

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

TR. APPLICATION NO. 391/87.

Dahyabhai Haribhai Kantharia,
Residing at 13/409, Shastri Nagar,
Goregaon (West),
BOMBAY - 400 062.

.. Applicant.

V/s..

1. Union of India (service through
the Central Government Advocate),
Ministry of Law, Aayakar Bhavan,
New Marine Lines,,
BOMBAY - 400 020.
2. General Manager (Establishment),
Western Railway, Headquarter Office,
Churchgate,
BOMBAY - 400 020.
3. Chief Engineer (Gen.),
Western Railway, Headquarter Office,
Churchgate,
BOMBAY - 400 020.
4. Chief Engineer (Survey & Construction),
Western Railway, Churchgate,
BOMBAY - 400 020.

.. Respondents.

Coram : Hon'ble Vice Chairman Shri U.C. Srivastava.
Hon'ble Member (A) Shri M.Y. Priolkar.

Appearances:

Mr.M.S. Ramamurthy, Advocate
for the applicant.

Mr.Dinesh Shah, Advocate for
the Respondents.

JUDGMENT

DATED: 9-7-1991

{ PER : Hon'ble Shri Justice U.C. Srivastava, Vice Chairman }

The seniority assigned to the applicant after
amalgamation which took place in pursuance of the order
passed by the Bombay High Court result^{ed}~~ing~~ in lowering down
the applicant from the post of Superintendent to that of

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Chief Head Clerk from which he was promoted. The applicant filed a Writ Petition before the Bombay High Court which by operation of the law has been transferred to this Tribunal. According to the applicant the order of reversion is illegal, arbitrary and contrary to the direction given by the Bombay High Court.

2. The applicant joined the railway service as Clerk in the Survey and Construction Department (herein after known as S&C Deptt) which is a temporary department. On 10.12.1956 he ^{joined} ~~was promoted~~ to the post of ~~Sr.~~ Clerk in the scale of Rs.60-130 and on 2.1.1962 he was promoted to the post of Sr. Clerk in the scale of Rs.130-300 and subsequently he was promoted to the post of Head Clerk in the grade of Rs.210-380, vide Office Order dtd. 27.4.1972. On 29.9.1977 he was promoted to the post of Chief Clerk on adhoc basis in the scale of Rs.550.750 and posted under Chief Engineer (Construction) Ahmedabad. On 5.9.1979 he was further promoted to officiate in the post of Office Superintendent in the scale of Rs.700-900.

3. In Railways several departments exist and Survey and Construction Department is a temporary department which is ^{distinct from various Departments comprising the} ~~known as~~ Open Line and the applicant had lien in the Operating, Commercial, Mechanical and General Group (CCMG Group) which is his parent group. The applicant also appeared for selection to the higher posts in the open line from time to time and he was promoted from the post of Clerk to Sr. Clerk, Head Clerk and Chief Clerk and to the Office

Superintendent in the open line.

4. The order dtd. 31.10.1981 indicates that Chief Clerks mentioned therein were promoted to officiate against 16 upgraded posts by way of CCMG and 6 in WSBA. Against the name of applicant ~~which~~ was mentioned as Officiating Office Superintendent in paper posting SSCG on adhoc.

5. On 13th March, 1972 the Railway Board decided to have combined cadre comprising the staff in the open line as well as in the Survey & Construction for ensuring that there was no disparity. In accordance with it a combined seniority list was prepared. The said decision was challenged in the Bombay High Court and the Court vide in its judgment dtd. 19.6.1978 upheld the validity of the Railway Boards' decision but laid down the manner in which the seniority list was to be prepared. The following direction were given by the Bombay High Court.

"There has been in fact a seniority list maintained for the Survey and Construction department for several years since the principles about the seniority were laid down way back in 1956. Now it is the staff borne on that seniority list which has got to be merged with the staff borne on the Civil Engineering department. Surely, therefore, it is neither intended nor could be intended to make any distinction between the persons who were directly recruited or the persons who were appointed in the Survey and Construction department on being selected and transferred. We are THEREFORE OF THE VIEW that this narrow controversy about the interpretation of the last sentence in paragraph 2 of the Board's letter Ex. 'F' dated March 13, 1972 can be resolved by rejecting the interpretation sought to be put up by Mr. Tipnis and by accepting the submissions made by Mr. Singhavi.

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As we pointed out there is no dispute so far as the direct recruits in the Survey and Construction department are concerned. While preparing the combined seniority list they shall be deemed to have joined the Open Line, Civil Engg. department on the respective dates and in the scale and in the cadre to which they were recruited in Survey and Construction. So also the persons who are appointed to the Survey and Construction department by transfer on being selected from the open line departments, they also shall be deemed to have been appointed to that particular post and so on that particular date the scale of pay in the Civil Engineering Department."

6. The last sentence of the paragraph of the said decision of the Railway Board dtd. 13th March, 1972 which came up for interpretation is as follows:-

"In merging the cadre, the staff in the Survey and Construction shall be assigned seniority which they would have got on the open line but for working in Survey and Construction."

It was thereafter a provisional seniority list was published by the Respondents on 3.5.1982 wherein the name of the applicant was shown at Sr.No.126 and the post was shown as Chief Head Clerk. The applicant made representation against the same and reply was given on 1.12.1983 ^{advising that} ~~challenging~~ the seniority has been fixed in terms of the Bombay High Court's decision referred to, above.

7. Thereafter a notice ^{was} ~~were~~ issued by the Respondents stating therein that the provisional seniority list has been fixed subject to the suitability test and those who have not passed this suitability were required to pass the same. The applicant's plea is that he had already ~~been~~ passed the suitability test and competitive test right upto the post of the Office Superintendent and his seniority could not have

been fixed in the lower grade at all. The reversion order and down gradation has been challenged by the applicant on variety of grounds including that it was ex facie illegal, perverse and contrary to the law and he having been promoted on a regular vacancy he could not have been reverted and that too without an opportunity of hearing and by merging the two cadres and by misinterpreting and misapplying the direction given by Bombay High Court and making his juniors both in open line and S&C department senior to him. According to the applicant the merge at the best could have affected only his seniority but not the post held by him.

8. The Respondents have resisted ~~to~~ ~~and~~ the application and have pleaded that the applicant was directly appointed in S&C Department keeping his lien/paper position on the post of Clerk in Bombay Division on which he was appointed with effect from 10.12.1956 and his seniority was accordingly fixed and the promotions which were earned by him in the department were all on ad hoc basis and were not regular promotions. They further contended that the applicant's seniority was in the Bombay Division of the department of OSMG group as such it was not possible to of the High Court implement the order/which clearly instructed to combine the seniority of staff working in S&C Department and those working in Civil Engineering Department, that is why options were not called from others. As has been stated earlier it is an admitted fact that the direction given by the Bombay High Court has not been complied and the plea for the same is that the same was not possible to do so, as combined seniority was to be drawn i.e., options were invited of

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those who had not given options were also treated to have given as provided therein and combined list of seniority was drawn and seniority was combined.

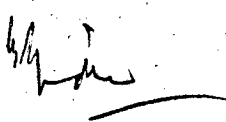
9. The above facts make it clear that the department has travelled beyond the direction given by the High Court in the name of implementing the said order obviously the objective of the department has been of restructuring the cadre or merging the cadre. But while merging cadre and drawing the seniority list, it was only the seniority list which alone was to have been drawn, if the purpose of seniority list was reversion of any person, the reversion order could have been passed from a higher post to that of a lower post, but the manner adopted by the respondents in reverting the applicant by ~~xxxx~~ merging cadres and preparing seniority list has deprived the applicant of his opportunity of being being heard.


10 In the instance case the applicant might have been a regular candidate and the earlier promotions may be on ad hoc basis but the reversion is violative of principles of natural justice and cannot be justified. It may be true that he was on ad hoc basis but that necessarily did not mean that he was to be reverted. Further the respondents stated that the applicant got his promotion as a Member of S.C. Community and in this connection the applicant had made reference to Government Rules regarding reservation of X posts for S.C. candidates. Apart from mentioning that he belongs to S.C. community in the written statement the Respondents have stated nothing else such as how he could have been promoted

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from the post of Clerk to that various other posts and thereafter to the post of Office Superintendent. As he belongs to the S.C. community ~~his~~ got his promotions and as such any decision to revert him mean~~s~~ ~~des~~ ~~er~~ ~~va~~ ~~ti~~ ~~o~~ ~~n~~ ~~o~~ ~~f~~ ~~p~~ ~~o~~ ~~s~~ ~~t~~ ~~w~~ ~~i~~ ~~t~~ ~~h~~ ~~o~~ ~~u~~ ~~t~~ ~~a~~ ~~n~~ ~~y~~ ~~l~~ ~~e~~ ~~g~~ ~~a~~ ~~l~~ ~~s~~ ~~a~~ ~~n~~ ~~c~~ ~~t~~ ~~i~~ ~~o~~ ~~n~~ ~~b~~ ~~e~~ ~~h~~ ~~i~~ ~~n~~ ~~d~~ ~~i~~ ~~t~~ ~~.~~ Before fixing the seniority obviously the railway notification in this behalf should have been issued and only thereafter the seniority should have been fixed. It appears that this has not been done.

In these circumstances, the application deserves to be allowed, and the applicant's reversion order dated 28.8.1985 is quashed and set aside. Respondents are directed to reconsider the claim of the applicant and give the applicant the opportunity of being heard before finalising his name in the seniority. The seniority list has to be prepared taking into consideration the observations made in the judgment and that he got promotion to a higher post as a Member of Scheduled Cast Community. Let this be done within three months from the date of communication of this order.


(MY PRIOLKAR)
M(A)


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