

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.1835 of 1989

This 20th day of May, 1994

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

D.D. Malik
Sr. Manager 'Traffic)
R I T E S, Deepali Building,
Nehru Place,
New Delhi.

Applicant

By Advocate: Shri B.S. Mainee

VERSUS

Union of India, through:

1. The Secretary,
Ministry of Railways,
Railway Board, Rail Bhavan,
New Delhi.

2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

Respondents

By Advocate: None present

O R D E R

(Hon'ble Mr. B.K. Singh, M(A)

In this OA NO.1835/89 the applicant has challenged the failure/refusal of the respondent to assign proper seniority to him in accordance with rules and also as per the judgment of the Hon'ble Delhi High Court and this Tribunal delivered in 1975 and 1986 respectively.

2. The material averments in this OA are these. The applicant was recruited as Traffic Apprentice under the Railways Apprentice Scheme circulated vide their dletter No.E-49/RR1/1/3 dated 30.8.1952. The Apprentice Scheme was applied to all the Railway Organisations. As per the said scheme, 25% of the annual vacancies inthe ex-cadre/general posts of Section Controllers, grade 200-300 (pre-revised) are to be filled up from amongst these apprentices. It has been alleged that

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the rules in this regard were not strictly adhered to. The Traffic Apprentices were not placed against the posts reserved for them and that the rankers were declared senior to them.

3. The Traffic Apprentices filed a writ petition in the Delhi High Court numbered as CWP 394/71 (SS Lal & Ors. v. Union of India & ors.). The CWP came up before the Single Bench of the High Court which dismissed the CWP on ground of delay and laches. A LPA No. 220/72 was filed before a Division Bench of the Delhi High Court which passed the following order:

"The seniority list (annexure 'E') attached to the Writ Petition is quashed. The respondent Railway Administration shall draw a seniority list within three months from today and proceed to make confirmation and/or promotion in the higher grade in accordance with law, rules and orders in force from time to time."

In spite of this judgment, the applicant alleges that, the respondents did not comply with these orders. The original writ petition was filed by only five Traffic Apprentices but since the benefit of the Scheme was not extended to other apprentices, another writ petition was filed by Avinash Chandra Chadha and others (CWP 946/76). The applicant was one of the petitioners in this CWP. The said writ petition was transferred to this Tribunal and was registered as T-246/85. The Tribunal decided this TA on 25.6.86. In this transferred writ petition the relief sought was to direct the respondents, Railways, to quash the impugned seniority list and prepare a fresh seniority list and to make the confirmation and promotions in accordance with that seniority list. The Tribunal held that, that relief already stood granted in LPA 220/72 by the Division Bench of the High Court and as such it was felt that no fresh directions were necessary. The respondents stated that the seniority has been prepared in 1983 in pursuance of the directions in LPA No. 220/72 by the High Court. The contempt petition was filed before the Tribunal on grounds that the list was not prepared within three months and that it was not in line with the instructions of the

High Court. The Tribunal expressed no opinion as regards validity or otherwise of seniority list prepared in pursuance of the directions of the High Court in LPA 220/72. The Tribunal in the operative portion of its judgment ordered as follows:

".....Unless otherwise ordered by a competent authority of the High Court, as the case may be, the seniority list prepared in pursuance of the directions of the High Court shall be acted upon and the confirmations and promotions made on the basis of that list within a period of four months from the date of the receipt of this order."

4. The applicant claims that Avinash Chandra Chadha, who was placed on the panel of 1972-73, is junior to him and therefore he (the applicant) should also be placed on the panel of 1972-73.

5. The applicant has sought relief that the respondents may be directed to interpolate the name of the applicant in group 'B' panel of 1973 as amended on 12.2.1988. He further prays that his name maybe interpolated at the appropriate place over and above his juniors and that his pay be fixed accordingly and all consequential benefits of arrears etc. may be allowed to him.

5. A notice was issued to the respondents who filed their reply and contested the application and grant of reliefs prayed for by the applicant.

6. We heard Shri B.S. Maine, learned counsel for the applicant. None was present to argue on behalf of the respondents.

7. The material averments in the counter affidavit are these. The revised seniority list for selection/formation of a panel for promotion to group 'B' service in T(T) & C Department was prepared on the basis of the Railway Board's instructions contained in letter No. E(GP)81/2/89 dated 5.3.1988. The name of the applicant did not figure in the revised list. This

Tribunal ordered on 25.1.86 in AC Chadha's case (T-246/85) that the Railway Board should hold a second supplementary selection pertaining to the year 1978-79 to consider such of the employees who became eligible due to the revised seniority list prepared in pursuance of the order dated 9.10.86 passed in O.P. Malik's case. Accordingly, a second supplementary selection was conducted in March 1987. The selection was finalised and revised provisional panel was issued on 13.3.87, 15.2.88 being the target date fixed by the Principal Bench of the Tribunal. Confirmations/promotions, as desired in the judgment of the Tribunal dated 25.6.86 in case of AC Chadha, were made as per the revised panel. The directions of the Tribunal had to be complied with before 15.2.88. In pursuance of the directions of the Tribunal, such of the Traffic Apprentices who got higher seniority position had to be interpolated in the earlier panel formed in the years 1972/73 and 1975-76. These revised panels after interpolation of names of such apprentices were issued vide letter No. 752-E/67/XII/EiA, dated 12.2.1988, 6.7.88 and 12.2.89. The name of the applicant did not figure in the revised list since he had already been absorbed in the RITES on a permanent basis and his lien in the Railways had been terminated w.e.f. 1.6.1980.

8. The admitted facts are that with the absorption of the applicant in the RITES w.e.f. 1.6.80, his lien with the Railways was terminated. Whether he was considered fit for promotion to group 'B' post after he joined the RITES, as argued by the learned counsel for the applicant and as also stated in the OA in para 4.27, has no relevance and no connection with the selection and empanelment of the Northern Railways. His case was not considered by the respondent Railways, because he had no lien with them after his permanent absorption with the

RITES. The judgment in AC Chadha came on 25.6.86 in which the directions given by the High Court in its judgment of 1972, were clarified and the Railway Administration was directed to comply with the instructions on or before 15.2.1988. The lien of the applicant had been terminated even before the guidelines for revised seniority list for selection/preparation of panel of promotion to group 'B' service in T(T) & C, were issued vide letter dated 5.3.1983. There was no question of inclusion of the applicant's name since he had been permanently absorbed in the RITES and he did not have any lien in the Railways. This Tribunal ordered on 30.1.1987 in the form of clarification that the Railway Administration should hold a second supplementary selection pertaining to the year 1978-79 to consider such of the employees who became eligible due to the revised seniority list in pursuance of the order dated 9.10.1986 passed in OP Malik's case. The applicant remained indolent all through. If he had been vigilant, he would have agitated the matter before the Railway Administration when the Tribunal had directed them to hold a second supplementary selection. It is an admitted fact that the applicant was enjoying the perks and privileges in the RITES and did not press his claims for selection pertaining to the year 1978-79. If the applicant considered himself eligible, he should have pressed his claim. To this, the answer of the learned counsel for the applicant was that the applicant had been selected by the RITES. Selection by the RITES in respect of any post will not entitle the applicant to derive any benefits, nor will any right accrue to him to be empanelled on the list prepared by the Northern Railways because the judgment of the Tribunal was applicable to such employees who were eligible and had been left out. If the applicant felt that he was also one of those who were left out, he should have immediately pointed

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out the same to the Railway Administration. But as stated above, he was never vigilant and he acquiesced in the empanelment of his juniors who were working with the Railway Administration and as such the doctrine of estoppel will also apply to his case. It is also true that a second supplementary selection was conducted in March 1987 but the applicant could not be considered in this selection since he was no longer an employee of the Railways. As a result of this selection, the revised provisional panel was issued on 13.3.87 and 15.3.87, i.e. before the target date of 15.2.1988.

9. We have perused the rejoinder filed by the applicant and it is nothing but reiteration of the various points stated in the OA itself.

10. The applicant's case is not comparable with that of A.C. Chadha since AC Chadha was an employee of the Railways unlike the applicant whose lien was terminated when the judgment of the Tribunal came for confirmations and promotions and interpolation of the eligible candidates ^{after} subjecting them to the process of selection for the panel of 1972-73. The applicant's hurdle was that he never subjected himself to the process of selection and as such there was no question of his case being considered for empanelment in the list of 1972-73. We do not see any illegality, arbitrariness or discrimination in the action of the respondents. The respondents have fully complied with the rules and regulations and instructions contained in the IREM and also in the various circulars and memorandums issued by the Railway Board.

11. No case has been made out by the applicant for interpolation of his name in the panel of 1972-73. The learned counsel for the applicant repeatedly argued that the applicant's name had been placed in group 'B' panel in the RITES. As already pointed out, this has nothing to do with the selection process of the Northern Railways and the empanelment of the

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employees who appeared before them and who were eligible at the relevant point of time.

12. From the aforesaid observations it is clear that the applicant could not have been considered for empanelment as a result of selection held for interpolation of names of eligible candidates in the panel of 1972-73 because he did not subject himself to the selection process resorted to by the Northern Railways to comply with the instructions of the Tribunal and the High Court. We do not find any discrimination or violation of Article 14 and 16 of the Constitution as argued by the learned counsel for the applicant, nor is there any violation of principles of natural justice.

13. In view of the aforesaid facts and circumstances, the applicant is not entitled to grant of any relief claimed and, accordingly, the application is dismissed as devoid of merit, leaving the parties to bear their own costs.

B.K. Singh
(B.K. Singh)
Member (A)

J.P. Sharma
(J.P. Sharma)
Member (J)