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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 318/98

Date of decision : 29.01.2007

Hon'ble Mr. J K Kaushik, Judicial Member.

Hon'ble Mr. R.R. Bhandari, Administrative member.

Nar Singh, S/o Shri Chander Lal, aged about 51 years, resident of L-187-B, New Loco Colony, Ratanada, Jodhpur. Official Address: Senior Diesel Assistant, Section Engineer, Loco Running Shed, Jodhpur.

: Applicant.

Rep. By Mr. Kuldeep Mathur: Counsel for the applicant.

VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, H.Q Office, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Jodhpur.
3. The Divisional Personnel Officer, Northern Railway, Jodhpur.

: Respondents.

Rep. By Mr. Salil Trivedi : Counsel for the respondents.

ORDER

Hon'ble Mr. J K Kaushik, Judicial Member.

This O.A was earlier rejected vide order dated 20.09.2000 on the ground of limitation and the matter was carried in Writ Appeal before the Hon'ble High Court of Rajasthan at Jodhpur vide D.B. civil Writ Petition No. 667/2001 and the same came to be allowed vide order dated 11.08.2005, with a direction to this Bench of the Tribunal to decide the matter afresh on merits. Hence this case was proceeded accordingly.

2. This application is filed under Sec. 19 of the Administrative Tribunals Act, 1985, for quashing the impugned orders at Annex. A/1 dated 04.06.98, Annex. A/2 dated 30.07.98, Annex. A/3 dated 13.02.92 and Annex. A/4 dated 21.07.92. The applicant further seeks a direction to the respondents

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to restore his seniority position at Serial No. 237 from 298 A in the seniority list of 1980 with all consequential benefits.

3. The case of the applicant is that he was appointed as casual employee with effect from 21.08.66. Thereafter, he was shifted as Cleaner (Loco) with effect from 30.12.1968 and there, the applicant was declared surplus with effect from 01.01.70 and thus, he remained surplus upto 16.04.70. Further case of the applicant is that he qualified B-1 medical examination for the post of Engine Lighter. Thereafter, the applicant was posted as Cleaner with effect from 21.01.72. But according to the respondents, the applicant was placed in the panel of Engine Lighter dated 01.03.73, and accordingly, he was appointed as Loco Engine Lighter vide Annex. R/2 dated 12.05.75. Therefore, in the seniority list, this is the date taken for the purpose of seniority of applicant as Engine Lighter.



4. The respondents have contested the case and have filed a detailed and exhaustive reply. It has been specifically averred that applicant was appointed on regular basis vide communication dated 12.05.75 at Annex.R/2 as Loco Engine Lighter. It is also averred that the applicant's representation against the revision of seniority came to be decided vide order dated 01.04.92 Annex. R/1. The applicant was asked to submit the relevant records in respect of his correct date of appointment on the basis of which he claimed to be appointed on 17.04.70. He was in fact placed on the panel for absorption against regular establishment dated 01.03.73 and therefore his seniority position came to be changed. He was wrongly assigned the seniority with effect from 17.04.70 instead of the actual date of regular appointment i.e. 12.05.75. The same was changed after following the principles of natural justice. He did not submit any proof in respect of his claim of seniority from 17.04.70. The grounds raised in the O.A have been generally denied. The same is followed by short rejoinder almost reiterating

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the facts which have been mentioned in the O.A in addition to making a narration that other similarly placed employees have not been subjected to such change in their seniority.

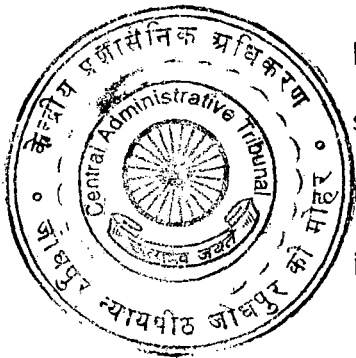
5. Thereafter, reply to the rejoinder, as well as an additional reply and one additional affidavit have been filed on behalf of the respondents. Neither any permission has been sought for filing the same nor there was any direction from the Court. Therefore, these pleadings ought not to have formed part of the main case and should have been dealt with under Rule 33 of the Central Administrative Tribunal (Rules of Practice) 1993, by placing them in part 'C' file of the O.A. Time and again this Court has observed to dispense with such practice and follow the correct rule but the same is not being adhered to by the Registry.



6. Both learned counsel for the contesting parties have reiterated the pleadings made on behalf of their respect parties. The learned counsel for the applicant has strived hard to submit that the applicant was assigned seniority as early as in 1980 and the same was maintained till 1992. Change of seniority at such belated stage unsettles the settled position in as much as number of promotions have taken place during the interregnum period. He has also submitted that on one occasion even the applicant protested against the earlier seniority and he was informed that seniority assigned was correct and no change was warranted; but subsequently the same has been changed to his disadvantage and acted upon. In support of his contention, the learned counsel for the applicant has cited the decisions in the following cases; **K R Mudgal and ors. vs. R.P. Singh and ors.** [1986 (4) SCC 531] **B.S. Bajwa and anr vs. State of Punjab and ors.** [JT 1998 (1) C 57]; **K. Thimmappa and ors. vs. Chairman Central Board of Directors** [2001 (2) SCC 259].

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7. Per contra, the learned counsel for the respondents has submitted that in the year 1992, the applicant was asked to submit proof in regard to the assignment of seniority to him from 17.04.70, but he did not submit any proof and even no document in proof of the same has been placed on record of this O.A. He has next contended that the respondents have corrected their mistake the moment it came to their notice. Department can always correct a mistake otherwise it would amount to perpetuation of a mistake. While correcting the mistake the principles of natural justice has been duly complied with. Therefore, the applicant has no case for interference by this Tribunal. We were also shown the position of the applicant at Sl. No. 298-A of the seniority list which indicates that he has been assigned seniority by taking his date of regular appointment as 12.05.75. He has also invited our attention to para 302 of the I.R.E.M. Vol. I, which regulates the assignment of seniority and provides that one would be given seniority from the date he joined his duties on regular basis after completion of due formalities i.e. passing of suitability test in respect of non-selection posts, passing the selection in respect of selection posts. Therefore, the action of the respondents is well in consonance with the rules in force, calling no indulgence by this Bench of the Tribunal.



8. We have considered the rival submissions put forth on behalf of both the parties. As far as the factual aspect of the case is concerned, on our incisive analysis of the records of this case, we find that the applicant was placed in 1973 panel and he came to be appointed on temporary basis with effect from 12.05.75, on which he was subsequently confirmed. The applicant has not been able to show any record to the contrary.

9. As far as the legal aspect of the matter is concerned, we are in agreement with the learned counsel for the respondents that the seniority is

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required to be assigned in such cases as per para 302 of the IREM Vol. I and the contents of the same are reproduced as under:

"302. Seniority in the initial recruitment grades - Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to that grade. The grant of higher pay than the initial pay should not, as a rule, confer on railway servant seniority above those who are already appointed against regular posts. In categories of post partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due promotion in the case of promotees and the date of joining the working post after the due process in the case of direct recruits, subject to maintenance of inter-se seniority of promotees and direct recruits among themselves. When the dates of entry in to a grade of 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."

A bare perusal of the aforesaid would reveal that in the instant case, the assignment of seniority to the applicant from 12.05.75 is correct and therefore on merits the applicant has absolutely no case requiring our indulgence.



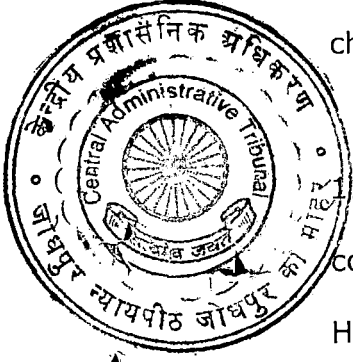
10. Now, we will advert to technical pleas which have been projected on behalf of the applicant. It has been put forth that the first seniority list came to be issued in the year 1980 and the same came to be changed in the year 1992 i.e. after a period of 12 years. During this long period the position of the individuals became irreversible in as much as most of them enjoyed further promotions. We have waded the authorities which are quoted in support of this plea of the applicant and find that as far as the principle of law is concerned, there can be no two ways about the same. But in the instant case, we are faced with almost a dilemma in as much as the revised seniority list came into force in the year 1992 and by now 15 long years have passed. During the interregnum period number of employees in the seniority list would have been promoted and changed their positions. None of them is before us. If we do the same thing as the respondents have done, perhaps we would be repeating the history to the misery of number of persons who are not before us. We also find that there is a basic legality in assignment of seniority to the applicant. Time and again the Hon'ble Apex Court has stressed that equality clause is not applicable to illegalities and in the name

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of the same, the illegality cannot be allowed to perpetuate by the Courts of law. Therefore keeping in view the diverse factors involved in the instant case in addition to the statutory rules, we are unable to persuade ourselves with the submissions of the learned counsel for the applicant; rather would choose to uphold the action of the respondents.



11. The upshot of the aforesaid discussion leads us to an inescapable conclusion that the O.A sans merit and the same stands dismissed. However, in the facts and circumstances of this case, the contesting parties are directed to bear their own costs.

Note: Before parting with this case, a word of caution is issued to the Registry. Registry is directed to follow the Rules scrupulously by keeping observations made in para 5 of this order.

(R R BHANDARI)
ADMINISTRATIVE MEMBER

(J K KAUSHIK)
JUDICIAL MEMBER

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