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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **WP(C) No.6519/2017**

Date of Decision: 30th August, 2017.

UNION OF INDIA & ANR. Petitioners
Through: Mr.R.V. Sinha, Adv. & Mr.Ashok
Singh, Adv.

Versus

DHARMABIR MALIK & ANR.Respondents
Through: Nemo.

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 21st April, 2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "Tribunal") in OA No.276/2016 & OA No.277/2016. The Tribunal has allowed the said original applications by the common order.
2. The present petition is directed against the order passed in OA No.276/2016. The respondent-applicant, who was serving as the

Chief Depot Material Superintendent (CDMS) in the Northern Railway (promoted as CDMS w.e.f. 30th November, 2007), had filed the aforesaid Original Application since the petitioners herein had not included his name in the revised provisional combined seniority list of the CDMS and Chief Office Superintendents/Store in Pay Band II Rs.9300-34800 +Rs.4600/- grade pay. This list was the basis for selection to the post next higher post of Assistant Materials Manager (Group `B` Service) against 70% quota. However, the said list included the name of respondent no.3 in the Original Application, namely, Shri Rohtas Kumar, working as CDMS also under the Depot Material Manager, Northern Railway, SSB, New Delhi, who was junior to the respondent-Applicant.

3. The petitioner sought to justify the exclusion of the name of the respondent-Applicant from the said list, and inclusion of the respondent no.2 Shri Rohtas Kumar, by placing reliance on IREM 203.5 contained in Chapter II Section `A`, which lays down the *“Rules Governing Promotion of Subordinate Staff”* to Group `B` Posts. The said chapter provides vide Rule 201.1 that all vacancies in Group `B` are to be filled by promotion on the basis of selection of eligible group `C` employees, and also on the basis of Limited

Departmental Competent Examination (LDCE), wherever the scheme is in force. Where the scheme of LCDE is in force, selection is held in respect of 70% of the vacancies, and LDCE is held to fill the remaining 30% of the vacancies. Rule 203.1 thereof lays down the conditions of eligibility. It provides that for selection, all Group 'C' employees working on a regular basis in grade-the minimum of which is Rs.5,000/-in the revised scale and in the higher Group 'C' grades, and who have rendered not less than three years of non-fortuitous service in the grade, are eligible. Rules 203.2 provides that in case a junior employee is considered for selection by virtue of his satisfying the relevant minimum service conditions, all persons senior to him shall be held to be eligible, notwithstanding the position that they do not fulfil the requisite minimum service conditions. Rule 203.5 is relevant in this regard, and is reproduced hereinbelow:-

“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.6500-10500 (R.S.) on a non-fortuitous basis will be the criterion.”

3. The case of the respondent-Applicant before the Tribunal was that the applicant had qualified and was promoted on 30th November, 2007 as Chief Depot Material Superintendent (CDMS) in the grade of Rs.7450-11500. In the same selection process, respondent no.2 Shri Rohtas Kumar, was declared 'failed'. Respondent no.2 was, however, promoted as Depot Material Superintendent Grade I (DMS-I) in the Grade of Rs.6500-10500/- w.e.f. 29th October, 1995 .e. prior to the date of promotion as DMS-I on 1st November, 2003. Thus, despite being more meritorious than respondent no.2 and having been promoted as CDMS earlier to respondent no.2, by resort to Rule 203.5, the name of the respondent-applicant was not included, only on the ground that respondent no.3 had been promoted as DMS-I in the grade of Rs.6500-10500 w.e.f. 29th October, 1995, whereas the respondent-applicant had been promoted as DMS-I on 1st November, 2003.

4. The Tribunal allowed the OA by placing reliance on the decision of the Division Bench of this Court in ***Union of India through Secretary, Ministry of Railways and Others Vs. Sarwar Ali*** WP (C) No.10011/2009 decided on 18th July, 2011. In the said

decision, the Division Bench considered para 203.5 of the IREM,

Volume 1 quoted hereinabove, and observed, as follows:-

“xxx 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.”

“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.”

5. The submission of Mr.Sinha, learned counsel for the petitioners is that though the decision in *Sarwar Ali (Supra)* applies in the facts of the case, the said decision itself needs reconsideration. According to him, there are four depots in the Store Department of the Northern Railways i.e. Store Depot Shakurpur; Store Depot Jagadhari; Store Depot, Alambagh, Lucknow and Store Depot at Headquarters Office. He submits that in each of these store depots/units, promotions are earned by the incumbents unit-wise. However, for consideration for promotion to the post of Assistant Material Manager against 70% promotional quota, the candidates from all the four stores/units are entitled to compete. Since the promotional avenues in different units/stores may vary on account of the number of vacancies vis-a-vis the number of eligible candidates, promotions may be earned by

employees in the different units at different point on time, even though they may have joined the service in the initial grade, at the same time. He submits that to deal with this situation, Para 203.5 of the IREM provides for drawing up the integrated seniority list for the purpose of selection, on the basis of total length of non-fortuitous service in the grade of Rs.6500-10500/- and above.

6. We are not inclined to examine the aforesaid submissions of the petitioners in the facts of the present case. Admittedly, the respondent-applicant and Shri Rohtas Kumar, respondent no.2 belong to the same unit depot and, therefore, the petitioners could not have disregarded the seniority of the respondent-applicant vis a vis Shri Rohtas Kumar, who had been promoted as CDMS on 30th November, 2007 when, in the same selection process, Shri Rohtas Kumar had failed. We find no justification on the part of the Petitioners to ignore this seniority of the Respondent-applicant in the grade of Rs.7450-11500/- vis-a-vis Respondent no.2, Shri Rohtas Kumar.

7. In view of the aforesaid facts, we are not inclined to interfere

with the impugned order. The petition is accordingly dismissed.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

AUGUST 30, 2017/aa