

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 26/3/04

OA 108/2003

P.D.Mishra, Confidential Assistant (Stenographer) O/o Divisional Security Commissioner, Railway Protection Force, Ajmer.

... Applicant

Versus

1. Union of India through General Manager, North-West Railway, HQ Office Jaipur.
2. Divisional Rly Manager, Ajmer Division (North West Railway), Ajmer.
3. Smt.Meena Kakwani, Confidential Assistant (Hindi Stenographer) O/o Sr.Divisional Personnel Officer, Ajmer Division, Ajmer.

... Respondents

CORAM:

HON'BLE MR.A.K.BHANDARI, MEMBER (A)

HON'BLE MR.BHARAT BHUSHAN, MEMBER (J)

For the Applicant

... Mr.P.V.Calla

For Respondents No.1&2

... Mr.U.D.Sharma

For Respondent No.3

... Mr.Dharmendra Jain, proxy counsel
for Mr.Manish Bhandari

ORDER

PER HON'BLE MR.A.K.BHANDARI

This application is filed u/s 19 of the Administrative Tribunals Act, 1985 to seek following relief :

- "i) the impugned letters Ann.A/1, A/2 & A/3 dated 24.5.2002, 5.7.2002 & 5.7.2002 respectively may kindly be declared illegal in so far as it relates to the applicant and the respondent No.3.
- ii) the official respondents may be restrained not to act upon the impugned decision conveyed vide letter dated 24.5.2002 (Ann.A/1) for the purpose of promotion to the next higher grade."

2. Brief facts of the case, as stated in the application, are that

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the applicant was appointed as Stenographer in the pay scale of Rs.330-560 on 26.9.84 and is working as Confidential Assistant scale Rs.1400-2300 in the office of Divisional Security Commissioner since July, 2001. Respondent No.3, a Hindi Stenographer, was appointed in Jaipur Division (same pay scale) and came to Ajmer Division on transfer on request and is posted in the office of DRM Ajmer. Both had to pass the typing speed test for promotion to pay scale of Rs.1400-2300. Whereas the applicant appeared in such a test held on 24.12.90, result of which was declared in January, 1991 in which his name appeared at S.No.7, respondent No.3 appeared in the typing speed test in March, 1991 result of which was declared on 23.4.91. Whereas the applicant was made regular Stenographer in pay scale of Rs.1400-2300 w.e.f. 8.1.88, respondent No.3 was made regular in this post and grade w.e.f. 11.7.88. Copies of results mentioned above are annexed as Ann.A/4 & A/5 respectively. It is further averred that combined seniority list of Stenographer cadres were issued by the respondents from time to time. Copies of such seniority lists are enclosed namely one dated 24.3.87 (Ann.A/6) in which applicant's name appeared at S.No.7 but the name of respondent No.3 is not mentioned in it. Applicant was promoted as Confidential Assistant scale Rs. 1400-2300 vide order dated 29.12.87 (Ann.A/7), in which applicant's name appeared at S.No.5. Respondent No.3 was also promoted in this scale on ad hoc basis as Hindi Assistant Grade-II, which is a separate cadre. That by letter dated 14.12.94 a seniority list of Stenographer cadre was issued (Ann.A/8), in which applicant's name finds mention at S.No.9, whereas name of respondent No.3 is at S.No.12 i.e. below the name of applicant. Seniority lists were also issued on 11.4.97 (Ann.A/11) and 24.3.2001 (Ann.A/12). In both these seniority lists applicant is shown senior to respondent No.3. Then it is averred that vide order dated 9.2.93 (Ann.A/9) the railway administration issued instructions that seniority position decided prior to 1993 shall not be reopened after 1993. However, respondent No.3 aggrieved from her place in seniority list dated

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14.12.94 (Ann.A/8) made some representation and the administration after considering the same amended the seniority list dated 14.12.94 vide order dated 16.11.2000 (Ann.A/10). In this, respondent No.3's name has been shifted to S.No.9A from her earlier place at S.No.12. Thus, it is clear that although in seniority lists issued from 1987 to 2001 the applicant remained senior to respondent No.3 yet vide impugned order dated 24.5.2002 (Ann.A/1) the name of respondent No.3 is placed at S.No.1 in the seniority list and her position is also changed in earlier seniority list issued on 14.12.94 (Ann.A/8), meaning thereby, that settled position of seniority as obtained by the applicant, was unsettled without any prior notice to the applicant. The applicant made representation but the same was turned down vide order dated 5.7.2002 (Ann.A/2), whereby he was informed that since respondent No.3 made representation for change of her seniority and the same was accepted, her position in the seniority list has been rectified. The railway administration vide impugned letter dated 5.7.2002 (Ann.A/3) again conveyed that respondent No.3 will remain senior to the applicant. The applicant then sent a legal notice dated 16.8.2002 (Ann.A/13), which was received by the authorities but no reply has been received from them. It is stated that the applicant was promoted to the pay scale of Rs.5500-9000 (RP) on ad hoc basis vide order dated 13.2.2002 (Ann.A/14) and respondent No.3 was also promoted by the same order and both are working on ad hoc basis in the same pay scale. That in order (Ann.A/14) name of the applicant finds place at S.No.1 and respondent No.3 at S.No.2. However, in case the seniority of respondent No.3 duly corrected by impugned orders is upheld, the applicant being junior will be reverted first and the changed position will continue to applicant's disadvantage in further promotion to the pay scale of Rs.6500-10500. Hence this OA.

3. In the grounds it is stated that the correction in seniority position was affected after lapse of 14 years to unsettle a settled

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position to the applicant's disadvantage, no opportunity of hearing was given to the applicant before doing so, supposed correction has been made considering administrative lapse which came to notice due to application of respondent No.3 but the same should not have been accepted because of delay, and extant rules not permitting it, as also because before seeking this correction she had sought another correction in her seniority in relation to one Dinesh Mehtani, whose name is just below the applicant's, but in this application the respondent No.3 did not ask for correction of seniority vice the applicant. That it is settled principle of law that once a seniority is assigned and the same is accepted, it should not be changed. This change, therefore, is contrary to policy as well as law. That aggrieved by the impugned orders, in which no valid reasons for changing his seniority are spelt out, the applicant sent notice for demand of justice, but the administration has not responded to the same. That respondent No.3's earlier seniority was fixed on the basis of the date of her passing the typing speed test and it is clear that applicant passed the test earlier. Thus, the reason given in the impugned letter (Ann.A/1) is without basis. Therefore, unless the impugned orders are cancelled, future promotions of the applicant will be affected.

4. The respondents No.1 and 2 have filed an exhaustive reply and have raised preliminary objections. Respondent No.3 has not filed any reply. In the reply by Respondents No.1 and 2 it is stated that the OA has become infructuous because after the impugned orders (Ann.A/1, A/2 & A/3) were issued, a fresh seniority has been issued on 31.3.2003 superseding the earlier seniority lists. Therefore, the relief sought by the applicant do not survive any longer. In view of this, the applicant should rather exhausted departmental remedy by making representation against the seniority list dated 31.3.2003 (Ann.R/1).

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5. On facts it is stated that the applicant was initially appointed as Stenographer on 26.9.84, whereas respondent No.3 was so appointed on 13.6.83 and was transferred on administrative grounds to Ajmer Division and that it was not a transfer on request (Ann.R/2), as alleged by the applicant. Thus, respondent No.3 having joined service earlier than the applicant and her seniority not effected by this transfer was senior to the applicant on the basis of base grade seniority. It is further pointed out that due to inadvertent administrative error, her name came to be placed below the applicant in the seniority lists dated 14.12.94 (Ann.A/8), 11.4.97 (Ann.A/11) & 24.3.2001 (Ann.A/12), which mistake was subsequently rectified vide order dated 5.7.2002 (Ann.A/3), which position has also been reflected correctly in the latest seniority listed dated 31.3.2003 (Ann.R/1). It is also pointed out that the said assignment of seniority of respondent No.3 over and above applicant is also based on panel position as indicated in seniority list issued vide order dated 29.6.89, wherein respondent No.3 has been placed at S.No.2 and applicant at S.No.3, a copy of which is annexed as Ann.R/3. It is pointed out that although the applicant has annexed a copy of this order, at page-34 to 37 of the application, he has however not made an annexure of this document to conceal a very relevant fact. It is also clarified that respondent No.3 had been making representations seeking correction in her seniority position, example of which are representations dated 28.6.2000 and 24.7.2001 which had been considered by the administration and when it was discovered that her grievance was genuine, earlier administrative error was duly corrected vide order dated 5.7.2002. It cannot, therefore, be said that the seniority position of the applicant vis-a-vis respondent No.3 had remained settled for long period and which came to be arbitrarily unsettled by the issuance of the impugned orders (Ann.A/1, A/2 & A/3). It is also clear that on the basis of initial appointment on base grade of Rs.330-560 and the panel position indicated in the panel issued on 29.6.89 (Ann.R/3) respondent No.3 has been assigned correct seniority,

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which is above the applicant. The same position is reflected in the latest seniority list issued vide order dated 31.3.2003.

6. In parawise reply it is stated that the promotion of the applicant as well as respondent No.3 in the pay scale of Rs.1400-2300 was on ad hoc basis as clearly indicated in office order dated 29.12.87 (Ann.A/7) (wrongly dated 29.12.2002). It is further clarified that respondent No.3's transfer to Ajmer Division was on administrative consideration (Ann.R/2), by which one post of Hindi Stenographer was transferred to Ajmer Division and she was also transferred to Ajmer Division on administrative grounds. Thus, contention regarding respondent No.3's losing seniority due to her request transfer is denied. Regarding respondent No.3's passing typing speed test later than the applicant, it is stated that vide order dated 18.12.90 (Ann.R/4) applicant as well as respondent No.3 were to appear in the test fixed on 24.12.90. In this order the name of the respondent No.3 was shown at S.No.8 and that of the applicant at S.No.9, However, due to inadvertence, name of respondent No.3 was deleted from the said order. Due to this respondent No.3 could not be given opportunity to participate in the speed test held on 24.12.90. However, she appeared in the very next speed test held on 20.4.91 and was declared passed in the first attempt vide order dated 23.4.91 (Ann.A/5). On that date, both respondent No.3 and applicant were working in pay scale Rs.1400-2300 on ad hoc basis, mention of which has been made in the order dated 29.6.89 (Ann.R/3). This regularisation does not change their respective seniority position in the panel dated 29.6.89 mentioned in para-1 of the order dated 29.6.89. Regarding seniority list issued on 23.4.87 (Ann.A/6) it is stated that respondent No.3's name was not included in it due to an administrative error but this will not deprive her of her rightful legal right of being senior to the applicant in pay scale Rs.1200-2040.

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7. In para-12 of the reply, sub para-10 of para-4 of the application has been responded to in an exhaustive manner repeating what has been stated in earlier paras regarding administrative error due to which seniority list dated 14.12.94 had to be corrected vice Shri Dayal Mehtani. For this, copy of her representation dated 28.6.2000 is annexed as Ann.R/5. Before making the correction, respondent No.2 vide his letter dated 2.11.2000 asked as to why she had submitted the representation so late in year 2000 (Ann.R/6). In response, respondent No.3 specifically explained how the seniority list dated 14.12.94 was not got noted from her and as such she made the representation when he had acquired knowledge of issuance of the said seniority list. A copy of her reply is annexed as Ann.R/7. Thereafter, respondent No.3 submitted another representation dated 24.7.2001 against assignment of seniority to her below the applicant. Copy of this is also annexed at Ann.R/8. Thus, on the basis of said representations, the entire case of assignment of seniority of respondent No.3 vis-a-vis Shri Dayal Mehtani and the applicant was thoroughly examined and it was found that respondent No.3 was entitled to seniority over and above Shri Mehtani as well as the applicant and consequently vide order dated 24.5.2002 (Ann.A/1) she was assigned seniority over and above Shri Mehtani as well as applicant.

8. Regarding applicant's contention that in compliance of railway administration's order dated 9.2.98 (Ann.A/9) the respondent should not have entertained the representation against seniority list issued prior to 1993, in year 2000, it is stated that the said instructions only regulate entertainment of representation against seniority list issued prior to 1993. However, in the present case, seniority list was issued on 14.12.94 and as such action of the respondents in correcting it was not in violation of this instruction. It is also stated that the railway administration being an employer is bound to safeguard the interest of its employees and cannot shirk its responsibilities to

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treat its employees as equal and by imparting justice to them, more so when the such aggrieved employee had given a satisfactory explanation for agitating the matter, although after some delay. Thus, once an error in the seniority list dated 14.12.94 was corrected, subsequent seniority lists also had to be corrected and correct position has been maintained till the issuance of seniority list dated 31.3.2003 (Ann.R/1). In these circumstances, the grounds taken by the applicant are also answered and that the applicant is not entitled to the relief prayed for by him.

9. No rejoinder was filed by the applicant although many opportunities were granted for it.

10. Both the parties were heard at length. In reply to the preliminary objection the learned counsel for the applicant stated that the same was not sustainable because the seniority list dated 31.3.2003 is based on wrong correctional exercise reasons of which have been amply explained in the OA and no satisfactory reply has been given by the respondents. He drew attention to covering letters of all the seniority lists referred to in the application, copies of which have been made annexures, in each of which it is clearly stated that objection, if any, should be raised within one month of the issue of the provisional seniority list but the same was not done by respondent No.3 and these provisional seniority lists acquired finality because railway administration have never ever issued final seniority lists after inviting objections. He also drew attention to the rule position indicated in Ann.A/9 and that any correction not made according to this was violative of rules and was, therefore, illegal. He also objected to the respondents' not issuing show-cause notice to him before changing his seniority below respondent No.3 in violation of principle of natural justice. He asserted that respondent No.3 was transferred to Ajmer on request and in order to favour her out of way, this

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transfer was shown as shown on administrative grounds. The rule regarding assignment of bottom seniority at the new place of posting has thus been circumvented in order to give respondent No.3 undue favour. The same has been done blatantly in violation of rules while dealing with speed type test issue at a belated stage and lastly while dealing with her representations for changing seniority in relation to Dayal Mehtani and the applicant.

11. The learned counsel for the respondents while reiterating the correctness of administrative action asserted that panel and promotion order dated 29.6.89 (Ann.R/3) was to the full knowledge of the applicant but he has not challenged the same although it shows respondent No.3 senior to him. He also objected to the learned counsel for the applicant trying to bring in new facts by quoting rules from IREM, beyond pleadings, thus far. It was also asserted that administration is bound to correct apparent mistakes and it has to be dispassionate while dealing with grievance of an employee in view of which the representations of respondent No.3 were attended to in relation to wrong assignment of seniority and speed typing test. Before concluding, he also cited case of Aligarh Muslim University & Ors. v. Mansoor Ali Khan, 2000 SCC (L&S) 965, in which the issue of non-compliance of natural justice has been discussed and it is held that issuance of notice before making any correction to apparent mistakes is not necessary. He also cited case of Dinkar Anna Patil & Anr. v. State of Maharashtra & Ors., 1999 SCC (L&S) 216, in which issue of belated correction of seniority list has been discussed and held that application did not suffer from delay and laches.

12. We have given very careful consideration to all the pleadings and arguments put forth by the contending parties. We feel that the applicant's objection to correcting seniority position of respondent No.3 after the administrative mistake regarding speed typing test was

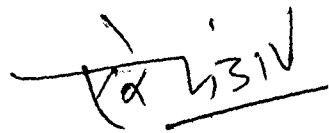
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corrected, is not sustainable. Similarly, his objection to correction in the seniority list dated 14.12.94 (Ann.A/8) is also not justified. We also feel that the respondents have very satisfactorily explained the circumstances in which both the corrections were made and in this they cannot be faulted because as employer they have to be sensitive to grievance of all employees. We cannot fail to take notice of panel dated 29.6.89 (Ann.R/3), which was definitely to the knowledge of the applicant but has been completely over-looked by him while building up his case against the respondents. It is also not understood why the applicant has placed on record one document dated 29.6.89 at page 34 to 37 of the application but has not cited it as annexure. When this is put in chronological sequence alongwith other documents, the position comes in perspective and it becomes clear that there had been some administrative lapse due to which in seniority lists dated 14.12.94 (Ann.A/8), 11.4.97 (Ann.A/11) & 24.3.2001 (Ann.A/12) respondent No.3 was shown junior to the applicant by mistake. The allegation of respondent No.3 'managing' transfer on administrative ground due to which she was saved from being placed at bottom seniority at the new place of posting, is unfounded because not only respondent No.3 but the post was also transferred to Ajmer due to administrative reasons. Due to all these facts the present application is found without substance and is dismissed with no order as to costs.



(BHARAT BHUSHAN)

MEMBER (J)



(A.K.BHANDARI)

MEMBER (A)