

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

.....

Regn. No. OA 1199/87

Date of decision: 30.10.1990

Bhagwan Dass

.....

Applicant

vs.

Union of India

....

Respondents

PRESENT

Shri G.D. Bhandari, counsel for the applicant.

Shri P.S. Mahendru, counsel for the respondents.

CORAM

Hon'ble Shri Justice Amitav Banerji, Chairman.

Hon'ble Shri B.C. Mathur, Vice-Chairman.

(Judgment of the Bench delivered by Hon'ble Shri
B.C. Mathur, Vice-Chairman.)

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri Bhagwan Dass, retired Chief Ticket Inspector, , Bikaner Division, Northern Railway, against the impugned letter of the respondents dated 1.10.86 (Annexure A-15 to the application) rejecting the claim of seniority of the applicant based on the respondents' letter dated 17.7.82 (Annexure A-2) and promoting his juniors by superseding him.

2. The brief facts, as brought out in the application, are that the applicant was appointed as a Ticket Collector in 1949 in Delhi Division of the Northern Railway and was promoted as Travelling Train Examiner (T.T.E.) in the grade of Rs. 330-560/ in 1959. He was transferred to Bikaner Division in 1981 in the same grade of T.T.E. The respondents issued a combined seniority list of T.T.Es/T.C.Rs in the grade of Rs. 330-560 dated 17.7.82 (Annexure A-2) in which the name of the applicant appears at Sl. No. 6. Many junior T.T.Es whose names appear at Sl. Nos. 17 to 20 were promoted in the grade of Rs. 425-640 as T.T.E. The applicant represented against his supersession by the juniors

but the respondents vide letter dated 28.3.83 informed the applicant that there was a 'status-quo' granted by a court, restraining the respondents from making promotions to the post of Head T.T.E. and that he would be promoted to the grade of Rs. 425-640 as soon as the stay was vacated (Annexure A-3). 7 persons shown junior to him in the seniority list (Annexure A-2) were even confirmed in the grade of Rs. 425-640 while the applicant continued to work in the lower grade of Rs. 330-560.

3. A selection for the H.T.T.E. grade of Rs. 425-640 was held in December, 1982/January 1983 and in the select list the applicant appears at the top of the list at Sl. No. 1 (Annexure A-5). This list also mentions that ad hoc promotion of S/Shri K.L. Sindhi and Bal Raj, at Sl. No. 2 and 3 of the select list, stood regularised. In spite of his being at the top, both in the seniority list as well as the select list, his promotion orders were not issued. The applicant who has been working as T.T.E. in the grade of Rs. 330-560 was transferred as H.T.T.E. in the same grade although the post of H.T.T.E. carries the grade of Rs. 425-640. Persons junior to the applicant vide seniority list dated 17.7.82 have been promoted as Chief Ticket Inspector (C.T.I.) in the grade of Rs. 700-900 while the applicant, senior to them all, was promoted in the grade of Rs. 550-750 without first being promoted in the grade of Rs. 425-640 although he was on the top of the select list. The respondents issued orders dated 1.3.85 fixing the pay of the applicant at Rs. 610 in the grade of Rs. 550-750. The seniority list issued on 17.3.86 (Annexure A-11) was superseded as a consequence to orders of the Respondent No. 1 issued on 19.6.85 that seniority for grade Rs. 550-750 should be assigned on the basis of length of service in the grade of Rs. 330-560 and Respondent No. 2 issued a fresh seniority list for HTTE/HTC/TNCRs in the grade of Rs. 425-560 (marked as Annexure A-12) in which the applicant's name appears at Sl. No. 53. There is a remark

against his name that the applicant arrived from Delhi Division in the grade of Rs. 330-560 and was empanelled in the grade Rs. 425-640 on 3.2.83 and hence kept below T.T.Es selected earlier. The case of the applicant is that when he was transferred from Delhi to Bikaner Division on administrative grounds, his length of service in the grade of T.T.E. would be taken into consideration while fixing his seniority in Bikaner Division and according to the letter of Respondent No.1, his seniority has to be fixed on the basis of service rendered in the grade of Rs. 330-560. In practice, Respondent No. 2 has fixed his seniority from the date of empanelment in the grade of Rs. 425-640 which is wrong. The applicant has claimed that he was considered as an outsider having joined the Bikaner Division from Delhi Division and not given his due. His juniors both in the Delhi and Bikaner Divisions have become C.T.I. earlier than him and he has, therefore, suffered. The applicant represented for consideration of his name for selection to the grade of Rs. 700-900, but the respondents deleted his name along with some others without assigning any reason (Annexure A-18). It has also been stated that the C.T.I. in the grade of Rs. 700-900, Shri Tulsi Dass, retired on 31.10.85 and the applicant being the seniormost person at Rewari officiated in his place, but was not given the grade of Rs. 700-900 and wrongly denied promotion to the grade of Rs. 700-900. Many persons who were junior to him in the seniority list (Annexure A-2) have been promoted as C.T.Is earlier than him.

4. The applicant superannuated from service on 31.3.87 and prays that he should be given advantage of the restructuring of the grades and placed in the grade of Rs. 700-900 with effect from 1.1.1984 when the restructuring of the cadre took place by the Railway.

dm

5. The respondents in their reply have stated that the applicant was transferred in April 1981 from Delhi Division to Bikaner Division as T.T.E. on administrative grounds due to a vigilance case against him. He was transferred in the same scale of Rs. 330-560 and was assigned seniority in the aforesaid grade in terms of para 311 of the Indian Railway Establishment Manual. It has been stated that persons referred to by the applicant as junior to him were in fact promoted as Head Travelling Ticket Examiners grade Rs. 425-640 prior to his arrival on transfer to Bikaner Division. As such, the applicant could not be given seniority over the persons who were already in the grade of Rs. 425-640 prior to his joining the Bikaner Division as T.T.E. He was assigned seniority in the grade Rs. 330-560 where he was at the time of transfer to Bikaner Division. It has been clarified that S/Shri K.L. Sindhi and Balraj were already holding the post of H.T.T.E. in the grade of Rs. 425-640 on ad hoc basis and when they were empanelled in the same list, their promotion as Head T.T.E. was regularised as per rules. At the time of empanelment for the post of H.T.T.E, the applicant was working in the grade of Rs. 330-560. One Shri Banwari Lal, who was working as Head T.T.E. on ad hoc basis, filed a suit in the court of Sub-Judge, Rewari, against his non-empanelment in the post of Head T.T.E. and his consequent reversion. The court granted him status quo on 7.2.83 and the administration was restrained from promoting the empanelled staff to the post of Head T.T.E. in the grade of Rs. 425-640 till the decision of the case. As such, the order of promotion of the applicant could not be issued till May 1984. As the applicant was only in the grade of Rs. 330-560, he could not be promoted in the grades of Rs. 425-640, Rs. 550-750 and Rs. 700-900 prior to 24.5.1984. On restructuring of the cadre of the Ticket Checking Staff with effect from 1.1.84, the applicant who was due for promotion in the grade of Rs. 550-750 against the upgraded post was promoted directly from the grade of Rs.

ban

(11)

330-560 to the grade of Rs. 550-750 on 24.5.84 according to his seniority in the Bikaner Division. The applicant was empanelled for the post of Head TTE grade Rs. 425-640 at Bikaner Division on 3.2.83 and a combined seniority list was issued on 25.9.84. Persons at Sl. Nos. 8, 9, 10, 11, 15 and 16 were already working at Bikaner Division as Head T.T.Es and had already been empanelled and selected for the post of Head T.T.Es during the years 1976, 1978 and 1979 prior to the joining of the applicant in Bikaner Division and were considered senior to him. As such, the applicant has no case. It has been further explained that the selection was initiated for 11 posts of Chief Ticket Inspectors' grade Rs. 700-900/2000-3200 (RS) during the month of February, 1987. Only 33 eligible persons working in the grade Rs. 550-750 according to their seniority position were called to appear for the selection. According to this seniority; the applicant was not due to be called for the selection of C.T.I. as per the above formula. For the same reason, he was not put to officiate in the post of C.T.I. grade Rs. 700-900 at Rewari in the vacancy created on the retirement of Shri Tulsi Dass. The applicant was due for promotion in the grade Rs. 550-750/Rs. 1600-2660 (RPS) as per the seniority and the applicant was promoted to this grade from 25.5.84 (Annexure R-3).

6. In the rejoinder by the applicant, the applicant has pointed out that since he was transferred from Delhi Division to Bikaner Division on administrative grounds, para 311 of the Indian Railway Establishment Manual would not apply as that is applicable to transfers from one cadre to another cadre. In this case, the transfer was from one Division to another Division in the same cadre of T.T.E. and on the date of his appointment, persons at Sl. No. 7 onwards in Annexure 2 were junior to him on the basis of the total length of service in the grade. The respondents were wrong in confirming his juniors in the higher grade overlooking his right. He was definitely told that he would be promoted as H.T.T.E. in the grade of Rs. 425-

640. After the applicant's joining the Bikaner Division in 1981, the respondents did not hold any selection for the grade Rs. 425-640 and the juniors continued to enjoy the benefits of ad hoc promotion over the head of the applicant. While the court's injunction was applied in his case, junior persons already working in the grade were confirmed and also promoted to the higher grade of Rs. 550-750 while the applicant continued to work in the grade of Rs. 330-560. While he was promoted to the grade of Rs. 550-750 on restructuring of the cadre, his juniors, as per the seniority list dated 17.7.82 (Annexure A-2) were promoted to the next higher grade of Rs. 700-900. In the list of candidates for the proposed selection for C.T.I. grade Rs. 700-900 issued in the month of February 1987, the name of the applicant was there, but on his representation that his seniority should be decided prior to the holding of the selection, his name was removed altogether.

7. The learned counsel for the applicant raised the point that since he could not lose his seniority in the grade of Rs. 330-560 on being transferred to Bikaner Division, he has to be considered senior to all persons who were promoted to the grade of T.T.E. after him and this position was correctly represented by the respondents in the seniority list at Annexure A-2. He cited the case of State of Andhra Pradesh Vs. Dr. N. Ramachandra Rao & Ors. (Civil Appeal Nos. 3131-32 of 1988 decided by the Supreme Court on 3.5.90). This was an appeal against the order of the Andhra Pradesh Administrative Tribunal, Hyderabad, directing the State Government to consider cases of officers for promotion to the cadre of Additional Director of Medical and Health Services and equivalent posts on the basis of seniority, including service in their lower cadre. The decision of the Tribunal was upheld by the Supreme Court. The Supreme Court held that it would be unreasonable and unjust to exclude the service and overlook the vertical seniority in the substantive cadre to which everyone was selected by

[Handwritten signature]

the Commission. The Court held that "we are of the opinion that the juniors who get accelerated promotion on account of fortuitous circumstances depending upon their speciality and availability of vacancies in such speciality should not be allowed to march over their seniors for appointment to administrative posts. Any advantage gained by juniors on such fortuitous circumstances of having some speciality and promotion should not impair the rights of their seniors for promotion to posts where speciality or teaching experience is not called for."

8. The learned counsel for the respondents raised some preliminary objections on grounds of limitation. He said that the cause of action took place when his seniority was fixed in 1982 and the application is, therefore, time barred. He said that there was a departmental enquiry for major penalties pending against the applicant because of which he was transferred from Delhi to Bikaner Division on administrative grounds. This plus the court directive delayed the empanelment of the applicant to the grade of Rs. 425-640. Since at the time of his transfer to Bikaner, some T.T.Es were already working in the next higher grade, they could not be considered junior to him. On restructuring, vacancies in the grades of Rs. 550-750 and Rs. 700-900 were fixed according to seniority in the grade of Rs. 425-640. The seniority and pay fixation of the applicant have been done correctly.

9. We have gone through the pleadings and given careful consideration to the arguments by the learned counsel. As far as the question of limitation is concerned, we are satisfied that the grievance of the applicant is against the impugned order dated 1.10.86 (Annexure A-15) and as such the limitation would not arise. The case of the applicant is that on transfer from Delhi to Bikaner Division, he was senior to some persons as T.T.E. and his seniority has been shown correctly in the list dated 17.7.82 at Annexure A-2 and that he wants his promotion on the basis of this seniority. According to the applicant, he cannot become junior to persons junior to him in the grade of T.T.E. merely because they had got ad hoc promotion to the next higher grade. Such a promotion would be considered fortuitous according to the judgment of the Supreme Court in the case of State of Andhra Pradesh vs. Dr. N. Ramachandra Rao & Ors. (supra) and he should be given advantage of his seniority in the grade of T.T.E. In any case, he was considered for the next grade of Rs. 425-640 and kept on the top of the list. Evidently, he was not promoted because of the major penalty enquiry pending against him at that time. We have gone through the orders passed by the Divisional Commercial Superintendent, Bikaner, in the case against him. He considered the enquiry report and accepted the findings of the Inquiry Officer. No ulterior motive was proved but the charge of carrying extra passengers and accommodating more passengers than the berths available though proved were dealt with leniently and a penalty of withholding two sets of privilege passes was imposed.


10. Since some persons junior to the applicant were already officiating in the next higher grade of Rs. 425-640 when the applicant was transferred from Delhi to Bikaner and since a penalty was imposed on him, under the normal circumstances,


Jan

the respondents would have been justified in not promoting the applicant to the higher grade. If this view is accepted, the respondents would have been justified in their action both regarding fixation of seniority as well as further promotion of the applicant, but the penalty of withholding of two sets of privilege passes is not a penalty which can justify ^{denying} promotion of a person and we hold that the applicant should have been promoted according to his original position in the grade of T.T.E. If some persons in Bikaner Division junior to him were officiating in the grade of Rs. 425-640 on ad hoc basis, the applicant should have also been promoted to that grade and given his due seniority as mentioned in Annexure A-2. ^{11.} We, therefore, direct that the respondents should reconsider the case of the applicant by treating him senior to the persons who were shown junior in the seniority ^{list} at Annexure A-2 and then consider him for promotion to the higher grades of Rs. 425-640, Rs. 550-750 and Rs. 700-900 strictly according to rules. In case he is found suitable for promotion, he may be allowed the benefits of proforma promotion and his pay refixed. In the event of his being found suitable for promotion and his getting advantage ^{grade} of Rs. 700-900 on the basis of restructuring with effect from 1.1.84, we direct that while his pay may be so revised, he would not get the benefit of any arrears of salary, but his retirement benefits should be fixed on the basis of the pay which he would have received at the time of his superannuation had his pay been fixed on the basis of his seniority as indicated above. We make it clear that no arrears of salary would be admissible to the applicant as a result of the refixation of his salary, but he would get full advantage in the matter of fixation of pension and other pensionary benefits, if he is otherwise found suitable. The respondents may consider his case accordingly



within a period of three months. There will be no order as to cost.


(B.C. MATHUR) 30.10.90
VICE-CHAIRMAN


(AMITAV BANERJI) 30.10.90
CHAIRMAN