

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 375/2001
T.A. No.

199

HWL On

May kindly per
Champalal

DATE OF DECISION _____

Bharat Lal Meena _____ Petitioner

Mr. Nand Kishore _____ Advocate for the Petitioner (s)

Versus

Union of India & Ors. _____ Respondent

Mr. S.S. Hasan, for official respondents _____ Advocate for the Respondent (s)

Mr. P.V. Calla, for private respondent

CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman

The Hon'ble Mr. A.P.Nagrath, Adm.Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(A.P.Nagrath)
Member (A)

(G.L.Gupta)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 17/11/2003

OA 375/2001

Bharat Lal Meena, Health & Malaria Inspector, Grade-III, Railway Station, Jaipur.

... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Divisional Rly Manager, W/Rly, Jaipur Division, Jaipur.
3. Ratan Lal Banzara, Health & Malaria Inspector, W/Rly. Phulera.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

For the Applicant	... Mr.Nand Kishore
For Official Respondents	... Mr.S.S.Hasan
For Private Respondent	... Mr.P.V.Calla

O R D E R

PER MR.A.P.NAGRATH

The applicant is a Health Inspector, having been initially appointed on 16.3.88 in the scale of Rs.1200-2040. In this cadre there were earlier four pay scales which have been reduced to two, by order dated 16.1.98. The basic grade is now Rs.5500-9000 in which the earlier grades of Rs.1200-2040 and Rs.1400-2300 stand merged. The next grade is Rs.6500-10500, in which the erstwhile scales of Rs.1600-2660 & Rs.2000-3200 stand merged. Earlier, vide order dated 18.3.98 respondent No.3, Ratan Lal Banzara, had been promoted, on ad hoc basis, in the then scale of Rs.1600-2660. The applicant challenged the said promotion by filing OA 195/98 on the ground that he was senior to respondent No.3. During hearing of the said OA, the department had conceded that the applicant was senior to respondent No.3 in the pay scale of Rs.5500-9000. Taking note of the said admission by the respondents, the OA was dismissed as having become infructuous, by order dated 10.8.2001.

2. Present OA has been filed against promotion of respondent No.3 to the next higher grade of Rs.6500-10500 in preference to the applicant. Plea of the applicant is that there are only three posts in the cadre and no post could have been treated as reserved as this was an occasion of only first replacement in the prescribed roster for small cadres of upto 13. The applicant, though belongs to ST, is claiming his promotion only on the ground of seniority and not against any reservation point. He has urged

that the vacancy against which respondent No.3 has been promoted because of his belonging to SC is erroneous operation of the roster as this being first replacement, the vacancy is required to be treated as unreserved.

3. The respondents have justified their action in promoting respondent No.3 on the ground that according to 'L' type roster, issued by the Railway Board vide letter No.95-E(SC)-1/49/5/2 date 21.8.97, first replacement point has to go to SC candidate. Since respondent No.3 belongs to SC, according to the respondents, he has rightly been promoted in preference to the applicant, who is admittedly senior in the feeder grade.

4. The learned counsel for the applicant brought to our notice the fact that the 'L' type roster, issued by the Railway Board, had come under scrutiny of Jodhpur Bench of the Tribunal in OA 286/98. By order dated 11.5.2001 the said order of the Railway Board was quashed and set aside and the Railway Board had been directed to adopt the same model roster as issued by the Department of Personnel & Training. Against this order of the Tribunal, the respondents had filed a Writ Petition in the High Court of Rajasthan. The said Writ Petition was dismissed by the Hon'ble High Court vide order dated 30.5.2002 in D.B.Civil Writ Petition No.3722/2001 and the order of the Tribunal was upheld. In this view, the learned counsel contended that action of the respondents in promoting respondent No.3 to the scale of Rs.6500-10500 by order dated 14.2.2000 (Ann.A/3) is illegal. While this position was fairly conceded by the learned counsel for the official respondents, the learned counsel for respondent No.3, while also conceding the same, urged that if the Tribunal comes to a conclusion that the applicant is entitled to a relief, this may be kept in mind that the applicant has not sought any relief against respondent No.3. He pleaded that no adverse order against respondent No.3 be passed.

5. The learned counsel for the official respondents opposed the prayer for any relief to the applicant on the ground that the applicant's prayer in the earlier OA for seeking direction to the respondents for promotion to the scale of Rs.6500-10500 was not considered by the Tribunal and that the same matter cannot be agitated now by the applicant.

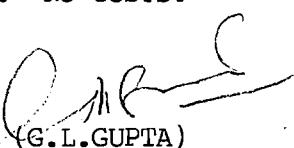
6. It is no more in dispute that the 'L' type roster, issued by the Railway Board by letter dated 21.8.97, is an invalid order. The stand of the respondents that the applicant has been promoted keeping in view the 'L' type roster, issued by the Railway Board, thus looses the ground and has to be declared illegal. This was admittedly a case of first replacement and this vacancy was required to be treated as unreserved as per model 'L' type roster for cadres upto 13, issued by DOPT on 2.7.97. There is no merit in

the argument of the learned counsel for the respondents that the applicant cannot raise the dispute about his promotion to the grade of Rs.6500-10500 for the reason that this relief was not granted to him in the earlier OA. The earlier OA was filed only in 1998 and the order under challenge has been issued only on 14.2.2000. Obviously, this order could not have been a matter of scrutiny in the earlier OA and perusal of the Tribunal's order in that OA clearly shows that the same view had been taken that the matter of promotion to grade Rs.6500-10500 was not before the Tribunal in that OA. We also do not see any merit in the plea of the learned counsel for respondent No.3 that no order, which may have adverse effect on respondent No.3, be passed. We are concerned here with the right of the applicant vis-a-vis the legal position. We have no doubt that when the vacancy was required to be filled up, only applicant had the first right to be considered if otherwise he was suitable. His being senior to respondent No.3 is not in dispute. We have taken note of the fact that it had already been indicated in the orders dated 10.6.99 (Ann.A/2) and dated 14.2.2000 (Ann.A/3) that name of respondent No.3 in the panel and his subsequent promotion was subject to the outcome of OA 195/98. Thus, the plea raised on behalf of respondent No.3 today has no basis as his status is necessarily to be governed by the decision rendered in OA 195/98. In that OA the position, which emerged, was that the applicant was held to be senior to respondent No.3. Being senior, only he had the right to be promoted to the next higher grade of Rs.6500-10500 when the vacancy arose. The applicant is clearly entitled to the relief prayed for in this OA.

7. In view of the discussions aforesaid, this OA is allowed. The respondents are directed to consider the case of the applicant for promotion to the scale of Rs.6500-10500 if he is otherwise found suitable as per rules. In the event he is considered fit and suitable, his promotion shall take effect from 14.2.2000. He shall be entitled to all consequential benefits. This order shall be implemented within a period of four months from the date of receipt of a certified copy of this order. No costs.


(A.P. NAGRATH)

MEMBER (A)


(G.L. GUPTA)

VICE CHAIRMAN