

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated: This the 28th day of Feb 2006.

Original Application No. 723 of 1996.

Hon'ble Mr. D.R. Tiwari, Member (A)

Hon'ble Mr. K.B.S. Rajan, Member (J)

Puspraj Janoria, s/o Late Shri D.L. Janoria,
Retired Assistant Mechanical Engineer (Drawing),
Chief Mechanical Engineer's Office, N.E. Rly.,
GORAKHPUR.

.....Applicant

By Adv: Sri M.K. Updhayay

V E R S U S

1. Union of India through Secretary,
Ministry of Railways, Rail Bhawan,
NEW DELHI.
2. General Manager, N.E. Railway,
GORAKHPUR.

.....Respondents.

By Adv: Sri ~~S. Singh~~ A.V. Srivastava

ORDER

By K.B.S. Rajan, Member (J)

The applicant having earlier moved TA No. 588 of 1986 has preferred this OA as a sequel to the said petition which was decided on 02.11.1988 and further on the strength of another order dated 17.01.1992 in TA 1190 of 1986, whereby certain direction to the respondents, was passed. As such thread of this OA can be had from the previous judgment itself.

2. Very briefly stated, fixation of seniority is the main challenge in this case. Earlier, two grades of Rs. 700-900 and Rs. 840-1040 existed the

latter being superior to the former. For higher officer grade of Assistant Works Manager, the seniority was initially of Rs. 840-1040 only. Subsequently, on the merger of the two grades maintaining inter-se-seniority within the said two grades, length of total service in the two grades became the norm for fixation of integrated seniority. In this regard the following orders of the Railway Board are relevant: -

- a. Para 321 of Indian Railway Establishment Manual.
- b. Railway Board Circular dated 05.03.1983.
- c. Railway Board Circular dated 28.05.1983.
- d. Railway Board Circular dated 06.01.1984.

3. By order-dated 02.11.1988, the Tribunal has passed the following order in TA No. 588 of 1986: -

"For the reasons mentioned above, we direct the defendants to prepare an integrated eligibility list of officials in group 'C' post in accordance with para 321 of the Indian Railway Establishment Manual for promotion to the post of Assistant Works Manager and ignore the instructions contained in the Railway Board's letters dated 5.3.83, 28.5.83 and 6.1.84 on this subject. The plaintiffs' suit is decreed to this extent without any order as to costs. We, however, direct that as a result of this order no persons, who have already been promoted and who are not defendants in this case shall be reverted until a revised integrated eligibility list is prepared and panel of suitable candidates prepared in accordance with the Rules and instructions of the Railway Board.

4. Subsequently, in another TA 1190 of 1986, which referred to above order-dated 02.11.1988, the following order was passed: -

"Accordingly, the respondents are directed to decide the representations made by the applicants regarding the integrated seniority list which is the basis of the examination referred to above in which the applicant was

empanelled and in case, in the seniority list, the applicant no.1 steps up, he may be given due seniority and in case the applicant no.2 also steps up, he may also be given due seniority, and he may be given permission in appearing in the next examination. His seniority may be determined and in case after determination of the seniority, if it is found that he is not eligible to appear in the examination, he may be given future opportunity for appearing in the same, in accordance with law keeping in view of Rules 301 and 321 of the Railway Establishment Manual. The application is disposed of with the above terms. Parties to bear their own costs. No case for contempt is made out and the contempt application is accordingly rejected. This judgment will cover both the cases.

5. The respondents by the impugned order dated 12.03.1993 read with order-dated 19.05.1995, have rejected the representation of the applicant.

6. The applicant, through this OA challenged the rejection order on the ground that the integrated seniority list earlier prepared by them was not in conformity with the direction of this Tribunal passed in order dated 17.01.1992. According to the applicant the seniority should be strictly in accordance with paragraph 320 of IREM which is renumbered paragraph 301 and 321. Also it has been contended that the officials not selected to the higher post but only granted ex-gratia higher scale and who have not rendered actual service had also been included in the seniority list.

7. Per-contra the respondents have stated that after the order dated 02.11.1988 in TA 588 of 1986 and an order of the Jabalpur Bench of the Tribunal dated 15.02.1988 in TA No. 273 of 1986 were passed, the Railway Board issued revised instructions on

22.12.1988, which was in-tune with para 321 of IREM and the integrated seniority was prepared strictly in terms of the same. As such, according to the respondents the seniority prepared was intact.

8. Arguments were heard and written arguments were also perused. The Jabalpur Bench by its order dated 05.02.1988 had directed as under:-

"Specifically a revised integrated seniority list shall be prepared for the feeder cadre of Group 'C' post for promotion to Group 'B' post on the basis of which promotions of the petitioners and others shall be considered on merits."

9. While arriving at the above direction the Tribunal had taken into account the decision of the Apex Court in the case of **Narendra Chaddha and others Vs Union of India and others, AIR 1986 (1) SC 49** and other decisions of the Apex Court holding that for seniority purposes non-fortuitous services shall be ignored.

10. In the instant case, the respondents have clearly stated that the Railway Board Circular issued in the wake of the judgments of this Tribunal and of Jabalpur Bench clearly stipulates that non-fortuitous services shall be ignored. Circular dated 22.12.1988, reads as under: -

"It has been decided in partial modification of the orders contained in the Board's letter No. E (GP) 81/2/87 dated 28.5.83 and 6.1.84 that:-

- a. The integrated seniority of Group 'C' employee for the promotion to Group 'B' posts should be determined on the basis of combined length of non fortuitous service rendered in the grade Rs. 700-900 (Rs.)/Rs. 2000-3200 (RPS) and above,*

ignoring promotions to the grade Rs. 840-1040 (Rs.)/Rs. 2375-3500 (RPS) and

- b. The SC/ST candidates who are appointed against reserved vacancies on the basis of roster points, may continue to be assigned the same service as that of General Community employee immediately below them in the particular grade in terms of para 3.1 of Boards letter dt.6.1.84."

11. The above circular has not been challenged and the same is also in conformity with the direction of this Tribunal. In so far as merger of two grades of Rs. 700-900 and 840-1040 to form a singly grade, the same is within the administrative powers of the authorities. In this regard the Judgment of the Apex Court in the case of **Reserve Bank of India v. C.N. Sahasranaman, 1986 Supp SCC 143** is apt to be relied upon and the same is as under: -

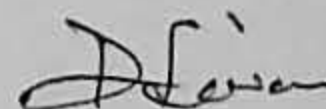
"It has to be borne in mind that in service jurisprudence there cannot be any service rule which would satisfy each and every employee and its constitutionality has to be judged by considering whether it is fair, reasonable and does justice to the majority of the employees and fortunes of some individuals is not the touchstone. having regard to the factors and in regard to the history of Reserve Bank employees, we are of the opinion that the scheme as modified by the Bank and as accepted by vast majority of their employees is a proper and just scheme and does not suffer from the vice of Article 14 or Article 16 or any other constitutional guarantees.... it is true, there may be individual instances exemplifying injustice by postponing or delaying the chances of promotions of the contesting respondents yet that does not deny them their constitutional right in its proper measure, and the considerations that have weighed with the making of the modified scheme and in the light of the other considerations mentioned hereinbefore, we must observe that with whatever care and objectivity or foresight any rule is framed, some hardship, inconvenience or injustice might result but the paramount consideration is the reconciliation of the conflicting claims of two important constituents of service - one which brings fresh clerical employees and the other mature

experience. There has been a happy merger of these two considerations in the scheme proposed and in that merger, no violation of the guaranteed rights of the opposing respondents have occurred."

12. In view of the above we find no infirmity in the seniority list dated 17.09.1989 prepared by the respondents and rejection of the representation of the applicant vide order dated 13.02.1993 which relates to selection for the year 1985 onwards cannot also be faulted with. In fact the applicant has availed of certain opportunities in regard to higher selection and the applicant had also retired long back. (His retirement is not the ground for rejection, as the case has been viewed, keeping the clock back and it is found that the action of the respondent is fully justified.) The OA, thus, is devoid of merits and is dismissed. No cost.



Member (J)



Member (A)

/pc/