

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 276/2017.

Dated this the 19th day of December, 2017.

CORAM:- HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)
HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)

1. Joel Mckenzie,
Date of Birth: 11.09.1976
Age: 30 years 6 months,
working as: ADME (Assistant Divisional Mechanical Engineer) (Diesel) (Group "B" Post), Under Senior Divisional Mechanical Engineer (Diesel), O/o Sr. DME(D), Ghorpadi, Pune- 411 001,
Residing at: C-15, 4th Floor, Parmar Paradise, Near Hotel Woodland, Pune, Maharashtra- 411 001.
2. Satish Vishnu Mohod,
S/o Vishnu Gopal Rao Mohod,
Date of Birth: 06.07.1962, Age: 53 years 8 months, Working as: "Senior Mechanical Engineer (Group "B" Post), under CAO, WPO, Patna, O/o Senior Mechanical Engineer's Office, 1st Floor, Amravati Station Building, Amravati- 444 602, Maharashtra, and residing at: Railway Quarter No. F/78-A, Green View Colony, Ajni, Nagpur- 440 003, State of Maharashtra.
3. Gajanand Meena, S/o Panchu Ram Meena,
DOB: 07.10.1976, Age: 36 years 05 months, Working as: ADME (Asst. Divisional Mechanical Engineer) (Group "B" post), under Senior Divisional Mechanical Engineer, Bhusawal, Central Railway, 425 201 and residing at: 1020/A, SPL, Railway Officer Colony, Bhusawal, Taluka- Bhusawal, District: Jalgaon- 425 201, State of Maharashtra.
4. Vikas Tarachand Gajbhiye, S/o Tarachand U. Gajbhiye, DOB: 12.05.1965, Age: 51 years 09 months, working as: ADME (Asst. Divisional Mechanical Engineer) (OP) BB, (Group "B" Post), under Senior Divisional Mechanical Engineer (FR & OP) BB, DRM Office, Anex Building, IInd Floor, above Reservation Office, Chhatrapati Shivaji Maharaj Terminus

(CST), Mumbai and residing at: 11, 2nd Floor, Building No. 3, Mazgaon, Mumbai Central Rly. Officer Colony, Mumbai- 400 010, State of Maharashtra.

5. Sujit Kumar Singh, S/o Late Rajeshwar Prasad singh, DOB: 05.01.1969, Age: 47 years 03 months, Working as Assistant Works Manager (AWM) (Group "B" Post), under CWM's Office, Matunga Workshop, Central Railway, Mumbai- 400 019, and residing at: Room No. 7, 1st floor, Building No. 3, RB-IV, Railway Officers Quarters, Mazgaon, Near Burhani College, Mumbai- 400 010, State of Maharashtra.
6. R K Pathak, S/o Late R S Pathak, DoB: 15.08.1964, Age: 52 years 06 months, Working as Assistant Works Manager (AWM), Matunga, Central Railway, (Group "B" Post), under CWM's Office, Matunga Workshop, Central Railway, Mumbai- 400 019, and residing at: A-10, Central Railway Officer's Colony, D.S.P. Road, Dadar (East), Mumbai- 400 014.
7. Deepak Khot, S/o Sadashiv, DoB: 21.07.1976, Age: 45 years 07 months, Working as: ADME (Assistant Divisional Mechanical Engineer) (C&W) (Group "B" Post), Under Senior Divisional Mechanical Engineer (C&W), Pune, DRM's Office and residing at: Survey No. 37, Sasane Colony, Manjari Road, Keshav Nagar, Mundwa, Pune- 36, State of Maharashtra.

...Applicants

(By Advocate Shri R G Walia)

Versus

- 1) Union of India,
Railway Board,
Through - The Secretary,
Railway Board, Rail Bhavan,
Raisina Road, Rafi Ahmed Kidwai Marg,
New Delhi- 110 011.
- 2) Through- General Manager,
Central Railway, Headquarters Office,
CSTM, Mumbai- 400 001.

- 3) UPSC (Union Public Service Commission),
Through- The Secretary,
Union Public Service Commission,
Dholpur House, Shahajahan Road,
New Delhi- 110 069.

...Respondents

(By Advocate Shri V S Masurkar)

Reserved on :- 09.11.2017.

Pronounced on:- 19.12.2017

O R D E R

Per:- Hon'ble Shri R. Vijaykumar, Member (A)

This Application was filed by the applicants on 24.04.2017 who were initially appointed in a Group "C" Post in Central Railways, received promotion as Assistant Mechanical Engineer at the Group "B" level and after gaining 8-10 years service in this category, became eligible for promotion to the Group "A" category in the Junior Scale of IRSME in the Railways. These posts in the Group "A" cadre are filled by 50% direct recruitment and 50% by promotions and direct recruitment process is well under rule including for training, for the vacancy year 2015-16. However, no action has been taken, they would say, in respect of their promotions for which they are eligible by way of conduct of DPC which involves the Railway Board, their current employers, Central Railway and the UPSC, who have been cited as Respondents in this case. They have expressed concern that the delay in promotion have consequential

effects for the future years.

2. For the vacancy year 2015-16, they state that the Railway Board had issued a final seniority list on 11.07.2016 and they found place in that seniority list. Even though, this list itself was delayed, no further steps have been taken for promotion. They have accordingly sought the following reliefs:

"a) This Hon'ble Tribunal will be pleased to call for the records of the case in respect of INDUCTION/PROMOTION to Group "A" POST/GRADE of Junior Time Scale and after going through its propriety, legality and constitutional validity be pleased to Order and direct the Respondents to immediately process the cases of Eligible Candidates for the year 2015-2016 for the purpose of promotion/induction with all consequential benefits of pay fixation, arrears of pay, seniority.

b) This Hon'ble Tribunal will be pleased to hold and declare that the delay in conducting the DPC for promotion/induction of the Applicants to Group "A" Service is illegal and wrong and accordingly direct the Respondents to conduct relevant DPC and consider the case of the Applicants immediately with all consequential benefits.

c) Any other and further and additional orders as this Hon'ble Tribunal deems fit and necessary in the nature and circumstances of the case may be passed.

3. The Respondent Nos. 1 & 2 have filed their reply in 2017 and Respondent No.3, UPSC, has decided to accord with the response provided

by Respondent Nos. 1 & 2. However, on 04.12.2017, Respondent No.3 has filed a separate reply, in addition. In their reply, respondents emphasized that they have always tried to hold DPCs on time in accordance with the model calender but they are sometimes deterred by unprecedented circumstances. In the case of Group "B" officers for the Mechanical Department of Indian Railways, the promotions for 2014-15 were finalized after holding DPC with the approval of the Competent Authority and notifications were issued on 06.05.2016. Thereafter, DPC process for 84 vacancies of 2015-16 was initiated with the seniority list as on 01.04.2015 and was issued on 02.06.2016. This DPC proposal was sent to UPSC, respondent No. 3, but it was not accepted by the Commission. In their reply from Unit AP-4 dated 19.12.2016, stating:

"The proposal is impacted by DoP&T OM dated 30.09.2016 issued in context of Contempt Petition(C) No. 314/2016 in SLP(C) No. 4831/2012 - Samta Andolan Samiti through its President Vs. Sanjay Kothari & 2 Ors. The proposal comes under category (v) of the Commission's circular dated 05.10.2016. The proposal is both for UR and reserved vacancies but one reserve category person is at sufficiently high seniority position in the normal zone of consideration and the number of reserved category candidates in the extended zone of

*consideration also exceeds the number of reserved vacancies. Clarification has been sought from DoPT regarding the vacancies against which these officers would be reflected i.e. whether the reserved category would be adjusted first (in the order of seniority) to the extent reserved vacancies are available in a vacancy year and whether even after such adjustments some reserved candidates are left over, they may be recommended as per their seniority against the UR vacancies. **The reply of DOP&T is still awaited despite reminder.**"*

4. This situation of promotions not being made arose for the Stores, Traffic, Civil, Electrical, Telecommunication and Personnel Departments also and they have been similarly affected, since the promotion proposals conflicted with DoPT's OM No. 36012/11/2016-Estt.(Res.) dated 30.09.2016. They assert that they are continuing to press the matter with respondent No.3 as in their letter No. E(GP)2015/3/8 (Pt.I) dated 20.03.2017 and there is no delay on their part. On these grounds, they have held that the application is premature and needs to be dismissed.

5. Applicants have filed additional pleadings and referred to the reasons given by the respondents for not conducting the DPC because the matter is pending before the Hon'ble Apex Court in CP(C)No. 314/2016 In SLP No.

483/2012. They argue that the undertaking given by the learned Solicitor General and the orders of the Hon'ble Supreme Court have not required the respondents to stop conducting DPCs. They have also referred to a recent judgment of Hon'ble CAT, Ernakulam Bench in OA No. 564/2017 dated 31.08.2017, which dealt with a similar matter for promotion of applicants to the post of Assistant Passport Officer in accordance with the model calendar. In that case too, reference was made to the case pending before the Hon'ble Apex Court and when the DPC Proposals were sent to the UPSC, they were returned for the same reason recorded for the present application that which is the pendency of the Contempt Petition before the Hon'ble Apex Court. They had also referred to the same circular of DoPT in OM No. 36012/11/2016-Estt.(Res.) dated 30.09.2016, which directed that promotions may be held over until the SLPs are decided by the Hon'ble Supreme Court. The orders of the Hon'ble CAT, Ernakulam Bench read the undertaking provided by the Solicitor General in the Office Memorandum issued by the DoPT and reproduced Para-5 which reads as follows:

"In the light of the above, till such time that the SLPs are decided by the Hon'ble Supreme Court, while considering promotion, the DoPT OM

dated 10.08.2010 and Railway Board circular dated 14.09.2010 are not to be relied upon. The main matter along with the contempt petition is likely to be taken up for hearing on 22.11.2016."

6. Accordingly, Hon'ble CAT, Ernakulam Bench noted that the DoPT circular contemplated no blanket on promotions and only excluded reliance on the circulars of DoPT dated 10.08.2010 and Railway Board dated 14.09.2010 by which prohibitions extended to promotions of reserved category persons to unreserved posts. Accordingly, that Bench directed the respondents to consider all the eligible persons to conduct a DPC urgently and promote them from the date due, subject to the outcome of the orders of the Hon'ble Apex Court in the pending SLP.

7. The applicants have therefore urged similar orders to be passed in the present case giving that the circumstances are entirely identical except for the different departments involved.

8.

9. We have heard both the learned counsels and have carefully considered the facts and circumstances of the case, law points and contentions by parties in the case.

10. The single issue arising in this application is the refusal by the UPSC to convene a DPC

proposed by the Respondent Nos. 1 & 2 on the plea that SLP is pending before the Hon'ble Apex Court. A plain reading of the circular issued by the DoPT on 30.09.2016 suggests that no such ban was ever contemplated on promotions that were to be taken up in the normal posts. The only exception was that the previous orders which permitted promotions of reserved candidates to unreserved posts was the subject of dispute before the Hon'ble Supreme Court and in regard to which the learned Solicitor General had given an undertaking that this method could not be adopted until a decision is taken by the Hon'ble Supreme Court. Neither the learned Solicitor General nor the Hon'ble Supreme Court nor indeed, the DoPT, proposed a ban on all promotions of all reserved and unreserved candidates pending resolution of the matter by the Hon'ble Apex Court. In the Circumstances, it is appropriate to adopt a decision of Hon'ble CAT, Ernakulam Bench as cited above in the present case and to direct the respondent Nos. 1 & 2 to immediately resubmit their proposals for promotion to respondent No.3, who shall within four weeks, conduct a DPC and if the applicants as also others are found fit for promotion, they should be promoted w.e.f. the eligible date

notionally and benefits calculated accordingly. The promotions so conferred shall subject to the decision of the Hon'ble Apex Court in the above referred SLP.

11. This OA is, therefore, disposed off as above without any orders as to costs.

(R. Vijaykumar)
Member (A)

(Arvind. J. Rohee)
Member (J)

Ram.