

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No. 6/88 .. Date of decision: 18.05.93

Sh. K.L.Gupta .. Applicant

Versus

Union of India,

General Manager,

Northern Railway.. Respondents

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Hon`ble Sh. A.B. Gorthi, Member (A)

Hon`ble Sh. C.J. Roy, Member (J)

For the applicant .. Sh.V.P. Sharma, Counsel.

For Respondent No.1 to III..Sh. P.S. Mahindru, Counsel

For Respondent No. IV. ..Sh.G.D.Bhandari, Counsel.

J U D G E M E N T (Oral)

(Delivered by Hon`ble Sh. A.B. Gorthi, Member (A))

Aggrieved by the improper fixation of the seniority by the respondents, the applicant has filed this petition with a prayer that the order of the Divisional Personnel Officer, Northern Railway dated 24.3.84 rejecting his representation be set aside and that his seniority be fixed on the authority of the order dated 26.3.81 promoting him to the post of I.O.W. Grade-III.

2. The applicant joined the Railways in the post of Sub-Overseer Mistry on 4.1.58. The next higher post is Inspector of Works (IOW) Grade-III. The promotion to the post of I.O.W. Grade-III is based on seniority-cum-suitability. The respondent No. 3 having conducted a proper selection, published a panel for promotion to the post of I.O.W. In the panel, his name figured at Sl. No. 9. Thereafter, vide the promotion order dated 26.3.81, he was promoted to the grade of I.O.W. Grade-III in the pay scale of Rs. 425-700. He assumed charge of that appointment at Rewari, which he could do so, on 28.3.91 after receiving a copy of the promotion order by post. However, in the meantime, the Respondent No. 4 who might have personally collected the promotion order assumed the appointment of I.O.W. Grade-III on 26.3.81 itself. The applicant's request for proper fixation of seniority w.e.f. 26.3.81 and not from 28.3.81 met with no success.

3. Reply affidavits have been filed on behalf of the Railway respondents as also the private respondent, Mr. Birender Singh (R. 4). The Railways contended that as the Respondent No.4 assumed the post of I.O.W. Grade-III on 26.3.81, he will reckon his seniority from that date whereas the seniority of the applicant would reckon from the date on which he assumed the post of I.O.W. Grade-III i.e. on 28.3.81. The respondent No. 4 contended that on completion of the prescribed training and on being

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given the appointment of I.O.W. Grade-III, he assumed the said appointment w.e.f. 26.3.81. As per the extant rules, his seniority, therefore, shall reckon from that date only.

4. We have heard the learned counsel for the parties. At the outset, Mr. Mahindru raised an objection that the application is time barred, as admittedly, his representation for proper fixation of seniority was turned down in the year 1984 while the present application was filed in December, 1987. Having heard the learned counsel and having perused the material on record, we are of the considered opinion that this case deserves to be examined on merit than being thrown out at the threshold on the technical plea of limitation. The delay in filing this application is, therefore, condoned.

The respondents relied on para 302 of the Indian Railway Establishment Manual(Vol.I) which is reproduced below :

"302. Seniority in initial recruitment grades- Unless specifically stated otherwise, the seniority among the incumbent of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct

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recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-se-seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se-seniority of each group. "

A careful examination of the above provision would clearly indicate that in the case of a promotee, the seniority should reckon from the date of regular promotion after due process of selection. Nowhere in the said paragraph is there any reference to the date of assuming the promotional post. Since, the applicant was promoted vide order issued by the respondents on 26.3.81, we are of the opinion that the seniority should count from that date and not from the date on which he physically resumed the appointment. As far as the direct recruit is concerned, there is no doubt whatsoever that his seniority shall reckon from the date he assumed the appointment. In view of the rule position, it is seen that whereas the seniority of Respondent No.4 has been correctly fixed from the date of his assumption of charge i.e. 26.3.81, the seniority of the applicant ought to have been fixed

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not on the date he reported on duty but the date on which he was promoted. We also find that the applicant was not negligent in any manner in assuming the promotional post, which he did within a reasonable time and not beyond. It is pertinent to note that both the applicant and the Respondent No.4 were given the appointment of I.O.W. Grade-III by means of the same order dated 26.3.81, which is at Annexure-4 to the application. In this context, para 302 of the Indian Railway Establishment Manual clarifies that when a promotee and a direct recruitee are promoted on the same date, the promotee shall be given seniority over the direct recruit.

In view of what is stated above, we find there is merit in the application and the same is, therefore, allowed and the respondents are hereby directed to fix the seniority of the applicant from the date of his promotion which is 26.3.81.

There shall be no order as to costs.

(C.J. Roy)

Member (J)

(A. B. Gorathi)

Member (A)