

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 26-X-04.

OA No.323/2001

V.P.Gupta s/o Shri Om Prakash Gupta, presently working as Section Engineer (TRD), Western Railway, Kota r/o R.E./III/18-A/Railway Colony, Kota Junction.

.. Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager (E), Western Railway, Kota.
3. Dharm Pal Singh s/o Shri Deo Karan Yadav, aged about 51 years r/o 18-B, R.E. Railway Colony, Kota Junction.
4. Murli Ram Yadav s/o Shri Bishai Yadav, aged about 46 years, r/o Near Railway Station, Vikram Gart, Allot, Ratlam.
5. J.S.Chawla s/o Shri B.S.Chawla, aged about 47 years, r/o 9/B, R.E.Colony, Kota.
6. S.K.Sharma s/o Shri N.N.Sharma, aged about 53 years, r/o Shanti Kunj Vikas Colony, Kota Junction.
7. R.K.Pandey s/o Shri Didhyadhar Pandey, aged about 45 years, r/o R.E. IInd/2-B, Railway Colony, Kota Junction.
8. Hari Singh s/o Shri Bihari Singh, aged about 49 years, r/o RE-III, 12-B, Railway Colony, Kota Junction.
9. R.S.Rathore s/o Shri Chhote Lal, aged about 46 years, r/o Chopra Farm, Kota.
10. Deo Dutt s/o Shri Hoti Singh, aged about 47 years,

r/o R.E. Type-4/3-A, Railway Colony, Kota.

11. Janardhan Singh s/o Ram Chandra Singh, aged about 47 years, r/o Quarter No.208, R.E.(III), Railway Colony, Kota.

.. Respondents

Mr. C.B.Sharma, counsel for the applicant.

Mr. S.S.Hasan, counsel for respondent Nos. 1 and 2

Mr. Rajveer Sharma, counsel for respondent Nos. 3 to 11.

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

ORDER

Per Mr. M.L.Chauhan

The applicant has filed this Original Application thereby praying for the following reliefs:-

- "i) That the impugned orders dated 13/16.11.2000 and the order dated 4.12.2000 by which the benefit of seniority so given to the applicant earlier has been withdrawn, may kindly be quashed and set aside.
- ii) That the Hon'ble Tribunal may also declare that the applicant is entitled for the seniority as has been assigned vide order dated 25.2.1999.
- iii)
- iv)"

2. Facts of the case are that the applicant was initially appointed on the post of Apprentice Electrical Chargeman on 2.6.1982 in WRS, Kota. Later on he was promoted as Senior Electrical Chargeman (hereinafter referred to as Sr. ELC) in the same group. While working as Sr. ELC he applied for the post of TRD group against the notification dated 31.5.84/26.9.85. The applicant was screened and declared suitable vide DRM, Kota letter dated 22.8.86. It is further

case of the applicant that he could not join ACTED group of Kota Division as he was not relieved from RE Kota on administrative reasons and many junior screened persons of other stream have joined AC-TRD group earlier to him, And appeared in the Selection of TFO scale Rs. 2000-3200 for AC-TRD in 1987-88 and was declared pass and panel was notified on 19.7.88. The applicant who was willing to appear in the above selection at that time and reported for written test of TFO/ACTRD on 5.12.1987 but was not allowed to appear. Subsequently, the applicant and other persons filed OA No.712/92 before this Tribunal which was decided on 2.3.95 and the said OA was dismissed. However, in the meanwhile the applicant was selected for the post of Traction Foreman in TRD in first attempt on 25.5.92. The applicant represented against his non inclusion in panel dated 19.7.88 pursuant to selection held in the year 1987-88. The respondents keeping in view the fact that the applicant though senior to many persons and was also willing to appear in the above selection and reported for written test on 5.12.87 but was not allowed to appear, Under these circumstance, as an exceptional case, his name was allowed to be interpolated in the 1988 panel. Accordingly name of the applicant was interpolated at higher place in the seniority list circulated on 30.9.98 by making necessary corrections. Subsequently, vide order dated 25.2.99 (Ann.A14) the respondents issued a provisional seniority list in respect of various categories including categories of CT/TRD. The respondents simultaneously issued another order dated 26.2.99 (Ann.A13) thereby granting proforma promotion to the applicant from the back date pursuant to his inclusion in the panel w.e.f. 19.7.88. Now the respondents vide order dated 16.11.2000 and the order dated 4.12.2000 have withdrawn the benefit of seniority given to the applicant. It is these

orders, which are under challenge in this OA and the applicant has prayed that these orders may be quashed and set-aside and the applicant be held entitled for seniority as was assigned to him vide order dated 25.2.99.

2. Notices of this application was given to the respondents. The official respondents as well as private respondent Nos. 3 to 11 have filed separate replies. By way of preliminary submissions, it has been stated that the present OA is liable to be dismissed in view of the order passed by this Tribunal in OA No.721/92 decided on 2.3.95. At this stage it will be relevant to extract relevant portion of the reply filed by the official respondents which will clinch the matter in issue:-

"That before giving para-wise reply to the OA, humble answering respondents want to submit the following preliminary objections regarding maintainability of the OA:

1. That earlier, the applicant filed an OA No.721/92 (Old No.508/88) before this Hon'ble Tribunal with the following prayers:-

(i) The respondents may kindly be restrained from acting upon the panel dated 19th July, 1988 so as not to appoint any person on permanent basis, included in the panel dated 9.7.1988;

(ii) The panel dated 19.7.88 may kindly be quashed and set-aside.

(iii) The respondents be directed to hold afresh selection while considering only those candidates who were eligible on the date of occurrence of vacancies and the persons who are found suitable may be given appointment from the date of occurrence of vacancies and they may be given all consequential benefits pertaining to pay, seniority etc. etc.

(iv) any other appropriate relief(s) which this Hon'ble High Court deems just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner/applicants."

2. That the Hon'ble Tribunal disposed off the said OA filed by others alongwith the present applicant vide order dated 2.3.95 in which a specific observation was made by the Hon'ble Tribunal regarding the applicant as under:-

Regarding the exclusion of another applicant namely Shri V.P.Gupta, the respondents have stated that he was excluded from the selection process because he was not working in TRD nor did he had any lien in TRD. The applicants in their rejoinder have not indicated any concrete evidence to rebut this averment of the respondents. In these circumstances, we hold that the respondents were not unjustified in excluding the name of Shri V.P.Gupta; one of the applicants from the selection process at the relevant time"

As such, by this order, the Hon'ble Tribunal has not found any case in favour of the applicant and the OA was then dismissed. Subsequently, the applicant was promoted on the post of TRD (scale 2000-3200) in the year 1992.

3. That in the judgment dated 2.3.95, the Hon'ble Tribunal has held that the action of the respondents was not unjustified in excluding the name of Shri V.P.Gupta, one of the applicants from the selection process at the relevant time and as such, the applicant was not eligible for appearing in the selection so held in the year 1988. On the representation filed by the applicant, the matter was placed in the PNM meeting and the applicant was assigned seniority of 1938 in the cadre of TRD but subsequently when representations were received from the affected persons, the seniority given in favour of the applicant Shri V.P.Gupta has been withdrawn and ordered that the name of the applicant (Shri V.P.Gupta) will undergo no change and shall remain at Sl.No.110 in the seniority list notified on 21.11.97. In view of the aforesaid preliminary submission, the applicant's case stands already rejected in OA No.721/92 and hence the applicant has no case."

3. The applicant has also filed rejoinder thereby

reiterating the submissions made in the OA.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

4.1 The only contention raised by the learned counsel for the applicant in this OA is that once the competent authority has decided to give the applicant benefit by interpolating his name in the 1988 panel pursuant ^{to} _^ order Ann. All and representations of the private respondents were rejected and his name was inserted at appropriate place in the seniority list dated 25.2.99, it was not permissible for the respondents to pass the impugned order dated 4.12.2000 again on the representation received by the employees and that too without giving opportunity of hearing to the applicant.

4.2 We have given thoughtful consideration to the submissions made by the learned counsel for the applicant and the same are required out right rejection. It is admitted case between the parties that pursuant to notification dated 26.9.1985, the applicant alongwith other persons applied for the post of TRD for which the applicant was screened and declared suitable vide letter dated 22.8.86 but the applicant was not allowed to appear in the written test held on 5.12.1987 and he was not screened for the said post though persons junior to the applicant were screened and they were declared pass and panel was notified on 19.7.88. The panel dated 19.7.88 in which the name of the applicant did not find mentioned was challenged by the applicant and other persons by filing OA No.721/92. The said OA was ultimately dismissed on 2.3.95 and so far as the applicant is concerned, this Tribunal in para 14 of the judgment has gave the following findings:-

"14. Regarding the exclusion of another applicants namely Shri V.P.Gupta, the respondents have stated that he was excluded from the selection process because he was not working in the TRD nor did he had any lien in TRD. The applicants in their rejoinder

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have not indicated any concrete evidence to rebut this averment of the respondents. In these circumstances, we hold that the respondents were not unjustified in excluding the name of Shri V.P.Gupta one of the applicants from the selection process at the relevant time."

4.3 Thus from the finding reproduced above, whereby non-inclusion of the applicant in the panel dated 19.7.88 was justified by this tribunal, it was not legally permissible for the respondents to reject the representation of 10 persons vide order dated 17/28.12.98 (Ann.A1) on the ground that the applicant being a senior to the representationists and willing to appear for the selection but he was not allowed to appear, as such his name should be inserted in the 1988 as he had subsequently cleared selection in the first attempt on 25.5.92, on the face of the clear cut findings given by this Tribunal in the earlier OA No.721/92 on 2.3.95. Accordingly, the seniority list issued vide order dated 25.2.99^{which} is contrary to the findings recorded by this Tribunal in earlier OA decided on 2.3.95, relevant portion of which has been reproduced hereinabove, could not have been legally issued thereby granting benefit of higher seniority to the applicants by incorporating his name in the panel prepared on 19.7.88. In case the respondents have rectified their action, which was contrary to the findings given by this Tribunal in the earlier OA while issuing order dated 13.11.2000 (Ann.A1) which decision was again circulated for information vide order dated 4.12.2000 (Ann.A2), no infirmity can be found in such action. Perusal of said order reveals that the said order was passed on receiving representations and also examining the decision rendered by the CAT Bench in OA No.721/91 and as such the earlier order whereby the benefit was given to the applicant is, contrary to the decision rendered by this Tribunal, was

withdrawn. The contention of the learned counsel for the applicant that he should be heard before passing the impugned order cannot be accepted.

4.4 As can be seen from the judgment of this Tribunal dated 2.3.95, in OA No.721/92 in which the present applicant was one of the applicant, the grievance of the applicant that he was not called for selection though he was screened in TRD and as such the panel dated 19.7.88 which did not include the name of the applicant, shall not be operated was found without merit and this Tribunal has categorically held that the respondents were not unjustified in excluding the name of Shri V.P.Gupta, one of the applicant from the selection process at the relevant time. Thus, he was heard by this Tribunal in the earlier OA and categorical finding was given that his name in the panel dated 19.7.88 was not rightly included. On the face of such findings given by this Tribunal in the earlier OA, it would have not materially changed the situation even if the show-cause notice was required to be issued to the applicant before passing the impugned order dated 13.11.2000 (Ann.A1). Rather, it would have been useless formality to issue show-cause notice especially when the applicant was heard by this Tribunal in earlier OA regarding inclusion or exclusion of the candidates in terms of criteria adopted by the respondents. This Tribunal has justified exclusion of Shri V.P.Gupta in the panel dated 19.7.88. Rather the action taken by the respondents by granting benefit pursuant to seniority dated 25.2.99 was contrary to the findings given by this Tribunal in earlier OA decided on 2.3.95 and by passing the impugned order, the respondents have rectified this glaring mistake, especially when earlier judgment has attained finality and the applicant has not challenged the said order.

5. For the reasons stated above, we agree with the

submissions made by the learned counsel for the respondents that the present OA is not maintainable in view of the order passed by this Tribunal in earlier OA No.721/92 decided on 2.3.95. Accordingly, the present OA is dismissed with no order as to costs.



(A.K.BHANDARI)

Member (A)



(M.L.CHAUHAN)

Member (J)