

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 255/98

Date of Decision:

7/5/99

R.G.Nair

Applicant.

Shri D.V.Gangal

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri S.C.Dhawan

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. D.S.Bawej, Member (A)

(1) To be referred to the Reporter or not?  Yes

(2) Whether it needs to be circulated to other Benches of the Tribunal?

D.S.Bawej  
(D.S.BAWEJA)

MEMBER (A)

R.G.Vaidyanatha  
(R.G.VAIDYANATHA)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA. NO. 255/98

Dated this the 7th day of MAY 1999

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri D.S.Bawaja, Member (A)

Rajgopal G. Nair,  
Chief Controller  
under D.R.M.Bhusawal,  
R/at D-90, Tapi Road,  
Bhusawal.

By Advocate Shri D.V.Gangal ... Applicant  
V/S.

1. The Union of India  
through the General Manager,  
Central Railway,  
Mumbai C.S.T., Mumbai.
2. The Divisional Railway  
Manager, Bhusawal Division,  
Bhusawal.
3. The Chief Personnel Officer,  
Personnel Branch,  
Mumbai C.S.T.

By Advocate Shri S.C.Dhawan ... Respondents

ORDER

(Per: Shri D.S.Bawaja, Member (A))

This application has been filed by the applicant on being aggrieved due to change in his seniority position as well as denying him the opportunity to appear in the selection for Group 'B' post of Assistant Transportation Manager.

2. The applicant has stated his case as follows :- The applicant was initially appointed as a Guard in Central Railway in 1976. He was promoted as Section Controller on ad hoc basis

during 1980, and subsequently on regular basis from 16.5.1986. The applicant was further promoted on regular basis as Deputy Chief Controller on 29.5.1986. Thereafter, the applicant was promoted as Chief Controller and the present OA. has been filed while working as Chief Controller. A Notification was issued dated 17.11.1997 for selection to the Group 'B' post of Assistant Transportation Manager. The applicant's name was included in the list of eligible candidates as a stand-by candidate. However, subsequently, the applicant came within the zone of consideration and as per letter dated 1.1.1998 he was permitted to appear in the written test fixed on 10.1.1998. The written test fixed on 10.1.1998 was, however, postponed. As per letter dated 26.2.1998, the name of the applicant was deleted from the list of eligible candidates stating that the applicant was promoted on a regular basis as Deputy Chief Controller in the scale of Rs.2000-3200 from 17.5.1988 instead of 29.5.1986 as indicated in the earlier seniority list. The applicant made a representation dated 10.3.1998 against the change in seniority position. On feeling aggrieved and not getting any response to his representation, the present OA. has been filed on 20.3.1998.

3. The applicant has submitted that he was regularly promoted as Deputy Chief Controller from 29.5.1986 as is clear from the integrated seniority list issued by the Headquarters' office as per letter dated 15.9.1993. The applicant further

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submits that based on this seniority list, the applicant's name was included in the list of eligible candidates in the seniority list notified on 30.5.1995 in connection with the selection to the Group 'B' post of Assistant Transportation Manager. The applicant's case is that the change in seniority position of the applicant as Deputy Chief Controller had been done after a considerable lapse of time and therefore the settled position is being unsettled. The applicant also alleges that no show cause notice has been given to the applicant before changing his seniority position and therefore the action of the respondents is illegal and violative of principles of natural justice.

4. Based on the above facts, the applicant has sought the following reliefs :- (a) to declare that Notification dated 26.2.1998 deleting the name of the applicant from the list of eligible candidates for the selection to the post of Assistant Transportation Manager as illegal and quash the same. (b) to declare that the action of the respondents to change the date of promotion of the applicant as Deputy Chief Controller from 29.5.1986 to 17.5.1988 is illegal. (c) to declare that the applicant is entitled to appear for the selection scheduled to be held on 28.3.1998/4.4.1998.

5. The respondents have filed written statement. The respondents have stated that applicant was promoted on adhoc basis as Section Controller on 12.09.1980 and thereafter was promoted on regular basis from 16.05.1986. He was promoted as Deputy Chief Controller in the scale of Rs. 700-900 from 29.05.1986 and on regular basis from 01.07.1988 as per order dated 16.10.1989 brought on record as Annexure R-2. The respondents have contended that the post of Deputy Chief Controller is a safety category post and as per the extant rules, an employee can be considered for promotion only after completion of two years of service in a lower grade. In view of this, the respondents submit that promotion of the applicant on 29.05.1986 as Deputy Chief Controller on adhoc basis was done <sup>through</sup> an oversight. The respondents further state that there were representations with regard to allowing of seniority to the applicant as Deputy Chief Controller taking his adhoc promotion as regular promotion from 29.05.1986. The matter was also taken up by one of the recognized unions on the Permanent Negotiating Machinery Meeting. After careful consideration of the matter, it was noted that the concerned Division had wrongly treated the applicant as having been promoted regularly from 29.05.1986. The concerned division was advised as per letter dated 03.02.1993 to correct the seniority of the applicant with reference to the seniority allowed to his senior Shri M. D. Khare. The respondents further add that though decision was taken in 1993 to rectify the seniority of the applicant, but somehow this correction was not carried out by the Division and in the integrated seniority list was issued as per letter dated 02.06.1995 for selection to Group 'B' post of Assistant Transport Manager, the applicant was shown

regularly promoted from 29.05.1986. In view of this date of promotion, the applicant came within the zone of consideration and also appeared in the selection. However, in the subsequent selection to the post of Assistant Transport Manager when the eligibility list was issued as per letter dated 17.11.1997, there was a representation against the seniority allowed to the applicant. The matter was again re-examined. It was then revealed that decision taken in 1993 with regard to rectification of the mistake had been not implemented by the Division. Accordingly, action was taken to allocate the correct seniority to the applicant as per the date of regular promotion. Based on the integrated seniority with date of regular promotion as 01.07.1988 list, the applicant did not come within the zone of consideration, and therefore his name was deleted from the list as per the impugned order dated 26.02.1998. The main contention of the respondents with this background is that the action of the respondents is legal as the clerical mistake which had crept into while preparing the seniority list had only been rectified. The respondents also contend that the applicant is not entitled for any benefit due to wrong indication of the date of promotion on regular basis in the seniority list, as he was aware of the orders with regard to adhoc promotion in 1986 and subsequent regularisation as per order dated 16.10.1989.

6. The applicant has filed the rejoinder-reply refuting the submissions of the respondents. The applicant has submitted that the respondents have not notified the integrated seniority list as brought on record with the written statement at R-3 and, therefore, the applicant is not aware of the same. The applicant has also

pleaded that he was promoted as Deputy Chief Controller from 29.05.1986 after following the procedure as applicable for non-selection post and, therefore, his promotion was on regular basis though purportedly the same had been shown as adhoc. The applicant also challenges the order dated 16.10.1989 stating that the change in the date of regularisation has been ~~carried~~ out without the approval of the competent authority. The applicant has further averred that the rule of two years service in the lower grade before being eligible for promotion to the higher grade has not been followed in all cases, as this rule is not mandatory but is only a directory in nature. In view of these averments, the applicant strongly challenges the stand of the respondents that the promotion of the applicant shown as regular from 29.05.1986 is a clerical mistake.

7. In addition to the written statement, the respondents have filed a further written statement reiterating the earlier averments made in the written statement. In the additional statement, the respondents have brought out that the letter dated 17.11.1997 through which the eligibility list was issued, representations if any, were called for from the staffs. One of the candidates represented against the seniority allowed to the applicant and, therefore, the matter was <sup>re-</sup>examined. At this stage it was revealed that the decision taken earlier for rectification of mistake had not been implemented by the Division.

8. The applicant has also filed additional rejoinder for the additional written statement of the respondents. The applicant has reiterated the submissions made earlier in the original application as well as in the written statement with special emphasis on his plea rule of that the two years service had not been followed strictly for promotion to the next higher grade. The applicant has also brought out that as per the Railway Board's Circular dated 26.05.1984 read with para 214 (c) (Vol. I) of the Indian Railway Establishment Manual, 1989, the two years service in the lower grade is to be counted by taking into consideration the period of adhoc service rendered before being promoted on regular basis. Based on the provision of this rule, he had already put in two years service in the lower grade as Assistant Controller and therefore, he was due for regular promotion on 29.05.1986 as Deputy Chief Commissioner.

9. As per the order dated 23.03.1998 it was provided as an interim order that the applicant shall be allowed to appear in the examination to be held on 28.03.1998 but the results of the written test shall not be declared till further orders. This interim stay order was continued till further orders.

10. During the hearing, Shri D.V. Gangal and Shri S. V. Marne advanced arguments on behalf of the applicant and Shri S. C. Dhavan on behalf of respondents. The material brought on record has been carefully perused.

11. From the facts brought out by either of the parties, it is noted that as per the impugned order dated 26.2.1998, the seniority of the applicant as Deputy Chief Controller in the grade of Rs.2000-3200 had been changed from 29.5.1986 to 17.5.1988 and as a result of this, he was not found coming within the zone of consideration for selection to the Group 'B' post of Assistant Transportation Manager. The applicant's claim is that he has been allowed seniority as Deputy Chief Controller treating him regularly promoted from 29.5.1986 all along and after several years, the seniority position has been changed. The applicant has brought on record that in the integrated seniority list issued by the Headquarter for the grade of Rs.2000-3200 on 15.9.1993 (at Annexure-'A-8'), he has been allowed seniority with regular promotion from 29.5.1986. Based on this seniority list, the applicant was made eligible for selection for the Group 'B' post of Assistant Transportation Manager as per Notification dated 26.4.1995. The applicant submits that he appeared in the selection. The next selection for Group 'B' post of Assistant Manager was notified on 17.11.1996 and the name of the applicant appeared in the list of Stand-by candidates but subsequently he came within the zone of consideration and was directed to appear in the written examination. Based on these documents, the applicant has taken a plea that right from 1993 the applicant is being shown in seniority list treating his regular promotion as Deputy Chief Controller from 29.5.1986.

It is also contended that the respondents are barred from making any changes in the seniority which has been existing from several years and at a belated stage challenged by the staff. He has challenged the action of the respondents in changing his seniority in the impugned order on two grounds. First ground is that the change in the seniority as per the impugned order has been done without any show cause notice to the applicant and therefore in violation of principles of natural justice. The second ground being that the seniority position of the applicant is being changed after considerable lapse of time and therefore settled position is being unsettled which is not permissible under the law. The learned counsel for the applicant statement at Bar made a L that he does not press the plea of issue of show cause as the matter is being now argued on merits. As regards the plea of unsettling the settled position after several years, the learned counsel for the applicant relied upon the following judgements :-

- (1) Malcom Lawrence Cecil D'souza vs. Union of India, A.I.R. 1975 SC 1269.
- (2) T.V.Soolapani Warrier vs. State of Kerala & Ors., 1986(1) SLJ 52.
- (3) K.R.Mudgil vs. R.P.Singh & Ors. AIR 1986 SC 2086
- (4) B.S.Bajwa & Anr. vs. State of Punjab & Ors. 1998 A.I.R. SCW 3883
- (5) Order dated 8.9.1998 in OA.NO. 230/98 and connected OAs. Rakesh Kumar vs. Union of India of Mumbai Bench of the Tribunal.

The cited judgements/orders have been carefully gone through and briefly reviewed as follows :-

In the case of Malcom Lawrence Cecil D'souza, the seniority list which was issued in 1956 was challenged through a writ petition filed in 1971. The Hon'ble Supreme Court has held that raking up old matters like seniority after a long time is likely to result in administrative complications/difficulties and therefore such a belated challenge is not legally maintainable.

In the case of K.R.Mudgal & Ors., the petition challenging inter-se seniority was filed 18 years after issuance of first seniority list. The Hon'ble Supreme Court while dismissing the petition on the ground of laches alone observed that it is essential that any one who feels aggrieved by the seniority assigned to him should approach the court as early as possible so that there is no sense of uncertainty with regard to seniority amongst Government servants.

The third cited judgement is in the case of T.V.Soolapani Warrier of Kerala High Court. In this case, the lower court had held that it is open to the Government as an employer to correct mistake which had occurred in the past to do justice to the affected employee. The Hon'ble High Court however did not up-hold the decision of the lower court on the ground that refixing of seniority had been done after a period of 18 years at the instance of a person who did not make any protest in the past despite repeated supersession in the various promotions based on the impugned seniority list.

The next cited judgement is in the case of B.S.Bajwa & Anr. Here also the issue of seniority was raised in a writ petition after several years of joining in service. The Hon'ble Supreme Court did not up-hold the judgement of the High Court observing that in service matters, the question of seniority should not be reopened after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable.

Lastly, the applicant has relied upon the order of this Bench dated 8.9.1998 in OA.NO. 230/98 and connected OAs. in the case of Rakesh Kumar & Ors. vs. Union of India. Here, the applicants were allowed to be appointed after the period stipulated for joining. However, after several years the seniority list of the applicants was modified on the plea that as per the provisions of the rules, the applicants were to lose their seniority as they did not join on the post as per the time allowed as per the appointment orders. The Bench held the view that it was open to the respondents to deny the request of the applicants for extention of joining period but after having allowed the applicants to join the service without any stipulation with regard to losing of seniority, the respondents cannot take action after several years to implement the provisions of the rules according to which the seniority position of the applicants should have been depressed as they had not joined the service within the period as per the appointment order.

From the above review of the cited judgements, it emerges that the main theme in all the judgements/orders is that the settled position particularly in respect of seniority which has been existing for several years should not be unsettled. Any challenge with respect to seniority should be within a reasonable time.

12. Keeping in view what is held in the cited judgements, the rival contentions of the parties and the facts and circumstances of the present case, we are inclined to hold a view that the contention of the applicant is not tenable. In the present case, the issue involved is with regard to the change in seniority position in the integrated seniority list which is common to all the Divisions of the Railway zone and is of relevance in respect of selection to Group 'B' post. Here, the first time seniority list was published in 1993 and the change in seniority list has been effected in 1998 after a period of 5 years. In our opinion, in the case of integrated seniority, the objections if any from the staff may come up only when the eligibility list for selection to Group 'B' post is issued. In the present case, it is an admitted fact that the applicant's name was in the eligibility list of 1995 selection and the applicant also appeared in the written test. The applicant's name also appeared in the list of stand-by candidates in the selection of 1997. Based on the notification dated 17.11.1997, representation was made by one of the candidates with regard to seniority of the applicant referring to para 4 of the Notification as per which the objections if any for the seniority were called for. Based on this representation, the matter was examined by the respondents and it was found that the issue of seniority which had been earlier gone into in 1993 and direction was issued to the concerned Divisions for rectification of the mistake, but in actual no action had been taken by the concerned Division to rectify the mistake. In this background, in case of the integrated seniority, the

objections may arise from the staff only as and when the eligibility list is published because the affected persons can make representation only if they do not come within the zone of consideration. While conceding that as per the law laid down by the Hon'ble Supreme Court, the seniority matter should not be reopened after several years to unsettle the position but in the facts and circumstances of the present case, we are of the view that opening of the seniority issue in the present case in 1998 <sup>however</sup> is sustainable. There can be <sup>no</sup> dispute that it is open to the Government to modify the seniority list to correct a mistake of the past. The only aspects which are to be seen when such action is challenged is that the action of the Government is bonafide and within a reasonable time.

13. In the present case, the respondents have brought out the documentary evidence to show that the applicant was promoted on ad-hoc basis as per order dated 29.5.1986 brought on record as 'Annexure-'R-1'. Subsequently, the applicant has been regularly promoted from 1.7.1988 as per order dated 16.10.1988 brought on record as Annexure-'R-2'. The applicant has not refuted these two orders. The case of the applicant is to be looked at with reference to these two orders which determine the status of the promotion of the applicant in the grade of Rs.2000-3200. On perusal of the order dated 29.5.1986, it is quite clear that the promotion of the applicant was on ad hoc basis purely on local arrangement against the vacancy arising due to promotion of the senior into the higher grade. The order dated 16.10.1989 clearly brings out the date of regular promotion in the grade of Rs.2000-3200 of several

employees including the applicant. The list covers several seniors and juniors to the applicant. With these two documents, it is obvious that the seniority allowed to the applicant taking the date of regular promotion as 29.5.1986 was error apparent on the record. Though the applicant has taken a plea as discussed subsequently <sup>has</sup> inspite of these orders the applicant was regularly promoted on 29.5.1986, but in the face of these two orders, the applicant could not have been given seniority treating his promotion as regular from 29.5.1986. From the details furnished by the respondents, it is noted that the issue of the seniority had been raised through several representations as well as by one of the recognised Unions. The matter was discussed in the Permanent Negotiating Machinery meeting and decision was taken to change the seniority of the applicant. The decision was conveyed to the Bhusawal Division <sup>in 1993</sup> but some how it appears that the Division had not effected this change and advised to the Headquarters for preparation of the integrated seniority list. With this fact-situation, the applicant cannot claim that he is entitled for seniority from 29.5.1986 treating that he was regularly promoted from that date. The applicant had been allowed seniority due to an error and in our opinion the respondents have legitimate right to correct the seniority allowed to the applicant. As indicated earlier, this seniority change ~~alone~~ only affects the applicant in respect of integrated list which determines the eligibility of the applicant for appearing in Group 'B' selection. This change in seniority had been effected within a period

of few years only and not after several years. Further, so far as his seniority in the Division is concerned, even after change of date of promotion the relative position of the applicant does not get affected as the seniority of others have also been changed and therefore the applicant's promotion to higher grade was not affected. In this connection, we refer to the judgement of Hon'ble Supreme Court in the case of A.K.Sarma & Anr. vs. Union of India & Anr. JT 1999 (1) SC 113 relied upon by the respondents to support their contention that the Government has legitimate right to correct the mistake which has crept in allowing the seniority. In this case, the petitioners were promoted on ad hoc basis but in the seniority list this aspect was not shown. In the subsequent seniority list also the applicants were shown to have been regularly promoted. Subsequently, when this mistake was noted, the department has taken action and modified the seniority indicating that the applicant had been promoted on ad hoc basis. The matter was challenged before the Tribunal. The Tribunal had held that action of the department in issuing a subsequent clarification and modifying the promotion of the applicant as ad-hoc was justified and was within the law. It was also held that the mistake committed by the respondents could not confer any right. This view of the Tribunal has been up-held by the Hon'ble Supreme Court in this judgement. In the present case also the respondents have taken action to rectify the mistake. The two documents brought on record by the respondents at Annexures- 'R-1' & 'R-2' establish without any doubt that the applicant was promoted on 29.5.1986 on adhoc basis and was regularised subsequently

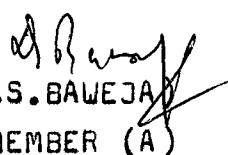
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in 1988. Keeping in view the facts and circumstances of the case and what is held by the Hon'ble Supreme Court in the case of A.K.Sarma & Anr. vs. Union of India & Anr., we come to the conclusion that no fault can be found in the action of the respondents and the modification in the seniority list as per the impugned order is legally sustainable as the applicants could not be allowed to enjoy any right contrary to the rules.

14. The applicant in the rejoinder reply has taken a plea that his promotion on 29.5.1986 was ordered after following the procedure as applicable for the non-selection post and therefore the selection was regular though purportedly the same has been shown as adhoc in the order. The applicant has however not made any amendment to the OA. with regard to his plea of claiming regular promotion from 29.5.1986 as per order dated 29.5.1986. In fact, the learned counsel for the applicant was at pains to deliberate on this aspect and devoted a considerable time of his oral submissions justifying that his promotion on 29.5.1986 was regular and the respondents initially had rightly allowed him seniority from 29.5.1986. Keeping in view the documents at Annexures - 'R-1' and 'R-2' and as brought out earlier, we are unable to find any merit in this plea of the applicant. The applicant cannot come around now at this stage to make a plea that his promotion as per order dated 29.5.1986 was in fact regular though the same had been shown as ad-hoc. If the applicant was

not satisfied with the order, he could have challenged at that time. Further, the order for regular promotion in the grade of Rs.2000-3200 was issued in 1989 and at that time the applicant was again had a chance to claim that his promotion from 29.5.1986 should be treated as regular. Though the applicant has cited the rules and made supporting pleadings, we are not inclined to go into the same as in our view this plea is not sustainable. The applicant was aware of these two orders and did not challenge at any time with regard to his date of regular promotion. The applicant is making this claim now only after his name has been shown in the integrated seniority treating his seniority from the date of his promotion on 29.5.1986. This date was shown wrongly as we have observed above and the applicant cannot derive any right for the mistake committed by the respondents in allowing the seniority in the face of the orders at Annexures - 'R-1' and 'R-2'.

15. Keeping in view the above deliberations, we are not able to find any merit in the OA. and the same is accordingly dismissed. The interim order dated 23.3.1998 according to which the applicant was allowed to appear in the written test is accordingly vacated. No order as to costs.

  
(D.S. BAWEJA)  
MEMBER (A)

  
7.5.99  
(R.G. VAIDYANATHA)  
VICE CHAIRMAN

mrj.