

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.276/2016
M.A.No.2539/2016
with
O.A.No.277/2016
M.A.No.267/2016
M.A.No.2532/2016

Order Reserved on: 17.04.2017
Order pronounced on 21.04.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

O.A.No.276/2016:

Shri Dharambir Malik
S/o Shri Ram Kishan Malik
Age about 51 year
Working as Chief Depot Material Supdt.,
Under Chief Manager (P&S)
Northern Railway, SSB,
Delhi. ... Applicant

(By Advocate: Shri M.S.Reen)

Versus

Union of India & Others : Through

1. The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Dy. Chief Material Manager

Northern Railway
General Stores Depot
Shakurbasti,
Delhi.

3. Shri Rohtas Kumar
Working as CDMS
Under Dy. Chief Material Manager
Northern Railway
SSB, New Delhi. ... Respondents

(By Advocate: Sh. R.N.Singh for Respondents No.1 and 2)

O.A.No.277/2016:

Shri Chhagan Lal Meena
S/o Shri Chander Ram
Age about 57 year
Working as Chief Office Supdt.,
Under Senior Material Manager
Northern Railway, Diesel Depot SSB
Delhi. ... Applicant

(By Advocate: Shri M.S.Reen)

Versus

Union of India & Others : Through

1. The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Dy. Chief Material Manager
Northern Railway
General Stores Depot
Shakurbasti,
Delhi.

3. Shri Raj Kumari
 Working as CDMS
 Under Dy. Chief Material Manager
 Northern Railway
 SSB, New Delhi.

... Respondents

(By Advocate: Sh. R.N.Singh for Respondents No.1 and 2)

ORDER

By V. Ajay Kumar, Member (J):

Since the facts and questions of law involved in both the aforesaid OAs are identical, they are being disposed of by this common order. For the sake of convenience, the facts from OA No.276/2016 have been considered.

2. The applicant a Chief Depot Material Superintendent in the Respondent-Northern Railway, filed the OA having aggrieved with the action of the respondents in not including his name in the revised provisional combined seniority list of Chief Depot Material Superintendents and Chief Office Superintendents/Store in PB-2 Rs.9300-34800 + Rs.4600 GP for the purpose of selection to the post of Assistant Materials Manager (Group B Service), against 70% quota, and in including the name of the 3rd Respondent, who is much junior to him, and the consequential action in not allowing the applicant to participate in the said selection process.

3. The brief facts are that the applicant was appointed as Depot Material Superintendent (DMS) in Grade Rs.1400-2300 w.e.f. 19.12.1986 through Railway Recruitment Board. After qualifying the

selection for the post of DMS – II, he was promoted as DMS - II in the grade of Rs. 1600-2660 w.e.f. 29.11.1993. Subsequently, he had been promoted as DMS-I in the Grade of Rs.6500-10500 w.e.f. 01.11.2003. The applicant also qualified the selection for the post of Chief DMS in the Grade of Rs.7450-11500 and was promoted as Chief DMS w.e.f. 30.11.2007.

4. As stated by the official respondents, in their counter, the 3rd Respondent has been promoted as DMS-I in the Grade of Rs.6500-10500 w.e.f. 29.10.1995, i.e., prior to the date of the applicant's promotion as DMS-I of 01.11.2003. But the 3rd Respondent was promoted to the higher grade of Chief DMS much later to the applicant.

5. The Railway Board, vide Annexure A5, proceedings No.E(NG)I-2009/PM1/4 dated 26.09.2012 issued instructions with regard to the issue of status of promotions made between the date of effect and date of implementation of 6th CPC and seniority of staff in case where two or more pre revised grades were merged and placed in a common Grade Pay, in consonance with the recommendations of the 6th CPC. Accordingly, the respondent-Railways issued re-determined seniority lists of Chief DMS of Shakurbasti Stores Complex, where both the applicant and 3rd Respondent are working, as per RBE No.107 of 2012. The Annexure A6, seniority list dated 05.12.2012 and Annexure A7 seniority list dated 17.07.2015 and Annexure A8, seniority list

dated 23.01.2015 shows that the applicant is senior to the 3rd Respondent in Chief DMS grade of Rs.9300-34800 + GP of Rs.4600.

6. As observed above, though the applicant is senior to the 3rd Respondent in Chief DMS grade of Rs.9300-34800 + Rs.4600 GP, but when the respondent-Railways issued the impugned Annexure A1 dated 14.09.2015, i.e., the revised provisional combined seniority list of Chief DMS and Chief OS/Store in PB-2 Rs.9300-34800+Rs.4600 GP for the purpose of selection to the post of Assistant Material Manager (Group B Service), against 70% quota by not including the name of the applicant and by including the name of the 3rd Respondent, and when they have issued Annexure R2, dated 15.12.2015, calling the 3rd Respondent for consequential written test ignoring the claim of the applicant, he filed the present OA.

7. Heard Shri Manjeet Singh Reen, the learned counsel for the applicants and Shri R.N.Singh, the learned counsel for the respondents No.1 and 2, and perused the pleadings on record. Though notice was served by Dasti on the 3rd Respondent, as he neither filed the counter nor represented through counsel, he was set ex-parte, and the OA was accordingly heard.

8. This Tribunal on 02.02.2016, as an interim measure, directed the respondents not to declare the result of the examination scheduled to be held on 03.02.2016.

9. Shri Manjeet Singh Reen, the learned counsel for the applicant, mainly contends that the applicant is senior to the 3rd Respondent in the Grade of Chief DMS, as he was promoted to the said grade on 30.11.2007 and whereas the 3rd Respondent was promoted much later, and hence, not including the name of the applicant for selection to the post of Assistant Material Manger, against 70% quota and not allowing to participate in the written examination is illegal, arbitrary and against to the Annexure A5 proceedings dated 26.09.2012 of the Railway Board and also Para 203.2 of the IREM Vol.I.

10. Per contra, Shri R.N.Singh, the learned counsel for the respondent-Railways would submit that there is no illegality or irregularity in their action as they have strictly followed Para 203.5 of the IREM Vol.I. He further submits that Para 203.2 of IREM Vol.I, and the Annexure A5 dated 26.09.2012, have no relevance to the facts of the present case. In any event, the applicant having not questioned the validity of para No.203.5 of IREM Vol.I, cannot maintain the present OA.

11. In view of the above rival submissions, it is necessary to examine the Paras 201.1, 203.1, 203.2, and 203.5 of the IREM Vol.I, which read as under:

**"CHAPTER-II
SECTION `A'
RULES GOVERNING PROMOTION OF SUBORDINATE
STAFF
PROMOTION OF GROUP `B' POSTS**

201.1 All vacancies in Group `B' are filled by promotion on the basis of selection of eligible Group `C' employees and also on the basis of Limited Departmental Competitive Examination,

wherever the scheme is in force. Where the scheme of LDCE is in force, selection is held to fill 70% of the vacancies and LDCE is held to fill the remaining 30% of the vacancies. The conditions and procedure governing the selection for promotion to Group B posts are given in the following paras. Regarding conditions and procedure governing LDCE, the provisions of relevant Recruitment Rules and administrative instructions issued from time to time should be referred to.

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203.1.Conditions of Eligibility:- For the selection, all Group `C` employee working on a regular basis in grade the minimum of which Rs.5000/- in the revised scale and in the higher Group `C` grades and who have rendered not less than 3 years of non-fortuitous service in the grad are eligible. There will be no distinction between permanent and temporary employee.

203.2.In case a junior employee is considered for selection by virtue of his satisfying the relevant minimum service conditions all senior to him shall be held to be eligible, notwithstanding the position that they do not fulfil the requisite minimum service conditions.

203.5. Since employees from the different streams will be eligible to appear for the selection, their integrated seniority for purposes of the selection should be determined on the basis of total length of non-fortuitous service rendered in grade Rs.6500-10500 (R.S.) on a non-fortuitous basis will be the creterion."

12. It is also relevant to examine Para 2(ii) of Annexure A5 dated 26.09.2012, which reads as under:

(II) Where posts having different pay scales prior to 6th CPC recommendations and now after merger have come to lie in the same Pay Band with same Grade Pay, the inter-se seniority of all the employees will be fully maintained with employee in a higher pre-revised pay scale being placed higher vis-à-vis an employee in a lower revised pay scale being placed higher vis-à-vis an employee in a lower pay scale. Within the same pre-revised pay scale, seniority which existed prior to revision would continue."

13 In terms of 6th Pay Commission Report, the relevant grades of the Respondent-Railways, as mentioned in para 2 of the respondents' counter, have been merged as under:

| Grade in IVth Pay Commission w.e.f. 01.01.1986 | Grade in Vth pay commission w.e.f. 01.01.1996 | Grade Merged in VIth Pay Commission w.e.f. 01.01.2006 |
|--|---|---|
| 1400-2300 | 5000-8000 | 9300-34800+ 4200 |
| 1600-2660 | 5500-9000 | |
| 2000-3200 | 6500-10500 | 9300-34800+ 4600 |
| | 7450-11500 | |

14. The learned counsel for the applicant placed reliance on the following decisions, in support of his submissions:

- a) Kamlesh Kumar v. UOI & Others, OA No.830/2006, CAT, Allahabad Bench.
- b) Bal Krishan v. Delhi Administration and Anr., 1989 (6) SLR (SC) 35.
- c) Union of India v. Sadhana Khanna, (2008) 1 SCC 720.

15. The issue falls for our consideration in this OA is that for selection to the post of AMM, against 70% quota, whether the aforesaid para 203.5 is applicable and if applicable, whether the same is properly interpreted and applied by the respondents and without questioning its validity, the OA is maintainable?

16. The said issue is not a res-integra. In WP(C) No.10011/2009, dated 18.07.2011, **Union of India v. Sarwar Ali**, the Hon'ble High Court of Delhi considered the application and interpretation of Para 203.5 of IREM Vol.I, and dismissed the WP in the identical circumstances. The relevant paragraphs of the said decision are, as under:

"2. The brief facts to comprehend the disputes between the parties are that the respondent challenged the order No.30 of 2007 dated 1st March, 2007 which was passed by the General Manager Personnel, Head Quarter Office, Allahabad whereby Sh.Basant Lal and Sh.Subodh Kumar Jain, who were juniors to the respondent were promoted to the post of AOM and were posted at Agra, thereby becoming immediate officers of the respondent.

3. While challenging the order No.30 of 2007 dated 1st March, 2007 the respondent assailed Para No.203.4 of the IREM Vol.-I and also challenged the exclusion of the name of the respondent in the provisional integrated seniority list No.797E/NCR/GR. "B" inter se seniority list dated 17th September, 2005 for the selection to the post of AOM, while the names of persons who had not been placed in the

WP(C) 10011/2009 Page 3 of 18 higher grade of Rs.7450-11500 were included in the list but the respondent had not been included.

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7. The grievance of the respondent was that the employees holding a junior supervisory grade i.e. Rs.6500-10500 were included and though WP(C) 10011/2009 Page 4 of 18 the respondent had been placed in the grade of senior supervisor in the pay scale of Rs.7450-11500/-, he was excluded and was superseded by those who had still been in the grade of Rs.6500-10500 on the basis of seniority in that grade.

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18. This Court has heard the learned counsels for the parties in detail. This is not disputed that the respondent was given a higher grade of Rs.7450-11500/- on 12th June, 1996 and some of the employees shown senior to him in the eligibility panel had not even been given the higher grade of Rs.7450-11500/- and some of them had failed twice. Placing an employee in the higher grade of Rs.7450-11500/- cannot be termed to be inconsequential. For the purpose of promotion how the seniority only in the lower grade of Rs.6500-10500/- is to be taken into consideration and the seniority in the grade of Rs.7450-11500/- is not to be considered has not been satisfactorily explained by the learned counsel except relying on para 203.5 of IREM. WP(C) 10011/2009 Page 12 of 18 Though Para 203.5 of IREM Vol-1 stipulates that date of appointment in the grade of Rs.6500-10500/- will be the criteria for determining seniority, however, no rule or para has been shown in support of the contention that the promotion to the next higher grade of Rs.7450- 11500/- will be of no relevance. The Tribunal very pertinently observed that considering only Para 203.5 leads to an anomalous situation, as even though the respondent is given a higher grade of pay scale of Rs.7450-11500/- yet his seniority in the lower grade of Rs.6500- 10500/- is taken into consideration and no weightage is given to the promotion of the respondent to the higher grade of Rs.7450-11500/-. If the respondent has been promoted to a higher grade, he cannot be considered to be junior on the basis of seniority in the lower grade, specially in comparison to those employees who are in the lower grade and who have failed or who were promoted only after the respondent to the next grade of Rs.7450-11500/-. Even according to the contentions of the respondent though 33 candidates had to be considered for 11 post, however, as 5 of the candidates out of the 33 had failed twice in earlier selections, therefore, 5 more candidates had been called for, as per seniority in the grade of Rs.6500-10500/-. Thus, the candidates/employees who even failed twice in the earlier selections were being considered in preference to the respondent who was promoted to the next higher grade, who undoubtedly is more WP(C) 10011/2009 Page 13 of 18 meritorious, yet his seniority on account of his promotion to the next higher grade is completely ignored.

19. The plea of the petitioners that the respondent had not challenged Para 203.5 and has only challenged Para 203.4 is also not correct. On reading of the entire OA of the respondent, it is apparent that the respondent had challenged the consideration of the candidates on the basis of the seniority in the grade of Rs.6500-10500/- and not taking into account the seniority in the higher grade of Rs.7450-11500/- and not on the ground as to how many candidates are to be considered for various numbers of vacancies. Consequently even if the respondent has mentioned Para 203.4 in his petition, it is apparent that he challenged para 203.5 and not 203.4 and this contention of the petitioners thus cannot be accepted. The learned counsel for the petitioners has not been able to give any satisfactory reason as to why the merit of those candidates who had been placed in the higher grade

of Rs.7450- 11500/- is to be completely ignored and their date of appointment in the lower grade should be the criteria for consideration for promotion to the post of AOM (Group B) in the pay scale of Rs.7500-12000/-. Even if the employees from the different streams are eligible to appear for selection, while considering their integrated seniority, the higher grade given to some of the employees in preference to others who have remained in the lower grade cannot be ignored, nor can it be held that WP(C) 10011/2009 Page 14 of 18 no weightage is to be given to such merit of candidates, like the respondent.

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21. What is apparent from the facts on the record that prior to 5th Pay Commission the grade of group 'B' was Rs.2000-3500 and the grade of Junior Supervisor was Rs.2000-3200. Thus keeping in view the beginning of the grade of these two posts as the same at the initial stage, the provision of eligibility for the selection of AOM was arranged. WP(C) 10011/2009 Page 17 of 18 After 5th Pay Commission the circumstances changed and now the grade of Group 'B' post is Rs.7500-12000 for promotee officer and senior supervisor grade is Rs.7450-11500 and Junior Supervisor grade is Rs.6500-10500. In the circumstances, para 203.5 could not be applied mechanically so as to eliminate the seniority of Senior Supervisor having grade 7450-11500. The seniority for consideration for post of AOM (Group „B“) has to be based on the seniority of grade 7450- 11500 and not on the basis of grade of Rs.6500-10500. Thus the para 203.5 Vol.I could not be interpreted and construed in a manner that it leads to anomalies, injustices or absurdities.

17. In view of the categorical pronouncement by the Hon'ble High Court of Delhi in **Sarwar Ali** (supra), and since all the questions raised in the instant OA were answered in the said judgement, the instant OA No.276/2016 also deserves to be disposed of in the same lines. In this view of the matter, there is no need to consider the other decisions on which the applicant placed reliance.

18. In OA No.277/2016, though the respondents included the name of the applicant therein, who belongs to ST category, in the impugned Annexures A1 and A2 and accordingly allowed him to participate in the written test, and that the private Respondent No.3 in this OA died, after the OA is filed, but the issue involved, is the same.

19. In the circumstances and for the aforesaid reasons, both the OAs are allowed in terms of the decision in **Sarwar Ali** (supra). Accordingly, the impugned Annexure A1, dated 14.09.2015 and Annexure A2, dated 15.12.2015 are quashed, qua the applicants and the 3rd Respondent and the respondents 1 and 2 are directed to consider the case of the applicants along with others, as per their seniority in the Chief DMS grade, if they are otherwise eligible, after conducting a written examination for the applicant in OA No.276/2016, and shall declare the results of all the candidates within 90 days from the date of receipt of a copy of this order. No costs.

20. Pending MAs No.2539/2016, 267/2016 and 2532/2016 stand disposed of accordingly.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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