

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 470/2002 with
M.A. No. 140/2003.

DATE OF DECISION _____

H.V.C. In BIS
Petitioner

Hari Prasad 'D'

Advocate for the Petitioner(s)

P. V. Calla

Versus

Respondent

Union of India & ors.

U.D. Sharma for respondent No. 1 to 3.

Nand Kishore & Ajay Gupta for respondent No. 4

Advocate for the Respondents(s)

CORAM:

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

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


(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.

Date of Decision : 9/5/2003

O.A. No. 470/2002.

with

M.A. No. 140/2003.

Hari Prasad 'D' S/o Shri Kishan Lal Ji, aged about 59, at present holding the post of D.C.T.I., Western Railway, Ajmer Division, Ajmer, R/o H. No. 442/30 Pratap Nagar, Ajmer Linc Road, Ajmer.

... APPLICANT.

v e r s u s

1. Union of India, through the General Manager, North-West Railway, Opposite Railway Hospital, Jaipur.
2. The Railway Board, through the Chairman, Rail Bhawan, New Delhi.
3. The Divisional Railway Manager, North-West Railway, Ajmer Division, Ajmer.
4. Shri Bhanwar Lal Meena, C.T.I./O/o D.C.T.I., North-West Railway, Ajmer Division, Ajmer.

... RESPONDENTS.

Mr. P. V. Calla counsel for the applicant.

Mr. U.D. Sharma counsel for respondent No.1 to 3.

Mr. Nand Kishore & Mr. Ajay Gupta counsel for respondent No.4.

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 applicant is working as Chief Ticket Collector (CTI, for short) in the pay scale of Rs.6500-10500/-.. There is a post designated as Divisional Chief Ticket Inspector (DCTI, for short) in the same grade. DCTI is expected to work as the incharge of the category of Ticket Collectors up to the grade of CTI. The applicant was posted as DCTI, Ajmer, vide order dated 08.01.2002 (Annexure A-2), on the ground that he was the senior most in his cadre. Subsequently, vide order dated 24.09.2002 (Annexure A-1), previous order dated 08.01.2002 was cancelled. By filing this OA, the applicant has assailed this order dated 24.09.2002 (Annexure A-1). During pendency of this application, the respondents have posted Shri Bhanwar Lal Meena,

respondent No.4 in this OA, as DCTI vide order dated 03.03.2003, which has been brought on record by the applicant as Annexure MA/3 to MA No. 140/2003.

2. The case of the applicant is that he is senior to respondent No.4, as can be ascertained from the seniority list dated 25.03.2001. He contends that there was no reason to cancel the orders dated 08.01.2002, by which he was posted as DCTI. It has been averred that respondent No.4, Shri Bhanwar Lal Meena, had earlier been shifted from the post of DCTI by order dated 28.03.2001 and one Shri Sharwan Kumar Meena was posted as DCTI. When the post fell vacant Shri Bhanwar Lal Meena represented to be posted as DCTI but his claim was rejected by respondents vide communication dated 05.06.2002. Thus he contends that it was admitted position that respondent no.4 was not entitled to hold the post of DCTI and also because the applicant is senior, he was entitled to be posted of DCTI.

3. A reply to the OA has been filed by the official respondents and also by respondent No.4. Respondent No.4 in his reply has asserted that he was promoted to this grade way back on 01.01.1984 and was posted as DCTI in the year 1989. He claims that he has been all along senior to the applicant and that the department was fully justified in cancelling the order dated 08.01.2002 by subsequent order dated 24.09.2002.

4. The official respondents have stated that the legal position in respect of determining seniority of general candidates vis a vis reserved category candidates has undergone a change. He stated that the earlier seniority list dated 25.03.2001 was based on the law laid down by Hon'ble the Supreme Court in the case of Ajil Singh Janjua-II. There has been further development and by enactment of Constitution (85th Amendment) Act 2001, seniority of reserved category candidates promoted on roster points against reservation were entitled to be given the benefit of seniority as it exists prior to 10.02.1995. Pursuant thereto, the Railway Board issued instructions vide letter No. E(NG)1-97/Sr.6/3 Vol.III dated 08.03.2002 for revising the seniority of Railway servants and also to grant consequential benefits like promotion, pay, pension, etc. The Respondents' case is that by this aforesaid constitutional amendment and legal position, they were under legal obligation to revise the seniority-lists of the employees of all the grades and posts and since the seniority position in respect of the grade of C.T.I. was also likely to be changed on the basis of the changed seniority position, the senior most C.T.I. was required to be designated and posted as D.C.T.I. It was decided on administrative grounds to cancel the order dated 8.1.2002 vide the order dated 24.9.2002. Another plea taken by the respondents is that there are no statutory recruitment rules for filling up the said post and the senior most C.T.I. was posted as D.C.T.I. as a matter of convention only and not based on any legal consideration. The applicant has, therefore,



legal right to continue to hold the said post of D.C.T.I. and this Hon'ble Tribunal will also not be pleased to issue any mandamus to the Respondents to post the applicant as D.C.T.I., who is even otherwise stated to be junior to respondent No.4.

5. We have heard the learned counsel for the parties. The matter was argued at great length by either side. It is not in dispute that post of C.T.I. and the D.C.T.I. are in the same grade. D.C.T.I. functions as a Supervisor in charge of the cadre and it is only the senior most person, posted as D.C.T.I. In the matter of service jurisprudence status is also as such important for a government servant as the promotion to the next grade. It cannot be said that the department would be justified in posting any junior person as incharge, ignoring the claims of the senior. Respondents themselves have admitted that by convention senior person is posted as D.C.T.I. though they have also taken a stand that convention cannot be a matter which can ~~again~~ create any right which can be enforced legally. We are unable to agree with this contention of the respondents. Learned counsel for respondent No.4, Shri Nand Kishore, drew our attention to the judgement of this Tribunal rendered by a bench in which one of us "Mr. A. P. Nagrath" was the Member in OA No. 34/2002 decided on 31.05.2002 in the case of Prithvi Raj & another vs. Union of India & Ors. He submitted that in that case the Tribunal had held that the status promotion cannot be claimed by any employee on the ground of seniority. We have perused that order and we find that there is obvious misunderstanding on the part on the learned counsel, in this regard. It was clearly observed in Para 4 of that order that " In the situation of said posting, no reservation applies and only the senior persons are posted as HTTEs. Regularly selected senior persons have been posted vide orders dated 26.2.2002 and the applicants have no cause of making a grievance out of this posting."(emphasis supplied). So it is not correct to say that this Tribunal had accepted the proposition that in the matter of status promotion the departmental authorities are free to post even the juniors.

6. Having said that, the question which arises for our consideration is whether the applicant is senior to Shri Bhanwar Lal Meena, respondent No.4 and can thus rightfully claim to be posted as DCTI. In the matters relating to seniority of general candidates vis a vis those promoted against roster points, the situation has remained fluid over the last few decades. There have been varrying interpretations of the reservation policy by various courts. This has been resulting into repeated changes in drawing of seniority lists and determining the eligibility of the employees for being considered for promotion to the next higher grade. The reservation policy came under detailed scrutiny by the Apex Court in the much celebrated cases of R. K. Sabbarwal, Ajit Singh Janjua-II and Jitendra Pal Singh. After the pronouncement of Hon'ble the Supreme Court in Ajit Singh Janjua-II, the departments were required to re-cast the seniority of general candidates vis a vis



the candidates promoted against reservation point, on the basis of 'Catch-up' principle as enunciated in the said judgement. Later by virtue of Constitution (85th Amendment), the position has undergone further change. As per amendment brought in Article 16 (4) (A). The reserved community candidates will continue to retain their seniority as per the dates of their promotion. As an obvious consequence, the seniority list prepared in pursuance of Ajit Singh Janjua-II, were required to be modified again. Learned counsel for the applicant, Shri P. V. Calla, while conceding that there has been a change in respect of the legal position after the 85th amendment, asserted that the matter was again considered by the Supreme Court on 11.11.2002, when the Apex Court took up a large batch of writ petitions involving the Constitutionality of Article 16(4) (A), in the context of an interim order which had been passed earlier. It is clear from this order that by an interim order earlier, the Apex Court had directed not to revert any of the petitioners from the existing placement nor affect their standing in the seniority list. Shri P. V. Calla's contention was that since the applicant was already working as DCTI, he could not have been shifted from that post, notwithstanding the 85th amendment to the Constitution, in view of this interim order of the Supreme Court.

7. Learned counsel for the official respondents, Shri U.D. Sharma, drew our attention to Railway Board's Letter dated 8.3.2002 (Annexure R-3) and submitted that the same had been issued in pursuance of the 85th amendment to the Constitution 2001. It was in view of this order the seniority list of all cadres were required to be reviewed. The obvious result of the review is that the position obtaining prior to 10.02.1995 would continue to prevail in so far as seniority of general category employees vis a vis those promoted against reserved points. He also stated that the department had issued an order dated 13.08.2002 by which it was communicated that employees of earlier panel have to remain senior to employees of the subsequent panel. Consequently, in the same order Shri Bhanwar Lal Meena was ordered to be restored to the post of D.C.T.I. Shri U. D. Sharma, specifically pointed out that this order of the Railway Board as also the order of the Western Railway dated 13.08.2002, have not been brought under challenge by the applicant. His plea is that the impugned order dated 24.09.2002 is only a consequence of the order dated 13.08.2002, thus applicant can have no case to make any grievance.

8. Learned Counsel Shri Ajay Gupta also appeared on behalf of respondent No.4. He laid great stress on the fact that respondent No.4 had been holding the position in the same grade w.e.f. 1.1.1984 whereas the applicant was promoted to that grade only in the year 1993. He submitted that by the time, the applicant was posted as C.T.I., the respondent No.4 had already been working on the post of DCTI. Thus the applicant has no cause of grievance if respondent NO.4 is posted as DCTI now.

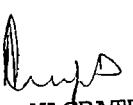
9. In the face of these facts, the only point which is left to be considered by us is whether the applicant can rightfully claim seniority over respondent no.4. Learned counsel on his behalf Shri P.V. Calla stressed that the Tribunal is required to examine the legal position which was obtaining on the date the impugned order was issued, and not any subsequent development. In our considered view this would depend on the facts and circumstances of the case and the issue involved in controversy. If the legal position itself undergoes a change and the law in respect of a particular issue is redefined then the Courts are bound to follow the same in the present as otherwise any order to the contrary would be rendered non-enforceable. In the facts of this case, the admitted position is that 85th amendment had come into effect w.e.f. 4.1.2002. In pursuance of the same, Railway Board had issued detailed instructions on 08.03.2002 directing the Zonal railways to revise the seniority of the railway servants in the light of this amendment and also to grant consequential benefits like promotion, pay, pension etc. to the concerned SC/ST railway servants. Clearly, this order is not under challenge before us. An obvious consequence is that these instructions were in force when the impugned order dated 24.09.2002 had been issued. Further by order dated 13.08.2002, the respondents had declared Shri Bhanwar Lal Meena as senior and also ordered to restore him to the post of D.C.T.I. This order has also not been challenged by the applicant. In fact, in the very beginning of his arguments learned counsel for the applicant, Shri P.V. Calla, himself stated before us at the Bar that this order dated 13.08.2002 had been challenged by the applicant in earlier OA No. 392/2002, but the same was withdrawn by him with a liberty to file a fresh OA by assailing the validity of the order dated 24.09.2002. Of course, this later order is under challenge in this OA but this order is only in consequence of the order dated 13.08.2002. If that order has not been assailed by the applicant we see no reasons for him to assail an order which is only a consequence of the order dated 13.08.2002. Shri Calla laid lot of stress on the point that seniority position as per the seniority list dated 25.03.2001, stands even today, cannot be accepted. The factum of the 85th amendment and subsequent developments cannot be ignored. In fact, the respondents have further issued a seniority list dated 3.3.2003, in which respondent No.4 has been shown as the senior most in the cadre. This has brought on record by the applicant himself by filing a MA. Shri Calla's plea is that this is only a provisional seniority list. This argument has no force because this is provisional only for the reason that the vires of the 85th amendment to the Constitution are under consideration before Hon'ble the Supreme Court and the seniority list cannot attain finality till the Apex Court finally decides the controversy. As per the latest seniority list, respondent No.4 is senior and we find no reason to interfere in that seniority list. In the backdrop of these facts and keeping in view the legal position currently obtaining, respondent No.4 is senior to the applicant and thus no fault can be found with the impugned order.

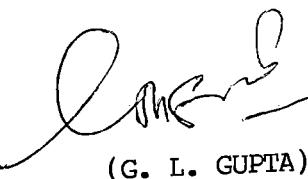
10. The prayer of the applicant in MA was to stay the operation of the



seniority list dated 3.3.2003. In view of the fact that the issue of determining the seniority of general candidates vis a vis those promoted against reserved posts is pending in the Apex Court we do not consider it appropriate to interfere in the seniority list dated 3.3.2003 which has apparently been issued in pursuance of Railway Board's letter dated 8.2.2002. The prayer of the applicant in this MA is therefore rejected and the MA stands disposed of accordingly.

11. The applicant has failed to make out any case in his favour. We, therefore, dismiss this OA. No costs.


(A. P. NAGRATH)
MEMBER (A)


(G. L. GUPTA)
VICE CHAIRMAN