

**Central Administrative Tribunal
Principal Bench**

OA No.3365/2015

Order Reserved on: 13.02.2017

Pronounced on: 17.03.2017

***HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)***

D.C. Sharma, OSD, J&K, N. Railway,
Aged 52 years,
H.No. 26, San Martin Marg,
Railway Colony,
New Delhi 110 021.

Applicant.

(By Advocates: Shri Murari Lal, Mr. R.S.N. Kalky and Shri
Ajit Kumar Ekka)

1. Union of India
Through Secretary
Ministry of Railways,
Rail Bhavan,
Raisina Road,
New Delhi 110 001.
2. Railway Board, through its Chairman,
Ministry of Railways, Rail Bhawan,
New Delhi 110 001.
3. Ashesh Aggarwal
Divisional Railway Manager
South Central Railway,
Secundarabad, (Telangana).

-Respondents

(By Advocate Shri R.N. Singh)

O R D E R

Mr. K.N. Shrivastava, Member (A):

Through the medium of this Original Application (OA), filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

“(c) Pass an appropriate order, direction or writ in the nature of certiorari or any other appropriate writ, quashing/modifying the list of empanelment of DRMs/select list (2014-2015) and consequent modifying of the posting order dated 18.02.2015 [ANNEXURE A-1] in the interest of justice and in the facts and circumstances of the present case; and

(d) Pass an appropriate order, direction or writ in the nature of mandamus or any other appropriate writ, directing the official respondents to place the humble applicant above respondent No.3 in the empanelment list of DRMs/select list (2014-2015) and as such post the humble applicant, in the interest of justice.”

2. The brief facts of this case are as under:

2.1 The applicant belongs to 1984 batch of Indian Railway Service of Mechanical Engineers (IRSME). He is aspiring to be posted as Divisional Railway Manager (DRM). The Railway Board has issued Annexure A-5 guidelines for posting of DRMs. Officers of 08 Services of Railways are entitled for posting as DRMs. These are:

- (i) Indian Railway Service of Engineers (IRSE)
- (ii) Indian Railway Traffic Service (IRTS);
- (iii) Indian Railway Service of Mechanical Engineers (IRSME);
- (iv) Indian Railway Service of Electrical Engineers (IRSEE);
- (v) Indian Railway Service of Signal Engineers (IRSSE);
- (vi) Indian Railway Accounts Service (IRAS);
- (vii) Indian Railway Store Service (IRSS); and
- (viii) Indian Railway Personnel Service (IRPS).

2.2 The relevant extract from the guidelines for posting of DRMs is reproduced below:

“(i) The posts of Divisional Railway Managers (DRMs) are in Senior Administrative (SA) Grade (Pay Band 4 Rs.37,600 to 67,000 with grade pay of Rs.10,000/-). Posting of DRMs should be made by considering the suitability of SA Grade Officers of the above 8 (eight) Railway Services. Shortlist of the officers for posting as DRMs shall be prepared in the order of their seniority in SA Grade. Mere inclusion of the name of an officer in the shortlist will not confer any right upon him/her to claim posting as DRM. A minimum of two batches from every service will be considered for preparing the shortlist, subject to maximum of 6 (six) officers per batch. From each department, from one batch, a maximum of 6 (six) officers shall be included in the short list. However, in the subsequent years, officers from the same batch can be considered for short listing, provided they fulfil the requisite criteria. The limit of six (6) officers from one batch and from one department shall continue to apply.

(ii) Officers to be posted as DRMs should have been assessed at least as “Very Good+” in their Confidential Reports. They should have been assessed as ‘Outstanding’ at least twice during the preceding five (05) years and should have a minimum of two (2) clearances for posting as DRM, including one clearance in the latest ACR or should have been minimum of three (3) clearances including one (1) in the latest two (2) ACRs.

(iii)

(iv) The short-list of DRMs will cater to the requirement of DRMs arising during the period of 1st of July a particular year to 30th of June of the following year, irrespective of the date of approval of the shortlist. In other words, the currency/validity of a particular short list will not be from the date of its approval but will be uniformly valid for the requirements from 1st July to 30th June are not filled, such requirements will only be filled from the same Shortlist which has been made for such requirements, even after 30th June.

(v) Officers being considered for short listing for posting as DRMs should be less than 52 years of age as on 1st July of the year for which the short list is being made. A short list officer can be posted as DRM within the period of currency of the short list, even if at the point of his actual posting he has crossed the age of 52 years.

(vi) to (ix)....

(x) At the time of inclusion in the short list as well as the time of actual posting as DRM, officers should be clear from *Vigilance angle*. Since the post of DRMs are sensitive posts, officers who are not clear from Vigilance angle, or against whom a charge sheet is pending or officer undergoing any penalty or figuring in Agreed/Secret List will not be considered for short listing and posting as DRM. In case an

officer is under departmental investigation other than CBI investigation, he shall be considered for inclusion in the short list and posting as DRM.”

2.3 The applicant was posted as Director (Mechanical Engineering) Coaching (DME/Chg.) during the period January 2003 to March, 2006 in the Railway Board. In that period, he circulated letter No.2003/M(c)/141/3 dated 01.05.2003 to all Zonal Railways, advising them therein to try out the following two items for improving the sanitation and hygiene of passenger coaches:

- i) Auto Janitor Hygiene & Odour Control System.
- ii) Microburst Automatic Odour Control System.

2.4 According to the applicant, he wrote the said letter to the Zonal Railways on the written directive of the then Member (Mechanical) of Railway Board.

2.5 The Railway Design & Standard Organisation (RDSO) - a technical arm of the Railways, which *inter-alia*, lays down specifications for items to be procured for Railways. As averred in para-4.6 of the OA, specifications for the two items mentioned in para-2.3 supra were laid down by the RDSO subsequently in the year 2005-06. In the year 2007-08, some complaints were received against the quality of the *ibid* two times. The complaints were examined by the Vigilance Branch of Railway Board. Advice of the Central Vigilance Commission (CVC) was also sought in the matter on 10.12.2010. Several correspondences have been exchanged

between the Railway Board and CVC. Due to the pendency of the vigilance case, the applicant is not getting empanelled and posted as DRM, whereas his juniors have been posted as DRM.

2.6 The applicant approached this Tribunal in OA-1553/2016, which was disposed of on 24.04.2015 with the following directions to the respondents:

“3. In view of the above and looking to the facts of the case, I am of the view that no purpose would be served by keeping this matter further pending as the applicant has already made representation which is pending before the respondents, and, therefore, it would be appropriate to dispose of this matter at this stage with the direction to respondent No.2 to examine the aforesaid representation of the applicant dated 21.02.2015 and decide the same expeditiously and preferably within a period of three months from the date of production of certified copy of this order by passing a reasoned and speaking order. It is made clear that I have not expressed any opinion on merit of the case as at the first instance, the matter is required to be examined by the respondent No.2.”

2.7 Pursuant to the above directions of the Tribunal, the respondents vide Annexure A-1 colly. letter dated 31.07.2015 addressed to General Manager, Northern Railway, under whom the applicant is working, informed as under:

“2. A certified copy of the aforesaid order has been received in this Ministry from Shri Sharma on 06.05.2015. In pursuance of the aforesaid directions passed by the Hon’ble Tribunal, the representation of Sharma has been considered by Chairman, Railway Board (Respondent No.2). It is seen that Shri Sharma has stated that while his juniors have been posted as DRMs, he has been denied the same ostensibly on grounds of vigilance clearance. He has stated that when he was posted as Director in Board’s office, the Railway Board had recommended closure of a vigilance case against him. However, the CVC advised punitive action against him in August, 2013 which was against their own advice given earlier in 2008 & 2011. Shri Sharma has stated that DRM is stepping stone for career advancement and denial of vigilance clearance

in this regard is against the instructions contained in DOP&T's OM dated 14.07.2012.

3. At the time of inclusion in the short list as well as at the time of actual posting as DRM, officers should be clear from vigilance angle. Since the posts of DRMs are sensitive posts, officers who are not clear from vigilance angle or against whom a charge sheet is pending or officers undergoing any penalty or figuring in a Agreed/Secret List will not be considered for short listing and posting as DRM. In case an officer is under departmental investigation other than CBI investigation, he shall be considered for inclusion in the short list and posting as DRM.

4. In the case of Shri Sharma, in a case regarding introduction of a new item, the CVC advised initiation of major penalty on 21.08.2013. Board recommended no action against Shri Sharma and the case was sent to CVC for reconsideration. On 10.02.2015, after reconsideration of the case, the CVC reiterated its advice of major penalty proceedings against Shri Sharma. Therefore, Shri Sharma is not clear from vigilance angle and he has not been included in the short list for DRMs.

5. As for the provision contained in DOP&T's OM dated 14.12.2007 mentioned by Shri Sharma, the same are applicable in cases of empanelment for posts under Central Civil Services/Central Civil Posts and the same cannot be compared with posting of DRMs. Incidentally, if any advice for penalty from the CVC is pending against any officer, he will not be considered for empanelment under the Central Staffing Scheme also.

6. The above position may be communicated to Shri Sharma and his acknowledgement thereof may be obtained and sent to Board's Office for information and record. This has the approval of Chairman, Railway Board."

A copy of the letter dated 31.07.2015 was also marked to the applicant.

2.8 Aggrieved by the above communication of the Railway Board, the applicant has filed the instant OA praying for the reliefs as indicated at para-1 supra.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicant thereafter filed his rejoinder. In terms of the directions of the Tribunal dated

09.05.2016, the respondents have also filed a supplementary affidavit to which also the applicant has filed his rejoinder.

4. The respondents in their reply and additional affidavit have made the following important averments:

- i) The posts of DRM in Indian Railways are in Senior Administrative Grade (SAG). The short-listing of officers for posting as DRM is done in the order of their seniority in SAG. Only such officers are short-listed who have been assessed '**Outstanding**' at least twice during the preceding five years.
- ii) The post of DRM is not a promotional post. The officers are short-listed for posting as DRM taking cognizance of the fact that the DRM performs arduous tasks and is overall responsible for running of the Division. Hence, only such officers are short-listed who are assessed to be capable for the task involved, based on their performance records and who are below the age of 52 years and are cleared from the vigilance angle as on the 1st July of the year for which the short-listing is to be done.
- iii) The applicant's claim for short-listing for posting as DRM has not been considered, as he has not been cleared from the vigilance angle. The CVC in the letter dated 10.02.2015 have recommended for starting of a major penalty proceedings against the applicant.

5. The arguments of the learned counsel for the parties were heard on 13.02.2017.

6. The learned counsel for the applicant, besides reiterating the averments made in the pleadings of the applicant, submitted that there is no vigilance case pending against the applicant, as intimated by the General Manager, Northern Railway to Secretary, Railway Board, vide his Annexure A-7 letter dated 22.12.2014. This position further gets corroborated by the table at para-3 of the additional reply (page 145) filed on behalf of the respondents wherein all developments, in a chronological sequence, relating to the vigilance case against the applicant have been indicated. It was also submitted that the applicant's empanelment for the post of DRM was not considered by the Short-listing Committee which met on 18.02.2015 for preparing the DRM panel for the year 2014-15, on the pretext that his vigilance clearance is not in place. The learned counsel said that neither any Show Cause Notice (SCN) nor any charge-sheet has ever been issued to the applicant and hence denial of vigilance clearance to him is absolutely illegal, so much so, that his prospects of being posted as DRM despite excellent service record is jeopardized for ever as he crossed 52 years of age by the 1st July, 2015 and thus has been rendered ineligible for consideration.

7. The learned counsel for the respondents stated that the primary cause for the applicant being not considered for DRM-empanelment is that his vigilance clearance is not in place. There has been a difference of opinion between the CVC and the Disciplinary Authority (DA) of the applicant, i.e., Member

(Mechanical) and this difference of opinion has not been resolved even by referring the matter to the DoP&T. Under these circumstances, the case of the applicant for empanelment as DRM cannot be considered.

8. We have gone through the arguments of the learned counsel for the parties and have also perused the pleadings and documents annexed thereto. As borne out from the records and pleadings, the vigilance clearance in the case of the applicant for short-listing him for the post of DRM has not been issued palpably on the ground that he, vide his letter dated 01.05.2013 had advised the Zonal Railways to try out two new items for improving the sanitation and hygiene of passenger coaches and that these items were later found to be defective. The said letter was issued by him under a written directive of the then Member (Mechanical) of the Railway Board. The technical specifications of the said two items was also prescribed by the RDSO later in the year 2005-06. The procurement of these items by the Zonal Railways was obviously done as per the technical specifications of RDSO. In the light of this stark truth, it is amazing as to how the applicant is being singled out for the defective materials and for which vigilance clearance is being denied to him. The Member (Mechanical), in his letter dated 21.09.2013 to the Hon'ble Minister for Railways, has testified the integrity of the applicant. Even the General Manager, Northern Railway has forwarded the application of the applicant to Secretary,

Railway Board for considering him for the post of Director (Project & Services), Container Corporation of India. It would be worthwhile to quote from the letter dated 21.09.2013 of the then Member (Mechanical).:

“7. Honorable Minister, having lost my cherished reputation, I have been doomed to live with this ignominy till my death. Be that as it may, what disturbs me more as a Railway Man is that my Executive Director Shri R.S. Virdi and the Director Shri D.C. Sharma, men of great standing in the department and known for professional and technical excellence, are likely to be taken up for carrying out my instructions.”

9. As a matter of fact, it is a common practice in the Railways to try out new products developed with latest technology in order to improve the rail services. It is quite clear from the records that the DA, i.e., Member (Mechanical) has been of the view that there is no malfeasance on the part of the applicant in writing the letter dated 01.05.2013 to the Zonal Railways. The CVC, however, have not been agreeing with the DA and have been insisting on starting of a major penalty proceedings against the applicant. The difference of opinion between the DA and CVC has remained unresolved despite a reference made to the DoP&T. Be that as it may, the fact remains that the applicant has been subjected to ignominy of denial of vigilance clearance since the year 2010. This denial has severely prejudiced his future prospects including his posting as DRM. What is ironical is that neither any SCN nor any charge-sheet has ever been issued to the applicant and yet he has to be under the cloud of denial of vigilance clearance. Pertinent to mention that the advice of

the CVC is just advisory in nature and is not mandatory. The DA can ignore the CVC's advice by giving cogent reasons. Unfortunately, in the instant case, the DA, although convinced that there is no misdemeanour on the part of the applicant yet has been dithering in taking a firm stand to reject the CVC's advice. Such a situation is bizarre and appalling to say the least. Suffice to say that the DA is expected to show his courage and conviction and call a spade, a spade. If he does not do so and indulges in preverifications, it would only reflect on his administrative acumen. The Hon'ble Apex Court in the case of **Union of India v. Alok Kumar**, [(2010) 5 SCC 349, on the issue of vigilance clearance has observed as under:

“53. No rule has been brought to our notice where it is a mandatory requirement for the disciplinary authority to consult the vigilance officer and take the said report into consideration before passing any order. If that was the position, the matter would have been different.

54. In the present case, firstly, no such rule has been brought to our notice and secondly, there is nothing on record to show that the alleged notes of the CVC were actually taken into consideration and the same effected or tainted the findings or mind of the authority while passing the orders of punishment. Thus, in our view, the findings of the Tribunal cannot be sustained in law. **Unless the Rules so require, advice of the CVC is not binding.** The advice tendered by the CVC, is to enable the disciplinary authority to proceed in accordance with law. In absence of any specific rule, that seeking advice and implementing thereof is mandatory, it will not be just and proper to presume that there is prejudice to the concerned officer. Even in the cases where the action is taken without consulting the Vigilance Commission, it necessarily will not vitiate the order of removal passed after inquiry by the departmental authority. Reference in this regard can also be made to the judgment of this Court in the cases of State of A. P. & Anr. v. Dr. Rahimuddin Kamal [1997 (3) SCC 505] and Deokinandan Prasad v. State of Bihar [1971 (2) SCC 330].”

10. In view of the above observations of the Hon'ble Apex Court and also considering the fact that the 'Sword of Damocles' is hanging over the head of the applicant for almost 07 years for no valid reasons, we consider it appropriate that the respondents are directed to decide the issue of vigilance clearance of the applicant within the shortest possible time. Noteworthy to mention that CVC/DoP&T themselves have provided time frame of one to two months for deciding the issue of vigilance clearance of an officer.

11. In the conspectus of the discussions in the foregoing paras, we issue the following directions to the respondents:

- (i) Decide the issue of vigilance clearance of the applicant within four weeks from the date of receipt of a copy of this order.
- (ii) If the applicant is cleared from the vigilance angle, then consider the case of the applicant for empanelment for the post of DRM for the year 2014-15 within four weeks. For this purpose, if required, convene a special meeting of the Short-listing Committee.

12. The OA is accordingly disposed of.

13. No order as to costs.

(K.N. Shrivastava)
Member (A)

'San.'

(Justice Permod Kohli)
Chairman

