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

+ **Date of Decision: 30.01.2019**

% **W.P.(C) 11455/2015 and C.M. No. 30260/2015**

UNION OF INDIA AND ORS

..... Petitioners

Through: Mr. Satpal Singh & Dr. Indra Pratap
Singh, Advocates for UOI/ Railways.

Versus

SARWAR ALI

..... Respondent

Through: Mr. Vikas Tripathi & Ms. Mandavi
Pandey, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE PRATEEK JALAN

VIPIN SANGHI, J. (ORAL)

1. The petitioner Union of India assails the order dated 19.03.2015 passed by the Central Administrative Tribunal (CAT/ Tribunal) in O.A. No.642/2014 and the order dated 03.11.2015, passed in Review Application No.134/2015.

2. The brief background of the case is that the petitioner had taken steps

for selection to the post of Assistant Operating Manager (AOM) – which is a Group-B selection post in the pay scale of Rs.7500-12000, against 70% promotee quota. A written test for that purpose was held on 02.09.2006 followed by a supplementary written test in December and viva-voce, which was completed on 26.02.2007. A panel list was prepared on the basis of the selection process. The respondent was, however, omitted from consideration, even though he was eligible for participating in the said selection process. Consequently, he preferred O.A. No.723/2008, which was allowed by the Tribunal on 05.12.2008. The operative direction issued by the Tribunal reads as follows:

*“8. Therefore, the selection leading to Annexure A-2 need not be disturbed **but there should be separate assessment of the claims of the applicant for consideration for promotion to Group ‘B’ post to be held by Respondents 2 and 3.** The selection process has to be completed within a period of three months from today and if the applicant is found fit to be included in the list, he should be given an appropriate place in the list reckoning him as senior to persons who were in the pay scale of Rs.6500-10,500. The O.A. is allowed. However, there will be no order as to costs.” (emphasis supplied)*

3. The writ petition preferred by the Union of India being W.P.(C.) No.10011/2009 was dismissed on 18.07.2011. The operative direction issued by this Court reads as follows:

“23. In the totality of the facts and circumstances the pleas and contentions raised on behalf of the petitioners are rejected and the interim stay granted by this Court on 30th July, 2009 staying the operation of the order dated 5th December, 2008 passed in OA No.723 of 2008 is vacated and all the pending applications are disposed of. The petitioners shall comply with

the direction given by the Tribunal by order dated 5th December, 2008 within three months. After consideration of the respondents for the post of AOM (Group B) in the pay scale of Rs.7500-12000/- if the respondent shall be found fit, he will be given an appropriate place in the seniority list in terms of the direction of the Tribunal. With these directions, the writ petition is disposed of. Considering the facts and circumstances, the parties are however, left to bear their own costs.” (emphasis supplied)

4. After the decision was rendered by this Court on 18.07.2011, the petitioner conducted a similar examination in respect of the panel for the year 2009-11. The examination for the said process of selection was held on 17.12.2011, wherein the respondent participated, and the admitted position is that he cleared the said examination. However, it appears, that he could not be selected on account of the limited number of vacancies and his relative merit position.

5. The Special Leave Petition preferred by the petitioner against the order passed in W.P.(C.) No. 10011/2009 was dismissed by the Supreme Court in S.L.P. (Civil) No.25753/2012 on 06.12.2013. The petitioner then sought to issue a communication on 13.01.2014 in respect of the respondent that he may be called for test for Group-B selection for the post of AOM against 75% quota for assessment period 2005-07.

6. The respondent represented against the said communication and he protested against being subjected to another test. He claimed that he had already cleared the test on 17.12.2011 for the panel year 2009-11, and that test result should be considered for the purpose of considering his candidature for the panel year 2005-07. Since the petitioner did not accede

to this request, he once again approached the Tribunal by preferring O.A. No. 642/2014, which has been allowed by the Tribunal, as aforesaid, on 19.03.2015.

7. The submission of learned counsel for the petitioner is that the validity of the panel is only for two years and since the examination conducted on 17.12.2011 was for the panel year 2009-11, the same could not be considered as valid for the earlier panel years 2005-07. Learned counsel submits that the selection process is held in terms of the Indian Railways Establishment Manual, and in particular, Regulations 201 to 209 thereof. The further submission of learned counsel for the petitioner is that the respondent was called upon to appear in the special examination to be held for him in compliance of the orders passed by the Tribunal and this Court in earlier proceedings.

8. The Tribunal has rejected the defence of the petitioner by observing that the selection examination is meant to test the suitability for appointment/ promotion to a higher post. Once a person has cleared such an examination, there is no justification for directing him to appear in another examination, simply because the petitioner herein decided not to implement the order of the Tribunal and the High Court passed much before the selection process was undertaken for the panel year 2009-11 for which the test was held on 17.12.2011.

9. Having heard learned counsel for the petitioner as well as learned counsel for the respondent and perused the record, we are not inclined to interfere with the impugned order. Reference made to the Rules is of no

avail, since they do not provide for a situation like the present. The petitioner is seeking to conduct a special test only for the respondent, even though he has already qualified in a similar examination conducted on 17.12.2011. The petitioner's emphasis on the "separate assessment" directed by the Tribunal on 05.12.2018, and affirmed by the order of this Court dated 18.07.2011 is also misplaced as the test in which the respondent participated, and passed, was conducted at a later point of time. It is not that there are others who are competing for a limited number of promotional posts. When the general examination was held for the panel years 2005-07, the petitioner wrongly excluded the respondent from consideration. Therefore, it makes no difference even if, to test the respondent's competence for promotion, his result in the examination held on 17.12.2011 were to be taken into account. Since the purpose of the said test is only to assess the competence of the candidate, and the respondent had cleared the same, he was entitled to be promoted to the post of AOM and assigned seniority in accordance with the order dated 05.12.2008 passed in O.A. No. 723/2008, which has attained finality. The fact that the respondent could not be promoted for the panel year 2009-11, or that the validity of the panel is two years is wholly irrelevant for the present purpose.

10. In our view, the respondent has been wronged for a long period as it is, and to subject him to yet another test specially designed for him would not be just, fair or reasonable.

11. For the aforesaid reasons, we are not inclined to interfere with the impugned order.

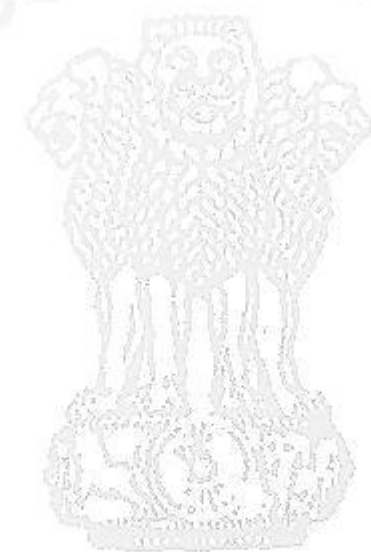
12. Dismissed.

VIPIN SANGHI, J

PRATEEK JALAN, J

JANUARY 30, 2019

B.S. Rohella



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