

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 2349/2001

New Delhi this the 3rd day of February, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri V.K. Majotra, Member (A).

Shri P.B. Narang,
S/o Shri Deeraj Narang,
working as Goods Supervisor,
Northern Railway,
Kishanganj, Delhi,
R/o House No.64, State Bank Nagar
Outer Ring Road, Paschim Vihar,
Delhi.

... Applicant.

(By Advocate Shri S.K. Sawhney)

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Divisional Personnel Officer,
Northern Railway,
DRM Office, Chelmsford Road,
New Delhi.

... Respondents.

(By Advocate Shri Rajeev Bansal)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

This application is the second round of litigation
by the applicant as he had earlier filed O.A.2345/1995
which has been disposed of along with another O.A. (O.A

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2387/95) by order dated 25.10.1999. By that order, the claim of the applicant who was applicant no. 2 in O.A. 2345/95 was allowed. In other words, the claim of the applicant that he should be allowed to regain his inter-se seniority vis-a-vis the reserved category employees as Goods Clerk and, therefore, he should have prior claim to the post of Goods Supervisor was allowed. Thereafter, the applicant had filed CP 158 of 2000 which was disposed of by Tribunal's order dated 2.1.2001. In that order, with regard to the claim of the applicant for arrears of pay, it was observed that he may have a fresh cause of action which he may pursue through proper original proceedings in accordance with law, if so advised.

2. Thereafter, this O.A. has been filed, in which the applicant has impugned the seniority list issued by the respondents dated 12.4.2001. He has prayed for a direction to the respondents to pay him arrears of pay for the post of Goods Supervisor during the period from 1.1.1996 to 9.10.1998 which has been denied to him by the letter dated 20.11.2000 and also to pay interest on the same. He has also sought a further direction to the respondents to promote him to the post of Chief Goods Supervisor (CGS) with reference to the date of promotion

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of his immediate junior, as according to him, he had already qualified in the selection test for the post of CGS.

3. It is not disputed that in pursuance of the aforesaid orders of the Tribunal in OA 2345/95, the respondents had issued a provisional seniority list of Goods Supervisors of Delhi Division on 19.10.2000, in which the applicant's name had appeared at Serial No. 2. That provisional seniority list was superseded by a subsequent provisional seniority list issued on 21.12.2000. In the provisional seniority list of Goods Supervisors issued on 21.12.2000, the applicant's name is shown at serial no. 1. It is relevant to note that when the earlier provisional seniority list was issued on 19.10.2000, it has been clearly stated that this was in compliance of the Tribunal's order dated 25.10.1999 in OA 2345/95, in which objections had also been called for from the concerned persons. After these two provisional seniority lists were issued, the respondents have issued another seniority list of Goods Supervisors in supersession of the earlier seniority lists, on 12.4.2001 which is the present impugned seniority list. In this list, the applicant's name has been placed at serial no. 17. The relevant portion of the covering

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letter of the seniority list of Goods Supervisors dated 12.04.2001 reads as follows:

"In supersession to the seniority list circulated vide this office letter of even number dated 19.10.2000 & 21.12.2000 & scrutiny of objections submitted by few employees & consulting the directions of Hon'ble Supreme Court on the matter the proposed seniority of Goods Supervisor Gr. Rs.5500-9000 is now circulated for wide publicity among the affected staff for submitting the objections if any within 15 days to this office. All efforts have been made to keep each & every aspect while preparing this seniority list. In case (of) any discrepancy is noticed the same may be advised to this office immediately"

4. Noting the above facts and circumstances, as there were no clear reasons spelt out by the respondents either in their reply to this OA. or in the aforesaid letter of 12.4.2001, to depress the applicant's seniority from Serial No. 1 to 17 which had earlier been done in pursuance of Tribunal's order in O.A.2545/95, we had directed the respondents to file an additional affidavit to clear the same. In spite of a number of opportunities being granted to them, this has not been done. We have also seen the letter dated 21.6.2000 issued by the General Manager (P) on behalf of the respondents regarding implementation of the Hon'ble Supreme Court judgement dated 16.9.1999 in Ajit Singh & Ors. Vs. State of Punjab & Ors. (Civil Appeal No. 3792-

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3794/89 and I.A.) which has been referred to in the aforesaid letter dated 12.4.2001. It is relevant to note that the preliminary objection taken by the learned counsel for the respondents that the applicant has not cared to make a representation against the impugned revised seniority list dated 12.4.2001 has been rejected, having regard to the facts and circumstances of the case, as also mentioned in our previous order dated 14.11.2002.

5. The Tribunal in OA 2345/1995 has referred to a number of judgements of the Hon'ble Supreme Court, including Union of India & Ors. Vs. Virpal Singh Chauhan, etc. (JT 1995 (7) SC 231), R.K. Sabharwal & Ors. Vs. State of Punjab & Ors. (1995 (2) SCC 745) and Ajit Singh Januja & Ors. Vs. State of Punjab & Ors. (1995 (2) Scale 526). Other than a mere reference to the General Manager's letter dated 21.6.2000, the respondents have failed to give the specific reasons for revising the seniority list of Goods Supervisors and shifting the position of the applicant from serial no.1 in the provisional seniority list to serial no. 17. It is also not evident from the documents on record whether any final seniority list has been issued by the respondents till date. In any case, it was incumbent on

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the respondents to give satisfactory reasons for their subsequent action taken in the letter dated 12.4.2001, especially having regard to the fact that earlier they had issued the provisional seniority list in compliance with the Tribunal's order in OA 2345/1995. The respondents cannot also ignore the judgement of the Tribunal as it is not disputed that that judgement has become final and binding, which itself had followed the earlier judgements of the Hon'ble Supreme Court. In this view of the matter, the impugned provisional seniority list of Goods Supervisors dated 12.4.2001 with regard to the applicant is quashed and set aside with a direction to the respondents to re-consider his case in the light of the aforesaid judgements, including the judgement of the Tribunal in OA 2345 of 1995.

6. With regard to the applicant's claim for arrears of pay in the post of Goods Supervisor during the period from 1.1.1996 to 9.10.1998, the main contention of the respondents is that under Para 228 of the IREM, he is not entitled to such arrears. On the contrary, this claim is well founded having regard to the fact that on a number of occasions when similar pleas have been taken by the respondents, it has not found favour before several Courts, for example, the Hon'ble Karnataka High

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Court in **Sheikh Mehaboob Vs. Railway Board & Ors.** (1982 (1) SLR 455) and the Hon'ble Punjab and Haryana High Court in **Mrs. Asha Rani Lamba Vs. State of Haryana and Anr.** (1983 (1) SLR P-400). It is also relevant to mention the Full Bench judgement of the Tribunal in **Devi Lal & ors. Vs. Union of India** (2002 (1) ATJ 485), in which a reference had been made to another Full Bench judgement of the Tribunal in **B.S. Tyagi's case** (CP 154 of 2001 in OA 2066 of 2001), decided on 2.1.2002, which, we are informed, has been upheld by the Hon'ble High Court of Delhi. The Full Bench has held as follows:

"7. Having regard to the aforesaid reasons, we answer the reference as under:

a) An employee who was not promoted earlier due to administrative lapse, on his retrospective notional promotion to the higher post subsequently with effect from the date his juniors have been promoted, would be entitled to arrears of pay and allowances with retrospective date, and

b) Para-228 of IREM in so far as the same denies an employee pay and allowances on the principle of 'no work no pay' even if an employee has been erroneously denied the actual work on account of the fault of the management is invalid and violative of Articles 14 and 16 of the Constitution of India".

As no appeals have been filed against the aforesaid judgements, they are legal and binding on the parties.

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7. Therefore, from the above decisions, it is seen that repeatedly, judicial pronouncements have held the import of Paragraph 228 of IREM as unconstitutional and invalid and violative of Articles 14 and 16 of the Constitution. In the circumstances, the respondents are surely aware of the above judgements, why they repeatedly fall back on the provision of paragraph 228 of IREM for denying arrears to the Railway employees who could not earlier be promoted to the higher post due to their own administrative lapses is not understood. Such a stand on behalf of the respondents is not legally justified and they cannot choose to ignore the above judgements. We hope that the senior officers in the office of the respondents will take note of these observations so that such infructuous litigations can be avoided in future in the public interest.

8. For the reasons given above, the claim of the applicant for arrears of pay and allowances in accordance with the Rules for the period from ~~1.10.1976~~ ^{⑧ 1.1.1996} to 9.10.1978 is allowed. This amount shall be paid to the applicant within one month from the date of receipt of a copy of this order. Having regard to the observations made in paragraphs 6 and 7 above, we also consider that this is a fit case where interest should

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be granted to the applicant on the arrears of amount due to him by way of pay and allowances from ^{⑧ 1-1-1996} ~~1-10-1996~~ to 9.10.1998, which is quantified as 10% per annum from the due date to the actual date of payment.

9. The third claim of the applicant is for being considered for promotion to the post of CGS from the date his junior has been promoted, as according to him he had already qualified in the selection test for which he has relied on the letter dated 8.9.1999. Shri Rajiv Bansal, learned counsel has denied that the applicant has been declared qualified in the selection test for the post of CGS. He has pointed out that the letter dated 8.9.1999 only refers to the fact that the applicant has qualified in the written test and there is still a qualifying viva voce test. On the other hand, the learned counsel for the applicant has submitted that the applicant is stated to have obtained less than the cut off marks of 60% in the written test, on account of taking the depressed seniority position as per the revised provisional seniority list dated 12.4.2001 where he has been shown at serial no. 17 instead of the earlier position of no. 1.

10. In view of what has been stated above with regard to the preparation of the revised seniority list of the

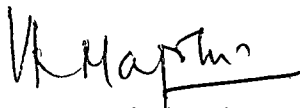
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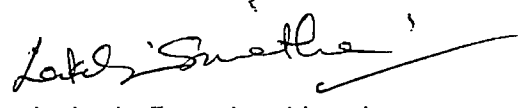
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applicant as Goods Supervisor, we consider it appropriate to dispose of this part of the claim with a direction to the respondents to review his seniority, if any, as per the above directions. In case, the applicant qualifies in the selection test in accordance with the Rules, he shall be granted further promotion to the post of Chief Goods Supervisor as per his revised seniority position from the date his junior was promoted, in accordance with the relevant law, rules and instructions. This shall be done within a period of two months from the date of receipt of a copy of this order, with intimation to the applicant.

11. In the result, the O.A. is disposed of as above.
No order as to costs.

12. In the circumstances of the case, let a copy of this order be also issued to the Chairman, Railway Board, with particular reference to the observations contained in paragraphs 6, 7 and 8 above.


(V.K. Majotra)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'

Note :- ⑧ Please see orders dated 7.10.2004 in
M.A. No. 2030/2004 in O.A. No. 2349/2001.