(2014) 08 DEL CK 0026

Delhi High Court

Case No: W.P.(C) 8100 and 8107/2013

Manoj Kumar		APPELLANT
	Vs	
Union of India		RESPONDENT

Date of Decision: Aug. 29, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Vipin Sanghi, J; S. Ravindra Bhat, J

Bench: Division Bench

Advocate: Kailash Vasdev, Sr. Advocate, Tarun Gupta, Shreyans Singhvi, Umrao Singh Rawat, Ekta Mehta and Joann Pudussery, Advocate for the Appellant; Ruchir Mishra, Sanjiv K. Saxena, Padma Kumar S., Naresh Kaushik, Aditi Gupta, Amita Kalkal Chaudhary, Prasant Sivarajan for Ankur Chhibber, Advocate for the Respondent

Final Decision: Dismissed

Judgement

S. Ravindra Bhat, J.
In these two proceedings under Article 226 of the Constitution, a common order of the Central Administrative Tribunal (CAT) dated 26.09.2013 in O.A. No. 2898/2012 and O.A. No.3000/2012 have been challenged. In both these proceedings, the petitioner"s non-inclusion for promotion to the post of Additional Director General in the Central Engineering Service for the vacancy years 2011-12 and 2012-13 have been challenged. Additionally, the petitioner had challenged the Central Engineering Service (Roads) Group A Rules, 2003 (hereafter called "the 2003 Rules ") as inconsistent and arbitrary.

2. The petitioner was appointed as Assistant Executive Engineer (Roads Wings), after he qualified in the Central Engineering Service (CES) entrance examination 1980, on 31.05.1982. The CES was governed by the rules which were replaced in 1995 and subsequently amended on 31.03.1997. The petitioner was promoted as Superintending Engineer on 11.06.1997; the contesting respondent, Sh. S.N. Das was promoted to the grade of Superintending Engineer in the Mechanical Wing on 16.08.2002. It is not in

dispute that, subsequently, on 06.10.2008, Sh. S.N. Das was promoted as Chief Engineer; the petitioner was promoted as Chief Engineer, on the other hand, on 15.07.2009.

3. The 2003 Rules provided inter alia that the maintenance of the service (Chief Engineers) was to be in accordance with the manner indicated by its provisions. Rule 5(1) and 5(2) prescribed that vacancies in the grades of Assistant Executive Engineer (Civil) and Assistant Executive Engineer (Mechanical) were to be filled up by direct recruitment on the basis of the results in the Central Engineering Services Examinations. Rule 5(3) provided as follows:

"Appointments in the Service to the posts of Chief Engineer, Superintending Engineer and Executive Engineer shall be made by promotion from amongst the officers of the respective discipline (Civil or Mechanical) in the next lower grade with minimum qualifying service as specified in Schedule II. Appointment to the posts of Additional Director General and Director General (Roads Development) and Special Secretary shall be made by promotion from amongst the officers in the next lower grade(s) with minimum qualifying service as specified in Schedule II. "

4. The relevant portion of Schedule-II, which is relevant for determining the eligibility conditions for promotion to the post of Additional Director General and Director General respectively provided as follows:

"Schedule-II

[See Rule 5(3)]

Method of recruitment, field of promotion and minimum qualifying service in the next lower grade for appointment of officers on promotion to duty posts included in various grades of Central Engineering Service (Roads) Group "A" of the Ministry of Road Transport and Highways:

XXXXXX XXXXXX XXXXXX "

5. As noticed earlier, the petitioner was promoted to the post of Chief Engineer on 15.07.2009 whereas one of the private respondents, Sh. S.N. Das was likewise appointed on 06.10.2008; whereas the petitioner was promoted as Chief Engineer (Civil), the said Sh. S.N. Das was promoted as Chief Engineer (Mechanical). The report of the Sixth Pay Commission recommended uniformity in the eligibility criteria across various Group-A services for promotions. In the wake is report, the Department of Personnel and Training (DOPT), Central Government on 15.12.2009 issued an Office Memorandum which inter alia provided as follows:

"2. The 6th CPC have also recommended for bringing uniformity in eligibility criteria across various organized Group "A" Services for promotions. The issue has been

examined and in the light of these it has been decided that the following steps to amend the existing Service Rules shall be undertaken on priority basis:

(i) For promotion to SAG level, the eligibility requirement shall be "Officers in the JAG with 8 years" regular service in the grade including NFSG OR Officers with 17 years regular service in Group "A" posts in the service out of which at least 4 years regular service should be in the JAG (including service rendered in the NFSG of the JAG. "

(ii) For promotion to HAG level, the eligibility requirement shall be "Officers in the SAG with 3 years" regular service in the grade OR Officers with 25 years" regular service in Group "A" posts in the service out of which at least 1 year" regular service should be in the SAG. "

3. The cadre controlling authorities of the various Organized Group A Services may initiate action for appropriate amendments in the Service Rules.

XXXXXX XXXXXX XXXXXX "

6. The petitioner approached the CAT firstly through O.A. No. 2898/2012, claiming that Sh. S.N. Das was wrongly included in the list for promotion to the post of Additional Director General, which according to him was arbitrary. Likewise, in O.A. No. 3000/2012, a similar grievance with respect to inclusion of the name of Sh. Nandan Singh and Sh. S.N. Das for the other panel year was impugned. In both the applications, common grounds were urged. It was firstly stated that the petitioner was senior to the private respondent and ought to have been considered and his claims for promotion could not be ignored. It was next urged that the recruitment rules did not permit promotion of officers from the Mechanical Wing to the post of Additional Director General and Director General, which had to be filled from amongst eligible officers of the Civil Wing only. The petitioner relied upon the seniority list maintained by the official respondents in the various cadres up to Superintending Engineer, to urge that he was clearly senior to those considered for promotion and, therefore, his claims could not be ignored.

7. The official respondents (hereafter collectively referred to as "the Central Government ") in its reply stated that with the advent of the 2003 Rules, the post of Director General (RD) and Additional Director General were classified in Schedule-I with reference to the name, number and scale of pay of different posts included in the various grades of Central Engineering Services. It had nothing to do with the method of recruitment, promotion and qualifying service in the next lower grade for appointment and on promotion to those posts. The mere mention of "Additional Director General " and "Director General " under the heads "Civil Engineering " in the First Schedule, according to the Central Government, did not mean that those were to be filled-up from amongst officers of civil engineering branch. The Central Government stated that field of "promotion", of "minimum qualification" for next lower grade for appointment of officers was defined in Schedule-II of the recruitment rules and that consequently there was no

inconsistency. The Central Government also relied upon the Office Memorandum dated 15.12.2009, which allowed consideration of officers with 25 years'' regular service in Group A posts out of which at least one year''s regular service should have been in the Senior Administrate Grade (SAG) as against the existing requirement of three years'' regular service, in the rules. The Central Government went on to explain that for 2011-12, only one clear vacancy in the post of Additional Director General arose due to the superannuation of an incumbent officer on 31.05.2011. When the names were processed, it was found that only one officer ï¿½ Sh. A.K. Sharma, Chief Engineer fulfilled the eligibility criteria of possessing the service in the SAG as on 01.01.2011. Further, he was assessed and found unfit for vacancies for the years 2011 and 2012 due to his below-benchmark gradings for the two years. In the Central Government''s opinion, since it was almost certain that the said Sh. A.K. Sharma would be rendered unfit for the vacancy in 2011-12, which potentially led to a situation where no one could have been considered under the rules, the DOPT''s approval by way of relaxation was sought to fill-up the vacancies in accordance with the Office Memorandum dated 15.12.2009. It was submitted that six officers were found eligible on the basis of their having rendered 20 years of regular service in the Group A posts, with at least one year''s regular service in the SAG, who were eligible ï¿½ Sh. A.K. Sharma, Sh. S.K. Marwah, Sh. V.L. Patankar, Sh. Chaman Lal, Sh. S.N. Das and Sh. Manoj Kumar. It was submitted further that the Central Government followed the DOPT guidelines dated 11.11.2010, which inter alia stated as follows:

"where promotion to a grade/post are made from more than one grade and no quota has been fixed for various feeder grades owing to a smaller number of posts in the promotion grade, in such cases it would be required to prepare a combined eligibility list of the candidates from various feeder grades with due regard to inter-se seniority of the candidates of various feeder grades for preparation of combined eligibility list of the candidates from various feeder grades/broad parameter is date of completion of qualifying service prescribed in the relevant recruitment rules, in the feeder grade for promotion and if the aforesaid date is same then date of completion of the qualifying service in the feeder to feeder grade. "

8. The Central Government further submitted that following the existing criteria of considering five names for a single vacancy, the names of the senior-most five, i.e. Sh. A.K. Sharma, Sh. S.K. Marwah, Sh. V.L. Patankar, Sh. Chaman Lal and Sh. S.N. Das were taken up for consideration. Since the petitioner was the sixth officer and fell outside the zone of consideration. Of the five, Sh. A.K. Sharma was found unfit whereas Sh. S.K. Marwah and Sh. V.L. Patankar were assessed and found fit for promotion. However, since Sh. S.K. Marwah was due to retire on 30.11.2011, Sh. V.L. Patankar''s name was recommended. The names of the other two, i.e. Sh. Chaman Lal and Sh. S.N. Das could not be considered.

9. For the next vacancy year, it was contended that the petitioner did not fulfil the eligibility criteria of possessing the qualifying service in the grade of Chief Engineer as on

01.01.2012 whereas Sh. S.N. Das fulfilled that criteria. For this period, the Central Government did not seek any relaxation in terms of the Office Memorandum dated 15.12.2009 as three Chief Engineers were eligible for promotion to the post of Additional Director General in terms of the recruitment rules.

10. The CAT was of the opinion that the reliance on the Office Memorandum dated 15.12.2009 for the basis of considering the eligibility was not sound. It was of the opinion that once the recruitment rules existed, there is no question of applying any criteria which are different from the conditions prescribed in the rules, since the executive instructions cannot supersede the rules which have force of law. As regards the other contention made by the petitioner that he was senior to Sh. S.N. Das and, therefore, he is to be considered, the CAT was of the opinion that firstly there was no force in the submission with regard to the post of Additional Director General having to be filled-up only from amongst the officers of Civil Wing and that eligible Chief Engineers from both the Civil and Mechanical Wing were to be considered on the basis of a combined eligibility list. Taking note of the fact that Sh. S.N. Das was promoted as Chief Engineer on 06.10.2008 and had completed the three years'' qualifying service on 05.10.2011, whereas the petitioner was promoted as Chief Engineer on 15.07.2009 and would have completed the qualifying service on 15.07.2012, the CAT held that there was no infirmity and that the Central Government acted in accordance with law in promoting Sh. S.N. Das. The CAT further went on to hold that there was no justification for the Central Government to invoke the provisions of the Office Memorandum dated 15.12.2009 given that the recruitment rules were clear and unequivocal with regard to the qualifications, experience and eligibility conditions etc. for promotion to the post concerned.

11. The petitioner argues that the impugned order has fallen into error in as much as it upholds the application of the Office Memorandum dated 15.12.2009 for one vacancy year, i.e. 2011-12 whereas for the next year, it is held inapplicable. It is next contended that if the Central Government''s position in recommending the relaxation of the recruitment rules of 2003 on account of absence of eligible officers were to be considered, the denial of promotion to the petitioner was arbitrary. Expanding on this submission, Sh. Kailash Vasdev, learned senior counsel contended that the petitioner joined the service in Group A post in Central Engineering Service on 05.04.1982, whereas the seventh respondent joined as Assistant Executive Engineer on 17.03.1989. Clearly, therefore, Sh. S.N. Das was ineligible, on a textual application of the Office Memorandum dated 15.12.2009, which required 25 years'' service in Group A post. It was further submitted that the petitioner was an Executive Engineer even as Sh. S.N. Das continued as Assistant Executive Engineer and that even in the cadre of Superintending Engineer, the petitioner was senior, whereas the seventh respondent was junior to him. Learned counsel thirdly submitted that there was an inherent contradiction in the 2003 rules in as much, as, Schedule-I indicated that promotional avenues for Civil Engineering stream was up to the post of Director General whereas for the Mechanical Engineering stream, it was only up to the post of Chief Engineer. This was a pointer to the Central

Government''s thinking that the officers in the Mechanical Engineering stream were ineligible and not equipped to man the highest echelons of the service, i.e. Additional Director General and the Director General. On the other hand, Schedule-II, which prescribed the qualifications for promotions to the post of Additional Director General, erroneously made the Chief Engineer (Mechanical) eligible. This rendered the rules arbitrary; the reasonable way to apply it was to ensure that the Chief Engineers of the Mechanical Wing were not promoted as Additional Director General/Director General.

12. It was next argued that the relevant cut-off date, i.e. 01.01.2012 for the second vacancy period in respect of which the Departmental Promotion Committee (DPC) was held on 05.09.2012, the petitioner had to be considered along with Sh. S.N. Das since he had completed more than 2 Â½ years'' service in the grade of Chief Engineer. For this purpose, learned counsel relied upon the following note of Schedule - II:

''Note:- Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service, or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/eligibility service. ''

13. In the present case, it was urged by learned senior counsel that since Sh. S.N. Das was clearly junior to the petitioner, the latter had a right to be considered for promotion since he had already completed more than two years of regular service in the lower grade, i.e. Chief Engineer.

14. Learned counsel for the respondents argued that the CAT''s findings are not in error. Learned counsel for the Central Government has produced the files pertaining to the DPC and urged that for the vacancy year 2011-12, only one vacancy arose with anticipated retirements on 31.05.2000 and in 2011. There were two other vacancies which arose subsequently on 26.12.2011 and 30.12.2011. They were unanticipated vacancies. The Central Government sought relaxation from the DOPT on 06.04.2011 in view of the fact that the only candidate, who could possibly be considered - Sh. A.K. Sharma - would have been unfit in view of the past record. Therefore, a reference was made to the DOPT seeking approval by way of relaxation for application of the Office Memorandum dated 15.12.2009. On 06.04.2011, the DOPT noted that similar proposals have been processed and permitted, and accordingly approved the relaxation of the eligibility conditions for the vacancy which would arise upon superannuation of an officer on 31.05.2011. This meant that six candidates would be considered, including the petitioner; however, since the zone of consideration was confined to five only, the petitioner''s name was left-out. Ultimately, Sh. V.L. Patankar was found fit and was recommended. Even though the name of Sh. S.N. Das was included for consideration, he was not selected. Arguing that in neither petition was Sh. V.L. Patankar impleaded as a party, the Central Government urged that the petitioner cannot challenge his promotion, especially since Sh. S.N. Das was not

promoted, though considered. It was underlined that for the vacancies which arose on 31.05.2011 (in respect of DPC held on 01.08.2011), the petitioner had no cause of action because the only individual impleaded, Sh. S.N. Das was, like the petitioner not promoted, and the officer selected and promoted - Sh. V.L. Patankar - had not been impleaded. It was next contended by the respondents that as far as the subsequent DPC was concerned, i.e. one held on 15.09.2012, the eligibility was to be reckoned as on 01.01.2012. On that day, the petitioner had not fulfilled the eligibility condition of possessing three years'' service in the lower grade; on the other hand, two other officers, including Sh. S.N. Das had fulfilled that condition. For this year, there was no necessity to seek any relaxation, or apply the Office Memorandum dated 15.12.2009 because the eligible officers were available and consequently were assessed. Learned counsel submitted that there was no question of applicability of a note relied upon by the petitioner because that was operative only when a junior in the grade was considered for promotion. Learned counsel stressed that since the petitioner was promoted as Chief Engineer only on 15.07.2009, whereas Sh. S.N. Das was promoted to the post of Chief Engineer on 06.10.2008, the note could not apply. As far as the allegation that Sh. S.N. Das was appointed in 1989 is concerned, it was argued that the issue was entirely academic because the relevance of the 25 years'' service in Group A would have arisen only if the said Sh. S.N. Das had, in fact, been promoted for the earlier vacancy on account of the recommendation by the DPC on 01.09.2012; since he was not recommended or promoted, that issue would not arise. Without prejudice to this argument, it was submitted that Sh. S.N. Das, in fact, entered the service in Group A post on 24.10.1983; at that time he was appointed as a Patent Examiner; subsequently, he applied through proper channel and was selected as Assistant Executive Engineer.

15. The following issues arise for consideration:

(1) Illegality of the exclusion of the petitioner''s name from consideration for the vacancy which arose on 31.05.2011;

(2) The applicability of the Office Memorandum dated 15.12.2009;

(3) The correctness of the petitioner''s plea that he ought to have been promoted as against the subsequent vacancies, i.e. for which DPC was held on 05.09.2012 over and above the claim of Sh. S.N. Das.

Issue Nos. 1 and 2

16. 2003 Rules provide by Rule 5(3) that promotions to various posts are to be in accordance with the conditions spelt-out in the Schedule-II. The first part of Rule 5(3) deals with the cadre of Assistant Executive Engineer, Executive Engineer etc. The last part deals with the posts of Additional Director General and Director General. Under the rules, the classification of posts is as indicated in the First Schedule. No doubt, the Schedule ex facie suggests that the posts of Director General and Additional Director

General fell within the Civil Wing. The petitioner''s submission with respect to the non-eligibility of officers in the mechanical wing for promotion to these two posts would have entailed serious consideration. However, Schedule-II ï¿½ which has been expressly referred to in Rule 5(3) spells- out the eligibility conditions for these two posts (i.e. Director General/Additional Director General). It is after segregating these two posts that the eligibility conditions for the Civil Wing (Part-I) and Mechanical Wing (Part-2), leading up to the cadre of Chief Engineer in both these categories have been prescribed. The inference that the Director General and Additional Director General level posts can be filled from other wings is compelling for these reasons. Furthermore, Schedule-I deals only with classification, categories and scale of pay of various posts; it does not spell-out the eligibility conditions, such as experience, qualifications, age etc. These are the subject matter of Rule 5(3) read with Schedule II. As a consequence, this Court affirms the findings of the CAT that officers of both the civil and mechanical wing from the cadre of Chief Engineer can be considered for promotion as Additional Director General/Director General.

17. As previous discussion reveals, barring one Sh. A.K. Sharma - who alone fulfilled the condition of three years'' regular service in the grade of Chief Engineer as of April-May 2011, no other candidate could have been considered at that stage. The Central Government took note of the fact that Sh. A.K. Sharma''s record was poor and, therefore, approached the DOPT for a relaxation. The 2003 rules prescribe the power to relax. The relaxation sought by the Central Government was, therefore, a proposal mooted to the DOPT; it alluded to the Office Memorandum dated 15.12.2009 which stated that officers with 25 years'' service in Group A posts could be considered for promotion to the HAG (post of ADG is a HAG post). The DOPT granted the approval on 06.04.2011. The Central Government''s explanation for not including the petitioner''s name in that instance - when the DPC considered all eligible officers, is that the zone of consideration ï¿½ given that only one vacancy existed ï¿½ extended to five officers. Since the petitioner, according to the Central Government, was the sixth officer, his name was not sent-up. Ultimately, of the two officers who were found eligible, only Sh. V.L. Patankar was selected and appointed. Concededly, this officer was senior to the petitioner; in neither of the application was he impleaded, nor is he a party in the present proceedings. On account of this fact alone, the petitioner''s grievance regard his non consideration has to be rejected. Moreover, even though Sh. S.N. Das was considered for DPC, his name was not recommended for promotion. Therefore, the petitioner''s grievance with respect to his non-selection for the year 2011-2012 (in respect of vacancies which occurred on 31.05.2011, for which the DPC met on 01.08.2011) is unfounded.

18. This Court notices that the CAT, in its impugned order, was of the opinion that the Central Government could not have fallen back upon the Office Memorandum dated 15.12.2009 because of an express eligibility condition contained in the rules. Since the concerned individual, Sh. V.L. Patankar, who was promoted, was not an aggrieved party, and as against him the petitioner could not claim to be senior, the CAT''s findings in this

regard were not called for. That apart, there is no discussion in the impugned order with regard to the power of the Central Government to relax any condition and the implications arising out of it, having regard to the facts of this case.

19. As a result of the above discussion, it is held that the petitioner''s submission that he was wrongly overlooked for the vacancies which arose on 31.05.2011 and later in 2011 is meritless.

20. For the above reasons, this Court further holds that the Central Government''s opinion that the lone eligible candidate ï¿½ Sh. A.K. Sharma''s track record was poor and that on this count, the exigencies of service warranted some relaxation could not have been overlooked. The official files reveal that the process for seeking approval of DOPT began sometime in October, 2010 when it became clear, given the below benchmark ACR gradings of the lone eligible candidate, Sh. A.K. Sharma, that he would be found not likely to be fit for promotion. There was no need to fill the anticipated vacancy on 31.05.2011. It was in these circumstances that the relaxation to apply the terms of the Office Memorandum dated 15.12.2009 on a one-time basis was sought. This relaxation was, therefore, on the basis of some logic and principle and not in order to favour an officer or a group of individuals. If one were to have regard to the fact that in the CES, there were only two posts of ADGs under the 2003 rules, there was a great need to fill it. The Office Memorandum dated 15.12.2009 not only stated that the candidates with 25 years'' regular service could be considered but also that, of those 25 years, at least one years'' regular service should have been in the SAG. The records show that Sh. V.L. Patankar had fulfilled the 25 years'' criteria on 24.07.2009 and was promoted to a post and the date of his entry in the SAG was 25.07.2008. Clearly, therefore, he was senior to the petitioner in the SAG grade as well as Sh. S.N. Das. As a result, this Court holds that there was no infirmity in the Central Government''s action by applying the Office Memorandum dated 15.12.2009 by way of relaxation.

Issue No.3

21. The petitioner''s grievance with regard to the promotion of Sh. S.N. Das ï¿½ one of the vacancies for which DPC was held on 05.09.2012 is two-fold. The first appears to be that the CAT upheld the application of the Office Memorandum dated 15.12.2009 for one year whereas for the later year, it did not. This contention is groundless. The CAT undoubtedly records the findings that the Office Memorandum dated 15.12.2009 could not have been applied in the teeth of the provisions of the 2003 rules. As discussed previously, this finding is faultless. However, the petitioner''s argument that the impugned order upholds the application of that Office Memorandum for one year and does not do so for the next year, is without substance for the reason that the mere consideration of Sh. S.N. Das along with other eligible candidates on 01.08.2011, by itself, could not have resulted in an actionable grievance. Sh. S.N. Das was not appointed; he was not even selected. The candidate found eligible and who was subsequently appointed ï¿½ Sh. V.L. Patankar was not impleaded. Therefore, the petitioner''s grievance with regard to the

application of the Office Memorandum for one year is academic.

22. The next grievance, i.e. that the petitioner was wrongly overlooked despite his being senior to Sh. S.N. Das, now requires to be examined. This submission is based upon the assumption that the promotion of Sh. S.N. Das pursuant to the DPC proceedings of 05.09.2012 was, like in respect of the previous year, based upon the application of the Office Memorandum dated 15.12.2009. As recorded by the CAT, the Central Government''s submission on this aspect is that there were officers who fulfilled the eligibility criteria, Sh. S.N. Das being one of them. The petitioner, however, did not fulfil the eligibility criteria spelt-out in the rules, i.e. 3 years'' qualifying service in the lower grade of Chief Engineer on 01.01.2012, which was a crucial date for consideration of the qualifying service for determining the eligibility of officers for promotion. The Central Government in this regard had relied upon the DOPT guidelines in the Office Memorandum dated 19.07.1989 and the Office Memorandum 22011/3/98 dated 17.09.1998.

23. During the proceedings, some arguments were sought to be made that even on an application of the Office Memorandum dated 15.12.2009, Sh. S.N. Das was ineligible. However, this Court notices that there was no pleading urged in the grounds in the original applications filed before the CAT, nor was any contention urged in that regard before the CAT. The submission was, however, countered on behalf of the Central Government - which stated that in respect of unanticipated vacancies, i.e. such as the ones which arose subsequently in 2011 on account of voluntary retirement and death, the Office Memorandum of 09.04.1996 (No.2201/8/87-Est.(B)) applied and, consequently, the eligibility with respect to such vacancies was to be considered as on 01.01.2012. Whatever be the position, the fact remains that when the DPC met to consider the eligible candidates on 05.09.2012, the record of the officer as on 01.01.2012 was available and apparently taken into consideration. As on that date, the petitioner had not fulfilled the eligibility conditions. His submission that a junior, Sh. S.N. Das was considered as a result of which he too had to be considered, is unsound. The note relied upon by the petitioner in this regard applies only when the consideration is of a junior in the cadre, and not a junior in the entire service. In other words, the entire period of service of an officer is not relevant; what is material and what the note speaks of is where the junior in the immediately preceding grade ï¿½ in the present case, the Chief Engineer, is considered senior, acquires the right to be considered. In the present instance, Sh. S.N. Das cannot be considered as the petitioner''s junior in the grade of Chief Engineer because he was promoted to that post on 06.10.2008, while the petitioner was promoted as the Chief Engineer on 15.07.2009.

24. A week after arguments were concluded, and judgment reserved, the petitioner''s counsel circulated written submissions. These sought to highlight that the vacancies which arose after 31.05.2011 could not be called "unanticipated vacancies " since one was due to the promotion of an officer; the other submission was that the relevant date for determining eligibility for these vacancies was 01.01.2011 and not 01.01.2012 (though

the DPC was held in September 2012). A circular dated 09.04.1996 was relied upon in support of the submission.

25. This Court is of the opinion that these questions cannot be gone into because there is nothing in the pleadings before the CAT or its order, suggestive of these being put in issue or raised, or argued. The averments in the Writ Petitions too are bereft of any pleadings on the point. Furthermore, there cannot be any dispute about the fact that when the subsequent DPC did consider the cases of officers for promotion, there were several eligible under the Rules; the Petitioner had not fulfilled the qualifying service as on the cut off date considered by the DPC, i.e. 01.01.2012. These aspects, therefore, cannot be urged for the first time in written submissions.

26. For the above reasons, the third point too is to be answered against the petitioner; his contentions are, therefore, rejected.

27. As a consequence, it is held that these petitions lack merit and are to fail. They are accordingly dismissed with no order as to costs.