

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 6th August, 2001

OA No.315/99

Ram Jeewan Meena s/o late Shri Ram Sukh Meena r/o Plot No.1444, Shivgoraksh, Malviya Nagar, Jaipur, presently posted as Office Superintendent, DRM Office, Jaipur.

..Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Jaipur Division, Western Railway, Jaipur
3. The Sr. Divisional Personnel Officer, Jaipur Division, Western Railway, Jaipur.
4. Smt. Gangotri Bist, Office Superintendent, DRM Office, Jaipur.
5. Shri Brijendra Singh, Office Superintendent, DRM Office, Jaipur.

.. Respondents

Mr. S.K.Jain, counsel for the applicant

Mr.R.G.Gupta, counsel for respondents Nos. 1 to 3

Mr. R.A.Katta, counsel for respondent No.4

Mr. C.B.Sharma, proxy counsel to Mr. J.K.Kaushik, counsel for respondent No.5.

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


The applicant belongs to Scheduled Tribe category and aggrieved with the orders dated 17.6.99 (Ann.A1) and 21.9.99 (Ann. by which the private respondents Nos. 4 and 5 have been placed in



Grade Rs. 7450-11500 and the applicant does not find his name in these orders. His plea is that he is senior to Smt. Gangotri Bist and Shri Brijendra Singh. His prayer is that Ann.A1 and A2 be amended to the extent that the name of the applicant may be included in the provisional panel for promotion to the post of Chief Office Superintendent in preference to respondents Nos. 4 and 5 and that he be granted promotion to the post of Chief Office Superintendent (for short COS) w.e.f. 21.6.99.

2. The case of the applicant is that he is senior to respondents Nos. 4 and 5 and the promotion to the ^{post of} COS was based on the scrutiny of records and seniority. His plea is that he was promoted as Office Superintendent in the grade Rs. 6500-10500 on 1.3.93 whereas respondent No.5 was promoted to that grade on 9.6.93. Respondent No.4 ^{is} /stated to have been promoted on 13.5.89 but only against sports quota and promotion against sports quota does not confer any right of seniority to the person such promoted. Respondent No.4 ^{is} /stated to be junior to the applicant as per the base grade seniority. His contention is that respondents committed a serious illegality by depriving a senior candidate of his due promotion.

3. When the matter was taken up for hearing the learned counsel for the respondents drew our attention to the order issued by respondents No.2 in pursuance of Hon'ble the Supreme Court's directions given in the case of Ajit Singh Juna-Ja-II and decisions of this Tribunal dated 29/3/2001 in OA Nos. 387/1999, 189/2000 and 171/2000. This order was placed on record in the related case OA No.20/2000 where respondent No.5 was the applicant. We find that the seniority of MOCG unit of the Jaipur Division has been re-cast keeping in view the principle laid down by Hon'ble the Apex Court. With this change in situation, the matter of the relative claim of the applicant



and respondents stands settled. However, the learned counsel for the applicant while admitting that the re-cast seniority has already been determined and issued, but challenged the placement of respondent No.4 in the grade of Rs. 7450-11500. His plea was that respondent No.4 had been earlier granted out of turn promotion to the grade of Head Clerk as a sports person only as personal and stated that as per policy of the department, out of turn promotion granted to sports persons does not confer any right of seniority as seniority with respect to the erstwhile seniors remains intact. Notwithstanding this fact, the applicant had been promoted as Head Clerk almost 3 years prior to respondent No.4. He was further promoted as Chief Clerk also on 1.1.84 while respondent No.4 was promoted on 25.8.86. He questioned the action of the respondents in declaring respondent No.4 as having been promoted to the Grade of Office Superintendent-I scale Rs. 6500-10500 w.e.f. 23.12.88 which date has further been changed to 13.5.89. He drew our attention to Ann.RA/5 filed on behalf of the applicant in rejoinder to the reply of the respondents. This is an order dated 14.12.88 indicating transfers and postings of staff. In this order, name of respondent No.4 is at Sl.No.1. She is shown to have been promoted from the grade Rs. 1600-2660 to Grade Rs. 2000-3200 as OS-I in Mechanical Department. In the note below, it has been mentioned that promotion of Smt. Gangotri Bist is adhoc and by this promotion no right of seniority is conferred on her over her seniors. The learned counsel vehemently stated that till today, there is no record to indicate as to when did respondent No.4 was regularly promoted and thus he contended that assigning the date of promotion to the grade of Rs. 6500-10500 in the case of respondent No.4 as 13.5.89 is totally arbitrary and without basis. In that view, he contested promotion of respondent No.4 to the post of COS grade Rs. 7450-11500 and stated that her name deserves to be deleted from this grade. He further submitted that even as per recast seniority, the applicant is seniormost in the grade of Rs. 6500-10500 and if the name of




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respondent No.4 is deleted from the cadre of COS, obviously the position will go to the applicant.

4. The learned counsel for the applicant has also filed written submissions reiterating the stand taken at the time of oral arguments. Circulars governing promotions against sports quota have also been annexed to stress that while out of turn promotions of sports persons are admissible, on their achieving distinction at international level, such out of turn promotions do not result in assigning seniority to the sports persons above their seniors. Other emphasis is on promotion of respondent No.4 to the post of OS-I grade Rs. 6500-10500, which is stated to have remained adhoc only.

5. We have carefully scrutinised the records placed before us. The learned counsel for the respondents could not substantiate the claim made by the department in their written statement about the date of promotion of respondent No.4. However, we find from the comparative chart in para 4(vi) of the reply to the OA that respondent No.4 was promoted as Chief Clerk on 25.8.86 which is a selection post, while respondent No.5 was promoted as Chief Clerk on 31.1.92. There is no challenge to the promotion of Smt. Bist as Chief Clerk w.e.f. 25.8.86. We have also noted that the applicant was promoted as Chief Clerk on 1.1.84. Considering the date of promotion of respondent No.4 and respondent No.5; respondent No.4 Smt. Bist stands senior to Shri Brijendra Singh respondent No.5. In the recast seniority issued vide order dated 19.6.2001, Shri Brijendra Singh has been placed senior to the applicant and Smt. Gangotri Bist has been placed above Shri Brijendra Singh in grade Rs. 7450-11500. Promotion to the post of Chief Clerk grade Rs. 5500-9000 is by selection whereas promotion to the post of OS-I is by seniority-cum-suitability. Admittedly, in the grade of Chief Clerk, Smt. Bist is senior to Shri Brijendra Singh. Thus, her (Smt. Bist) promotion to the post of OS-I has to be earlier than Shri



Brijendra Singh. Shri Brijendra Singh was promoted to the grade of OS-I on 9.6.93 and this fact is not under dispute. As an obvious corollary Smt. Bist's promotion to that grade has to be earlier than that of Shri Brijendra Singh, even if the date shown by respondents as 13.5.89 remains in dispute. The fact of her being senior to Shri Brijendra Singh in the grade of Chief Clerk has not been challenged. It is established from the record that Smt. Bist was senior to Shri Brijendra Singh who, as per the recast seniority, is senior to the applicant. The respondents have recast the seniority as per the directions of Hon'ble the Apex Court in Ajit Singh Januja-II and there is no ground for us to interfere in this seniority list, as this recast seniority list is not under challenge before us. If the applicant is aggrieved with the recast seniority list, he is at liberty to agitate the matter by filing a fresh OA.

6. We, therefore, dismiss this OA with no order as to costs.


(A.P.NAGRATH)

Adm. Member


(S.K.AGARWAL)

Judl. Member