

I/13

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

O.A. No.342/2010

Jodhpur this the 8th January, 2013

CORAM

**Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Mr. B.K. Sinha, Member (A)**

Vishva Prakash Singh S/o Shri Om Prakash
R/o Jailwell Road, Bikaner
At present J.E.-II/P-way, North-Western Railway
Bikaner

.....Applicant

(Through Adv. Kishan Bansal)

Versus

1. Union of India through General Manager
North-Western Railway H.Q. Office
Opposite Railway Hospital, Jaipur

2 Joint Director Estt (N), Railway Board
Rail Bhawan, New Delhi

3. The Divisional Railway Manager, NWR
Bikaner Division, Bikaner

4. Divisional Personnel Officer, NWR
Bikaner

.....Respondents

(Through Adv. Vinay Jain)

ORDER

Per: B K Sinha, Administrative Member

The instant OA is directed against the order of the Divisional Personnel Officer, NWR, Bikaner issued vide order No. P-4/754-E/JE-II/Selection/Vol.6 dated 04.02.2010 and Order No. E(NG)1-2009/PMI/15 dated 08.12.2009 declaring promotion to the applicant on the post of JE-II from the date of selection.



2. The applicant has sought following relief(s) :

- (i) *By an appropriate order, writ or direction, the orders dated 04.02.2010 (A/1) may kindly be ordered to be modified to the extent that the applicant may kindly be promoted on the post of JE II (P-way) from the date of selection with all consequential benefits.*
- (ii) *By an appropriate order, writ or direction the order dated 08.10.2009 (A/2) passed by the respondents qua the applicant may kindly be declared illegal and be quashed and set aside, and*
- (iii) *By an appropriate order, writ or direction the respondents may kindly be directed that the seniority on the post of JE II (P-way) of the applicant may kindly be considered from the date of selection.*
- (iv) *Any other order, which this Hon'ble Tribunal deems fit, just and proper in the facts and circumstances of the case, may kindly be passed in favour of the applicant.*
- (v) *Costs be awarded to the applicant.*

Case of the applicant:

3. The applicant was directly recruited to the post of PWS (Supervisor Permanent Way) on 10/01/2005 in the scale of Rs 4500-7000/-. The respondent organization issued a notification dated 18/01/2008 for selection on the promotional post of JE II (P-way) in a pay band of Rs 5000-8000/- to be recruited from the post of PWS in the scale of Rs 4500-7000/-. The applicant was also required to fulfil a residency clause of two years in order to gain eligibility for the post. The applicant was invited to appear in the written examination on 09.02.2008 as he fulfilled the residency clause. [A/4] The applicant submits that some PWS who did not fulfil the residency clause were also called for the written test. The applicant was selected along with 11 others for the post of JE II on the basis of the written examination and was sent for training to the Regional Railway Training Institute, Udaipur from 03.12.2012 to 02.02.2009 which he cleared [A/8]. In the meantime the Railway Board issued a circular no. PC-III/2004/CRC/1(Pt 1) dated 22.03.2007 whereby the PWS was abolished and new post of Sr PWS in the pay scale of Rs 5000-8000/- was created. The existing PWS were upgraded to Sr PWS as a

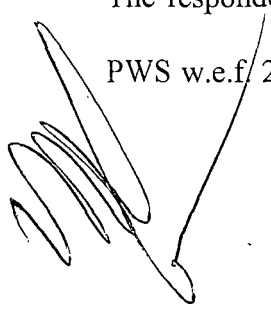
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consequence of this letter dated 22.03.2007 as a measure of implementation of Corporate Safety Plan (2003 to 2013) of Indian Railways [A/9]. The grievance of the applicant is that he was upgraded from PWS to Sr. PWS in the pay scale of Rs 5000-8000/- w.e.f. 19.10.2007 vide the letter dated 12.06.2008 after the notification dated 18.01.2008 for the post of JE II (P-way) had been issued and the written test had been conducted on 09.02.2008. The applicant was denied posting on the post of JE II (P-way) on the ground that he had not completed the residency clause of two years while 6 other incumbents were posted as JE II (P-way) out of the 12 persons selected. The applicant alleges hostile discrimination and cites the instance of one Radha Mohan who had been appointed as Sr. PWS along with the applicant on 17.01.2006 and had been promoted to the post of Sr. PWS w.e.f. 22.03.2007. Radha Mohan has also been promoted as JE II (P-way). The applicant further cites the case of one Lal Bahadur who has been similarly appointed Sr. PWS w.e.f. 22.03.2007 and has since been promoted.

4. The principal argument adopted by the applicant is that since the PWS cadre had been upgraded to Sr. PWS, the two are the same post and 2 years' residency should be viewed taking both the PWS and Sr. PWS together. The applicant has further argued that once he had been considered eligible on 18.01.2008 at the time of notification and has been permitted to sit for the written examination and undertake the training the respondents had no right to go back and declare that he was not eligible on the basis of the residency clause [para 'C': page 8]. The applicant further argued that one Radha Mohan who was junior to the applicant in the Western Railway has been promoted earlier. The learned counsel for the applicant eloquently pleaded for application of the 'same rule, same policy' and for the promotion of the applicant with date of his selection.

Case of the Respondents:

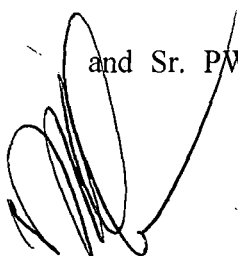
5. The respondents have submitted their written reply and have contested the OA. The respondents submit that the Railway Board introduced a new category i.e. the Sr. PWS w.e.f. 22.03.2007 in the scale of Rs 5000-8000/-. In pursuance of this letter all 44



cadre posts of PWS in pay scale of Rs 4500-7000/- were upgraded into the newly created category by means of the letter dated 30.01.2008[R/1] w.e.f. 22.03.2007 following the guidelines for selection. The letter dated 22.03.2007 prescribes minimum residency period of 2 years' service. As the applicant did not fulfil two years of minimum qualifying service he was promoted to the post of JE II vide order dated 04.02.2010 on completion of the residency period. Regarding the fact that the notification inviting applications for the post of JE II and the written examinations were conducted before promotion to the post of Sr PWS the respondents have submitted : *"Of course, a notification dated 18.01.2008 was issued for the selection on the promotional post of JE-II (P.Way) in the pay scale of Rs 5000-8000/- from the post of PWS pay scale of Rs 4500-7000/-. It is just and proper to submit that the new category of Sr. PWS in grade of Rs 500-8000/- which was introduced by Railway Board by letter dated 22.03.2007 was not in the knowledge of the respondents, therefore, notification dated 18.01.2008 was issued. As soon as creation of Sr. PWS was came to the knowledge of the respondent-department, modified selection was conducted by the respondent-department for the post of Sr. PWS and by which the applicant was also considered for the post of Sr. PWS and promoted by letter dated 23.05.2008, and in pursuance of this, a letter dated 12.06.2008 was issued and by which applicant was promoted to the post of Sr. PWS w.e.f. 19.10.2007. Thereafter, as per Railway Board letter dated 03.07.2007, a selection for the post of JE-II (P.Way) was initiated."*[para 2 of the CA].

6. The learned counsel for the respondents has strongly argued that the post of PWS has not been abolished and further that there is a residency clause of 2 years' both for the promotion from PWS to Sr. PWS and from Sr. PWS to JE-II (P.Way). The applicant had not completed the residency period of 2 years on the post of Sr. PWS and he was promoted to the JE II (P.way) as soon as he completed it on 04.02.2010.

7. The learned counsel for the respondents submitted that the nature of job of PWS and Sr. PWS are the same. The applicant, once having accepted the letter dated




22.03.2007 and having been promoted to the post of Sr. PWS now cannot turn around and take the plea that a residency period of the post of PWS should also be counted for the post of JE II (P.way). The instance of Lal Bahadur cited by the applicant is not applicable as Lal Bahadur is appointed by direct recruitment to Sr. PWS which is a promotional post of PWS requiring residency period of 2 years. The learned counsel for the respondents admitted that in some other Railways the period of service as PWS has been reckoned towards the residency period for JE II (P.way). This however, cannot be accepted as a precedent in view of the clear clarification received from the Railway Board vide the letter dated 03.07.2007. A continuing wrong cannot be accepted as a precedent. The learned counsel for the respondents, therefore, has strongly argued for the OA to be dismissed as being devoid of merit.

Facts-in-Issue:

8. We have carefully considered the pleadings and such documentary evidence as has been adduced by the parties. Having listened to the arguments put forth by their respective counsels which have by and large followed their written submissions the only fact in issue that emerges for consideration is that whether the residency period for the post of JE II (P.way) should be computed on the basis of the services of 2 years rendered as Sr. PWS or that the service as PWS would also reckon for the same. In this regard it is necessary first to consider the letter of the Railway Board dated 22.03.2007. This letter clearly spells out that a new category of Sr. Permanent Way Supervisor is being introduced as a measure of rationalization of manpower planning for staff engaged in track maintenance and related matters in pursuance to the progressive implementation of Corporate Safety Plan (2003-2013) of the Indian Railways based upon the recommendations of the Railway Safety Review Committee (RSRC-1998). The letter adds to prescribe a procedure for fitment for the existing staff in the new category and does not envisage it as an upgradation of the entire cadre

"As one time exception, existing regulars incumbents of the posts of Track Supervisor (erstwhile P.W. Mistries/Supervisors Permanent Way) would be absorbed in the category of Sr. P. Way Supervisor through promotion through modified selection procedure which will be based only on scrutiny



of service records and confidential reports without holding any written or viva-voce tests. The selection Board would consider the claims/suitability of eligible staff one by one in order of their seniority. The Track Supervisors (erstwhile P.W. Mistries/Supervisors Permanent Way) who do not get absorbed (promoted) as Sr. P.W. Supervisor shall continue to hold post/scale of Track Supervisor as personal to them. To this extent, the newly created posts of Sr. P.W. Supervisor will be operated as the posts of Track Supervisors (erstwhile P.W. Mistries/Supervisors Permanent Way) till the existing incumbents vacate the same by way of promotion, retirement etc. On vacation of these posts, the same shall automatically be operated as the posts of Sr. P.W. Supervisors."

9. This the same very letter has referred to in previous para also goes ahead to prescribe a minimum service residency clause.

"For the above purpose the condition regarding minimum residency period prescribed by the Railway Board for promotion within Group 'C' safety categories on the Railways will have to be fulfilled. Those Track Supervisors (erstwhile P.W. Mistries/Supervisors Permanent Way) who do not have the prescribed minimum service would not be absorbed (through promotion) in the new category till they acquire such service."

10. This clearly specifies that only those persons who fulfil this residency period will be eligible for promotion as Sr. PWS.

11. As regards the promotion to JE (P.way) the matter stands clarified vide the letter dated 08.12.2009 of the Railway Board which also covers the promotion of 6 staff to JE II (P.way).

"2. The matter has been carefully considered and it is pointed out that it was irregular on the part of Railway to promote six staff to the post the JE-II(Pay) from the panel published on 03.09.2008 even before issue of instructions dated 24.04.2009, as instructions issued vide letter ibid, are only clarification to Board's earlier instructions dated 23.09.2008, in terms of which no promotions were to be made in case of merged grades, as merger had affected existing AVCs. The reasons for above lapse alongwith action taken against erring official may be advised to the Board."

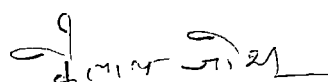
2.1 As regards fate of residual panel, it has been decided that Railway in this case may promote the staff to the post of JE-II who have been placed on the panel and have completed two years service as Sr. Supervisor (P.way) in grade Rs.5000-8000."

12. From paragraph 2.1 of this letter it becomes abundantly clear that only such candidates may be promoted to JE II who have completed 2 years as Sr. Supervisor (P.way) in Rs 5000-8000/-. Thus, it also becomes clear that the service rendered as PWS will only count towards gaining eligibility for Sr. PWS and not towards JE II (P.way).

13. As regards the question of precedence of persons getting benefit of service as PWS in other Railways is concerned we tend to fully agree with the contention of the learned counsel for the respondents that such practice has already been declared wrong and a wrong even if it is a continuing one cannot act as precedent. It is to be clarified here that the practice in other Divisions do not constitute a legal precedent. In common law legal system a precedent or authority is a principle or rule established in a previous legal case that is either binding or persuasive for a court or other Tribunals when deciding subsequent cases with similar issues or facts. Black⁸ defines precedent as "rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases". It takes birth from the Latin maxim *Stare decisis et non quieta movere* 'to stand by decisions and not disturb the undisturbed.' In India authoritative legal precedence include the decisions of the Hon'ble Supreme Court under Article 141 or that of the Hon'ble High Courts which create binding precedent for all lower courts within their jurisdiction. Thus, it clearly emerges that the instances cited by the applicant are no legal precedent and hence not binding.

14. In sum and substance we find that the OA is devoid of merit and, hence, dismiss the same without costs.


(B K SINHA)
ADMINISTRATIVE MEMBER


(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER