

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD**

(ALLAHABAD THIS THE 21st DAY OF Aug 2014)

PRESENT:

**'HON'BLE MR. JUSTICE S.S. TIWARI, MEMBER - J
HON'BLE MR. U.K. BANSAL, MEMBER - A**

ORIGINAL APPLICATION NO. 869 OF 2005

(U/s, 19 Administrative Tribunal Act.1985)

Jaspal Singh, son of Sri Mangal Singh, Chief Inspector
Ticket, Northern Railway, Moradabad.

.....Applicant

By Advocate: Shri S.K. Tyagi

Versus

1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Moradabad.
3. Senior Divisional Personnel Officer, Northern Railway, Moradabad.

..... Respondents

By Advocate : Shri P Mathur

(Reserved on 11.08.2014)

ORDER
BY HON'BLE MR. U.K. BANSAL, MEMBER - A

This O.A. has been filed by Shri Jaspal Singh, Chief Inspector Ticket, Northern Railway, Moradabad against the impugned order dated 8.7.2005 passed by respondent NO.2 (D.R.M Northern Railway, Moradabad) by virtue of which the benefit of promotion given to the

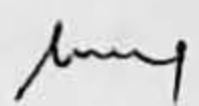
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applicant by order dated 03.07.2000 has been treated as erroneous and recovery has been ordered from the pay given to the applicant from 01.01.1984 to 01.06.2005.

The applicant seeks a direction to quash the impugned order dated 08.07.2005. The applicant further seeks the relief of directions to the respondent authorities not to disturb his seniority as accorded in consonance with the order dated 10.10.1987 passed by this Tribunal.

2. Detailed pleadings have been submitted by the applicant's counsel according to which, the averments of the applicant can be summed up as follows:-

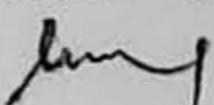
(i) An O.A. NO. 437 of 1986 was filed by the applicant, along with others, seeking that the service already rendered by them in the pay scale of Rs.425-640 should be counted for purposes of promotion to the grade of Rs.550-750. This matter was disposed of by an order dated 10.11.1987 with directions to the respondents that the seniority of the applicants, which included the present petitioner, should be based on the principles laid down in the Railway Board's letter dated 27.08.1983. The respondents were further directed that the seniority of the applicant



should be based on these principles for the limited purpose of further promotion keeping their inter-se seniority intact.

(ii) It has been stated in the O.A. that as a consequence of the directions of the Tribunal a provisional seniority list was issued by Divisional Railway Manager, Moradabad on 20.08.1986. Subsequently, the pay fixation and benefits of this applicant were awarded to him w.e.f. 01.01.1984 by an order issued in August 2000. It is, therefore, the contention of the applicant that he was given various benefits of enhanced pay etc. consequent to orders of this Tribunal in O.A. NO. 437 of 1986.

(iii) The applicant has also referred to O.A. NO. 44 of 2001 filed before this Bench of the Tribunal by one Shri R.S. Shukla in which the present applicant is listed as respondent NO. 4. This matter was also related to grievances in respect of promotions and was disposed of by an order dated 29.10.2001 with a direction to respondent No.2 (D.R.M Moradabad) to decide the representation of Shri R.S. Shukla in respect of his seniority etc. It is the



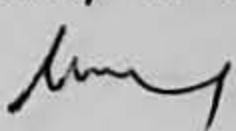
contention of the applicant that the impugned order was passed erroneously as a consequence of these directions (in O.A. NO. 44 of 2001). Reference has also been made to O.A. NO. 3173 of 2003 filed by one Shri Madan Lal before the Principal Bench of this Tribunal seeking compliance of the order passed by General Manager, Northern Railway dated 18.12.2003 (Annexure 16) giving certain reliefs to Shri Madan Lal (applicant in that O.A.). This O.A (No. 3173 of 2003) was decided by an order dated 08.07.2004. Notably the applicant in the present O.A was not a party in the aforementioned O.A. before the Principal Bench of C.A.T. Though this O.A was dismissed as far as the relief sought by Shri Madan Lal was concerned, but the order contained several references to the present applicant while the Hon'ble Members of that Bench discussed the details of the case. These references should be ignored, while deciding the case of the applicant as he was not a party to that O.A.



3. During arguments, it was forcefully contended by the learned counsel for the applicant that the impugned order dated 08.07.2005 is at-least partly based on the observations contained in the judgment passed in O.A. No. 3173 of 2003 and the respondents should not have based their decision to issue the impugned order based on this judgment of the Principal Bench since the said O.A. has been dismissed in respect of the applicant Shri Madan Lal. The relevant para of the O.A. is reproduced below:-

"That the order has been passed in compliance of the judgment dated 8.7.2004 passed in O.A. NO. 3173 of 2003 by the Administrative Tribunal, New Delhi, which is nothing but the dismissal of the O.A., therefore, the said order cannot be complied".

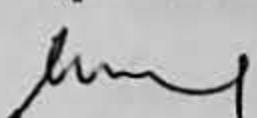
4. The respondents, in their counter affidavit have clarified the background of the impugned order by stating that there was an outstanding seniority dispute between Conductors and Head Ticket Collectors working in the grade of Rs.425-640 for promotion to the grade of Rs.550-750. General Manager, Northern Railway vide his letter dated 23.03.1984 tried to resolve this issue and directed that the seniority for promotion should be maintained as per inter-se seniority in the feeder grade



of Rs.330-560. This order of the General Manager, Northern Railway was challenged before the C.A.T through O.A. NO. 437 of 1986 (Anokhey Lal Vs. Union of India and Ors.). This O.A. has perhaps been erroneously mentioned in the counter affidavit (para 11) as O.A. NO. 433. The solution to the problem attempted by General Manager, Northern Railway was struck down in favour of the validity of old Rules on the subject.

5. The counter affidavit has quoted the relevant operative portion of the order of this Tribunal passed in O.A. NO. 437 of 1986, which reads as follows:-

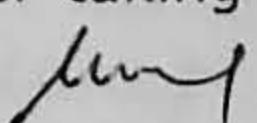
- "(a) That the Railway Board vide its letter dated 27.08.1983 approved determination of seniority for further promotion on the basis of continued seniority to be counted on the basis of the date on which non fortuitous vacancies arose in the relevant seniority unit (last lines of para 11).*
- (b) That the plea of the applicant that they should be continued to be governed by old rules is therefore not sustainable (para 12).*
- (c) That the action of respondents in making new rules is not sustainable hence the same is struck down. They should have followed Railway Board letter dated 27.08.1983 and they should do it now (para 13)".*



6. It has been stated by the respondents that the Hon'ble Tribunal has never directed that the applicants of the aforementioned O.A be given all benefits as is being claimed by the applicant in his present O.A. It has been stated that the present applicant submitted various representations from time to time to the respondents and the seniority list dated 06.08.1993 was held as final in 2002 with the direction that all other seniority lists were not to be read in this matter. It has also been stated that the benefits conveyed to the applicant, vide the letter of August 2000, which has been referred to in para 16 of the O.A., were issued as a result of an administrative error, due to applicant's representations made to the authorities concerned, by including wrong, concocted and fabricated facts and by concealing material facts and this error was rectified subsequently.

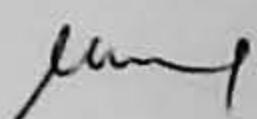
7. The respondents have also taken note of the fact that there is no respondent NO. 4 in the present O.A. and references to such a respondent No. 4 deserve to be ignored.

8. It has further been stated that the case of the applicant was considered by the Competent Authority at Head Quarters, New Delhi and after taking into account



all the relevant Rules and evidence on records, it was decided to withdraw the benefits given to the applicant based on a seniority list, which had been withdrawn and was not supposed to be read in future. The reply given by the applicant to the show cause notice regarding recovery, was considered in the light of the relevant Rules and has been rejected accordingly. The respondents have further stated that as per observations made by the Hon'ble Principal Bench of Central Administrative Tribunal in O.A No. 3173 of 2003, the benefits given erroneously to the applicant, needed to be rectified and corrected. The contention of the applicant that the impugned order has been issued as a consequence of the order passed by the Tribunal (Principal Bench) in O.A. NO. 3173 of 2003 has also been denied by the respondents and it has been stated that the benefits extended to the applicant earlier were not in accordance with the order dated 10.11.1987 passed by the Allahabad Bench of C.A.T. in O.A. NO. 437 of 1986 and this error has now been corrected.

9. In his rejoinder affidavit, the applicant has reiterated most of the points raised in the O.A and has highlighted the problem of seniority fixation of Conductor vis-à-vis Head Ticket Collectors and senior Ticket



Examiners. He has stated that while promotion to the post of Conductors from the feeder grade of Rs.330-560 was done faster as it was a non-selection process of seniority-cum-suitability, the promotion of Head Ticket Collectors and Senior Ticket Examiners was made by selection and took a longer period. Thus conductors came to be in the grade of Rs.425-640 earlier and it was the contention of the Conductors that the period served by them in this grade should be counted for seniority for promotions to the next higher grade of Rs.550-750. While elaborating this point, the applicant has argued that he was justifiably given the benefits after fixation of his seniority following the order of this Tribunal in O.A. NO. 437 of 1986. It has also been reiterated by the applicant that since O.A. NO. 3173 of 2003 was dismissed by the Principal Bench of this Tribunal, the respondents could not have taken into account the observations made in this order, to formulate the impugned order. It has also been mentioned that the applicant in O.A NO. 3173 of 2003 has filed a writ petition in the Hon'ble High Court at New Delhi, which is still pending and that the respondents have acted illegally by issuing the impugned order of recovery without considering his reply.

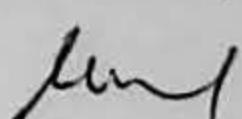


10. A brief supplementary affidavit has been filed by the applicant where the contentions of the O.A. and rejoinder affidavit have been largely reiterated.

11. Heard the counsels of both sides who argued largely on the basis of pleadings and documents on record.

12. The applicant has made repeated references to a certain respondent NO. 4 (para xxii, xxiii, xiv, xv of the O.A.). However, it is noticed that there are only three respondents in the case and, therefore, it is not clear that as to what is the purport of the applicant when he refers to this respondent No.4. Hence, the references to respondent NO. 4 in the O.A. need to be ignored.

13. It is clear from the pleadings and various documents on record that the respondents issued various seniority lists following the orders of the C.A.T., Allahabad Bench in O.A. No. 437 of 1986 and various benefits, which were awarded to the applicant earlier, flowed from these seniority lists including the orders of fixation of pay. However, it was determined by the respondents subsequently, that some errors had crept in, while issuing those orders and the seniority situation was



finalized by an order dated 13.03.2002, which stated that the seniority lists issued on 03.01.1996 and 20.08.1996 are not in consonance with Rules and hence should not be read for any purpose. It was also decided by the respondents that the seniority list issued on 06.08.1993 holds good and shall remain in force. Subsequent to this decision by the Competent Authority (respondent NO. 2) which has not been challenged, the benefits which had accrued to the applicant by earlier orders were rectified and corrected leading to the impugned orders. The contentions of the applicant that the impugned order flows from the judgment in O.A. NO. 3173 of 2003 is not accurate, as is clear from the show cause notice issued to the applicant (dated 12.05.2005).

hence
It is clearly stated therein that ~~the~~ following the orders passed by this Tribunal in O.A. NO. 44 of 2001 (R.S. Shukla Vs. Union of India and Ors.), the Competent Authority has examined all the facts and materials on record. It has also been stated that the seniority list issued on 06.08.1993 was modified on 03.01.1996 and again on 20.08.1996 but the scrutiny of the records show that these two modifications were not in order and hence both orders were withdrawn and the initial seniority list dated 06.08.1993 was restored as the correct list. The show cause notice also clearly states

hence

that the Competent Authority has held that the benefit of promotion in the grade of Rs.700-900 w.e.f. 01.01.1984 was given to the applicant erroneously on the basis of the seniority list dated 20.08.1996, which has been withdrawn subsequently. Clearly, the benefit granted earlier is also required to be withdrawn. It is, therefore, clear that the recovery notice is based on the cancellation of the seniority list on which the benefits were initially awarded to the applicant. The observations relating to the applicant made in O.A. NO. 3173 of 2003 by the Principal Bench of this Tribunal in their order dated 08.07.2004 do not come into play and it is clearly a case of an error made by the respondent authorities in fixing the seniority of the officials such as the applicant, and subsequent rectification of that error. The reply submitted by the applicant dated 5.7.2005 in response to the show cause notice also does not state that the show cause notice has originated as a consequence of the orders of the Principal Bench of this Tribunal in O.A. NO. 3173 of 2003 and in fact mentions that the claim of Shri Madan Lal as being senior to the applicant has been dismissed by the order in that O.A.

14. It is a well settled law that the employer respondents in this case are fully entitled and justified in

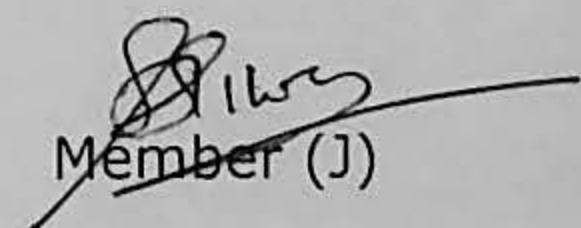


correcting errors, which may have crept in, while fixing the seniority and benefits flowing from the same at any subsequent time when the error is detected. The recoveries arising out of such corrective measures are also fully justified in service law. In this case as required under Rules a show cause notice was served upon the applicant and his reply was also considered before issuing the final order of recovery. Hence, we do not find any reason to interfere with the impugned order, which does not suffer from any infirmity of law or procedure, and the seniority list of 06.08.1993 which was held as final in 2002.

15. Accordingly, the O.A. is dismissed with no orders on costs.



Member (A)



Member (J)

Manish/-