

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 27th day of April 2010

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr.D. C. Lakha, Member (A)

Original Application No. 409 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

D.R. Sagar, S/o Sri Tori Ram, R/o 59, Biharipur, Kishore Bazar,
Bareilly.

..... Applicant

By Adv. : Shri S.K. Om.

V E R S U S

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Chief Personnel Officer, North Eastern Railway, Gorakhpur.
3. Chief Works Manager, North Eastern Railway, Izatnagar, Bareilly.
4. Senior Personnel officer (Mech) N.E. Railway, Izatnagar, Bareilly.

..... Respondents

By Adv. : Shri P. Mathur



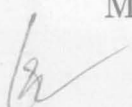
ORDER

(Delivered by Hon'ble Dr. K.B.S. Rajan, Member(J))

At the time when the applicant filed this OA, he was 59 years old and by now, he is about 64 years. His claim is for retrospective promotion from 1971 to the post of Chargeman Gr. B, on regular basis and consequential promotion to the next higher grades.

2. Respondents may be right that limitation stares at the very face of the case, for, the clock is required to be set back to 1971 and relief of antedated promotion and seniority to be given. Meanwhile a lot many promotions based on the then existing seniority list was given effect and thus the matter reached a settled affair. Yet, the case has to be considered on merit and if the case is meritorious, there is a likelihood of delay being condoned and if not, straightway both on limitation and on merit the OA should fail.

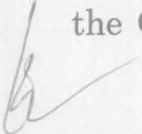
3. Now the factual matrix as per the applicant. Initially appointed in the Railway as Apprentice on 01-04-1959, the applicant became a regular fitter (skilled) on 10-11-1962 and thereafter, was promoted as Skilled Grade I on 10-04-1971 in the scale of Rs 175-240. In pursuance of an award called Miya Bhai Award, posts of Chargemen were created in Tool Room of North Eastern Railway Workshop in the grade of Rs 205-280 and two juniors (one Shri H.N.Upadhyay and another Shri Kampta Prasad Mathur) were appointed as Chargeman Gr. B. It was thereafter,



that the applicant was promoted to the post of Chargeman Gr. B on ad hoc basis on 01-12-1974. This adhoc promotion subsisted till 27-05-1979 when the applicant was reverted to his substantive post. However, according to the applicant, the reversion order was never given effect to and juniors to the applicant were continued on the post of Chargeman Grade B on ad hoc basis w.e.f. 22-03-1971. It was on 30-07-1979 that the applicant was again reverted to the substantive grade while the juniors Upadhyay and Kampta Prasad Mathur again promoted to officiate as Chargeman Grade B on ad ho basis. By 30-06-1980 on a local and tentative arrangement, the applicant was again promoted to officiate as Chargeman.

4. A trade test was conducted for promotion to the post of Chargeman B and the applicant was successful; vide order dated 16-05-1983. Incidentally, the juniors Upadhyay and Kampta Prasad Mathur were declared failed in the trade test. Thus, the applicant could get his regular promotion w.e.f. 12-09-1983.

5. While the above is one aspect, a selection for the post of Deputy Shop superintendent was notified on 03-02-1975 and though the applicant was eligible to be considered, with prior notice of a minimum of one month to be given to him, he was informed only at the eleventh hour. Obviously due to lack of preparation, the applicant could not be successful in the examination. One Shri D.S. Srivastava and another Shri A.S. Mathur were declared as passed. However, one post belonged to the General Category and another S.T. the two were afforded to



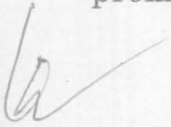
the aforesaid D.S. Srivastava and Shri Mathur in September 1975. Another selection for the said post of Deputy shop Superintendent was notified in July 1984 and though the applicant could have been considered, since he was by that time promoted as Chargeman I by that time, he was not permitted to appear in the said selection while his juniors were called. The result of the selection was declared on 10-08-1984 and one Shri R.D. Pandey and another shri Y.K. Singh were empanelled. These were juniors to the applicant. The applicant, of course, after a substantial period, in 1998 raised the issue again for consideration. And by 2004, his case was rejected by the respondents vide annexure A-6 of the O.A. and hence this O.A. seeking the following relief(s):-

- (i) Issue a writ order or direction in the nature of certiorari quashing the order dated 28th December, 2004 passed by the respondents (Annexure No.6)
- (ii) Issue a writ order or direction in the nature of mandamus commanding the respondents to promote the petitioner as Chargeman B w.e.f. 22.4.71 and assign him the seniority there of from that date along with all consequential benefits.
- (iii) Issue a writ order or direction in the nature of mandamus commanding the respondents to calculate the petitioner's retirement benefits considering his promotion as Chargeman B w.e.f. 22.4.71.

6. Respondents have contested the O.A. According to them, the ad hoc promotion of the applicant was advanced from 01-12-1974 to 22-04-1927 in terms of Mia Bhai Award, to bring the same at par with his the date of ad hoc promotion of his juniors. However, the benefit would not entail any advantage in so far as seniority is concerned since the promotion is on ad hoc basis only.

7. As regards the post of Deputy Shop Superintendent in the year 1975, the applicant claims that since Shri D.S. Srivastava was selected and given the benefit of seniority w.e.f. 31-08-1971, the same should be afforded to him as well. Respondents in this regard contend that the seniority afforded to the said Srivastava was erroneous and on location the error, the same was got rectified in 1992 by issuing corrected Seniority list. It was also stated by the respondents that the said Shri D.S. Srivastava was never promoted on ad hoc basis.

8. The respondents further elaborated the situation about the post of Assistant Shop Superintendent. Their version in this regard is that initially in 1975, three posts became vacant, two in general category and another in S.T. and, as per the norms, 8 in respect of general category and 4 in respect of S.T. were considered. The applicant was the junior most amongst the S.T. category. Due to non availability of any eligible and suitable ST candidates, none was promoted against the S.T. vacancy, while the aforesaid D.S. Srivastava and another Shri A.K. Mathur, who were working as Chargemen Gr. A were promoted as Asst. Shop superintendent in 1975. Later on, the ST vacancy was to be got de-reserved. By 1991 two posts under general category and one under ST category of Asst. Shop Superintendent were created and against the S.T. vacancy, the applicant was promoted w.e.f. 04-12-1991. And on the basis of his seniority he was further given promotion as Senior Section Engineer w.e.f. 19-03-1996.



9. The respondents contend that the applicant claims his promotion as Chargeman Gr. B w.e.f. 22-04-1971 and corresponding future promotions and this claim of his is raised in 2005 i.e. after 24 years.

10. Applicant has filed his rejoinder contending that the initial vacancy was not for ST but for S.T. and that he was not the junior most amongst the S.Ts. Again, he had stated that de-reservation cannot be done at the Chief Personnel Officer/manager level. It was further contended that the applicant had been wrongly reverted to the skilled grade. Lastly, it was contended in the counter that the applicant's fight for due seniority has its origin as early as in 1971 and thus it cannot be stated that he has woken up after 24 years.

11. Counsel for the parties presented the case.

12. Arguments were heard and documents perused. The simple issue is whether the applicant has been discriminated in either regular promotion or date of promotion. Though initially two of his juniors were promoted on ad hoc basis earlier than the applicant, subsequently, this deficiency had been made good by advancing the date of ad hoc promotion to the post of charge man Gr. B in 1971 in pursuance of the Mia Bhai Award. Thus, from that point of view, the applicant cannot have any grievance. In so far as promotion to the post of Asst. Shop superintendent for which the vacancy arose in 1975, is concerned, the applicant himself states that there is no ST vacancy. As regards de-reservation of the SC vacancy, whether it had been done at the level of CPO or

otherwise, should not affect the applicant's career prospects as the said vacancy belongs to SC category. It is not the case of the applicant that against SC, he, as an ST candidate should have been considered.

13. Equality clause has not been disturbed in this case in respect of grant of ad hoc promotion. Treating the ad hoc promotion as regular is not contemplated save when certain conditions are fulfilled, vide para 47 of the *Direct Recruit Class II*

Engineering Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715, wherein the

Apex court has held as *under:-*

47. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the

appointees from the other source inducted in the service at a later date.

(F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.

(I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position.

With respect to Writ Petition No. 1327 of 1982, we further hold:

(K) That a dispute raised by an application under Article 32 of the Constitution must be held to be barred by principles of *res judicata* including the rule of constructive *res judicata* if the same has been earlier decided by a competent court by a judgment which became final.

In the case of *Rudra Kumar Sain v. Union of India*, (2000) 8 SCC 25, the Apex

Court has held as under:-

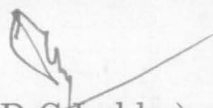
If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as "ad hoc" or "stopgap". If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as "fortuitous" in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a "stopgap" arrangement and appointment in the post as "ad hoc" appointment. It is not possible to lay down any strait-jacket formula nor give an exhaustive list of circumstances and

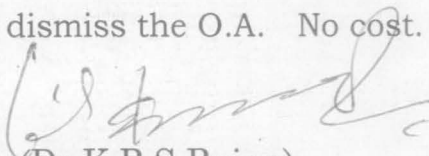
situation in which such an appointment (ad hoc, fortuitous or stopgap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the questions of inter se seniority of officers in the cadre.

20. In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be "stopgap or fortuitous or purely ad hoc". In this view of the matter, the reasoning and basis on which the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be "fortuitous/ad hoc/stopgap" are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.

14. Para 20 of the judgment in Rudra Kumar goes to show that if an ad hoc promotion is for a substantial period, then the same should qualify to be treated as regular. If this rule is adopted, then there is a likelihood of the applicant gaining seniority. However, in the instant case, the applicant had been reverted to the Skilled grade at least on two occasions which means that there were no regular vacancies of Chargeman Grade B to accommodate him. As such, para 20 of the judgment in Rudra Kumar Sain also does not come to the rescue of the applicant.

15. As there is absolutely no scope to accede to the request of the applicant, we have no option but to dismiss the O.A. No cost.


(D.C. Lakha)
Member (A)


(Dr. K.B.S. Rajan)
Member (J)

Uv/