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In the Central Administrative Tribunal, Jodhpur Bench, Jodhpur

Date of Order : 12th April, 2002.

O.A.NO. 18/2001

Laxminarain S/o Shri Lokman aged about 57 years, resident of RPF Ground Quarter No. 400-J, Abu Road, at present employed on the post of MCM in the office of Diesel Shed Abu Road, Western Railway.

.....Applicant.

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer.
3. Shri Dashrath Lal, MCF,
Through : Electric Foreman (DL), Dieselshed, Western Railway, Abu Road.

.....Respondents.

Mr. B.Khan
Mr. Kamal Dave

Counsel for applicant.
Counsel for the respondents.

CORAM :

Hon'ble Mr. Justice O.P.Garg, Vice Chairman
Hon'ble Mr. Gopal Singh, Administrative Member

Per Mr. Gopal Singh :

In this O.A., applicant, Laxmi Narain, has prayed for quashing the impugned order dated 21st November, 2000 (Annex. A/1) and order dated 27th November, 2000 (Annex. A/2), order amending the seniority list by assigning seniority to the applicant below the respondent No. 3, with all consequential benefits.

2. The undisputed facts of the case are that the applicant was

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junior to Shri Dashrath Lal, Respondent No.3 in the feeder cadre of FGM (SK). Both, the applicant and the respondent No. 3 were transferred on promotion vide order dated 5.2.1987 from Abu Road to Sabarmati. Respondent No. 3, communicated his unwillingness for transfer on promotion and accordingly, he was debarred from promotion for one year. The applicant, however, did not refuse promotion but, he also did not join on promotion at the new place of posting i.e. Sabarmati. The respondent No.3 was senior to the applicant and was erroneously assigned seniority below the applicant as per the Seniority List dated 28.1.1997 (Annex.A/6). Both applicant and the respondent No. 3, were promoted in the year 1990 and the applicant was placed before respondent No. 3 in the seniority list, as per his position in the feeder cadre, on the ground that non compliance of promotion orders of the year 1987 amounted to refusal by the applicant. Applicant, however, contends that had he been relieved for joining the promotional post at Sabarmati, he would have been senior to Shri Dashrath Lal, respondent No.3. Hence, this application.

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

4. A perusal of records would reveal that the applicant along with respondent No. 3, was promoted vide respondents order dated 5.2.1987. While the respondent No. 3 communicated his un-willingness to accept promotion, the applicant did not join the promotional post. We do not find any effort made by the applicant to get himself relieved so as to join his promotional post at Samdari. As a matter of fact, he did his best to avoid posting at Sabarmati and when his orders for posting at Abu Road were issued, he immediately joined the post. Thus, for more than two years, the applicant did not join the promotional post. Since the respondent No. 3 had expressed his unwillingness to join promotional post at Sabarmati, he was debarred for

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promotion for one year. Had the applicant joined the promotional post at Sabarmati immediately after his promotion orders dated 5.2.1987, he would have become senior to respondent No. 3. But, in this case he joined the promotional post only at Abu Road along with respondent No. 3 in the year 1990. It is also a fact that applicant was junior to respondent No. 3 in the feeder cadre. Thus, in the promotional post the applicant cannot be assigned higher seniority than respondent No. 3. In this view of the matter, we do not find any merit in this application and the same deserves to be dismissed. The O.A. is accordingly dismissed.

4. No orders as to cost.

Gopal Singh

(Gopal Singh)
Adm. Member

O.P.Garg

(Justice O.P.Garg)
Vice Chairman

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Part II and III destroyed
in my presence on 12-7-07
under the supervision of
Section Officer (1) as per
order dated 11-5-07
Section Officer (Record)

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