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CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH.

O.A. NO. 2520/90

New Delhi this the 5th day of May, 1995.

Hon'ble Shri N.V. Krishnan, Vice Chairman.

Hon'ble Dr. A. Vedavalli, Member(J).

Shri S.P. Srivastava,
Senior Commercial Officer (Claim/s),
Northern Railway, N.D.C.R. Bldg.,
Connaught Place,
New Delhi. ..Petitioner.

By Advocate Shri B.S. Mainee.

Versus

Union of India through

1. The Secretary,
Ministry of Railways,
Railway Board, Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway, Baroda House,
New Delhi. ..Respondents.

By Advocate Shri N.K. Aggarwal (None present).

O R D E R

Hon'ble Shri N.V. Krishnan, Vice Chairman(A).

The applicant is aggrieved by the fact that though his name has been included in the panel of Traffic Apprentices being fit for promotion to Senior Grade, yet he has not been given such promotion though his junior, C.P. Sharma, had been promoted much earlier. Hence, he has sought the following reliefs:

"8.1. That this Hon'ble Tribunal may be pleased to direct the respondents to give promotion to the applicant to the senior scale post and J.A. grade from the date from which his next junior, Shri C.P. Sharma has been promoted.

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8.2. That this Hon'ble Tribunal may be further pleased to refix the salary of the applicant in senior scale as well as J.A. grade from the date from which his junior, Shri C.P. Sharma was promoted and give arrears also to the applicant".

2. The applicant started service as Traffic Apprentice along with others. A dispute about the seniority of Traffic Apprentices was settled by the Division Bench of the Delhi High Court in Letters Patent Appeal against the judgement of the Single Judge of the High Court in CMF 394/71. The LPA was decided on 30.7.1975. On the basis of that judgement, the seniority of the Traffic Apprentices was revised.

3. In so far as the applicant is concerned, his case was not considered, probably due to inadvertence, but ultimately, on 12.12.1989, Annexure A-9 memo relating to selection for promotion to Class-II service in T(T)&C Department for the year 1972-73 and 1975-76 was issued to the concerned authorities. The 72-73 panel contained 29 names in which the name of the applicant was placed at Serial No. 7. Immediately below his name is that of C.P. Sharma.

4. As C.P. Sharma had already started working in the Junior Administrative Grade, the applicant by his representation dated 21.12.1989 sought similar benefits and requested that his pay should be fixed according to the Next Below Rule. Subsequent representations in this regard did not produce any result. Hence, this O.A. has been filed seeking the above reliefs.

5. The respondents have filed a reply contesting his claim. It is stated that this application has to be dismissed on the basis of the judgement of the Supreme Court in similar cases in Virender Kumar, General Manager Vs. Avinash Chander Chaddha, 1993(3)SCC 472. It is stated that the applicant could not be called in the supplementary selection held in March, 1987 for promotion to Group 'B' service in T(T) &(C) department pertaining to the year 1978-79 against 75% quota. The same is true of 1980 selection. It is only when further selection was held in 1988 that his name was considered. An undertaking was given by the respondents that if the applicant qualified in the selection test in April, 1988 his name would be interpolated in the earlier panel. Accordingly, the applicant appeared and qualified and his name has also been interpolated in the 1972-73 panel as mentioned above.

6. It is stated that S.C. Sekh, K.S. Srivastava, V.P. Singh and S.S. Lal were interpolated in the panels of 72-73 and 75-76 on earlier dates and hence, they were promoted to senior grade on ad hoc basis in Feb, 1988. The applicant could not be promoted to the senior grade at that time as he was facing a minor penalty on a charge-sheet. It is only after receiving clearance from the Railway Board that the name of the applicant was interpolated in the panel of 1972-73. The applicant has been given ~~xxxx~~ senior scale from 215.1990. It is also stated that C.P. Sharma's case is different as he was selected in the panel of 72-73 itself and after getting Class-I grade from the Railway Board he was promoted

to Junior Grade. These contentions have been ~~repeated~~ ^{disputed} in the rejoinder.

7. We have heard the learned counsel for the applicant only as none appeared for the respondents. He contended that as his name has been included in 1972-73, panel, consequential benefits should be given to him based on the benefit given to his immediate junior, Shri C.P. Sharma. He also denies that the Supreme Court's judgement stands in the way of allowing this claim.

8. We have considered the pleadings and the arguments of the learned counsel for the applicant. We have perused the judgement of the Supreme Court referred to above. The Court observed that the apprentices had already been given a more than fair deal when the seniority ~~in~~ Class-III was directed by the High Court to be fixed on the basis of the quota-rota rule, which suffered from serious inequities. Further, the Railways had already given them accelerated promotion to Class-II also based on the revised seniority in Class-III, even though there was no direction to this effect. In regard to further promotions to senior scale the court had negatived the claims. This will be clear from the following extracts of the judgement:

"13. In this appeal, we are concerned with two limited issues, viz. (i) whether in the context of the history of the litigation and the decisions and directions of the High Court and the Central Administrative Tribunal, the respondents should be given promotions in all posts above Class II service as a logical corollary to their new ranking in the revised,

seniority list of 1983, and (ii) whether on such promotions being given, they should be paid emoluments of such higher posts with retrospective effect...

14. 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. We, however, do not desire to make any observations which will come in their way if the UPSC is inclined to look into the matter. In that case the UPSC may constitute Review Departmental Promotional Committees and give them pro forma promotions and seniority in the promotional posts from the relevant years, if they are otherwise eligible to the same. We say nothing more on the subject.

15. As regards the emoluments of higher posts with retrospective effect, we find that the High Court had categorically denied the same to the respondents even on the basis of their claim to higher grades in Class III posts. Further, even the entitlement of the respondents to the higher grades in Class III posts as per the directions of the High Court was on the basis of the quota and rota rule which in itself is both inequitable

and irrational.....There is, therefore, neither equity nor justice in favour of the respondents to award them emoluments of the higher posts with retrospective effect...."

9. Therefore, the applicant would not be entitled to any benefit regarding getting the senior scale from an earlier date than it was given to him on the only consideration that he was put/ the Class-II panel in 1972-73 by the Annexure A-9 letter dated 12.12.1989. Though the respondents have not so stated explicitly it would appear that the applicant's immediate junior, Shri C.P. Sharma, was a 'ranker' and not an apprentice because respondents have stated that he was selected in the 1972-73 panel itself. In other words, his name was not introduced by interpolation on the basis of the judgements rendered in the writ petition filed by the apprentices. Hence, the applicant cannot claim any benefit on the ground that C.P. Sharma, his junior, has been given all further promotions from Class-III on earlier dates because that cannot be claimed in terms of the Supreme Court judgements.

10. But that does not mean that the O.A. itself has no merit. Respondents have admitted in reply to para 4.29 of the O.A. that names of certain other apprentices like the applicant, were interpolated in the 1972-73 selection panel (viz. S.C. Seth, K.S. Srivastava, B.P. Singh, S.S. Lall and Virendra Singh) on 12.2.1988 and, therefore, they were given senior scale from Feb, 88. The applicant's name was no doubt placed in that panel only on 12.12.1989 but above all the above persons (Ann.A-9). Therefore, he/claim that he be given the same benefits of promotion which have already been given to his juniors who belong to the same category i.e. apprentices who are beneficiaries

of interpolation in the selection panel. That is not prohibited by the above judgement.

ii. We, therefore, dispose of this O.A. with a direction to the respondents to reconsider the case of the applicant for promotion to senior scale and higher grades with effect from the dates on which the apprentices interpolated in the 1972-73 panel, but placed below him as per the Annexure A-9 order, have been given promotions (e.g. the persons mentioned in para 9 above). In case, he is found fit for promotion to those grades from dates earlier to the dates on which he was actually promoted, he shall be granted notional promotion from the earlier date and his pay should be refixed with effect from the date he was actually promoted and given all arrears of pay. These directions shall be carried out within four months from the date of receipt of this order. No costs.

A. Vedavalli
5/5/95

(DR. A. VEDAVALLI)
MEMBER (J)

V
N.V. KRISHNAN
5/5/95

(N.V. KRISHNAN)
VICE CHAIRMAN (A)

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