

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

(3)

Regn. No. OA 1144/1986

Date of decision: 05.02.1993

Shri Narinder Kumar

...Applicant

Versus

Union of India & Others

...Respondents

For the Applicant

...Shri S.K. Gupta,
Counsel

For the Respondents

...Shri Jagjit Singh
Counsel

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice-Chairman(J).

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

1. To be referred to the Reporters or not? *No*

JUDGEMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicant who is working as Fireman 'C' in the office of the respondents, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- (1) To give him the benefit of restructuring of scale, i.e., Rs.260-350 after correcting the seniority list;
- (2) to give consequential benefits; and
- (3) any other relief which this Tribunal deems fit and proper in the facts and circumstances of the case.

2. We have gone through the records of the case and have heard the learned counsel of both parties. The applicant had filed OA 245/1986 in the Tribunal which was disposed of by order dated 13.5.1986. He had sought that the seniority list of 1980 be corrected and thereby he should get promotion in the scale of Rs.260-350 and to quash the promotion list dated 31.12.1985. The Tribunal observed that as regards the correction of the seniority list, the same seemed to be time barred under Section 21 of the Administrative Tribunals Act. However, the application was within time ~~so far as~~ the quashing of the promotion list on 31.12.1985 was considered. The applicant did not file any representation against the said promotion list. In view of this, the Tribunal held that the application was premature without exhausting the remedies available to him. Accordingly, the application was rejected with liberty to the applicant to move the appropriate forum including the Tribunal in accordance with law at the appropriate stage.

3. Thereafter, the applicant made representation dated 14.5.1986. He did not receive any reply to the same.

4. The applicant has stated that he was appointed as a Loco Cleaner in Northern Railway Bikaner Division

on 15.5.1973 and he was transferred as Fireman 'C' to Delhi Sarai Rohilla, Loco Shed by order dated 15.2.79. The applicant was placed in the grade of Rs.210-270 admissible to Fireman 'C'.

5. In the seniority list of Fireman 'C' published in 1980, the applicant was placed at S.No.884 while hundreds of employees who were employed subsequent to him were shown in the aforesaid seniority list as senior to him. According to him, this seniority list was neither displayed on the board nor was it circulated among the employees concerned so that the adversely affected persons could raise any objection.

6. After he came to know about the seniority list of 1980 in 1982, he made a representation in 1982 for making necessary corrections in the seniority list but the respondents did not give any reply to his representation or to the subsequent reminders thereto.

7. The applicant has stated that on 31.12.1985 he came to know that respondents had promoted 140 Fireman 'C' from Rs.210-270 to Rs.260-350 by their letter dated 31.12.1985. All these promotees were junior to him in the seniority list. The applicant has

9

impleaded two of such persons as respondent Nos. 3 and 4 in the present application (Shri Mukesh Kumar and Shri Rajinder Singh).

8. The applicant has stated that his claim even against the reserved quota of SC and loyal worker category has been ignored by the respondents. He belongs to the SC category and loyal worker category.

9. The respondents have stated in their counter-affidavit that the application is hopelessly barred by limitation as the applicant is trying to challenge directly or indirectly various decisions taken by the respondents relating back to almost 8 to 9 years. On the merits they have stated that the applicant was engaged as a casual labourer and thereafter as substitute Loco Cleaner on 15.6.1973 and not as a Loco Cleaner on a regular basis. He was screened and regularised only in 1977. His seniority as Loco Cleaner was assigned according to the date of panel and thereafter he was promoted as Fireman 'C'.

10. The respondents have stated that the seniority list of Loco Cleaner was circulated vide their letter dated 23.2.1979. No objections were raised by the applicant against the same. He accepted the promotion

of Fireman 'C' on the basis of the seniority list dated 23.2.1979. After his promotion as Fireman 'C', the seniority list of Fireman 'C' was circulated in 1980 and the name of the applicant was placed at S.No.884. The respondent Nos.3^s/name~~s~~ at S.No.279 in the seniority list of 23.2.1979 and at S.No.709 in the seniority list dated 17.6.1980 whereas the applicant was at S.No.457 and 884 respectively. Respondent No.3 was regularly appointed as Loco Cleaner against 20% loyal quota in the year 1985. He has been assigned seniority from the date of his empanelment. As regards respondent No.4 they have stated that though he was junior to the applicant as Loco Cleaner as well as Fireman 'C', he had been promoted against the restructured post reserved for Scheduled Tribe.

II. Admittedly, the applicant was appointed as substitute Loco Cleaner and he would be eligible for the rights and privileges admissible to a substitute under Rule 2318 of the Indian Railway Establishment Manual. According to the said Rule, substitutes should be afforded all rights and privileges as may be admissible to temporary Railway servants for all purposes except seniority on their eventual absorption against regular post after selection. There is nothing on record to indicate that the applicant was appointed

Q

on a regular basis in 1973. He was empanelled after screening only on 14.2.1977 which was later in point of time to respondent No.3 who was appointed on a regular basis in 1975. The learned counsel for the applicant relied upon the judgment of the Ahmedabad Bench of this Tribunal in Harish Chimanla & Others Vs. Union of India & Others, 1989(9) ATC 344 in which the Tribunal had held that the action of the respondents- railway administration in conferring the employment or giving appointment to sons or daughters of railway staff who were loyal during railway strike, in the form of award or otherwise was discriminatory on the ground of descent only and was violative of fundamental right under Article 16(2) of the Constitution and was void. It was, therefore, held that persons recruited in terms of such award cannot claim any seniority over the petitioners in that case.

12. In our opinion, the aforesaid judgment is distinguishable. In the instant case, the applicant has not challenged the policy of the respondents in engaging the sons or daughters of railway staff during the strike period as an award or otherwise. The applicant was regularised after screening only in 1977 and the persons who were empanelled prior to that have been given higher seniority and higher grades of pay. We do not, therefore,

—

- 7 -

see any merit in the present application and the same is dismissed.

There will be no order as to costs.

B.N. Dhundiyal
(B.N. DHUNDIYAL)
MEMBER (A)

05.02.1993

RKS
050293

P.K. Kartha
(P.K. KARTHA)
VICE CHAIRMAN (J)
05.02.1993