

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
CP/050/00070/17
With
OA/050/00460/15

Reserved on: 23.03.2018
Pronounced on: 02.04.2018

C O R A M

HON'BLE MR. A.K. UPADHYAY, ADMINISTRATIVE MEMBER
HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER

R.K. Kushwaha, Son of Sri Raj Kishor Kushwaha, Ex Assistant Signal & Telecom Engineer, East Central Railway, Danapur Now Deputy Chief Signal & Telecom Engineer, East Central Railway, Hazipur (Bihar).

..... Applicant.

- By Advocate: - Mr. M.P. Dixit

-Versus-

1. Shri A.K. Mittal, The Chairman, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi-110001.
2. Shri R.K. Verma, The Secretary, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi-110001.

..... Respondents.

- By Advocate(s): - Mr. Mukundjee
Mr. S.K. Ravi

O R D E R

Per A.K. Upadhyay, A.M.:- This contempt has been filed alleging non compliance of the Tribunal's order dated 03.05.2016 in OA/050/00460/2015 (Annexure A/1). The operative part is as follows:-

“22. Thus, the provisions of the IREM determining inter-se seniority based on DITS are clearly flawed and arbitrary. Accordingly, we quash and set aside the impugned orders dated 09/12.06.2015 [Annexure-A/8] and dated 12.12.2014

[Annexure-A/4] being contrary to the underlying principle emerging from the Hon'ble Apex Court judgment in N. R. Parmar case as well as DOPT guidelines in this regard which mandate that wherever it is considered necessary to follow different principles for inter se seniority, consultation should be made with the DOPT. The respondents are directed to recast the seniority afresh and take necessary action to make corrections in the IREM in the light of the aforesaid observations within a period of four months from the date of receipt/production of a copy of this order. There shall be no order as to costs."

2. This was a matter between a direct recruit Group 'A' officer and the promotee officers from Group 'B' to Group 'A' who were allowed to be impleaded on their intervention petition. The order of the Tribunal was not challenged by the Railways. However, it was challenged by the promotee officers. The Hon'ble High Court by its order dated 12.05.2016 in CWJC No. 10669 of 2016 affirmed the judgment of the Tribunal.

3. It appears that the promotee officers thereafter agitated the matter before the Hon'ble Supreme Court in SLP No. 22444 of 2017. We do not have on record the outcome of this matter before the Supreme Court. However, the respondents/ contemnors have filed a compliance report dated 16.03.2018 with which they have annexed an inter-se seniority of the Group 'A' officers and promote officers vide Railway Board's letter dated 09.03.2018 addressed to all the General Managers (Annexure R/1). With the compliance report, RBE No.33 dated 05.03.2018 (Annexure R/2) has also been annexed

which is regarding principles of inter-se seniority of direct recruits. It has been stated in this letter that in exercise of the powers conferred by the proviso to Article 309 of the Constitution, the President has decided that principles for inter-se seniority of direct recruit Group 'A' officers and promote Group 'B' officers inducted into Group 'A' junior scale effective from the panel year 2012-13 stands modified amended as per Annexure/1. It has also been stated that this shall be applicable in all cases of fixation of inter-se seniority of promote officers of 2012-13 panel onwards and direct recruit 2006 examination onwards. They have also enclosed DoP&T OM Mo.43019/4/2018-Estt. D dated 16.02.2018 addressed to the Ministry of Railways (Annexure R/3) stating that the Ministry of Railways being the administrative ministry in the present case (SLP No. 22444 of 2017) is requested to defend the case on behalf of all the respondents including DoP&T as DoP&T is only a proforma party in such cases.

4. It was argued by the Id. Sr. Panel counsel for the Railways, Shri Mukundjee that this is full compliance of the Tribunal's order because in terms of the directions of the Tribunal the policy for fixing inter-se seniority between direct recruits and promotee officers has been modified to remove any scope of arbitrariness by fixing the seniority on the basis of allotment year/vacancy year as against the earlier practice of doing it on the basis of Date of Increment in Time Scale (DITS). Shri S.K. Singh, Under Secretary to

Railway Board assisted the Tribunal and explained the Railway Board's policy. As such, the counsel prayed for dropping the contempt proceedings.

5. The learned counsel for the applicant vehemently argued that this is not compliance at all. Rather it is in gross violation of the Tribunal and Hon'ble High Court's order and, therefore, contempt proceeding should be initiated against the respondents.

His main arguments were as follows:-

(i) The Tribunal had quashed the Railway Board's letter dated 12.12.2014 regarding fixation of inter-se seniority between the direct recruit officers and Group 'B' officers on promotion to Group 'A' and directed the Railways to recast the seniority on the principles of N.R. Parmar's case. In the impugned seniority list 87 promoted officers of the panel year 2012-13 and 2013-14 were placed below the direct IRSSE officers of 2007 examination and above those of 2008 examination. As per Shri Dixit the direct recruits' seniority has to be fixed on the basis of the date of requisition, i.e. 2007 (for the applicant) and the promotee officers on the basis of date of promotion, i.e. 2014. Instead, the applicant has been given a seniority of 2009 and the respondents have been placed above him by giving the weightage of 5 or 6 years.

(ii) RBE do not come under rule making powers under Article 309 of the Constitution.

(iii) Giving any weightage in service to Group 'B' officers in promotion is illegal and in violation of the Tribunal's order.

6. Shri Dixit submitted that Railway services are central services. No other service has a provision for giving weightage in

seniority of promotee officers from Group 'B' to Group 'A'. Such provision exists only in the case of All India Services, mainly IAS, IPS and Indian Forest Service in which there is a provision for giving weightage in number of years in seniority for promotion from the feeder state services. This provision is there by virtue of a parliamentary enactment. The Railway Board cannot allow such weightage by a circular under the garb of rule making powers under Article 309 of the Constitution. The Railway Board circular cannot have the legal force at par with what exists in the case of All India Services.

7. The key question hinges on what exactly has been decided by the Tribunal? To be more precise whether the Tribunal has said that the applicant's seniority shall be counted from 2007, i.e. the year of requisition. And, whether the Tribunal has said that giving weightage in service for promote officers is illegal.

8. In the present case, the requisition (for direct recruits) was sent in 2007, the Engineering Service Examination was held in 2008 and the applicant joined in 2009. The Tribunal has observed in para-15 of the order that *"It is difficult to relate the date of requisition 23.10.2007 as the reference date for determining the vacancy for a competitive examination 2008. Thus, the contention of the applicant that the relevant date for fixing his seniority will be 23.10.2007 is not acceptable"*. In the earlier paragraphs of that order the Tribunal has explained the entire concept of N.R. Parmar after

which the above view has been recorded. Therefore, the Tribunal has specifically held that a direct recruit joining in 2009 on the basis of an examination of 2008 cannot be given a seniority of 2007. As regards the question of giving additional weightage of seniority (upto a maximum of 5 years) on promotion from Group 'B' to Group 'A', the Tribunal has taken note that award of additional weightage to promotee officers is not unknown in service jurisprudence. In paras 18, 19 of the judgment the concept of weightage as prevalent in IAS has been discussed. The Tribunal has nowhere held that giving weightage to promotee officers is illegal. What has been observed is that making the seniority on the basis of DITS gives scope of arbitrariness because the date of joining of direct recruits and date of promotion for promotees are subject to vagaries of *"unintended delay in completion of the process of one stream or the other, or in the worst case human manipulation"*. In the light of this the Railway Board's action was held to be flawed and arbitrary and they were directed to re-cast the seniority in consultation with the DoP&T in conformity with the underlying principles emerging from the Hon'ble Apex Court's judgment in N.R. Parmar's case.

9. It is clear from the aforesaid discussion that the reference to N.R. Parmar was regarding removing the arbitrariness due to DITS and bringing it on line with the concept of vacancy year/allotment year which does away with this problem.

10. We have gone through the revised policy. It would not be appropriate to discuss the merit of the policy in contempt jurisdiction. However, we are satisfied that the new policy for fixation of seniority does not depend upon the DITS but upon the allotment year/vacancy year.

11. It is also not proper in contempt jurisdiction to go into the question whether the Railways have rule making powers under Article-309 of the Constitution and whether the said RBE is without any legal force. The legality of this RBE, the reasonableness of the revised policy and legality of giving weightage in service to the promotee officers can be adjudicated only in a separate judicial proceeding.

12. The learned counsel for the applicant has filed a detailed written argument enclosing some judgments. The written argument is essentially repetition of the submissions made in the OA, CP and oral arguments made during hearing which we have already summarized in our preceding paragraphs. He has reiterated that RBE No. 33 of 2018 dated 05.03.2018 stated to be issued under Article-309 is directly against para 24 of the order passed by Hon'ble Patna High Court. The said para 24 is quoted as follows:-

“ 24. The issue, therefore, is as to what would be the deciding principles while determining inter-se seniority between direct recruits and promotees and since the office memorandum is applicable to one and all Ministries and Departments of Government of India across the board, the decision of the Chairman, Railway Board, that they are not

bound by the OM or the decision of the Hon'ble Apex Court is a misplaced kind of understanding of law especially when the Indian Railway Establishment Manual is not statutory in nature, but is a codified set of guidelines only and it is the Indian Railway Establishment Code, which is statutory and wherein Rule 201 specifically lays down that so far as appointment of Group A posts are concerned, they are to be done by the UPSC and not by the Railway. The power of the Railway is confined to Group-C and D posts alone, The Railway cannot shy away from following the OM issued by the DOP&T, which have been issued in terms of declaration of law by the highest Court of the land."

13. Thus, the aforesaid para 24 does not categorically say that the applicant's seniority has to be counted from the year 2007 or that the weightage in years to the promotee officers is illegal. Finally, there is a mention of consultation with DoP&T. The consultation has been done and the DoP&T's vide OM dated 16.02.2018 has also been enclosed with the compliance report (Annexure R/3) which we have also referred to above.

14. The judgments cited by the applicant are as follows:-

(i) Hon'ble Patna High Court judgment dated 12.05.2017 in **CWJC No. 10669 of 2016** - By this judgment the Tribunal's order was affirmed. The judgment has already been referred above.

(ii) The Hon'ble Supreme Court judgment in the matter of **Sunaina Sharma & Others Vs. State of Jammu and Kashmir & Others** - This is regarding service law of promotion, retrospective promotion in which it has been held that normally no person can be promoted with retrospective effect from a date when he was not born in a cadre. This

judgment can have value when the legality of weightage to service to promotee officers is challenged in a separate litigation. In contempt jurisdiction it is not possible to adjudicate this issue and declare this part of the policy illegal.

(iii) The Hon'ble Supreme Court judgment in **P. Sudhakar Rao & Ors Vs. U. Govind Rao & Ors.** Dated 03.07.2013 in CA No. 1712-1713 of 2002 (**AIR 2013 SC 2533**) – It is not clear why the applicant has cited this case, because the placitum of this judgment on the point of weightage of past service does not lend any strength to the argument of Mr. Dixit. We refrain from quoting from this judgment so as not to prejudice the right of the applicant to challenge the legality of the weightage given to the promotee officers.

(iv) The Hon'ble Supreme Court judgment dated 12.09.2017 in CA No. 1585-1586 of 2017 in the matter of **Union of India & Ors. Vs. Raj Kumar Jha & Ors.** – This was a matter of promotion from National Capital of A&N Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli Police Services (DANIPS) to the IPS. The Hon'ble Supreme Court have held that the seniority in IPS will depend on the date of induction to the IPS and it cannot be based on the length of service in any of the service prior to the induction. This would be a very good basis for challenging the legality of the policy of the Railways granting weightage to promote officers to Group 'A' service. However, as discussed in the foregoing paragraphs it would not be prudent to pass such orders in contempt jurisdiction.

(v) The judgment of the Hon'ble High Court, Patna in CWJC No. 17935 of 2017 in the matter of **Pawan Kumar Jha & Ors. Vs. Union of India & Ors.** by which the Tribunal's order was set aside. This was a matter regarding the inter-se seniority of promotee Income Tax Inspectors and direct recruit Income Tax Inspectors. In contempt jurisdiction we cannot go into these details.

(vi) The judgment of the Hon'ble Supreme Court in the matter of **Prithvi Nath Ram Vs. the State of Jharkhand & Ors.** dated 24.08.2004 in CA No. 5024 of 2000 [AIR 2004 (SC) 4277] – The ratio of this judgment is that an order of the Court has to be obeyed. Flouting an order would render the party liable for contempt. Rightness or wrongness of the Court's order cannot be urged in contempt proceeding. This is not a case where the authorities are questioning the rightness or wrongness of the order. They have complied with the order and have re-cast the policy. There is also consultation with DoP&T on record who have given some advice vide OM dated 16.02.2018 (Annexure R/3). The legality of the new policy cannot be challenged in the contempt jurisdiction because it raises complex questions of law.

(vii) The Hon'ble High Court's judgment dated 01.02.2018 in MJC No. 2039 of 2016 (in CWJC No. 1560 of 2012) – In this judgment the Hon'ble High Court have held that the Railways cannot interpret a judgment as if an appellate authority. In the present case we are not convinced that the authorities have tried to act as an appellate authority over the court's judgment.

15. Finally, the most important fact is that the Hon'ble Supreme Court is currently seized of the matter in SLP (Civil) 22444 of 2017 in which the direct recruits, the promotees, the Railway Board and the DoP&T all are parties. Surely, the legality of the revised policy would be placed by the parties before the Hon'ble Supreme Court who will decide the law on this matter and also settle the dispute finally. In the light of the fact that the matter is pending

before the Hon'ble Supreme Court, It would not be appropriate to take any coercive measure against the Railway officials.

16. In conclusion, the Railways' conduct cannot be termed as deliberate defiance of the Court's order, or contumacious. The CP is dropped. Notices are discharged.

[Jayesh V. Bhairavia]
Judicial Member

Srk.

[A.K. Upadhyay]
Administrative Member