

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 353 of 2005

Jabalpur this the 18th day of July, 2006

Hon'ble Dr. G.C. Srivastava, Vice Chairman
 Hon'ble, Mr. A.K. Gaur, Judicial Member

Ajay Kumar Joshi Staff No.00993130 aged
 About 45 years, S/o Shri S.B. Joshi,
 Section Enginer (COACH-REPAIR), C.R.W.S.
 Nishatpura, West Central Railway Bhopal
 M.P.

Applicant

(By Advocate – Shri L.S. Rajput)

Versus

1. Union of India,
 Through, General Manager,
 West Central Railway,
 Indira-Market, Near Railway
 Station, Jabalpur (M.P.) 482001
2. Chief Works Shop Manager,
 Coach Rehabilitation Work
 Shop (CRWS) Nishatpura,
 West Central Railway
 Bhopal (M.P.)

Respondents

(By Advocate - M.N. Banerjee)

ORDER

By Shri A.K. Gaur, Judicial Member

By means of the aforesaid Original Application, the applicant has prayed for quashing the impugned seniority list of Section Engineers (Coach-repair) Grade Rs.6500-10500 dated 31.8.2004 (Annexure-A-1) to the extent, it relates to the wrong seniority position of the applicant and by holding that the applicant is due for his original seniority as Section Engineer Grade-I, w.e.f. 1.3.93 and also for quashing the part of office order dated 15.3.2005 (Annexure-A-3) to the extent it says that seniority of the applicant shall be determined from the date of restoration, holding that on restoration as S.E-I, the applicant is entitled for his original seniority w.e.f. 1.3.93.

2. The grievance of the applicant is that by the impugned seniority list dated 31.8.2004, the date of promotion of the applicant as Section Engineer (Coach Repair) has been changed from 1.3.93 to 10.4.2003 and thereby lowering the seniority position of the applicant from serial No. 1 to Sr. No. 5 in the seniority list.

3. The applicant was originally promoted in the grade of Section Engineer Rs. 6500-10550 w.e.f. 1.3.93 copy of the promotion order dated 15.11.95 has already been annexed as Annexure-A-4 to the Original Application. It is urged on behalf of the applicant that he is senior most Section Engineer in the cadre and while working as Section Engineer he was served with a major penalty charge sheet on 20.5.2000. The main charge against the applicant is "negligence of work" in as much as, that he prepared the estimate for the work of supplying, fixing and testing of computer cable amounting to Rs.5.50 lacs, without conducting any market survey for the existing rates of materials. A departmental enquiry under Rule 9 (2) of Railway Servant (D & A) Rules, 1968 was held and finally it was concluded that the charges are proved against the applicant.

4. The disciplinary authority (Deputy Chief Mechanical Engineer, Bhopal) imposed the penalty of reducing the applicant to the lower grade of JE-I in the pay scale of Rs.5500-9000 for indefinite period until he is found fit by the competent authority to be restored to the higher grade of Section Engineer and his pay was fixed at Rs. 7600/-. It was also clearly specified in the order of punishment that "on restoration the period of reduction will have the effect on his seniority". Against the punishment order dated 17.11.01(Annexure-A-5), the applicant has preferred statutory appeal, which was rejected vide order dated 18.4.2002 (Annexure-A-6(a) against which the applicant has preferred a revision petition and the same was also rejected on 29.8.2002 (Annexure-A-6(b).

5. It was pointed out that OA No.87 of 2003 was earlier filed by the applicant challenging the order of disciplinary authority. On 14.3.2003 an application was moved by the applicant before

competent authority for reviewing his case. In view of his performance during the penalty period the competent authority had agreed to revoke the punishment & promote him as S.E.-I, but on the condition of withdrawal of the OA No.87 of 2003. Accordingly application was moved by the applicant for withdrawal of OA and the same was got dismissed as withdrawn on 28.4.2003.

6. According to the applicant, the competent authority has revoked his punishment, passed order of his promotion as S.E.-I and his pay was restored to Rs.8100/- in the promoted grade, as if there was no punishment treating the punishment as non cumulative. It is also urged on behalf of the applicant that for the first time, after formation of new West Central Railway Zone, a provisional integrated seniority list of Technical Supervisors was published by respondent No.1 on 10.5.2004, which was circulated by respondent No.2 on 10/11.6.2004. In the provisional seniority list, the date of promotion of the applicant was shown as 10.4.2003, instead of 1.3.93. Immediately, the applicant represented against the wrong seniority on 5.7.04 (Annexure-A-10a) and followed by another representation dated 17.4.2004. After rejection of the representation of the applicant a provisional seniority list dated 31.8.2004 (Annexure-A-1) was issued. In this seniority list, the name of the applicant has been placed at Sr. No.5 with the date of promotion as 10.4.2003 in grade of Rs.6500-10500 (RSRP) below his juniors from Sr.Nos.1 to 4. The applicant again represented on 14.9.2004 against the provisional seniority list, but his representation was rejected vide order dated 15.3.2005 (Annexure-A-3). In this order it was clearly mentioned that the fixation of seniority of the applicant has been done from the date of restoration to the post of S.E-I, w.e.f. 10.4.2003 in accordance with para 322 (ii) (b) of IR Manual.

7. The respondents have filed a detailed counter reply in the aforesaid case and clearly contended that the competent authority reviewed the case of the applicant taking into consideration performance of the employee, as per personal record and confidential reports along with working report, and found him fit to be restored to

the original higher grade post of Section Engineer w.e.f. 10.4.2003. In this order, it is clearly mentioned that seniority of the applicant as Section Engineer grade Rs.6500-10500 (RSRP) will be determined from the date of restoration, keeping in view the extant instructions. The applicant was given seniority in the grade of Section Engineer w.e.f. 10.4.2003. It is further mentioned that in the seniority list dated 31.8.2004, the seniority position of the applicant has been shown at Sr. No.5 because his seniority position was changed from Sr. No.1 to Sr. No.5, due to the fact that he was imposed with punishment of reduction from grade of Section Engineer grade Rs.6500-10500 (RSRP) to the lower grade of Junior Engineer-I Gr.Rs.5500-9000 (RSRP). It is clearly stated by the respondents in their reply that the seniority position of the applicant in the seniority list notified on 31.8.2004 was changed due to imposition of penalty of reduction from Section Engineer grade Rs.6500-10500 to Junior Engineer Grade-I Rs.5500-9000, until he is found fit by the competent authority to be restored to the higher grade of Section Engineer. According to the respondents, he was found suitable for restoration to the grade of Section Engineer w.e.f. 10.4.2003. The seniority of the applicant on restoration to the grade of Section Engineer has been determined in accordance with the provisions of Indian Railway Establishment Manual Vol-I para 322 (ii) (b) which is being reproduced herein under:-

“Where the period of reduction is not specified in the order imposing the penalty of reduction, the railway servant should be deemed to be reduced for an indefinite period, i.e. till such date as, on the basis of his performance subsequent to the order of reduction, he may be considered fit for promotion. On repromotion, the seniority of such a railway servant should be determined by the date of repromotion. In all such cases, the person loses his original seniority in the higher service, grade or post in entirety. On repromotion, the seniority of such a railway servant should be determined by the date of promotion without regard to the service rendered by him in such service, grade or post prior to his reduction”

In view of the aforesaid settled legal provision, the applicant was given seniority in grade of Section Engineer w.e.f. 10.4.2003 i.e. from

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the date of restoration in that grade after completion of penalty as shown in seniority list dated 31.8.2004. In para 4.5 of the reply, it is specifically mentioned by the respondents that no such condition was put before the applicant to withdraw the OA No.87/2003. The applicant himself decided to withdraw the aforesaid Original Application because he was restored to higher grade of Section Engineer and this fact can be verified from the record itself. The respondents have also stated in their reply that the contention of the applicant that he was restored to higher grade as if there was no punishment treating the punishment as non-cumulative is denied. The restoration of the applicant with the higher grade of Section Engineer was the logical conclusion of the earlier punishment imposed for reduction to the lower grade of JE-I until he is found fit by the competent authority to be restored to higher grade of Section Engineer.

8. The applicant has also filed rejoinder in this case and has maintained the same stand which was taken in the OA. It has also been stated in the rejoinder that the punishment awarded by the disciplinary authority to the applicant was void ab initio. In the speaking order of the competent authority there was no such order regarding the loss of seniority after restoration. The punishment order is void because it is on a printed proforma and consists of such a punishment, which was not included in the speaking order. It was also stated in the rejoinder that the Railway Board vide order dated 24.9.2002 have clearly warned the authorities not to pass disciplinary orders on printed forms. Learned counsel for the applicant vehemently argued that no such penalty of Reversion could be imposed for an indefinite period with a view to buttress the said contention, learned counsel for the applicant has relied on following cases :-

- (i) 1990 (1) SLJ (CAT) 299 = Ram Kishore Vs. UOI
- (ii) 2005 (1) ATJ 258 = N.C. Jena Vs. UOI

9. Having heard learned counsel for the parties in greater detail, we are of the considered view that the competent authority has rightly promoted the applicant as SE-I, w.e.f. 10.4.2003 and assigned him

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seniority in accordance with the provisions of para 322 (ii) (b) of I.R. Manual.

10. We are also inclined to hold that the seniority position of the applicant has been changed due to imposition of penalty of reduction from Section Engineer-I grade Rs.6500-10500 (RSRP) to Jr. Engineer grade Rs.5500-9000/- until he is found fit by the competent authority to be restored to the higher grade of Section Engineer w.e.f. 10.4.2003.

11. In the instant case the period of reduction is not specified in the order of penalty of imposition of reduction and as such the Railway servant shall be deemed to be reduced for an indefinite period i.e. till such date as on the basis of performance subsequently to the order of reduction, he may be considered fit for promotion. It is clearly laid down in para 322(ii)(b) that on promotion the seniority of such Railway servant shall be determined by the date of promotion. "In all such cases, the person loses his original seniority in the higher service, grade or post in entirety. It is further clarified in the same provision that on promotion the seniority of such a railway servant should be determined by the date of promotion without regard to the service rendered by him in such service, grade or post prior to his reduction." In view of the aforesaid legal provision the applicant has rightly been given the seniority in the grade of Section Engineer w.e.f. 10.4.2003 i.e. the date of restoration in that grade after completion of penalty as shown in the seniority list dated 31.4.2004. It is clearly stated in the order of punishment dated 10.4.2003 that on restoration the period of reduction will have effect on ~~your~~ ^{his} seniority. This clause was retained in the aforesaid order of imposition of penalty, which was signed by the disciplinary authority, as the period of reduction to lower grade was not specified in the speaking order and thus the same was meant for indefinite period until the competent authority reviews the case of the applicant and found him fit to be restored on higher grade.

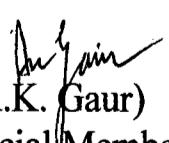
12. The petitioner has miserably failed to challenge the order of the appellate authority dated 18.4.2002 and revising authority order dated

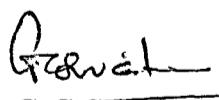
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29.8.2002 and the same has already become final. This is also one of the reasons for not giving any relief to the applicant. The contention of the learned counsel for the applicant that he was restored to higher grade, as if there was no punishment treating the punishment as non-cumulative is without any substance. The restoration of the applicant to the higher grade of Section Engineer was the logical conclusion of the earlier punishment imposed of reduction to the lower grade of Jr. Engineer grade-I, until found fit by the competent authority to be restored on higher grade of Section Engineer. From the perusal of the punishment order, it is nowhere found that the punishment is meant to be non-cumulative. The notice of implementation of the penalty dated 17.1.2001 clearly mentions that on restoration the period of reduction will have the effect on seniority. Similarly in the order of restoration dated 10.4.2003 (Annexure-A-2) it is clearly and specifically mentioned that seniority of the applicant in Section Engineer grade will be determined from the date of restoration.

13. The case laws cited by the learned counsel for the applicant are not at all applicable to the facts of the present case. The seniority of the petitioner has been determined in accordance with the provisions of para 322 (ii) (b) of Indian Railway Establishment Manual, and does not call for any interference by this Tribunal.

14. In view of the observations made above and looking to the provisions of Indian Railway Establishment Manual Vol-I para 322 (ii) (b), we are not inclined to interfere with the office order dated 15.3.2005 and seniority list dated 31.8.2004. This OA deserves to be dismissed. Accordingly the same is dismissed, no order as to costs.


(A.K. Gaur)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman