

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 24.01.2007

OA No.365/1995

Pal Singh s/o Shri Veer Singh, Jeep Driver in the office of ICW
(TWS) Kota r/o 109 T Old Railway Colony, Kota Junction.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway,
Churchgate Mumbai.
2. The Divisional Railway Manager, Western Railway, Kota.
3. The Senior Divisional Personnel Officer, Western Railway,
Kota.

.. Respondents

Mr.P.V.Cella, counsel for the applicant

Mr.M.Pafiq) counsel for the respondents

Mr. Hemant Gupta)

CORAM:

Hon'ble Mr.A.K.Mishra, Judicial Member

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

Order

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

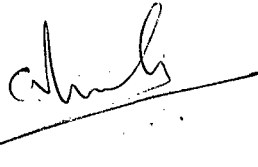
In this Original Application filed under Section 19 of the
Administrative Tribunals Act, the applicant prays for the following
reliefs:-

- (i) "respondents may be directed to consider the case of the
applicant for according grade Rs. 1200-2040 from the date
earlier to the date when the same was provided to an employee
entered in the feeder grade later to him;
- (ii) respondents may be restrained not to accord higher grade to
any other trade so long the candidature of the applicant is
not considered."

2. Some of the relevant facts that can be stated are that the

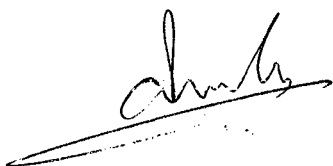


applicant entered the railway service as a Group 'D' employee as Platform Operation on 23.10.1982 and was subsequently promoted purely on ad-hoc basis to the post of Jeep Driver vide order dated 30.1.1984 in the pay scale of Rs. 150-350 (R). The applicant subsequently passed the trade test for the post of Jeep Driver on 29.1.1988 and was assigned seniority on the post of Jeep Driver after having passed the said trade test. It is the contention of the applicant that he continued to work on the post on ad-hoc basis and since the said ad-hoc appointment was followed by a regular appointment, he should be given the benefit of seniority from the date he was appointed on ad-hoc basis, which, in any case, was not fortuitous. It has also been stated on behalf of the applicant that the Inspector of Works (for short IOW) TWS is looking after the work of different types under its control and at the time the post of Driver was created, a total of 13 different trades were available under the IOW, which has been listed by the applicant at page 6 of his OA. Subsequently, one post in the trade of MCF was also created and that is how there are now 14 trades available under the IOW. It is contended by the applicant that all the 14 employees working in different trades as mentioned are falling within Group 'C' post and their cadre is combined cadre known as Artisan Staff and their seniority is determined on the basis of entering into the grade of Rs. 950-1500. It is also stated that there is no promotional avenues for the staff but whenever the posts are upgraded under restructuring scheme the higher scale is provided to the seniormost Artisan Staff. It is the case of the applicant that since he entered the grade of Rs. 950-1500 in 1984, he should have been given the higher pay scale of Rs. 1200-1800 long back. He made a representation on 17.11.1992 but his grievance was not attended to in spite of his name having been shown at Sl. No.1 in the seniority list dated 8.2.1993 (Ann.A4). On the other hand, vide letter dated 29.9.1987 (Ann.A6), one Metra Pal Singh



(SC), Helper in the scale of Rs. 800-1150 was promoted as Hammerman in the scale of Rs. 950-1500 (RP) in spite of his having joined in the cadre of Artisan in the scale of Rs. 950-1500 much later than applicant. The said Netra Pal Singh was further promoted in next higher scale of Rs. 1200-1800 in the year 1991 which will be clear from the representation dated 4.12.1991 (Ann.A7) made by the applicant. The applicant made a further representation on 2.2.1995 (Ann.A8) but of no avail. The applicant, therefore, filed this OA, inter alia, alleging that the applicant was being deprived of his rightful claim to the higher scale in violation of Articles 14 and 16 of the Constitution of India.

3. The respondents by filing a reply have denied the claim of the applicant. Their main refrain is that the applicant was promoted from the post of Platform Operation to the post of Jeep Driver purely on ad-hoc basis on 30.1.1984 and he could be given seniority only when he passed the required trade test for the post of Jeep Driver on 29.1.1988 and, therefore, he is not entitled to seniority in the pay scale of Rs. 950-1500 w.e.f. his date of ad-hoc and fortuitous promotion on 30.1.1984. They have denied that there is any cause for rectification of error or any need to review the earlier orders of promotion etc. It has further been stated that the post in the pay scale of Rs. 1200-1800 are filled in after conducting a trade test and whenever such test is conducted, the applicant will also be given due opportunity for consideration on the basis of his seniority as per the rules. It has also been clarified by the respondents that Netra Pal Singh was promoted in the pay scale of Rs. 950-1500 vide order dated 29.2.1987 whereas the applicant was so promoted only on 29.1.1988 and, therefore, the applicant cannot take any exception to the seniority position of Netra Pal Singh and there is no question of any violation of Articles 14 and 16 of the Constitution of India.

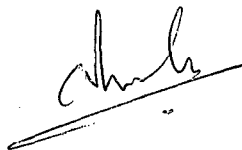


4. We have carefully considered the rival contentions. After hearing the learned counsel for the parties at length and perusing the material on record, we are of the view that the impugned controversy involved in this case is regarding seniority in the pay scale Rs. 950-1500 in the combined cadre of Artisan under IOW, even though the relief clause has been couched in somewhat unclear language. The factual matrix relating to this controversy is that the applicant on passing the trade test was promoted on regular basis in the pay scale Rs. 950-1500 w.e.f. 29.1.1988 and one Hetre Pal Singh was promoted to the same pay scale in the combined cadre of artisan on 29.9.1987. The issue to be decided, therefore, gets limited to only the question whether the applicant could be given seniority w.e.f. 30.1.1984 when he was promoted purely on ad-hoc basis in the then corresponding pay scale of Rs. 360-350. The respondents have claimed and the learned counsel for the respondents has argued that the applicant was promoted on ad-hoc basis vide order dated 30.1.1984 because of fortuitous circumstances on a post of Jeep Driver having been created. It has further been argued by him that the regular appointment on the post of Jeep Driver can be given only after the candidate passed the required trade test and the applicant passed the required trade test only on 29.1.1988, therefore, he was not entitled to the benefit of his fortuitous and ad-hoc appointment on 30.1.1984. The learned counsel for the respondents relied on the decision of the Constitution Bench of Hon'ble the Supreme Court of India in the case of Rudra Kumar Sain and ors. v. Union of India and ors. reported in 2000 (3) ATJ 392. On the other hand, the learned counsel for the applicant has vehemently argued that the applicant was appointed on the post of Jeep Driver, even though on ad-hoc basis on a clear vacancy which continued not only till his so-called regular appointment after passing the trade test but



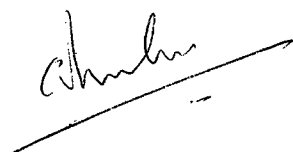
continued even thereafter and, therefore, he was entitled to counting of his seniority w.e.f. the date of his ad-hoc appointment viz. 30.1.1984. The learned counsel for the applicant also relied on the same judgment of Hon'ble the Supreme Court in Pudra Kumar Sain (supra) in which 1996 (2) JT 1996 is said to be referred. We have given our most respectful consideration to the judgment of the Apex Court in the case cited by the learned counsel for the applicant. We find that the said case was specifically regarding the seniority of promotees and direct recruitees as governed under Delhi Higher Judicial Service Rules, 1970 which provides for direct recruitment to the extent of one-third and also provides for creation of temporary posts in the Service and filling up the same under Rule 16 and 17 of the said rules. However, the Apex Court had, inter-alia, an occasion to interpret and define the terms "ad-hoc, stop-gap and fortuitous" but went on to hold that an appointment made either under rule 16 and 17 of the recruitment rules, after due consultation with the High Court and the appointee possessing the prescribed qualifications for such appointment provided under rule 7 and continuance as such for fairly long period then the same cannot be held to be fortuitous. Apart from this, the Apex Court in the cited case was dealing with the question of correct implementation of its judgment in the case of O.P. Single and anr. v. Union of India and ors., 1985 (1) SCR 351 regarding which it has been mentioned that "the court on being confronted with a peculiar situation" and thus in view of the specific rule position and the Apex Court having been confronted with a peculiar situation, the judgment has been rendered in the case of Pudre Kumar Sain (supra) and the terms ad-hoc, stop-gap and fortuitous have been interpreted as is clear from the paragraph No.20 of the judgment.

5. In the case in hand, a vacancy of the Jeep Driver happened to



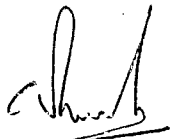
have arisen in a separate location and the applicant was appointed undisputedly on ad-hoc basis. We have perused the said order of promotion of February, 84 (Ann.A1) promoting the applicant w.e.f. 30.1.84. The order itself states that the applicant is being promoted on temporary and ad-hoc basis. The note appended to the said order states that the applicant should not mean from this promotion order that his name is on the panel and he would be reverted back to his substantive post on availability of a senior Driver. It is also stated that he can be regularly appointed on the said post only after he successfully passes the trade test (emphasis supplied). It is also undisputed that the applicant passed the trade test for the post of Jeep Driver on 29.1.1988. It also appears from the seniority list dated 8.2.93 (Ann.A4), on which much reliance has been placed by the learned counsel for the applicant, that against the name of the applicant the date 29.1.1988 has been mentioned under the column heading "date from which continuously working". If the heading of the said column was "date on which regularly appointment", the situation might have been different. Finally, the applicant's challenge to the seniority given to one Netra Pal Singh has been rebutted by the respondents by saying that the said Netra Pal Singh was promoted on regular basis from 29.9.1987, the date earlier than the regular promotion of the applicant. The applicant, therefore, has not been able to substantiate his claim for seniority w.e.f. the date he was actually given only an ad-hoc promotion.

6. In view of the circumstances as discussed, we are of the opinion that the applicant could be given seniority on the post of Driver in the pay scale of Rs. 950-1500 only from the date he passed the required trade test for the post i.e. only from 29.1.1988 and this being so further promotion to the pay scale Rs. 1200-1800 will be determined on the basis of his such seniority and

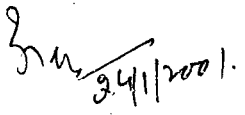


the passing of the trade test.

7. In the result, the OA does not succeed and is accordingly dismissed with no order as to costs.


(N.P. NAWANI)

Adm. Member


(A.Y. MISHRA)

Judl. Member