

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 07.04.2007

QA 40/94

Vijay Kumar Madan, CPWI, Western Railway, Feengus.

... Applicant

Versus

Union of India through General Manager, Western Railway, Churchgate, Mumbai.

... Respondents

CORAM:

HON'BLE MR.JUSTICE B.S.PAIKOTE, VICE CHAIRMAN

HON'BLE MR. H.F. HAWAII, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.P.F.Mathur, proxy counsel
for Mr.R.N.Mathur

For the Respondents

... Mr. Manish Bhandari

ORDER

PER HON'BLE MR.JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

The applicant has prayed for a direction to promote him on the post of Assistant Engineer from the post of PWI Grade-I. In the application he has elaborated his contention by stating that on the basis of the seniority list (Annexure A-6) he should have been promoted to the post of Assistant Engineer since he is in the same position what Shri Gurnam Singh occupied on the date of his promotion. Therefore, a direction may be issued to that effect.

2. In the application the applicant has stated that earlier he was working as Assistant Inspector of Works (AIOW) right from the year 1962 on the basis of his selection to that post. After selection he was posted at Udaipur Himmat Nagar Project, where the posts of AIOW were considered to be surplus. However, vide letter dated 2.5.68 he was considered for absorption in the post of Assistant Permanent Way Inspector (APWI). Later, vide order dated 18.9.68 (Ann.A-1) he was absorbed as APWI with a condition that those who seek for absorption to the post of APWI should undertake a training for a period of six months. Accordingly, the applicant underwent the training and consequently he was absorbed in the post of APWI. It is further case of the applicant that the applicant and other similarly situated persons made a representation to consider the services rendered by them in the post of Assistant Inspector of Works for the purpose of seniority in the post of APWI. The department refused to accept their contention. In those circumstances, the applicant and other persons filed

an application before the Central Administrative Tribunal, Gujarat Bench. In the first instance the same was allowed. Thereafter, the affected persons filed a review petition. The said Tribunal allowed the review petition and rejected the case of the applicant. In those circumstances, the applicant preferred a SLP before the Hon'ble Supreme Court. The same was also dismissed. The applicant and others were given the benefit of the judgement of the Central Administrative Tribunal, Gujarat Bench, passed in the first instance, and the seniority list was accordingly prepared, but after the review petition was allowed and after the judgement of the Hon'ble Supreme Court, dismissing their SLP, their seniority in the department was reconsidered and necessary reversions were also effected to the lower cadre. Meanwhile, the panel was also prepared vide Annexure A-4 dated 20.2.89 for the purpose of promotion to the post of Assistant Engineer. In that panel, the applicant's name also finds place at Sl.No.47. But this was also cancelled in view of the final judgement of the Tribunal and also the judgement of the Hon'ble Supreme Court. The resultant position was that the applicant had to go back to the post of APWI Grade-I, which the applicant was occupying after his promotion from APWI Grade-II. It is also not disputed that the final seniority was settled by fixing the seniority of the applicant and the persons who are juniors to him on the basis of Annexure A-6 dated 21.1.93. Annexure A-6 is a Corrigendum issued to the seniority list dated 23.6.92 of the PWI Grade-I. By Annexure A-6 it was directed that the name of the applicant should be inserted at Sl.No.163-B. It is also stated before us that the person by name J.N.Vaish was directed to be inserted at Sl.No.163-A but the said entry was deleted later on the basis that a wrong ranking was given to that person. Anyway, we are not concerned with the said person namely J.N.Vaish. So far as the applicant is concerned, his name finally finds place at Sl.No.163-B in the seniority list of PWI Grade-I, which the applicant also accepted. The seniority list of the year 1992, as modified vide order dated 21.1.93 (Annexure A-6), has not been challenged by the applicant.

3. The case of the applicant is that Shri Gurnam Singh, at Sl.No.163, just above his name, was promoted to the post of Assistant Engineer and there were only 135 posts and out of them only 119 posts have been selected for promotion to the post of Assistant Engineer and the other posts are vacant. The applicant would also come within the zone of consideration alongwith Shri Gurnam Singh, therefore, there should be a direction that the applicant also may be promoted as Assistant Engineer. As against this relief, a serious objection of the respondents is that this aspect of the

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case, which is now sought out in the argument, is not pleaded in the application. Having gone through the application we find that this aspect is not pleaded by the applicant in his application. Therefore, it is very difficult to know the number of posts that were available for the purpose of promotion by selection to the post of Assistant Engineers and how many posts have been filled up by promotion and how many posts should be taken as existing at this juncture. The applicant clearly admits in this case that Shri Gurnam Singh, who was promoted on the post of Assistant Engineer, was senior to him and a person namely S.L.Makwana, who is at Sl.No.164 and who is just below him even today continues to be junior to the applicant. It is also the case of the applicant that neither Shri S.L.Makwana nor any person junior to him has been promoted to the post of Assistant Engineer. If that is so, in our considered opinion, the applicant has no cause of action as such, for filing the present application. If Shri Gurnam Singh, admittedly who is senior to the applicant, was promoted as Assistant Engineer, the same does not give rise any cause or right to the applicant unless the applicant demonstrate before us that any of his junior is promoted to the post of Assistant Engineer and that he has not done. In fact it is not the case of the applicant at all that any of his junior has been promoted to the post of Assistant Engineer. If that is so, the applicant would not be entitled to the relief as prayed for.

4. However, there is another relief to the effect that the training period spent by the applicant should be counted for the purpose of seniority.

5. There is no substance in this case also, for the reason that, that was a training the applicant was given when he was in service as AIOW. As we have stated above, the post of AIOW was found to be surplus and those persons were to be absorbed in some other equivalent post, in the railway department, the post of APWI was an equivalent post and the department had decided to absorb them subject to the condition that, they undergo six months training so as to be eligible for the post of Assistant Permanent Way Inspector. Therefore, instead of terminating their services from the post of Assistant Inspector of Works, the department gave them training for the purpose of absorption on the post of Assistant Permanent Way Inspector and after the training the applicant was absorbed as Assistant Permanent Way Inspector. Therefore, the seniority of the applicant starts from the date he was absorbed as Assistant Permanent Way Inspector and the period he has undergone training cannot be counted for the purpose of seniority for the post of APWI. The training in question was only for the purpose of

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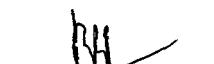
absorption on the post of AFWI. All this kind of exercise was done by the department only to see that, the applicant and other persons were not put to difficulty by terminating their service as AICW, on the ground that those posts were surplus. In fact the applicant and other persons similarly situated should thank the department for retaining their service, at least, on some other post. If that is so, the period during which the applicant was given training for the purpose of absorption as AFWI cannot be counted for the purpose of seniority. Therefore, even ~~now~~ the second relief also the applicant is not entitled. As contended by the learned counsel for the respondents, this aspect of the case, that the training period should be counted for the purpose of seniority, the applicant could have raised before the Central Administrative Tribunal, Gujarat Bench, but he did not do so. In the circumstances, the applicant is not entitled to any relief at this point of time.

6. For the above reasons, we have no option but to pass the order as under :-

The Original Application is dismissed but in the circumstances without any costs.



(N.P.NAWANI)
MEMBER (A)



(P.S.RAIKOTE)
VICE CHAIRMAN