

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

Original Application No. 166 of 1996

DATE OF ORDER : JULY 23rd, 2002.

Panchanand Singh, S/o of late Raghubans Singh, resident of Bodha Chapra, P.S. Astar Nagar, District - Saran, at present working as Electric Driver Grade 'C' at Dangoposi Railway Station, S.E. Railway, Chakradharpur Division.

..... APPLICANT.

By Advocate : Shri V. Ram.

Versus

1. The Union of India, through the General Manager, South Eastern Railway, Garden Reach, Calcutta.
2. The Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta - 43.
3. The Divisional Railway Manager, South Eastern Railway, Chakradharpur, Bihar.
4. The Divisional Personnel Officer -1, S.E. Railway, Chakradharpur, Bihar.

..... RESPONDENTS.

By Advocate : Shri Gautam Bose.

C O R A M

Hon'ble Shri L.R.K. Prasad, Member (A)

Hon'ble Smt. Shyama Dogra, Member (J)

O R D E R

By Shyama Dogra, M(J):- This original application has been filed by the applicant with the prayer to give directions to the respondents to correct the seniority list of Electrical Goods Driver issued by the Divisional Personnel Officer, Chakradharpur dated 25.8.1995 (Annexure-1) wherein the name of the applicant has been placed below his juniors in violation of the directions given by the

Tribunal (Patna Bench) in OA 222/89 decided on 29.7.1993.

2. The applicant has also prayed to place him and at appropriate place in the seniority list/to consider him for promotion to the higher post of Passenger Driver Grade 'A' with all consequential benefits.

3. Initially, the applicant was appointed as Apprenticeship Fireman Grade 'A' on 15.8.1964. Thereafter, he was made to switch-over to the post of Traction 'A' Driver (also known as Electrical Assistant Driver) with effect from 3.1.1966. Similarly, some other persons who were junior to the applicant, namely, B.C. Ghose and S.N. Das were also appointed to the post of Fireman Gr. 'A', and later on, they were allowed to switch-over as Electrical Assistant Driver from the subsequent date. The applicant was placed at the right place in the seniority list till 1974. It was only on 7th October, 1974 when the seniority list of Assistant Electrical Driver Gr. 'A' of Chakradharpur Division was prepared by the D.P.O., Chakradharpur on the basis of the record as on 1.4.1974, wherein the name of the applicant has been correctly shown against the serial no. 87 and the names of his juniors including S.N. Das was shown below to that of the applicant at serial no. 90.

S. Ghose

4. The dispute arose when the seniority list of direct recruits appointed through the Railway Recruitment Board as Trainee Assistant Electrical Driver and persons

absorbed from the Steam side after conversion training from the post of Diesel Assistant, Fireman 'A', Fireman 'B' and second Fireman was prepared. Fireman Gr. 'A' switched over to electrical side as Trainee Assistant Electrical Driver and absorption as Assistant Electrical Driver after completion of training (called as steam convertees). The directly recruited Assistant Electrical Drivers reckoned their seniority from the date of completion of prescribed training of 18 months, and the steam converted were allowed to reckon their seniority as Assistant Electrical Driver with reference to the date of promotion in their steam cadre and from the date of absorption in respect of those absorbed from the second fireman.

5. Some of the directly recruited Assistant Electrical Driver whose seniority was affected due to gradual induction of steam running staff into Assistant Electrical Driver cadre in electrical side with seniority of steam service had objected to the seniority allowed to the steam convertees. This resulted into filing of Title Suit No. 1/73 in the Court of Munsif, Chaibasa, challenging the seniority list dated 1.6.1970. The said suit was decreed on 16.6.1975 holding that for the purpose of seniority in the cadre of Assistant Electrical Driver, the period of service rendered in the steam side should not be counted, and it should be counted from the date of absorption in the cadre of Assistant Electrical Driver.

Sygent

In appeal, the said decree was confirmed, and the second appeal filed by the respondents before the Ranchi Bench of the Patna High Court in S.A. No. 98/77 was dismissed for default. Even the S.L.P. filed before the Supreme Court was dismissed on 17.3.1989.

6. The respondents in obedience of the decree of the Munsif Court issued a provisional gradation list of Assistant Electrical Driver on 26.5.1989, in which the steam convertees were allowed the seniority from the date of absorption without giving any weightage to the service rendered in the steam side. The respondents further prepared a provisional gradation list relating to the cadre of next higher grades of Electrical Shunter and Electrical Goods Driver on 23rd June, 1989 and 18th July, 1989 respectively.

7. *Some* of the steam converted Assistant Electrical Drivers already promoted to Electrical Shunter Driver 'C' affected by the revised seniority list made out in accordance with the said decree of the title suit filed an original application No. 222/89 for reckoning their seniority as Goods Driver from the date of promotion, as laid down in the Indian Railway Establishment Manual and not on the basis of the decree of the Munsif Court. The said OA which was decided on 18.1.90 was challenged in the Hon'ble Supreme Court, and the same was disposed of on 13.2.1992 with certain guidelines to the Tribunal to

hear the said OA 222/89 again, and the Tribunal disposed of the matter on 29.7.1993 with direction to finalise the provisional seniority list of Driver 'C'/Goods Driver as per the Rules of Seniority in force and after considering the representation of the applicants therein without giving any weightage to the decree in the title suit. Accordingly, the seniority of 71 applicants of the said OA 222/89 were placed in the seniority list after reckoning their seniority on the basis of their dates of promotion as Goods Driver (steam convertees).

8. The plea of the applicant is that he was defendant No. 88 in the said title suit 1/73, and was covered by the decision of the Munsif Court, and the decision of the original application no. 222/89, which was filed by one of the said defendants is also applicable in the case of the applicant, but he has not been given the benefit of the said judgement, and has been placed below the juniors in the seniority list prepared after the decision of the said OA 222/89.

Singh

9. In the written statement, this application has been opposed on the grounds that the same is hit by non-joinder of necessary parties, and is also barred by limitation under Section 21 of the Act. In support of this contention on the point of limitation, the learned counsel for the respondents has placed reliance on AIR 1992 SC 1414, titled Bhup Singh vs. U.O.I. & Ors,

in which the termination order was challenged after 22 years without any explanation for the delay, and his case was dismissed on the grounds of delay, further holding that it will not cause discrimination on the ground that the similar reliefs on reinstatement was granted to similarly situated persons 22 years back.

10. During the course of arguments, one copy of the judgement in OA 183/96, decided on 27.6.2002 was also placed on record, in which reliefs has been granted to seven applicants who were similarly situated with the applicants on the grounds that OA 222/89 is applicable in ~~item~~ therefore, the applicant deserves to be given the same ~~benefit~~ which was given to the similarly situated persons in the said OA. So far as factual position regarding seniority of the applicant is concerned, the same has not been denied by the respondents.

11. The main reason for not putting the applicant at the appropriate place in the seniority list under challenge was that since the applicant was not among the applicants who filed OA 222/89, though he was admittedly one of the defendant in the title suit, therefore, he is not entitled for grant of the benefits of the said judgement, being not a party to it. Putting the applicant's junior higher above in the said seniority is also not denied, but the reason given therefor is the same that

since the applicant was not a party to the OA 222/89, therefore, he was not covered by the said judgement.

12. Heard learned counsel for the parties. So far as point on limitation was concerned, with all respects, it can be safely held that the authority cited by the learned counsel for the respondents on this point is not applicable, because the facts of that case are quite different from the facts of the present case, therefore, the same cannot be applied in this case for the reasons that if the said benefit which has been given to the applicants in OA 222/89 and OA 183/96 is not granted to the applicant, particularly when it is held by this Bench in OA 183/96 that the judgement passed in OA 222/89 is applicable in rem, it will cause injustice to the applicant. Therefore, the point of limitation is decided accordingly.

13. In view of this fact that since the judgement in OA 222/89 has been held to be applicable in rem, and the applicant being similarly situated with the persons who were the applicants in the said judgement, we are of the considered opinion that the applicant is also entitled for grant of the same benefits given to the applicant in OA 222/89.

14. In view of these observations, this O.A. is allowed to the extent as above, and the respondents are directed to consider the case of the applicant by putting him at appropriate place in the said seniority list as was

directed by the Tribunal in OA 222/89, after verifying all other aspects of the case and grant him consequential benefits when the same fell due and were given to the persons similarly situated with the applicant. The needful be done within a period of three months from the date date of receipt of this order.

15. With these observations, this OA is disposed of with no order as to costs.

/CBS/

Shyamal
(SHYAMAL DOBRA)
MEMBER (J)

ecb
23.7.02
(L.R.K. PRASAD)
MEMBER (A)