

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 6th day of May, 2005

ORIGINAL APPLICATION No. 79/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR.G.R.PATWARDHAN, MEMBER (ADMV.)

Roop Chand
s/o Shri Ram Lal
r/o 6-A Himmant Nagar,
Tonk Road, Jaipur,
retired from the post of
Traffic Inspector (Safety)
office of Divisional Railway
Manager, Jodhpur Northern Railway.

.. Applicant

(By Advocate: Mr. C.B.Sharma)

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Jodhpur Division,
Jodhpur.

.. Respondents

(By Advocate: Mr. S.P.Sharma)

ORDERPer Hon'ble Mr. M.L. Chauhan.

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

- "i) that the entire record relating to the case be called for and after perusing the same respondents may be directed to treat the applicant deemed promoted on Group 'B' post in the scale of Rs. 3410-11500 (7500-12000) from the date juniors so promoted in the year 1995 with all consequential benefits including arrears of pay and allowances with revised retiral benefits by quashing letter dated 27.12.2002 (Annexure A/1).
- ii) Any other order/direction of relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of the case.
- iii) That the costs of this application may be awarded."

3. Facts of the case are that the applicant was initially appointed as Assistant Station Master on 8.1.1960 and was further promoted on the post of Traffic Inspector in the year 1980. The said scale was also available to the category of Station Master and Chief Yard Master. Further promotional avenues to these 3 categories namely Station Master, Traffic Inspector and Chief Yard Master were in the pay scale of Rs. 700-900 and for that purpose combined seniority list was published vide letter dated 23.6.1983 and names of persons in the said seniority list were arranged as per length of service in the respective cadre. However, the railways vide order dated 20.12.1983 upgraded the cadre of Station

Master/Station Superintendent and Chief Yard Master w.e.f. 1.8.1993 whereas cadre of Traffic Inspector was given upgraded scale w.e.f. 1.1.84. The respondents again issued a combined seniority list of these categories based on grant of pay scale on account of restructuring and the said seniority list was published vide letter dated 20.3.90. In the said seniority list name of the applicant was shown at Sl.No.253 as against the seniority list published on 23.6.1983 where name of the applicant was shown at Sl.No.24. The applicant filed objection against the provisional seniority list dated 20.3.90 which came to be rejected. Based on the subsequent seniority list, the respondents also took steps for making selection in the pay scale of Rs. 2375-3500 from suitable candidates. Since name of the applicant was far below in the seniority list, his name was not included in the eligibility list. Feeling aggrieved of the action of the respondents, the applicant filed OA No.523/91 at Jodhpur Bench of this Tribunal. In that OA the applicant has challenged the action of the respondents on two grounds, firstly that the date of implementation of the order regarding restructuring of the cadre in respect of Traffic Inspector vis-à-vis other two categories namely Station Superintendent and Deputy Chief Yard master is arbitrary and upgradation of the posts of Traffic Inspector to which category the applicant belongs should also be ante-dated w.e.f.

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1.8.1983 instead of 1.1.1984 and as such the applicant be fixed in the pay scale of Rs. 700-900 (revised Rs. 2000-3200) w.e.f. 1.8.1983. The second ground taken by the applicant for challenging action of the respondents was that the combined seniority in the grade of Rs. 2000-3200 may be prepared on the basis of date of entry in the grade of Rs. 550-750 ignoring financial upgradation given to the category of Station Superintendent/Chief Yard Master from the earlier date than the category of Traffic Inspector and further promotion in the scale of Rs. 2375-3500 may be made from the said seniority list. The Tribunal vide judgment dated - 17.2.1994 however rejected the contention of the applicant that he is also entitled for higher scale on account of restructuring w.e.f. 1.8.1983 as was done in the case of Station Master and Deputy Chief Yard Master and up held the benefit of restructuring to the aforesaid three categories from a different date i.e. with effect from 1.1.1984 and 1.8.1983. However, the second contention of the applicant was accepted by the Tribunal and it was held that a fresh combined seniority list of Station Superintendents, Chief Yard Masters and Traffic Inspectors grade Rs. 2000-3200, for the purpose of promotion to grade Rs. 2375-3500, may be prepared on the basis of date of entry in the grade of Rs. 550-750, in cases of those who were promoted to this grade before upgradation. Resultantly, this Tribunal quashed

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the order dated 31.10.1991 whereby persons were promoted in the grade of Rs. 2375-3500 on the basis of the seniority list which was prepared on the basis of grant of financial upgradation on account of restructuring. However, reversion of person so promoted were stayed by the Tribunal on the ground that they have not been impleaded as party in this OA and the applicant and similar other persons which will be empanelled on the basis of the directions given by the Tribunal shall be promoted prospectively against the vacancies that may still be available or may arise in future. In order to carry out directions given by the Jodhpur Bench of the Tribunal, the respondents have prepared a seniority list of grade of Rs. 2000-3200 dated 6.1.1995 (Ann.A6) in which name of the applicant has been shown at Sl.No.1 although he was also subsequently given promotion in the scale of Rs. 2375-3500 w.e.f. 1.3.1993 vide order dated 6.7.2001 after his retirement and when the SLP filed by the respondents was also dismissed by the Apex Court. Now, the grievance of the applicant is regarding his promotion on Group-B post from the date when junior persons to the applicant namely S/Shri S.C.Lal and Sita Ram was granted such promotion in the year 1995. The basis for this relief, as can be seen from the pleadings made in the OA, is that since in the seniority list dated 6.1.1995 (Ann.A6) which list has been prepared pursuant to the decision rendered by the

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Jodhpur Bench in earlier OA, name of the applicant has been shown at Sl.No.1 whereas names of S/Shri S.C.Lal and Sita Ram have been shown at Sl.No.38 and 39 respectively, as such, he is also entitled for promotion to the post of Assistant Operating Manager (AOM) Group-B from the date when his juniors have been promoted against 70% quota vacancies.

4. Notice of this application was given to the respondents. The respondents have filed reply. The facts as stated above have not been disputed except that the applicant was only entitled for promotion in the grade of Rs. 2375-3500 w.e.f. 1.3.1993 pursuant to the decision rendered by the Jodhpur Bench of this Tribunal in the earlier OA No.523/91. Regarding promotion of the applicant on the post of AOM Group-B against 70% quota from 1994-95 from which date S/Shri S.C.Lal and Sita Ram were promoted, it has been stated that the above two persons were not junior to the applicant as the selection for the post of AOM held in the year 1995 was conducted on the basis of seniority list issued on 30.12.1994 which was based on length of service in the grade of Rs. 2000-3200 (earlier Rs. 700-900). The respondents have categorically stated that the seniority list dated 6.1.95 (Ann.A6), on which much reliance has been placed by the applicant was not prepared for the purpose of promotion to Group-B service in which the post of AOM falls. The said

seniority list dated 6.1.95 was prepared for promotion to the post of Station Superintendent/Traffic Inspector/Chief Yard Master grade Rs.2375-3500 (earlier Rs. 840-1040) as per the directions given by Jodhpur Bench of this Tribunal. It is further stated that since the date of promotion of S/Shri S.C.Lal and Sita Ram in the grade of Rs. 2000-3200 was 1.8.83 and their names have been placed at Sl.No. 52 and 53 in the seniority list 30.12.1994 and the date of promotion of the applicant in the grade of Rs. 2000-3200 being 1.1.84 and his name being at Sl.No. 169A, he was not called upon in the selection for the post of AOM as he was not in the zone of consideration. It is further stated that in the selection conducted for filling of 25 vacancies of AOM against 70% quota, 84 candidates in the order of seniority were called upon and since the applicant was much below in the combined seniority list which was prepared on the basis of entry in the grade Rs. 2000-3500/6500-10500, the applicant was not called. The respondents have also categorically stated that seniority list dated 30.12.1994 whereby name of the applicant was shown at Sl.No.169A was sent to each and every division for information and notice of the concerned staff vide letter dated 30.12.1994. The respondents have also placed on record relevant instructions/rules which stipulate that integrated seniority of Group-C employees for promotion to Grade-B should be determined on the basis of combined length

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of non-fortuitous service rendered in the grade of Rs. 700-900/2000-3200 and above ignoring promotion to the grade of Rs. 840-1040/2375-3500. To this effect is also the provision contained in para 203.5 of IREM Vol.I Revised Edition 1989. Thus, according to the respondents, the applicant is not entitled to any relief.

5. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

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

6.1 We are of the view that the applicant is not entitled to any relief for more than one reason. As can be seen from the facts as stated above, it is clear that grievance of the applicant is regarding promotion to the post of AOM which is Group-B post from the date when such promotion was given to the so called juniors namely S/Shri S.C.Lal and Sita Ram in the year 1994-95 and for that purpose the applicant is basing his claim on the basis of seniority list dated 6.1.1995 (Ann.A6) whereby admittedly the name of the applicant has been shown at Sl.No.1 whereas the aforesaid two officers has been shown at Sl.No.38 and 39. The respondents have categorically stated that this seniority list was issued and prepared pursuant

to decision rendered by the CAT-Jodhpur Bench dated 17.2.1994 whereby the Tribunal has directed to prepare seniority in the grade of Rs. 2000-3200 afresh taking into consideration date of entry in the grade of Rs. 550-750 as basis for the purpose of preparing the combined seniority list ignoring financial upgradation which was given to some of categories from earlier date than the category to which the applicant belongs. This fact is also borne out from the latter dated 6.1.1995 which stipulates that seniority list has been prepared on the basis of the judgment rendered by the CAT-Jodhpur Bench. The respondents have also categorically stated that such seniority list was operative only to give promotion in the grade of Rs. 2375-3500 which is Group-C post and such seniority ~~has~~ nothing to do with promotion from Group-C category to Group-B. The respondents have further stated that promotion to the post of AOM against 70% quota has to be made on the basis of integrated seniority of Group-C employees on the basis of combined length of non-fortuitous service rendered in the grade of Rs 700-900/2000-3200. Admittedly, the criteria for promotion to Group-B post is entirely different. For that purpose date of appointment in the grade of Rs. 2000-3200 even on non-fortuitous basis is determinative factor. At this stage it will be useful to quota para 203.5 of the IREM Vol.I, Edition 1989 which is in the following effect:

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"203.5. Since employees from the different streams will be eligible to appear for the selection, their interlated seniority for purposes of the selection should be determined on the basis of total length of non-fortuitous service rendered in grade Rs. 2000-3200 (R.S.) and above. In other words, the date of appointment in the grade Rs. 2000-3200 (R.S.) on a non-fortuitous basis will be the criterion."

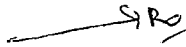
Thus from the portion as quoted above, it is clear that for promotion to Group-B post appointment in the grade of Rs. 2000-3200 even on non-fortuitous basis is only the sole criteria and seniority has to be prepared on that basis. Admittedly the applicant was granted promotion in the grade of Rs. 2000-3200 on 1.1.84 whereas the so called juniors namely S/Shri S.C.Lal and Sita Ram were granted promotion in the said grade w.e.f. 1.8.83. Thus, it cannot be said that the respondents have committed any illegality while considering the case of the so called junior persons and granting promotion to them as AOM pursuant to selection held in the year 1994-95 based on the seniority list dated 30.12.1994 whereby name of the so called junior persons were shown at Sl.No. 52 and 53 whereas name of the applicant has been shown at Sl.No.169 A.

6.2 That apart, the applicant is also not entitled to any relief yet on another ground. The selection for

filling up 25 vacancies of AOM against 70% quota was held in the year 1995. This selection was conducted on the basis of seniority list dated 30.12.1994 in which the name of the applicant was shown at Sl.No.169A whereas as per rule only 84 candidates in order of seniority were required to be considered against 70% quota of vacancies meant for promotion. The applicant has not challenged this seniority list. Thus, on this ground alone the applicant is not entitled to any relief and it cannot be said that he is senior to S/Shri S.C.Lal and Sita Ram solely on the basis of subsequent provisional seniority list dated 6.1.1995 (Ann.A6) which was prepared pursuant to the decision rendered by the Jodhpur Bench only for the purpose of promotion in the grade of Rs. 2375-3500 which was the issued involved in that OA. Further as per provisions contained in the rules vacancies of AOM falling against 70% quota has to be filled on the basis of selection as per seniority in the grade of Rs. 2000-3200. Admittedly, the applicant could not appear in the selection test conducted in the year 1995 for the aforesaid post as his name in the seniority list dated 30.12.1994 was far below than the candidates who fall within the zone of consideration. The cause of action has arisen in favour of the applicant at the relevant time. In case the applicant was wrongly ignored and not allowed to appear in the selection test held for the post of AOM, it was permissible for him to agitate

the matter at the relevant time. The applicant has failed to avail that remedy. Now at this stage he cannot be allowed to contend that he should be granted selection for the post of AOM Group-B category simply because some of persons junior to him have been promoted. As already stated above, the selection to the post of AOM, which is Group-B post, has to be made on the basis of selection based on the seniority in the grade of Rs. 2000-3200. The promotion is not based on seniority alone. Even if for arguments sake, it is assumed that the applicant is senior to the so called two persons who were promoted pursuant to the selection held in the year 1995, he is not entitled for promotion in the Group-B post of AOM so long as he has not qualified the selection test. From the material placed on record, it is evident that out of 84 persons who were called for selection for filling up 25 vacancies of Group-B post of AOM against 70% quota, only 22 persons were empanelled. Thus, the process of selection is sine-qua-non for empanelment and promotion to the post of AOM and it is only after passing the selection test that seniority may play a predominant role. The applicant has not explained why he has not agitated the matter at the relevant time when the selection for the post of AOM was conducted in the year 1995. Thus, the grievance of the applicant cannot be entertained at this belated stage.

7. Accordingly, the OA is bereft of merit which is accordingly dismissed with no order as to costs.



(G.R.PATWARDHAN)

Member (A)



(M.L.CHAUHAN)

Member (J)