

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.476/2002

New Delhi, this the 17th day of January, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri V. Srikantan, Member(A)

R.K. Nanda
3/5, Railway Flats
Kishan Ganj, Delhi-110007 .. Applicant
(Applicant in person)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Divisional Railway Manager
Northern Railway, New Delhi .. Respondents

(Shri D.S.Jagotra, Advocate)

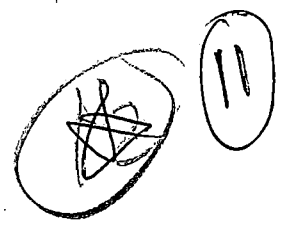
ORDER

Shri V. Srikantan

Through this application, applicant Shri R.K.Nanda is seeking quashing of the order of Respondent no.1 enclosed at Annexure 2 through letter dated 1.5.2001 issued by Respondent no.2 and for the grant of the benefit of restructuring of Control cadre in respect of the applicant and to direct the respondents to grant similar relief as has been granted to similarly situated persons vide letter dated 12.11.2001 based on the letter dated 24.1.2000 issued by Respondent No.1.

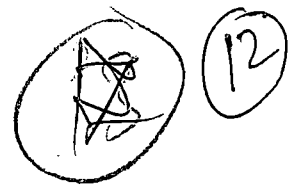
2. The relevant facts, as mentioned by the applicant, are that the applicant while working as Station Master (SM) was relieved and he assumed charge of the post of Section Controller (SC) in Control Office, New Delhi on 11.8.1981 on ad hoc basis. Subsequently, R-2 held the selection for SC in 1982 and a selection panel was drawn

U

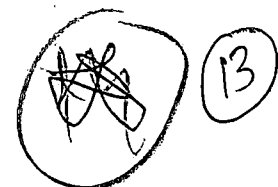


up but the name of applicant did not appear on this panel. Thereafter, through order dated 18.10.1985, applicant's name was interpolated in the panel of SC. Subsequently, vide letter dated 6.11.85, applicant was promoted as Deputy Chief Controller (DCC) by R-2. Respondents had restructured the cadre of "Control" staff w.e.f. 1.1.84. This restructuring had been challenged before the Allahabad Bench of the Tribunal, which by its order in OA 450/90 directed that the benefit of restructuring of control staff should be given effect from 1.8.83 instead of 1.1.84. This order of the Allahabad Bench of the Tribunal had been challenged before the Supreme Court which dismissed the SLP. Respondents thereafter implemented the order passed by the Allahabad Bench and gave the benefit of restructuring on notional basis w.e.f. 1.8.82 and actual basis w.e.f. 1.8.83 instead of from 1.1.84 as given earlier.

3. According to the applicant, the seniority assigned to him in the panel of SC through interpolation done in the panel was incorrect and had proper seniority been assigned to him in the SC panel, he would have been promoted as DCC w.e.f. 1.1.84 and he would have been entitled to the benefit of restructuring of control staff in terms of the decision of the Allahabad Bench of the Tribunal and got the benefit of restructured cadre of control staff on notional basis from 1.8.82 and actual basis from 1.8.83. Accordingly, the grievance of the applicant is that he was denied this benefit because of incorrect seniority assigned to him in the cadre of SC. Hence this OA.



4. Respondents have filed their reply opposing the claim of the applicant. Respondents have pointed out that the applicant was originally not included in the panel of SC which was prepared in 1983 as he was not included due to his lower seniority. Subsequently, after obtaining approval for dereservation of posts reserved for SC/ST, applicant alongwith four others was placed in the above panel of SC and applicant was placed below Shri R.S.Kalra (Item No.10) of letter dated 18.10.1985 and the ad hoc promotion of the applicant as SC from 22.9.81 was regularised w.e.f. 25.2.83 and his name was interpolated in the SC panel. It was therefore argued that seniority of the applicant was correctly fixed in the cadre of SC. Thereafter, applicant was promoted as DCC on 6.11.85 based on seniority in the cadre of SC. It was further argued that in the light of these facts, applicant was not entitled to the benefit of restructuring w.e.f. 1.1.84 as contended as he was not in the grade of DCC on that date. Respondents have also denied that any other junior to the applicant has been given the benefit of restructuring w.e.f. 1.1.84 and that this benefit had been given only upto the name of Shri T.R.Bhardwaj vide letter dated 31.5.1984. In terms of seniority position, applicant was far too junior to get the benefit w.e.f. 1.1.84. As the applicant was not entitled to the benefit of restructuring of control cadre w.e.f. 1.1.84, he is also not entitled to the benefit of Allahabad Bench decision, as upheld by the Supreme Court.



5. Applicant has filed rejoinder wherein besides reiterating the stand taken in the original application he has stated that respondents prevented the applicant from reverting to the cadre of SM as a consequence of which applicant lost the benefit of restructuring of SM cadre also and accordingly he has suffered financial loss. He has also stated that he had submitted a number of representations for being assigned the correct seniority in the cadre of SC but respondents have failed to consider his request. Applicant has also taken the ground that the panel of SC of 1983 contained names of persons who are junior to him and have been appointed in lower scale of pay much after the appointment of the applicant and that all these persons were in lower scale while attending selection on 25.7.1982 on the basis of which the SC panel was drawn up in 1983. It is also the contention of the applicant that all the persons in the SC panel had failed to qualify P-16 course, a pre-requisite for promotion to higher grade, whereas applicant had cleared this course in 1967 itself and accordingly he should have been assigned correct seniority in the said panel and should have been promoted as DCC on 1.1.84. In his rejoinder, applicant has enclosed at Annexure A-15 letter dated 4.10.1987, wherein he has stated as under:

"On perusing the seniority list circulated vide your letter No.758E/31/DYCHC seniority dated 17.8.1987, it is surprising that my name is showing at Sl.No.67, which should be at S.No.61 as Shri S.K. Chadha was appointed on 13.11.1968 and was in grade 330-560 at the time of attending the selection. Similarly Shri T.R.Bhardwaj (S.No.62) originally appointed as Trains Clerk and was officiating as Guard in scale 330-560 at the time of attending the selection of Section Controllers, whereas I was working in grade 425-640 since 1973 i.e. 10 years before the selection was held. As such you are



requested to re-arrange the seniority correctly, thus benefiting me by promoting as DY CHC with effect from 1.1.1984, as I am already qualified in P-2 (old) course equivalent to P-16 a pre-requisite for promotion as DY CHC in the year 1967."


6. Further contention of the applicant is that as on 1.1.84, 28 posts have been upgraded but the respondents had only filled up 26 posts and two upgraded posts have been kept vacant for a long time and the applicant being fully qualified should have been adjusted against one of these posts.


7. Heard Shri R.K. Nanda, applicant appearing in person and Shri D.S.Jagotra, learned counsel for respondents and perused the documents on record.

8. The main contention of the applicant is that respondents have not assigned correct seniority to him in the panel of 1983 and had it been done correctly applicant would have been entitled to be promoted to the cadre of DCC from 1.1.84 and would have become entitled to the benefit of restructuring of control cadre from 1.1.84 as also the benefit of the decision of Allahabad Bench as upheld by the Supreme Court and got the benefit of restructuring on notional basis from 1.1.82 and actual basis from 1.1.83. However, nowhere in the pleadings - either in the original application or in the rejoinder - has the applicant stated who are the persons who have wrongly been assigned seniority as compared to the applicant and where exactly his name should figure in the panel of SC. It is only in the letter dated 4.10.87 (Annexure A-15) that the applicant had referred to seniority list dated 17.8.1987 wherein he had claimed that S/Shri Chadha and Bhardwaj are juniors to him and

requested for refixing his seniority correctly so that he could claim the benefit of promotion as DCC w.e.f. 1.1.1984. Even this seniority has not been challenged in this application. The applicant has also not impleaded names of these two persons in the array of respondents, who are necessary parties for proper adjudication of the matter. Thus the OA is hit by nonjoinder of necessary parties and on this ground alone the OA is liable to be dismissed. It is also a settled legal position that "the question of seniority should not be reopened after a lapse of reasonable period because that results in disturbing the settled position which is not justifiable" In this proposition, we are supported by the judgement of the Supreme Court in B.S.Bajwa Vs. State of Punjab 1998 (Vol.II) SCC 523.

9. Therefore, for the reasons recorded above, the present OA is not maintainable and is accordingly dismissed. No costs.


(V.Srikantan)
Member(A)


(V.S. Aggarwal)
Chairman

/gtv/