IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH AT NEW DELHI

**OA No.45 of 2015**

BETWEEN:

Abhay Kumar & 4 Ors. ... Applicants

 AND

Union of India,

Rep.by It’s Secretary,

Rail Bhavan,

New Delhi and one other. …. Respondents

**Reply Affidavit filed on behalf of Respondent No. 1 and 2**

1. I, Ashwani Kumar S/o………………….. aged about …………. years, Occ: Government Service, do hereby solemnly affirm and state as follows.

 2. I am working as Dy. CPO/Gaz. in the office of the respondent No.1 herein and am conversant with the case based on records. I am authorized to file this reply on behalf of Respondents No.1 and 2. I deny all the material averments made in the OA except those that are admitted hereunder. Applicant may be put to strict proof of the same.

3. Before giving the reply on merits the deponent wishes to submit the following facts by way of preliminary submissions:

**Preliminary Submissions: -**

1. The applicants are direct recruit IRSME officers of 2009 UPSC examination batch and are aggrieved with the impugned rule 334(2)(ii), approved by the president, permitting weightage in seniority to promotee Gr. ‘A’ officers(Gr. ‘B’ officers inducted in Gr. ‘A’ by UPSC) contained in Indian Railway Establishment Manual – Vol. I in short IREM-I (Annexure R-1).
2. As per the rule 328 of the IREM-I, the seniority of officers appointed to various Indian Railway Services in Gr. ‘A’ Junior Time Scale shall be determined on the basis of Date for Increment in time scale(DITS), which is the date of joining service for direct recruits and is arrived at for promotees after their induction in Gr. ‘A’ by giving weightage in seniority based on (a) years of service connoted by the initial pay on permanent promotion to Gr. ‘A’ or (b) half the total number of years of continuous service in Gr. “B’ both officiating and permanent , whichever is higher, subject to a maximum of five years.
3. As per rule 330 officers appointed to Indian Railway Services Gr. ‘A’ on the basis of examinations held by the Union Public Service Commission(UPSC) w.e.f 1986 examination batch shall count service for seniority from the date they commence earning increments in the regular scale as Junior Scale officers in Gr. ‘A’,(DITS) subject to the condition that the inter-se-seniority of officers in each service recruited as probationers in a particular year will be regulated by their place in the order of merit.
4. In case of Gr. ‘B’ officers permanently promoted to Junior Scale Gr. ‘A’ service impugned rule 334 of the IREM- I provides as under:-

*334. In the case of Group B officers permanently promoted to Junior Scale of group ‘A’ Services:*

1. *Officers of a particular department promoted from the earlier panel shall rank senior to officers promoted from the later panel,*
2. *If two or more than two officers are promoted on the same date, the following method shall be followed to determine their inter-se-seniority within the Railway:-*
3. *The relative seniority of officers of each Railway shall be in the order of their position in the panel for that Railway.*
4. *The Date of Increment in the Time Scale (DITS) of the above officers, shall be determined by giving weightage based on:*

*(a) The year of service connoted by the initial pay on permanent promotion to Group A service; or*

*(b) Half the total number of years of continuous service in Group B, both officiating and permanent whichever is more subject to a maximum of 5 years; provided that the weightage so assigned does not exceed the total non-fortuitous service rendered by the officer in Group B*

1. *The DITS of the junior officer (s) in any Railway shall not be earlier than the DITS of his immediate senior in the same panel,*
2. *The integrated seniority of the officers on All India Railways basis, shall be determined as under:-*
3. *The integrated seniority shall be on the basis of DITS, the officers having earlier DITS being senior,*

*The inter-se seniority of officers having same DITS shall be in the order of the length of non-fortutous service Group B.*

*(V)* As per rule 336 of the IREM-I, officers permanently appointed to Gr. A Junior Scale (promotes) against the quota of vacancies reserved for them shall be placed below or above a particular batch of direct recruits accordingly as their DITS are earlier or later than the earliest date on which any one of the direct recruits in a particular batch joins service.

(VI) It is not an invariable rule that seniority should be determined only on the basis of the respective date of appointment to the post and that any departure from it would be unreasonable and illegal. It is open to the rule making authority to take a note of the relevant circumstances obtaining in relation to each department and determine objectively the rules that should govern the inter se seniority and ranking. The principle of granting seniority on the basis of weightage of past service and lower service to the category of pomotee officers is well known and recognised in the service jurisprudence.

(VII) It is settled law that the appointing authority can frame rules governing seniority which are reasonable keeping in mind the divergent claims by various categories of the members of the service. It is however, necessary that there should be no discrimination, that is, persons placed in the same group must be treated similarly and further, that any principle which is made the basis of determination of seniority should, if applicable to others, be applied to them also.

(VIII) In the case of Anand Prakash Saksena Vs. Union of India Hon’ble Apex Court considered the rules of seniority contained in the Regulation of Seniority Rules and the Special Recruitment Seniority Regulation, 1960 to be valid not offending Articles 14 and 16 of the Constitution. Under Rule 3(3)(b) of the Regulation of Seniority Rules the year of allotment of a promote was to be determined by his continuously officiating on a senior scale post included in the Indian Administrative Service. Under Regulation 3(3) of the Special Recruitment Seniority Regulations, 1960, the year of allotment of special recruits was to be determined by the formula. While upholding the validity of these rules and not regarding them to be arbitrary or discriminatory, it was observed the pormotees can claim that total length of service in the Provincial Civil Service be considered for determining seniority. On the other hand, the direct recruits can say that the seniority should depend upon their entry in the Indian Administrative Service. Hon’ble Apex Court took the view that the rule contained in clause (b) and (c) of Rule 3(3) was a mean between these extreme views and was regarded to be just and fair

(IX) Weightage for promotes has been allowed under the rules considering the fact that the average age of promotes is always much higher than the direct recruits. Reason being the promotes initially recruited through Gr’C’ render long years of service in Gr. ‘C” before getting into Gr.’B’ (30% through Limited Departmental Examination and rest 70% on seniority cum suitability). Even, in the this stream those coming through seniority cum suitability are relatively older then those coming through LDCE. This has an imbalance in the service conditions of promotes and direct recruits and is the root cause of frustration amongst the promotes. Apart from the imbalance in service, the promotes would be denied of the higher pay scale like Selection Grade and Senior Administrative Grade etc, since it is given on the basis of merit and seniority of the officers in Gr. ‘A’ Junior Scale. With a view to remove the frustration of promotes resulting from the aforesaid imbalance the president as rule making authority took a considered view to allow maximum weightage of five years in seniority to promotes on permanent promotion to Gr. ‘A’ Junior Sclae, in terms of impugned rule 334 (2)(ii) of IREM-I.

4. FACTS OF THE CASE

4.1 Para 4.1 being formal no comments are offered.

4.2 The various representation from Secretary General Federation of Railway officers Association received in Board’s office were duly examined and there was no anomaly in fixation of seniority based on rules framed by the president. The Board was apprised of the correct rule position, which is being followed without any deviation in determination of inter-se-seniority of direct recruits vis-a-vis promotees.

4.3 No comments

4.4 It is admitted that on 17.12.2014 DITS and inter-se-seniority position of promote Gr. ‘B’ officers of Mechanical Engineering Department substantively appointed to Gr. ‘A’ Junior Scale with effect from 26.08.2014 against the promote quota vacancy for the year 2012-13 and 2013-14 was issued after allowing weightage to the promotes in terms of the principles laid down in rule 334 (2) (ii) of IREM-I. The promotes were given the maximum weightage of five years and were assigned the DITS of 26.08.2009, in terms of ibid rule and were placed below the junior most direct recruit Mechanical officer of 2007 UPSC examination batch (earliest joining 15.12.2008, being notional DITS of whole batch in terms of rule 336) and above the senior most Direct Recruit Mechanical officer of 2008 UPSC examination batch earliest joining 14.12.2009.

4.5 The principle of granting seniority on the basis of weightage of past service and lower service to the category of pomotee officers is well known and recognised in the service jurisprudence. In the case of Anand Prakash Saksena Vs. Union of India Hon’ble Apex Court considered the rules of seniority contained in the Regulation of Seniority Rules and the Special Recruitment Seniority Regulation, 1960 to be valid not offending Articles 14 and 16 of the Constitution. Under Rule 3(3)(b) of the Regulation of Seniority Rules the year of allotment of a promote was to be determined by his continuously officiating on a senior scale post included in the Indian Administrative Service. Under Regulation 3(3) of the Special Recruitment Seniority Regulations, 1960, the year of allotment of special recruits was to be determined by the formula. While upholding the validity of these rules and not regarding them to be arbitrary or discriminatory, it was observed the pormotees can claim that total length of service in the Provincial Civil Service be considered for determining seniority. On the other hand, the direct recruits can say that the seniority should depend upon their entry in the Indian Administrative Service. Hon’ble Apex Court took the view that the rule contained in clause (b) and (c) of Rule 3(3) was a mean between these extreme views and was regarded to be just and fair. It is submitted that 30% promotions to Gr. ‘B’ posts on the Railways(interchangeable with Gr. ‘A’ posts, in the sense the same post is sometime occupied by Gr. ‘A’ officer and sometimes by Gr. ‘B’ officer, there is no earmarked Gr. ‘B’ and Gr. ‘A’ posts on Indian Railways) are made from the apex Gr. ‘C’ post through Limited Departmental Examination, and rest 70% through seniority cum suitability. Only very senior Gr. ‘C’ officers having rendered long years of service in apex Gr. ‘C’ post are empanelled to Gr. ‘B’ post against the 70% quota on the basis of seniority cum suitability. When these promote officers get empanelled to Gr. ‘A’ Junior Scale through UPSC against their quota, although they have rendered long years of service in the Railway System their total service in Gr. ‘B’ is sometimes less then 10 years to entitle them to maximum weightage of five years. To protect the interest of such promote officers and to fully utilize their long experience of the Railway System, rule making authority made the provision of connoted pay for weightage, which is again restricted to maximum of five years only. Provided further, that the weightage so assigned does not exceed the total non-fortuitous service rendered by the officer in Gr. ‘B’, implying even if by the connoted pay if Gr. ‘B’ officer on induction is eligible for 8 or 9 years of weightage but he has rendered only 4 years of service in Gr. ‘B’ then the weightage assigned to him is to restricted to not more than 4 years.

 4.6. The averments made in the para are wrong and denied. Special provision (weightage), for the promotes, who are distinct class is admissible under Article 16 of the Constitution. The direct recruits and promote have been treated as two different and distinct class and the rule has been uniformally applied without any discrimination. Therefore, the O.A is liable to be dismissed with cost.

5. Grounds for relief with legal provisions:

5.1 There is no violation of Article 14 and 16 of the Constitution which provides for equality before the law and equal protection of the law, as alleged by the applicant. Inter –se-seniority of direct recruit and promotes is determined in terms of rule laid down in para 334 (2)(ii) of IREM-I. The rule lays down elaborate guidelines for extending maximum weightage of five years to the promotes, who have been treated as a class. The applicant has not brought out how Article 14 and 16 has been violated as he is a direct recruit officer and his seniority vis-a-vis that of the promotes has been fixed in terms of rule made by the president.

5.2 The applicant has rightly quoted the pronouncements of the Hon’ble Apex Court, But has not brought out how he has prior right for consideration for promotion to the next higher grade before the senior promotes who have been assigned seniority above him after allowing the necessary weightage in terms of rule 334 (2)(ii) of IREM-I.

5.3 It is not denied that the applicant has the fundamental right under Article 16 to be considered for promotion to the higher grade but the applicant has no right to be promoted before the senior promote officers who have been assigned seniority above him in terms of rule 334(2)(ii) of IREM-I.

5.4 The averments made by the applicant is wrong and denied. The weightage under Rule 334(2)(ii) is allowed based on (a) the year of service connoted by the initial pay on permanent promotion to Gr. ‘A’ service or (b) half the total number of years of continuous service in Gr. ‘B’ both officiating and permanent, whichever is more, subject to a maximum of five years; provided that the weightage so assigned does not exceed the total non-fortuitous service rendered by the officer in Gr. ‘B’. It has already been submitted in para 4.5 above that 30% promotions to Gr. ‘B’ posts on the Railways(interchangeable with Gr. ‘A’ posts, in the sense the same post is sometime occupied by Gr. ‘A’ officer and sometimes by Gr. ‘B’ officer, there is no earmarked Gr. ‘B’ and Gr. ‘A’ posts) are made from the apex Gr. ‘C’ post through Limited Departmental Examination, and rest 70% through seniority cum suitability. Only very senior Gr. ‘C’ officers having rendered long years of service in apex Gr. ‘C’ post are empanelled to Gr. ‘B’ post against the 70% quota on the basis of seniority cum suitability. When these promote officers get empanelled to Gr. ‘A’ Junior Scale through UPSC against their quota, although they have rendered long years of service in the Railway System their total service in Gr. ‘B’ is sometimes less then 10 years to entitle them to maximum weightage of five years. To protect the interest of such promote officers and to fully utilize their long experience of the Railway System, rule making authority made the provision of connoted pay for weightage, which is again restricted to maximum of five years only. Provided further, that the weightage so assigned does not exceed the total non-fortuitous service rendered by the officer in Gr. ‘B’. Once the seniority has been fixed in terms of above rule consequential promotions will automatically flow from the date from which seniority has been fixed. Asking the promotes to render four years of service for promotion to Senior Time Scale will have the effect of doing away with the weightage allowed to the promotes.

5.5 The averments made in the para are wrong and denied. As per the Gazette notification dated 31.07.1997, 50% of the Junior Scale Gr. ‘A’ vacant post every year is filled through the direct recruitment and 50% by promotion of Gr. ‘B’ officers of Mechanical Engineering department. While direct recruit officers have to render minimum four years of service in Junior Time Scale before they become eligible for consideration for promotion to Senior Time Scale. Most of the promote Gr. ‘B’ officers at the time of induction to Gr. ‘A’ junior Scale, already work in ad-hoc Senior Time Scale. After their induction in Gr. A Junior time scale they get weightage in seniority in terms of rule 334(2)(ii) and consequential promotion to the next higher grade thereby they vacate the promote slot every year to be occupied by the next batch of promotes.

5.6 The averments made in the para are denied. As has been brought out in above para that most the promotes at the time of induction to Gr. ‘A’ Junior Time Scale are already working in Senior Time Scale on ad-hoc basis.

5.7 The averments made in the para are wrong and denied. In the illustration cited by the applicant in para 5.6 above the promotes of 2000 vacancy year, will be placed below or above 1995 direct recruit officer depending on their assigned DITS and date of Joining Service by the direct recruit. On the event of their placement below 1995 batch they will not have any claim for promotion to Senior Time Scale before all their seniors of 1995 batch get promoted and so on for subsequent years.

5.8 The averments made in the para are wrong and facts have been distorted to mislead this Hon’ble Tribunal. The contention of the applicants that the weightage is being allowed solely on the basis of connoted pay is wrong. Rule 334(2)(ii) stipulates that DITS of promote officers shall be determined by giving weightage based on:

(a) the year of service connoted by the initial pay on permanent promotion Gr. Gr. ‘A’ Service or

(b) half the total number of years of continuous service in Gr. ‘B’

Whichever is more, subject to a maximum of 5 years provided that the weightage so assigned does not exceed the total non-fortuitous service rendered by the officer in Gr. “B”.

In terms of the rule even if the promote officer has pay connoting eight or nine increments in Gr. ‘A’ he will be eligible for weightage of five years only. Also a promote officers having higher pay connoting eight or nine increments in Gr. ‘A’ who has rendered lets say only three years of service in Gr. ‘B’ will get the weightage of maximum three years only because assigned weightage should not exceed the total non-fortuitous service rendered by the officer in Gr. ‘B’.

The averments of the applicants that after sixth pay commission the pay difference between Gr. ‘B’ and Gr. ‘A’ officers has virtually disappeared and therefore weightage based on connoted pay is arbitrary and violate of Article 14 and 16 of the Constitution, is absolutely wrong statement and has been made with motive to mislead this Hon’ble Tribunal. Table produced below detailing the apex Gr. “C” “B” and “A” pay scale during previous pay commission will make the things crystal clear:

|  |
| --- |
| **4TH PAY COMMISSION** |
| Apex Gr. ‘C’ scale | Rs.2350-3350/- |
| Gr. ‘B’ Scale | Rs.2000-3500/- |
| Gr. ‘A’ Scale | Rs.2200-4000/- |
| **5TH PAY COMMISSION** |
| Apex Gr. ‘C’ scale | Rs.7450-11500/- |
| Gr. ‘B’ Scale | Rs.7500-12000/- |
| Gr. ‘A’ Scale | Rs.8000-13500/- |
| **6TH PAY COMMISSION** |
| Apex Gr. ‘C’ scale | Rs.9300-34800 and GP Rs.4200/- |
| Gr. ‘B’ Scale | Rs.9300-34800 and GP Rs.4800/-. 80% in GP Rs.5400/- |
| Gr. ‘A’ Scale | Rs.15600-39100 and GP Rs.5400/ |

It is thus clear from the above that Gr. C staff were allotted higher initial pay during 4th CPC then Gr. ‘B’ and Gr. ‘A’ officers and the staff on promotion to Gr. ‘B’ or Gr. ‘A’ had the right for pay protection. This position was slightly altered during the 5th CPC and Gr. C staff was allowed Rs. 50 less than the Gr. B officers. The disparity became more evident /glaring during the 6th CPC, contrary to the contention of the applicants before this Hon’ble Tribunal.

As regards allowing weightage based on pay and years of Gr. ‘B’ service is concerned the justification for the same has been elaborated in detail in para 5.4 above.

5.9 The contention in the para are wrong and denied. It is not an invariable rule that seniority should be determined only on the basis of the respective date of appointment to the post and that any departure from it would be unreasonable and illegal. It is open to the rule making authority to take a note of the relevant circumstances obtaining in relation to each department and determine objectively the rules that should govern the inter se seniority and ranking. The principle of granting seniority on the basis of weightage of past service and lower service to the category of pomotee officers is well known and recognised in the service jurisprudence. Para 3(3) on assignment of year of allotment of The Indian Administrative Service (Regulation of Seniority) Rules , 1987 lays down:

(3) The year of allotment of an officer appointed to the Service after the commencement of these rules shall be as follows:-

(i) the year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held.

1. The year of allotment of a promote officer shall be determined with reference to the year for which the meeting of the Commitee to make selection , to prepare the select list on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him in the State Civil Service not below the rank of a Deputy Collector or equivalent, up to the 31st day of December of the year immediately before the year for which meeting of the Committee to make selection was held to prepare the select lis on the basis of which he was appointed to the Service, in the following manner:-
2. For the service rendered by him upto twenty one years, he shall be given a weightage of one year for every completed three years of service, subject to a minimum of four years.
3. He shall also be give a weightage of one year for every completed two years of service beyond the period of twenty one years, referred to in sub-clause (a), subject to a maximum of three years.

5.10 The case cited by the applicant is irrelevant to the present case. In the instant case issue for consideration is admissiability of weightage or otherwise to promote officers who continue to discharge the duties of Gr. ‘A’ post while working in Gr. ‘B’ and before induction to Gr. ‘A’ because there are no separate and distinct Gr. ‘B’ and Gr. ‘A’ posts on the Indian Railway. The principle of granting seniority on the basis of weightage of past service and lower service to the category of pomotee officers is well known and recognised in the service jurisprudence.

5.11 The applicants have rightly quoted the judgement but have misinterpreted the same. In the instant case seniority letter dated 17.12.2014 has been questioned. The said seniority list has been prepared strictly in accordance with the rules framed by the President in para 334(2) (ii) of IREM –I and these rules are consistent with Article 14 and 16 of the Constitution. Therefore, the views of the Hon’ble Apex Court in Pawan Pratap Singh vs. Reevan Singh, (2011)3 SCC 267, that inter –se-seniority in a particular service has to be determined as per the service rules, has been scrupulously followed, in determining inter –se- seniority

5.12 The averments made in the para are wrong and denied. Once the seniority has been assigned to promote officers, after giving due weightage, on their induction to Gr. ‘A’ in terms of the rule, consequential promotion to higher grade will naturally flow from it. It will not be out of context to mention here that Gr. ‘B’ officers while working in Gr. “B’ and ad-hoc Senior Scale discharge the duties of Gr. ‘A’ posts, as there are no separate and earmarked Gr. ‘B’ and Gr. ‘A’ posts on Indian Railways. The same post is sometime occupied by direct recruit Gr. ‘A’ Junior Scale officer and at other time by promote Gr. ‘B’ officer.

5.13

5.14

5.15 The averments made in the para are wrong and denied. Hon’ble Apex Court in the matter of A K Nigam vs. Sunil Misra (Annexure R- ) against grant of weightage of five years to promotes for purposes of seniority as per rule laid down that “ It is settled law that the appointing authority or the appropriate Government can frame rules governing seniority which are reasonable keeping in mind the divergent claims that can be put forward by the various categories of the members of the service. It is , however, necessary that there should be no discrimination, that is, persons placed in the same group must be treated similarly and, further, that any principle which is made the basis of determination of seniority should, if applicable to others, be applied to them also. In other words, if seniority is to depend purely upon the date of confirmation or the date of appointment, that rule should be applicable to all, but if the promotes and special recruits are being given weightage, the principles applicable to the members of the service should be kept in mind while determining the weightage to be given or while laying down rules for determination of seniority.

5.16

5.17 The averments made in the para are wrong and denied.