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**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 350/01770/2015

Date of order : 29.01.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Asok Kumar Bandopadhyay,
Son of Late Mrityunjoy Bandopadhyay,
Aged about 61 years,
Retired Deputy Chief Electrical Engineer (Loco)
As JAG, Eastern Railway,
Fairlie Place Building,
Kolkata - 700 001;
Residing at Flat No. 3E,
Viraj Complex, 240/20, G.T. Road,
P.O. Belur Bazar, Dist. Howrah,
Pin - 711 202.

Applicant

VERSUS -

1. Union of India,
Through the General Manager,
Eastern Railway,
Fairlie Place,
17, N.S. Road,
Kolkata - 700 001.
2. The General Manager,
Eastern Railway,
Fairlie Place,
17, N.S. Road,
Kolkata - 700 001.
3. The Chief Personnel Officer,
Eastern Railway,
Fairlie Place,
17, N.S. Road,
Kolkata - 700 001.
4. The Chairman,
Railway Board,
Rail Bhavan,
New Delhi. Pin - 110 001.
5. The Secretary,
Railway Board,

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Rail Bhavan,
New Delhi. Pin – 110 001.

6. The Chief Electrical Engineer,
Eastern Railway,
Fairlie Place,
17, N.S. Road,
Kolkata – 700 001.

... Respondents

For the Applicant : Mr. K. Sarkar, Counsel

For the Respondents : Ms. S.D. Chandra, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

"a) To direct the respondents to deal with and/or dispose of the representations of the applicant dated 31.3.2014 & 7.10.2015 as contained in Annexure "A-9" & "A-10" herein respectively.

b) To direct the respondents to consider the candidature of the applicant for nomination as Gr. A officer in Junior Scale Grade (JS) of Indian Railway Service of Electrical Engineers (IRSEE) from the post of AEE/Gr.B/Senior Scale for the year 2004-2005, i.e. when the juniors to the applicant, namely, Sarvasree Jagadish Prasad of N.E. Railway and K. Madan Mohan of ICF, Sl. Nos. 702 & 703 in the seniority list of Electrical Deptt. Of Indian Railway, as on 1.5.2008 as contained in Annexure "A-6" herein, were given JS benefit superseding the rightful and legitimate claim of the applicant and to extend all service benefits and consequential benefits including pension and pensionary benefits,

c) To direct the respondents to produce the entire records of the case before this Hon'ble Tribunal for effective adjudication of the issues involved herein;

d) And to pass such further or other order or orders as to this Hon'ble Tribunal may deem fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record.
3. The case of the applicant, as submitted by his Ld. Counsel, is that the applicant was appointed as an Apprentice Mechanics (Electrical) vide orders dated 13.3.1974, joined as Electrical Chargeman Gr. 'B' vide orders dated 6.6.1979, was thereafter transferred for assuming charge as AEE/TRS/Asansol,

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Eastern Railway, further promoted to DEE/Howrah/Eastern Railway vide orders dated 29.7.2003 and was placed in senior scale of Gr. 'B' officers of Eastern Railway.

That, the applicant was positioned at Srl. No. 3 in the seniority list of Gr. 'B' Electrical officers as on 1.4.2005 but was listed against Srl. No. 794 in the seniority list of Electrical Department of Indian Railway as on 1.5.2008. According to the applicant, his juniors in service, namely, one Shri Jagdish PD of North Eastern Railway and Shri K. Madana Mohan of Integral Coach Factory, who joined much after him had been given promotion to the JS Grade of Indian Railway having been accorded Srl. Nos. 702 and 703 of the Indian Railway seniority list dated 1.5.2008, whereas the applicant, who was listed at Srl. No. 74 was not considered for promotion to the said JS Grade for the year 2004-2005 whereas his juniors were considered and promoted.

That, the applicant was further posted as Dy. CEE (Con.)/Howrah/Eastern Railway in JAG on adhoc basis vide order dated 27.1.2009 and thereafter was appointed as Senior Scale IRSEE Officer to officiate in JA Grade w.e.f. 22.3.2013. The applicant had represented on 31.3.2014 and 7.10.2015 on the subject of discrepancy in formation of panel for Gr. 'A' for the year 2004-2005. Having received no response to the representations, the applicant being aggrieved, has approached the Tribunal.

The applicant, inter alia, has advanced the following grounds in support of his claim:

- (a) His supersession ignoring his rightful claim was bad in law.
- (b) The said supersession was violative of the principles of natural justice, procedural justice and fair-play.
- (c) The applicant had joined much earlier to the officers junior to him and his seniority was denied at the time of appointment in JS Grade for the year 2004-2005 and that the purported supersession is founded on malafide of the respondent authorities.

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4. The respondents, per contra, have argued that, as per their policy, 50% of the vacancies pertaining to vacancy year 2004-2005 in the promotee segment of Group 'A'/Jr. Scale of IRSEE were allotted to different Railways according to the Roster prepared on the basis of cadre strength of each Unit and the remaining 50% was to be in accordance with the length of Gr. 'B' service of the Officers of different Railways. Hence, 13 out of the regular promotion quota vacancies of vacancy year 2004-2005 were allotted as per Point Numbers 15 to 27 of the Roster as the Roster upto points No. 14 was utilized for allotment of vacancies corresponding to the vacancy year 2003-2004. 13 numbers of vacancies were accordingly distributed, inter alia, as NFR-1, ER-1 and ICF-1 respectively. Accordingly, with the recommendations of the DPC as conducted by UPSC and after obtaining Presidential approval, Shri Jagdish PD (NER) and Shri K. Madana Mohan (IGF) were substantively appointed to Group 'A'/Jr. Scale against the single vacancies of North Eastern Railway and Integral Coach Factory respectively. In Eastern Railway, Shri A.B. Kundu, who was senior to the applicant was so appointed. Although the name of the applicant figured in the zone of consideration in Eastern Railway, he was not assessed because the single vacancy in Eastern Railway was filled up by his senior in Eastern Railway and, according to the respondents as the appointment of Shri Jagdish PD and Shri K. Madana Mohan were made as per rules, the applicant's claims are liable to be dismissed.

The respondents have further reiterated that seniority of Gr. 'B' Officers working in different Railways are not comparable as the seniority of Gr. 'B' Officers is maintained Railway-wise and vacancies are also allotted Railway-wise. Hence, the zones of consideration to Group 'A'/Jr. Scale and their empanelment consequent to such seniority and allotment of vacancies, would be according to specific zonal Railway to which the officials belong.

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5. The point of determination herein whether the applicant is eligible for nomination in Gr. 'A' in JS of IRSEE for the year 2004-2005 against his purported juniors S/Shri Jagdish PD and Madana Mohan.

6.(1) At the outset, we examine the policy of the respondents which has been elaborated in the counter-affidavit to the Original Application. The respondents have stated that, prior to 1997, the approval policy provided for distribution of Junior Scale/Gr. 'A' vacancies (in the promotee segment) among the Railways on the basis of gazetted cadre strength (75% of vacancies) and on the basis of level of stagnation in Gr. 'B' (25% of vacancies). Post 1997 and upto the vacancy year 2004-2005, the policy provided for distribution of vacancies among the Railways as follows:-

- (i) 50% of the vacancies were allotted to the different Railways on the basis of the gazetted cadre strength on each Railway in a particular department.
- (ii) Remaining 50% of such vacancies were allotted to the different Railways on the basis of level of stagnation in Group 'B' in that Department.

Further, allotment of 50% of vacancies to different Railways on the basis of their cadre strength was done on the basis of running Rosters containing 100 points prepared for each department and points were allotted for the Railways based on the gazetted cadre strength of the different Railways. The vacancies were allotted to the Railways indicated against the various roster points that were to be taken into account for a particular year. Reportedly, seven new zones were formed in October, 2002/April, 2003 by carving them out from the existing nine zones. Till the process of absorption of Gr. 'B' Officers in new zones were completed and till the Gr. 'B' cadre of new zones formed separate seniority Units, all officers including the Officers already absorbed in new zones were considered for further promotion to Gr. 'A' only in their parent zones. After finalizing the Gr. 'B' cadres and seniority in the new zones, the new zones were treated as

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separate Units for allotment of vacancies for promotion to Gr. 'A' for the first time in the vacancy year 2005-2006. Fresh rosters were prepared based on the revised gazette cadre strength of old as well as new zones. From 2005-2006 onwards, however, the policy of allotment of vacancies were further reviewed and revised with allotment of vacancies being made on the basis of stagnation in Gr. 'B' and that, for all the eight organized services, from the year 2005-2006, vacancies were allotted as per the revised policy and DPC proposals were sent to UPSC accordingly.

From the above, the following are inferred:

(a) As far as the vacancy year 2004-2005 is concerned, the policy provided for distribution of vacancies among the Railways as follows:-

- (i) 50% of the vacancies were allotted to the different Railways on the basis of the gazetted cadre strength on each Railway in a particular department.
- (ii) Remaining 50% of such vacancies were allotted to the different Railways on the basis of level of stagnation in Group 'B' in that Department.

50% of vacancies were, therefore, allotted to different Railways on the basis of gazetted cadre strength on each Railway in a particular Department and consequently the vacancies were allotted to different Railways according to roster prepared on the basis of cadre strength of each Unit.

(b) It is also inferred that the seniority of Gr. 'B' officers were maintained Railway-wise, allotment of vacancies were maintained Railway-wise, zone of consideration of Gr. 'A' was also made Railway-wise and their empanelment was also done Railway-wise.

It is noted herein that at no point of time the applicant had questioned or challenged the policy of distribution of allotment of vacancies among the Railways and, hence, for the year 2004-2005, the allotment of 1 vacancy to NER, 1 vacancy to ICF and 1 vacancy to ER remain undisputed.

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(2) Next, we examine the seniority lists which have been annexed by the applicant in his pleadings. Firstly, the provisional seniority list of the Gr. 'B' Officers of the Electrical Department as on 1.4.2005 (Annexure A-5 to the O.A.) of the Eastern Railway which shows that the applicant is enlisted as Srl No. 3 of the same and his date of appointment to the grade is noted as 1.2.1994. Thereafter, the Indian Railways have circulated a seniority list of the Electrical Department in which the applicant has been shown at Srl. No. 794 while his two purported juniors namely, Shri Jagdish PD and K. Madana Mohan have been enlisted as Srl. No. 702 and 703 respectively (Annexure A-6 to the O.A.). There is nothing on record to show that the applicant has ever challenged this All India Seniority List of Electrical Department of Indian Railways and hence his claim that natural justice and procedural justice were denied to him, falls through.

(3) The applicant had represented against the purported discrimination stating that although his two purported juniors, who were nominated for Gr. 'A' vide appointment notification dated 21.7.2005, the applicant was considered against the notification dated 27.5.2008 against vacancy year 2005-2006 and not against the vacancy year 2004-2005 as per his rightful eligibility.

The crux of the issue to be decided herein is that whether there was any policy violation on behalf of the respondents in appointing the two purported juniors to Gr. 'A'/Jr. Scale in the vacancy year 2004-2005 while the applicant was promoted only against vacancy year 2005-2006.

It is seen from the respondents' submissions that there was a clear policy to fill up the vacancy in 2004-2005 in which 50% were to be allotted to different Railways on the basis of gazetted cadre strength of each Railway and the balance 50% on the basis of level of stagnation in Gr. 'B' in that Department.

The applicant's claim is related to the allotment of vacancies to different Railways on the basis of gazetted cadre strength in each Railway and following points Nos. 15 to 27 of the roster it is undisputed that the Railway-wise allotment as per roster was 1 for NER, 1 for ICF and 1 for ER respectively. Hence, the

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applicant could only have been considered as per his seniority in ER against the single vacancy allotted thereto on the basis of the recommendations of the DPC.

The respondents have clarified that one, Shri A.B. Kundu of Eastern Railway was empanelled by the DPC, who was admittedly senior to the applicant. The applicant has nowhere disputed the seniority of Shri A.B. Kundu vis-à-vis his enlisted position, as Shri A.B. Kundu appears to be at Srl. No. 1 in the provisional seniority list of Officers of Electrical Department as on 1.4.2005 of the Eastern Railway (Annexure A-5 to the O.A.). In fact, one Shri P.B. Saha, who was also admittedly senior to the applicant by virtue of the said seniority list was also not taken up for promotion to Gr. 'A' in the vacancy year 2004-2005.

This being the admitted position and the fact that the applicant had not questioned or challenged the All India Seniority List of Electrical Department as on 1.5.2008 at any stage, we find no fault with the action of the respondents in implementing the recommendations of the DPC and for forwarding proposals thereto strictly in accordance to their policy which is Zonal Railway-wise seniority, cadre strength consideration and empanelment in Gr. A/JS. Though alleged, the applicant has not established mala fide in policy formulation as required by Hon'ble Apex Court's observations in **Ratnagiri Gas and Power Private Limited vs. RDS Projects Ltd. & ors. (2013) 1 SCC 524** that the burden of proving malafide is upon the person alleging the same. The Hon'ble Court has also held that malafide has to be proved on admitted/established facts or logical inferences deducible for the same.

In the context of seniority, we are guided by the Hon'ble Apex Court in **Rashmi Srivastava (Dr.) v. Vikram University, 1995 (3) SLJ 18 (SC)** wherein it was held that since seniority is normally determined amongst those in the same cadre, the list must also be confined to those who belong to that cadre.

It is also held in **Suresh v. Yeotmal District Central Cooperative Bank Ltd. (2008) 12 SCC 558** that as it is a civil right, the question of seniority cannot be effectively adjudicated upon unless the persons who are shown senior to the

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aggrieved employee are impleaded as parties. In this case, the seniority list as on 1.5.2008 had enlisted the two purported juniors, namely, Shri Jagdish Pd. and Shri K. Madana Mohan at Srl. Nos. 702 and 703 as against the applicant who was enlisted at Srl. No. 794. The applicant challenges the seniority of the two purported juniors at this stage but as they have not been impleaded, scope of effective adjudication is limited accordingly.

7. We are, therefore, of the considered view that there being no policy violations while nominating Shri Jagdish Prasad of N.E. Railway and Shri Madana Mohan of ICF for the panel year 2004-2005 as Gr. 'A' officers in Junior Scale of IRSEE and in nominating the applicant in panel year 2005-2006, this application is devoid of merit and accordingly dismiss the same. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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