IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.
* * *

Date of Decision: 24.3.93

OA 32/87

SHRI OM PRAKASH SHARMA ... APPLICANT.

Vs.

UNION OF INDIA & ORS. ... RESPONDENTS.

CORAM:

HON'BLE MR. JUSTICE U.C. SRIVASTAVA, VICE CHAIRMAN.
HON'BLE SHRI S.R. ADIGE, MEMBER (A).

For the Applicant ... SHRI B.S. MAINEE.

For the Respondents. ... SHRI R.L. DHAWAN.

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI S.R. ADIGE, MEMBER (A).)

This is an application dated 6.1.87 u/s 19 of the Administrative Tribunals Act, 1985, filed by Shri Om Prakash Sharma, retired ATO (Planning), praying for confirmation/promotion with retrospective effect and with all consequential benefits, including arrears of pay and allowances, refixation of pension etc.

2. The applicant was appointed as Traffic Apprentice in 1954. According to him, he was given to understand that his seniority would be fixed in accordance with the roster

.....2.

points of vacancies accruing according to 25% quota allotted to the Traffic Apprentices. After completion of training, he was appointed and posted as Asstt. Yard Master, New Delhi, and thereafter Section Controller, Deputy Chief Yard Master, Chief Yard Master, Station Master, and then Traffic Inspector etc. at different places. He also held a post of Chief Yard Master at Ghaziabad, and Senior Works Study Inspector and then Chief Yard Master, Tughlakabad, and then T.I. Special, and then D.T.I. When his repeated representations for refixation of seniority, in accordance with extant rules, failed, the applicant, alongwith some other Traffic Apprentices, filed a Writ Petition in the Delhi High Court in 1971, praying for allotment of 25% of the vacancies reserved for Traffic Apprentices from 1954 onwards, giving them seniority position as per roster points and also that the reserved vacancies should be carried forward and the benefit of proforma fixation in seniority to be given to the Traffic Apprentices joining in subsequent years. It was also prayed that the Traffic Apprentices should be confirmed against reserved vacancies with effect from the date on which said vacancies accrued. The Hon'ble Single Judge, who heard the Writ Petition, agreed with the petitioners on merits but dismissed the Writ Petition on the point of delay in filing the Writ Petition, upon which the petitioners filed LPA 220/72 and the Delhi High Court directed as follows :-

....3.

"The Appellants are entitled to the grant of Mandamas directing Respondents No.1, 2 and 3 to give the seniority of the Apprentice in the light of the observations made by the learned Single Judge and as upheld by us. The seniority list Annexure 'E' attached to the Writ Petition is quashed. The Respondent Railway Administration shall draw the seniority list within 3 months from today and proceed to make confirmations and/or further promotions to the higher grades in accordance with law, rules and orders in force."

3. Ultimately, the respondents, by their letter dated 16.6.83, issued a seniority list placing the applicant at Sl.No.5. However, in the meantime, according to the applicant, a number of persons who had always been junior to him, had been promoted to higher grades earlier to him on account of wrong assignment of seniority, were declared junior to him. Had the seniority now assigned to him been assigned at the very begining, the applicant would have been empanelled in the Deputy Chief Controllers' panel and would have found his proper place above above Shri Ram Lal. Some of the employees who were empanelled in 1964 or 1967 or subsequent panels in Class-II Gazetted Service were junior to the applicant. According to the revised seniority, the applicant should have been placed as follows :-

(a) Class-II - Grade Rs.650-1200 :- The applicant should have been placed above Shri G.B. Singh and Shri A.N. Srivastava, who had been declared junior to him as per revised seniority. Accordingly, the applicant should have been promoted to Class-II service w.e.f. 17.10.66, the date on which Shri G.B.

.....4.

Singh was promoted to Class-II service.

(b) Senior Scale Grade Rs.1100-1600 :- The applicant was entitled to be promoted to Senior Scale Grade Rs.100-1600 w.e.f. 31.3.76, the date from which Shri A.N. Srivastava, who was junior to him, has been promoted to senior scale.

(c) J.A. Grade Rs.1500-2000 :- The applicant should have been awarded Class-I service w.e.f. 1.5.74, the date on which Shri R.K. Khanna, who was junior to the applicant, was awarded Class-I service. Accordingly, the applicant should have been promoted in J.A. Grade w.e.f. 4.11.81, the date when Shri Girish Chander, who would have been junior to the applicant, was promoted to J.A. Grade.

4. The applicant further contends that on the failure of the Railway Administration to honour the judgement of Delhi High Court within three months, a Contempt Petition was filed in the Delhi High Court, which however was kept pending till such time another similar Writ Petition filed by some other Traffic Apprentice; (Shri A.C. Chaddha & Ors. Vs. UOI & Ors.) was decided. The said Writ Petition (Shri A.C. Chadha & Ors. Vs. UOI & Ors.) was decided by this Tribunal on 25.6.86, wherein the Tribunal has passed similar orders as were passed by the Delhi High Court in LPA 220/72, but uptill now the Railway Administration has failed to extend the benefits

ordered by the Tribunal in that case to the applicant, causing him considerable financial loss etc.

5. The respondents have contested the application on the ground firstly, that it is barred by limitation. It has been contended that the applicant was called to appear in the selection held in 1972-73 for promotion to Class-II service, but he failed to qualify. Again he was called to appear in the selection held in 1975-76 for promotion to Class-II service, but he could not find a place on the panel. He was appointed to officiate in Class-II service on ad-hoc basis in July, 1977 and while holding such appointment, he retired from service w.e.f. 30.4.84. Having failed in the selection for promotion to Class-II service held in 1972-73, the applicant has no valid claim for such promotion from 17.10.66, as held by this Tribunal in an identical case of Shri Ved Prakash Vs. UOI & Ors. (OA 677/89) decided on 3.12.91. The claim of the Traffic Apprentices including the applicant for promotion to Class-II service, i.e. in Senior Scale and Junior Administrative Grade consequent to their ranking in their revised seniority list dated 16.6.83 was considered by the Hon'ble Supreme Court in Civil Appeal No.2013/90 (Shri Virendra Kumar, General Manager, Northern Railway Vs. Avinash Chandra Chadha & Ors.) decided on 25.4.90, in which it was held as follows :-

> "12. As regards the promotion to posts above Class-II service, we find that initially when the petitioners approached the court, their grievance was with regard to their seniority in and promotions to the grades in Class-III service. The High Court had

> also in its direction said nothing about the promotions to Class-II service. However, as stated earlier, the appellants have worked out the promotions to Class-II service on the basis of the new seniority list of Class-III service of the year 1983. The respondents, therefore, have gained substantially since, as stated earlier, the promotions to Class-II and above were not the subject matter of the writ petition before the High Court. We are afraid the Tribunal has gone beyond the scope of the original petition while dealing with the contempt petition. The respondents, therefore, are not entitled to claim in these proceedings as a matter of right promotions to any higher posts."

6. The respondents have also pointed out that in the said Civil Appeal No.2013/90, the Hon'ble Supreme Court had also considered the claim of the Traffic Apprentices including the applicant for payment of emoluments of higher posts with retrospective effect and observed as under :-

> "The respondents have actually not worked in the said posts and, therefore, on the principle of 'No work no pay' they will not be entitled to higher salary. Hence we give no directions in this behalf and leave it to the appellate to give such relief as deemed fit."

7. Under the circumstances, the respondents contend that the applicant is not entitled to any relief, and his application is fit to be dismissed.

8. We have heard Shri B.S. Mainee, learned counsel for the applicant, and Shri R.L. Dhawan, learned counsel for the respondents, and have perused the materials on record.

9. The first ground taken by Shri Dhawan is the one of limitation. He has argued that the cause of action accrued

to the applicant on 16.6.83 when the said seniority list was issued, but the application was filed on 6.1.87 and, therefore, this application is barred by limitation. As the applicant had filed representation on 21.1.84, 8.9.84, 31.5.85, 5.1.86 and thereafter sent a legal notice u/s 80 C.P.C. on 18.9.86, but received no reply to these repeated representations, and was, therefore, compelled to file this OA, We are of the view that the ground of limitation is not valid one.

10. Coming to the second objection, taken by the respondents, Shri Dhawan has produced the relevant DPC record before us, from which it is clear that the applicant was successful in the written test held in 1972 for promotion to Class-II service, but he could not secure the prescribed marks in the viva-voce test and, therefore, failed in the selection. Having failed in the selection for promotion to Class-II service, held in 1972-73, the applicant has no valid claim for such promotion w.e.f. 17.10.86, the date from which his junior Shri G.B. Singh was promoted to Class-II service, and hence this objection of the respondents is sustained.

11. The applicant was again called to appear in the selection held in 1975-76, but although he qualified in the written test and was called for interview on 29.3.76, there is nothing to indicate that he passed in the viva-voce test. In paragraph 3 of his rejoinder also, the applicant does not claim that he passed in the viva-voce test held in 1976.

From Annexure A-3 it appears that the applicant was yet again called for interview on 26.2.79, but nowhere in the applicant's rejoinder has it been stated that he was selected on that occasion and the respondents too are silent on that point. In OA 676/89, Ved Prakash Vs. UOI & Ors., decided on 3.12.91, the Tribunal had noted that the said Ved Prakash had passed in the 1978-79 written test but failed in the viva-voce test and, therefore, could not be interpolated in the 1972-73 panel. While disposing Ved Prakash's case, the Tribunal has observed that if he had failed in viva-voce in 1979, then his case for interpolation has to be considered only in a later panel according to the rules and principles of the Railway Board, after he qualifies in the selection, and if as a result of consideration as above, any existing incumbent in the panel is adversely affected, he should be given a chance of hearing or representation, in accordance with the basic principle of natural justice. The Tribunal had further observed that there was no case for payment of arrears of emoluments, as this matter has already been clearly dealt with in the judgement of the Hon'ble Supreme Court in CA No.2013/90. However, proforma promotion and notional fixation of pay should be done from the dates of deemed promotions after inclusion in the panel, which would also be consistent with paragraph 8(vii) of Railway Board letter dated 30.7.82.

.....9.

12. However, Shri Mainee has furnished a copy of General Manager, Northern Railway, DO letter No.E-339/12-3 dated 16.2.89, wherein reference has been made to the Railway Board's decision contained in their letter No.E(OP)/86/1/58 dated 15.2.89 to interpolate six officers in the 1972-73 panel as per their performance in the subsequent selection in 1978-79.

13. To sum up therefore, as the applicant failed in the selection for promotion to Class-II service, held in 1972-73, his inclusion in the 1972-73 panel of Class-II service officers does not arise. As the applicant has not succeded in establishing that he cleared the selection test, both in respect of written exam as well as the viva-voce test in 1975-76, or in 1978-79, his case for interpolation can be considered only in a later panel, as has been held in Ved Prakash's case, referred to above. However, if, as per General Manager's letter dated 16.2.89, the Railway Board permitted the interpolation of six officers in 1972-73 panel on the basis of their performance in the subsequent selection i.e. 1978-79, and the applicant can also furnish evidence to show that he cleared both the written papers as well as the viva-voce test in 1975-76 or 1978-79, the respondents should also consider his case for inclusion in the 1972-73 panel to avoid the applicant being discriminated against.

14. However, if as a result of such consideration, any existing incumbent in any of the panels is adversely affected,

.....10.

he should be given an opportunity of being heard in accordance with the basic principle of natural justice. The consideration, as proposed above, should be finalised within six months from the date of receipt of a copy of this order.

15. No case for payment of arrears arises, as this matter has been dealt with exhaustively in the judgement of Hon'ble Supreme Court in CA No.2013/90. However, proforma promotion and notional fixation of pay may be done from the date of deemed promotions in the event that the applicant is included in the 1972-73 panel or in any other panel.

16. This application is disposed of accordingly in terms of the directions given in the foregoing paragraphs. No costs.

(S.R. ADIGE)
MEMBER (A)

(U.C. SRIVASTAVA)
VICE CHAIRMAN

Pronounced by me in open court on 24.3.93.

24.3.93