

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

Date of order : 19.4.2000

O.A.NO.292/95

Kishan Chand S/o Shri Shri Chand Harsh, aged 56 years, Official Address Head Clerk M 2 Shop no. 18, Northern Railway, Workshop, Jodhpur, Residential Address New Chand Pole Road, Near Electricity House, Jai Narayan Vyas Colony, Jodhpur.

.....Applicant.

versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Deputy Chief Mechanical Engineer (Works), Northern Railway, Jodhpur.
3. Assistant Personnel Officer (Works), Northern Railway, Jodhpur.
4. Teekam Das, Material Clerk/Office Supt.II Northern Railway (Workshop No.2) through Deputy Chief Mechanical Engineer (Works), Northern Railway, Jodhpur.

.....Respondents.

Mr.G.K.Vyas, Counsel for the applicant.
Mr.Manoj Bhandari, Counsel for the respondents No. 1 to 3.
None present for the respondent No.4.

PER HON'BLE MR.JUSTICE B.S.RAIKOTE :

The Applicant is seeking for quashing of Annex.A/1 dated 13.6.92, Annex.A/2 dated 4.1.95 and Annex.A/3 dated 28.10.94. The consequential relief that he may be assigned the right seniority at no. 8 in the seniority list Annex.A/1 and at no. 5 in the seniority list Annex.A/3 be also granted. His further relief is that the benefit of cadre re-structuring to the post of O.S.-II may be given to him from the date persons junior to applicant were given, as a consequence of granting the relief no.1.

2. In the application the applicant has stated that he was selected ~~appointed~~ as Tool Checker vide selection list dated 12.9.72, and immediately thereafter, he was appointed as Tool Checker w.e.f. 25.9.72. He stated that in the said selection of

1972 his name was at No. 4 and the name of respondent No. 4 is at sl.No.9. He submitted that the seniority on the post of Tool Checker should be on the basis of seniority assigned in the panel of selection and according to this panel, the other persons S/Shri Narain Singh, Shas Mal, Amrit Lal and Teekam Das (respondent No.4), were all juniors to him. But, he found that in the seniority list prepared afterwards vide Annex.A/1 for the post of Tool Checker, he was shown at sl.No.13 whereas, the persons who were juniors to him in the selection list (Annex.A/1), were seniors to him. The name of Shri Narain Singh and the name of Shri Teekam Das, are shown at No. 8 and 10 respectively. The name of Shri Amrit Lal, stands at Sl.No.11. But, these persons were juniors to him as per the selection list vide Annex.A/11. According to the applicant, the same mistake is continuing in the subsequent seniority list dated 28.10.94. The name of the applicant is shown at No.9 and the name of the private respondent No. 4 and other persons, who were juniors to the applicant, were at No. 5,6, 7 and 8. Thus, the grievance of the applicant is that he is senior to respondent No.4 and other persons. He has been brought down in the seniority lists and this has caused injustice to him. These persons who are junior to him in Annexs. A/1 and A/3, were subsequently promoted to the post of O.S.-II on the basis of re-structuring of the cadre. As on the date of such re-structuring in the cadre, the applicant was senior to them and he should have been also promoted by re-structuring along with his juniors, like respondent No.4. But, later in the year 1996, he was regularly promoted to the said post of O.S.-II on the basis of selection test held. But, the applicant was entitled to be promoted to the post of O.S.-II on the basis of the re-structuring of the post itself without any further test. The method of re-structuring scheme is a modified method of selection without any test. The applicant also entitled for the promotion along with his juniors to the post of O.S.-II on the basis of re-structuring scheme itself. Therefore, he submits that notwithstanding he passed the test subsequently in 1996, his seniority should be fixed over and above respondent No. 4 and



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other juniors on the basis of the re-structuring of the scheme and the applicant shall be given all the consequential benefits.

3. Respondent No.4, who is a private respondent, remained ex-parte. The official respondents filed a Counter denying the allegations of the applicant. In substance their case is that respondent No. 4 and others were working on ad hoc basis since 1969 on the post of Tool Checker and their earlier service on ad hoc basis was taken into account and on that basis, the seniority has been fixed. If their ad hoc appointment in the year 1969 is taken into account, the respondent No. 4 would be senior to the applicant. The learned counsel for the respondents contended that the selection list Annex.A/11, would not have any consequence on their status as Tool Checkers on ad hoc basis. He submitted that the post of Tool Checker which was earlier an Ex-cadre post, was merged with the regular cadre. The respondent No. 4 and others, who were there in the merged Ex-cadre, and their services though on ad hoc basis, were counted for the purpose of seniority and if that is so, the respondent No. 4 and other persons, referred by the applicant, were senior to him. They were promoted as O.S.-II on the basis of the re-structuring. Because the applicant entered into the cadre in 1972 on the basis of Annex.A/11, and if his entry into service from 1972 is considered, he would be junior to the respondent No.4 and other persons. By the impugned seniority lists Annex. A/1 and A/3, no injustice is done to the applicant. He further submitted that applicant was given opportunities but he was found successful only in 1996 and he was promoted in the year 1996. Therefore, in the cadre of O.S.-II, he would be junior to respondent No. 4 and others. He also relied upon a judgment of Hon'ble Supreme Court, reported in 1977 SLR 289. He also relied upon another judgment of Hon'ble the Supreme Court, reported in AIR 1981 SC 41.

4. On the basis of the case and counter case, the short point

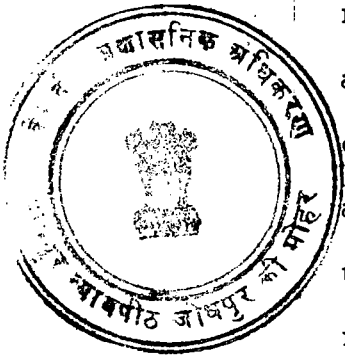
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that would arise for our consideration, would be whether the applicant would be senior to the respondent No. 4 and others on the basis of selection panel Annex.A/11 or whether the services of the respondent No. 4 and others, rendered on ad hoc basis, could be counted for the purpose of seniority.

5. The fact that the applicant and respondent No.4 were selected through a proper procedure vide Annex.A/11 on 14.9.72, is not denied before us. It is not the case of the official respondents that this Annex.A/11 dated 14.9.72 was challenged by any person before any authority. Respondent No. 4 and others accepted the seniority, as mentioned in Annex.A/11. The Judgment relied upon by the official respondents, reported in 1977 SLR 289, supports the case of the applicant. As long as Annex.A/11, the selection list is not challenged and as long as it has become final, the seniority of the applicant vis-a-vis the respondent No.4, has got to be determined on the basis of Annex.A/11. The earlier services rendered by the respondent No. 4 and others, were purely on ad hoc basis and the same does not confer any seniority. No Rule or Law is brought to our notice that service rendered by a person on ad hoc basis, could be counted for seniority or any other purposes. In these circumstances, the services rendered by the respondent No.4 from the year 1969 on ad hoc basis cannot be taken into account for purpose of preparing the seniority vide Annexs. A/1 and A/3.

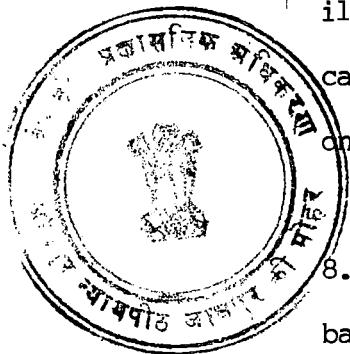
6. As admitted by the official respondents, their seniority is prepared by taking into account the services rendered by the respondent No.4 and others on ad hoc basis. Their other argument was that the respondent No. 4 and others were working on ad hoc basis in ex cadre which merged in the present cadre and on the basis of their ad hoc service in ex cadre, they become senior to the applicant.

7. If a person is serving on ad hoc basis on an ex cadre, his



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status on ad hoc basis, would not be changed only because that the said cadre has merged with some other. If that is so, the services rendered by respondent No.4 and others on ad hoc basis in ex cadre, would not be counted for the purpose of preparing the seniority list vide Annexs.A/1 and A/3. At any rate, Annex.A/11 could not be ignored. The name of the applicant is at No.4 in the order Annex.A/11 dated 14.9.72, whereas, the name of respondent No.4 is at sl.No.9. If that is so, the applicant would be senior to the respondent No.4. This position should have ^{been} necessarily reflected in the seniority lists Annex. A/1 and A/3. Having considered these circumstances, we have no option but to hold that showing the rank at No. 13 to the applicant against respondent No.4 and other persons, would be clearly illegal and contrary to Annex.A/11 itself. Subsequent merger of the cadre will not have any consequence on their relative ranking based on Annex.A/11.



8. If the applicant was to be considered for promotion on the basis of the re-structuring of the post of Tool Checker to O.S.-II along with respondent No.4 and others who were juniors to the applicant, he would have been definitely promoted to the post of O.S.-II on the basis of restructuring itself. As we have pointed out, so far as the method of re-structuring, it is a modified procedure to a regular procedure. In other words, the other procedure meant for selection is not adopted. A person occupying a particular post on regular basis, would be a consideration for giving him promotional post on the basis of re-structuring. As we have pointed-out, re-structuring itself is a method of promotion. If that is so, as on the date, the respondent No.4 and other persons who were junior were considered for promotion by way of re-structuring the post, the applicant should also have been considered. If the applicant were to be considered along with them definitely he would have been ~~senior~~ senior in O.S.-II on the basis of restructuring itself. In these circumstances, taking the selection test of

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the applicant in the year 1996 for qualifying for the post of O.S.-II would not have any consequence so far as his relative seniority in the cadre of Tool Checker and later in the cadre of O.S.-II . In this view of the matter, we have to declare that the applicant shall be senior to the respondent No.4 and others as on the date the respondent No.4 and others were promoted on the basis of restructuring of the post. On the basis of this date, the seniority of the applicant in the list vide Annex.A/1 has got to be changed so as to see that the name of the applicant is kept over and above Shri Narain Singh, whose name is at No. 8 in the seniority list of 1992 vide Annex.A/1, and whose name is at No.5 in the seniority list of 1994 at Annex.A/3. Accordingly, we pass the order as under :



9. The Application is allowed and the respondents are directed to fix the seniority of the applicant as on the date the respondent No. 4 and others were promoted by way of re-structuring of the post of Tool Checker as O.S.-II by suitably ^{-ing} ~~amend~~ the seniority list of the Tool Checkers, vide Annex.A/2, issued in the month of June 1992 and Annex.A/3 dated 28.10.94. The applicant also shall be entitled to all the consequential benefits including the retirement benefits, if any, accrued to him. However, we restrict his claim, if any, for arrears, only for a period, within three years from the date of preceeding the date of filing of the present application.

10. No costs.


(GOPAL SINGH)
Adm.Member


(B.S.RAIKOTE)
Vice Chairman

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Copy Received

~~17/05/2000~~

04/05/2000

(Kishan Chand.) Applicant
For G.K. vyas) Advt

Sub - cols

Read copy

me

(Kishan
Mang Bhandari
Nohra)

Part II and III destroyed
in my presence on 17.5.00-2006
under the supervision of
section officer as per
order dated 23.1.8.2006.

Section officer (Record)