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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH: JODHPUR.

O.A. No. 240/1996

Date of Order: 20.7.1998

1. Prem Narain s/o Shri Heera Lal, resident of Block No. 207/B, Workshop Colony, Near Industrial Road, Jodhpur (Presently working as Chief Power Controller in the office of DRM Office, Jodhpur).
2. Rameshwar Lal s/o Shri Kanhiya Lal, resident of Plot No. 58 C, Ladha Colony, Ratanada, Jodhpur (Presently working on the post of Loco Inspector, Diesel Training Centre, Bhagat ki Kothi, Jodhpur).
3. Tara Chand s/o Shri Ghisu Lal, resident of Railway Quarter No. L/219 A, Old Loco Colony, Jodhpur (Presently working as Loco Inspector, Diesel Training Centre, Bhagat ki Kothi, Jodhpur).

... Applicants

VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Jodhpur.
3. The Divisional Personnel Officer, Northern Railway, Jodhpur.
4. Shri Shyam Lal s/o Shri Hazari Lal, Power Controller, Control Office, D.R.M. Office, Jodhpur.

... Respondents

Mr. S.K. Malik, Counsel for the applicants
Mr. R.K. Soni, Counsel for the respondents No. 1 to 3.
Mr. M.S. Singhvi, Counsel for the respondent No. 4.

CORAM

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

Hon'ble Mr. Gopal Singh, Administrative Member

Gopal Singh

O R D E R

Per Hon'ble Mr. Gopal Singh

Applicants, Prem Narain, Rameshwar Lal and Tara Chand, have filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned order dated 1.7.1996 (Annexure A/1) and impugned seniority list dated 12.9.1995 (Annexure A/2) and for assigning them seniority over respondent No. 4 (Shri Shyam Lal).

2. The case of the applicant No. 1 (Prem Narain) is that he appeared for selection to the post of Power Controller and after due selection he was promoted as Power Controller in the scale 2000-3200 w.e.f. 28.8.1985. Applicant No. 2 (Rameshwar Lal) after due selection was promoted as Power Controller in the scale 2000-3200 w.e.f. 22.2.1995 and applicant No. 3 (Tara Chand) was promoted as Power Controller after due selection on 25.2.1995. Respondent No. 4 was selected for the post of Power Controller vide order dated 10.1.1995 Annexure A/5. It is also stated that respondent No. 4 was dismissed from service in February, 1981 and was reinstated in terms of the order of the Hon'ble Supreme Court dated 5.8.1993. The Hon'ble Supreme Court in its order dated 5.8.1993 had also directed that although the employee shall not be entitled to any promotional benefit but they shall be given notional continuity from the date of the termination till the date of restoration for purposoe of calculation of pensionary benefits. Besides at the time of dismissal, respondent No. 4 was also facing another departmental enquiry under Rule 14 for major penalty. The said departmental enquiry was completed on 17.3.1994 and the Disciplinary Authority passed an order of reversion against the respondent No. 4 and accordingly he was reverted to the post of Shunter in the scale of 1200-2040. The appeal filed by the respondent No. 4 against the order of the Disciplinary Authority in the above mentioned disciplinary case was also rejected. In the selection for the post of Power Controller conducted by the official respondents applicant No. 2 and 3 alongwith respondent No. 4 were declared qualified and were empanelled under order dated 10.1.1995 Annexure A/5. In this panel of 10.1.1995 applicant No. 2 (Rameshwar

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Lal) appeared at Sl. No. 1 and applicant No. 3 (Tara Chand) appeared at Sl. No. 2 whereas respondent No. 4 (Shyam Lal Sharma) appeared at Sl. No. 7. It is thus contended by the applicants that they are senior to respondent No. 4 and have prayed for according them seniority in the grade of Power Controller over respondent No. 4.

3. The learned counsel for respondent No. 4 has stated that the respondent No. 4 has all along been senior to the applicants as per details given below:

	Applicant No. 1	Applicant No.2	Applicant No.3	Respond.No.4
Fireman	30.7.64	14.7.64	2/68	10.3.64
Shunter	1/73	1/71	21.12.70	2.6.70
Driver(Goods)	1/73	2/73	5/75	27.7.71
Driver(Pass.)	6/81	11/84	6/88	

It has also been contended that respondent No. 4 had appeared for selection to the post of Power Controller on 7.9.1980. Applicant No. 1 and 2 had also appeared in the said selection alongwith respondent No. 4. Applicant No. 3 was not eligible to appear in that selection on that date. It has also been pointed out by the learned counsel for respondent No. 4 that applicant No. 1 and 2 had failed in that selection and the panel for said selection was declared on 9.1.1981 and respondent No. 4 was placed at Sl. No. 5 of the said panel. Initially the result of the respondent No. 4 was kept under a sealed cover as there was a departmental enquiry pending against him as also his case of dismissal was under consideration with the Hon'ble Supreme Court. After the verdict of the Hon'ble Supreme Court dated 5.8.1993, the sealed cover containing the result of respondent No. 4 was opened and his name was included in the said panel at Sl. No. 5 vide order dated 16.5.1995 (Annexure A/3). It has also been contended by the learned counsel of respondent No. 4 that respondent No. 4 had submitted a revision petition dated 10.12.1996 against the order of the Disciplinary Authority and Appellate Authority and the Revising Authority accepted the contention of respondent No. 4 and exonerated him of all the charges. The punishment imposed by the Disciplinary Authority and upheld by the Appellate Authority was set aside by the Revising Authority vide his order conveyed vide letter dated 24.10.1997 (Annexure R/4/4).

(Signature)

4. The learned counsel for the official respondents No. 1 to 3 had nothing to add to what has been stated by the learned counsel for the respondent No. 4.

5. We have heard the learned counsel for the parties and perused the record of the case.

6. Respondent No. 4 was dismissed from service on 6.2.1981 and he was reinstated on 22.9.1993 in terms of order dated 5.8.1983 of the Hon'ble Supreme Court. The Hon'ble Supreme Court in its order dated 5.8.1983 had observed as under:

(i) Employees who were dismissed under Rule 14 (2) for having participated in the Loco Staff strike of 1981 shall be restored to their respective post within a period of three months from today.

(ii) (A) Since more than three years have elapsed from the date the orders were found to be bad on merits by one of the tribunal it is just and fair to direct the appellant to pay the employees compensation equivalent to three years salary inclusive of dearness allowance calculated on the scale of pay prevalent in the year the judgement was delivered, that is, in 1990.

(b) This benefit shall be available even to those employees who have retired from service. In those cases where the employees are dead the compensation shall be paid to their dependents. The compensation shall be calculated on the scale prevalent three years immediately before the date of retirement or death.

(iii) Although the employees shall not be entitled to any promotional benefit but they shall be given notional continuity from the date of termination till the date of restoration for purposes of calculation of pensionary benefits. This benefit shall be available to retired employees as well as to those who are dead by calculating the period till date of retirement or death.

The departmental enquiry case against respondent No. 4 was concluded on 9.8.1994 with a penalty of reduction to next lower rank for a period of five months. It has been argued by the learned counsel for the respondent No. 4 that the respondent No. 4 had already been declared successful in the selection test for the post of Power Controller held on 7.9.1980 while applicants No. 1 and 2 had failed in that selection test and applicant No. 3 was not eligible to appear in the selection test at that time. He further added that consequent upon setting aside the penalty by the Revision Authority, respondent No. 4 was given promotion w.e.f. 9.1.1981 on the post of Power Controller in terms of the panel prepared for the selection test held on 7.9.1980 result of

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which was declared on 9.1.1981. In this connection he has also annexed two documents at Annexure R/4/2 and R/4/7. Since respondent No. 4 was given promotion on the basis of the panel prepared after the selection test of 7.9.1980, it is the argument of the learned counsel of respondent No. 4 that since applicants 1 and 2 had failed in that selection and applicant No. 3 was not eligible to appear in that selection they cannot challenge the appointment of respondent No. 4 as Power Controller w.e.f. 9.1.1981, as they have no locus standi to maintain the present application. It is seen from Annexure R/4/3 that the panel of the selection held for the post of Power Controller on 7.9.1980 was declared on 27.5.1981. This is also corroborated by letter dated 11.11.1992 in which seniority list of Loco Foreman scale 2000-3200 has been circulated. As per this seniority list Shri Guman Singh who was No. 1 on the selection panel for the post of Power Controller in the selection held on 7.9.1980 has been shown as promoted w.e.f. 27.5.1981. It is as such not very clear as to how the panel declared on 27.5.1981 have been implemented w.e.f. 9.1.1981 in respect of respondent No. 4 who figured at Sl. No. 5 of the said panel while one Guman Singh placed at Sl. No. 1 of the said panel was promoted from 27.5.1981. Apparently the date of declaration of this panel is 27.5.1981. Moreover in terms of order of the Hon'ble Supreme Court, the respondent No. 4 was not entitled to any promotional benefit during the period from 6.2.1981 to 22.9.1993. Apparently the official respondents have committed a mistake in giving promotion to respondent No. 4 w.e.f. 9.1.1981 and further committed a mistake giving him pay fixation benefit from that date. The respondent No. 4 was eligible for this benefit only from the date of declaration of the panel i.e. 27.5.1981, if at all he was to be given the benefit. It may be mentioned that respondent No. 4 was dismissed from service on 6.2.1981 and was reinstated on 22.9.1993 and he was not entitled to any promotion during this period in terms of order dated 5.8.1993 of the Hon'ble Supreme Court. As such respondent No. 4 was entitled for promotion, if any, only after 22.9.1993. Further the respondent No. 4 was facing a disciplinary enquiry for major penalty on that date and the disciplinary enquiry was finalised on 17.3.1994 and the Disciplinary Authority imposed the penalty of reversion to the next lower rank for a period of five months on respondent No. 4. As such the question of opening the sealed cover on conclusion of the departmental enquiry did not arise as a major penalty had been imposed upon the respondent No. 4.

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7. As has been mentioned earlier, the official respondents had opened the sealed cover after the case of dismissal of respondent No. 4 was decided by the Hon'ble Supreme Court vide its order dated 5.8.1993. Since the respondent No. 4 was facing departmental enquiry on that date it was wrong on the part of the official respondents to have opened the sealed cover. In fact the sealed cover can only be opened when a government servant is completely exonerated in the disciplinary proceedings case. It was not so in the instant case. Further respondent No. 4 submitted a revision petition on 10.12.1996 and the same was decided by the Revision Authority on 24.10.1997. It would thus be seen that the revision petition was filed two years and nine months after the Disciplinary Authority had imposed the penalty upon respondent No. 4. In the meantime, respondent No. 4 had also suffered the penalty imposed by the Disciplinary Authority. Further the revision petition was filed after the applicants had filed this O.A. on 19.9.1996. It appears that the revision petition was filed so as to validate the action taken by the official respondents in opening the sealed cover and giving promotion to respondent No. 4 on the basis of the selection panel of 27.5.1981. It has already been mentioned that action on the part of the official respondents in opening the sealed cover and giving promotion to respondent No. 4 consequent upon the order of the Hon'ble Supreme Court was ab initio void and as such subsequent events cannot validate the earlier orders passed by the official respondents. We, therefore, are of the view that the action taken by the official respondents in opening the sealed cover consequent upon the order of the Hon'ble Supreme Court was ab initio void in view of the principles laid down in the U.O.I. Vs K.V. Jankiraman and Others, 1993 (23) ATC 322 SC and, therefore, the subsequent order passed by the Revision Authority cannot have any effect. This view is supported by the Hon'ble Supreme Court judgement in the case of Baradakanta Mishra Vs High Court of Orissa and Others - AIR 196 SC 1899 and Jot Singh Vs U.O.I. - 1996 (1) AIJ 36 (CAT, Allahabad).

8. In final analysis we find that;

- (i) the official respondents should not have opened the sealed cover containing the result of the respondent No. 4 of the selection held on 7.9.1980,
- (ii) the official respondents should not have given promotion to respondent No. 4 to the post of Power Controller from 9.1.1981,
- (iii) respondent No. 4 was not entitled to any promotion from 6.2.1981 to 22.9.1993 (period of dismissal from service) and upto 13.10.1994 (finalisation of the departmental enquiry) and thereafter till the penalty was over,

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(iv) even after the penalty was over, respondent No. 4 was not entitled to get the benefit of promotion from the panel of the selection held on 7.9.1980.

9. After having discussed the case of respondent No. 4 as above, we now come to the basic question of awarding seniority to applicants No. 1, 2 and 3. It has already been mentioned that applicant No. 1 after due selection was promoted to the post of Power Controller w.e.f. 28.8.1985. Applicants No. 2 and 3 alongwith respondent No. 4 had appeared in July, 1994 for the selection for the post of Power Controller, selection panel of which was declared on 10.1.1995. Applicants No. 2 and 3 were placed in the merit list at Sl. No. 1 and 2 respectively and respondent No. 4 was placed at Sl. No. 7 of the selection panel. Applicant No. 2 was promoted as Power Controller on 22.2.1995 and applicant No. 3 was promoted as Power Controller on 25.2.1995. Since respondent No. 4 was placed at Sl. No. 7 of the selection panel much below the applicants No. 2 and 3, he can be given the benefit of the promotion only after the date applicant No. 3 was promoted. It would thus be seen that the applicants were senior to respondent No. 4 as they had been promoted as Power Controller much earlier than respondent No. 4. Accordingly official respondents letter dated 1.7.1996 (Annex. A/1) and seniority list circulated vide letter dated 12.9.1995 turn out to be void and deserves to be quashed.

10. The O.A. is accordingly allowed and disposed of with the observations that impugned order dated 1.7.1996 (Annex. A/1) and impugned seniority list dated 12.9.1995 (Annex. A/2) are set aside. Applicants 1, 2 and 3 will rank senior to respondent No. 4 as Power Controller. The seniority list should be modified accordingly.

11. Parties are left to bear their own costs.

Gopal Singh
(Gopal Singh)
Administrative Member

29/7/1998
A.K. Misra
Judicial Member

Aviator/

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- Roy

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for
Doris
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