

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 430/95

Date of Decision: 06.05.2003

Janmeijay Mishra

Applicant(s)

Shri G.S. Walia.

Advocate for Applicants

Versus

Union of India & ors.

Respondents

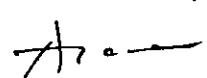
Shri S.C. Dhawan.

Advocate for Respondents

CORAM: HON'BLE SHRI A.S. SANGHVI
HON'BLE SHRI SHANKAR PRASAD.

MEMBER (J)
MEMBER (A)

1. To be referred to the reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library.


(A.S. SANGHVI)
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.430/95

TUESDAY THE 06TH DAY OF MAY, 2003

CORAM: HON'BLE SHRI A.S. SANGHVI. .. MEMBER (J)
HON'BLE SHRI SHANKAR PRASAD .. MEMBER (A)

Janmeijay Mishra,
Chargeman Grade A,
Kurla Car-Shed,
Central Railway,
Kurla, Bombay. ...Applicant

By Advocate Shri G.S.Walia

vs.

1. Union of India
through General Manager,
Central Railway HQrs. Office,
Bombay V.T., Bombay.
2. Divisional Railway Manager,
Bombay Division,
Central Railway,
Bombay V.T., Bombay.
3. Sr.D.E.E. (TRS),
Kurla Car-Shed,
Central Railway,
Kurla, Bombay.Respondents

By Advocate Shri S.C.Dhawan

O R D E R

{Per : Shri A.S.Sanghvi, Member (J)}

The applicant who is working as a Chargeman Grade 'A' is aggrieved by his seniority as shown in the grade of Chargeman Grade 'A'. He had submitted a representation to the respondents and pursuant to the representation of the applicant, the respondents had vide their order dated 22.2.1994 revised the seniority of the applicant and he was given the seniority at Sr.No.64-A above Shri S.K.Bandopadhyaya w.e.f. 24.4.1987 in the seniority list of Chargeman Grade 'A' dated 12.3.1991. The applicant is still aggrieved and has

challenged this order of the respondents dated 22.2.1994 assigning him seniority at Sr.No.54. He maintained that he ought to have ^{been} given seniority between Sr.No.53 and 54. According to him, the post of Chargeman Grade 'A' is a non selection post which is filled in on the basis of seniority-cum-suitability. In the seniority list of 3.4.1987 of Chargeman Grade 'B', i.e. feeder cadre for Chargeman grade 'A', he was at Sr.No.177. His immediate junior was one Shri Kamal Choudhary. The respondents had vide order dated 24.3.1987 promoted certain employees to the post of Chargeman Grade 'A' but the name of the applicant was missing from that list of the promotees. The promotion order stated that it was on a purely provisional and on trial basis and did not confer on the incumbents therein any prescriptive right to continue in the post in preference to their seniors. The list of the promotees shows that the Sr.No.2 to 5 were junior to the applicant. Thereafter, again on 24.4.1987 another promotion order was issued wherein certain persons were promoted to officiate as Chargeman Grade 'A'. The applicant therefore made a representation against his non-promotion to the post of Chargeman grade 'A' and he was promoted to Chargeman Grade 'A' by orders dated 23.⁷4.1987. The respondents thereafter issued a seniority list of Chargeman Grade 'A' on 12.3.1991 and this seniority list shows the name

of the applicant at Sr.No.93. Since his seniority was depressed, the applicant represented his case against his seniority shown in the list and ultimately on 22.2.1994, the respondents granted seniority to the applicant at Sr.No.64-A. According to the applicant, since he was senior to Shri Kamal Choudhary, his seniority ought to have been shown between Sr.No.53 and 54. He has also contended that all the promotions given by the respondents were provisional and on trial basis and therefore the seniority shown in the final seniority list is not correct. He has therefore prayed for a direction to the respondents to revise his seniority in the seniority list of Chargeman and give him seniority between Sr.No.53 and 54.

2. The respondents in their reply have contended inter-alia that the OA. is ~~suffered~~ ^{barred} by non-joinder of the parties as affected persons are not joined as parties. The OA. is also barred by limitation as the applicant is seeking to challenge the seniority list dated 12.3.1991 and the OA. is not moved in the year of publication of the list. According to them, before issuing order dated 24.3.1987 promoting certain employees as Chargeman 'A', the suitability of eligible employees was assessed, the applicant was also considered but was not found fit hence his name was not

included in the list of the promotees. This assessment according to them was done for filling up the post of Chargeman 'A' in EMU cadre Bombay Division for 15 posts de-reserved in terms of CPO (EL)BB's letter dated 29.1.1987. Thereafter, for other vacancies assessment was again made on 20.4.1987 when the applicant was again considered and on his being found suitable, he was promoted to the post of Chargeman 'A'. According to them, the representation of the applicant was ~~received~~ duly considered by the competent authority. Since he was promoted by Office Order dated 23.7.1987 whereas the employees at Sr.No.53 and 54 in the seniority list of Chargeman 'A' were promoted on the basis of assessment dated 23.2.1987 and 20.4.1987, the applicant was given seniority below them. However, the representation of the applicant was again considered ~~at~~ ^{on} ~~the~~ ^{on} basis and he has been given seniority at Sr.No.64-A above Shri S.K.Bandopadhyay. They have denied that the applicant is entitled to seniority between Sr.No.53 and 54 and contended that those who are senior were promoted earlier to the applicant and as such the applicant cannot claim any seniority over them. They have prayed that the OA. be dismissed with cost.

3. We have heard the learned counsel of both the parties at length and carefully perused the documents on record.

4. We have heard the learned counsel for the parties and carefully perused the documents produced. Mr. Dhawan learned counsel appearing for the respondents raised the preliminary objection regarding maintainability of the application. According to Mr. Dhawan the OA is bad due to non joinder of necessary parties as the persons affected have not been made parties by the applicant. He has pointed out that the applicant is given seniority at S1. No.64A while the applicant is praying for seniority between S1. No.53 and 54. If the prayer of the applicant is to be granted then naturally the persons between S1. No.54 and 64 would be affected as their seniority would be disturbed. Since the persons likely to be affected are not joined as parties the OA is not maintainable. On the other hand Mr. Walia learned counsel for the applicant has submitted that the grievance of the applicant is against the principle adopted by the respondents in fixing the seniority of the applicant. According to him, the respondents have fixed his seniority wrongly and this can also be seen from the fact that earlier the applicant was given the seniority at S1. No.92 while on a representation of the applicant his seniority is revised and given at S1. No.64A. According to Mr. Walia since the policy adopted by the respondents was faulty and erroneous (there is no need for joining any other private respondents. He has also submitted that the promotions given to the applicant as well as his

juniors ~~from~~ in the feeder cadre of Chargeman-B were provisional, and officiating and thereafter no order regularising their promotions have been passed by the respondents. Since the promotions are only provisional and officiating the same cannot be considered for giving seniority and as such the seniority prepared by the respondents in the year 1991 is erroneous, unjust and illegal.

5. So far as the question of promotion is concerned the seniority list of Chargeman-B does reflect that the applicant was senior to Kamal Choudhary, S. Venkateshwarloo etc. There is also no dispute that in the seniority list of Chargeman-A published in the year 1991, Kamal Choudhary and Venkateshwarloo have been shown senior to the applicant and originally the applicant's name figured at Sl. No.92 in that list. In that original list of 1991 the applicant was shown as promoted with effect from 23.7.1987 to the post of Chargeman-A while his juniors in the post of Chargeman-B were shown to have been promoted as on 27.02.1987. The reply of the respondents reveals that the applicant was considered for promotion along with others on 23.02.1987 but he was not found suitable and was as such not promoted. He was again assessed on 26th April, 1987 but at that time also he was not found suitable for promotion. He was thereafter, promoted on 23.7.1987. But since his juniors had already been promoted he was

given the seniority at S1. No.92. On consequential revision of seniority on the representation of the applicant his seniority is revised to 64A. The respondents have also contended that the applicant never objected to his supersession by his juniors and hence the seniority given to his juniors has become final, the same cannot be disturbed now.

6. Mr. Walia learned counsel for the applicant has submitted that all the promotion orders were on adhoc, temporary and officiating basis and as such when no regular promotion was given to any of the juniors of the applicant, they cannot therefore become senior to the applicant. The position is that the applicant has not challenged any of the promotions given to his juniors by filing any OA. He might have made representations but has never challenged the promotion even given on officiating basis to his juniors. He therefore cannot be heard at this juncture to raise the question regarding the promotion given to his juniors and his being wrongly superseded. It appears from the seniority list of the Chargeman-A published in 1991 that the promotions though were ordered to be on officiating and trial basis but consequentially considered to be regular promotion by the respondents and nobody had objected to this position. Even otherwise when the seniority has become final the same could not have been objected by the applicant in the year 1995. There is no

dispute that all the promotees shown in the seniority list of 1991 were holding the post in the substantive capacity and they had been continuing in that post right from the date of their promotion in 1987. In the case of Baleshwardas & Others Vs. State of U.P. & Others reported in 1980 (4) SCC 226 the Supreme Court has observed as under: "we may well say that a person is said to hold a post in a substantive capacity when he holds it for an indefinite period especially of long duration in contradiction to a person who holds for a definite or temporary period or holds it on promotion subject to confirmation." In the instant case all the promotees were clearly holding the post for an indefinite period especially for a long duration and though initially their order said that they were appointed on an officiating and trial basis, they continued in that post till 1991, clearly indicating to be promoted on regular basis. Mr. Dhawan learned counsel for the respondents has submitted that the authorities did not issue fresh orders regularising their promotion, but they were all treated as regularly promoted. This applies to applicant also. In view of this position the applicant cannot be heard to say that since the promotion of the others were on officiating and trial basis they ought not to have been given seniority above him. The reply of the respondents clearly says that when all were considered for promotion

to the grade of Chargeman-A the applicant was not found suitable and as such was not promoted. Since the applicant did not challenge his supersession at the relevant time he cannot now be heard to say that he was wrongly superseded. His grievance cannot be redressed in view of the same being defeated on account of delay and latches.

7. Further more so far as the question of non-joinder of necessary parties is concerned it cannot be denied that those who are already holding the seniority between S1. No.54 to 64 are necessary parties so far as this OA is concerned. If the applicant is to be given seniority after S1. No.53 then naturally their seniority will be disturbed and they will be the most affected persons. Their non-joinder therefore clearly bars this OA. The applicant had moved an MP bearing No.335/03 in this OA on 23rd April 2003 for permission to amend the OA to join three persons as party respondents. The MP has come to be rejected by us ~~on~~
~~the ground of the ~~~
~~the same was~~ barred by limitation. It was an attempt on the part of the applicant to save the OA from being rejected on the ground of non joinder of necessary parties. However, since in an OA filed in the year 1995
~~the MP~~ moved in the year 2003;— even though the respondents had right from the beginning raised the objection of non joinder of necessary parties—for amendment of the OA for bringing new respondents on record, the amendment sought for being clearly barred by

limitation was not allowed. In the case of M. Bheemaiah & Others Vs. Deputy Commissioner of Excise, Hyderabad & Others reported in 2002 SCC (L&S) 1004 the Supreme Court while considering similar question of the non joinder of necessary parties has observed as under:

" Though it is possible to contend that the appellants are not at fault we find that assigning any date, anterior to the dates assigned to those in other districts is likely to affect the seniority of all the candidates in other districts. Candidates from the other districts have not been made parties before the Tribunal nor in this court. In the circumstances, as all the necessary parties are not before us, we are not inclined to interfere in this appeal."

8. Since all the parties are not before us in this OA we are of the same opinion that the OA deserves to be rejected due to non joinder of necessary parties. Further more on merit also we do not find any case made out for our interference with the seniority of the applicant. The seniority of others have become crystallized and stable in view of the long period that had elapsed and it would be inappropriate for us to disturb that seniority after more than a decade. The applicant having failed to challenge his supersession in the year 1987 cannot now be heard to say that he was wrongly superseded and therefore he was denied the just seniority. Mr. Walia learned counsel for the applicant

relied on the decision of the Supreme Court in the case of V.P. Srivastav Vs. State of UP & Others 1996 SCC (L&S) 676 and S.N. Karkhani Vs. UOI reported in AIR 1974 SC 2302. We find that both these decisions have no application to the facts of the instant case. So far as the case of S.N.Karkhani Vs. Union of India (supra) is concerned the Supreme Court held that the case of petitioners of two respective service on the date of presidential resolution were governed by the same rules relating to seniority. The question before Supreme Court was whether the presidential resolution could have been over ruled by the Government. Apparently this has no relevancy so far as the instant case is concerned. In the case of V.P. Srivastav, (Supra) heavily relied on by the learned counsel for the applicant, the question pertained to the seniority between direct recruits and promotees. The direct recruits had challenged the principles of determination of the seniority applied by the State in assigning seniority to the adhoc promotees. The appointment of the adhoc promotees however was not challenged and the Supreme Court held that in such circumstances impleadment of State was sufficient and non impleadment of all the promotees was not necessary. It is quite obvious that this was not a case of non joinder of all the necessary parties. Two of the affected promotees were joined as parties and the Tribunal had already observed that impleadment of two of the promotees is to safeguard the

interest of the promotees. This decision has therefore no applicability to the facts of the instant case.

9. For the reasons discussed above, we hold that the OA is barred due to non joinder of parties. We also hold that the applicant has failed to make out any case for interference with the seniority in the cadre of Chargeeman-A published in 1991 and they are not entitled to any of the reliefs sought for. The OA is therefore rejected with no order as to costs.

Shankar Prasad

(SHANKAR PRASAD)
MEMBER (A)

A. S. Sanghvi

(A.S. SANGHVI)
MEMBER (J)

Gajan