

(2009) 06 MP CK 0007

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8017 of 2008

Mahendra Singh and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 26-06-2009

Acts Referred:

Citation : (2009) 4 MPLJ 261

Hon'ble Judges : Sushma Shrivastava, J; Arun Mishra, J

Bench : Division Bench

Advocate : Shobha Menon, with Ms. Manjeet Chuckal, for the Appellant; Arun Soni, Advocate on behalf of Rajesh Soni and Shobhitadiya for Intervenor, for the Respondent

Judgement

Arun Mishra, J.

The writ petition has been filed by the petitioners assailing an Order, passed by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur on 27th June, 2008 in OA No. 236/2007. Petitioners filed the original application before the Central Administrative Tribunal praying for declaring Para 203.5 of Indian Railways Establishment Manual (In short "IREM") as unconstitutional. Prayer was also made to annul the notification dated 30-3-2007 (Annexure A/2) and the action of Promotion based thereon.

It is averred in the application by the petitioners that they are functioning in the grade of Rs. 7450-11500. Mahendra Singh was selected to the grade with effect from 13-3-1997, D. K. Richhariya with effect from 4-2-1999 and S. P. Budholia with effect from 9-3-2001. They are drawing higher pay scale than the Mail Guards.. The applicants are holding the post of Station Master. The pay scale of Mail Guards was Rs. 5500-9000. They could not have been placed by the aforesaid notification with advantage of 30% of the additional salary in the grade of Rs. 6500-10500 equivalent to Rs. 2000-3200 on promotion to the post of Assistant Operating Manager (AOM) and Assistant Commercial Manager (ACM). As per channel of promotion published by West Central Railway, insofar as Traffic

Department is concerned, incumbents falling under the category of ASM, AYM, SM, MI and TI it is regulated in the manner set forth in Avenue Chart (Annexure A/4). The crux of the petitioners' submission is that Mail Guards can reach up to the grade of Rs. 5500-9000 whereas Station Masters cadre carry higher pay scale of Rs. 7450-11500 as such Mail Guards could not have been placed above the petitioners in the eligibility list for promotion to the post of AOM and ACM. As a matter of fact the petitioners have been drawing higher pay scale, their seniority could not have been ignored.

The respondents/West Central Railway conducted a written examination on 21-4-2007, pursuant to the written examination eligibility list was notified, objections were submitted which were not considered, hence, the Tribunal was approached by way of filing original application 236/07.

The stand of respondents in the return was that selection for filling up Gazetted Post Grade B was held in two parts as per provisions of IREM, LGS (70% quota) and LDCE (30% quota). The selection in question pertains to LGS. Reliance has been placed on Para 203.5 of IREM which provides that employees from the different streams will be eligible to appear for the selection, their integrated seniority for purposes of the selection should be determined on the basis of total length of non-fortuitous service rendered in grade Rs. 2000-3200 and above. In other words the date of appointment to the grade Rs. 2000-3200 on a non-fortuitous basis will be the criterion. The provision is constitutionally valid. Employees from different streams of operating department and commercial department are eligible, their integrated seniority for the purpose of selection has to be determined on the basis of total length of non-fortuitous service rendered in grade Rs. 2000-3200 now Rs. 6500-10500 on a non-fortuitous basis. Shri Brijendra Singh, Mail Guard was promoted against ST quota in grade Rs. 5500-9000 with effect from 29-12-1983, thereafter promoted against ST quota on same day in the pay scale of Rs. 6500-10500 because there was no available candidate against ST quota. This was strictly as per rules- prevailing -at the relevant time. Provisions of Para 201 to 209 of IREM have been followed.

In the additional reply filed before this Court, reliance has been placed on the instructions issued by the Railway Board vide circulars dated 15-6-1979, 4-8-1982, 10-1-1992, 1-10-1999, 2-6-2006 and 20th July, 2006 filed as R/I to R/6. It is further submitted that Railway Board's circular dated 15-6-1979 is clear about the consideration of running staff for the promotion by roughly adding 30% of the same in the pay scale in lieu of running allowance for the purpose of comparison with non-running categories for promotion/selection. In the railways there are two kinds of staff one is called running staff (those who work in train) and second is called as non-running staff (those who handle office work). Running staff get running allowance which is additionally paid to them other than their salary/pay what they get whereas non-running staff do not get any other allowance except pay/salary. Therefore, they are placed on lower pay scale to non-running staff/ but at the time of selection or promotion just to treat

them equivalent after adding roughly 30% to the actual of pay of running staff is the method adopted for the comparison between them for promotion/selection and to adjudge the eligibility.

The Central Administrative Tribunal vide impugned order has dismissed the application filed by the petitioners relying on para 203.5 of IREM. The eligibility list prepared by the respondents has been upheld. It has been found to be in accordance with the rules and instructions issued by the Railway Board time to time. The grade of running staff has been equated with that of stationary staff for the purpose of determining eligibility of the candidates for promotion to the respective Group B posts. By virtue of this equation, both the running staff and non-running staff have become eligible to appear for combined selections for filling up Group B vacancies in the different streams. It was held that as per Para 203.5 of the IREM, the order of seniority is determined on the basis of the total length of non-fortuitous service in the grade of Rs. 6500-10,500, which is also same for all other departmental selection to Group B post. The application has been dismissed, consequently, writ petition has been preferred.

At the outset, it may be mentioned that Ms. S. Menon, Sr. Advocate has withdrawn the challenge to the vires of Para 203.5 of IREM. However, she has submitted that the eligibility list which was prepared was not in terms of Para 203.5 of IREM. She has submitted that integrated seniority list has to be prepared on total length of non-fortuitous service rendered in the grade of Rs. Rs. 2000-3200 = Rs. 6500-10500. None of the Mail Guards were enjoying the aforesaid pay scale. Their maximum pay scale was Rs. 5500-9000, consequently they could not have been included in the eligibility list which was based on seniority cum merit. 30% addition of the pay could not have been made for bringing them into the pay scale of Rs. 2000-3200 Rs. 6500-10500. She has also placed reliance on Para 302 and 320 of IREM. Para 302 provides for seniority in initial recruitment grades. Para 320 of IREM provides for relative seniority of employees in an intermediate grade belonging to different seniority units appearing for a selection/non-selection post in higher grade. She has also relied upon note to Para 320 of IREM which defines that non-fortuitous service means the service rendered after the date of regular promotion after due process. Thus, she has submitted that retrospective grant of pay scale of Rs. 6500-10,500 to the Mail Guards with effect from 1983 was wholly impermissible. Petitioners were functioning in the higher pay scale from the earlier dates. They were working in the grade of Rs. 6500-10500. The Mail Guards can reach to the maximum of Rs. 5500-9000 in the cadre. The feeder grade of Rs. 6500-10500 available for the purpose of promotion to AOM or ACM is not available to Mail Guards/Express Guards. They could not have been included in the eligibility list for the purpose of promotion to the aforesaid post. Thus, it can be said that the eligibility list has not been prepared in accordance with due process of law. She has also referred to the pay scales prevailing from time to time. Thus, Mail Guards could not have been equated with the stationary post carrying pay scale of Rs. 6500-10500. Pay scale of Rs. 6500-10,500 came with effect from 1-1-1996, therefore, they could

not have been given the benefit from 1-1-1983. The action is contrary to service jurisprudence also. She has submitted that Tribunal has not considered the matter in its true perspective. The Tribunal has ignored the meaning of non-fortuitous service. The decision of Dharmendra Singh Yadav vs. Union of India rendered in OA No. 1045/04 is distinguishable. The Mail Guards could not be treated over and above the pay scale of Rs. 5500-9000 with addition of 30%. She has placed reliance on various decisions to be referred later on.

The respondents have relied upon the provision of IREM 203.5 and the Railway" Board-circulars, particularly R/I and R/2 dated 15-6-1979 and 4-8-1982. They have also relied upon certain decisions to be referred later on.

The main question for consideration is whether for the purpose of promotion of Mail Guards to the post of AOM and ACM special pay of 30% given to them by capacity of their being running staff could have been added while preparing the eligibility list. Admittedly, the Mail Guards were drawing lesser pay scale of Rs. 5500-9000 whereas the pay scale of petitioners was higher by virtue of there being Station Masters. They were drawing pay scale of Rs. 7450-11500.

It is only by virtue of addition of 30% of pay in the existing pay scale of Mail Guards, they have been included in the eligibility list prepared for the purpose of promotion to AOM/ACM. Para 203.5 of IREM is quoted below :-

Para 203.5 :- Since employees from the different streams will be eligible to appear for the selection,, their integrated seniority for purposes of the selection should be determined on the basis of total length of non-fortuitous service rendered in grade Rs. 2000-3200, (R.S.) and above. In other words the date of appointment to the grade Rs. 2000-3200 (R.S.) on a non-fortuitous basis will be the criterion.

Para 302 of IREM has been relied upon by the respondents which deals with seniority of employees in initial recruitment grades. Same is quoted below :-

302. Seniority in initial recruitment grades - Unless specifically stated otherwise, the seniority among the 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 servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-se seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se-seniority of each group.

NOTE - In case the training period of a direct recruit is curtailed in the exigencies

of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training.

Para 320 of IREM deals with relative seniority of employees in an intermediate grade belonging to different seniority units appearing for a selection/non-selection post in higher grade. The same is quoted below :-

320. Relative seniority of employees in an intermediate grade belonging to different seniority units appearing for a selection/non-selection post in higher grade :-

When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to the proviso that only non-fortuitous service should be taken into account for this purpose.

Note - Non-fortuitous service means the service rendered after the date of regular promotion after due process.

The respondents have relied upon the instructions contained in circulars R/I dated the 15-6-1979 and R/2 dated 4-8-1982 which have been filed with the additional reply by respondents. Same is quoted below :-

No. E(NG)I-78 PM1/305

New Delhi, dt. 15-6-1979

The General Managers, All Indian Railways

Sub: Comparison of grades of running staff with stationary categories :-
Complaints have been received from time to time from running staff that when they have to compete for promotion with non-running categories they are often not selected and placed on the panels or get very low positions on the panels because of their scale of pay being the lowest among the other eligible categories. The Railway Board have after careful consideration decided that this disadvantage should be removed by adding to the pay scales of the running staff, roughly 30% of the same (in lieu of running allowance) for the purpose of comparison with non-running categories for promotion/selections. The occasion for comparison normally arises in the following grades, where equivalence of grades should be taken as below:-

Actual scale

Scale of stationary category to which to be treated as equivalent after adding 30%

Guard A Spl

Rs. 425-640

Rs. 550-750

Guard A

Rs. 425-600

Guard B

Rs. 330-560

Rs. 455-700

Guard C

Rs. 330-530

Rs. 425-640

Drivers A Spl

Rs. 550-750

Rs. 700-900

Drivers A

Rs. 550-700

Drivers B

Rs. 425-640

Rs. 550-750

Drivers C

Rs. 330-560

Rs. 455-700

Hindi version will follow.

sd/-

(Dwarka Dass)

Deputy Director Establishment Railway Board.

Circular (R/2) dated 4-8-1982 of Govt, of India, Ministry of Railway (Railway Board) is quoted below :-

Sub: Comparison of Grades of Running Staff with Stationary categories for purposes of selection :-

Reference is invited to this Ministry's Letter No. E(NG) I -

78/PM/1/305 dated 15-6-1979 and 8-10-1979 indicating the table of equivalent grades after adding roughly 30% to the actual scales of pay of Running Staff to be adopted for the purpose of comparison with non-hyphen running categories for promotion/selection. In this context, the questions have been raised that whether these instructions would apply for selection to Group "B" (Clause II) post also.

After a careful consideration the Railway Ministry have decided that the equivalence of grades prescribed in the Ministry's letters quoted above will apply for purposes of selection to Group "B" posts also that is for determining the relative position of running staff. In the combined seniority list of staff eligible to be considered in the selection.

Sd/-

(N.Anantaram)

Jt. Director, Estt. (T),

Railway Board.

The provision of Para 203.5 of IREM makes it clear that employees from the different streams will be eligible to appear for the selection, their integrated seniority for purposes of the selection should be determined on the basis of total length of non-fortuitous service rendered- in grade Rs. 2000-3200 and above. Thus, it is sine qua non that for inclusion in the eligibility list, a person should have rendered non-fortuitous service in the grade of Rs. 2000-3200 Non-fortuitous service is defined in note appended to para 320 of IREM to mean the service rendered with effect from the date of regular promotion after due process. It is not in dispute that the Mail Guards were in regular service. The Male Guards who have been included in the eligibility list were in the regular service. What is disputed is that they were not enjoying the corresponding pay scale of Rs. 2000-3200 which is necessary for inclusion in the eligibility list prepared on the basis of selection. There is a difference between the salary of the stationary staff and running staff. Mail Guards are in the category of running staff. With respect to removing the disparity decisions R/I and R/2 have been taken. The aforesaid circular (R/I) dated 15-6-1979 clearly provides that Railway Board after careful consideration decided that disadvantage to running staff should be removed by adding to the pay scales of the running staff roughly 30% of the same (in lieu of running allowance) for the purpose of comparison with non-running) categories for promotion/selections. The circular (R/I) was reiterated vide circular (R/2) dated 4-8-1982. Circular (R/2) reiterated that it has been decided after careful consideration by the Ministry that equivalence of grades prescribed in the Ministry letter (R/I) dated 15-6-1979 will apply for purposes of selection to Group "B" posts also that is for determining the relative position of running staff. In the combined seniority list of staff eligible to be considered in the selection.

In our opinion, in view of Ministry of Railways and Railway Board's decision contained in circulars R/1 and R/2, 30% salary of the Mail Guards was required to be added for the purpose of preparing panel for comparison with non-running categories for promotion/selection for Group B posts also. Thus, to the existing scale of Mail Guards Rs. 5500-9000, 30% salary has been added to bring equivalence for the purpose of preparing the eligibility list based on the selection made as per prescribed procedure. On the basis of aforesaid Circulars (R/1 and R/2), the pay scales of Mail Guards fall within the pay scale of Rs. 2000-3200 - Rs. 6500-10500 as provided in para 203.5 of IREM. Thus, it is apparent that the eligibility list has been prepared in terms of circulars R/1 and R/2 and para 203.5 of IREM. We find the action taken by the respondents to be in accordance with law. The submissions raised by the petitioners' counsel could have been accepted had there not been the aforesaid circulars of Railway Board and Ministry of Railways as contained in R/1 and R/2, but in order to do justice 30% addition of pay has to be made even for the purpose of promotion to Group B post.

The posts in question of ACMs/AOMs are Group B posts, thus, addition of 30% pay is appropriate. It cannot be said that promotion has been given with retrospective effect. Infact equivalence has been brought in terms of aforesaid circulars R/1 and R/2. They were deemed to be placed in the aforesaid scale. Actual benefit has not been given with retrospective effect. Only for the purpose of preparation of integrated seniority list for counting their seniority by addition of 30% of the pay scale prevailing time to time in the year 1983 and later on the aforesaid exercise has been done. When in the existing pay in the year 1983, 30% amount is added, the salary of the Mail Guards would be within prescribed norms for promotion in Para 203.5 of IREM which fact is not in dispute. The dispute is that 30% salary could not have been added which submission we find to be unacceptable in view of decisions of Board and Ministry contained in Circulars R/1 and R/2.

Submission was made by senior counsel for petitioner for fixation of seniority as provided in Para 302 of IREM. Para 302 deals with seniority in initial recruitment grades. There was regular appointments of Mail Guards as well as that of petitioners. Thus, after addition of pay scale, in our opinion, eligibility list has been rightly prepared. It could not be said that Mail Guards were not having non-fortuitous service. There is no violation of para 302 of IREM. Reference has also been made to para 320 of IREM which deals with the relative seniority of employees in an intermediate grade belonging to different seniority units appearing for a selection/non-selection post in higher grade. When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter se seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. In the instant case, question involved is

addition of 30% pay as promotion to the posts in question is required to be made from different streams. Thus, we find that provision of Para 320 of IREM has not been violated in any manner while preparing the eligibility list based on selection. The provision of non-fortuitous service as provided in Note appended to Para 320 of IREM has also not been violated in the instant case as Mail Guards were holding the post substantively is not in dispute. Merely by the fact that petitioners were drawing higher pay scale it could not be said that for the purpose of promotion to Group B posts they should be placed above the Mail Guards, particularly when equivalence has been brought by addition of 30% pay scale. We find that they have been rightly placed at appropriate places in tune of IREM 203.5. Main challenge is that 30% of the salary could not have been added. There is no dispute that petitioners, are drawing higher pay scale, but that is not the crux- for the purpose of preparation of eligibility list of different streams, crux is that 30% of the pay has to be added in the pay scale drawn by the Mail Guard for promotion to Group "B" posts also. Consequently, we find that various submission: raised by petitioners" counsel have no force in view of aforesaid discussion.

Ms. S. Menon, learned senior counsel has relied upon a decision of Supreme Court in State of Uttaranchal and another vs. Dinesh Kumar Sharma, (2007) 1 SCC 683 in which it has been laid down that a person appointed on promotion shall not get seniority of any earlier year but shall get the seniority of the year in which his/her appointment was made. Therefore, the respondent cannot be given promotion from the date of occurrence of the vacancy which is 1995-96 but can only get promotion and seniority from the time he has been substantively appointed, i.e. from 1999. The decision is of no help to the petitioners as the dispute in the instant case is totally different. Mail Guards were holding substantive post is not in dispute, but they were drawing lesser pay scale and for the purpose of promotion to Group B posts, 30% salary has been added to their existing pay scales, on that basis integrated eligibility list has been prepared which is found to be in accordance with circulars R/1 and R/2 relied by the respondents. Smt. Menon has also relied upon another decision of Apex Court in Uttaranchal Forest Rangers" Association and others vs. State of U.P. and others AIR 2006 SCW 5337 in which it has been laid down that by virtue of Rule 8 of U.P. Government Servant Seniority Rules, 1991 seniority has to be given from date of substantive appointment. Direct recruits appointed on post of Forest Rangers prior to 1990 and promotees were appointed in 1991, promotion was not dated back to date of vacancies. It was held by the Apex Court that such promotees cannot be given seniority over direct recruits. In the instant case, the decision is of no help as it is not a case of dispute between the direct recruits and promotees, question is of addition of 30% of pay in order to bring the equivalence as provided in Circulars R/1 and R/2. She has also relied upon another decision of Apex Court in Hari Nandan Sharan Bhatnagar Vs. S.N. Dixit and Another, in which the Apex Court considered when the post was a selection post and seniority by itself was not a sufficient qualification for promotion. The

claim of Upper Division Assistants was considered but under Rule 7 the choice was not limited to the Upper Division Assistants. The claim of others who were in the same grade, that is to say, enjoying the same scales of pay was not considered. The employer picked out the person considered to be qualified in all respects to perform the duties of a Superintendent was considered. All officials of Legislative Assembly Secretariat holding posts in the same scale of pay as Upper Division Assistants were eligible for promotion to the post of the Superintendent, in the instant case, as already stated, it is provided in para 203.5 of IREM that persons have to be selected from different streams, combined eligibility list has to be prepared for promotion to Group B posts of AOM/ACM. Consequently, it is not a case where the cases of different streams have not been taken into consideration. Cases of petitioners have been considered and persons of their category have been included in the Integrated eligibility list, but as per their position in the seniority, the petitioners could not find place in the eligibility list. The selection, in the instant case, is in terms of prevailing instructions.

Respondents' counsel have also referred to the decision of Apex Court in Punjab State Electricity Board and others vs. Gurmail Singh, AIR 2008 SCW 3852 to submit that it was necessary to challenge circulars R/1 and R/2 which has not been done. On merits we find that provision of Para 203.5 of IREM has not been violated. The instructions R/1 and R/2 hold the field and there is no violation of provisions of Para 302 and 320 of IREM also.

Consequently, in our considered opinion the order passed by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur to be in accordance with law. There is no merits in the writ petition. Petition being devoid of merits is hereby dismissed. No costs.