



2023:DHC:8573-DB



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: December 01, 2023

+ W.P.(C) 15412/2023

UNION OF INDIA THROUGH THE CHAIRMAN AND
CHIEF EXECUTIVE OFFICER RAILWAY BOARD
AND OTHERS

..... Petitioners

Through: Mr. Vikrant Nilesh Goyal, Advocate.

versus

SHRI VIVEK KUMAR

..... Respondent

Through: Mr. Ankur Chhibber, Mr. Arjun
Agarwal and Mr. Nikunj Arora,
Advocates.**CORAM:****HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE AMIT MAHAJAN****V. KAMESWAR RAO, J. (ORAL)**

1. The challenge in this writ petition is to an order dated September 18, 2023 passed by Central Administrative Tribunal ('Tribunal', in short) in O.A. No. 3292/2022, whereby the Tribunal has allowed the O.A. filed by respondent herein by stating in paragraphs 23, 24 and 25 as under:-

"23. In the conspectus of the facts and circumstances brought out above, we find that there exist sufficient reasons to direct the respondents for re-consideration of the applicant's case. We also find that the applicant is on the verge of retirement, and his non-promotion at this stage would have permanent impact not only on his pension, but also on other retirement dues.

24. Keeping in view the procedure to be followed for promotion to the post of General Manager and/or



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equivalent post, we are of the considered opinion that the impugned orders dated 04.10.2022 and 11.10.2022 are not sustainable in law, and the same are accordingly quashed and set aside. We, accordingly direct respondent no.1, i.e., CEO and Chairman, Ministry of Railways (Railway Board) to re-frame the proposal for promotion/posting of the applicant on the post of General Manager and/or equivalent post and submit the same for re-consideration by the ACC.

25. The exercise, as ordained above, shall be completed by the respondents within a period of eight weeks from the date of receipt of a certified copy of this order.”

2. The facts, as noted from the record are that respondent is an officer of 1984 Batch of Indian Railway Service of Mechanical Engineers (IRSME) and his grievance before the Tribunal was that despite his empanelment for appointment to the post of General Manager or equivalent post, duly approved by the Appointments Committee of the Cabinet (‘ACC’, in short) on June 12, 2021, he has been denied the subsequent posting on such a post, even after a lapse of one year since the date of empanelment.

3. He had earlier filed an O.A. being O.A. No. 2561/2022, which was decided on September 16, 2022, whereby the Tribunal has inter alia directed the competent authority to decide the pending representation of the respondent dated June 15, 2022 with respect to his posting as General Manager or equivalent in accordance with rules, policies and instructions governing the subject within a period of two weeks from the date of the order.

4. Pursuant to the directions of the Tribunal, the petitioners herein have passed an order dated October 04, 2022 rejecting the representation. It is this



order, which was challenged by the respondent before the Tribunal. The Tribunal has in paragraphs 20, 21 and 22 also held as under:

“20. The applicant was earlier considered for appointment to Service specific post of Additional Member of IRSME in Level-16 and a proposal was sent to DoP&T on 18.08.2021 seeking ACC's approval for appointment as Pr.CAO (COFMOW). However, the ACC did not agree to the vigilance status of the applicant and decided to defer the appointment of the applicant as Additional Member as conveyed vide order dated 25.12.2021.

21. It is undisputed that the applicant had been empanelled to hold the post of General Manager and/or equivalent post for the year 2021, yet the same has been denied to him on one pretext or the other. Insofar as the contention of the learned counsel for the respondents regarding the vigilance complaint against the applicant is concerned, that also stood finalized on 30.12.2021 and accepted by the Competent Authority on 31.12.2021 during the year 2021 itself. Further, vide orders of this Tribunal dated 11.11.2022, the respondents had been directed ‘to keep one post of General Manager and/or equivalent post vacant, particularly, the one which is to be filled from the quota of IRSME’.

22. A crucial point to be noted here is that ACC vide communication dated 25.12.2021 only deferred the appointment of the applicant as Additional Member (Rolling Stock Management) and did not reject his case as such. It was, therefore, incumbent upon the respondents to approach the ACC again in view of the clearance given by CVC on 30.12.2021, as accepted by the Competent Authority on 31.12.2021.”

5. There is no denial to the fact that on June 12, 2021, the respondent was empanelled for appointment to the post of General Manager or equivalent, pursuant to the approval granted by the ACC. It is also a conceded fact that on November 01, 2021 one post of General Manager (or



equivalent) became vacant and it was the case of the respondent that he was to be considered for appointment to the said post.

6. It appears that it is pursuant to a complaint received, which was under investigation, that the name of the respondent was not sent for appropriate posting. However, nothing adverse was found against the respondent, and thereafter, a fresh vigilance clearance was sought and his name was forwarded for posting.

7. It was the stand of the petitioners herein that since 2022 had set in, the vacancy which had become vacant on November 01, 2021, need to be filled in the year 2022 and not from November 01, 2021 as is the claim of the respondent.

8. The submissions of Mr. Goyal, learned counsel appearing for the petitioners, are also on similar lines as were canvassed before the Tribunal, inasmuch as that the post having not been filled in year 2021 because of the aforesaid reasons, it necessarily has to be filled in the year 2022 and as such, the respondent has no claim for the posting as General Manager or in an equivalent post w.e.f. November 01, 2021.

9. We are not in agreement with the said submission made by Mr. Goyal, for the reason as accepted by him that as an interim measure, the Tribunal had directed the respondents not to fill up the post of General Manager or equivalent post during the pendency of the O.A.

10. He submits, the order on interim relief was passed on November 11, 2022, i.e., after the post had become vacant on November 01, 2021. Though, this submission of Mr. Goyal is appealing, but the fact remains that the claim



of the respondent before the Tribunal was for a posting w.e.f. November 01, 2021, and the order which was passed by the Tribunal as an interim measure was only for the purpose of filling up that post in the eventuality the respondent succeeded with O.A.

11. Now, the respondent has succeeded before the Tribunal. We have been informed that despite the interim order and the respondent succeeding in the O.A., on October 30, 2023, the petitioners have filled up the post, which was kept vacant by the Tribunal, which according to Mr. Chhibber would mean that even the directions of the Tribunal cannot be complied with.

12. On this, Mr. Goyal submits that one post has become vacant today, as one officer has demitted office, on attaining the age of superannuation, yesterday. Be that as it may, we are of the view that respondent being eligible for being considered for posting / promotion to the post of General Manager or an equivalent post w.e.f. November 01, 2021 and nothing adverse has been found against the respondent, the Tribunal was justified in allowing the O.A.

13. We are of the view that in the facts, the impugned order passed by the Tribunal does not warrant any interference.

14. The writ petition is dismissed.

V. KAMESWAR RAO, J.

AMIT MAHAJAN, J.

DECEMBER 01, 2023/R