

8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No. 1332 of 1987.

Date of decision 1.11.91

Sham Sunder

.....Applicant.

Vs.

1. Secretary,
Ministry of Railways, Rail Bhavan,
Rafi Marg, New Delhi.
2. General Manager,
Northern Railway, Baroda House,
New Delhi.
3. Divisional Railway Manager,
Northern Railway, New Delhi.

.....Respondents.

For the Applicant

- Shri B.S. Mainee, counsel

For the Respondents

- Shri P.S. Mahendru, counse

B.S. SEKHON:

The Applicant is a member of scheduled caste. He is presently working as Chief Reservation Supervisor at Delhi. The instant Application has been filed by the Applicant seeking the following reliefs:-

- i) To direct the Respondents to assign proper and correct seniority to him in grade Rs. 250-380 (revised Rs. 455-700) in the cadre of Reservation Clerks from 1971 because the out of turn promotion granted by the Railway Minister was a regular promotion in the cadre.
- ii) To direct the Respondents to refix the seniority as well as pay of the applicant as per directions of the Railway Board as communicated vide Railway Board's letter No. E(SCT)70/RE-8/247 dated November, 1970.
- iii) To direct the Respondents to give further promotion in the higher grades to him in

accordance with the proper position in seniority list as per item (i) above.

2. In a nutshell the factual matrix germane to the adjudication of the Application is:-

Applicant initially joined the railway service as Asstt. Station Master (for short 'ASM') on 10.3.1961 after having been selected and undergone successful training. The scale of the post at that time was Rs. 130-225. During May, 1969, Applicant was posted as ASM, Guldhar when the aforesaid Station was raided by dacoits. In a daring act, Applicant saved the railway cash even though he had received two gun shots. For the aforesaid act of bravery, Applicant was given a cash award of Rs. 5,000/- as also Kirti Chakra. The then Railway Minister is also stated to have recommended special promotion for the Applicant in the grade Rs. 250-380. Applicant worked for more than one decade in ex-cadre post. After having worked in the ex-cadre post of Chief Cash Witness vide order dated 11.5.72 (Annexure R/1), Applicant was given proforma position as Enquiry-cum-Reservation Clerk in grade Rs. 150-240 (AS) w.e.f. 15.5.71 i.e., the date of his posting as Chief Cash Witness. Annexure R/1 also states that Applicant should seek further promotion in the cadre of Enquiry-cum-Reservation Clerk and that till he becomes eligible for the grade Rs. 250-380(AS) in that cadre, he may be allowed to continue as Chief Cash Witness without the restriction of tenure. According to the Applicant, the special promotion ordered by the Railway Minister had not been implemented in the present cadre. The change of cadre from ASM to Reservation Clerk is arbitrary

and without any request on his part. He is entitled to seniority in the grade Rs. 250-380 (revised Rs. 455-700) from May, 1971 as a Reservation Clerk in the cadre of Reservation Clerks. But the Respondents have completely ignored the 10 years period from 1961 to 1971 while assigning him his proper seniority. Applicant has also made an issue of giving him grade of Rs. 150-240 from May, 1971 as also of promotion granted to Shri Ghanshyam Singh vide Annexure A/1.

3. Respondents' defence as set out in the counter is that Shri Ghanshyam Singh has been correctly promoted. Annexure R/1 was issued in accordance with the instructions of the Railway Board. Applicant is not entitled to any relief. Respondents have also controverted the grounds pleaded by the Applicant adding that seniority has been correctly assigned to the Applicant.

4. We have heard the arguments addressed by the learned counsel for the parties and have also perused the pleadings^{and} documents on record with due care and attention.

5. The learned counsel for the Applicant commenced his argument by stating that Applicant has rendered meritorious and commendable service in the department. The incident of May, 69 in which Applicant was able to save the railway property (cash) at great personal risk was also highlighted. The learned counsel^{added that} the Applicant is entitled to be assigned the seniority on the basis of the

grade Rs. 250-380 which had been recommended by the Railway Minister and had also been granted to the Applicant even though he was posted as Chief Cash Witness. So saying the learned counsel submitted that the Railway Department have neither implemented the order of the Railway Minister nor have assigned the correct seniority to the Applicant. The learned counsel also made a grievance about the promotion accorded to Shri Ghanshyam Singh vide Annexure A/1 saying that Shri Ghanshyam Singh was junior to the Applicant in the grade of ASM and had the Applicant continued in the aforesaid cadre, he would have earned promotion which has now been given to Shri Ghanshyam Singh. Reference was also made by the learned counsel to the representation filed by the Applicant which has been forwarded by the Headquarters Office, Baroda House to the Railway Board. ^{by Annexure-X} Reliance, in particular, was placed by the learned counsel upon paragraphs 2 and 4 of the aforesaid Annexure. The learned counsel for the Respondents countered by stating that Applicant had never been promoted on regular basis in the grade of Rs. 250-380. Applicant's claim based on Annexure A/1 has no connection with the reliefs claimed by the Applicant and that the seniority of the Applicant has been refixed correctly. Another point made by the learned counsel for the Respondents was that Applicant cannot now assail the change of cadre.

It may at once be stated that the grievance of the Applicant pertaining to the promotion of Shri Ghanshyam Singh who is stated

to be junior to the Applicant in the cadre of ASM is neither justified nor is at all relevant to the adjudication of the reliefs claimed by the Applicant. As is borne out from Annexure R/1, Applicant's cadre had been changed as far back as 15.5.71. Applicant did not choose to assail the change of his cadre at that time or within the period of limitation. It is ^{too}late in the day to now contend that Applicant's cadre has been changed arbitrarily, without his consent and that as such he is aggrieved by an order of promotion of his junior in the cadre of ASM to which Applicant belong^{ed} prior to 15.5.71. Turning to the relief claimed vide clause (a) of para 9 of the Application, the basis of Applicant's claim for assignment of seniority^{is} that he had been regularly promoted in the grade of Rs. 250-380; when a specific query was made by the learned counsel for the Applicant about the order whereby the Applicant was promoted on regular basis in the aforesaid grade, the learned counsel simply stated that the promotion could not^{but} be made on regular basis. Reliance was also placed in this regard by the learned counsel on paragraphs 2 and 4 of Annexure-X. The onus of establishing that the Applicant was promoted on regular basis lay upon the Applicant. He has not produced any satisfactory material to discharge the aforesaid onus. As regards the submission of the learned counsel that Applicant could not but be promoted only on regular basis in the grade of Rs. 250-380, it may be stated that

.....6/

13

Applicant's statement in the representation to the General Manager, dated 15.1.72 (copy at pages 18/c) as also that of his mother in the representation dated 7.2.72 addressed to the Chairman for Railways, (copy at pages 19-20 of the paper-book) seriously tell against the aforesaid submission. In these representations Applicant as also his mother had requested for grant of regular promotion to him. A perusal of para 5 of Annexure-X also militates against the aforesaid submission. Furthermore, Applicant has failed to produce Railway Board's letter No. E(SCT)70-REB-247, dated 20.12.1970. Paragraphs 2, 3 and 4 of Annexure-X also do not in any wise improve Applicant's case. Failure of the Applicant to produce the aforesaid letter also goes against the Applicant. During the course of arguments, the learned counsel for the Applicant stated that the Respondents should be called upon to produce the aforesaid letter. Applicant had neither moved any MP in this connection nor had made this request prior to the concluding stage of arguments. In any case, it is for the Applicant to produce or not to produce the documents on which he seeks to place reliance in support of his claim. In a case seeking refixation of seniority, a party desirous of refixation of seniority also produces the seniority list. Neither the Applicant nor the Respondents have produced any seniority list of the cadre in which the Applicant has been working since 15.5.71. Upon a specific query made by us about the existence of seniority list from the learned counsel for the parties, we drew ^a blank.

6. In the premises, we are of the considered view that the Applicant has signally failed to establish that he had been promoted on regular basis in the grade of Rs. 250-380. That being so, Applicant's claims for assignment of seniority in the aforesaid grade on the basis he had been regularly promoted and for refixation of his seniority and pay are unsustainable. Consequently, Application merits rejection and the same is hereby rejected. This order will not, however, preclude the Railway Administration from taking a proper decision on the representation forwarded vide Annexure -X. Application stands disposed of accordingly. No order as to costs.

Cecai
(P.C. JAIN) 11/8/1991
MEMBER (A)

B. S. Sekhon
(B.S. SEKHON)
VICE CHAIRMAN

1-11-91

'MS'