

2/11/86
Judgment
reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Original Application No.231 of 1986.

Sri Suresh Chandra Srivastava Applicant.

Versus

Union of India and others Respondents.

Hon'ble D.S.Misra-AM
Hon'ble G.S.Sharma-JM

(Delivered by Hon'ble D.S.Misra)

This is an application under section 19 of the Administrative Tribunals Act no. 13 of 1985 against the order dated 21st April 1986 passed by the General Manager, N.E.Railway, Gorakhpur changing the seniority of the applicant.

2. The admitted facts of the case are that the applicant was appointed as a Cameraman in the scale of Rs. 425-700 in the Printing Press of N.E.Rly, Gorakhpur vide letter dated 8th June, 1981 (copy at annexure-1). Sri B.V. Singh, respondent no.3, was appointed as Chargeman (Trainee) in the scale of Rs.380-392 on 8.4.1981 with the condition that after successful completion of training of two years, he will be appointed a Chargeman (B) in the scale of Rs.425-700 and he was posted as such vide Office Order dated 7.4.1983. The applicant contends that he held diploma in Printing Technology and was eligible for promotion as Chargeman Grade-A FRO etc.. As a result of restructuring of posts in the Printing Press, the posts in the Grade of Rs.425-700 were upgraded to the Grade of Rs. 550-750 and designated as Chargeman-A. The applicant as well as respondent no.3 were placed in the scale of Rs.500-750 vide Order dated 17.4.1985 (annexure-4). In the aforesaid order the

applicant was placed at sl.no.9 whereas the respondent no.3 was placed at sl.no.10. The applicant has alleged that on the basis of a representation of respondent no.3, the General Manager, without giving any opportunity to the applicant, passed an order dated 21st April, 1986 by means of which he has ordered that respondent no.3, who stands senior to the applicant in the category of Chargeman-A in the scale of Rs.550-700 (copy at annexure-6).

3. Counter-affidavit was filed on behalf of the respondents nos.1 and 2 in which it is stated that the appointment of the applicant and respondent no.3 were in different categories and that there was no channel of promotion of the applicant at the time of his appointment whereas respondent no.3, who was appointed as Chargeman B, had a channel of promotion in his category. The contention of the applicant that he was eligible for promotion as a Chargeman is denied and it is stated that the applicant did not possess the educational qualification required for a trainee Chargeman and he was neither selected for the post of Trainee Chargeman, nor worked as Chargeman-B in the Grade of Rs.425-700. It is admitted that the petitioner and respondent no.3 were promoted in the Grade of Rs.550-750 as a result of restructuring. The applicant had no avenue of promotion from the post of Cameraman and N.E. Railway (Administration) had written to the Railway Board that since there was no avenue of promotion for Cameraman, the post of Cameraman may be included for promotion in the category of Chargeman and in anticipation of sanction of Railway Board, the applicant was promoted against ex-cadre post of Chargeman A in the Production Control Organization and that the promotion of the petitioner in the ex-cadre post did not create any right. It is stated that Annexure-4 dated 17.4.1985 was not the seniority list. It is further stated that in the Notification calling eligible persons for selecting to the Grade of Rs.700-900, the name of the applicant was wrongly shown at sl.no.1, ~~on the basis of his promotion from 1984 to 1985~~. The petitioner

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should have been given seniority in the cadre of Chargeman-B in the Grade of Rs.425-700 w.e.from 24.10.1985. The representation of respondent no.3 regarding his seniority was considered by the competent authority, who had passed the order dated 21.4.1985 (copy at annexure-6). It is further stated that since the post of Cameraman was included in the category of Chargeman vide Railway Board's Order dated 24.10.1985, the promotion of the applicant from 17.4.1985 to the date of issue of the revised A & C has already been treated as ad hoc. The applicant was wrongly shown as senior to the respondent no.3 in the Notification inviting application in the Grade of Rs.700-900 and it was not necessary to give opportunity to the petitioner before correcting an obvious error. The claim of the applicant that his promotion in the Grade of Rs. 550-750 was made with the Railway Board has been denied and it is asserted that the N.E.Railway(Administration) had only sought the approval of the Railway Board for the post of Cameraman to be included in the category of Chargeman. The claim of the petitioner for promotion to the post of Chargeman-A from an earlier date is denied. It is also denied that the petitioner was eligible for selection to a higher post in general category.

4. Sri B.V. Singh, respondent no.3 also filed a counter stating affidavit/that he was given the pay scale of Chargeman A since 1.1.1984 and he should be deemed senior to the applicant in the category of Chargeman Grade A. It is stated that in the various categories and groups of technical supervisory staff, which exist in Printing Press of North-Eastern Railway, the post of Chargeman-A is filled by promotion from the post of Chargeman-B and the applicant could be promoted as Chargeman Grade A only after his appointment as Chargeman-B and not as Cameraman, which was an ex-cadre post. The Railway Ministry had made an exception to the general rule ~~////////~~ redesignating the post of Cameraman in the scale of Rs.425-700 as Chargeman-B vide order dated 24.10.1985 and he can not get any benefit out of his redesignation with retrospective

effect. Respondent no.3 has challenged the order of N.E.(Administration) dated ¹²17.4.1985 by which the applicant has been promoted to the category of Chargeman Grade A in the scale of Rs.550-750 since 1.1.1984. It is further stated that the order dated 21.4.1986 has been passed by the Addl. Chief Personnel Officer and not by the General Manager, Northern Railway, Gorakhpur. It is stated that the General Manager being the higher authority than the Addl. Chief Personnel Officer, the applicant should have preferred a representation to the General Manager before approaching the Tribunal.

5. The applicant filed two rejoinder affidavits in reply to the counter affidavit of respondents nos.1 and 2 and another in reply to the counter-affidavit filed by respondent no.3. The applicant has claimed that he was appointed as Cameraman in the Process Section under Rule 106 for Recruitment, Training and Promotion of Staff in Railway Training Presses on 8.6.1981, whereas respondent no.3 was appointed on 7.4.1983 as such the applicant is very much senior to the respondent no.3 in the initial grade, namely, Rs.425-700. The direct recruitments on the post of Chargeman are made on the basis of Rule 202 (1) of the aforesaid Rules for filling-up the vacancies of sections specified in Rule 107-A of the Rules. At the time, when the respondent no.3 was appointed, there was no section as Process Section under Rule 107 A of the Rules, as such the respondent no.3 could not be validly appointed. The applicant denied that he was promoted against an ex-cadre post. It is also contended that in the order of promotion as Chargeman Grade-A, he has been given seniority according to his seniority list in the category of Chargeman Grade-B. He has also challenged the promotion of respondent no.3 as Chargeman-A, as respondent no.3 had not completed the probationary period of at-least one year. The averments made in his application were reaffirmed. In the second rejoinder-affidavit, in reply to the counter-affidavit of respondent no.3, the same points have been reiterated and it has been alleged that the impugned order passed by the General Manager was

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illegal and liable to be quashed.

6. On the date of hearing, the applicant sought permission to file yet another application with which he filed a photo copy of an office note on the subject of posting of FO(700-900) and CHMan-A 550-750 in the Press. The applicant has claimed that this was the proceedings of the DPC. In this note, it has been indicated that in the Process Section, Sri S.C. Srivastava was shown senior to Sri B.V. Singh in the scale of Rs.425-700 and he was promoted Chergeman Grade-A in the process Section and Safety Department in the same capacity to PCO Section against the ex-cadre post of Chergeman-A. The same note indicates that Sri B.V. Singh was considered for promotion as Chergeman Grade-A against the upgraded post vacated by Sri S.C. Srivastava. The remaining notings in the photo stat copy are not legible and it is difficult to decipher which portion of this note was approved by the competent authority and which was not.

7. We have heard learned counsel for the parties and have also perused the records. From the above narration, it is evident that respondent nos.1 and 2 have denied the claim of the applicant and have justified the order dated 21.4.1986 passed by the General Manager Gorakhpur. The applicant has based his claim on the ~~//////~~ grounds that he was working in the pay scale of 425-700 from an earlier date i.e., 8.6.1981 as against the respondent no.3 who was appointed to the scale of Rs.425-700 only w.e. from 7.4.1983; that in the order of promotion dated 17.4.1985 he has been given sl.no.9 whereas respondent no.3 has been given sl.no. 10 and that this order of promotion was in the order of seniority and that in the letter dated 6.11.1983 of General Manager(Personnel), the applicant has been placed at sl.no.1 and respondent no. 3 has been placed at sl.no.2 in the general category. The applicant has himself filed copy of the representation dated 16.10.1985 of Sri B.V. Singh addressed to the General Manager(P and E) Railway Gorakhpur in which he claimed seniority over the applicant with reference to an office order dated 22.4.1985

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in which he was shown junior to the applicant. In this representation, respondent no.3 has nowhere stated that he had been given a lower seniority than the applicant and he has merely expressed his apprehension that he may be made junior to the applicant even though he has claimed that he has always been senior to S.C.Srivastava who was working under him. The order passed by the General Manager(P) states that Sri B.V. Singh, ^{be} ~~who~~ stands senior to Sri S.C.Srivastava in the category of Chargeman A and the period of Sri S.C.Srivastava to this post (wrongly described as part) will be treated as ad hoc upto the date of issue of AVC for promotion of Cameraman to the post of Chargeman A. The applicant has himself filed a copy of his representation dated 13.4.1983 addressed to the Superintendent Printing and Stationary(annexure-3) in which he has stated that candidates recorded as Chargeman ^{have} ~~for~~ avenues of promotion to Chargeman-A, AFD, F.O., ASPS and so on and that inspite of his having the same qualification as a chargeman in Railway Printing Press, he was deprived of the above benefit. He has requested that the avenue of promotion to Cameraman may be provided so that his Future Prospect may not be blocked. A reference to this has been made in para 8 of the counter-affidavit of respondents nos.1 and 2 in which it is stated that N.E.Railway(Administration) had written to the Railway Board on 26.4.1985 that since there is no AVC for Cameraman, the post of Cameraman may be included for promotion in the category of Chargeman and the applicant was promoted against ex cadre post of Chargeman A in the Production Control Organization. The Railway Board had approved the post of Cameraman being included in the AVC of Chargeman with designation of Chargeman(Camera) vide letter dated 24.10.1985, annexure-1. A perusal of this letter would show that the order of the Railway Board clearly stated that the Cameraman in the scale of Rs.425-700 may be redesignated as Chargeman B in the same scale of pay. Respondents nos.1 and 2 have stated that

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according to this letter of the Railway Administration, the applicant should have been given seniority as Chargeman-B in the grade of Rs.425-700 w.e.from 24.10.1985, it is pertinent to mention here that the applicant as well as respondent no.3 had been promoted as Chargeman Grade A vide Order dated 17.4.1985 w.e.from 1.1.1984 on provisional basis. A perusal of the order dated 17.4.1985(annexure-4) would show that the promotions ordered were provisional and the names contained in that order were not in the order of seniority or in the nature of a merit list. It appears that the Office of the Superintendent Printing and Stationary interpreted the order dated 17.4.1985 as a seniority list of Chargeman Grade-A. The subsequent noting showing the applicant senior to respondent no.3 appears to be based on the above mentioned misunderstanding. The representation of respondent no.3 requesting fixation of his seniority for the purpose of promotion to higher post is dated 16.10.1985. In this representation, there is a reference to the proposal of Railway Administration to give a suitable designation to the applicant to enable him to get promotion in higher post and there is also a mention that the A V C proposal had not yet been approved by the Railway Board. From the above, it can be inferred that the apprehensions of respondent no.3 were genuine and he had sought the decision of the competent authority, so that the ambiguity or misunderstanding created by the promotion order dt. 17.4.1985 may be clarified. According to the Railway Board's Order dated 24.10.1985, the applicant was

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designated Chargeman B only w.e.from that date. The promotion of the applicant to the post of Chargeman Grade A from an earlier date could not be made on a regular basis. The Order of the Railway Board dated 21.4.1986 made this point clear while standing that the period of S.C. Srivastava to the post of Chargeman Grade A will be treated ad hoc upto the date of issue of A V C for promotion of Cameraman in the scale of 425-700 to the post of Chargeman-A in the scale of 550-750. In our opinion, the order dated 21.4.1986 passed by the General Manager, N.E. Railway is in the nature of a clarification to the representation made by respondent no.3 regarding his interse seniority vis.& vis. the applicant. The contention of the applicant that he was senior to respondent no.3 in the Grade of Rs.550-750 can not be sustained as he became eligible for promotion as Chargeman Grade A only after his redesignation as Chargeman Grade-B in the scale of Rs.425-750. The Railway Board's Order redesignating the applicant as Chargeman-B was in the nature of a change of cadre as he was occupying an ex-cadre post of Cameraman in the scale of pay of Rs.425-700. This was done with a view to provide an avenue of promotion to the applicant and his contention that he should be deemed to have been appointed as Chargeman Grade-B w.e.from his initial appointment as Cameraman in the same scale of pay can not be accepted.

For the reasons mentioned above, we are of the opinion that there is no occasion for interfering

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with the order dated 21.4.1986 passed by the General Manager, N.E. Railway, Gorakhpur declaring respondent no.3 senior to the applicant. The application is dismissed without any order as to costs.

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Member-A

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Member-J

JS/ 6.1.1987.