

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.46/97

Date of order: 2.9.1997

Fazalluddin : Applicant

Vs.

1. The Union of India through the General Manager, Western Railway, Church Gate, Bombay.
2. Divisional Railway Manager, Western Railway, Ajmer.
3. Dy Controller of Stores(E), Western Railway, Nagra, Ajmer.
4. Shri Bishan Lal, Compositor Grade-III (Token No.65), ASPS Ticket Printing Press, Western Railway, Ajmer.

...Respondents.

Mr.R.N.Mathur - Counsel for applicant.

Mr.U.D.Sharma - counsel for respondents Nos.1 to 3

Mr.P.V.Calla - Counsel for respondent No.4.

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

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

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

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Fazalluddin has prayed that the order dated 14.1.97 (Annex.A1) by which the applicant was reverted from the post of Compositor Gr.II scale Rs.1200-1800 to that of Compositor Gr.III scale Rs.950-1500 in the Ticket Printing Press (TPP), Western Railway, Ajmer, may be quashed and the applicant may be declared as senior to Shri Bishan Lal, respondent No.4 on the post of Compositor Gr.III and Compositor Gr.II. He has further prayed that the period <sup>of service</sup> rendered by the applicant in TPP may be considered for the purpose of seniority and other benefits.

2. The applicant has set out in detail the factual position regarding his appointment in the TPP and holding the post of Compositor Gr.III. The applicant appeared in the trade test for the post of Compositor Gr.II and was declared successful

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therein and was promoted to the said post vide order dated 17.1.96 (Annex.A7). The applicant is now sought to be reverted from the said post by order Annex.A1 dated 14.1.97 said to have been passed in pursuance of the Tribunal's order dated 4.1.96 (Annex.A10) passed in O.A No.157/95, Bishan Lal Vs. Union of India & Ors. The applicant's case is that he is senior to Shri Bishan Lal because he was initially appointed on 9.4.1977 whereas Shri Bishan Lal was appointed on 21.9.1979 as Khallasi and subsequently also the applicant got promotions earlier than Shri Bishan Lal. Shri Bishan Lal, who was applicant in O.A No.157/95 is now respondent No.4 in the present O.A filed by the applicant. According to the applicant the question of seniority of the applicant vis a vis Shri Bishan Lal was not decided by the Tribunal by the aforesaid order passed in O.A No.157/95. But subsequently certain clarifications were issued by the Tribunal regarding the applicant's seniority vis a vis that of Shri Bishan Lal, on the basis of a Contempt Petition filed by Shri Bishan Lal. The applicant was not a party to the said petition. The respondents had also not invited any objection from the applicant before deciding the issue of seniority. He has, therefore, prayed that the order of reversion of the applicant passed vide Annex.A1 dated 14.1.97 purporting to be for the purpose of implementation of the order passed by the Tribunal in the aforesaid O.A, by which a higher seniority has also been assigned to Shri Bishan Lal vis a vis the applicant may be quashed.

3. Official respondents Nos.1 to 3 in their reply have maintained that the question of seniority of the applicant vis a vis Shri Bishan Lal has been decided by the Tribunal vide its order dated 4.1.96 passed in O.A No.157/95 and since the applicant has not filed any appeal against the said order, the order dated 4.1.96 has attained finality and therefore cannot be reagitated in the present O.A.

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4. During the arguments the learned counsel for the applicant stated that the question of seniority of the applicant vis a vis Shri Bishan Lal had not been decided by the Tribunal in the aforesaid order dated 4.1.96 (Annex.A10) and since the applicant was not a party to any petition/application filed by Shri Bishan Lal regarding implementation of the said order, the applicant is not bound by any clarifications issued by the Tribunal in pursuance thereof, as in Annex.A11. According to him the applicant is also not bound by any clarification given by the Tribunal directly or indirectly in the order (Annex.B2) passed on the Contempt Petition filed by Shri Bishan Lal seeking implementation of the Tribunal's order dated 4.1.96 (Annex.A10).

5. The learned counsel for the official respondents as well as respondent No.4, Shri Bishan Lal, drew our attention to para 18 of the Tribunal's order dated 4.1.96 which according to them clarified the position of the seniority of the applicant also vis a vis Shri Bishan Lal. They also relied upon the further clarifications dated 9.12.96 (Annex.A11) issued by the Tribunal in this regard. They also drew our attention to the order of the Tribunal dated 12.3.1997 passed in C.P.No.46/96 in O.A No.157/95 (Annex.B2), which also according to them directly or indirectly clarifies the position regarding seniority of the applicant vis a vis Shri Bishan Lal. They have, therefore, prayed that the O.A does not deserve <sup>even</sup> to be admitted.

6. We have heard the learned counsel for the parties and have perused the material on record.

7. It is not necessary to dwell on all the facts of the case. In O.A No.157/95 filed by Shri Bishan Lal, applicant in the present O.A, Shri Faizuddin was respondent No.4. Shri Bishan Lal had raised various grievances in the said O.A and one of

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these was grant of higher seniority to him <sup>than</sup> amongst others, respondent No.4, Shri Fazalluddin, in the TPP. Para 18 of the order passed by the Tribunal on 4.1.96 (Annex.A10) reads as under:

"18. As regards respondent No.4, he was also holding the post of Compositor earlier in TPP but was reverted and declared surplus but was absorbed on the post of Proof Reader in the same Press (TPP) on his passing trade test for Proof Reader. He has since continued on the said post which carries the same scale of pay which is available to Compositor Grade-III. He also did not challenge his being declared surplus etc. at the relevant time. There is no provision for change from one seniority unit to another, even in the same Press. Since he was in a different seniority unit though in TPP, his being brought back to the seniority unit of Compositor Gr.III, is not in accordance with the rules. Therefore, the applicant's reversion from the post of Compositor Gr.III in order to absorb respondent No.4 in the said post is not valid. However, it was stated before us during the arguments that two posts of Compositor Gr.III are available now in TPP and besides the applicant respondent No.4 can also be accommodated against one of these posts. Since respondent No.4 remained throughout in TPP, we are of the view that if additional post of Compositor Gr.III is available in TPP, respondent No.4 may be fitted against that post without causing any prejudice to any of the rights of the applicant accruing to him by virtue of his holding the post of Compositor Gr.III in TPP."

The above paragraph is self explanatory and it states in categorical terms that while Shri Fazalluddin may be fitted on the post of Compositor Gr.III in TPP, no prejudice shall be caused to any of the rights of the applicant accruing to him by

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virtue of his holding the post of Compositor Gr.III in TPP. Subsequently, however the applicant had filed a CP No.46/96 against nonimplementation of the Tribunal's order in terms of which directions were issued by the Tribunal. Before passing the final order in the Contempt Petition, the Tribunal issued certain clarifications on 9.12.96 (Annex. A11) in which it was categorically stated that the import of the order of the Tribunal was that Shri Bishan Lal was to be treated as senior to respondent No.4 in that O.A, i.e. Shri Faizalluddin, in the post of Compositor Gr.III, in TPP and that any further promotions to be granted to Shri Bishan Lal or Shri Faizalluddin have to be in the light of this position laid down in the original order of the Tribunal. Thereafter order dated 12.3.97 was passed by the Tribunal in the Contempt Petition which is at Annex. B2, treating the C.P as infructuous on the ground that the order of the Tribunal has been correctly implemented by treating Shri Faizalluddin as below Shri Bishan Lal in the cadre of Compositor Gr.III.

8. Thus whatever seniority has been assigned to Shri Faizalluddin, the applicant, vis a vis Shri Bishan Lal, respondent No.4 in the present O.A, is in accordance with the order dated 4.1.1996 passed by the Tribunal in the O.A filed by Shri Bishan Lal to which Shri Faizalluddin was made a respondent. The subsequent clarification dated 9.12.96 says nothing new but it merely reiterates the position stated in paragraph 18 of the Tribunal's order dated 4.1.96 in which it was abundantly made clear that if Shri Faizalluddin is fitted in TPP in the post of Compositor Gr.III this would be without causing any prejudice to any of the rights of Shri Bishan Lal. These rights would obviously include the right to have higher seniority than that granted to Shri Faizalluddin. In the Contempt Petition filed by Shri Bishan Lal, Shri Faizalluddin, respondent No.4 in that O.A, could not have been made a party.

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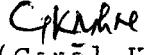
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The arguments that the applicant in the present O.A was not a party to the Contempt Petition filed by Shri Bishan Lal and he is not bound by any clarifications issued by the Tribunal have no relevance in our view. Now promotion was granted to Shri Facalluddin in the post of Composer Gr.II before it was granted to Shri Bishan Lal who is senior to Shri Facalluddin in the post of Composer Gr.III. It is this improper action which has been undone by the respondents by passing the impugned order Anxx.Al dated 14.1.96, in view of the directions of the Tribunal contained in the order dated 4.1.96 passed in O.A No.157/95 filed by Shri Bishan Lal. The applicant in the present O.A did not seek any remedy by way of appeal or review of the order passed by the Tribunal on 4.1.96 which has attained finality. Therefore, the present application filed by Shri Facalluddin is not maintainable. It is, therefore, dismissed at the stage of admission. No order as to costs.



(O.P. Sharma)

Administrative Member.

  
(Gopal Krishna)

Vice Chairman.