

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

ORIGINAL APPLICATION NO. 183/2003

JODHPUR THIS DAY 31 March, 2010

**Hon'ble Mr. Justice Syed Md. Mahfooz Alam, Judicial Member
Hon'ble Mr. V.K. Kapoor, Administrative Member.**

Naseeb Rahman, s/o Shri M.A. Rahman, aged about 46 years, resident of A-69, Kabir Nagar, Jodhpur. The applicant is presently holding the post of Depot Store Keeper (DSKP II) in the respondent department.

: Applicant.

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

Versus

1. The Union of India, through the General Manager, North Western Railway Jaipur (Raj).
2. The Deputy Chief Material Manager, NW Railway, Jodhpur.
3. The Assistant Personnel Officer, NW Railway, Jodhpur.
4. Om Singh, S/o Shri Salagram, DMS II, C/o Deputy Chief Material Manager, NW Railway, Jodhpur.
5. Purkharam, S/o Shri Krishna Ram, DMS II C/o District Material Manager (Stores), NW Railway, Lalgarh, Bikaner.

: Respondents.

Rep. By Mr. M. Godara, proxy counsel for

Mr. Vinit Mathur : Counsel for respondents 1 to 3

Mr. S.K. Malik : Counsel for respondent Nos. 4 & 5.

ORDER

Per Mr. V.K. Kapoor, Administrative Member.

Shri Naseeb Rahman has filed the present O.A wherein he has challenged the orders passed by the respondents dated 26/27 Feb, 2003 (Ann.A-1) and 20 Nov, 2003 (Ann.A-10A & A-10B). The applicant has sought the reliefs that are as follows:-

"(i) That the seniority list dated 26/27-02-2003 issued by the Assistant Personnel Officer (P), North West Railway, Jodhpur may kindly be declared illegal and the same may kindly be quashed and set aside qua the petitioner and respondents No. 4 & 5.

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(ii) The respondents may kindly be directed to issue a correct seniority list by showing name of the applicant over and above to respondents No. 4 & 5 in the seniority list.

(ii)A. The office orders No. E/2003/138 and No. E/2003/139 dated 20-11-2003 showing 21.08.1995 as revised dated of promotion and also seniority position at S. No. 3 & 4 of the respondents No.4 & 5 may be declared illegal and same may kindly be quashed and set aside.

(iii) Any other relief, which this Hon'ble Tribunal deems fit and proper in favour of the applicant may be granted. The Original Application may kindly be allowed with costs and all circumstantial benefits may be granted in favour of the applicant.

2. The facts in brief are that the applicant entered into services of respdts on 24.8.1987 as senior clerk. He was promoted on the post of depot storekeeper III (DSKP-III) on 16.7.1990; now re-designated as depot Material Superintendent (DMS). Applicant is shown junior to respondents 4,5 in seniority list dt 26/27 Feb,2003. On 14.9.1987, a provisional seniority list of Senior Clerks (grade Rs.1200-2040) was issued; applicant's name appears at Sl.55, names of respondent 4,5 do not appear (Ann.A-2). On 24.8.1990, Deputy Controller of stores again issued a seniority list of senior clerks stores Jodhpur in which applicant's name appears at Sl.16, respondent 4,5 at Sl. 34, 38 (Ann.A-3). For selection on the post of DSKP II (grade Rs. 1600-2660), an office order dt 10/11 June, 1991 (Ann.A-4) was issued in which respondents 4, 5 names were shown at Sl.17, 18, applicant's name was shown at Sl.21 & that of one G.K. Bohra shown at Sl.13. As per applicant Sri G.K. Bohra is junior to him in the grade of DSKP III (pay scale Rs.1400-2300), he submitted a representation dt 28.6.1991 (Ann.A-5). After perusal of representation submitted by him, respondents issued an office order dt 11.10.1991 in partial modification of office order dt 26.7.1991 placing him above Shri G.K. Bohra. Vide order dt 08.10.1996 (Ann.A-7, A-7A, A-7B), applicant



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was provisionally promoted to the post of DSKP II after passing written test & viva voce, respondents 4 & 5 names do not figure in the said order. The respondents have issued provisional seniority list on 07.12.2000 (Ann.A-8) in which applicant's name figures at Sl.7 and respondents 4 & 5 names figure at Sl.12, 13. On 26/27 Feb, 2003, respondent 3 issued a seniority list of DSKP gr.II in grade of Rs.5500-9000 (Ann. A-1) in which respondents 4 & 5 are shown as senior to applicant. The respondents introduced restructuring scheme to give benefit to the employees of reserved category (SC) in which respondent 4 & 5 were posted as DSK II w.e.f. 01.3.1993. In fact, promotions as per restructuring scheme are to be given as per employees' seniority. Two DSK II, namely Shri M.K. Jain and Shri Bhag Singh filed an O.A. 45/1996 impleading respondents 4,5 as parties, which were allowed by Tribunal vide order dt 28.10.1999. In this OA order dt 28.11.1995 was quashed & the same was declared illegal, whereby respondents 4,5 were given benefit of reservation under restructuring scheme. He produced order dt 28.10.1999, date of promotion/seniority was revised vide order dt 20.11.2003 (Ann.A-10A, A-10 B). The applicant has prayed that order of granting promotion in grade Rs.5500-9000 to respds 4,5 w.e.f. 21.8.1995 be quashed. The applicant faced selection proceedings to DSKII & was granted promotion in gr. of Rs.5500-9000 wef 08.10.1996 (Ann.A-7).

3. (a) The respondents 1 to 3 in reply have stated that respondents 4, 5 were promoted in 1989; thereafter in DSKP III/II in 1993. The applicant was promoted on the post of DMS III on 16 July, 1990 and DMS II on 08 Oct, 1996. The respondents 4,5 were shown

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senior to the applicant vide order dt 26/27 Feb, 2003 as they were promoted as DMS III in the grade of Rs.5000-8000 w.e.f. 21 July, 1988 on proforma promotion, then on regular basis w.e.f. 16 July, 1990. The respondents 4, 5 were further promoted to DMS II in the grade of Rs.5500 9000 w.e.f 01 Mar, 1993 against shortfall of reserve quota vacancy; applicant was promoted to DMS Gr. II w.e.f. 08 Oct, 1996. The respondents 4,5 were promoted as DMS III w.e.f. 01 Mar, 1993 under restructuring scheme. In selection post of DMS II seniority & service records etc were taken; in restructuring scheme, the SC/ST reservation was to continue. In O.A.45/1996, M.K. Jain & anr. vs. UOI & ors. the candidates were allowed promotion as per seniority w.e.f. 01 Mar,1993; thus respondents 4, 5 (SC) were shifted to subsequent vacancies of shortfall of reserve community w.e.f. 21 Aug, 1995 and seniority list was again prepared on 20 Nov, 2003.

The respondents 4,5 are currently shown as senior vide order dt 26/27 Feb. 2003, thus action of respondents is perfectly legal.

3 (b) The respondents 4, 5 in reply have challenged the revised promotion orders dt 10 Nov, 2003 (ann.A-10A) and seniority list dt 20 Nov, 2003. After remand of case from High Court, the applicant has challenged these orders after a lapse of 04 years, thus this O.A deserves to be dismissed. Both these respondents were promoted on senior clerk's post vide order dt 23 May, 1987. The respondent 4 & 5 were promoted on DSK PIII grade Rs.1400-2300 on 26 May, 1989 and 31 May, 1989 respectively. Both were promoted to DSKP II vide order dt 07.01.1994 w.e.f. 01.3.1993, respondents 4, 5 were shown above in seniority list of 20 Nov. 2003 (Ann R-4/5). After decision in

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M.K. Jain's case, both respondents 4, 5 were adjusted against the shortfall of reserve vacancies w.e.f. 21.8.1995. The respondents 4, 5 have contended that there is no infirmity in modifying the date of their promotion w.e.f. 21.8.1995, seniority list was issued after Ajit Kumar Juneja's case. As respondents 4, 5 are rightly shown senior on DSKP II w.e.f. 01.3.1993, under the restructuring/modified scheme, the restructuring would not change applicant's position as he is junior to respondents 4, 5 right from the post of senior clerk onwards. Under this restructuring scheme, the shortfall vacancies of scheduled caste were adjusted later when these were available.

4. (a) Learned counsel for the applicant in arguments has given a chronological list of events; the seniority list of senior clerks was prepared working in stores (Ann.A-1). On 26/27 Feb 2003; applicant was promoted to DSKP III & then on selection to the post of DSKP II. The applicant submitted that respondents 4, 5 did not pass the test for selection to DSKP II; but they were termed/made senior to him. In 1993, a restructuring scheme for group C, D was constituted. Applicant being a senior clerk on 24.8.1987, got promoted to DSKP III on 16.7.1990; respondents, 4,5 being from reserve category got promotions from lower cadres w.e.f. 23.5.1987; appointed as senior clerk on 26.5.1987 & 31.5.1989 respectively. They were promoted on senior clerks' post on urgent temporary basis. The DSKP II is filled by selection after taking written examination and viva voce test etc. As per Apex Court's verdict, reservation benefits to respondents 4, 5 could not be given. The Tribunal in M.K. Jain & anr. Vs. UOI & ors. O.A.45/1996 passed an order on 28.10.1999 in applicant' favour.

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He got promoted to DSKP II post on 08.10.1996 (Ann.A-7); whereas respondents 4, 5 were promoted on 01.3.1993; even though they did not pass selection test. Both were given advantage of restructuring scheme; in seniority list 20 Nov, 2003, they were shown as senior in violation of prescribed norms. The respondents 4, 5 appeared, but they did not pass test and reservation benefits were given to them against norms. As per applicant, respondents 4, 5 are not entitled to promotion on account reservation over & above him. As Tribunal's order in M.K.Jain's case is not challenged, this becomes final.

4(b) Learned counsel for respondents 4, 5 has drawn attention to the order dt 07.01.1994 to the modified selection held on 23.12.1993, the respondents 4,5 DSKP III gr. Rs.1400-2300 were placed on DSKP II gr. of Rs.1600-2660; promoted w.e.f. 01.03.1993 (ann.R-4). The modified selection grade to DSKP II would be applicable to both these respondents w.e.f. 01.5.1993. The respondents 4,5 were senior to applicant throughout; in view of Trbibunal's order in O.A.45/1996 in M.K.Jain & ann vs. UOI & ors., the dates of promotion were revised for DMS II in grade Rs.5500-9000 in which both these were shown senior. In the order passed by the Hon'ble High Court of Rajasthan in DB Writ Petition 2698/2005, in decision 08.3.2006, directions were given to Tribunal (in O.A.183/2003) to decide this case afresh. Thus the applicant cannot challenge this matter after a lapse of 5 years.

4 (c) Learned counsel for respondents 1 to 3 has stated that there were some adjustments in shortfall of reserve quota; promotions were made on reserve vacancies under the restructuring scheme.

Answer

5. As per learned counsel for respondents 4, 5, the applicant has challenged their revised promotion orders issued vide office order dt 10 Nov, 2003 (Ann.A-10A) and seniority list dt 20 Nov, 2003. It is averred by the respondents 4, 5 that the seniority list etc and these orders were well within applicant's knowledge. After High Court's order, applicant has challenged these orders after almost a lapse of 04 years. This is clear on the face of record that seniority list dt 26/27 Feb, 2003 was challenged and relief sought for issuing a fresh seniority list showing the applicant over and above respondents 4, 5. The matter was decided vide order dt 23.9.2004 in applicant's favour which was struck down by Raj. High Court, Jodhpur in writ petition 2698/2005, in judgment dt 08.3.2006 directions were given to Tribunal to decide the matter afresh. The present O.A came up for consideration, which being a continuous process, there is no delay under Sec.21 of the AT Act, 1985. The objections of respondents 4 and 5 as regards delay are hereby rejected.

6. The applicant entered into service of railways on 24.8.1987 on the post of senior clerk. He was promoted on the post of DSKP III on 16.7.1990; the revised designation of this post is DMS. The Deputy Controller of stores, Jodhpur issued a provisional seniority list of senior clerks on 14.9.1987 in the scale of Rs.1200-2040; applicant's name appears at Sl. 55, names of respondent 4, 5 do not find place there (Ann.A-2). On 24.8.1990, a seniority list of senior clerks was published in which applicant's name appears at Sl.16 and those of respondents 4, 5 at Sl. 34, 38 respectively (Ann.A-3). For selection

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on the post of DSKP II grade 1600-2660, list of eligible candidates was published on 11.6.1991; applicant's name figures at Sl.21 & those of respondents 4, 5 at Sl. 17,18 respectively (Ann.A-4). Even the name of Shri G.K. Bohra who was junior to the applicant as per list of clerks dt 29.7.1995/01.8.1995 is shown senior to him in office order dt 26.7.1991 in gr of Rs.1400-2300. On applicant's representation, correct seniority was given; he was placed above Shri G.K. Bohra and respdts 4, 5 (Ann.A-6). Vide office order dt 08.10.1996, applicant was promoted as DSKP II in selection gr. of Rs.1600-2660; respdts 4, 5 names do not figure in Ann.A-7. The official respdts had declared results of selection for the posts of DSKP II vide order dt 30.5.1995, name of Shri G.K. Bohra is below applicant; respdts 4, 5 names do not appear in the list (Ann.A-7A). After conduct of written test and viva voce on 21.8.1995, panel of successful candidates for DSKP II was declared on 21.8.1995 (Ann.A-7 B).

On 07.12.2000, the respondents issued a provisional seniority list for various categories of Jodhpur depot; in DSKP II seniority list, applicant's name is shown at Sl.7, respondents 4, 5 were placed at Sl. 12,13 (Ann A-8). But on 26/27 Feb, 2003, in the seniority list of DMS II (scale Rs.5500-9000), applicant's name figures at Sl.7; the names of respondents 4, 5 appear at Sl.3,4; i.e. they enjoy seniority above applicant (Ann.A-1). The railways introduced a restructuring scheme to the advantage of reserve category candidates; respdts 4, 5 were given benefit of reservation roaster. The respondents 4, 5 were promoted to DSKP III in scale of Rs.1400-2300 vide office order dt 23.5.1989 & 31.5.1989 (Ann.R-4/2, R-4/3); they were promoted

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to DSKP II post vide order dt 07.01.1994 w.e.f. 01.3.1993 (Ann.R-4/4). The respondents 4, 5 are said to be promoted on DSKP II under restructuring scheme; they were adjusted against the shortfall of reserve vacancies w.e.f. 21.8.1995. The applicant has quoted the case of *M.K. Jain & anr vs. UOI & ors.* in O.A.45/1996 which states that reservation is not a criteria for promotion. The applicant has also relied upon *UOI vs. V.K. Sirothia* 1999 SCC (L&S) 938 in which it is held by Apex Court - in case of upgradation on account of restructuring of cadres, reservation not attracted. The respondents have acted in the light of these cases; the case of *M.K. Jain vs. UOI* has not been challenged; this holds good even now.

8. It is pertinent to mention that the railways introduced a restructuring scheme to the benefit of reserve category candidates; the respondents 4, 5 being of reserve category, were quick to grab this opportunity. They were promoted to DSKP III in the grade of Rs.1400-2300 vide office order dt 23 May, 1989 and 31 May 1989 as stated in Ann.R-4/2 & Ann.R-4/3 respectively. Subsequently, these respondents 4, 5 were said to be promoted on DSKP II under the restructuring scheme vide order dt 07.01.1994 w.e.f. 01.3.1993. Vide this order dt 07.01.1994, the pay and allowances of respondents 4,5 were fixed at Rs.1650/- per month for each w.e.f. 01.5.1993. It was clearly specified in their order dt 07.01.1994 that both of them would be entitled for their next increment on 01.5.1994. Thus, it is apparent that both these respondents 4,5 came in service of the official respondents' department earlier. Vide order dt 07.01.1994 the respondents 4, 5 got seniority, thereby they were placed above the

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applicant. It is worth finding mention that both respondents 4, 5 were promoted to DSKP II in the grade Rs.1600-2660 (RPS) as a result of modified selection held on 23.12.1993 vide order dated 07.01.1994, accordingly respdts 4, 5 were placed in the provisional panel. This nullifies the contention of applicant that respondents 4, 5 did not pass selection test for DSKP II posts in the revised pay scale of Rs.1600-2660 (Ann.R-4/4). This is finally settled that respondents 4, 5 passed the modified selection organized by the official respondents in which these two respondents got cleared. Therefore, the respondents 4, 5 were promoted from the post of DSKP III to that of DSKP II vide above stated order dt 07.01.1994.

9. Later, the railways introduced restructuring scheme, the respondents 4, 5 were adjusted against the shortfall of reserve vacancies w.e.f. 21.8.1995. As per modified selection applicable w.e.f. 01.5.1993, the respondents 4, 5 were made senior to applicant throughout. Moreover, the official respondents decided to follow the rule of reservation in promotion posts as well, accordingly decision to amend their seniority was taken. Thus, the respondents 4, 5 being of reserve category were shifted to subsequent vacancies of shortfall of the reserve vacancies; this was made applicable w.e.f. 21 Aug, 1995. This took quite some time for respondents 1-3 to prepare revised seniority; the seniority list was prepared by official respdts vide order dt 26/27 Feb, 2003. Accordingly, the respondents 4, 5 would gain advantage against the reserve posts; their seniority placement is definitely above applicant. The applicant is not supposed to challenge the seniority of the respondents 4, 5 in the light of reservation rules

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on account of cadre restructuring. Thus, vide order dt.07.01.1994, respondents 4,5 were provisionally promoted w.e.f. 01.3.1993 to the post DSKP II w.e.f. 01.3.1993 upto 30.4.1993 and given the grade of Rs.1650 per month w.e.f. 01.5.1993; later they got advantage under the restructuring scheme. The contention of the applicant stands refuted that both these respondents 4,5 were not promoted as per selection process. The order dt 07.01.1994 is quite clear and specific that respondents 4, 5 passed in the modified selection held on 23.12.1993 in which the DSKP II personnel of grade Rs.1400-2300 (revised pay scale) were promoted to DSKP, grade II scale Rs.1600-2600 on 07.01.1994. This order dt 07.01.1994 finally makes the respondents 4, 5 senior to the applicant. Applicant is not supposed to challenge the promotions of respondents 4,5 on the selection grade of DSKP/DMS II vide order dt 07.01.1994. Later, under restructuring scheme, both of these respondents 4,5 were given seniority, the reservation benefits finally accrued to them. Thus, the claim of seniority on the part of applicant stands vindicated. The seniority list prepared on 26/27 Feb, 2003 was prepared after giving due thought to the claims of the respective class of employees, following reservation roaster under the restructuring scheme.

10. The respondents 1 to 3 made a writ before Hon'ble High Court of Rajasthan, Jodhpur in D.B. (civil) Writ Petition 2698/2005 against the order of Tribunal passed in present OA 183/2003 dt 23.9.2004 was challenged. This writ petition before Rajasthan High Court was allowed, the case was remitted back to Tribunal to decide this afresh. It is pleaded on behalf of respondents 4, 5 that as per modified

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selection applicable w.e.f. 01.5.1993, respondents 4,5 were senior to the applicant throughout. The contention of counsel for respondents 4,5 is that the applicant cannot challenge the seniority of respondent 4, 5 after a lapse of 5 years or so. The learned counsel for respondents 4, 5 have relied upon *Ajit Singh Juneja's & ors vs. State of Punjab & ors* 1996 SCC (L&S) 540 that speaks about accelerated promotion through reservation or roaster system will not grant such promotees seniority over general category promotees for next promotion in the general category post- they can again gain advantage only against the reserved posts in the higher grade. Accordingly, the rule of reservation on the promoted posts was also made effective; the respondents took decision to amend the seniority list. The respondents 4,5 were promoted as DMS against shortfall of reserve quota in the grade of Rs.5500-9000; it was decided by the official respondents that SC/ST reservation would continue to apply under the scheme of restructuring. As per decision in O.A.45/1996 *M.K. Jain & anr. vs. UOI & ors.* Shri M.K. Jain and Shri Bagh Singh were allowed promotion w.e.f. 01.3.1993; respondents 4, 5 were shifted to subsequent vacancies of shortfall of reserve vacancies w.e.f.21 Aug, 1995 & seniority list was again prepared on 20 Nov, 2003. Thus, seniority list for the posts of DMS II vide orders 26/27 Feb, 2003 was rightly prepared by the respondents. The respondents 4, 5 can gain advantage only against reserved posts in the higher grade as per *Ajit Singh Juneja & ors vs. State of Punjab & ors.* Thus promotions given to respdts 4,5 on the posts of DSKP/DMSII vide

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orders dt 26/27 Feb, 2003 are just & proper in view of restructuring scheme, thereby giving advantage to them on reserved posts.

11. In the light of deliberations/observations made above, no interference is called for in the orders dt 26/27 Feb, 2003 (Ann.A-1) and 20 Nov, 2003 (Ann.A-10A & A-10B). Resultantly, the present OA is dismissed with no order as to costs.

[V.K. Kapoor]
Administrative Member

S.M. Alam
[Justice S.M.M. Alam]
Judicial Member

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