

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 12.04.2000

OA No.476/94

(10)

Gopal Kishan S/o Shri Nathooram, Chargeman Grade-A, Carriage and Wagon Workshop, Western Railway, Ajmer.

.. Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Dy. Chief Mechanical Engineer, Carriage and Wagon, Western Railway, Ajmer.
3. Chief Works Manager, Western Railway, Ajmer.
4. Mohal Lal, J.S.S., Machine and Plant Section through Dy. CME, Carriage and Wagon, Western Railway, Ajmer.
5. Shyam Babu Rathore, JSS, 31 Department through Dy. CME, Carriage and Wagon, Western Railway, Ajmer.

.. Respondents

Mr. J.K.Kaushik, counsel for the applicant

Mr. Hemant Gupta, proxy counsel for Mr. M.Rafiq, counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S.Raikote, Vice Chairman

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing of the impugned order dated 29.3.1994 (Ann.A2) and that respondents may be directed to assign correct seniority to the applicant on the post of Chargeman 'B' w.e.f. the date of entry into the grade and allowed all the consequential benefits. Further that the seniority list dated 30.6.1990 (Ann.A1) may be ordered to be amended accordingly.

2. The facts of the case, as stated by the applicant, are that the applicant was initially appointed as Trade Apprentice on 22.11.1954 and after training was absorbed as Fitter in the scale of Rs. 110-180-260-400-950-1500 w.e.f. 25.12.1958. He was subsequently promoted to the post of H.S.Fitter Grade-2 and Fitter Grade-1 on

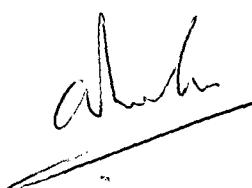


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6.5.1976 and 1.8.1978 respectively. Under restructuring order if an employee <sup>is</sup> due for promotion to one grade above the post held by him on regular basis and if such higher grade post is classified as selection post, the selection process will stand modified to the extent that selection will be based only on scrutiny of service records without holding any written and/or viva-voce test. However, if an official becomes due for promotion to a grade more than one grade above, the benefit of such modified selection process will be applicable only to the first such promotion (if that post happens to be a selection post) and normal rules for promotion will apply. The restructuring scheme was effective w.e.f. 1.1.1984. The applicant became eligible for promotion w.e.f. 1.1.1984 to Chargeman and scale Rs. 425-700 and was accordingly allowed benefit of upgradation vide order dated 23.3.1985 (Ann.A3A) with modified selection process of only scrutiny of records. However, while doing so, the respondents also organised a selection wherein the applicant qualified vide letter dated 29.4.1989 (Ann.A4). On 19.5.1989, an order of promotion was also issued to the post of Charman 'B' (Ann.A5). Thereafter the applicant was promoted to the post of Sr. Chargeman scale Rs. 1600-2660 vide letter dated 5.7.1989 (Ann.A6).

It is contended by the applicant that he was not assigned the correct seniority i.e. w.e.f. 1.1.1984, the date of entry in the grade of Chargeman 'B', his juniors were allowed to supercede him whereupon he filed OA No.932/89 and the Tribunal <sup>decided it</sup> vide its order dated 13.1.1993, following which he was placed above Chandra Kishore w.e.f. 29.4.1989 vide Ann.A2 in the seniority list at Ann.A1, but his name ought to have been placed between Sl.No.2 and 3 therein i.e. above Mohan Lal who had become Chargeman 'B' w.e.f. 23.5.1985 in view of his entry into the grade. The applicant filed a Comtempt Petition but authorities in the meantime assigned seniority ("though wrong to him") and the CP was dismissed. The respondents Nos. 4,5 and 6 are junior to him but since Joginder Singh has expired, he has not been impleaded as a party. The applicant's contention is that respondent No.4 has been given undue benefits and shown senior to the applicant inspite of the fact that the applicant was given regular promotion to the post of Chargeman 'B' w.e.f. 1.1.1984.

3. In their reply the official respondents have emphatically opposed the reliefs sought. Their preliminary objection

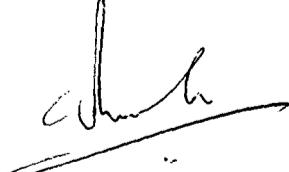


is that the application is basically against the order dated 30.6.1990 and has been filed as late as September 1994 and is, therefore, hopelessly time barred. We tend to agree with this. We also find that no delay/<sup>condonation</sup> application has been filed. It is also well settled principle of service jurisprudence that seniority lists should not be interferred with after reasonable passage of time as it might result in prejudice/<sup>to</sup> the interest of a number of other employees. In this case, we also find that no application for condonation of delay has been filed. The principle has been reiterated by Hon'ble the Supreme Court in the recent case of Ramesh Chandra Sharma v. Udhamp Singh Kamal, reported in JT 1999(8) SC 289. This OA is, therefore, liable to be dismissed being barred by limitation.

4. Even on merits, we find that the applicant has not been able to establish his case. In reply to his contentions, the respondents have clarified that the applicant was not regularly promoted to the post of Chargeman 'B' vide order dated 23.3.1985 (Ann.A/3A) as stated by the applicant but it was promotion on ad-hoc basis, as can be seen from the body of the order itself. The applicant has sought seniority over Mohan Lal whose name also figured in the same order but the respondents have made it clear that Mohan Lal was a direct recruitee who was regularly appointed to the post of Chargeman 'B' after successful training and passing final retention test. Our attention has also been drawn to para 4.2 of the policy regarding cadre review and restructuring of Group 'C' cadres. The said para is extracted hereinunder:

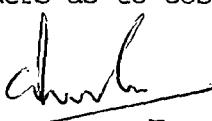
"4.2 In case, however, as a result of these restructuring orders an individual Rly. servant becomes due for promotion to a grade more than one grade above that of the post held by him at present on a regular basis, the benefit of the modified procedure of Selection as aforesaid will be applicable only to the first such promotion (if that post happens to be a 'selection' post), the second and subsequent promotions, if any, will be based only on the normal rules relating to filling in of 'selection' or 'non-selection' posts (as the case may be.)"

5, We are, therefore, satisfied that the applicant was



required to face a selection process when he got the second promotion i.e. from Chargeman 'B' to Chargeman 'A' and it was admitted that he appeared in the said selection process successfully. However, the question of seniority in the grade of Chargeman 'B' is an entirely different matter. The applicant, in the grade of Chargeman 'B' cannot claim seniority over Shri Mohan Lal who was appointed on regular basis as a direct recruit on the post of Chargeman 'B' by the same order by which the applicant was promoted to the same post, albeit on ad-hoc basis. The relief sought that his name should be placed over the name of Shri Mohan Lal in seniority list as on 12.6.1990 (Ann.A1) is, therefore, not sustainable. The applicant was correctly ordered (vide Ann.R1 dated 29.3.1994) to be placed over Shri Chandra Kishore because he and the applicant were part of the group of four officials who were on the panel for regular promotion to the post of Chargeman 'B' vide order dated illegible (Ann.A4) and all were regularly promoted on 28.9.1989 but having earlier date of appointment in service, he was subsequently ordered to be placed over Chandra Kishore. This modification had nothing to do with the seniority of the regularly appointed official Mohan Lal. The order dated 13.1.1993 in OA No.932/89 (Ann.A7) has no application to the controversy at hand. <sup>Hereinafter</sup> ~~which~~ controversy <sup>which</sup> relates to the applicant's claim of seniority w.e.f. 1.1.1984 on the basis of his ad-hoc promotion given vide order dated 23.3.1985 (Ann.A3/A) and his further claim that he be placed over Shri Mohan Lal, at Sl.No.10 in the same order, who, as we have discussed above was a regularly appointed Chargeman 'B' on direct recruitment basis after completion of his training and final retention tests.

6. This OA is, therefore, not only time-barred but is not sustainable even on merits and is, therefore, dismissed with no orders as to costs.



(N.P.NAWANI)

Adm. Member



(B.S.RAIKOTE)

Vice Chairman