

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 16-12-04

O.A. No.463/2001 with M.A. No.183/2003.

Prahlad Kumar Meena, aged about 46 years, S/o Shri Giriraj Prasad Ji Meena, R/o 31, Kailash Puri, Kota Jn.

... Applicant.

v e r s u s

1. Union of India through General Manager, Western Railway, Churchgate Mumbai-20.
2. Divisional Railway Manager, Western Railway, Kota (Raj.).
3. Shri Ramcharan, aged about 58 years, S/o Shri Ganga Sahaya R/o C/o Shri Prem Sagar, Bapu Colony, Rangpur Road, Kota Jn.

... Respondents.

None is present for the applicant.

Mr. U. D. Sharma counsel for respondent No.1&2.
None is present for respondent No.3.

CORAM

Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhandari, Administrative Member.

: O R D E R :
(per Hon'ble Mr. M. L. Chauhan)

This application has been made against the order dated 27.09.2001 (Annexure A/1) passed by respondent No.2 whereby the representations of the applicant dated 25.05.2001 and 29.05.2001 against the seniority list have been disposed of and the seniority of the applicant has been changed adversely and another order of the same date i.e. 27.09.2001 (Annexure A/2) whereby the applicant was reverted from the post of Chief Office Superintendent to Office Superintendent.

2. In the relief clause, the applicant has prayed that the impugned order Annexure A/1 and A/2 dated 27.09.2001 be quashed and set aside and the Seniority Lists dated 15.05.2001 (Annexure A/12) and 27.07.2001

6

6

(Annexure A/13) may also be quashed and directions be given to the respondents to prepare the seniority list according to the seniority position mentioned in the Seniority List dated 20.03.1995 (Annexure A/11). It is further prayed that the respondents be directed to allow the applicant to remain on the post of Chief Office Superintendent in the pay scale of Rs.7450-11500/- continuously with all consequential benefits.

3. Briefly stated, the applicant was initially appointed as Junior Clerk under respondents on 30.03.1979. Since his appointment on the post of Junior Clerk, the applicant was given promotion to the post of UDC and further on the post of Head Clerk and Chief Clerk. Further in the year 1999 he was called for selection to the post of Chief Office Superintendent. He was selected vide order dated 15.04.1999 and kept in the panel. He was, however, given promotion to the post of Chief Office Superintendent in the pay scale of Rs.7450-11500/- vide order dated 15.04.1999 (Annexure A/10). However, against the said panel and promotion representations were received from the affected general category candidates as well as from the recognised unions and as such the matter was reconsidered and the panel as well as promotion vide order dated 15.04.1999 were cancelled vide order dated 21.04.1999. Against the order dated 21.04.1999, one Shri M. G. Verma, who was placed at Sl. No.1 in the panel as well as in the promotion order dated 15.04.1999 (Annexure A/10) approached this Tribunal by filing OA No.189/1999 and the Hon'ble Tribunal vide ad-interim order dated 28.04.1999 passed in the aforesaid OA directed that the operation of the impugned order dated 21.04.1999 shall remain stayed. Therefore, the applicant continued to function as Chief Office Superintendent by virtue of the said stay order granted by the Tribunal in the aforesaid OA filed by Shri M. G. Verma. The said OA along with other OAs wherein the controversy pertains to reservation came to be disposed of by a common order dated 29.03.2001. While disposing of the aforesaid OA, this Tribunal vide

order dated 29.03.2001 directed the respondents not to give effect to any panel prepared for the purpose of promotion without revising the seniority in the lower cadre in the light of the 'Catch up' rule enunciated by the Hon'ble Supreme Court in Ajit Singh-II, Jatinder Pal Singh etc. and the official respondents were directed to take up the exercise for revising the seniority between the applicants and the respondents in all the cases covered by the said order in terms of the base level seniority. A copy of the order has been placed by the respondents on record with their reply as Annexure R/1. Pursuant to the directions given by this Tribunal, the respondents circulated tentative seniority list dated 15.05.2001 (Annexure A/12) and it has been specifically mentioned in the said order that in case any employee had objection about the assignment of seniority, he could submit his representation within a period of 15 days and thereafter no representation would be considered. In the said seniority list, the [redacted] the private respondent No.3 was assigned seniority at Sl. No.4 over and above the applicant whose name find mention at Sl. No.7. A representation filed against the said seniority list was rejected by the respondents and the applicant was informed vide impugned order dated 27.09.2001 and consequently the applicant was also reverted to the post of Office Superintendent vide separate order dated 27.09.2001 (Annexure A/2).

4. In the OA, the applicant has specifically pleaded that he was given promotion on the post of Chief Office Superintendent on the basis of general category and it is further contended that as per seniority list dated 20.03.1995, he was senior to the private respondent, as such, he was rightly promoted to the post of Chief Office Superintendent and action of the respondents in issuing the tentative seniority list dated 15.05.2001 (Annexure A/12) and final seniority list dated 27.07.2001 (Annexure A/13) is illegal and contrary to law and it is on these basis the applicant has sought

4/

for the aforesaid reliefs.

5. The respondents in their reply have not however contraverted the factual submission as stated above. However, it has been stated that the applicant was assigned higher seniority as against Shri R. C. Sharma, Shri D. S. Rajawat and Shri Sajjan Singh Rajawat vide seniority list dated 20.03.1995 in the cadre of Office Superintendent in the pay scale of Rs.2000-3200 ^{on the basis of entry} in a particular grade on account of accelerated promotion being a candidate of reserved category. The respondents in their reply have specifically stated that the promotion of the applicant to the post of Head Clerk and thereafter to the post of Chief Clerk was based on reservation and his accelerated promotion on the said posts. Otherwise, on the basis of his base grade seniority, the applicant would not have become eligible for consideration for the post of Officer Superintendent.

6. It is further stated that the promotion of the applicant for the post of Chief Office Superintendent vide order dated 15.04.1999 (Annexure A/10) in the pay scale of Rs.7450-11500/- was also against the reserved category post, which promotion was erroneously made and he was not selected and appointed as general category candidate as alleged by the applicant. It is further stated that against the panel and promotion representations were received from the affected general category candidates and as well as from the recognised unions, as such, the matter was considered in depth and panel as well as promotion order dated 15.04.1999 were cancelled vide order dated 21.04.1999. The respondents have also placed on record with their reply the representation which ~~they~~ received from the affected general candidate and has been marked as Annexure R/3 and R/4. The circumstances under which the applicant has been continued to draw the benefit of the promotion of the post of Chief Office Superintendent and his reversion specifically pursuant to the direction given

by this Tribunal vide judgement dated 29.03.2001 (Annexure R/1) as stated above has been admitted. In nutshell, the stand taken by the respondents in the reply is that the revised seniority list as well as reversion of the applicant from the post of Chief Office Superintendent to Office Superintendent was made pursuant to the order dated 29.03.2001 passed by the Hon'ble Tribunal and also on the basis of the judgment rendered by the Hon'ble Supreme Court in the case of Ajit Pal Singh-II, Jatinder Pal Singh, as such, his reversion was perfectly proper and justified legal.

7. The applicant has filed the rejoinder thereby reiterating the submissions made in the OA. Besides it, the applicant has also taken new point that the law has changed now and the respondents have issued new seniority list dated 21.2.2003 (Annexure A/17) and thus seniority list dated 15.5.2001 has now lost its entity and in view of changed circumstances applicant shall be treated as continue as Chief Office Superintendent in all respect. Further, during the pendency of this OA, the applicant has also filed an MA thereby praying for staying the operation of the order dated 26.3.2003 (Annexure A/19) whereby the respondents issued an eligibility list for filling up two posts of Chief Office Superintendent in the scale of Rs. 7450-11500/-, wherein the name of the applicant figures at Sl.No.1 in the list 'A'. The averment made by the applicant in this MA is that since this eligibility list has been prepared pursuant to seniority list Annexure A/17 which is in term has been prepared as per enactment of the Constitution (85th Amendment) Act and the instructions issued by the Railway Board thereby giving the benefit of consequential seniority to the reserved category candidates who had been given promotion with effect from 17.6.1995, as such, he shall be deemed to have been promoted on the post of Chief Office Superintendent w.e.f. 15.04.1999 and there is no necessity to conduct selection process again.

8. The respondents have filed reply to this MA. In the reply, it has been stated that since the applicant has been reverted from the post of Chief Office

Superintendent to the post of Office Superintendent Grade-I on 27.09.2001, he cannot be included in the seniority list for the post of Chief Office Superintendent in the pay scale of Rs. 7450-11500/- until and unless he gets promoted to the said post by clearing the normal prescribed selection procedure. He has, therefore, been correctly shown in the seniority list for the post of Office Superintendent Grade-I and he cannot ^{be} made entitled for being placed in the category of Chief Office Superintendent without clearing the normal prescribed selection procedure for the said post.

9. The matter was listed for hearing immediately after the completion of pleadings as no interim stay was granted to the applicant on account of his reversion from the post of Chief Office Superintendent to that of Office Superintendent Grade-I. Further on the special request of the learned counsel for the applicant and the fact that no interim stay was granted by this Tribunal in MA No.183/2003, this Tribunal while considering this MA vide order dated 05.05.2003 listed the case for final disposal on 12.05.2003 and no stay was granted. Therafter the matter was adjourned from time to time mostly on the request made on behalf of the learned counsel for the applicant. When the matter was listed on 05.01.2004, a prayer was made by learned counsel for the applicant that he intend to amend the OA and this Tribunal on that date granted four weeks time to do the needful and the matter was adjourned to 19.02.2004. On the next date also, learned counsel for the applicant sought further time to amend the OA and four weeks time was also allowed and the matter was adjourned to 29.03.2004. On 29.03.2004, none appeared on behalf of the applicant and it was observed that despite repeated opportunities amendment has not been done, it appears that the applicant is not interested in filing the amended OA and the matter was listed for hearing on 12.05.2004. On 12.05.2004, none appeared on behalf of the applicant and the case was dismissed in *W*

default for non prosecution. However, the OA was subsequently restored to its original position vide order dated 07.07.2004. Therafter the matter was listed on 23.08.2004 and subsequently on 15.09.2004. On 15.09.2004 this Bench specifically observed that it is a 2001 matter and let the same be listed for hearing on 13.10.2004 and it is made clear that no further adjournment will be given on that date. On 13.10.2004, learned counsel for the applicant sought further time to make an application for amendment in the OA which request was opposed by the learned counsel for the respondents by stating that the counsel for the applicant has sought adjournment on many occasions on this ground but amendment in the OA has not been made. This Tribunal granted last opportunity for the purpose and the matter was listed for hearing on 18.11.2004. On 18.11.2004, none appeared on behalf of the applicant. On that date, this Tribunal observed that amended OA has not been filed despite granting last opportunity, it appears that the applicant is not interested in amending the OA and let the matter be listed for hearing on 08.12.2004 being a 2001 matter. Even on 08.12.2004, none was present on behalf of the applicant. In the absence of the learned counsel for the applicant, learned counsel for respondent No. 1 and 2 was heard and order was reserved.

10. We have heard the learned counsel for the respondent No.1 and 2 and gone through the material placed on record. The fact that the applicant was initially appointed as Junior Clerk and further promoted as Senior Clerk is not in dispute. However, according to the respondents, the applicant was given further promotion to the post of Head Clerk and Chief Clerk on the basis of reservation and thus he was granted accelerated promotion on the said post(s). This fact has not been contraverted by the applicant. Further the fact that further promotion of the applicant to the post of Office Superintendent was also based on his seniority in the post of Head Clerk/Chief Clerk.

102

Clerk has also not been contraverted. The respondents have specifically stated that the accelerated promotion of the applicant on the said posts was based on reservation, otherwise, the applicant on the basis of his base grade seniority, would not have become eligible for consideration for the post of Office Superintendent has also not been contraverted. The respondents have categorically stated that the promotion of the applicant to the post of Chief Office Superintendent vide order dated 15.04.1999 (Annexure A/10) was made against the reserved category for SC/ST and such promotion was erroneously made and the same was subsequently cancelled vide order dated 21.04.1999 on account of representations made by the affected general category candidates which were considered in depth and the panel as well as promotion order dated 15.4.1999 were cancelled.

10.1 The respondents have also categorically stated that the applicant thereafter continued on the post of Chief Office Superintendent by virtue of the stay granted against the said order of cancellation dated 21.04.1999 in OA filed by one Shri M.G.Verma whose name also find mentioned at Sl.No.1 in the panel as well as in the promotion order dated 15.04.1999 (Annexure A/10). Subsequently, the stay order granted by this Tribunal in the aforesaid case ultimately became inoperative when the final judgment was rendered by this Tribunal vide order dated 29.03.2001 whereby this Tribunal has specifically directed the respondents not to give effect to any panel prepared for the purpose of promotion without revising the seniority in the lower cadre in the light of 'Catch up' rule enunciated by the Hon'ble Supreme Court in Ajit Singh -II (supra) and the official respondents had been directed to take up the exercise for revising the seniority between the applicants and the respondents in all the cases covered by the said order in terms of the base level seniority. Pursuant to the direction given by this Tribunal vide order dated 29.03.2001 in OA No.189/1999, the tentative

iii

seniority list in various grades was revised and circulated vide order dated 15.05.2001 (Annexure A/12) and opportunities were given to the affected parties to file representation against the said seniority list within a period of 15 days and it is only thereafter that the final seniority list dated 27.07.2001 (Annexure A/13) was notified where the name of the applicant find at Sl.No.7 whereas the name of private respondent No.3 find mention at Sl.No.4. Based on this seniority list, the applicant was subsequently reverted to the post of Office Superintendent. Thus, we see no infirmity in the action of the respondents in circulating and finalising the seniority list pursuant to the direction given by this Tribunal on 29.03.2001 in OA No.189/1999 and thereby operating the panel strictly in accordance with the direction given by this Tribunal.

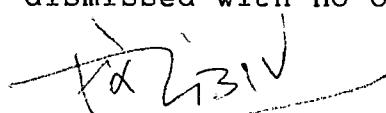
11. Thus, the applicant cannot draw any assistance from the seniority list dated 20.03.1995 (Annexure A/11), which seniority list was prepared on the basis of entry in particular cadre based on the accelerated promotion given to the applicant on account of reservation and not on the basis of entry in the lower cadre in the light of 'Catch up' rule enunciated by the Apex Court in the case of Ajit Pal Singh-II (supra). Accordingly, the applicant is not entitled to any relief.

12. We wish to clarify here that since the respondents have again prepared a seniority list dated 21.02.2003 (Annexure A/17) which was annexed with the rejoinder, pursuant to the enactment of the Constitution (85th Amendment) Act and instruction issued by the Railway Board thereby giving the benefit of consequential seniority to the reserved category candidates who had been given promotion w.e.f. 17.6.1995 and the name of the applicant has been shown at Sl.No.1 of the cadre of Office Superintendent, although according to the applicant his name should have been shown in the cadre of Chief Office Superintendent, no finding on this

102

point has been given by us as this is not the case set up by the applicant in the present OA nor the applicant has carried out amendment despite repeated opportunities granted to him in this behalf. As such, no finding is required to be given whether the name of the applicant in the revised seniority list dated 21.02.2003 (Annexure A/17) has been correctly reflected in the cadre of Office Superintendent Grade-I or his name should have been included in the cadre of Chief Office Superintendent and also whether in view of subsequent Constitution (85th Amendment) Act and instruction issued by the Railway Board, the impugned seniority list Annexure A/12 and A/13 has lost its entity and applicant shall be deemed to have continued as Chief Office Superintendent. It will be open for the applicant to raise such contention subsequently as permissible to him in accordance with law and this order will not come in his way.

13. With these observations, the OA as well as MA is dismissed with no order as to costs.



(A.K. BHANDARI)

Member (A)



(M.L. CHAUHAN)

Member (J)