

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 4th day of December 2002.

QUORUM : HON. MR. S. DAYAL, A.M.

HON. MR. A.K. BHATNAGAR, J.M.

O. A. No. 1549/94

Jai Shanker Misra, aged about 37 years S/O Sri Jagannath Misra
R/O Rly. Qr. No. E/12, North Eastern Railway, Colony Manduadih,
Varanasi, Village Kundaria, P.O. Banipur, P.S. Janga, Varanasi.

..... Applicant.

Counsel for applicant : Sri V.K. Srivastava.

Versus

1. Union of India through its General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Rail Manager, North Eastern Railway, Varanasi.
3. Senior Divisional Personnel Officer, N.E. Rly., Varanasi.
4. Chief Personnel Officer, N.E. Railway, Gorakhpur.
5. Mehtab Hussain, I.O.W., N.E. Railway, Mau.

..... Respondents.

Counsel for respondents : Sri A. Sthalekar.

ORDER

BY HON. MR. S. DAYAL, A.M.

This application has been filed for setting aside order dated 13.9.94 and 7.10.94. A direction to the respondents is also sought not to give effect the order dated 13.9.94 and 7.10.94 and not to revert the applicant from the post of Inspector of Works Grade I.

2. The applicant has claimed that he was selected for the post of Apprentice Inspector of Works-III by Railway Service Commission vide letter dated 3.8.1981 and was appointed as Apprentice I.O.W-III on 12.6.81. The applicant was sent for the apprentice/training and after successful completion of training, he was posted as Inspector of works, Grade-III. A seniority list was issued on 1.1.1987 in which the applicant was placed at Sl.No.77 and Respondent No.5 at Sl.No.78. The

applicant and Respondent No.5 were promoted as I.O.W. Grade II vide order dated 18.2.88 in which the applicant was placed at Sl.No.6 and Respondent No.5 at Sl.No.7. In a subsequent order dated 16.11.89, for promotion from I.O.W. Gr.III to I.O.W. Gr.II the applicant was shown at Sl.No.30 and Respondent No.5 at Sl.No.31. In the seniority list dated 1.4.90 of I.O.W. Grade III, the applicant has been placed at Sl.No.2 and Respondent No.5 at Sl.No.3. The applicant was promoted to the grade of Rs.2000-3200 by order dated 24.2.94 due to restructuring and upgradation of post of I.O.W. Grade-II. In the notification for selection to the post of I.O.W. Grade I in the scale of Rs.2000-3200, the applicant was included for participation/ appearing in selection. However, by order dated 21.6.94, the Respondent No.5 along with two others were included to participate in the selection for promotion to the post of I.O.W. Grade-I. The applicant claims that the seniority of I.O.W. was to be determined on the basis of marks obtained in the training as apprentice. The applicant was sent for six month's training and was thereafter posted as I.O.W. Grade-III. It is claimed that the authorities are now seeking to disturb the seniority of 13 years. The applicant also claims that the seniority has been altered arbitrarily by respondents after passage of such long time.

3. We have heard the arguments of Sri A. Sthalekar for the respondents.

4. Counsel for respondents has drawn our attention to Rule 303 and 304 and stated that the seniority of the applicant was previously determined under Rule 304 while Rule 303 was applicable to them and thus, the seniority was wrongly fixed earlier which has been corrected vide order dated 7.10.1994.

The rules 303 and 304 are reproduced below :-

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"303. The seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority should be determined as under :-

- (a) Candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts. Those who join the subsequent courses for any reason whatsoever and those who pass the examination in subsequent chances, will rank junior to those who had passed the examination in earlier courses.
- (b) In the case of candidate who do not have to undergo any training in training school, the seniority should be determined on the basis of the merit order assigned by the Railway Recruitment Board or other recruiting authority.

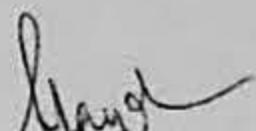
304. When two or more candidates are declared to be of equal merit at one and the same examination/selection, their relative seniority is determined by the date of birth the older candidate being the senior.

5. Counsel for respondents, in a supplementary reply on behalf of respondents, has stated that the applicant was given training at Varanasi and was sent for institutional training for one month on 13.11.81. At the end of one month training, the result was declared and the merit list was received from the school. It is stated that the merit list was filed as CA-II. CA-II is the only merit list in which the Respondent No.5 is shown at Sl.No.1 and the applicant is shown at Sl.No.6. According to this merit list read with Rule 303 as ^{exempted 1} accepted above, the seniority of the applicant viz-a-viz Respondent No.5 has been decided by the respondents. Prior to deciding the seniority, a notice was given to the applicant and his representation to the notice was taken into account before order dated 7.10.94 was passed. The applicant, in the representation, had basically raised two points. The first was that on the basis of total marks obtained by him as well as Sri Mehtab Hussain, he was assigned seniority over Sri Mehtab Hussain, Respondent No.5 in this O.A. and that the seniority has been challenged by Sri Mehtab Hussain after such a long time.

6. As far as the first contention of the applicant is concerned, that has been denied by the respondents in their

supplimentary reply filed on 27.8.96. As far as the second contention is concerned, the applicant has failed to show as to whether any limitation applies to the respondents to correct interse seniority on the basis of representation. Hence we find no merit in the O.A. which is dismissed with no order as to costs.


J.M.


A.M.

As thana/