

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1490 OF 1998

ALLAHABAD, THIS THE 2nd DAY OF DECEMBER, 2003

HON'BLE MAJ GEN K. K. SRIVASTAVA, A.M.

HON'BLE MR. A. K. BHATNAGAR, J.M.

Malkhan Singh,
son of Shri Achhe Lal aged about 36 years
working as Goods Guard under Chief Yard Master,
Central Railway, Jhansi and resident of Behind
Home Guard Centre, Pathoria, Jhansi.

.....Applicant

(By Advocate : Shri G.P. Sharma)

VERSUS

1. Union of India through the General Manager,
Central Railway, Mumbai CST.

2. The Divisional Railway Manager,
Central Railway, Jhansi.

.....Respondents

(By Advocate : Shri A. Sthaleker)

O R D E R

By Hon'ble Maj Gen K.K. Srivastava, A.M.

In this Original Application filed under section 19 of
Administrative Tribunals Act, 1985, the applicant has prayed
for direction to respondents to consider the case of the
applicant for empanelment for promotion to the post of
Passenger Guard in the selection dated 13.11.1997 with all
consequential benefits. The applicant has also prayed for

direction to respondents to give promotion as per proper S.C. seniority list fixed in the seniority of the applicant above Shri Ghazi Ram Munshi Ram.

2. We have heard counsel for the parties, perused records and also the arguments filed by the counsel for the applicant on behalf of the applicant.

3. The grievance of the applicant is that in the selection for the post of Passenger Guard Gr.1350-2200/- favouritism has been done by the respondents in Jhansi Division ⁱⁿ ~~ignoring~~ including the claim and seniority of the applicant. The argument of the applicant is that Shri Ghazi Ram Munshi Ram joined Jhansi Division from Bhopal on mutual transfer with one Shri Mohendra Kasker. Since Shri Ghazi Ram Munshi Ram joined from other division, he should have been placed on bottom seniority i.e. below the applicant.

4. The other ground taken by the applicant is that both Shri Ghazi Ram Munshi Ram and applicant ~~belong to S.C. category~~ ⁱⁿ and both qualified in the written examination. Both failed in the viva-voce and therefore, the applicant being the senior, should have been kept on the panel for promotion being senior to Shri Ghazi Ram Munshi Ram on the principle of best amongst failure S.C. candidate.

5. The learned counsel for the respondents invited our attention to para-3 of the Counter Affidavit and submitted that Shri Ghazi

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Ram Munshi Ram came on mutual transfer, Shri Mohendra Kaskar was senior to the applicant, therefore, the contention of the applicant is misconceived. Shri Ghazi Ram Munshi Ram was all ^{along} senior, therefore, the applicant could not have been considered for promotion as he did not qualify in the viva-voce.

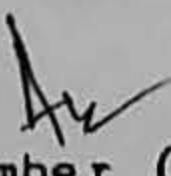
6. Another point raised by the respondents is that seniority of Shri Ghazi Ram Munshi Ram was assigned w.e.f. 20.11.1992 and if the applicant was aggrieved, he should have approached the Tribunal challenging the seniority of Shri Ghazi Ram Munshi Ram within the period of limitation as provided under section 21 of Administrative Tribunals Act, 1985. The applicant has filed this O.A. only on 23.12.1998, therefore, the O.A. is highly time barred and is liable to be dismissed.

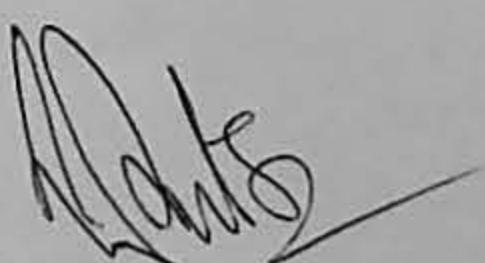
7. In this ^b short controversy involved is whether the seniority to Shri Ghazi Ram Munshi Ram has been assigned correctly by the respondents or not. In para-3 it has been stated by the respondents that Shri Ghazi Ram Munshi Ram joined Jhansi on mutual transfer ^b with ^b Shri Mohendra Kaskar who was senior to the applicant but junior to Shri Ghazi Ram Munshi Ram. It has also been stated that Shri Mohendra Kaskar was working as Goods Guard w.e.f. 20.11.1992 whereas the applicant started working as Goods Guard w.e.f. 20.10.1993. This fact has not been specifically denied by the applicant in para 4 and para-7 of the rejoinder. The only ground taken by the applicant is that since Shri Ghazi Ram Munshi Ram came on mutual transfer, he should have been assigned the bottom

seniority. We would like to observe that the contention of the applicant is totally misconceived in view of the para 310 of I.R.E.M. volume-I.

8. The respondents have argued that the O.A. is grossly time barred because the applicant is claiming the seniority over Shri Ghasi Ram Munshi Ram by filing this O.A. on 23.12.1998. We find substance in the argument of the respondents counsel. It is not denied that Shri Ghasi Ram Munshi Ram was assigned seniority w.e.f. 20.11.1992 and applicant woke up only after 6 years in 1998 when he could not pass the selection for promotion as Passenger Guard. We would also like to observe that applicant has challenged the selection of Shri Ghasi Ram Munshi Ram to the post of Passenger Guard without impleading him as one of the respondents. Therefore, even on the ground of non-joinder of essential party, the O.A. is not maintainable.

9. In the facts and circumstances and above aforesaid discussions, the O.A. is bereft of any merit. The O.A. is dismissed not only on the ground of lacking in merit but also on the ground of non-joinder of essential party. No order as to costs.


Member (J)


Member (A)