

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.598/87

Date of decision:25.11.1992.

Sh.Om Parkash .. Applicant
versus

Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi & ors. Respondents

CORAM: THE HON'BLE SH.P.C.JAIN, MEMBER(A)
THE HON'BLE SH.J.P.SHARMA, MEMBER(J)

For the Applicant .. Sh.H.S.Dhir, Counsel.

For the Respondents .. Sh.N.K.Aggarwal, Counsel

JUDGEMENT(ORAL)

(DELIVERED BY HON'BLE SH.P.C.JAIN, MEMBER(A))

The applicant was appointed as P.Way-Khalasi with effect from 16.2.63 and put to work as Hammerman in the scale of Rs.210-270 in the month of August, 1979. By notice dated 18.2.86 (Annexure A-2), he was put to officiate as Senior Hammerman pending selection in the grade of Rs.260-400 vice Shri Culla who had retired. This arrangement was stated to be purely temporary and on ad hoc basis and was not to confer upon the applicant any right of seniority on this count. Further, this officiating arrangement was pending selection liable to be replaced on availability of a duly selected candidate.

Vide impugned order dated April, 1987 (Annexure A-10), he was directed to be reverted from the aforesaid post and respondent No.3, namely

Shri Bankey Lal was directed to be posted in his place. It is in this background that the applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 assailing the aforesaid order of April 1987 and praying for quashing of the same and promoting him "under the Next Below Rule according to the channel of promotion". He has also prayed that he should be ordered to be posted to the post he is found eligible and for a declaration that he is senior to Respondent No.3 and that the order declaring him junior to Respondent No.3 be quashed. By an order dated 4.5.87 passed by a Bench of this Tribunal status quo as of that date was directed to be maintained till further orders. The applicant has thus continued to work in the post of Senior Hammerman in the grade of Rs.260-400.

2. The respondents have contested the OA by filing a return to which rejoinder has been filed by the applicant. We have perused the material on record and also heard the learned counsel for the parties.

3. In the background of the controversy in this case, the contention of the respondents is that the applicant ~~does~~ ^{will} not belong to the cadre

to which the promotional post of Hammerman belonged and that his channel of promotion was first to Gangman and from that post to ~~to~~ Keyman and then to Mate. The other channel of promotion is stated to be Khalasi(unskilled), then Hammerman and from there to Bellman. Thus the contention of the respondents is that the applicant cannot claim promotion to the post of Hammerman as a matter of right as such promotion would amount to change of cadre. However, it is admitted that the applicant was put to work on the post of Hammerman in August, 1979 and again in the grade of Rs.260-400/- in February, 1986. As will be seen from the relief prayed for by the applicant, the applicant is really seeking his promotion in the channel of promotion to which he may ~~not~~ have been entitled. The learned counsel for the applicant, at the stage of oral hearing, brought to our notice letter No.930-E/2/Misc./P.4 dated 24.2.92 in which it is stated as below:-

" Sub:Absorption of Shri Om Parkash s/o Shri Baboo Ram in his parent cadre of Gangman.

In view of the decision arrived at with the Recognised Union, the above named H/Man is to be absorbed in his parent cadre of Gangman.

Keeping in view of his seniority position in the cadre of Gangman he stands for promotion as Mate.

AEN/TKD to please give suitability test and result be sent to this office for the approval of competent authority."

In the subsequent letter dated 3.3.1992 from the same office addressed to the A.E.N., Northern Railway, Tughlakabad on the subject of absorption of the applicant in his parental cadre, it has been stated that the decision already communicated vide office letter of even number dated 24.2.92 still holds good as according to length of service, he is seniormost Gangman on Tughlakabad Sub Division and suitability test was to be given to the applicant for the post of Mate and the results of the same to be communicated to the DRM's office. In view of the substance of the prayer in the OA as also the recent letters, referred to above, the learned counsel for the applicant submitted that the applicant would be satisfied if he is given promotion first to the cadre of Gangman and then to the cadre of Mate depending upon his presumptive seniority in the two cadres.

4. We have given our careful consideration to the above request as also to the pleadings of the respondents and the oral submissions made by the learned counsel for the respondents. It cannot be disputed that the applicant is entitled to promotion at least to one of the two channels of promotion, referred to above. If the respondents are of the view that the

applicant was not entitled to promotion in the line of promotion as Hammerman etc., then the applicant has to be given promotion in the channel of promotion to which, according to the respondents, he was entitled. This being acceptable to the applicant and certain orders issued by the respondents in February and March, 1992, this OA is partly allowed with the following directions:-

- (i) the applicant shall be deemed to have been promoted to the post of Gangman from the date from which his junior in the cadre of P.Way Khalasi was promoted as such and his seniority in the cadre of Gangman would also count from that date.
- (ii) subject to the applicant's passing the suitability test which is referred to in the Divisional Office letter dated 24.2.92(supra), the applicant shall be entitled to promotion to the post of Mate in the earstwhile scale of Rs.260-400/-from the date his junior in the cadre of Gangman was promoted to that post. As the applicant has already worked on the post of Hammerman from August, 1979 in the scale of Rs.210-270/- i.e.a scale higher than the scale of the post of Gangman which we are informed was only Rs.200-250, no recovery from his pay already drawn by him shall be made.

(1)

(iii) similarly, for the period he has already worked in the scale of Rs.260-400, no recovery shall be made from the pay which he has already drawn in the aforesaid scale/revised corresponding scale with effect from 1.1.86, even if as per direction(ii) above, he is found, eligible for promotion to the post of Mate in that grade from a date subsequent to the date on which he was put to officiate on the post of Senior Hammerman in the scale of Rs.260-400.

5. We also expect that while assessing the applicant by suitability test for the post of Mate as already adverted to above, the fact that the applicant has already worked in two higher scales should not be ignored and will be given due consideration.

No costs.

J.P.Sharma

(J.P.SHARMA)
MEMBER(J)

C.C.

(P.C.JAIN)
MEMBER(A)

SNS