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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH, JAIPUR.

O.A.No.406/96

Date of order: 9.10.1996

Vinod Kumar Gupta : Applicant

vs.

Union of India & Ors : Respondents

Mr.V.P.Mishra : Counsel for applicant

Mr.Manish Bhandari : Counsel for respondents Nos.1 & 2

Mr.S.Kumar : Counsel for private respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Ratan Prakash, Judicial Member

PER HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Vinod Kumar Gupta has prayed that the official respondents be permanently restrained from revising the seniority of the applicant to his detriment and vis-a-vis the respondents Nos.3 & 4 as proposed to be done by the impugned order dated 27.5.96 (Annex. All). It is further prayed that order dated 27.5.96 be quashed and the applicant be declared senior to respondents Nos.3 & 4 as per the seniority position dated 21.6.95 (Annex. A10).

2. The facts of the case as stated by the applicant are that he was initially appointed as Assistant Goods Clerk scale Rs.110-200(A) in Bombay Division of the Western Railway on 3.6.1965 and thereafter promoted to the post of Senior Goods Clerk scale Rs.330-560(E) on regular basis, after transfer to Kota Division. He was further promoted to the post of Assistant Commercial Inspector (ACMI) scale Rs.1400-2300 (RP) on 23.5.1984 on ad hoc basis. On passing the selection test, the applicant was placed on the panel for the post of ACMI by order dated 12.2.93 (Annex. A1) and he was posted as CMI in Kota Division vide order dated 16.2.1993 (Annex. A2). The applicant was further promoted to the post of CMI scale 1600-2660 (RP)

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vide order dated 3.2.1995 (Annex.A3). The applicant had continued on the post of CMI scale 1400-2300 on ad hoc basis for 9 years due to administrative delay in finalising the selection. Respondents Nos.3 & 4, S/Shri Anupam Mishra and Satyaveer Singh, were earlier working on the post of Guards. (They got themselves medically decategorised by getting themselves medically examined prematurely and therefore they were inducted into the post of ACMI scale Rs.1400-2300. They were detailed for practical training but they were to be assigned seniority on the post of ACMI only on successful completion of the training (Annex.A9 dated 13.12.92 and Annex.A9(A) dated 30.10.92). Respondents Nos.3 and 4 were appointed as CMI scale Rs.1400-2300 (FP) after passing the training on 21.9.94 vide order dated 3.2.95 (Annex.A3). By the same order, the applicant was further promoted substantively to the post of CMI scale Rs.1600-2660.

3. Further, according to the applicant, respondent No.2, i.e. The Divisional Railway Manager, Western Railway, Kota, thereafter issued seniority list dated 21.6.95 for the post of CMI grade Rs.2000-3200, CMI grade Rs.1600-2660 and CMI grade Rs.1400-2300 (Annex.A10). In the said seniority list, name of the applicant figures at Sl.No.5 in the list of CMI scale Rs.1600-2660 and names of respondents Nos.3 & 4 figure at sl. Nos.1 and 2 respectively in the seniority list of CMI scale Rs.1400-2300. The respondents have now issued order dated 27.5.96 (Annex.A11) proposing to revise the seniority of respondents Nos.3 & 4 vis-a-vis the applicant and other similarly placed employees. The applicant submitted a representation dated 19.6.96 (Annex.A12) against the proposal to revise the seniority by order dated 27.5.96. The official respondents have been acting under the pressure of vested interests and revising the seniority of the applicant vis-a-vis respondents Nos.3 & 4 and the applicant apprehends that



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respondent No.2 is likely to succumb to pressure from various quarters and revise the seniority list. The applicant's case is that having been appointed on a regular basis to the post of CMI scale Rs.1400-2300 and having been further promoted substantively to the post of CMI scale Rs.1600-2660, he has acquired a 'prescriptive right' for confirmation in view of the Supreme Court's judgments and also for the reason that respondents Nos.3 & 4 were appointed to the post of CMI scale Rs.1400-2300 by order dated 3.2.95 on passing the training for 2 years. Advantage of absorption in another category could not be granted to them the detriment of the interests of the applicant. The total length of service is to be taken as criterion for determination of seniority of the applicant vis-a-vis respondents Nos.3 & 4. For these reasons, it is prayed that the respondents be restrained from revising the seniority of the applicant to his detriment, vis-a-vis that of respondents Nos.3 & 4 as proposed to be done by Annex. All dated 27.5.96.

4. During the arguments the learned counsel for the applicant stated that the applicant had submitted his reply to the show cause notice Annex. All as far back as 19.6.96 and the official respondents have still not taken any decision on the said representation. Now there is a justified apprehension that the official respondents may suddenly take a decision on the representation and revise the seniority of the applicant vis-a-vis those of respondents Nos.3 & 4 and thereafter revert the applicant to the lower post, and respondents Nos.3 & 4 may be promoted to CMI scale Rs.1600-2660. He has cited before us the judgment of Jodhpur Bench of the Tribunal in Prem Dass Adiwal Vs. Union of India & Ors, (1994) 27 ATC 368, in which one of the issues decided by the Tribunal was the nature of the order against which an application lies to the Tribunal. Relying on

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this judgment, the learned counsel for the applicant stated that the applicant was entitled to approach the Tribunal against the threat given by the official respondents to revise the applicant's seniority. He has also cited another judgment of the Tribunal in R.Caliamoorthy Vs. Union of India & Anr, (1992) 19 ATC 355, wherein according to him the Madras Bench of Tribunal held that the Tribunal can entertain an application even against a show cause notice proposing to revert an applicant. Yet another judgment cited by him is Kuldip Kumar Bomania Vs. Union of India (1991) 16 ATC 360, wherein according to him the Tribunal entertained an application against apprehended termination of service. Relying on these judgments, the learned counsel for the applicant argued that even though at this stage no final decision to revise the seniority of the applicant has been taken, yet he was entitled to approach the Tribunal on the basis of the show cause notice issued to him proposing to take such action.

5. No reply has been filed on behalf of any of the respondents.

6. This matter can be decided on a short point. The respondents have issued notice Anxx.All dated 27.5.96 to the applicant and certain others asking them to submit their representation within a period of 15 days in respect of the proposal to revise their seniority. Reasons why their seniority is proposed to be revised are also indicated in brief in the said communication. The applicant has submitted a detailed representation, Anxx.A12 dated 19.6.96 against the proposal of the respondents to revise his seniority. No decision on the said representation has so far been taken by the respondents. In the first instance it is for the respondents to take a decision on the representation submitted by the applicant and to consider the various pleas made by him in it on merits. By

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order dated 13.8.96, the Tribunal had issued an interim direction to the effect that if the applicant had not already reverted, no action shall be taken by the respondents in pursuance of their show cause notice dated 27.5.96 (Annex.A11), till the next date. The said stay order is still in operation. Now the respondents are directed to take a decision on merits on the representation submitted by the applicant at Annex.A12, within a period of 3 months from the date of receipt of a copy of this order. The respondents shall deal with all the points raised by the applicant and dispose of his representation by a speaking order. Till such time as the applicant's representation remains pending, no action shall be taken by the respondents to revise his seniority. In passing the above order we have carefully considered the judgments cited by the learned counsel for the applicant and we are of the view that these do not directly cover the point raised in this application. The O.A is disposed of accordingly at the stage of admission. No order as to costs.



(Patan Prakash)

Judicial Member.



(O.P. Sharma)

Administrative Member.