

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

Original Application No.357/2011  
with  
Misc. Application No.140/2011

Jodhpur this the 13<sup>th</sup> day of April, 2015

**CORAM**

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial)  
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)**

Fakrudeen S/o Shri Lal Mohd., by caste Muslim, aged about 61 years, R/o Outside Sheetla Gate Daran Mohalla, Jamalsa Kamalsa Peer Dargah, Bikaner (Ex-Painter Grade.II, Under respondent No.4)

.....Applicant

By Advocate: Shri Nitin Trivedi.

**Versus**

1. The Union of India, through General Manager, North Western Railway, Head Quarter Office, Jaipur.
2. The Divisional Railway Manager, North Western Railway, DRM Office, Bikaner.
3. The Divisional Personnel Officer, North Western Railway, Bikaner.
4. The Assistant Divisional Engineer, North Western Railway, Bikaner.
5. Senior Section Engineer, North Western Railway, Bikaner.
6. Shri Jawaharlal S/o Shri Shri Parmeshwar Lal, at present working as Painter Gr.I in the office of Assistant Divisional Engineer (Works), North Western Railway, Hanumangarh.
7. Sarwan Kumar S/o Gopi Nath, at present working as Painter Gr.I in the office of Assistant Divisional Engineer (Works), North Western Railway, Bikaner.

.....Respondents

By Advocate : Shri Manoj Rhandari, counsel for respondent No. 1 to 5

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

In the present OA, the applicant is aggrieved of the order No.P-4/755-E/Engg/Artisan/Promotion dated 11.05.2007 issued by the Divisional Personnel Officer, North Western Railway, Bikaner and therefore, the applicant has prayed for the following reliefs:-

- "(a) By an appropriate order or direction, the impugned order dated 11.05.2007 (Annexure-A/1) may kindly be modified and the respondents may kindly be directed to promote the applicant with effect from the date from the private respondent No.6 Shri Jawahar Lal & 7 i.e. Sarwan Kumar has been promoted and further be directed to provide all the arrears of services benefits including the retiral benefits after making the revision of pay fixation on promotion of the applicant as Painter Gr.I along with simple interest @ 9% per annum with all consequential benefits.
- (b) Without prejudice to the relief claimed herein above, the respondents may kindly be directed to notionally fix the applicant in the pay band of Rs.5200-20200 in pay grade of Rs.2800/- on the post of Painter Gr.I with effect from the date of retirement itself i.e. 31.08.2010 and further be directed to make the payment of arrears of all retiral benefits after revision of fixation of pay on the post of Painter Gr.I along with simple interest @ 9% per annum with all consequential benefits.

(c) Any other order or direction, which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the applicant.

(d) The cost of the OA may kindly be awarded in favour of the applicant."

2. Brief facts of the case, as stated by the applicant, are that the applicant was initially employed as Casual Labour w.e.f. 01.01.1973 and Khallasi from 07.05.1978 and further as Gangman w.e.f. 1983. The applicant also qualified the trade test for the post of Painter. The applicant was promoted and posted as Trainee Painter Grade III with effect from 01.06.1992 and joined services from 08.06.1992. The applicant was further promoted to the post of Painter Grade II in the pay scale of Rs.4000-6000 vide order dated 03.11.2004 (Annexure-A/3), wherein the name of the applicant mentioned at Sl. No.6 who although shown to be promoted from the date of passing of the order, but thereafter vide order dated 04.04.2007 (Annexure-A/7) corrected the above mistake and shown to be promoted w.e.f. 01.11.2003 i.e. the date from which his juniors were promoted. It has been averred that the respondents while maintaining the seniority list never sought objections from the concerned employees during the period of 2004 from which the promotion order from Painter Gr.III to painter Gr.II were issued and two juniors viz. Jawahar Lal and Sarwan Kumar who actually had been working as Painter Grade III

the applicant on account of the fact that a wrong entry of the date of joining of the applicant Painter Grade III was entered into service record as 21.05.1999, whereas he actually was working on this post from June, 1992. Further, in the seniority list issued by the respondent in the year 2006, the applicant has been shown junior to them. Although the applicant made representation to the respondent authority to correct seniority and the date of promotion to the post of Painter Grade II, responding to which, the respondents have corrected the date of promotion of the applicant w.e.f. 2003 vide order dated 04.04.2007, but never corrected the seniority position of the applicant vis a vis the junior employees. Due to which many junior employees including the private respondents got promotion to the post of Painter Grade I in the pay scale of Rs.5700-7000 vide order dated 11.05.2007 (Annexure-A/1) and the names of private respondents have been incorporated at Sl. No.16 & 18. Thereafter, the applicant submitted various representations/ applications, but no heed was paid to them. It has been further averred that the issue with regard to the promoting the applicant from the post of Painter Gr.II to the post of Painter Gr.I w.e.f. the date of promotion of junior employees had been under consideration with the respondent No.3, and therefore he vide his order dated 31.08.2010 (Annexure-A/12) directed the Assistant Divisional Engineer (HO), North Western Railway, Bikaner to

promotion of Shri Allah Bux as Painter Gr.III has wrongly been shown as 21.05.1999 because the same was recorded by the office of Assistant Divisional Engineer. Thereafter, the Assistant Divisional Engineer vide his letter dated 07.10.2010 (Annexure-A/12) informed the respondent No.3 that the similarly situated person Shri Allah Bux has already stood retired on 31.08.2010 and his actual date of joining on the post of Painter Grade III is 03.09.1992 whereas same has wrongly been shown as 21.05.1999. Therefore, the applicant by way of this application seeks the aforementioned relief(s). The applicant has also filed a Misc. Application No.140/2011 for condonation of delay and praying therein to condone the delay in filing of the OA.

3. By way of reply, the respondents contended that the OA is grossly belated and filing of Misc. Application for condonation of delay is of no consequence and the same is time barred so as to be violative of Section 21 of the Administrative Tribunals Act, 1985. It has been averred that the seniority list of Painter Grade III was circulated vide Communication and order dated 06<sup>th</sup> September, 2000 (Annexure-R/1) and subsequently on 05<sup>th</sup> May, 2005 by inviting objections from concerned employees, but the applicant neither represented nor objected to the said seniority list. The list became final and therefore the applicant cannot now plead that his

working against the regular post and therefore, his name was not included in the seniority list of Painter Grade III issued vide communication dated 06<sup>th</sup> April, 1994 (Annexure-R/2). The applicant also never represented for inclusion of his name in the seniority list. As per the letter of DPO, Bikaner dated 18.05.1999, 13 posts of Painter Grade-III were created by matching surrender of TLA posts. These posts were distributed on various sub-divisions vide letter dated 21.05.1999 which were circulated vide letter dated 01.07.1999 (Annexure-R/3) and out of these 13 posts of Painter Grade III, 06 posts were allotted to Bikaner Sub-Division and against one of these posts, the applicant stand regularized as Painter Grade III w.e.f. 21.05.1999. Accordingly, the seniority of the applicant was assigned w.e.f. 21<sup>st</sup> May, 1999 vide letter dated 06<sup>th</sup> September, 2000 by calling objections. It has been averred that Shri Sarwan Kumar and Shri Jawahar Lal (private respondents) were promoted as Painter Grade I vide letter dated 11.05.2007 according to Grade II seniority issued vide letter dated 13.02.2006 and then the applicant represented through recognized union for promotion as Painter Grade I which was replied vide letter dated 29.04.2009 (Annexure-R/5). It has been averred that in the category of Painter Grade I two vacant posts were available which were reserved posts and apart from this the applicant had joined w.e.f. 08<sup>th</sup> June, 1992 as Grade III against TLA Post and he was assigned seniority w.e.f. 21<sup>st</sup> May,

September, 2000 which has attained finality as despite objection being invited no objection was given. The objections were again invited vide communication dated 05<sup>th</sup> May, 2005 and in response to that the applicant did not raise any objection therefore now at this stage the applicant has no right to agitate the same and prayed for dismissal of the OA. The respondents also filed reply to Misc. Application No.140/2011 and praying therein to dismiss the same on the ground of delay.

4. Heard both the parties. Counsel for the applicant contended that the applicant was promoted as Painter Grade-III w.e.f. 1.6.1992 and due to the inadvertent error, his date of promotion to the post of Painter Grade-III was recorded as 21.05.1999 and he was placed under his junior persons namely Jawahar Lal and Sarwan Kumar, who were promoted as Painter Grade-III in the year 1995 and 1999, though as may be seen from copy of the service book Ann.A/2 that he has joined as CPC (TLA) on 8.6.1992. The respondents department failed to correct the error apparent on the face of record, therefore, the applicant has approached this Tribunal to direct the respondents to correct this error and also to grant notional benefit of pay fixation to the applicant as he has already been superannuated. He has further prayed to place the applicant as senior to Jawahar Lal and Sarwan Kumar.

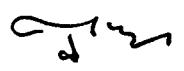
5. Per contra, counsel for the respondents contended that the respondent department issued the seniority list in the year 2000 as Annexure-R/1 and the applicant failed to make any representation against that seniority list, therefore, now he has lost his right regarding the prayer made in the application. Counsel for the respondents also submits that the application has been filed after much delay. Counsel for the respondents contended that in this case the basic order i.e. seniority list Annexure-R/1 has not been challenged by the applicant and in support of his arguments, he relied upon the judgment of the P. Chitharanja Menon and Others vs. A. Balakrishnan & Ors. Reported in 1977 3 SCC page 255. We have perused the facts of that case and the facts of the present case. As in the instant case, the basic order is promotion order i.e. Annexure-A/1, which has been challenged by the applicant, therefore, the facts of the present case are different from the facts of the case stated by the counsel for the respondents.

6. Considered the rival contentions of both the parties and perused the record. So far as the delay part is concerned, the delay filing in the OA is condoned because it is always better to decide the case on merits rather to dismiss on technical grounds of limitations because deciding the case on merit advances the cause of justice. Accordingly the MA No.140/2011

promotion has been recorded as 8.6.1992 in the service book itself, therefore, the argument advanced by the counsel for the respondents does not carry any weight and accordingly, we direct the respondents department to make correction in the date of promotion as per reference given in Ann.A/2 and grant ~~notional~~ benefit to the applicant as he has already been superannuated. They are also directed to further promote the applicant from the date from which his juniors Jawahar Lal and Sarwan Kumar have been promoted and so far as retiral benefits are concerned the same may be paid to the applicant as per rules.

The OA stands disposed of as above with no order as to costs.

  
[Meenakshi Hooja]  
Administrative Member

  
[Justice K.C.Joshi]  
Judicial Member

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