

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No. 944 of 1999

This the 8/4 day of April, 2005

HON'BLE MR V.K. MAJOTRA, VICE CHAIRMAN
HON'BLE MR. A.K. BHATNAGAR, MEMBER-J

Balendu Pratap Singh, S/o Sri Sahat Bahadur Singh,
Presently working as Section Controller under Chief
Controller, Northern Railway, DRM's Office,
Allahabad.

.....Applicant.

By Advocate : Sri Sudhir Agarwal

Versus.

1. Union of India through the General Manager,
Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern
Railway, Allahabad.
3. The Senior Divisional Operating Manager, N.R.,
Allahabad.
4. U.S. Singh.
5. G.P. Sharma
6. Dilip Saraswat.
7. Tapan Chatterjee.

.....Respondents.

By Advocate: Sri A.K. Gaur.

Along with

Original Application No. 789 of 2003

Balendu Pratap Singh, S/o Sri Sahat Bahadur Singh,
Presently working as Section Controller under Chief
Controller, Northern Railway, DRM's Office,
Allahabad.

.....Applicant.

By Advocate: Sri Sudhigar Agarwal.

Versus.

1. Union of India through the General Manager,
Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern
Railway, Allahabad.

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3. The Senior Divisional Operating Manager,
N.R., Allahabad.

.....Respondents

O R D E R

BY V.K. MAJOTRA, V.C.

On the joint request of the parties, the above O.As have been taken up together for adjudication and as such are being decided by a common and consolidated orders.

O.A. no. 944 of 1999

2. The applicant has assailed impugned orders dated 22.4.1999 and 24.6.1999 passed by the D.R.M., Allahabad whereby his request for empanelment to the post of the Section Controller in the grade of Rs. 5500-9000/- (RSRP) in the panel declared on 31.7.1997 on the basis of revised seniority list decided on 6.5.1998 has been rejected.

3. The learned counsel of the applicant pointed out that the applicant's earlier O.A. namely 201 of 1995 was allowed vide order 23.5.2002. Therein, applicant had sought quashment of panel for the post of Section Controller formed as per notification dated 22.6.1990 and directions to the respondents to provide opportunity to the applicant to appear in the related selection. Respondents were directed to promote the applicant on notional basis from the date his junior had been promoted with consequential benefits subject to clearing the selection.

4. The learned counsel brought to our attention that applicant's representation regarding his seniority was accepted and vide DRM's letter dated 6.5.1998 (Annexure-3), his seniority in the ASM cadre (Grade Rs. 1400-2300/-) (RPS) (revised 5000-8000/-) was fixed below sl. No. 150 Sri Surendra



Pratap Singh and above Sl. No. 151 Sri Uma Shanker Singh.

5. Respondents had advertised through notification dated 6.1.1997 selection for the post of Section Controller from the categories of ASM, Yard Master, Guard etc. The Written examination and the Supplementary test in this regard were to be held on 1.2.1997 and 8.2.1997. The applicant had qualified in the written test and appeared in the viva voce test. Applicant's junior Sri Uma Shanker Singh was empanelled. Applicant's name did not find place in the panel. The learned counsel contended that on rectification of the seniority of the applicant and placement of his name above Sri Uma Shanker Singh in the seniority list vide letter dated 6.5.1999, on application's representation, respondents ought to have reviewed the panel of 1997 selection and promoted the applicant as such. However, the respondents have denied applicant's claim in this regard vide the impugned orders.

6. The learned counsel further mentioned that the respondents have gone ahead with the next selection held in the year 2002, however, the applicant has failed in the written test in the selection held in the year 2002. The learned counsel contended that in terms of para 228 of IREM Vol. I, applicant should be promoted to the post of Section Controller as applicant was not so promoted due to the administrative error committed by the respondents in not allocating the correct seniority to the applicant. Now that, the applicant has been assigned correct seniority, his name should be inserted in the panel above his junior Sri Uma Shanker Singh and the applicant should be promoted as Section Controller with all consequential benefits. The learned counsel relied on AIR 1991 SC 1171 in re. R.M. Ramaul Vs. State of Himachal Pradesh & Others. In that case, vide order of Hon'ble Supreme Court

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complainant's seniority in service was restored, H.P. Tourism Development Corporation granted notional promotion to the complainant without any monetary benefits. The Supreme Court made it clear that promotion for the relevant period should be accompanied by monetary benefits.

7. On the other hand, the learned counsel for the respondents pointed out that applicant seeks promotion to a selection post. The applicant had represented regarding his seniority on 17.11.1997 after declaration of the panel of Section Controller on 31.7.1997. The decision on his representation and seniority was communicated to him on 6.5.1998 when the panel for the year 1997 had already been put into effect. Thus, applicant cannot be given benefit of seniority revised at a later stage than the selection which have been completed earlier. The learned counsel also confirmed that the applicant had appeared in the selection conducted in the year 2002 as well, but he did not qualify in the written test.

8. The learned counsel of the respondents has produced the records related to 1997 selection. We have carefully gone through these recodes. We find that these records neither include "notes portion", nor the sheets showing the marks obtained by the candidates including the applicant in the written and viva voce tests. These records on page 198 show have a memorandum dated 31.7.1997 indicating the names of the candidates who have been put in the provisional panel. Of course, this memorandum does not include the name of the applicant. In the absence of notes portion as also the sheets indicating marks of candidates including the applicant in the written and viva voce tests, we have to draw an adverse inference against the respondents. Whether or not the applicant made the grade for inclusion in the panel, it could have

been ascertained only from the sheets indicating the comparative marks of the candidates. Concealment of these relevant portion from us, compels us to draw an adverse inference against the respondents. Thus, it leads us to inhabitible conclusion that the applicant had made the grade on the basis of marks obtained by him in the written and viva voce tests. The respondents have resorted to methodology concealment of the relevant records to establish their stance that the applicant had failed in selection. We deprecate the unfair conduct of the respondents in concealing the relevant records from us.

9. Para 228 ibid as follows :-

"Erroneous Promotions:- (1) Sometimes due to administrative errors, staff are overlooked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types:-

- (i) Where a person has not been promoted at all because of administrative error and;
- (ii) Where a person has been promoted but not on the date fromwhich he would have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should be on promotion be assigned correct seniority vis-à-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion made be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts."

10. The import of para 228 ibid is that due to the administrative error on the part of the respondents applicant's seniority remained subdued, however, respondents corrected the administrative error and

allocated the correct seniority to the applicant. From the above discussion, our conclusion is that though the applicant deserved inclusion in the panel on the basis of marks obtained by him, he was excluded from the panel due to his wrong seniority. In terms of para 228, therefore, he has to be considered for promotion from the date his junior Sri Uma Shanker Singh was promoted.

11. Whereas para 228 ibid mandates that on rectification of the administrative error, the consequential promotion should be on proforma basis and he should not be granted any arrears on this account, duties and responsibilities of the higher post not having been shouldered. The ratio of the case of R.M. Ramaul would not be applicable to the instant case as the present case relates to Railways and the provisions of para 228 would govern it.

12. Having regard to the above discussions and in the facts and circumstances of this case, order dated 22.4.1999 and 24.6.1999 are quashed and set-aside. The respondent no.2 is directed to include the applicant's name in the panel dated 31.7.1997 for the post of Section Controller above the name of U.S. Singh who has been shown at Sl. No. 16 and below the name of Sri P.M. Tripathi Sl.No. 15. It is made clear that the applicant's promotion shall be on proforma basis from the date his junior was promoted. The enhanced pay would be allowed to the applicant from the date of actual promotion and no arrears on this account shall be payable.

13. The O.A. is allowed in the above terms, however, without any costs.

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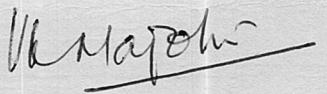
O.A. no.789 of 2003

14. The applicant has challenged his transfer order (Annexure-1) dated 17.4.2003 whereby he has been transferred as ASM to Bindki Road. The basic ground for attacking the transfer orders is that his request for correction of seniority has not been acceded to and that O.A. No. 944 of 1999 seeking empanelment to the higher post is still pending.

15. As discussed above, applicant has now been accorded the claimed seniority in the cadre of ASM and O.A. no. 944 of 1999 has also been allowed as above. The learned counsel of the applicant has not denied liability of transfer. But now that the applicant is being promoted in terms of orders in O.A. no. 944 of 1999, the impugned order of his transfer to Bindki Road would become ineffective and are quashed and set-aside. The respondents may decide about the applicant's posting on promotion appropriately under the rules, instructions and related policy. This O.A. is disposed of accordingly..


MEMBER-J

GIRISH/-


VICE CHAIRMAN
8.4.05