

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 908/87
T.A. No.

198

DATE OF DECISION

22.11.80

Shri P.K.Srivastava,

Petitioner

Shri G.D.Bhandari,

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri S.N.Sikka,

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. P.C. Jain, Member (Administrative)

The Hon'ble Mr. J.P.Sharma, Member (Judicial)

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

MGIPRRND-12 CAT/86-3-12-86-15,000

Do agree
(J.P. Sharma)
Member (Judl.)

Agree
(P.C. Jain)
Member (Admn.)

Central Administrative Tribunal
Principal Bench: New Delhi.

.....
Regn. No. OA-908/87

Date of Decision: 22.11.90

Shri P.K. Srivastava

... Applicant.

Vs.

Union of India & Ors.

.... Respondents.

For the applicant

.... Shri G.D. Bhandari,
Advocate.

For the respondents

... Shri S.N. Sikka,
Advocate.

CORAM: Hon'ble Shri P.C. Jain, Member (Administrative)
Hon'ble Shri J.P. Sharma, Member (Judicial).

JUDGEMENT

(Delivered by Hon'ble Shri J.P. Sharma)

The applicant, working as Chief Technical Assistant, Central Organisation for Freight Operation Information System, Indian Railways, Chanakayapuri, New Delhi filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order dated 10.2.86 and dated 3.9.1986 (Annexure A-14 and A-15) promoting Shri Narendra Sharma and Hem Raj from Grade Rs.700-900/- to grade 840-1040/- superseding the applicant.

2. The applicant claimed the following reliefs:

- a) to quash the orders dated 10.2.86 and dated 3.9.86 (Annexure-A14 and A-15).
- b) a direction be issued to the respondents that the applicant be treated as senior to the respondents No.4 and 5, Shri Narendra Sharma and Hem Raj respectively and consequential benefits be given to him of pay and allowances as also arrears accruing therefrom.
- c) A direction ^{that} the applicant be deemed to have been promoted in the grade of Rs.840-1040/- from the date his juniors respondents No.4 and 5 are promoted.

3. The facts as given in the application are that the applicant joined on 17.12.1966 as Apprentice Mechanic. The applicant was promoted through a suitability test as Electric Chargeeman 'A' in the Grade of Rs.550-750/- in October, 1979

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after passing the promotional training course. It is further stated that in Electrical department till 1981 there used to be three different cadres of staff, namely, i) General Power Service (GPS), ii) Traction Rolling Stock (TRA), iii) Traction Distribution (T.R.D.). All the above three cadres had different seniority units and staff working in each has their inter se seniority separate from others up to the highest grade of Rs.840-1040/- (RS). It is only when promotions take place in the next higher post i.e. Group 'B', the staff from all the cadres is taken and then seniority of staff from all cadres is merged into an integrated seniority. The respondents circulated a letter in December, 1981 about the formation of a separate independent cadre for maintenance of E.M.U. Services (Electrical Multiple Unit) in Delhi Division. For this, the staff was taken on deputation vide circular letter dated 22.12.1981 (Annexure A-3) on the following basis:

- a) on transfer and posting in the same grade for permanent absorption in E.M.U. maintenance cadre.
- b) those who want to join the above cadre on promotion and on deputation, shall be returned back to their parent cadre either on promotion ^{or} on completion of three years of service in the above cadre.

The applicant was selected through a panel dated 25.3.82 (Annexure A-3) and the applicant who was earlier Electric Chargeman in the grade of Rs.550-750/- was taken in E.M.U. cadre on deputation in the Grade Rs.700-900 and the applicant joined in May, 1982. The applicant who was working in the grade of Rs.700-900 as per his own allegation in para 6-IV was selected as Chief Technical Assistant in the grade of Rs.840-1040 on an ex-cadre post with effect from 12.9.85 (Annexure A-19). The applicant, did not come back to his parent department and moved an application for permanent absorption in E.M.U. cadre by a request made in this behalf on 31.1.1985 (Annexure A-11).

4. Shri Narender Sharma, respondent No.4 and Shri Hem Raj, respondent No.5 also joined the E.M.U. cadre in the grade of Rs.550-750/- on deputation in September, 1982. In terms of the Railway Board's circular for restructuring of certain posts, a modified selection was held on 12.3.1985 and the applicant as well as respondents No.4 and 5 were regularised in the scale of Rs.700-900(RS) with effect from 1.1.1984 (Annexure A-9) dated 15.5.85 and Annexure A-10 dated 29.5.85).

5. The applicant made representations in February, 1985, June 85, September, 1985 and October, 1986 in which the applicant placed his grievance regarding his seniority with respondent No.6 and 7 Shri S.K. Vyas and Shri S. Swarankar and also with respondents No.4 and 5, Narender Sharma and Hem Raj. Though, against S.K. Vyas and S. Swarankar no relief has been claimed yet they have been impleaded as respondents. Narender Sharma was promoted in the grade of Rs.840-1040 with effect from 31.1.1986 by the order dated 10.2.1986 (Annexure A-14) and Hem Raj was promoted in the same grade of Rs.840-1040 by the order dated 3.9.1986 (Annexure A-15). At this time, the applicant had already been selected as Chief Technical Assistant in Central Organisation as said above and working there since February, 1985 in the grade of Rs.850-1040. The grievance of the applicant is that since he has not been given promotion and in case he goes back to his parent department, now E.M.U. then he will not get the promotion and further the applicant desired that he should also be promoted in the parent department in the grade of Rs.840-1040 as he alleged himself to be senior to Shri Narender Sharma and Hem Raj, respondents No.4 and 5. The main contention of the applicant is that he had gone in the grade of Rs.700-900 by virtue of a selection in May, 1982 and the respondent No.4 and 5 have gone in lower grade of Rs.550-750/-. By restructuring, the respondents No.4 & 5

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got promotion from 1.1.1984 in the grade Rs.700-900 while the applicant had already been working in that grade, Rs.700-900/- in E.M.U. since May,1982 and as such he is senior to both Narender Sharma and Hem Raj respondents No. 4 and 5. Secondly, in the year 1982 when the selection was made for transfer on deputation in the grade of Rs.700-900, it was the applicant who was only declared successful and the respdts.^{4 & 5} subsequently joined in the grade of Rs.550-750 that is, they were not found fit to be taken in the grade of Rs.700-900. Thus, it is stated by the applicant that in the new cadre his seniority shall be reckoned on the basis of the officiation in a particular grade and the seniority cannot have any nexus with the grade of feeder category.

6. The official respondents contested the application by stating in the reply that the relevant seniority of the employees in an intermediate grade belonging to different seniority groups (selection/non-selection) in a higher cadre has to be determined on the basis of directives contained in para 321 of Chapter III of Railway Establishment Code which provides that the criteria for determining the relative seniority of the staff in different seniority groups the total length of continuous service in the same or equivalent grade held by the employee shall be the determining factor of assigning inter-seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employees with the longer length of continuous service. Only non-fortutous service is to be taken into account for the purpose. It is further stated that applicant exercised his option in January,1982 for his appointment in E.M.U. Unit on deputation basis and he joined there in May,1982. The respondents No. 4 and 5, Shri Narender Sharma and Hem Raj were senior to the

applicant and they were promoted on their due turn in the scale of Rs.840-1040. Before joining E.M.U. unit, the seniority group of the applicant was different to that of respondents Shri Narendra Sharma, Shri Hem Ram, Shri S.K.Vyas and Shri S.Swarankar. The applicant came from Electrical General Service Unit and the above named four persons belong to TRS unit. As said by the applicant, separate seniority of each unit is maintained and the staff in each unit seeks their promotion in their own unit upto to the highest grade of Rs.840-1040/-. All the staff before joining E.M.U. units were in the scale of Rs.550-750/- on regular basis. As such, the criteria for determining the seniority in E.M.U. Unit was from the date of their promotion in in the Grade Rs.425-700 on a regular basis in their permanent grade. The date of promotion of the five staff members is as follows:

S.No.	Name	Unit	Date of promotion in grade 550-700
1.	Narendra Sharma	TRS	1.8.1970
2.	Hem Raj	TRS	6.4.1978.
3.	S.K.Vyas	TRS	1.1.1979
4.	S.Swarankar	TRS	1.1.1979
5.	P.K.Srivastava	Elec.Gen. Service.	25.4.1980.

The contention of the official respondents, therefore, is that the applicant has no case as he got the regular promotion in the grade on 1.1.1984 in the parent department in the grade of Rs.700-900 and since in the permanent grade of Rs.550-750, the respondents No.4 and 5 are undisputedly senior so the applicant cannot claim a march over them.

7. The respondents No.4 and 5 did not file any counter.
8. The applicant filed rejoinder reiterating the same facts and also filed the judgements of Central Administrative Tribunal, Guwahati Bench, case No.410 of 1986 and of the Principal Bench OA-989 of 1986 (Annexure A-21 and A-22).
9. We have heard the learned counsel for the parties at length and have gone through the records of the case

The respondents have referred to the circular dated 20.8.59 issued by the Railway Board regarding fixation of seniority of non-gazetted staff in non-selection post, which is reproduced below: -

"The Board have had under consideration the question of laying down a uniform procedure for determining the seniority of staff who are promoted to non-selection posts after passing a departmental examination or a trade test. After considering the procedure already being followed by the railway administration, the Board have decided that as a general rule the senior-most candidate should be promoted to a higher non-selection post, subject to his suitability. Once promoted against a vacancy, which is non-fortuitous, he should be considered as senior in that grade to all others, who are subsequently promoted. The suitability of a candidate for promotion should be judged on the date of the vacancy in the higher grade, or as close to it as possible."

The memo dated 16.8.1987 has also been filed to show the criteria adopted for assignment of seniority and the criteria No.2 is relevant which is reproduced below:

XXXXX

XXXXX

XXXXX

2. In case of staff where passing of Selection/suitability test is a pre-condition, the inter-se-seniority of staff concerned in the lower post has been kept intact, subject to the condition that the staff has passed the selection/suitability test in their turn. In case the staff failed in the selection/suitability test in their turn, their seniority has been lowered.

applicant

10. The learned counsel for the/has filed the extract of Rule 312 of the Indian Railway Establishment Manual (I.R.E.M) (Annexure A-6), but this rule is not relevant in the present case because the rule which is applicable in the present case is Rule 321 of the Railway Establishment Code. This is so, because, as stated in the application itself Electrical consisted Department till 1981 of three different cadres GPS, TRS and TRD and the applicant belonged to GPS while respondents No.4 & 5 belonged to TRS and they had their separate seniority in their units which continues upto the highest grade of Rs.840-1040/-. In fact, the applicant as well as the respondents No.4 and 5 came to a new cadre E.M.U and none of them was absorbed by 1.1.1984 in the said cadre and were on deputation. It is on 1.1.1984 that respondents No.4 and 5 got promotion in the grade of Rs.700-900, though the applicant was also

promoted in the same grade in the parent department but his promotion was notional and he had already joined in E.M.U. in the grade of Rs.700-900 in May, 1982. It is stated by the official respondents that the seniority in the EMU unit from the date of promotion on regular basis in grade Rs.550-750, where the staff members are drawn from different units. The notice issued by the Railway Headquarter, Baroda House on 15.5.85 (Annexure A-9) shows respondents No. 4 and 5 senior to the applicant. Another notice dated 25.5.85 (Annexure A-10) shows that as a result of modified selection held on 12.3.1985, the applicant has been placed on the panel of EFO (EMU) with effect from 1.1.1984. Thus, the seniority of the applicant vis-a-vis has to be regulated of respondents No. 4 and 5 in terms of para 321 of the Railway Establishment Code and not under Rule 312 of the I.R.E.M.

11. The contention of the applicant that he joined EMU on 12.5.1982 in the grade of Rs.700-900 so he has become senior to respondent No. 4 and 5 and got promoted in this grade with effect from 1.1.1984 cannot be accepted for fixation of seniority. The applicant has gone on deputation for a period of three years as is evident by the memo dated 22.12.1981 (Annexure A-3). The applicant had joined in May, 1982 and his term was for three years i.e. upto May, 1985. On return after three years i.e. in May, 1985, he had to join his parent department in the same place of seniority or on the promotion post but in the meantime in the parent department also the applicant got proforma promotion from 1.1.1984 and so also the respondents No. 4 and 5. The applicant in his own representation of June, 1985 (Annexure A-12) has given a chart which is reproduced below:

S.No.	Name	Date of Appointment.	Date of Appointment in Gr.	Date of Promotion in Grade	Date and Grade joined in EMU Organisation.
1.	Shri N.Sharma (Respdt. No.4)	6.5.53	1967	1.8.70	Sept. 1982 (550-750) (RS)

1.	2	3	4	5	6
2.	Shri Hem Raj (Respdt. No.5)	1.5.59	1972	Feb. 1977	1982 (550-750)
3.	Shri P.K. Srivastava (Applicant)	17.12.69	Dec. 1974	1.10.79	1982 (700-900)

In this representation, the applicant has prayed for refixation of seniority in the grade of Rs.550-750 and only had a grievance with Shri S.K.Vyas and S.Swarankar as stated in the representation. In any case, the applicant knew that the position of Narendra Sharma and Hem Raj is much above him in 1985 and if he desired to challenge the seniority on any other account than promotion, it should have been done in 1985 itself in the civil court or High Court or soon after before this Tribunal. However, this present application was filed in June, 1987.

12. The learned counsel for the applicant has referred to the decision of D.Vijayappan Nair Vs. General Manager, Cordite Factory, ATR 1986 (2) ACT 599. In this authority it has been held by the Madras Bench that the services rendered in lower scale of pay cannot be counted for determining seniority in a cadre with a higher scale of pay but this is not the case here. The applicant only went on deputation in a higher grade and that was totally fortuitous and so cannot claim on that basis a rank senior in the parent post. The matter would have been different if the applicant had gone by way of a complete absorption in May, 1982 then in the seniority list of EMU he could have claimed the benefit of this officiation since May, 1982.

13. Reliance has also been placed by the learned counsel on K.S.Badan Vs. Union of India, ATR 1987 (1) GAT 347. This authority also does not concern a person who has gone on deputation in a higher grade. However, the observation in the authority is that "the petitioner was included in the panel only on 11.8.1978 and therefore, the officiation between 17.4.1977 and 17.7.78 cannot be considered to be regular for the purpose of seniority." This authority also goes against

the applicant. In the present case the applicant was promoted in the parent unit from 1.1.1984 and shall be deemed to have been promoted in the grade of Rs.700-900 on that day though notionally. The respondents No.4 and 5 were also promoted on the same date but they were senior to the applicant in the below grade of Rs.550-750/-.

14. The other two judgement cited by the learned counsel for the applicant which are (Annexure A-20 and A-21) also have no application to the present case at all. Davender Prasad Sharma's case was a case of absorption of a Sub Inspector of Assam Police in the Union territory of Mizoram. In this cited case there were no service rules. The applicant wants to take advantage of the fact that in this cited case the respondents joined the Mizoram police force as Inspector while the applicant joined as Sub Inspector, so it was held that those who joined as Inspector are senior than the person joined as Sub Inspector. The case in hand is different. Here, the applicant has gone on deputation for a fixed period of three years and there was no absorption in EMU permanently and was to come back when respondents No.4 and 5 got promotion in the grade of Rs.700-900.

15. The authority of Shri Chander Mohan Sharma (Annexure A-2) also has no application to the present case because the officiation on a fortuitous post cannot be counted for the purpose of seniority. The person must be in a regular vacancy or subsequently regularised according to the rules. In the present case the applicant was given higher grade only for a fixed period so it cannot be said that he was in a cadre post and the officiation of ex-cadre post cannot be counted.

16. In view of the above discussion, we find that there is no force in this application which is devoid of merits

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and is dismissed leaving the parties to bear their own costs.

J. P. Sharma
(J.P. Sharma)
Member (Judl.) 22.10.70

P. C. Jain
(P.C. Jain)
Member (Admn.)