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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
BOMBAY - 400 001

TRANSFERRED APPLICATION NO. 449/87

K. Sundaram
148/10 Railway Colony
Santacruz
Bombay 400 055

.. Applicant

V/s.

1. Union of India
through General Manager
Western Railway
Churchgate
Bombay
2. S. Sarath
General Manager
Western Railway
Churchgate
Bombay 400020
3. Madan Singh
Chief Operating Superintendent
Western Railway
Churchgate
Bombay 400020
4. S K Datta
Chief Personnel Officer
Western Railway
Churchgate
Bombay 400020

.. Respondents

CORAM: Hon. Shri P S Chaudhuri, Member(A)
Hon. Shri T S Oberoi, Member (J)

APPEARANCE

Mr. G K Masand
Advocate
for the applicant

Mr. N K Srinivasan
Advocate
for the Respondents

JUDGMENT:
(PER: P S Chaudhuri, Member(A))

DATED: 13-09-1991


This application has come to the Tribunal
by way of transfer under section 29 of the Admini-
strative Tribunals Act, 1985 from the Bombay High

Court in terms of its order dated 29.9.1987 on Writ Petition No.2152/82 which was filed before it on 5.10.1982. In it the petitioner (Applicant) who was working as Transportation Inspector in the scale of Rs.700-900(R) on Western Railway is seeking a direction that he be assigned seniority as Transportation Inspector in scale Rs.700-900(R) with effect from 31.7.1976 below Shri Trilokchand Kalra and above Shri Baldev Singh Rajput and connected and consequential reliefs.

2. The applicant was appointed on Western Railway as Trains Clerk on 29.1.1953. After intermediate promotions, on 22.2.1965 he was promoted as Assistant Trains Controller in the scale of Rs.250-380(A).

3. A selection for promotion to the post of Transportation Inspector in the scale of Rs.335-425(A) was notified on 16.10.1970. A written test was held and the results notified vide letter dated 6.9.72. The applicant was at Sr.No.46 in this list whereas Kalra and Rajput (supra) were at Sr.No. 41 and 74 respectively. A provisional panel was notified on 23.11.1973 in which the applicant was at Sr.No.25 and Kalra at Sr.No.22. Rajput did not find^a place in this panel.

4. Thereafter the applicant was sent to undergo training at the Zonal Training School, Udaipur and then posted as Safety Counsellor (Traffic) in the scale Rs.335-425(A) in August 1974. The posts of Transportation Inspectors and Safety



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Counsellors (Traffic) are inter changeable and are filled by candidates drawn from the common panel of Transportation Inspectors.

5. Based on the recommendations of the Third Pay Commission, the two authorised scales of pay for Transportation Inspectors viz., Rs.250-380(A) and Rs.335-425(A) were merged into one single revised scale of Rs. 455-700(R) with effect from 1.1.1973. As a result of this merger Transportation Inspectors working in the lower scale of Rs. 250-380(A) who hitherto had to be first promoted to the next higher scale of Rs.335-425 (A)/ Rs.455-700(R) before promotion to the scale of Rs.700-900(R) now became eligible for promotion straightaway to the scale of Rs.700-900(R).

6. Consequent on the revision of pay structure recommended by the Third Pay Commission, by order dated 17-11-1973 circulated on 19.11.1973 the Railway Board directed that in cases where two existing scales of pay 'A' and 'B' have been merged into a single scale of pay 'C', selections and promotions from the existing lower scale 'A' to the existing higher scale 'B' should not hereafter be made. Promotions from existing lower scales to the existing scale 'A' should likewise cease. Action on selections etc., already in process should be stayed and the panels/suitability lists already existing should not be operated any further. Based on these instructions, by order dated 3.5.1975 the Western Railway authorities cancelled the pro-

visional panel dated 23.11.1973 (supra).

7. After the cancellation of this panel dated 23.11.1973 (supra), certain posts of Transportation Inspectors in the scale Rs.700-900(R) had to be filled in and a selection to draw up a panel for doing so was initiated on 17.7.1974. The channel of promotion to these posts was from the lower posts of Transportation Inspectors in the scale of Rs.550-750(R) and Rs.455-700(R). In other words only staff belonging to the cadre of Transportation Inspectors in these two scales were eligible to offer themselves for selection to the post of Transportation Inspectors scale Rs.700+900(R). As the applicant's empanelment had been cancelled he was not eligible to offer himself for this selection. As a result of the selection Kalra and Rajput (supra) who were eligible as they were working as Transportation Inspectors in the scale of Rs.250-380(A) / Rs.455-700(R) [after merger] were empaneled at Sr. Nos. 3 and 4 in the panel published on 29-7-1976. Thereafter Kalra and Rajput were promoted as Transportation Inspectors, scale Rs. 700-900(R), by letter dated 31.7.1976. ^{8.} By order dated 6.10.1980, based on the Railway Board's letter dated 25.9.1980, the Western Railway authorities revived the panel dated 23.11.1973 which had been cancelled in 1975. This decision was based on the decision of the Railway Board that panels formed after 19.11.1973 (the date mentioned earlier) the selection in respect of which had been initiated prior to that date should be deemed to have been

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formed in 1973 itself and given effect ^{to} accordingly. As a result, the applicant was posted on regular basis as Transportation Inspector in the scale Rs.455-700 (R) and Rs.550-750(R).

After the revival of the 1973 panel, in due course further selections were held for promotion to the post of Transportation Inspector in scale Rs.700-900 (R) in 1981. A panel was notified on 15.10.1981 in which the applicant was at Sr.No.10 and he was promoted on regular basis from that date.

9. In this panel dated 15.10.1981, the nine persons above the applicant made a representation that they being senior to Kalra (supra) in the 1973 panel should also now be placed above him in the matter of seniority as Transportation Inspectors in the scale Rs.700-900(R). This request of these nine applicants was acceded to and by letter dated 19.11.1981 they were assigned seniority above Kalra.

10. On the analogy of these nine employees from the 1973 panel being given seniority above Kalra who ranked below them in 1973 panel, the applicant submitted a representation asking for seniority above Rajput (supra) who did not find a place in the 1973 panel. This request of the applicant was rejected and so he filed this writ petition.

11. The respondents have opposed the writ petition by filing their written statement. We have heard Mr. G K Masand, learned counsel for the applicant and Mr. N K Srinivasan, learned counsel for



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the respondents.

12. It is the applicant's case that the restoration of the 1973 panel entitles him to all consequential benefits as a result thereof. He bases this case on two submissions. The first submission is that his seniority qua Rajput should be treated in the same way as the case of nine senior employees qua Kalra. The respondents dispute this submission on the ground that Kalra had filed a writ petition in the Gujarat High Court, which had been transferred to the Ahmedabad Bench of the Tribunal, challenging the order dated 19.11.1981. By their judgment and order dated 4.3.1987 the Ahmedabad Bench had quashed and set aside the order dated 19.11.1981. Against this background this submission of the applicant is of no avail to him.

13. The applicant's next submission was that his seniority should be fixed on the presumption that the 1973 panel has never been cancelled and that his seniority qua Rajput should be fixed accordingly. The respondents contend that Rajput was a substantive holder of the post of Transportation Inspector, scale Rs.250-380(A) / Rs.455-700(R). He was not placed on the panel of Transportation Inspector scale Rs.335-425(A) notified on 23.11.1973 and subsequently cancelled in the year 1975. By cancellation of this panel Rajput's position is not affected for his further promotion as he was a substantive holder of the post of Transportation Inspector, scale Rs.250-380(A) / Rs.455-700(R). As per the avenue of promotion to the post of Trans-


portation Inspector scale Rs.700-900(R), only Transportation Inspectors working two grades below the selection grade are eligible. Therefore Kalra and Rajput, Transportation Inspectors were called for the selection to the post of Transportation Inspector, scale Rs.700-900(R) and were placed on the panel notified on 29.7.1976 and further promoted to the above grade. Rajput retired from Railway service on 30.11.1979 and so the applicant has no case against him. We are of the view that this submission of the respondents does not help them. It cannot be disputed that the consequential benefits to which the applicant is entitled have to be based on the presumption that the 1973 panel had never been cancelled. On this basis he was in the cadre of Transportation Inspectors from 1973, or atleast August 1974 when he was promoted to work as Safety Counsellor (Traffic) in the scale of Rs.335-425(A). Thus, he would have been eligible for consideration for selection as Transportation Inspector in the scale of Rs.700-900(R) ^{for the panel} which was notified in 1976. It is not disputed that he was not so considered. In their written statement the respondents have indicated that the selection that was held was for 12 vacancies against which, as per rules, 48 eligible employees were to be called for selection and that amongst these 48 eligible employees the applicant's seniority would have been 38. It is the respondent's case that being at Sr.No.38, there was no chance of his being selected amongst the 12 required. But this contention is of no avail



to the respondents as this is not adequate ground for refusing to consider the applicant for this promotion. Admittedly the selection that resulted in the panel that was notified in 1976 was for 12 vacancies but the panel that was published on 29.7.1976 had only 4 names, of whom only one person was graded as 'Outstanding'. Later, the name of a Scheduled Caste candidate was interpolated, raising the strength of the panel from 4 to 5. No explanation is available as to why the remaining 7 posts were not filled. It might well be that had the applicant, and other eligible candidates who came within the zone of consideration, been considered one or more of them might have found a place in the panel. Further, this point was not at issue before the Ahmedabad Bench when they decided Kalra's writ petition and so the decision in that case is also of no avail to the respondents on this point. Against this background we are of the opinion that the applicant was denied consideration for empanelment in 1976 after the 1973 panel was revived in 1980 after its cancellation in 1975.

14. In this view of the matter the application partly succeeds inasmuch as it will be necessary to reconsider the applicant's case for promotion as Transportation Inspector in scale Rs.700-900(R) in respect of panel notified on 29.7.1976.

15. We accordingly direct the respondents to reconsider the applicant for promotion as Transportation Inspector in scale Rs.700-900(R) in



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accordance with the rules and instructions in respect of the panel notified on 29.7.1976 on the basis of his empanelment as Transportation Inspector, scale Rs.335-425(A), on 23.11.1973 and to grant him all consequential benefits, if any, on the basis of the result of such reconsideration. This reconsideration shall be completed within a period of three months from the date of receipt of a copy of this order. In the circumstances of the case there will be no order as to costs.

T. S. Oberoi

(T S OBEROI)
MEMBER (J)

P. S. Chaudhuri

(P S CHAUDHURI)
MEMBER (A)

13-9-1991

trk/-