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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 1203/88

DATE OF DECISION: 20.11.1991

SHRI BHAGIRATH RAM

APPLICANT

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE CHAIRMAN (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI G.D. BHANDARI, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY
HON'BLE MR. I.K. RASGOTRA, MEMBER (A))

The applicant, Shri Bhagirath Ram, retired Luggage and Platform Inspector (LPI) has filed this application under Section 19 of the Administrative Tribunals, Act, 1985 aggrieved by respondent's notice No. 758 E/62-ix/P-2 dated 21.12.1987 (A-7), according to which the respondents decided to treat the posts in the cadre of LPI as ex-cadre posts. Consequent to this decision the respondents vide notice ibid promoted S/Shri Hari Ram Singh and H.R. Chopra, Platform and Luggage Inspectors, Delhi and New Delhi who held lien in the Ticket Checking Cadre as TTI in the grade of Rs. 550-750 and CTI grade Rs. 700-900 respectively w.e.f. 1.1.1984 on adhoc basis pending selection. The applicant submits that he is senior to both the persons who have been promoted and thus has been superseded and discriminated in violation of General Manager (P)'s letter dated 6.1.1986 (Annexure A-3).

2. For facility of reference paragraph 2 of the General Manager (P)'s letter dated 6.1.1986 is reproduced below:

"2. The matter has been examined in this office and it has been decided with the approval of the competent authority that normally the staff drafted from regular cadres and posted to

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ex-cadre posts should not be confirmed. However, even if they are confirmed against permanent ex-cadre posts they should continue to retain their lien in their parent cadres and considered for further promotion on the basis of their seniority which they will continue to maintain in their parent cadres. All the cases being dealt with otherwise of the employees be reconsidered in the light of the decision as given above."

The applicant was appointed as a Goods Clerk Rs. 330-560 on 16.8.1953 in the Commercial Department of Delhi Division of Northern Railway. He was selected as LPI in the pay scale of Rs. 425-640 on 21.10.1970 (ex-cadre post) and was promoted to the higher grade of Rs. 550-700 of LPI w.e.f. 5.2.1973. He was confirmed in the grade of Rs. 425-640 w.e.f. 21.10.1970 in the cadre of L.P.I. and again in the grade of Rs. 455-700 w.e.f. 25.7.1978 as during this period the posts of LPI were encadred in the separate cadre of LPI and again in the grade of 455-700 w.e.f. 25.7.1978. He retired from service on 31.7.1987 on attaining the age of superannuation. The applicant submits that the post of LPI was an ex-cadre post without any channel of promotion. Accordingly the applicant stagnated at the maximum of the scale at Rs. 700/- for several years. Even when large scale restructuring of Group 'C' cadre was undertaken by the Railways effective from 1.1.1984, no further avenue of promotion was provided to the category of LPI nor has any specific provision been made by the Fourth Central Pay Commission for this category.

The applicant made a representation dated 26.3.1985 seeking repatriation to his parent department. The claim of the applicant is that he should have been considered for further promotion in his parent cadre in accordance with GM, Northern Railway's letter dated 6.1.1986. The General Manager, Northern Railway reiterated his decision vide letters dated 6.11.1987

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and 7.12.1987 (Annexure A-5 and A-6). The applicant, therefore, contends that promotion of two junior persons viz. S/Shri Hari Ram Singh and H.R. Chopra, Platform and Luggage Inspectors in the grade of Rs. 550-750 and Rs. 700-900 ignoring the applicant and in violation of GM(P)'s letter dated 6.1.1986 constitutes discrimination against the applicant, and therefore is in violation of Articles 14 and 16 of the Constitution. He, therefore, claims promotion in his parent cadre w.e.f. 1.1.1984 retrospectively. His representations dated 29.1.1988 and 15.3.1988 have remained unresponded by the applicants.

By way of relief he prays that the respondents be ordered to

(i) consider the applicant for promotion in his parent cadre i.e., Goods Clerk/Supervisor in the grade of Rs. 2000-3200 from the date his first junior was promoted along with consequential benefits of pay fixation and arrears.

(ii) to recalculate, revise and make payments of the Pension and all other retiral benefits.

3. The respondents in their reply affidavit have broadly admitted the facts of the case. However, they submit that the persons who are claimed to be his juniors by the applicant held their lien in Ticket Checking Staff while the applicant belonged to the Goods Clerk cadre. His claim for seniority over them has no relevance. They admit that the applicant was promoted as LPI in the scale of Rs. 455-700 w.e.f. 5.2.1973 which was a separate cadre at that time. The posts of LPI, however, were declared as ex-cadre posts in November, 1987 after retirement of the applicant on 31.7.1987. They admit that the applicant stagnated at the maximum of Rs. 700/- in the pay scale of Rs. 455-700 against the post of LPI which formed separate cadre of LPI at that time. There were, however representations from the

persons appointed as LPI that they should be provided further avenue of promotion in their cadre. As it was not possible to find further avenue of promotion in the LPI cadre, it was decided by the General Manager, Northern Railway in November, 1987 to disband the separate cadre of LPI and treat these as ex-cadre posts enabling the LPIs to keep lien in their parent department and also to seek further promotion. The respondent further submit that the other persons who were promoted in their parent cadre were not paid any arrears for the period from 1.1.1984 to the date of their assumption in the parent cadre. However, they were paid higher pay on resumption in their parent cadre as "proforma pay" to their junior. As the applicant never worked in his parent cadre, after declaration of the post of LPI as ex-cadre in November, 1987, he could not be given any benefit.

4. The applicant has filed a rejoinder.

5. We have heard the learned counsel for the applicant, Shri G.D. Bhandari. None appeared for the respondents. We have also perused the record carefully. The respondents have in their counter admitted that the LPIs had made general representations to the General Manager, seeking avenue of promotion and it was in consequence of that representation that the General Manager in November, 1987 decided to declare the posts of LPI as ex-cadre posts, thereby giving the benefit of holding lien and seeking promotion in the parent cadre. They have not denied that the applicant had sought repatriation to his parent cadre vide his letter dated 26.3.1985. The fact, however, remains that the matter to provide the avenues of promotion to the LPIs was under the consideration of the administration which culminated in the decision to treat the posts of LPI as ex-cadre in November, 1987. The applicant in the meantime retired on 31.7.1987. Therefore, he could not get the benefit of promotion to the higher grade post in his parent cadre. It is, however, obvious that had the applicant been in service, he would have been considered for promotion to the higher grade in his parent cadre. It is apparent that initially the Railway respondent established a separate cadre of LPIs when, however, they found that the cadre of LPI was not viable. They decided to

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treat the posts of LPI as ex-cadre posts so that the LPIS could maintain lien in their parent cadre and seek further promotion. This policy of the administration was not well thought out and also remained in a state of flux for a period of time. Although the matter was under consideration, the final decision emerged only after the applicant retired.

In the above conspectus of the matter, we are of the view that it would be fair and just if the applicant is considered for promotion in his parent cadre treating the post of LPI as ex-cadre with reference to the next junior promoted to the higher grade of Rs. 550-760^a or Rs. 700-900 as the case may be in the cadre of Goods Clerks. If no junior to him was promoted to the higher grade prior to his date of retirement, i.e. 31.7.1987, the applicant would have no claim for any benefit. However, if the next junior to him was promoted in his parent cadre, prior to 31.7.1987, the applicant should be considered for promotion and if found fit, given proforma promotion from that date. He shall not be entitled to any arrears of pay but his pension and retiral benefits shall be revised in accordance with the notional pay he would have drawn in the higher grade had he been promoted in his parent cadre from the date his next junior was promoted, treating the post of LPI held by him as ex-cadre post.

The OA is disposed of as above with no order as to costs.

I.K. Rasgotra
(I.K. Rasgotra)
27/4/91
Member (A)

Ram Pal Singh
(Ram Pal Singh)
Vice Chairman (J)