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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~PRINCIPAL BENCH~~
PRINCIPAL BENCH: NEW DELHI

O. A. No. 940/90

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DATE OF DECISION

5.4.91

Kishen Lal Meena Applicant (s)

Mr. Rajender Singhvi Advocate for the Applicant (s)

Versus

Union of India rep. by the Respondent (s)
General Manager, Western Railway,
Church Gate, Bombay and others.

Mr ON Moolri Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

and

The Hon'ble Mr. JP Sharma, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? >
3. Whether their Lordships wish to see the fair copy of the Judgement? >
4. To be circulated to all Benches of the Tribunal? >

JUDGEMENT

Shri NV Krishnan, A.M

The applicant was a Chargeman, Grade A, Smithy Shop in the Railway Workshop at Kota, Northern Railway, when he filed this application against the apprehended promotion of Shri Shankar Lal, the 4th respondent, to the post of Shop Superintendent, on the ground that the 4th respondent is junior and therefore, he cannot be granted such promotion illegally. By the order dated 17.5.90 of the Hon'ble Chairman, Central Administrative Tribunal under Section 25 of the Administrative Tribunals Act, 1985, this case has been allowed to be retained in the Principal Bench for final disposal.

2 The applicant has produced as Annexures what appear to be English translations of the original orders in Hindi. The corresponding originals of orders admittedly issued have been produced by the Respondents 1 to 3 i.e., Department, for short. Admittedly, by an order dated 17.12.76 (Annexure A1 and R1), the applicant who belongs to a Scheduled Tribe, was promoted to officiate as Chargeman A to fill in a vacancy ^{reserved} for Scheduled Tribe. He was on probation for 6 months and his fitness to continue was to be assessed later. A declaration of such fitness was issued by the Annexure R2 order dated 16.8.77 of the Works Manager. He contends that in the Annexure A3 seniority list of Chargemen-A, claimed to be issued on 30.6.87, his name appears between Sl.No.3, Shri Kishori Singh and Sl.No.4 Shri Shankar Lal, his date of confirmation (1.8.83) being earlier than that of the latter i.e. 24.3.85. Admittedly, as claimed by the applicant, a vacancy of Shop Superintendent has arisen on 30.4.90 due to the death of Shri Kishori Singh. The applicant alleges that the respondents 1 to 3 are manipulating to see that the 4th respondent is promoted to that post whereas, in accordance with the inter-se seniority, on the basis of which that post is to be filled up, the applicant has a better claim. The applicant, therefore, made a representation on 14.5.90 (Annexure A4).

3 It is through this representation that we gather some more facts about the applicant, which he ought to have stated in the application itself. It appears that

by an order dated 21.3.87 the applicant was penalised by demoting him to the lower post for a period of two years, with loss of seniority and that this period had ended on 24.3.89. He states in this representation that during the period of his punishment also, his name should have been included in the selection list for promotion according to his seniority, in terms of the rules applicable to such promotion. Instead, he alleges therein that the authorities had not only ignored his claims but promoted many juniors, including the 4th respondent, as Junior Shop Superintendent. He then requests in the representation that as the post of Shop Superintendent has already fallen vacant due to the death of Shri Koshori Singh, he should not be ignored, being the seniormost Chargeman A.

4 When the application was heard on admission, notices were directed to be issued on admission to the respondents and respondents 1 to 3, i.e. the Department, have filed a detailed counter affidavit. No reply has been filed by the 4th respondent.

5 The Department submits that no such seniority list dated 30.6.87 (produced as Annexure A/3 by the applicant) has been issued. Instead, the Department has issued a confirmation order on 30.6.87 (Annexure R3) which shows confirmation in various grades relating to smithy trade. That Annexure R3 order shows the following position:-

- (i) the 4th respondent is confirmed earlier than the applicant in the grade of Chargemen B.

(ii) In the grade of Chargeman A, the name of only the 4th respondent appears. This is obviously due to the fact that on 30th June 1987 the applicant was undergoing a punishment as a result of which he was reverted to the post of Chargeman B for two years.

6 The Department further submits that the applicant got an out of turn promotion to the grade of Chargeman B because he belonged to a Scheduled Tribe and there was a deficiency in the quota of ST Candidates. That does not mean that he can gain seniority over other persons who were seniors to him in Chargeman Grade A category.

7 That apart, the Department has produced a copy of the order dated 8.6.90 (Annexure R5) which explains the position of the applicant in the seniority list of Chargeman. This document indicates that the applicant had earlier been dismissed from service (a fact ^{not} mentioned by the applicant in his application and the annexures thereto) and that by the order dated 25.3.87 the punishment was modified. He was reinstated in service from 24.3.87 and reverted to the lower post of Chargeman B for a period of two years, with loss of seniority. That period came to an end on 23.3.89. Therefore, with effect from 24.3.89, he was given his place as Chargeman A by an order dated 29.3.89. On that basis, it was directed in Annexure R5 order that in the seniority list issued on 13.5.88 (Annexure R5 series) the applicant's name should be placed between Sl.No.2 Amrit Lal Panjal and Sl.No.3, Kishori Singh in the category of Chargeman Gr.A. As a result of this order, the applicant

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would be senior to Shri Shankar Lal, the 4th respondent in the grade of Chargeman Gr.A. However, it is seen that before this date, the 4th respondent had already been promoted to the next higher grade of Junior Shop Superintendent and he was continuously holding that post without break from 27.1.86 i.e., at a time when the applicant has been dismissed from service.

8 The Department, therefore, contends that the applicant cannot claim higher seniority over the 4th respondent. It is, further stated that by the order dated 6.6.90 (Annexure R6) the 4th respondent who was already included in the select list for promotion as Shop Superintendent was so promoted. By the same order the applicant also was promoted to the post of Junior Shop Superintendent.

9 Lastly, it is also contended by the Department that the channel of promotion is from Chargeman B (selection post) to Chargeman Gr.A (non-selection post) and then to Junior Shop Superintendent (selection post) and then to the post of Shop Superintendent, which ^{is} a non selection post. As the applicant had been restored to the grade of Chargeman A after punishment from 24.3.89 only, he should first get selected to the post of Junior Shop Superintendent before his name can be considered as Shop Superintendent. It was also contended that the applicant can, therefore, have no claim against the 4th respondent.

10 In view of these submissions, the Department has stated that the application has to be dismissed at the

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admission stage itself, as no prima facie case has been made out by the applicant.

11. We have heard the counsel and perused the records. We notice that the applicant has failed to mention in the application that in pursuance of certain disciplinary proceedings initiated against him, while working as Chargeman A, he had been dismissed from service and that by an order dated 23.3.87 he was later reinstated and reverted to the lower grade of Chargeman B for a period of two years with loss of seniority. These facts became clear only by perusing the Annexure R5 order passed by the Department on 8.6.90 and the representation (Annexure A4).

12 The applicant can have no grievance if his juniors have been promoted while he was out of service or while he stood reverted as Chargeman Gr.B. It is seen from the Annexure R5 seniority list dated 13.5.88 that as on ^{that} the date, the applicant was only shown as Chargeman B. His name does not figure in the seniority list of Chargeman A because of his reversion. In pursuance of an order dated 8.6.90 (Annexure R5) his name was subsequently interpolated between Sl.No.2 and 3 in the seniority list of Chargeman A only after the punishment period was over. The Annexure R5 series also shows that the 4th respondent had already been promoted as Junior Shop Superintendent from 27.1.86.

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13. That apart, if the applicant had any grievance against the promotion of Respondent 4 as Junior Shop Superintendent, he should have filed a representation against that promotion in time, either when he was reinstated or at any rate, when the seniority list dated 13.5.88 was issued (R5 series). Since that has not been done, we are of the view that it is too late for him now to contend that the 4th respondent cannot be permitted to steal a march over him in the matter of promotion to the grade of Junior Shop Superintendent, when he was out of service, as a result of which the 4th respondent also gained a right of promotion earlier as Shop Superintendent.

14 In addition, the Department is on strong ground when it is contended that the applicant has now been made a Chargeman Gr.A from 24.3.89 only and that therefore, he should first get selected as a Junior Shop Superintendent, whereafter alone he can be considered for promotion as Shop Superintendent because this is the channel of promotion.

15 We also notice that though the respondents have produced the Annexure R6 document dated 6.6.90, by which the 4th respondent is promoted as Shop Superintendent, the applicant has not cared to assail the same by amending his application.

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16 In the circumstances, we are of the view that the applicant has not made out any prima facie case against the respondents and therefore, we dismiss this application at the admission stage itself.

<i>Jomai</i>	<i>NV</i>
(JP Sharma)	(NV Krishnan)
Judicial Member	Administrative Member

The judgment pronounced by me

Jomai
S. 4. 91-1.