

**Central Administrative Tribunal
Principal Bench**

OA No.4058/2015

New Delhi this the 25th day of May, 2016.

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

Rajeev Kishore Bhatnagar,
S/o Sh. Raj Kishore Bhatnagar,
R/o C-88, Anand Niketan,
New Delhi-21.

-Applicant

(Applicant in person)

Versus

1. The Union of India through
Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi-1.
2. Appointment Committee of Cabinet (ACC),
Through Establishment Officer,
Department of Personnel & Training,
North Block,
New Delhi-110001.

-Respondents

(By Advocate Shri Rajinder Nischal, Advocate)

O R D E R (ORAL)

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

This OA has been filed by the applicants under Section 19
of the Administrative Tribunals Act, 1985.

2. The applicant joined the Indian Railway Service of Electrical Engineers (IRSEE) in the year 1977. He superannuated from the service on 28.02.2015. His grievance is that he has been denied promotion to the post of Additional Member (Electrical) which is in Higher Administrative Grade (HAG) and above, although he was eligible for the promotion being the senior most amongst the eligible candidates. He has prayed for the grant of following relief in this OA:

“ i) Government be directed to give notional promotion to the Applicant to the post of Additional Member (Electrical) with effect from 21.11.2014, the date Shri Man Singh an officer junior to the Applicant was promoted to the post of Additional Member Electrical or such other date as the Hon’ble Tribunal considers appropriate, with all consequential benefits.”

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicant thereafter filed his rejoinder. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 25.05.2016. The applicant as a party in person and Shri Rajinder Nischal, learned counsel for the respondents argued the case.

4. The applicant during the course of his arguments made the following important points:

i) The respondents in their Annexure A-6 Resolution No.ERB-I/2000/11/2 dated 11.10.2000 have laid down criteria for promotion of the eligible officers to the grade of Additional

Member, which broadly indicate that only such officers should be considered for promotion to the post of Additional Member, who have been left with at least one year of residual service, who would be having Very Good + ratings in the last five years and who would have been cleared for appointment as General Manager, Open Line, in short, GM(OL). These criteria are applicable to all promotions to the post of Additional Member across various services of the Railway Department.

ii) He was not cleared for GM(OL) but was cleared for GM, Metro, which has been declared as a Zonal Railway vide Ministry of Railway Gazette Notification dated 28.12.2000 and thus he is deemed to have been cleared for GM(OL).

iii) He was the senior-most officer in the HAG of the Electrical Department in the Railways holding the post of Adviser (Electrical) and thus was the most eligible officer for promotion to the post of Additional Member (Electrical).

iv) Shri S.S. Bhandari, belonging to the Indian Railway Traffic Service (IRTS) was also not cleared for GM(OL) but special dispensation was accorded to him and he was promoted as Additional Member (Traffic) (page 106 of the paper-book). Likewise, Shri Girish Chandra belonging to IRTS was also not cleared for GM(OL) but was given special dispensation and promoted to the post of Additional Member (Traffic) (page 109 of the paper-book).

v) The Appointment Committee of Cabinet (ACC), in the case of Shri Girish Chandra had directed the Railway Board to consider revising the guidelines suitably to count for situations, as in the above case, and not making clearance as GM(OL) a mandatory requirement for the post.

vi) In the case of **E.P. Rayappa v. State of Tamil Nadu**, AIR 1974 SC 555, the Hon'ble Supreme Court has made the following observations:

"The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Articles. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valent relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality."

vii) In the case of **Chairman, Railway Board and Ors. v. R.K. Verma**, [Writ Petition (C) no.8464/2011], the Hon'ble High Court of Delhi has held as under:

"Consequently, we are of the view that the Tribunal has wrongly assumed that in case the respondent is not posted as a DRM, it would be an impediment in respect of the consideration of his case for promotion to the post of a General Manager. That being the position, since the premise on which the Tribunals direction is based, is itself faulty, we set aside the impugned order. But, we make it clear that this has been done on the position explained by the petitioner that the fact that the respondent has not been posted as a Divisional Railway Manager, will not deprive him of the opportunity for being considered for any of the posts of General Managers, subject, of course, to the respondent fulfilling the other eligibility conditions."

viii) He had outstanding ratings for the years 2011-12 and 2012-13.

4.1 Continuing with his arguments, the applicant stated that he was eligible in all respects for being promoted to the post of Additional Member (Electrical) in HAG+ grade in the pay scale of Rs.75000-80000, which had fallen vacant on 20.11.2013. It was also submitted that he was cleared for the post of GM, Metro Rail, which has been notified by the Railways as Zonal Railway on 28.12.2010 and thus it could be construed that he has been cleared for GM(OL). He said that otherwise also special dispensation had been granted in many cases in the past, two of which he has mentioned above, the same consideration should be shown by the respondents towards him. Finally, in view of the observations of the Hon'ble Apex Court in **E.P. Rayappa** (supra) as also in view of the ACC's direction to the Ministry of Railways (Annexure A-16), his not working as DRM and consequently not cleared for GM(OL) should not become an impediment in the way of his promotion to the post of Additional Member Electrical, he contended.

5. Per contra, the learned counsel for the respondents argued that the applicant has not worked as Divisional Railway Manager (DRM). He was offered the said post but he refused it. Consequently, he has not been cleared for GM(OL). Such a clearance was a pre-requisite for his promotion to the post of Additional Member (Electrical) in terms of the Annexure A-6 Resolution dated 11.10.2000 of the Ministry of Railways.

6. We have considered the arguments put-forth by the applicant in person and by the learned counsel for the respondents and have also perused the pleadings. Annexure A-6 Resolution of the Ministry of Railways is dated 11.10.2000, prescribes criteria for promotion of eligible officers to the post of Additional Member in the Railway Board. But then Ministry of Railways have granted special dispensation in few cases, two of them have been cited by the applicant. In the impugned Annexure A-1 order, the Chairman, Railway Board, in the context of Shri S.S. Bhandari and Shri Girish Chandra, has stated that their selection was as per the recommendations of the Selection Committee but has failed to elaborate the rules or standing instructions under which such a Selection Committee could be constituted nor has he spelt out the composition of the said Selection Committee. Even the Annexure A-6 Resolution of the Railways does not stipulate any such Selection Committee. Be that as it may, if a Special Selection Committee was constituted in the case of Shri S.S. Bhandari and Shri Girish Chandra, the same would have been done even in the case of the applicant as well. Hence, we hold that the respondents have not observed the principles of equality as enshrined in Articles 14 and 16 of the Constitution of India. The Hon'ble Supreme Court in **E.P. Rayappa** (supra) has also observed that the action must be based on relevant principles applicable alike

to all similarly situate and it must not be guided by any extraneous or irrelevant considerations.

7. No doubt, Annexure A-6 Resolution of the Ministry of Railways lays down criteria for promotion to the post of Additional Member in the Railway Board but efficacy of the requirement that the officer eligible for such promotion ought to have been cleared for GM(OL) and for that should have worked as DRM does not have any solid footings as could be seen from the observations of the ACC (Annexure A-16) as well as in the judgment of the Hon'ble High Court of Delhi in **R.K. Verma** (supra).

8. Taking into consideration the fact that the applicant was cleared for GM, Metro and the Metro Railway has been notified as a Zonal Railway on 28.12.2000 by the Ministry of Railways, as such he possessed the requisite eligibility for the promotion to the post of Additional Member (Electrical), we are of the firm opinion that applicant ought to have been considered for such promotion. Hence, we feel that ends of justice would meet only by directing the respondents to promote the applicant to the post of Additional Member (Electrical), i.e., in the grade of HAG+ w.e.f. 20.11.2013 when the said post had fallen vacant. Accordingly we order.

9. As a consequence of this order the applicant shall be entitled for receiving the arrears as well as revision of his

pensionary benefits. It is made clear that he shall not be entitled for any interest on the arrears. The respondents shall implement this order within three months from the date of receipt of a certified copy of this order.

10. With the above direction, the OA is allowed.

11. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

‘San.’