

N THE HIGH COURT OF JUDICATURE OF BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.6851 OF 2014

01 Union of India,
through the Secretary,
Railway Board, Rail Bhavan,
New Delhi 110 001.

02 Chairman,
Railway Board, Rail Bhavan,
New Delhi 110 001.

03 The General Manager,
Central Railway,
Headquarters Office, CST,
Mumbai 400 001.

04 The General Manager,
Eastern Railway,
Headquarters Office,
Fairlie Place, 17 NS Road,
Kolkata

Petitioners

Versus

01 M.K.Gupta,
son of Late Shri Murari Lal Gupta,
age: 55 years (DOB 11.10.1958),
working as Chief Administrative
Officer (Construction),
Central Railway, Headquarters
Office, CST, Mumbai 400 001,
and residing at L-42, Badhwar
Park, Wodehouse Road, Colaba,
Mumbai – 400 005.

02 Shri S.L.Verma,
Divisional Railway Manager
(DRM), Nagpur, South-East
Railway, Office of the Divisional
Railway Manager (DRM),
Nagpur.

03 Shri L.M.Jha,
Chief Administrative Officer
(Construction), South,
Office of Chief Administrative

Officer ©, East Central Rly,
Mahendru Ghat,
Patna, Bihar 800 004.

04 Shri Sanjeev Mittal, IRSE,
Divisional Railway Manager
(DRM), Hubli, South-Western
Railway, Office of Divisional
Railway Manager (DRM),
Hubli, Karnataka.

Respondents

Mr.Anil Singh, Assistant Solicitor General a/w Mr.Suresh Kumar
a/w Ms.Indrayani Deshmukh, advocates for petitioner.
Mr.Sudhir Talsania, Senior Counsel a/w Mr.Rahul Walia, advocate
for Respondents.

WITH
WRIT PETITION NO.8942 OF 2014

01 M.K.Gupta,
son of Late Shri Murari Lal Gupta,
age: 55 years (DOB 11.10.1958),
working as Chief Administrative
Officer (Construction),
Central Railway, Headquarters
Office, CST, Mumbai 400 001,
and residing at L-42, Badhwar
Park, Woodhouse Road, Colaba,
Mumbai – 400 005.

Petitioner

Versus

01 Union of India,
through the Secretary,
Railway Board, Rail Bhavan,
New Delhi 110 001.

02 Railway Board,
through its Chairman,
Railway Board, Rail Bhavan,
New Delhi 110 001.

03 The General Manager,
Central Railway,
Headquarters Office, CST,
Mumbai 400 001.

04 The General Manager,
Eastern Railway,
Headquarters Office,
Fairlie Place, 17 NS Road,
Kolkata, Pin Code-700 001.

05 Shri S.L.Verma,
Divisional Railway Manager
(DRM), Nagpur, South-East
Central Railway, Office of the
Divisional Railway Manager
(DRM), Nagpur 441 111.

06 Shri L.M.Jha,
Chief Administrative Officer
(Construction), South,
Office of Chief Administrative
Officer ©, East Central Rly,
Mahendru Ghat,
Patna, Bihar 800 004.

07 Sanjeev Mittal, IRSE,
Divisional Railway Manager
(DRM), Hubli, South-Western
Railway, Office of Divisional
Railway Manager (DRM),
Hubli, Karnataka,
Pin Code 580 029.

Respondents

Mr.Sudhir Talsania, Senior Counsel a/w Mr.Rahul Walia, advocate
for the petitioner.

Mr.Anil Singh, Assistant Solicitor General a/w Mr.Suresh Kumar
a/w Ms.Indrayani Deshmukh, advocates for Respondents No.1 to
4.

WITH

WRIT PETITION NO.12241 OF 2015

01 Union of India,
through the Secretary,
Railway Board, Rail Bhavan,
New Delhi 110 001.

02 Railway Board,
through its Chairman,
Railway Board, Rail Bhavan,
New Delhi 110 001.

Petitioners.

Versus

01 M.K.Gupta,
son of Late Shri Murari Lal Gupta,
age: 57 years (DOB 11.10.1958),
working as Chief Administrative
Officer (Construction),
Central Railway, Headquarters
Office, CST, Mumbai 400 001,
and residing at L-42, Badhwar
Park, Woodhouse Road, Colaba,
Mumbai – 400 005,
State of Maharashtra.

02 Department of Personnel and
Training (DOPT),
through its Secretary,
North Block, New Delhi 110 001.

03 Appointment Committee of
Cabinet (ACC) through
Establishment Officer DOPT,
North Block,
New Delhi 110 001.

Respondents

Mr.Anil Singh, Additional Solicitor General a/w Mr.Suresh Kumar
a/w Ms.Indrayani Deshmukh, advocates for petitioner.
Mr.Sudhir Talsania, Senior Counsel a/w Mr.Rahul Walia, advocate
for Respondent No.1.

CORAM : R.M.BORDE AND

A.S.GADKARI, JJ.

RESERVED ON : 15th February, 2017.

PRONOUNCED ON : 4th September, 2017.

JUDGMENT (Per R.M.Borde, J.) :

1 Heard. Rule. Rule made returnable forthwith and
heard finally by consent of learned Counsel for respective parties.

2 Writ Petition No.6851 of 2014 has been presented by

the Union of India through the Secretary, Railway Board and other 3 petitioners seeking a writ of certiorari or any other appropriate writ, order or direction for quashing the order dated 14.02.2014 passed by the Central Administrative Tribunal in Original Application No.522 of 2013. Whereas, Writ Petition No.12241 of 2015 has been presented by the Union of India seeking to quash the order dated 06.11.2015, passed by the Central Administrative Tribunal in Misc. Application No.779/2015 in Original Application No.425/2015.

3 Respondent No.1-employee, in the petition presented by Union of India, has approached this Court by presenting Writ Petition No.8942 of 2014, praying to quash and set aside impugned para 9(vi) of the order dated 14.02.2014, passed by the Central Administrative Tribunal. Respondent No.1 is also questioning validity of the orders dated 27.08.2013 and 07.08.2013, passed by the petitioner-Railways. Respondent No.1 has also sought for a declaration that he is eligible for promotion to the post of General Manager (Open Line) and that working on the post of Divisional Railway Manager (DRM) is not an eligibility condition under 1986 Rules. Respondent No.1 further seeks to quash the declaration “not eligible” recorded in the impugned ACR/APAR forms of the petitioner with regard to eligibility for consideration to the post of General Manager (Open Line) and to direct the respondents to replace the remark “not eligible” with a remark “eligible or fit” for

the said post. Respondent No.1 has also made a prayer to quash the order dated 12.09.2014, passed by the Central Administrative Tribunal in Review Petition No.22 of 2014 in O.A. No.522 of 2013.

4 Parties herein are referred to as per their status recorded in Writ Petition No.6851 of 2014 presented by Union of India.

5 Respondent No.1 was appointed as a Group-A Officer on the basis of Combined Engineering Services Examination conducted in 1979 by the Union Public Service Commission. After successful declaration in the selection process, Respondent No.1 joined Indian Railways on 16.01.1981. Respondent No.1, as on the date of presentation of the petition, is functioning as Chief Administrative Officer (Construction) in Central Railways, which is a Higher Administrative Grade (HAG) post. Respondent No.1, while functioning as Chief Engineer (TP), Central Railways, was issued a major penalty charge sheet. The Inquiry Officer, during the course of inquiry, exonerated him of all the charges. However, he was issued a disagreement note by the employer and was compulsorily retired vide order dated 21.04.2005.

6 Respondent No.1-employee objected to the adverse order by presenting Original Application to the Central Administrative Tribunal bearing No.315 of 2005, which came to be allowed by the Tribunal and the order directing imposition of

penalty was quashed and set aside on 12.02.2007.

7 The Railway administration presented Writ Petition No.12395 of 2007 challenging the judgment and order passed by the Central Administrative Tribunal, Mumbai. The petition presented to this Court was heard and disposed of on 19.04.2007. While dealing with the petition, the Division Bench has observed that the impugned order of the Tribunal, not for the reasons recorded, but otherwise on account of procedural infirmities in the inquiry proceedings, the memo dated 31.10.2003 and the order dated 21.04.2005 are quashed and set aside. The matter came to be remanded to the Member, Engineering Railway Board, to take steps in accordance with procedure applicable to Respondent No.1 from the stage of findings recorded by the Inquiry Officer. This Court directed the petitioner-Railways to complete disciplinary proceedings and pass order, according to law, within six months.

8 The employer, however, did not adhere to the time frame and took action only after about 44 months. The charge sheet issued by the employer was dropped and Respondent No.1 was exonerated of all the charges. In the meanwhile, juniors of respondent no.1 were posted as Divisional Railway Manager (DRM). Respondent No.1 was not posted as DRM only on account of pendency of inquiry proceedings against him. Respondent No.1 made several representations to the employer requesting to give

him posting as DRM. It is only after exoneration of the petitioner of all the charges in the year 2010, he was shortlisted for posting as a Divisional Railway Manager (DRM) in and around April 2011. However, his name was not included in the posting order dated 07.04.2011. Respondent No.1 made representation agitating his non selection as DRM. He was, however, adjudged "not eligible" for consideration to the post of GM (OL) and such an entry has been recorded in his ACR/APAR for the year ending March 2013. Respondent No.1, however, was adjudged fit for other post of General Manager. The request of Respondent No.1, made through representations for holding him eligible for the post of General Manager (Open Line), has been turned down by the employer by orders dated 27.08.2013 and 07.08.2013. Respondent No.1 approached the Tribunal seeking to quash adverse entries in ACR/APAR recording his ineligibility for promotion to the post of General Manager (Open Line) and Assistant General Manager. The Tribunal passed an interim order on consideration of application tendered by Respondent No.1 directing the employer to consider claim of Respondent No.1-employee for posting him as DRM so as to make him eligible for consideration of his claim for promotion to the post of General Manager (Open Line). The interim order passed by the Tribunal on 21.10.2013 was not complied with and letter was issued to Respondent No.1 rejecting the contentions raised while granting interim relief. The Central Administrative Tribunal, after hearing the parties, proceeded to decide the Original Application

and allowed the same partly by an order dated 14.02.2014. The Tribunal directed the employer to offer posting as DMR to Respondent No.1 so as to give him exposure required to be considered for the post of General Manager (Open Line). It is further ordered that in case the employer do not post him as DMR, it will not stand in his way for claiming the post of General Manager (Open Line). It is further directed that this particular handicap will not be held against him since the Railways are squarely responsible for not finalizing the disciplinary proceedings against Respondent No.1 and thereby depriving him an opportunity of working as DMR as per his turn. An application seeking review of the order was presented by Respondent No.1. However, application seeking review came to be rejected by the Central Administrative Tribunal.

9 It is the principal stand of the petitioner – railways that, the respondent is ineligible for consideration for promotion to the post of General Manager (OL), as he has not worked as DRM. According to the petitioner, an officer in the cadre of SAG can be posted as DRM; whereas, since the petitioner was being considered for promotion to HAG, he was not posted as DRM as on 7.4.2011. The respondent / employee was listed at Sr. No.1 as per the panel, prepared in January/February 2011 for consideration of posting as a DRM. However, since the railway administration had taken a decision to consider the respondent for promotion to HAG, as he

was not posted as DRM. It must be noted that, in fact, the respondent received his HAG promotion only in August/September, 2011 and the process of consideration for posting as DRM was initiated in the month of April, 2011. The respondent could not have been denied posting as DRM, which is crucial for his consideration for promotion to the post of General Manager (OL), on the ground that, he is being considered for promotion to HAG. In fact, even the DPC for HAG was not held on 7.4.2011, so far as the respondent is concerned. Thus the stand adopted by the Railway administration does not appear to be sound.

10 Another contention raised by the petitioner is that, the posts of AGM/GM(OL) are not promotional posts and that the post of General Manager (OL) is an ex-cadre post. The respondent employee, according to the petitioner, cannot claim posting/promotion to an ex-cadre post. The petitioner, at the same time contends that, the posting of an employee as a DRM is crucial for his consideration for promotion to the post of General Manager (OL). On one hand, the respondent has not been considered for posting as DRM on the pretext that he is being considered for promotion to HAG and in fact is being denied promotion as General Manager (OL) merely because, the petitioner does not have experience to function as DRM. The defence of the petitioner thus appear to be contradictory.

11 Another contention raised by the petitioner is that, the

age limit prescribed for the posting as DRM is 52 years and the respondent is over-aged. It must be recorded that, in the year 2007, the High Court, while allowing the petition presented by the Railway authority, directed to take decision within a period of six months from the date of the order. The decision was rendered by the High Court on 19.4.2007. The railway administration took about 44 months for taking decision and ultimately, dropped charges leveled against the respondent. In the meanwhile, juniors to the respondent were promoted. Though the respondent insisted for his posting as DRM since 2010, his claim was not considered and ultimately, he was denied posting as DRM on the ground that he is being considered for promotion to higher administrative grade. The department thus, by not posting the respondent as DRM has taken away his chance of being considered for the post of AGM/ General Manager (OL). Firstly, the petitioner railway administration took 44 months for taking decision and secondly, denied the respondent posting as DRM on the ground that he is being considered for higher post. Now, it would not be appropriate for the Railway administration to take a stand that respondent could not be considered for posting as D RM since he has crossed 52 years of age.

12 So far as the requirement under the relevant Rules, framed by the railway administration for promotion to the post of General Manager (OL) is concerned, there is no mandate under the

scheme that for consideration of promotion to the post of General Manager (OL) and equivalent in the railways, an employee shall mandatorily be posted as DRM. The eligibility criteria for making promotion to the post of GM and equivalent in the railways is laid down in Rule No.7 which reads thus:-

“ 7. Eligibility Criteria

7.1 Officers belonging to the Railway Services listed in Appendix-II will be eligible for consideration by the Selection Committee.

7.2 For being considered every such officer should on 1st July of the year in which selection is made:

- (i) Be less than 58 years of age;
- (ii) have put in not less than 25 years of regular continuous service including period of probation, if any, in a Group 'A' Service listed in Appendix-II
- (iii) have put in a minimum of five years service in the Senior Administrative Grade, including service rendered in higher grade posts, if any

7.3 Only such of the empaneled officers would be considered for appointment to the post of General Manager/equivalent who are left with a minimum service of 2 years or more from the date of occurrence of the vacancy falling in their turn and for which they have been cleared.”

13 There is no mandate under the Rules that a candidate shall have the experience of DRM before he can be considered for promotion to the post of General Manager (OL). Appendix-I prescribes various posts of GM and equivalent which also includes the post of General Manager (OL) for which, there is no separate or

different or distinct criteria laid down or set out for the post of General Manager (OL) as opposed to other GMs listed in Appendix I. The method for consideration for promotion to the post is listed in Appendix-I. It is provided that the selection committee set up in accordance with paragraph 5 of the scheme will consider on merit eligible officers of the Railway Services listed in Appendix II, their interse seniority and prepare a panel of officers considered suitable in all respects for promotion to the post of General Manager and equivalent. The Selection Committee may also recommend the specific type/types of assignment for which a particular officer mentioned in the panel may be considered suitable.

14 Paragraph 6 of the Rules deals with the assessment of suitability of the candidate. Further on adjudging the suitability of the officers, it is provided that due consideration will be given to the performance of the candidates as DRM and as principal Head of the Department. According to the respondent, it is not mandatory for being judged as eligible for an officer to work as DRM before being considered for the post of General Manager (OL) or any other GM's post or equivalent. The respondent has been declared fit and eligible for consideration for the post of General Manager (OL). The respondent was listed at Sr.No.1 for consideration of his posting as DRM. However, he was not considered. The respondent is also declared fit and eligible for consideration to the post of GM and at one point of time, the

superior authority of the railway department had declared the respondent fit and eligible for being considered for the post of General Manager (OL). However, at later point of time, the reviewing authority recorded endorsement on the ACR/APAR that since the respondent has not worked as DRM, he is not eligible for the post of General Manager (OL). According to the respondent, the decision of petitioner, adjudging respondent as ineligible for the post of General Manager (OL) only because he has not worked as DRM is *de-horse* the rules.

15 Even if the stand taken by the railways that the long standing practice of promotion as General Manager (OL) from amongst the officers, who have gained experience to function as DRM has to be considered, it must be noted that, on one hand, Railway department did not extend an opportunity to the petitioner to function as DMR and on the other hand, the respondent is being denied promotion to the post of General Manager (OL) merely on the said ground. The High Court, while disposing of the Writ Petition, directed the petitioner Railways to take decision within a period of six months and the department took about 44 months to take decision. In the meanwhile, employees junior to the respondent, were promoted to the post of DRM and the respondent was denied opportunity. Even after reinstatement of the respondent in the year 2010, he was not posted as DRM on the ground that he was being considered for HAG promotion. The

Tribunal, by an order dated 2.10.2013 directed the petitioner – Railway department to consider the claim of the petitioner for posting him as DRM to fulfill the criteria of promotion to the post of General Manager (OL) however, the Railway department did not comply with the directions of the Central Administrative Tribunal (CAT) and refused opportunity to the respondent to function as DRM on the ground that, he was then being considered for promotion to HAG. It also must be noted that the respondent was considered eligible for DRM and his name was enlisted by the selection panel. So far as promotion of respondent to the post of General Manager (OL) is concerned, the committee ought to have considered that the record i.e. APAR/ACR reveals that the respondent is declared to be fit for the post of DRM, AGM and General Manager (OL), though in the peculiar circumstances, he could not be posted as DRM and got his HAG promotion. The higher authorities i.e. the Executive General Manager as well as the Member, Engineering Railway Board, while writing the ACRs, declared the respondent fit for the post of DRM, AGM, General Manager (OL). This finding as recorded by the Railway authorities, accepted by the accepting authority had also been confirmed by the Chairman, Railway Board on 25.12.2012. The annual confidential reports for the subsequent period, however, declared the respondent unfit for posting as GM(OL), since he had not worked as DRM. The accepting authority, the Chairman, Railway Board has recorded the endorsement on the relevant ACRs/APAR

although the reviewing authority agreed, that the respondent has the merit and eligibility to work as General Manager (OL). It is further recommended by the Member, Engineering Railway Board that, in order to prepare the respondent for posting as General Manager (OL), he may be posted as AGM. The petitioner thus appears to have denied opportunity to respondent to function as General Manager (OL), merely because the respondent was not posted as DRM. As has been recorded above, on one hand, the petitioner denied respondent to work as DRM and on the other hand, though he is found suitable to function as General Manager (OL) and though the authorities have found the respondent to be the most efficient employee, having required merit and eligibility to function as General Manager (OL), he is denied the opportunity of promotion. It would, thus be not open for the petitioner to deny the respondent promotion as General Manager (OL) on the ground that, he has not worked as DRM. In the circumstances, though the respondent was found eligible, for the posting as DRM and though his name was listed at Sr.No.1 by the selection committee, having failed to post him as DRM, it is not open for the petitioner to take a contradictory stand and to deny the benefits to the respondent. It is not a matter of doubt that, an officer functioning as General Manager (OL) can only be considered for the posting as the Member of the Railway Board. Thus, denying the respondent promotion to the post of General Manager (OL), will have an adverse impact in respect of his chances of becoming the Member

of the railway board.

16 It is also worthy to be noted that, though the respondent made representations, requesting the petitioner Railway to post him as DRM, his request was not considered. Respondent though offered to function as DRM in spite of his promotion to HAG, has been denied the opportunity under the pretext that he is placed in HAG group. The interim order issued by the CAT directing the petitioner Railways to post the petitioner as DRM so as to extend him an opportunity to gain experience of the post, has also been turned down on the flimsy ground that respondent is functioning as HAG. If the employee who is functioning in the higher grade, voluntarily accepts, as in the instant case, to work on the lower post, there was no reason for denying the opportunity. It is not a matter of doubt that respondent was eligible for posting as DRM. He was placed at Sr. No.1 in the selection list at the relevant time, however, he was not considered. The respondent was also held eligible for posting as General Manager (OL) despite noticing the fact that he has not worked as DRM at one point of time. In the peculiar facts of the case, the finding that the respondent is otherwise fit for functioning as GM(OL) except for the reason that the respondent did not work as DRM, he cannot be denied the opportunity. It is recorded in the ACR/APR that the respondent is an efficient officer and is well-suited to shoulder the responsibility of the post of

General Manager (OL). In the peculiar facts of the case, therefore, it is logical that the respondent shall be directed to consider the respondent for promotion to the post of General Manager (OL).

17 It is also interesting to consider that the seniority of the respondent has always been maintained and he does not lose the seniority merely because he has not worked as DRM. The appointment of the GM and equivalent is governed by paragraph No.4 of the Rules. It is provided under rule 4.1 as:-

“ 4 Method

4.1 A panel of names for consideration for appointment to the posts of General Manager and equivalent, listed in appendix I to the Scheme, shall be prepared by a Selection Committee set up in accordance with para 5 of the Scheme. For this purpose, the Selection Committee shall consider on merit, eligible officers of each of the Railway Services listed in appendix-II, having regard to their inter-se seniority as well as their seniority in the respective Services – officers working in Higher Administrative Grade (Rs.22,400 – 24,500) being placed above, those working in Senior Administrative Grade (Rs.18,400 – 22,40)being placed above those working in Senior Administrative Grade (Rs.18,400 – 24,500) being placed above those working in Senior Administrative Grade (Rs.18,400 – 22,400/-) in each respective Service and prepare a panel of officers considered suitable in all respects for appointment to the posts of General Manager and equivalent. The Selection Committee may also recommend the specific type/types of assignment for which a particular officer mentioned in the panel may be considered suitable. ”

18 It thus appears that, for consideration for appointment to the post of General Manager and equivalent, under the scheme,

seniority cum merit is the criteria. There is no doubt that respondent is the senior officer and is suitable for being considered for the post of G.M. (OL).

19 It is tried to be contended that, since the respondent has accepted the promotion in HAG, he cannot now make a grievance about denial to post him as DRM. According to the petitioner, the respondent employee is not eligible for being considered as General Manager (OL), since he has not worked as DRM. There arises no question of estoppel for the reason that before promoting the respondent in HAG, he requested the Railways to consider him for the post of DRM. Even in 2013, the respondent expressed his willingness to function as DRM in spite of his promotion in HAG. However, the request made by the respondent was not considered at the relevant time. Therefore, it would not be equitable to allow the petitioner to take a stand that respondent cannot be considered for promotion as General Manager (OL), since he has not functioned as DRM. It is the petitioner Railways, which denied opportunity to the respondent to gain requisite experience as DRM and as such, it would be inappropriate for them to deny the promotional opportunity to the respondent. Apart from this, respondent is found to be fit and suitable for posting as AGM, GM(OL). The finding recorded by the Assessing Authority could not have been reviewed by the Chairman – Railway Board within a span of few months. On earlier occasion,

the Chairman, Railway Board has approved the report of the assessing authority as regards the suitability of the respondent for the post of General Manager (OL). There are no reasons recorded as to why, there is shift in the stand by the Chairman, Railway Board. The petitioner having found the respondent suitable and fit for promotion to the post of GM (OL), denying the opportunity on the ground that the respondent has not functioned as DRM which opportunity was denied by the Railways on more than one occasion and without any fault on the part of the respondent does not appear to be bonafide.

20 Reliance is placed on the Judgment in the matter of **Union of India versus K.V. Jankiraman** (1991 (4) SCC 109). The Honourable Supreme Court of India has held that if an officer is exonerated of all charges, then he would get his due promotion from the day his immediate junior came to be promoted.

21 The argument of the petitioner that the respondent was not considered for promotion, since he was over-aged from 2011 onwards, is unacceptable for the reason, that the respondent ought to have been considered for posting as DRM in 2011 and till the year 2015, he was eligible for being considered. The right/entitlement was accrued to the respondent in the year 2011. There was sufficient time for the Railways to take a decision within four years until the date, the respondent crossed age bar of 52 years.

22 In the matter of **S.B. Bhattacharjee versus S.D. Majumdar and others** (2007 (10) SCC 513), it is ruled that though a person has no fundamental right in terms of article 16 of the Constitution of India, he has every right to be considered thereof. An effective and meaningful consideration is postulated thereby the terms and conditions of service of an employee including his right to be considered for promotion indisputably are governed by the Rules framed under the proviso appended to Article 309 of the Constitution of India.

23 In the instant matter, though the respondent may not have right to seek direction to post him as GM(OL), he is entitled to seek direction to the petitioner to consider him for the post of General Manager (OL). In the light of peculiar facts and circumstances of this case, the failure of the petitioner Railways to post the respondent as DRM shall not come in the way of respondent for being considered for promotion to the post of General Manager (OL). The Tribunal issued directions to the petitioner – Railway to post the respondent as DRM to give him exposure required to be considered as General Manager (OL). It is further ordered that, in case the petitioner do not post him as DRM, it will not stand in the way of respondent for being considered for the post of General Manager (OL). The directions were issued by the Tribunal in 2013. The petitioner railway, did not

post the respondent as DRM in furtherance of the directions issued by the Tribunal. The Tribunal, by issuing directions at an interlocutory stage before final decision, had also issued similar directions to the Railways, however, under the pretext that the respondent has crossed 52 years of age, he was not considered for posting as DRM. In fact, it ought to have been considered that the respondent became eligible, in terms of his seniority long back i.e. in 2007 itself. Even after conclusion of the departmental proceedings initiated against him in the year 2010, he could have been considered. The respondent Railways took 44 months for taking decision in respect of the departmental proceedings and thereby diminished the chances of the respondent for further promotion which in itself cannot come in the way of the respondent and shall not be construed as a bar. The Tribunal had already issued directions to the Railways that in the event, the respondent could not be considered for posting as DRM as directed, that itself shall not come in his way of offering promotion to the post of GM (OL).

24 In the instant matter, at this stage, it would not be possible to issue directions to petitioner to post the respondent as DRM, however, merely because he was not promoted as DRM, it shall not come in his way of being considered for the post of GM (OL). This view, we have taken, in the peculiar facts and circumstances, since the respondent was considered eligible at the

relevant time for the post of DRM and was enlisted at Sr.No.1 by the selection panel. At one point of time, the superior authorities in the Railway department considered the respondent fit and eligible for promotion to the post of GM(OL) though he has not functioned as DRM. The service record of the respondent has not been doubted. The relevant service Regulations do not create any bar for consideration of the respondent for the post of GM (OL). Merely on the ground that he was not offered an opportunity to function as DRM, even if the established practice is of considering the officers who have functioned as DRM, the same cannot be pressed into service in the instant matter for the reason that it is the petitioner – railways took 44 months time for finalizing the departmental enquiry proceedings and did not consider the respondent at appropriate time for posting as DRM, though he was enlisted at Sr.No.1 by selection panel.

25 For the reasons recorded above, we direct the petitioner/railway administration to consider the claim of the respondent for promotion to the post of GM (OL) and the endorsement in the service record by the Railways in respect of his in-eligibility on the ground that he has not functioned as DRM shall not be an impediment for his consideration to the promotional post, if he is otherwise found eligible. The Judgment & Order passed by the CAT stands modified to the extent as specified above. The Writ petition presented by the petitioner as well as the

respondent employee stand disposed of accordingly.

26 Rule is made absolute to the extent as specified above.

27 There shall be no order as to costs.

28 In view of disposal of W.P.No.6851/2014 and W.P.No.8942/2014, WP No.12241/2015 deserves no consideration and stand disposed of.

(A.S.GADKARI, J.)

(R.M.BORDE,J)

vbd