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

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Date of Decision: 2.07.2019

% **W.P.(C.) No. 6946/2019 & CM No.28874/2019**

UNION OF INDIA & ANR.

..... Petitioners

Through: Ms. Shipra Shukla, Advocate
Versus

RAM SWARUP & ORS.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J. (ORAL)

1. The petitioners have challenged the impugned order dated 28-11-2018 by virtue of which the Original Application No. 2821/2013 was partly allowed by the Central Administrative Tribunal, Principal Bench, New Delhi and the promotion of the respondents to the post of Shunting Master Grade-II was directed to be treated w.e.f. 14-02-2000, the date on which the juniors of the respondents were promoted.
2. The respondents were working as Pointsman in the Northern Railway in the year 1999 in the pay scale of Rs. 3050-4590. The next promotion from the post is to that of Shunting Master Grade-II with the pay scale of Rs. 4000-6000.
3. The respondents had contended that their juniors were promoted to the post of Shunting Master Grade-II w.e.f. 14-02-2000, whereas, they had been promoted to that post only on 20-01-2006. The respondents had submitted

their representation to the petitioners for grant of promotion w.e.f 14-02-2000, despite that no steps were taken by the petitioners, so the respondents were constrained to file OA No. 3847/2010 which was disposed of with the direction to the respondents to pass speaking orders on the representation of the respondents.

4. Thereafter, vide order dated 29-12-2010 their representation was rejected and the respondents were informed that since they had not exercised their option in the process of promotion to the post of Shunting Master Grade-II, which was initiated in the year 2000, therefore, they cannot be considered for promotion. However, subsequently they were promoted on the basis of option exercised by them. The relevant portion of the order dated 29-12-2010 which was challenged in OA No. 2821/13 is as follows :

“As per previously GM Baroda House NDLS letter No. 757E/34/Channel/E1B dated 10-03-1999 circulated under PS No. 11709/98 the post of Shunting Master Grade-II Rs.4000-6000 was filled up through option from Promotion cum Shuntman grade Rs. 3050-4590 which was revised to selection post as per Rly. Bd’s letter no. E(NG) 1/2000/PM-2/4 dated 30-10-01 circulated on N. Rly Under P.S. No. 12358/02. Further the channel of promotion was again revised to non-selection as per GM (P), BH letter No. 844/202/ELB dated 15-12-2003 P.S. No. 12741/03.”

5. Consequently, the respondents again approached the tribunal by filing the OA in question, which has been allowed by the Tribunal while limiting the relief granted to the respondents. The relevant extract from the impugned order reads as follows :

“6. The juniors of the applicants were promoted to the post of Shunting Master Grade-II on 14.02.2000. Things would have been different altogether, had it been a case where different

promotional avenues existed for the feeder category or an element of selection was involved. When the appointment is by way of promotion on the basis of seniority, the respondents were under obligation to ensure that no person who is senior in the list is omitted from the consideration when a person down on the list is being promoted. Further, the refusal to promote the applicants on the sole ground that they did not exercise options could have been justified, only if, they were in a position to avail similar benefits.

7. The Chief Yard Master, where the applicants were working, addressed a letter dated 20.08.1999, enclosing a list of persons who exercised the options for promotion to the post of Shunting Master Grade-II, and the names of the applicants figured therein. Though it is filed as a document in the OA, the respondents did not dispute the authenticity thereof in the counter affidavit.

8. It is true that there is an inordinate delay in pursuit of the remedies. At the same time, the grievance of the applicants that their juniors were promoted in the year 2000, whereas they have been promoted in the year 2006, cannot be ignored. The delay can, at the most, result in denial of past benefit to them. It is represented that all the applicants have since retired from service.”

6. The submission of Ld. counsel for the petitioners is that the respondents not having exercised their option to seek promotion, were rightly overlooked in the year 2000 - when their juniors were promoted.

7. We do not find any merit in this submission. In the present case, the appointment is by way of promotion on the basis of seniority. The respondents were entitled to be promoted on 14-02-2000 itself when the juniors of the respondents were promoted to the post of Shunting Master Grade-II. The main ground for the refusal of promotion to the respondents is

that they had not exercised their option. This argument is flawed because an “option” can be called for and exercised when two similar alternatives are presented before the optee and he is asked to choose one of them. There is no question of calling for an “option” from an employee on the issue whether he was to avail of seniority based promotion or not. There is nothing to show that the respondents had declined their promotion when offered, before or at the time of promotion of their juniors in 2000.

8. We have also perused the letter dated 20-08-1999 written by the Chief Guard Master, where the respondents were working, enclosing the list of persons who have exercised the option for promotion to the post of Shunting Master Grade-II and the names of respondents No. 1 to 5 figured therein.

9. The Tribunal has granted limited relief to the respondents by directing that “the promotion of the applicants to the post of Shunting Master Grade-II shall be treated w.e.f. 14.02.2000, the date on which their juniors were promoted, but this shall be for the limited purpose of determination of pension and shall not be entitled to arrears on that count. However, the benefit shall be extended to them from January, 2019 onwards”, in view of their approach to the tribunal initially in 2010. Thus, we do not find any infirmity in the impugned order dated 28-11-2018. The petition is dismissed.

RAJNISH BHATNAGAR, J.

VIPIN SANGHI, J.

JULY 02, 2019

sumant