

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1838/1999

Tuesday, this the 13th day of February, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T. RIZVI, MEMBER (ADMN)

Shri Jai Chand S/O Shri Harphool Singh,
Head T.T.E., Northern Railway, Ghaziabad.
..Applicant.
(By Advocates: Shri B.S.Mainee & Ms. Meenu Mainee)

VERSUS

Union of India through

1. The General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Personnel Officer, Northern Railway, State Entry Road, New Delhi.
3. Shri Nand Kishore, Head T.T.E., Railway Station, Delhi through Divisional Chief Ticket Inspector, Northern Railway, Delhi.

..Respondents.

(By Advocate: Shri P.M. Ahlawat)

O R D E R (ORAL)

Hon'ble Shri S.A.T. Rizvi, M (A):-

The applicant in this OA who is a Head Ticket Collector (for short Hd.TC), is aggrieved by the refixation of seniority rendering him junior to the private respondent No.3 and, hence, this OA.

2. The grievance in this OA first arose when the applicant received a show cause notice dated 15.7.99 which, for the sake of convenience, is reproduced below:

"In the result of initial T-6 course held from 22.2.80 to 22.3.80 declared by ZTS/CH your merit position was at 26 whereas Sh. Nand Kishore was senior to you in the cadre of TCR Gr. Rs. 950-1590/- (RPS) as per extant rule since new recruits sent to the training school for undergoing training before being put

to their working posts shall be given the seniority in accordance with the merit obtained by them in the examination held at the end of their training period. But in the seniority list of Sr.TCR/STE gr. Rs.1200-2040 issued vide No.758-E/43 X/B/P2 dated 7.1.88, your seniority was wrongly assigned at S.No.251 and your senior Sh. Nand Kishore at S.No.258 from the date of appointment in the cadre of TCR as a result of which you were promoted as Hd.TC gr. Rs.1400-2300 on 11.3.88 i.e. earlier to your senior who was promoted on 1.1.94.

Now it is, therefore, proposed to treat you as promoted in gr. Rs.1400-2300 w.e.f. 1.1.94 by withdrawing your promotion dt. 11.3.88 in gr.1400-2300 in view of the position explained above.

You are hereby given an opportunity to submit your representation against the above proposal within one month from the date of receipt of this letter, failing which, it will be presumed that you have no representation to make and final decision shall be taken on this issue."

3. The applicant submitted his reply to the aforesaid show cause notice on 6.8.1999 and, subsequently, the matter was decided by the respondents vide their letter dated 2.9.1999. The applicant has impugned the aforesaid show cause notice as well as the above-mentioned reply dated 2.9.1999.

4. A perusal of the show cause notice shows that the respondents do admit that the applicant was given wrong seniority in the rank of Senior Ticket Collector (for short Sr.TC) vide respondents' letter dated 7/12.1.88. The notice goes on to say that the applicant was wrongly assigned a place at Sl.No.251 in the seniority list in question whereas the respondent No.3 was placed at Sl.No.258. The aforesaid show cause notice further admits that as a result of the above mistake, the

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applicant was promoted as Hd.TC from 11.3.1988 whereas the respondent No.3, though actually senior to the applicant, was promoted w.e.f. 1.1.1994. Aforesaid notice contained a proposal to withdraw the applicant's promotion dated 11.3.1988 and to treat the said promotion as taking effect from 1.1.1994 instead. By the aforesaid impugned order of 2.9.1999, the respondents have decided the matter in terms of the show cause notice. The result is that the promotion of the applicant w.e.f. 11.3.1988 which was in any case on adhoc basis, has been treated as withdrawn and instead the applicant has been placed on promotion in the same rank of Hd.TT w.e.f. 23.1.1994. The respondents have, however, protected the pay of the applicant by the same order.

5. We have heard the learned counsel on either side and have perused the material on record. The learned counsel for the applicant has raised a contention based on the judgement of the Hon'ble Supreme Court in the case of Maloom Lawrence Cecil D' Souza Vs. Union of India & Ors., reported as 1975 (2) SLR 255. The learned counsel has placed reliance in particular on the following observations made by the Supreme Court in the aforesaid case:

"9.... Satisfactory service conditions postulate that there should be no sense of uncertainty amongst public servants because of state claims made after lapse of 14 or 15 years. It is essential that any one who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. No satisfactory explanation has been furnished by the petitioner before us for the inordinate delay in approaching the Court. It is no doubt

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true that he made a representation against the seniority list issued in 1956 and 1958 but that representation was rejected in 1961. No cogent ground has been shown as to why the petitioner became quiescent and took no diligent steps to obtain redress.

10. Although security of service cannot be used as a shield against administrative action for lapses of a Public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Backing up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time."

The learned counsel has further placed reliance on the case of B.S.Bajwa & Anr. Vs. State of Punjab & Ors., decided by the Supreme Court and reported as 1998 (1) SCSLJ 168. The relevant portion taken from the aforesaid judgement is as follows:-

"6... It is well settled that in service matters the questions of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable..."

6. The further contention raised by the learned counsel is that the applicant has been shown as senior to the respondent No.3 in the seniority lists published by the respondents on 28.10.1987, 7/12.1.1988 and 16.4.1993.

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These all relate to post of Sr.TTE. It is also contended by the learned counsel that having been declared senior in the aforesaid seniority lists, the applicant has wrongly been shown as junior to the respondent No.3 in the seniority list dated 28.3.1994 which, we find, relates to the post of Ticket Collector (for short TC). The learned counsel has relied on another seniority list dated 28.2.1995 ~~which~~ ^{and} which relates to the post of Hd.TT^e in which the applicant has again been shown as senior to Respondent No.3. The learned counsel has claimed that affecting change in seniority after a lapse of more than 10 years, will be hit by the observations of the Supreme Court reproduced above as the same will amount to unsettling settled matters after a long enough time. He has not referred to any specific rule for the determination of seniority at any stage whether at the level of TC or at the levels of Sr.TC and Hd.TC. He has also not produced any seniority list relating to the post of TC in which the applicant might have been shown as senior to the respondent No.3. He has, of course, impugned the seniority list for the post of TC dated 28.3.1994 and placed on record, but this, he has done without making a reference to any rule. The applicant's case thus rests squarely on the observations of the Supreme Court already referred to.

7. The learned counsel appearing for the respondents has placed reliance on the rule position and the seniority list dated 28.3.1994 for the post of TC and the other seniority list dated 25.7.1997 for the post of Hd.TTE placed on record by them. We find that both these

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lists are provisional lists as indeed are the various seniority lists referred to by the applicant. The learned counsel's argument is that seniority is required to be fixed firstly at the level of TC and in support of this contention, he has quoted from para 303 (a) of I.R.E.M. Vol.I (page 3 of the counter). The aforesaid rule provides as under:-

"303- The seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority should be determined as under:-

(a) Candidates who are sent for initial training to training school will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of Training period before being posted against working posts."

According to the learned counsel, after selection as TC, the applicant as well as the respondent No.3 were sent for initial training as provided in the aforesaid rule. As a result of the examination held at the end of the aforesaid training, the applicant was found to have been placed at a lower position compared to the respondent No.3. He has produced before us a copy of the results declared at the end of the aforesaid examination. A perusal of the same reveals that the applicant was placed at Sl.No.26 in order of merit whereas the respondent No.3 was placed at Sl.No.16 in order of merit at the end of the aforesaid examination. Thus, according to the learned counsel, at the level of TC, the respondent No.3 was found to be senior vis-a-vis the applicant. According to the learned counsel, this seniority is required to be carried forward to the post of Sr.TC and,

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therefore, at that level also, the respondent No.3 will have to be regarded as senior to the applicant. Further, according to the learned counsel, the same seniority will have to be carried forward to the level of Hd.TTE. According to him, promotion from Sr.TC to Hd.TTE is by selection. He has not placed before us, however, the relevant rules to convince us that the seniority at the level of Sr.TC will in any case have to be carried forward to the level of Hd.TTE. Moreover, even after issuing the seniority list dated 28.3.1994 in respect of TCs, in which the respondent No.3 is seen as senior the respondents themselves have published a provisional seniority list in respect of Hd.TTE dated 28.2.1995 wherein the applicant has been shown as senior to the respondent No.3. We are, therefore, unable to come to a firm conclusion as to the rule position for fixing seniority at the level of Hd.TTE.

8. In keeping with the line of argument advanced by the learned counsel for the applicant, we do believe that long settled matters should not be allowed to be unsettled and, therefore, the refixation of seniority in the manner sought to be done by the respondents after such a long time, should *prima facie* be called into question. However, we are not inclined to decide the matters finally for the reason that neither side has produced final seniority lists for the post of TC or for the post of Sr. TCs and Hd.TTCs. The rules relevant for fixation of seniority at various levels, excepting at the level of TC, have also not been placed before us. According to us, a final decision as regards seniority

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can be taken only with reference to final seniority lists which are yet to be prepared by the respondents. All the seniority lists produced before us are, as stated, provisional lists which will need to be reviewed and re-cast by the respondents inter alia in the light of objections that might have been received by them in the meanwhile.

9. In the peculiar circumstances of this case and for all the reasons set out above, we would like to give the respondents time to consider the matter in the light of relevant rules, the objections, if any, received and to publish final seniority lists for the posts of Sr.TC and Hd.TTE. We accordingly dispose of this OA with a direction to the respondents to publish final seniority list as soon as possible and in any case, within a period of two months from the date of receipt of a copy of this order. The applicant will be at liberty to approach the Tribunal if the outcome of the aforesaid exercise to be undertaken by the respondents, is found to be adverse to him. Likewise, the respondent No.3 will also be at liberty to approach the Tribunal. We also direct the respondents to grant hearing to the applicant as well as to the respondent No.3 while deciding the matter regarding their inter-se-seniority and to pass a speaking and a reasoned order in that regard.

10. The OA is disposed of in the aforesated terms.

No Costs.



(S.A.T. Rizvi)
Member (A)



(Ashok Agarwal)
Chairman

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