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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.385/89

New Delhi, this 2nd day of March, 1994

HON'BLE SHRI C.J.ROY, MEMBER (J)

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER (A)

Shri Harish Chandra Chhabra
son of Shri Brij Lal Chhabra,
r/o 67-R, Model Town, Sonapat. ..Applicant
(By Shri S.K.Sawhney, Advocate)

Vs.

Union of India through

1. General Manager, Northern
Railway, Baroda House,
New Delhi.

2. Sr.Divl.Personnel Officer,
Northern Railway, New Delhi ..Respondents.
(By Shri O.P.Kshtriya, Advocate)

ORDER

(Delivered by Hon'ble Shri P.T.Thiruvengadam, Member(A))

The applicant was working as Lower Division Clerk from 3-4-1957 in the Delhi Division of Northern Railway. As per the procedure prevailing then, the posts in the higher grade, namely, Upper Division Clerk ^{were} ~~was~~ to be filled by seniority-cum-suitability to the extent of 90% of vacancies and the remaining 10% of the vacancies were to be filled up through a limited competitive test. For one such competitive test held in January, 1970 for promotion against 10% vacancies of Upper Division Clerks, the applicant volunteered to appear but since at that point of time a major penalty charge sheet proceedings were pending against him he was not allowed to take the test. However, in the subsequent competitive test held in the year 1973 the applicant appeared and in the O.A. it has been averred that he topped the list of successful candidates.

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2. As regards the major penalty proceedings against the applicant pending at the time of competitive test held in the year 1970, these proceedings culminated in ^athe minor penalty vide letter dated 21-3-1970 and much earlier to the declaration of the panel on 17-8-1971 relating to the competitive test held in January, 1970. On finalisation of the disciplinary proceedings, the applicant represented on 25-8-71 that he should be allowed to appear in the supplementary test in continuation of the competition test held in 1970. The request was not granted. The applicant continued to represent and at some stage the respondents were considering to give the benefit of interpolation in the panel dated 17-8-1971. Accordingly, a notice (No.561-E/125-III P4 dated 4-1-1985) was issued by respondent No.2 as under:-

"Shri Harish Chander Chhabra, Hd.Clerk (P-3) grade Rs.425-700 (R/S) at present who has been assigned seniority below Shri Gulzari Lal Hd.Clerk (P-5) will now be assigned seniority below Shri Kimti Lal Bhalla, Hd.Clerk (P-1) as per decision taken in the confidential case No.561-E/125-II/S.Cell Shri H.C. Chhabra is also assigned seniority as Sr.Clerk grade Rs.130-300(RS)/Rs.330-560 (R.) from the date his junior Shri Kimti Lal Bhalla borne on the panel on 17-8-1971. He will be given proforma fixation accordingly.

Objections if any may be sent within 15 days of the receipt of this notice otherwise it will be treated as final and proforma fixation will be finalized."

However, these orders were ^{pending} issued vide letter dated 2-2-1985 which reads as under:-

"The orders in connection with assignment of seniority to Shri Harish Chander Chhabra Head Clerk P-3 issued vide this office Notice of even No. dated 4-1-85 is hereby pending."

Subsequently the reasons for effacing the seniority of the applicant were given by respondent No.2 vide his letter dated 21-2-1985 extracted below:-

"It is proposed to assign seniority to Shri H.C.Chhabra, on the basis of panel dated 17-9-1971, in accordance with

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Rly. Board's confidential instructions issued vide letter No.E(D&A)66-RG5-4 dated 25-6-67, which laid down that an employee against whom SF-5 was pending was not allowed to appear in the test but was to be given seniority on the basis of original panel if SF-5 culminated in award of minor penalty and the employee concerned was declared successful at the subsequent examination at the first attempt.

You may please note above position and objections if any may be sent within a week of the receipt of this notice."

3. The applicant was under the impression that the last letter dated 21-2-1985 was being acted upon in his favour, but for the selection for the post of Assistant Superintendent notified on 10-3-1988 the applicant found that he was not getting the benefit of the letters of 4-1-1985 and 21-2-1985. The applicant represented on 27-7-1988 for the implementation of the notices dated 4-1-1985 and 21-2-1985. To this representation, a reply was given to the applicant on 17-8-1988 stating that the matter had been considered in detail and his claim for assigning seniority as proposed in the said letters dated 4-1-1985 and 21-2-1985 was not tenable. This O.A. has been filed for quashing this reply dated 17-8-1988 and for a direction to grant the applicant seniority as Upper Division Clerk as proposed by respondent No.2 in his orders dated 4-1-1985 and 21-2-1985 with all consequential benefits.

4. The learned counsel for the respondents raised preliminary objections regarding limitation and the non-joinder of necessary parties. With regard to limitation, relevance was placed on ATR 1988 (1) 149 as per which the Tribunal cannot take cognisance of the grievance arising out of an order made prior to 1-11-1982 i.e. the date earlier to three years from the date of transfer of jurisdiction to the Tribunal. We are not impressed by this argument since the

grievance has arisen consequent to the letter of 17-8-1988 rejecting the representation of the applicant. After considering the grant of seniority favourably to the applicant by issue of certain orders in 1985, the respondents ultimately decided in 1988 not to uphold his claim. Thus the final order against which the applicant is aggrieved should be taken as the order issued on 17-8-1988 and the question of limitation will not arise.

5. On the aspect of non-impleading of necessary parties, the ld. counsel for the applicant cited Supreme Court orders in Civil Appeal No.5317 of 1990 in SLP No.7055 of 1989. The relevant portion in the order is as under:-

"...It has been tried to be contended before us by the learned counsel appearing on behalf of the respondent that since the employees who are likely to be affected by this judgment have not been impleaded, the relief should not be granted until and unless they are impleaded in this case. We are unable to find any merit of this submission for the simple reason that the question of law involved in this case whether a person appointed on an officiating basis to a substantive vacancy and working there for a considerable period of years is entitled to have his period of ad hoc service to be reckoned while being regularised in the promoted posts."

The ld. counsel of the applicant argued that certain questions of law have been raised in this O.A. viz., whether promotion through limited departmental examination should have the trappings of a direct recruitment and whether the benefit of sealed cover procedure should apply in such cases. We are convinced that specific questions of law as would be discussed further have been raised in this O.A. and hence the non-joinder of necessary parties should not be held as a bar against entertaining the O.A.

6. The main thrust of the case of the applicant

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is that the benefit of the instructions of Railway Board issued vide letter No.E(D&A)66-RG5-4 dated 25-6-1967 should have been extended to him since the disciplinary proceedings rendered a minor penalty other than stoppage of promotion. The relevant extracts from this letter are as under:-

"Sub:- Procedure to be followed for promotion of Railway servants who are under suspension and/or whose conduct is under investigation.

In supersession of the instructions contained in Board's letter No.E(D&A)63-RG6-32 dated 26-10-1965 on the above subject, the Board have decided that the following procedure should be followed in the matter of promotion, from class IV to class III, within class III and from class III to class II of Railway servants who are under suspension or whose conduct is under investigation or against whom departmental proceedings have been initiated or are proposed to be initiated.

1). Cases where a Railway servant is placed under suspension and/or against whom departmental proceedings have been initiated or are proposed to be initiated for the imposition of a major penalty.

- i) Such a Railway servant should not be promoted even if already borne on a selection/suitability panel till after the result of the proceedings against him is known.
- ii) Such a Railway servant should not also be called to appear at the written test and/or appear before the selection Board.
- iii) A vacancy in promotion grade should however, be kept reserved for him till the finalisation of the proceedings against him and meantime the vacancy filled on an officiating basis.

The panel formed after keeping the vacancies reserved for these Railway servants who are under suspension etc. will be provisional to the extent that the merit position may change on account of the interpolation of additional names subsequently. Such a provisional panel may be announced in relaxation of order contained in Board's letter No.E(NG)64-PNM/93 dated 9-2-1965.

If the number of vacancies to be kept reserved is equal or more than the strength of the panel to be announced it will be possible to announce the panel. In such cases, as no panel can be formed, and the vacancy/vacancies in such cases may be filled by appointing staff to officiate on an ad hoc basis till the finalisation of the disciplinary proceedings.

- (iv) If he is ultimately exonerated or his suspension is held as wholly unjustified or awarded any of the following penalties:-
1. Censure.
 2. Withholding of increment.
 3. Withholding of the privilege of passes or PTOs or both.
 4. Fines.
 5. Recovery from pay of the whole or part of any pecuniary loss caused to Govt. by negligence or breach of orders, and
 6. Reduction to a lower stage in the time scale. He should be called for a supplementary selection on his suitability adjudged or seniority-cum-suitability basis as the case may be and his name interpolated in the panel/list for promotion viz-a-vis other candidates already on the panel/list. Before ordering actual promotion against a reserved vacancy, it should, however, be ensured that he is not promoted during the currency of the penalty but only after its expiry as laid down in Beard's letter No.E(D&A)58-RG6-41 dated 7-2-1959, but if the punishment of withholding of increment becomes effective from a future date, he should be promoted, if due, and the penalty of withholding of increment should be imposed in the promotion grade for a period which would not result in greater monetary loss, as laid down in Beard's letters No.E(D&A)59-RG6-41 dated 17-4-1961 and No.E(D&A)65-RG-6-27 dated 20-7-1965.

Notes:- Staff who are ultimately awarded the penalty of withholding of promotion or reduction to a lower service, grade or post should not be called even at the supplementary selection/suitability test."

The case of the appoicant^{is} that he should have been subjected to a supplementary test in continuation of the previous test held in January, 1970^{and} he had made a representation in time accordingly but this was^{and} not entertained. Ultimately he passed in the next competitive test held in the year 1973 topping the list of candidates who had passed and hence treating this performance as the supplementary^{test} he should be given the benefit of interpolation in the 1970 test.

7. The respondents opposed the above on the plea that limited departmental competitive test is treated at par with direct recruitment made by Railway Service Commission and for direct recruitment tests applications^{of Mr. H} ~~stacked~~ and not cleared from disciplinary/

vigilance angles are not forwarded and no posts are kept aside in such cases. Since it was not a selection within the normal channel of promotion the applicant cannot be granted any benefit which is admissible in case of normal departmental selection.

7. In the batch of O.As No.T-43/87 (CWP 2172/85), O.A.No.1595/87, O.A.1596/87, O.A.No.1599/88, O.A. No.1405/89 and O.A.1408/89 heard by a Full Bench of this Tribunal, it has been held as under:-

"Persons promoted on the result of a competitive examination conducted in accordance with the Rules cannot be regarded as direct recruits. Item 8 of the Rule pertaining to Upper Division Clerks expressly describes the mode of appointment on the result of a competitive examination as 'Promotion'. When the Rule itself expressly describes the method of appointment as 'promotion', we fail to see how it can be treated as 'Direct Recruitment'.

8. We are bound by the stand taken by the Full Bench in a similar case of Upper Division Clerks ^{in another department,} where 50% of the posts are filled on the basis of seniority subject to rejection of unfit and the remaining 50% vacancies are filled by promotion of Lower Division Clerks including stenotypists, telephone or telex operators on the results of a competitive examination. It is not in dispute that vacancies of Upper Division Clerks relating to this O.A. were filled 90% by promotion on seniority-cum-suitability basis and 10% by promotion on competitive basis. Various notifications issued in connection with the competitive examination (An.A-2, An.A-5 and An.A-6) bringing out that 10% of the vacancies were also filled only by a process of promotion. In this view the application of the provisions of the circular No.E(D&A)66-RG5-4 dated 25-6-1967 in favour of the applicant was warranted. At some stage

respondent No.2 (vide letter dated 21-2-1985) had invoked the provisions of this letter and was wanting to extend the benefot of interpolation in the panel of 1971 to the applicant. We do not see any reason as to why this benefit should have been denied and the letters of respondent No.2 dated 4-1-1985 and 21-2-1985 taken to the logical end.

9. In the circumstances of the case, the O.A. is allowed with the direction that the respondent No.2 will extend the benefit of seniority to the applicant as proposed by him in his orders dated 4-1-1985 and 21-2-1985. The applicant will be eligible for consequential benefits, namely, proforma fixation as already envisaged in the notice dated 4-1-1985. No costs.

P.T. Thiruvengadam

(P.T. THIRUVENGADAM)
Member (A).

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C.J. Roy
(C.J. ROY) 2/3/94
Member (J)