

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 1104 of 2003

Allahabad this the 16th day of January 2012

**Hon'ble Mr. Justice S.C. Sharma, Sr. J.M./HOD
Hon'ble Mr. Shashi Prakash, Member (A)**

Karam Chand, S/o Late Bhagwan Das, R/o Shakti Colony, Post
Arogya Mandir, Basaratpur, Gorakhpur.

Applicant

By Advocate: Sri Ashish Srivastava

Versus

1. Union of India through Secretary, Ministry of Railway, Railway Board, Rail Bhawan, Govt. of India, New Delhi.
2. General Manager, North Eastern Railway, Gorakhpur.
3. Chief Personnel Officer, North Eastern Railway, Gorakhpur.

Respondents

By Advocate: Sri Prashant Mathur

ORDER

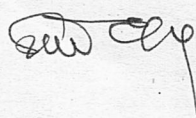
By Hon'ble Mr. Justice S.C. Sharma, Sr. JM/HOD

Instant OA has been instituted for the following relief

(s): -

"i) That this Hon'ble Court may be pleased to set-aside the order dated 8-1-2003 (Annexure A-1 to this original application with compilation No. I)

ii) The remarks Column in the seniority list dated 1-4-2001 (Annexure A-10 to this original application with compilation No.



1), may kindly be set-aside and the petitioner may be given seniority w.e.f. 9-8-1989.

iii) The respondents No. 2 & 3 may be directed to accord the seniority to the petitioner on the post of Chief Advertising Inspector (Commercial) w.e.f. 9-8-1989 since the date of his joining and respondents may also be directed to fix the seniority on the post of Asstt. Commercial Manager after 1989, as per the Railway Board's Circular dated 15-10-1990, the selection ought to have taken place immediately after 1989 which the respondents did not held.

iv) Respondents may also be directed to grant seniority from 31-5-1996 on the Gazetted Post.

v) Any other relief, which this Hon'ble Tribunal deem fit and proper in the circumstances of the case may be given in favour of the petitioner.

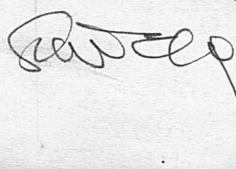
vi) Copy of the petition may be awarded in favour of petitioner."

2. The facts of the case may be summarized as follows:

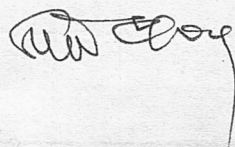
It has been alleged by the applicant that after following the due process of taking Written Examination followed by the Viva Voce test, he was selected for promotion on the post of Chief Advertising Inspector from the post of Senior Advertising Inspector (for short SAI) vide letter dated 26.12.1984. In pursuance of restructuring of the cadre w.e.f. 01.01.1979 applicant was also selected for the post of Chief Advertising Inspector (for short CAI) vide letter dated 26/27-12-1984. His seniority was also fixed

Saxena

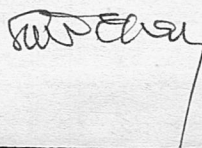
in the cadre of CAI vide letter dated 26.09.1985 as on 01.04.1985, and he was placed at serial No. 2. Another seniority list was also issued on 03.05.1988, in which applicant was placed at serial No. 1 in the cadre of CAI. The next promotion of Chief Advertising Inspector/Chief Publicity Inspector is in Group 'B' cadre i.e. Public Relation Officer (hereinafter referred to as PRO). Three posts were sanctioned for the PRO Group-B cadre in the pay scale of ₹ 2000-3200/- vide notification dated 19.04.1989 in the Public Relation Organization. The respondent No. 3 issued an order on 09.10.1990 through which two posts of CAI in the pay scale of ₹ 2000-3200/- and one post of SAI in the pay scale of ₹ 1600-2660/- were up graded in the cadre of PRO. But on 02.05.1989 an order was issued in order to de-link the work of commercial publicity from the Public Relation Organization, and was placed in Commercial department. In view of this order, it was directed to take immediate action to place the staff at present exclusively dealing with commercial activities in Public Relation Organisation. The non-gazetted staff of PRO was transferred under Commercial Wing along with the post with immediate effect. The applicant was also transferred to Commercial Wing in the pay scale of ₹ 2000-3200/-. After the transfer of applicant in Commercial Wing, under the control of



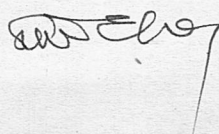
Chief Commercial Officer as a non-gazetted staff, in view of order dated 19.04.1989 read with order dated 09.10.1990, the only post of PRO for commercial wing ought to have been filled amongst the eligible candidates as per seniority as on 01.04.1988 in the cadre of CAI. The applicant was the senior most CAI and, as such, he was fully entitled for promotion on the post of Public Relation Officer. A selection was conducted to fill up Group 'B' post from 19.04.1989 to 06.08.1992, and the gazetted post of PRO (Commercial) was illegally filled vide order dated 11.05.1989 by posting of Sri R.P. Shukla and Shri S.D. Rajput, who were not the member of Commercial Wing. Thereafter, another order was also issued on 03.10.1989 through which Sri V.C. Tiwari was given promotion on officiating basis on the post of PRO (Commercial). It is alleged that the applicant belongs to SC community and was fully eligible to be promoted on the post of PRO (Commercial) being senior most CAI. After the bifurcation of aforesaid two wings in PRO cadre, the respondent No. 1, in order to check the irregularity, on 15.10.1990 has issued a directive where it has been specifically directed that the Group 'B' post of PRO are to be filled by promotion amongst the eligible group 'C' staff of Public Relation department. For holding selection of the PRO (Commercial)-Group 'B' cadre, the post of CAI is the



feeding cadre. However, vide order dated 15.09.1992, a direction was given by the Tribunal in an O.A. to permit the applicant to appear in the examination but no selection was held by the respondents at that time, and on ad hoc arrangement much junior person to the applicant Sri B.N. Singh was promoted from the Publicity Branch. A notification was issued on 10.08.1992 for selection of the Assistant Commercial Manager Group-B against 75% of vacancies along with the list of candidates appearing for selection, and the applicant's name was shown at serial No. 1. It was also provided in the Notification that all the general candidates from list 'A' and 'B' shall be imparted one week training and all the SC & ST candidates will be given 20 working days training before the written test. It is claimed that sufficient time was not allowed to the applicant to impart training of 20 working days and the applicant had only attended 4-5 working days' training before commencement of examination hence he could not succeed in the examination, and it is also claimed that the applicant was compelled to participate in the examination without completing the training. No test was conducted for about three years, and after expiry of three years vide notification dated 31.05.1996 a selection was conducted of Assistant Commercial Manager of Group 'B' against 75% vacancies but the applicant's name was not shown in the



list of eligible candidates. However, a memo was received by the applicant surprisingly on 28.10.1996 in order to relieve the applicant for appearing in the written test of 27.10.1996. But the applicant could not appear in the test. Thereafter, he appeared in the absentee test on 03.11.1996, and at that time also 20 working days training was not imparted to the applicant, and hence he could not get success and the training was must. After a lapse of 13 years, the tentative seniority list of Commercial Inspector was published vide notification dated 01.04.2001, and in that list applicant's date of promotion was shown as 20.05.1983/01.03.1993. It was also commented in the remark column that the proforma seniority in the cadre of CAI has been given w.e.f. 20.05.1983. The post ought to be filled on the basis of seniority but the seniority of the applicant was not fixed in the Commercial Wing and he could not get the marks of seniority. Hence, the selection of 1993 was not according to rules. Thereafter in 1995, the selection of PRO Group 'B'/Assistant Commercial Manager was held but since the seniority of applicant in Commercial Wing was not finalized and, as such, applicant did not appear in the said examination. Thereafter, also a competitive selection was conducted and the applicant appeared in the selection, and he was selected but earlier the applicant



could not be promoted as the seniority list of Commercial Wing was not published of non-gazetted staff hence, applicant has been deprived. The applicant filed O.A. No. 1444 of 1994 claiming his seniority w.e.f. 1994 as the applicant has been discriminated at the cost of juniors. The applicant was promoted in Group 'B' on 03.09.2001, and the O.A. was disposed of by giving a direction to the respondents to consider the matter of seniority of the applicant in the cadre of Assistant Commercial Manager (for short ACM) as per rules but the claim of applicant has been rejected hence, the O.A.

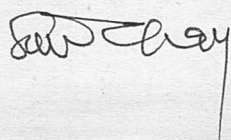
3. The respondents contested the case, filed the Counter Reply and denied from the allegations made in the O.A. It has further been alleged that the impugned order was passed as per directions of the Tribunal in the earlier OA after providing full opportunity to the applicant. It has further been alleged that the staff of PR department dealing with Commercial publicity works has been transferred in Commercial department under the administrative control of Chief Commercial Superintendent, Gorakhpur along with the post held by them with immediate effect vide letter dated 09.08.1989. As a result of above de linking of the cadre of Commercial publicity wing from PR department to Commercial



department, the applicant being the senior most-SAI has opted to join in commercial department and accordingly he was transferred to Commercial department vide letter dated 09.08.1989. As per rules, once the applicant has opted for rendering his duty in the Commercial department thereafter, again the applicant cannot claim promotion in the PR department as a PRO-Group 'B' cadre post, which is barred by the Principle of Estoppel. The applicant joined in the Commercial department on 09.08.1989 and after joining in the Commercial department, applicant was not entitled to be promoted in the PR department. The post of Group 'B' will have to be filled by the senior most eligible candidates of the PR department. The applicant was entitled only for the post of PRO Group-B in Commercial department but this post was not vacant since 31.05.1984 as Sri B. Ram was working on that post. S/Sri R.P. Shukla and S.D. Rajput were not permanently posted as PRO. There was no vacancy at the time of their post^{ing}. Sri RP Shukla belongs to ACM cadre and Sri Rajput belongs to Personnel cadre. Therefore, Sri Rajput and Sri Shukla were posted as PRO temporarily. The post of PRO Group 'B' could not be filled up due to dispute of seniority in the PR department and the vacancy of PRO Group B was existing at that time. The Group 'B' post of PRO was filled on ad hoc basis as



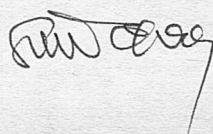
per administrative necessity of PR department was considered for ad hoc promotion. Sri Karam Chand-applicant was senior most staff but he had opted to work in Commercial department before ad hoc promotion for the post of PRO (Group-B), therefore, he was not considered for the post of PRO (Group-B). A notification was issued for selection of Group 'B' post of PRO on 06.08.1992 but Sri Karam Chand was not eligible at that time for the post of PRO (Group-B) because he was working on the post of CAI in Commercial department. It is wrong to allege that the pre-selection coaching was not provided to the applicant. After taking the training of seven days, applicant gave a written consent on 02.05.1993 that he does not require further training. His consent is on record. In the year 1993, in the selection of ACM Group-B, applicant did not qualify the written examination. Afterwards applicant was called in the Absentee Written Test of the selection for the post of ACM (Group-B) but he did not appear in the Absentee Written Test held on 23.11.1996. In the seniority list dated 01.04.2001 of Commercial Inspector, the date of applicant's promotion has been shown as 20.05.1983/01.03.1993. It is clarified about the both dates that 01.03.1993 is the date of actual promotion of the applicant in the pay scale of ₹ 2375-3500/- and the date



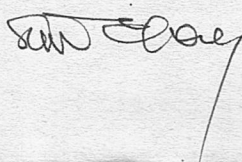
20.05.1983 is the date of proforma promotion of the applicant in the pay scale of ₹ 2375-3500/- for the purpose of seniority in the scale of ₹ 2375-3500/-. In Group - B selection of ACM held in 1993 and 1996, the applicant was called to appear in selection in spite of seniority dispute, therefore, he did not suffer any loss but he was called for selection when he was eligible. In the year 1995, the applicant was not eligible for the post of PRO/Group-B because he had been working in the Commercial department and hence he was not considered for ad hoc promotion. As the applicant in the earlier examination did not qualify the written test hence he was not selected. Thereafter, he appeared and was selected. It is claimed that the OA lacks merits and is liable to be dismissed.

4. Rejoinder Affidavit has also been filed on behalf of the applicant in response of the Counter Reply-filed by the respondents, and the applicant in the Rejoinder Affidavit reiterated the facts which have already been alleged in the O.A. Supplementary Affidavits have also been filed by the parties, which shall be discussed at the relevant place.

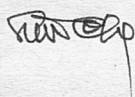
5. We have heard Sri Ashish Srivastava, Advocate for the applicant and Sri Prashant Mathur, Advocate for the respondents, and perused the entire facts of the case.



6. From perusal of pleadings of the parties, it is evident that it is admitted fact that the applicant was selected for promotion on the post of CAI from the post of SAI, and the benefit has also been given of restructuring of the cadre w.e.f. 01.01.1979 along with consequential benefits. An office order was also issued on 26/27-12-1984 to that effect. In the seniority list of the cadre of CAI dated 26.09.1985, as on 01.04.1985, applicant was placed at serial No. 2 and thereafter in the seniority list issued on 03.05.1988, as on 01.04.1985, he was shown at serial No.1. It has also been alleged that the next promotional post of CAI/Chief Publicity Inspector is Group 'B' cadre i.e. PRO. It is also an admitted fact that on 02.05.1989 respondent No. 1 issued an order by which the commercial publicity work was delinked from the Public Relation Organization, and was placed in the Commercial department. The applicant, as stated above, belongs to the Advertising Wing and he had been promoted on the post of CAI. Earlier, the Advertising and Commercial Wings were the same under the control of Public Relation Organization but w.e.f. 02.05.1989 the wing of Commercial Publicity was de-linked from PRO Organization. It is undisputed facts that the applicant was transferred under the Commercial wing in accordance with the earlier order. His post remained the same after



transfer to the Commercial wing as of CAI. But it has been alleged by the applicant that the only post of PRO for Commercial wing ought to have been filled amongst the eligible candidates as per seniority and as the applicant was senior most CAI hence he was entitled and eligible for promotion on the post of PRO. The gazetted post of PRO (Commercial) was created on 04.05.1989 but it has been alleged by the applicant that these posts were illegally filled up by the outsiders, who were not the members of Commercial wing namely Sri R.P. Shukla and Sri S.D. Rajput. The ad hoc promotion was also given to Sri V.C. Tiwari on the post of PRO (Commercial). But the respondents alleged that as a result of de linking of Commercial Publicity Wing from Public Relation department, the applicant-senior most SAI had opted to join in Commercial department, and accordingly he was transferred to Commercial department vide letter dated 09.08.1989. Once the applicant has opted for Commercial department then thereafter he had no link and he cannot claim promotion in the Public Relation department. The applicant was entitled only for promotion in his wing of Commercial department. But in the Commercial department there was no vacancy since 31.05.1984 and Sri B. Ram was working against this post. There was no vacancy of ACM/Group-B at the time of their posting and



S/Sri R.P. Shukla and Sri S.D. Rajput belong to Personnel cadre and hence they were promoted temporarily as PRO. It has also been alleged by the respondents that there was dispute of seniority in the Public Relation department. Before ad hoc promotion on the post of PRO, the applicant opted for Commercial department and hence ad hoc promotion was not given to the applicant. It has also been alleged that the notification was issued by the respondents on 06.08.1992 for taking selection for Group 'B' post of PRO but at that time applicant was not eligible for the post of PRO (Group B) because he was working on the post of CAI in the Commercial department.

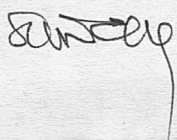
7. Under these circumstances, it is to be decided that whether the applicant was eligible for promotion on the post of PRO (Commercial)-Group 'B' post while working in the Advertisement Wing of the Commercial department. It has been alleged by the applicant that the gazetted post of PRO Commercial was created on 04.09.1989 but it has been alleged on behalf of the respondents that there was dispute of seniority in the Commercial wing and hence no selection could be made and the selection was conducted in the year 1992 and at that time applicant was not eligible for promotion. The applicant also alleged that no selection was conducted in order to fill up the Group-B



post from 19.04.1989 to 06.08.1992. Sri R.P. Shukla and Sri S.D. Rajput were ordered to work on the post on ad hoc basis and they were not promoted regularly. It has been alleged by the respondents that the post of PRO is to be filled up from the Personnel wing and not from the persons of Commercial wing. The Advertisement and Commercial were delinked and separate wing was created hence there was dispute of seniority. It has been alleged by the applicant that after bifurcation of two wings in Public Relation Officer, the respondents given promotion as PRO by transferring from other department like Personnel and Commercial, and thereafter directive was issued by the respondents in order to fill up the Group 'B' post of PRO from amongst the Group 'C' staff of Public Relation department, and for the post of PRO (Group B), the CAI was the feeding cadre. It has also been argued by learned counsel for the applicant that the applicant was ^{permitted} ~~promoted~~ vide order of the Tribunal dated 15.09.1992 to participate in the examination for selection of PRO but for the reasons best known to the respondents they have not conducted a selection at that time, and ad hoc arrangement was made. A notification was issued on dated 10.08.1992 for selection on the post of ACM Group 'B' against 75% of vacancies along with the list of candidates appearing for selection, and the name of

Sanjay

applicant was shown at serial No. 1. But a notification was also issued by the respondents that all the general candidates from List 'A' and 'B' shall be imparted one week training whereas all SC/ST candidates will be given 20 working days training before the written test. The examination was scheduled to be held on 02.05.1993, and sufficient 20 working days' training was not imparted to the applicant, and only after completing 4-5 days training, applicant was forced to participate in the examination. The respondents have also admitted that for SC/ST candidates, 20 working days-pre selection coaching was to be provided, and it is also an admitted fact that 20 working days' training was not imparted to the applicant prior to conducting the selection on 02.05.1993, and the applicant has alleged that the selection made in pursuance of the written examination on 02.05.1993 is illegal as the requisite and required training was not provided to him, and it was mandatory. It has been argued by learned counsel for the respondents that it is a fact that 20 working days pre-selection coaching was not provided to the applicant prior to examination but a written consent was delivered by the applicant on 02.05.1993 and in that letter, applicant had admitted that only 7 working days' training has been imparted to the applicant in the above selection. But he also stated that



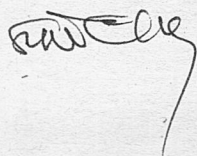
he does not require further training, and after submitting this written consent, applicant participated in the written examination on 02.05.1993. Annexure CR-2 of the Counter Reply is the consent furnished by the applicant. Hence, we disagree with the argument of learned counsel for the applicant that the selection made in pursuance of the written examination on 02.05.1993 is illegal and liable to be quashed as the mandatory pre-selection coaching of 20 working days has not been given to the applicant. As written consent was given by the applicant himself to waive this mandatory pre-selection coaching of 20 working days hence, applicant consented to it and appeared in the selection fully knowing this fact hence, the selection cannot be said illegal. The applicant did not qualify in the written examination hence he cannot be granted promotion in pursuance of selection conducted in the year 1993.

8. It has been argued by learned counsel for the respondents that the name of applicant was not included in the list of eligible candidate issued vide notification dated 31.05.1996 for Group-C post of ACM (70% quota) but later on Sri Karam Chand-applicant was called to appear in the written examination for selection to the post of ACM but the applicant did not appear in the absentee



test held on 23.11.1996. In spite of providing for the applicant to appear in the examination, he declined to appear and hence the applicant also cannot be promoted w.e.f. 1996 and in the selection of 1993 and 1996 some other persons were promoted to the post of ACM. It has been argued by learned counsel for the respondents that the seniority list of Commercial Inspector was issued on 01.04.2001 in which the date of applicant's promotion has been shown as 20.05.1983/01.03.1993. '01.03.1993' is the actual date of promotion of the applicant in the pay scale of ₹ 2375-3500/- and '20.05.1983' is the date of proforma promotion of the applicant, and the same has rightly been shown in the seniority list issued on 01.04.2001. There is no confusion about these dates. There had not been any violation in the matter of selection to the post of PRO Group-B.

9. It has also been argued by learned counsel for the applicant that the applicant was discriminated by giving promotion to his juniors on the post of PRO and the applicant was promoted in Group 'B' on 03.09.2001. It has also been argued that the gazetted post of PRO (Commercial) was created on 04.05.1989 and it was illegally filled vide order dated 11.05.1989 by the post of ^{ing} Sri R.P. Shukla and Sri S.D. Rajput who were not the

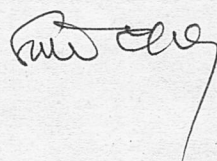


Members of the Commercial wing. Again an order was issued on 03.10.1989 by which Sri VC Tiwari was given promotion on officiating basis on the post of PRO (Commercial). These two outsiders and juniors to the applicant were illegally promoted whereas the applicant was senior most person of the Advertisement wing and promotion ought to have been given to the applicant. It has been argued by learned counsel for the respondents that S/Sri R.P. Shukla and S.D. Rajput belong to Personnel cadre and hence Sri Rajput and Sri Shukla were posted as PRO temporarily. It was stop-gap arrangement and as there was dispute in the seniority list of PRO department, and the vacancy of PRO was existing, the Group-B posts of PRO were filled on ad hoc basis. As per administrative exigency, senior most group-C persons of PR Branch have been considered for ad hoc promotion. But the ad hoc promotion was not given to the applicant on the post of PRO because earlier to that, he opted to work in Commercial department hence the applicant was not considered for the post of PRO Group -B, and that there had been no discrimination with the applicant, and the applicant was promoted in pursuance of the seniority list dated 01.04.2001. Under these circumstances, it cannot be said that any discrimination has been committed with the applicant in not giving the promotion

Subodh

as PRO (Commercial) Group B cadre in the year 1993 and 1996. In the year 1993, applicant failed to qualify the written test and the applicant himself waived the mandatory training of 20 days of pre-selection coaching. After getting 7 days' training, applicant consented to participate in the selection, and he himself volunteered to participate without getting the complete training, and earlier to that also applicant was not eligible being promoted in the year 1989. He was not eligible at that time. He opted for Commercial branch. Hence, the seniority cannot be granted for selection of 1996 on the gazetted post. In the year 1996, applicant has not qualified rather he did not participate in the selection.

10. For the reasons mentioned above, we are of the opinion that the applicant was selected in the year 2001 when he qualified the written examination. In the earlier examination of 1993, applicant failed to qualify the written examination and in the year 1996 applicant absented himself to participate in the training. There appears no illegality in the selection of PRO Group-B in the year 1993 and 1996. The applicant himself waived not to complete the pre-selection coaching of 20 days. After completing 7 days' training, applicant opted for participating in the



selection. Hence, due to these reasons selection cannot be quashed. O.A. lacks merits and is liable to be dismissed.

11. O.A. is dismissed. No order as to costs.


Member-A


Sr. JM/HOD

/M.M/