

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

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O.A. No.563/90.

New Delhi, this the 7th day of July, 94.

SHRI J.P. SHARMA, MEMBER (J).  
SHRI S.R. ADIGE, MEMBER (A).

Anil Kumar Sharma,  
s/o Shri Sardar Singh,  
R/o T23/C, Railway Colony,  
Haridwar, U.P. working as  
Inspector of Works, Haridwar,  
under IOW, Northern Railway,  
HARIDWAR.

...Applicant

By advocate Mr. J.K. Bali.

Versus

Union of India, through  
General Manager,  
Northern Railway,  
Baroda House, New Delhi.

...Respondent

By advocate Mr. D.P. Kshatriya.

ORDER (ORAL)

J.P.SHARMA :

The applicant applied in pursuance to an employment notice no.1/78-79 issued by the Railway Service Commission giving a choice for both the posts of PWI and IOW. The applicant along with others qualified for the posts but he was empanelled for the post of PWI. It appears that there was no requisition made inadvertently by the department for some existing posts of IOW with the consequence that the persons who could have been appointed were not given appointment, and instead, they were

asked whether they are willing to join a lower post of SOM in the grade of 380-560. The applicant along with others gave his option and he joined that post wef 17-3-1980. Subsequently, it was found that there are vacancies and the panel can be exhausted by appointing persons to the post of IDW by which time the applicant had already joined the post of SOM. Since the applicant had joined that post, he was never informed that appointments are also being made for the higher post of IDW. The applicant learnt subsequently that soon after the appointment of the applicant to the post of SOM, the persons who were lower in ranking in the aforesaid panel of the said employment notice no.1/78-79, have been considered and given appointment to the post of IDW. When the matter came to the knowledge of the applicant, he made representations to the respondent showing the discrimination meted out to him inasmuch the persons who were junior in the panel and much below him have been given appointment to the higher post of IDW ignoring the claim of the applicant. The respondent Railway Board has considered the case of the applicant sympathetically and the applicant along with others has been given appointment to the post of IDW in the grade of

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425-700 (pre-revised). The applicant joined that post on 21-11-1985. However, the applicant also felt that his seniority be also corrected as it was no fault of his that the post of IOW was not given to him. However, his representation has been rejected by the letter dated 13-4-1989 (Annexure A-I). He filed this application in March 1990 praying for the grant of the relief that the applicant should be treated as having joined the post of IOW in the grade of 425-700 with effect from the date any junior from the aforesaid panel has been offered that post. He should also be given seniority below Shri Om Prakash at S.No.20 and above Shri Manmohan Singh at S.No.21 in the grade of Rs.1600-2660. He also claims that he should also be promoted to the post of IOW grade Rs.1600-2660 from the date his any junior has been promoted. He also claims for difference in the pay which normally he would have got by joining the post of IOW though he joined the lower post of SOM.

2. A notice was issued to the respondent who contested the application and opposed the grant of the reliefs on a number of grounds. The respondent has taken the ground of limitation stating that the application is not maintainable

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as the relief claimed by the applicant is of much earlier period. The point of the territorial jurisdiction of the Tribunal has also been raised. It is said that the applicant cannot be given benefit of seniority ignoring the claim of others who had already joined on the post of IOW particularly in view of the fact that the applicant has accepted the offer dated 1-10-1984 and joined in pursuance of the said offer in Moradabad division on the post of SOM.

3. The applicant has also filed the rejoinder reiterating the facts alleged in the original application.

4. We heard Shri J.K. Bali for the applicant at considerable length and also heard on the last sitting of the Bench. Normally, the seniority is counted by the length of service a person has put in in a particular grade or cadre. Since the applicant was not a member of the grade of IOW, he cannot claim ante-dated seniority before his berth in the service. The learned counsel for the applicant referred to para 228 of the Indian Railway Establishment Manual Volume-I wherein it is stated that if the promotion has been given wrongly affecting the claim of the original person,

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the seniority can be corrected subsequently.

However, this is not a case of promotion. It is a normal case of fresh appointment in the case of the applicant. In any case, the greatest hurdle which has to be crossed by the applicant for pressing his claim successfully is to counter the nonjoinder of necessary parties who are likely to be affected in the event of the success of this application. During the course of the arguments, it has come to the notice that there are 22 persons who have beaten the applicant in seniority and were offered appointments ignoring the claim of the applicant though he was senior in the panel of the said selection of employment notice 1/78-79. The learned counsel for the applicant, however, referred to the authority of A. JANARDHAN v. UNION OF INDIA AIR 1985 SC p. and GENERAL MANAGER, SOUTH-NORTHERN RAILWAY v. A.V.R. SIDHARTHI 1974(1) SLR p.597. The learned counsel has emphasised that seniority has to be decided on certain principles. So, in such a case, those who are likely to be affected by adoption of the principle need not be necessary parties. However, in the case of A. JANARDHAN (supra) one of the representatives of the direct recruit was a <sup>party</sup> to that petition and that observation has been made in the body of the judgment by the Hon'ble Supreme Court. In fact, in

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this case what is alleged to be the principle by the learned counsel is only a non-action on the part of the respondent in not offering appointment to the applicant on the basis of seniority depicted in the panel of the said selection. It is the salient principle of jurisprudence that none should be condemned unheard. The applicant and those who are not before us were appointed to the post of IOW grade III and the applicant himself has sought promotion to the next promotional grade also of IOW grade II in the grade of 1600-2660. We, therefore, are not persuaded by the argument of the learned counsel that those who are likely to be affected are not necessary parties. The application is bad for nonjoinder of the necessary parties.

5. However, we have also considered the case on merits. Firstly, the applicant was not an examinee for the post of IOW. He only offered himself for the post of PWI. Secondly, in the strength of the posts advertised of IOW, the applicant was not likely to be appointed unless a mistake committed by not notifying the vacancies by the various divisions had not taken place. When the vacancies were subsequently determined and came into light, the applicant had already willingly accepted a lower post of SOM while

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others, this is not evident, who were appointed to the post of IOW were offered this post or not. In any case, the applicant had been a member of the service of SOM and if he is granted seniority in the grade of IOW, his seniority has to be measured in two services - one of the lower and other of the higher grade which shall not only be unjust but inequitable.

6. However, we find that the applicant has not been vigilant in processing his claim for a judicial review. He was satisfied in making representations to the respondent and to some extent got the relief regarding the posting to the post of IOW. He had earlier filed an OA-1109/88 in the Allahabad Bench whereby he also claimed the restoration of his seniority and that application was disposed of with the direction that the applicant should make a representation and that representation made by the applicant earlier be also disposed of within two months. This application was filed sometimes in the year 1988. The impugned order was passed on 13.4.1989 by which the representation made by the applicant was not considered favourably. Though point of limitation may not be fatal in this case, yet we do find that the applicant has waited for long for redress of his grievance during which

period the promotion to the higher grade has already taken place. In any case, since the applicant was never a member of the service of IDW, we don't want to interfere to unsettle the settled affairs of the service after such a long period.

7. The learned counsel for the applicant also orally requested that he may be permitted to implead the affected parties in this case and to file the petition thereafter. We don't find that this is a fit case to allow oral request.

8. The application is, therefore, devoid of merit and dismissed. No costs.

*S.R. Adige*  
( S.R. ADIGE )  
MEMBER (A)

*J.P. Sharma*  
( J.P. SHARMA )  
MEMBER (J)

07.07.1994.

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