

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00168/2018

With

Misc. Application No. 040/00003/2019

Date of Order: This, the 5th day of April 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, ADMINISTRATIVE MEMBER

Sri Anand Dev, Son of Late T.R. Gupta
Presently resident of Flat No. 497/C
Railway Officers Colony, Nambari
Maligaon, Guwahati – 781011.

...Applicant

By Advocates: Mr. U.K. Nair, Sr. Advocate, Mr. M.P. Sharma and
Ms. N. Shyamal

-VERSUS-

1. THE UNION OF INDIA
Represented by the Secretary
Railway Board, Ministry of Railways
Government of India, New Delhi – 110006.
2. The Director, (Establishment)
Railway Board, Ministry of Railways
Government of India, New Delhi – 110006.
3. The General Manager
N.F. Railway, Maligaon, Guwahati – 11.
4. The Chief Personnel Officer
N.F. Railway, Maligaon, Guwahati – 11.
5. Sri Rajesh Tiwari
HAG, IRSEE
Principal Chief Electrical Engineer
Northern Railway, Baroda House, New Delhi – 110001.

... Respondents

By Advocates: Ms. U. Das, Rly. SC and Mr. USR Krishna

ORDER

NEKKHOMANG NEIHSIAL, MEMBER (A):

Being aggrieved with the impugned order dated 30.01.2018 to the extent he was promoted to HA Grade from the panel of 2017-18 instead of the panel of 2016-17, the applicant has preferred the instant O.A. under Section 19 of the Administrative Tribunals Act, 1985 seeking the following main reliefs:-

- “8.1 To set aside and quash the impugned order dated 30.01.2018 to the extent the applicant was promoted to HA Grade from the panel of 2017-18 instead of the panel of 2016-17 and grant all consequential benefits.
- 8.2 To direct the respondents to hold Review Supplementary DPC for considering promotion of the applicant against 5 (five) additional vacancy arising in the vacancy year 2016-17 and/or to implement the supplementary panel already prepared by the Railway Board and promote the applicant to HA Grade with all consequential benefits.
- 8.3 To direct the respondents to consider the case of applicant for promotion to the next higher post of General Manager upon grant of relief No. 8.1 and 8.2 with all consequential benefits.
- 8.4 Cost of the application.
- 8.5 Pass any such order/orders as Your Lordships may deem fit and proper.”

2. Mr. U.K. Nair, learned Sr. counsel assisted by Ms. N. Shyamal for the applicant submits that the applicant is a 1981 Batch officer of Indian Railway Services of Electrical Engineers (IRSEE) who

was initially appointed as Assistant Electronic Engineer in 06.05.1983 under the Central Railway. By virtue of order dated 15.12.2014 issued by the Director (Estt) Railway Board, the applicant was promoted to Non-Functional HA Grade w.e.f. 10.07.2014. The applicant came into the zone of consideration for promotion to the next higher rank of HA Grade for the panel year 2016-17. The respondents published the panel of 17 officers for promotion HA Grade and uploaded the same in the website. After the empanelled list of HA Grade officer was uploaded, it was found out that 5 more vacancies for the year 2016-17 had emerged apart from the 17 vacancies which had already been uploaded in the website. The vacancies for the year 2016-17, including the 5 additional vacancies arising during 2016-17 could not be filled up due to pendency of O.A. No. 01462/2016 filed before the Learned Central Administrative Tribunal, Allahabad Bench by one Sri Rajesh Tiwari challenging his non-inclusion in the Panel of SA Officers.

3. Learned Sr. counsel further submits that when the applicant submitted a representation dated 01.10.2017 praying for preparing a supplementary panel against the 5 additional vacancies, he was informed that the matter was under active consideration of the Railway Board. This led him to believe that his case would receive due consideration for empanelment in HA Grade for the year 2016-17 in the Extended panel. To his utter surprise

he found out by information note dated 30.01.2018 that 22 officers, including the applicant had been approved for empanelment to HAG Scale for the panel year 2017-18, whereas he should have been empanelled under the panel year 2016-17.

4. Mr. Nair, learned Sr. counsel further submits that the applicant was in the zone of consideration for promotion to next higher rank of HA Grade for the panel year of 2016-17. In this context it is worthwhile to mention here that as per Rules holding the field, the Railway Board is required to hold year wise DPC for the filling up of posts before commencement of the vacancy year. Here the vacancy year is the financial year i.e. April to March. Be that as it may, the Railway Board convened the DPC meeting for preparing the panel of SA Grade/IRSEE officers for promotion to HA Grade for the vacancy year 2016-17 which was approved by Appointments Committee of the Cabinet (ACC) on 16.08.2016 and same was uploaded in the website. A bare perusal of the same would reveal that in the main panel in total 13 (thirteen) incumbents were empanelled and in the extended panel 4 (four) incumbents were so empanelled. In this context, it is pertinent to mention here that amongst the 13 (thirteen) incumbents included in the main panel, most of the officers have already retired. Again apart from the 17 vacancies shown to be included in the Main Panel and Extended Panel, 5 (five) more vacancies had arisen during the vacancy year

01.04.2016 to 31.03.2017, which was not considered in the original DPC.

5. According to Mr. Nair, learned Sr. counsel, one of his colleagues Sri Rajesh Tiwari instituted O.A. No. 01462/2016 before the Central Administrative Tribunal, Allahabad Bench challenging his exclusion from the panel of 2016-17 for promotion to HA Grade. The exclusion of said Tiwari from the panel as prepared for the year 2016-2017 was account of his inferior service records. The Hon'ble Tribunal while issuing notice in the matter was pleased to pass an interim direction restraining the respondents from effecting promotions to HA Grade in pursuance to the panel prepared by the respondents. The case was finally heard by the co-ordinate bench of this Hon'ble Tribunal and was pleased to pass the judgement and order dated 30.08.2017 dismissing the original application. The interim directions as passed in the matter accordingly also stood vacated with the passing of the said Judgement and order dated 30.08.2017.

6. Mr. Nair, learned Sr. counsel further submits that on account of the pendency of the proceedings in O.A. No. 01462/2016 the promotion of officers empanelled for promotion to the HAG against the vacancies of 2016-17 came to be delayed. However, immediately after the decision of the Hon'ble Tribunal in the case of Sri Rajesh Tiwari, Sri A. K. Singhal whose name figured in the extended

panel for the year 2016-17 prepared by the Railway Board came to be promoted to HA Grade vide order dated 13.10.2017. It is stated that in the meantime 5 (five) more vacancies in HA Grade had arisen during the vacancy period April' 2016 to March' 2017 on account of further promotion of incumbents to the rank of General Manager. Be that as it may, after occurrence of 5 (five) more vacancies for the year 2016-17, it was incumbent upon the respondents to prepare an extended panel for promotion to HA Grade for the year 2016-17 by holding supplementary DPC. Accordingly, the applicant submitted a representation dated 16.10.2017 before the Chairman, Railway Board praying for preparing a supplementary panel as per the instructions issued by the DoPT.

7. On the other hand, learned counsel for the respondents submitted that the applicant has filed the present O.A. before this Tribunal being aggrieved for his non-empanelment to HA Grade for the panel year 2016-17. In this regard, he has already sent a representation dated 06.04.2018 to Chairman, Railway Board. However, without waiting for disposal of this representation, the applicant has approached this Tribunal with the same prayer. According to the learned counsel for the respondents, before filing O.A., the applicant should have first exhausted the administrative

remedies available in terms of statutory provision made in Section 20 of Administrative Tribunals act, 1985. Hence, the instant O.A. is premature and deserves to be dismissed.

8. During argument, learned counsel for the respondents has referred para 2, 3 & of their written statement which among others stated as under:

2. That the applicant's representation is yet to be answered. The applicant has also apprehended that his representation "has been kept pending deliberately as in the event of its disposal with a speaking order, it would bring to light the illegalities/irregularities committed in the matter by the authorities. It would, therefore, be in the fitness of things that this Tribunal disposes of the present OA at the admission stage itself, without going into the merits, with directions to the Respondents to dispose of the representation of the applicant. After going through the reply issued by the Respondents, the applicant would then be at liberty to challenge the same, if deemed fit.

3. That on perusal of the OA, it appears that the main grievance of the applicant is the fact that Shri Rajesh Tiwari (Respondent No. 5) has been placed above him in the HA Grade/IRSEE panel for the eyar 2017-18 whereas, according to him, had the supplementary panel for the year 2016-17 been made, the applicant would have been placed above Shri Tiwari as Shri Tiwari was found unfit in the said panel of 2016-17. It is submitted that the stakes of Shri Rajesh Tiwari are very high in this case and no interim directions ought to be passed by this Tribunal without hearing respondent No. 5.

4. That the respondents submit that the applicant has sought multiple remedies such as including his name in the HA Grade IRSEE panel for the year 2016-17 and also considering his case for promotion of the next higher post of General Manager. As an interim relief, he has also prayed to restrain the respondents from considering the incumbents in HA Grade from the panel years 2016-17 & 2017-18 for further promotion to the post of

General Manager. In this connection, it is submitted that as per Rule 10 of CAT (Procedure) Rules, 1987, an application shall be based upon a single cause of action and may seek one or more reliefs provided they are consequential to one another. It is submitted that the posts of General Managers/equivalent are ex-cadre posts which do not belong to any particular service/cadre.

9. On going through the submissions/pleadings and records submitted by parties, it is essentially observed that the applicant is asking for empanelment for eventual promotion to HA Grade for the year 2016-17 had additional 5 vacancies subsequently occurred have been filled up by the respondents, he would have become senior to respondent No. 5 namely Sri Rajesh Tiwari who was left out in the initial empanelment and promotion in that year 2016-17. However, the respondents have brought out clearly that due to pendency of the O.A. No. 01462/2016 filed by said Sri Rajesh Tiwari, they are not in a position to move ahead and finalize for the creation of additional empanelment for additional 5 vacancies arose during the year. They also informed that the said O.A. filed by Sri Rajesh Tiwari got vacated only in the month of **September/October** and since additional vacancies are also visible in the next year, conscious decision was taken by the competent authority to combine this additional 5 vacancies with the visible vacancies of the following year. As such, there was no deliberate intention or action on the part of the respondent authorities to deny

the probable promotion of the applicant during year 2016-17. Moreover, it was also pointed out that seniority between the private respondent No. 5 namely Sri Rajesh Tiwari and the applicant, there are as many as 14 officers who are senior to the applicant. As such, claim of the applicant that he could have been promoted in the previous year of empanelment i.e. 2016-17 is more conjecture and presumption does not have any basis as per the extent guidelines or orders.

10. Considering the above fact, it is considered that the O.A. is devoid of any merit and liable to be dismissed. Accordingly, O.A. stands dismissed.

11. No order to the costs.

12. Consequently, M.A. No. 040/00003/2019 praying for passing of appropriate interim directions in O.A. No. 040/00168/2018 also stands dismissed.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)