

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

O.A.No. 2700 of 1992.

Date of Decision 7.5.93

M.K.BansalApplicant.

Versus

General Manager & anotherRespondents.

CORAM:

Hon'ble Mr. J.P.Sharma, Member(J)

Hon'ble Mr. S.R.Adige, Member(A)

For the applicant: Shri B.S.Mainee, Counsel.

For the respondent: Shri Rajesh, Counsel.

JUDGMENT

(By Hon'ble Mr.S.R.Adige, Member(A).)

The prayer of the applicant Shri M.K.Bansal, Assistant Superintendent, Carriage & Wagon Depot, Northern Railway, Ghaziabad is for quashing of the impugned orders dated 11.6.92 (Annexure-A2) and 21.7.92 (Annexure-A1), passed by the Divisional Personnel Officer, Northern Railway, New Delhi and for a direction to the respondents to consider him for promotion as Superintendent in the grade 2000-3200 from the date his juniors were promoted with all consequential benefits.

2. The applicant's case is that he was initially appointed as an Apprentice Train Examiner in 1978 and was later on put to work as an independent Train Examiner in August, 1980. While working on that post, he met with an accident leading to an amputation of one of his legs. He was, therefore, posted as an Instructor in the Training School, Dharampur. He was next promoted as Head Train Examiner in the Grade 550-750 w.e.f. 23.9.87 which is a non-selection post. The next higher post to which the applicant was eligible was that of Chief Train Examiner in the Grade 2000-3200 which is a selection post. The applicant passed the

written examination and appeared in the viva-voce test but the applicant contends that they did not declare the result because they considered that the applicant, being handicapped, would not be able to function effectively as Chief Train Examiner. Therefore, he was given an alternative post of Assistant Superintendent Grade 1600-2660 and posted as such against a regular and permanent vacancy at Ghaziabad. He claims that since he was given an alternative post in the administrative interest and was working in the grade 1600-2660 in non-fortuous manner, he is entitled to count his seniority from the date of his promotion as Head Ticket Examiner Grade 1600-2660 w.e.f. 23.9.87. He alleges that the respondents did not fix his seniority in accordance with rules as a result of which he made a representation on 20.12.90. After considering his representation, the respondents fixed his seniority between Shri Narain Singh and Shri N.N.Bali vide order dated 5.2.91 (Annexure-A4). He claims that as the aforesaid seniority assigned to him was not in accordance with rules, he submitted another representation on 22.2.91 (Annexure-A5) claiming that both Shri Narain Singh and Shri N.N.Bali were junior to him and that the seniority should be fixed between Shri H.D.Mathur and Shri Fakir Chand. After considering his representation, the respondents gave seniority to the applicant from the date of his appointment as Head Train Examiner w.e.f. 23.9.87, and fixed his seniority at Serial No.46A above Shri Fakir Chand vide Notice dated 12.12.91 (Annexure-A6). Subsequently, on 25.2.92, the respondents issued a seniority list of Assistant Superintendent (Annexure-A7) in which the name of the applicant appeared at S.No.2 and the date of his promotion as Assistant Superintendent

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was shown as 23.9.87, but in June, 1992, the respondents promoted Shri Faqir Chand as Superintendent although he was junior to the applicant. The applicant represented against that promotion upon which the respondents issued a notice on 21.7.92 proposing to down grade seniority of the applicant from S.No.2 of the seniority list to S.No.12A between Shri Mahabir Singh and Shri N.N.Bali, which the applicant alleges ^{is} wholly illegal. He represented against that on 2.8.92 and sought a personal interview with the Divisional Personnel Officer on 19.9.92 and represented his case but the DPO turned down his representation against which the applicant has now come to this Tribunal.

3. The respondents, in their counter-affidavit, have contested the application on the ground that ~~through~~ ^{the} the persons, shown in the seniority list dated 25.3.92 between Serial No.3 to 12, have been continuously officiating in the grade 1600-2660 since 1985/1986 (supported by letter dated 25.3.92 Annexure-A7) against regular vacancy and which was followed by regularisation in 1988, and hence they all are entitled to reckon their seniority in 1985 much before the applicant's promotion to the ^{post of Asst. Super} grade 1600-2660 ^{on 16.9.90 (Annexure A-3)}. It has been contended that the applicant has wrongly been assigned at Serial No.2 of the seniority list dated 25.3.92 of the Assistant Superintendent, in the grade 1600-2660, without taking into consideration the names of the persons appearing from S.Nos.3 to 12 who were continuously officiating against regular vacancy from 1985/1986 onwards, followed by their regularisation against those posts. It has been urged that the applicant cannot take any advantage of the mistake, if any. It has also been urged that the post of

Superintendent is a non-selection post and the promotions are made in order of seniority, hence Shri Faqir Chand was rightly promoted to the aforesaid post.

4. We have heard Shri B.S.Mainee-learned counsel for the applicant and Shri Rajesh-learned counsel for the respondents.

5. The entire case of the applicant rests on the claim that he was promoted as a Head Train Examiner in the scale of 1600-2660 w.e.f. 23.9.87, ^{but in} owing to his physical handicap^{ed}, he could not discharge ^{his duties and in} these ^{things} ~~point~~ ^{he was} given an alternative post of Assistant Superintendent in the same scale of 1600-2660 w.e.f. 23.9.87. However, this claim of the applicant is not borne out by the notice dated 16.9.90 (Annexure-A3), ^{which} ~~he~~ states that the applicant having been declared ^{un} unfit for the post of Head Train Examiner and declared fit for the post of Assistant Superintendent in the grade 1600-2660, is posted as Assistant Superintendent at Ghaziabad. That notice came into effect on 16.9.90 and, therefore, the applicant's claim to have been posted as Head Train Examiner/Assistant Superintendent w.e.f. 23.9.87 has no merit. Under the circumstances, he cannot take advantage of any mistake that might have crept into the provisional seniority list of Assistant Superintendent dated 25.2.92 (Annexure-A7).

6. In the result, the impugned order warrants no interference, and this application is accordingly dismissed. No costs.

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

J.P. Sharma
(J.P.SHARMA) 7.5.92
MEMBER(J)

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