

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00274 /2017

DATED THIS THE 13th DAY OF DECEMBER 2017

HON'BLE DR.KB.SURESH, MEMBER(J)

HON'BLE SHRI P. K. PRADHAN, MEMBER(A)

Ganesh Kumar Dwivedy,
Aged 52 years,
S/o Sri Keshava Prasad Dwivedy,
Chief Signal & Telecom Engineer (Construction),
South Western Railway,
Bengaluru.560 046.

...Applicant

(By Shri PA.Kulkarni..... Advocate)

Vs.

1.Railway Board,
Rail Bhavan,
New Delhi. 110 001.
By its Secretrary.

2.Chairman,
Railway Board,
Rail Bhavan,
Raisina Road,
New Delhi. 110 001.

3.General Manager,
South Western Railway ,
Hubballi 580 020.
For and on behalf of Union of India
and also as an authority of SWR
Hubballi

.....Respondents

(By Shri N.Amaresh ... Counsel)

ORDER (ORAL)

DR.KB.SURESH MEMBER (J):

1. The matter relates to very simply issue. The earlier rule postulated that for a selection as DRM in the Railways for a person who is already in the SAG level and as the DRM is also in SAG level. It is just changing over of the tracks. Therefore, there is no difference in career progression at this stage. But, this inclusion in the DRM level is required for inclusion of his name in the zone consideration for GM post. Therefore, this is very crucial to an employee. The Hon'ble Apex Court in Union of India vs. Hamraj Singh Chauhan & ors reported in AIR 2010 SC 1682 categorically held that the right to be considered for promotion is almost a fundamental right.

2. Therefore, since the applicant was born exactly on 1st of July he can only be considered in the larger public interest in the inclusive terms and not in the exclusive terms, just because in an amendment which was later brought in also the crucial date is 1st July. Therefore, by an artificial expostulation applicant's right cannot be taken away by wrong interpretation. This we have to say because the age 52 is selected without too much rational consideration. The more or less in that context will therefore be irrational as one day here or there will not make any manifest difference. Therefore, the interpretation has to be in the inclusiveness and

not in the exclusiveness. Therefore, we hold on the basis of the Hon'ble Apex Court rulings as mentioned above since it is the fundamental right of the applicant to be considered for promotion he should be considered in the right way, if he is other wise eligible. But, Shri PA.Kulkarni submits that his track record is exemplary for the last 10 years. Therefore, we will remit the matter back to the respondents to do the needful on the basis of the above Supreme Court rulings and interpretation we had given as it is the duty of every sensitive employer to be just in their dealing with their employees. This consideration shall be done by the respondents within 3 months next and appropriate order to be issued and if an order is passed in his favour, he will be considered on par with all those who are appointed when he became eligible at that point of time. OA is thus allowed to this extent. No order as to costs.

(P. K. PRADHAN)
MEMBER(A)

(DR.KB.SURESH)
MEMBER(J)

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Annexures referred to by the applicant in OA No.170/00274/2017

Annexure A1: Copy of 1989 Railway Board's guidelines.

Annexure A2: Copy of 2016 Railway Board's guidelines along with typed copy.

Annexure A3: Copy of Railway Board resolution dated 16.8.2016

Annexure A4: Copy of Railway Board resolution dated 11.10.2000

Annexure A5: Copy of List of officers short listed for DRM for the year 2015-16.

Annexure A6: Copy of Railway Board posting orders dated 13.4.2017 for the year 2016-17.

Annexure A7: Copy of Railway Board's one more posting order dated 19.4.2017.

Annexure A8: Copy of Railway Board's next posting order dated 5.5.2017.

Annexure A9: Copy of representation dt.10.11.2016

Annexure A10: Copy of representation dt.18.4.2017

Annexure A11: Copy of impugned order dated 9.5.2017 as communicated under letter dt.22.5.2017 from SWR Hubli.

Annexure A12: Copy of answer extract of Lok Sabha unstarred question No.1079 dated 17.7.2014

Annexure A13: Copy of answer extract of Lok Sabha unstarred question No.2389 dated 8.12.2014

Annexure A14: Copy of Principal Bench CAT order dt. 14.7.2010 in OA.2752/2010

Annexure A15: Copy of Principal Bench CAT order dt. 9.4.2014 in OA.4366/2013 with OA.270/2014

Annexure A16: Copy of CAT Mumbai order dt. 14.2.2014 in OA.522/2013 with CP.49/2013

Annexures with rejoinder statement:

Annexure RJI: Copy of the seniority list of the feeder cadre eligible for consideration for selection as DRM

