

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

Date of Decision: 10.12.2001

OA 32/98

Mojdeen s/o Chand Khan r/o Village Ridmalsar, Post Office Udasar,
District Bikaner.

... Applicant

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Addl.Divisional Rly Manager, Northern Railway, Bikaner.
3. Divisional Personnel Officer, Northern Railway, Bikaner.
4. Asstt.Engineer, Northern Railway, Bikaner.
5. Divisional Supdt. (Engineer), Northern Railway, Divisional Office, Bikaner.

... Respondents



FORAM:

HON'BLE MR.JUSTICE O.P.GARG, VICE CHAIRMAN

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.Bharat Singh

For the Respondents

... Mr.Jitendra Singh, brief holder
for Mr.Ravi Bhansali

O R D E R

PER HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

In this application u/s 19 of the Administrative Tribunals Act, 1985, applicant, Mojdeen, has prayed for quashing the impugned order dated 23.4.97 (Ann.A/1) and for further direction to the respondents to give promotional and fixation benefit and consequential arrears to him in view of letters dated 12.1.94, 13.1.94 and 31.5.94 at par with

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his junior, Shri Badri Das, on the post of Supervisor in the scale of Rs.1400-2300. The applicant has also prayed that his retiral benefits should also be revised accordingly.

2. Undisputed facts of the case are that the applicant was initially appointed on 25.5.59 as Mali Khalasi in the Bikaner Sub Division of Engineering Department. Subsequently, one Shri Badri Das was absorbed as Mali Khalasi in the same division on 9.6.66. In the seniority list issued on 17.6.83 the applicant was placed at S.No.10, while name of said Badri Das appeared at S.No.17. Thus, the applicant was senior to said Badri Das in the seniority list dated 17.6.83. Subsequently, Badri Das was promoted as Supervisor (Horticulture) in the grade of Rs.1400-2300 vide respondents' letter dated 12.1.94 (Ann.A/2). The applicant submitted a representation dated 30.5.95 claiming that the applicant was senior to Badri Das and, therefore, entitled to promotion as Supervisor (Horticulture) at par with Badri Das. The respondent department had circulated a revised seniority list dated July, ~~198~~ 1991, wherein Badri Das was shown at S.No.1 and the applicant was shown at S.No.2. Feeling aggrieved, the applicant had filed OA 140/96 before this Tribunal and the said OA was decided on 17.5.96 with a direction to the respondents to decide the representation of the applicant dated 30.5.95. This representation was rejected by the respondents vide their letter dated 23.4.97 (Ann.A/1). Hence this application.



3. It is seen from records that the applicant is claiming seniority over Badri Das on the basis of seniority list circulated in the year 1983. He has not mentioned anywhere in his application that this seniority list was revised in the year 1991. It is also seen from records that the applicant had never challenged the seniority list

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circulated in the year 1991. It is only by way of challenging the promotion of Badri Das that the applicant is indirectly challenging the seniority list circulated in the year 1991. It has been clarified by the respondents that Badri Das had been absorbed in the Engineering Department after being medically decategorised in his own department and as per Printed Serial No.6174 dated 18.7.74 he was given benefit of past service in the equivalent grade for the purpose of seniority as Mali Khalasi in the Engineering Department. After extending him this benefit, Badri Das became senior to the applicant. In the rejoinder filed by the applicant it has been contended that the benefit of P.S. No.6174, circulated in 1974, cannot be extended retrospectively to Badri Das from 1967, when he was absorbed in the Engineering Department.



4. As has been pointed out above, the applicant has never challenged the seniority list circulated in the year 1991. His first representation was made only after Badri Das was promoted on 12.1.94. Through this representation even he has not challenged the seniority list issued in 1991. He is only claiming that he is senior to Badri Das with reference to the seniority list of the year 1983. Once the seniority list has been revised and circulated, the applicant cannot get the benefit of the past seniority list. In our view, the seniority list published in the year 1983 gets superseded with the issue of the seniority list of 1991. Thus, the applicant cannot derive any benefit from the seniority list published in the year 1983.

5. The applicant has also contended that Badri Das cannot be given the benefit of P.S. No.6174 retrospectively. In this connection, we

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consider it appropriate to extract below P.S. No.6174 :-

"Serial No.6174 - Circular No.831-E/78-IV (EIV), dated 18.7.1974.

Sub:- Seniority of medically incapacitated staff in alternative posts.

A copy of Railway Board's letter No.E(NG)I-74 SR6/30, dated 2.7.74 alongwith this office letter No.831-E/78-IV(EIV), dated 23.5.73 to which it is a reply is sent herewith for information and guidance.

Copy of Railway Board's letter No.E(NG)I-74 SR6/30, dated 2.7.1974.

Sub:- As above.

Reference your letter No.831-E/78-IV (Eiv), dated 23rd May, 1973 on the above subject. The presumption made in para 3 of your letter is confirmed.

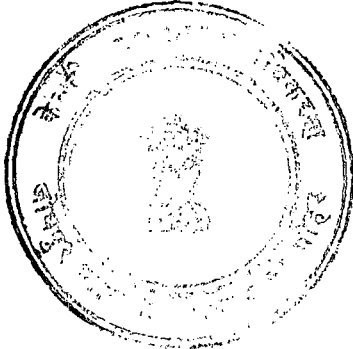
Copy of letter No.831-E/78-IV(Eiv), dated 23rd May, 1973, from (Dilraj Singh) General Manager addressed to the Secretary Establishment, Railway Board, New Delhi.

Sub:- As above.

In para I(ii) of their letter No.E(NG)63SR6/31, dated 26.8.64 the Board have decided that the medically decategorised staff absorbed in alternative posts, whether in the same or other cadres, should be allowed seniority in the grade of absorption with reference to the length of service rendered in the equivalent or corresponding grade irrespective of the rate of pay fixed in the grade of absorption under the extant rules (emphasis ours).

There has been a case where a Ticket Collector grade Rs.110-180

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(AS) was promoted as Guard Gr.'C' Rs.130-225 (AS). On being medically decategorised he was absorbed as Goods Clerk grade Rs.110-200 (AS). A question has arisen whether the benefit of service rendered in grade Rs.110-180 (AS) can be given to him on his absorption in Gr.Rs.110-200 (AS) after medically decategorization.

It is presumed that as grade Rs. 110-200 (AS) is comparatively higher than the grades Rs. 110-180 (AS) the benefit of the length of service rendered in the lower grade Rs. 110-180 (AS) as Ticket Collector can not be afforded to the employee concerned, for this purpose and as such he will be allowed seniority in the grade of absorption with reference to length of service rendered in the higher grade of Guard grade 'C' Rs. 130-225 (AS) only.

It is requested that Board's confirmation to the above presumption may kindly be obtained and communicated."



It would be seen that P.S. No.6174 dated 18.7.74 was issued only by way of a clarification. In fact, provision for according seniority to a medically decategorised person was already existing vide Board's letter dated 26.8.64. Thus, the contention of the applicant in this regard is not tenable and is hereby rejected. The applicant has also contended that his seniority has been changed without any notice to him. We are not inclined to accept this argument also of the applicant. The revised seniority list was circulated in July, 1991 and objections were invited within one month of the date of the circulation of the seniority list. The applicant had never challenged that seniority list nor raised any objection. At this late stage he cannot challenge the said seniority list.

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6. In the result, we are of the view that Badri Das has been assigned seniority correctly as per rules and the applicant has miserably failed in establishing his claim.

7. The learned counsel for the applicant has also cited a few judgements in support of his contention. These are being discussed in subsequent paragraphs.

8. 2001 (3) SLJ (SC) 277, Anil Ratan Sarkar and Ors. v. State of West Bengal and Ors. - In this case, Lab Assistants were declared as non-teaching staff thus denying them certain monetary benefits. It was found unjustified by the Single Judge who directed to treat them as teaching staff w.e.f. 1983. The High Court accepted it but changed the date of effect to 1987. The Supreme Court had also directed earlier in 1994 to this effect. The Government had not produced any records to establish their stand to the contrary and, therefore, Hon'ble the Supreme Court allowed the appeal and entitlement w.e.f. 1.8.87 was upheld. The contention of the learned counsel for the applicant, in the instant case, is that the respondent department cannot change his seniority without production of records to establish their stand. As has been mentioned above, the respondents have stated that Badri Das has been assigned seniority in terms of P.S. No.6174. Even the challenge made by the applicant in this regard has been dealt with above and it has been held that Badri Das has been rightly assigned seniority as per rules. Thus, this judgement does not help the applicant.

9. (1993) 24 ATC 363 (SC), Vasant Rao Roman v. Union of India &

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Ors. - In this case due to shortage of literate Shunters, appellant being literate, deputed for table work as a result of which he could not complete requisite number of firing kilometers and as such for no fault on his part, his juniors promoted as Shunters and Drivers ignoring his claim for promotion. In the circumstances of this case, claim of the appellant for promotion over his juniors and for arrears of emoluments to the promotion post was allowed. We have already pointed out that Badri Das has been rightly given seniority over the applicant and thus the applicant cannot claim parity in promotion or pay fixation with reference to Badri Das. Hence this citation also does not come to the rescue of the applicant.

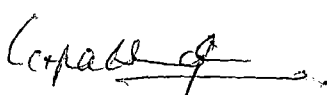


10. 2001 (1) SCT, M.G.Badappanavar and Another v. State of Karnataka - This judgement deals with the question of seniority between reserved category candidates and general category candidates, which is not the controversy in hand. Thus, this judgement also does not help the applicant.

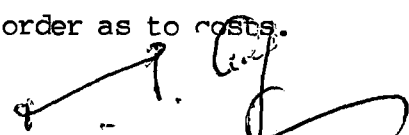
11. Learned counsel for the applicant has also drawn our attention to Para 216 A(i) of the Indian Railway Establishment Manual, Vol.I, wherein it is provided that as a rule junior should not be promoted ignoring his senior. We have already held that Badri Das was rightly given seniority over the applicant, hence question of ignoring senior does not arise in this case. This provision also does not help the applicant.

12. In the light of above discussion, we find this application is devoid of any merit and is liable to be dismissed.

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


(GOPAL SINGH)

MEMBER (A)


(JUSTICE O.P.GARG)

VICE CHAIRMAN

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Handwritten notes, possibly initials or a signature, including a circled 'G' and the date 4/1/22.

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Part II and III destroyed
In my presence on 28.5.22
under the supervision of
section officer as per
order dated 13.1.22
Section officer (Records)