

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: this the 24 Tu day of May 2011

Original Application No. 904 of 2004

Hon'ble Mr. Justice Shiv Charan Sharma, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

Suresh Chandra ~~Sharma~~, S/o Sri M.L. Sharma, R/o 31G, Near Railway Station Tundla Jn. North Central Railway, Tundla.

...Applicant.

By Adv : Shri S. Ram

Versus

1. Union of India through General Manager, N.C. Railway, Allahabad.
2. General Manager (P)/CPO, Northern Railway, Baroda House, New Delhi.
3. Divisional Railway Manager, N.C. Railway, Allahabad.
4. Divisional Personnel Officer, N.C. Railway, Allahabad.
5. Shri Tapas Chatterji, Catering Supervisor (AUCM), N.C. Railway, Kanpur Central.

...Respondents.

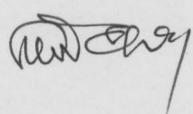
By Adv : Shri A.K. Pandey

O R D E R

Hon'ble Mr. Justice Shiv Charan Sharma, Member (J)

The instant OA has been filed by the applicant under Section 19 of the Administrative Act, 1985 with the following reliefs:-

"i. The Hon'ble Tribunal may graciously be pleased to quash the impugned orders i.e. General Manager (P)/Northern Railway, New Delhi's letter No. 561-E/85/370/Spl./IV/EIC dated 15.07.2003 (Annexure A-1), Divl. Personnel Officer/N. Rly. Allahabad's letter no. 940-E/EC-5/Catering/Part III dated 16.1.2004 (Annexure A-2) and Order No. 940-E/EC-5/Catering/Part III dated 7.7.2004 passed by the Divisional Railway Manager, North Central Railway, Allahabad (Annexure A-3) and impugned order dated 19.10.2004 (Annexure A3/A) and direct the respondents to treat the applicant for the



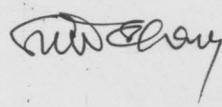
purpose of seniority as Assistant Catering Manager Grade ₹ 975-1540 (RPS) as per merit position of the panel dated 7.10.1991 and assign the seniority in this category from the date the applicant joined in the same pay scale i.e. 10.11.1991.

- ii. The Hon'ble Tribunal may further be pleased to direct the respondents to promote the applicant in next higher grade i.e. Catering Manager II in the pay scale ₹ 4000 – 6000 (RSRP) against the existing vacancy from the date it become due in respect of his junior persons as per panel dated 7.10.1991.*
- iii. Any other order, direction or writ which the Hon'ble Tribunal deems fit and proper in the circumstances of the case, may also be issued.*
- iv. Cost of the application may also be awarded."*

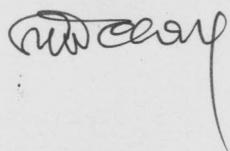
2. The applicant was initially appointed in the Grade 'D' category post as Houseman cum Safaiwala in the grade ₹ 750-940 (RSP) on the basis of the select list vide letter 26.06.1987 issued by Deputy Manager, Rail Yatri Niwas, New Delhi and his name was placed at Sl. No. 11. The respondent No. 5 was also appointed on the same capacity and was placed at Sl. No. 9 of the select list. Respondent No. 5 was also selected as Utility worker-cum-Safaiwala Grade ₹ 754-940 (RPS) but he did not join the same. The applicant and respondent No. 5 join on the same date i.e. 01.02.1988. As the joining date is same the date of birth became the crucial point for the purposes of fixing seniority in terms of Para 302 read with para 304 of the IREM Vol.-1 (1989). The applicant was senior to respondent No. 5 as his date of birth was 20.10.1964. A notification was issued by General Manager (P), Northern Railway on 08.08.1991 to fill up the post of Group 'C' in the pay scale of ₹ 975-1540 by conducting suitability test i.e. of Assistant Catering Manager Grade III – 22 posts (13 for General, 6 for SC and 3 for ST) and Catering Stores Clerk – 13 posts (7 for General, 3 for SC and 3 for ST). Total 73 candidates were allowed to appear in the above selection from various

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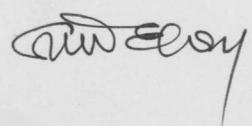
categories of Group 'D' posts including the applicant and respondent No. 5. The applicant was also given cash award of ₹ 200/-. The posts were to be filled up in view of para 132 (1) (ii) of Chapter I Section B of IR&M Vo. I (1989). The result of the selection/test held on 24.08.1991 and 01.09.1991 for the post of Assistant Catering Manager Grade III as well as Stores clerk cum Accounts Clerk grade ₹ 975-1540 was declared on 07.10.1991 in which 31 persons were placed in the panel. The name of the applicant was placed at Sl. No. 9 and respondent No. 5 placed at Sl. No. 18. It was stipulated that senior persons may be posted as Assistant Catering Manager and the next junior person as Stores Clerk cum Accounts Clerk. The applicant was promoted from Group 'D' post to the post of Group 'C' on the post of Catering Stores clerk cum Accounts Clerk instead of Assistant Catering Manager. Considering the merit position of the applicant he should have been posted as Assistant Catering Manager. But the applicant was asked to join as Store Clerk cum Accounts Clerk instead of Assistant Catering Manager at Tundla Jn. Respondent No. 5 Sri Tapas Chatterji was also posted as Stores Clerk-cum-Accounts Clerk as per his panel position on 07.10.1991 and he also joined on 13.11.1991. The applicant was given status promotion for the post of Catering Supervisor/ Assistant Catering Manager Grade ₹ 975-1540 (RPS)/3200-4900 (RSRP) by the Divisional Personnel Officer. No reason was mentioned why the applicant was not posted as Assistant Catering Manager as per approval. But as soon as the vacancies were arises in the Northern Railway or on Allahabad Division as per merit position at Sl No. 9. The applicant was selected against 13 vacancies of



Assistant Catering Manager, the order is dated 23.05.1994. Sri Tapas Chatterji (respondent No. 5) whose name in the aforesaid panel dated 07.10.1991 was at Sl. No. 18, was also given status promotion from Stores Clerk cum Accounts Clerk as Catering Supervisor Grade ₹ 975-1540 (RPS) at Kanpur on 18.07.1996 after two years of posting of the applicant. There is no difference in the pay scale of Store Clerk and Catering Supervisor/Assistant Catering Manager. There is only difference of status for further promotions in the higher grade as Catering Manager Grade II ₹ 4000 – 6000 and Catering Manager Grade ₹ 59000 – 8000. The candidates who are posted as Assistant Catering Manager as per panel dated 07.10.1991 have been promoted in the higher grade of Catering Manager Grade II ₹ 4000 – 6000 and Catering Manager Grade I ₹ 5000 – 8000. The applicant was promoted as Assistant Catering Manager strictly in order of merit position obtained in the panel but due to pick and choose policy the applicant was denied in higher Grade of Catering Manager Grade II. The applicant was arbitrarily not posted as Assistant Catering Manager Grade ₹ 975 – 1540 by the respondents w.e.f. 10.11.1991. The Divisional personnel Officer, Northern Railway, Allahabad issued the seniority list for the post of Catering Supervisor/Assistant Catering Manager of the applicant for the first time as Catering Supervisor vide notice dated 21.01.1997. The applicant was placed at Sl No. 5 and respondent No. 5 was placed at Sl. No. 6. It was done in view of the policy as provided in Para 321 (b) of IREM Vol. I and it was not subject to revision or change by the authority.

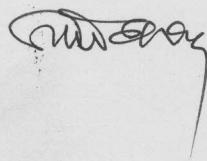


3. The Divisional Personnel Officer, Northern Railway, Allahabad issued provisional seniority list of Assistant Catering Manager Grade ₹ 3200 – 4900 (RSRP) of Allahabad division vide notice dated 27.01.2000 and in that list the name was placed at Sl. No. 2 and respondent No. 5 was placed at Sl. No. 3 and after one year the seniority list has become final and cannot be changed. A representation was made by the applicant regarding his promotion as Catering Manager/Vending in the pay scale of ₹ 4000 – 6000 (RSRP) against the existing vacancies in Allahabad as his service was quite satisfactory and no DAR/SPE/Vigilance case was pending against him. Reminders were also submitted. One Sri Satvinder Singh on behalf of General Manager (P), Northern Railway, Baroda House, New Delhi vide his letter dated 25.03.2005 to the Divisional Railway Manager, Allahabad that the applicant is senior to Sri Tapas Chatterji (respondent No. 5) in the category of Assistant Catering Manager and he was promoted after about two years of the promotion of the applicant as catering Manager. Sri Tapas Chatterji, Respondent No. 5 also made representation on 20.04.2003 when a clarification from General Manager (P), Northern Railway, New Delhi was received in the office and for the first time Sri Tapas Chatterji challenged the seniority position of the applicant claiming him to be senior. The Divisional Personnel Manager (P), New Delhi instead of complying instructions already received referred the case of respondent No. 5 with intention to get favourable decision otherwise there was no need for sending. A reply was given by Sri Sativender Singh vide letter dated 15.07.2003 contrary to the earlier decision dated 25.03.2003 due to exterior considerations.

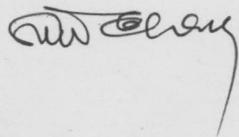


It was provided in the panel of 07.10.1991 that the senior persons may be posted as Assistant Catering Manager and next junior may be posted as Store-cum-Accounts Clerk and the name of the applicant appeared at Sl. No. 9 whereas the name of respondent No. 5 appears at Sl. No. 18. It was evident that the applicant was senior to Sri Tapas Chatterji but a decision contrary to the rule was passed by the respondents. Aggrieved from the order dated 16.01.2004 the applicant filed OA No. 54 of 2004 and the OA was disposed of at the admission stage on 29.01.2004 with direction to the respondent No. 2 i.e. Divisional Railway Manager to look into the grievance of the applicant and dispose of the representation by a reasoned and speaking order. But the same order was passed on the representation of the applicant and it is against the provision of IREM and hence this OA.

4. The respondents have contested the case and filed counter affidavit. It has further been alleged that the applicant has sought the relief of issuing direction to promote the applicant in the next higher grade of Catering Manager II in the pay scale of ₹ 4000 – 6000 (RSRP) against existing vacancy from the date it became due in respect of his junior persons as per panel dated 07.10.1991. The applicant has also prayed that he should be treated for the purpose of seniority as Assistant Catering Manager in the Grade of ₹ 975 – 1540 (RPS) as per merit position. In the earlier OA same prayer was made. In pursuance of the direction of the Tribunal in OA No. 54 of 2004 the representation of the applicant was decided by a reasoned and speaking order



in which all the grievances of the applicant were considered. It was clarified to the applicant that the seniority assigned to him by Northern Railway, Headquarters, New Delhi prior to 01.04.1986 and, thereafter, from time to time the applicant was placed in the seniority list below Sri Tapas Chatterji as determined from the date of initial appointment of both the employees. According to the seniority list of Northern Railway from very beginning the applicant has been placed in the seniority list at the proper place. Hence, the seniority assigned to the applicant by letter dated 16.01.2004 is based upon the decision taken by the Head Office of Northern Railway, New Delhi vide their letter dated 15.07.2003. The applicant has been correctly assigned in the seniority as per rules. It was clarified that as a result of the appointment of the applicant and Sri Tapas Chatterji as a Houseman cum Safaiwala in the pay scale of ₹ 750 – 940 (RPS), the position of the applicant in the panel dated 26.06.1987 was at Sl. No. 11 whereas Sri Tapas Chatterji was at Sl. No. 9. The name of Sri Tapas Chatterji was always above the name of the applicant in different lists of seniority. Vide notification dated 05.05.1994 issued by Northern Railway pertaining to promotion to the post of Assistant Catering Manager in the pay scale of ₹ 975 – 1540 the applicant was placed below Sri Tapas Chatterji. Due to administrative errors Sri Tapas Chatterji could not be promoted by office order dated 23.05.1994 and in order to make correction in the administrative error. By another order dated 16.07.1996 Sri Tapas Chatterji was upgraded / promoted with retrospective effect. Hence, Sri Tapas Chatterji is always senior to the applicant in the seniority list. It



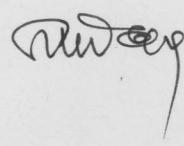
was also clarified to the applicant that the letter dated 07.10.1991 was not seniority list but it was a result of the staff applied / appeared in the post of AUCM / Catering Store Clerk. Whereas, the General Manager, Northern Railway, New Delhi vide letter dated 25.10.1991 and 30.10.1991 which was passed regarding the order of seniority. Under these circumstances the claim of his promotion for his promotion to the post of Catering Manager Grade II in the scale of ₹ 4000 – 6000 w.e.f. 07.10.1991 dates back to the year 1991. The applicant was aware about that he has placed below Sri Tapas Chatterji when the seniority list was displayed periodically from time to time and the applicant could not have been raised any objection against the seniority list as such the applicant has got no right to claim promotion / seniority for which the cause of action accrued in the year 1991 and the OA is also barred by period of limitation. The seniority was assigned on the basis of para 303 (B) OF IREM Vol. 1 and para 304 of the said manual. As per result of qualifying written test both the employees were posted as Store Clerk in the grade of ₹ 975 – 1540 (RPS). While issuing the above said order respondent No. 5 was shown senior to the applicant. On 23.05.1994 promotion order was issued excluding the name of respondent No. 5 without any reason and after a gap of more then two years the promotion order of respondent No. 5 was issued. On 16.07.1996 whereas, the name of the applicant should have been included in the order dated 23.05.1994 wherein the applicant's name was included. The OA lacks merit and is liable to be dismissed.

Ansley

5. In response to the averments of the counter reply the applicant has filed rejoinder reply and reiterated the averments made in the OA. It has been alleged that the applicant was senior to the respondent No. 5.

6. We have heard Sri S. Ram, advocate for the applicant and Sri D. Tiwari, brief holder of Sri A.K. Pandey, advocate for the respondents and perused the facts of the case.

7. It is an admitted fact that the applicant as well as the respondent No. 5, Sri Tapas Chatterji were appointed in the Grade 'D' category post as Houseman cum Safaiwala in the grade ₹ 750-940 (RSP) on the basis of the select list vide letter 26.06.1987 issued by Deputy Manager, Rail Yatri Niwas, New Delhi after conducting viva-voce test. But it has been alleged by the applicant that at the time of preparation of panel of Houseman cum Safaiwala the applicant was placed at Sl. No. 11 and respondent No. 5 placed at Sl. No. 09. The respondents have also admitted the same fact. It has also been alleged by the applicant that respondent No. 5 was also selected as Utility worker-cum-Safaiwala in the Grade of ₹ 754-940 (RPS) but he did not join the same. Both the applicant and respondent No. 5 joined on 01.02.1988 after issuing the notice of select list dated 26.06.1987 i.e. beyond six months of the declaration of the select list. It has been alleged by the applicant that as the joining date is same the date of birth became the crucial point for the purposes of fixing seniority in terms of Para 302 read with para 304 of the IREM Vol. 1 (1989). The applicant also stated that the



office of respondents No. 2 and 3 always treated the applicant as senior being the date of birth of the applicant as 20.10.1964 and the respondent No. 5 being 06.10.1966. This contention of the applicant has no connection with the preparation of seniority list. The respondents have not stated this fact that they always treated the applicant as senior to Sri Tapas Chatterji, respondent No. 5. We fail to understand as to how the applicant was treated as senior to respondent No. 5. Annexure A-4 is the copy of the result of the interview for recruitment of staff for Rail Yatri Niwas from 12.03.1987 to 13.03.1987. This is the gradation list showing seniority of the candidates. In this list the name of the applicant appeared at Sl. No. 11 and the name of respondent No. 5 at Sl. No. 09 and in between both the name of Sri Subas Chandra Patra appeared. Undisputedly the respondent No. 5 was senior to the applicant, but even then the applicant continued to allege that due to age the applicant was always treated as senior to respondent No. 5, but there appears no substance in this contention of the applicant. In our opinion at the initial appointment Sri Tapas Chatterji, respondent No. 5 was senior to the applicant.

8. After a suitability / selection test conducted by General Manager (P), Northern Railway vide notification dated 08.08.1991 to fill up the Group 'C' post in the pay scale of ₹ 975 – 1540 (RPS) and it includes the post of Assistant Catering Manager Grade III – 22 posts and Catering Store Clerk – 13 posts. It means that the post of Assistant Catering Manager II and the post of Catering Store Clerk were in the same pay scale of ₹ 975

Subhas Chandra Patra

– 1540 and the mode for filling these posts were adopted as provided in para 132 (1) (ii) of Chapter 1 Section B of IREM Vol. 1. In view of this rule selection post shall be filled up by positive act of selection made by the Selection Board from the staff eligible for selection and the act of selection may consist of written test and viva-voce. The selection was conducted on 24.08.1991 and 01.09.1991 and the select list of Assistant Catering Manager as well as Store Clerk cum Accounts Clerk was prepared and declared on 07.10.1991. Admittedly, 31 persons were placed on the panel. It has been alleged by the applicant that his name was placed at Sl. No. 9 and respondent No. 5 placed at Sl. No. 18. It was also specifically mentioned in the order that senior persons may be posted as Assistant Catering Manager and the next junior person as Stores Clerk cum Accounts Clerk. As the applicant was placed at Sl. No. 09 hence he was entitled and eligible for posting as Assistant Catering Manager Grade III as there were 13 posts for general category. Respondent No. 5 ought to have been posted as Store Clerk cum Accounts Clerk but it has also been alleged by the applicant that both were posted as Store Clerk cum Accounts Clerk. Thereafter the applicant was given status promotion for the post of Catering Supervisor. But the applicant was not posted as Assistant Catering Manager.

9. It has also been alleged by the applicant that Sri Tapas Chatterji, respondent No. 5 whose name appeared at Sl. No. 18 on the panel dated 09.10.1991 was also given status promotion from Store Clerk cum Accounts Clerk as Catering Supervisor Grade ₹ 975 – 1540. The appointment / posting was given to the

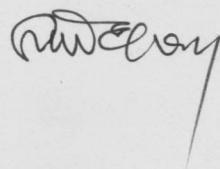
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applicant in the year 1994, whereas, it was given to respondent No. 5 on 18.07.1996. Perusal of the contents of the application shows that this is the bone of contention regarding the seniority of the applicant and respondent No. 5. Annexure A-5 is the list of staff who participated in the selection. A separate list of the staff was prepared of those persons who were working in the Grade of ₹ 750 – 940 and surprisingly in that list the name of the applicant appeared at Sl. No. 60, and the name of respondent No. 5 appeared at Sl. No. 65, but it is not the seniority list. Annexure A-6 is the list of suitability test for the post of Assistant Catering Manager / Store Cum Accounts Clerk dated 07.10.1991. It has been alleged by the applicant that in this suitability test the name of the applicant was placed at Sl. No. 9 and the name of respondent No. 5 at Sl. No. 18. Page No. 30/A which is part of Annexure A-6 is also relevant and in this list also the name of the applicant appeared at Sl. No. 9. In the subsequent document also the name of the applicant has been shown above respondent No. 5. It has been alleged by the respondents that the grievance of the applicant was dealt with in accordance with the rules and it was clarified to the applicant that the seniority assigned to the applicant by Northern Railway, Headquarters, New Delhi prior to 01.04.1986 and, thereafter, from time to time the applicant was placed in the seniority list below Sri Tapas Chatterji as determined from the date of initial appointment of both the employees. The applicant was always placed at the proper place in the seniority list and the seniority assigned to the applicant vide letter dated 10.01.2004 based upon the decision by Northern Railway, Headquarter, New Delhi vide letter dated

Mr. Chatterji

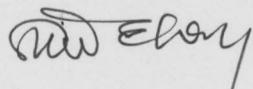
15.07.2003. As the applicant was initially appointed in the year 1987 and in the seniority list he was placed below Sri Tapas Chatterji, respondent No. 5 and the applicant was always treated below respondent No. 5. A notification was issued by the respondents pertaining to the post of Assistant Catering Manager in the pay scale of ₹ 975 – 1540 and in that list also the applicant was placed below respondent No. 5. It is also the fact that the applicant joined as Assistant Catering Manager vide letter dated 23.05.1994 and respondent No. 5 joined on 18.07.1996, but the respondents admitted that administrative error was committed regarding the promotion order of respondent No. 5 and that's why vide order dated 16.07.1996 respondent No. 5 was upgraded / promoted with retrospective effect and respondent No. 5 always remain senior to the applicant. Learned counsel for the applicant placed much reliance on the fact that the applicant was promoted and posted as Assistant Catering Manager vide order dated 23.05.1994 whereas, respondent No. 5 was promoted after more than two years on 16.07.1996. But according to the respondents this is an administrative error, hence it could be rectified at any time.

10. It is also material that this administrative error was highlighted and brought to the notice of respondents by respondent No. 5 Sri Tapas Chatterji by making representation in this regard and that's why the mistake was rectified and the order for promotion of respondent No. 5 was issued with retrospective effect. If it was a mistake or administrative error then the respondents are fully competent and entitled to rectify

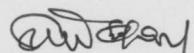
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it. It has also been alleged by the respondents that the letter dated 07.10.1991 was not the seniority list but it was the result of the staff applied / appeared for the post of Assistant Catering Manager and Store clerk cum Accounts clerk. Subsequently letters were issued on 25.10.1991 and 30.10.1991 by the General Manager, Northern Railway, New Delhi which was passed regarding the order of seniority. Hence we are of the opinion that initially both the applicant and respondent No. 5 were appointed as Houseman cum Safaiwala in the year 1987 and at that time the seniority list was prepared and according to that seniority list the applicant was below to respondent No. 5. The applicant was at Sl. No. 11 and respondent No. 5 at Sl. No. 09 and this fact has been admitted by the applicant in his OA. Then how this seniority position became upside down is not known, but there has been some administrative error as has been alleged by the respondents. As any mistake has been committed or some error has been committed then an employee cannot be promoted to take advantage of that mistake.

11. It is the main contention of the respondents that the seniority is to be considered from the date of initial appointment. In view of para 228 of IREM Vol. I the seniority was revised vide letter dated 16.01.2004. Hence, the subsequent date of joining as Assistant Catering Manager is not going to make any difference in the seniority. This para is of no help to the applicant as this para is not applicable in the present case for seniority.

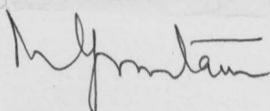


12. Considering the fact of the case we arrive at the conclusion that at the time of initial appointment in the year 1987, respondent No. 5 was senior to the applicant. The lame excuse made by the applicant that two persons are joining at same date then the date of birth of the particular employee is crucial and the applicant was of more age than the respondent No. 5. But in between the applicant and respondent No. 5 there was one more candidate. Hence, this argument is not available to the applicant that both the applicant and respondent No. 5 joined on the same date hence the applicant was placed senior than respondent No. 5 due to age. It could have been accepted that in case the dispute might have been between the applicant and respondent No. 5 as we have stated above that the applicant was placed at Sl. No. 11 and respondent No. 5 at Sl. No. 09 then one persons at Sl. No. 10 was in between and certainly he was also senior to the applicant and there was no dispute regarding seniority of that person who was at Sl. No. 10. As the respondents have admitted that the administrative error has been committed in passing the order of promotion as Assistant Catering Manager and respondents have also clarified that Annexure A-6 is not the seniority list rather it is the list of successful candidates. The seniority list was prepared afterwards. In our opinion the applicant is not entitled by taking the benefit of some administrative error. The applicant is not going to be benefited merely on the ground that he was given posting as Assistant Catering Manger in the year 1994, whereas the respondent No. 5 was given the posting in the year 1996 i.e. after more than two years. It was a mistake apparent on the face of it.

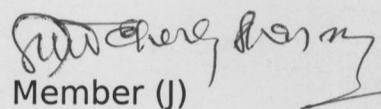


13. For the reasons mentioned above we are of the opinion that the applicant was not senior to the respondent No. 5 and the order passed by the respondents on the representation of the applicant is in accordance with law and factual position. The OA lacks merit and is liable to be dismissed.

14. The OA is accordingly dismissed. No cost.


Member (A)

/pc/


Member (J)