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Central Administrative Tribunal
Principal Bench: New Delhi

1. OA No.3343/92

New Delhi this the 24th Day of January, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)
Shri C.J. Roy, Member (Judicial)

S. Ravi,
Adviser (Signals),
Railway Board,
Rail Bhawan, Rafi Marg,
New Delhi.

...Applicant

(By Advocate Shri R.K. Kamal with Sh. S.K. Gupta,
Advocate).

Versus

1. The Chairman, Railway Board,
Rail Bhawan, Rafi Marg, New Delhi.

2. Sh. B. Rangarajan, IRSME,
General Manager (on leave)
through the Secretary, Railway
Board, Rail Bhawan, Rafi Marg,
New Delhi.

3. Sh. Raj Kumar, IRSE,
General Manager through
the Secretary, Railway Board,
Rail Bhawan, Rafi Marg, New Delhi.

...Respondents

(By Advocates Sh. M.S. Ramamurthy and Sh.P.S.
Mahendru).

2. OA No.165/93

S. Ravi, Adviser (Signals),
Railway Board, Rail Bhawan,
Rafi Marg, New Delhi.

...Applicant

(By Advocate Sh. R.K. Kamal with Sh.S.K. Gupta)

Versus

1. The Chairman, Railway Board,
Rail Bhawan, Rafi Marg, New Delhi.

2. Sh. Raj Kumar, Member Engineering,
Railway Board, Rail Bhawan,
Rafi Marg, New Delhi.

3. Sh. B. Rangarajan,
General Manager (on leave)
through the Secretary, Railway
Board, Rail Bhawan, Rafi Marg,
New Delhi.

...Respondents

(By Advocates Sh. M.S. Ramamurthy and Sh.P.S.
Mahendru for the official respondents).

(Sh. P.R. Rao, Senior Counsel with Sh. P.Sinha,
counsel for respondent - Raj Kumar in both
the cases).

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(Hon'ble Mr. N.V. Krishnan)

These two OAs involving connected matters have been heard together with the consent of parties and are being disposed of by this common order.

2. The applicant is at present working as Adviser (Signals) in the Railway Board (respondent No.1) and belongs to the Group 'A' cadre of the Indian Railway Service of Signal Engineers (IRSSE for short). The grievance of the applicant in both the cases relates to his non-appointment to the post of General Manager or equivalent while the contesting party respondents Sh.B. Rangarajan, IRSME and Sh. Raj Kumar, IRSE have been given such appointments contrary to the scheme made in this regard.

3. Appointment to the posts of General Manager and equivalent thereto are governed by a scheme notified in the Government of India, Ministry of Transport (Department of Railways) Resolution dated 16.7.86 (Anneuxre A-1), as modified by the Resolution dated 30.1.87. This scheme applies to 16 posts in all listed in Appendix-I to the scheme, i.e., the nine posts of General Manager, Zonal Railways (Open Line), 4 other posts of General Managers of production units, General Manager N.E.F. Railway (Construction), General Manager, Metro Railway, Calcutta and Director General Research

and Designs Organisation. Appointment is made from the 8 different Railway Services mentioned in Appendix-II to the scheme. The other principal features of the scheme which may be noted at present are as follows:-

- i) A Selection Committee consisting of the Chairman, Railway Board, the Secretary Ministry of Personnel and a Member of the Railway Board nominated by the Cabinet Secretary will prepare a panel for vacancies from 1st July of the year to the 30th June of the next year.
- ii) Normally, only persons who have at least two years to serve will be considered for inclusion in the panel. Likewise, normally, only those officers who can serve for 2 years will be considered for appointment.
- iii) The panel prepared by the Selection Committee becomes operative only after it is approved by the Appointments Committee of the Cabinet (ACC).
- iv) A second approval of the ACC has to be taken when any individual from the panel is to be appointed. This is provided in para 4.3 of the scheme reproduced below:-

"4.3 On every occasion on which appointment is required to be made to any particular vacancy/vacancies amongst the posts of General Managers and equivalent listed in Appendix-I, the Railway Board shall, keeping in mind the specific requirement(s), if any,



of the post(s) to be filled up; process the case for obtaining the approval of the Appointments Committee of the Cabinet for appointment of person/persons included in the Select List, to such post/posts."

4. We may first take the circumstances in which the first case OA-3343/92, was filed. They are as follows:-

4.1 A panel was prepared and approved by the ACC for the year 1991-92, i.e., in respect of vacancies from 1.7.91 to 30.6.92. Admittedly, the applicant's name stands included in the panel.

4.2 By an order dated 13/14.2.92 (Annexure A-3) Sh. B.Rangarajan, IRSME (Indian Railway Service of Mechanical Engineers) working as Chief Mechanical Engineer, Integral Coach Factory, Madras was ordered to be transferred and "detailed to look after the current duties of the post of General Manager Wheel and Axle Plant, Bangalore until further orders" in a leave vacancy. This order was issued by the Ministry of Railways with the approval of the President.

4.3 Another order dated 1.4.92 (Annexure A-4) was similarly issued transferring Shri Raj Kumar, IRSME (Indian Railway Service of Mechanical Engineers) working as Chief Administrative Officer (Construction), Southern Railway, to the Northern Railway and "detailed to look after the current duties of the post of General Manager, Northern Railway until further orders vice Sh. M.K. Rao detailed to look after the current duties of the post of Member (Mechanical) Railway Board."

4.4 Being aggrieved by these orders, the applicant submitted a representation on 30.11.92 (Annexure A-5) to the Secretary, Railway Board with the request that it be forwarded to the Cabinet Secretary for consideration. As he came to understand that the representation was not forwarded, he has filed this application.

4.5 The applicant has succinctly set out his grievance and the basis therefor in paras 4.5. and 4.6 of his O.A. They are reproduced below:-

"4.5 The following arbitrary acts and violation of the provisions of the Scheme by the Railway Board have so far deprived the applicant of the legitimate claims:-

a) The Railway Board issued order dated 13/14.2.1992 (Annexure A-3) filling up a vacancy of the post of General Manager, appointing Shri B.Rangarajan, IRSME, when he had less than 2 years of residual service (Retirement due on 31.1.94) and he was not eligible for appointment. Secondly, he was appointed without the approval of the A.C.C. It is learnt that the A.C.C. finally rejected the proposal of the Railway Board for appointing Shri Rangarajan, as General Manager. His appointment, therefore was d'hors the Rules and deprived the eligible officers to hold the post.

b) The Railway Board issued orders dated 1.4.1992 (Annexure A-4) filling up a vacancy of the post of General Manager, appointing Shri Raj Kumar, IRSE committing the following illegalities:-

i) His name was not placed in the panel approved by A.C.C. in the year 1991.

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ii) The panel approved in 1991 still current had not been exhausted.

iii) He was junior to the applicant who was in the approved panel and still awaiting his turn for appointment with more than 2 years to serve.

iv) He was appointed d'hors the Rules.

v) He was appointed without the approval of A.C.C.

c) The applicant humbly submits that the arrangement of promotion in the above two cases, although shown as "looking after current duties", but actually the language used was a camouflage or a veil for regular arrangement to conceal the violation of the provisions of the scheme and evade the prior approval of A.C.C. The arrangement continued for indefinite duration and against long-term vacancies.

4.6 The submission of the applicant is that if the Railway Board had not acted arbitrarily and in gross violation of the provisions of the Scheme and without approval of the Appointments Committee of the Cabinet in filling up the posts of General Managers as explained in para 4.5 above, the concerned vacancies would have been filled up by empanelled persons and the applicant would not have been illegally deprived of his appointment to the post of General Manager prior to Aug, 1992 when he had more than 2 years to serve in the higher post."

4.6 As there were three vacancies of General Manager, the applicant states that he could be still considered for one of them.

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4.7 The only relief sought is to direct the respondents "to consider the applicant for promotion to the post of General Manager against one of the existing vacancies, if necessary, by relaxing the provisions of para 7.3 of the Scheme Annexure A-1."

5. While OA-3343/92 was pending, the Ministry issued another order dated 29.12.92 by which Shri Raj Kumar was approved for regular appointment retrospectively w.e.f. 23.4.92 and he was also approved for appointment as Member (Engineering) Railway Board and ex- officio Secretary to the Government of India w.e.f. 1.1.93. It is in these circumstances that the applicant filed OA-165/93 challenging that order (Annexure A-6). It is contended in para 4.10 of the OA as follows:-

"The submission of the applicant is that Respondent No.1, on receipt of the notice of O.A. 3343/92 on 28.12.92, took immediate action for rectifying the illegalities committed in the appointment of Shri Raj Kumar (Annexure A-4) and manipulated the issue of the impugned order dated 29.12.92 (Annexure A-6). The applicant submits that if the long-term vacancy of the General Manager had not been filled up by illegal appointment of Shri B.Rangarajan, the same vacancy would have been filled up by one officer Shri Shukla who was in the approved panel of the General Managers. In that event, the second long-term vacancy illegally filled up by Shri Raj Kumar would have been filled up by the applicant who was next person in the approved panel. By manipulation, Respondent No.1 deprived the applicant of his right to be considered for appointment as General Manager in

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accordance with the Scheme, which has statutory force."

The illegalities committed in the appointment of Shri Raj Kumar are then set out. Excluding the grounds raised in the earlier OA these are as follows:-

"i) The impugned order being administrative in character, was illegally put into effect retrospectively in violation of the law laid down in the judgements (Annexure A-7, A-8 and A-9).

ii) By the impugned order, Shri Raj Kumar has been granted regular scale of the post of General Manager even though he never performed all the duties, functions and responsibilities of General Manager, because "looking after the current duties of the post of General Manager, Northern Railway" cannot be identified with the performance of all the duties (including major policy decisions) and shouldering all the responsibilities and hazards of the post of General Manager.

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iv) The appointment of Shri Raj Kumar as Member Engineering with effect from 1.1.93 is illegal because he never performed the duties and functions of a regular General Manager before his appointment as Member Railway Board."

The applicant has prayed for quashing the impugned Annexure A-6 order dated 28.12.92 and for a direction to the respondents to consider him for promotion to the post of General Manager in the chain of vacancies arising out of quashing the impugned order.

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6. The Ministry (Respondent No.1) and Shri Raj Kumar have filed replies opposing both the OAs. Shri Rangarajan did not either file any reply or appear before us. These replies will be considered shortly.

7. When the case came up for hearing on 22.4.93, the learned counsel for the Ministry disclosed certain other facts which were not part of the reply of this respondent. He was, therefore, directed to file a supplementary reply. That was filed on 17.5.93. A supplementary rejoinder was filed by the applicant on 20.5.93 summarising in a nutshell his objections to the appointments of Shri Rangarajan and Shri Raj Kumar and the basis for the relief claimed by him. After hearing all the parties we passed an order on 11.6.93 calling for further particulars from the Ministry. Most of this was furnished in the second supplementary reply dated 6.10.93 of the Ministry. Therefore, on 2.12.93 we directed the Ministry to produce certain relevant records and to furnish certain information. After this was done, the two OAs were finally heard and reserved for orders.

8. The Ministry (Respondent-1) has furnished more detailed information in the supplementary reply dated 17.5.93 and we can start with this. The main contention raised is that though the applicant was included in the 1991 panel, he was not senior enough to be appointed when Sh. Rangarajan was appointed to perform the current duties of the post of General Manager, Central Railway/ ^{w.e.f. 18.5.92.} Similarly, in regard to Sh. Raj Kumar, it is contended that he was selected in a second panel in 1991 as he had to be groomed

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for eventual appointment as Member. This was done in accordance with para 4.4(c) of the Scheme.

9. The detailed reply of the Ministry in regard to the appointment of Sh. Rangarajan is as follows:- (*relevant extracts only reproduced*)

"2. Shri B. Rangarajan is borne on the Select List prepared for the year 1991-92 for appointment to the post of General Managers and equivalent. His name appears at S.No.7 of the said Select List."

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"Approval of the Panel by the Competent Authority in accordance with the provisions of the Scheme was conveyed vide letter dated 20.11.91."

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"Pending approval of the competent authority for individual appointments, Shri B.Rangarajan was detailed to look after the current duties of the post of General Manager/Wheel and Axle Plant on 14.2.92 when he was just over 56 years of age by a few days (13 days). Subsequently, he was detailed to look after the current duties of General Manager/Integral Coach Factory, and thereafter of General Manager/Central Railway w.e.f 18.5.92 where he continued in that capacity till 10.12.92 after which date he was on leave. Shri K.R. Vij, who is senior to the applicant and already looking after the current duties of the post of General Manager/Chittaranjan Locomotive Works w.e.f. 1.6.92, was appointed as General Manager, Central Railway on regular basis vice Shri Rangarajan and Shri Vij is continuing on date."

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"It is, therefore, submitted that the contention of the applicant that but for the posting of Shri Rangarajan as General Manager, he would have been appointed as General Manager is untenable because there were 13 officers in between Shri Rangarajan and the applicant on the select list formed for the purpose of appointments to the posts of General Managers for the period, 1991-92, and a number of them were eligible and had a prior claim for appointment as General Manager (Open Line) in preference to the applicant."

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"It may be submitted that the applicant was included in the panel of 1991-92 and his name appeared below twenty officers who were senior to him. After the name of the applicant, there were ten more officers borne on the panel but none of them has been appointed to the post of General Manager or equivalent. In other words, no junior to the applicant in the aforesaid select list has been appointed to the post of General Manager or equivalent."

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"In fact in OA No.165/93 (para 4.10), the applicant has himself expressly stated that had Shri B. Rangarajan not been detailed to look after against the long term vacancy of General Manager, the same would have been filled by another officer senior to him on the Select List -Shri Shukla."



10. Before referring to the reply of the Ministry in regard to the appointment of Sh. Raj Kumar, it is necessary to point out that the Scheme for appointment as General Manager etc. has also been amended by the further resolution dated 16.2.87 (Annexure R-IV) and resolution dated 26.2.88 (Annexure R-III). Annexure R-IV prescribes tenure for Member and Chairman of the Railway Board. Annexure R-III resolution makes the scheme applicable to three more posts of General Manager and equivalent grade, raising the total number to 19. It also modifies the criterion of 6 posts held by officers of the same discipline, used to determine predominance of Members of one Service in the appointments to the 19 posts, to 37.5% of the total number of posts governed by the scheme.

11. The Ministry also relies on para 4.4 (c) of the scheme to justify the promotion of Shri Raj Kumar. That provision is as follows:-

"4.4 While taking action as in the preceding sub-para, the Railway Board shall normally suggest the promotion of empanelled officers in order of their inter-se seniority within those cleared for that particular type of assignment, except when -"

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(c) it becomes inescapable to promote an officer of a particular discipline as General Manager (Open Line), ahead of his normal turn, to meet the requirements for manning the post of Member,



"Railway Board, corresponding to his discipline. In such cases, detailed reasons will be recorded for the consideration of the Appointments Committee of the Cabinet. In the event of such an appointment being approved by the Appointments Committee of the Cabinet, it will be notified that the junior officer will not gain any seniority vis-a-vis his empanelled seniors or"

12. In the light of this provision the Ministry contended as follows in respect of Sh.Raj Kumar in the main repy dated 13.4.93:-

"Sri Raj Kumar, an Officer of Indian Railway Service of Engineers, was selected by the Selection Committee for appointment to the post of General Manager, so that after having had the experience of working in the post of General Manager (Open Line) he may be available to man the post of Member Engineering on retirement of Sri Y.P.Anand, which has been duly approved by the Government. His appointment as General Manager ahead of his turn is for the purpose of filling up of the post of Member Engineering, Railway Board, belonging to his discipline(IRSE) and is covered under para 8(iii) of the Scheme notified under Resolution dated 16.7.86 and Para 4.4(c) of the amendment notified under Resolution dated 30.1.87. His appointment as such has no relevance to the claim of the applicant because the applicant belongs to Signal Engineering discipline (IRSE) and is not entitled to appointment to the post of Member Engineering."

This is elaborated as follows in the supplementary reply dated 17.5.93:-

"5. In regard to the contention of the applicant that but for appointment of Shri Raj Kumar, he should have been appointed as General Manager, it is submitted that Shri Raj Kumar belongs to a differnt discipline viz. Civil Engineering (IRSE) whereas the applicant belongs to the Service of the Signal Engineering (IRSSE). In para-8(iii) of the Scheme (Annexure R-1 of the Counter) relating to the appointments to the post of General Managers and equivalent, it has been provided that the Selection Committee in preparing the panel of names for consideration for appointment to the post of General Managers and equivalent shall, as far as may be practicable, ensure, inter-alia, that an officer of the appropriate service with adequate experience in the post of General Manager and equivalent would become available for



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consideration for appointment against a future vacancy in the corresponding functional post of Member of the Railway Board. The Scheme further provides vide para 4.4.(c) of the Amendment dated 30.1.87 (Annex-RII) of the counter that an officer of a particular discipline can be promoted as General Manager (Open Line) ahead of his normal turn to meet the requirements of manning the post of Member, Railway Board corresponding his discipline. It has also been provided in the Scheme that the Selection Committee can meet more than once in a year to form the Select List. It was in view of these provisions that a supplementary panel had to be formed to meet the requirement of the future vacancy of the post of Member Engineering, Railway Board which could be filled only from officers of Civil Engineering discipline (IRSE), since it was found that no eligible/suitable General Manager (Open Line) or any empanelled officer on the Select List belonging to Civil Engineering discipline was available to be posted as Member Engineering in the vacancy due to the then incumbent thereof having to retire on 31.12.92 AN. In the supplementary selection, five officers were considered by the same Selection Committee comprising of the Chairman, Railway Board, Secretary/Department of Personnel and Training and a Member of Railway Board and out of them Shri Raj Kumar was selected for appointment to the post of General Manager (Open Line). He was detailed to look after the current duties of the post of General Manager w.e.f. 1.4.92 and was eventually regularly appointed to the same post of General Manager, Northern Railway w.e.f. 23.4.92. It may be stated that Shri Raj Kumar was selected and put on the panel on 24.10.91 and the approval of the Competent Authority was received on 23.4.92."



13. The applicant filed a common supplementary rejoinder in both the OAs on 21.5.93 wherein he summarised his contentions. Paragraphs 5 and 7 being important are reproduced below:-

u "5. That the respondents have over-emphasized the number of officers above the applicant in the panel. A large number of them could not be appointed due to following constraints:

- i) Officers with less than 2 years service left at the time of appointment could not normally be considered, whn officers having more than 2 years service, including the applicant were available.
- ii) Officers recommended by the Selection Committee for specific posts only could not be considered for other posts falling vacant.
- iii) More than 6 officers could not be appointed from any one Group 'A' Cadre.

The respondents have deliberately suppressed these facts from the Hon'ble Tribunal."

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"7. That the respondents have failed to explain (inspite of additional opportunity given to them after the completion of pleadings to file an additional affidavit) the following acts of exercise of powers without jurisdiction, misuse and abuse of powers conferred upon them and deliberate inaction to implement the mandate of the scheme:-

I. Exercise of powers without jurisdiction:

- i) Shri Raj Kumar was appointed on transfer against a long term vacancy of General Manager under order dated 1.4.92 to look after the current duties, when admittedly the approval of the competent authority was received on 23.4.92.

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ii) No approval of A.C.C. was obtained prior to the appointment of Shri Raj Kumar on 1.4.92.

iii) No notification to the seniors, including applicant as enjoined in Para 4.4.(c) of the Scheme was issued, in the case of Shri Raj Kumar.

iv) For the blocking of a long term vacancy from 14.2.92 to 10.12.92 as admitted by Respondent No.1 by illegal appointment of Shri B.Rangarajan, no approval was obtained from A.C.C., when eligible persons in the panel were available.

v) Shri B. Rangarajan was appointed to look after the duties of General Manager when no approval for relaxation of 2 years' rule from the competent authority was obtained.

II Misuse and abuse of powers:

i) Shri Raj Kumar never performed the full-fledged duties of the post of General Manager, but under orders dated 29.12.92, he has been appointed as General Manager with retrospective date i.e. 23.4.92.

ii) Shri Raj Kumar has been granted the scale of the post of General Manager with effect from 23.4.92 without performing full-fledged duties for the same post, thereby committing a fraud on the public exchequer.

iii) Shri Raj Kumar has been appointed as Member Engineering without fulfilling the eligibility conditions contained in the Resolution dated 16.2.87 (Annexure R-IV) of the couter in O.A. No.3343/92 filed by respondent).

III Deliberate inaction in the implementation of the Scheme:

i) The respondent failed to operate the valid panel prepared by the High Level Selection Committee and approved by the A.C.C. strictly in accordance with the conditionalities of the Scheme.

ii) The respondent failed to process preparation of panel for 1992-93 in accordance with the time-frame mentioned in the Scheme.

iii) The respondent failed to give a fair deal to the applicant in the operation of the valid panel."

14. A direction was given on 11.6.93 in both the applications to the respondents to furnish certain additional particulars, including the names of all those in the panel ending with the applicant giving their dates of birth. The respondents furnished all particulars except the particulars of the names of persons included in the panel, in respect of which an affidavit was filed by Sh. A.N. Shukla, Chairman, Railway Board, claiming privilege under Articles 74 (1) and 74 (2) of the Constitution of India as well as under Sections 123 and 124 of the Evidence Act, 1872. He, however, stated in his affidavit that he has no objection to the above document being produced for our perusal. This matter was argued for some time, but, ultimately, the learned counsel for the applicant was fair enough to state that the original records produced by the respondents could be perused by us for our own satisfaction to arrive at a proper decision in this case. Further directions were issued to the respondents on 2.12.93 to produce certain records/information which was done.



15. In the light of these pleadings, the matter was heard at great length. The learned counsel for Shri Raj Kumar, respondent No.3 in OA-3343/92 and respondent 2 in OA-165/93, filed short written arguments which are on record.

16. We find it useful to take the issues arising in these OAs seriatim for our decision. These are brought out in the supplementary rejoinder of the applicant dated 21.5.92, reproduced in paragraph-13 supra.

17. It is alleged that the Ministry of Railways has exercised powers without jurisdiction by illegally appointing Sh. Rangarajan, without obtaining the approval of the ACC and thus blocking a long term vacancy when eligible persons in the panel were available.

18. In this connection we notice from the records produced by the respondents relating to the panel of 1991-92 that the ACC approved the empanelment of 31 officers for the posts of General Manager and equivalent in respect of vacancies from 1.7.91 to 30.6.92. This approval was communicated by the Secretariat of the ACC to the Ministry in letter dated 13.11.91. The Establishment Officer and Secretary A.C.C sent on 20.11.91 the panel as approved by the ACC which not only indicates the names of the 31 persons who are approved but the posts for which they were approved.



19. Sh. B. Rangarajan (IRSME) was approved for General Manager (Open Line) General Manager (Production Unit), Director General, RDSO and Principal RSC and was placed at srl. No.7. The applicant Sh. S.Ravi (IRSSE) was placed at serial No.21 and was approved for General Manager (Open Line), General Manager (Metro), Director General (RDSO), General Manager, Railway Electrification and Member, RSC.

20. It is clear from the Annexure A-3 telegram dated 14.2.92 in OA-3343/92 that Sh. B. Rangarajan was transferred to the Wheel and Axle Plant, Bangalore, to look after the current duties of the post of General Manager of that Plant in a leave vacancy vice Sh. M.C. Dass proceeding on leave. Annexure-I to the additional information furnished on 6.10.93 by the Ministry as directed by us shows that Sh. B.Rangarajan held this post only from 14.2.92 to 6.3.92 after which date there was a break. He was subsequently appointed to hold current charge of the post of General Manager, Integral Coach Factory, again on a leave vacancy from 18.4.92 to 17.5.92. Thus, these two vacancies do not form part of long term vacancies. Further, these are also posts to which Sh. Rangarajan could have been appointed but not the applicant, as these are production units for which the applicant has not been approved by the ACC. Therefore, the applicant has no locus standi to object to the short term appointments to these posts.



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21. The same Annexure-I shows that subsequently, Sh. B. Rangarajan was appointed to hold current charge of the post of General Manager, Central Railway from 18.5.92 to 10.12.92. This is a long term vacancy. The objection of the applicant, can, therefore, be considered with reference to this appointment.

22. The basic question that arises is whether the Minister of Railways has any authority to appoint anyone from the approved panel to hold current charge of the post of General Manager or its equivalent, without first obtaining the second approval of the ACC to the specific appointment, as provided in para 4.3 of the Annexure A-1 scheme. The learned counsel for the applicant submitted that in the absence of a law on the subject or rules under the proviso to Article 309 "the Scheme for appointment to the post of General Manager and equivalent in the Indian Railways" notified by the Annexure A-1 resolution dated 16.7.86 has to be treated as a law on the subject and strict compliance thereof is required. Admittedly, para 4.3 of the scheme requires that on every occasion on which appointment is required to be made of any person included in the Select List to a specified post, the Ministry should process the case and obtain the approval of the ACC. He contended that no distinction has been made in this command between regular appointments and appointments to merely look after the current duties of the specified post.

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23. On the other hand, the learned counsel for the Railways submitted that such an interpretation is not called for. The resolution itself states that the Scheme has been prepared "for the smooth and efficient running of the Railway system." Every provision should be considered in the light of this basic objective. It is well known that approval by the ACC takes a long time, whatever be the reasons therefor. Therefore, if such approval is a pre-condition for appointment to perform current duties - i.e. as in the circumstances in which Sh. B.Rangarajan had to be appointed, it would paralyse the Railway system.

24. We have bestowed our careful consideration to this important issue. We have to observe at the outset that it is not as if that Sh. B.Rangarajan alone was appointed to look after the current duties of a specified post without obtaining the prior approval of the ACC. We notice that this is the general practice, probably due to the fact that prior approval of the ACC cannot be taken in time. No doubt, the Scheme is silent on the subject. Undoubtedly, the restrictions in para 4.3 of the Scheme apply both to regular appointments as well as to short term or long term appointments made to look after the current duties of a post. We, however, are unable to agree that the Minister of Railways does not have any power to issue orders in anticipation of the ACC's approval. In a cabinet form of the Govt., there is joint responsibility. It is for the Minister of Railways alone to decide, whether he should take any decision in anticipation of the approval of the ACC. If such a decision is taken, it is for the ACC alone to either give its ex post facto approval or to reverse



the decision taken by the Minister. The ACC alone can disown the decision, if necessary, even retrospectively, if that is permissible and communicate, either explicitly or by implication, its disapproval of the Minister's action in taking a decision without obtaining prior approval. In our view, these are purely internal matters of administrative procedure at the highest level of Government, which do not confer any right on a Government servant. This may be a mere irregularity in contravention of the procedure laid down in the Scheme, but, it will not invalidate the decision taken, unless it is disapproved by the ACC.

25. The Ministry has placed for our perusal the original records regarding the appointment of Sh. B. Rangarajan. It is seen that on 29.1.92 the Minister of Railways recorded a minute that Sh. Rangarajan, the next seniormost IRSME officer, should be promoted in the vacancy of Sh. M.C. Dass, General Manager, Wheel and Axle Plant who was proceeding on leave. He also authorised that Sh. Rangarajan may be given a regular posting w.e.f. 1.3.92 against a vacancy in the grade of General Manager, which would arise on the retirement of the Member (Mechanical) of the Railway Board and the consequent promotion as Member of one IRSME officer, working as General Manager. He also authorised the appointment of Sh. B. Rangarajan, in anticipation of the approval of the ACC. We also notice that the Chairman, Railway Board sent a D.O. letter on 18.5.92 to the Establishment Officer and Secretary, ACC, seeking approval, among other things, to the appointment of Sh.

B. Rangarajan as General Manager, Central Railway.

It was indicated in the proposal that from 17.4.92 he was looking after the current duties of the post of General Manager, Integral Coach Factory in a leave vacancy and that he was directed to look after the current duties of the post of General Manager, Central Railway.

A reply to this D.O. letter was received by him from the Secretariat of the ACC, in the letter dated 25.9.92, which conveyed the approval of the ACC to certain appointments. As far as the General Manager, Central Railway is concerned, the appointment of Sh. K.R. Vij, IRSSE was approved. In regard to the proposal to appoint Sh. Rangarajan to this post this letter is silent. It is also silent on the appointment of Sh. Rangarajan to look after the current duties from 18.4.92.

26. It is thus clear that while the proposal of the Minister to appoint Sh. Rangarajan regularly as General Manager, Central Railway/ the ACC did not frown upon him for having taken a decision to appoint Sh. Rangarajan to look after the current duties, without its prior approval.

27. In the circumstances, we are of the view that the Ministry of Railways cannot be faulted on the appointment of Sh. Rangarajan to the post of General Manager, Central Railway to look after the current duties for the period from 18.5.92 to 10.12.92. After the approval of the ACC to the appointment of Sh. K.R. Vij to that post, he was appointed and, Sh. B.



Rangarajan had to revert.

28. We, therefore, hold that the Scheme does not contain any positive bar to making such appointment in anticipation of the ACC's approval and such appointment cannot be called in question on that ground by any aggrieved officer.

29. It is also contended that when Sh. Rangarajan was appointed to look after the duties of General Manager, no relaxation of the two year - contained in para 7.3 of the Scheme - was obtained from the competent authority. We are unable to agree with this submission for two reasons. Firstly, the applicant whose date of birth is 3.8.86, as seen from the records and who had attained the age of 56 years on 3.8.92 has similarly prayed that he should be considered for appointment to a post of General Manager or equivalent even though he would have less than two years' of service left, after such appointment. When he has made such a prayer for himself, the appointment of Sh. Rangarajan when he was short of 2 years service by 13 days cannot be called into question. That apart, the learned counsel for the applicant has strongly relied on the judgement of the Calcutta Bench of the Tribunal in OA-924/93 (Bhaskar Chowdhuri Vs. Union of India & Others), wherein, it was held that such relaxation is to be given as a matter of course after the inclusion of the name in the panel approved

by the ACC. Moreover, as stated above, it is entirely for the Minister of Railways to decide in the first instance whether he should appoint a person having less than two years of service to such a post, in anticipation of the ACC's approval. The situation would have been different if the ACC had specifically disapproved of this appointment *ab initio*, i.e., with retrospective effect, in which case, as far as others like the applicant are concerned, a claim could arise that notwithstanding the appointment of Sh. Rangarajan, there was a case for notional appointment from the date he was appointed, as the ACC has disapproved of his appointment with retrospective effect. That contingency does not arise in this case.

30. In regard to Sh. Raj Kumar, an objection has been taken that he was appointed on transfer to hold the current charge of the duties of General manager by the order dated 1.4.92 when, admittedly, the approval of the competent authority was received only on 23.4.92. Further, no prior approval of the ACC was obtained before he was appointed from 1.4.92.

31. In so far as the second objection is concerned, we have rejected the similar objection in respect of Sh. Rangarajan. That decision covers this objection also.

32. A perusal of the original record, produced by the first respondent in regard to Sh. Raj Kumar, shows that a supplementary panel for the post of General Manager and



equivalent was held on 24.10.91 for the following reasons:-

i) Sh. Y.P. Anand, (IRSE) Member, Mechanical was due to retire on 31.12.92.

ii) This post of Member is open to only officers of the IRSE.

iii) Out of the working General Managers, only four belong to IRSE, all of whom were due to superannuate between April, 1992 to June, 1993. Those who retired after 31.12.92 will thus have only six months service or less.

Likewise, the panel for 1991-92 included two IRSE officers who too, would be left with substantially less than 2 years service as on 31.12.92. Hence, the need arose to prepare a supplementary panel of IRSE officers to feed the post of Member (Engineering).

iv) The preparation of this panel is thus covered by para 8(iii) read with para 4.4(c) of the Scheme. It is further seen that the Committee considered the claims of the eligible officers and recommended only one name viz. that of Sh. Raj Kumar, respondent in both the cases. Approval of the ACC to the appointment of Sh. Raj Kumar as General Manager or equivalent post was conveyed in the letter dated 23.4.92 of the Secretariat of the ACC. It was, however, directed that, as far as selection of Member (Engineering) was concerned, which post would fall vacant on 31.12.92, the selection should be made from out of the five officers who were senior to Sh. Raj Kumar. This direction of the ACC was, obviously, improper and hence, it was taken up for reconsideration by the Chairman, Railway Board by his letter dated

4.5.92 to the Establishment Officer and Secretary, ACC. Finally, the ACC by its letter dated 29.12.92, reconsidered this decision and approved the appointment of Sh. Raj Kumar as Member (Engineering) w.e.f. 1.1.93.

It is thus clear that the appointment of Sh. Raj Kumar is covered by para 4(4) (c) of the Scheme. The applicant was not entitled to be considered as he was not a member of the IRSE. Hence, *prima facie*, the applicant cannot have any objection to the empanelment of Sh. Raj Kumar.

33. No doubt, Sh. Raj Kumar was appointed from 1.4.92 when there was no approval of the panel by the ACC. As held above, the appointment was made only after he had been empanelled by the Selection Committee on 24.10.91. His appointment, therefore, was in the context of that selection, which was awaiting approval of the ACC. He was appointed from 1.4.92, no doubt, in anticipation of the ACC's approval which was ~~on subsequent dates~~ received only on 23.4.92. As mentioned in the case of Sh. Rangarajan, this cannot give rise to a cause of action to any other official.

34. The other objection raised is that if the appointment of Sh. Raj Kumar was under clause (c) of sub para 4 of para 4 of the Scheme, it should have been notified that the junior officer so appointed, will not gain any seniority

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vis-a-vis his empanelled seniors, as provided in clause c. This, indeed, is an omission. But this will not invalidate the appointment of Sh. Raj Kumar nor render it illegal. It is a matter of regret that having processed the case of Sh. Raj Kumar under para 4 (4) (c) of the Scheme the respondents failed to notify the seniors about this condition in regard to his appointment. A suitable direction will be issued to the respondents in this behalf.

35. The learned counsel for the applicant has raised the following further objections in respect of the appointment of Sh. Raj Kumar:-

"Misuse and abuse of powers:

i) Shri Raj Kumar never performed the full-fledged duties of the post of General Manager, but under orders dated 29.12.92, he has been appointed as General Manager with retrospective date i.e. 23.4.92.

ii) Shri Raj Kumar has been granted the scale of the post of General Manager with effect from 23.4.92 without performing full-fledged duties for the same post, thereby committing a fraud on the public exchequer.

iii) Shri Raj Kumar has been appointed as Member Engineering without fulfilling the eligibility conditions contained in the Resolution dated 16.2.87 (Annexure R-IV) of the counter in O.A. No.3343/92) filed by respondent)." .

36. In so far as the first objection is concerned, the learned counsel for the applicant submitted that administrative orders cannot be given retrospective effect. It is true that



in the present case Sh. Raj Kumar was transferred by the order dated 1.4.92 (Annexure A-4) from Southern Railway to Northern Railway to look after the current duties of the post of General Manager, Northern Railway and that by the impugned Annexure A-6 order dated 29.12.92 his regular appointment w.e.f. 23.4.92 was notified. The learned counsel relied on the judgement of the Tribunal in Deepak Samal Vs. Union of India & Others 1991 (3) CSJ CAT 225 (PB), wherein it has been held that an order which is purely administrative in nature cannot operate retrospectively to the prejudice or detriment of a Government servant. That was a case where an I.P.S. Officer sought voluntary retirement on 22.10.84 for the purpose of absorption in the public sector undertaking where he was on deputation i.e. Air India. Government did not convey its approval and he continued in the service in Air India. The Ministry forced him to go on leave upto 9.4.86 and a direction was given to this effect by the Ministry to Air India. After he resumed duties, he was served with an order, retiring him from 30.11.83 by the order dated 27.2.86. It was in these circumstances that a declaration was given that a purely administrative order cannot operate retrospectively to the prejudice or detriment of a Government servant. Obviously, that situation does not obtain in the present case. Annexure A-6 order is certainly not prejudicial to the officer concerned, i.e., Sh. Raj Kumar. It cannot be to the prejudice of the applicant

because as mentioned above he was not eligible for being posted as General Manager, Northern Railway on the considerations mentioned in para 4(4)(c) of the Scheme.

37. That apart, the Annexure A-6 order can be justified in the light of the principles laid down by the Supreme Court in State of West Bengal & Ors. vs. Aghore Nath Dey & Ors. (JT 1993 (2) SC 598).

This is a case where an appointment has been regularised retrospectively after making good a procedural irregularity, which had taken place at the time of initial appointment.

38. The second objection is not germane to this OA and the applicant has no loco standi in that matter. That apart, the learned counsel for the respondents submitted that during the period when officers are appointed to perform current duties of a post, their pay and allowances are regulated strictly in accordance with the provisions of FR 49.

39. Likewise, the applicant cannot make a grievance against the appointment of Sh. Raj Kumar as Member (Engineering). For, he himself is not eligible to hold that post.

40. In his supplementary affidavit dated 20.5.93, the applicant has stated that the Ministry operated the 1991-92 panel for the purpose of filling up vacancies which arose upto 31.7.92. He has furnished the details in Annexure R-I to that reply. We have perused it. It shows the 7 clear vacancies which arose from 1.4.92 to 1.8.92 and how they were filled





up. The details are summarised as follows:-

S.No.	Date on which vacancy arose	Reason for the vacancy	How filled up
1.	31.3.92	Retirement of Sh.R.D.Kitson, Chairman, Railway Board and therefore, consequent vacancy due to promotion of Sh.M.K.Rao G.M. Norther Railway.	Sh.Raj Kumar as General Manager, Northern Railway.
ii)	30.4.92	Retirement of Sh.G.N.Phadke G.M. (Constrn.).N.F. Railway	Sh. J.M. Lamba officiating in leave vacancy regularised.
iii)	14.5.92	Due to promotion of Sh.A.N. Shukla, G.M. Central Rly. as Member vice Sh.M.K.Rao proceeded on leave.	Sh.B.Rangarajan was posted as G.M., Central Railway.
iv)	31.5.92	Retirement of Sh.M.M. Sharma General Manager, South Centaral Railway.	Sh.D.C. Mishra, promoted.
v)	31.5.92	Sh.J.Upadhaya, G.M./CLW promoted as Member Electrical vice Sh.N. Venkatsan retired.	Sh. K.R. Vij promoted.
vi)	30.6.92	Sh.S.P. Jain, Member (Staff) retired. Sh. M.K. Rao, Member (Mech.) posted on return from leave.	
vii)	31.7.92	Retirement of Sh.S.Bhatnagar, G.M./DLW.	Sh.Hasan Iqbal FA&CAO promoted as Principal,RSC.

Out of the above, we note that the item at (vi) is a case where local arrangement was made without involving any one from the panel. This is actually related to (iii), which otherwise, would only be a leave vacancy. The applicant's contention is that against the seven vacancies the eligible persons from the panel who should have been appointed are S/Shri J.N. Lamba, D.C. Mishra, Pramod Kumar, R.K. Shukla, Hasan Iqbal, K.R. Vij and the applicant.



41. We have carefully considered this argument. The major flaw is the assumption that Shri Raj Kumar was not entitled to be appointed as General Manager, Northern Railway Srl. No.1). His appointment, as shown earlier, was due to the preparation of a second panel to groom a suitable officer to be appointed as Member Engineering on the retirement of the incumbent on 31.12.92 and the inclusion of only Shri Raj Kumar's name in that panel. The validity of this appointment has already been upheld earlier. Hence, on his own submission, the applicant's turn would not have come during the period of currency of the panel.

42. The Annexure R-1 list referred to above shows that appointments have been made from the panel on vacancies which arose on 31.7.92 (serial No.vii and viii thereof). In so far as Sh. Pramod Kumar is concerned, we notice from the records relating to the appointment of Sh. Rangarajan that the Ministry had sent proposal to fill up four posts, one of which was the post of D.L.W. vice "Shri S. Bhattacharya (IRSME) proceeding on leave for one month w.e.f. 1.6.92, which is likely to be extended further. He is superannuating on 31.7.92." The Ministry recommended on 18.5.92 Shri Pramod Kumar (IRSME) for posting as General Manager/DCW, which was approved by the ACC on 25.9.92.



43. The respondents have not explained the appointment of Shri Hasan Iqbal as Principal R.S.C. from 31.7.92 as stated in serial No.(viii) of Annexure R-1. However, we notice that he is senior to the applicant in the panel of 1991-92 which is also admitted by him in that Annexure. Hence, the applicant does not have a case on this ground also. If it is his case that the panel of 1991-92, has been operated to fill up the vacancies which arose after 30.6.92, contrary to para 9 of the Scheme, in the case of Sh. Hasan Iqbal and the same benefit should be given to him and he should be considered for the vacancies which arose after 30.6.92, that is a totally different cause of action, not covered by the present applications.

44. For the detailed reasons given above, we are of the view that neither the appointment of Sh.B. Rangarajan nor of Shri Raj Kumar entitles the applicant to the relief claimed by him in these two applications and accordingly, these applications are dismissed. We, however, direct the first respondent to issue a corrigendum to the Annexure A-6 order dated 29.12.92 in OA-165/93 clarifying that Sh.Raj Kumar's/ as General Manager Northern Railway is made under para 4.4.(c) of the Scheme and the respondents should notify that he will not gain any seniority on account of this appointment vis-a-vis his seniors who have



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been empanelled earlier in the panel for 1991-92. Copies of this order be placed in both the applications. No costs.

(C.J. ROY)
MEMBER (J)

San.

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(N.V. KRISHNAN)
VICE-CHAIRMAN

अधिकारित सत्यप्रतिलिपि
CERTIFIED TRUE COPY
दिनांक.....
Date..... 24/11/94
अनुभाव अधिकारी (संगठन-1)
Section Officer (J 1)
केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Office
प्रधान न्यायालय, नई दिल्ली
Principal Branch, New Delhi