

(J)

**Central Administrative Tribunal  
Principal Bench**

OA No.2259 of 2004

New Delhi this the 19<sup>th</sup> day of October, 2006.

**Hon'ble Mr. Shanker Raju, Member (J)**  
**Hon'ble Mr. N.D. Dayal, Member (A)**

Shri S.C. Dubey,  
Assistant Engineer (Civil),  
North Central Railway,  
Agra Cantt.

-Applicant

(By Advocate Shri B.S. Mainee)

**-Versus-**

Union of India: through

1. The Secretary,  
Ministry of Railways,  
Rail Bhawan,  
New Delhi.
2. The General Manager,  
Western Railway,  
Church Gate,  
Mumbai.
3. The General Manager,  
North Central Railway,  
Allahabad.
4. The Chief Administrative Officer (Construction),  
North Central Railway,  
Allahabad.

-Respondents

(By Advocate Shri H.K. Gangwani)

1. To be referred to the Reporters or not? Yes
2. To be circulated to outlying Benches or not? Yes

*S. Raju*  
(Shanker Raju)  
Member (J)

26

**Central Administrative Tribunal**  
**Principal Bench**

OA No.2259 of 2004

New Delhi this the 19<sup>th</sup> day of October, 2006.

**Hon'ble Mr. Shanker Raju, Member (J)**  
**Hon'ble Mr. N.D. Dayal, Member (A)**

Shri S.C. Dubey,  
Assistant Engineer (Civil),  
North Central Railway,  
Agra Cantt.

-Applicant

(By Advocate Shri B.S. Mainee)

**-Versus-**

Union of India: through

1. The Secretary,  
Ministry of Railways,  
Rail Bhawan,  
New Delhi.
2. The General Manager,  
Western Railway,  
Church Gate,  
Mumbai.
3. The General Manager,  
North Central Railway,  
Allahabad.
4. The Chief Administrative Officer (Construction),  
North Central Railway,  
Allahabad.

-Respondents

(By Advocate Shri H.K. Gangwani)

**O R D E R (ORAL)**

**Mr. Shanker Raju, Hon'ble Member (J):**

By virtue of this OA applicant has assailed an order passed by the respondents on 19.8.2004, whereby his request for interpolation in the panel of Assistant Engineers formed in the year 1993-94 has not been acceded to on the ground that even if

erroneously others have been included it would not confer upon him a right to be included.

2. A brief factual matrix, relevant to be highlighted, transpires that applicant, who was appointed as Inspector of Works (IOW) Grade-III on completion of training was promoted as Grade II and I on 23.12.1989 and 6.2.1996 respectively. Applicant and others being aggrieved with not incorporating their names in the seniority list above his immediate junior B.B. Gamit filed OA-782/2001 – **Satish Chandra Dubey v. Union of India** before the Ahmedabad Bench of the Tribunal, which was disposed of on 15.2.2002, in the light that a memorandum dated 14.2.2002 accorded seniority to applicant over and above his junior.

3. An order passed on 14.2.2002 on correction of seniority of applicant allowed his interpolation in Grade II and I w.e.f. 5.3.1991 and 17.6.1991 and further orders issued on 1.4.2002 accorded promotion to him as IOW Grade-II in the pay scale of Rs.2000-3200, deeming 17.6.1991 as date of promotion of his junior and also Grade-I w.e.f. 16.5.1996 in the pay scale of Rs.2375-3500. Subsequently, on 19.3.2003 insofar as after applicant has qualified the selection for the posts of Assistant Engineer in Group 'B' is concerned, he has been placed on notional promotion as Assistant Engineer w.e.f. 19.5.2000, with actual benefits from 31.12.2002, i.e., on assumption of charge at par with junior Hanselia.

4. Shri B.S. Maine, learned counsel appearing for applicant states that applicant who was in the pay scale of Rs.2000-3200 when there is no requirement of five years' service in the grade of

Rs.2000-3200 as per paragraph 203.1 of Indian Railway Establishment Manual, Volume-I (IREM-I) is liable to be considered for promotion as Assistant Engineer on interpolation in the panel of 1993-94 in the 70% quota of promotees whereas five years' regular service in the grade of Rs.2000-3200 would apply only for LDCE. Accordingly, he states that non-consideration of applicant retrospectively as a consequence of the decision of the Tribunal and on revision of seniority when his promotion as IOW Grade-I and II has been antedated he has a right to be considered in the panel immediately formed after the proper seniority has been assigned on eligibility acquired for the post of Assistant Engineer by applicant on 17.6.1991.

5. Learned counsel of applicant states that rejection of claim of applicant is on unsustainable grounds, which cannot stand scrutiny of law.

6. On the other hand, learned counsel appearing for respondents vehemently opposed the contentions and stated that earlier incorporation of the names of persons on promotion as Assistant Engineer Grade-B though was to be on the basis of the seniority with reference to the date of entry in the grade of Rs.2000-3200 has been computed on the basis of seniority reckoned in the grade of Rs.2375-3500. Accordingly, promotion on wrong seniority would not confer upon applicant a right to be considered, as negative equality has no place under Article 14 of the Constitution of India.

7. Shri Gangwani further stated that if the aforesaid prayer is acceded to there are more candidates who would stake similar

29

claim, which would create an administrative chaotic situation, which is to be avoided in the interest of justice.

8. Learned counsel would contend that the decision of the General Manager is not sufficient to claim relief, which is against paragraph 203.10 of the IREM-I.

9. We have carefully considered the rival contentions of the parties and perused the material on record, including the departmental record produced by the respondents.

10. It is trite that whatever reason is accorded in the order passed by the Government the reasons therefor have to be considered in law as apt to the cause of action and no reasoning taken in the counter reply would be admissible, as held by the Apex Court in ***Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chennai & others***, (2005) 7 SCC 627.

11. In the light of the above, the only reason assigned for rejecting the claim of applicant for interpolation of his name in the select panel of 1993 of Assistant Engineer is that he was not eligible.

12. It is trite that when the Department rectifies its mistake of assignment of wrong seniority to an employee and places him on notional basis in the post on promotion the consequential benefits of further consideration are natural and as per law.

13. In the above backdrop of revision of seniority of applicant vis-à-vis his junior by memorandum of respondents on 14.2.2002, which culminated into OA being declared infructuous <sup>W</sup> (supra) the decision of the respondents to place applicant in the

pay scale of Rs.2000-3200 in IOW Grade-I w.e.f. 17.6.1991 makes him eligible for the post of Assistant Engineer, Group 'B' where the only requirement is that one should be in the pay scale of Rs.2000-3200. In such view of the matter, finding no averment to the effect as substantiated by any rule or instructions that five years' regular service is required on regular basis in the pay scale of Rs.2000-3200 though under 70% quota for Assistant Engineer, the decision of the respondents that earlier those who have been empanelled their seniority was wrongly taken into consideration in the grade of Rs.2375-3500 instead of 2000-3200. Applicant's claim is not to claim any negative equality or to assert a right on a wrong committed by the respondents, but being eligible in all respects and in the pay scale of Rs.2000-3200 on accord of retrospective seniority as an implication of the order of the Tribunal applicant has acquired eligibility and a right to be considered in the selection held in 1993 as Rule contained in paragraph 203, as referred to ibid of IREM-I, does not envisage five years' service on regular basis in the grade of Rs.2000-3200, as a condition precedent, non-consideration of claim of applicant, who has qualified the selection for Assistant Engineer Group 'B' subsequently from a retrospective date when junior has been promoted is not only denial of fundamental right of consideration of promotion but also deprivation of natural consequences which flowed on accord of retrospective seniority on revision to applicant.

14. It is relevant to be appointed pointed out at this stage that the claim of applicant for interpolation has been forwarded by the General Manager (Establishment) vide letter dated 27.11.2003,

37

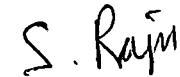
wherein it is observed that on accord of seniority applicant has a right to be considered for such interpolation. The aforesaid letter by a competent authority having not paid any heed to by the Railway Board constitutes non-application of mind and renders the order as illegal.

15. In this view of the matter the reasoning assigned is misconceived and is not well founded as extended by the respondents.

16. In the result, for the foregoing reasons, OA is partly allowed. Impugned order is set aside. Respondents are directed to re-consider placing name of applicant in the panel of Assistant Engineer formed in the year 1993-94 at par with his junior Shri Khuswah and in that event he would also be considered for grant of consequential benefits. The aforesaid exercise would be completed within a period a two months from the date of receipt of a copy of this order. No costs.



(N.D. Dayal)  
Member (A)



S. Raju  
(Shanker Raju)  
Member (J)

‘San.’