

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No. 1427/2014

New Delhi, this the 9th day of May, 2018

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)**

M.S. Meena,
Aged about 53 years,
S/o Shri Prahlad Singh,
Chief Controller, DRM Office,
Northern Railway,
Moradabad, U.P. .. Applicant

(By Advocate : Shri Shaad Anwar)

Versus

1. Union of India
Through Secretary,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. The General Manager (P),
Northern Railway,
Baroda House, New Delhi.
3. Chief Operating Manager,
Northern Railway,
Baroda House,
New Delhi. .. Respondents

(By Advocate : Shri V.S.R. Krishna with Shri Shailendra Tiwary)

ORDER (ORAL)

By Mr. V. Ajay Kumar, Member (J)

Heard Shri Shaad Anwar, learned counsel for the applicant and Shri V.S.R. Krishna and Shri Shailendra Tiwary, learned counsel appearing for the respondents and perused the pleadings on record.

2. The applicant, a Chief Controller in the respondent – Northern Railway, filed the O.A. seeking the following relief(s):

- “(a) Quash para 203.4 and para 203.5 of Indian Railway Employees Manual Vol. I on the basis of which impugned inter se seniority list dated 09.03.2011 was prepared, wherein name of the applicant was not included at the appropriate place.
- (b) Set aside the order No.752-E/67-PT/50-70%, AOM-EIA dated 09.05.2012 issued by General Manager Personnel, Head Quarter Office, Baroda House, New Delhi.
- (c) Set aside order dated 14.02.2014, passed by the respondent No.2 rejecting the representation dated 18.06.2012, submitted by the applicant.
- (d) Set aside integrated seniority list dated 09.03.2011 of Class III staff for selection Group ‘B’ Post against 70% quota issued by GM Personnel, Baroda House, New Delhi, and prepare the correct integrated seniority list reckoning the applicant as senior to persons who were in the pay scale of Rs.6500-10500/- and consider the applicant for selection to the post of AOM against 70% quota in the pay scale of Rs.7500-12000 to meet the ends of justice.”

3. Shri Shaad Anwar, the learned counsel for the applicant, while drawing our attention to the facts of the case, placed heavy reliance on a judgment of this Tribunal in Sarwar Ali vs. Union of India in O.A. No. 723/2008 dated 05.12.2008 (Annexure P-7), submits that since the applicant is identically placed like the applicant therein, viz. Shri Sarwar Ali, the O.A. is liable to be allowed in terms of the said decision. It is further submitted that the decision in Sarwar Ali was upheld upto the Hon’ble Apex Court. The relevant paragraphs of this Tribunal’s order dated 05.12.2008 read as under:

“6. This leads to a curious position. A person whose merit had been recognized, and who is promoted to the higher cadre

is sought to be denied opportunity to compete in a selection where persons who were not successful in the previous selection are permitted to partake. Definitely the successful would be brought above the head of the applicant as Grade B officer. Paragraph 203.5 of IREM does not appear to be arbitrarily worded. We only find that it has omitted to take notice of certain an anomalous situation like the above instance. What should be proper, we feel is that simultaneous with preparation of an integrated list, there should also be an examination as to whether any person, in the lower grade, had secured promotion by a process of selection and as in the present case. Such persons are to be given priority to be placed in the integrated list prepared. This will be more in consonance with the principles of service jurisprudence. The lower seniority in the erstwhile cadre when is compensated by a promotion, previous seniority position becomes irrelevant and the person is to be treated as having a prior claim to be included in the list, when selection steps to Group 'B' posts are being processed. In other words, a person, who has been adjudged as meritorious, should as well get an opportunity, in fairness to compete for the Group B post. Of course, Mr. Yadav had invited our attention to a judgment of the Supreme Court in Vinod Krishna Kaul Vs. UOI & Ors. (JT 1991 (5) SC (2), but we find the above discussion rested on totally different facts.

7. Since the applicant had been agitating over the issue and since, as a matter of fact, Paragraph 203.5, does not, in effect, prohibit such a consideration, in absolute terms, we are of the view that the applicant is entitled to succeed. However, when the selection process has been complete and selectees have been appointed to the vacancies, it may not be possible for the respondents to grant reliefs to the applicant straightway. But since the applicant has made out a case that his rights for promotion have been overlooked, he should not be without any remedy. The selection held, especially is to be considered as depending on the outcome of the proceedings."

4. The relevant paragraphs 203.4 and 203.5 of IREM Vol.-I read as under:

"203.4. Zone of consideration- The number of employees to be called for the selection will be in accordance with the sliding scale in the order of seniority shown below:

1. Vacancies--5 employees,
2. Vacancies--8 employees,
3. Vacancies-10 employees,
4. Vacancies and above employees equal to three times the number of vacancies.

203.5. Since employee from the different streams to be eligible to appear for the selection, their intended seniority for purpose of the selection should be determined on the basis of total length of non-fortuitous service rendered in grade Rs.2000-3200 (R.S.) as above. In other words the date of appointment of the grade Rs.200-3200 (RS) on a non-fictitious basis will be the criterion.

(Feader as 6500-10500-Acs 181 item No.4.)"

5. It is also relevant to consider the observations made by the Hon'ble High Court in WP(C) No.10011/2009 dated 18.07.2011, while upholding the decision of this Tribunal, in Sarwar Ali (supra) as under:

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

22. In the circumstances, direction by the Tribunal to consider the claim of the respondent for consideration for promotion to post of AOM (Group "B") cannot be termed to be illegal or suffering from such manifest illegality or irregularity so as to require any interference by this Court in exercise of its jurisdiction under [Article 226](#) of the Constitution of India.

23. In the totality of the facts and circumstances the pleas and contentions raised on behalf of the petitioners are rejected and the interim stay granted by this Court on 30th July, 2009 staying the operation of the order dated 5th December, 2008 passed in OA No.723 of 2008 is vacated and all the pending applications are disposed of. The petitioners shall comply with the direction given by the Tribunal by order dated 5th December, 2008 within three months. After consideration of the

respondents for the post of AOM (Group B) in the pay scale of Rs.7500-12000/- if the respondent shall be found fit, he will be given an appropriate place in the seniority list in terms of the direction of the Tribunal. With these directions, the writ petition is disposed of. Considering the facts and circumstances, the parties are however, left to bear their own costs.

6. The learned counsel appearing for the respondents, while denying that the facts of the present case and the facts in Sarwar Ali's case are identical, however, not disputed the principle decided in Sarwar Ali's case.

7. The specific contention of the respondents, as detailed in their counter, is as under:

"His claim therefore is that positioning of his name in the seniority is wrong, and that his position in the list on the basis of the date of promotion in the list on the basis of the date of promotion in scale Rs.6500-10500 is (a) without any lawful basis and (b) in utter disregard to the constitutional provisions as well as judgments of Hon'ble High Court."

8. In view of the above referred submissions, we are of the view that once a principle is decided in Sarwar Ali's case, as upheld upto the Hon'ble Apex Court, the respondents are required to consider the case of the applicant in terms of Sarwar Ali (supra).

9. In the circumstances, the O.A. is disposed of, by directing the respondents to assess the claim of the applicant for promotion to Group 'B' post, if any of his juniors were already considered for the same, by duly keeping in view the decision in Sarwar Ali (supra)

and to pass appropriate orders within a period of three months from the date of receipt of a certified copy of this order.

10. If the respondents found that the applicant is eligible for promotion to Group 'B' post, as claimed by him, they shall release all the consequential benefits to the applicant immediately thereafter. However, the applicant is entitled for the arrears only with effect from 15.01.2014, i.e. from the date of filing of the O.A.

No order as to costs.

(NITA CHOWDHURY)
Member (A)

(V. AJAY KUMAR)
Member (J)

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