

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./K.K. NO. . . 176. . . . of 1998.

DATE OF DECISION 21-5-2001.

Sri Sripati Mohan Sarkar

APPLICANT(S)

Sri M.Chanda.

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

Union of India & Ors.

RESPONDENT(S)

Sri S.Sengupta, Railway standing counsel ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN.

THE HON'BLE MR K.K.SHARMA, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?
5. Judgment delivered by Hon'ble Admin. Member.

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.176 of 1998.

Date of Order : This the 21st Day of May, 2001.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

The Hon'ble Mr K.K.Sharma, Administrative Member.

Shri Sripati Mohan Sarkar,
Retired Shunting Zamadar,
N.F.Railway,
Panbari Road, Bijni,
Dist. Bongaigaon, Assam.

... Applicant.

By Advocate Shri M.Chanda,

- Versus -

1. Union of India
through the General Manager,
N.F.Railway, Maligaon,
Guwahati-12.

2. Divisional Railway Manager,
Alipurduar Division,
N.F.Railway,
P.O. Alipurduar Junction,
Dist. Jalpaiguri,
West Bengal.

3. Shri Jogendra Thakur,
Shunting Master Gr.I,
N.F.Railway,
New Bongaigaon, Assam.

... Respondents.

By Shri S.Sengupta, Rly. standing counsel.

O R D E R

K.K.SHARMA, ADMN MEMBER,

By this application under Section 19 of the Administrative Tribunals Act 1985 the applicant has challenged the Order No. E/208/2/0A/25/93 dated 10.2.98 and has prayed for promotion to the post of Shunting Zamadar with effect from 10.10.1984, Shunting Master-II with effect from 16.7.87 and Shunting Master-I with effect from 7.8.89.

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2. The applicant was appointed as Porter by appointment letter dated 20.7.61 and he was promoted as Pointsman B on 1.5.63. It is stated that as per the criteria laid down in the Standing AVC (avenue of promotion chart) the promotion to the cadre of Shunting Jamadar is by seniority in the cadre of Pointsman Grade-B. The applicant claims that he was senior on account of length of service to respondent No.3, Jogendra Thakur. The applicant was promoted to the post of Pointsman B on 1.5.63 while the respondent No.3 was promoted to the post on 26.6.63. The applicant was promoted to the post of Shunting Jamadar on 7.8.89 on ad hoc basis in the scale of Rs.1200-1800/- while his junior was promoted as Shunting Master I in the brought scale of Rs.1400-2300/-. The applicant filed the matter of his supersession to the concerned authorities and prayed for redressal of his grievance on 10.12.90. The N.F.Railway Mazdoor Union, Bongaigaon also submitted a representation pointing out the anomaly on 17.1.91. By letter dated 30.10.92 the applicant was informed that his seniority did not permit inclusion of his name in the field of eligibility in the selection of Shunting Jamadar held in 1984. The applicant appeared for selection to the post of Shunting Jamadar on 1.2.93 and on the basis of the interview he was promoted as Shunting Jamadar on 26.2.93. The date of promotion of the applicant as well as respondent No.3 under different cadre are as under :

	<u>"Sri S.M.Sarkar,</u> <u>Applicant</u>	<u>Sri Jogendra</u> <u>Thakur, respondent</u> <u>No.3.</u>
Date of appointment as Porter	24.7.61	21.6.62
Promotion to P/Man B	1.5.63	26.6.63
Promotion to C/Man	22.9.67	-
Promotion to P/Man I	-	20.1.73
Promotion to Shunting Jamadar	26.2.93	10.10.84
Promotion to Shunting Master II	-	16.7.87
Promotion to Shunting Master I	-	7.8.89

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The applicant submitted that he has been superseded illegally and he was not considered for promotion to the post of Shunting Jamadar on 10.10.84. Being aggrieved by the action of the respondents the applicant approached this Tribunal by filing O.A.25/93. The Tribunal disposed of the O.A. on 15.12.1997 directing the respondents to consider the case of the applicant afresh and to pass a reasoned order within one month from the date of receipt of the order. Thereafter the applicant made a representation to respondent No.2 on 23.12.97 praying for review of his case. It was replied by the respondent No.2 by his letter dated 10.2.98 rejecting the prayer of the applicant on the ground that he did not come into the field of eligibility because of his seniority position in Cabinman-I. It was informed that respondent No.3 Shri Jogendra Thakur was promoted because of his seniority in Pointsman-A. Being aggrieved against this order dated 10.2.98 the applicant has filed this O.A. challenging the action of the respondents. It is submitted that the action of the respondents is illegal as they have promoted the junior of the applicant.

3. The respondents have filed their written statement. They have disputed the applicant's claim and have stated that the claim of the applicant is time barred as the cause of action relates back to the year 1984. It is stated that the applicant's case is that he was superseded in the post of Shunting Jamadar in the year 1984 and subsequent promotion to the post of Shunting Master by respondent No.3 who according to the applicant was junior to him as Pointsman 'B'. According to the respondents the applicant's claim is that seniority as Pointsman B is the basis for further promotion. It is submitted that as per the prevailing AVC (avenue of promotion chart) the applicant and

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from Pointsman B respondent No.3 had to be promoted either as Cabinman-II by option or Cabinman-I by seniority (from Cabinman-II only), or as Pointsman A by seniority and thereafter to the next post of Shunting Jamadar, Shunting Master etc. The post of Shunting Jamadar has to be filled up from the eligible candidates of the following :

"(i) Pointsman 'A' cadre; and

(ii) Cabinman-I and Cabinman-II cadres; assigning their inter-se-seniority based upon the original seniority as Pointsman 'B'."

The applicant had opted for Cabinman -II and was promoted as Cabinman on 22.9.67. The respondent No.3 Sri Jogendra Thakur remained in the Pointsman stream and was promoted as Pointsman A on 20.1.73. These cadres are different and the seniority list of both stream (Cabinman side and Pointsman A side are maintained separately). The applicant's name appeared at sl.No.172 of Cabinman's seniority list as on 1.4.80., on the basis of his joining this cadre. The name of respondent No.3 appeared at sl.No.112 of Pointsman A seniority list as on 1.4.81 which was determined on the basis of date of promotion to the cadre/grade. In 1984 it was proposed to hold a selection for filling up 40 vacancies of Shunting Jamadar. The selection was open to both cadre of Cabinman and Pointsman A. The selection was to be conducted in the following stages :

1. No.of staff to be called in the selection decided by adopting $3 \times$ formulae i.e. 3 times the number of vacancies.
2. Separate lists of eligible candidates to be prepared for each stream/catefory separately adopting $3 \times$ formulae and based on their seniority in that individual cadre like Cabinman or Pointsman A.
3. Both the lists of eligible candidates as reflected in the individual seniority lists of Cabinman and

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Pointsman A prepared separately, are clubbed together and one combined list of eligible candidates (adopting 3 X formulae) is prepared out of this combined list.

4. At the time of the preparation of this list out of the combined list, the inter-seniority and eligibility of the candidates who are to be called by adopting 3 X formulae from this combined list, is fixed with reference to their base seniority as Pointsman B and the personnels as included in this final list is allowed to appear in the test examination for selection of personnels for the post."

As against 40 vacancies 120 candidates are to be called from amongst the senior hands of both the streams i.e. Cabinman and Pointsman A and for this the following process were adopted :

- "1) At the first stage, cadrewise lists for Cabinman, and for Pointsman 'A' were prepared separately or applying the 3 X formulae, i.e. 120 for Cabinman and 120 for Pointsman A, by consulting their cadrewise seniority position in that particular cadre i.e. those staff who are within the 120 seniority position in that particular cadre seniority list could be accommodated in such respective lists.
- 2) In the second phase, both the cadrewise lists were clubbed together and one list of 120 person was prepared out of the 240 staff in the combined list by application of 3 X formulae and by considering their (i.e. these 240 persons) inter-se-seniority position based on the basic seniority of these 240 person as Pointsman B.
- 3) In the third stage these 120 persons (i.e. 3 times the number of posts), whose inter-se-seniority position as Pointsman B permitted them to be included within list for 120 personnel were called before the selection for filling up of 40 vacancies of Shunting Jamadar."

As the applicant's name could not find place in 120 persons of Cabinman cadre (based on the date of joining in the cadre as Cabinman), the applicant being found place in serial no. 172 in the Cabinman's seniority list, the

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applicant's name remained excluded in the said combined list of both cadres also prepared in the second phase of preparation of eligible candidates who could be allowed to appear in the selection. Though respondent No.3 was junior to the applicant in consideration of the date of appointment in service as Porter and Pointsman B, he enjoyed a higher seniority position (Sl.112) within his category of Pointsman A and also in the combined list of 240 persons. In the selection for the post of Shunting Jamadar respondent No.3 figured at seniority position 58 in the final list of candidates and called for the test and he was declared selected for the post of Shunting Jamadar and he also got promotion to the subsequent grade of Shunting Master taking the benefit of selection as Shunting Jamadar. The applicant could not be selected in 1984 as the seniority position in Cabinman was low and his name could not be included in the initial list of 120 Cabinman. The applicant was intimated about the cause for which he could not be called for selection. The applicant retired and received his settlement dues. After 5 years of his retirement he has filed this application. It is stated that seniority position is not a criteria for getting a call for the post of Shunting Jamadar. As per the existing AVC to get call for selection to the post of Shunting Jamadar it was prerequisite that the candidates should have been promoted from Pointsman B to the post either as Cabinman II by option of Cabinman-I by seniority only or promoted to the Pointsman by seniority and that individual seniority position in particular cadre like Cabinman or Pointsman-A in each category list which is prepared at 3 times the number of vacancies. The two category lists prepared separately for Cabinman and Pointsman are clubbed together

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by amalgamation of these two cadre and the final list of candidates ~~be~~ called for selection is to be prepared only from those candidates whose names appeared in the combined list after screening for fixation of the inter-se-seniority position by verifying their base seniority as Pointsman B. The relevant rule for the promotion to Shunting Jamadar is re-produced below :

"For promotion to the posts of Shunting Jamadars in grade Rs.225-350(RS) from Cabinman Gr.II/Pointsman 'A' in scale Rs.210-270 and Cabinman grade I in scale Rs.225-308 the inter-se seniority will be counted from the original seniority from Pointsman 'B'/Gatekeeper in scale Rs.200-250."

It has been submitted that the allegation made by the applicant are baseless. The applicant was informed of the reason in reply to his representation dated 23.12.97 that he was not eligible to be called for selection for the post of Shunting Jamadar in 1984, due to his seniority position in his category of Cabinman.

4. We have heard the parties at length and also considered the submission made by Mr M.Chanda, learned counsel for the applicant and Mr S.Sengupta, learned Railway standing counsel. Mr Sengupta pointed out that the applicant was referring to the rule which was added in the year 1990. While the rule applicable to the applicant was dated 7.8.80. The relevant rule as referred from 1990 is reproduced below :

"promotion to the post of Shunting Jamadar should be made on the basis of combined seniority of Leverman-I, Cabinman-I and Pointsman 'A' in grade Rs.950-1500/- The inter-se-seniority among these categories will be determined on the basis of seniority as Pointsman 'B'.

However, in their respective categories, Cabinman-I, Pointsman 'A' etc. will have their seniority based on the date of promotion to that category."

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Comparing the rule effective from 1990 it is seen that the last part of the rule "However, in their respective categories, Cabinman-I, Pointsman 'A' etc. will have their seniority based on the date of promotion to that category" were not there in the 1980 rules. As brought out by the respondents, the respondent No.3 was senior to the applicant in the category of Pointsman 'A' and was from a different stream.

5. As seen above, promotion to the post of Shunting Jamadar is from the cadre of Pointsman A and Cabinman-I cadre and not from Pointsman B. The selection process followed by the respondents involved different stages. The respondents prepared two lists for 40 posts of Shunting Jamadars as under :

- i) 120 Pointsman 'A'
- ii) 120 Cabinman.

The respective position of the applicant and respondent No.3 in their cadres were as under :

"(i) Cabinman A - Applicant's name appeared at sl. No.172 in the list of his cadre.

(ii) Pointsman A- Name of respondent No.3 appeared at sl.No.112 in the list of his cadre."

At the first stage, the applicant's name got excluded on account of his low position in the seniority list of Cabinman. In the second stage the lists of 120 Pointsman A and 120 Cabinman were clubbed together and another list of 240 persons was prepared, considering their inter-se-seniority as Pointsman B. In this list the name of the respondent No.3 appeared at sl.No.58 and he got selected for the post of Shunting Jamadar. For the reason that the applicant's name did not figure in the initial list of 120 Cabinman, he was not considered for the post. The selection process adopted by the respondents

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was fair and no violation of any rule is found. The application is disposed of as above. There shall, however, be no order as to costs.

IC (K.K.Sharma)
(K.K.SHARMA)
ADMINISTRATIVE MEMBER

D.N.Chowdhury
(D.N.CHOWDHURY)
VICE CHAIRMAN

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