

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. NO. 399/2006

Monday. Date of Order: 24th May, 2010.

C O R A M

**Hon'ble Mr. Justice Anwar Ahmad, Member(Judicial)
Hon'ble Mr. Sudhir Kumar, Member(Administrative)**

Uma Kant Prasad S/o Late Chhotelal Razak, resident of Mohalla-Sadar Bazar, Jamalpur, P.S. Jamalpur Dist.- Munger, Ex- Section Engineer in the Railway Workshop at + P.O. Jamalpur, Dist.- Munger.

..... Applicant.

- By Advocate - Shri R.K. Jha

-Versus-

1. The Union of India through its General Manager, Eastern Railway, 17 Netaji Subhash Road, Fairlie Place, Calcutta
2. The Chief Personnel Officer, Eastern Railway, Fairlie Place, Calcutta.
3. The Chief Works Manager, Railway Workshop at + PO – Jamalpur, Dist.- Munger.
4. The Workshop Personnel Officer, Railway Workshop, Jamalpur, Dist.- Munger.

..... Respondents.

By Advocate:- Shri B.K. Sinha

O R D E R

Sudhir Kumar, Member [Administrative]:- The applicant of this OA has come before this Tribunal for the fourth time this time, seeking the

following reliefs:-

"8[a] The rejection of the claim of the applicant by the respondent no. 3 vide his letter dated 13.02.2006, the substance of which is contained in Annexure A/9 may be set -aside.

[b] The respondents may be directed to promote or to consider the promotion of the applicant as S. Shop Supdt (Erector) under restructuring effective from 01.03.1993.

[c] Any other orders/directions as deemed fit and proper in the circumstances of the case be passed/issued."

2. He had come before this Tribunal for the first time in OA No. 297 of 1995 in which his case was summarized and orders were pronounced on 22.04.1999, with the following directions in para-8 of that order (Annexure R/3) :-

"1. The applicant has prayed for direction to the respondents to consider his promotion to the post of Shop Superintendent (Erector), in the pay scale of Rs. 2375-3500/- with effect from 1.2.94, under Restructuring of Groups C & D (Technical Supervisors) of Work Shop (Loco) Group cadre as per the Railway Board's letter No. L/No. PC/III/91/CDC/1 dated 27.01.1993, as at Annexure A/2.

2. Heard Shri Uma Kant Prasad, the applicant appearing personally and Shri Gautam Bose, counsel for the Respondents and perused the record.

3. The applicant is working as Dy. Shop Supervisor (Erector) in the Railway Work-shop, Jamalpur, in the pay scale of Rs. 2000-3200/- with effect from 23.9.91. Consequent upon the implementation of restructuring in terms of the aforesaid Railway Board's letter, 11 Dy. Superintendent (Erector), out of 31 of them as per seniority list as at Annexure A/1, i.e. From sl. no. 1 to 9, including sl. no. 8 and 8B, were promoted vide letter dated 9.3.1994 of the Chief Personnel officer, Eastern

Railway, Calcutta, read with letter dated 8.4.94 of the Chief Works Manager, Jamalpur Work-shop with retrospective effect from 1.3.93. One of the 11 promoted Shop Supervisor under the aforesaid restructuring, namely, N.K. Biswas, at sl. no. 6 retired from the services from 31.1.1994, and an another Dy. Shop Superintendent, namely, Shri U.P. Saha (SC) as at sl. no. 17 of Annexure A/1 was promoted on selection. The applicant is at sl. no. 21 of the seniority list.

4. It is the contention of the applicant that the aforesaid two Dy. Shop Superintendents, namely, N.K. Biswas (Sl. No. 6) and U.P. Saha, Sl. No. 17, of the seniority list as contained in Annexure -A/1, who are SC candidates, were not given promotion under reservation quota, rather they were promoted on merit. Therefore, the applicant being the next S.C. Candidate, should have been considered for promotion to the post of Shop Superintendent. It is also contended that on restructuring the sanctioned strength of Shop Superintendent was raised from 10% to 17%, and, accordingly, 16 Dy. Shop Superintendents ought to have been promoted, but only 11, as said above, could be promoted, and, thereby, the claim of the applicant for promotion was shelved. It is also contended that under the Railway Board's circular dated 16.6.92, as circulated by the Chief Personnel Officer, SN 87/92 dated 13.7.92, as at Annexure A/6, even if the figures of the reservation quota of SC and ST are more than required number of reservation. The ST and SC should be given promotion as per the reserved point following the roster register, as per the number of vacancies being filled up.

5....6....7....(Not reproduced here).

8. In the aforementioned circumstances, we find that the OA suffers from the defects of mis-joinder of causes of action. However, considering all the aspects of the matter, we dispose of this OA with directions to the concerned respondents as follows:-

- (i) The applicants shall file a fresh representation along with the copy of the OA clearly mentioning the basis of his claim for promotion with due date to the post of Shop Superintendent within two months from the date of this order;
- (ii) The respondents concerned shall dispose of his

representation by reasoned order within two months thereafter with communication to the applicant.

(iii) The applicant shall be at liberty to move the Tribunal if aggrieved by the order."

3. Even though a certified copy of that order was made available on 10.05.1999, the applicant did not file afresh representation before the respondent authorities in the time of two months allowed to him for this purpose. Instead, he filed a Review Application before this Tribunal vide RA No. 16/1999 which came to be dismissed on the ground that the Review Application had been filed without filing the fresh representation as per the order dated 22.04.1999. The applicant then approached the respondent authorities. The representation of the applicant then filed was rejected on 16.12.1999 by the respondent authorities on the ground that the representation had been filed after the stipulated time limit of two months as directed by this Tribunal. The applicant then came to this Tribunal for a third time by filing MA No. 89 of 2000 arising out of OA 297/1995, in which orders were passed on 02.02.2001 (Annexure R/4) stating as follows:-

" 4. The applicant did not file the representation as he considered that the representation might not stand in good stead and rushed to file the aforesaid RA. With the result, as said above, it was rejected.

5. Now, the applicant has filed this MA with the aforesaid prayer for extension of time for filing a AM.

representation.

“ 6. From the aforesaid facts and circumstances, we are are of the considered view that none other than the applicant himself is to blame for non-compliance of the order on the plea that the representation might not stand in good stead. Therefore, the prayer for extension of time for filing representation does not appear tenable. It is, accordingly, rejected. However, the applicant is at liberty to file a representation if he has got any fresh cause of action. The Misc. Application is, accordingly, disposed of.”

4. The applicant then approached the Hon'ble High Court in CWJC No. 4523 of 2001, in which the orders (Annexure A/7) were passed on 17.10.2005 stating as follows:-

“ In view of the order passed by the Tribunal giving opportunity to the petitioner to represent the matter, we are of the view that no purpose will be served in keeping the matter pending. The petitioner should file representation before the authorities concerned mentioning the claim for promotion with due date and thereafter the authorities will consider the matter in the light of the observations made by the Tribunal.

With the aforesaid observation, the application is disposed of.”

5. Thereafter, the applicant filed his representation dated 02.08.1999 before the Workshop Personnel Officer, Eastern Railway, Workshop, Jamalpur (Annexure A/8), which came to be disposed of by the DY. Chief Personnel officer (Works) for Chief Works Manager, E. Rly., Jamalpur through a four page speaking order dated 13.02.2006 (Annexure A/9). Treating that speaking order dated 13.02.2006 as a fresh cause of u.

action. the applicant has now come before this Tribunal in the present OA in the fourth round of litigation in this Tribunal . The grievances sought to be redressed by the applicant through this OA are essentially the same which were before this Tribunal earlier also in OA No. 297/1995, in which in the order dated 22.04.1999 (Annexure R/3) came to be passed.

6. While filing the present OA, the applicant chose not to file copies of the earlier orders of this Tribunal either in RA 16/1999 or the orders dated 02.02.2001 in MA No. 89/2000, which were brought on record by the respondents in their written statement through Annexure R/4. From a reading of para 6 of that order as reproduced in para 3 above, when the prayer of the applicant for extension of time for filing his ~~his~~ representation tu. was rejected, to our mind, the applicant lost an opportunity to exploit the window of opportunity opened to him by this Tribunal on 22.04.1999 through para 8(i) of the operative portion of that order (cited in para 2 above). It is obvious therefore that in respect of all the points which were considered by this Tribunal in the OA 297/1995 through the order dated 22.04.1999, and in respect of which grievances of his, even though his OA was suffering from defects of misjoinder of the causes of action, a window of opportunity was opened for him by this Tribunal to try to redress his grievances, the principle of res-judicata would now apply.

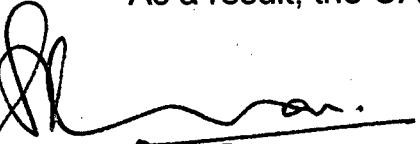
7. The order dated 02.02.2001 (Annexure R/4 of this OA) in MA 89/2000 as cited in para 3 above therefore recognised such res-judicata, tu.

and clearly stated that "However, the applicant is at liberty to file a representation, if he has got any fresh cause of action (emphasis supplied)....." Against this order, the applicant had gone to the Hon'ble HC High Court in CWJC No. 4523 of 2001. The Hon'ble High Court also did not order for reopening the issues which had got settled and hit by the principle of res-judicata because of the failure of the applicant to file his representation within the time as allowed to him by this Tribunal on 22.04.1999, and only stated, as already cited above, that the applicant should file his representation mentioning his claim for promotion with due dates, and thereafter, the authorities will consider the matter in the light of the observations made by this Tribunal. Therefore, the High Court did not or profound reopen / on any of the already settled issues, and left the respondent authorities to decide the case of the applicant in the light of the observations of this Tribunal in its order dated 22.04.1999 in OA No. 297 of 1995, in the order in RA 16/1995, and in the order in MA No. 89/2000 dated 02.02.2001.

8. We have gone through the detailed speaking order at Annexure A/9 dated 13.02.2006 impugned in the present OA and have found nothing wrong with the reasoning or logic of that speaking order. It deserves to be upheld both in law and on facts. In the result, the relief sought for the applicant in para 8[a] of the present OA is rejected. Q.L.

9. The relief sought for by the applicant in para 8[b] of the present OA is rejected as being hit by principles of res-judicata, and the consequential relief in para 8[c] prayed for by the applicant is also, therefore, rejected.

10. As a result, the OA fails and is rejected. No order as to costs.


[Sudhir Kumar]
Member[A]


[Anwar Ahmad]
Member[J]

srk.