

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

^L
Dated this Monday the 10th day of June, 2003

Coram: Hon'ble Mr.V.K.Majotra - Member (A)
Hon'ble Mr.Shankar Raju - Member (J)

O.A.903 of 1999

Sh. Suresh Parasram Kamble,
T.No.00594623. working as
Junior Engineer-II, in
Carriage Repair Shop in the
C. Rly., Carriage & Wagon Workshop,
Matunga. -Applicant

(By Advocate Sh. R.D. Deharia)

-Versus-

Union of India through
the General Manager,
C. Rly, C.S.T. Mumbai-400 001
and five others -Respondents

(By Advocate Shri V.D. Vadhavkar)

O R D E R

Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 20.8.98, 7.9.98, 12.9.98, 9.11.98, 27.11.98, 24.11.98, 20.7.99 and 4.10.99, wherein he was reverted to the substantive post of Junior Engineer (Grade-II) and request against which was turned down and private respondent No.4 Sh. Atmaram Dhondiram Kamble was promoted as Junior Engineer. He has sought quashment of the aforesaid order with direction to restore applicant to the post of Junior Engineer Grade-I with all consequential benefits and to declare promotion of respondent No.4 as illegal and further entitlement to the post in general category only.

2. Applicant was appointed as skilled Carpenter grade Rs.260-400 on 3.10.77 and was further promoted as Highly skilled Grade-II Carpenter Grade Rs.330-480 in the year 1982 and Highly Skilled Grade I Carpenter grade.

Rs.380-560 w.e.f. 1.1.1984. Applicant was also selected as an Apprentice Mechanic (Ranker) in the year 1991-92 and had undergone two years training and on written test was empanelled for the post of Chargeman 'B' now designated as Junior Engineer Grade-I he was promoted and posted as such against SC point. Senior to applicant Sh. S.R. Gajbhiye unfortunately passed away on 8.5.98 while working as Junior Engineer Grade-I. Against this reserved post applicant was promoted but vide order dated 20.8.98 he was reverted to his substantive post of Junior Grade II and respondent No.4 A.D. Kamble was promoted. Applicant represented to respondents but the same was turned down, giving rise to the present OA.

3. Subsequently applicant was also promoted as Junior Engineer-I by an order dated 2.1.2003.

4. Learned counsel for applicant contended that in so far as his reversion and to give way to accommodate R-4 is concerned, cannot be countenanced in view of Railway Board's instructions contained in Establishment letter dated 21.2.76, according to which a reserved category candidate once appointed against an earlier point against an unreserved one cannot be adjusted against subsequent reserved post. In nut shell that it has been contended that by an order dated 6.7.98 issued by Chief Personnel Officer by referring to railway Board's letter dated 21.8.97 where reserved candidates who are appointed on the basis of merit and not on account of reservation are not to be counted towards quota maintained for reserved candidates. Applicant who was appointed even assuming temporarily

against a post meant for SC respondent No.4 who had been assigned seniority with retrospective effect and on antedation ranked senior over and above V.P. Punekar a general candidate he is to be considered for further promotion not under the reserved quota but as a general candidate and accordingly applicant who was holding the position and the next promotion being general on the criteria of seniority cum fitness applicant against SC quota cannot be reverted and is entitled for deemed antedated seniority and promotion with all consequential benefits.

5. In this backdrop it is contended that the seniority assigned to R-4 is not legally sustainable and by referring to order dated 7.9.98 it is contended that respondent No.4 has been promoted and applicant reverted on the premise that Sh. Kumble would have been promoted to the post of JE Grade-I against SC backlog being senior against SC candidate applicant being junior has no right to be promoted. Moreover, while referring to the promotion order it is contended that the same was temporary and ad hoc though not specifically mentioned therein, applicant has no right to hold the promotional post and in view of accord of seniority to R-4 being senior promotion order cannot be found fault with. Another ground put-forth is that before reversion as applicant had suffered civil consequences he has been deprived of an opportunity to show cause which is not in consonance with the principles of natural justice and his request contained in representation has been turned down de hors the rules.

6. Respondents in their reply vehemently controverted the contentions and stated that the post on which applicant was promoted had occurred due to the sad demise of Sh.Gajbhije who was holding the post on ad hoc basis and subsequently also one Shambugum who was one of the selected candidates having failed in selection had been reverted back. However, it is stated that respondent No.4 being senior and on accord of seniority to respondent No.4 applicant being junior cannot be continued and respondent No.4 who has a right to be considered against SC quota as per post based roster no illegality is apparent on the face to warrant any interference by this Court.

7. We have carefully considered the rival contentions of the parties and perused the material on record. It is not disputed and has been apparent from the order passed on 7.9.98 as well as 10.4.98 that respondent No.4 who had been on the ground of having qualified on general merits has been assigned seniority as a general candidate from retrospective effect and was promoted against the SC quota which led to reversion of applicant. As per Railway Board's letter dated 21.2.76 even if a SC candidate is appointed against an earlier point even if it is unreserved one cannot be adjusted against subsequent point. Moreover, Railway Board's letter dated 21.8.97 prescribes non-counting of incumbent towards quota meant for reservation those belonging to reserved categories if they are appointed on the basis of merit. In this view of the matter as the seniority to R-4 is accorded by virtue of general merit over and above a general candidate he could have

been promoted against a vacancy meant for a general candidate and could not have encroached upon the quota meant for SC despite being SC and senior to applicant.

8. Order of reversion is also not sustainable on the ground of having passed in contravention of principles of natural justice. Before reversion neither any show cause notice nor reasonable opportunity has been accorded to applicant despite civil consequences ensued.

9. In so far as the promotion to the post of JE-I is concerned, the same is to be made on the basis of seniority cum fitness and as applicant was promoted even temporarily would have continued he not been reverted and would have been eligible for further regularisation in his quota meant for SC. In this manner he has been deprived of the pay and allowances for the post of Junior Engineer on his reversion and further promotion as Junior Engineer-I which has now been accorded to him by an order dated 2.1.2003.

10. In view of the above OA is partly allowed. Impugned order of reversion is quashed and set aside. Respondents are directed to deem applicant as having worked as Junior Engineer-I from the date of reversion till he has been promoted on 2.1.2003. He shall also be entitled to pay and allowances, i.e., difference in wages of Junior Engineer-II and Junior Engineer-I.

11. In so far as seniority is concerned, respondents shall also consider accord of seniority to applicant having regard to his deputation to the post from 3.6.98 in his quota. No costs.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Member (A)

"San."

Order/Judgment despatched

Applicant/Respondent(s)

on 22-1-04

20/8/04 CP 8

Contentious Petition is pending

Keep the case for orders on

Contentious Petition on 4-10-04

Inform the parties accordingly

4-10-04

on

for review)

W/S

noted

R.D. Deharia

23/8/04

Noted
23/8/04

CP-8/2004

4/10/2004-7

Applicant by Shri R.D. Deharia,
Respondents by Shri V.D. Vadhawan.
Learned counsel for the
applicant accepted that the
order dated 10/6/2003
has been complied with
by the respondents.

Therefore CP-8/2004 does
not lie.

CP-8/2004 is dismissed.

Q. Coram
CP
17/10/04

Order signed

on 17/10/04

1/11/04 adep.

(Muzaffer Husain) (A.K. Agarwal)
M (J) N.C.