

\$~J-1

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

**Judgement reserved on: 27.10.2021**

%

**Judgement pronounced on: 12.11.2021**

+ **LPA 347/2021, CM APPL. 35956/2021 & CM APPL. 33631/2021**

**SACHIN KUMAR GUPTA & ORS.**

**.....Appellants**

Through: Mr. Rajshekhar Rao, Sr. Advocate with  
Mr. Saurabh Agrawal, Ms. Komal  
Mundhra and Ms. Shipra Jain, Advs.

versus

**DEDICATED FREIGHT CORRIDORS CORPORATION OF INDIA  
LIMITED**

**.....Respondent**

Through: Mr. V.S.R. Krishna and Mr. V.  
Shashank Kumar, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**HON'BLE MR. JUSTICE TALWANT SINGH**

**TALWANT SINGH, J.:**

1. By the present Letter Patent Appeal, the appellants have challenged the judgement dated 06.08.2021, passed by the learned Single Judge of this Court, in W.P.(C) 415/2021, titled '*Sachin Kumar Gupta & Ors. vs. Dedicated Freight Corridors Corporation of India Limited*'.

2. The learned Single Judge was pleased to dismiss the writ petition filed by the present appellants by observing as under:

“9. On the aspect of promotion from E1 to E2 is concerned, the same is subject to availability of vacancies. As reflected above, the minimum residency period for promotion from Sr. Executive (E1) to Jr. Manager (E2) is three years

subject to availability of vacancies. There is no provision to consider an employee in case of non-availability of vacancy in higher cluster. He seeks the dismissal of the writ petition.

10. Having heard the learned counsel for the parties, the only issue, which arises for consideration is whether the posts, which have been created by the Board of Directors in its meeting dated October 13, 2020, as notified on October 22, 2020 need to be filled under the old policy i.e. by way of only interview and not in terms of circular dated October 16, 2020. The said issue is clearly covered by Clause 9 of the circular dated October 16, 2020, which has already been reflected above, inasmuch as for grades where CBT will be conducted, policy shall be effective from January 01, 2021. I have already reproduced the manner, in which the promotions have to be made from E1 to E2, i.e., by way of competitive examination.

11. The clause regarding mode of filling the vacancies in the grade E2 to E4 from E0/E1 in terms of recruitment and promotion policy is concerned the same reads as under:-

| Grade | Post / Hierarchy  | Cluster | Mode of Filling Vacancies                                                                                                                                                                                                          | Educational qualifications for Direct recruitment/Immediate Absorption for entry in lowest grade of the cluster |
|-------|-------------------|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| E4    | Manager           | D       | 50% posts in E2 to E4 grade (cluster D) shall be filled by direct recruitment. 50% posts shall be filled by promotion from eligible employees in E0 / E1 grade having three years minimum service through competitive examination. | Relevant degree from arecognized Institutewith minimum 60%marks                                                 |
| E3    | Assistant Manager |         |                                                                                                                                                                                                                                    |                                                                                                                 |
| E2    | Junior Manager    |         |                                                                                                                                                                                                                                    |                                                                                                                 |

12. The above provision states 50% posts shall be filled by promotion from eligible employees in E0 / E1 grade having three years minimum service through competitive examination. There is no dispute that the appellants being in E1 level, are eligible for promotion to E2 level. Hence, the same has to be through competitive examination (CBT). If that be so, the promotion policy shall be effective from January 01, 2021. Hence, this plea of Mr. Agrawal is rejected.

13. The reliance placed by Mr. Agrawal in the cases of ***State of Rajasthan v R. Dayal (supra)*** and ***Y. V. Rangaiah And Ors. (supra)*** is concerned, they have no applicability in the facts of this case inasmuch as the recruitment and promotion policy was notified on October 16, 2020 before the circular of creation of posts was notified on October 22, 2020, though decision with regard to both was taken by the Board on the same day, i.e., October 13, 2020. In other words, the recruitment and promotion policy was in place when the vacancies created, were notified. That apart, there is a conscious decision taken by the competent authority to fill up the vacancies for promotions in terms of the new recruitment and promotion policy with effect from January 01, 2021.”

3. The brief background of the matter is that the appellants are working as Senior Executives (E1 level) in the Signals and Telecom (S & T) Department of the respondent organisation. They had joined as Executive Engineers in response to an advertisement dated 10.02.2012 and their date of appointment is 27.09.2012.

3.1. On 10.02.2016, the respondent introduced new posts at E2 (Rs.20,600-46,500) level and upgradation of posts of E0 to E2 and E3 level on financial neutrality basis. Option was given to the employees at E1 level to either opt for promotion to E3 level on completion of six years residency at E1 level or to E2 level after completion of three years residency at E1 level.

3.2. On 02.06.2017, the appellants were promoted to the post of Senior Executive at E1 level, although after a delay of approximately six months. On 16.05.2019, the respondents issued circular no. 07/2019 by which the promotion policy for E0 level and above employees was amended. As per the amended rules, no written test would

be required for promotion from E1 to E2 level and only an interview was to be conducted.

3.3. In May 2019, a consultant was appointed, who prepared a report regarding shortage of staff as well as the infrastructure and maintenance of the assets of the respondent organisation. As per the said recommendation, existing 51 posts in cluster D comprising posts at E2-E4 level in S & T Department were recommended to be reduced to 38.

3.4. It is pertinent to note that at that time, around 48 employees were already working in the said cluster. This recommendation was accepted by the Board of Directors of the respondent on 18.10.2019. In spite of reduction of posts to 38, against which 48 employees were already working, 3 employees working on deputation were called for interview for appointment in the said cluster and they were subsequently absorbed.

3.5. On 07.11.2019, appellant no. 2 sent an e-mail to the higher officials of the respondent organisation requesting for his promotion to Grade E2 as Junior Manager. In response, he was assured that appropriate action will be taken subject to fulfillment of eligibility/selection criteria for promotion.

3.6. On 01.01.2020, all the appellants became eligible for inter-cluster promotion from E1 to E2 level and they submitted their request through proper channel. On 05.02.2020, a provisional seniority list was published by the respondent organisation and even as per the said list, the appellants were eligible to be promoted to the E2 level.

3.7. The employees of the Electrical Department of E1 level, who were recruited along with the present appellants, were called for interview on 14.05.2020 and subsequently granted promotion as Junior Managers at E2 level.

3.8. On 22.09.2020, Agenda for '*Cadre Restructuring of the S & T Department in DFCCIL*' was placed before the Board of Directors after approval from the General Manager (HR), Director Finance and the Managing Director, taking due notice of the stagnation of the employees in the S & T Department, whose promotion was due to posts of Junior Manager (E2) and Assistant Manager (E3), which could not be considered due to non-availability of vacancies at E2/E3 level. It was proposed that 8 posts for Assistant Managers and 14 posts for Junior Managers be created in the S & T Department as "**one-time measure**" for those employees, who were due for promotion on 01.01.2020. This proposal was approved by the Board of Directors on 13.10.2020.

3.9. On 16.10.2020, the respondent organisation issued circular no. 640/2020, revising the recruitment and promotion policy. As per this circular, for promotion to E2 level, a Computer-Based Test (in short 'CBT') was to be qualified by all the employees in the lower cadres (E1 and E0), who had three years' service experience. The appellants had almost completed nine years service by that time. This test was required to be conducted with effect from 01.01.2021, hence in cases of promotion to E2 to E4 cluster, the policy and requirement for CBT will only be applicable from 01.01.2021, as per the stand of the appellants.

3.10. On 22.10.2020, the respondent organisation issued circular no. 648/2020 creating new posts at E2 and E3 levels, as per decision of the Board detailed above, after surrendering the posts in the lower grade of E0. On 17.11.2020, the appellants sent a representation requesting for promotion to E2 grade against newly created posts. On 30.12.2020, the respondent organisation informed the appellants that they will be considered for promotion as per the revised promotion policy dated 16.10.2020.

3.11. On 04.01.2021, the respondent organisation issued vacancy notice no. 02/2021 for filling up one of the 22 posts. The appellants approached this Court on 06.01.2021

by filing W.P.(C) No. 415/2021. Notice was issued on 12.01.2021 and it was observed that any appointments made in pursuance of notification dated 04.01.2021 shall be subject to the outcome of the writ petition.

3.12. On 05.07.2021, the respondent organisation was directed to place on record the decision of the Board with regard to creation of posts and framing of new rules governing the promotion to E2 level.

3.13. On 06.08.2021, the impugned judgement was passed and the writ petition filed by the appellants was dismissed. Hence, the appellants have approached this Court by filing the present appeal.

4. The main grounds agitated by the appellants are that the writ petition was erroneously dismissed, holding that a conscious decision was taken by the competent authority to fill up the vacancies, which is contrary to the documents on record, in particular, the agenda dated 22.09.2020 which was approved by Board of Directors on 13.10.2020. Bare perusal of the minutes of the Board meeting dated 13.10.2020 shows that the said 22 posts were created for promotion of the stagnated employees of S & T Department, including appellants, who were due for promotion on 01.01.2020. The proposal dated 22.09.2020 was initiated by the HR Department after approval from the Director Finance and the Managing Director of the respondent organisation.

4.1. The learned Single Judge did not notice that these posts were created for promotion of the appellants herein, who have the residency period of more than three years in E1 grade but less than six years. Even in reply to the writ petition, the respondent organisation has admitted that the said posts were created for the benefit of the petitioners, i.e., the appellants herein. The 22 posts were created in E2/E3 grade to be filled by those, who were eligible for promotion as on 01.01.2020 on the basis of the extant policy, which was applied in case of promotion of similarly placed

employees of Civil and Electrical Departments. The due approval of the proposal for cadre restructuring in S&T department on 13.10.2020 has created a vested right in favor of the appellants.

4.2. It has been further stated that the learned Single Judge has failed to appreciate the clear admission of the respondent organisation in the agenda of restructuring dated 22.09.2020 in the impugned judgement and there is no mention of the same therein.

4.3. It has been also pointed out on behalf of the appellants that the learned Single Judge has observed that as per Clause 9 of the amended promotion policy dated 16.10.2020, it shall come into effect only on 01.01.2021 but it has been erroneously held that the posts created on 22.10.2020 shall be filled as per amended promotion rules.

4.4. There was no conscious decision of the Board of Directors to fill the newly created 22 posts by way of amended rules, which would be operative only from 01.01.2021. The day when these posts were created, a vested right for consideration was created in favour of the appellants as per the existing rules and ratio of the judgement of the Supreme Court in *Deepak Aggarwal v. State of UP*, (2011) 6 SCC 725 has no application to the facts of this case and the same was incorrectly applied.

4.5. As per the appellants, in the provisional seniority list dated 05.02.2020, the employees shown at serial no. 1-6 of the Senior Executive (S & T) list have been in service for six years or more in the E1 grade. Hence, they are eligible to be promoted directly to E3 level. The appellants are at serial no. 9 and 11-16, having completed three years at E1 level, and they are, consequently, entitled to be promoted to E2 level. These persons were considered to be eligible for promotion on 01.01.2020 but as there were no vacancies available, so they could not be promoted.

4.6. Since the 22 vacancies were created for the stagnated employees of S & T Department, hence respondent organisation's contention that the said vacancies are to be filled by applying amended rules, is untenable. The General Manager/HR had initiated the process for creation of these vacancies on the basis of the grievance raised by the appellants herein and other similarly placed employees, as mentioned in para 3 of the agenda note dated 22.09.2020. The respondent organisation has unfairly expanded the zone of consideration to include those, who are much junior to the appellants in the existing cadre.

4.7. The vacancies notified by the respondent organisation are 10 and as per the seniority list, the appellants are eligible for promotion on 01.01.2020 and these vacancies ought to be filled by the extant policy, which was applied for promotion in the other departments. The employees in the other departments have been promoted long back and the appellants are still waiting for their promotion. All similarly placed persons are to be treated equally.

4.8. On the basis of the above grounds, the appellants have prayed that the impugned judgement and the order dated 06.08.2021 be quashed.

5. On the other hand, stand of the respondent organisation, as detailed in the counter-affidavit, is that the judgement of the learned Single Judge is reasoned and therefore the appeal is liable to be dismissed. The vacancies in question were created through circular dated 22.10.2020. The recruitment and promotion policy was amended and circular dated 16.10.2020 in this regard was issued with the approval of Board of Directors, which stipulated conduction of CBT in order to be considered for promotion to the post of Junior Manager. Hence, the amended rules for promotion will govern the promotion of the appellants, as rightly held by the learned Single Judge.

5.1. It is further submitted that the contention of the appellants is misconceived to the effect that they be considered for promotion only on the basis of seniority. The creation of new vacancies at E2/E3 level as well as amendment to the recruitment and promotion policy were carried out by the Board of Directors of the respondent organisation simultaneously in a meeting held on 13.10.2020. Hence, the posts were created and side by side recruitment and promotion policy was also approved, and accordingly, on 16.10.2020, the amended recruitment and promotion policy was notified. Clause 9 of the amended recruitment and promotion policy provides that the grades where CBT was prescribed, the policy shall be effective from 01.01.2021. Additional posts were created on 22.10.2020, out of which some posts are marked for S & T Department, and therefore the logical and reasonable conclusion one can arrive at is that the newly created posts vide circular dated 22.10.2020 are to be filled up under the amended recruitment and promotion policy, which had been already amended by way of circular dated 16.10.2020.

5.2. The competent authority had taken a conscious decision to create the posts as well as to amend the recruitment and promotion policy. The amendment was carried out to ensure that only the meritorious candidates should occupy the said posts, which is in public interest and is required for better functioning of the respondent organisation.

5.3. It is also contended on behalf of the respondent organisation that the present appeal has been filed by the appellants with a view to avoid any competition or assessment of their merit for promotion, which is not in public interest. The promotion cannot be claimed as a matter of right. The appellants can participate in the CBT and prove their merit for being considered for promotion.

5.4. In the light of the above facts as well as the detailed replies to the grounds, it has been prayed that the appeal be dismissed.

6. The appellants herein have filed rejoinder to the counter affidavit of the respondent, reiterating their earlier stand, as detailed above.

7. We have heard the arguments. Both the parties have also filed their written submissions.

8. The main question to be decided in the present case is as to whether the existing recruitment rules shall be applicable for promotion of the Appellants to the newly created posts at E2 level or the said posts are to be filled as per the new recruitment and promotion policy.

8.1. The case of the appellants is that these 22 posts were created in S & T Department only because of the stagnation suffered by them and their colleagues and consequently, these posts are to be filled via the extant policy which provides for consideration of APARs and the result of interview. The stand of the respondent organisation is that the Board of Directors had approved creation of these posts as well as the amended promotion policy in the same meeting and it was a conscious decision of the Board that these newly created posts be filled through the procedure prescribed in the amended promotion policy, i.e., through the CBT and the zone of consideration would stand expanded to the entire cluster at E0-E1 level, is what requires examination at our end.

8.2. The first document to be considered in this regard is the agenda note dated 22.09.2020. The relevant portion of the said agenda note is reproduced hereunder:

**“Note**

No. **HQ-HR0COPO/2/2020-HR-COORD AND POLICY**

Dated: 22.09.2020

Sub: BoD Agenda for “Cadre Restructuring of S & T Department in DFCCIL”

\*\*\*

Agenda for “Cadre Restructuring of S&T Department in DFCCIL” for consideration & approval of BoD is enclosed herewith please.

Encl.: As above

SUBJECT: Cadre restructuring of S&T Department in DFCCIL

INITIATED BY : GGM/HR

SPONSORED BY : ED/EDFC

CONCURRED BY : DIR/FINANCE

APPROVED BY : MD

SUBMITTED FOR : Approval of BoD

| Brief introduction on the proposal to be placed before the Board | :           | Cadre restructuring of S&T Department in DFCCIL                                                                                                                                                                                                                                                                                                                                                                                                                |            |             |       |       |      |      |       |     |    |    |  |  |  |  |  |     |    |   |   |   |   |  |     |    |  |  |  |  |  |     |    |  |  |  |
|------------------------------------------------------------------|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-------------|-------|-------|------|------|-------|-----|----|----|--|--|--|--|--|-----|----|---|---|---|---|--|-----|----|--|--|--|--|--|-----|----|--|--|--|
| Need and justification of the proposal                           | :           | Sanctioned strength of S&T Department for operations phase recommended by CPCS and approved by BoD in its 70 <sup>th</sup> meeting held on 05.09.2019 as under:                                                                                                                                                                                                                                                                                                |            |             |       |       |      |      |       |     |    |    |  |  |  |  |  |     |    |   |   |   |   |  |     |    |  |  |  |  |  |     |    |  |  |  |
|                                                                  |             | <table><tr><th>Department</th><th>Designation</th><th>Level</th><th>CO</th><th>EDFC</th><th>WDFC</th><th>Total</th></tr><tr><td>S&amp;T</td><td>ED</td><td>E9</td><td></td><td></td><td></td><td></td></tr><tr><td></td><td>GGM</td><td>E8</td><td>3</td><td>2</td><td>2</td><td>7</td></tr><tr><td></td><td>AGM</td><td>E7</td><td></td><td></td><td></td><td></td></tr><tr><td></td><td>JGM</td><td>E6</td><td></td><td></td><td></td><td></td></tr></table> | Department | Designation | Level | CO    | EDFC | WDFC | Total | S&T | ED | E9 |  |  |  |  |  | GGM | E8 | 3 | 2 | 2 | 7 |  | AGM | E7 |  |  |  |  |  | JGM | E6 |  |  |  |
| Department                                                       | Designation | Level                                                                                                                                                                                                                                                                                                                                                                                                                                                          | CO         | EDFC        | WDFC  | Total |      |      |       |     |    |    |  |  |  |  |  |     |    |   |   |   |   |  |     |    |  |  |  |  |  |     |    |  |  |  |
| S&T                                                              | ED          | E9                                                                                                                                                                                                                                                                                                                                                                                                                                                             |            |             |       |       |      |      |       |     |    |    |  |  |  |  |  |     |    |   |   |   |   |  |     |    |  |  |  |  |  |     |    |  |  |  |
|                                                                  | GGM         | E8                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 3          | 2           | 2     | 7     |      |      |       |     |    |    |  |  |  |  |  |     |    |   |   |   |   |  |     |    |  |  |  |  |  |     |    |  |  |  |
|                                                                  | AGM         | E7                                                                                                                                                                                                                                                                                                                                                                                                                                                             |            |             |       |       |      |      |       |     |    |    |  |  |  |  |  |     |    |   |   |   |   |  |     |    |  |  |  |  |  |     |    |  |  |  |
|                                                                  | JGM         | E6                                                                                                                                                                                                                                                                                                                                                                                                                                                             |            |             |       |       |      |      |       |     |    |    |  |  |  |  |  |     |    |   |   |   |   |  |     |    |  |  |  |  |  |     |    |  |  |  |

|  |                       |                         |           |            |            |             |
|--|-----------------------|-------------------------|-----------|------------|------------|-------------|
|  | DGM                   | E5                      | 5         | 4          | 4          | 13          |
|  | Manager               | E4                      |           |            |            |             |
|  | Assistant<br>Manager  | E3                      | 2         | 19         | 17         | 38          |
|  | Junior<br>Manager     | E2                      |           |            |            |             |
|  | TA (Sr.<br>Executive) | E1                      |           | 108        | 91         | 199         |
|  | TA<br>(Executive)     | E0                      |           | 213        | 180        | 393         |
|  | Jr.<br>Executive      | N7/<br>N6/<br>N5        |           | 234        | 196        | 430         |
|  | MTS                   | N4/<br>N3/<br>N2/<br>N1 |           | 88         | 74         | 162         |
|  |                       | <b>Total</b>            | <b>12</b> | <b>668</b> | <b>564</b> | <b>1242</b> |

2. Details of vacancy position (cluster wise up to E7) in S&T department are as under:

| Grade        | SS | OR*   | Vacancy | Remarks                                                                                            |
|--------------|----|-------|---------|----------------------------------------------------------------------------------------------------|
| <b>E5-E7</b> | 13 | 7+1** | 05      | 2 officers recently promoted on 19.06.2020**<br>One offer letter issued for AGM post for permanent |

|              |             |            |                 |                                                                                             |
|--------------|-------------|------------|-----------------|---------------------------------------------------------------------------------------------|
|              |             |            |                 | absorption                                                                                  |
| <b>E3-E4</b> | 38          | 48         | -10<br>(excess) | 5 are excess at present and 5 will be adjusted against resultant vacancies of E5-E7 cluster |
| <b>E0-E1</b> | 592         | 135        | 457             | SS-592 (E1-199 + E0-393)                                                                    |
| <b>N5-N7</b> | 430         | 08         | 422             |                                                                                             |
| <b>N1-N4</b> | 162         | 07         | 155             |                                                                                             |
| <b>Total</b> | <b>1235</b> | <b>205</b> | <b>1030</b>     |                                                                                             |

\* includes permanent and absorbed employees.

3. Various representations were received from employees of S&T Department regarding promotion from Sr. Executive (E1) to Jr. Manager (E2) grade who have completed three years of service as Sr. Executive. Further, representations were also received from employees who have completed six years' service in Sr. Executive (E1) grade and are eligible for promotion in Assistant Manager (E3) grade in S&T Department.

3.1 In this regard, it is pertinent to mention that even after taking into consideration all anticipated vacancies of higher grade and newly created training posts, there are no vacancies available in E3/E4 grade. At present there is excess on-roll staff strength in these grades.

3.2 Before the CPCS review was undertaken, there were 51 posts available in E3/E4 grade in S&T Department as per the Business Plan. Vacancies were available and, in the meantime, permanent absorption requests of three employees of AM level were considered in E3. Now, after review of manpower by CPCS and approval of BoD, the posts in E2/E3/E4 have been reduced to 38 and the employees are operating in excess. Executive/Sr. Executive level employees who are working since long and have become due for promotion to Jr. Manager (E2) and Assistant Manager (E3) could not be considered for promotion due to less number of vacancies.

3.3 It is also be observed that cadre in E2/E3/E4 is very small, i.e., 38. As such, there needs to be a review of cadre in E2/E3/E4 in S&T Department.

3.4 Employees of Civil and Electrical department who joined along with the S&T employees are being considered for promotion to the posts of Jr. Manager (E2) and Assistant Manager (E3) level. However, due to shortage of vacancies in S&T Department, employees are getting stagnated in their existing grades.

3.5 Keeping in view the above, it waws decided to create posts in E2/E3 grade, by matching surrender in lower level posts.

4. Details for creation of E3/E2 level post with matching surrender from the lower grade, ie. Executive (E0) to resolve the grievances of employees of S&T Department are as under:

| Level                                     | SS               | On roll | Vacancy       | No. of posts proposed for creation | No. of posts proposed for surrender |
|-------------------------------------------|------------------|---------|---------------|------------------------------------|-------------------------------------|
| <b>DGM/JGM/ AGM (E5/E6/E7)</b>            | 13               | 7+1     | 05            |                                    |                                     |
| <b>Jr. Manager, AM/Manager (E2/E3/E4)</b> | 38               | 48      | (10 excess)** | 22 (08-AM & 14 Jr. Manager)        | 2                                   |
| <b>Executive/ Sr. Executive (E0-E1)</b>   | 591<br>(199+393) | 135     | 457           |                                    | 33*<br>Executive (E0)               |
| <b>Jr. Executive (N5-N7)</b>              | 430              | 08      | 422           |                                    |                                     |
| <b>MTS (N1-N4)</b>                        | 162              | 07      | 155           |                                    |                                     |

|  |  |              |             |            |             |  |  |
|--|--|--------------|-------------|------------|-------------|--|--|
|  |  | <b>Total</b> | <b>1235</b> | <b>205</b> | <b>1030</b> |  |  |
|--|--|--------------|-------------|------------|-------------|--|--|

\* 393-33=360

\*\* 5 are excess at present and 5 will be adjusted against resultant vacancies of E5-E7 cluster.

**4.1 Eligible for promotion from E1 to E3 level: (inter-cluster promotion, 06 years residency)**

Three (03) employees were eligible for promotion as on 01.01.2020 from Sr. Executive (E1) to Assistant Manager (E3) but could not be considered due to non-availability of vacancies.

For consideration of these 03 employees for promotion in AM level (E3), total 08 posts are required in E3 level, 05 posts for adjustment of excess employees and 3 posts are required for consideration of promotion of above-mentioned employees who have completed 06 years residency period in E1 Grade.

**4.2 Eligible for promotion from E1 to E2 level: (inter-cluster promotion, 03 years residency)**

Fourteen (14) employees were eligible for promotion as on 01.01.2020 from Sr. Executive (E1) to Junior Manager (E2) but could not be considered due to non-availability of vacancies.

For consideration of above 14 employees for promotion in Junior Manager level (E2), total 14 posts are required in E2 level as the employees have completed 03 years or more than three years residency period in E1 Grade but less than six years.

**4.3 Thus, following posts are required for promotion of above-mentioned employees:**

| Level                  | Posts required |
|------------------------|----------------|
| Assistant Manager (E3) | 08             |
| Junior Manager (E2)    | 14             |
| <b>Total</b>           | <b>22</b>      |

|                                                                                                                         |   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-------------------------------------------------------------------------------------------------------------------------|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                         |   | <p>For creation of 22 posts (08-AM &amp; 14- Junior Manager), 33 posts of Executive (E0) level have to be surrendered as per money value calculation sheet placed as Annexure A. Money value required for creation of 22 posts is Rs. 3,46,12,920. Accordingly, the money value for 33 posts of Executive level equivalent to Rs. 3,52,53,900 is proposed to be surrendered.</p> <p>The above proposal has been agreed by Executive Department, concurred by Finance and approved by MD/DFCCIL.</p> <p><b>Proposal</b></p> <p>It is proposed to create 22 posts (14 in E2 grade and 08 in E3 grade) with matching surrender from E0 grade (33) to ease out the promotional prospects of employees in S&amp;T Department as one time measure.</p> |
| Need for frequent/ Supplement/interim/ Approval/sanctions if any and whether a Committee needs to be constituted        | : | Not required                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Delegation of authority, if any, proposed and the particulars of the executives in whose favour authorization is sought | : | Not required                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

(Ajay Kumar)

ED/EDFC

## RESOLUTION

**“Resolved that the Board be and hereby approve the proposal of creation of 22 posts (14 in E2 grade and 08 in E3 grade) with matching**

**surrender from E0 grade (33) to ease out the promotional prospects of employees in S&T Department as one-time measure.”**

8.3. This agenda was taken up for consideration in the Board meeting dated 13.10.2020 as item no. 74.3.5 and the following resolution was passed:

**“74.3.5 Cadre Restructuring of S&T Department in DFCCIL.**

GGM/HR apprised the Board about the agenda. After detailed discussion, the Board passed the following resolution;

**Resolved that the Board and hereby approve the proposal of creation of 22 posts (14 in E2 grade and 08 in E3 grade) with matching surrender from E0 grade (33) to ease out the promotional prospects of employees in S&T Department as one-time measure.”**

**[ emphasis is ours]**

8.4. In the same meeting of the Board of Directors, a revised recruitment and promotion policy was also approved, and a resolution was passed. In the light of this Board resolution, revised recruitment and promotion policy was notified vide circular no. 640/2020 dated 16.10.2020 and the relevant portions of the said policy are reproduced hereunder:

**“CIRCULAR No. 640/2020**

**Sub: Revised Recruitment & Promotion Policy**

The Board of Directors (BoD) in their 74<sup>th</sup> meeting held on 13.10.2020 (Item no. 74.3.2) has approved the Revised Recruitment & Promotion Policy.

| Grade | Post/<br>Hierarchy | Cluster | Mode of<br>Filling<br>vacancies | Educational<br>qualifications for<br>direct<br>recruitment/immediate<br>absorption for entry in<br>lowest grade of the<br>cluster |
|-------|--------------------|---------|---------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
|       |                    |         |                                 |                                                                                                                                   |

|    |                   |   |                                                                                                                                                                                                                                                                   |                                                                     |
|----|-------------------|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| E4 | Manager           | D | 50% posts in E2 to E4 grade (cluster D) shall be filled by direct recruitment.<br><br>50% posts in E2 to E4 grade (cluster D) shall be filled by promotion from eligible employees in E0/E1 grade having 3 years minimum service through competitive examination. | Relevant degree from a recognized institute with minimum 60% marks. |
| E3 | Assistant Manager |   |                                                                                                                                                                                                                                                                   |                                                                     |
| E2 | Junior Manager    |   |                                                                                                                                                                                                                                                                   |                                                                     |

## **b) From one cluster to another cluster**

### **(i) For promotion to N5, E0, E2 grades**

For cluster A to lowest grade in cluster B (N5), cluster B to lowest grade in cluster C (E0) and cluster C to lowest grade in cluster D (E2) promotions will be made on the basis of performance of the employee in competitive examination comprising of professional/managerial ability (written test) and APARs.

All the employees in lower cluster with 3 years minimum service will be eligible to appear in the competitive examination.

Marks obtained in the written test (computer-based test) as per the result given by the reputed testing agency will be tabulated along with marks for APARs by the Selection Committee. APARs for last 4 years will be considered. Weightage of each APAR will be of 10 marks. Distribution of marks will be as under:

| Professional/Managerial ability (written test) | APAR | Total |
|------------------------------------------------|------|-------|
| 60                                             | 40   | 100   |

If APAR for 4 years are not available then marks will be awarded on pro-rata basis on the basis of available APARs. Minimum qualifying marks for the promotion will be 60% in professional/managerial ability (written

test) and 60% in APAR. Thus, overall qualifying marks shall be 60% (i.e. 60 marks out of 100)

### **Applicability**

In grades where CBT is not prescribed as method of promotion, policy shall be effective from the date of issue. For grades where CBT will be conducted, policy shall be effective from 01.01.2021.”

8.5. As far as the creation of the posts in pursuance to Board resolution no. 74.3.5 for S & T Department as a “**one-time measure**” is concerned, circular no. 648 dated 22.10.2020 was issued, which is reproduced here under:

“ **CIRCULAR NO 648/2020**

**Sub: Creation of posts by matching surrender of posts in S&T Department**

Sanctioned strength of S&T Department (up to E6 grade) for operations phase recommended by CPCS and approved by BoD in its 70<sup>th</sup> meeting held on 05.09.2019 is as under:

| <b>Designation</b> | <b>Level</b> | <b>Sanctioned strength</b> |
|--------------------|--------------|----------------------------|
| JGM                | E6           |                            |
| DGM                | E5           | 13                         |
| Manager            | E4           |                            |
| Assistant Manager  | E3           | 38                         |
| Junior Manager     | E2           |                            |
| Sr. Executive      | E1           | 199                        |
| Executive          | E0           | 393                        |
| Jr. Executive      | N7/N6/N5     | 430                        |
| MTS                | N4/N3/N2/N1  | 162                        |

2. In order to address the stagnation in S&T cadre, a proposal for creation of posts in E3/E2 with matching surrender from lower grade, i.e. Executive (E0) was submitted for consideration of BoD.

3. BoD in its 74<sup>th</sup> meeting (item no. 74.3.5) held on 13.10.2020 has approved the proposal of creation of 22 posts (14 posts in E2 grade and 08 posts in E3 grade) with matching surrender from E0 grade (33 posts) to ease out the promotional aspects of employees in S&T Department as a one-time measure.

4. Pursuant to the above, the revised sanctioned strength in S&T Department after the above creation/surrender of posts is as under:

| Designation       | Level       | Sanctioned strength |
|-------------------|-------------|---------------------|
| JGM               | E6          |                     |
| DGM               | E5          | 13                  |
| Manager           | E4          |                     |
| Assistant Manager | E3          | 46                  |
| Junior Manager    | E2          | 14                  |
| Sr. Executive     | E1          | 199                 |
| Executive         | E0          | 360                 |
| Jr. Executive     | N7/N6/N5    | 430                 |
| MTS               | N4/N3/N2/N1 | 162                 |

(S.K. Panda)

**Joint General Manager/HR”**

8.6. As per the appellants, if the agenda for cadre restructuring dated 22.09.2020, Board resolution dated 13.10.2020 and circular dated 22.10.2020 are considered together, then, a harmonious reading of these three documents makes it very clear that to address the grievances of the appellants and other employees stuck at E1 level without any promotional prospect for quite a long time, the posts mentioned at E2 level (14 posts) and E3 level (8 posts) were created as a **one-time measure**. Hence, they were entitled to be promoted there and then as they were fulfilling the eligibility requirement as per the old promotional policy prevailing at the relevant time.

8.7. The appellants, accordingly, submitted their representations but vide letter dated 30.12.2020, they were informed that they will be considered for promotion in terms of the new promotion policy circulated on 16.10.2020.

8.8. In sum and substance, the case of the appellants is that they were eligible for promotion much prior to 01.01.2021, i.e., the cutoff date, after which, the new promotion policy has to come into effect and a CBT is to be conducted for promotion from one cluster to another and entire cluster D has been clubbed together as the

feeder cadre for the next cluster C, whereas vacancies were specifically created at E2 and E3 level as one-time measure to resolve the grievance concerning stagnation of the present appellants and others who were stuck at E1 level for a long time.

8.9. It has been further argued, that it was for the first time on 30.12.2020, the revised recruitment and promotion policy and creation of one-time posts in S & T Department were clubbed together to deny the legitimate rights and expectations of the appellants for promotion as per the existing policy. The said letter dated 30.12.2020 is reproduced hereunder:

“HQ/HR/Misc/S&T/Vol-I

Dated: 30.12.2020

Sh. Shyam Veer Singh, Sr. Executive/S&T/India

Sh. Kanti Kumar Thakur, Sr. Executive/S&T/JP

Sh. Santosh Kumar, Sr. Executive/S&T/ADI

Sh. Sanjay Kumar, Sr. Executive/Ajmer

Sh. Nitish Kumar, Sr. Executive/UMB

Sh. Vikash Kumar Priyadarshi, Sr. Executive/MGS

Sub : Representation for promotion from Sr. Executive/S&T to Jr. Manager/S&T.

Ref : Grievance No. 715, 717, 719, 720, 716 & 718/2020

In reference to above mentioned grievance received through portal, the representation of the above named employees of S&T Department have been examined and they will be considered as Jr. Manager/S&T as per revised promotion policy circulated vide order No. 640/2020 dated 16.10.2020.”

8.10. Learned senior counsel for the appellants has also argued that as per clause no. 10 of the revised recruitment and promotional policy, clarification concerning the provisions of the said policy can only be made by the Managing Director but in the present case, it was the head of the HR Department, who has issued the letter dated 30.12.2020, extending the revised recruitment and promotional policy to cover the

one-time posts created at E2/E3 level in S & T Department. In this regard, reference was made to clause 10 of the said policy, which is reproduced hereunder:

**“Interpretation**

MD would be competent authority to decide/clarify the provisions, issue necessary administrative instructions and procedural order, etc. for implementation of Promotion Policy. This policy may be reviewed periodically.”

8.11. It has been further submitted that if the new policy is made applicable to the one-time post created in S & T Department at E2-E3 level, then, **the zone of consideration will be increased from 8 candidates to 53 candidates and it will also include certain employees at E0 level, who were not even eligible for promotion when the Board resolution was passed.**

8.12. It is also contended that mere fact that the revised promotional policy was notified on 16.10.2020 and the circular notifying the vacancies was issued on 22.10.2020 does not mean that the revised promotional policy will be applicable as these two documents were issued in pursuance of two different Board resolutions.

8.13. The appellants submitted that the revised promotional policy was to come into effect from 01.01.2021 in respect of CBT, whereas the promotion of the present appellants was overdue on the date when the vacancies were notified, i.e., on 22.10.2020.

8.14. In view of the above, it has been submitted that the appellants are entitled to be promoted to the next cluster at E2 level on the basis of the promotional rules, i.e., interview plus consideration of APAR.

9. On the other hand, the submission of Mr. V S R Krishna, learned counsel for the respondent organisation, is that the revised promotional policy was notified after a due and proper administrative exercise and there is no scope for judicial

intervention in administrative decision-making process. This revised promotional policy has been applied uniformly across the board qua all employees and hence there is no occasion to interfere with the same as the appellants cannot claim a preferential treatment.

9.1. The promotion from one cluster to another involves the selection methodology. Earlier, it was the interview plus APAR but as per the new promotional policy a CBT has to be qualified by the candidates.

9.2. The circulars are merely implementing the decisions of the Board of Directors and creation of additional posts in S & T Department as well as the amendments in the promotional policy were decided together on 13.10.2020 in the Board meeting. Hence, the amended promotional policy would be applicable for filling up the posts of Junior Manager (E2 level) through promotion.

9.3. The amended promotional rules were in place before the cadre restructuring was done, hence, the amended promotional policy would be applicable, and it was a conscious decision of the administration.

9.4. In the agenda for the meeting of the Board of Directors, it is nowhere mentioned that the zone of consideration for promotion to additional posts is only limited to the 14 employees at E1 level, to the exclusion of all others. All the eligible employees are to be considered in fair, equitable and reasonable manner and only meritorious candidates are to be promoted. The discussion/justification of the agenda item is not relevant, rather the final resolution of the Board is to be considered.

9.5. It has been also argued that the other affected employees in the zone of consideration are not parties. Hence, the proper and necessary parties were not impleaded in the writ petition as well as in the appeal.

9.6. If the Court interferes at this level qua recruitment to the post of Junior Manager (E2 level), it will have a cascading effect generating more issues. The

assessment of the vacancies is to be undertaken on 01.01.2021, hence, the vacancies created on 22.10.2020 are to be assessed as on 01.01.2021 and from that date onwards new promotional policy is applicable. Hence, the said vacancies are to be filled through CBT.

10. Learned senior counsel for the appellant in rejoinder arguments has submitted that the appellants are the only ones in the respondent organisation, who were not promoted even after nine years service and as per the amended promotion policy, new candidates with three years experience are also eligible, which is also a denial of natural justice to the present appellants. For the remaining 10 vacancies, presently, only 7 appellants are claiming their right to be promoted. Still 3 vacancies are left, which may be filled by applying the new recruitment policy. .

11. In our view, the agenda for Board of Directors meeting, circulated on 22.09.2020 provides complete justification for creation of vacancies. In clause no. 3.4 of the said agenda, it has been specifically mentioned that although the employees of Civil and Electrical Department, who joined along with S & T employees, are being considered for promotion to the post of Junior Manager (E2) and Assistant Manager (E3), however, due to shortage of vacancies in S & T Department, employees are getting stagnated in their existing grades. Here the reference is only to the employees of S & T Department, who are getting stagnated in their existing grades, and therefore it was proposed that additional posts at E2/E3 level should be created as one-time measure to resolve the grievances of employees of S & T Department. Accordingly, it was decided to surrender 33 posts at E0 level and create 8 posts of Assistant Managers (E3) and 14 posts of Junior Managers (E2).

11.1. Point no. 4.1 of the agenda makes it clear that there were three employees who were eligible for promotion as on 01.01.2020 from Senior Executive (E1) to Assistant Manager (E3) but they could not be considered due to non-availability of vacancies.

For the 8 posts created at Assistant Manager level, the justification given is in the

next paragraph, which mentions that as there were already 5 excess employees at E3 level, so, 5 newly created posts will be adjusted against those excess employees and 3 posts were required for consideration of promotion of the 3 employees who have already completed six years residency period at E1 level.

11.2. Similarly, in point no. 4.2 of this agenda, it has been clarified that there are 14 employees, who are eligible for promotion as on 01.01.2020 from Senior Executive (E1) to Junior Manager (E2) level but they could not be considered due to non-availability of vacancies. At this juncture it needs to be flagged that their eligibility for promotion is as on 01.01.2020 and not on 01.01.2021 as has been submitted by the learned counsel for the respondent corporation.

11.3. The next sub-paragraph makes it clear that for consideration of these 14 employees (which included the present 7 appellants) for promotion to the Junior Manager level (E2), 14 posts are required to be created at E2 level, qua those who had completed three years or more but less than six years residency period in E1 grade. There is no mention in the entire agenda note which would suggest that 14 posts for which, employees at EO level will also be eligible in the S & T Department should be created..

11.4. Hence, it is absolutely clear in terms of the agenda note dated 22.09.2020 that these 22 posts were to be created only for the promotion of the employees who were stagnating at E1 level for more than six years/three years, as the case may be.

11.5. This agenda was taken up for discussion by the Board in its meeting dated 13.10.2020 as item no. 74.3.5. The JGM/HR apprised the Board about the agenda and after detailed discussion, the Board passed the proposed resolution as given in the agenda note, without adding or deleting even a single word. It is nowhere stated in the said resolution that the employees at E0 level in S & T Department are also to be

considered for filling up these 22 posts, which were created as one-time measure to address the stagnation of the employees at E1 level of S & T Department.

11.6. The promotional prospects of the employees in S & T Department have been taken into consideration in the agenda note, which only talks about the stagnation of employees at E1 level and there is no discussion about creating additional avenue as one-time measure for employees at E0 level. The only discussion about E0 level is for surrendering the excess 33 posts, so that there is no additional financial implication for the creation of 22 posts at E2/E3 level as one-time measure.

11.7. The circular no. 648/2020 dated 22.10.2020 is in continuation of the above-mentioned Board resolution and the same has also adverted to the background, which is, that the said 22 posts were created to address the issue of stagnation of employees in S & T cadre at E1 level. This issue has been discussed in detail in the agenda note dated 22.09.2021. We have to read the said agenda note dated 22.09.2020, the Board resolution dated 13.10.2020 and vacancy creation circular dated 22.10.2020 together, to understand that these one-time posts were created only to accommodate the employees who were stagnated at E1 level as on 01.01.2020 and hence, they have to be promoted as per the existing promotion policy, i.e., APAR plus interview.

11.8. The revised recruitment and promotion policy makes it clear that in cases where CBT is to be held, this policy will come into effect with effect from 01.01.2021.

11.9. As discussed above, the present appellants were eligible for their promotion on 01.01.2020. The only impediment in their promotion from E1 to E2 level was that there were no posts. These posts were created in view of the above agenda note dated 22.09.2020, Board resolution dated 13.10.2020 and vacancy circular dated 22.10.2020. Hence, they would have to be promoted as per the existing promotion

policy, as is evident upon a perusal of the aforementioned three documents, to address the stagnation of these employees at E1 level albeit as one-time measure. Pertinently, these are not the posts which have been created to meet organisational need and exigency and therefore cannot be filled up via the revised promotional policy.

11.10. Moreover, the zone of consideration has been enlarged by the new recruitment and promotion policy from 8 to 53 by including ED level employees with 3 years' experience, to the disadvantage of appellants, who have more than nine years' experience.

11.11 The contention of the respondent organisation that available vacancies are to be assessed as on 1<sup>st</sup> January of every year and then process to fill them is to be initiated, cannot be made applicable to this case as these 22 vacancies are specifically created for the employees at E1 level, who were already entitled for promotion on 01.01.2020.

11.12. Another objection raised by the learned counsel for respondent organisation that necessary parties were not impleaded, is again not sustainable as it is the decision of the Board of Directors to fill these 22 specially created posts, the adherence to which is sought by the appellants via the writ petition as well as in the instant appeal- which in no way would impact the seniority of the employees at E0 level and they are standing at E1 level for a long time.

11.13. In view of the above facts and circumstance, the ratio of judgment in ***Deepak Aggarwal v. State of U.P. (2011) 6 SCC 725*** is not applicable to this case.

11.14. At present, there are only 7 appellants before this Court whose names are detailed in the memo of parties. Therefore, out of the existing vacancies at E2 level, the respondent organisation shall consider the appellants for promotion as per the promotional policy which was subsisting as on 13.10. 2020 i.e. consideration of their APARs and interview result. The process for the promotion of the appellants, will be completed within 2 months from the date of the judgement..

11.15. As far as the remaining vacancies at E2 level are concerned, the respondent organisation will at liberty to fill the same as per the new recruitment and promotion policy by holding a CBT and after completion of other required formalities.

12. The appeal is, accordingly, allowed. The impugned judgement of the learned Single Judge dated 06.08.2021 is hereby set aside in the aforesaid terms. The pending applications shall also stand closed.

**TALWANT SINGH, J**

**RAJIV SHAKDHER, J**

**NOVEMBER 12, 2021/pa**

*Click here to check corrigendum, if any*