

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) Nos.10011/2009**

% **Date of Decision: 18.07.2011**

Union of India through the Secretary, Ministry of Petitioners
Railways & Ors.

Through Ms. Geetanjali Mohan and Mr. Ketan
Madan, Advocates

Versus

Sarwar Ali Respondent

Through Mr. Shaad Anwar, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether reporters of Local papers may | YES |
| | be allowed to see the judgment? | |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be | NO |
| | reported in the Digest? | |

ANIL KUMAR, J.

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1. The petitioners, Union of India, through the Secretary, Ministry of Railways & Ors., have challenged the order dated 5th December, 2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.723/2008, titled as 'Mr.Sarwar Ali, Chief Controller

Train v. Union of India through the Secretary, Ministry of Railways & Ors.’, allowing the original application of the respondent and holding that there should be a separate assessment of the claims of the respondent for consideration for promotion to Group ‘B’ post to be held by petitioners No.2 and 3. It was further directed to the petitioners that if the respondent is found fit to be included in the list, he should be given an appropriate place in the list reckoning him as senior to the persons who were in the pay scale of Rs.6500-10500/-.

2. The brief facts to comprehend the disputes between the parties are that the respondent challenged the order No.30 of 2007 dated 1st March, 2007 which was passed by the General Manager Personnel, Head Quarter Office, Allahabad whereby Sh.Basant Lal and Sh.Subodh Kumar Jain, who were juniors to the respondent were promoted to the post of AOM and were posted at Agra, thereby becoming immediate officers of the respondent.

3. While challenging the order No.30 of 2007 dated 1st March, 2007 the respondent assailed Para No.203.4 of the IREM Vol.-I and also challenged the exclusion of the name of the respondent in the provisional integrated seniority list No.797E/NCR/GR. “B” inter se seniority list dated 17th September, 2005 for the selection to the post of AOM, while the names of persons who had not been placed in the

higher grade of Rs.7450-11500 were included in the list but the respondent had not been included.

4. The respondent had contended that in the year 2008 he had filed the original application before the Tribunal against non inclusion of his name in panel of eligible candidates for consideration for promotion, that time he was working as Chief Train Controller, Northern Railway and was posted at Agra holding the grade of Senior Supervisor in the scale of Rs.7450-11500/-.

5. He claimed that he is entitled for consideration for promotion to Group B officer having the grade of Rs.7500-12000/-.

6. The respondent contended that he was aggrieved by the letter dated 17th September, 2005 issued by the General Manager along with the provisional integrated seniority list of the staff in the grade of Rs.6500-10500/- for selection to the post of AOM (Group B) against the 70% quota vacancies. The seniority list which was prepared did not include the name of the respondent for recruitment to the officer grade in Group B in the pay scale of Rs.7500-12000/-.

7. The grievance of the respondent was that the employees holding a junior supervisory grade i.e. Rs.6500-10500 were included and though

the respondent had been placed in the grade of senior supervisor in the pay scale of Rs.7450-11500/-, he was excluded and was superseded by those who had still been in the grade of Rs.6500-10500 on the basis of seniority in that grade.

8. The respondent had pleaded that he had joined the Indian Railway as a Traffic Apprentice on 22nd December, 1985 and he had completed his training in October, 1988 and was posted as an Assistant Train Controller in the Grade of pay scale of Rs.5000-9000/- Thereafter, on 17th October, 1990 he was promoted to the post of Deputy Train Controller having the pay scale of Rs. 6500-10,500/- and subsequently on 12th June, 1996 he was promoted to the post of Chief Train Controller in the pay scale of Rs.7450-11500/-.

9. For promotion to the post of AOM Group B in the grade Rs.7500-12000, 31 employees were enlisted but the name of the respondent was not included. According to the respondent, he is senior to the employees listed at serial No.10 to 31 in the grade of Rs.7450-11500/- except for employees at serial No.14 and 30.

10. The respondent made a representation to the General Manager (P), Northern Central Railway, Allahabad on 17th September, 2005 and to the General Manager, North Central Railway, Allahabad on 24th

October, 2005 for redressal of his grievance, however, even his representation was not disposed of. The respondent further contended that he had filed an original application No.497/2006 which was disposed of by order dated 6th March, 2006 holding that the respondent had approached the Tribunal prematurely without providing reasonable time to the petitioners to decide upon his representation.

11. The respondent further asserted that he is senior in grade as well as in service in relation to the employees whose names had been enlisted. He also made a grievance that the employees on the basis of the grade of Rs.6500-10500/- were included for the selection to the post of AOM, while the employees in the grade of Rs. 7450-11500/- had been excluded. The respondent had filed another original application No.176/2006 titled as 'Mr. Sarwar Ali v. Chairman, railway Board and Ors.' which was withdrawn by him, with liberty to file a fresh original application by order dated 29th May, 2007. The respondent also disclosed that the employees who were in the junior grade of Rs.6500-10,500/- including Sh.Subodh Kumar Jain and Sh.Basant Lal were promoted provisionally during the pendency of OA No.176/2006. Challenging the seniority list prepared for selection for promotion to the post of AOM Group 'B' in the scale of Rs.7500-12000/-, the respondent contended that the Railway Board committed grave error in not including the names of the persons who had been placed in the higher

grade of Rs.7450-11500/- and only including the employees in the grade of Rs.6500-10500/- on the basis of seniority in the said grade.

12. The OA of the respondent was contested by the petitioners. It was asserted that to fill up the post of AOM (Group B) against 70% quota vacancies in North Central Railway, the provisional integrated seniority list of staff in the grade of Rs.6500-10,500 (RSRP) of Operating Department was prepared as per the provisions contained in Para 203.5 of IREM Vol.-I. The petitioners pleaded that the integrated seniority list of the Operating Department had been prepared in accordance with the sliding scale in terms of Para 203.4 of IREM Vol-1. The petitioners admitted that the respondent was promoted in the grade of Rs.7450-11500/- w.e.f. 12th June, 1996 and earlier he had been promoted in the grade of Rs.6500-10500/- (RSRP) w.e.f. 17th October, 1990. According to them, the date of appointment in the grade of Rs.6500-10500 (RSRP) on a non-fortuitous basis is the criteria for determining the seniority of an employee for further selection to the post of AOM (Group B) as per Para 203.5 of IREM Vol.-I. The petitioners further disclosed that a total of 11 vacancies had been assessed for holding Group 'B' post selections against the 70% promotee quota, out of which 2 were reserved for Scheduled Caste candidates, 1 for Scheduled Tribe candidate and remaining 8 for General quota. As against the 11 vacancies, a total of 33 candidates as per seniority in grade of Rs.6500-10500 were to be

considered and promotion of some of the employees to higher grade of Rs.7450-11500 is not to be taken into consideration. In terms of Para 203.4 for four vacancies, employees equal to 3 times the number of vacancies had to be considered and thus, 33 candidates had been considered against the 11 vacancies. Out of the total 33 candidates, according to the seniority in the grade of Rs.6500-10500, 5 candidates had failed twice in earlier selections, and therefore, against these 5 candidates 5 additional candidates had been called as per the instructions of Railway Board letter No.E(GP)85/1/71 dated 10th September, 1986 and thus, a total 38 candidates were considered for selection as per seniority in the grade of Rs.6500-10500. As per integrated seniority of 55 candidates dated 10th July, 2006 the name of the respondent appears at item No.55 and only 38 candidates had been considered against the total of 11 vacancies, because of which the respondent had not even been considered, as he did not fall as per his previous seniority in the grade of Rs.6500-10500 though those who have been considered, some of them failed to get the higher grade and the respondent had been given the higher grade after his selection to the grade of Rs.7450-11500.

13. Para 203.4 and 203.5 of IREM Vol.-I is as under:-

“203.4. Zone of consideration- The number of employees to be called for the selection will be in accordance with the sliding scale in the order of seniority shown below:

1. Vacancies—5 employees,
2. Vacancies—8 employees,
3. Vacancies-10 employees,
4. Vacancies and above employees equal to three times the number of vacancies.

203.5. Since employee from the different streams to be eligible to appear for the selection, their intended seniority for purpose of the selection should be determined on the basis of total length of non-fortuitous service rendered in grade Rs.2000-3200 (R.S.) as above. In other words the date of appointment of the grade Rs.200-3200 (RS) on a non-fictitious basis will be the criterion.

(Feader as 6500-10500-Acs 181 item No.4.)”

14. The Tribunal considered the pleas and contentions of the parties and held that the respondent had been promoted to the pay scale of Rs.6500-10500/- on 17th October, 1990 and remained there on non-fortuitous basis up to 12th June, 1996 and then promoted as Chief Train Controller in the pay scale of Rs.7450-11500/-. His promotion to the next grade could not be construed against him nor can be held to be insignificant and meriting no consideration for promotion to the post of AOM (Group B) in the pay scale of Rs.7500-12000/-. The Tribunal noted that though the merit of the respondent was recognized and he was promoted to the higher grade yet for selection to the next post, the seniority in the lower grade was taken into considered and no weightage for selection was given to the respondent for promotion to the next post of AOM (Group B) with pay scale of Rs.7500-12000/-. According to the Tribunal, no rationale had been given as to how the employees who had

not been successful in previous selections were taken into consideration, whereas the respondent and other employees, similarly placed as the respondent, belonging to a higher grade of Rs.7450-11500/- could be eliminated on the basis of Para 203.5 of IREM Vol.-I. According to the Tribunal, Para 203.5 does not take into consideration this anomalous situation, where even though the respondent is in the higher grade, he is not considered for the post of AOM (Group B) in the grade of Rs.7500-12000/-, however, on account of his seniority in the lower grade of Rs.6500-10500/- he has been denied even consideration for the next post. In Para 6 and 7 of the judgment impugned by the petitioners, Tribunal had held as under:-

“6. This leads to a curious position. A person whose merit had been recognized, and who is promoted to the higher cadre is sought to be denied opportunity to compete in a selection where persons who were not successful in the previous selection are permitted to partake. Definitely the successful would be brought above the head of the applicant as Grade B officer. Paragraph 203.5 of IREM does not appear to be arbitrarily worded. We only find that it has omitted to take notice of certain an anomalous situation like the above instance. What should be proper, we feel is that simultaneous with preparation of an integrated list, there should also be an examination as to whether any person, in the lower grade, had secured promotion by a process of selection and as in the present case. Such persons are to be given priority to be placed in the integrated list prepared. This will be more in consonance with the principles of service jurisprudence. The lower seniority in the erstwhile cadre when is compensated by a promotion, previous seniority position becomes irrelevant and the person is to be treated as having a prior claim to be included in the list, when selection steps to Group `B` posts are being processed. In

other words, a person, who has been adjudged as meritorious, should as well get an opportunity, in fairness to complete for the Group B post. Of course, Mr. Yadav had invited our attention to a judgment of the Supreme Court in Vinod Krishna Kaul Vs. UOI & Ors. (JT 1991 (5) SC (2)), but we find the above discussion rested on totally different facts.

7. Since the applicant had been agitating over the issue and since, as a matter of fact, Paragraph 203.5, does not, in effect, prohibit such a consideration, in absolute terms, we are of the view that the applicant is entitled to succeed. However, when the selection process has been complete and selectees have been appointed to the vacancies, it may not be possible for the respondents to grant reliefs to the applicant straightway. But since the applicant has made out a case that his rights for promotion have been overlooked, he should not be without any remedy. The selection held, especially is to be considered as depending on the outcome of the proceedings.

15. The order of the Tribunal is challenged by the petitioners primarily on the ground that in terms of Para 203.5 of IREM Vol-1 the seniority in the grade of Rs.6500-10500/- only is to be considered, even though the respondent had been given the higher grade of Rs.7450-11500/- in comparison to many others in the grade of Rs.6500-10500/- who had failed and not been given the higher grade of Rs.7450-11500/-. The petitioners contended that since the respondent moved from scale of Rs. 6500-10500/- to a higher scale, his selection for higher grade in not relevant for consideration for promotion to the post of AOM (Group B).

16. The petitioners also contended that the respondent had only challenged Para 203.4 and not Para 203.5 of IREM Vol.-I and that the Tribunal on its own had given the finding with respect to Para 203.5.

17. During the pendency of the present petition, an affidavit of Sh.P.S.Bisht, senior personal officer dated 4th September, 2010 was filed along with the seniority list up-dated as on 24th November, 2006, giving the date of promotion in the grade of Rs.6500-10500/- and the date of promotion in the grade of Rs.7450-11500/-. For purpose of eligibility seniority in the lower scale of Rs.6500-10500 has been considered and not the seniority in the grade of Rs.7450-11500.

18. This Court has heard the learned counsels for the parties in detail. This is not disputed that the respondent was given a higher grade of Rs.7450-11500/- on 12th June, 1996 and some of the employees shown senior to him in the eligibility panel had not even been given the higher grade of Rs.7450-11500/- and some of them had failed twice. Placing an employee in the higher grade of Rs.7450-11500/- cannot be termed to be inconsequential. For the purpose of promotion how the seniority only in the lower grade of Rs.6500-10500/- is to be taken into consideration and the seniority in the grade of Rs.7450-11500/- is not to be considered has not been satisfactorily explained by the learned counsel except relying on para 203.5 of IREM.

Though Para 203.5 of IREM Vol-1 stipulates that date of appointment in the grade of Rs.6500-10500/- will be the criteria for determining seniority, however, no rule or para has been shown in support of the contention that the promotion to the next higher grade of Rs.7450-11500/- will be of no relevance. The Tribunal very pertinently observed that considering only Para 203.5 leads to an anomalous situation, as even though the respondent is given a higher grade of pay scale of Rs.7450-11500/- yet his seniority in the lower grade of Rs.6500-10500/- is taken into consideration and no weightage is given to the promotion of the respondent to the higher grade of Rs.7450-11500/-. If the respondent has been promoted to a higher grade, he cannot be considered to be junior on the basis of seniority in the lower grade, specially in comparison to those employees who are in the lower grade and who have failed or who were promoted only after the respondent to the next grade of Rs.7450-11500/-. Even according to the contentions of the respondent though 33 candidates had to be considered for 11 post, however, as 5 of the candidates out of the 33 had failed twice in earlier selections, therefore, 5 more candidates had been called for, as per seniority in the grade of Rs.6500-10500/-. Thus, the candidates/employees who even failed twice in the earlier selections were being considered in preference to the respondent who was promoted to the next higher grade, who undoubtedly is more

meritorious, yet his seniority on account of his promotion to the next higher grade is completely ignored.

19. The plea of the petitioners that the respondent had not challenged Para 203.5 and has only challenged Para 203.4 is also not correct. On reading of the entire OA of the respondent, it is apparent that the respondent had challenged the consideration of the candidates on the basis of the seniority in the grade of Rs.6500-10500/- and not taking into account the seniority in the higher grade of Rs.7450-11500/- and not on the ground as to how many candidates are to be considered for various numbers of vacancies. Consequently even if the respondent has mentioned Para 203.4 in his petition, it is apparent that he challenged para 203.5 and not 203.4 and this contention of the petitioners thus cannot be accepted. The learned counsel for the petitioners has not been able to give any satisfactory reason as to why the merit of those candidates who had been placed in the higher grade of Rs.7450-11500/- is to be completely ignored and their date of appointment in the lower grade should be the criteria for consideration for promotion to the post of AOM (Group B) in the pay scale of Rs.7500-12000/-. Even if the employees from the different streams are eligible to appear for selection, while considering their integrated seniority, the higher grade given to some of the employees in preference to others who have remained in the lower grade cannot be ignored, nor can it be held that

no weightage is to be given to such merit of candidates, like the respondent.

20. In the case of *Girdhari Lal & Sons v. Balbirnath Mathur*: [1986]1SCR383 the Apex Court had very pertinently made the following observations:

“9. So we see that the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing, the written word if necessary.

10.

12. In *Seaford Court Estates Limited v. Ashor* [1949] 2 All E.R. 155 Lord Denning, who referred to Plowden's Reports already mentioned by us, said :

Whenever a statute comes up for consideration, it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity... A Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a construction of the social conditions which gave rise to it and of the mischief which it was passed to remedy and then he must supplement the written word so as to give force and

life to the intention of the legislature. Put into homely metaphor, it is this: A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the contexture of it they would have straightened it out? He must then do what they would have done. A judge should not alter the material of which the Act is woven, but he can and should iron out the creases.

13. In *Rugby Joint Water Board v. Foot* it [1972] 1 A.E.R. 1057, Lord Simon of Glaisdale said :

The task of the courts is to ascertain what was the intention of Parliament, actual or to be imputed, in relation to the facts as found by the court...But on scrutiny of a statutory provision, it will generally appear that a given situation was within the direct contemplation of the draftsman as the situation calling for statutory regulation: this may be called the primary situation. As to this, Parliament will certainly have manifested an intention - 'The Primary Statutory Intention'. But situations other than the primary situation may present themselves for judicial decisions - secondary situations. As regards these secondary situations, it may seem likely in some cases that the draftsman had them in contemplation; in others not. Where it seems likely that a secondary situation was not within the draftsman's contemplation, it will be necessary for the court to impute an intention to Parliament in the way I have described, that is, to determine what would have been this statutory intention if the secondary situation had been within Parliamentary contemplation (a secondary intention).

14. It may not be out of place to refer here to what Harold Laski said in his Report of the Committee on Ministers' powers:

The present methods of statutory interpretation make the task of considering the relationship of statutes, especially in the realm of great social experiments, to the social welfare they are intended to promote one in which the end involved may become unduly narrowed, either by reason of the unconscious assumptions of the Judge or because he is observing

the principles of interpretation devised to suit interests we are no longer concerned to protect in the same degree as formerly...The method of interpretation should be less analytical and more functional in character; it should seek to discover the effect of the legislative precept in action so as to give full weight to the social value it is intended to secure.

15. In 1981, the Australian Parliament added a new Section 15AA(1) to the Acts Interpretation Act, 1901, requiring that in statutory interpretation "A construction that would promote the purpose or object" of an Act (even if not expressed in the Act), be preferred to one that would not promote that purpose or object. Julius Stone in his 'Precedent And Law - Dynamics of Common. Law Growth' also refers to this provision.

16. Our own court has generally taken the view that ascertainment of legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred which advances the purpose and object of a legislation and that though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices or absurdities, vide K.P. Varghese v. I.T.O. MANU/SC/0300/1981 : [1981]131ITR597(SC) , State Bank of Travancore v. Mohd. M.Khan MANU/SC/0002/1981 : [1982]1SCR338 , Som Prakash Rathi v. Union of India : (1981)ILLJ79SC , Ravula Subba Sao v. C.I.T. MANU/SC/0042/1956 : [1956]30ITR163(SC) , Govindlal v. Market Committee [1976] 1 S.C.R. 482 & Babaji Kondaji v. Nasik Merchants Coop. Bank MANU/SC/0367/1984 : [1984]1SCR767 .”

21. What is apparent from the facts on the record that prior to 5th Pay Commission the grade of group 'B' was Rs.2000-3500 and the grade of Junior Supervisor was Rs.2000-3200. Thus keeping in view the beginning of the grade of these two posts as the same at the initial stage, the provision of eligibility for the selection of AOM was arranged.

After 5th Pay Commission the circumstances changed and now the grade of Group 'B' post is Rs.7500-12000 for promotee officer and senior supervisor grade is Rs.7450-11500 and Junior Supervisor grade is Rs.6500-10500. In the circumstances, para 203.5 could not be applied mechanically so as to eliminate the seniority of Senior Supervisor having grade 7450-11500. The seniority for consideration for post of AOM (Group 'B') has to be based on the seniority of grade 7450-11500 and not on the basis of grade of Rs.6500-10500. Thus the para 203.5 Vol.I could not be interpreted and construed in a manner that it leads to anomalies, injustices or absurdities.

22. In the circumstances, direction by the Tribunal to consider the claim of the respondent for consideration for promotion to post of AOM (Group 'B') cannot be termed to be illegal or suffering from such manifest illegality or irregularity so as to require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

23. In the totality of the facts and circumstances the pleas and contentions raised on behalf of the petitioners are rejected and the interim stay granted by this Court on 30th July, 2009 staying the operation of the order dated 5th December, 2008 passed in OA No.723 of 2008 is vacated and all the pending applications are disposed of. The

petitioners shall comply with the direction given by the Tribunal by order dated 5th December, 2008 within three months. After consideration of the respondents for the post of AOM (Group B) in the pay scale of Rs.7500-12000/- if the respondent shall be found fit, he will be given an appropriate place in the seniority list in terms of the direction of the Tribunal. With these directions, the writ petition is disposed of. Considering the facts and circumstances, the parties are however, left to bear their own costs.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

July 18, 2011

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