

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 36 of 2004

Allahabad this the, 28th day of February, 2011

Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)

Umesh Dutt Bhatt A/a 47 years, S/o late Durga Dutt Bhatt R/o Rly. Qr. No. E-37 'A', Railway Malgodown Colony, Sahawar Gate, Kasganj, District Etah.

Applicant

By Advocate: Mr. Vinod Kumar

Vs.

1. Union of India through General Manager, N.E. Railway, Gorakhpur.
2. Sr. Divisional Personnel Officer (Divisional Railway Manager – Personnel), N.E. Railway, Izatnagar, District Bareilly.
3. Assistant Divisional Engineer, N.E. Railway, Mathura Cantt., Mathura.

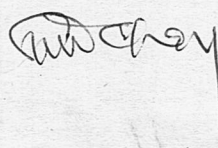
Respondents

By Advocate: Mr. K.P. Singh

ORDER

By Hon'ble Mr. Justice S.C. Sharma, J.M.

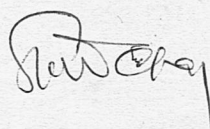
Under challenge in this O.A. is the Order dated 17.01.2003 passed by the Assistant Divisional Engineer, N.E. Railway, Mathura Cantt. (annexure A-1) and the Order dated 06.03.2003 passed by the Senior Divisional



Personnel Officer, N.E. Railway, Izzat Nagar (Annexure A-3). Further prayer has also been made for giving direction to the respondents to re-fix the seniority of applicant as per his seniority by making necessary amendments in the seniority list, so published by Assistant Divisional Engineer, Mathura Cantt. (Annexure A-2). Prayer has also been made for giving direction to the respondents to promote the applicant on the post of Gangman to Keyman and further to the post of Permanent Way Mate from the date his juniors have been granted promotions and to further grant him all consequential benefits thereupon.

2. The pleadings of the parties, in brief, are as follows: -

The applicant was appointed as casual labour under the Inspector of Works (Maintenance), N.E. Railway, Gorakhpur on 17.12.2974. On 16.11.1980, the applicant was granted the time scale in the pay scale of ₹ 200-250, after screening and was posted as Trolley Man under the Inspector of Works (Special), N.E.R., Kasganj. Finally on 18.09.1981, the applicant was granted appointment on the post of Gangman in the pay scale of ₹ 200-250 (now revised to ₹ 2550-4000), and



was posted as Gangman in Gang No. 46 'B' under the Permanent Way Inspector, N.E. Railway, Kasganj (now designated as Senior Section Engineer, Permanent Way). It is stated that the applicant is presently posted as a Gangman in Gang No. 72 under the Senior Section Engineer, Permanent Way, N.E. Railway, Kasganj, and has been continuously functioning on the said post since 18.09.1981 to the full and complete satisfaction of his superiors. Now the post of Gangman has been re designated as Trackman. According to the channel of promotion from the post of Gangman, one is to be promoted as Keyman, and thereafter to the post of Permanent Way Mate, and finally on the post of Supervisor/Permanent Way (D) ₹ 4500-7000. All these promotional posts are to be filled on the basis of seniority cum suitability, annexure A-4 provides the channel of promotion. In spite of the fact that the applicant is continuously functioning on the post of Gangman since 18.09.1981 but he has neither been called for any selections/promotions nor any intimation has been given to him for appearing in the same. No seniority list was shown to him of the Gangman. Later on applicant came to know that his juniors were promoted on the post of Keyman and other higher posts.

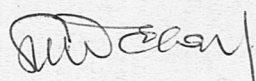
Sunil

Thereafter, representations were filed by the applicants before the respondents as S/Shri Jai Ram, Banwari and Prem Pal are the juniors of the applicant but they have been given promotion. Without obtaining the copy of seniority list, applicant was not aware that promotions were given to his ^{juniors} ~~senior~~ and hence he was not in a position to challenge the promotion of his juniors. The applicant is entitled for promotion over and above juniors so promoted ignoring the claim of the applicant. Earlier the applicant filed an O.A. and this O.A. No. 1171 of 2002 was decided on 11.10.2002. A direction was given by the Tribunal in order to decide the representation of the applicant by a reasoned and speaking order. In pursuance of the Order of the Tribunal, the respondents decided the representation of the applicant and the same was rejected. Name of one Dal Chand in the seniority list published afterwards appears at serial No. 33 whereas the name of the applicant appears at serial No. 50. Dal Chand was transferred from Gang No. 70 under Senior Section Engineer, P. Way, Badaun to Gang No. 39 on his request by means of the Order dated 17.03.1986, and applicant was transferred to Gang No. 70. The applicant was again transferred from Gang No. 70 to Gang No. 72

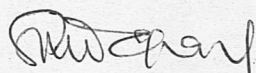
[Signature]

under same seniority unit vide order dated 25th Feb./20th March 1987 and finally in the year 1994 the entire Gang No. 72 was transferred under the jurisdiction of Section Engineer, P. Way, Badaun, annexure-9 is the order in this connection. The seniority list was not supplied to the applicant purposely in between 1986 to 1990 and the applicant was wrongly given bottom seniority in spite of the fact that he was never transferred from one seniority unit to another seniority unit on his request. No opportunity was provided to the applicant to state about the fixation of seniority. It is alleged that there are numerous persons namely-Jai Ram, Banwari, and Prem Pal, who were junior to the applicant but, they were given promotion. It is claimed that proper orders were not passed even in pursuance of direction of the Tribunal hence the present O.A.

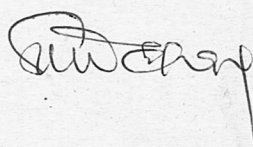
3. The respondents have contested the case, and filed the Counter Reply. It has further been alleged that the applicant was initially appointed as Gangman on 18.09.1981 under Senior Section Engineer, P. Way, N.E. Railway, Kasganj, and afterwards found suitable in the screening test. Thereafter, he was posted under P.W.I., Badaun. The applicant misbehaved with Shri Kalloo



Mate of Gang No. 70 under PWI, Badaun, and thereafter he was transferred from Gang No. 70 to Gang No. 72 on his own request. In the month of January 1993, Gang No. 72 was merged with P.W.I., Kasganj due to revised jurisdiction of P.W.I., Kasganj, and the applicant along with other employee of Gang No. 72 were transferred to A.E.N., Kasganj. The complaints were received against the applicant of indiscipline and he was charge sheeted for the same and copy of the charge ^{sheet} has also been annexed. It has also been alleged that the Gangman is to be promoted on the post of Keyman in the pay scale of Rs. 2750-4400/- by seniority-cum-suitability. It is stated that the post of Keyman was filled up as per direction of D.R.M (P), Izzatnagar. It has been admitted that as per AVC of P. Way Mate in the pay scale of Rs.3050-4590/- filled up at the divisional level by selection amongst working Keyman. The post of Permanent Way Supervisor (PWS) in the pay scale of Rs.4500-7000/- was also filled at divisional level by seniority cum suitability test from the Permanent Way Mate. It is stated that the applicant was not working in the pay scale of Rs.2750-4400/- hence he was not called for suitability test for further promotion. None of the juniors of the applicant was called for suitability test for



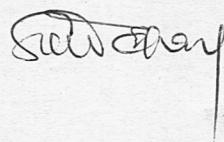
the post of Keyman. It has also been alleged that for the post of Keyman in the pay scale of Rs.2750-4400/- only eligible Senior Gangman, Senior Chaukidar, Senior Trolley Man and Senior Gate Man working in the pay scale of Rs.2750-4400/- were called for suitability test. It is wrong to allege that the persons alleged by the applicant junior to him, are junior to him as in view of the seniority list these persons are senior to the applicant as they got seniority in different units. It is stated that S/Shri Jai Ram and Prem Pal were in the higher pay scale of Rs.800-1150/- on dated 01.04.1991. Both were working in the higher grade in comparison to the applicant hence they were not juniors to the applicant. It is wrong to allege that the seniority list was not prepared and not shown to the applicant. It was circulated and pasted on the notice board. It is also wrong to allege that the junior persons were unfairly promoted, ignoring the claim of the applicant. It is stated that the applicant was transferred on his own request hence bottom seniority was given to him whereas Dal Chand and others were transferred to other units and they got their seniority in that unit. The applicant was transferred from Gang No. 70 to Gang No. 72 on 20.03.1997 whereas Dal Chand was transferred



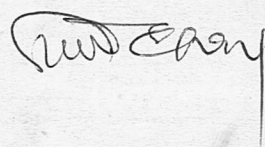
under PWI, Kasganj in the year 1986 and applicant has been transferred on request. Hence, the name of Dal Chand was placed above the applicant. O.A. lacks merit and hence the same is liable to be dismissed.

4. We have heard Mr. Vinod Kumar, Advocate for the applicant and Mr. K.P. Singh, Advocate for the respondents and perused the entire facts of the case.

5. It has been argued by learned counsel for the applicant that the applicant was initially appointed as Casual Labour under the Inspector of Work (Maintenance), N.E. Railway, Gorakhpur on 17.12.1974 and on 16.11.1980, he was granted time scale after screening and posted as Trolleyman. On 18.09.1981, he was granted appointment on the post of Gangman in the pay scale of ₹ 200-250/- pre revised and was posted in Gang No. 46-B. It is stated that no seniority list was prepared of the Gangman, and that junior persons were promoted and no promotion was given to the applicant in his entire career. Learned counsel for the applicant demonstrated before us that as the applicant was finally appointed on the post of Gangman on 18.09.1981 but even then no promotion was provided to him, and that

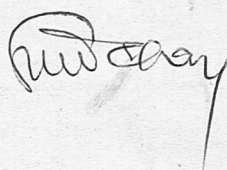


he was never transferred on his own request with bottom seniority. Earlier, the applicant was posted as Gangman in Gang No. 46-B under the P.W.I., N.E. Railway, Kasganj and thereafter he was transferred to Gang No. 70 under Section Engineer, P. Way, Badaun in place of Dal Chand without any request of the applicant. It is wrong to allege that he was transferred on his own request. Thereafter, again the applicant was transferred from Gang No. 70 to Gang No. 72 in the same seniority unit. Thereafter, entire Gang No. 72 was transferred under the jurisdiction of Section Engineer, P. Way, Kasganj from the jurisdiction of Section Engineer, P. Way, Badaun. It is stated by the applicant that Dal Chand was junior to the applicant. Moreover, Jai Ram, Banwari, Prem Pal and Mohar Singh are junior to the applicant. They were appointed afterwards in different years as Gangman after the appointment of the applicant on 18.09.1981. But, they have been given promotion prior to the applicant. It has been alleged by the respondents that it is a fact that the applicant was appointed on the post of Gangman on 18.09.1981 but thereafter he was transferred to various units on request with bottom seniority and as a consequence of his transfers, on request, he was given bottom seniority



whereas the persons named by the applicant were transferred to other units with different seniority and hence it cannot be said that they are junior to the applicant. It has also been alleged by the respondents that the applicant was punished earlier. He was charge sheeted as he misbehaved with an employee.

6. Learned counsel for the applicant argued that it is wrong to allege by the respondents that the applicant was transferred on his request. Earlier, the applicant was posted as Gangman in Gang No. 39, and thereafter he was transferred to Gang No. 70 whereas Dal Chand was transferred from Gang No. 70 to Gang No. 39 in place of the applicant, annexure-7 is the copy of the order of transfer of the applicant from Gang No. 39 to Gang No. 70. It is wrong to allege that the applicant was transferred on his own request with bottom seniority. We have perused the order of transfer dated 17.03.1986 and it shows that the applicant was transferred in place of Dal Chand to Gang No. 70. There was no mention in this transfer order that he has been transferred on his own request with bottom seniority, annexure No. 8 is the copy of transfer order dated 25th February/20th March, 1987 and according to this



annexure No. 8, the applicant was transferred from Gang No. 70 to Gang No. 72 on the vacant post. It is a fact that the applicant was transferred from Gang No. 70 to Gang No. 72 on request. But it is wrong to allege that the applicant was transferred to Gang No. 72 with bottom seniority. Perusal of this order shows that the applicant was transferred on the same seniority unit as the post was lying vacant hence question does not arise for giving bottom seniority to the applicant. Moreover, there is no mention in the order that these employees were transferred with bottom seniority although it has been mentioned that these employees have been transferred on request and hence no TA/DA will be ~~admissible~~ ^{available} to them but nothing has been alleged about the seniority of the applicant. Under these circumstances, it will be presumed that it is wrong to allege that the applicant was transferred from Gang No. 70 to Gang No. 72 with bottom seniority as the transfer was on request. Perusal of annexure-9 shows that vide letter dated 23.01.1993, the entire Gang No. 72 was transferred within the jurisdiction of Section Engineer, P. Way, Kasganj from Badaun. Under these circumstances, it cannot be presumed that the applicant was transferred on request or otherwise with bottom

[Signature]

seniority. The main contention of the respondents is that as the applicant was transferred to different Gangs, on request, hence he was transferred with bottom seniority, and that is why the applicant cannot state that his juniors were promoted earlier to him.

7. It has been alleged by the applicant that one Dal Chand was transferred in lieu of the applicant but he was placed above the applicant whereas he was junior to the applicant. It has specifically been alleged that Jai Ram was appointed on 18.09.1983, Banwari on 16.08.1982, Prem Pal on 16.08.1982 and Mohar Singh on 04.03.1985, whereas these employees have been placed above the applicant irrespective of the fact that he was appointed on 18.09.1981 as Gangman prior to these employees. We have perused the seniority list filed by the applicant (annexure-2) and perusal of this seniority list shows that the applicant was senior to these employees but in the seniority list prepared in pursuance of the directions of the Tribunal they have shown above the applicant. Whereas it has not been shown that how the applicant has been placed below these persons irrespective of the fact that the applicant was senior to them. It has also been alleged on behalf

Subodh

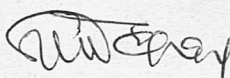
of the respondents that there were complaints against the applicant. He misbehaved with fellow employee, he was charge sheeted but it has not been shown by the respondents that whether any punishment has been awarded to the applicant, copies of the charge sheets have been filed by the respondents. Mere submission of the charge sheet is not sufficient but it must be shown that the applicant was punished and that due to the punishment, he lost his seniority.

8. For the reasons mentioned above, we are of the opinion that there is no material available before us on record to show that the applicant was transferred from one Gang to another on request with bottom seniority. It is a fact that the applicant was transferred from one Gang to another Gang and once on request but he was transferred with the same seniority. It is a fact that junior persons were placed above the applicant without any reasons and it is surprising that the applicant had been working since 1981 continuously as Gangman and no promotion at all has been given to him although initially he was appointed as casual labour on 17.12.1974 but as Gangman he was appointed on 18.09.1981 and his seniority is to be counted since

Shirley

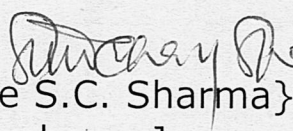
18.09.1981. The seniority list prepared by the respondents is not correct and the junior persons to the applicant have been placed above to him. Under these circumstances, O.A. deserves to be allowed and seniority list deserves to be quashed. The order dated 17.01.2003 and 06.03.2003 are also to be quashed and set aside. The seniority list is to be amended so as to give proper seniority to the applicant. Thereafter, he may be promoted according to his seniority from the date when his juniors were promoted.

9. O.A. is allowed. The impugned orders passed by the respondents dated 17.01.2003 (Annexure-1) and 06.03.2003 (Annexure-3) are quashed. The respondents are directed to re-fix the seniority of the applicant as per his seniority, and necessary amendments shall be made in the seniority list, published by the respondents (Annexure-2). Thereafter, the applicant shall be promoted according to his seniority from the date when his juniors were promoted. Proforma promotion will be given to the applicant. Compliance of the Order shall be made by the respondents within a period of three months from the date when a copy of this Order is produced before them.



The applicant shall produce a copy of this Order before
the respondents forthwith. No cost.


(S.N. Shukla)
Member - A


{Justice S.C. Sharma}
Member - J

28.2.11

/M.M/