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

+ **W.P.(C) 9727/2024**

SATYAJEET PRAKASH

.....Petitioner

Through: Mr. Shanker Raju, Mr. Nilansh Gaur
and Ms. Himantika Saini Gaur, Advocates.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Siddharth Shankar Ray, CGSC
with Mr. Ratan Prakash, Govt. Pleader for R1.
Mr. J.P. Nahar and Ms. Renu Nahar, Advocates
with Ms. Devyani Bhardwaj, Legal Consultant for
R2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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19.07.2024

CM APPL. 39866/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 9727/2024 & CM APPL. 39865/2024 (stay)

3. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:

“a) To call for the records and quash and set aside RCI order dated 10.02.2024 whereby already settled seniority list dated 22.06.2022 has been revised by illegally applying para 2.2.3 of DOPT OM dated 16.09.2022.

b) To set aside the office memorandum dated 01.05.2024 whereby the combined seniority list in the grade of ASO/Accountant has been revised by relegating seniority of Petitioner qua Respondent No.3 and to thereby restore the seniority determined vide OM dated 22.06.2022, and the Petitioner be considered for promotion as AS with all consequential



benefits.

(c) Any order or further relief which this Hon'ble Court deems fit, just and proper in the peculiar circumstance of the case in the interest of justice may also please be awarded including costs."

4. Petitioner applied for appointment to the post of Assistant pursuant to a common advertisement issued by Rehabilitation Council of India ('RCI')/Respondent No.2 bearing No.01/2013, inviting applications for posts of Assistant and Accountant. Petitioner joined the post of Assistant Section Officer ('ASO') on direct recruitment basis on 31.01.2014 against the Unreserved category on his own merit *albeit* he had applied in the OBC category. Respondent No.3/Sh. Rishi Prakash had applied for the post of Accountant and on being selected, joined on 23.12.2013. As per the merit list prepared by RCI post selection, Petitioner scored 62 marks and was placed at Serial No.1 while Respondent No.3 had scored 51.5 marks and was below in merit.

5. It is the case of the Petitioner that in the Combined Seniority List issued vide Office Memorandum dated 22.06.2022, Petitioner was placed above Respondent No.3 in seniority at Serial No.1, applying the guidelines on seniority amongst direct recruits contained in various DoPT O.M.s wherein it is provided that relative seniority of the direct recruits is to be determined on the basis of merit obtained in the selection. In this context, reliance is placed on paragraphs 2.1, 2.2.3 and 4.9 of the recent DoPT O.M. dated 16.09.2022.

6. Petitioner avers that subsequently, Respondent No.1 illegally reversed the seniority position, on repeated representations of Respondent No.3 and passed an order on 10.02.2024, directing RCI to revise the Combined Seniority List in terms of paragraph 2.2.3 of DoPT O.M. dated 16.09.2022.



Pursuant to the said order, RCI circulated revised Combined Seniority List in the grade of ASOs/Accountants vide impugned Memorandum dated 01.05.2024, whereby Petitioner has been placed at Serial No.2 while Respondent No.3 is at Serial No.1, thereby reversing the seniority position of the Petitioner, without inviting objections from him. This, according to the Petitioner, has adversely impacted his prospect for promotion to the single post of Assistant Secretary in RCI, for which the Petitioner is eligible since the year 2022 and has a preferential right over Respondent No.3 in terms of the earlier seniority list, which was correctly issued.

7. Mr. Shanker Raju, learned counsel for the Petitioner submits that the seniority list dated 22.06.2022 was correctly finalized on the principle of merit as per paragraph 2.1 of DoPT O.M. dated 16.09.2022 as well as in terms of O.M. dated 11.11.2010, since Petitioner was higher in merit in the selection process relative to Respondent No.3. No objections were invited before revising the seniority list. After the revised Combined Seniority List was issued, Petitioner made a detailed representation on 03.05.2024 seeking opportunity to put forth his case, followed by reminders dated 03.06.2024 and 11.07.2024, but the representations are still pending. Petitioner has detailed in the representations how according to him, the earlier seniority list was correctly finalized applying the principle that relative seniority of direct recruits is determined by order of merit in which they are selected.

8. Mr. Raju further submits that while on one hand, Respondent No.1 has illegally and arbitrarily passed the impugned order dated 10.02.2024 and RCI has revised the seniority list pursuant thereto and the representations of the Petitioner are pending before the RCI, on the other hand, RCI has issued a letter dated 01.07.2024 writing to Respondent No.1 that it was proposing



to hold a meeting of the DPC to fill up the vacant post of Assistant Secretary by promotion from the feeder grades of ASOs/Accountants. The argument is that if the DPC is convened, without deciding the representations of the Petitioner and on the basis of the existing *inter se* seniority, grave prejudice shall be caused to him as there is only one post of Assistant Secretary, to be filled by promotion. It is urged that Respondents No.1 and 2 should first take a decision on the representations and decide the *inter se* seniority between the Petitioner and Respondent No.3, before proceeding to convene a DPC for promotion.

9. Issue notice.

10. Mr. Siddharth Shankar Ray, learned Central Government Standing Counsel accepts notice on behalf of Respondent No. 1.

11. Mr. J.P. Nahar, learned counsel accepts notice on behalf of Respondent No.2.

12. From the facts emerging from the writ petition, Petitioner was placed at Serial No.1 in the Combined Seniority List issued in the grade of ASOs/Accountants on 22.06.2022, while Respondent No.3 was at Serial No.3. Initial representations made by Respondent No.3 were rejected, however, subsequently a revised seniority list was issued on 01.05.2024, whereby Respondent No.3 is at Serial No.1 while Petitioner is at Serial No.2. Admittedly, objections were not invited before revising the seniority list and Petitioner has subsequently made representations ventilating his grievances against the revised seniority position, but the same are pending. According to the Petitioner, there is only one post of Assistant Secretary to be filled by promotion and Annexure 'P-8' to the petition, which is a letter dated 01.07.2024 from RCI to Respondent No.1, shows that there is a



proposal to convene DPC to fill up the one vacant post from the feeder grades of ASOs/Accountants and therefore, the plea is that before convening the DPC, Petitioner's representations should be decided. Several other contentions have been raised by the Petitioner on merits of the impugned orders.

13. In my considered view, once the Petitioner was higher in seniority in the initial seniority list published on 22.06.2022 and the same was revised on 01.05.2024, without inviting objections from him, it would be both imperative and appropriate that Respondents No.1 and 2 first decide his representations before proceeding to convene the DPC for promotion to the post of Assistant Secretary by promotion since both ASOs and Accountants are feeder grades and therefore, it would be appropriate at this stage, to dispose of the petition with a limited direction to RCI to dispose of the representations made by the Petitioner, objecting to the revised seniority list.

14. Writ petition is accordingly disposed of directing the Competent Authority in RCI to decide the representations dated 03.05.2024, 03.06.2024 and 11.07.2024 within a period of four weeks from today and take a considered decision thereon, which shall be communicated to the Petitioner, who will be at liberty to take recourse to appropriate remedies in law, in case of any surviving grievance. It is further directed that Respondents No.1 and 2 will not convene the DPC for promotion to the post of Assistant Secretary for a period of two weeks, after the decision is communicated to the Petitioner, to enable him to take recourse to legal remedies, in case the decision is adverse to him.

15. It is made clear that this Court has not expressed any opinion on the merits of the case and it would be open to the Competent Authority to take a



decision in accordance with law.

16. Pending application also stands disposed of.

JYOTI SINGH, J

JULY 19, 2024/jg/kks