

(9)
(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 632 of 1986

Allahabad this the 8th day of March 1995

Hon'ble Mr. S. Das Gupta, Member(A)
Hon'ble Mr. Jasbir S. Dhaliwal, Member(J)

Rakesh Chander Johri R/o House no. S-19/4-A, Near
Taj Hotel P.W.D. Road, Baruna Bridge Varanasi(U.P.)
Applicant.

By Advocate Shri Vipin Sinha

Versus

1. Union of India through its General Manager, Northern Railway Headquarter Office, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Lucknow.
3. Shri R.K. Bhattacharya, Head Trains Examiner, Northern Railway, Varanasi.
4. Sri Satya Pal Head Train Examiner, Northern Railway Charbagh, Lucknow.
5. Shri Hausla Prasad, Head Train Examiner, Northern Railway, Charbagh, Lucknow.
6. Shri Gangotri Lall, Head Train Examiner, Northern Railway, Varanasi.
7. Shri Deo Raj, Head Train Examiner, Northern Railway, Charbagh, Lucknow.
8. Shri Shree Narain, Head Train Examiner, Northern Railway, Charbagh, Lucknow.
9. Shri R.A. Chaturvedi, Head Train Examiner, Northern Railway, Charbagh, Lucknow.
10. Shri Ram Shanker, Head Train Examiner, Northern Railway, Charbagh, Lucknow.
11. Shri O.P. Pandey, Officiating Carriage and Wagon Inspector, (safety), Northern Railway, Lucknow.
12. Shri Sarvajeet Singh, Head Train Examiner, Northern Railway, Charbagh, Lucknow.

Respondents

By Advocate Shri A.V. Srivastava

wl.

:: 2 ::

O R D E R

By Hon'ble Mr. S.Das Gupta, Member(A)

The applicant was working as Train Examiner at Varanasi w.e.f. 21.1.1980. The Railway Board carried out certain cadre review and restructuring of group 'C' cadres. Such restructurings were notified by the General Manager, Northern Railway, New Delhi by the notification dated 07.5.1984(Annexure I and II). By these orders, the Railway Board increased the percentage in various grades in the category of Train Examiner Carriage and Wagon Inspectors. By this restructuring, the post in the pay scale of 425-700/-, in which the applicant was working, was reduced and the pay in the higher grades were correspondingly increased. The Divisional Railway Manager, Northern Railway, Lucknow in the meantime had issued a seniority list of Train Examiners(T.X.R. for short) in the pay scale of 425-700/- vide his letter dated 21.9.1984(Annexure-III). The applicant's name was placed at serial no.58 of the said seniority list. The applicant represented against the assignment of his seniority at serial no.58 and thereafter, a revised seniority list was issued by the D.R.M., Northern Railway, Lucknow vide letter dated 01.11.1985(Annexure A-9) placing the applicant's name at serial no.48.

2.

Due to cadre structuring which

..... pg.3/-

was effective from 01.1.1984, certain vacancies had arisen in the higher grade of Head Train Examiner(H.T.X.R. for short) in the pay scale of 550-750/- . Promotion to this grade was made on the basis of seniority ~~grade~~ ^{from} amongst the T.X.R. The applicant was entitled to this promotion but, he was ignored and his juniors who had been assigned lower seniority position of 49, 53, 55, 57, 59, 60, 61, 62, 63, 64 in the seniority list issued by letter dated 01.11.1985 were promoted by the notice dated 05/7-12-1984 and notice dated 19.9.1985 (Annexure V, bVI). The applicant represented against this promotion and thereafter, the Divisional Personnel Officer, Northern Railway, Lucknow issued a notice dated 01.11.1985 (Annexure A-8) cancelled the letter dated 19.9.1985 by which the applicant's juniors were given promotion. However by another notice dated 08.11.1985 (Annexure-X), the earlier notice dated 01.11.1985 by which the promotions were cancelled, was kept in abeyance. The applicant again submitted a representation to the D.R.M. on 15.11.1985 against the said notice keeping in abeyance, the earlier notice of cancellation of promotion, and requested that the applicant also be promoted to the higher grade. The senior Divisional Personnel Officer, Northern Railway, however, promoted another person, Sarvajeet Singh, who is also stated to be junior to the applicant, as H.X.T.R. by notice dated ----04.3.1986. The applicant submitted another representation

on 20.3.1986 in which he pointed out that there was no penalty imposed on him on 01.1.1984. It was only on 17.5.1985 that a penalty of with holding increment for a period of 2 years w.e.f. 01.1.1986 was imposed on him and these could not have been made the basis for refusing to promote him as H.T.X.R., as the relevant date for promotion was 01.1.1984. This position, the applicant asserts, is borne out by the Railway Board's letter dated 29.10.1984 circulated by the General Manager(P), Northern Railway Headquarters, letter dated 04.12.1984(Annexure XV and XVI) Being unable to obtain redressal from the respondents, the applicant has now approached this Tribunal with the prayer that the respondents be directed to promote him as H.T.X.R. w.e.f. 01.1.1984 and pay him all consequential benefits. It has also been prayed that the notice dated 08.11.1985 by which notice of cancellation of promotion issued vide letter dated 01.11.1985 was kept in abeyance, be quashed. The applicant has further prayed for quashing the notice dated 04.3.1986 by which one Shri Sarvajeet Singh was promoted as H.T.X.R.

3. In the written statement filed by the respondents, the preliminary objection has been taken to the maintainability of this application on the ground of limitation. On merits, it has been stated that on 07.5.1984

SL.

a provisional seniority list of T.X.R.'s indicating seniority their position as on 08.2.1984 was issued. Thereafter on 21.9.1984, a provisional(revised) seniority list was issued. No appeal/representations of the applicant against either of the provisional seniority list is stated to have been received by the respondents. It is, however, admitted by the respondents that another seniority list was issued on 01.11.1985 but, the same is under modification. By order-dated 05/7-12-1984, a list of 30 persons was issued promoting them as H.I.X.R. and all these persons were actually senior to the applicant as per seniority list of 1984 and also the seniority list issued on 01.11.1985. However, the other persons named by the applicant viz. B.K. Bhattacharya, Satya Pal, Hausla Prasad, Gangotri Lall, Deo Raj, Shree Narain, RaA. Chaturvedi and Ram Shanker were shown as senior to him in the 1984 list but, in the subsequent list of 1985, they are shown as junior to the applicant and all these persons were represented against their assignment of seniority below the applicant and the matter is under consideration. Their promotion orders were issued prior to issuance of the seniority list of 01.11.1985. However, when the seniority positions were changed by the seniority list of 01.11.1985, the promotions of these persons were cancelled. However, they represented against

SL.

.....pg.6/-

(13)
(14)

such cancellation and also the seniority list of 01.11.1985 and, therefore, pending decision on the matter, the order of cancellation of promotion was kept in abeyance. As regards the promotion of Sarvajeet Singh, it has been averred that he was promoted not on the basis of restructuring of the cadre but, on the occurrence of a fresh vacancy w.e.f. 04.3.1986. Since ~~at~~ that time the applicant was undergoing ~~with~~ the penalty, he could not be considered for promotion.

4. The applicant has filed a rejoinder-affidavit in which the contentions made in the O.A., have been reiterated.

5. We have heard the learned counsel for both the parties and have carefully gone through the pleadings.

6. The plea of the respondents that the application is barred by the limitation, has no force. The applicant has ~~not~~ challenged the notice dated 08.11.1985 by which the order cancelling the promotion of the applicant's juniors was kept in abeyance. As the application was filed on 28.10.86 the same is clearly within the period of limitation.

7. It would be clear from the averments made in the O.A. and ~~now~~ in the C.A. that the extent

:: 7 ::

seniority list of T.X.H.'s is ~~the~~ one which was issued on 01.11.1985. On the basis of ~~these~~ seniority list, the applicant should have been promoted in preference to his juniors viz. B.K. Bhattacharya, Satya Pal, Hausla Prasad, Gangotri Lall, Deo Raj, Shree Narain, R.A.- Chaturvedi and Ram Shanker whose positions were admittedly lower than the applicant in the said seniority list. These promotions were to take place against the posts created by the restructuring of the cadre w.e.f. 01.1.1984. On that date, admittedly, there was no disciplinary action against the applicant. There was, therefore, no impediment to his promotion w.e.f. 01.1.1984 in preference to or alongwith his juniors. It is, however, stated by the respondents that the said seniority list of 01.11.1985 is under dispute due to representations from several persons who were shown as junior to the applicant. We have noted that on earlier occasions two more seniority lists were published and thereafter the seniority list of 01.1.1985 was issued. Such frequent change in the seniority list would indicate that the authorities concerned have not been able to come to a decision as to how the seniority of T.X.H.'s should be assigned. Seniority of an employee cannot be changed frequently. There must be some certainty about his position in the seniority list so that he knows where he stands and what his prospects are of further career advancement. It is not

the case of the respondents that the applicant was not otherwise eligible for promotion as H.T.X.R. w.e.f. 01.11.1984. It has only been stated that in the 1984 seniority list, he was junior to Shri B.K. Bhattacharya and others and in 1985 seniority list, he was shown senior to them, but the seniority list is under dispute.

8.

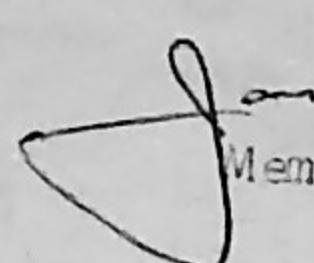
In consideration of the facts and circumstances of this case, we are of the view that it has been unfair on the part of the respondents to deny the applicant's promotion as H.T.X.R. w.e.f. 01.11.1984 alongwith his juniors in the seniority list of 01.11.1985. We, therefore, direct the respondents to promote the applicant ~~from date~~ as H.T.X.R. from the date on which his juniors in the seniority list dated 01.11.1985, namely, B.K. Bhattacharya, Satya Pal, Hausla Prasad, Gangotri Lall, Deo Raj, Shree Narain, R.A. Chaturvedi and Ram Shanker were promoted, within a period of one month from the date of communication of this order. This promotion will continue to be provisional during the pendency of controversy relating to the seniority list of 01.11.1985. The question of seniority to be assigned to the applicant, is not the subject of controversy in this case, therefore, we ^{are} also not called upon to adjudicate this matter. This has to be done by the respondents on the basis of relevant rules in this regard. Once

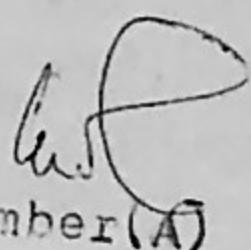
W.L.

:: 9 ::

the seniority dispute is finalised and revised seniority list issued, further action regarding regularisation or otherwise of the applicant's promotion may be taken by the respondents on the basis of the seniority position assigned to him.

9. This application is disposed of with the above directions. There shall be no order as to costs.


Member (J)


Member (A)

/M.M./