

21

Central Administrative Tribunal, Principal Bench

Original Application No. 772 of 1995

New Delhi this the 19th day of January, 2000

Honorable Mrs. S. R. Adige, Vice Chairman (A)
Honorable Mr. Kuldip Singh, Member (J)

Om Prakash Khosla,
son of Shri Kishan Gopal,
Office Supdt II
Refund Section
New Delhi Station Building
Northern Railway
New Delhi

Residential Address

Om Prakash Khosla
H. No. 26, Gali No. 1
Samey Pur
Delhi 110034

(By Advocate - Shri G.D. Bhandari)

Versus

1. Union of India through
the General Manager
N.Rly., Baroda House,
New Delhi.

2. The Chief Personnel Officer
N.Rly., Baroda House,
New Delhi.

3. Shri Prahlad Singh
Hd. Clerk/O.S. II,
Refund Section,
New Delhi Station Building
Northern Railway,
New Delhi

- Respondents

(By Advocate - Shri R.L. Dhawan)

O R D E R

By Honorable Mr. Kuldip Singh, Member (J)

The applicant in this OA has assailed the respondents' letter dated 18.4.1995, Annexure A-1 whereby the applicant has been depanelled and ordered to be reverted as a Head Clerk in the grade of Rs.1400-2300 from the post of Office Superintendent in the grade of Rs.1600-2660.

km

P

2. The brief facts of the case are that the name of the applicant has been removed from the panel and in his place the name of Shri Prahlad Singh, respondent No. 3 has been added. The applicant states that this has been done without giving any show cause notice to him, as such this is arbitrary, mala fide and discriminatory. He has made a prayer for quashing of the same and has also prayed for setting aside Annexure A-1 whereby his name has been depanelled and for setting aside the order whereby he was reverted.

3. He has also prayed for setting aside the seniority list issued on 26.4.1994 and the one issued in July, 1994 whereby the name of the applicant has been placed at S.No. 28 while the name of respondent No. 3 has been placed at S.No. 26. It is stated that this change has been ordered without following the rules and without giving a show cause notice to the applicant. The applicant has further stated that while effecting these changes, the provisions of Rule 219(1) of the IREM and para 228 of the IREM has not been observed and his seniority has been disturbed without giving him a show cause notice.

4. The respondents contested the case and have submitted that the seniority of Head Clerks working in the grade of Rs. 1400-2300 in the Refund Section of the Northern Railway, New Delhi has been recast in accordance with the judgment of the Allahabad Bench.

27

passed in the case of Veerpal Singh Chauhan Vs. U.O.I. and cadre restructuring from 1.3.93 was implemented on the basis of the recasting of the seniority list. Selection to the post of Office Superintendent Grade II was also done on the basis of the recasting of the seniority and though the applicant was included and promoted as Office Superintendent Grade II vide notice dated 15.10.1993, but, on the representation of the members of the reserved community, the case was reexamined and keeping in view the directions given in Veerpal Singh's case (Supra), the competent authority decided to issue the seniority list of Head Clerks which was prevailing prior to the issue of the recasted seniority list vide letter dated 28.7.94.

5. Respondents pleaded that while recasting the seniority list and while deempanelling the applicant from the grade of Office Superintendent Grade-II, the procedure as enshrined under IREM Rule 219(1) and Rule 228 had been fully followed.

6. The respondents also states that a show cause notice was also issued to the applicant and deempanelling was ordered vide Annexure R-4 after giving the notice, so it is prayed that the application has no merits and the same is liable to be dismissed.

Kw

24

7. Rejoinder to the same was also filed and therein it was stated that the procedure as enshrined in Rule 219(1) and para 228 of the IREM has not been followed.

8. We have heard the learned counsel for the parties and have gone through the records.

9. At the outset we may mention that this is not a first round of litigation taken up by the applicant. The seniority list on the basis of which the applicant was empanelled for the post of Office Superintendent Grade-II that was challenged by one Bani Singh in OA No. 2585/93 wherein the applicant was arrayed as respondent No.3. The copy of the judgment has been placed on record by respondents, i.e., the Railway authorities. A perusal of the judgment shows that the seniority list dated 6.8.93 wherein the applicant, Bani Singh in the said case was shown at S.No.33 and the present applicant, who was respondent No.3 in OA 2585/93 was shown at S.No.18 and the applicant who had been empanelled for the post of office Superintendent Grade-II, was the subject matter of challenge in the said OA and when the matter was heard, the counsel for the applicant in that case submitted that the applicant's claim in respect of seniority against the third respondent (i.e. the present applicant) had been considered by the Railway authorities and the applicant had prayed therein that

k

the respondent should be directed to take further action to consider the applicant's case for promotion to the rank of Assistant Superintendent since the present applicant had already been promoted as Assistant Superintendent.

10. The Railway Authorities did not care to file any supplementary affidavit or to contest the plea taken by Bani Singh in the said case. However, the present applicant had taken up the plea that he is not bothered as to what is to be done to the seniority of the applicant, i.e., Bani Singh in that case. He was satisfied that whatever may be done to Bani Singh but his promotion should not be effected and the Tribunal returned the verdict that as the seniority matter had already been settled, the only direction that can be given to the respondents is to consider the case of Bani Singh for promotion with effect from the date the present applicant had been given promotion as Assistant Superintendent. Accordingly, the direction was given. Thus, a perusal of the judgement given by the Principal Bench in the above said case shows that the present applicant was satisfied with the change of the seniority list effected by the respondents at that time.

11. It appears that the applicant had filed this OA after he had been reverted back to the post of Head Clerk from the post of Office Superintendent Grade-II.

R

He is stated to have made representation against the seniority list whereby his seniority had been depressed and the respondent No.3 had been placed at S.No.26, Bani Singh at S.No.27 and the applicant had been placed at S.No.28. However, it appears that his representation had not been considered favourably.

12. The plea of the respondents is that while recasting the seniority list, the provision of Rule 219(1) and para 228 of the IREM has been adhered to and once it has come to the notice of the authorities that there had been erroneous promotion, the same has to be corrected and has to be cancelled in terms of para 228 of the IREM and it is stated that the promotion of the applicant had been cancelled in terms of para 228 of IREM.

13. From whatever has been stated above it is quite apparent that the promotion to the grade of Office Superintendent was given to the applicant on the basis of the seniority list which was the subject matter of challenge in OA 2585/93. Since that seniority list had been quashed and has been replaced by another seniority list and in that OA since applicant was also a party as respondent No.3, so he cannot ask for setting aside the seniority list which would imply quashing of that judgment by means of the present OA. Hence, it is to be deemed that the seniority list which had been accepted in the said OA

k

29

7.

had been issued by the department after going through the entire procedure. The applicant in the present case is challenging the seniority list which had been accepted in OA 2585/93, in his presence and to our mind the applicant cannot challenge the same by means of the present OA for the reasons stated hereinabove.

14. In view of the above discussion, we do not find any merit in the OA and the same is liable to be dismissed. Accordingly, OA is dismissed but without any order as to costs.

Kuldeep
(Kuldeep Singh)
Member (J)

Adige
(S. R. Adige)
Vice Chairman (A)

Rakesh