records made available to us in PDF Form. The arguments were mainly on the lines of the written pleadings.

8. Learned counsel for the applicant brought to our notice that the applicant is superannuating in April, 2021.

9. Learned counsel for the respondents submitted that order of this Tribunal while granting the interim relief have been complied with.

FINDINGS

10. The applicant has been waging a legal battle for the last 11-12 years. Though he has emerged victorious in all the judicial forums including this Tribunal, Hon'ble High Court of Delhi and Hon'ble Supreme Court, but the benefit of the same is still eluding him.

11. The respondents are relying on review petition filed in Hon'ble High Court of Delhi. However, even further 15 months of filing, the defects notified have not been cured by the respondent department. Therefore, this argument does not have any merit and is brushed aside.

12. The approach of the respondents is truly baffling. The issue of reckoning of seniority on the basis of induction in grade 6500 – 10500, as being argued by the respondents, has been adjudicated by Principal Bench of this Tribunal in OA 723/2008 and Hon'ble High Court of Delhi in WP 10011/2009 on merits. The same cannot be raised again in this Tribunal and is barred by res-judicata. This Tribunal as well as the Hon'ble High Court of Delhi have dealt with the issue in a very detailed manner before allowing the OA and dismissing the Writ Petition respectively. Therefore, the stand of the respondents in claiming that Principal Bench of this Tribunal and Hon'ble High Court of Delhi have not appreciated the provision of IREM have truly surprised us. The respondents have failed to convince the Hon'ble Supreme Court in SLP 25753/2012 for quashing the order of Hon'ble High Court of Delhi. Therefore, the issue has attained finality.

13. In the given circumstances, the respondents cannot raise the issue which has already been decided in the year 2008, 2011 and 2013 in this Tribunal, Hon'ble High Court and Hon'ble Supreme Court respectively.

14 The issue that promotion cannot be granted on the basis of qualifying examination has also been dealt with by this Tribunal on 19.03.2015 and Hon'ble High Court of Delhi on 30.01.2019. The Tribunal in its order dated 19.03.2015 have observed as under :

“14 The question that is to be answered is whether the applicant has to appear a fresh for assessing fitness for promotion to the Group ‘B’ post, once he has already appeared in such a test in 2011 and secured marks above the qualifying marks. In 2006, the applicant was not called to participate in the selection examination for the Group ‘B’ posts on the ground that his name did not appear in the seniority list of the officers in the grade of Rs.6500-10500/-, even though he was in the higher scale of Rs.7450-11500/- . Later, in 2011, he was allowed to participate in the selection process for Group ‘B’ posts and he secured qualifying marks in the written, viva voce and record of service. The respondents did not include his name in the panel on the ground that he was at Sl. No.12 while only 5 vacancies were available. The respondents had not contended that the applicant did not qualify in the written test/viva voce examination held in 2011. After Hon'ble High Court of Delhi had passed the order in WP (C) No.10011/2009 on 18.07.2011, this ground would be no more valid. It is also obvious that had the respondents decided to implement the order of the Hon'ble High Court, the selection test held on 17.12.2011 would have been a part of the action taken to implement the order of this Tribunal and the Hon'ble High Court of Delhi. Again, had the respondents considered the applicant as senior to those in the grade of Rs.6500-10500/-, his name would have appeared in the panel prepared after the selection examination held in 2011. The respondents, therefore, cannot now take a view that because of their wrong action of not giving him the appropriate seniority and not including him in the panel would imply that the applicant had not qualified in the selection/examination of 2011.”

15. From the above, it is very clear that the applicant has to be promoted to Group ‘B’ in the panel of 2005-07. His date of promotion has to be considered as 01.03.2007 (Annexure-A-7), the date on which other candidates in the panel of 2005-07 have been promoted. In fact, in compliance of the above orders of this Tribunal and Hon'ble High Court as mentioned above, the applicant was promoted in Group 'B' for assessment year 2005-07. The contents of the order read as under:

“In partial modification to this office order No.157/2019 dated 22.08.2019, the following is issued:-

In compliance of order dated 19.03.2015 of Hon'ble CAT (PB)/NDLS passed in OA No.642 of 2014 & order dated 30.01.2019 of Hon'ble High Court/Delhi in WP No.11455/2015 and C.M. No.30260/2015, Shri Sarwar Ali, Chief Controller/AGC, is promoted to Group 'B' post of AOM assessment year 2005-07.

The above promotion is subject to outcome of the review petition filed before Hon'ble High Court/Delhi."

16. Only on the basis of the fact that a defective review petition is pending before Hon'ble High Court, this matter can not be kept pending for an uncertain period, moreso, when the applicant is going to retire shortly.

17. The averment of the applicant that he should be placed between sl. no. 63 and 64 in the All India seniority list dated 24.04.2017 (Annexure A/7) has not been controverted by the respondents on facts. We find merit in the arguments of the applicant regarding the said interpolation of his name in the All India seniority list on the basis of his date of promotion in Group 'B' as 01.03.2007. Therefore, we direct the respondents to place his name in the seniority list dated dated 24.04.2017 between sl. no. 63 and 64.

18. It follows logically that while deliberating the names for induction in Group 'A'/IRTS, his name should be considered to be between sl.no. 63 and 64 of All India seniority list.

19. With the above directions, the respondents are directed to open the sealed cover. If he has been considered fit for induction in Group 'A'/IRTS

by the Departmental Promotion Committee, his name should also be included in the order for induction in to Group 'A'/IRTS at relevant place of seniority.

20. The OA is allowed in above terms. He is also entitled to all the consequential benefits from 01.03.2007, the date when other candidates of selection panel 2005-07 were promoted.

21. The respondents are directed to implement these directions within four weeks of the receipt of a certified copy of this order. One post of Junior Administrative Grade in IRTS cadre shall be kept vacant till the result of DPC for induction into IRTS is declared.

22. No order as to costs.

23. As a review petition is pending before Hon'ble Delhi High Court, needless to say that this order will be subject to outcome of the review petition.

(Navin Tandon)
Member(Administrative)

(Justice Vijay Lakshmi)
Member(Judicial)

RKM/