

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

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Original Application No. 257 of 1991 (L)

this the 18th day of September 1995.

HON'BLE MR. V.K. SETH, ADMN. MEMBER
HON'BLE MR. D.C. VERMA, JUDICIAL MEMBER

Anil Kumar Sinha, aged about 59 years, S/o
Late Sri P.C. Sinha, R/o 91/91, Jadunath Sanyal
Road, Lucknow

Applicant

By Advocate : Sri P.S. Mehra

versus

Union of India through its Secretary in Railway
Department, Rail Bhawan, New Delhi.

2. General Manager, Northern Railway, Baroda House,
New Delhi.

3. Financial Advisor and Chief Account's Officer,
Northern Railway, Baroda House, New Delhi.

4. Deputy Chief Account's Officer (General),
Northern Railway, Baroda House, New Delhi.

5. Senior Divisional Accounts Officer, Northern
Railway, Hazratganj, Lucknow.

Respondents

By Advocate : Sri Anil Srivastava



O R D E R

D.C. VERMA, MEMBER(J)

The applicant Anil Kumar Sinha has filed this O.A. under section 19 of the A.T. Act with the prayer (i) for direction to the respondents to fix the applicant's pay, confirmation and seniority in accordance to Railway Board's letter and pay the applicant all the arrears; (ii) to prepare the fresh seniority list showing the applicant senior in accordance to provisions of law as well as various instructions of Railway Establishment Manual.

2. To appreciate the points involved in the case, the brief facts is given below :

The applicant was appointed in Northern Railway as Clerk Grade II (in short C.G-II) on 4.1.55. The applicant appeared in Appendix-II A examination in December, 1957 and qualified the examination. Consequently, the applicant was promoted to the post of Clerk Grade I (in short C.G. I) w.e.f. 15.5.58. The applicant was confirmed as C.G. I w.e.f. 21.11.1962. The applicant's grievance is that subsequent C.G. II who qualified / Appendix II A examination, ~~subsequent~~ after the applicant, were confirmed to the w.e.f. a date prior to the applicant post of C.G. I in according to their seniority in lower grade. Thus, according to the applicant, the respondents had acted arbitrarily, illegally and discriminative in the matter of equal opportunity of promotion. According to the applicant, seniority list off C.G.I was issued in the year 1971 and the second seniority list was issued in the year 1983. In the ⁷second seniority list the

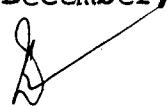
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position of the applicant has been lowered down. The applicant moved a representation dated 13.9.1983 (Annexure-5' to the O.A.) but the same was rejected vide order dated 16.11.90. Meanwhile the applicant was promoted to the post of Sub-Head on 5.2.81 and subsequently as Senior Sub-Head w.e.f. 1.1.1984.

3. The respondents in their counter affidavit, have stated that vide Railway Board's letter dated 7.3.1957 read with letter dated 14.1.1958 same posts to C.G.II were upgraded from C.G. II to C.G. I. The promotion of eligible staff as a result of implementation of Board's above letters were notified and eligible candidates were given benefit of up-gradation. The applicant Anil Kumar Sinha qualified Appendix II A Examination in December 1957. According to the respondents no post whatsoever permanent or temporary was left out and applicant was confirmed as C.G. I w.e.f. 1.10.1962.

4. A short question raised in the O.A. is that the applicant who passed Appendix II A examination in December, 1957 and was senior to Sri J.B. Tiwari, B.K. Srivastava, L.D. Verma and others mentioned in para 4 (7) of the O.A. in the seniority list issued in the year 1971. but, J.B. Tiwari and some others who had passed Appendix II A Examination in the

year 1960 were subsequently shown senior to the applicant in the revised seniority list issued in the year 1983 on the basis of their seniority position in Clerk Grade II. None of the parties have filed the actual seniority list of the year 1971 and the revised seniority list of the year 1983. The applicant has however, filed a chart (Annexure-3 to the O.A.) showing the particulars of the persons as per position in the seniority list of 1971 and their position in the revised seniority list of 1983 in Clerk Grade II. The respondents have challenged this position and have, in their counter affidavit, stated that the applicant has mixed-up the seniority of C.G. II and C.G. I. It is admitted by the respondents that the seniority list in both the categories i.e. C.G. II and C.G. I are maintained separately. The applicant's date of appointment in C.G. II is shown as 4.1.1955. In para 4 (3) of the O.A. , the applicant has stated that he was promoted to the post of C.G. I w.e.f. 15.5.1958 vide order No. FA-CAOS/SOO No. 355 dated 15.5.1958. In reply to this, the respondents/^{have,} in their Counter affidavit, admitted this position as they are matter of record. In the circumstances, the applicant who passed Appendix II A examination in December, 1957 has to be shown senior to the persons who passed the said examination in subsequent years. Bringing down the seniority of the applicant in the revised seniority list issued in the year 1983 vis-a-vis to the persons who passed the said examination after December, 1957, is not correct.



5. Relying on the Railway Board's letter No. E(S) 1-57 CPC/40 dated 7.3.1957 read with letter dated 14.1.1958 regarding up-gradation of the post w.e.f. 1.4.1956, the relevant portion of which is quoted in para 2 of the O.A., the respondents' case is that seniority of the officials in C.G. II have been maintained in C.G. I also. The Railway Board's letter has been misinterpreted. The circular nowhere shows that the persons who passed Appendix II A Examination in subsequent years would be senior to the persons who passed such examination in earlier years to retain their seniority of C.G. II. It is an admitted fact in the Counter affidavit that the seniority of C.G. I and C.G. II are maintained separately. Thus, the officials who passed the examination Appendix II A examination in earlier years have to be senior to those who clear the said examination in subsequent years. On behalf of the applicant reliance has been placed in an earlier judgment of Lucknow Bench of the Tribunal passed in T.A. No. 1649/87 Raja Babu & others Vs. Union of India & others decided on 24.7.1992. The Bench was considering the seniority of 21 C.G.II persons who were promoted ~~from~~ C.G. II to C.G. I, ^{from} C.G.I. against the direct recruits to/ The revised seniority list of 1983 which was assailed before this Bench, was also in question before the earlier Bench. The Bench while deciding the case of Raja Babu has held as below :

"Annexure 3 to the writ petition, as already mentioned above, indicates that the petitioners were promoted as C.G. I

between 1.4.1956 to 4.10.1962. The directly recruited C.G. I shown senior to the petitioners in the impugned seniority list joined the working post of C.G. I after 4.10.1962. Therefore, whatever be the policy of the Board, it does not appear equitable or in consonance with the principles of natural justice to place the petitioners junior to those who were recruited in service on a subsequent date. Therefore, to our mind, the impugned seniority list, so far as it purports to place the petitioners junior to directly recruited C.G. I is violative of principles of natural justice. In other words, it would mean that the seniority list of 1972, so far as the petitioners and directly recruited C.G. I are concerned, cannot be disturbed."

6. In the case before us, the applicant competed in the examination and promoted to C.G. I. Those who cleared the examination in subsequent years have to be placed junior to the applicant as C.G. I. If it is not so holding of such examination would be force. Nobody would take it earnestly and seriously as clearance of such examination in any number of attempts would not disturb the seniority of C.G. II. In our view, therefore, as the impugned seniority list, so far~~s~~ it purports to place the applicant junior to those promotees who cleared the examination in subsequent years, is violative of the principles of natural justice. Policy of the Board, if it is not in consonance with this principle, is against natural justice and inequitable.

7. The case of the respondents that no post was available after 15.5.1958 prior to 1.10.1962 does not stand to reason. In para 4 (7) of the O.A., the names of the officials who passed Appendix II A examination shown in the year 1958, 1959 & 1960 and have been senior to the applicant has been given. If no post of C.G. I was available in the year 1958, 1959 & 1960, such examination would not have been held. Thus, the stand of the respondents that no post was available prior to 1.10.62 is not correct.

8. The learned counsel for the respondents has vehemently argued that the claim of the applicant is barred by limitation, as the applicant has assailed

the seniority fixed in the year 1972. We have carefully examined this point and we are of the view that the contention of the learned counsel for the respondents has no force. It is an admitted ^{fact} that the seniority list was issued in the year 1971 and the second seniority list was issued in the year 1983. The applicant has challenged his position given in the second seniority list issued in the year 1983 and his seniority which is not in accordance with the Railway Board's circular. The applicant made representation on 11.9.1983 (copy Annexure-5 to the O.A.). As per recital in para 9 of the Counter affidavit, the representation of the applicant was decided and communicated to the applicant with letter dated 7.2.1989. The impugned order is dated 16.11.1990 by which the case of the applicant regarding fixation of pay, confirmation and seniority has been rejected. The O.A. was filed on 30.7.1991, i.e. well within one year w.e.f. the date of the impugned order dated 16.11.1990, thus, the O.A. is within time.

9. While deciding T.A. No. 1649/87 in the case of Raja Babu (supra), the Bench gave the following directions :

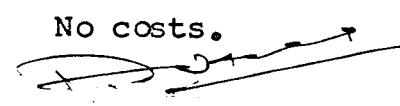
"In the result, the writ petition is allowed. The revised seniority list dated 19.1.1983, so far as the Petitioners are concerned, is hereby quashed. The Petitioners are entitled to all consequential benefits according to the seniority list declared in the year 1972 and mentioned above in the body of this judgment. The Respondents are directed to accordingly pass order, as may be necessary, in respect of the Petitioners on the basis of this judgment within three months hereof. The parties are directed to bear their own costs."



Though the Bench has further observed that " this decision will not be cited as precedent for others promoted from C.G. II to C.G. I", we are of the view that the applicant who has been pursuing his claim of promotion, seniority, and fixation of pay with ~~diligence~~ and has not slept over his right, cannot be denied the benefit which is legally accruable to him.

10. The applicant has also superannuated, therefore, without disturbing the seniority lists of 1971/1983 in respect of others, we allow this application, in so far as the applicant is concerned and quash the impugned order dated 16.11.1990 (Annexure-1 to the O.A.) and seniority lists in respect of the applicant only. The respondents are directed to re-fix the seniority list of the applicant in accordance with the observation made above ~~Fixing the date of confirmation, seniority and~~ and fixing the date of confirmation, seniority and the pay accordingly. The applicant shall be entitled to all consequential benefits which may accrue to him and to arrears after adjustment of the amount already drawn in respect of the pay pension and other emoluments. This order shall be complied with within a period of three months from the date of communication of this order.

No costs.


MEMBER (J)


MEMBER (A)

LUCKNOW: DATED: 18-9-95
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