

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

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O.A. No. 719 of 1992 decided on 14.12.1998.

Name of Applicant : H.C. Srivastava

By Advocate : Shri K.N.R. Pillai

Versus

Name of respondent/s Union of India & others


By Advocate : Shri R.L. Dhawan

Coram:

Hon'ble Mr. N. Sahu, Member (Adminv)

Hon'ble Dr. A. Vedavalli, Member (J)

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No


(N. Sahu)
Member (Adminv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 719/92

New Delhi, this the 14th day of December, 1998

HON'BLE MR. N. SAHU, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

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H.C. Srivastava,
S/o Late Sh. G.C. Srivastava,
R/o V-404, Anupam Apartments,
East Arjun Nagar,
Shahdara, Delhi.

...Applicant

(By Advocate: Shri K.N.R. Pillai)

Versus

1. Union of India, through
the Secretary,
Ministry of Railways (Railway Board),
New Delhi.
2. The Union Public Service Commission
through its Secretary,
Dholpur House,
New Delhi.
3. Shri D.P. Khanna,
Joint Director,
Railway Board,
New Delhi.
4. Shri Chander Prakash,
Dy. COPS (Safety)
Northern Railway Headquarters
New Delhi.
5. Shri G.P. Sahu,
C/o General Manager,
Northern Railway,
New Delhi.
6. Shri S.C. Seth,
Joint Director (Vigilance (I))
Railway Board,
New Delhi.
7. Shri K.S. Srivastava,
DOS (Safety),
Northern Railway,
Allahabad.
8. Shri B.P. Singh,
C/o General Manager,
Northern Railway,
New Delhi.
9. Shri Virender Singh,
CRIS,
Near Rail Museum,
New Delhi.

10. Shri K.K. Sharma,
Sr. DSO
Northern Railway,
Bikaner.

11. Shri S.C. Bajpai,
Sr DOS (Planning),
Northern Railway,
Lucknow.

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... Respondents

(By Advocate Shri R.L. Dhawan)

ORDER

HON'BLE MR. N. SAHU, MEMBER(A)

The applicant in this O.A. prayed for the following reliefs:-

- "(a) give a direction to the 1st respondent that since as held by the Supreme Court there was no legal requirement to interpolate the ex-Traffic Apprentices in Group B panel of 1972-73 and the Railways had done this on their own, it was illegal to interpolate any of them above the applicant who was not a party to the seniority dispute and the Writ Petitions; any interpolation should be confined to places in the panel below the applicant.
- (b) Quash the Notification dated 5.9.91 at Annexure A-II-A and the Notification/order dated 5.1.92 at Annexure A-IV to the extent they cancel the Notification of 24.9.83 promoting the applicant substantively to Junior Scale of the I.R.T.S. from 19.7.83 and makes the applicant junior to respondents 3 to 11.
- (c) direct the 1st and 2nd respondents to restore the applicant's position and seniority in the I.R.T.S. to what it was before the issue of Annexure A-II-A and A-IV.
- (d) direct the 1st respondent to consider the applicant for promotion to the Selection Grade from the due date as per his seniority position restored as per (c) above, with all consequential benefits including arrears of pay and allowances.
- (B) Any other relief which the Hon'ble Tribunal may consider appropriate in the circumstances of the case."

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2. The impugned order is dated 15.1.92. Under this order, the earlier appointment of the applicant to the junior scale of I.R.T.S. with effect from 19.7.83 was cancelled and he was approved for appointment substantively to this grade with effect from 7.8.85. In response to this, the applicant submitted his representation dated 11.3.92 and on the very next day, he filed the present application on 12.3.92. One important contention raised by the respondents is that such an application is not permissible under Section 20 of A.T. Act, 1985.

3. The applicant submits that the basic representations of the applicant are those addressed to the General Manager on 6.3.89 and 17.6.91 enclosed as Annexure A-1 and A-2 to the O.A. There was no response by the General Manager and accordingly he appealed to the Railway Board by his representation dated 1.10.91 (Annexure A-3). He states that he had exhausted the departmental remedies in this manner.


4. It will be necessary to trace the genesis of the dispute in a short compass. The applicant was promoted to Class-II Services regularly on 12.3.73 in the Transportation(Traffic) and Commercial Department. He was promoted to officiate in senior scale on 30.6.80. He was substantively appointed to junior scale of the Indian Railway Traffic Service(IRT S) with effect from 19.7.83. He was assigned seniority below 1977 batch and above 1978 batch of IRTS by the Board's letter dated 15.2.84. He was promoted to officiate in Junior Administrative Grade by an order dated 25.9.86 which was regularised from 14.5.87. In the panel of 72-73 serving Group 'B' officers, his place was number 5. This position was changed to no.12 by an order dated 4.2.88.

a-c

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The applicant states that this was done without notice or information to him. This change was done due to interpolation of the names of some traffic apprentices in the panel to implement the orders of the Central Administrative Tribunal in the case of Avinash Chandra Chadha and ors. vs. Union of India (T-246/85) and in the case of O.P. Malik vs. Union of India (T-431/85). The orders of C.A.T. in Chadha's case are to the effect that the petitioners should be granted the same relief as granted by the Delhi High Court in LPA No. 220/72. The applicant states that the order of the C.A.T. in these OAs do not govern his case and cannot apply to his disadvantage. The Hon'ble Supreme Court decided the Civil Appeal No. 2013/90 (G.M., Northern Railway vs. Avinash Chandra Chadha and ors.). The applicant states that the observations of the Supreme Court do not support recasting and alteration of the seniority position of 1972-73 panel of departmental promotees in IRTS cadre in as much as the promotion to Class-II and above were not the subject matter of the writ petition before the High Court. The applicant by his representation dated 11.3.92, pointed out that as per Railway Board order dated 15.3.92, seven more juniors have been appointed substantively to the junior scale of IRTS and would rank in seniority above him.

5. ~~He~~ ^{we} are satisfied that the direct cause of action was the order dated 15.1.92. The applicant cannot now claim that his earlier representation of 6.3.89 should have been considered. If that were so, on that premise, this O.A. itself is barred by limitation. He could have come to this Tribunal six months later than the date of representation filed. The impugned order in truth and in substance is the



order dated 15.1.92 to which he filed a representation on 11.3.92. He could have waited for a reasonable period before knocking the doors of this Tribunal.

6. The important grievance in this O.A. is that the respondents have not observed the principles of natural justice before altering the seniority position enjoyed by the applicant for nearly two decades. This is an administrative action which has grave adverse consequences. In all fairness, the respondents should have given a show-cause notice proposing to alter his seniority to his detriment and should have heard him before passing the impugned order shifting his promotion arbitrarily from 19.7.83 to 7.8.85. Ld. counsel for applicant Shri K.N.R.Pillai has relied on two famous pronouncements of the Hon'ble Supreme Court on this subject which are as under:-

(i) JT 1988 (4) SC 464 - M.L.Trehan vs. Union of India

(ii) JT 1994 (5) SC 253 - Bhagwan Shukla vs. Union of India

7. WE will extract the following observation of the Hon'ble Supreme Court from Trehan's case:-

"There can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Government servant, without complying with the rules of natural justice by giving the Govt. servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a Govt. servant, will offend against the provisions of Article 14."

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8. The respondents say that revision in seniority was done after consulting the UPSC. That does not justify the stand of respondents. The applicant should have been given a fair hearing before taking such a step to the detriment of the applicant. With the exceptions of two or three situations, we do not know of any other situation where an administrative order is issued denying and depriving certain vested rights to an individual without giving him a fair chance of being heard. The two or three exceptions that we notice are when the change in seniority or rights is due to the operation of a statutory rule or where the record shows that the applicant had been impliedly heard or by not giving a show-cause, the action did not operate to his prejudice. The applicant contends that the principles of Supreme Court in Chadha's case do not apply to his cadre. ~~we are~~ ^{we are} satisfied that this is a fit case where the applicant should have been given a show-cause notice.

9. While it is true that the applicant should not have rushed to the Tribunal without awaiting for a reply to his representation and pre-empting the respondents from considering the representation and to that extent rendering the application incompetent, we intend to strike a modus vivendi by which the representation can be disposed of and an opportunity of hearing the applicant can also be given. We, however, hasten to add that post decisional hearing does not ^{always} cure the defect of not giving an opportunity before the impugned order is passed. Even so, this should enable the respondents to come out with their view as to why such a radical step was taken without hearing the applicant who is the affected party. We do not want to go into the merits of the case because the respondents may modify their stand after hearing the applicant.

10. We, therefore, dispose of this O.A. with the direction that the representation filed by the applicant on 11.3.92 (Annexure A-6 to the O.A.) addressed to the Secretary, Railway Board, impleaded as respondent no.1 in this O.A., shall be disposed of within a period of six weeks from the date of receipt of a copy of this order. We further direct that respondent no.1 shall hear the applicant and pass a reasoned and speaking order.

11. The O.A. is disposed of as above. No costs.

12. The applicant is at liberty to approach this Tribunal if his grievances still survives after his representation is disposed of by respondent no.1.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

N. Sahu
(N. Sahu)
Member (A)

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