

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

DATE OF ORDER: 19.4.2004

OA 588/2003 with MA 28/2004

Sharwan Kumar Meena son of Shri Kanhya Lal Ji Meena aged about 52 year
Office Supdt. II, Establishment Branch West Central Railway, Kota,
Residing at 451 B, New Railway Colony, Kota Junction, Rajasthan.

Applicant

VERSUS

1. Union of India through General Manager, West Central Railway,
Jabalpur, Madhya Pradesh.

2. Divisional Railway Manager, West Central Railway, Kota
(Rajasthan).

Respondents

Mr. Nand Kishore, Counsel for the applicant

Mr. S.P. Sharma, Counsel for the respondents

CORAM:

Hon'ble Mr. M.L. Chauhan, Member (Judicial)

Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the
following reliefs:-

"(i) By an appropriate writ/order/direction, the seniority list
dated 10.5.2001 A/4 may be amended in accordance with
Railway Board's directives dated 8.3.2002 and 22.11.2002
(A/5 and A/12) as done in other scales of the same category
vide A/6 and A/7.

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- (ii) They may be further directed to act upon the seniority list dated 16.8.1999 (A/3) which was not modified by the Hon'ble Tribunal in their order dated 15.9.2002, 24.9.2002 (A/10 and A/11).
- (iii) Consequent upon the above relief, the applicant may be promoted in O.S. Grade I in accordance with seniority list dated 16.8.1999 when he is due.
- (iv) Any other direction and orders which is deems proper in the facts and circumstances of the case may kindly be allowed to the applicant.

2. The facts of the case are that the applicant was initially appointed in Railways on 5.5.1983. The applicant is presently working as O.S. Grade II in the scale of Rs.5500-9000 w.e.f. 16.5.1996. The grievance of the applicant that the seniority list is not being revised in the light of the amendment carried out by 85th Amendment of the Constitution in the grade of O.S. and for that purpose he had also submitted a representation dated 17.6.2003 (Annexure A/3) and the same has been rejected vide order dated 11.11.2003 (Annexure A/2). The applicant has again submitted a representation vide letter dated 12.9.2003 (Annexure A/9) but the same has also been rejected vide impugned order dated 11.11.2003 (Annexure A/1). On these basis, the applicant has filed this OA whereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, it has been stated that no relief can be granted to the applicant as the applicant has not challenged any of the seniority list. It is further stated that the seniority list dated 16.8.1999 was already revised by seniority list dated 10.5.2001 during the pendency of OA No. 389/2000 which came to be decided on 24.9.2002. The revised seniority list dated 10.5.2001 was issued pursuant to the common judgement dated 29.3.2001, rendered by this Tribunal in OAs Nos. 374/1993, 377/1999 and 189/1999. It is further stated that the seniority list dated 10.5.2001 is based on the letter dated 27.4.2001, issued by the General Manager, taking into consideration the 'Catch Up Principle'. After the issuance of

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seniority list dated 10.5.2001, this Tribunal in OA No. 389/2001 decided on 24.9.2001 has directed that revised seniority list be issued after the Apex Court passes its final judgement in regard to 85th amendment of the Constitution. The respondents submits that in view of the directions given by this Tribunal in OA No. 389/2000 decided on 24.9.2001, the respondents are precluded from revising the seniority list on the basis of constitutional amendment so long as matter is not finally settled by the Apex Court. As such, no relief can be granted to the applicant.

4. We have heard the learned counsel for the parties. We are of the view that in view of the specific directions given by this Tribunal while disposing of the OA No. 389/2000 vide its decision dated 24.9.2001, it is not permissible for us to grant relief to the applicant at this stage. It will be useful to quote Para No. 5 of the Decision dated 24.9.2001 passed in OA No. 389/2000, which reads as under:-

"Consequently the respondents are directed to revise the seniority list after the Hon'ble Supreme Court decides the matter of 85th Constitution Amendment."

5. The learned counsel for the applicant submits that in view of the direction given by the Railway Board vide letter dated 8.3.2002 (Annexure A/5) and letter dated 21.11.2002 (Annexure A/12), it was incumbent upon the authorities to prepare the seniority list as per guidelines issued therein and revised the seniority list of O.S. Category. We are not impressed with the submissions made by the learned counsel for the applicant, in view of the specific direction given by this Tribunal in Para No. 5 of the order dated 24.9.2001, which has been quoted above. So long as, this is not quashed or modified by the higher court, the order is binding upon the respondents. It is not legally permissible for us to ignore the findings given by the Co-ordinate Bench and pass direction contrary to observation made

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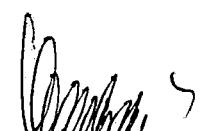
and give directions to respondents to revise seniority in the category of O.S. even prior to decision of Apex Court where issue regarding 85th Constitution Amendment is pending. According to us, the only course which may be available as per law is either to refer the matter to the Full Bench in case we want to disagree with the findings given by the Co-ordinate Bench or we leave it open ~~to~~ for the applicant to challenge the said decision before the higher forum thereby the applicant can contend that the said judgement is not binding on him as he was not a party to the earlier OA. We are of the view that applicant should resort to second option by challenging order dated 24.9.2001 passed in OA No. 389/2000 instead of referring the matter to Larger Bench.

6. In view of what has been stated above, we do not think appropriate to interfere in the matter at this stage as the Hon'ble Supreme Court has not finally decided the issue regarding 85th Constitutional amendment though we are aware that the Hon'ble Supreme Court has passes some interim order. The OA is accordingly dismissed with no order as to costs.

7. In view of the order passed in the OA No. 588/2003, there is no need to pass any order in MA No. 28/2004 and the same too is dismissed.


(A.K. BHANDARI)
MEMBER (A)

AHQ


(M.L. CHAUHAN)
MEMBER (J)