

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH.

Original Application No.102/2000.

Thursday, this the 1st day of November, 2001.

Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman,  
Hon'ble Shri M.P.Singh, Member (A).

Mahendrapal Verma,  
C/o. G.S.Walia,  
Advocate,  
16, Maharashtra Bhawan,  
Bora Masjid Street,  
Behind Handloom House,  
Fort,  
Mumbai - 400 001.  
(By Advocate Shri G.S.Walia)

...Applicant.

v.

1. Union of India, through,  
General Manager,  
Central Railway,  
Headquarters Office,  
Mumbai CST,  
Mumbai - 400 001.
2. Chief Workshop Manager,  
Central Railway's  
Parel,  
Mumbai - 400 012.
3. Chief Workshop Manager,  
Matunga Workshop,  
Matunga,  
Mumbai - 400 019.
4. K.H.Pattekar,  
Section Engineer,  
Smithy Shop,  
Parel,  
Mumbai - 400 012.
5. Phool Chand Sharma  
Section Engineer,  
Smithy Shop,  
Parel,  
Mumbai - 400 012.

(By Advocate Shri Suresh Kumar)

...Respondents.

: O R D E R (ORAL) :

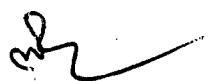
Shri M.P.Singh, Member (A).

The applicant by filing this OA under section 19 of the  
Administrative Tribunals Act, 1985 has challenged the order dt.  
21.1.2000, whereby the seniority of the applicant has been

...2.

depressed and as a result of it, he is likely to be reverted from the present post of Senior Section Engineer.

2. The brief facts of the case are that the applicant was appointed as an Apprentice Mechanic on 16.8.1989 and was ordered to undergo two years training in the Railways. Thereafter, on completion of two years training he was absorbed as Chargeman "Grade B" and further appointed on promotion as Chargeman "Grade A". At present, applicant is holding the post of Senior Section Engineer in the scale of Rs.7450-11500. It is stated by the applicant that the present promotional post is a non-selection post to which he was promoted vide order dt. 14.5.1999. On 3.12.1998, the Respondents issued a seniority list of Section Engineers in the grade of Rs. 6500 - 10500. According to the applicant, the seniority from Deputy Shop Superintendent and Shop Superintendent i.e. Senior Section Engineer are common to Matunga, Parel and Jhansi Workshops. However, the seniority upto the post of Junior Engineer is restricted to respective workshops i.e. Matunga, Parel and Jhansi. It is the case of the applicant that his non-promotion to the post of Junior Engineer Gr. I on due date has resulted in serious set back as against those persons belonging to the other Workshops. Had the applicant been promoted on due date i.e. 2.12.1993 he would never have lost seniority to the persons belonging to other Workshops. In other Workshop, like Parel, the persons were promoted on 2.2.1996 immediately after the vacancy arose. Therefore, in such a case the seniority must be related to the date of the vacancy and inaction on the part of the Respondents cannot operate against the applicant. The



Respondents thereafter had issued another letter dt. 21.1.2000 whereby the seniority of the applicant has been disturbed and his name in the seniority list has now been brought down and shown between Sl.No. 8 and 9 i.e. between Phoolchand Sharma and S.G.Vasant. The grievance of the applicant is that he has not been afforded any opportunity before effecting the change in the seniority list. Aggrieved by this, he has filed this OA seeking directions to quash and set aside the impugned order dt. 21.1.2000 and has also sought directions to hold and declare that the seniority list dt. 3.12.1998 in which the applicant was shown at Sl. No.2 is valid, operative and subsisting.

2. The Respondents in their reply have stated that the applicant in this application has agitated the issue regarding his promotion granted to him on 13.6.1994, and not the action of the respondents in granting him promotion w.e.f. 13.6.1994. The representation made by the applicant shown at Ex. A-7 is made prior to the promotion granted to him. The applicant was satisfied with the promotion given to him and never agitated the issue. The entire case of the applicant is based on the contention that he ought to have been given promotion w.e.f. 2.12.1993, as he has completed 2 years on that date in the feeder grade. The applicant has neither disputed the seniority list nor has made any representation against the same. The question which the applicant has raised now after a period of 5 years after his promotion as Chargeman Gr. A is time barred and suffers from delay and laches. According to Respondents, there is no Rule by which the post is required to be filled up on the date it falls vacant. To support their

contention they have relied upon the Judgment of the Hon'ble Supreme Court in the case of Union of India Vs. V.K.Vadera (AIR 1990 SC 442) which reads as under:

"There is no statutory provision that the promotion to the post of scientist B should take effect from 1st July of the year in which the promotion is granted. It may be that rightly or wrongly for some reason or other the promotions are granted from 1st July, but we do not find any justifying reason for the direction given by the Tribunal that the promotion of the respondent to the post of Scientist B should be with effect from the date of the creation of these promotional posts. We do not know any law or any rule under which a promotion is to be effective from the date of the creation of the promotional post. After a post falls vacant for any reason whatsoever a promotion to the post should be from the date of promotion granted and not from the date on which such post falls vacant. In the same way when additional posts were created promotions to those posts can be granted only after the assessment Board has met and made its recommendation for promotions being granted. If on the contrary the promotions are directed to be effected from the date of creation of additional post then it would have the effect of giving the promotion even before the assessment board has met and assessed the suitability of the candidate for promotion. In the circumstances, it is difficult to sustain the judgment of Tribunal."

It is also stated by the Respondents that it is well settled law that no opportunity is required to be given before correcting the seniority at a particular place and it is not a right and the seniority list can always be corrected as no employee has a right to wrong seniority above his senior. In view of the above submissions, the OA has no merit and is liable to be dismissed.

3. Heard Learned Counsel Shri G.S.Walia for the applicant and Shri Suresh Kumar for the Respondents.
4. During the course of argument, the Learned Counsel for the

applicant drew our attention to para 214 (c) of the Indian Railway Establishment Manual (IREM), according to which minimum 2 years service is required in the feeder grade for promotion to a non-selection post. He also drew our attention to the seniority list issued by the Respondents on 3.12.1998 in which the applicant has been shown at Sl.No.2. He submitted that although the applicant was placed in the panel in the grade of Rs. 6500-10500 on 8.1.1996, he could be promoted on 13.6.1996 only as he did not complete two years service in the pay scale of Rs. 5500 - 9000, whereas other persons at Sl. Nos. 7 and 8 in the seniority list have been promoted from the grade of Rs. 5000-8000 to 5500-9000 without completing two years service. He further submitted that since the applicant has been selected and placed in earlier panel as compared to Respondents No.4 and 5 he will rank senior to them in terms of Rule 306 of IREM. Rule 306 of IREM states that "Candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by paragraph 305 above." The applicant in this case is not covered by para 305 of IREM. Since the applicant was empanelled earlier to Respondents No. 4 and 5 he was rightly shown as senior to Respondents No.4 and 5 in the seniority list issued on 3.12.1998. The Respondents have now depressed the seniority of the applicant by bringing down his name from Sl.No.2 to 8(a) vide order dt. 21.1.2000 without giving any opportunity of hearing to the applicant. In support of his claim, he has relied upon the judgment of the Hon'ble Supreme Court in the case of Ram Ujarey Vs. Union of India (1999 (1) SC SLJ 381), where the Hon'ble Supreme Court has held that :

"Promotion-Reversion-Appellant had been allowed

the benefit of service rendered as Khalasi in the Loco Department from 1964-1972 and that period was counted towards his seniority - On that basis he was called for trade tests - Passed the tests and promoted to the posts of Semi-skilled Fitter and then Skilled Fitter - Reverted to the post of Khalasi on the ground that his seniority was wrongly determined by taking into account the service rendered by him from 1964 to 1972 - No opportunity to show cause given - Impugned order quashed."

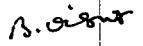
On the other hand, the Learned Counsel for the Respondents stated that as per practise before 1987 even the candidates without completing two years service in the feeder grade were being promoted to the next higher grade against non-selection post. It is for this reason that Respondents No.4 and 5 were promoted from the grade of Rs.5000-8000 to the grade of Rs.5500-9000 without completing two years of service. Moreover, the seniority of the persons working in the workshop below the level of Rs.6500-10500 is maintained workshopwise. It is only for promotion to the grade of Rs.7400-11500 where the combined seniority of all the three workshops is prepared. The seniority in such cases is fixed in accordance with Rule 320 of IREM viz. persons having more length of service would rank senior to persons having less length of service. He also submitted that there is no Rule where the persons can claim his promotion from the date the vacancy has arisen. Even if the applicant has any grievance against his promotion to the grade of Rs.5500-9000 he should have challenged that order 5 years back at that relevant point of time.

5. After hearing both the Learned Counsel and perusing the record, we find in this case that the Respondents have depressed the seniority of the applicant from S1.No.2 to S1. No. 8(a) vide order dt. 21.1.2000 without issuing a notice to him and



affording him an opportunity of making a representation. In the facts and circumstances of the case, we feel that interest of justice would be served, if we remit back the case to the Respondents to decide the whole issue of seniority in accordance with Law, Rules and Instructions. Accordingly, we quash and set aside the order dt. 21.1.2000 and direct the respondents to fix the seniority of the applicant as per Law, Rules and Instructions within a period of six months from the date of receipt of a copy of this order. The Respondents shall fix the seniority after issuing a show cause notice to the applicant and provide him an opportunity of hearing and thereafter pass a speaking, reasoned and detailed order. The other parties likely to be affected who have earlier represented against the seniority list of December, 1998 shall also be given an opportunity of hearing. With the above directions, the OA is disposed of. No costs.

  
(M.P.SINGH)  
MEMBER(A)

  
(BIRENDRA DIKSHIT)  
VICE-CHAIRMAN

B.