

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.250/223/2014

Date of Reserve:04.12.2019
Date of Order: 31.01.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Susanta Mishra, aged about 51 years, S/o. Late Bhabani Charan Mishra, at Plot No.1087, Jaydurganagar, Bamikhal, Bhubaneswar-6, Dist.Khurda – at present working as Assistant Executive Engineer (Con.), under C.A.O.(Con) East Coast Railways, Chandrasekharpur, Bhubaneswar, Dist-Khurda.

...Applicant

By the Advocate(s)-M/s.D.P.Dhalasamant
N.M.Rout

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railways, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Railway Board represented through its Secretary, Rail Bhawan, New Delhi.
3. Director, Establishment (GP), Railway Board, Rail Bhawan, New Delhi.
4. Deputy Chief Personnel Officer (G), East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
5. General Manager, S.E.Railway, Garden Reach, Kolkata-700 043.
6. Wazir Singh, Executive Engineer, Flash Bhutt Welding Plant, S.E.Railway, AT/PO/Dist-Jharsuguda.

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Assistant Executive Engineer(Con.) in the East Coast Railways. His grievance is directed against the provisional seniority list of Group-B officers published on 24.09.2013 (A/8) followed by the final seniority list published on 17.12.2013 (A/10), which for all intents and purposes eliminates his name. Hence, in this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) That the provisional seniority list dated 24.09.2013 (A/8) and final seniority list dated 17.12.2013 (A/10) published by Respondent No.3 be quashed.
- ii) That direction/order be issued to the respondent no.3 to place the name of the applicant into Group-B integrated seniority list in terms of Railway Board's Circular dated 13.05.2011 above the Respondent No.6.
- iii) Any other orders/direction as may be deemed fit and proper to give complete relief to the applicant.

2. Briefly stated, the facts of the matter are that the applicant joined as Inspector of Works(re-designated as Junior Engineer) in the erstwhile South Eastern Railways on 06.01.1992, through a regular process of selection. While working as such, consequent upon qualifying the Limited Departmental Competitive Examination, he was posted as Assistant Executive Engineer (Con.) vide Office Order dated 30.12.2002, issued by the Deputy Chief Personnel Officer (Con.), S.E. Railways, Bhubaneswar and accordingly, on the basis of office order dated 01.01.2003, he reported for duty on 01.01.2003 as Assistant Executive Engineer (Con.). In the meantime, S.E. Railways stood trifurcated viz., South Eastern Railway, East Coast Railways and South East Central Railways, the headquarters of East Coast Railways being at Bhubaneswar, which started its independent functioning with effect from 01.04.2003. Since the applicant was working in the East Coast Railways, he was forced to opt for his absorption/transfer to East Coast Railway and accordingly, he exercised his option on 14.06.2004. On the basis of this, the applicant stood transferred to East Coast Railway being assigned bottom seniority in terms of Ministry's letter dated 03.12.1977, vide Memo dated 15.10.2004 (A/4). In the meantime, Respondent No.4 published a seniority list of Group – B officers in Civil Engineering Department as on 01.01.2011 vide

Memo dated 24.01.2011, wherein the applicant was assigned his correct position at SI.No.44. Thereafter, Respondent No.4 forwarded the seniority list of Group-B officers to Respondent No.3 for regular promotion to Group-A vide his letter dated 31.10.2011(A/5) with reference to Railway Board' letters dated 21.12.2009 and dated 18.01.2010. While the matter stood thus, Provisional Integrated Seniority List of Grup-B officers in Civil Engineering Department as on 01.01.2010 and 01.01.2011 for limited purpose of their induction to Group – A (Jr. Scale of IRSE) was published by Respondent No.3 vide Memo dated 21.12.2011 (A/6), in which it was pointed out that the said provisional seniority list should be circulated for obtaining representations, if any, within 15 days. It was further indicated that if no representations are received within 30 days from the date of issue of the said Memo, the provisional seniority shall be treated as final. According to applicant, since the aforesaid Provisional Integrated Seniority List published on 21.12.2011 by Respondent No.3 was not circulated, he could not submit any representation. However, having come to know about the same on 26.10.2012 that his name did not figure in the said Provisional Integrated Seniority List, he submitted a representation on 02.11.2012 (A/7) to Respondent No.3 through proper channel for inclusion of his name in the seniority list above Sri Sandeep Kumar Kaushik whose name was found place at SI.No.445 and who joined in Group-B on 07.01.2003, i.e., after joining of the applicant. Respondent No.3, without considering and disposing of the said representation, published Provisional Seniority List of Group-B officers of Civil Engineering Department as on 01.01.2012 and 01.01.2013 for forming a panel of Group-A/J. Scale IRSE for the vacancy year 2012-13 and 2012-14 vide Memo dated 24.09.2013 (A/8). In spite of specific direction issued therein, the said provisional

seniority list published on 24.09.2013 was not circulated to facilitate the incumbents to make representations, if any, within the stipulated time frame and in this respect, the applicant also could not submit his representation. However, having come to know about this, the applicant submitted a representation dated 01.12.2013 (A/9) to Respondent No.3 through Respondent No.4 for inclusion of his name at Sl.No.372 above Private Respondent No.6 as on 01.01.2012 and at Sl.No.360 as on 01.01.2013.

3. Grievance of the applicant is that while his representation dated 01.12.2013 was pending consideration, Respondent No.3 vide Memo dated 17.12.2013 (A/10) published the final seniority list of Group-B officers of Civil Engineering Department as on 01.01.2012 and 01.01.2013, thereby eliminating his name in spite of the fact that the name of Private Respondent No.6, who joined as Gr.B after him, was found place at Sl.No.372 and 360 of the Seniority Lists as on 01.01.2012 and 01.01.2013, respectively. Hence, this Application with the aforesaid reliefs.

4. The grounds urged by the applicant is that non-inclusion of his name in the Provisional Seniority list vide A/8 and the final Seniority List vide A/10 is bad in law, inasmuch as, Respondent No.3 without disposing of his representations dated 2.11.2012 and dated 1.12.2013 should not have published the final seniority list vide A/10. According to applicant, without circulating the Provisional Seniority List published on 21.12.2011 (A/6) and dated 24.09.2013 (A/8) for the purpose of obtaining representation, if any, from the Group-B officers of Civil Engineering Department, the final Seniority List published vide A/10 is not sustainable in the eye of law. It is the case of the applicant that the seniority lists of Group-B Officers of Civil Engineering Department as on 01.01.2010 and 01.01.2011 were prepared for the limited

purpose for their induction into Gr.A/Jr.Scale of IRSE in terms of principle laid down in Railway Board's letter No.E(GP)/2009/1/97 dated 13.05.2011 whereas the seniority as published vide A/8 makes a mention that those who have joined the Railways on transfer from other Railways on bottom seniority basis, the date on which the orders for such transfer were issued by the Railway Board or the actual date on which such officers joined the Railway on bottom seniority basis, as the case may be, have been treated as their Group-B date(s) for the purpose of integrating their seniority on All India basis, which is contrary to the circular/letter dated 13.05.2011 of the Railway Board and therefore, the provisional seniority list dated 24.09.2013 (A/8) and the final seniority list dated 17.12.2013 (A/10) should be quashed and set aside. The applicant has pointed out that the Integrated Seniority List of Gr.B Officers of Civil Engineering Department should have been prepared in terms of Railway Board's letter No.E(GP)/2009/1/97 dated 13.05.2011 which stipulates that a common eligibility list of Gr.B officers of each organized service may be prepared on All India basis in the order of their date of induction into Gr.B without disturbing the prevailing inter se Group-B seniority on each railway/unit instead of preparing the same railway-wise as per existing practice. In Paragraph-5.7 of the O.A., the applicant has urged the following grounds:

"That in the provisional seniority list dated 24.09.2013, it has been mentioned that the panel of Gr.A/Jr.Scale of IRSE for the vacancy year 2010-11, 2011-12 has been formed taking the date on which the order of transfer was issued by the railway board or the actual date on which such officer joined the railway on bottom seniority as their Gr.B dates. But the integrated seniority list of Gr.B officers against vacancy of 2010-11, 2011-12, have been prepared in terms of the railway board circular dated 13.05.2011, i.e. in order of their date of induction into Gr.B without disturbing the prevailing Gr.B seniority".

5. In sum and substance, the contention of the applicant is that the provisional seniority list (A/8) and the final seniority list (A/10) in respect of Gr.B Officers of Civil Engineering Department have been prepared contrary to Railway Board's Circular dated 13.05.2011 (A/11) and hence, the same are liable to be quashed and set aside.

6. Opposing the prayer of the applicant, Respondent-Railways have filed a detailed counter-reply. In the counter-reply, the respondents have pointed out that as per instructions issued vide Board's letter No.E(GP)/2009/1/97 dated 13.5.2011, from the vacancy year 2010-11, a common eligibility list of Group-B officers of each organized service has to be prepared on All India basis in order of their dates of induction into Group-B without disturbing the inter-se Group-B seniority prevailing on each Railway/Unit, and that the procedure would have limited application to the extent of forming only Group-A/Jr. Scale panels on All India basis. The Respondents have pointed out that the phrase used in the said instructions, i.e., "...*in the order of their dates of induction into Group-B...*" **connotes the dates from which the Group-B officers are holding lien in the respective Railways/Units in which their seniority is being maintained.** In view of this, and keeping in view the anomalies in the earlier system, the Group-B seniority in each Department has been integrated from the vacancy year 2010-11 based on the following principles:

- i) In the order of Group-B dates of the officers, without disturbing the prevailing inter-se seniority on each Railway Zone/Production Unit.
- ii) For those who joined the Railways on transfer from other Railway on bottom seniority basis, the dates on which the orders for such transfers were issued by the Railway Board, or the actual dates on which such officers joined the new Railways on bottom seniority basis whichever is later, as the case may be, have been treated as their Group-B dates

for the purpose of integrating the group-B seniority on All India basis. Otherwise, if they are allowed their original Group-B dates for the purpose of integrating the Group-B seniority, Group-B officers of new seniority unit who are senior but have lesser Group-B service, will also get considered for promotion on the analogy that when juniors are being considered the seniors should also be considered. In the process, Group-B officers on the other Railways with longer Group-B service will be left out and the very spirit of integration of Group-B seniority will be defeated.

- iii) When Group-B date happens to be the same, the officer with an earlier date of birth will rank senior to the officer with a later date of birth.

7. Respondent-Railways in the counter-reply have raised the following preliminary objections regarding maintainability of the O.A.

- i) It is the settled law that the claim of seniority is not a matter of right and issue is within the domain of the administration restraining judicial interference except in exceptional circumstances.
- ii) The applicant is stopped to raise his objection after accepting the bottom seniority by way of submitting option application. Since, his transfer to the E.Co.Rly made on the basis of certain conditions and knowing fully well and accepting the same, applicant joined in the E.Co.Rly, now he cannot turn back challenging the same.
- iii) Even if the applicant has prayed for quashing of Annexure-A/8 and A/10, but complete documents have not been annexed to the O.A. Hence, prayer of the applicant cannot be accepted.
- iv) The prayer of applicant to change his seniority position and place him above Sri Wazir Singh. However, the applicant has never made all the senior persons as parties to the proceeding even if they are the necessary parties. In absence of necessary parties to the proceeding, present Original Application is not maintainable.
- v) Earlier, this Hon'ble Tribunal dismissed the O.A.No.761/2013 in the matter of Tribikram Mishra and another vs. UOI & Others vide its order dated 29.01.2013 on the ground of jurisdiction and non-joinder of parties as Respondents who will be affected in case if the gradation list is quashed. The present O.A. is similar in nature and the applicant has also prayed to quash gradation list under Annexure-A/8 and A/10 published by Railway Board. As

such, this Original Application is not maintainable and liable to be dismissed in limine.

8. Respondent-Railways have submitted that the applicant was promoted to Group-B officer on 01.01.2003 being selected through LDCE. As his cadre was being maintained by S.E. Railway and therefore, he had no scope to apply for his absorption in E.Co. Railway as Group-B officer as per the option invited by the Railway Board vide letter No.E(GP)/2002/1/18 dated 22.08.2002. Consequent upon formation of Group-C cadre in newly constituted zonal Railways with effect from 01.11.2003, Railway Board vide letter dated 12.01.2004 (R/3) permitted new zones to conduct Group-B selections/LDCEs independently for the vacancies in their jurisdiction. In the said letter, the Board advised that Group-B officers who had not been absorbed in the new zones but were working in the jurisdiction of new zones on administrative grounds with retention of their lien and seniority on their parent Railways, may be retained by the new zones, keeping in view the administrative requirements, for a maximum period of one year. The parent Railway may ensure that the surplus Group-B officers working in the new zones on administrative grounds and awaiting return to the parent Railway were accommodated whenever vacancies arise in the parent zone. Accordingly, the applicant had to repatriate to his parent Railway, i.e., S.E. Railway as his lien was being maintained there. Since a number of Group-B officers were working in the E.Co. Railway having their lien with S.E. Railways, but could not avail of the opportunity to exercise option for E.Co.Railway, the CPO/ECoR vide letter dated 01.06.2004, invited applications from those Group-B officers of all Departments of E.Co. Railway for transfer of their lien to E.Co. Railway on bottom seniority. Accordingly, the applicant had opted for his absorption in

E.Co. Railway on accepting bottom seniority and this was acceded to vide Railway Board's order dated 08/11.10.2004. It has been submitted that in response to seniority list as on 01.01.2010 and 01.01.2011 (A/6) showing seniority position in Group-B with effect from 08.10.2004, the applicant had submitted a representation dated 02.11.2012 stating that since he had joined E.Co. Railway in Group-B cadre with effect from 01.01.2003, his name ought to have been reflected at Sl.No.445 of the seniority list as on 01.01.2010 in place of Shri Sandeep Kumar Kaushik whose Group-B induction date is 7.1.2003. However, his representation was disposed of vide communication dated 05.12.2012 (R/8) by stating that in terms of Railway Board's letter dated 08.10.2004, he came on transfer to the East Coast Railway accepting bottom seniority and as such, his seniority has to be counted with effect from 08.10.2004 and not from the date he was promoted as Group-B. According to Respondent-Railways, provisional seniority lists of Group-B officers of Civil Engineering Department as on 01.01.2012 and 01.01.2013 were published vide Railway Board letter dated 24.09.2013 (A/8) by adopting the same principle as followed while publishing seniority lists as on 01.01.2010 and 01.01.2011. They have pointed out that the seniority lists as on 01.01.2012 covers officers with Group-B dates upto 07.02.2003, whereas the seniority list as on 01.01.2013 covers upto 26.02.2004 and as the applicant has been assigned seniority with effect from 08.10.2004, his name did not find place in the said seniority lists. However, the Respondent-Railways have emphatically submitted that the positions of Group-B officers of E.Co. Railway on All India final seniority lists of Civil Engineering Department as on 01.01.2012 and 01.01.2013 as published vide A/10 are in order which should not be interfered. In the end, the Respondents have submitted that if the name of the

applicant in the integrated seniority list of Group-B officers of Civil Engineering Department is incorporated, 135 nos. of Group – B officers in Indian Railways will be affected. They have therefore, prayed that this O.A. being devoid of merit should be dismissed.

9. In the rejoinder, the applicant has pointed out that he joined as Group-B in the East Coast Railway with effect from 01.01.2003 and had been properly placed at bottom seniority at Sl.No.44 in the seniority list of Group-B officers of Civil Engineering Department of East Coast Railways as on 01.01.2011 inasmuch as all 43 Group-B officers in the said seniority list had joined earlier to the applicant. According to him, the integrated seniority list on all India basis should have been prepared on the basis of Railway Board's letter dated 13.05.2011, i.e., in order of their dates of induction into Group-B without disturbing the prevailing inter se Gr.B seniority on each Railway. As regards non-joinder of necessary parties, it has been submitted that in view of law laid down by the Hon'ble Apex Court that one senior most Junior in the seniority list is to be made party in case of matters relating to seniority and according to him, Shri Wazir Singh (Respondent No.6) being the senior most junior and having been arraigned as party-respondent, this O.A. is maintainable.

10. Private Respondent No.6 though duly noticed has neither entered appearance nor filed counter.

11. We have heard the learned counsels for both the sides and perused the records. We have also gone through the decisions relied on by the parties.

12. From the pleadings of the parties, the short point to be decided in this O.A. is whether the impugned seniority lists, the legality of which have been called in question in the instant O.A. have been prepared in conformity with the Railway Board's letter No.E(GP)/2009/1/97 dated 13.05.2011. In this

connection, it would be profitable to extract hereunder the gist of the Railway Board's letter.

"Sub: Promotion from Group 'B' to group "A'/Jr.Scale of organized services – Procedure for conducting DPCs.

Reference Board's letter No.E(GP)/97/1/5 dated 7.7.97 and 6.9.2002 and No.E(GP)/2005/1/2 dated 29.6.2007 on the above subject.

2. As per existing practice, while promoting Group 'B' officers to Group 'a'/Jr.Scale, Railway-wise Eligibility Lists for each department in the order of Group 'B' seniority are prepared strictly in accordance with the seniority lists provided by the individual Railways/Units. The UPSC also provides Railway-wise panels for Group 'A'/Jr.Scale accordingly.
3. The issue of improving the existing system has been under consideration of Railway Board for quite some time. After detailed deliberations with IRPOF, the Board have decided that a common Eligibility List of Group 'B' officers of each organized service may be prepared on All India basis in the order of their dates of induction into Group 'B' without disturbing the prevailing inter-se Group " seniority on each Railway/Unit, instead of preparing the same Railway-wise as per the existing practice.
4. On the basis of a common Eligibility List, UPSC will provide a common Group 'A'/Jr.Scale panel on All India basis for each service. The procedure will, however, have limited application to the extent of forming only Group 'A'/Jr.Scale panels on All India basis, and will be effective from vacancy year 2010-11 onwards.
5. The above revised DPC procedure may be circulated for information and guidance of all concerned".

13. The above Railway Board's letter makes it clear that the existing practice of preparation of Railway-wise Eligibility Lists for each Department in order of Group B seniority strictly in accordance with the seniority lists provided by the individual Railway/Units is to be dispensed with view to improving the existing system by preparing a common Eligibility List of Group

'B' officers in the order of their dates of induction into Group 'B', without disturbing the prevailing inter-se Group-B seniority. But, it appears that whereas A/8 is the provisional seniority list of Group-B Officers of Civil Engineering Department as on 1.1.2012 & 01.01.2013 for forming the panel of Group 'A'/Jr.Scale of IRSE for the vacancy years 2012-13 & 2013-14, A/10 is the final seniority list thereof and while preparing those seniority lists, the same has been prepared in contravention of Railway Board's letter dated 13.05.2011, which dispels the date of induction of the applicant into Group-B. In other words, to make it more conspicuous, after the Railway Board's letter dated 13.05.2011 (A/11) came to be issued prescribing a common Eligibility List of Group B officers of each organized service to be prepared on All India basis, in order of their dates of induction into Group B without disturbing the prevailing inter se Group B seniority on each Railway/Unit, the date of induction of the applicant in Group-B with effect from 01.01.2003 has not been taken care of. While the Respondents have rightly pointed out in their counter-reply that the phrase used in the Railway Board's letter dated 13.05.2011 "*in the order of the dates of induction of the officers into Group 'B'*" connotes the dates from which the Group 'B' officers are actually holding lien in the respective Railway/Units in which their seniority is being maintained, at the same time, they became oblivious of publication of a common Eligibility Lists in order of induction into Group B, without disturbing the prevailing inter-se Group B seniority on each Railway and by implication, they published Railway-wise seniority list as was prevalent earlier. The date of induction for the purpose of a common eligibility list is the date of joining as Group-B officer and inter se seniority in this context means – the date on which the applicant or similarly situated persons stood transferred to East Coast

Railway by virtue of the Railway Board's order consequent upon options exercised. There is no doubt that the Respondents by such action have not adhered to the instructions issued by the Railway Board vide letter dated 13.05.2011, and instead of publishing a common Eligibility List having regard to the date(s) of induction of the incumbents into Group-B without disturbing their inter se seniority, have prepared the Railway-wise seniority list in accordance with the seniority lists provided by the individual Railway/Units and as such, there has been a complete departure from the instructions issued by the Railway Board for the purpose of promotion from Group B to Group A/Jr. Scale of organized services on the basis of a common Eligibility List.

14. It is the settled principle of law that if something has to be done in a particular manner, the same has to be done in that manner only and not otherwise. Besides the above, the Respondent-Railways published the final seniority list vide A/10 dated 17.12.2013 without even considering the representation dated 01.12.2013 (A/9) submitted by the applicant in pursuance of provisional seniority list dated 24.09.2013 (A/8). Besides, respondents have not stated anything in the counter-reply as to how Shri Wazir Singh, whose name did not figure in the Seniority List of Group-B officers of Civil Engineering Department of East Coast Railway as on 01.01.2011 (A/5) could find place in the provisional seniority list at A/8 followed by final seniority list at A/10, his date of induction as Group-B being on 10.01.2003, i.e., after the induction of the applicant on 02.01.2003, which gives a delicate hints of suppression of material facts. The contentions of the respondents in the counter that the date of induction into Group-B service means the date from which the Group-B officers are holding lien in the

respective Railways, are not in accordance with the Railway Board Circular dated 13.05.2011.

15. We have gone through the decisions cited by the parties pro et contra. Since in the instant case, the point to be decided is whether the seniority list which is the subject matter of dispute has been prepared in conformity with the Railway Board's letter No.E(GP)/2009/1/97 dated 13.05.2011 and this point having not been decided in any of those decisions, this Tribunal is not inclined to place reliance on the same. However, as discussed above, it is a fact that a common eligibility list of Group 'B' officers on All India basis which was intended to be published in the order of their dates of induction into Group 'B' without disturbing the prevailing inter-se Group-B seniority by virtue of Railway Board's letter dated 13.05.2011 has not been so prepared.

16. In view of the discussions held above, we would direct Respondent No.3, i.e., the Director, Establishment (GP), Railway Board to re-examine the issue in the light of the discussions held above and suitably incorporate the name of the applicant for the purpose of common eligibility list at A/10 having regard to his date of induction in Group-B service, without disturbing inter se seniority, as mandated in Railway Board's letter dated 13.05.2011, by giving due notice to the incumbents who are likely to be affected thereby and recast the said seniority list within a period of 120 days from the date of receipt of this order.

17. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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