

(92)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 122/1995

199

T.A. No.

DATE OF DECISION : 16.05.2000

Harmohan Singh Walia Petitioner

Mr. M.C. Bhoot, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent (s)

Mr. S.S. Vyas, Advocate for the Respondent (s)



CORAM :

The Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *no*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *no*

Gopal Singh
(Gopal Singh)
Adm. Member

B.S. Raikote
(B.S. Raikote)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J O D H P U R

Date of Order : 16.5.2000.

O.A. No.122/1995

Harmohan Singh Walia S/O Shri Sardar Gurcharan Singh Walia,
Deputy Shop Superintendent (C&W), Shop No.17, Northern Railway,
Workshop, Jodhpur; Resident of Kundan Bhawan, 58, Sindhi Colony
Jodhpur.

... Applicant

Vs

1. The Union of India through General Manager (P)
Northern Railway, Headquarters Office, Baroda
House, New Delhi.

The Chief Workshop Engineer, Headquarters Office,
Baroda House, New Delhi.

The Deputy Chief Mechanical Engineer (W), Northern
Railway, Workshop, Jodhpur.

4. Shri Ravindra Nath Sharma, Shop Superintendent (C&W),
P.C.O. Northern Railway, Headquarters Office, Baroda
House, New Delhi.

... Respondents

Mr. M.C. Bhoot, Counsel for the Applicant.

Mr. S.S. Vyas, Counsel for the Respondents.

CORAM :

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

O R D E R

(PER HON'BLE MR. GOPAL SINGH)

Applicant, Harmohan Singh Walia, has filed this
application under Section 19 of the Administrative Tribunals
Act, 1985, praying for a direction to the respondents to promote
the applicant on the post of Deputy Shop Superintendent (C&W)

Gopal Singh

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w.e.f. 01.1.1984 or in the alternative w.e.f. 0.1.12.1984, and for a further directions to the respondents to promote the applicant as Shop Superintendent (C&W), w.e.f. 01.3.1993, on account of cadre restructuring. The applicant has also prayed for a direction to declare the applicant senior to respondent No.4.

2. Applicant's case is that after due selection, he was appointed Chargeman Gr.'B' on 01.2.1975 on Jodhpur Division while respondent No.4, was appointed after due selection as Chargeman Gr.'B' on 15.10.1976 on Bikaner Division, the applicant was further promoted as Chargeman Gr. 'A' on 12.6.1981, while respondent No.4, was promoted on 23.7.1980 as Chargeman Gr. 'A' on Bikaner Division. The cadre of Chargeman Gr.'A' which was earlier controlled by Hqrs., was decentralized to division level vide respondents' letter dated 24.8.1979 (Annex R/12). The contention of the applicant is that since he has joined as Chargeman Gr. 'B' earlier to respondent No.4, he would have ranked senior to respondent No.4 had the cadre of Chargeman Gr. 'A' not been decentralized and would have been eligible for promotion to the post of Assistant Shop Superintendent/ Deputy Shop Superintendent under the restructuring scheme w.e.f. 01.1.1984, and consequently, he would have been entitled for promotion to the post of Shop Superintendent in terms of cadre restructuring scheme w.e.f. 01.3.1993. It is also the case of the applicant that in case, he is not granted the benefit of ~~cadre~~ restructuring scheme w.e.f. 01.1.1984, he should be promoted to the post of Asstt. Superintendent/Deputy Shop Superintendent w.e.f. 01.12.1984 in the vacancy caused by the retirement of Dungar Ram. Feeling aggrieved, the applicant has filed this O.A.

3. The applicant has approached this Tribunal earlier vide O.A. No.373/87 with the prayer for a direction to the respondents to promote the applicant on the post of Assistant Shop Superintendent w.e.f. 01.1.1984, and alternatively

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the applicant be promoted w.e.f. 01.12.84 against the resultant vacancy. The said O.A. was decided on 27.5.1993 with the following observations :

" In case the decision relating to the seniority has not been taken then the respondents are directed to decide the question of seniority according to law after giving an opportunity of hearing to the applicant as well as to respondent No.4 Ravindra Nath, who may be affected in case the decision relating to the seniority goes in favour of the applicant. The matter should be decided within four months. The question of promotion against the regular vacancy should also be determined. The resultant vacancy created on account of the retirement of Dungar Ram should also be decided within the period of four months. The applicant shall submit the copy of the judgment and the copy of the representation which has already been submitted so that it may not take to trace out the papers. In case the applicant feels aggrieved by the decision of the authority concerned, the applicant will have a right to move afresh before this Tribunal. The applicant shall continue on the post which he is holding since 1985 till the decision of the representation. No order as to costs."



4. The applicant again approached this Tribunal vide O.A. No.373/93, which was decided on 15.7.1994 with the following observations :

"In the result, the O.A. is accepted in view of the decision in O.A. No.373/87 dated 27.5.93 and we direct the respondents that after giving a personal hearing to the applicant regarding the controversy involved in this OA as well as in the previous OA they should pass a speaking order, covering all the points, within a period of three months from the date of this order. However, the applicant shall not be reverted, if he has not been reverted so far."

5. Consequently, after giving personal hearing to the applicant, the respondents issued order dated 28.4.1995 (Annexure R-10), explaining the position as to why the applicant could not be

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promoted as Deputy Shop Superintendent as per his seniority position. This order has been challenged by the applicant in the present O.A.

6. Notices were issued to the respondents and they have filed their reply.

7. We have heard the learned Counsel for the parties, and perused the records of the case.

8. In their reply, it has been contended by the respondents that the respondent No.4, was promoted as Chargeman Gr.'A' on 23.7.1980, and the applicant was promoted as Chargeman Gr 'A' on 12.6.1981 on Bikaner and Jodhpur Division respectively. With a view to implement the cadre restructuring scheme for upgradation to the post of Assistant Shop Superintendent/Dy. Shop Superintendent (Headquarter Control Cadre) a combined seniority list was prepared of the post of Chargeman Gr.'A' and the respondent No.4, was placed higher in seniority than the applicant because respondent No.4, was promoted to the post of Chargeman Gr. 'A' earlier than the applicant. It is also contended by the respondents that because of the position of the applicant in combined seniority list of Chargeman Gr.'A' the applicant was not within the Zone of consideration for promotion to the post of Assistant Shop Superintendent/Deputy Shop Superintendent w.e.f. 01.1.1984 under the restructuring scheme. Thus, it is clear that the respondent No.4, would rank senior to the applicant in the combined seniority list and, therefore, the applicant will not be entitled to the benefit of cadre restructuring scheme w.e.f. 01.1.1984. Further, challenging now the decentralization scheme effected from 24.8.1979 is of no avail specially when the applicant has earned promotion to the post of Chargeman Gr. 'A' on 12.6.1981 based on that decentralization.

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9. In regard to promotion of this applicant w.e.f. 01.12.1984 against the resultant vacancy caused due to retirement of one Shri Dungar Ram, the contention of the applicant is that since the post was available before the cadre restructuring scheme was implemented by the respondents in 5/85, the applicant is entitled to be considered against that resultant vacancy for promotion to the post of Assistant Shop Superintendent/Deputy Shop Superintendent with effect from 01.12.1984. Learned Counsel for the applicant has stressed this point that resultant vacancy would mean the vacancy available on the date of implementation of the scheme. We are afraid, we cannot subscribe to this definition of resultant vacancy given by the learned Counsel for the applicant. In this connection, we consider it appropriate to reproduce Para 4.3 of the cadre restructuring scheme effective from 01.1.1984 as under :



"4.3 Vacancies existing on 1.1.1984 and those arising on that date from this cadre restructuring should be filled in the following sequence :-

- (i) from panels approved on or before 30.4.1984 and current on that date; and
- (ii) Balance in the manner indicated in paras 4.1 and 4.2 above."

10. It is clear from the above cited para that the resultant vacancy should have occurred on 01.1.1984 itself for being considered to be filled up under the cadre restructuring scheme. Any vacancy arising on 02.1.'84 and thereafter would require to be filled up by normal promotion rules. It is different thing that the respondents have also promoted Shri Gurjit Singh in the vacancy caused by the retirement of Shri Dungar Ram on 30.11.'84, which appear to be incorrect. But it is not possible for us to give a positive finding in this regard in the absence of that person. As a matter of fact, vacancy arising on 1.12.84, should have been filled up under normal promotion rules and not under cadre

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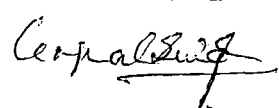
restructuring scheme. In this view of the matter, the applicant is not entitled for promotion to the post of Assistant Shop Superintendent/Deputy Shop Superintendent with effect from 01.12.1984 under the cadre restructuring scheme.

11. Coming to the promotion of the applicant to the post of Shop Superintendent under the cadre restructuring scheme effective from 01.3.1993, it has been stated by the respondents that under the scheme, the applicant was eligible for upgradation to the post of Assistant Shop Superintendent/Deputy Shop Superintendent as per his seniority position and accordingly he was considered and promoted as such. It has further been averred by the respondents that the applicant was not eligible for upgradation to the post of Shop Superintendent under this scheme. Since the applicant was not promoted to the post of Assistant Shop Superintendent/Deputy Shop Superintendent w.e.f. 01.1.1984, he could not have been considered for promotion to the post of Shop Superintendent w.e.f. 01.3.1993 under cadre restructuring scheme.

12. In the light of above discussion, we are of the view that the application is devoid of any merit and deserves to be dismissed.

13. The Original Application is accordingly dismissed with no order as to costs.




(GOPAL SINGH)
Adm. Member


(B.S. BAIKOTE)
Vice Chairman

Received
5,500
19.5.52 PM
(S.S. V. J. W.)

6/24
(S.S. V. J. W.)
22/5/52
(K. S. Roberts, D.M.)

Part II and III destroyed
in my presence on 30-6-56
under the supervision of
section officer as per
order dated 23/5/56
Section officer (Records)