

**Central Administrative Tribunal
Principal Bench**

OA No.4496/2011

New Delhi, this the 30th day of January, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Ms. Nita Chowdhury, Member (A)**

1. Shri Ch. M. Raju
S/o Shri Veer Raju
Sr. Dy. General Manager
M/s RITES Limited,
R/o Canara Bank Colony,
4th Cross Vijay Nagar,
Bangalore.
2. Sh. K. V. V. Ramana Murty
S/o Sh. Subba Rao (Late)
Sr. DGM
R/o B-703, St. Jhona Wood Apartment,
Tower Khari Road,
Bangalore.
3. Sh. R. Balasubramanian
S/o SRD Ramasubramanian
Sr. DGM,
R/o St. Jhona Wood Apartment, Tower
Khare Road,
Bangalore.
4. Sh. R. K. Sisodia
S/o Late Genda Singh
Sr. DGM
R/o C-205, Rail Vihar
Vasundhara Sector-3
Ghaziabad.
5. Sh. S. K. Asthana
S/o Sh. A. P. Asthana
Sr. DGM
R/o 12/13-C Apna Enclave
New Railway Road,
Gurgaon.
6. Sh. V. K. Sharma
S/o Sh. Puran Singh
Sr. DGM,
R/o T-38/c7, T Block,
Uttam Nagar,
New Delhi.
7. Sh. Amitabh Khare
S/o Sh. S. P. Khare
Sr. DGM
R/o A1/28, SF

South City-II, Gurgaon.

8. Sh. Surendra Madan
S/o Sh. Diwan Chandra Madan
Sr. DGM
R/o H. No.68, Sector-19,
Faridabad.
9. Sh. Pradeep Kumar Khattar
S/o Sh. Hardayal Khatter
Sr. DGM
R/o Flat No.43, DDA SFS Flat,
Pocket-1, Sector-22,
Dwarka, New Delhi.
10. Sh. R. K. Sharma
S/o Late V. P. Sharma
Sr. DGM,
R/o C-206, IRWO,
Westend Tower,
Sector-47, Gurgaon.
11. Sh. V. Bhardwaj
S/o Late S. P. Sharma
Sr. DGM,
R/o C54, RPS, DDA Flats,
MS Park, Shahdara,
Delhi-32.
12. Sh. L. P. Bhatt
S/o Late IRN Bhatt
Sr. DGM,
R/o C-4/1, RITES Flats,
Ashok Vihar,
Delhi.
13. Sh. Raj Kumar Bansal
S/o Late Jai Chandra Bansal
Sr. DGM/F & A
R/o 3789, Nai Basti
Pahari Dhiraj,
Delhi-6.
14. Sh. Ashok Ralhan
S/o Late R. P. Ralhan
Sr. DGM/F
R/o 5-P-26, NIT
Faridabad.
15. Sh. Naveen Bakshi
S/o Late D. N. Bakshi
DGM/IT
R/o F-1029, Sector 119,
Gaur Grandeur
Noida.

16. Sh. Pradeep Tyagi
S/o Sh. C. S. Tyagi
Sr. DGM
R/o 16/168/8,
Vasundhara, Ghaziabad.
17. Sh. Tarun Kumar Gupta
S/o Sh. A. L. Gupta
DGM
R/o C-83, Lohia Nagar,
Ghaziabad.
18. Sh. R. S. Dhull
S/o Sh. M. S. Dhull
Sr. DGM,
R/o 83, Sur-Air, CGHS,
Sector-15, Rohini,
New Delhi.
19. Sh. K. K. Sharma
S/o Late J. D. Sharma
Sr. DGM, Highway Division,
R/o D-IV/3, RITES Flats,
Ashok Vihar, Ph.III,
Delhi-52.
20. Sh. Sushil Parashar
S/o Late Kapil Dev Parashar
Sr. DGM (C)
R/o 19/35B, GF,
Tilak Nagar,
New Delhi-18.
21. Sh. A. K. Gupta
S/o late O. P. Gupta
Sr. DGM/C
R/o G-78, Dilshad Colony, Ext-1,
Delhi-92.
22. Sh. Amrish Kumar
S/o Late Sukhvir Singh
Sr. DGM
R/o D-304, IRWO
Sector-47, Gurgaon.
23. Sh. D. S. Negi
S/o Late R. S. Negi
Sr. DGM/Design
R/o E-305, Rail Vihar,
Sector-57, Gurgaon.
24. Sh Vijay Kumar
S/o Late R. N. Bundela
Sr. DGM,
R/o 76, B-8, Sector-4
Rohini, New Delhi

25. Sh. S. K. Singh
S/o Late V. N. P. Cheeubar
DGM/C
R/o B-202, SFS Aptt.
Ghaziabad.
26. Sh. Punit Jain
S/o Sh. S. C. Jain
DGM/C
R/o F-106, IRWO, Westend
Sector-47, Gurgaon.
27. Sh. Vinay Gupta
S/o Sh. Prem Chand Gupta
Sr. DG/C
R/o IA-358, Ashok Vihar-I,
New Delhi.
28. Sh. R. Saravanan
S/o Sh. N. Rajamanickam
Sr DGM
R/o 383-C, Bank Street
Munirka, Delhi-67.
29. Sh. P. K. Gause
S/o Sh. Bhavan Nath
DGM
R/o 707, Sector 9
Faridabad.
30. Sh. D. K. Gupta
S/o Late S. S. Gupta
Sr. DGM
R/o D2/12, Rail Vihar,
Indirapuram,
Ghaziabad.
31. Sh. N. N. Jha
S/o Late S. N. Jha
DGM
32. Sh. Tapan Ghosh
S/o Late S. N. Ghosh
Sr. DGM
R/o C1/4, RITES Flats,
Ashok Vihar III,
Delhi-52.
33. Sh A. P. Sharma
S/o Sh. Fateh Singh Sharma
DGM/C
R/o 214, First Floor,
SK-4, Indirapuram,
Ghaziabad.
34. Sh. S. B. Gupta
S/o Late D. B. Gupta

Sr. DGM/C
R/o 137-H/A2
MV-III, Delhi-96.

35. Shri S. K. Gupta
S/o Late L. L. Gupta
Sr. DGM/E
R/o 868, Sec.23A,
Gurgaon 122017.

36. Abdul Khaleque
S/o Late Jamiruddin Ahmed
DGM/Elect
R/o Flat No.C-I/3, Ashok Vihar,
New Delhi. Applicants.

(By Advocate : Mrs. Meenu Newee)

Vs

Union of India through

1. Secretary
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi.

2. Member Mechanical
Railway Board (Chairman/RITES Ltd.)
Rail Bhawan,
New Delhi.

3. Managing Director
RITES Limited
Regd. Office SCOPE Minar Laxmi Nagar
Delhi &
Corporate Office Plot No.1,
Sector-29, Gurgaon. Respondents.

(By Advocate : Shri G. S. Chaturvedi)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman :

The applicants in the present Application are working as Senior Deputy General Manager (Sr.DGM) and Deputy General Manager (DGM), in RITES Limited, i.e., Respondent No.3. They are aggrieved of the promotion policy as notified vide impugned Office Order

No.PP/056/2008 dated 22.09.2008 whereby earlier promotion policy and Rules of 2003 have been modified.

2. All the applicants are engineering graduates and also possessed qualification of MBA or equivalent etc. Their grievance is that by modification of promotion policy of 2003 vide new policy of 2008, their promotional avenues have been taken away or at least reduced which not only alters their service conditions but also violates their right of consideration for further promotion, and thus violative of Article 14 and 16 of the Constitution of India.

3. The RITES formulated promotion policy and rules called as "Promotion Policy and Rules". These rules came into force w.e.f. 01.09.2003. The policy was made applicable to RITES employees in Executive and Non-Executive cadres on the regular rolls of the company including those who are sent on deputation/secondment to other organisation(s) but the said policy excludes the employees appointed for a limited tenure, i.e., appointments on contract basis for a particular period/specific assignments or project etc., including superannuated persons re-appointed in the Company's service or are working on extension basis etc. etc. Para 3 of the said policy lays down the basic principles and objectives of the policy, viz., to provide adequate avenues of career advancement at all levels consistent with merit, suitability, performance and professional attainments of the employees, commensurate with the business needs of the Company to sustain in the competitive environment. Para 4.1 of the said policy also provides classification of posts in two cadres, namely, (i) Executive Cadre and (ii) Non-Executive Cadre. The applicants belong to the Executive Cadre. The Executive Cadre under the aforesaid policy had following three clusters:-

“Designation	Present Scale of Pay	
	<u>(Rs.)</u>	
	(CDA)	(IDA)
<u>Cluster-I</u>		
* Engineer/Jr. Manager etc.	6500-10500	6550-11350
* Asstt. Managers etc.	8000-13500	8600-14600
* Managers etc.	10000-15200	10750-16750
<u>Cluster-II</u>		
* Dy. GMs	12000-16500	13000-18250
* Jt. GMs	14300-18300	16000-20800
* Addl. GMs	16400-20000	17500-22300
<u>Cluster-III</u>		
* General Managers	18400-22400	18500-23900
* Group GMs	18400-22400	20500-26500
* EDs	18400-22400	20500-26500”

The applicants herein, except few, are working in Cluster-II. Cluster-II comprises of three sub cadres. Para 4.2.2 deals with the “Eligibility Period”. It provides that all promotions shall be subject to completion of prescribed “Eligibility Period” on the cut-off date of 30th June of the year in which selections occur to coincide with the ACRs earned and other requirements as laid down in these Rules. Para 4.2.3 deals with the “Seniority” whereas para 4.2.4 provides for “Promotions subject to availability of vacancy”. The said paragraph, however, reads as under:-

“4.2.4. Promotions subject to availability of vacancy:

Promotions within the same cluster shall be allowed subject to eligibility, suitability and fulfilment of other requirements under these rules; vacancy not being a constraint. However selection to the post of GGM and ED would be subject to availability of vacancy. Promotions from one cluster to higher cluster shall be subject to availability of vacancy which shall be calculated as prescribed in these rules. Man-power strength, discipline-wise will be sanctioned for each cluster on a financial year basis.”

In view of the above conditions, promotion within the same cluster is not vacancy based, though subject to eligibility, suitability and fulfilment of other requirements. However, selection to the post of DGM and ED is vacancy based. Similarly, promotion from one cluster to higher cluster is also subject to availability of vacancies. Para 4.2.5 provides holding of screening test for inter-cluster promotions (in both Executive and Non-Executive Cadres) prescribing 60% minimum qualifying marks in the screening test for Non-Executive cadre and 70% for Executive Cadre. The mode and method of screening test also include written test/trade test/group discussion and viva-voce. This promotion policy was modified by the new policy dated 22.09.2008 and cluster formations have undergone change. The new cluster formation and the parameters for promotion under the new policy are as under:-

Cluster	Designation	Qualifying service for promotion to next grade/post (years)
E-I	Asstt. Engr/Asstt. Officer/Asstt. Accounts Officer	3
	Engineer/Jr. Manager and equivalent	3
	Asstt. Manager and equivalent	4
	Manager and equivalent	4
E-II	DGMs and equivalent	3
	Sr. DGMs	4
E-III	JGMs	4
	AGMs	2
E-IV	GMs	5
	GGMs	3
	EDs	

The grievance of the applicants is that under the earlier policy for promotion within the same cluster vacancy was not a constraint and thus Dy. General Manager could be promoted to Joint General Manager and Joint General Manager to Additional General Manager on completion

of residency period and subject to the fulfilment of other conditions required for promotion irrespective of the vacancy position in cluster-II. However, under the new policy, clusters have been re-crystallized as E-I, E-II, E-III and E-IV respectively. Cluster-II under the new policy has been divided into new Clusters E-II and E-III with the introduction of another cadre of Sr. DGM in E-II. The entire argument of Mrs. Meenu Mainee, learned counsel for the applicant is that since the promotions within the cluster which were earlier without any vacancy constraint are now made vacancy based and thus take away the vested right of the applicants to be considered for promotion notwithstanding the availability of the vacancy for promotion from DGM and equivalent to Joint General Manager, and from Joint General Manager to Additional General manager. Her further contention is that the introduction of new cadre of Sr. DGM is also unnecessary and it has also delayed further promotions of DGM to the post of Joint General Manager and Additional General Manager.

4. Earlier, OA No.1651/2009 was filed by some of the DGMS working with respondent No.3 including some of the applicants in the present OA. This OA was decided vide judgment dated 15.09.2009. In the said Application, new promotion policy dated 22.09.2008 was challenged. This Application was disposed of by a coordinate bench of this Tribunal with the following directions:-

“27. In the result, for the foregoing reasons, we dispose of this OA with a direction to respondents to reconsider their policy decision of promulgating promotion rules in September 2008 and also introduction of intermediate post of Senior DGM. The aforesaid exercise shall also entail meticulous consideration of averments in the OA and the contentions put-forth by the applicants, including rejoinder and also our observations made in the body of the order. A well conscious decision shall be taken by the respondents with reasons, within a period of three months from the date of receipt of a copy of this order. No costs.”

5. Pursuant to the aforesaid directions, the respondents passed a speaking order on 18.12.2009. Respondent No.3 organisation on re-examination of the altered promotion policy made following observations:-

“To safeguard the service already put forth by the DGMs including the applicants, it has been decided that the intermediate post of Sr. DGM would be operated as notified with amendments to be made in eligibility qualifying service, by computing the combined service as DGM and as Sr. DGM totalling seven years would make a Sr. DGM eligible for consideration for the post of JGM. To make the matters clear, if a DGM has put in the service of six years as DGM and is promoted as Sr. DGM, after putting a service of another one year as Sr. DGM, he would be eligible for consideration for promotion to the post of JGM. The eligibility for promotion to the post of JGM would be 4 years service in the grade of Sr. DGM falling which it would be Sr. DGM with 7 years combined service as DGM & Sr. DGM. This reconsideration in the eligibility condition by taking the combined service of DGMs and Sr. DGMs is with a view, so that the DGMs who have already put in some number of years of service as DGM are not prejudiced while being considered for the post of JGM from Sr. DGM.

In view of the above decision, it is hoped that the reconsideration of the policy and positive change in the norms of eligibility condition for consideration for the post of JGM would satisfy the concerned officials and would end the litigation.”

6. The respondents justified new promotion policy and declined to bring in any change therein. After passing of this order, the applicants in OA No.1651/2009 filed CP No.42/2010 which was dismissed vide order dated 15.11.2010. One of the contentions raised in the CP was that the respondents have flouted the directions of the Tribunal by not considering the observations contained in the judgment passed in OA No.1651/2009. This contention was not agreed to. Finally, the CP was dismissed with the following observations:-

“6.3 In view of the foregoing, we do not find the present CP as maintainable, which is dismissed hereby. Needless to say, this would not affect the rights of the applicants to redress their further grievances, if any, by apt methodology in law.”

The applicants thereafter filed OA No.4341/2010 before this Tribunal, which was withdrawn by them with liberty to file a fresh one as is evident from order dated 07.12.2011 passed in the aforesaid OA.

7. Shri G. S. Chaturvedi, learned counsel for the respondents has raised a preliminary objection regarding maintainability of this OA. His contention is that the present OA is barred by *res judicata*. It is argued that the same policy was challenged in OA No.1651/2009 which was disposed of by this Tribunal without interfering with the policy, though a direction was issued to the respondents to reconsider their policy decision. The respondents in compliance to the directions re-examined the policy and passed order dated 18.12.2009 and this order is not challenged in the present OA. From the prayer made in the present OA, we find that the applicants have only challenged the promotion policy and not the order dated 18.12.2009 passed by the respondents pursuant to the directions contained in OA No.1561/2009. This is a serious lapse on the part of the applicants, and as a matter of fact, the OA should be rejected on that ground itself. However, with a view to put the matter at rest, it is deemed appropriate to consider the validity of the new promotion policy challenged in the present OA on its own merits as well.

8. In the counter affidavit filed by the respondents, the new promotion policy is being defended on variety of grounds. Firstly, it is stated that the original policy dated 01.09.2003 permit the amendment of the said policy and reference is made to para 12 of it, which reads as under:-

“12. AMENDMENTS/INTERPRETATION AND RELAXATION:

12.1 The Company may, at any time, depending upon requirement, modify/amend or alter any of the Rules/Procedure of Promotion Policy in the overall interest of the Company.”

It is contended on behalf of the respondents that promotion is not a right. The only right vests with the government servant, is to be considered for promotion, and thus such right of consideration continue to be available with the applicants. It is further contended that it is the prerogative of the employer to laid down the conditions of service including conditions for promotion for the best interest of the organisation.

9. It is the case of the respondents that RITES is a public sector consultancy organisation under the Ministry of Railways doing consultancy in Project Management, Design and supervision of construction in infrastructure sector, which field is highly competitive. It is also stated that the company is one of the mini navratnas being the profitable venture of the Government. The personnel of the company have to be highly competitive and remain updated to stay afloat in the present competitive world. Regarding the new policy, it is stated that apart from restructuring the post and the promotion aspect, the Company has enhanced the pay scales to motivate its employees who are being lured by the private sector. It was keeping in view this fact that change in norms of promotion was made to ensure that merit and performance should be duly awarded and promotions are competition based and should not be taken for granted. It is also the case of the respondents that the new policy has not taken away any promotional avenue of the applicants and within the cluster the promotion continues to be without vacancy constraint, and thus the entire basis of challenge is meaningless.

10. The entire thrust of the argument of learned counsel for the applicants is that earlier promotions within the cluster were not vacancy

based whereas under the new policy, promotion is subject to availability of the vacancy.

11. We have examined this aspect by carefully considering the old and new promotion policies. Admittedly, under old policy, promotions within the cluster were without any vacancy constraint. However, under the new policy, we find that promotion within the cluster including Cluster-II which has now been segregated in two clusters E-II and E-III with the introduction of another sub cadre of Sr. DGMs continues to be without vacancy constraint. The comparative analysis of the two policies is as under:-

Old Policy 2003		New Policy 2008	
Cluster	Designation	Cluster	Designation
II	Dy. GMs	E-II	DGMs and equivalent
	Jt. GMs		Sr. DGMs
	Addl. GMs	E-III	JGMS
			AGMs

5. The criteria of promotion would remain the same as existing including for the promotions from GM to GGM and from GGM to ED which are vacancy based as of now.”

From a careful examination of the new promotion policy, we find that though the original cluster-II has been further restructured between two clusters E-II and E-III, promotions from DGMs and equivalent to Sr. DGMs, the post introduced is not vacancy based. Similarly, promotion from Joint General Manager to Additional Dy. General Manager in E-III is also not vacancy based. Para 5 of new policy further clarifies that criteria for promotion would remain the same as existing including for promotion from General Manager to Dy. General Manager and from DGM to ED which are vacancy based. Thus, under the new policy even

promotions from E-II to E-III under para 5 are not vacancy based but are subject to other conditions of eligibility, i.e., holding of screening test etc. as laid down under the old policy.

12. In view of the above conditions of new policy, the very argument of learned counsel for the applicants is totally without any substance. The argument and relied upon judgment by the applicants that conditions of service cannot be altered to the detriment of the employee is not relevant. Otherwise also, it is settled law that matters of promotion are the policy decision of the employer. It is the prerogative of the employer to lay down conditions of service as also the promotion, and employee has no vested right over it.

13. In the matter of **P. U. Joshi and Ors. vs. The Accountant General, Ahmedabad and ors.** reported in (2003) 2 SCC 632, the Apex Court has held as under:-

“10. We have carefully considered the sub-missions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/ posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or

safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

14. In ***Union of India and Others vs. S. L. Dutta and another***

91991) 1 SCC 505, the Hon’ble Supreme Court has held as under:-

“14. In connection with the question as to whether the conditions of service of respondent No. 1 could be said to be adversely affected by the change in the promotional policy, our attention was drawn by learned Additional Solicitor General to the decision of this Court in State of Maharashtra v. Chandrakant Anant Kulkarni, (1981) 4 SCC 130 : (AIR 1981 SC 1990). There it was held by a Bench comprising three learned Judges of this Court that mere chances of promotion are not conditions of service, and the fact that there was reduction in the chances of promotion did not tantamount a change in the conditions of service. A right to be considered for promotion is a term of service chances of promotion are not. (See para 16 at page 141) of the Report). Reference was also made to the decision of this Court in K. Jagadeesan v. Union of India, (1990) 1 JT 247 : (AIR 1990 SC 1072) where the decision of this Court in State of Maharashtra v. Chandrakant Anant Kulkarni, (AIR 1981 SC 1990) was followed.”

15. Thus, the law laid down in this regard by the Hon’ble Supreme

Court is that the policy matter, particularly, relating to promotions of the government servant is primarily within the domain of the employer.

Mere chance of promotion is not a condition of service. Even if, promotional avenues are reduced on account of alteration of the promotion rules/policies, no interference is warranted.

16. Considering the ratio of the aforesaid judgments and the factual

aspects, noticed hereinabove, we are of the considered view that this Application is without any merit and is hereby dismissed. No order as to costs.

(Nita Chowdhury)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/