

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No.3/2013

Reserved on : 10.07.2020
Pronounced on : 15.07.2020

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Mohan Lal Son of Shri Kanhiya Lal aged about 59 years, Resident of Railway Phatak, Railway Station Asalpur (Jobner), Jaipur and presently working as Clerk, Under Loco Foreman, Loco Office, North Western Railway, Jaipur-302006.

...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.
2. Divisional Railway Manager, North Western Railway, Jaipur Divison, Jaipur-302006.

...Respondents.

(By Advocate: Shri Y.K.Sharma)

ORDER

Per: Dinesh Sharma, Member (A):

In the instant OA, the applicant has prayed for directing the respondents to give him pay scale at par with his junior or co-workers from time to time (at least in the scale of Rs. 4000-6000 from the year 1999-2000) treating him senior to Shri Nand Ram on the basis of adhoc service by quashing letter dated 26/07/2012 (hereinafter referred to as the impugned order-Annexure- A/1).

2. Applicant's case, in brief, is that, by the impugned order, his claim for seniority over Shri Nand Ram, who was appointed in the service after the applicant and who remained junior to him throughout the service, has been rejected on the ground that the applicant was promoted as Points-man/Cabin-man after Shri Nand Ram. This is wrong since the applicant was allowed adhoc promotion prior to Shri Nand Ram, both worked in same seniority unit and his adhoc services were also regularized as regular service. The applicant has claimed that the seniority is division wise. The action of the respondents has resulted in lesser pay to him than his junior and also lesser pensionary benefits at the time of retirement. The applicant has alleged that he has been pursuing this matter right since 1995, sought information under the RTI Act and on representation, his claim has been rejected by the impugned order, and hence this OA.

3. The respondents have filed a written statement denying the claim of the applicant. It is stated that there are five different Units of the employees working on the post of Points-man. The applicant was working at the Unit in Jaipur while Shri Nandram in the Unit at RPC and therefore though the applicant came into service (01.05.1975) before Shri Nand Ram (21.02.1978), and also got ad-hoc promotion as Points-man before Shri Nandram, the applicant is not entitled to claim seniority over any employee working in another Unit. The seniority has been determined

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strictly on account of continuous regular service in accordance with Para 320 of the Indian Railways Establishment Manual (IREM). The respondents have quoted Para No. 216 (B) (iii) of the IREM to support their contention that ad hoc promotion does not give a right to get regular promotion. The applicant was medically de-categorized in the year 2006 and became Head Clerk thereafter and therefore his claim has no meaning now. The respondents have also pleaded that the OA is barred by period of limitation and should be rejected on that ground alone.

4. No rejoinder has been filed.

5. We have gone through the pleadings and heard the arguments advanced by learned counsels of both the parties. There is no dispute about the fact that the applicant joined service in the Railways before Shri Nand Ram (who, incidentally, has not been made a party in this OA, presumably, on ground that no relief is being claimed against him). It is also not disputed that the applicant got adhoc promotion in his Unit before Shri Nand Ram got in his respective Unit. The applicant does not deny the fact that his (applicant) regular promotion happened after the promotion of Shri Nandram. It is also not denied by the applicant that both of them worked in separate Units, when they got their respective ad hoc promotions. While respondents do not recognise claim to seniority based on his ad hoc service, the applicant wants the ad hoc service to be taken cognizance of

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while determining seniority vis-a-vis Shri Nand Ram. Obviously, this issue should have been raised when the applicant was regularized later than Shri Nand Ram (in the year 1993), or at least when the seniority list showing him Junior to Shri Nandram was published in the year 2007 (Annexure A/7). The applicant has done nothing other than writing a few letters (Annexes A/8 and A/9). Thus, the applicant has been sleeping over for more than a decade on whatever he alleges to have been claiming as his right and therefore the OA is apparently barred by period of limitation. The reply given to the applicant by Annexure A/1, following his representation and meeting with General Manager, however, provides him a thin excuse for having this issue decided on merit.

6. We are reproducing here the provisions of the IREM relating to determination of seniority:

"Para No.216 (B) (iii): Notification for adhoc promotions against selection posts should specifically include a remark to the effect that the person concerned has not been selected for promotion and that his temporary promotion gives him no right for regular promotion and that his promotion is to be treated as provisional.

Para No. 320. Relative Seniority of employees in an intermediate Grade belonging to different seniority units appearing for a selection/non-selection post in higher grade.

When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter-seniority irrespective of the date of confirmation of an employee with lesser length

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of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to the proviso that only non-fortuitous service should be taken into account for this purpose.”

The respondents have followed these rules by treating their seniority from the dates of their regular selection while ignoring the earlier adhoc promotion which could be as a result of fortuitous circumstances prevalent in separate units. The regularisation order of the Applicant (Ann, A/5) did mention (in Para 6 thereof) that the seniority will be as per their merit position (in that Unit) in the list shown in that order. The list did not include Shri Nandram as he was not in that Unit. We also agree with the contention of the respondents that this claim of the applicant, to have seniority and pay benefits above Shri Nandram, years after he has been medically de-categorised (2006) and joined as Head Clerk, has no meaning. For all these reasons, the OA does not merit consideration after this much length of time.

7. The OA is, therefore, dismissed. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

/kdr/