

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated 22nd February 2002.

Original Application No.809 of 1995.

CORAM :-

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

Hon'ble Mr. C.S. Chadha, A.M.

Virendra Kumar Giri,
S/o Late Sri Subba Giri,
R/o N.E. Railway Colony, Anwarganj,
Kanpur (Inspector of Works, N.E. Railway),
presently posted at Anwarganj, Kanpur.

(Sri Ratnaker Bharti, Advocate)

..... .Applicant

versus

1. Union of India through General Manager,
N.E. Railway, Gorakhpur.
2. Chief Engineer, N.E. Railway, Gorakhpur.
3. Chief Railway Manager (Personnel),
N.E. Railway, Gorakhpur.
4. Divisional Railway Manager Personnel,
Izzatnagar (N.E.R.)

(Sri DC Saxena, Advocate)

..... .Respondents

O R D E R (O_r_a_1)

By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

By this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed to quash the order dated 10-8-1994 (Annexure-15 to the OA) in so far as it denied the promotion to Grade I w.e.f. 23-3-88. The applicant has also prayed to quash the order dated 10-6-1994 rejecting the appeal of the applicant. He also prays for a direction to the respondents to determine the petitioner's seniority w.e.f. 23-3-1988 when he was promoted to Inspector of Works Grade I and to grant him scale of Rs.2300-3500 w.e.f. 23-3-1988. He has also prayed that the respondents may be directed to promote the applicant as Assistant Engineer from the date his juniors were promoted with consequential benefits.



2. The facts in short giving rise to this application are that the applicant joined the Railway as Assistant Inspector of Works on 19-6-1964 in the Northern Railway. He was promoted to the Inspector of Works Grade II subsequently. However, by order dated 20-1-1988 the applicant was given officiating promotion on the post of Inspector Grade I against work charge post. While the applicant was working on that post, he was considered and promoted on regular basis as Inspector Grade I vide order dated 14-5-1991. It is claimed that in the seniority list his position was shown as Inspector Grade I working since 23-3-1988. However, by order dated 12/20-11-1993 some of the juniors, in Inspector of Works Grade I were promoted as Assistant Engineers though he was amongst the seniormost. Aggrieved by which he filed a representation for correcting his position in seniority list. D.R.M. (Personnel) vide his letter dated 7-3-1994 referred the matter to the HQs Office to remove anomalies which had crept up with regard to the seniority of the applicant. The applicant also made a representation to General Manager (Personnel) on 9-3-94 ^{of} for being permitted to appear for selection/Assistant Engineer provisionally so that he may prove his worth. A copy of the application is Annexure-9 to the OA. The claim of the applicant about seniority, however, was rejected on 14-6-1994 saying that his seniority can be counted only from 13/20-4-1992 in Inspector Grade I. However, this order was corrected by a subsequent order dated 10-8-1994 (Annexure-15 to the OA) and the applicant informed that his seniority as Inspector Grade I shall be counted from 14-5-1991 when he was regularly selected for Inspector of Works Grade I in pay scale of Rs.2000-3200.

3. Learned counsel for the applicant has submitted that ^{as} the applicant was regularly working on the post of



Inspector Grade I from 23-3-1988 his seniority should be counted from that date. It has also been submitted that on account of the illegal action of the respondents the applicant has been deprived of the chance of promotion as Assistant Engineer in 1993 when his juniors were promoted on 12-11-1993. It is claimed that in the list (Annexure-8) persons shown from Serial Nos.8 to 16 were junior to the applicant. Counsel for the applicant has further submitted that if the applicant was allowed to appear in the next selection which he certainly would have crossed and promoted as Assistant Engineer w.e.f.17-6-1994. Learned counsel also informed that the applicant has retired as Assistant Engineer on 31-12-2001. Sri DC Saxena, counsel for the respondents on the other hand has submitted that the applicant cannot be granted relief of promotion from the date his juniors were promoted as none of the juniors have been impleaded as party in the OA. It is submitted that the OA is liable to be dismissed on this ground alone. He has also submitted that the applicant had not passed written test and viva voce for being promoted as Assistant Engineer. Hence, he is not entitled for the relief.

4. Sri DC Saxena, has also relied upon the judgement of the Hon'ble Supreme Court in the case of Neku Verma and Others Vs. Amma Ram Vadehra and Ors, 2002 SCC (L&S) 55.

5. Learned counsel for the applicant on the other hand submitted that in the facts and circumstances of the present case as the applicant was in fact aggrieved by action of respondent authorities of the Railway, the juniors who were promoted were not required to be impleaded. He has placed reliance in case of Rajbir Singh and Others Vs. UOI and Ors, 1991 SC 518.



6. We have carefully considered the submissions of the counsel for the parties. Learned counsel for the applicant has claimed that the applicant's seniority should be counted from 23-3-1988 when he was given officiating chance on work charge post. The basis of the claim is that the applicant was continuously working on the said post when he was regularly selected on 19-5-1991. This claim of the applicant cannot be accepted. The legal position is well settled that period of service as ad hoc or against the work charge post cannot be counted for the purposes of seniority. The petitioner has been working as Inspector of works since 14-5-1991 and he was entitled for seniority from the said date, which has been accepted subsequently by respondents vide order dated 10-8-1994.

7. The applicant has, however, suffered on account of wrong determination of his seniority by the respondents as they had taken that the applicant is entitled for seniority from the dated 13/20-4-1992. Labouring under this mistaken impression the applicant was not allowed to appear in the selection held earlier when his juniors appeared and were selected as Assistant Engineers. Thus, on account of the illegal determination of seniority the applicant suffered for the period 12/20-11-1993 to 17-6-1994 when he was promoted as Assistant Engineer. As the applicant has already retired from service, he can only be compensated in terms of money.

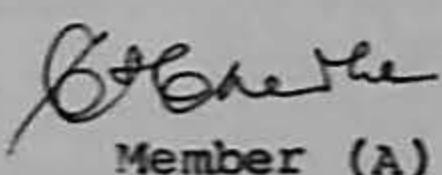
8. The objection of the learned counsel for the respondents that the applicant is not entitled for relief as his juniors who were promoted in 1993 have not been impleaded, cannot be accepted in the circumstances of the present case. It has also been submitted that the applicant has not served during the period as Assistant Engineer. However, the position in the present case is that the applicant suffered on account of the wrong committed by the respondents. In the normal course, he would have

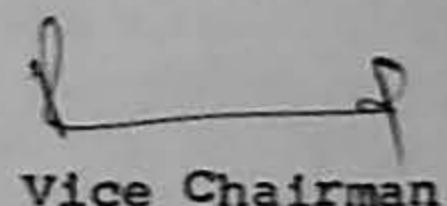


got promotion alongwith his juniors in November, 1993. It cannot be pleaded now that he had not passed examination then. He made an application for correcting his seniority and also requested that he may be permitted to appear in the selection test provisionally but his request was turned down. In the next selection and in the first opportunity he proved his worth and came out successful and was promoted as Assistant Engineer. In these circumstances, it is not open to respondents to say that the applicant is not entitled for the relief as he had not passed the test and had not worked. Both the aforesaid failings were on account of action of the respondents and the applicant cannot be held responsible for the same.

In our opinion, the applicant is entitled for the relief.

9. For the reasons stated above, this OA is allowed in part. The respondents are directed to treat the applicant having been promoted alongwith his juniors on 12/20-11-1993 and pay him dues of salary for that period and his further salary be accordingly revised and the arrears shall be paid. He shall be also entitled for revision of the pension on account of the aforesaid change. This order shall be given effect within a period of six months from the date a copy of this order is produced before the respondents. There shall be no order as to costs.


Member (A)


Vice Chairman

Dube/