

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 2. August, 2001

OA No.171/96

Naseeb Beg s/o Shri Akher Beg, r/o village Zilawada via Srinagar, District Ajmer, presently working as Mason Gr.III, in the office of Dy. Chief Mechanical Engineer (C&W), Western Railway, Ajmer.

..Applicant

Versus

1. The Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Deputy Chief Mechanical Engineer (Carriage and Wagon), Western Railway, Ajmer.

.. Respondents

Mr. P.P.Mathur, proxy counsel to Mr. R.N.Mathur, counsel for the applicant

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

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr.A.P.Nagrath, Administrative Member

ORDER

Per Hon'ble Mr. A.P.Nagrath, Administrative Member

By filing this application, applicant seeks directions to the respondents to promote him to the post of Mason Gr.II and to include his name in the seniority list of Mason Gr.II by considering his seniority on the post of Mason Gr.III with effect from his initial date of appointment on the aforesaid post i.e. 12.2.1982.

2. The applicant had earlier filed OA No.670/93 with the prayer the he be treated as Mason Gr.III w.e.f. 28.10.1982. This OA came to be decided by an order dated 26.4.1995 allowing the



application, the respondents were directed to continue the applicant on the post of Mason, as if he held the post from the date on which he was originally promoted to this post. This order was implemented by the respondents vide letter dated 12.8.95 (Ann.A1) and it was mentioned, inter alia, that the applicant is the seniormost in Gr.III and will be considered for promotion to Mason Gr.II when a vacancy arises in future. The applicant has not challenged this order, but his prayer is that he be promoted to Gr.II and be included in the seniority list of Mason Gr.II.

3. We have perused the documents brought on record by the applicant and the reply of the respondents. While the respondents have admittedly implemented the order passed in OA No.670/93 by issuing Ann.A1, the date of assigning seniority to the applicant in Gr.III has not been specified. Even in the reply, to which a rejoinder has been filed by the applicant, the respondents have not made any attempt to clarify this position as to from which date the seniority in Gr.III has been assigned to the applicant. It is admitted by the respondents in the order Ann.A1 that he is the seniormost, but unless his name is interpolated in the seniority list, the position remains vague. The respondents have tried to take a stand in the reply that the applicant was temporarily posted as Mason on 23.10.82 against a work-charged post. Later on the said work-charged post was surrendered and the applicant reported back to his original post of Caneman w.e.f. 23.12.1983. We find that the same stand had been taken by the respondents in their reply to OA No. 670/93. It was observed by the Tribunal that a copy of the communication dated 23.12.83, under which the applicant had been stated to have reported for joining duty as Caneman has not been presented, although, a reference to this communication has been made in the reply <sup>and</sup> that reversion to the lower post of Caneman had not been substantiated by the records. It was also

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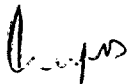
stated in that order that the applicant had passed the trade test for the post of Mason and was thus entitled to hold that post. In view of such clear observations, the respondents' attempt to take the same stand against the applicant now appears to us rather strange. Interestingly, even in reply to the present OA before us, respondents have listed the letter dated 23.12.93 as Ann.R1 but the same has actually not been filed. We are convinced that in view of the order passed in OA No. 670/93 the applicant is entitled to Mason Gr.III w.e.f. 23.10.82 as the respondents themselves have failed to indicate any definite date of assigning seniority to the applicant and to provide a convincing justification therefor. Having held that the applicant is entitled to seniority in Gr.III w.e.f. 23.10.82, he is obviously entitled to be placed in the cadre of Mason at appropriate position with respect to this date. However, in view of the fact that his position has got decided as Mason Gr.III only in consequence of the order passed in OA No.670/93, no direction can be issued to promote the applicant by reverting those who had already been promoted to Gr.II, when seniority of the applicant in Gr.III remained in a fluid state. The only course open to the respondents is to consider the case of the applicant for promotion to Gr.II when the next vacancy arises after following the procedure prescribed under the rules and to grant proforma fixation to the applicant with respect to his next junior. In such a situation and in view of the law laid down by Hon'ble the Supreme Court in the case of State of Haryana and ors. v. O.P.Gupta, 1996 SCC (L&S) 633, arrears are not payable to the applicant.

4. In view of the discussions as aforesaid, we partly allow this application by directing the respondents to assign seniority to the applicant as Mason Gr.III w.e.f. 23.10.1982. As soon as a vacancy in Gr.II becomes available, respondents shall consider the case of the applicant for promotion after following the procedure prescribed under

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the rules. On his promotion to Gr.II, the applicant shall be entitled to proforma fixation with respect to his next junior determined on the basis of his seniority in Gr.III as 23.10.82. However, the applicant, on his promotion to Gr.II, shall not be entitled to any arrears on account of proforma fixation. No order as to costs.



(A.P.NAGFATH)

Adm. Member



(S.K.AGARWAL)

Judl. Member