

**Central Administrative Tribunal  
Principal Bench, New Delhi**

**OA No.3978/2013**

**Order reserved on 13.07.2017  
Order pronounced on 25.10.2017**

**Hon'ble Mr. Justice Permod Kohli, Chairman  
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Nau Nihal Singh Rana (Sr. Citizen 70 years old)  
Retd. Chief Personnel Officer (HAG)  
North Central Railway/ Allahabad  
R/o Q-60, (First Floor), Rajouri Garden  
New Delhi-27.

...Applicant

(By Advocates: Mrs. Jyoti Singh, Sr. Advocate with Shri Padma  
Kumar S., Advocate and applicant)

Vs.

1. Union of India, Through Secretary/Ministry  
of Railways, Railway Board  
Railway Bhawan, Raisina Marg  
New Delhi-110001.
2. The Establishment Officer and Secretary  
Appointment Committee of Cabinet  
Department of Personnel & Training  
North Block, New Delhi-110001.
3. General Manager  
North Central Railway HQ  
Subedar Ganj, Allahabad (UP)
4. Sh. Vinay Mittal  
Ex-Chairman Railway Board  
Through Secretary  
Railway Board, Rail Bhawan  
New Delhi-110001.

5. Director (D&A)  
 Railway Board, Rail Bhawan  
 New Delhi-110001. ...Respondents

(By Advocates: Shri R.V. Sinha with Shri Amit Sinha)

**: O R D E R :**

**Justice Permod Kohli:-**

The applicant is aggrieved of action of the respondents in declaring him unfit for empanelment for appointment to the post of Additional Member (Staff), Railway Board as communicated to him vide impugned order dated 27/30.11.2012.

2. The present Application has been filed seeking the following reliefs:-

- “(i) To quash and set aside the impugned communication No. ERB-1/2012/16/25 dated 27/30.11.2012 at Annexure A-1, by which the applicant has been declared unfit for empanelment for appointment to the post of Additional Member (Staff), Railway Board grade 24050-2600.
- (ii) To declare the action of Respondents in treating the applicant as “Not Eligible” or “Not Applicable” etc. in his ACRs for promotion to the post of Additional Member (Staff), Railway Board and a post equivalent to General Manager, illegal, arbitrary and discriminatory and violation of Article 14 and 16 of Constitution of India.
- (iii) That Hon’ble Tribunal may graciously be pleased to order the Respondents, Ministry of Railway to hold a Review D.P.C. without considering any remarks in the relevant ACRs of applicant by which applicant has been declared as “Unfit” for Notional promotion to the I.R.P.S. cadre post of Additional Member(Staff) Railway Board grade 24050-26000 (5<sup>th</sup> P.C.), 75500-80000 of 6<sup>th</sup> P.C.), from the date of promotion to his

junior Sh. U.V. Acharya since no adverse remarks in his relevant ACRs making him unfit for this promotion had ever been conveyed to Applicant and quality of record of service of applicant is better than that of his junior Sh. U.V. Acharya.

- (iv) Respondent No.2 may also be ordered to reconsider the case of Applicant, since no Review Petition has been filed by Ministry of Railways against judgement dt. 27.9.2011 of Hon'ble Supreme Court in CA No.1752/2010.
- (v) That the Hon'ble Tribunal may also kindly order the respondent No.1 and 3 to grant all consequential benefits like arrears of revised gratuity, revised commutation of pension, composite transfer grant, arrears of pay in revised grade upto 31.03.03 and arrears of pension, from 31.03.2003, (the date of superannuation of applicant) and any other dues payable alongwith interest @ 10% p.a. to applicant as per rules and law laid down by Hon'ble Supreme Court in various judgements.
- (vi) That Hon'ble Tribunal may also grant costs of this litigation to applicant and any other relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of case."

3. The factual matrix as emerge from the record is noticed hereunder:-

3.1 The applicant belongs to Indian Railway Personnel Service (IRPS). He was appointed as Class-I Officer (now Group 'A') on 13.12.1965 on the basis of All India Competition" held by Union Public Service Commission (UPSC) in the year 1964. The applicant possessed qualification of M.Sc (Engineering), LLB, M.Phil (Social Services) and PG Diploma in Personal Management and Industrial Relations etc. It is stated that the applicant got all his promotions on the due dates. He was granted grade of Joint Secretary to

Government of India on 01.01.1986 and was appointed as Principal/ Coordinating Head of Department on 04.09.1995 on the post of Chief Personnel Officer (CPO), Northern Railway Headquarter. He was granted notional promotion w.e.f. 14.02.2000 on 29.02.2012 on opening the sealed cover to Higher Administrative Grade (HAG) in the pay scale of Rs.22400-24500 (5<sup>th</sup> Pay Commission) revised to Rs.67000-79000 (6<sup>th</sup> Pay Commission) from the date his junior A. P. Nagrath was promoted to this grade. This notional promotion was granted to the applicant consequent upon the judgment of Hon'ble Supreme Court dated 27.09.2011. The applicant superannuated on 31.03.2003. The circumstances leading to adoption of the sealed cover procedure have also been narrated in the Application.

3.2 It is mentioned that the applicant while working as Chief Personnel Officer, Northern Railway Headquarter, New Delhi, suspended his 53 years old lady Secretary on 23.09.1996 and also issued her a charge sheet dated 24.09.1996 for dereliction of duty. The lady revengefully as a counter blast met the then Minister of Railways and the State Minister for Railways, taking along representatives of the Officers Association etc., and filed a concocted, defamatory complaint dated 04.10.1996 alleging sexual harassment by the applicant. This according to the applicant was done to prevent him from taking action against her. On the complaint of the aforesaid lady, the Railway Board (Disciplinary Authority)

suspended the applicant on 31.10.1996 on the orders of Minister for Railways and State Minister for Railways, and also issued a major penalty charge sheet dated 16.12.1996 containing four charges of causing sexual harassment to the lady Secretary. The suspension of the applicant was revoked on 18.03.1998 as per the judgment dated 09.09.1997 passed in OA No.2379/1996 filed by the applicant. After the enquiry, the Disciplinary Authority ordered that all the charges of causing sexual harassment were not proved as is evident from the order dated 13.01.2000. It is stated that in spite of the charges having not been proved, the Railway Board illegally imposed a minor penalty on the applicant on the ground that he lacked leadership quality though there was no such charge against him. It is also stated that these allegations were false as in all ACRs the applicant had been graded as "Outstanding" or "Very Good" in his leadership quality and got all his promotions when due up to 31.03.1996. Vide order dated 13.01.2000, while imposing the minor penalty of "reduction by one stage in the same pay scale for a period of six months without cumulative effect", the applicant was granted 45 days time to file the appeal from the date of receipt of copy of the order as provided in Railways Servants (Discipline and Appeal) Rules, 1968.

3.3 The applicant has further alleged that while he was in the process of preparing the appeal, as time for filing the appeal had yet to lapse, the lady Secretary again met the new Railway Minister (Ms.

Mamta Banerjee) in third week of January, 2000 along with the representations of Officers Association and under her influence, the Railway Minister illegally carried out *suo moto* review of minor penalty on 05.02.2000 without citing any new evidence. The applicant has placed on record the note sheet of the department obtained under RTI Act, 2005. The note dated 05.02.2000 indicates that the Railway Minister recorded imposing penalty of removal from service and asking for issuance of show cause notice for enhancement of punishment to the applicant. A show cause notice dated 19.12.2001 was issued to the applicant.

3.4 The applicant, in the meanwhile, filed an appeal against the original order of penalty on 22.02.2000 within the prescribed 45 days. This appeal was sent to the UPSC. The UPSC did not agree with the proposal of the Railway Minister for imposing penalty of removal from service. The Railway Minister by overlooking the advice of UPSC, imposed penalty of removal from service upon the applicant w.e.f. 31.12.2002 on the same charge sheet. The applicant filed OA No.22/2001 which was later amended in the year 2003 against the original order and later penalty order of removal from service. This OA was dismissed by the Tribunal vide judgment dated 24.10.2003. The applicant preferred a writ petition (civil) No.4014/2005 before the Hon'ble High Court of Delhi. This petition was allowed vide judgment dated 14.12.2008 setting aside the judgment of the Tribunal.

The directions issued by the Hon'ble Delhi High Court are reproduced hereunder:-

“19. Taking all these facts into consideration, in our opinion, it is quite clear that the appellate authority completely misdirected itself in law in upsetting the factual conclusions arrived at by the Railway Board and thereafter enhancing the punishment awarded to the Petitioner. For this reason, the order passed by the Tribunal upholding the decision of the appellate authority is required to be set aside.

20. In a situation such as this, ordinarily, we would have had to remit the case to the appellate authority for reconsideration of the matter in its correct perspective. But, we have been told that the Petitioner has since retired and has also suffered the monetary penalty that was originally imposed upon him by the Railway Board. Therefore, we do not think it appropriate to remit the matter back to the Respondents for a reconsideration of the issue. The case is about 12 years old and deserves to be given a quite burial.

21. The writ petition is allowed, but there will be no order as to costs. The Petitioner will, however, be entitled to all consequential benefits.”

The respondents challenged the aforementioned judgment of Delhi High Court before Hon'ble Supreme Court in Civil Appeal No.1752/2010. The said appeal was dismissed vide judgment dated 27.09.2011. The relevant observations are as under:-

“18. Consequently, the appeal being bereft of any merit, is dismissed, leaving the parties to bear their own costs.

19. Since the appeal preferred by the Railway Board has been dismissed, the bond furnished by the respondent in terms of order dated 26<sup>th</sup> August, 2009, is discharged.”

As a consequence of the aforesaid judgment of the Apex Court, the respondent Nos.1 & 3 opened the sealed cover which was adopted for consideration of the applicant for promotion to HAG on account of pendency of disciplinary proceedings. On consideration, the applicant was granted notional promotion to HAG. The applicant has placed on record DPC proceedings held on 11.11.1999 to consider him along with other officers for empanelment for appointment to the posts in Grade of Rs.22400-24500 (revised) in IRPS received by him under RTI Act, 2005 (Annexure A/7).

4. It appears that when the judgment of Hon'ble Supreme Court was yet to be implemented, a CP (C) No.317/2009 in W.P.(C) No.4014/2005 was filed, wherein, a direction was issued to decide about promotion of applicant to the next grade of Rs.24050-26000/- within two months. As a result of the aforesaid directions, the respondents have passed the impugned order dated 27/30.11.2012. The relevant part of the impugned order reads as under:-

“2. In this context, it may be mentioned that in pursuance of the judgment of the High Court of Delhi dated 4.12.2008, you had been notionally promoted to HAG w.e.f. 14.2.2000 vide Ministry of Railways (Railway Board's) order dated 16.3.2012 with all consequential benefits. While considering your case for HAG promotion, it was decided that 'as a consequence of your notional promotion to HAG, further promotion to AM's Grade, if due, will be considered. Accordingly, your case was considered for empanelment to the post of Additional Member (Staff), Railway Board in Grade Rs. 24,050-26,000/- against the vacancy that occurred on 1.2.2002 but you have been found unfit for empanelment for

appointment to the post of Additional Member(Staff), Railway Board by the Competent Authority.

3. In view of the above, issue of your promotion order to Additional Member's Grade does not arise."

5. The applicant has alleged bias against the then Chairman of the Railway Board. It is alleged that the then Chairman, Railway Board, Shri Vinay Mittal, who headed the DPC, which is supposed to be held on 04.04.2012 was fully biased against the applicant. It is further mentioned that the factum of bias is proved from the fact that the applicant was fully exonerated of all the charges of sexual harassment, first by the Disciplinary Authority (Railway Board) itself vide order dated 13.01.2000 and then by Hon'ble High Court of Delhi vide judgment dated 04.12.2008 in W.P. (C) No.4014/2005 upheld by the Hon'ble Supreme Court vide judgment dated 27.09.2011 in Civil Appeal No.1752/2010, but the then Chairman, Railway Board still noted in the notesheet that the applicant was involved in sexual harassment. Thus, the then Chairman with this mind set could never give correct assessment about the fitness of the applicant for empanelment to the IRPS Cadre post of Additional Member (Staff) Railway Board. It is the aforesaid order which has been assailed in the present OA.

6. The applicant relies upon the Resolution dated 11.10.2000 issued by Government of India, Ministry of Railways, Railway Board laying down the norms for promotion to the post of Additional

Member (Staff), Railway Board. The relevant extracts of the aforesaid resolution are reproduced hereunder:-

“(i) Posts of Additional Members in Railway Board, except the posts of Secretary, Railway Board, Additional Member(Planning) and Additional Member (Projects), are discipline specific posts as shown in the annexure. For discipline specific posts, officers of the relevant discipline in Grade Rs.22400-24500 should be considered in the order of their seniority in the grade. For general Posts of Secretary, Railway Board, Additional Member (Planning) and Additional Member(Projects) however, officers of various Grade ‘A’ Railway services (except IRMS and RPF) working in Grade Rs.22400-24500 would be eligible for consideration as per their inter-se seniority position.

(ii) Only such of the officers who would be having at least one year residual service before superannuation on the date of the occurrence of the vacancy failing in their turn, would be eligible for consideration.

(iii) Overall performance record of the officer should be Very Good plus(+) and he should have earned at least two ‘Outstanding’ and three ‘Very Good’ ratings in his ACRs of last five years with fitness for Additional Member and also for General Manager equivalent post in his last ACR. Relevant experience gained by an officer in different assignments, particularly in challenging positions, his technical and professional exposure and his potential for shouldering still higher challenging responsibilities should be given due weightage. Also, officers of absolute and proven integrity with clean record should only be recommended if otherwise suitable for appointment against the posts of Additional Members.

(vi). Post of Additional Member (Staff) is normally to be filled up by a senior and suitable officer of Indian Railway Personnel Service (IRPS). However, since Indian Railway Personnel Service is a new service in case a suitable IRPS officer of appropriate seniority is not available, the posts may be filled up on deputation by a senior and suitable officer belonging to any other Group ‘A’ service (except IRMS & RPF) working in Grade Rs.22400-24500.”

The applicant under the RTI Act, 2005, obtained the relevant notings of the Minutes of DPC where his case was considered. The relevant notings on the file are reproduced hereunder:-

“In pursuance of the judgment of Hon’ble High Court of Delhi, Shri NNS Rana, Ex. SAG/IRPS has been notionally promoted to HA Grade (Rs.22400-24500/- pre revised) with effect from 14.02.2000 vide Board’s order dated 16.03.2012 with all consequential benefits (S.No.1 & 1/1).

2. While considering the proposal of HAG promotion to Shri NNS Rana it has been decided (vide para 7 of pre page 13/n (i.e. extracts from notings on file no.2011/SSC/05/44) that *“as a consequence of his notional promotion to HAG, further promotion of Shri NNS Rana to Addl. Member’s grade, if due, will be considered....”*.

3. Shri Rana’s eligibility and suitability for further promotion, to AM’s Grade has to be considered now. It may be mentioned that a vacancy in the post of AM (Staff) had occurred on 01.02.2002 on superannuation of Shri AS Gupta (F/A).

4. By virtue of his promotion to HAG/IRPS w.e.f. 14.02.2000, Shri NNS Rana becomes eligible for consideration for empanelment and appointment to the post of AM(Staff), as per the revised seniority position as on the date of occurrence of vacancy i.e. 01.02.2002.”

The notings thereafter referred to the Resolution dated 11.10.2000, relevant extract whereof has already been reproduced hereinabove.

The norms for promotion to the post of Additional Member (Staff) have been laid down under the said notings. The relevant extract of the same reads as under:-

“6. Since no HAG/IRPS officer with sufficient seniority was available at the time of occurrence of vacancy i.e. on 01.02.2002 (S.No.3), it was decided in terms of para 1(vi) of Resolution dated 11.10.2000, to fill up the post of AM (Staff) by officers of other services (except IRMS & RPF) (Extracts at S.No.4).

Accordingly, senior HAG officers of other services were considered and Shri UV Acharya, IRAS (DITS: 16.08.1966) was appointed as Addl. Member (Staff) in Grade Rs.24050-26000/- (Pre-revised) with the approval of ACC w.e.f. 02.05.2002 (S.No.5).

7. In terms of para 1 (vi) of the Resolution dated 11.10.2000 (Para 5 (iv) on pre page) "*the Post of Addl. Member (Staff) is normally to be filled up by a senior and suitable officer of Indian Railway Personnel Service (IRPS)*". Now that Shri NNS Rana Ex.IRPS (DOB: 10.03.1943 DITS: 13.12.1965) has been promoted to HAG/IRPS w.e.f. 14.2.2000, albeit notionally, Shri NNS Rana would be senior most available IRPS officer as on the date of occurrence of vacancy in the post of Addl. Member (Staff) i.e. on 01.02.2002. Therefore, he has to be considered for notional promotion to the post of AM (Staff). Shri NNS Rana also fulfils the eligibility condition of one year residual service on the date of occurrence of the vacancy of the post of AM (Staff) i.e. on 01.02.2002.

7.1 Performance of Shri NNS Rana as reflected in his ACRs for the period of five years, upto the year March, 2001 are to be taken into consideration (His ACRs dossier is placed below ). Statement showing Grading/Fitness of Shri Rana for this period for consideration for the post of AM (Staff) is placed below at S.No.6."

"In pursuance of the judgment of Hon'ble High Court of Delhi, Shri NNS Rana, Ex IRPS (Deemed to have retired on 31.03.2003) has been notionally promoted to HA Grade with effect from 14.02.2000, with all consequential benefits vide Board's orders dated 29.02.12. By virtue of his promotion to HAG, albeit notionally, Shri NNS Rana (DOB: 10.03.43; DITS: 13.12.65) becomes the senior most officer eligible for consideration the post of A (Staff) Railway Board in Grade Rs.24050-26000/- (pre-revised) for the vacancy that occurred on 01.02.2002 on the retirement of Shri AS Gupta, IRPS, the then Addl. Member (Staff), Railway Board."

"In terms of para 1 (vi) of the Resolution dated 11.10.2000 (parar 2 (iv) on pre page) "*the Post of Addl. Member (Staff) is normally to be filled up by a senior and suitable officer of Indian Railway Personnel Service (IRPS)*". Now that Shri NNS Rana, Ex-IRPS (DOB:10.03.1943 DITS: 13.12.1965) has been promoted to HAG/IRPS w.e.f. 14.2.2000, albeit notionally, Shri NNS Rana would be the senior most available IRPS officer as on the date of occurrence of vacancy in the post of Addl.

Member (Staff) i.e. on 01.02.2002. Shri NNS Rana also fulfills the eligibility condition of one year residual service on the date of occurrence of the vacancy of the post of AM (Staff) i.e. on 01.02.2002. Therefore, he is being considered for notional promotion to the post of AM (Staff)."

From the above notings, it is evident that the applicant was fully eligible and senior most for being empanelled for the post of Additional Member (Staff), Railway Board. He was considered by the DPC on 04.04.2012 and declared "Unfit". The Minutes of the Meeting held on 04.04.2012 have neither been reproduced in the notings nor provided to the applicant. Even with the counter affidavit no minutes of meeting held on 04.04.2012 have been placed on record.

7. The applicant has also obtained his ACRs for the period ending 31.03.1996 to 31.03.2000 which are relevant for purposes of his consideration for promotion to the post of Additional Member (Staff) Railway Board. Out of five ACRs, the applicant has "Outstanding" ACRs for two years and "Very Good" for three years. In terms of the Resolution dated 11.10.2000, this is the required benchmark for empanelment for promotion as Additional Member (Staff) Railway Board. From the perusal of the ACRs, we find that in Part-IV of General Assessment against Column No.5 under the heading Grading and Fitness, the grading given to the applicant is Outstanding/Very Good by both reporting and reviewing officers.

This grading is duly accepted by the Accepting Authority. However, under the Column Fitness for promotion under the heading AGM/GM-OL, NA and Not Eligible are mentioned. Not Eligible seems to be put by a stamp and not written in hand. It is also relevant to note that in the ACR for the period 01.04.1995 to 31.03.1996, under Part-V, the following remarks are mentioned by the reviewing authority:-

“I agree. An intelligent and knowledgeable Personnel Officer.”

A tabular sheet having summary of ACRs of applicant for years ending 31.03.1996 to 31.03.2002 has been annexed with the OA. The same reads as under:-

Year Ending	Authority	Grading	Fitness for Promotion to		Remarks of Applicant for O.A.
			Grade 7300-7600 Deptt.	GM and Equivalent – Principal R.S.C.	
31.3.1996	Reporting Officer	Outstanding	Yes	-	Remarks “—” given for fitness for Principal RSC not permissible -NOT CONVEYED-
	Reviewing Officer	Outstanding	Yes	-	
	Accepting Officer	Accepted			
Year Ending 31.3.1997:- (a) ACR Written only for period 1.4.1996 to 30.10.96	Reporting Officer	Very Good	Yes	-	-do-
(b) (Applicant suspended from 31.10.1996 to	Reviewing Officer	No separate Remarks given as Reporting Officer was same as Reviewing Officer after his Promotion			Suspension period later treated as duty in June, 2000

31.3.1997 so no ACR for this period			
Year ending 31.3.1998	No ACR written as Applicant was under Suspension upto 17.3.1998		Suspension period later treated as duty in June, 2000

From Year ending 31.3.1999, Following new format was introduced

(After 6<sup>th</sup> PC Scales Introduced)

Year Ending	Authority	Grading	Fitness for Promotion to			Remarks of Applicant for O.A.
			Grade 22400-24500 Deptt.	Additional Member	GM and Equivalent Principal R.S.C.	
31.3.1999	Reporting Officer	Outstanding	Yes	Yes	No	Remarks "NO" for fitness for Promotion to Principal RSC not conveyed to applicant
	Reporting Officer	Outstanding	Yes	Yes	No	
31.3.2000	Reporting Officer	Very Good	Yes	Yes	Yes	(i) No reason given by Reviewing Officer to downgrade fitness for promotion to Additional Member or Principal RSC. Also remarks "N.A." are not allowed and are irrelevant now after Supreme Court's judgement dt.27.9.2011 (ii) While Reviewing Officer wrote "I" agree yet he downgraded fitness for promotion. (iii) Adverse remarks not conveyed
	Reviewing Officer	Very Good	Yes	No	N.A.	

ACR for year ending 31.3.2001 written in 2 parts.						
(i)Part-I- 1.4.2000 to 28.9.2000	(i)For Pt-I Reporting Officer	Very Good	Yes	Yes	No	9(a) Downgradation done by Reporting Officer for fitness to Principal RSC compared to year ending 31.3.2000 was not conveyed, especially when remarks of Reviewing Officer for year ending 31.3.2000, were not relevant and were not conveyed.  (b) Downgrading done by Reviewing Officer without reasons and its remarks. "Not Eligible" were not relevant then, as also in April 2012 after Supreme Court's judgment dated 27.9.2011  (c) New Resolution dt. 11.10.2000 was applicable only for 5 ½ months to applicants.
(ii)Pt-II 29.9.2000 to 31.3.2001	(ii)Pt.II- Reporting Officer	Outstanding	Yes	Not Competent to give Remarks		
Year Ending 31.3.2002	Reporting Officer	Very Good	Yes	"Not eligible"		
	Reviewing Officer	Outstanding	Fit	Fit	Not competent to give remarks	New Resolution dt. 11.10.2000 was applicable for whole year to applicant.

It is specifically mentioned by the applicant that he was never conveyed any adverse remarks in his ACRs including the remarks "NA" and Not Eligible". For the year 2002, the applicant was shown to be fit. The applicant has referred to the promotion of his junior U. V. Acharya which fact is also admitted by the respondents.

8. In the counter affidavit filed by the respondents, it is stated that pursuant to the judgment of the Hon'ble High Court of Delhi, the applicant was notionally promoted to HAG in the pay scale of Rs.22400-24500 (pre-revised) w.e.f. 14.02.2000 vide Railway Board's letter dated 16.03.2012 with all consequential benefits. While

considering the proposal of HAG promotion to the applicant it was decided that as a consequence of his notional promotion to HAG, further promotion of Shri N. N. S. Rao to Additional Member's grade, if due, will be considered. It is further mentioned that the posts of Additional Members (Staff) are made with the approval of the Appointment Committee of Cabinet (ACC). The eligibility conditions which are relevant to the post of Additional Member (Staff), Railway Board laid down in the Resolution dated 11.10.2000. According to the respondents since no HAG/IRPS Officer with sufficient seniority was available at the time of occurrence of vacancy, i.e., on 01.02.2002, it was decided in terms of Para 1 (vi) of the aforesaid Resolution dated 11.10.2000 to fill up the post of Additional Member (Staff) by the officers of other services (except IRMS and RPF). Accordingly, senior HAG Officers of other services were considered and Shri U. V. Acharya, IRAS (DITS: 16.08.1966) was appointed as Additional Member (Staff) with the approval of ACC w.e.f. 02.05.2002. It is further averred that Shri U. V. Acharya is not from IRPS branch to which the applicant belongs. The two wings are different and thus the applicant cannot claim that he is senior to Acharya. In Para 6 of the counter, it is admitted that the post of Additional Member (Staff) is normally to be filled up by a senior and suitable officer of Indian Railway Personnel Service (IRPS). The applicant was the senior most available IRPS Officer as on the date of

occurrence of vacancy of Additional Member (Staff) on 01.02.2002 after his promotion to HAG. Therefore, he was considered for notional promotion to the post of Additional Member (Staff). The applicant fulfilled the eligibility condition of one year residual service on the date of occurrence of the vacancy of the post of Additional Member (Staff). The performance of the applicant as reflected in his ACRs for the period of five years, up to March 2001 was taken into consideration, and he was not assessed 'Fit' either for the post of Additional Member (Staff) or General Manager or equivalent, not only in his last ACR but in any of the five ACRs under consideration. Thus, the applicant did not fulfill the requirements stipulated in the Resolution and therefore, not found suitable for empanelment and appointment to the post of Additional Member (Staff) Railway Board.

9. The recommendations of the Ministry were forwarded to DoP&T for obtaining the approval of ACC vide OM dated 13.06.2012. The DoP&T vide letter dated 08.08.2012 had conveyed ACCs approval for non empanelment of the applicant for appointment to the post of Additional Member (Staff) w.e.f. 01.02.2002.

10. The applicant has filed rejoinder to the counter affidavit filed by the respondents. While reiterating the averments made in the OA, it is mentioned that the respondents have concealed the facts. Referring to Para 6 of the Resolution, it is mentioned that it is

necessary to prepare a combined *inter se* seniority list of HAG Officers of all eight departments of Indian Railways to check whether suitable officer of appropriate seniority was available in IRPS cadre or not. The respondents prepared such an *inter se* seniority list while considering U. V. Acharya in 2002 and later the applicant for the post of Additional Member (Staff) Railway Board. The said list has been placed on record at page 96 of the OA.

11. In the combined *inter se* seniority list of officers of IRPS cadres working in the grade of Rs.22400-24500 (pre revised) with one year residual service as on 01.02.2002, the applicant is shown at serial number 2 whereas U. V. Acharya is at serial number 4. The applicant belongs to 1965 batch on the basis of All India Examination conducted by UPSC in 1964 whereas U. V. Acharya belongs to next year batch, i.e., 1966 on the basis of All India Examination conducted by the UPSC in the year 1965. Even the date of increment in time scale of the applicant is 13.12.1965 and that of U. V. Acharya is 16.01.1966. Thus, in the combined *inter se* seniority list, the applicant was senior to U. V. Acharya. It is further stated that since the Acharya belongs to IRAS Cadre, he was appointed as Additional Member (Staff) on deputation basis. It is also stated that while considering the applicant for promotion to the post of Additional Member (Staff) in April, 2005, his ACRs for the year ending 31.03.2002 were also required to be considered. In this ACR for the

year ending 31.03.2002, the applicant had been declared fit for promotion both as Additional Member (Staff) as well as for a post equivalent to General Manager and thus the applicant fulfills all norms as prescribed in the Resolution dated 11.10.2000. It is also the case of the applicant that since he was never conveyed any adverse remarks including the so called entries of "NA" and "Not Eligible", the same cannot be made basis for denying promotion to the applicant.

12. We have heard learned counsel for the parties at length.

13. The admitted facts are that the applicant was senior to U. V. Acharya. The post of Additional Member (Staff), Railway Board, was/is required to be filled up from IRPS Officers in the department of Indian Railways. The applicant was senior most on the date of occurrence of vacancy, i.e., 01.02.2002. It was only on account of pendency of disciplinary proceedings that his case was kept in sealed cover. Though, initially the applicant was awarded punishment of minor penalty of reduction by one stage in the same pay scale for a period of six months without cumulative effect, but the said punishment was later revised to removal from service. However, the penalty imposed upon the applicant has been set aside by the Hon'ble High Court and the judgment of the High Court has been affirmed by the Apex Court. Not only that, the penalty imposed

upon the applicant has been set aside, the Hon'ble High Court of Delhi also issued clear directions to the respondents to grant all consequential benefits to the applicant which *inter alia* include promotion. The applicant was duly considered for promotion to HAG and found eligible on the basis of same ACRs. He was granted notional promotion to HAG. On such notional promotion, he became eligible to be empanelled for promotion to the post of Additional Member (Staff), Railway Board. This promotion has been denied to the applicant. The only reason for denying the promotion is he was not found fit by the DPC. The DPC allegedly held its proceedings on 04.04.2012. The DPC proceedings have not been disclosed to the Tribunal. On what basis, the DPC has denied promotion to the applicant is also not revealed in the counter affidavit. Even the official notings obtained by the applicant under RTI Act, 2005 do not disclose the minutes of the meetings. It simply mentioned that the DPC did not find him fit. No reasons have been recorded even in the notings, nor any such reasons had been disclosed in the counter affidavit. Reference is made to ACRs wherein remarks are mentioned as "NA" and "Not Eligible". No reasons whatsoever have been recorded to substantiate such remarks. These remarks have been recorded in respect to the period for which the overall grading of the applicant is Outstanding/Very Good. After having graded him as Outstanding/Very Good, why he is not eligible for promotion

to the post of Additional Member (Staff) Railway Board or even for the post of General Manager or an equivalent post is not disclosed or revealed by any of the authorities. These remarks are also not in hand writing. It seems to be a stamp. Who has recorded these remarks is not evident from the ACRs. In any case, these remarks were never conveyed to the applicant. There is not even a whisper in the reply that these remarks were communicated to the applicant. Any adverse remark or entry in the ACRs unless conveyed to the applicant cannot be relied upon to deny promotion to a Govt. Servant.

14. The applicant has relied upon the judgment of this Tribunal dated 07.03.2013 passed in OA No.371/2011 titled *Anoop Kumar Srivastava & Ors. vs. Secretary, Ministry of Personnel, Public Grievances & Pension & Ors.* In this judgment, it is held that there is no such a law which entitles an employee for promotion from the date of creation of vacancy or attaining the eligibility. A promotion becomes effective only in terms of the order made. Only exception to the rule of prospective promotion is the date of promotion of a junior. In the event of promotion of a junior is from back date, senior becomes entitled to his promotion from the date of promotion of his junior, subject to just exceptions.

15. He has also relied upon a case decided by three Judges Bench of the Apex Court in the matter of *Abhijit Ghosh Dastidar vs. Union of India and Others* reported in (2009) 16 SCC 146. In this case, it was held that any entry below the benchmark or any other adverse entry has to be communicated to the employee and if not communicated, the same cannot be relied upon to deny promotion to a government servant. It has further been observed that where an officer junior in service was given promotion, the senior officer is deemed to have been given promotion with effect from the same date.

16. On the same issue, some other judgments were also relied upon by the applicant, which are as under:-

- (i) *S. K. Nanda vs. General Manager, South East Central Railway & Ors.* OA No.144 of 2007 decided on 17.06.2008.
- (ii) *Dev Dutt vs. Union of India & Others* (2008) 8 SCC 725.
- (iii) *Sukhdev Singh vs. Union of India & Others* 2013 (6) SCALE 490.
- (iv) *M. Sankaranarayanan, IAS vs. State of Karnataka and Others* (1993) 1 SCC 54.

17. There is no dispute with the proposition of law enunciated in the aforesaid judgments. In the present case, admittedly the applicant had benchmark gradings in all his five ACRs. Despite

Outstanding and Very Good gradings, there is an endorsement "NA" and "Not Eligible". One fails to understand how these can be reconciled. Both the entries are mutually exclusive. Gradings earned by the applicant cannot support the remarks of ineligibility for promotion. No reasons whatsoever have been recorded, either in the ACRs or in the counter affidavit. Even in the official notings, no reasons have been disclosed why the applicant was declared unfit for promotion. The deficiency has to be specifically pointed out to enable the government servant, not only, to contest the case, if denied any promotion but also to enable him to remove the deficiency and improve his efficiency in future. This is the very object and purport of rule requiring communication of ACRs to the Govt. Servant. In absence of recording of any reasons for any adverse entry what to say of entry detrimental to the carrier progression of Govt. Servant, the same cannot be permitted to be relied upon. It is not only in violation of principles of natural justice but is an arbitrary exercise and it is in violation of mandate of Article 14 and 16 of the Constitution of India.

18. The Hon'ble High Court while setting aside the order of the Tribunal directed the respondents to grant all consequential benefits to the applicant including all promotions which the government servant may be found entitled to and the best parameter is if a junior is promoted the senior government servant has to be granted promotion w.e.f. the date junior was promoted unless he suffers any

disqualification. The disqualification has to be apparent on the service record supported with reasons by the person making entries in the ACRs. Nothing of sort has been disclosed in the present case. The applicant is definitely entitled to consequential relief as directed by the High Court vide its judgment dated 14.12.2008 in writ petition (civil) No.4014/2005.

19. For the above reasons, this OA is allowed. The impugned order dated 27/30.11.2012 to the extent it has declared the applicant unfit for empanelment for promotion to the post of Additional Member (Staff), Railway Board, is hereby quashed.

20. Under normal circumstances, we would have remitted the matter back to the competent authority for reconsideration, however, in the present case, the applicant retired in the year 2003. He has been contesting for the last almost two decades. It is not prudent to remit the case at this stage. The applicant has established his eligibility and entitlement for empanelment for promotion to the post of Additional Member (Staff), Railway Board. Respondents are directed to grant promotion to the applicant as Additional Member (Staff), Railway Board w.e.f. 01.05.2002 when U. V. Acharya was promoted on notional basis. The applicant will not be entitled to any arrears. However, his retirement benefits shall be re-determined and re-fixed giving the benefit of notional promotion to the grade of

Additional Member (Staff), Railway Board. The respondents would complete the entire exercise of grant of promotion and resultant benefits in view of the above directions within a period of three months from the date of receipt of copy of this order. Because of arbitrary manner in which promotion has been denied to the applicant, we allow cost of Rs.20,000/- to the applicant.

**(K. N. Shrivastava)**  
**Member (A)**

**(Justice Permod Kohli)**  
**Chairman**

/pj/