

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order 12.1.2001

O.A. No. 494/1994

Umesh Chandra Yadav, aged 33 years resident of C/o. Shri Mahendra Singh Bhati, House No. 203, 34, Pal Bichla, Ajmer, now-a-days Junior lecturer, System Technical School, Western Railway, Ajmer.

... Applicant.

versus

1. Union of India through the General Manager, Western Railway, Church Gate, Bombay - 20.
2. Chief Works Manager, Wagon Workshop, Western Railway, Kota.
3. Shri Rajesh Gupta, Junior Shop Superintendent, Machine Shop, Kota Workshop, Western Railway, Kota.

... Respondents.

Mr. S.K. Jain, Counsel for the applicant.

Mr. Manish Bhandari, Counsel for the respondents.

CORAM:

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

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

(O R D E R)

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed under Section 19 of the Administrative Tribunals Act, 1985, praying for a

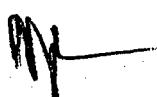


declaration that maintaining separate seniority lists for Tool Room and Machine Shop is illegal with a further direction to the respondents to prepare a common seniority list for both the cadres. The applicant also sought for a declaration that the order of promotion vide Annexure A/1 by which the private respondent No.3 was promoted as Junior Shop Superintendent is illegal. He also prayed for a direction to the respondents to prepare a common seniority list for Tool Room and Machine Shop Units and then issue necessary orders for promotions with a direction to the respondents to promote the applicant to the post of Junior Shop Superintendent from the date his juniors were promoted to the said post, with all consequential benefits.

2. The applicant stated that he was selected as Apprentice Mechanic in the grade of Rs. 1400-2300 on 3.7.85. Thereafter, he was sent for training for 2 years and after completion of the said training, he was appointed as Chargeman Grade 'B' in the pay scale of Rs. 1400-2300 on 3.7.87 in Tool Room. Thereafter, he was promoted as Chargeman Grade 'A' in Tool Room on 13.10.89. Put vide order dated 27.12.89, that promotion was kept in abeyance. Thereafter, again the applicant was promoted in February 1990, on the post of Chargeman Grade 'A', due to the vacancy arising on the post of Chargeman Grade 'A', on one Shri Karan Singh being promoted as Junior Shop Supdt.. But later, the said Shri Karan Singh was reverted and consequently, the applicant also was reverted vide order dated 1.6.92 (Annexure A/8). ^{Since on} ~~But~~ the applicant worked for more than 18 months on the promotional post of Chargeman Grade 'A', hence he should not have been

reverted. Meanwhile, the private respondent No. 3 was promoted from Chargeman Grade 'A' to Junior Shop Superintendent vide order Annexure A/1 dated 3.8.84 in the Machine Shop. But he was appointed subsequent to the appointment of the applicant in the grade of Chargeman Grade 'B' and as such, he was junior and his promotion as Junior Superintendent is illegal and the same is liable to be quashed.

3. The applicant contended that after selection as Apprentice Mechanic in the Grade 'B' and after training, he was appointed in Tool Room, whereas some other persons, who were selected as Apprentice Mechanic in the same selection were appointed as Chargeman Grade 'E' in Machine Shop. The department is maintaining a separate seniority list for the Tool Room and Machine Shop, even though they are part and parcel of one unit under the Senior Shop Superintendent. The posts in Machine Shop are 9 times more than the Tool Room, and as such there are more promotional opportunities in Machine Shop than the Tool Room, only because of maintaining two separate seniority lists, one for Tool Room and other for Machine Shop without any basis. When Tool Room and Machine Shop units are a part of one establishment, there was no justification for maintaining such two separate seniority lists. The respondent No. 3, though appointed later than the applicant on the post of Chargeman Grade 'B', is being promoted as Junior Superintendent as against the claim of the applicant only because of maintaining two separate seniority lists, and also due to the fact that there are posts in the Machine Shop far more than 9 times more than the Tool Room. Consequently, much promotional opportunities would be available to the employees of



Machine Shop than the Tool Room. Due to maintaining of these two separate seniority lists, one for Tool Room and other for Machine Shop, the applicant was not promoted as Chargeman Grade 'A' in Tool Room alongwith other similarly situated persons in Machine Shop, where the large number of persons are enjoying more promotional opportunities. It is only because of maintaining two separate seniority lists, one for Tool Room and other for Machine Shop, the respondent No. 3 was promoted vide Annexure A/1 as Junior Shop Superintendent as against the claim of the applicant, who is senior to him on the basis of the date of appointment in the cadre of Chargeman Grade 'B'. The learned counsel for the applicant highlighted this aspect of the case, contending that such maintaining of two separate seniority lists, one for Tool Room and other for Machine Shop, is not in accordance with any rule or law and ^{has} created discriminatory situation amongst equals, and as such, the action of the respondents in maintaining two separate seniority lists, is liable to be declared as illegal. He relied upon the Rules 119 and 120 of the Indian Railway Establishment Code, Volume I, Vth edition (1985) (the Code, for short), contending that under these Rules, it is only the Railway Board, which can create cadres and bifurcate the cadres, but not any other authority except the General Manager, to whom such power is delegated, with prior permission from the Railway Board. Without following the provisions of Rules 119 and 120 of the Code, if the department is created separate units/cadres as Tool Room and Machine Shop, the same is illegal and without any authority of law. As per paragraph 140 of Indian Railway Establishment Manual, Volume I (Revised Edition - 1985) (for short, the Manual), under Section - B of Chapter I, the persons are required to

be filled in on the post of Chargeman Grade 'B' in scale Rs. 1400-2300, in the vacancy meant for direct recruitment quota in the Mechanical and Electrical Engg. Departments and in the cadre of Draftsman in these departments, by inducting Apprentice Mechanics. After the selection to the post of Apprentice Mechanic and after the training, all the persons are required to be appointed in Mech. and Elec. Engg. Departments, and there cannot be any bifurcation of such Apprentices, some being appointed in Tool Room and some others in Machine Shop. He further submitted that under the said Para 140 of the Manual, only one seniority list is required to be maintained for all those apprentices, who had completed the training. Therefore, maintaining separate seniority lists, one for Tool Room and other for Machine Shop, is illegal and for all the persons so appointed, a common seniority has to be determined and followed under the Paragraphs 301, 302, 303 and 304 of the Chapter III in the Manual. Therefore, maintaining two separate seniority list, is illegal, and accordingly, a direction be issued to the respondents in that behalf. He also submitted that allegations made in the application are required to be accepted as unrebuted, since the respondents did not file the reply within the time prescribed vide proceedings dated 22.11.94 of this Tribunal, and as such the reply filed later, cannot be entertained. Hence, on the basis of these unrebuted allegations of the applicant in O.A., the applicant is entitled to the relief, as prayed for. In support of this contention, he relied upon the judgement of Hon'ble the Rajasthan High Court, Jaipur Bench, reported in 1994 (2) WLC (Raj.) 441.

4. The respondents have filed the reply, contending

Shop Superintendent, whereas the applicant being at the level of Chargeman Grade 'E', is yet to earn his promotion to the post of Chargeman Grade 'A' and thereafter, Junior Shop Superintendent. Thus, the applicant as Chargeman 'E' cannot file this application against the respondent No.3, who was promoted as Junior Shop Superintendent from the post of Chargeman 'A'. He contended that on the basis of the orders and the position as on date of filing this application would be that the applicant was only at the stage of Chargeman 'E'. Therefore, he cannot make any grievance against the private respondent No. 3. He also stated that two separate seniority lists are being maintained, one for Tool Room and other for Machine Shop, on the basis of the circulars issued from time to time. Atleast this is the position from the year 1975, and this position cannot be unsettled at this juncture of time. Accordingly, he submitted that the application is liable to be dismissed.

5. Before proceeding to the consideration of the points urged by the learned counsel on both the sides, we have to determine the fate of the reply filed on behalf of the official respondents.

6. We find from the order sheet dated 22.11.94 of this Tribunal that the following order was passed:-

"Mr. S.P. Jain, Counsel for the applicant

Mr. Manish Phandari, Counsel for the respondents

The counsel for the respondents seeks ten weeks time for filing reply. The reply may be filed within ten weeks, failing which it will not be entertained.

May be listed for hearing on 6.2.95.

Sd/-

(E.N. DHONDIYAL)
Member (A)

sd/-

(D.L. MEHTA)
Vice Chairman"

that this application has no merits. They have also filed certain documents alongwith the reply vide Annexure E/1 and contended that though the reply was not filed in time, in terms of the order of this Tribunal dated 22.11.94, even on the basis of the pleadings raised in the application, the applicant has not made out a case. He contended that the applicant himself has admitted at page 16 of the O.A. that the department is maintaining two separate seniority lists, one for Tool Room and other for Machine Shop, since long time. Unless the other persons who would be affected by any order to be passed in this case are made parties, the applicant cannot succeed. It is stated that the applicant cannot have any grievance against the respondent No. 3, who was promoted as Junior Shop Superintendent from Machine Shop Unit, and he has not filed any seniority list so as to demonstrate that the applicant was senior to the respondent No. 3. He also submitted that as per the pleadings in the O.A. itself, it is clear that earlier the applicant was promoted as Chargeman Grade 'A', but his promotion was kept in abeyance vide Annexure A/4. This order, the applicant has not challenged. He stated that the subsequent promotion in Chargeman Grade 'A' in the vacancy caused on promotion of one Shri Karan Singh, Tool Room Unit, to the post of Junior Shop Superintendent, was also set aside by reverting the applicant to the post of Chargeman Grade 'B' vide Annexure A/6 dated 1.6.92. This order also, the applicant has not challenged. As a result, the applicant is now posted as Chargeman Grade 'B'. The channel of promotion for the post of Chargeman 'B' is, first as Chargeman 'A' and thereafter, as Junior Shop Superintendent. The respondent No. 3 was Chargeman 'A' in the Machine Shop and he was rightly promoted to the Junior

7. From the above order of this Tribunal, it is clear that the respondents were given 10 weeks time for filing reply, and if they failed to file such a reply within ten weeks, the same would not be entertained. We find from the record that such reply was filed on 19.9.95. From this, it follows that the reply was not filed within the time specified by the Tribunal vide order dated 22.11.94 and there is a delay in filing such reply. But the proceedings of the Tribunal, being original in nature, to exclude the reply statement of the respondents for consideration would cause undue hardship to the official respondents. Moreover, excluding those pleadings, we find that the defence of the respondents would not be understood. Whether common seniority was required to be maintained and what is maintained in the department are the matters within the knowledge of the department. Therefore, it would be in the interest of the justice and equity to condone the lapse on the part of the respondents in filing the reply, beyond the time granted to them. Moreover, the order dated 22.11.94 seems to us in the nature of warning to the respondents, putting on them a condition that if the reply is not filed within ten weeks, the Tribunal will not entertain it. Thereafter, there is no order of this Tribunal, rejecting the reply filed. The order dated 22.11.94, cannot be taken as the one forfeiting the right of the respondents to file their reply. Considering the nature of the case and the controversy involved, even otherwise we consider it appropriate to entertain the reply filed by the respondents, in order to have full and final adjudication in the matter. As we have already stated above, there is no further order of this Tribunal, refusing to entertain the reply filed by the respondents. Therefore, we think

(Signature)

that it would be in the interest of justice and equity to condone the delay in filing the reply and accept the reply for consideration of the case. Moreover, in the context, the order dated 22.11.94 has the wording "it will not be entertained", which only meant that "may not be entertained, and the language of the order cannot be taken that such reply filed later, shall not be entertained at all. Therefore, we entertain the reply statement and accordingly, treat it as counter of pleadings in the case and decide the matter accordingly.

8. The judgement of Hon'ble High Court of Rajasthan, reported in 1994 (2) WLC 441 would not apply to the facts of the case. That was a case in which the respondents did not file any reply despite of granting time, and therefore, Hon'ble High Court proceeded with on the basis of the pleadings, and the petition as not being denied by the respondents, allowed the writ petition by granting the appropriate relief. But in the instant case, the reply was filed, though not within the time permitted by the Court. Therefore, the said case being distinguishable, does not support the contention of the learned counsel for the applicant.

9. Both from the pleadings and the arguments addressed at the Bar, we find that few facts are admitted. It is admitted that the applicant was selected as Apprentice Mechanic vide order dated 3.7.85 and subsequently, he was posted as Chargeman Grade 'B' in Tool Room with effect from 3.7.87, after successful completion of 2 years' training. It is also admitted that the applicant was earlier promoted as Chargeman Grade 'A' in Tool Room on 18.10.89, and the said order of promotion was kept in

abeyance vide Annexure A/4 dated 27.12.89. Thereafter, he also was again promoted vide order dated 6.3.90 (Annexure A/6). But vide order Annexure A/3 dated 1.6.92, he was reverted as Chargeman Grade 'B'. These orders vide Annexures A/4 and A/6, have not been challenged by the applicant, as such the applicant remained on the post of Chargeman Grade 'B'. It is also not in dispute that the next promotional post of Chargeman Grade 'B' is Chargeman Grade 'A', and thereafter as Junior Shop Superintendent and then Senior Shop Superintendent. The respondent No. 3 was promoted from the post of Chargeman Grade 'A' to the post of Junior Shop Superintendent. From this, it follows that the applicant without even being the Chargeman Grade 'A', cannot challenge the promotion of the respondent No.3 from Chargeman Grade 'A' to Junior Shop Superintendent. Therefore, *prima facie*, the applicant cannot succeed in getting Annexure A/1 quashed, when he has accepted the order of reversion (Annexure A/8), without challenging it in time before the Tribunal. The further relief that he shall be deemed to have continued as Chargeman Grade 'A' also cannot be granted. But the counsel appearing for the applicant submitted that the respondent No.3 was promoted as Chargeman Grade 'A' in the first instance, and thereafter as Junior Shop Superintendent, only because of maintaining two separate seniority lists, one for Tool Room and the other for Machine Shop. He did not give us as from what date two separate seniority lists started/maintained, for Tool Room and Machine Shop. He simply submitted that such seniority lists are maintained since time immemorial, but not authorised by any rule or law. If a common seniority is directed to be maintained, both for Tool Room and Machine Shop, persons appointed subsequent to the

applicant on the post of Chargeman Grade 'B', would be junior to the applicant. Therefore, the action of the respondents in maintaining two separate seniority lists in Tool Room and Machine Shop, ^{be} is declared to be illegal so also Annexure A'1, the promotion order of the respondent No.3. The respondents have stated that the promotions are made from the post of Chargeman Grade 'B' to Chargeman Grade 'A' for Tool Room and Machine Shop, on unit basis. The applicant was in Tool Room and separate seniority list was maintained in Machine Shop. They have stated that from the post of Chargeman Grade 'B', the next promotional post is Chargeman Grade 'A' in their respective units, and on the basis of combined seniority list of Chargeman Grade 'A', subsequent promotion to the post of Junior Shop Superintendent is being done. On the basis of the separate seniority lists maintained both for Tool Room and Machine Shop, the promotion till the stage of Chargeman 'A' is made, and for the Junior Shop Superintendent, the promotion is provided to the employees of both the units on the basis of the combined seniority list. They have further stated that ".....the work of two trades are quite separate in nature and the two separate seniority lists are being maintained since long and was never been challenged by the applicant; rather the claim of the applicant is time barred by limitation inasmuch as from the very beginning when the two seniority lists are being maintained and the promotion upto the post of Chargeman 'A' is given on the basis of such unitwise seniority list and if the applicant was aggrieved by the said arrangements, then he should have challenged the same immediately then and there or when certain order of promotion passed in the year 1990. Therefore, the claim of the applicant in this regard is

not only barred by limitation but even the same is not legally tenable inasmuch as when a decision was taken to maintain the practice of keeping separate seniority list in the year 1975 and since then, the same practice is being maintained, there is no reason to accept the contention of the applicant especially when such an order has not been challenged. Further, it may also be submitted that if at all, the applicant was aggrieved by the posting in Tool Room then also, it was necessary for the applicant to challenge the same in the year 1987 when such posting was given to the applicant for the first time. Therefore, also the claim of the applicant is not maintainable...."

10. The respondents also have filed Annexure R,1, showing that the channel of promotion is provided in Tool Room and Machine Shop on the basis of 1975 instructions, vide Annexure P,1. Thus, from the reply statement of the respondents, it is clear that the nature of the trade in Tool Room and the Machine Shop are entirely different. In Tool Room, there is a channel of promotion from Mistri (Tool Room Fitter) and from T.R. Fitter to Chargeman 'B' and thereafter, to Chargeman 'A'. In same way, in the Machine Shop, there is a channel of promotion from Mistry (Turner and Machinist) and from Turner & Machinst to Chargeman 'B', and thereafter, to the post of Chargeman 'A' (Turner Machinst). The chart at Annexure R,1 shows that further promotion would base on the basis of the combined seniority list as to the post of Junior Shop Superintendent, and then to the post of Senior Shop Superintendent. On the basis of the nature of the trade and work, these 2 separate seniority lists are maintained, one for Tool Room and other for Machine Shop, atleast

since the year 1975 either on the basis of the circular or on the basis of the instructions. We do not think it proper to declare such maintaining of seniority lists as illegal after the period of about 25 to 30 years. On the basis of maintaining these two separate seniority lists, persons both from the Tool Room and from the Machine Shop for all these 25 years, must have been promoted to the post of Junior Shop Superintendent and so on. It is also a fact that when the applicant ^{was} appointed as Chargeman 'B' in the year 1987, 2 separate units were there, and his appointment was in Tool Room vide order dated 3.7.87. The applicant had gladly accepted it. If the applicant had any grievance at that time, i.e. in the year 1987, to the effect that he ^{was} posted as Chargeman 'B' in the Machine Shop instead of Tool Room, he should have ventilated his grievance at the time of his joining the service for the first time, and it is not open to the applicant to challenge the same after 27 years of service, only because there are no promotional opportunities in the Tool Room as in the case of Machine Shop. It may be mentioned that the Chargeman Grade 'A' and the Chargeman Grade 'B' in Tool Room and Machine Shop, may carry the same pay scale, and on the basis of different trades, different channel of promotion has been fixed. The applicant himself has been promoted to the post of Chargeman Grade 'A', but the said promotion was kept in abeyance vide Annexure A/4, and subsequently, he was again promoted vide order dated 6.3.90. But thereafter, he was reverted vide order dated 1.6.92 (Annexure A/3). The applicant has accepted those orders also. It may be a fact that the persons appointed in Machine Shop, being in large number, they may be having more promotional opportunities than the persons appointed in Tool Room, where the number of employees is small.

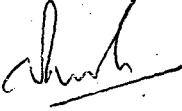
These things are inevitable having regard to the nature of service and the appointment to the cadre has taken. It is not the case of the applicant that any one of his junior in Tool Room Unit has been promoted as against his claim. Admittedly, the respondent No. 3 belongs to Machine Shop Unit, and perhaps due to large number in his unit, he got the promotions earlier to the applicant, though joined later (taking applicant's statement as true that the respondent No. 3 was appointed later than him). The applicant, borne on the Tool Room Unit, cannot violate the Articles 14 and 16 of the Constitution. Such a situation is accepted by the employees and the Employees' Union, atleast since last 25 years, presumably, having regard to the different nature of the trades. We do not think that we should unsettle that position at this juncture of time.

11. However, the learned counsel for the applicant submitted that under Rules 119 and 120 of the Code, it was the Railway Board or the General Manager, who were competent either to create or bifurcate the cadres. Having regard to the fact that such bifurcation, if any, between the Tool Room and the Machine Shop, which has been in existence for the last 25 years, there must have been some order or implicit acceptance of such bifurcation by the competent authority. Moreover, such bifurcation is purely an administrative matter. In these circumstances, it is very difficult to consider such a contention to maintain a common seniority list for both the Units, Tool Room and Machine Shop, on the basis of the touchstone the Articles 14 and 16 of the Constitution. Moreover, in Paragraphs 301 to 304 of the Manual, the seniority amongst the persons directly recruited in a particular unit, shall be maintained as per the extant instructions therein. It

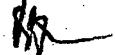
is not the case of the applicant that the Tool Room is upset by any other persons, contrary to Paras 301 to 304 of the Manual. Therefore, the Paras 301 to 304 of the Manual also would not help the applicant in any sense. Hon'ble the Supreme Court in more than one judgements has laid down a law that a settled position holding the field for a long time, should not be unsettled by an order of the Court (See JT 1999 (1) SC 57, B.S. Bajwa and Another vs. State of Punjab & Ors.).

12. From the above reasons, we do not find any merit in this application. Accordingly, we pass the order as under:

The application is dismissed. But in the circumstances without costs."



(N.P. NAWANI)
Adm. Member



(JUSTICE E.S. RAINOTE)
Vice Chairman