

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1788/87
XXXIX/XXX/87.

198

DATE OF DECISION 15.1.92.

Shri G.S. Garg

Applicant (s)

Shri R.L. Sethi

Advocate for the Applicant (s)

Union of India & Urs.

Respondent (s)

Shri B.K. Aggarwal

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

I.K. Rasgotra
(I.K. Rasgotra)

Member (A)

T.S. Oberoi
(T.S. Oberoi)
Member (J)

15.1.92.

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PRINCIPAL BENCH: NEW DELHI

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SHRI G.S. GARG

...APPLICANT

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

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

FOR THE APPLICANT SHRI R.L. SETHI, COUNSEL

FOR THE RESPONDENTS SHRI B.K. AGGARWAL, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

MR. I.K. RASGOTRA, MEMBER (A))

Shri G.S. Garg, working as Signal Inspector (SI), Northern Railway has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by order NO.754/E/162-V(EID) dated 21.1.1986, notifying the seniority list of SI in the grade of Rs.700-900 and inviting objections from the affected persons, if any, by 28.2.1986. The applicant appears at serial number 40 of the said seniority list.

2. The case of the applicant in brief is that he was promoted as SI in the grade of Rs.700-900 on adhoc basis in a purely local arrangement vide order dated 21.2.1990 by respondent No.2 vide Annexure A-2 while he was officiating SI in the grade of Rs.550-750 at Khurja and transferred to Kanpur. However, instead of allowing him to proceed to Kanpur he was ordered to join Railway Electrification Project where he was given the grade of Rs.700-900 in October, 1980. In 1981 a selection for the post of SI grade Rs.700-900 was initiated by the parent department on the Northern Railway. Although the applicant was within the field of eligibility for

appearing in the written examination yet he was not called to appear in the selection test held on 17.1.1982. On his representation he was advised to appear in the supplementary written examination scheduled to be held on 20th June, 1982 in terms of their letter No. PE/MTJ/E-424 dated 19.6.1982. Since, however, the notice given to the applicant for the supplementary selection was much short of the 15 clear days required to be given under the extant rules. The applicant did not attend the selection and made another representation on 18.6.1982 to the respondents to give him adequate time to appear in the examination as per rules. The respondents advised the applicant to appear in the departmental test scheduled to be held on 8.6.1984 at the Northern Railway Headquarters vide their letter dated 26.5.1984. The applicant applied for the pass for proceeding from Mathura to Delhi and back. His grievance is that no pass issued to him till 17.4.1984 when he was taken till suddenly and was placed under the treatment of Assistant Divisional Medical Officer, Central Railway, Mathura Junction where he remained under treatment upto 8.6.1984. The pass etc., however, have been handed over to him only of 11.6.1983. The applicant claims that the pass and the letter to appear in the examination should have been sent to his residence on 7.6.1984 when he was sick. He, therefore, again addressed a representation to Chief Engineer, Railway Electrification, Allahabad that the applicant has not been able to attend the selection in the circumstances stated above and, therefore, another date may be fixed for his appearing in the test. In response, however, he was advised that it was just his bad luck that he fell sick and could not appear in the second selection. He was further advised that no further chance would be available to him. The applicant submits that he

cannot be deprived of his fundamental right to be considered for selection. Accordingly, he made a representation on 18.11.1984 to the respondents. The applicant was repatriated to his parent department in December, 1984 although the applicant has not clearly stated, it appears that under the restructuring scheme he was regularised as SI in the grade of Rs.700-900 on the Northern Railway and he was assigned the seniority below those who had appeared in the selection initiated in 1981. By this application he is challenging the seniority assigned to him at serial number 40 on the ground that his erstwhile junior has been placed at serial number 15 to 39. He further submits that he protested against the seniority assigned to him vide his representation dated 10.9.1987, stating that seniority list of 21.1.1986 "was never supplied to him even on several requests. The list was made available to him now only on my personal efforts." Because of his revised seniority the applicant apprehended that his juniors would get promoted to the next higher grade of Rs.840-1040.

By way of relief he prays that the seniority list issued by the respondents vide their letter dated 21.1.1986 be quashed and that the respondents be directed to regularise the applicant as SI in the grade of Rs.700-900 from the date he was promoted on officiating basis as he has been continuously working in the said grade. He further prays that the respondents be ordered to modify the seniority list and to place the name of the applicant in accordance with his original seniority in the grade of Rs.550-750 notified on 18/25.5.1984.

3. The respondents have admitted that he could not be called for the selection test on 17.1.1982 as a copy of the circular letter dated 24.12.1981 was inadvertently not addressed to the office of C.E.(RE) Allahabad under

whom the applicant was working at that time. However, when a supplementary test was fixed on 18.6.1982 an intimation to this effect was given to his office vide letter dated 3.6.1982 but he did not appear in the test on that date. He was given another chance to appear in the supplementary written test, scheduled for 16.5.1984 but actually held on 8.6.1984 after a postponement vide office letter No.754/E-1/101/V EIIB dated 28.4.1984 but he again did not appear.

Since he did not appear for the test despite the two additional opportunities provided to him his juniors who got empanelled for obvious reasons became senior to him. Regarding the delay in issue of a pass to enable him to proceed to Baroda House, New Delhi the respondents submit that pass No.557700 was prepared by the respondents for the applicant and it was sent to him when he failed to collect the same. Though it was his duty to collect the pass personally inspite of, however, collecting the pass he reported sick from 7.6.1984 to 8.6.1984 with the intent to avoid to appear in the test. In the circumstances the case of the applicant has been correctly dealt with in accordance with the Railway Board's instructions vide circular letter No.831-E/63/2-IX(Eiv) dated 10.11.1970 (page 69 of the paper book). The relevant part of the said letter reads as under:-

"5. In order to guard against dilatory tactics of staff in avoiding the selections, the candidates will be given only two chances to appear for selection. If a candidate is sick or on leave on the first occasion, he will be given one more chance only after which the selection will be finalised. If again he falls sick, it is just bad luck which cannot be helped. The selection board

will now in future meet only on two occasions for selection. The date for the supplementation selection shall be fixed by the selection board before they disperse."

The respondents have also taken the plea that the application is time-barred in accordance with the provisions made in Sections 20 and 21 of the Administrative Tribunals Act, 1985, as according to the applicant he has been making representations since 18.6.1982 to the respondents but he has not received any reply.

4. The applicant has filed a rejoinder.

5. We have heard Shri R.L. Sethi, learned counsel for the applicant and Shri B.K. Aggarwal, learned counsel for the respondents and perused the record carefully. As is apparent from the case the applicant is aggrieved by the seniority list of SI grade Rs.700-900 issued by the respondents on 21.1.1986. According to the covering letter the respondents had invited objections from the affected employees, if any, against assigning particular seniority upto 28.2.1986. The applicant does not seem to have reacted to the seniority list in proper time and has chosen to challenge the same vide this O.A. filed on 8.12.1987. He did not make any representation against the seniority list. The plea taken now is that the seniority list was not supplied to him. We are not persuaded to accept that he was ignorant of the seniority assigned to him. He chose to ignore or to react to the said seniority list at the proper time. Having acquiesced in the matter he is now estopped from agitating the

matter. Once the seniority list becomes final the subsequent promotions to the next higher grades are a matter of time. Further his promotion to the grade of Rs.700-900 was not according to the rules till he was possibly promoted under the restructuring scheme. We cannot, therefore, accept his prayer for regularising him from the date he was promoted on officiating basis as SI in the grade of Rs.700-900. Having chosen not to appear in the examination which would have bestowed on him regularisation, in accordance with the rules he cannot claim the benefit of the same.

It is clear from the above that the selection held for SI Grade I (Rs.700-900) was finalised after the second supplementary was held on 8.6.1984. The cause of action arose in 1984, as the seniority list issued on 21.1.1986, merely affirms the consequence flowing from the finalisation of the selection in 1984. Nevertheless, an opportunity was available to the applicant to file his objection to the seniority assigned to him upto 28.2.1986. He failed to do so nor did he challenge the selection or the seniority list in proper time. Their Lordships in **The Direct Recruit Class. II Engineering Officers Association v. State of Maharashtra 1990 (2) SC 264** vide clause (J) of paragraph 47 observed:-

"The decision dealing important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of service to unsettle a settled position."

Having regard to the facts of the case and the above discussion we are not inclined to interfere with the seniority that was settled on 28.2.1986 on the basis of the selection finalised in 1984.

In this view of the matter the application is devoid of merit and time barred. The same is accordingly dismissed, with no order as to costs.

SKK
(I.K. RASGOTRA)
MEMBER(A) 15/1/92

OB
(T.S. OBEROI)
MEMBER (J)

January 15, 1992.

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