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Central Administrative Tribunal, Principal Bench

Original Application No. 2701 of 1996

New Delhi, this the 9th day of March, 2000

Hon'ble Mr. Justice Ashok Agarwal Chairman
Hon'ble Mr. V.K. Majotra, Member (Admnv)

Nanoo Ram S/o Shri Johri Lal resident of
W/40, Seelampur, III, New Delhi. - Applicant

(By proxy counsel Shri M.K. Bhardwaj)

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Personnel Officer, Northern Railway, Delhi Division, DRM Office, Paharganj, New Delhi.
3. The Divisional Railway Manager, Northern Railway, Delhi Division, DRM Office, Paharganj, New Delhi.
4. Shri Chatterjee, Divisional Mechanical Engineer, Northern Railway, Delhi Division, DRM Office, Paharganj, New Delhi

- Respondents

(By proxy counsel Shri D.S. Jagotra)

O R D E R (Oral)

By V.K. Majotra, Member (Admnv) -

The applicant has assailed order dated 18.4.1996 passed by the DPO New Delhi, respondent no.2 whereby his claim for promotion as Head Train Examiner ('TXR' for short) in grade Rs.1600 -2600 was found to be not tenable as no junior person had been promoted in the grade earlier than he. The applicant has alleged that his juniors S/Shri Kamlesh Chand, H.K. Shukla and H.C. Sharma were so promoted and in this manner he has been discriminated against. He has taken exception to the rejection of his representation as well.

2. The applicant was appointed as Khalasi in the Railways on 25.5.1954. He was promoted as H. Khalasi, Fitter and H.S. Fitter in due course. In the year 1987

he was promoted as TXR on adhoc basis. He was regularised as TXR grade Rs.1400-2300 and underwent the System Technical School Training by 14.1.1992. He has claimed that since his adhoc promotion as TXR given in the year 1987 was followed by regularisation, his seniority as TXR should have been fixed with effect from the date of his adhoc promotion. He pointed out that in January, 1994 whereas he was promoted to the post of Head TXR the promotion was not given effect to arbitrarily till his retirement on 31.5.1994. The applicant has alleged that his juniors were given promotion as Head TXRs after the applicant's retirement but retrospectively. The applicant has sought quashing of Annexure-A-1 and direction to the respondents to give notional promotion to the applicant as Head TXR/ Chief TXR with effect from the date of promotion of his juniors pursuant to January, 1994 with all consequential benefits.

3. The respondents in their written statement have contended that the application is barred by limitation; that the post of TXR is a selection post and the manner of filling up its vacancies is provided in Para 142 of the Indian Railway Establishment Manual Vol.1 (Revised edition-1989). According to the respondents the applicant had been appointed as TXR purely on adhoc basis due to shortage of TXRs after passing only the suitability test as against the full-fledged test consisting of written test and viva voce. However, the competent authority later on decided vide letters dated 21.9.1990 and 12.7.1991 to regularise

the TXRs including the applicant who had been put to work on adhoc basis subject to certain conditions laid down therein. The applicant in the process was regularised and given seniority as TXR effective from 14.1.1992 i.e. on completion of requisite training as per rules from System Training School, Lucknow. The respondents have refuted the contention of the applicant that any junior to the applicant has been promoted as Head TXR and Chief TXR. The respondents have clarified that S/Shri S.K.Shukla, and H.C.Sharma were recruited directly by the Railway Recruitment Board on 27.6.1986 and 25.6.1976 respectively i.e. much before the applicant was even put to work as TXR on adhoc basis. Both these employees were senior to the applicant. Shri Kamlesh Chand was also senior to the applicant as Fitter grade Rs.950-1500 and was promoted as Head TXR on 10.8.1994 i.e. after the applicant's superannuation on 31.5.1994. According to the respondents the applicant had not made any representation other than the one dated 17.9.1995 which was replied vide letter dated 18.4.1996 (Annexure-A-1) stating that no junior to the applicant had been promoted to Head TXR grade Rs.1600-2660.

4. The learned proxy counsel Shri M.K.Bhardwaj was heard in detail. He reiterated the points made in the OA particularly that when applicant's adhoc promotion as TXR given in the year 1987 was followed by regularisation, his seniority as TXR should have been fixed with effect from the date of his adhoc promotion and that whereas the applicant's juniors have been


promoted as Head TXRs retrospectively after the superannuation of the applicant, the applicant was denied such promotion on a notional basis.

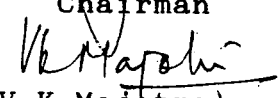
5. We have gone through the material placed before us carefully. We find that the applicant had been promoted as TXR on an adhoc basis merely on the basis of suitability test and not through a fullfledged selection processs prescribed under the rules which includes a written test and viva voce as well. Regularisation of the applicant at a later stage without additional written test and viva voce that would have been conducted if the regular selection had taken place is only in the nature of according a concession to him and similarly placed personnel as they had been promoted on adhoc basis a couple of years ago. The respondents have assigned seniority to the applicant as TXR with effect from 14.1.1992 after he had cleared the training as per rules from the Systems Training School. The respondents have successfully explained that no junior to the applicant has been promoted as Head TXR and Chief TXR as alleged. As a matter of fact direct recruitment of S/Shri S.K.Shukla and H.C.Sharma on dates several years prior to the applicant's promotion as TXR on adhoc basis makes their claim certainly superior to that of the applicant as they were senior to the applicant as TXRs. Shri Kamlesh Chand was also senior to the applicant as Fitter Grade and was promoted as Head TXR on 10.8.1994 i.e. after the retirement of the applicant.

[Signature]

6. The applicant has failed to specify the retrospectivity in the promotion of these personnel on promotion as Head TXR. If the applicant had been put to a full-fledged selection process as prescribed for regular promotion to the post of TXR when he was promoted on an adhoc basis and if he had been trained along with the personnel named above, the complexion of this case would have been totally different. In that case the applicant's seniority would have been assigned on the basis of the date of his adhoc promotion.

7. In the circumstances, we do not find any merit in the OA which is dismissed accordingly without costs.


(Ashok Agarwal) -
Chairman


(V.K. Majotra)
Member (Admnv)