

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 61/2002
T.A. No.

200

H.C.

Div

75

DATE OF DECISION _____

Nem Raj & Ors.

Petitioner

Shiv Kumar

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

S. S. Hassan

Advocate for the Respondents(s)

CORAM:

The Hon'ble Mr. Justice G. L. Gupta

The Hon'ble Mr. A. P. Nagrath

(A. P. NAGRATH)
MEMBER (A)

(G. L. GUPTA)
VICE CHAIRMAN

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 ?

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR.

8/5/2003

O.A. No. 61/2002.

1. Nem Raj S/o Sh. Brij Lal, aged about 55 years, employed on the post of Head Clerk at Ajmer in the office of Deputy Controller Stores, Ajmer.
2. Sh. Roop Chand S/o Sh. Bheru Lal, aged about 55 years, at present employed on the post of Head Clerk, at Ajmer under Deputy Controller of Stores, Ajmer.
3. Shri Pooran Chand, S/o Sh. Warain, aged about 51 years, employed on the post of Head Clerk at Ajmer under Deputy Controller of Stores, Ajmer.

versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Chief Personnel Officer, Western Railway, Churchgate, Mumbai.
3. Deputy Controller of Stores, Western Railway, Ajmer.

... RESPONDENTS.

Mr. Shiv Kumar counsel for the applicants.
Mr. S. S. Hassan counsel for the respondents.

CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.
Hon'ble Mr. A. P. Nagrath, Administrative Member.

: O R D E R:
(per Hon'ble Mr. A. P. Nagrath)

The three applicants of this OA S/s Nem Raj, Sh. Roop Chand & Shri Pooran Chand, all belongs to ST community. Their prayer is that the respondents be directed to consider their cases for grant of promotion on the post of Chief Clerk in the then pay scale of Rs.1600-2660 under Restructuring Scheme. This Restructuring Scheme was given effect to from 01.03.1993. The grievance of the applicant is that while their juniors namely S/s Radhey Shyam, P.C. Soni, Nem Chand Gupta & H. C. Soni were given



the benefit of Restructuring Scheme and promoted w.e.f. 01.03.1993 vide impugned order dated 14.05.1993 (Annexure A-1), they have been ignored.

2. We find from the reply filed by the respondents that the factum of seniority of the applicants vis a vis some of those promoted under the impugned order, is not disputed. In fact they have even conceded that there was a lack of clarity in understanding of the earlier decisions of various Benches of this Tribunal and orders passed by the Hon'ble Supreme Court on the subject of seniority of reserved/general category candidates. It has been clearly asserted that SC/ST candidates who have been left over due to non observance of Railway Boards Instructions dated 16.06.1992 will be considered for proforma promotion/seniority over the candidates who have already been promoted so as to ensure justice. It is ironical that despite such clear admission, the respondents have failed to act to grant necessary relief to the applicants.

3. Having heard the learned counsel for the parties and after perusing the documents on record, we find that when the applicants were earlier not granted promotion under the Restructuring Scheme, they filed OA No.266/95. The same came to be decided on 25.11.1999. A copy of the order is annexed as Annexure A-7. In Para 3 of the order, the Tribunal had observed that the respondents had admitted that the applicants were within the zone of consideration as per their general seniority. At that time also the respondents had taken a plea that there was some lack of clarity of understanding of earlier decisions of the various Benches of the Tribunal and of the Supreme Court. Respondents held out an assurance that if any omission has taken place, the same would be rectified and the SC/ST candidates who



have been left over will be considered for proforma promotion/seniority. Obviously, the respondents failed to fulfil this assurance. The applicants had to move the matter by way of filing CP No. 30/2000. The said CP came to be dismissed as the Tribunal noted that respondents were prevented from granting relief to the petitioners because of interim orders passed by the Tribunal in another OA No. 106/1996. In that background, the Tribunal observed that there was no wilful disobedience on the part of the petitioners and the CP was dismissed.

4. By the interim orders passed in OA No. 106/1996, the respondents had been directed by the Tribunal to maintain Status quo in regard to the promotion on the basis of reservation in excess of the prescribed percentage and inter se seniority in the field of cadre. This OA came to be finally heard and decided along with the large bunch of OAs on 29.03.2001. The operative part reads as under :-

"All the above OAs are disposed of with a direction to the respondents not to give effect to any eligibility list and/or panel already prepared for the purpose of promotion to the next higher cadre, without revising the seniority in the lower cadre in light of the "catch up" rule enunciated by Hon'ble the Supreme Court in Ajit Singh-II, Jatinder Pal Singh etc. The official respondents shall now take up the exercise for revising the seniority between the applicants and the respondents in each case with reference to other persons of the cadres at different levels, in terms of the base level seniority. This exercise shall be completed within a period of six months from the date of receipt of a copy of this order or before initiating the process for any promotion to higher cadre, whichever is earlier."

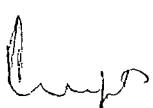
5. It is apparent that the respondents have failed to act in so far as granting relief to the applicants is concerned. It is not the case of the respondents that the applicants are claiming any benefit on account of their belongings to ST communities. The applicants' case is that they are senior even with reference



to the date of entry in the basic grade. This fact is not disputed by the respondents. Under such circumstances, we fail to appreciate why the respondents have been so indifferent to the cause of the applicants. They have been only holding out assurance repeatedly that the applicants would be granted the due benefit w.e.f. the date their juniors were so promoted, but in fact they are doing absolutely nothing.

6. In the circumstances of this case, we direct the respondents to consider the cases of all the three applicants for promotion under the Restructuring Scheme effective from 01.03.1993 and if otherwise finds suitable extend to them the benefit of promotion to the post of Chief Clerk in the then grade of Rs.1600-2660 w.e.f. the date their juniors were so promoted. The applicants shall be entitled to grant of all the arrears of pay and allowances w.e.f. the date of such promotion. They shall also be entitled to be considered for further promotion in the event their juniors have been so promoted. The respondents shall pass appropriate orders in the matter within a period of 3 months from the date of receipt of a certified copy of this order. We consider it a fit case where cost should be imposed on the respondents for compelling the applicants to move the Tribunal again and again. We determine the cost as Rs.2000/- to be paid to each of the applicants. However, we would not like the exchequer to be burdened with this cost. General Manager, North Western Railway is directed to fix responsibility on the officials whose inaction has compelled the applicants to come before this Tribunal repeatedly ; and to recover the cost imposed from such officials.

7. A copy of this order should be sent to General Manager, North Western Railway, for necessary compliance.


(A. P. NAGRATH)
MEMBER (A)


(G. L. GUPTA)
VICE CHAIRMAN