

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

17

O.A. No. 1159/93

199

T.A.No.

DATE OF DECISION 19-8-99

Sh. Ajit Singh

....Petitioner

Shri B.S. Mainee

....Advocate for the
Petitioner(s)

VERSUS

UOI through GM(NR)
Baroda House, New Delhi

....Respondent

Sh.P.S. Mahendru

....Advocate for the
Respondents.

CORAM

The Hon'ble Shri S.R. Adige, Vice Chairman (A)
The Hon'ble Smt. Lakshmi Swaminathan, Member(J)

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other
Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

B

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1159/93

New Delhi this the 19th day of May, 1999.

HON'BLE MR. S.R. ADIGE, VICE-CHAIRMAN (A)
HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Ajit Singh,
S/o Shri Dayal Singh,
R/o Ramlila Road,
Linepar Near GRP Lines,
Moradabad.

...Applicant

(By Advocate Shri B.S. Mainee)

-Versus-

Union of India through:

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Chief Bridge Engineer,
Northern Railway, H.Q.
Baroda House,
New Delhi.

...Respondents

(By Advocate Shri P.S. Mahendru)

O R D E R

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J):

The applicant is aggrieved by the order passed by the respondents dated 22.3.93, rejecting his claims made in his representation dated 16.10.92 for promotion and seniority of Bridge Mistry.

2. The respondents have taken a preliminary objection to the OA on the ground that it is highly belated and barred by limitation. They have submitted that the applicant is seeking relief w.e.f. 1968 for promotion as Bridge Mistry and they have also referred to the previous OA filed by the applicant (OA-1381/86 (T) CAT Allahabad Bench) which was decided on 4.12.87 on which SLP filed by the respondents was also dismissed on 5.9.90. The present OA has been filed on 25.5.93. This preliminary objection taken by

18

the respondents can be straightaway dismissed on the ground that they themselves have rejected his representation dated 16.10.92 by the impugned order dated 22.3.93, giving reasons which he has challenged in this OA. It is also relevant to note that the respondents have themselves sent a letter to the applicant on 11.6.92 requesting him to send certain details immediately on the subject of his promotion to the grade of Mistry, BRA Grade-III and BRA Grade-II and fixation of his pay, for their consideration. In the circumstances, since the applicant has filed this OA within two months of the passing of the impugned letter by the respondents rejecting his claims for promotion and seniority, we find this OA is within limitation and the preliminary objection raised by the respondents is accordingly rejected.

3. The applicant has relied on an earlier OA filed by him in the Allahabad Bench of the Tribunal (Regn. No. 1381/86(T)) decided on 4.12.1987. In this judgement it was held that after the quashing of the second enquiry and the order of removal passed by the General Manager and reinstatement of the applicant, he was fully entitled to full pay and allowances to which he would have been entitled, had he not been removed from service. It was further held that in terms of Rule-3 of Paragraph-2044 of Indian Railway Establishment Manual, the period of absence from duty including the period of suspension from 8.12.65 to 30.7.80 is to be treated as period spent on duty for all purposes. The applicant has stated that he was suspended w.e.f. 15.9.62 and had been removed from service on 8.12.65. Shri B.S. Mainee, learned counsel for the applicant has submitted that the applicant's case cannot be compared with Shri Moti Ram, his junior. According to him, although Shri Moti Ram alongwith 14

JS

other Artisan staff had been called for the suitability test for the post of Bridge Mistry by the respondents on 14.2.68, as he had not qualified in the test, juniors to Shri Moti Ram namely, S/Shri Kashi Ram, Nasib Singh and Pritam Singh who were also called for the same test had qualified and were promoted and posted as Bridge Mistries by Notice dated 29.2.68. He, therefore, claims that the applicant should also be promoted as Bridge Mistry w.e.f. 29.2.1968 when his juniors were promoted.

4. According to the respondents the applicant's case cannot be compared with Shri Moti Ram, as they have submitted that the applicant was given proforma fixation as 'Sarang' in the grade of Rs.110-180 as per his seniority w.e.f. 24.11.67 when his next junior Shri Ram Lakhan was promoted in the Lucknow Unit. They have stated that no Sarang, promoted in 1967 was called for consideration to the post of Bridge Mistry on 29.4.68. On the other hand, the respondents have relied on their letter dated 3.4.91. Paragraph-5 of this letter reads as follows:

"5. Sh. Ajit Singh has been given seniority of Bridge Mistry equivalent to Junior Sh. Moti Ram (Promotion as Bridge Mistry on 29.8.78). This has been vetted by account. He has been given proforma fixation w.e.f. 29.8.78 and arrear bill on this account amounting to Rs.9034.00 has been paid through Divisional Cashier MB vide Cheque No.4842/242095 dtd.2.4.91." (emphasis added).

5. From the above, we find merit in the contention of the learned counsel for the applicant that merely because Shri Moti Ram who was junior to the applicant had failed in the suitability test for promotion to the post of Bridge Mistry when he was called to appear in 1968, it does not mean

18

that the applicant should also be given the promotion to that post only from the latter date i.e. 29.8.78 when Shri Moti Ram qualified in a subsequent test. We find from the documents on record (Annexures A-3, A-4 and A-5) that other juniors to Shri Moti Ram who had also appeared for the suitability test which was held on 29.2.68 have qualified and have been appointed as Bridge Mistries in grade Rs.150-240 w.e.f. 29.2.68 and consequently there is no reason why the applicant should not be given promotion to this post from the same date, instead of 29.8.78, in accordance with relevant rules and instructions. The applicant has also submitted that both Shri Kansi Ram and Nasib Singh were promoted as Bridge Inspectors Grade II w.e.f 19.8.86.

6. In the impugned letter the respondents have stated that the applicant's seniority as Sarang on MV Division was fixed with respect to his junior Shri Ram Lakhan. Besides this, he had also been given proforma fixation as Mistry with respect to Shri Moti Ram who is junior to him in that category. If as stated by the respondents the promotion has been given to the applicant on the basis that Moti Ram was junior to him as Bridge Mistry, then obviously the contention of the applicant that because Shri Moti Ram was not found suitable for the post of Bridge Mistry on 29.2.68 when others junior to him have been promoted is valid, and the applicant is entitled to promotion as Bridge Mistry w.e.f. 29.2.68. Thereafter he would also be entitled to other posts of Bridge Inspector Grade III and Bridge Inspector Grade II from the dates his juniors have been promoted, in accordance with rules and instructions.

12

(5)

7. For the reasons given above, OA is allowed. The impugned order dated 22.3.93 is quashed and set aside. Respondents are directed to promote the applicant to the post of Bridge Mistry w.e.f. 29.2.68, i.e., the date from which his juniors have been promoted and also consider him for further promotions as Bridge Inspector Grade III and Grade II from the dates his juniors have been promoted with all consequential benefits, including difference in pay and allowances, in accordance with rules and instructions. This shall be done within two months of the receipt of a copy of this order. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

S.R. Adige
(S.R. Adige)
Vice-Chairman(A)

'San.'