

17

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Lucknow this the 17th day of Nov., 99.

O.A. No. 238/92

HON. MR. D.C. VERMA, MEMBER(J)

HON. MR. A.K. MISRA, MEMBER(A)

Amrit Lal Mehndiratta

Applicant.

Shri K.P. Srivastava for applicant.

versus

1. General Manager, Northern Railway, Baroda House, New Delhi.
2. D.R.M. Northern Railway Lucknow.
3. Sr. Divisional Personnel Officer, Northern Railway Lucknow.

Respondents.

None for respondents.

ORDER

BY D.C. VERMA, MEMBER(J)

By this O.A. the applicant has claimed that his seniority be re-fixed w.e.f. the date it became due in respective grades as directed by the Hon. High Court in their judgment dated 2.4.1969 (Anneuxre A-3 to the O.A.) and the applicant be given difference of pay.

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

3. The applicant was initially appointed as works Mistry on 11.8.1957 and was subsequently promoted as Assistant Inspector of Works (in short A.I.O.W.) in 1963. On 16.8.1967, the applicant was reverted from the post of A.I.O.W. The applicant challenged the order of reversion by filing writ petition No. 2947/67. The said writ petition was decided on 2.4.69 (copy Anneuxre A-3). The Hon. High Court passed the following order:

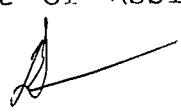


"For the reasons stated above, the petition is allowed and the order of reversion dated 16.8.1967 is quashed. The respondents are directed to decide afresh the question as to whether the petitioner can be legitimately treated as surplus and can be reverted as such. The respondents are further directed to consider and decide whether after 17.12.1963 any such vacancy came into existence in which the petitioner could be substantively appointed in accordance with Annexure 'C' and 'D' to the Supplementary rejoinder affidavit. In case it is found that the petitioner had become entitled to be substantively appointed to the post of Assistant Inspector of Works after 17.12.1963, the respondents will make the necessary appointment. The petitioner's case shall be considered not only in relation to his position as against the direct recruits but also in relation to his position as against other Rankers, if any, who had also acquired right to be promoted substantively to the post of Assistant Inspector of Works. In case upon an examination of all the relevant facts and in the light of the rules and principles contained in Annexures 'C' and 'D', it is found that the impugned reversion order dated 16.8.1967 had been rightly passed, it would be open to the respondents to pass a fresh order of reversion with retrospective effect from 16.8.1967. There shall be no order as to costs."

4. After the above order of the Hon. High Court the Competent Authority examined the case of the applicant and found that the applicant had become surplus and so he was reverted from the post of A.I.O.W. vide office order dated 7.5.69. Subsequent thereto, the applicant was again promoted as AIOW vide office order dated 23.7.70. The Post of AIOW was subsequently designated as IOW grade III. The seniority list of AIOW was issued through office order dated 15.1.71. Two persons namely A.P. Dixit and K.K.L. Srivastava were appointed to the post of

A

AIOW on 29.8.64 and 11.5.66 respectively. The applicant had been promoted to the post of AIOW vide order dated 23.8.70 w.e.f. 26. 8.70. Accordingly, the applicant was junior to A.P. Dixit and K.K.L. Srivastava. The revised seniority list was accordingly issued on 19.10.72, where A.P. Dixit was senior to K.K.L. Srivastava and K.K.L. Srivastava was senior to Amrit Lal, the applicant. The position remained the same in the seniority list of the Division issued vide order dated 8.6.82. The applicant represented against the revised seniority list whereby the applicant had been placed junior to A.P. Dixit and K.K.L. Srivastava, but he was informed vide letter dated 5.5.83 and the other letter dated 20.5.83 that the seniority assigned in the revised seniority list was correctly given. The applicant however, represented to grievances Cell but could not get any relief as per communication dated 4.1.88 (Anneuxre 10 to the O.A.). Subsequently, the applicant was promoted to the post of IOW grade II from 1.10.1980 on adhoc basis but was given regular promotion on the said post from 1.1.84 (Anneuxre A-11) as a result of restructuring of the Cadre. The applicant was promoted on adhoc basis as IOW grade I on 17.10.86 but was subsequently given regular promotion as IOW grade I w.e.f. 29.6.90. The post of IOW is a selection post. The selection for the post of IOW grade I was held in the year 1990 and the panel was declared on 29.6.90. Consequently, the applicant was given regular promotion in the grade of IOW Grade I w.e.f. 29.6.90. The applicant superannuated from the post of IOW on 31.1.96.

5. The applicant's case is that he was not promoted to the post of Assistant Engineer (AE) 

20

against 75% quota whereas his juniors were called for selection and appointed as AEN. The applicant has consequently claimed relief of refixation of seniority in the grade of AIOW, IOW grade II and IOW grade I. The respondents have denied the claim of the applicant and have submitted that the applicant is not entitled to any relief on merit and also on the ground of laches.

6. Heard the learned counsel for the parties and have gone through the pleadings on record. The relief claimed in the O.A. is that the applicant be given seniority as per order of the Hon. High Court dated 2.4.89. The relevant portion of the Hon. High Court's order has been quoted above. The Hon. High Court's order shows that the order of reversion of the applicant from the post of AIOW dated 16.8.67 was quashed but the respondents were directed to decide afresh, the question as to whether the petitioner can be legitimately treated as surplus and can be reverted as such. The Hon. High Court further directed that if it is found that the impugned order of reversion dated 16.8.1967 had been rightly passed, it would be open to the respondents to pass a fresh order of reversion w.e.f. 16.8.1967. In the light of Hon. High Court's order, as per recitals made in para 11 of the Counter Affidavit of the respondents, the competent authority had examined the case and had found that the applicant had become surplus and hence he was reverted from the post of AIOW vide order dated 7.5.1969. This order of reversion was not challenged by the applicant in any court of law. Thus, the subsequent order of reversion became final. As has been stated earlier, the applicant was again promoted as AIOW w.e.f. 26.8.1970 vide order dated 23.8.70. Initially, a seniority list

was issued in the year 1971, but subsequently, the same was revised on 19.10.72 and 8.6.82. In the seniority lists issued in 19.10.72 and 8.6.82 the position of the applicant remained the same and unchanged. The seniority list issued on 19.10.72 and again on 8.6.82 was not challenged by the applicant in any court. Thus, this seniority list again became final.

7. It is found that the applicant was promoted to the post of IOW grade II initially on adhoc basis w.e.f. 28.10.80 and was subsequently regularised on the post of IOW grade II w.e.f. 1.1.84. In the provisional seniority list in respect of IOWS grade II issued vide order dated 6.4.90 (Anneuxre A-11 to the O.A.) the name of applicant Amrit Lal is shown at serial No. 3 wherein the date of regular promotion is given as 1.1.84. This fact again was not challenged by the applicant in any court of law. As has been already stated, the applicant was promoted to the post of I.O.W grade I on 17.10.86. This promotion was again on adhoc basis (Anneuxre 12 to the O.A.). As the post of IOW grade I is a selection post and is filled by positive act of selection (written test and viva voce), the selection for the post of IOW grade I was held in the year 1990 and the panel was declared on 29.6.90, w.e.f. this date i.e. 29.6.90, the applicant was given regular promotion as IOW grade I. It is thus, seen that whatever seniority was given to the applicant, on the post of AIOW ^{was} final and unchallenged. The applicant was placed junior to A.P. Dixit and K.K.L. Srivastava as the applicant had accepted that position in the year 1969. That position cannot be changed or altered after so many years.

[Signature]

22

As has been held by the Hon. Supreme Court in the case of B.S. Bajwa and another vs. State of Punjab reported in 1998 SCC (L&S) 611, the seniority dispute raised after more than a decade cannot be re-opened because that would result in disturbing the settled position which is not justifiable.

8. In the present case, as has been already discussed above, the applicant failed to challenge the seniority list of 19.10.72 and 8.6.82. The applicant further failed to challenge the order dated 5.5.83, and 20.5.83 by which the representation of the applicant was rejected. The applicant again failed to challenge the order dated 4.1.88 by which the applicant's representation to Grievances Cell was rejected. The applicant also failed to challenge the date of his regularisation dated 1.1.84 as IOW GRADE II. Similarly, the applicant failed to challenge the date of regularisation as IOW grade I w.e.f.29.6.90. The seniority position as AIOW, the date of regularisation in the grade of IOW grade II and the date of regularisation on the post of IOW grade I were all accepted by the applicant and were not challenged in any court of law within the time prescribed therefor. Consequently, at this late stage the applicant cannot be permitted to challenge all such orders after great delay. Consequently, the O.A., in respect of this claim is barred by limitation and laches.

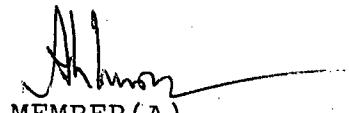
9. The applicant's claim is for promotion to the post of AEN on the ground that the juniors to him have been promoted. This claim is also based on the claim of the applicant for seniority from the date of joining on the initial post as Works Mistri. This claim cannot be examined at this stage. The

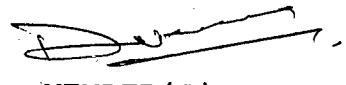


claim of seniority has been held to be of no merit.

Consequently, this claim is also rejected.

10. In view of the discussions made above, the O.A. has no merit and is dismissed. Costs easy.


MEMBER (A)


MEMBER (J)

Lucknow; Dated: 17-11-99

Shakeel/