

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

(36)

O.A. NO.1450/91

HON. SHRI A.V. HARIDASAN, VICE-CHAIRMAN 'J'  
HON. SHRI R.K. AHOOJA, MEMBER 'A'

NEW DELHI, THIS 5TH DAY OF DECEMBER, 1996.

SUSHIL KUMAR JAIN  
S/o Lt. Shri K.P. Jain  
Aged 32 years  
I.O.W., Western Railway  
Tughlakabad,  
NEW DELHI - 44.

R/o Railway Quarter No.302 'A-2  
Railway Colony  
Tughlakabad  
NEW DELHI - 44.

... APPLICANT

'By advocate Shri R.K. Relan'

VERSUS

Union of India, through

1. General Manager  
Western Railway  
Churchgate  
BOMBAY - 20.

2. Divisional Railway Manager  
Kota Division  
Western Railway  
Kota 'Rajasthan'

3. Sr. Divisional Electrical Engineer  
TRS Electric Loco Shed  
Tughlakabad.

.. RESPONDENTS

'By Advocate Mrs. Sunita Rao'

'ORDER 'ORAL'

A.V. HARIDASAN, VICE-CHAIRMAN 'J'

The applicant was selected for appointment  
for the post of I.O.W. Grade III in the scale of

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Rs.425-700 and on successful completion of training for 12 months he was appointed as temporary IOW Grade III at Kota under DCE Construction as per order dated 12.9.84 'A-6'. His lien was kept on the Kota Division while he was posted in the Project. One Shri Chotey Lal Tomar was also appointed as IOW Grade III in the Kota Division on the same date according to the applicant. In the final seniority list of IOW Grade III circulated on 17.12.85 'A-7', the applicant was shown at S.No.37 whereas Shri Tomar was at S.No.39. While the applicant was working as IOW Grade III in the Project, he came to know that Shri Tomar was promoted on regular basis as IOW Grade II. Coming to know of this, the applicant on 24.11.86 'A-10' made a representation requesting that he should also be promoted. Though he repeated the request, he was not favoured with any reply. However, the applicant was promoted on ad hoc basis as IOW Grade II on 5.6.87 in the Project. The applicant went on making representations. Vide A-13'a) the applicant was repatriated to his parent division in 1988. He was served with a memorandum 'A-23' dated 6.3.1991 informing him that he was not considered suitable for regular promotion as IOW Grade II on the basis of record of service. The applicant was also aggrieved by the notification dated 8.2.1991 'A-1' wherein while juniors to the applicant were being considered for selection to the post of IOW Grade I, while he was being left out. Therefore, the applicant has filed this application praying that the respondents may be directed to treat the applicant as regularly promoted IOW Grade II

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w.e.f. 5.11.1986 when his junior Shri Tomar was promoted and to allow him to participate in the selection process for appointment to the post of IOW Grade I, with all consequential benefits.

2. The respondents in their reply have contended that the seniority of the applicant vis-a-vis Shri Tomar has undergone a change on the basis of representation submitted by Shri Tomar with the result that the applicant has become junior to Shri Tomar and that, therefore, he is not entitled to be considered for promotion with effect from the date on which Shri Tomar was promoted as IOW Grade II. They further contend that the applicant, when considered for promotion in 1991 was found not suitable and therefore could not be promoted as IOW Grade II.

3. After hearing the counsel on either side for some time, by order dated 4.10.96 the respondents were directed to produce the relevant documents showing the relative position in merit on completion of training of the applicant and Shri Tomar, any rules by which the seniority in the IOW Grade III was determined, documents which show that the seniority of the applicant was altered to his detriment after notice to him and which would show that the applicant was considered for regular promotion to IOW Grade II in November 1986 when Shri Tomar was so promoted. The 1d. counsel for the respondents produced a documents which would show that the relative position of seniority of Shri Tomar in the seniority list of Grade III IOW was altered in the year 1986 on consideration of a representation submitted by Shri Tomar. It is clear from the said documents that no notice was given to the applicant

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while altering his seniority position to his detriment. There is nothing to indicate that the alteration in the seniority list was ever brought to the notice of the applicant.

4. We have heard the counsel on both sides and have with meticulous care perused the pleadings and materials on record. A fact which is beyond dispute is that in the final seniority list of Grade III IOW circulated on 17.12.85 ('A-7'), the applicant was placed at S.no.37 while Shri Tomar was at S.No.39. The alteration of the seniority position of the applicant vis-a-vis Shri Tomar is sought to be justified on the ground that as Shri Tomar joined a day earlier, as per rules he was to be placed senior to the applicant and this was done on the basis of a representation made by Shri Tomar. But it is established that the seniority position was effected without any notice to the applicant. A position in seniority is of vital importance to an employee for many reasons. It is on the basis of the position in seniority that he can aspire to get advancement in his career. If such a right is to be interfered with, the employee concerned should be given an opportunity to put forth his case. This has not been done in the case of the applicant by the respondents. Whether Shri Tomar joined a day earlier than the applicant and whether the determination of seniority is dependent on the date of joining are all facts which can be disputed. Decision on such disputed points should not have been taken by the respondents without hearing the applicant. It is evident from the pleadings that the applicant has been going on making representations ever since 1986 for

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promotion with effect from the date on which his junior was promoted. If Shri Tomar had become senior to the applicant on account of a change in the seniority list, at least when the applicant made the representations, the respondents should have informed him that the seniority has undergone a change. Admittedly, though representations were received by the respondents, they did not inform the applicant of this. We are of the view that the action on the part of the respondents in altering the seniority position of the applicant vis-a-vis Shri Tomar to the detriment of the applicant without giving him a notice and without hearing him is vitiated for violation of the principles of natural justice. The net result of this conclusion is that the applicant remains senior to Shri Tomar and is therefore entitled to be considered for promotion as IOW Grade II w.e.f. 5.11.1986, the date on which Shri Tomar was so promoted, and also to be considered for next promotion on the date on which Shri Tomar was so promoted. In the light of what is stated above, the applicant is bound to succeed and we therefore allow this application. We direct the respondents to consider the application for promotion as IOW Gr.II w.e.f. 5.11.86 and if he is found on that date not unsuitable for such promotion, to promote him with effect from that date, to recast his seniority accordingly and to consider him for promotion to the higher grade with effect from the date on which Shri Chotey

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Lal Tomar was so promoted. The above exercise should be completed within a period of three months from the date of communication of a copy of this order.

No costs.

Rleaha  
(R.K. AHOOJA)  
MEMBER (A)

A. V. HARIDASAM  
VICE-CHAIRMAN (J)

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