

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A.No.216 of 1996

Date of order 25-8-2000

Jai Ram Sahu, son of Late Lali Sahu, Highly Skilled Grade I/T No.22109 DCS/Stop/Eastern Railway workshop, Jamalpur.

.. Applicant

-versus-

1. The Union of India through General Manager, Eastern Railway, 17, Netaji Subhas Chandra Road, Fairle place, Calcutta.
2. The Chief Personnel Officer, Eastern Railway, Calcutta.
3. Chief Works Manager, Eastern Railway workshop, Jamalpur.
4. Workshop Personnel Officer, Eastern Railway workshop, Jamalpur.
5. Assistant Personnel Officer, Eastern Railway, Jamalpur.
6. Subodh Kumar Singh, Ticket No.22083, Highly Skilled Grade I, DCS Shop Eastern Railway workshop, Jamalpur.

.. Respondents

Counsel for the applicant..Mr. Ved Prakash.

Counsel for the respondents..Mr. Gautam Bose.

CORAM: Hon'ble Mr. Justice S. Narayan, Vice-Chairman

Hon'ble Mr. L.R.K. Prasad, Member (Administrative)

O R D E R

L.R.K. Prasad, Member (A):-

This application has been filed seeking following reliefs:-

(1) The order dated 13.12.1995 (Annexure-7) be quashed.

(ii) The seniority of the applicant in H.S.K. Grade I may be relied and he may be placed before respondent no.6.

2. We have heard the learned counsel for the parties and perused the materials on record.

3. The applicant initially joined Apprentice Training Course in March 1970 in the Grade of Turner and he completed the same in 1973. The certificate granted to him in this regard is at Annexure-1. In the list of persons awaiting for absorption (Annexure-2), the applicant is placed at Serial No.11 with T.A.430, whereas, the respondent no.6 is shown at Serial No.13 with T.A.313. The applicant was appointed as skilled (Grade 'C') in M.C.T.R. Shop on 15.3.1975. On formation of D.C.S. Shop at Jamalpur, a notice was issued on 3.11.1979 (Annexure-3) inviting applications for forming a panel for the posts of skilled Machinist and Fitter in D.C.S. from the skilled Machinist and Sk Fitter for filling up future vacancies in D.C.S. The said notice makes it clear that the staff included in the panel will retain their seniority in their parent shop till their absorption in D.C.S. and will be considered for absorption in D.C.S. only as and when vacancy will arise. They will have no claim for promotion over their juniors, who have already been promoted in higher grade and working as such in D.C.S. Their seniority over the juniors working in higher grades, will be restored after their promotion in D.C.S. On his request, the applicant was transferred to D.C.S. Shop in 1981. He was promoted to the post of HSK Grade II with effect from 4.4.1986 ~~in D.C.S.~~ Shop against 65% upgradation vide order dated 4.4.1986. It is alleged by the

applicant that at the time of promotion in Grade II, the applicant was made junior to Shri D.P. Singh, Shri N.P. Yadav, Shri P.D. Sharma and Shri L. Singh. He made a representation to concerned authority for refixing his seniority over his junior. On due consideration of the matter, it is stated that his seniority was restored and thereafter the applicant was promoted to the post of HSK Grade I in D.C.S. Shop with effect from 26.6.1987, whereafter, he again applied for refixation of his seniority. When the seniority list was published, the applicant was shown junior to respondent no.6 and others. Against this, he filed an appeal on 29.12.1995 and 19.12.1995 for rectification in the seniority list on the basis of principle laid down in the latter, as at Annexure-3. However, vide letter dated 10.2.1996 (Annexure-5), the claim of the applicant was rejected by the respondents, which is under challenge. While respondent no.6, who is alleged to be junior to him, was allowed to appear in the Trade test examination for Mistri Grade I, the applicant was not given the same opportunity. This is also under challenge. According to the applicant, as he is senior to respondent no.6, he was entitled to be permitted to appear in the said examination. In support of his claim, he had filed several representations but without any positive response. Being aggrieved by the action of the respondents, the applicant has filed this O.A. claiming reliefs as mentioned at para 1.

4. while stating that this application is not maintainable, both on facts as well as in law, the respondents have strongly opposed this application on the ground of limitation and non-joinder of parties. It is

stated that after publication of result of Apprenticeship Training Course, the applicant and respondent no.6 were recruited for two different shops at ~~Jamalpur~~ workshop. While the applicant was recruited in MCTR Wing of ~~Jamalpur~~ workshop, the respondent no.6 was recruited in ~~Diesel~~ Component Shop (DCS). Both wings were maintaining separate seniority list. The applicant, who was recruited in MCTR Shop, was having his seniority there. After being found suitable and on the basis of option exercised by him, the applicant was transferred to DCS in 1981 as Grade III (Skilled) and, subsequently, he was promoted to Grade II with effect from 1.1.1984 and, thereafter, Grade I with effect from 27.6.1987 in DCS. On the other hand, respondent no.6 was promoted to the Skilled Grade II from 25.6.1979 and was promoted to Grade I with effect from 19.6.1981. The same was done as per seniority maintained in the DCS. Therefore, when the applicant was transferred to DCS shop as Skilled Grade III in 1981, the respondent no.66 was already there in Skilled Grade II since 25.6.1979 and skilled Grade I with effect from 19.6.1981. While replying to para 4 (XII), the respondents have stated that respondent no.6 and other staff, who were senior to the applicant in their respective ~~grade~~, were included in the trade test. The representation of the applicant had been rejected on due consideration. Whereas, the promotion was given to the applicant in 1987, the applicant had made his representation in 1995. The seniority list of skilled Grade I of DCS was published on 15.10.1990 (Annexure-R-1) and also on 16.12.1995 (Annexure-R-II) with the stipulation that representation for any anomaly should be made within one month from the date of publication of the seniority list but the applicant never submitted any such

representation claiming his seniority over respondent no.6 within time. The respondents have also clarified the position that in such a situation, respondent no.6 along with others, who were senior to the applicant, were given opportunity for appearing in trade test for Mistri Grade I in 1995. The applicant had submitted a representation on 29.12.1995 in this regard which was disposed of vide letter dated 10.2.1995 (Annexure-5) on the ground of delay in submitting representation after 8½ years from the date of his promotion. Moreover, if the applicant had any grievance, he should have represented within the stipulated period, but he failed to do so. If such later representation is considered, it will give rise to administration complication. The seniority list of skilled Grade I of D.C.S. was published on 15.10.1990 and 16.12.1995 with clear instruction that representation, if any, for anomaly should be made within one month from the date of publication of seniority list but the applicant failed to submit his objection claiming his seniority over respondent no.6 within stipulated time. As respondent no.6 and concerned other persons were senior to the applicant, they were considered first for test and promotion to next higher grade of Mistri Grade I vide letter dated 13.12.1995 (Annexure-7).

5. While replying to the written statement of the respondents, the applicant has pointed out that limitation clause is not attracted on the ground that there is continuing loss causing pecuniary loss to the applicant. On the question of limitation, our attention has been drawn to the orders of the Hon'ble Supreme Court in the matter of S.S. Rathore vs. State of Madhya Pradesh decided on 6.9.1989 (AIR 1990 SC page 10). In the aforesaid case, it has been held that cause of action shall be taken to arise

not from the date of original adverse order but on the date when the order of higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken, to be the date when cause of action shall be taken to have first arisen. This principle has no application when the ~~remedy~~ availed of has not been provided by law. Repeated- unsuccessful representations not provided by law are not governed by this principle. The above observation was made in the context of Limitation Act (36 of 1963). It may be pointed out that each case has to be examined on the basis of its own merits and facts and circumstances of the case and the matter has been accordingly considered.

②. While referring to paras 8 and 9 of W.S., the applicant has pointed out that when he was promoted to Highly Skilled Grade II on 1.1.1984, his claim for seniority upon his junior said Shri D.P. Singh, Shri N.P. Yadav, Shri P.D. Sharma and Shri L.Singh was accepted by the respondents. However, when he was promoted in Highly Skilled Grade I with effect from 2.1.1984, he made representation to declare him senior to respondent no.6 but the same was not given due consideration, as a result of which, when the seniority list of Highly Skilled Grade I was published on 15.10.1990, the applicant was shown junior to respondent no.6. Even though he made representation against the said seniority list, but the same was submitted not within a month from the date of publication of seniority list but it was done only in 1995 which has been basically rejected on the ground of delay in submitting his representation.

7. It is an admitted fact that after being found fit and on the basis of his option, the applicant was transferred to DCS in 1981 as Grade III Skilled staff. He was promoted to Grade II with effect from 1.1.1984 and Grade I with effect from 27.6.1987 in DCS. On the other hand, respondent no.6 was already therein DCS who was promoted to skilled Grade II from 25.6.1979 and in Grade I with effect from 19.6.1981. This makes it clear that the respondent no.6 got all these promotions much before the same was granted to the applicant.

8. It is an admitted fact that D.C.S. was a different wing than MCTR Shop. While the applicant was working in MCTR Shop in Skilled Grade III, respondent no.6 was promoted to Highly Skilled Grade II and Grade I from 25.6.1979 and 19.6.1981 as per his seniority in DCS. On the basis of his option and being found suitable, the applicant was transferred to DCS Shop in 1981 as Skilled Grade III and he was subsequently promoted to Grade II and Grade I in 1984. In that view of the matter, it is the stand of the respondents that respondent no.6 is senior to the applicant.

9. It is well settled principle of law that objection on any point should be raised within a stipulated period so that appropriate decision could be taken in time without disturbing the settled position. However, in the instant case, we find that the applicant did not raise any objection at the relevant time even though he is now placing reliance on a Staff Notice dated 3.11.1979 regarding formation of panel for filling up the post of Sk/in OCS/Jamalpur (Annexure-3). He has made a representation with regard to his seniority much later than the stipulated period and, therefore, his

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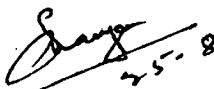
representation in this regard was rejected basically on the ground of delay. It may be pointed out that it would not be proper to disturb the settled position after a gap of few years because any such disturbance can lead to administrative complications. The applicant had been promoted in Grade I with effect from 27.6.1987 in DCS. He should have raised the point of seniority within the prescribed period after he got promotion to Skilled Grade I. However, he failed to do so. Therefore, it is difficult to consider the prayer of the applicant for fixation of his seniority in question as any change at this stage is likely to disturb the settled position. On this score, his case does not stand.

10. As in the given circumstances, the respondent no.6 was senior to the applicant, he was invited for selection test to next higher grade (Mistry Grade I). The argument advanced on behalf of the respondents is quite convincing.

11. The whole matter has been considered by us in totality keeping in view the submissions made by the parties and materials on record. In view of the above analysis of the case, we are of the considered opinion that this O.A. is devoid of merit and the same is disposed of as dismissed with no order as to the costs.


25.8.2000

(L.R.K. Prasad)
Member (A)


25.8.2000

(S.Narayan)
Vice-Chairman