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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No.149 of 1993 decided on 7th 12.1998.

Name of Applicant : Sh. Virendra Kumar

By Advocate : Shri Prabhu Kant

Versus

Name of respondent/s Union of India & others

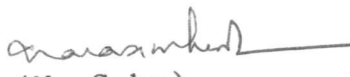
By Advocate : Shri P.S.Mahendru

Corum:

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

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 (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

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Original Application No.149 of 1993

New Delhi, this the 7th day of December, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)
Hon'ble Dr.A.Vedavalli, Member(J)

Sh. Virendra Kumar S/o Sh. Jagan Nath,
R/o C-29-D, Lajpat Nagar, New
Delhi-110024 working as Junior Chemical
and Metallurgical Asstt. and posted at
New Delhi Railway Station in Diesel Sub
Shed of WDS4 Locomotives.

-APPLICANT

(By Advocate Shri Prabhu Kant)

Versus

1. Union of India through General
Manager, Baroda House, N. Railway,
New Delhi.
2. The Sr. Chemist and Metallurgist,
N.Rly., Diesel/Shed/TKD.
3. The Chemist and Metallurgist,
N.Railway, Charbagh (Workshop),
Lucknow, U.P.
4. Sr. D.P.O., N.Rly. D.R.M. Office,
New Delhi.
5. Sh. Rajpal Singh, Junior Chemical &
Metallurgical Asstt. N.Rly. Diesel
Shed. Shakurbasti, Delhi-34.
6. Sh. R.N. Srivastava, Chemical and
Metallurgical Asstt. Railway
Workshop, Kalka, Haryana.
7. Sh. Madan Lal, JCMA, N.Rly., Diesel
Shed, Shakurbasti, Delhi-110034.
8. Sh. Madan Lal S/o Sh. Bhooramal,
JCMA, N.Rly. Diesel Shed, Bhagat Ki
Kothi (Rajasthan)
9. Sh.R.N.Tripathi, JCMA, N.Rly, Diesel
Shed, Tughlakabad, New Delhi.
10. Sh. Kulwant Singh, CMA, Railway
Parts Manufacturing Workshop,
Patiala, Punjab.
11. Mohamad Wasimuddin, JCMA, Rly.
Electric Loco Shed, Ghaziabad, U.P.
12. Sudarshan Kumar, JCMA, N.Rly,
Jagadhari Workshop, Haryana.
13. Sh. Govind Narain, JCMA, N.Rly,
Bhagat Ki Kothi, Diesel Shed,
Rajasthan.

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14. Sh. Baldev Singh, JCMA, Rly Workshop, Amritsar, Punjab.


15. Sh. Mata Parshad, JCMA, Traction Motorsshop, Fazal Ganj, Kanpur, U.P. -RESPONDENTS

(Official respondents -By Advocate Shri P.S. Mahendru)

O R D E R

By Mr. N. Sahu, Member(Admnv) -

The relief prayed for in the amended O.A. is as under -

- (i) That the impugned Annexures A-11 (On page 56), A-12 (on page 57) and A-58 (on page 134) be quashed as arbitrary, illegal, malafide and contrary to their own records and the seniority of the Petitioner be restored to his appropriate position, above Shri Raj Pal Singh and Shri R.N.Srivastava (Respondent Nos. 5 and 6 respectively).
 - (ii) Consequent to prayer at (i) as above if granted, direct the Respondents in view of the directions/ observation of this Honourable Tribunal in their judgment in Transferred Application No.13/86 (Suit No.245 of 1985) decided by their Lordships on 5th February, 1992 as well as the observation on the C.C.P. dated 19th October, 1992 (Operative paras on pages 124 and 135 respectively) to give the benefits to the applicant including continuous officiation followed by regularisation on the post of Junior Chemical and Metallurgical Assistant (J.C.M.A.) from 10th January, 1979 i.e. right from the date one.
 - (iii) Direct the official respondents to give all consequential benefits that follows the regularisation of the period under reversion from 20th July, 1984 to 2nd December, 1985, with all consequential benefits like difference of pay and allowances, seniority, promotion etc.
 - (iv) Award exemplary cost for this application with a further request to pass any other order/orders or direction/ directions or grant any other relief/ reliefs as deemed fit in the light of the facts and circumstances of the case.
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2. In the original OA the applicant sought a direction to the respondents to declare his reversion with effect from 20.7.1984 to 2.12.1985 as null and void and also a prayer to declare him senior to respondent no.5 Rajpal Singh.

3. The dispute in this OA arose on the following admitted facts - in the panel for Laboratory Assistants (in short 'Lab. Asstt.') prepared in December, 1979 the applicant figured at serial no.7. Respondents Nos. 5 and 6 are at serial nos. 8 and 9. The applicant was confirmed as Lab. Asstt. on 9.4.1982 while respondent no.5 was confirmed on 10.4.1982 and respondent no.6 on 12.4.1982. On 19.7.1984 the applicant and respondents 5 and 6 were officiating as Junior Chemical and Metallurgical Assistant (in short 'JCMA') when Asif Raza, a direct recruit came to join as a regular CMA. This required one reversion. The applicant though senior was reverted. He filed a Civil Suit on 4.8.1984 and secured a status quo order on 22.8.1984. The Divisional Personnel Officer, New Delhi realised the mistake and ordered repromotion of the applicant but this could not be done immediately because of the status quo order. This was vacated and thereafter on 2.12.1985 the applicant was promoted. The Civil Suit was transferred to this Tribunal and registered as TA 13 of 1986. In the written test in July, 1986 the applicant was selected as JCMA but in the interview he failed. He filed another OA 765/86 on 11.9.1986 against his non-selection. This Tribunal dismissed TA 13/86 and

OA 765/86 on 5.2.1992 on the ground that respondents 5 to 14 were not parties. The applicant was directed to make a representation which he did on 3.3.1992 and this was not responded to in spite of several reminders. Under the circumstances he pleads for quashing the reversion order as well as for fixing his seniority above respondent no. 6 from 1979.

4. The respondents have admitted to the following. In para 36 they admitted that the applicant was senior to respondents. In para 13 of their reply they admitted that the applicant should not have been reverted being the senior most. In other paras they have conceded the claim of the applicant. The selection of the applicant in July, 1986 depended upon allocation of certain marks relating to seniority. As the applicant is admittedly senior to respondents 6, he feels that proper marks were not awarded to him in the selection in July, 1986. He states categorically that respondents 1 to 4 cannot justify the selections of respondents 9, 10 and 12 who had failed in the written test. He feels that on basis parallal to respondents 9, 10 and 12, if he was given the same seniority marks he would have been selected. It is also clear and admitted vide paragraph 42 of the reply that the post of JCMA is a safety cadre post and reservation for scheduled castes and scheduled tribes cannot be enforced in safety category posts.



5. Subsequently, by an order dated 16.1.1998 the respondents have promoted the applicant for the post of JCMA Grade 1320-2040 as a result of the written test held on 20.6.1997 followed by viva voce held on 9.9.1997. The no. 1 in the panel is the applicant and no.2 is Shri Rajpal Singh, respondent no.5. Therefore, the applicant has no grievance with regard to seniority over Shri Rajpal Singh any more. He wants now that he should be declared senior to respondent no.6 Shri R.N.Srivastava and respondent no.7 Shri Madanlal.

6. We have noted that in paras 57, 59 and 65 of the counter the respondents stated that the applicant's case is under consideration. Similarly, respondents stated that JCMA is a safety cadre post and, therefore, no SC/ST reservation is permissible. This is admitted by the respondents at paragraph 42 of the counter. Respondent no.7 Madanlal was promoted because Madanlal was a scheduled caste candidate. We have mentioned above that in paras 6,12,13,36 and 44 of the counter the respondents admitted that the applicant is senior to respondents 5, 6 and 7. They also say that he should not have been reverted. Consequently, there should be no difficulty to declare that the applicant is senior to respondent 6. It is also clear from the order of the Division Bench dated 5.2.1992 that the applicant even if declared senior cannot claim back wages.



7. We accordingly direct the official respondents - (i) to consider the representation pending before them and in accordance with the paragraphs of the counter cited above, declare the applicant as senior to respondent 6. We have no difficulty in holding that the reversion order dated 20.7.1984 is not in accordance with law. Although the applicant is not entitled to any back wages, he should be given the same benefits and rank as that of respondent no.6 counting his seniority for the purpose of future promotion and his pay shall be notionally fixed. The O.A. is disposed of. No costs.

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

N. Sahu
(N. Sahu)
Member(Admnv)

rkv.