

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 205/1992
this the 22nd day of February, 2001
Hon'ble Mr. D.C. Verma, Member (J)
Hon'ble Mr. A.K. Misra, Member (A)

Bhiku Ram, aged about 51 years s/o Late Sri Sadhu
Ram, H.S. Gr. II, Crain Driver, T.No.91/CBM
R/o House No.554/33/2, Chhota Barha, Pawan Puri,
Alambagh, Lucknow.

....Applicant
By Advocate: Sri A.P. Debey

Versus

1. Union of India, through the General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. The General Manager (P), Northern Railway Headquarters Office, Baroda House, New Delhi.
3. The Dy. Chief Electrical Engineer (W), Northern Railway, Charbagh, Lucknow.
4. Ram Narain Mistry, s/o "Ganga" Prasad through Shop Superintendent (Electrical), Motor Sec., Northern Railway, Loco Shop, Alambagh, Lucknow.

....Respondents.

By Advocate: Sri S. Verma.B/h for Sri Anil Srivastava
Sri Praveen Kumar for private respondents

ORDER

A.K. MISRA, AM

The applicant to this O.A. has prayed for assignment of his correct seniority on the basis of his date of promotion/appointment in the skilled grade in the category of Crane Drivers. He has accordingly prayed for quashing of the impugned order dated 1.4.92. A further prayer is for assigning ~~xxx~~ seniority in highly skilled grade II in the category of Crane Drivers from the date his immediate junior was promoted along with all consequential benefits. It has also been prayed that on passing the requisite trade test

Al. Misra

for highly skilled Grade I, he should be promoted and given seniority from the date his immediate junior~~s~~ was promoted with all consequential benefits. Lastly it has been prayed that the benefit available/admissible to him as per quota reserved for scheduled caste candidates with proper weightage be also given to him.

2. Pleadings on record have been perused and counsel for the parties have been heard at great length.

3. At the outset, it may be stated that on the final date of hearing on 15.1.2000, the learned counsel for the applicant stated at the bar that he does not wish to press MP Nos. 2130/95 & 786/96. Both the MPs related to amendment of the OA and since were not pressed, have been rejected. The applicant was working initially in temporary capacity and was asked to officiate as Crane Driver w.e.f. 25.5.67 in the grade of Rs. 110-180 as it then existed. He was confirmed in this grade as Crane Driver w.e.f. 1.10.69. The applicant came on transfer on 18.10.77 from Mugal Sarain to Lucknow under the administrative control of Dy. Chief Mechanical Engineer (Works) (in short Dy.CME(W), Northern Railway, Charbagh, Lucknow on his own request after accepting the bottom seniority in his category in accordance with the para 312 of IREM Volume I. On 19.11.86, he was transferred from administrative control of Dy.CME (W) to the administrative control of Dy. Chief Electrical Engineer (W) (in short Dy. CEE(W), alongwith his post in administrative interest, and was posted under the Shop Superintendent (P), Lucknow as skilled Crane Driver in the scale of Rs. 950-1500 as it then existed. The applicant was



promoted as highly skilled Grade II Crane Driver
W.E.F. 11.5.87 after passing the trade test and
further as Grade I Crane Driver on 19.11.93.
According to the applicant the provision
seniority list of Crane Drivers as on 1.4.90
circulated by the office of Dy. CEE (W), Northern
Railway, Lucknow did not show his correct
seniority and therefore, he made a representation
in this regard dated 18.6.90, which was followed
by reminders. Subsequently, by letter dated
1.4.92 issued by Dy. CEE (W), the seniority of the
applicant was revised and he was placed at
S.No. 32 in the revised seniority list as against
his original position shown at S.No. 35.
According to the applicant the revision made in
the seniority was not in order as according to him
his seniority should be determined as per extant
rules from the date of his promotion/appointment
in the skilled grade in the category of Crane
Drivers and not from 19.11.86 as has been done.
4. According to the respondents, the
applicant has no case because prior to the
joining of the applicant in the office of Dy.
CEE (W) on 19.11.86 certain staff ~~XXXXXX~~
~~XXXXXX~~ in the electrical Department had
already been promoted as skilled Grade II Crane
Driver. The case of the respondents is that the
applicant was given appropriate seniority due to
him W.E.F. 19.11.86, the date of his transfer from
the office of Dy. CEE (W) to the office of Dy. CEE
(W). Further the applicant was promoted as highly

Skilled Grade II as Crane Driver on 11.5.87 and therefore the staff in Electrical Department which had been promoted as Highly Skilled Grade II Crane Driver prior to 11.5.87 became senior to the applicant. The minor adjustments in the applicant's seniority was made on his representation as a result of which he moved up in seniority from S.No. 35 to S.No. 32. This adjustment of applicant's seniority was duly communicated to him by letter dated 1.4.92 which is impugned in this OA. Further on his transfer on his own request from Mugal-Sarai to Lucknow on 18.10.77, the applicant was assigned and he accepted the bottom seniority assigned to him as per para 312 of IREM, Volume I. The assignment of seniority to him in 1977 is not disputed by the applicant.

5. On the basis of the foregoing discussions we are of the view that the OA has no merit. There is no dispute that the applicant officiated as Crane Driver w.e.f. 25.5.67 and prior to that he was working in temporary capacity. He was confirmed in the Crane Drivers cadre from 1.10.69. It is also not in dispute that as a result of his transfer from Mugal-Sarai to Lucknow on his own request in October, 1977, he accepted the bottom seniority as per rules. It is also not in dispute that the applicant was promoted as Skilled Grade II Crane Driver on 11.5.87. Prior to that by order dated 19.11.86, he was transferred from the office of Dy. CME (W) to Dy. CEE (W) in administrative interest. In the office of Dy. CEE (W), the applicant has been assigned seniority as on 19.11.86 and only those persons who had already been promoted prior to 19.11.86 in the Electrical Department as Skilled



Grade II Crane Drivers were given seniority above the applicant. Since the applicant became skilled Grade II Crane Driver only on 11.5.87 and joined the electrical Department by order dated 19.11.86, he was given seniority as on 19.11.86. It is not the case of the applicant that any person junior to him in the electrical department after he joined the electrical department was given seniority over and above him. Having been promoted as Skilled Grade II Crane Driver only on 11.5.87, he cannot claim seniority over and above those in the electrical department who had been promoted as Skilled Grade II Crane Drivers prior to 19.11.86/11.5.87. Para 311 of IREM, Volume I provides that the seniority of ^aRailway servant on transfer from one cadre to another in administrative interest is regulated by the date of promotion/appointment to the Grade as the case may be. The applicant was appointed by order dated 19.11.86 in the Electrical Department and was promoted as skilled Grade II Crane Driver w.e.f. 11.5.87. Therefore, the applicant was rightly assigned seniority in accordance with para 311 of IREM Volume I ~~w.e.f.~~ 19.11.86 and as Skilled Grade II Crane Driver w.e.f. 11.5.87. The seniority of the applicant as fixed in 1977 on his transfer from Mugal-Sarai to Lucknow on his own request is not disputed by him. The minor adjustment in his seniority had already been made and duly communicated to the applicant by letter dt. 1.4.92. Respondent No. 4 Sri Ram Narain impleaded as a party by the applicant ^{is} shown at S.No. 7 of the seniority list issued on 1.4.90 whereas the applicant has been placed at S.No. 32. Respondent No. 4 therefore was always senior to the applicant. The applicant might have been senior to the respondents No. 4 prior to 18.10.77 but after

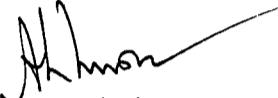


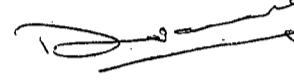
18.10.77, on his transfer from Mugal-Sarai to Lucknow, the applicant accepted the bottom seniority and hence became junior to the respondent No. 4 in the seniority list of 1983 and 1987 also. The respondent No. 4 (Sri Ram Narain) has been shown senior to the applicant in list of 1983 and 1987 also. XXXX. The seniority list of 1983 and 1987 have not been challenged by the applicant. Besides while the applicant was promoted in the Skilled Grade II cadre on 11.5.87, the respondent NO. 4 was promoted as Gr. II on 23.10.83. Therefore the applicant has no claim for seniority over and above the respondent's No. 4. The decision~~s~~ relied upon on behalf of the applicant in the case of State of Maharashtra Vs. Jagannath Achyut Karandikar reported in 1989 SCC (L&S) page 417 would not be applicable to the facts in the case of the applicant because in the case of Jagannath Achyut Kanandikar (Supra), the apex court was deliberating on the question of assigning seniority in the promotional post in respect of a petitioner who could not be promoted in time because of the failure of the administration to hold the departmental examination in certain years in spite of rules providing for holding the Departmental examination in each year. Like wise decision in the case of Union Public Service Commission and others Vs. B.M. Vijay Shankar and others 1992 SCC(L&S), page 362 would also not apply to the facts in the case of the applicant because in the case of B.M. Vijay Shankar, the apex court was deliberating on the question of affording an opportunity of hearing to a candidate of Civil Services Examination who contrary to instructions had written his roll number on all pages inside the answer book and whose answer book was not evaluated for this.

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reason. Similarly, the decision in the case of Union of India Vs. K.V. Janki Raman, 1997, SCC (L&S), 387 would also not apply to the case of the applicant because in the case of K.V. Janki Raman, the apex court was dealing with the sealed cover procedure in the matter of promotion and selection to the higher grade.

In the light of the foregoing discussion, we are of the view that OA has no merit and is accordingly dismissed. Costs easy.


MEMBER (A)


MEMBER (J)

LUCKNOW: DATED: 22nd feb 2001

HLS/-