

CENTRAL ADMINISTRATIVE TRIBUNAL,**JAIPUR BENCH**

O.A.NO. 291/00028/2015 - ORDERS PRONOUNCED ON: 23.08.2016.
(Orders reserved on: 25.07.2016)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)**

1. Samit Pratap Singh S/o Shri Ram Raghuraj Singh, aged about 43 years, Resident of A-146, Ganpati Apartment, Rohini Nagar, Jagatpura, Jaipur (Raj).

2. Ashok Kumar Kumawat S/o Shri Tulsi Ram Kumawat, aged about 42 years, Resident of Bad Ki Dhani, Village Post, Kachroda, Phulera, Distt. Jaipur (Raj).

Both are presently posted as Accounts Asstt. (AA) in the office of FA & CAO, North Western Railway, Jaipur.

Applicants

Versus

1. Union of India through General Manager, North Western Railway, Jawahar Circle, Jagatpura, Jaipur.

2. The Financial Advisor & Chief Accounts Officer (FA & CAO), North Western Railway, Jawahar Circle, Jagatpura, Jaipur.

3. Shri R.K. Meena, Sr. ISA, C/o FA & CAO (S&C), North Western Railway, Jawahar Circle, Jagatpura, Jaipur.

Respondents

Present: Mr. Vinod Goyal, Advocate, for the applicant.
Mr. Y.K Sharma, Advocate, for respondents No.1&2.
Mr. Nand Kishore, Advocate, for Respondent No.3

ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicants have filed this O.A. seeking the following reliefs :-

"(i) by an appropriate order or direction, the impugned order dated 22.12.2014 (Annex. A/1) qua the Respondent No.3 be declared as null & void and be quashed and set aside.

(ii) By an appropriate order or direction, the official respondents be directed to extend the promotion of the post of Sr. ISA strictly as per the Railway Board Circular dated 01.09.2010 and the Railway Board clarification dated 14.11.2014. The respondents as such be directed not to fill up the post of general quota by the reserved category candidate who have taken the benefit of relaxation in the qualifying exam.

(iii) By an appropriate order or direction, the promotion given to Respondent no.3 on the post of Sr. ISA be declared as contrary to the provisions of the Railway Board Circular dated 01.09.2010 and clarification dated 14.11.2014. The Respondent No.3 as such be declared as not qualified /entitled to hold the post of Sr. ISA. The applicant as such be promoted on the post of Sr. ISA with all consequential benefits."

2. The facts, which led to filing of the case, are that the applicants were appointed as Junior Accounts Assistants in 1997 and were promoted as Accounts Assistant (AA) on 7.11.2000 and 19.10.2004 respectively. They claim that they have passed the Appendix-III (IREM) in ISA Group in the year 2012 securing more marks than the minimum required. Respondent No.3 on the other hand qualified Appendix-III (IEM) Part-II examination in the year 2010 by relaxed

standard as in II paper (Optional Subject-II), he obtained 74 marks which is less than the qualifying 90 marks. Thus, he was declared qualified after giving benefit of relaxation in the marks for ST candidates.

3. The applicant submits that the Govt. of India, Ministry of Railway, vide Circular No. 126/2010 dated 1.9.2010 have held that SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualification will be adjusted against unreserved points of reservation roster, irrespective of the fact whether promotion is made by selection or non selection method. The Railway Board as such in superseding the earlier letters dated 6.5.2005 and 29.1.2009 in categorical terms has held that the SC/ST candidates, who have not promoted / appointed on the basis of their own merit / seniority or have taken the benefit of relaxation in qualification would not be adjusted against the unreserved post. The aforesaid Appendix-III (IREM) is very much relevant for the purpose of promotion on the post of Sr. ISA PB-9300-34800 with grade pay of Rs.4800/-. The official respondents on the basis of circular dated 1.9.2010 sought a clarification vide letter dated 28.11.2013 as to whether respondent no.3 who had passed Appendix-III Examination, 2010 with relaxed standard can be given promotion against general category. Further clarification was also sought. The Railway Board clarified on 14.11.2014 that SC/ST candidates who qualify with relaxed standard have to be promoted and adjusted against reserved post only.

4. Thereafter the official respondents prepared panel / seniority list of Appendix-III (IREM) qualified staff in ISA Group in which the name of respondent no. 3 has been shown at Sr. No.1 whereas names of applicants are shown at Sr. No.3 &4. It is claimed that this has been done by ignoring the clarification dated 14.11.2014 and then also granted promotion to respondent no.3 as Sr. ISA against general category vide order dated 22.12.2014, which is not permissible, hence this Original Application.

5. The respondents No.1&2 have opposed the claim of the applicants. They submit that in the examination appendix-3 (IREM), 2010, respondent no.3 had appeared and was successful vide memorandum dated 30.9.2011 (R-1). The applicants who appeared in examination in 2012 were declared successful vide memorandum dated 29.8.2014 (Annexure R-2). Thus, respondent no.3 (R.K. Meena) was empanelled in category of ISA in the year 2010, whereas applicants qualified subsequently and as such they cannot be placed above respondent no.3. The relaxation in marks given to respondent no.3 will not have any adverse effect on the applicant as they qualified examination subsequent to respondent no.3. Appendix-III IREM is only a qualifying examination for preparation of seniority for promotion to the post of Sr. ISA/Sr. SO/Sr. TIA. No assessment of vacancies for Appendix III IREM Exam is carried out on the line of other selection posts in other Railway Departments. After qualifying Appendix III IREM Exam, the seniority for promotion to the post of Sr. ISA / Sr. SO / Sr. TIA is not

prepared as per their merit but as per their seniority. No currency of above seniority of Appendix-III IREM Exam qualified candidates has been laid down while such is the case for panel in other Railway Departments. As per IREM, seniority is to be prepared based on year of passing Appendix-III examination except exceptions as per letter dated 16.3.2014. Railway Board has clarified on 14.11.2014 for promotion of respondent no.3 by adjusting him against reserved point only.

6. The applicants have filed a rejoinder to oppose the averments made in the written statement.

7. We have heard learned counsel for the parties at length and examined the material on the file.

8. A conjunctive perusal of the pleadings would disclose that the controversy raised in this case is as to whether the applicants, who have passed relevant examination subsequent to the respondent no.3, can be given seniority over and above the respondent no.3. The answer to this question can be bound in para No.317 of IREM relating to seniority which is reproduced as under:-

"317. SENIORITY FOR PROMOTION AS SECTION OFFICER (ACCOUNTS) INSPECTORS OF STATION OR STORES ACCOUNTS :

(a) Seniority for promotion to the rank of Section Officer (Accounts) or Inspector of Station or Stores Accounts should count entirely according to the date of passing the examination qualifying for promotion to those

ranks. Candidates who pass the examination in a particular year are ipso facto senior to those who qualify in subsequent years irrespective of their relative seniority before passing the examination. On receipt of the result of the above examination an appropriate Selection Board on each Railway Administration should immediately arrange to assign a suitable place to each such candidate in the panel based on their relative seniority. The staff placed on the panel in any year will rank enbloc senior to those empanelled in subsequent years."

(Authority: Railway Board's letter no.2004/AC-II/20/34 dated 14-12-2004)"

A perusal of the aforesaid instructions does not leave any manner of doubt in our mind that a candidate, who passes the examination in a particular year, would ipso facto be senior to one who has qualified it in subsequent years irrespective of their relative seniority before passing the examination. In this case respondent no.3. passed the qualifying Appendix III examination in the year 2010 which was relevant only for preparation of the panel seniority of 2010 examination and after gaining the seniority of that examination, the relaxation given to the candidates for qualifying year 2010 Appendix III exam will not affect his further promotion as ISA/Sr. ISA. The applicants qualified said examination in 2012 as such they are admittedly junior to respondent no.3 and as such they cannot claim that the

respondent no.3 has to be ranked junior to them despite the fact that he has qualified examination in earlier year.

9. Considering the position available under Para 317 of IREM as reproduced above, we do not find any merit in this Original Application which is dismissed accordingly leaving the parties to bear their own respective costs.

