

7
CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH, N. DELHI

O.A. NO. 1503 of 1988

2nd day of November, 1993

Shri Justice V.S. Malimath, Chairman.

Shri S.R. Adige, Member(A).

Ashok Kumar Kapur,
S/o Shri Harbans Lal Kapur,
R/o D-194, Anand Vihar,
(Vikas Marg Extension),
Delhi-92.

... Applicant.

By Advocate Shri B.L. Madhok, proxy for Shri B.S. Mainee,
Counsel.

Versus

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

2. The Chief Track Engineer,
Northern Railway,
Baroda House,
New Delhi.

... Respondents.

By Advocate Shri B.K. Aggarwal.

ORDER

Shri Justice V.S. Malimath.

The petitioner, Shri Ashok Kumar Kapur, has in this application filed on 11.8.1988 prayed for a direction to the respondents to implement the restructuring orders of the Railway Board issued in 1979, 1981 and 1984 vide Annexures A-2, A-3 and A-4 and to give promotions on that basis to the post of Senior Clerk, Head Clerk and Assistant Superintendent. There is a further prayer to direct the respondents to fix the salary of the petitioner with retrospective effect in the higher grades as due to him in accordance with the first prayer and for a further direction for grant of arrears etc.

-2-

2. The entire basis of the petitioner's case is that according to the relevant restructuring orders issued from time to time certain posts were required to be upgraded in which event the petitioner having regard to his seniority would be entitled to promotion to those upgraded posts. The claim of the petitioner for promotion rests on the seniority list which held the field on 11.8.1988, the date on which the O.A. was filed.

3. As regards the effect of restructuring from which flowed the benefit of upgradation, the respondents have taken the stand that it is only w.e.f. 1.7.1981 that the Tie Tamping Organisation in which the petitioner was employed became encadred. They have produced the order in this behalf at Annexure R-1. The restructuring orders issued earlier would not, therefore, have any operation to the Tie Tamping Organisation. Shri Madhok, learned counsel for the petitioner, submits that nothing has been said in the orders regarding restructuring that they are not applicable to organisations which are not regular cadre organisations; likewise it may also be said that there is nothing stated in those orders to the effect that they would be applicable to non-cadre organisations like Tie Tamping Organisation. It is reasonable to presume in the circumstances that whenever the orders are issued regarding upgradation or restructuring, they are normally applicable to the particular cadre. If there is indication that they are applicable to non-cadre organisations, then they will be made applicable to them. Hence, the petitioner cannot claim the benefit of restructuring orders issued before the Tie Tamping Organisation became a regular cadre organisation.

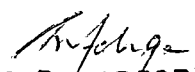
4. The entire claim of the petitioner is based on the ranking assigned to him in the seniority list. The


seniority list which holds the field is dated 2.4.1987, Annexure A-1. The petitioner's name shown therein is at Serial No.2. The respondents have produced along with the reply the revised seniority list, Annexure R-3, dated 9.9.1988 in which the petitioner's name is shown at Serial No. 11. The petitioner has thus suffered in the seniority as he has been pushed down from Serial No. 2 to Serial No. 11. Shri Madhok, learned counsel for the petitioner, submitted that the O.A. was filed in August, 1988 and the seniority list Annexure R-3 was issued thereafter on 9.9.1988. He, therefore, submitted that this ^{was} / not permissible. We find it difficult to accede to this contention. Mere filing of an application under Sec. 19 of the Act does not have the effect of preventing the authorities from taking such steps as they consider appropriate to take in regard to the service matters. There is no interim direction by the Tribunal restraining the respondents from modifying the seniority or directing the status quo to be maintained in regard to the seniority. It is, therefore, not possible to accede to the contention that we should ignore the seniority list dated 9.9.1988 merely on the ground that it was made during the pendency of these proceedings. It is necessary to point out that it was published very shortly after the petitioner filed the Original Application. The steps in this behalf must have been initiated much earlier culminating in the issuance of the same on 9.9.1988. The respondents have along with their reply filed on 7.3.1989 enclosed a copy of the new seniority list as Annexure R-3. The petitioner has filed a rejoinder thereafter wherein he has stated that the ranking assigned to him is not correct. A final seniority list having been issued during the pendency of these proceedings, the petitioner had opportunity to make grievance about the same, to seek amendment of the

-4-

Original Application and implead the persons likely to be affected. What is more important is that the seniority list, Annexure R-3, dated 9.9.1993 itself states that the persons who are aggrieved by the ranking assigned therein may submit their objections within the specified time failing which the said list would become final. The petitioner has not taken the stand that he had filed any such objections. An opportunity to file objections was given to the petitioner as per Annexure R-3. The petitioner has not stated that he had availed such opportunity. This aspect need not detain us any further as the very basis for the reliefs sought in this case has disappeared consequent upon the issuance of the seniority list on 9.9.1993. The relief has been claimed by the petitioner on the basis of the seniority list dated 2.4.1987, Annexure A-1. Now that position has altered. The petitioner cannot agitate his rights on the basis of old seniority. Hence, it will not be possible for us to grant any relief in these proceedings. We, however, would like to say that the petitioner can work out his rights in accordance with the ranking assigned to him in the new seniority list and in the light of the elucidation which we have made in regard to the applicability of restructuring orders.

5. For the reasons stated above, this petition fails and is dismissed. No costs.


(S.R. ADIGE)
MEMBER(A)


(V.S. MALIMATH)
CHAIRMAN

'SRD'
031193