

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

O.A. 1072/1996

This the 7th day of April, 2005

**Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Mr. K.V. Prahaladan, Member (A)**

Sri Nirmal Debnath, Goods Driver,
Eastern Railway, Beliaghata, son of
Late Surja Kanta Debnath, working
Under Divisional Mechanical Engineer
(Power), Eastern Railway, Sealdah,
residing at Railway Quarter No. DKD 455/1,
Belgachia, P.O. Belgachia,
Calcutta-700037.

.... Applicant.

(By Advocate Shri A.K. Banerjee)

Versus

1. Union of India
represented by General Manager,
Eastern Railway, Calcutta,
17, Netaji Subhas Road,
Calcutta-700001.
2. Chief Personnel Officer,
Eastern Railway, 17, Netaji Subhas
Road, Calcutta-700001.
3. Divisional Railway Manager,
Eastern Railway, Sealdah.
4. Senior Divisional Personnel Officer,
Eastern Railway, Sealdah. Respondents.

(By Advocate Shri R.M. Roy Choudhary)

ORDER (ORAL)

Hon'ble Mrs. Meera Chhibber, Member (J).

By this O.A., applicant has sought the following relief:



- (a) An order directing the respondent authorities to rescind, revoke and/or withdraw the provisional combined seniority list of Senior Goods Driver and Goods Driver dated 11.6.96.
- (b) An order directing the respondent authorities to set right the anomalies of seniority of the applicant right from the post of 'Shunter' and to fix up the seniority of the applicant giving due seniority and to give all consequential benefits arising thereof.
- (c) An order directing the respondent authorities to promote the applicant to the post of Goods Driver with retrospective effect from the date his juniors were so promoted and to consider him for promotion as Passenger Driver.

2. Grievance of the applicant in this case is that even though he was promoted to the post of Shunter along with his juniors, namely, S/Shri A.K. Banerjee, Bhim Sharma, A.K. Mukherjee, Sankar Prasad, B.K. Das and Panchanan Ghosh vide order dated 13.8.1991, yet his juniors were sent for training ahead of him and were given further promotion to the posts of 'Goods Driver' earlier than him.

3. It is submitted by the applicant that he was given the punishment of stoppage of increment for one year vide order dated 20.11.1991 but subsequently the same was reduced to censure vide order dated 19.1.1993 and it is settled law that censure cannot come in the way of any one for further promotion. He was booked for promotional training course. Subsequently, in the seniority list of Goods Driver, he was shown below his juniors for reasons best known to the respondents. In the seniority list of Shunters, applicant was shown at Serial No. 67 but the juniors, as mentioned above, were given promotion ahead of him superseding him. Thus, from the stage of Shunter, his seniority has not been correctly fixed by the respondents as a result of which he has been deprived of his right illegally by the respondents. Applicant is due to be promoted for Passenger Driver from Goods Driver but since he has been deprived of his seniority, chance of his promotion as Passenger Driver is absolutely remote. Being aggrieved, he gave number of representations but since no reply was given to him, he had no other option but to file the present O.A.

4. The only argument advanced by the counsel for applicant was that since he was already promoted when the punishment order was issued and the



punishment was also reduced to censure, therefore, he could not have been denied promotion along with his juniors nor he could have been depressed in seniority by the respondents.

5. Respondents have opposed the O.A. by submitting that this O.A. is barred by limitation as applicant was superseded in 1992. He gave representation in the year 1992 but he has filed the present O.A. in 1996, that too without filing the application for condonation of delay. Therefore, this case has to be rejected, on the ground of limitation in view of the judgment given in the case of Ramesh Chand Sharma. They have further submitted that this case is bad for non-joinder of parties as he has not impleaded all those persons who are stated to have superseded him as Goods Driver.

6. On merits, they have submitted that applicant was promoted to the post of Shunter along with his juniors vide order dated 16.7.1991. Applicant was posted at Beliaghata Shed but applicant preferred an appeal for retention at his existing place of posting at Chitpur Shed. His appeal was considered by the competent authority and he was retained at his former shed at Chitpur with promotion with effect from 13.8.1991 vide Office Order dated 8.8.1991. He was given a punishment of stoppage of increment for one year vide order dated 20.11.1991 and during the period he was undergoing the punishment, his juniors undertook the training and were promoted to the post of Goods Driver. His punishment was reduced to censure vide order dated 19.1.1993. It was only after his punishment was over that applicant was booked for promotional training course at STS/Jamalpur from Shunter to Goods Driver commencing from 24.2.1992 vide letter dated 19.2.1992 and he passed the training on 8.4.1992. On being found suitable for the post of Goods Driver in the scale of Rs.1350-2000, the applicant along with others were promoted to the post of Goods Driver w.e.f. 28.6.1993 vide order dated 3.3.1993. They have thus explained that since applicant joined the higher grade post later than his juniors, he was placed below his juniors in the seniority list, which is as per Rule 303 IREM (Vol.I). He had already been given promotion as Passenger Driver w.e.f. 19.4.1997 vide order dated 10.4.1997. They have thus explained that even though applicant was promoted

A handwritten signature in black ink, appearing to be a stylized 'B' or a similar character, is located at the bottom right of the page.

as Shunter on 16.7.1991 but due to non-compliance of transfer order, his actual promotion to the post of Shunter took place w.e.f. 13.8.1991. They have thus prayed that the O.A. may be dismissed.

7. We have heard both the counsel and perused the pleadings as well. It is correct that in the seniority list of Diesel Assistant, the applicant's position was at Serial No. 56 while the persons whose names are mentioned in para 2 above, were at Serial Nos. 57,58,60,61,63 and 64, respectively. For promotion to the post of Goods Driver, training is mandatory and is a pre-requisite condition. Admittedly, applicant was undergoing punishment of stoppage of one increment for one year on 20.11.1991. Therefore, he could not be considered either for promotion or promotional training course till February, 1992 when persons junior to him were already sent for training. This punishment was reduced from stoppage of increment for one year to cesure only on 19.1.1993. Therefore, it was only ~~thereafter~~^{the punishment was over} that applicant was sent for promotional training course on 24.2.1992 and he completed his training on 8.4.1992. His juniors were promoted as Goods Driver in the year 1992 while applicant was promoted to the post of Goods Driver on 3.3.1993 and he took the charge of promotion on 28.6.1993.

8. At this juncture, it would be relevant to see the rules, as referred to by both the counsel. Counsel for the applicant had relied on para 323 while counsel for the respondents relied on para 303 of IREM (Vol.I). Para 323 for ready reference reads as under:

"Staff directly recruited on the Locomotive Component Works.
All persons who were directly recruited in the Locomotive Component Works shall be deemed to have been transferred in the Diesel Locomotive Works on 1.8.1961, the date on which the Diesel Locomotive Works was set up. The grade held by them as on 1.8.1961 and the length of non-fortuitous service in that grade shall be the basis for fixing their relative seniority in the Diesel Locomotive Work on that date".

While para 303 reads as under:

"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".

9. Perusal of the above paras would show that para 323 relates only to those staff who are directly recruited on the Locomotive Component Works. Therefore, this would not be applicable in the present case but para 303 deals with not only the candidates recruited through Railway Recruitment Board but by any other recruiting authority as well and specifically deals with the situation as to how the seniority of those persons has to be decided who are sent for training to the training school. Therefore, if both the rules are compared, Rule 303 seems to be relevant and appropriate in these circumstances. This rule specifically states that 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. This portion would be relevant for those who had attended the training in one go but those candidates who join the subsequent courses for any reason whatsoever and pass the examination in subsequent chances will rank junior to those who had passed the examination in earlier courses. The second portion would be relevant in the present case of the applicant vis-à-vis his counter parts. Respondents have stated categorically that his juniors had passed the training and were given posting in the year 1992 itself while applicant was sent for training in the year 1992 and he passed the training in subsequent chance and was also given promotion in 1993. In these circumstances, naturally his juniors who had passed the examination prior to him had to be put above him in the seniority list of Goods Driver. It is seen that respondents had filed their counter affidavit as back as on 22.11.2002 but applicant has not even bothered to controvert these facts. Therefore, they are deemed to have been accepted by the applicant in law.

10. In this view of the matter, we cannot find any illegality if applicant was placed below in the seniority list of Goods Driver on account of completing his training after his juniors because seniority had to be computed on the basis of completion of training as per Rule 303 of IREM (Vol.I).

A handwritten signature in black ink, appearing to be a stylized 'S' or a similar character, is located at the bottom right of the page.

11. As far as the contention of applicant's counsel that censure could not have come in the way of promotion is concerned, we would only like to state that had censure been given to him on a prior date before considering him for promotion, this would not have come in his way but once the punishment of censure is given, person can neither be given promotion nor sent for training so long the effect of censure is in operation, that is for six months. Admittedly, at the time when his juniors were sent for training, he was already undergoing punishment. Therefore, respondents were right in not sending him on training along with his juniors.

12. In view of the above discussion, we find no merit in the O.A. The same is accordingly dismissed. No order as to costs.


(K.V. PRAHALADAN)
MEMBER (A)


(MRS. MEERA CHHIBBER)
MEMBER (J)

'SRD'