

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.285/2015

Wednesday, this the 24th day of July 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

1. Rajeev Dwivedi
S/o late Shri J.N. Dwivedi
Aged about 57 years
Resident of D-9/87
Mandir Marg
Chitrakoot, Vashali Nagar
Jaipur-302021
Presently working as Executive
Engineer/Con/Design-I/Jaipur
2. Kamalesh Chakraborty
S/o Late Shri Kamakhya Prasad Chakraborty
Aged about 55 years
Resident of Bani Kutir, Prantik
Tolafatak, Chinsurah
Hooghly. Pin-712101
Presently working as
Divisional Engineer (Con)
Jubli Bridge, Sealdah
3. S.B. Malik, S/o Shri Bhim Singh
Aged about 51 years
Resident of 163, DPS Society
Sector No.4
Dwarka, New Delhi.
Presently working as
Executive Engineer/Survey/Tilak Bridge/Delhi
4. Madan Lal Chawla
S/o Shri Hem Raj
Aged about 55 years
Resident of 101/3B
Railway Officer Flats
Anand Vihar, New Delhi
Presently working as
Executive Engineer/Consultation/Design/Delhi.
5. Vijay Kumar, S/o Shri Radhe Shyam
Aged about 50 years

Resident of B-8, House No.154
Sector-3, Rohini, New Delhi
Presently working as
Executive Engineer/Construction/Design/Delhi

6. Deep Kumar Sharma
S/o Shri J.P. Sharma
Aged about 49 years
Resident of 251/4-B
Railway Officers Flats
Panchkuian Road
New Delhi-110001.
Presently working as
Executive Engineer/Bridge
Special/Tilak Bridge/Delhi.
7. Rashmi Kumar, S/o Shri V.P. Verma
Aged about 51 years
Resident of L-3/203, Gulmohar Garden
Raj Nagar Extension, Gaziabad, UP
Presently working as Executive
Engineer/Construction/Shivaji Bridge/New Delhi.
8. Naresh Singh Chauhan
S/o Sh. A.S. Chauhan
Aged about 48 years
Resident of 1A, V.N. Marg
Railway Officers Colony, Lucknow
Presently working as
Divisional Engineer-I, Lucknow
9. Arun Kumar Mittal
S/o Late Shri Jagnandan Nath
Aged about 48 years
Resident of A-64, Malka Ganj
Delhi-10007
Presently working as
Executive Engineer/Survey/Tilak Bridge/Delhi.
10. P.K. Singh, S/o L.L. Singh
Aged about 52 years
Resident of P-205, Railway Officers Colony
Lumbding, Distt. Nagaon, Assam
Presently working as Divisional
Engineer-IV/NF Railway/Lumbding
11. L.K. Nandi, S/o Late Shri Bhakta Bilash Nandi
Aged about 51 years
Resident of Sealdah RMS Building
2nd Floor, Kolkata-700014.

Presently working as Division
Engineer/Construction/Sealdah

12. B. Sarkar, S/o Late Shri Sunil Baran Sarkar
Aged about 55½ years
Resident of Kalupukur, Kumarpara
Chandannagar, Pin-712136
Presently working as Division
Engineer/Special/Works/Sealdah.

..Applicants

(Mr. Surajit Samanta, Advocate)

Versus

1. Secretary, Union Public Service Commission
Dholpur House
New Delhi-110069.
2. Union of India through Secretary
Railway Board
Rail Bhawan
New Delhi-110001.

...Respondents

(Mr. Ravinder Aggarwal, Advocate for respondent No.1 –
Mr. R V Sinha and Mr. Amit Sinha, Advocates for respondent
No.2)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicants were appointed as Junior Scale in Indian Railway Service of Engineers (IRSE) in the Civil Engineering Department, in the year 1988. Thereafter, they were promoted to Group 'B' in 1997. The promotion from that is to IRSE. The Departmental Promotion Committee (DPC), for that purpose, met on 22/23.11.2012. The applicants were selected and they were recommended for being promoted to Group 'A' Junior Scale in IRSE. The recommendations of the DPC were approved

by the Chairman on 11.12.2012. The applicants and others were promoted w.e.f. 11.12.2012, through order dated 20.02.2013.

2. Through an order dated 21.02.2014, the Ministry of Railways informed the applicants that they will be placed between the batches of IRES officers of 2006 and 2007. It was also mentioned that the inter-se-seniority and 'date for increment on time scale' (DITS) of 137 officers, including the applicants, would be w.e.f. 11.12.2012. The same is challenged in the instant O.A.

3. The applicants contend that there was a deliberate delay in the processing of entire file, and contrary to the usual practice of approving the minutes of the DPC on the same day, it was held up till 11.12.2012. It is stated that had the approval been accorded, the day on which the DPC held its meeting, they would have been entitled to be placed between the batches of 2005 and 2006.

4. On the basis of information procured by submitting an application under the Right to Information Act, 2005, the applicants contend that an element of fraud is writ large in the entire proceedings. Ultimately, they claimed the relief, in the form of direction to the respondents to approve the minutes of the meeting of DPC on 27.11.2012, and that the advice letter of Union Public Service Commission (UPSC) to the Railway Board be deemed to be the one 03.12.2012. On that basis, the

applicants seek a further declaration that they shall be deemed to have been permanently promoted to Group 'A' Junior Scale w.e.f. 03.12.2012. Consequential reliefs are also claimed.

5. The respondent Nos. 1 & 2 have filed separate counter affidavits opposing the O.A. It is stated that the cases of more than 100 Group 'B' Junior Scale officers, including the applicants, were considered by the DPC in its meeting held on 22/23.11.2012 and that the minutes of the same were approved by the concerned authority on 11.12.2012. It is also stated that though the actual order of promotion was issued on 20.02.2013, the applicants were extended the benefit w.e.f. 11.12.2012. Exception is taken to the filing of O.A. without impleading the affected parties.

6. The respondents have further stated that according to model calendar issued by the Department of Personnel & Training (DoPT), it is permissible to complete the process of selection through DPC within 120 days, whereas, in the instant case, it was completed in 96 days. Various contentions urged by the applicants are denied specifically.

7. We heard Mr. Surajit Samanta, learned counsel for applicants, Mr. Ravinder Aggarwal, learned counsel for respondent No.1 and Mr. R V Sinha with Mr. Amit Sinha, learned counsel for respondent No.2, at length.

8. The applicants and about 110 other Group 'B' Junior Scale officers were promoted to Group 'A' Junior Scale of IRSE, through an order dated 20.02.2013, w.e.f. 11.12.2012. Since the appointment to Group 'A' is through direct recruitment as well as promotion, the allotment of year becomes necessary, duly taking into account, the date on which the direct recruitment Group 'A' officers of IRSE of the batch have been appointed. In the context of allotment of year, the respondents issued proceedings dated 21.02.2014 directing that the applicants shall be placed in the seniority list below IRSE 2006 batch and above IRSE 2007 batch. The applicants feel aggrieved by that. They contend that had the minutes of the DPC been approved, there would have been possibility for them to be placed below IRSE 2005 batch and above IRSE 2006 batch.

9. After obtaining information, by submitting application under Right to Information Act, 2005, the applicants are able to specify some dates in relation to their selection. The DPC met on 22/23.11.2012. The file was placed before the Chairman of UPSC on 27.11.2012. On that day, he endorsed that the advice letter be issued. Thereafter, the file was placed before the Chairman once again on 11.12.2012 and on the same day, he approved it. This was the date, with effect from which, the applicants herein were appointed to Group 'A'.

10. It is pleaded that there was unduly delay between 23.11.2012 and 27.11.2012 & between 27.11.2012 and 03.12.2012. The third spell is said to be between 03.12.2012 and 11.12.2012. We are of the clear view that the contention of the applicants is purely imaginary. They expected that every step in relation to their promotions must take on the very same day, if not the same hour.

11. When the file is required to be routed through various authorities, it is natural that it would take quite some time for verification. Each authority has to satisfy himself, before he puts his signature. The respondents have categorically stated that the selection process is required to be completed within 120 days, whereas, in the instant case, it was completed within 96 days.

12. There is serious flaw in the O.A. The applicants claim seniority over the officers of IRSE 2006 batch. As of now, they are below that batch. Any such relief can be claimed only by impleading the officers of IRSE 2006 batch. They have chosen not to do so.

13. Identical situation was dealt with by the Hon'ble Delhi High Court in **Union of India & another v. Indian Railways Civil Engineering Officer Association & others** (W.P. (C) No.1353/2011 with batch) decided on 30.05.2011. After referring to the various judgments on the

subject, their Lordships held that the relief of this nature cannot be claimed, unless the affected parties are impleaded. The order passed by the Tribunal in O.A., wherein the affected parties were not impleaded, was set aside. Reference was made to the judgment of Hon'ble Supreme Court in **Post-Graduate Institute of Medical Education and Research & another v. A.P. Wasan & others**, (2003) 5 SCC 321, and various other judgments. The effect of delay either in the convening of DPC or the stages thereafter, was also addressed with reference to an O.M. dated 29.07.2004. It was held that such a delay cannot be treated as fatal.

14. The applicants have employed the word 'fraud' in more places than in one, in the pleadings. However, it is neither supported by any elaboration, nor the persons, who are said to have committed fraud, are impleaded as party respondents.

15. We do not find any merit in this O.A. It is accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

July 24, 2019
/sunil/