

## **HIGHLIGHTS OF CIVIL APPEAL NO.9176 OF 2018 IN THE SUPREME COURT OF INDIA**

**Appellants - On behalf of Promote officers - Respondents - On behalf of Direct recruit officers**

### **Case Highlights of Civil Appeal No.9176 of 2018 in the Supreme Court of India**

1. Never ending war between promotees and direct recruits.
2. Recruitment to the Group 'A' service is by two modes - 50% by direct recruitment through UPSC and 50% by promotion from amongst Group 'B' officers in the feeder services.
3. Ministry of Railways issued a requisition to the UPSC for filling up vacancies in the Group 'A' service on 23.10.2007.
4. One of the direct recruit in IRSSE was duly selected and joined service on 14.12.2009.
5. 87 Group 'B' officers were promoted to Group 'A' w.e.f. 08.05.2014. They have been given benefit of weightage of 5 years of service rendered in Group 'B' service as per rule 334 of IREM Vol-1. ie, They were placed before DR joined the service on 14.02.2009.
6. DR challenged the seniority in CAT Patna. CAT Patna directed CRB to consider the DR's plea. CRB in his speaking order dated 09.06.2015 rejected the plea of DR.
7. DR filed fresh OA in CAT Patna pleading to recast the seniority list afresh on the basis of principle laid down by Hon'ble Supreme Court of India in NR Parmar Case and DOPT OM dated 04.03.2014 and to issue correction slip for IREM Vol-1.
8. None of the promotee officers was made a party in this O.A.
9. General Secretary of East Central Railway Promotee Officers Association, Hajipur filed an application for impleadment. CAT heard all the parties.
10. The CAT order dated 03.05.2016 partly allowed the O.A. The CAT held that the case of the direct recruit that he should be given seniority from 23.10.2007 is not acceptable. But the CAT went on to examine the speaking order dated 09.06.2015 passed by the CRB in the context of the DoPT circular dated 04.03.2014 and the judgment of Supreme Court passed in the N.R. Parmar's case and said that,
  - i. IREM Vol-1 in terms of rule 327 to 341 give maximum of 5 years of weightage to the promotes.
  - ii. In terms of rule 328 of IREM seniority of Group 'A' services shall be determined on the basis of 'date of increment in the time scale' (DITS).
  - iii. For DR, the DITS is to be reckoned from the date of commencement of earning increments in the regular scale.
  - iv. For Group 'B' officers promoted to Group 'A', the DITS would be determined by giving weightage in terms of rule 334.
  - v. The CAT ordered that, Railways must align their policy in consonance with the fundamental philosophy of N.R. Parmar.
  - vi. The ratio described for the DR and the promotees is 50:50 not maintained. Between the year 2001 to 2007 against 95 direct recruits, 376 promotees have been inducted.
  - vii. Provision of the IREM determining inter se seniority based on DITS are clearly flawed and arbitrary.
  - viii. Railways is directed to recast the seniority afresh and take necessary action to make corrections in the IREM in the light of the aforesaid observations within a period of four months.
11. CAT judgment was challenged in Patna High Court on behalf of Promotee officers.
  - i. The Patna High Court dismissed the petition on 12.05.2017 and went on to hold that
  - ii. IREM is not statutory in nature and is only a codified set of guidelines.

- iii. Power of the Railways to frame rules of the Indian Railway Establishment Code (IREC), which is statutory in nature, is only confined to Group 'C' and Group 'D' posts.
  - iv. Therefore, the Railways are bound by the OM issued by the DoPT dated 04.03.2014.
12. As per the direction issued by CAT on 03.05.2016, Railways amended the rules 327 to 341 of IREM on 05.03.2018,
- i. for determining the inter se seniority between direct recruits and promotes, which shall be determined and fixed on the basis of 'year of allotment' and not on the basis of 'DITS'.
  - ii. The amendment is applicable in all cases of fixation of inter se seniority of promote officers from the panel of 2012-13 and for DR 2006 examination onwards.
  - iii. Seniority has been refixed.
  - iv. Promotee officers who have been allotted 2008 as the 'year of allotment' have been given seniority over the DR and those promote officers who have been allotted 2009 as the year of allotment have been ranked en block junior to the DR of the year 2009.
13. According to direct recruits, placing some of the promotees above them was in violation of CAT Judgment and they file a contempt petition before CAT Patna, which was dismissed on 02.04.2018.
14. Direct recruits filed a writ petition before Patna High Court to quash the order passed by CAT Patna. Vide order dated 03.05.2018 the Supreme Court transferred this writ petition to its Court.
15. Counsel for promotes submitted that,
- i. the petition has been rendered infructuous in view of the amendment to rules 327 to 341 of IREM.
  - ii. However observations made by the CAT and the High Court that the DoPT circulars are binding on the Railways and that the observations of the Patna High Court that IREM has no statutory force are wrong and are liable to be set aside.
16. Counsel appearing for direct recruits submitted that
- i. IREM which provides weightage in seniority to the promotes was set aside by CAT.
  - ii. Continuing to give weightage to promotes account to contempt of the CAT.
  - iii. Rules which provide for giving weightage to promote officers are illegal and arbitrary.
17. Railways submitted that,
- i. Railways are empowered to frame their own rules
  - ii. IREMs are issued with the concurrence of the President of India in terms of article 309 of constitution.

## **JUDGEMENT**

### **I. Whether the Railways is bound by the rules framed by the DoPT or it can frame its own rules and whether the IREM has statutory force?**

- i. Allocation of Business Rules 1961 for DoPT

#### **ON RECRUITMENT, PROMOTION AND MORALE OF SERVICES**

General questions relating to recruitment, promotion and seniority pertaining to Central Services except Railways Services and ....

General policy matters regarding classification of posts and grant of gazetted status in relation to Services other than Railway Services

Recruitment of ministerial staff for the Government of India Secretariat and its attached offices except that for the Department of Railways ....

Appointment of non-Indians to Civil posts under the Government of India except posts under the Department of Railways.

## SERVICE CONDITIONS

... Conduct Rules relating to All India and Union Public Services except in regard to services under the control of the Department of Railways.....

Conditions of service of Central Government employees (excluding those under the control of the Department of Railways.....

General policy regarding retrenchment and revision of temporary Government servants except those under the Department of Railways

- ii. Supreme Court ruled that, as per Allocation of Business Rules 1961, Railways is specifically excluded from the ambit of the scope of business allocated to the DoPT, whether it be for classification of posts, recruitment of ministerial staff, appointment of non Indians to civil posts, fixing of service conditions, including conduct rules, general policy regarding retrenchment and revision of temporary service of the Railways etc.,
- iii. Apex court made it clear that if the DoPT issues a circular and the Railways specifically accepts the circular or makes it applicable, then such a circular may apply but if the circular is not made specifically applicable then it has no force so far as the Railways and its employees are concerned.
- iv. Ministry of Railways is having power to deal with all matters including those relating to Revenue and Expenditure. Therefore, the Ministry of Railways has the power to lay down conditions of service for its employees.
- v. DoPT itself has issued OM dated 16.02.2018 stating that the matters relating to recruitment, promotion & seniority in respect of Ministry of Railways do not fall within the jurisdiction of the DoPT.
- vi. Apex court held that Railways is not bound by the memorandum issued by the DoPT and are empowered to frame its own rules to lay down the service conditions of its employees.
- vii. Also hold that the IREM has statutory force and has been issued in exercise of powers vested under the proviso to Article 309 of the Constitution.

### **II. Whether Shri R.K. Kushwaha, the direct recruit had laid challenge to the rules, which provide for giving weightage in the seniority to the promotee officers?**

- i. The only case set up by the direct recruit was that he was entitled to seniority from 23.10.2007, the date on which requisition for filling up the direct recruit posts was sent and the promotees after being given due weightage of 05 years were entitled to seniority w.e.f. 08.05.2009.
- ii. Therefore, he cannot now urge that he had laid challenge to the rule providing for grant of weightage to the promotes.

### **III. Whether the findings of the CAT in respect of N.R. Parmar's case was limited to removing the arbitrariness only in respect of 'DITS'?**

- i. The Apex Court not at all in agreement with the interpretation sought to be given by the direct recruits to the decision rendered in N.R. Parmar's case, that they are entitled to seniority from the date of requisition.
- ii. As per the then existing rules, the persons so appointed/promoted would get seniority from the date when they joined.
- iii. In the present case though the requisition for selection was sent in the year 2007, the vacancies related to the year 2009 and, therefore, the CAT as well as the High Court rightly held that the direct recruits were not entitled to promotion from the year 2007.
- iv. The CAT only ordered that the arbitrariness which may arise due to fixation of 'DITS' be removed by fixing the 'year of allotment' as the relevant criteria.

### **IV. Whether by issuing the memorandum dated 05.03.2018 amendment/modifying rules 327341 the Railways have violated the order issued by the CAT?**

- i. CAT ordered was that the IREM determining the inter se seniority based on DITS was clearly flawed and arbitrary. The CRB's speaking order dated 09.06.2015 and order dated 12.12.2014 fixing the

seniority of the 87 promotee officers were quashed and set aside being violative of the judgment of this Court in N.R. Parmar's case and DoPT guide lines.

- ii. There was no challenge to Rule 334 which provides for giving weightage to the promotes and the CAT did not went into the validity of Rule 334.
- iii. All that the CAT held was that instead of the 'DITS' being the determining factor to determine the year of promotion, the seniority would be determined with reference to the 'year of allotment' following the principle of IAS Rules.
- iv. The CAT itself has clearly held that it had not at all dealt with the issue whether promotees were not entitled of being granted weightage of 5 years service for determining the seniority.
- v. It has also been urged that most of the promotees are already getting higher emoluments than are payable to the direct recruits on their induction and this is also a factor taken into consideration for granting this weightage.
- vi. The Apex Court clearly held that there was no challenge to Rule 334 in the original application and such a challenge cannot be entertained either in contempt proceedings or on behalf of the respondents while defending the appeal in this Court.
- vii. The Apex Court made it clear that it has not expressed any opinion on the rival contentions of the parties on this issue.
- viii. The situation as on date is that rules have been amended. These rules have to be implemented. Neither the promotees nor the direct recruits have challenged these rules. The Supreme Court therefore, not gone into other issues raised by the parties.

**The Supreme Court has held that**

- i. **CAT had only directed that instead of 'DITS', the 'year of allotment' should be the determining factor/criteria for determining the *inter se* seniority.**
- ii. **There was neither any challenge to Rule 334 of the IREM Vol. 1 in the original application nor did the CAT go into this issue.**
- iii. **Uphold the order dated 02.04.2018 passed by the CAT Patna Bench dismissing the contempt petition filed by the direct recruit.**
- iv. **Writ Petition before the Patna High Court was dismissed.**

**Compiled by  
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