

Open Court

\* CENTRAL \* ADMINISTRATIVE \* TRIBUNAL \*  
\* ALLAHABAD \* BENCH \*  
\* ALLAHABAD \*  
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Original Application No. 475 of 1998

Allahabad, this the 26th day of August, 2003

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER A  
HON'BLE MR. A.K. BHATNAGAR, MEMBER J

Iqbal Hussain aged about 48 years  
Son of Shri Chand Khan Inspector  
of Works Grade-III, North Eastern  
Railway Izatnagar District-Bareilly.

... ... ... Applicant.

: By Advocate : Shri R.D. Agarwal (absent) :

\* VERSUS\*  
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1. Union of India through the General Manager, North Eastern Railway, Headquarters Office, Gorakhpur.
2. The Divisional Railway Manager (Personnel) N.E.Railway Izatnagar, District Bareilly.
3. The Divisional Engineer - III, N.E.Railway, Izatnagar, District Bareilly.

... ... ... Respondents.

: By Advocate : Km. S. Srivastava :

\* O R D E R ( O R A L ) \*

BY HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER-A

List has been revised none appeared for the applicant. Km. Sadhna Srivastava, learned counsel for the respondents is present. Since the matter pertains to the year 1998 we proceed to decide the same on merits under rule 15 of C.A.T. Procedure Rule, 1985.

2- In this O.A. filed under section 19 of Administrative Tribunal Act, 1985, applicant has prayed for following relief(s) :

" (a) This Tribunal may graciously be pleased to direct the respondents for awarding the seniority to the applicant from 29.11.91 the date he is working and holding the vacant post of I.O.W. grade-III in grade Rs.1400-2300 against which he appeared and qualified the Selection Committee without any break and still working.

(b) To issue a mandamus commanding the respondents to published a seniority list of I.O.W. grade III by showing the name of the applicant from 29.11.91. "

3. The facts, in short, are that the applicant was appointed as Artisan Driver in the respondents' establishment on 16.02.1969. During 1981 the applicant was transferred to the Engineering Department on the post of Work Mistri in grade Rs.1400-2300 (RPS). The applicant was further promoted as Inspector of Works grade-III in grade Rs.1400-2300 Vice Shri A.K.Sharma at Izatnagar on ad-hoc basis vide order dated 02.12.1991. The applicant was called for Selection Examination against 2 clear vacancies of I.O.W. vide order dated 17.02.1992. However, he was not allowed to appear in the selection examination. His name was struck off and name of one J.P.Gangwar was added. The applicant appeared in the written examination held on 15.06.1995 and Viva-voce test held on 28.06.1995 for permanent posting of Inspector of Works grade III. He was declared successful by order dated 04.07.1995 and allowed to continue on the post already held by him. The grievance of the applicant is that respondent no.2 illegally passed the order on 10.07.1995 (Annexure-A-I) for promotion of the applicant with immediate effect instead of regularisation of the services of the applicant on the same post from 29.11.1991. The applicant submitted his representation on 09.12.1995 through proper channel but the same has not been decided so far. The applicant sent reminder on 09.09.1996. His case was strongly



recommended by respondent no.2 by letter dated 04.11.1996 (Annexure-A II) but the respondent no.1 has not considered the same. Aggrieved by the same applicant has filed this O.A. which has been contested by the respondents by filing Counter. In the pleadings applicant has raised basically two issues. Firstly, he was denied the opportunity of appearing in the selection in 1992 and secondly, he should have been regularised as Inspector of Works from 29.11.1991 on which he continuously worked followed by his clearing the selection in 1995. Another point raised by the applicant is that by striking off his name and adding the name of Shri J.P.Gangwar, the respondents have committed illegality.

4. Resisting the claim of the applicant Km. Sadhna Srivastava, learned counsel for the respondents submitted that the name of the applicant had to be strucked off from the list of the eligible candidates to appear in the written examination in 1992 because in order to fill 2 vacancies six persons had to be called for selection. Due to mistake the name of Shri J.P.Gangwar, who is admittedly senior to the applicant, was omitted. The administration had to allow, Shri J.P.Gangwar instead of the applicant, no illegality had been committed by the respondents in this regard. The learned counsel for the respondents further submitted that the post of Inspector of Works is a selection post and till the applicant could clear the selection, he could not be granted regular promotion. Period during which he worked on ad-hoc basis can not be counted for the purpose of seniority. The learned counsel also submitted that as per Rule 302 of I.R.E.M. the period of ad-hoc is not to be counted for the purpose of seniority.

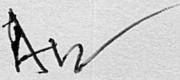
5. We have heard counsel for the respondents, considered submissions and closely perused records.

6. In the present case the applicant is claiming seniority w.e.f. 29.11.1991 on the ground that he was promoted and he worked on that post continuously. In para 3 of the O.A., the

applicant had admitted that he was promoted to work as Inspector of Works Vice Shri A.K.Sharma vide order dated 02.12.1991(Annexure-AIII). The name of the applicant appears at serial no.2 and in the same order it is clearly mentioned that the promotion is on ad hoc basis and will not count for seniority or regularisation. We have no doubt in our mind that for a selection post, it is required to pass the selection test and only then applicant can be entitled for regularisation and seniority on the promoted post. In the present case <sup>he</sup> applicant cleared the selection in 1995 and he was promoted vide impugned order dated 10.07.1995. Therefore, the date for seniority in respect of the applicant shall count from 10.7.95 itself and he is not entitled for any ante-dated seniority.

7. Applicant has raised the plea that he was denied an opportunity to clear the selection in 1992. In our considered opinion it is not so. Shri J.P. Gangwar was admittedly senior to the applicant and he had an earlier claim on the post than the applicant. There were only 2 vacancies and, therefore, against 2 vacancies six persons were to be considered. Since due to office omission the name of Shri J.P.Gangwar was not included, the same was detected in time, the respondents very correctly and as per rules added the name of Shri J.P. Gangwar as one of the candidates in 1992 selection. Unfortunately in the list circulated vide letter dated 17/27-02-1992 (Annexure A IV) the applicant's name was at serial no.6, his name <sup>had been</sup> ~~ought~~ to be removed. We do not find that there is any substance in the plea taken by the applicant in this regard.

8. In the facts and circumstances and aforesaid discussion the O.A. is bereft of merits and accordingly dismissed with no order as to costs.

  
Member J

  
Member A

Brijesh/-