

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH

LUCKNOW

Lucknow this the 8th day of Jan. 1996.

O.A. No. 118/91

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. V.K. SETH, MEMBER(A)

Badri Prasad, son of Shri Misri Lal, resident of House No. 371, Nai Basti, Murad ali Lane, Hazratganj, Lucknow.

Applicant

By Advocate Shri C.A. Basir.

versus

1. Union of India through G.M. Northern Railway, New Delhi.

2. Chief Engineer, (Track) N. Railway, Baroda House, New Delhi.

3. Senior Civil Engineer (TT) N. Railway, Shivaji Bridge, New Delhi.

4. Shri S.K. Bajpai working as Assistant Shop Supdnt/Foreman T.T. office of Senior Civil Engineer, (T.T.) N. Railway, Shivaji Bridge New Delhi.

5. Shri S.K. Rana, working as Assistant Shop Supdnt/Foreman in the office of Senior Civil Engineer (T.T.) Northern Railway, Shivaji Bridge, New Delhi.

Respondents.

By Advocate Shri A.K. Chaturvedi.

O R D E R

HON. MR. V.K. SETH, MEMBER(A)

By means of this O.A. the applicant has prayed for issue of a direction to the respondents 1 to 3 to declare him Senior to

opposite parties 4 and 5 for promotion in the grade of Rs 700-900(RPS 2000-3200) and by virtue of this seniority further promote him in the grade of Rs 2375-3500. He has also claimed consequential benefits.

2. ^ePladings have been exchanged between the parties and we have also given our careful thought to the rival contentions advanced by the learned counsel for the two sides during the course of hearing.

3. The applicant joined the Railways as Motor Board Mechanic on 24.8.1960 in the scale of Rs 110-180. A ^{Track}~~the~~ Tamping (T.T.) organisation came into existence under the railways from 4.10.1969. This organisation was an ex cadre organisation and was manned by taking staff on deputation from regular cadres of railways. The applicant applied for the same and he was declared successful on 18.11.69 as per averments in the O.A. He was further selected for the post of Assistant Chargeman in the grade of Rs 205-280 (revised to Rs 425-700) with effect from 1.1.73 on 15.12.69. The applicant was thereafter promoted as Assistant Foreman on T.T. in the grade of Rs 550-750 vide orders of 2.6.83. In the seniority list of chargemen in the grade of Rs 425-700 the applicant's name figures at serial No. 14 while the names of opposite parties 4 and 5 are at 16 and 17 (Annexure A-9). Likewise in the seniority list of Assistant Foreman, the applicant is placed at serial No. 5 while the opposite parties 4

and 5 at serial Nos. 7 and 8. The applicant's claim rests on these seniority lists. Further in support of his claim he has also cited rulings in 1992(21)ATC 126 and 1992(20)ATC 863.

4. While contesting the claim of the applicant in their reply to the amendment proposed by the applicant in the O.A., the respondents have clearly stated that staff were taken on deputation for the ex cadre T.T. organisation with the clear stipulation that such staff shall maintain their lien and seniority in their parent cadre and selections and promotions earned by them in the T.T. organisation will not entitle them to any benefit in the parent cadre. None of the contentions raised by the applicant in his pleadings or by his counsel during the course of arguments rebut this point.

5. It is further admitted fact that the opposite parties 4 and 5 were promoted in the grade of Rs 380-560 in their parent cadres of Signal and Telecommunication department on 15.2.78 and 29.7.78 respectively. The applicant has been promoted in this grade in his parent department on 11.8.78. The applicant however, claims such promotion with effect from 7.8.77 on the basis of an order dated 11.8.78 enclosed as Annexure R-1 with the Rejoinder. It is true that the said order mentions 7.8.77 as date of approval of the result by the Deputy C.E. However, this fact per se would not entitle him to such promotion with effect from that date unless it were so stated in the order itself.

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which has been issued on 11.8.78 from which date the applicant has been treated as promoted to the grade of Rs 380-560. Obviously, therefore, in the parent cadre in the above grade the applicant became junior to the respondents 4 and 5 who were promoted from 15.2.78 and 29.7.78 respectively.

6. Further, the T.T. organisation was converted from an ex cadre organisation to regular cadre with effect from 1.7.81 and the seniority list of the staff who opted to remain in the T.T. organisation was prepared on the basis of their non fortuitous length of service in the particular grade in which they would have been working in their parent cadres, but for their posting in the T.T. organisation. This was done in conformity with the Railway Board's orders of 5.1.1980. Accordingly, a seniority list circulated on 16.11.84 copy of which is enclosed with the C.A. of the respondents 1 to 3 was circulated. In this seniority list, while the respondents have been shown at serials No. 14 and 15, the applicant has been shown at serial No. 19, a few positions below them. As seen from the endorsement of the said letter circulating the seniority list, the same was widely circulated and copies were also endorsed to the Unions. The applicant apparently did not challenge the same. His belated claim now in the R.A. that the same was issued arbitrarily and illegally, particularly in the context of our earlier discussions, lacks force.

7. As regards promotion to the post of ASS/Foreman T.T. in the grade of Rs 700-900, the respondents, in their counter affidavit have

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pointed out that the same is selection post and while the applicant failed in the said selection the respondents qualified and therefore, their higher seniority vis-a-vis the applicant. This fact has not been rebutted by the applicant in his rejoinder.

8. Coming now to the rulings cited by the applicant. The first one viz. 1992(20) ATC 863 in re Narendra Deo Asiza vs. Union of India, the matter relates to grant of back wages as against the notional promotion. No such issue is involved in the present case as the applicant's claim has been found without merit. The second ruling in re A. Sagayanathan and others vs. D.P.O. Southern Railways Bangalore reported in (1992) 21, ATC 126. The Tribunal disposed of the dispute on merits wholly on ground of delay. Again the present case is distinguishable inasmuch as we are disposing of the matter on merits.

9. We have also taken note of the decision in T.A. No. 1292/1987 decided by the Allahabad bench of this Tribunal on 29.11.91. The facts and circumstances of that case and the present one are identical. In that case the Tribunal had held that the applicant could not claim seniority over the respondents who were senior to them in the parent cadre, thus, fortifying our view in the present case.

10. In the light of the foregoing discussions, we do not find any merit in the claim of the applicant and the same is therefore hereby dismissed. Parties shall bear

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their own costs.

W. S.
MEMBER (A)

Badakura
VICE CHAIRMAN

Lucknow; Dated: 8-1-96

Shakeel/