

12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR

Date of order : 3.8.99

O.A. No. 476/1995

Surajmal son of Shri Birdi Chand aged about 45 years resident of Kumahar Mohalla, Behind Fire Temple, Abu Road, at present holding the post of Train Examiner at Abu Road Railway Station, Western Railway.

... Applicant.



versus

1. Union of India through General Manager, Western Railway, Church Gate, Bombay.
2. Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer.
3. Senior Divisional Mechanical Engineer, Western Railway, Ajmer Division, Ajmer.
4. Shri Nathi Lal, Head Train Examiner, Western Railway, Gandhi Dham.
5. Shri Ravi, Head Train Examiner, Western Railway, Ajmer.
6. Shri Chiman Lal K, Head Train Examiner, Abu Road, Western Railway.

... Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.

Mr. S.S. Vyas, Counsel for the respondents Nos. 1 to 3.

None present for the respondents Nos. 4 to 6.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

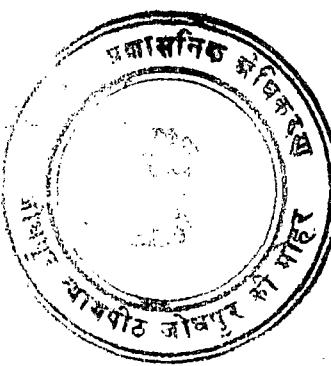
O R D E R

(Per Hon'ble Mr. Gopal Singh)

Applicant, Surajmal, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying

for relief

for setting aside the impugned order dated 21.8.1995 (Annexure A/1) and for a direction to the respondents to assign the correct seniority to the applicant above the respondent No. 4 in case the seniority is to be assigned as per the Railway Board's Circular dated 14.5.92 or above the respondents Nos. 5 and 6 if the seniority is to be assigned on the basis of the date of joining the promotional post, with all consequential benefits. By way of interim relief, the applicant had also prayed for a direction to the respondents not to revert the applicant from the post of Train Examiner (TXR) till finalisation of the seniority case.



2. By way of interim relief, the respondents were directed that the applicant may not be reverted from the post of Train Examiner (if he is still working on the said post) on the basis of the revised seniority as per Annexure A/1, till the next date.

3. Applicant's case is that he was initially appointed in Group 'D' with effect from 9.1.1970 and was promoted to the post of Fitter vide order dated 26.7.82 and he joined the promotional post on 8.8.1982. After due selection for the post of Train Examiner, the applicant was empanelled for the post of Train Examiner alongwith three others. Subsequently, the respondents vide order dated 9.2.90 (Annexure A/5) interpolated the names of three persons including that of the respondent No. 4, in the above mentioned panel. This had adversely affected the seniority position of the applicant and he represented in this regard on 4.3.90. This representation was rejected by the respondents vide their letter dated 29.3.90 (Annexure A/7). Feeling aggrieved, the applicant had earlier filed an OA No. 320/1991 in this Tribunal. While disposing of this O.A. (320/91) vide order dated 12.4.94, it was observed as under :-

"In view of this and in view of the fact that the applicant has continued on the same post for all these years we deem it proper to direct the respondents to decide the matter raised by the applicant in Annexure A/10 at their earliest and inform the applicant accordingly. Till then, the applicant shall continue on the post which is being held by him at present."

4. The representation of the applicant in this regard has been disposed of by the respondents vide their ~~xxxxxx~~ letter

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dated 21.8.95 (Annexure A/1). Feeling aggrieved by the applicant has again approached this Tribunal this present O.A.

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

6. We have heard the learned counsel for the parties perused the records of the case.

7. The applicant is seeking through this application seniority over S/Shri Nathi Lal and Popat Lal. The respondents have categorically admitted that Shri Popat Lal is junior to the applicant as seen from Para 2.7(C) of the respondents letter dated 21.8.95 at Annexure A/1. The only question now remains is of the seniority of the applicant vis-a-vis Nathi Lal. It is pointed out that Shri Nathi Lal had come on mutual transfer with Shri Sarwan Kumar. It is also seen from the seniority list of Group 'D' employees published by the respondents vide their letter dated 28.12.82 (Annexure A/12) that the applicant is senior to Shri Sarwan Kumar. It has also been stated on behalf of the applicant that Shri Sarwan Kumar was promoted to Group 'C' post on 1.8.82 while the applicant was promoted on the said post on 26.7.82. As per the rules governing mutual transfer, Shri Nathi Lal will take seniority of Shri Sarwan Kumar, i.e., he would be treated as having entered the grade on 1.8.82. The respondents in their reply have asserted that Shri Nathi Lal would get seniority from 1.8.82 on the basis of Shri Sarwan Kumar's promotion date. It has been further averred by the respondents that since the applicant had joined the promotional post on 8.8.82, he would rank junior to Sarwan Kumar and subsequently to Shri Nathi Lal. Here, the respondents have taken the date of joining the promotional post as the date from which the seniority is given. In this connection, it would be relevant to go through the rules governing seniority and relevant portion of para 302 of Indian Railway Establishment Manual is reproduced below:

"In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter se seniority of promotees and direct recruits among themselves. When the dates of the entry into a grade of

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(3)

promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter se seniority of each group. "

8. It can be seen from the above that in the promotional post, inter se seniority for promotees and direct recruits among themselves have to be maintained. Further, the result of the trade test for Group 'C' post in respect of the applicant as also Shri Sarwan Kumar were approved by the competent authority on 30.7.82 and the promotion orders to the respective posts for both of them were issued on 26.7.82. In case of Shri Sarwan Kumar, the respondents have given him the seniority in Group 'C' post with effect from 30.7.1982 in terms of Railway Board's circular dated 14.5.1992 whereas in case of the applicant, the seniority has been given from 8.8.82, the date of joining the Group 'C' post. In terms of Railway Board's letter dated 14.5.1992, it has been provided that the select list/trade test panel may be treated as effective from the date of approval by the competent authority. Accordingly, the applicant should also have been given the seniority from 30.7.82, the date of approval of the trade test result. Thus, the applicant cannot be made loose the seniority because of his joining the promotional post on a later date. Further, para 320 of Indian Railway Establishment Manual Vol. I which deals with relative seniority of employees in an intermediate grade belonging to different seniority units appearing for a selection / non-selection post in higher grade, provides that when a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter-seniority. As has been discussed above, the trade test result in respect of the applicant as also Shri Sarwan Kumar were approved on the same date and in terms of Railway Board's letter dated 14.5.1992, the date of approval of the trade test result is the effective date and as such, the applicant cannot be denied his seniority over Shri Sarwan Kumar simply because he had joined the promotional post on 8.8.92. As has been pointed out earlier that the applicant was senior to Shri Sarwan Kumar (therefore, senior to Shri Nathi Lal), the name of the applicant should figure above the name of Shri Nathi Lal.

9. In the light of the above discussion, we find much force in the present application and the same deserves to be allowed.

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10. The O.A. is, accordingly allowed with the following observations :-

- (i) The impugned order dated 21.8.95 at Annexure A/1 is set aside;
- (ii) The applicant would figure above the respondent No. 4, Shri Nathi Lal, in the panel for the post of Train Examiner.

11. Parties are left to bear their own costs.

Gopal Singh

(GOPAL SINGH)
Adm. Member

31/8/99

(A.K. MISRA)
Judl. Member

cvr.

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05/8/99
SAC
(B. I. C. H. N.)

~~Recd~~
S.
6-8-99
(S. S. V. G. S.
R. B.)

Part III and III destroyed
in my presence on 16/5/99
under the supervision of
Section Officer () as per
order dated 16/5/99

Section Officer (Record)