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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No.271/2006

Date of decision: 17.09.2007

Hon'ble Mr. Kuldip Singh, Vice Chairman,

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

Jagdev Singh S/o Sh Miiki Ram, aged about 57 1/2 years r/o qr. No. E-25Railway Colony, Rai Ka Bagh, North Western Railway, Jodhpur Division, Jodhpur. (Rajasthan)

Presently working on the post of Tech Sarang I Grade in the office of Section Engineer Bridge (M) Rai Ka Bagh North Western Railway, Jodhpur Division, Jodhpur (Rajasthan)

: applicant.
Rep. By Mr. S.K. Malik : Counsel for the applicant

VERSUS



1. Union of India through the General Manager, North western Railway, Jaipur (Rajasthan)
2. The Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur (Rajasthan)
3. The Senior Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur (Rajasthan)
4. Sh Munna S/o Sh Madho Tech Sarang -I Grade in the office of Section Engineer Bridge (M) Rai Ka Bagh, North Western Railway, Jodhpur Division, Jodhpur.(Rajasthan)

Mr. Salil Trivedi : Counsel for respondents 1 to 3

Mr. H.R. Soni : Counsel for respondent No. 4

ORDER

Per Mr. Kuldip Singh, Vice Chairman.

The applicant has filed this O.A for quashing the order dated 08.11.2006 (Annex. A/1) vide which his representation for revision of seniority list dated 03.05.2006(Annex. A/2) has been turned down.

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2. The case of the applicant is that he was initially engaged as Casual Labour with effect from 31.08.1968 and he was granted the scale of Khalasi with effect from 12.05.1977 and then he was further promoted as Khalasi Helper, Sarang Gr. III on 12.09.82, Sarang Gr.II with effect from 02.07.94 and Sarang Gr. I with effect from 03.011.97. Respondent No. 4 was also initially engaged as Casual Labour with effect from 17.06.73 and he was granted graded scale of pay of Khalasi with effect from 12.08.77. He was promoted as Khalasi Helper with effect from 01.08.78. He was further promoted as Sarang Gr. III on 21.09.84, as Sarang Gr. II 02.09.99 and lastly as Sarang Gr. I on 12.11.99. Earlier Respondent No. 4 filed O.A.No. 144/93 challenging the seniority list of Artisan Staff under the Bridge Engineer, Jodhpur which was prepared on 31.01.93, wherein the name of the applicant had been shown at Sl. No. 7 and that of the R.4 at Sl. No. 15. In that O.A the applicant was not arrayed as a party. This Tribunal vide its order dated 28.09.94, without quashing the seniority list directed the respondents to decide the case of R.4 in terms of the decision rendered in the case of one Sh Sukhbir Singh. Respondent No. 4 was also directed to submit a representation. It seems that the said representation of R.4 was turned down and a further seniority list of Artisan Staff as on 30.09.96 (Annex. A/5) was issued wherein the name of the applicant was shown at Sl. No. 2 as Sarang Gr. II and that of R.4 had been shown at Sl. No. 6 as Sarang. Gr. III. Now the official respondents have issued a provisional seniority list of Group C vide letter dated 03.05.2006,

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wherein in the seniority of Sarang Gr. I, the name of R.4 has been shown at Sl. No.1 and that of the applicant at Sl. No. 2. The applicant submits that he being senior to R.4 right from the very beginning he submitted a representation on 09.05.2006, which was turned down vide Annex. A/1.

3. In the grounds challenging the O.A, the applicant has pleaded that he being senior to R.4 from the date of initial appointment to the date of last promotion as Sarang Gr. I, he cannot be pushed down in terms of para 302, 306 , 309 and 319 (a) of IREM Vol. I. In the Original Application No. 144/93 filed by R.4 a direction was issued to the official respondents to decide the case of R.4 without quashing the seniority list. In pursuance to the order R.4 submitted a representation which was turned down. But now the official respondents have issued a provisional seniority list for Group C in which for the post of Sarang Gr. I, respondent No.4 had been shown at Sl. No. 1 and the applicant at Sl. No.2. Further R.4 had not raised any objection at the time of rejection of representation. Thus it is prayed that the seniority list should be revised and the applicant should be shown as senior to R.4

4. The official respondents as well as the private respondent are contesting the O.A and have filed detailed separate replies. The official respondents have submitted that the O.A filed by the applicant is barred by the principle of resjudicata since R.4 had earlier filed O.A. No. 458/94; in which the present applicant was

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also arrayed as a party respondent. The said O.A was decided by this Bench of the Tribunal on 13.11.98 and the said O.A was allowed and the official respondents were directed to issue a seniority list in compliance with the directions.

5. The respondents have also taken another objection that the applicant is aware of the factum of filing O.A. No. 458/94 by R.4 and he conveniently suppressed these facts from the Court in the present O.A and he has stated that no O.A was ever filed.

6. On merits, it is stated that because of the direction given in O.A. No. 458/94, which had attained finality, the seniority list has been issued and the applicant being a party to O.A. No. 458/94, he cannot raise any objection now since the issue regarding the inter se seniority between the respondent No. 4 and the applicant has attained finality and the same cannot be re-agitated now. Therefore the official respondents have prayed for the dismissal of the O.A.

7. The Private respondent No. 4 had also taken similar objections. R.4 had also prayed for dismissal of the O.A.

8. The applicant has filed rejoinder reiterating the averments made in the O.A and stated that the applicant being senior to R.4 right from very beginning and the seniority should be fixed in terms of paras 302,306,309 and 319 (a) of the IREM Vol. I and the O.A should be allowed. The applicant has also annexed a copy of

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the order dated 19.01.2001 in O.A. No. 23/2000 filed by R.4, in which the official respondents themselves admitted that the applicant is senior to R.4 on the basis of date of entry into service.

9. We have heard the learned counsel for the parties and carefully gone through the records. The learned counsel for the applicant submitted that in terms of paras 302 and 306 of IREM Vol. I, for determining seniority the date of appointment/promotion is the criteria and hence the applicant is senior to R.4 in all the grades, since he was appointed/promoted earlier to R.4. In this connection, the learned counsel for the applicant referred to a judgement of the Apex Court in the case of **Indian Council of Agricultural Research and Another vs. T.K. Suryanarayan and ors** [1998 SCC (L&S) 359] wherein it has been held as under:


 "Promotion-Erroneous promotion given departmentally by misreading of rules or pursuant to judicial order contrary to rules- When does not confer right on other similarly placed person to similar benefit- Erroneous promotions given to several employees on account of wrong application of rules - Held, the appellant-Council was not barred from applying the rules correctly in the respondents' case though they were similarly placed and it resulted in unmerited hardship to a large number of employees- Further observed, it was for the rule making authority to consider desirability of amending or relaxing the rules to remove the hardship - Constitution of India, Arts 16 and 14 - Equality of opportunity in public employment - Exceptions - Appointment -Erroneous appointment -Recruitment Process - Erroneous recruitment -Service rules - Amendment/Relaxation of - When desirable -Unmerited hardship."

The judgement cited by the learned counsel for the applicant is not appropriate in the present set of facts since the inter se seniority had already been settled in the earlier litigation.

10. As such we are of the view that by filing the present O.A, the applicant is trying to re-agitate the issue of seniority which had

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attained finality and therefore the same is barred by the principle of resjudicata. The applicant was a party to O.A. No. 458/94 and the inter se seniority between the applicant and respondent No. 4 had attained finality. It is also seen that the applicant had not disclosed anywhere in the present O.A about the factum of filing of O.A. No. 458/94 by R.4. The official respondents have also stated that the seniority between the applicant and R.4 had been settled in accordance with the directions given in O.A. No. 458/94 and they could not carry out the interpolation in view of the stay granted by this Tribunal in favour of the applicant in the present O.A vide order dated 13.11.2006. A perusal of the order in O.A. No. 458/94 would go to show that R.4 (Applicant in O.A. No. 458/94) had been put to a disadvantage by the official respondents by not calling him for the trade test along with his juniors. It was also held that with the restoration of his position in the seniority list he should be considered to appear in the trade test for the post of Sarang Gr. I as per his turn and seniority and if he is declared successful in the trade test to be held for the post of Sarang I in terms of the order, he would be promoted to the post of Sarang Gr.I from the date his immediate junior has been promoted as such. R.4 had qualified in the trade test for Sarang Gr.I. In these circumstances the seniority of R.4 and the applicant has been assigned placing R.4 above the applicant. Therefore the applicant cannot re-agitate the matter now.

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11. The learned counsel for the private respondent No. 4 submitted that his O.A No. 458/94 was decided on the basis of O.A. No. 142/93 [Sukhbir Singh vs. UOI and ors]. Against the order in O.A. No. 142/93, the official respondents have preferred D.B. CW. No. 1770/2000 before the Hon'ble High Court of Rajasthan at Jodhpur. The Hon'ble High Court has up held the order of this Tribunal and dismissed the above Writ Petition. Thus the seniority matter had been impliedly upheld by the Hon'ble High Court of Rajasthan also. Therefore, we cannot re-open the issue of seniority now and allow the applicant to re-agitate the matter. It is also well settled principle of service jurisprudence that seniority should not be disturbed again and again which had been settled by an order of the Court of law. Admittedly, the applicant is a party to O.A. No. 458/94. Therefore, we find no merit in this O.A and accordingly it is dismissed. No costs.

R.R. Bhandari

(R.R. Bhandari)
Administrative Member

Kuldeep Singh

(Kuldeep Singh)
Vice Chairman.

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Part II and III destroyed
in my presence on 04-6-14
under the supervision of
Section Officer (1) as per
order dated 26-7-2014

Section officer (Record)

Recd 9/9/14
27/9/14
S. K. K. 27/9/14

Recd 9/9/14
27/9/14
General file
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