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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 10.12.1999

OA 437/93

Bharosi Lal S/o Shri Chetram, aged about 50 years, r/o Shaheed Bhagatsingh Colony, House No.65, Kota Junction, Kota.

... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. The Chief Works Engineer, Western Railway, Churchgate, Mumbai.
3. Chief Works Manager, Wagon Repair Shop, Western Railway, Kota Division, Kota.
4. Chandra Mohan Upadhayay, Shop Superintendent, Computer, under Chief Works Manager, Kota.
5. Karan Singh Chargeman 'A' under Chief Works Manager, Kota.

... Respondents

Mr. Jasraj, counsel for the applicant

Mr. S.S. Hasan, counsel for respondents Nos. 1 to 3

Mr. Vinod Goyal, Proxy counsel to Mr. R.N. Mathur, counsel for respondents Nos. 4 and 5.

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.N.P.NAWANI, ADMINISTRATIVE MEMBER

O R D E R

PER HON'BLE MR.N.P.NAWANI ADMINISTRATIVE MEMBER

In this application, the applicant seeks assignment of proforma seniority and his being declared eligible for promotion to the post of Shop Superintendent (for short, SS), his juniors respondents No. 4 and 5 having already been so promoted.

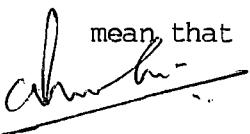
2. It is stated on behalf of the applicant that he was promoted from High Skilled Fitter Grade-I (for short, HSFG-I) in the scale Rs. 330-480 to the post of Chargeman Gr. 'B' in the scale of Rs. 450-700 on 31.3.1976 (Ann.A3) and was subsequently confirmed thereto w.e.f. 30.10.1976 (Ann.A4). Shri Chandra Mohan Upadhayay, respondent No.4 (for short, R-4) was appointed as Chargeman 'B' on probation for a period of one year vide order dated 3.11.1976 (Ann.A5), while Shri Karan Singh, respondent No.5 (for short, R-5) was promoted on ad hoc basis w.e.f. 23.8.1984. R-4 was further promoted to Chargeman-A in the scale Rs. 550-750 w.e.f. 25.8.1977, to Junior Shop Superintendent (for short JSS) scale Rs. 700-900 w.e.f. 17.11.1983 (Ann.A6) and further to the post of SS scale Rs. 2375-3500 on 8.4.1988. R-5 was further promoted to Chargeman-A on 15.12.1987 (Ann.A8)

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and JSS on 6/7.2.1990. On the other hand, the applicant even though senior to R-4 and R-5 was not considered for promotion to Chargeman 'A', JSS and SS on account of departmental proceedings. While the applicant was working as Chargeman 'B' to supervise the work of Tool Room Shop, costly items including Grinding wheels could not be located and their loss was taken as carelessness negligence on applicant's part. To cut the story short, being unconnected with relief, the applicant was issued with a chargesheet on 18.1.1984 (Ann.A11) alleging that the applicant was careless, negligent and responsible for loss to railways and subsequently he was removed from service vide order dated 27.5.1987. On his appeal, the penalty was reduced to reduction in lower post of Fitter Skilled in the scale of Rs. 260-400 at the lowest stage for 2 years with future effect and also recovery of loss, vide order dated 18.8.1987 (Ann.A13). The applicant challenged the penalty by filing OA No.528/1987 before this Bench of the Tribunal which quashed the penalties imposed, giving liberty to the respondents to revive the proceedings from the stage of supply of the enquiry report. Consequently, disciplinary authority again issued a finding and imposed a penalty of reduction to the stage of the pay of Rs. 1600/- p.m. in the scale Rs. 1400-2300 for six months with no future effect. The said penalty was over on 11.3.1992 and applicant became entitled to his legitimate promotions to Chargeman 'A', JSS and SS as per his seniority but this was not done, causing grave injury to the applicant. Respondent No.3 also informed the applicant vide letter dated 7.4.1993 (Ann.A3) that the panel of Chargeman 'B' (Tool Room) scale Rs. 1400-2300 (RP) was effective from 30.10.1976 that he was not considered <sup>for</sup> promotion to the post of SS as the applicant was a rank junior to the respondent No.5 who is working on the post of SS. It is contended that respondents are not willing to promote the applicant notwithstanding the Railway Boards letter dated 18.3.1993 and the fact that the applicant was on the post of Chargeman 'B' w.e.f. 30.10.1976 (Ann.A4) and was senior to respondent No. 4 and 5. This is also permissible as per the para 319 of the IREM (Vol.I). However, the respondent No.3 vide his letter dated 6.5.1993 (Ann.A2) stated that as per grade seniority the applicant is junior to respondent No.5 despite the Apex Court judgment in the case of D.P.Sharma Vs. Union of India and further fortified in Karam Chand Vs. Haryana Electricity Board reported in AIR 1989 SCC 261. Aggrieved by the attitude of the respondents, the applicant filed this Original Application.

3. In reply, the respondents (R-1 to R-3) have contended that the applicant was promoted totally on ad hoc basis to the post of Chargeman 'B' grade (Rs.425-700) against deficiency of S.C. community with stipulation that same will not confer on him any right to this post and this would not mean that he had superceded his seniors and he would be reverted as soon as



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the selection panel for this category was formed. As regards applicants averment that he was confirmed on that post, it was contended that a bare reading of the order dated 11.11.1976 (Ann.A4) makes it clear that the applicant was not confirmed but he was declared to be kept only on the selection panel. R-4 was, on the other hand, appointed as Chargeman Gr.B upon his successful training period vide order dated 3.11.1976 on probation for one year but on regular selection basis and by the same order applicant was reverted to his substantive post of Skilled Filter Gr.II. The applicant was promoted as Chargeman Gr.B on his regular selection w.e.f. 1.9.1978 and could not be senior to R-4 so promoted w.e.f. 3.11.1976. Further, R-4 was promoted to JSS on ad hoc basis against a leave vacancy vide order dated 17.11.1983 (Ann.A6) and his promotion was regularised vide order dated 18.4.1985 (Ann.A7) against a clear vacancy having been found suitable for promotion on the basis of seniority cum suitability. It has also been stated that the applicant has concealed significant facts and circumstances in which R-5 was promoted whereas the facts are that vide Railway Board's circular No.EP 220/O(PS No.175/91) dated 10.9.1991 promotion of railway employees would be made on the basis of the seniority in the base grade was applied. Similarly, vide another circular No. E(R&T)22010 Dn.4 dated 20.5.1993, it has been clarified that any selection in process and initiated before 1.3.1993 will be implemented as per earlier instructions. However, any selection initiated after 1.3.1993 will be finalised as per Railway Board's circular No.89 E(SCT)/1/49/5(Pt.) dated 16.6.1992. In the light of these circulars, R-5 was senior to applicant in base grade (Skilled Grade-3 and Grade-2) and further on account of penalty imposed of reduction to a lower grade and withholding of annual grade increment for two years in disciplinary action on serious charges, the applicant could not have been promoted. R-5 also became senior by getting promotion much prior to the applicant. As regards the disciplinary proceedings and the resultant penalties, the official respondents have denied the allegations made in the application and ~~and that the~~ no further comments are required in view of the fact that the relief sought for in this OA is the claim to promotions only. The fact is that after revival of disciplinary proceedings following order dated 2.1.1992 of this Tribunal, penalty of reduction to a lower grade of Rs. 380-560 (R) was imposed vide order dated 25.9.1986 effective from 30.9.1986 for one year and before that R-5 was already promoted as Chargeman Gr.A in the scale of Rs. 1600-2660 and then as JSS. So R-5 was senior to the applicant. It has also been clarified that in restructuring w.e.f. 1.3.1993, there was no upgradation of Chargeman Gr.A (Tool Room Trade) and for the post of JSS only the employees holding the post of Chargeman Gr.A are eligible and, thereafter, those holding the post of JSS are eligible for promotion to SS and since the applicant was still not been holding the post of Chargeman Gr.A, the question of his

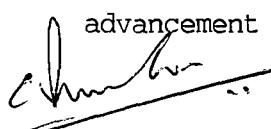
 still not be

consideration for promotion to JSS and SS did not arise. It has also been stated that it is trite law that a railway servant once promoted in his turn after being found suitable against a vacancy should be considered senior in that grade to all others who are subsequently promoted. The applicant has, however, concealed the significant fact that the applicant has been promoted Charge Gr.B only w.e.f. 1.9.1978 and he is, therefore, not entitled to relief claimed in this Original Application. Further, provisions contained in para 319 of IREM (Vol.I) 1989 Edition have been misunderstood by the applicant, in as much as that the applicant had been promoted as Chargeman Gr.B much after R-4 on regular selection basis w.e.f. 1.9.1978 and thus R-4 once promoted in his turn after his being found suitable against a vacancy, should be considered as senior. The applicant was, in fact, even not entitled to any promotion in view of gravity of offence, penalties imposed can also be considered as significant circumstances while considering his case for promotion and on that account, if he is not found suitable for promotion, such an action is legal. The cases cited by the applicant are totally distinguishable. In cases where the penalty of reduction to a lower service, grade or post or lower time scale is for a specific period, the employee concerned is only entitled to be re-promoted automatically to the post from which he was reduced and seniority of such employee is required to be determined by the date of re-promotion. In the light of these facts the applicant is junior to the respondent employees. The OA, therefore, deserves to be dismissed.

4. The applicant has also filed a rejoinder, which is on record and has been perused by us.

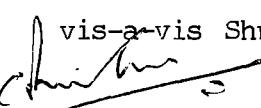
5. We have heard the learned counsel for the parties and have carefully examined the records.

6. In this case, a substantial portion of the application and the reply has been consumed by the narration of the disciplinary proceedings initiated against the applicant, the first penalty imposed vide order dated 18.8.1987 reducing the applicant's pay to the lower time scale with future effect vide order dated 18.8.1987, the order dated 19.4.1991 of this Bench of the Tribunal quashing the said penalty with continuation of proceedings from the stage of supply of a copy of enquiry report, the second penalty dated 12.9.1991 reduction to the lower stage of Rs. 1600 p.m. in the scale Rs. 1400-2300 for six months without future effect. There is neither any reason for us to go into the disciplinary proceedings as such nor is there any relief sought in this regard. However, if and when an occasion arises, we will examine if the penalties imposed had any impact on the promotional advancement of the applicant.



7. On a perusal of order dated 31.3.1976 (copy at Ann.A3) it is apparent that the applicant was promoted from the Officiating High Skilled Fitter (TR) Gr. II to Officiating Chargeman Gr.B on ad hoc basis to make good the deficiency of S.C. community. The order further states in the Note that "Shri Bharosilal's promotion is only on ad hoc basis and the same will not confer upon him any right for this post in future nor would it mean that he has been selected by superceding his seniors for this post. This ad hoc arrangement will be reverted as soon as the selection panel for this category is formed." The applicant had, therefore, no vested right on the post and we find no justification in interfering in the matter of reversion of the applicant from that post vide order dated 3.11.1976 (Ann.A5). The same order contains the appointment of Shri C.M.Upadhyay (R-4) on a probation of one year. The learned counsel for the applicant has stated that this was a regular appointment after successful completion of training by him. Thus, official respondents have been able to establish that R-4 was senior to the applicant and if R-4 got subsequent promotions, the applicant cannot have any grievance, even if the penalties imposed on him had not come in the way. As regards assertion by the both the official and private respondents that Shri Karan Singh (R-5) was also senior to the applicant, it does not appear to be very convincing. Official respondents have contended that R-5 was senior to the applicant in the base grade. However, they have not annexed any seniority list which figure the names of applicant and R-5. In the absence of this, we are not able to determine whether applicant was really junior to R-5 in the so called base grade. On the other hand, whereas the applicant was promoted on ad hoc basis to the post of Chargeman 'B' on 31.3.1976 (Ann.A3), R-5 was promoted on ad hoc basis on 23.8.1984 and on "provisional basis of selection" (as stated by official respondents). It has also been stated by the official respondents in para 18 of their reply that "the position of the applicant on the post of Chargeman 'B' was assigned to him w.e.f. 1.9.1978 i.e. before R-5 was promoted to Chargeman 'B' even on ad hoc basis. This was, it appears during the period which was even before the first penalty had become operative vide order dated 18.8.1987. The assertion of the official respondents in the same para 8 that such assignment of the applicant in the post of Chargeman 'B' had something to do with another notice for imposition of penalty issued on 29.2. (year illegible but second notice appear to be dated 12.9.1991 Ann.A6) is not easily understandable.

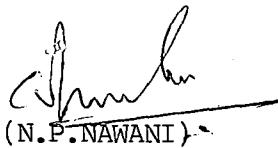
8. It, therefore, appears to us that whereas Shri C.M.Upadhyay (R-4) is senior to the applicant, it is necessary for official respondents to reconsider the seniority of the applicant in the post of Chargeman Gr.B vis-a-vis Shri Karan Singh (R-5) keeping in view the assertions made on



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behalf of the applicant in this Original Application, the panel that was issued by the respondents, the Rules/Instructions issued in this regard and judgments cited by the applicant as also any other relevant judgments/orders by any Court/Tribunal.

9. The Original Application is, therefore, allowed partly and the official respondents are directed to reconsider the seniority of the applicant in the cadre of Chargeman Grade 'B' vis-a-vis Shri Karan Singh (R-5) keeping in view what has been discussed in this Order, especially in the preceding paragraph and if it is found that the applicant should be considered senior to the respondent No.5 in the cadre of Chargeman Grade 'B', consequential benefits as entitled may also be extended to him. This exercise may be completed as expeditiously as possible, preferably within four months. Parties to bear their own costs.

  
(N.P. NAWANI)

Adm. Member

  
(S.K. AGARWAL)

Judl. Member