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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 4th DAY OF April 2011)

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Original Application No 1553 of 2002.

(U/S 19, Administrative Tribunal Act, 1985)

J.N Pandey, son of late Shri Jagat Narain Pandey, working as Senior Section Engineer (SSE) (Signal), Head Quarter Office, N.C.R. Allahabad.

..... ***Applicant***

Present for Applicant : **Shri B.P. Yadav**

Versus

1. General Manager (P) Head Quarter Office, Northern Railway Boroda House, New Delhi.
2. Divisional Railway Manager (P), Northern Railway, Allahabad.

..... ***Respondents***

Present for Respondents : **Shri S.K. Rai**

OR D E R

(Delivered by Dr. K.B.S. Rajan, Member (J).)

The brief facts of the case are that the applicant joined the Railway Services on 5.4.1973 and is presently working as SSE (Signal) in the pay scale of Rs. 7450-11,500/-. Due to pendency of certain Court case, instead of regular promotion, only adhoc arrangements were made vide letter dated 18.5.1994 (Annexure No. 2) and the applicant joined Signal Inspector (SI) grade I in the pay scale of Rs. 2000-3200/-. The services of the applicant as Signal Inspector Grade I were also confirmed with effect from

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1.3.1993. The applicant was also declared qualified in the written test held on 9.6.2001 in connection with selection for promotion to Group 'B' service against 30 percent vacancies in the Signal and Telecommunication department. In upgradation list of Signal Inspectors, the name of applicant was however, exempted. In spite of representation by the applicant, the said seniority list was not corrected. Vide letter dated 6.6.1997 panel of Signal Inspector in the pay scale of Rs. 2000-3200 with effect from 1.1.1993 was published and the name of the applicant finds place at Serial No. 23 (Annexure No. 5). Vide letter dated 26.6.1997, a provisional seniority list of Section Engineer/Signal Inspector in the pay scale of Rs. 2000-3200/- was published calling upon objections. In the provisional seniority list, the name of the applicant finds place at Serial No. 67 and the name of Shri G.N Tiwari and Shri R.C. Pandey found place at Serial Nos. 78 and 79 (Annexure No.8). However, in the provisional combined seniority list of S & T Inspectors department for the purpose of ASTE against 70 percent promotion quota vide order dated 12.10.2001, the name of the applicant finds place at Serial No. 265, whereas name of Shri G.N. Tiwari and Shri R.C. Pandey placed at Serial Nos. 171 and 172 respectively, who were juniors to the applicant in the list dated 26.6.1997 (Annexure No. 10). The applicant has filed objection on 30.10.2001 which is still pending before the respondent NO.2. The applicant approached this Tribunal by filing an Original Application No. 445 of 2002, which was finally disposed of vide order dated 26.4.2002 with a direction to consider the representation (Annexure NO.12). The respondent No.2 has decided the representation vide order dated 10.10.2002, whereby

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the persons shown above the applicant in the seniority list, has been placed below the applicant but applicant has not been given promotional benefits with effect from 24.5.1994. The order dated 10.10.2002 denies the promotional benefits to the applicant with effect from 24.5.1994. Aggrieved by this, the applicant has filed the present O.A. seeking the following relief(s):-

- "(i) to issue a direction for quashing the impugned order dated 10.10.2002 passed by respondent No.1 and communication letter dated 31.10.2002 issued by the respondent No.3.*
- (ii) to issue a direction to the respondents to prepare the seniority list of the applicant from the date of joining the job since when applicant is working in the pay scale of Rs. 6500-10500/- with effect from 24.5.1994 with all consequential benefits.*
- (iii)*
- (iv)"*

3. Respondents have contested the O.A. wherein it has been stated in the year 1990, a selection for the post of SI 1 scale Rs. 2000-3200 (RPS) was conducted to fill up 30 posts. 30 candidates qualified in the said test. The viva voce test was conducted on 18.1.1991. A provisional panel of 20 candidates was issued on 16.4.1991 and 23.4.1991. After issuing of the provisional panel, certain irregularities were noticed in selection procedure and on the basis of this, action to cancel the selection was being initiated. In the meantime, some candidates who were borne on the provisional panel issued on 16.4.1992 had filed an application before Principal Bench of this Court at New Delhi vide O.A No. 4597 of 1991 and 1342 of 1995 for directing the respondents to implement the panel of SI -I scale of Rs. 2000-3200 (RPS) issued on 16.4.1991 and 23.4.1991, and this Hon'ble Court (Principal Bench, New Delhi) restrained the respondent from cancelling the panel. Since there were large number of vacancies and administrative work was affected as such, it was decided to

promote the Senior person purely on adhoc basis with clear instructions that they will not confer any right to claim such promotion in future. Thereafter the Principal Bench of the Tribunal vide order dated 8.12.1995 dismissed the O.A. and also vacated the stay order already granted. As a result of re-structuring in the cadre of SI-I scale Rs. 2000-3200 (RPS) w.e.f. 1.3.1993, 39 senior most SI-II scale Rs. 1600-2660 (RPS) were promoted with immediate effect vide office order dated 11.6.1997. The applicant in this O.A. was also promoted in the scale of Rs. 2000-3200 (RPS) w.e.f. 11.6.1997. The criterion of the seniority on adhoc promotion is not correct in terms of the instruction contained in para 203.5 of the IREM (Vol-I). It is, however, stated that on the objection of the applicant, combined seniority issued on 12.10.2001 has been corrected by taking the regular service of his juniors in accordance with the instructions. However, in so far as inter-se seniority for the purpose of examination for further promotion is concerned, as per Rule 203.5, only regular service would be taken in to account and the same rule had been followed in this case.

4. Arguments were heard and documents perused. As certain clarification was required as to the holding of DPC prior to 1997, the respondents were directed to provide information of the same but the respondents could not furnish the same as the records were stated to be not traceable.

5. The matter is needs deep consideration. The applicant and certain others qualified in 1991 written examination and viva voce for the post of signal inspector Gr. I and due to certain irregularities, the same was to be cancelled. This forced some of

the selected candidates to move the Principal bench and the Principal Bench directed stay of operation of the proposed cancellation. It was at that juncture that the applicant and others were promoted purely on ad hoc basis. When the Principal Bench decided the OA by dismissing it and vacated the stay, by that time the process of restructuring came into existence where the policy was promotion by way of modified selection procedure.

6. In so far as fixation of seniority is concerned, both the impugned order as well as the counter filed by the respondents reflect that while determining the seniority of the juniors to the applicant, initially, their ad hoc promotion was taken into account while in the case of the applicant, his regular promotion had been taken into account and when the applicant filed the OA No. 445 of 2002 as per the order in that OA respondents considered the representation and brought the names of ~~the~~ those whose ad hoc promotion was taken into account down the applicant's name. In other words, the dates of regular promotion decided the seniority in the grade of Signal Inspector Gr. I. In so far as inter-se seniority amongst signal inspector Gr. I is concerned, his grievance has been rectified.

7. The applicant would have been satisfied if this seniority alone is the deciding factor for further promotion. That is not the case. Here comes the confluence of various other streams for promotion to the next higher grade of Group B post and the same calls for an integrated seniority of various posts. Whereas in other streams promotions on regular basis took place properly, in so far



as the post of signal inspector Gr. I is concerned, the same was to be preceded by ad hoc promotions for a substantial period, which had an adverse impact as such of the signal inspectors Gr. I who were promoted on ad hoc basis initially followed by regular promotion were made junior to many in the other streams. It is this act of the respondents, which has been challenged by the applicant.

8. When restructuring took place in 1993, and all the upgradations were based on such restructuring, for maintaining uniformity the date of upgradation or promotion as the case may be should have been simultaneous, especially when for the next promotion, there would be a combined seniority of persons of same grade from different streams. The contention of the applicant is that since he had been holding the post of Signal Inspector Gr. I from 24-05-1994, his seniority should reckon from the said date.

9. The contention of the applicant cannot be marginalized as it has full substance. When a common seniority is prepared, due to certain impediments, promotion to signal inspectors Gr. I was made on ad hoc basis, while for the other corresponding posts, promotions were made on regular basis, while working out the common seniority, the seniority should be suitably designed. Rule 203.5 of the IREM Vol. I provides the guidelines for fixation of seniority and the same reads as under:-

"203.5. Since employees from the different streams will be eligible to appear for the selection, their integrated seniority for purposes of the selection should be

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determined on the basis of total length of non-fortuitous service rendered in grade Rs 2000-3200 (RS) and above. In other words the date of appointment to the grade Rs 2000-3200 (RS) on a non-fortuitous basis will be the criterion."

10. In preparing the seniority list, the respondents have adopted the above rule. However, the peculiar situation that had occurred whereby regular promotion in respect of Signal Inspector Gr. I was to be deferred had not been kept in view while preparing the integrated seniority. It would have been a different matter if the ad hoc promotion were due to certain other contingencies. Had there not been the court case and had the promotions on regular basis taken place at the appropriate time, the signal inspectors Gr. I would not have suffered the set back in their seniority position in the integrated seniority as they face now. It might be that the promotion on regular basis was not by holding separate DPC but the earlier DPC recommendations would have been adopted for promotion on regular basis. It was to ascertain the same that the Tribunal called for information as to the DPC held prior to 1997 but the records were not readily traceable. Since the restructuring was the basis for promotion, and the same is uniform to all the categories, there is no justification in postponing the regular promotion of Signal Inspectors Gr. I (as the same would have had a telescopic negative impact in their future promotion prospects) and the period of ad hoc promotion should be deemed regular promotion to the post of Signal Inspector Gr. I. Thus, it is not only the applicant but others similarly situated would also be deemed to

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have been promoted on regular basis from the date of their ad hoc promotions.

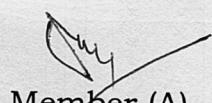
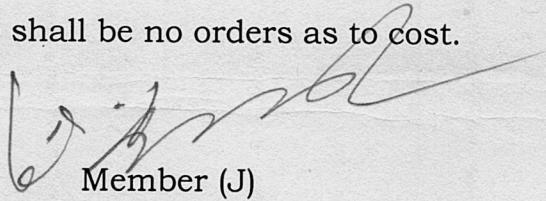
11. The **O.A. Is therefore, allowed.** It is declared that the applicant and others similarly situated signal inspectors Gr. I are deemed to have been promoted on regular basis right from the date of their ad hoc promotion to the said grade. The integrated seniority list prepared for promotion to the Group B post shall be rescheduled accordingly and promotion to the said Group B post made in 2001 or thereafter, should be reviewed by holding review DPC and based on the DPC recommendations, such signal inspectors Gr. I would be promoted to the higher post. The applicant and others similarly situated would, on promotion, be entitled to notional fixation of pay while their actual pay would be from the date they hold the higher responsibilities. In all expectation many of them would have been promoted to the higher grade and thus, they would be entitled to the arrears of pay and allowances w.e.f. the date they were holding the higher promotional post. However, it is made clear that in view of the review DPC, if some of the other individuals promoted to the higher grade are to be reverted, the respondents shall not revert them but accommodate them in supernumerary posts but their seniority would undergo due changes.

12. This order has been issued invoking the powers of the Tribunal as contained in Rule 24 of the C.A.T. Procedure rules, 1987 to secure ends of justice to the applicant as well as others similarly situated.

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13. This order shall be complied with, within six months from the date of communication of this order. Further time if required, would also be considered subject to due applications made in advance prior to the expiry of the period of six months.

14. Under the circumstances, there shall be no orders as to cost.


Member (A)
Member (J)

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