

18

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 2032/2004

And

OA NO. 2033/2004

This the 2nd day of November, 2005

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. D.R.TIWARI, MEMBER (A)

Shri Attar Singh Kashyap
S/o Shri Kamal Singh
R/o 89/1 Railway Quarters
Subzi Mangi, Delhi-110007
Presently working as Electrical Signal
Maintainer Gr.I Under SSE/Signal/P.S.
Old Delhi Railway Station
Delhi.

(By Advocate: D.R.Roy)

Versus

Union of India through

1. The Secretary, Ministry of Railway,
Rail Bhawan, New Delhi.
2. The General Manager,
Northern Railway Head Quarters Baroda House,
New Delhi.
3. The Divisional Railway Manager
State Entry Road, New Delhi.

(By Advocate: Sh. Shailendra Tiwary)

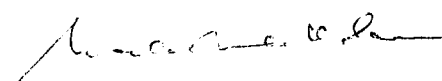
ORDER

Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

These two OAs may be conveniently decided by a common order as identical questions arise for determination.

2. OA No.2032/2004 is filed by the applicant Sh. Attar Singh Kashyap for determination of his seniority position in ESM Gr.II as on 7.9.97 and again in the higher grade of ESM Gr.I after he is granted promotion to the said post.

3. OA No.2033/2004, on the other hand, is filed by the applicant for a direction to the respondent to review the order on promotion of the applicant as per the extant policy of 'post based roster' and grant him promotion from ESM Gr.II to Gr.I with consequential refixation of his pay etc.



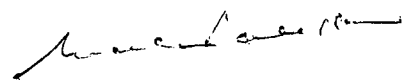
4. Brief facts are that the applicant joined Western Railway Zone S&T Branch in ESM Gr.II in the pre-revised scale of Rs.1200-1800. While he was working in ESM Gr.I in the pay scale of Rs.1320-2040, he sought his transfer to Northern Railway accepting bottom seniority in the entry grade, i.e., ESM Gr.II in the pay scale of Rs.1200-1800. He was accordingly transferred and joined Delhi Division on 7.8.97 in the grade of Rs.1200-1800 at the bottom seniority in the said grade. The respondent vide notice dated 18.6.99 assigned him seniority at the position of 59-A above Sh. Sita Ram and below Sh. Mohan Lal in the seniority list of ESM Gr.II issued on 20.4.99. Vide Railway Board's order dated 16.10.97 three grade structure of ESM Gr.I, II & III was made into two grade structure, i.e., Rs.4500-7000 and Rs.4000-6000. So during the period from 16.10.97 to 23.11.98 common scale of Rs.4000-6000 was applicable to the merged post of ESM Gr.II to Technician Gr. I & Gr.II. The Railway Board by an order dated 29.12.99 further decided that Technician Gr.II, who could not be promoted to the next higher grade of Technician Gr.I during the period between October 1997 to November 1998, be granted benefit of retrospective promotion, i.e., in respect of vacancies arisen between 16.10.97 to 30.4.98 w.e.f. 1.5.98 and in respect of vacancies which arose between 1.5.98 to 23.11.98 w.e.f. 1.12.98. During the period from 16.10.97 to 30.4.98, 15 unreserved vacancies, 3 vacancies of Scheduled Caste category, and 1 vacancy of Scheduled Tribe category totaling 19 vacancies were assessed. Accordingly, as per the seniority list 19 eligible candidates of these categories were given promotion. For the subsequent period from 1.5.98 to 23.11.98 further 8 in unreserved category and 1 in SC category totaling 9 vacancies were assessed. As against 8 candidates of General category, inadvertently one Sh. Ajay Kumar Sharma who was then working as Data Entry Operator in HQ office and was eligible for promotion against unreserved vacancies since he held the seniority position at No.38 was left out and in his place one Sh. Ashok Kumar, who was a SC candidate, and held seniority position 55 in the seniority list, and was eligible for promotion against a vacancy reserved for SC candidate, was erroneously given promotion as a General candidate. At the same time, the applicant who was eligible for promotion against SC category reserved vacancy and was next SC candidate to Sh. Ashok Kumar (who was at Sl. No.55 in the seniority list) and held position No.59-A was given promotion by mistake. Sh. Ajay Kumar Sharma gave a representation against

Sh. Ashok Kumar

his non-promotion and the respondent rectified this mistake by withdrawing the retrospective promotion of the applicant and promoting Shri Vijay Kumar Sharma instead with retrospective effect. Later when a vacancy became available the applicant was also promoted w.e.f. 13.7.2000. The applicant made a representation against the show cause notice dated 7.1.2004 which has been rejected by a reasoned order dated 19.3.2004. Both these orders are impugned in the two OAs.

5. The short question that arise for consideration is whether the applicant was granted promotion by order dated 30.3.2001 with retrospective effect from 1.12.98 under an administrative lapse which has been set right and rectified by the orders impugned in the OA. Learned counsel for applicant has candidly conceded that the respondent have power and authority to rectify the administrative mistake. IREM para 2281 & II (a) has provided that as and when the error of the administration is noticed, the same may be rectified and the employees concerned may be put back to such status, but for he is actually entitled. Therefore, the learned counsel for applicant has rightly not challenged the power of the respondent in rectifying the administrative error.

6. Concededly, applicant was transferred from Western Zone to the Northern Zone w.e.f. 7.8.98 on applicant's own request and he had accepted the bottom seniority in the entry grade, i.e. ESM Gr.II in the pay scale of Rs.4000-6000 in the Northern Zone. It is also admitted that by order dated 18.6.99 applicant was assigned the seniority at position No.59A above Sh. Sitam Ram and below Sh. Mohan Lal in the seniority list of ESM Gr.II/CSI (W) DLI of the seniority list issued on 20.4.99 (Annexure A-2). It is also not disputed that the applicant did not assail this order and challenge his seniority position by filing a representation or by resorting to an appropriate legal proceeding, if the position assigned in the seniority list was not correct. It means that he accepted the order dated 18.6.99 and was satisfied with his position in ESM Gr.II at Sl. No.59A of the seniority list issued on 20.4.99. Though in the OA it is contended that the seniority is not as per the 'post based roster' but the applicant has not been able to show that the seniority list is not in accordance with the extant rules/the roster. Sh. Ashok Kumar who also belonged to SC category was at Sl. No.55 much above the applicant. Applicant has neither claimed in the OA nor has asserted in the argument that he should have been assigned seniority in the list above Sh. Ashok Kumar.



7. It is also an admitted fact that the Railway Board decided to restructure ESM Gr.I, II & III into two grade structure, one in the entry level of Rs.4000-6000 (ESM Gr.II) and the other in the grade of Rs.4500-7000 (ESM Gr.I) by order dated 16.10.97. By a subsequent order dated 29.12.1999 the Board also decided to give promotion to those Technician Gr. II who could not be promoted between October 1997 to November 1998 from a retrospective date. In respect of the vacancies, which had arisen between 16.10.97 to 30.4.98, promotion was to be granted to ESM Gr.I retrospectively from 1.5.98 and in respect of vacancies which occurred between 1.5.98 to 23.11.98 retrospective promotion to ESM Gr.I was to be granted w.e.f. 1.12.98. For the period from 16.10.97 to 30.4.98 the administration assessed occurrences of 19 vacancies out of which 15 vacancies were for unreserved categories, 3 vacancies for SC category and 1 vacancy for ST category. 19 persons, all of whom were senior to the applicant and Sh. Ashok Kumar, both SC category officials, were promoted. The seniority list produced bears it out. Again the administration assessed 9 vacancies which had arisen during the period from 1.5.98 to 23.11.98 of which 8 were to be filled in by unreserved category candidates and one from SC candidate. 9 officials, as such, were to be granted promotion from a retrospective date of 1.12.98 against these vacancies, 8 General candidate from unreserved category and 1 SC candidate. Undisputedly Sh. Ashok Kumar and the applicant both belonged to SC category. Accordingly, one of them, in order of seniority was entitled to be promoted with retrospective effect from 1.12.98 to the higher grade of ESM Gr.I. Sh. Ashok Kumar being senior to the applicant was the rightful person to be promoted against that vacancy. Applicant being junior to him was not eligible to be promoted against that vacancy. Turn of the applicant for promotion, as a matter of fact, had not matured at that time since no other vacancy reserved for SC category was available.

8. One Sh. Ajay Kumar Sharma, who was a General candidate and as per order of seniority, was eligible for consideration for promotion to the ESM Gr.I under the order of the Board dated 29.12.99 from the retrospective date from 1.12.98. However, he was working as Data Entry Operator in Northern Railway Headquarter. The respondent administration by oversight did not take him into consideration at the time of promotion and at the same time erroneously promoted Sh. Ashok Kumar against unreserved

vacancy. Undeniably Sh. Ajay Kumar Sharma could not have been excluded from consideration for his promotion and further Sh. Ashok Kumar could have also not been promoted against an unreserved vacancies. This administrative lapse on the part resulted in one SC category vacancies remaining unfilled. The applicant being the next SC category official as per seniority list was considered eligible and was promoted against the vacancy reserved for SC with retrospective effect from 1.12.98.

9. The administration came to know about this lapse when the record was examined on the representation of Sh. Ajay Kumar Sharma. The respondent had the legal right and accordingly rightly rectified the mistake by giving promotion to Sh. Ajay Kumar Sharma with retrospective date from 1.12.98 from which date his juniors were given such a promotion pursuant to the order of the Railway Board and Sh. Ashok Kumar Sharma was given promotion against the only reserved vacancy available instead of his promotion against the unreserved post. The retrospective promotion of the applicant who was ineligible for promotion was also withdrawn.

10. As it has already been observed that the applicant was given the bottom seniority in ESM Gr.II and he was assigned seniority at position No.59-A in seniority list dated 20.4.99 by order dated 18.6.99 which having been not challenged had become final. Furthermore the applicant in the present case also has not been able to substantiate the allegations that the seniority list was otherwise not as per the extant rules and the roster. At the same time, he has also not challenged that Sh. Ashok Kumar, who belonged to SC category, was senior to him and was eligible for promotion against a vacancy reserved for SC candidates prior to his turn matured for such promotion to ESM Gr.I.

11. Having regard to the above discussion, we cannot find fault that the order of the respondents impugned in these two OAs whereby the retrospective promotion of the applicant to ESM Gr.I, which was granted from 1.12.98 by order dated 30.3.01, was withdrawn. The applicant has since been given promotion w.e.f. 13.7.2000 in a vacancy which had become available for his promotion.

12. As a result none of the two OAs has any merit. Neither the seniority position of the applicant is required to be reviewed nor is the applicant entitled to be promoted to ESM Gr.I from a date prior to 13.7.2000.

[Handwritten signature]

14. Both OAs No.2032/2004 and 2033/2004 having no merit failed. They are dismissed leaving the parties to bear their own costs. Original order is placed in OA-2032/2004 and attested copy thereof be placed on the file of OA No.2033/2004.

(D.R. TIWARI)
Member (A)

(M.A. KHAN)
Vice Chairman (J)

'sd'

RECEIVED
28/9/04
M.A. KHAN
Vice Chairman (J)