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

+ **W.P.(C) 6168/2013 and CM APPL. 13553/2013**

UNION OF INDIA AND ORS.

..... Petitioners

Through Mr.Jagjit Singh, Sr. Standing Counsel
for Railways with Ms. Preet Singh &
Mr. Vipin Chaudhary, Advocates

versus

KOMAL PRASAD & ORS.

..... Respondents

Through Ms. Meenu Mainee, Advocate

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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11.09.2019

1. The Union of India, in appeal has challenged an order dated 28th May, 2013 passed by the Central Administrative Tribunal (CAT) Principal Judge in OA No.2377/2008. This is the second round of litigation involving the respondents who had approached the CAT aggrieved by their non selection to 25 vacancies in the post of Senior Permanent Way Supervisor (Sr.PWS) against the Limited Department competitive Examination quota (LDCE).

2. The Respondents admittedly were Peons, Gangman, Keyman and Mates. In the initial round of litigation, the Tribunal in the first instance allowed their petition by an order dated 5th March, 2010. The Tribunal held that for the purposes of the selection to the 25% vacancies, the criteria to be adopted should be merit in the written examination and no weightage be given to

seniority. Somehow, the selected candidates, for some reason were not made party to O.A. No. 2377/2008. They filed a review petition being RA No.263/2010 before the CAT. By an order dated 9th December, 2010 the CAT allowed the review petition and recalled its earlier order dated 5th March, 2010 on the short ground that the selected candidates, who would obviously be affected by the order, were not made parties to O.A. No. 2377/2008.

3. The restored OA No. 2377/2008 was finally heard and the impugned order was passed wherein in the operative part, the Tribunal directed as under:-

“46. In the overall facts and circumstances and legal position noticed and discussed hereinabove and taking a holistic view in the matter, we dispose of the present O.A. with a direction to the official respondents to verify whether there is common seniority list and pay scale for Gangman, Keyman and Mates, etc. i.e., the categories eligible for selection to the post of P'WS in the grade of Rs.4500-8000 against 25% LDCE quota. If it is found that there is a separate seniority list maintained for these categories or they are in separate pay scales, respondent Nos. 1 to 3 would determine the merit position of the applicants in the selection process set in motion vide circular dated 09.04.2007 (Annexure A-14) and if found sufficiently high in merit, would promote them as Sr. PWS against future vacancies. On their such promotion, they would be placed in the seniority list of Sr. PWS above those selected as Sr. PWS on the basis of select panel assailed in the present O.A. provided their merit position is below the applicants. However, in no circumstances, the applicants would be entitled to any arrear of pay for the intervening period and their pay would be fixed notionally. In order to come over the impasse of drawl of salary against the

post in excess of sanctioned strength, instead of giving benefit of notional fixation of pay to the applicants, the official respondents may give them the benefit of step up of pay with reference to their juniors. Needful shall be done within a period of three months from the date of receipt of a copy of this order. No costs.”

4. This petition was first listed for hearing on 27th September, 2013. While directing notice to issue in the petition, this court stayed the impugned order of the CAT. That interim order of the Tribunal has continued since then.

5. In the 6 years during which the present petition is pending, barring Respondent no.5 Rajender Prasad, all other respondents, i.e., who filed the petition before the CAT and those who have been selected, have all retired.

6. As far as the impugned directions of the CAT are concerned, the Court finds that all that has been done by the CAT is to require the petitioner to once again consider whether on the basis of merit in the written examination, the applicant before the CAT would qualify to be appointed as Sr. PWS. This was further subject to there being a separate seniority list maintained for Gangmen, Keymen, Mates and Peons and the availability of vacancies in the future.

7. In the circumstances, the Court fails to appreciate how impugned directions could at all inconvenience the Petitioner. It is only when any of the respondent is found fulfilling all of the above conditions that they be placed in the a seniority list of Sr.PWS above those selected as Sr.PWS on the basis of the select panel, provided their merit position is below the

applicants. What the CAT has therefore done is not to disturb the appointment of those already selected but balance the equities by accommodating the applicants before it against future vacancies, if they fulfill all the above criteria.

8. In the circumstances, the Court finds no reason to interfere with the impugned order of the CAT.

9. The petition is dismissed. The interim order is vacated and the pending application is disposed of.

S.MURALIDHAR, J

TALWANT SINGH, J

SEPTEMBER 11, 2019

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