

JAIPUR

Dated of order: 04.08.2003

OA No.12/2000

Ashok Kumar Meena s/o Shri Bal Krishna Meena aged about 40 years, r/o 107, Shiv Ganesh Nagar, Model Town, Malviya Nagar, Jaipur, presently working as Chief Inspector of Works (SSE), Jaipur.

.. Applicant

Versus

1. Union of India through its General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager (DRM), DRM Office, Jaipur Division, Jaipur.

.. Respondents

Mr. Sunil Samadaria - counsel for the applicant

None present for the respondents.

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

Per Hon'ble Mr. M.L.Chauhan

The applicant has filed the present application for the following reliefs:-

- "i) quash and set aside the integrated seniority list which has been made taking base grade as 2000-3200.
- ii) quash and set aside the selection process for the post of AEN in pursuance of Ann.2.
- iii) direct the respondents to prepare fresh integrated seniority list taking grade of 2370-3500 = 7450-11500 (revised) as base grade and further conduct the selection to post of AEN on

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the basis of fresh integrated seniority list.

- iv) any other relief which the court deem fit and proper in circumstances of the case."


2. The applicant is Civil Engineer and he made entry in Railway Service as Inspector of works (IOW) Grade-III. Further promotional avenue from this post in ascending order is IOW Grade-II, IOW Grade-I and Chief IOW. All these posts belong to Group 'C' category. The post of IOW Grade-I is in the pay scale of Rs. 2000-3200 equal to Rs. 6500-10500 (revised) whereas the post of Chief IOW is in the pay scale of Rs. 2375-3500 equal to Rs. 7450-11500 (revised). The next promotional post for Group 'C' employee working in Engineering wing is that of Assistant Engineer (A.En.) which is Group 'B' post. For promotion to the post of A.En. officials of different streams of Engineer Department namely Permanent Way Inspector, Bridge Inspectors, Drawing Staff, Shop Superintendents, Engineering Workshops, Track Machine Staff etc. who are working in the grade of Rs. 2000-3200/6500-10500 as per their position in the integrated seniority list of the aforesaid streams, which is prepared on the basis of their respective total length of service in the said grade, are also eligible.

2.1 It may also be relevant to mention here that all the feeder categories as mentioned above do not carry higher scale of Rs. 2375-3500/7450-11500, as such the grade of Rs. 2000-3200/6500-10500 and above were made basis for the purpose of preparing the integrated seniority list for determining eligibility for the post of A.En. Further, on the recommendations of the 5th Pay Commission, new scale of Rs. 7450-11500 was also

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introduced to the staff working in Drawing, Design and Estimator cadre vide Railway Board letter dated 28.9.98. Consequently, 19 posts in the aforesaid scale were sanctioned for various divisions under the Western Railway and 18 persons working in the grade of Rs. 6500-11500 were promoted in the said grade of Rs. 7450-11500 vide letter dated 15.3.2000 (Ann.R5). Even the cadre of Drawing, Design and Estimating staff which was not having the grade of Rs. 7450-11500 came to be allotted this grade for the first time on 28.9.98. The grievance of the applicant in this OA is that for the purpose of preparing the integrated seniority list for declaring the eligibility for selection to the post of A.En. after recommendations of the 5th Pay Commission, should be the grade of Rs. 7450-11500 as by that time all the categories were in that grade and action of the respondents in preparing the integrated seniority list on the basis of the grade of Rs. 6500-10500 is per-se illegal. The applicant has further stated that in the integrated seniority list, name of one Shri B.R.Meena find mention and the applicant being senior to him could not have been ignored while preparing the integrated seniority list.

3. The respondents have filed reply. In the reply it has been stated that for the purpose of preparing the integrated seniority list, the officials working in various streams of Engineering department who are in the base grade of Rs. 2000-3200/6500-10500 have to be included in the seniority list as per provisions in para 203.5 of the IREM and the instructions issued by the Railway Board vide letter dated 22.12.88 as clarified vide letter dated 31.8.89. It is further stated that in the integrated



seniority list dated 9/10.9.99 name of such officials who were working in the grade of Rs. 6500-10500 in various streams of Engineer Department on non-fertitious basis upto 26.11.93 only have been included. The applicant was promoted as IOW Grade-I in the pay scale of Rs. 6500-10500 on 30.5.95 and was, therefore, not entitled for inclusion his name in the said integrated seniority list. It is further stated that the applicant was granted the higher pay scale of Rs. 7450-11500 not on his own turn but being a member of the reserved category. It is further ^{stated} submitted that the name of Shri B.R.Meena at Sl.No. 337 was incorrectly mentioned in the integrated seniority list. In fact it was Shri D.R.Meena whose name should have been find mention at Sl.No.337 and he is senior to the applicant. As such, the integrated seniority list for the purpose of declaring eligibility list for selection to the post of A.En. was rightly issued.

4. The applicant has not filed any rejoinder.

5. Heard the learned counsel for the applicant and gone through the material placed on record.

5.1. The question that requires our consideration is whether the integrated seniority list for the purpose of determining the eligibility for selection to the post of A.En. was to be prepared on the basis of the grade of Rs. 2375-3500/7450-11500 as contended by the applicant or on the basis of grade of Rs. 2000-3200/6500-10500. In order to answer this question, let us notice the relevant rules and Railway Board instructions having bearing on the determination of seniority for the purpose of determining the eligibility for the post of A.En. Para 203.5 of the

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IREM is reproduced below for ready reference:-

"Since employees from different streams will be eligible to appear for the selection, their integrated seniority for purpose of the selection should be determined on the basis of total length of non-fortuitous service rendered in the grade of Rs. 2000-3200 (RP) and above. In other words, the date of appointment to the grade of Rs. 2000-3200 (RP) on non-fortuitous basis will be the criterion."

5.2 To the similar effect is the Railway Board instructions dated 22.12.88 and 31.8.89 (Ann.R1 and R2). Even otherwise also, as can be seen from para 5(I) of the application, the case of the applicant is that previously CDR/CDM candidates were not having the grade of Rs. 7450-11500 and rest of categories had that grade, so the integrated seniority list was to be prepared on the basis of the grade of Rs. 6500-10500. After 5th Pay Commission and allotment of grade of Rs. 7450-11500 to CDR/CDM, ^{re} preparation of integrated seniority list on the basis of the grade Rs. 6500-10500 is per-se illegal. The respondents were under obligation to prepare integrated seniority list taking the basic grade of Rs. 7450-11500 and not preparing the integrated seniority list on the basis of the grade of Rs. 7450-11500 has resulted in great prejudice to the applicant. Thus, the applicant has not disputed that previously the integrated seniority list was used to be prepared from the persons constituting feeder cadre to the post of A.En. keeping in view the basic grade of Rs. 6500-10500. After allotment of the grade of Rs. 7450-11500 to CDR/CDM pursuant to the recommendations of the 5th Pay Commission, seniority should have been prepared taking

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into account the grade of Rs. 7450-11500.

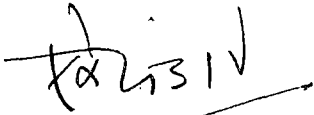
5.3 According to the respondents, integrated seniority list for the purpose of determining eligibility list for selection to the post of A.En. was prepared keeping in view the position of a person holding the grade of Rs. 6500-10500 as on 26.11.1993 and the scale of Rs. 7450-11500 was allotted to CDR/CDM pursuant to the recommendations of the 5th Pay Commission for the first time vide letter dated 28.9.98 and consequently 18 posts in the said cadre were created in different divisions and filled up on 15.3.2000. Thus, when the said integrated seniority list was issued on 9/10.9.99 there was no such grade of Rs. 7450-11500 available to the category of Drawing, Design and Estimating cadre. In view of what has been stated above, the contention of the learned counsel for the applicant that the integrated seniority list for the purpose of determining the eligibility for selection to the post of A.En. should be prepared on the basis of the grade of Rs. 7450-11500 cannot be accepted.

5.4 That apart, the applicant is also not entitled to any relief yet for another reason. The integrated seniority list for the purpose of determining eligibility for selection to the post of A.En. was prepared keeping in view the position of the employees who were holding the grade of Rs. 6500-10500 as on 26.11.93. Admittedly, the applicant was not holding the said grade at the relevant time. As such no infirmity can be found in case his name is not included in the integrated seniority list issued on 9/10.9.99. The applicant was promoted to the post of IOW Grade-I in the scale of Rs. 6500-10500 only on 30.5.95. He was subsequently promoted as Chief IOW in the grade of Rs. 7450-11500 not on his own merit but by virtue of being

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reserved category candidate. Thus, whether the seniority should be prepared on the basis of grade of Rs. 7450-11500 or on the basis of the grade Rs. 6500-10500 is immaterial as the applicant was not holding either of the posts as on 26.11.93 which formed the basis for issuing the impugned seniority list dated 9/10.9.99. The applicant is, therefore, not entitled to any relief on this score also.

6. For the reasons stated above, the applicant is not entitled for any relief. The OA is, therefore, dismissed with no order as to costs.



(A.K.BHANDARI)

Member (Administrative)



(M.L.CHAUDHARY)

Member (Judicial)