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

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**Date of Decision: 23.08.2017**

+ **W.P.(C) 4871/2017 & C.M. No. 21123/2017**

UNION OF INDIA & ANR ..... Petitioner  
Through: Mr. R.N. Singh, Adv.

versus

D C SHARMA & ANR ..... Respondent  
Through: Dr. K.S. Chauhan, Mr. Murari Lal,  
Mr. Ajit Kumar Ekka and Ms. Charu  
Lata Chaudhary, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**HON'BLE MS. JUSTICE REKHA PALLI**

**VIPIN SANGHI, J. (ORAL)**

1. The petitioner/ Union of India has preferred the present writ petition to assail the order dated 17.03.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No. 3365/2015 preferred by the respondent/ applicant. In the said O.A., the respondent sought a direction for quashing/ modifying the list of empanelment of Divisional Railway Manager (DRM)/ Select List for the year 2014-15 and consequential modification of the posting order dated 18.02.2015. He had also sought a direction that the petitioners therein be placed above respondent no.2, Ashish Aggarwal (who was respondent no.3 before the tribunal) in the empanelment of DRM/Select List for 2014-15.

2. The case of the respondent was that he belonged to 1984 batch of Indian Railway Service of Mechanical Engineers (IRSME). He was aspiring to be posted as DRM and in respect of the said posting, the Railway Board had issued guidelines. Officers of 8 services of railways were entitled to be considered for the post of DRM which included the IRSME.

3. The respondent was posted as Director (Mechanical Engineering) Coaching (DME/Chg.) during the period June 2003 to March 2006 in the Railway Board. In that period, he had circulated a letter dated 01.05.2003 to all Zonal Railways advising them to try out two items for improving the sanitation and hygiene of passenger coaches. These items were:

- i) Auto Janitor Hygiene & Odour Control System
- ii) Microburst Automatic Odour Control System.

4. The respondent claimed that he had written the said letter to the Zonal Railways on the written directive of the then Member (Mechanical) of Railway Board. The further case of the respondent was that the Railway Design & Standard Organisation (RDSO) – a technical arm of the railways which, inter alia, lays down the specifications for items to be procured by the railways had also laid down the specification for the aforesaid two items subsequently in the year 2005-06. In the year 2007-08, some complaints were received about the quality of the said two items. The said complaints were examined by the vigilance branch of the Railway Board, whereon advice was sought from the CVC on 10.12.2010. Correspondence was exchanged between the Railway Board and the CVC. The matter kept hanging fire for years, and due to the pendency of the vigilance case, the

respondent was not empanelled and posted as DRM, while his juniors were so posted. In the aforesaid background, the respondent earlier preferred O.A. No. 1553/2016, which was disposed of on 24.04.2015 with a direction to the petitioner to decide the representation of the respondent dated 21.02.2015 expeditiously within a period of three months.

5. In pursuance of the said order, the petitioner issued the communication dated 31.07.2015 to the General Manager, Northern Railways under whom the respondent was working which, inter alia, read as follows:

*“2. A certified copy of the aforesaid order has been received in this Ministry from Shri Sharma on 06.05.2015. In pursuance of the aforesaid directions passed by the Hon’ble Tribunal, the representation of Sharma has been considered by Chairman, Railway Board (Respondent No.2). It is seen that Shri Sharma has stated that while his juniors have been posted as DRMs, he has been denied the same ostensibly on grounds of vigilance clearance. He has stated that when he was posted as Director in Board’s office, the Railway Board had recommended closure of a vigilance case against him. However, the CVC advised punitive action against him in August, 2013 which was against their own advice given earlier in 2008 & 2011. Shri Sharma has stated that DRM is stepping stone for career advancement and denial of vigilance clearance in this regard is against the instructions contained in DOP&T’s OM dated 14.07.2012.*

*3. At the time of inclusion in the short list as well as at the time of actual posting as DRM, officers should be clear from vigilance angle. Since the posts of DRMs are sensitive posts, officers who are not clear from vigilance angle or against whom a charge sheet is pending or officers undergoing any penalty or figuring in a Agreed/Secret List will not be considered for short listing and posting as DRM. In case an officer is under departmental investigation other than CBI investigation, he shall be considered for inclusion in the short*

*list and posting as DRM.*

4. *In the case of Shri Sharma, in a case regarding introduction of a new item, the CVC advised initiation of major penalty on 21.08.2013. Board recommended no action against Shri Sharma and the case was sent to CVC for reconsideration. On 10.02.2015, after reconsideration of the case, the CVC reiterated its advice of major penalty proceedings against Shri Sharma. Therefore, Shri Sharma is not clear from vigilance angle and he has not been included in the short list for DRMs.*

5. *As for the provision contained in DOP&T's OM dated 14.12.2007 mentioned by Shri Sharma, the same are applicable in cases of empanelment for posts under Central Civil Services/Central Civil Posts and the same cannot be compared with posting of DRMs. Incidentally, if any advice for penalty from the CVC is pending against any officer, he will not be considered for empanelment under the Central Staffing Scheme also.*

6. *The above position may be communicated to Shri Sharma and his acknowledgement thereof may be obtained and sent to Board's Office for information and record. This has the approval of Chairman, Railway Board."*

6. To assail the said communication and claim the reliefs as set out herein above, the respondent approached the tribunal by preferring the O.A. in question. The tribunal called the response of the petitioner herein, whereafter the O.A. was allowed with the following directions issued to the petitioner:

*"(i) Decide the issue of vigilance clearance of the applicant within four weeks from the date of receipt of a copy of this order.*

*(ii) If the applicant is cleared from the vigilance angle, then consider the case of the applicant for empanelment for the post*

*of DRM for the year 2014-15 within four weeks. For this purpose, if required, convene a special meeting of the Short-listing Committee”.*

7. The submission of counsel for the petitioner is that the post of DRM is not a promotion and is merely a posting. The petitioner, therefore, seeks to play down the importance of the said posting, thereby, indirectly seeking to discount the prejudice that the respondent claims to have suffered on account of his not being shortlisted for the said posting.

8. A perusal of the guidelines issued by the Railway Board for purpose of selecting DRMs would show that the Board has set very high standards, so as to select the most meritorious and bright officers. It is the undisputed position that under the scheme of things, successful posting as DRM is a launching pad for assignment of higher responsibility as General Manager, and even as a Member of the Railway Board. An officer, to be posted as DRM, should have been assessed at least as ‘Very Good Plus’ in his confidential reports. He should have been assessed as ‘Outstanding’ at least twice during the preceding five years, and should have a minimum of two years clearance for posting as DRM, including one clearance in the latest ACR and should have a minimum of three clearances including the one in the latest two ACRs. The following extract from the guidelines are relevant and are reproduced herein below:

*“(iv) The short-list of DRMs will cater to the requirement of DRMs arising during the period of 1st of July a particular year to 30th of June of the following year, irrespective of the date of approval of the shortlist. In other words, the currency/validity of a particular short list will not being from the date of its approval but will be uniformly valid for the requirements from*

*1st July to 30th June are not filled, such requirements will only be filled from the same Shortlist which has been made for such requirements, even after 30th June.*

*(v) Officers being considered for short listing for posting as DRMs should be less than 52 years of age as on 1st July of the year for which the short list is being made. A short list officer can be posted as DRM within the period of currency of the short list, even if at the point of his actual posting he has crossed the age of 52 years.*

*(vi) to (ix) ....*

*(x) At the time of inclusion in the short list as well as the time of actual posting as DRM, officers should be clear from Vigilance angle. Since the post of DRMs are sensitive posts, officers who are not clear from Vigilance angle, or against whom a charge sheet is pending or officer undergoing any penalty or figuring in Agreed/Secret List will not be considered for short listing and posting as DRM. In case an officer is under departmental investigation other than CBI investigation, he shall be considered for inclusion in the short list and posting as DRM.”*

9. The aforesaid would show that the shortlist for DRMs is prepared to cater to the requirement of DRMs arising during the period from 1<sup>st</sup> July of a particular year to 30<sup>th</sup> June of the following year, irrespective of date of approval of the shortlist. Officers being considered for shortlisting for posting as DRM should be less than 52 years of age as on 1<sup>st</sup> July of the year for which the shortlist has been made. However, the actual posting as DRM may take place even after the crossing of the age of 52 years. The officers who are shortlisted for posting as DRM should be clear from vigilance angle in view of the fact that the posts of DRM are sensitive posts. The officers

who are not cleared from vigilance angle, or against whom charge sheet is pending, or officer is undergoing any penalty or figuring in agreed/ secret list will not be considered for shortlisting and posting as DRM. The guidelines also, inter alia, provide that in case an officer is under departmental investigation other than CBI investigation, he shall be considered for inclusion in the shortlist and posting as DRM.

10. By the order dated 29.05.2017 passed by this court, the petitioner was required to file a specific affidavit answering the following queries:

*“i) Whether there was any obligation on the part of the petitioner to obtain the advice of CVC with regard to vigilance clearance of the respondent. If so, under which provision?”*

*ii) Even if vigilance clearance and CVC was essential, within how much time it was essential for the petitioner to apply for the same and whether the petitioner had complied with the said time period?*

*iii) Whether there was any time limit within which the CVC was obliged to render its advice and if so, whether the said time limit was adhered to?*

*iv) Whether the advice of the CVC is binding upon the petitioner and if so, under which provision?*

*v) Whether the petitioner sought re-advice from the CVC – on account of the disciplinary authority not agreeing with the advice of the CVC, within permissible time?*

*vi) Whether the CVC rendered its second advice within the permissible time?*

*vii) Whether the petitioner approached the DoPT within the permitted time, and, whether the decision of the DoPT was communicated within the time permitted under the guidelines?”*

11. The petitioner has filed the additional affidavit on 17.07.2017 sworn by the Director (Estt.), Ministry of Railways, Railway Board, New Delhi. In response to the second query aforesaid, the petitioner has, inter alia, stated:

*“... The investigation against the respondent Shri D.C. Sharma pertained to the item ‘Auto Janitor Hygiene & Odour Control System’ and ‘Microburst Automatic Odour Control System’ in all the AC Coaches of the trains. Finally, the case was referred to CVC for their advice, with Board (MM)’s provisional decision for initiation of major penalty proceedings against the respondent, on 10.12.2010. The CVC referred back the case to Board for further clarification on 24.2.2011. After collecting information from several Railways and Directorates of Railway Board, the case was again referred to CVC on 14.06.2013 with required information/clarification and the fresh provisional views of the competent authority i.e. Board (MM)”.* (emphasis supplied)

12. In response to query no.5 aforesaid, the petitioner has stated as follows:

*“It is factually correct that, after consideration of the CVC’s advice dated 21.8.2013 for major penalty proceedings against the respondent, the case was referred to CVC on 30.12.2014, after in-depth examination of various issues, for reconsideration of their advice in the light of Board’s provisional decision not to take any action against Shri D.C. Sharma”.*

13. In response to a query, counsel for the petitioner submits that there is no time limit prescribed within which the petitioner is obliged to arrive at a decision with regard to the vigilance clearance of an officer. Thus, according to the petitioner, the petitioner may take its own sweet time to

arrive at its final conclusion on the aspect of vigilance clearance of an officer, who is awaiting such clearance for being considered for posting as DRM.

14. Having perused the record, including the impugned order and the response furnished by the petitioner, we are of the view that there is absolutely no merit in the present petition. It is clear to us that the petitioner has acted in the most casual and cavalier manner while dealing with the case of the respondent. The petitioner has been completely unmindful of the prejudice to which the respondent was being put on account of the petitioner taking its own sweet time for finally granting the vigilance clearance to the respondent, which came to be granted on 01.06.2016 - by when he had crossed the age bar of 52 years and he was, therefore, no longer eligible to be considered for posting as DRM.

15. A perusal of the impugned order shows that the General Manager, Northern Railways vide communication dated 22.12.2014 informed the Secretary, Railway Board that no vigilance case was pending against the respondent. The case of the respondent for shortlisting was not considered by the shortlisting committee which met on 18.02.2015 for preparing the DRM panel for the year 2014-15 on the pretext that his vigilance clearance was not in place. Pertinently, no show cause notice or charge sheet was ever issued to the respondent. Even the guidelines above referred to provide that *“In case an officer is under departmental investigation other than CBI investigation, he shall be considered for inclusion in the short list and posting as DRM”*.

16. The entire case sought to be made against the respondent also appears to be without any basis. Doubts were raised against the respondents conduct only on account of the fact that he had issued the letter dated 01.05.2003 on the directive of the Member (Mechanical) of the Railway Board in respect of the aforesaid two items. Pertinently, the technical specification in respect of the said items had been prescribed by the RDSO in the year 2005-06. Only on account of some complaint being raised with regard to the procurements made by the railways, the respondent was sought to be singled out even though he does not appear to have had any role in the process of approval of the specifications, or the procurement of the materials which, in any event, would have had to satisfy the technical specifications laid down by the RDSO. The Member (Mechanical) had also issued a communication dated 21.09.2013 to the then Hon'ble Member of Railways, testifying the integrity of the respondent. Even the General Manager, Northern Railways had forwarded the application of the respondent to the Secretary for considering him in the post of Director (Projects & Services), Container Corporation of India – wherein, in respect of the respondent, it was stated that he was a man of great standing in the department and known for his professional and technical excellence.

17. The additional affidavit filed by the petitioner - the relevant part whereof has been extracted herein above, would show that the petitioner sat over the matter and even though the CVC referred the case back to the Railway Board for further clarification on 24.02.2011, the petitioner took its own time to refer the matter back to the CVC only on 14.06.2013 i.e. after a lapse of about 2 years and 4 months. There is absolutely no explanation as

to why it took such a long period of time for the petitioner to respond to the clarifications sought by the CVC as early as on 24.02.2011. It is also pertinent to note that in respect of the advice of the CVC dated 21.08.2013, the petitioner, once again, took 1 year and 4 months to respond to the same on 30.12.2014.

18. The respondent/ caveator has filed his reply to the additional affidavit, from which it appears that the petitioner also sent the matter to the DoPT, which returned the file by stating that its consultation was not necessary in the matter, and that the petitioner railways have to decide the issue themselves. The matter was finally closed by the petitioner on 08.04.2016, which was conveyed to the CVC on 01.06.2016. By then, the respondent had been done in by the petitioner on account of its casual and cavalier approach taken note of herein above.

19. The tribunal while passing the impugned order has considered the decision of the Supreme Court in *Union of India v. Alok Kumar*, (2010) 5 SCC 349 on the issue of vigilance clearance. In the said decision, the Supreme Court, inter alia, observed that unless the rules so require, the advice of the CVC is not binding on the employer department. In our view, the tribunal was correct in observing that the 'Sword of Damocles' was kept hanging over the head of the respondent for almost 7 years for no valid reasons. If the petitioner were to be allowed to function in the manner as demonstrated in the facts of the present case, it would be very easy for the petitioner employer to sidetrack any deserving officer by initiating a vigilance inquiry, without any real substance, at the crucial time when the officer's case comes up for consideration for posting as DRM and on that

basis deny the shortlisting of the officer. We cannot permit the petitioner to get away with such conduct.

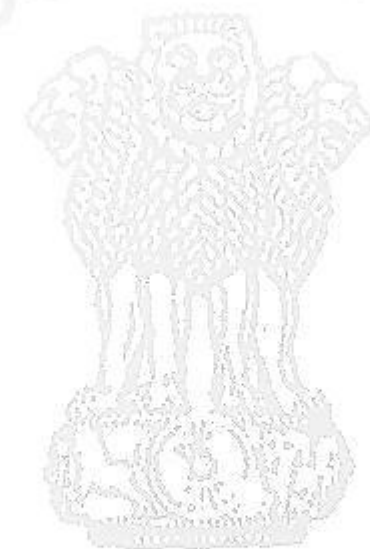
20. In these circumstances, we find absolutely no merit in this petition and dismiss the same with costs of Rs.10,000/- to be paid to the respondent.

**VIPIN SANGHI, J**

**REKHA PALLI, J**

**AUGUST 23, 2017**

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