

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.488/97

Date of order: 12/1/2007

T.M.Krishnan, S/o Shri TM Narsimhan, Junior Engineer II
(erstwhile Chargeman-E, 28 Department C&W Shop, Ajmer.

...Applicant.

Vs.

1. Union of India through General Manager, Western Rly,
Churchgate, Bombay.
2. Chief Works Manager, Loco Shop, Ajmer, W.Rly.
3. Dy.Chief Mechanical Engineer C&W Shop, Ajmer, W.Rly.
4. Sh.Kishan Pal Singh, Jr.Enggr.I, T.No.43345, 28
Department, C&W Shop, Ajmer, W.Rly.

...Respondents.

Mr.J.K.Kaushik - Counsel for the applicant.

Mr.Manish Bhandari)

Mr.T.P.Sharma -) Counsel for respondents.

CORAM:

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

Hon'ble Mr.Gopal Singh, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to direct the respondents to assign proforma seniority to the applicant above respondent No.4 from the year 1993 as per the provisions contained in paras 228 and 315 of the IREM with all consequential benefits.

2. Facts of the case as stated by the applicant are that in pursuance of notification dated 30.8.90, applications were invited to fill up 11 posts of Chargeman from 25% quota from serving employees. The applicant applied for the same and appeared in the written test also. He was asked to be ready for viva voce but the said selection was cancelled on the ground of irregularity. Thereafter, the applicant alongwith

others challenged the action of the respondents by filing O.A No.404/92 which was allowed with the directions to the respondents to declare the results after revaluation of answer sheets by applying uniform standard. Thereafter, final panel for Apprentice Mechanic was declared vide letter dated 28.9.93. The applicant successfully completed the training and was given posting as Chargeman vide letter dated 6.1.96. It is stated that due to administrative error, the applicant and others could not send for training therefore, they could not be given posting in 1993. It is also stated that certain candidates were given promotion for the vacancies of 1993 vide letter dated 26.2.94 and respondent No.3 was also given promotion thereby he was treated senior to the applicant as he joined earlier to the applicant on the promotion post and he was given further promotion on the post of Chargeman. The applicant filed representation and he also gave reminders but with no response. It is further stated that the applicant was not given training and posting in time due to administrative error, therefore, in view of the provisions contained in Paras 228 and 316 of the IREM, the applicant ought to have given proforma seniority and denial of the same is ex facie illegal and not sustainable in law. Therefore, applicant filed this O.A for the relief as mentioned above.

3. Reply was filed. It is stated in the reply that respondent No.4 was promoted in the year 1994 but the applicant remained silent at that time. Thereafter respondent No.4 was again promoted, now the applicant is trying to make out a case of erroneous promotion, which is not sustainable and claim of the applicant for proforma promotion/seniority is erroneous. It is also stated that respondent No.4 was promoted in High Skilled Gr.II in 1981 whereas applicant was promoted on that post in 1986. It is also stated that respondent No.4

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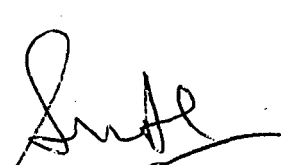
was given further promotion in High Skilled I in the year 1987, prior to the applicant followed by subsequent promotion, therefore, in no eventuality the applicant was senior to respondent No.4, hence seeking better position by the applicant in comparison to respondent No.4 is merely erroneous and not sustainable. It is also stated that the provisions contained in paras 228 and 316 of the IREM are of no consequence and not applicable in the instant case. It is also stated that mere selection does not give a right to appointment to the applicant, then how such a person can claim retrospective promotion to the higher post in view of the above. It is stated that the applicant has no case and this O.A is liable to be dismissed with costs.

4. Heard the learned counsel for the parties and also perused the whole record.

5. Admittedly, respondent No.4 was promoted in High Skilled Gr.II in the year 1981 and in High Skilled Gr.I in 1987, followed by further/subsequent promotion prior to the applicant. Therefore, in no case, the applicant appears to be senior in comparison to respondent No.4. Hence on this ground alone the applicant is not entitled to better position in comparison to respondent No.4.

6. We also do not agree that the applicant is entitled to proforma seniority over respondent No.4 in view of the provisions contained in paras 228 and 316 of the IREM, looking to the facts and circumstances of the instant case. The provisions contained in paras 228 and 316 of IREM reproduced as under:

228. Erroneous (I) Some times due to administrative errors, staff are over-looked for promotion to higher grades could either be on account wrong assignment of relative seniority of the eligible staff of full facts



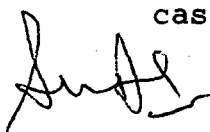
not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types:

- (i) Where a person has not been promoted at all because of administrative error, and
- ii) Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts.

316. A railway servant who, for reasons beyond his control, is unable to appear in the examination/test in his turn alongwith others, shall be given the examination/test immediately he is available and if he passess the same, he shall be entitled for promotion to the post as if he had poassed the examination/test in his turn."

7. On a perusal of the provisions as contained in paras 228 and 316 of the IREM, it emerges that granting proforma seniority arises only in a situation when some process of selection or administrative lapses have taken place affecting the right of a senior who has been ignored erroneously. In the case under adjudication, we do not find any administrative

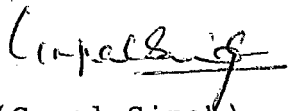


lapses on the part of respondents' department as in the case in hand the process of filling up of 25% vacancies was completed late for the reasons already mentioned above. Therefore, we are of the considered opinion that the applicant cannot claim better position in comparison with respondent No.4 and there is no merit in the claim of the applicant.

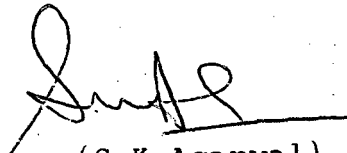
8 The learned counsel for the applicant has referred to the decision given by this Tribunal in O.A No.491/97, Raghuvir Singh Vs. UOI & Ors, decided on 14.12.2000, OA No. 366/96 Heera Lal Vs. UOI & Ors and O.A No.111/97 Sampat Ram & Anr, Vs. UOI & Ors, decided on 27.9.2000 and prayed that this matter may be referred to Larger Bench, in view of the conflicting decisions. But we do not find any substance in the contention of the learned counsel for the applicant thereby we do not find any basis to refer this matter to Larger Bench.

9. In view of the above, we do not find any merit in the O.A and the same is liable to be dismissed.

10. We, therefore, dismiss the O.A with no order as to costs.


(Gopal Singh)

Member (A).


(S.K. Agarwal)

Member (J).