

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. 112/2014

Reserved on 15.11.2017

Date of Pronouncement 05.12.2017

CORAM

**Hon'ble Shri A.K. Upadhyay, Member [A]
Hon'ble Shri Jayesh V. Bhairavia, Member [J]**

V.K. Gupta Son of Sri J.P.Gupta, Divisional Engineer-III, East Central Railway, Sonpur, District- Saran (Bihar).

.....Applicant

By Advocate : Shri M.P.Dixit

Versus

1. The Union of India through the Chairman, Railway Board Ministry of Railway, Rail Bhawan New Delhi.
2. The Director Establishment (GP) Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
3. The Secretary, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
4. The Chief Personnel Officer, N.E. Railway, Gorakhpur.

.....Respondents

By Advocate: Shri Bindhyachal Rai.

ORDER

Jayesh V. Bhairavia, Member [J]: The applicant in this O.A is aggrieved by the seniority list of Group-B Officer of Civil Engineering Department issued on 17.12.2013, 01.01.2012 and 01.01.2013 for forming the panel of Group A/Jr. Scale of IRSE for vacancy year 2012-13 & 2013-14 in which the name of the applicant has been placed at serial No. 220 and 211 respectively. Therefore, he prays for the following relief(s) in terms on para 8 of their O.A.:-

[8.1] That your Lordships may graciously be pleased to direct/command the respondent no. 1 to 3 to place the name of applicant in the impugned seniority list dated 17.12.2013 and 01.01.2012 and 01.01.2013 as contained in Annexure A/1 in between sl. O. 88 to 92 and 83 to 87 respectively and in any ase at sl. No. 133 and 126 as on 01.01.2012 and 01.01.2013 respectively i.e just below the name of Sri Ravindar Mehta figured at sl. No. 132 and 125 in the impugned seniority list as on 01.01.2012 and 01.01.2013 because the persons under said serial including Sri Mehra were also selected against the same and one notification as evident from Annexure A/2 and A/5 and as such the impugned seniority list as contained in Annexure A/1 be declared as void ab initio wrong.

[8.2] That Your Lordships may further be pleased to direct the respondents to modify the seniority position of applicant as indicated in the OA as well as in para 8.1 aboe without any delay with all consequential benefits.

[8.III] Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant".

2. The brief facts of the case, as submitted by the applicant, are as below :-

[i] The applicant,namely Shri V.K. Gupta, is presently working as Divisional Engineer-III under the East Central Railway, Sonepur. During the period when applicant was working against the Group C' post , a notification was issued by the respondents on 16.02.1998 for holding selection for promotion to the post of Assistant Engineer Group-'B 'under 30% quota. After following the requisite procedures, the applicant was declared successful, and accordingly, the applicant's name was included in the list of 10 successful candidates.

[ii] In pursuance of the said notification dated 16.2.1998, initially, the respondents had prepared a provisional panel of 8 successful candidates and thereafter, the names of other successful candidates, including the applicant were about to be included in the panel, as he had also passed the requisite test and had become eligible to be included in the panel. However, before the said panel of 8 successful candidates and others could be operated upon, some unsuccessful employees, including one Shri Dinesh Kumar K. Upadhyaya and others had filed one O A 1267 of 1998 before CAT, Allahabad against the implementation of the panel prepared pursuant to notification dated 16.2.1998. Initially, this Tribunal had granted an interim order, staying the operation of appointment process undertaken pursuant to notification dated 16.2.1998. Thereafter, the interim order was modified on 26.08.1999 and directions were issued to keep two posts out of ten vacant till the decision of that OA and allowed to fill up the remaining posts from amongst other candidates who had been placed in the panel. Thereafter, in terms of order passed by CAT, Allahabad, the respondents had filled up those 8 posts who were in the panel and they were appointed / inducted to the post of AEN [Group 'B'] by order dated 3.9.1999 and two post were kept vacant. The applicant and one Shri A.N. Singh who were amongst selectee were left out of the appointment due to interim order passed by the Tribunal. Subsequently, the said O.A was dismissed. Aggrieved by the said order, the affected applicants of that OA approached Hon'ble Allahabd High Court by way of writ

petition No. 27488 of 2000 where the interim order granted earlier dated 20.6.2000 had been modified and the respondents were directed to fill up the two vacant posts, subject to the final decision of the writ petition. The said order was passed on 1.2.2001 by the Hon'ble High Court [Annexure A/4 refers.]

[iii] In compliance to Hon'ble High Court's order dated 1.2.2001, the General Manager of the department, vide its order dated 8.11.2001 included the name of one Mr. A. N. Singh and the applicant in the provisional panel against Serial 9 and 10 for the post AEN [Group 'B'] against 80 % of vacancies [LDCE], subject to final decision of the writ petition pending before the Hon'ble High Court. Annexure A/5 refers.

[iv) Vide order dated 16.11.2001, the applicant was posted/inducted as AEN [Group 'B'] as per the panel list dated 8.11.2001. Annexure A/6 refers.

(v) It is stated that the next higher post from AEN [Group 'B'] is Group 'A ' / Junior Scale of IRSE. The said post of Group A/Junior Scale were to be filled up by way of promotion. In this regard, the seniority list of all concerned railway department were called for by the Railway Recruitment Board, and on receipt thereof, on 21.12.2011, the respondent no. 3 had circulated a provisional seniority list of Group B Officers of Civil Engineering Department as on 1.1.2010 and 1.1.2011. In the said seniority list, the name of Rabindra Mehra was placed at serial no. 265 and the name of Mr. A.N. Singh and the name of the applicant had been placed at serial no. 266 and 267 respectively and regarding the position existing

as on 1.1.2011, the seniority were accordingly assigned to the said other officials, including the applicant at serial nos. 260, 261 and 262 respectively. Annexure A/7 refers.

(vi) On 24.9.2013, the respondent no. 3 had issued a provisional seniority list for forming the panel of Group A / Junior Scale of IRSE for the vacancies of 2012 as on 1.1.2012 wherein the name of the applicant was placed at serial no. 220 and Shri A.N. Singh's name was placed at serial no. 219. So far the seniority list for the year 2013-14 is concerned, the position of the applicant and Shri A.N. Singh were shown at serial no. 211 and 210 respectively. With utter surprise, officials who were selected in pursuance to the notification dated 16.2.1998 had been placed at serial no. 88 onwards in the said seniority list, whereas though the applicant was also selected and appointed under the said notification, his name had been placed far below, therefore, against the said seniority list published by respondent no. 3 on 24.9.2013 the applicant had preferred a representation dated 7.10.2013 and submitted his objection. Annexure A/8 refers.

(vii) On 17.12.2013, the respondent no. 3 had issued the final seniority list for forming the panel of Group A / Junior Scale of IRSE for the vacancies of 2012 and 2013-14 in which the applicant's name had been placed at serial no. 219 with regard to position as on 1.1.2012 and at serial no. 211 with regard to position as on 1.1.2013. Annexure A/1 refers.

(viii) The learned counsel for the applicant submitted that though the applicant had submitted his objection against the seniority list

for the vacancy of the year 2012-13 and 2013-14. However, without considering the same, the final seniority list dated 17.12.2013 had been issued and the said seniority list is under challenge in this OA.

(ix) It is further submitted that the applicant was originally declared successful for the selection and appointment to the post of Group 'B' along with other 9 successful officials. However, due to court's order, out of 10 selectee / empanelled officials, only 8 were appointed on 3.9.1999 whereas the applicant and Shri A.N. Singh's name were subsequently included in the revised panel dated 8.11.2001 and thereafter, the applicant along with another official i.e Shri A.N. Singh were appointed to Group 'B'. Though the applicant's seniority for the year 2010-11 was assigned along with other officials who were also selected and appointed under the said notification. However, in arbitrary manner and discriminatorily, the name of the applicant had been placed much below to the identically selected officials in the seniority list published on 17.12.2013. Therefore, the action of the respondents is illegal and in violation of Rule 303 and 306 of the IREM Vol. I 1989. It is further submitted that the name of applicant needs to be placed at par with the identically situated officials who were commonly selected vide notification dated 16.2.1998. The applicant claims that the anomaly which cropped up with the publication of the seniority list dated 17.12.2013 needs to be removed. However, till date, the respondents have not redressed the grievance of the applicant and further, the respondents are in process of filling up

the post of Group A/Junior Scale on the basis of seniority list dated 17.12.2013. Thus, the applicant will be deprived of his legitimate right for higher promotion. Therefore, the prayer sought in para 8 of this OA be allowed.

3. The respondents have filed their reply and opposed the prayer and contention of the applicant in his OA. On the basis of their written statement, the learned counsel, Shri Bindhyachal Rai has submitted as under:-

[i] It is submitted that up to year 2009- 2010, there were a lots of anomalies existing in inter-se- seniority position of the various officials working at different Railway Zones in Group B, and therefore, Indian Railway Promotee Officers Federation [in short IRPOF] demanded that for the vacancy year 2010-11, the Group 'B' officials seniority in each of the 8 departments should be integrated on all India basis as per the date of their entry in Group B and accordingly, the officials be empanelled for Group A/ Junior Scale.

[ii] It is further submitted that the proposal of IRPOF was considered by the Railway Board at length and it was decided to replace the existing system of Railway – wise –empanelment by the one based on All India Integrated Group ' B ' seniority in each of the eight department from the vacancy year 2010-11. Accordingly, instructions were issued under Board's letter dated 13.5.2011, wherein it was stipulated that from the vacancy year 2010-11, a common eligibility list of Group 'B' officers of each organized service would be prepared on All India basis in order of their dates of 'induction' into Group 'B' without disturbing the inter-se Group 'B' seniority prevailing in each Railway/ Unit. And it was directed that

the procedure would have limited application to the extent of forming of Group 'A' / Junior Scale panel on all India basis. It was also submitted that the said instructions of the railway Board were issued with a view to providing equal opportunity to all the eligible officials of Group 'B'.

[iii] It is further submitted that integrated seniority list as on 1.1.2012 and as on 1.1.2013 in the 8 major departments [including civil Engineering] for promotion of Group B to Group A / Junior Scale for the vacancy year 2012-13 and 2013-14 have been issued in accordance with instructions of Railway Board and subsequently, DPC was held and in pursuance of approval of UPSC, promotion orders were issued on the basis of said existing seniority list, meaning thereby that the seniority list dated 17.12.2013 has already been operated upon and as and when turn of applicant come, he will also be considered for promotion to the post of Group A/Junior Scale.

[v] It is further submitted that the representation of the applicant dated 7.10.2013 was considered by the Railway Board. It is submitted that as per direction of the Tribunal and the Hon'ble High Court, a panel of eight candidates was published on 3.8.1999 and after approval of the competent authority, the said officials were inducted in Group B much before the applicant's appointment. The name applicant along with Shri A.N. Singh were included in the panel only on 8.11.2001, that too, after Hon'ble High Court had allowed the respondents to fill up the remaining two vacant posts. Thereafter, the applicant had joined as AEN Group

'B' on 20.11.2001 and Shri A.N. Singh had joined on 19.11.2001. and as per the date of their induction in Group B, their seniority were also assigned accordingly in the integrated seniority list.

[vi] The applicant now claims that he should be assigned seniority as per the publication of the first panel i.e. 3.8.1999, and not from the date of his induction in Group B, the said claim cannot be accepted in terms of instructions issued by Railway Board, as the induction date of applicant in Group B service is 20.11.2001 and accordingly, the seniority has been assigned which is just and proper. Moreover, it is further submitted that the applicant is junior to Shri A.N. Singh, N.E Railway, and said Shri Singh is junior to Shri Rabindra Mehra. It is important to note that said Rabindra Mehra was inducted in Group B in 1999 and thereafter from the period 1999 till the induction of the applicant in 2001 in Group B service, there were other officials who had been ordered to be inducted in the service before the applicant joined in Group B, and therefore, the applicant cannot claim seniority over the officials who joined earlier than the applicant. It is further submitted by the respondents that in the seniority list issued in year 2012 as on 1.1.2010 and 1.1.2011, the applicant's seniority was incorrectly assigned. The error occurred because the date of induction of another officials i.e one Saheb Singh was incorrectly considered in the said seniority list, and due to that, there was variation in assigning the seniority of the applicant. Subsequently, the error was rectified while finalizing the next seniority list i.e integrated

seniority list dated 17.12.2013. Therefore, in view of the factual position as submitted, the applicant is not entitled for any relief.

4 The learned counsel for the applicant had filed rejoinder and reiterated the submissions and denied the respondents' submissions. It is further submitted by the applicant that their seniority list had been prepared on the basis of joining on the post of Group B, the said action of the respondents is not correct because , the said date of joining to the post of Group B is immaterial, rather seniority has to be determined on the basis of merit position in the panel prepared in pursuance to concerned selection notification. It is submitted that seniority has to be determined on the basis of position in the merit list when selections were made in pursuance to common advertisement and on the basis of common merit list. For this submission, the learned counsel placed reliance on the judgment passed by CAT, Principal Bench, New Delhi in OA 585 of 2004 reported in ATJ 2006 (1) 340 and Judgment passed in CWJC No. 937 of 1992 decided on 11.8.2000 in the case of Shri Kapil Deo Prasad and another vs. State of Bihar and others reported in 2001 (1) PLJR and contended that the action of the respondents assigning the seniority of the applicant on the basis of date of his joining is erroneous and hence, reliefs sought in the OA be allowed.

5 Heard the parties and perused the records. It emerges from the record that vide notification dated 16.2.1998, respondents had decided to fill up post of AEN, Group B against 30 % of vacancies from the cadre of Group C and accordingly, after undertaking a due process of selection i.e followed by written test and viva voce, a panel of successful candidates were prepared. Before the said panel was acted upon, some unsuccessful employees approached the CAT, Allahabad and obtained an interim order against the implementation of

the panel for promotion to the post of Group B. In view of the interim directions of CAT, Allahabad, the respondents were allowed to fill up only 8 posts by keeping two posts of Group B vacant, and accordingly, on 3.9.1999, eight [8] empanelled candidates were approved for appointment to Group B and the said panel was acted upon. It is the case of the applicant that he was also one of the successful candidates for selection in Group B, as he had succeeded in written test and viva voce tests which were conducted by the respondents for filling up Group B post in pursuance to notification dated 16.2.1998.

6. It is noticed that initially, only 8 officials were inducted in Group B in the year 1999 i.e. on 3.9.1999. In the said selection, the name of the applicant was not included. Subsequently, when the Hon'ble Allahabad High Court had vacated the stay order and allowed the respondents to fill up remaining two vacant posts, only thereafter, the respondents had included the name of applicant at serial no 10 of the selection list vide order dated 8.11.2001, and accordingly, the applicant had joined the service as AEN in Group B.

7. The controversy occurred when the seniority list of Group B was published for the vacancy of the year 2010-11 for higher post i.e Group A/ Junior Scale and also subsequent seniority list dated 17.12.2013 as on 1.1.2012 and 1.1.2013 for the vacancy of the year 2012-13 and 2013-14.

8. It is submitted by the applicant that he has been assigned wrong seniority and deprived of his legitimate right for promotion to the higher post. To substantiate his submission, the learned counsel for the applicant vehemently argued that the applicant was found successful to be included in the panel for appointment in Group B in pursuance to selection notification dated 16.2.1998 along with the applicant, some other officials were also selected for Group B, however, the applicant had been assigned his seniority far below those who

were identically situated. The said action of the respondents is erroneous, illegal and in violation of rule 303 and 306 of IREM Vol. I, 1989, according to the applicant, the stand of the respondents to prepare integrated seniority list of Group B, that too, from the date of induction of the official in Group B, is against the rules. In our view, the said submission of the applicant is not tenable and the same is also contrary to the factual matrix of the present case.

9. It is an admitted fact that the applicant was empanelled on 8.11.2001 for the selection to the post of AEN Group B and subsequently was appointed on 16.11.2001 to the post of Group B whereas other officers, namely one Shri Rabindra Mehra and other 7 were included in the selection panel on 3.9.1999 and they were inducted in the cadre of Group B in the year 1999. This clearly establishes the facts that said officials who were inducted in 1999 are senior to the applicant and accordingly, their seniority were assigned over the applicant. It is also important to note here that the respondents have submitted that the integrated seniority of Group B officials was prepared on all India basis as per the instructions issued by the Railway Board. According to it, after due deliberation with the Association of officials and also considering previous anomalies in determining the seniority of Group B working in different department of different zones of the Railway throughout the India, the Railway Board had decided to assign the seniority from the date of induction of the official in Group B. The said decision has been implemented by the respondents since 2011 -12 and DPC was held and after approval of the UPSC, various orders of promotion of Group A / Junior Scale have been issued. The impugned seniority dated 17.12.2013 have already been operated upon. In this view of the matter, the contention of the applicant that the respondents had wrongly assigned his seniority is far from the truth. So far the submission of the applicant that the

respondents have not followed the rules for determining the inter-se seniority, is also not tenable.

10 It can be seen from the perusal of Rule 302 of IREM Vol. I, which speaks that unless specifically stated otherwise, the seniority among incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a Railway servants' seniority above those who are already appointed against regular post. Therefore, instructions issued by the Railway Board to remove anomalies with regard to assigning the seniority of Group B is found to be just and in consonance with the principle of equity. In the present case, the seniority list dated 17.12.2013 is based on the said principle and the same cannot be faulted. Further, paragraph 306 of IREM Vol. I clearly stipulates that the candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the date of posting except in the case covered by paragraph 305 above. Hence, the Rules of IREM as relied upon by the applicant in the present case are not of any help to the applicant. In the present case, as stated above, the applicant was selected for appointment on 8.11.2001 much later than those with whom he is seeking parity. In fact, those officials were selected for appointment in the year 1999, whereas the applicant was selected for appointment on 8.11.2001. Therefore, the applicant cannot be placed at par with them as per extant rules. The say of the applicant that seniority ought to have been assigned on the basis of merit position in the panel of the concerned selection notification only and not on the basis of subsequent notification for selection and also not on the basis of date of joining on the post, is also not acceptable in view of what has been observed hereinabove. It is important to note here that the applicant had accepted the appointment order in Group B

from the date 16.11.2001 when he entered in the cadre of Group in the year 2001, the said order has never been challenged by the applicant and the same is accepted for all purposes in the service benefits. Moreover, the seniority list dated 17.12.2013 which is under challenge has already been acted upon and in pursuance thereof, eligible officials were given promotion to Group A / Junior Scale and any interference with the impugned seniority list dated 17.12.2013 will unsettle the things which are settled in accordance with relevant rules and guidelines of the Railway Board.

11. Considering the issue at length, this Tribunal holds that the determination of inter-se seniority has to be done on the basis of date of induction in the grade and not on the basis of date of inclusion in the panel for appointment. We find that the applicant has not made out any case for grant of his reliefs. The OA is devoid of merit and the same is accordingly dismissed. No order as to costs.

(Jayesh V. Bhairavia) M [J]

(A.K. Upadhyay) M (A)

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