

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

LIBRARY

O.A. 1072 of 2018

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

Rajesh Aggarwal,
Son of Late G.R. Aggarwal,
Aged about 55 years,
Residing at AK-84, Salt Lake City,
Kolkata – 700 091.

..... Applicant.

Versus

1. The Union of India
Service through the Chairman,
Railway Board,
Rail Bhavan, Raisina Marg,
New Delhi – 110 011.
2. The Chairman-cum-Managing Director,
Rail India Technical and Economic Service
(RITES) Ltd., RITES Bhawan, No. 1,
Sector – 29, Gurgaon - 122 001.
3. The Group General Manager (P),
Rail India Technical and Economic
Service (RITES) Ltd., RITES Bhawan, No. 1,
Sector – 29, Gurgaon – 122 001.
4. Sr. Deputy General Manager (P),
RITES Ltd., RITES Bhawan, No. 1,
Sector 29, Gurgaon – 122 001. (India).
5. Virendra Singh,
Group General Manager, RITES.
6. S.C. Singhal,
Group General Manager, RITES.

..... Respondents.

For the applicant : Mr. A. Chakraborty, Counsel

For the respondents : Mr. B.P. Manna, Counsel

Mr. D.K. Singh, Counsel
 Mr. S.K. Das, Counsel
 Mr. C. Sinha, Counsel

Reserved on : 09.07.2019

Date of Order : 20.8.19

ORDER

Per : Bidisha Banerjee, Judicial Member

Ld. Counsels were heard.

2. The applicant, an aspirant for the post of Executive Director RITES, has in this O.A., sought for the following reliefs:

- 8.i) Office Order being no. PERS/P&P/25-09/2018 DATED 13.07.2018 issued by the respondent No. 3 to the extent of non-selection/ consideration of the case of the applicant therein for selection to the post of Executive Directors in various posts is not tenable in the eye of law and as such the same should be quashed.
- ii) Leave is granted by the Hon'ble Tribunal on 23.07.18 to (not legible) the prayer. Office order No. PERS/P&P/18-01/2018 dated 21.7.18 cannot be sustained in the eye of law and same may be quashed.
- iii) Consider the case of the applicant for his selection to the post of Executive Director under Respondent authorities at an earliest;
- iv) Grant all consequential benefits order.
- v) Pass such further or other order or orders;

3. The admitted facts, that emerge from the pleadings are as under:

RITES Ltd is a Government of India Enterprise, notified as Schedule 'A' Mini Ratna Company by the Government of India. It was constituted in 1974 and is providing Consultancy and Project Management Services in the Infrastructure space. The Company is also providing quality assurance services to different clients; the prime client of such services is Indian Railways. Its sectors of operations are Railways, Roadways, Ports, Airports, Ropeways, Export of Railway Locomotives, Rolling Stock and spares, Quality Assurance Services, Operation and maintenance of Railway Rolling Stock etc. and to provide such services, the company has to take experienced and trained manpower on deputation from different departments primarily from Indian Railways, who come on deputation for a period ranging from 3-5 years. In order to ensure that it has competent and experienced manpower

on its rolls, the company takes personnel on permanent absorption from amongst those who come on deputation or directly on absorption basis, again primarily from Indian Railways. Such absorption happens on the written willingness of the officer concerned, his suitability for the post, approval of the same by Chairman & Managing Director or Board of Directors and the approval of the competent authority in the parent department – in case of Group A officers of the Railways, the President of India, in public interest and is as per the business interest of the Respondent organization.

The Promotion policy for post of Executive Director, as envisaged in para 6.5.2 of the Promotion Policy and Rules (Annexure R/1), is as follows:

"The minimum requirement of service for in-house candidates to be appointed as Executive Director would be 29 years of Class-I service with a minimum period of 10 years service as GM and/or SAG or 31 years of Class-I service with a minimum period of 8 years service in SAG for companies regular employees with three years as GGM."

As per para 4.2.3 of the Promotion Policy and Rules (Annexure R/1), the seniority is determined as under:

"Seniority for promotion will be maintained discipline wise in each pay scale up to and including the level of General Managers. However for selection to the post of GGM, all GMs from various disciplines will form a common seniority subject to their fulfilling eligibility conditions laid down in the rules. Like-wise for selection to the post of executive Director all GGMs will be considered subject to their fulfilling eligibility conditions laid down in the rules and availability of the post of Executive Director earmarked for being filled up from an executive of the specific discipline. The inter-se seniority of eligible GGMs shall be based on their common seniority list in the cadre of GGM."

As per para 4.2.6 of Promotion Policy and Rules, the equivalence of Class-I service is determined as under:

For promotion from GM to GGM and from GGM to ED, minimum service required in Class-I service or equivalent has been laid down in these rules. Where nature of Class-I service is not clear, Class-I service will be counted from 2 years after entry into grade equivalent to Asst. Manager of RITES, in Central/State Govt./PSU service.

The equivalence to Class-I service is to be reckoned in the following manner:

(i) The officers who joined employment in Govt/PSU and have worked throughout in Govt. or PSUs will be treated Class-I from the date they joined the scale maximum of which is equivalent or more to the scale applicable to Asst. Manager in RITES.

(ii) In the case of officers who joined from a sector other than Govt./PSU, the case would be examined by a committee of three Directors and approved by Chairman and Managing Director on case to case basis.

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4. The respondents have averred that the applicant had not completed the required 29 years of Class-I service with a minimum period of 10 years' service as GM and/or SAG, or, 31 years of Class-I service with a minimum period of 8 years service in SAG with three years as GGM, on the cutoff date of selection i.e. 31.12.2018, hence he was not considered as eligible for promotion as Executive Director and was not called for selection.

Seniority of officers on permanent absorption:

The instructions issued by Department of Personnel and Training on fixation of seniority of officers who are taken on deputation and later absorbed permanently in the regular employees are as under:

In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for Deputation/Absorption his seniority in the grade in which he/she is absorbed will normally be counted from the date of absorption. If he/she has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his/her parent department, such regular service in the grade shall also be taken into account while fixing his seniority, subject to the condition that he will be given seniority from:

- The date he/she has been holding the post on deputation,
- (or)
- The date from which he/she has been appointed on a regular basis to the same or equivalent grade in his parent department,
- Whichever is earlier.

To maintain a balance among the regular incumbents of the company and those who are absorbed in the company, the seniority of those absorbed on permanent basis in the company is fixed as under:

The seniority is fixed in the grade / post from the date of his coming to deputation in case the absorption is done in the grade / post he was holding on his parent cadre and from the date of his absorption in case the absorption is done in the next higher grade.

Such seniority principle has been approved by the Board of Directors (the policy making body of the company) in its meeting held on 11.09.2012 and has been followed in all cases of absorption.

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The respondents have categorically stated that the seniority of Sh. Virender Singh and Sh. S.C. Singhal, respondent No. 5 and 6, who had been absorbed from Indian Railways, has been fixed on the above principle.

They have clarified the position as under:

Sh. Virendra Singh joined as General Manager in RITES in CDA pay scale with Grade pay of Rs. 10,000/- on 29.05.2007 on deputation (he was holding this Post/grade on Indian Railways on substantive basis, his date of entry to SAG on Indian Railways is 29.06.2005(Annexure-R/3/2)) and he was absorbed in RITES on 13.12.2012(Annexure-R3/3). He has been assigned seniority as General Manager w.e.f. 29.05.2007 i.e. from the date of his coming on deputation to RITES even though he was holding this post prior to this date on regular basis. His date of entry to the post of General Manager was earlier than his date of entry of applicant as General Manager, hence he is senior as General Manager to the applicant. He was promoted as GGM on 02.05.2013 on completion of prescribed period of qualifying service i.e. 24 years' service in Class I was 5 years' service in SAG on the cutoff date. As per the promotion policy of the company he was eligible for promotion to the post of Group General Manager (Para 4.2.6 of Promotion Policy. Accordingly, seniority position was assigned to Sh. Virendra Singh from 02.05.2013 (Annexure R/7), as GGM and he is thus senior to the applicant both at the level of General Manager as well as Group General Manager. The applicant was promoted to the level of GM on 23.07.2009 and GGM 06.01.2015. In both cases, later than Mr. Virendra Singh.

About the seniority of one S.C. Singhal, the respondents clarified the following:

Shri S.C. Singhal was promoted to SAG (equivalent to General Manager) on Indian Railways w.e.f. 30.4.2007(Annexure-R/4/1) and joined as General Manager in RITES on 07.10.2011 on deputation, he was promoted as GGM on 08.08.2013 vide office order No. PT/173/2013 dated 16.08.2013(Annexure-R/4/2) on completion of prescribed period of qualifying service i.e. 26 years service in Class-I with 5 years' service in SAG on the cut-off date of the year. As per the promotion policy of the company (Annexure R/1) he was eligible for promotion to the post of Group General Manager. Subsequently, he was absorbed in RITES on 05.02.2014 as GGM and has been assigned the seniority to the post of GGM from the date of promotion as GGM i.e. 08.08.2013.

Whereas, the applicant was promoted as General Manager vide office order No. PT/128/2009 dated 23.07.2009. Subsequently, he was

promoted as Group General Manager vide Office Order No. PT/011/2015 dated 06.01.2015.

A comparative statement in regard to the three is depicted as under:

Sr. No.	Grade / post on Indian Railway / equivalent post / grade on RITES	Date entry to the post/grade		
		Verender Singh	SC Singhal	Rajesh Agarwal
1.	Senior Administrative Grade / GM	29.6.2005	30.4.2007	13.7.2009
2.	Group General Manager	2.5.2013	8.8.2013	6.1.2015

The respondents would therefore asserted that, the date of entry of Sh. Virender Singh and Sh. S.C. Singhal to the post of Group General Manager being prior to the date of entry of Sh. Rajesh Agarwal to the post, they were placed above the applicant.

5. Applicants vide representations dt. 16.7.18 and 19.7.18 claimed that his qualifying service should be reckoned as under:

"Qualifying service:

1. Service:

- | | |
|--|----------|
| a. Prior to RITES (1984 – 1989) | 5 years |
| b. Service in RITES
(since 1989, with PQ requirement of 5 years of service) | 29 years |
| c. Total Service since 1984 (2/7/1984)
(Even if Class – I service with 2 years from AM scale (5 years eligibility), benefit of 3 years (1986 – 1989) should be given to undersigned, as was given to Mr. Alok Garg & Mrs Anita Dhar Kaul) | 34 years |

Total Class – I service (As per RITES circulars) - 29+(5-2)
= 32 years (A)

2. Service as GM + GGM (Since July 2009) - 9 years (B)
3. Mr. Virendra Singh joined as GM in '2012 – 3 yrs after my promotion as GM
4. Mr. S.C. Singhal joined as GM in '2011 - 2 years after my promotion as GM

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to call undersigned for selection of Executive Director, scheduled on 23/7/2018, by placing my seniority above Mr. Virendra Singh & Mr. S C Singhal based on:

- Total service, including service prior to RITES service (34 years), OR Class – I service of 32 years.
- Date of promotion as GM (13/7/2009), as GM & GM are interchangeable designations (Total – 9 years)."

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To the said representation, RITES responded in the following manner, vide letter dated 24.07.2018:

"Sub : Your representations dated 16.07.2018 & 19.07.2018

With reference to above referred representations, your seniority issue has been examined in details and you are informed that:

Shri Virendra Singh joined as General Manager in RITES on 29.05.2007 and absorbed in RITES on 13.12.2012. He has been assigned seniority as General Manager w.e.f. 29.05.2007. He was promoted as Group General Manager on 02.05.2013, on completion of prescribed period of qualifying service i.e. 24 years service in Class-I with 5 years service is SAG on the cut off the date of the year in terms of para 6.5.1 of promotion Policy as contained in HRM 2004 and further policy notified dated 06.10.2016. Accordingly seniority was assigned to him from 02.05.2013 as GGM.

Shri S.C. Singhal joined as General Manager in RITES on 07.10.2011 and promoted as Group General Manager on 08.08.2013 on completion of prescribed period of qualifying service (holding regular substantive position of SAG on Railways prior to coming on deputation to RITES) i.e. 26 YEARS SERVICE IN Class-I with 5 years' service in SAG on the cut off the date of the year in terms of para 6.5.1 of promotion policy ibid. Subsequently, he was absorbed in RITES on 05.02.2014 as GGM and assigned the seniority from his date of promotion as GGM in RITES.

Whereas, you were promoted as General Manager on 23.07.2009. Consequently, on completion of prescribed period of qualifying service you were promoted as Group General Manager on 06.01.2015 and seniority assigned as GGM accordingly.

Your claim for counting of past service prior to joining in RITES, has not been contended as equivalent to class-I service by the competent authority.

Hence, you are not eligible for consideration for promotion from GGM to ED.

This issues with the approval of CMD."

6. The respondents in this O.A. have contended that

Applicant's request to reckon his previous service towards Class-I service rendered prior to his joining, vide his representations dated 16.07.2018 and 19.07.2018, was put up to the competent authority for decision but was rejected by a committee of three Directors headed by Chairman and Managing Director, but not found feasible.

7. To pulverise and torpedo the argument put forth by applicant, respondents would further submit that the period between 1984 – 1989 would not count towards seniority as equivalence to Class I service was not granted, due to the fact that in the Private Concern the applicant was not in equivalent grade to Manager I of RITES. He was while in the Private Concern not on a regular pay.

8. Ld. Counsel for the applicant would at that juncture, try to draw comparison with one Alok Garg, in whose matter a committee of officers imparted equivalence, in the following way:

"Shri Alok Garg joined RITES as Engineer in grade Rs. 740-1200 on 17.10.83. This grade has been treated equivalent to the scale of Rs. 700-1300 which was given to AM (copies of relevant orders placed on (not legible) Shri Garg was promoted to Manager's scale Nov 1984 which confirms that the scale of Rs. 750-1200 held by him prior to his promotion in Manager's scale as equivalent to AM. Prior to joining RITES, he worked in M/s Bhagwan Das & Co. And M/s J.P. Associate Pvt. Ltd. from May, 1982 onward, which has been considered to be equivalent to class-I service."

Citing the above position, Ld. Counsel would vociferously argue that grade pay of Garg in erstwhile organisation was not known to RITES when equivalence was allowed, yet equivalence was allowed.

Ld. Counsel would contend that RITES simply assumed that Garg was in equivalent Grade of Assistant Manager, with no supporting documents and therefore for parity of reasons applicant deserved the same equivalence.

9. Ld. Counsels were heard and the materials on record were perused.

From the materials we infer as under:

(i) The promotion Policy in regard to promotion to ED specifies fulfilment of following service conditions for being

- (i) 29 years as Class I service with minimum 10 years service as GM and/or SAG
- (ii) 31 years of Class I service with minimum 8 years in SAG with 3 years GGM.

(ii) The applicant, prior to joining RITES was in a National Engineering Industries etc. Ltd. both were PSUS where he served from 11.5.84 (confirmed w.e.f. 1.1.85) until 1989 with no fixed scale of pay.

On 21.8.89, he joined RITES as Manager, (Class I) and continued as such.

On 6.1.15 he was further promoted to GGM. His profile vis a vis others, would be thus:

S. No.	Name	Date of appointment		Promotion to SAG or equivalent	Rank in Rly prior to joining RITES	Date of joining RITES as GM	Date of absorption in RITES as GM/GGM	Promotion as GGM
	S/Shri	RITES	Class-I					
1	Rajesh Aggarwal	21.08.1989		13.07.2009		13.07.2009		06.01.2015
2	Virendra Singh		04.04.1986	24.06.2005 (Rly SAG)	SAG	29.05.2007	13.12.2012 GM	02.05.2013
3	S.G. Singhal		09.03.1987	30.04.2007 (Rly SAG)	SAG	07.10.2011	05.02.2014 as GGM	08.08.2013

(iii) The service particulars of Applicant would be as under:

11.5.84 – 1989 in NEI (PSU) (Not counted as equivalence to Class I was not accorded)

21.8.89 – 12.7.09 in RITES as Manager (Class I) (a little less than 20 years as Class I)

13.7.09 – 5.1.15 in RITES as General Manager (i.e. 5 years as GM)

6.1.15 – 31.12.18 (cut of dt.) in RITES as GGM (i.e. little less than 3 years as GGM.)

A total of 28 years of Class I service including 5 years as GM and less than 3 years as GGM

As such, not having completed either the required service of 29 years of Class-I service with a minimum period of 10 years service as GM and/or SAG as per clause (i) or, 31 years of Class-I service with a minimum period of 8 years service in SAG for companies regular employees with three years as GGM as per clause (ii) on the cutoff date of selection i.e. 31.12.2018, he was rightly not considered as eligible for promotion as Executive Director and not called for selection.

Therefore his claim fails.

10. Ld. Counsel Mr. Chakraborty, representing the applicant would voice the grievance of the applicant to submit that the applicant prior to joining RITES, served a private concern between 1984 – 20.8.89 which period of service, if added to the service as Manager (Class I) from 21.8.89 to 12.7.09, and service

from 13.07.09 – 13.12.18 (cut of date), would be 14 years as Class I and therefore more than 10 years as Class I and 9 years (as GM) as on cutoff, and 34 years (1984 – 31.12.18) in all, imparting him eligibility in terms of the 2nd clause which requires fulfilment of 31 years as Class I with 8 years as SAG or 3 years as GGM. Therefore, Ld. Counsel would contend that the applicant was wrongly left out.

In support he would cite the case of Garg.

11. We note that the case of Alok Garg was never cited earlier and therefore the respondents had no occasion to deal with it. Therefore we can only permit the applicant to prefer a comprehensive representation to the competent authority citing his example, within 4 weeks, which if preferred shall be disposed of within 8 weeks thereafter. O.A. is accordingly disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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