

CV

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**JABALPUR BENCH,**  
**JA BALPUR**

**Original Application No. 415 of 2005**

**Jabalpur, this the 10<sup>th</sup> day of October, 2006.**

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

Baboo Lal, S/o Shri Banshi Lal, Aged about 52 years,  
Cabinman, West Central Railway, Railway Station  
Ganjbasoda, Ditt.Vidisha

**-Applicant**

(By Advocate – Shri S.K.Nagpal)

**V E R S U S**

1. Union of India, Through : General Manager, West  
Central Railway, Jabalpur.

2. Divisional Railway Manager, West Central Railway,  
Bhopal Division, Bhopal,

3. Shri Narmada Prasad, S/o Shri Mool Chand, C/o Chief  
Yard Master, West Central Railway, Itarsi

**-Respondents**

(By Advocate – Shri S.P.Sinha)

**O R D E R**

**By Dr.G.C.Srivastava, VC.-**

Through this Original Application, the applicant has  
challenged the order dated 27.3.2003/10.4.2003 (annexure A-1)  
issued by the office of the Divisional Railway Manager, Bhopal  
intimating the applicant that the benefit of being a scheduled caste  
(for short 'SC') would be given to him with effect from 10.1.2003.  
The applicant has also challenged the order dated 11.7.2003  
(annexure A-2) through which respondent no.3 i.e. Narmada

G

(2)

Prasad was promoted to the senior scale of Rs.4000-6000, allegedly ignoring the claim of the applicant. The applicant has claimed the following main relief :-

"(i) quash the impugned order Annexure - A/1 being arbitrary/illegal/unjustified.

(ii) direct the respondents to give the benefit of Schedule Caste to the applicant from the date of his entry in service and fix seniority accordingly and grant all consequential benefits flowing therefrom.

(iii) promote the applicant to grade of Rs.4000-6000 from the date his junior respondent no.3 has been promoted with all consequential benefits including arrears of pay and allowances".

2. The applicant has also filed an application for condonation of delay on the ground that he had submitted a representation to the respondent no.2 on 26.8.2004 and was hopeful that his grievance would be redressed and that is why he did not approach the Tribunal earlier. The applicant claimed that the delay in filing the OA was neither willful nor deliberate but because the applicant, being a low paid employee, wanted to avoid litigation. The respondents, in their reply, have opposed the condonation of delay. After considering the grounds stated by the applicant, we are of the view that the delay can be condoned. Accordingly, the delay in filing this OA is condoned.

3. The case of the applicant is that he was appointed as Assistant Pointsman on 26.5.1979 and was promoted as Pointsman Grade 'A' on 6.11.1989. At the time of his appointment, he claims, he submitted a certificate dated 15.5.1979 (annexure A-3) issued by the competent authority certifying that he belonged to the SC, but for reasons not known to him, he was not at that time given the benefit of being SC. The applicant alleges that arbitrarily the respondents have decided to give him the benefit of SC with effect from 10.1.2003 and not from the date of his initial appointment i.e.

G

(3)

26.5.1979 and have, in the meanwhile, promoted respondent no.3 vide order dated 11.7.2003 to the post of Cabinman in the scale of Rs.4000-6000 ignoring the claim of the applicant, who is senior to respondent no.3. Accordingly, the applicant has prayed that the respondents should be directed to give him the benefit of being an SC right from the date of his entry in service and promote him to the grade of Rs.4000-6000 from the date respondent no.3 has been promoted with all consequential benefits.

4. Opposing the prayer of the applicant, the respondents have submitted in their reply, that the applicant was appointed as Assistant Pointsman on 26.5.1979 as a general category candidate and not as an SC candidate. It is denied by the respondents that the applicant had submitted his caste certificate at the time of his initial appointment. In fact, for the first time the SC certificate of the applicant was brought to the notice of the respondents on 27/28.3.2002 when the Central Railway Mazdoor Sangh - a recognized union - made a representation to the DRM, Bhopal stating that the applicant belonged to SC community and in proof thereof enclosed the caste certificate (annexure A-3). The representation was considered in the meeting of the Permanent Negotiation Machinery on 27/28.3.2002, in which the union requested that since the applicant has produced the SC certificate, he should be promoted at par with his junior SC candidate Dayaram Prabhu as Cabinman in the grade Rs.4000-6000 (annexure R-2). Since the certificate was very old and not produced by the applicant himself and came to the notice of the respondents nearly 23 years after the initial appointment, it was sent for verification to the issuing authority on 3.12.2002. The issuing authority confirmed the genuineness of the certificate through letter dated 10.1.2003 (annexure R-4). After verification, the applicant was given the benefit of being an SC and he was given promotion with effect from 1.11.2003, when his immediate

G

junior SC candidate Sannoolal Deene had been promoted. The applicant has also been paid arrears of pay from that date and his seniority has been fixed accordingly.

5. It has further been submitted by the respondents that a seniority list of Pointsman 'A' was published on 15.1.1996 (annexure R-1) in which the name of the applicant was shown at serial no.378/376 as a general candidate, whereas respondent no.3 was shown at serial no.368/366 as an SC candidate, but the applicant neither made any representation against his seniority nor he disputed having not been shown as an SC candidate. The said seniority list, therefore, got a finality and this issue cannot now be challenged after a lapse of nearly 9 years. Since the respondent no.3 is senior to the applicant as per this seniority list, the claim of the applicant to get promotion with effect from the date on which respondent no.3 got promotion cannot be ~~accepted~~ <sup>entertained on</sup>. He has already been given promotion with effect from the date when his immediate junior was promoted vide order dated 15.4.2005 (annexure R-5). The applicant has accordingly been allowed seniority, pay fixation, and arrears and hence no further relief can be claimed by him.

6. In his rejoinder, the applicant has submitted that in the seniority list of Pointsman 'A' issued on 16.8.1991 (annexure A-8), the applicant is shown at serial no.390 whereas the name of respondent no.3 appears at serial no.461 and hence the applicant has been senior to respondent no.3 and should, therefore, get promotion on the same date from which respondent no.3 was promoted. The applicant also alleges that there has been lapse on the part of the respondents, who have either misplaced the certificate that was submitted by him at the time of his appointment in 1979 or did not take note of the same and have failed to record that he belonged to SC category. Accordingly, the applicant reiterated that he deserves to be promoted as Cabinman

grade Rs.4000-6000 with effect from 11.7.2003 and not with effect from 1.11.2003 as ordered by the respondents vide order dated 15.4.2005 (annexure R-5). The applicant also claims that he should be placed above respondent no.3 in the seniority list as he has always been senior to him and his seniority cannot be down graded without any justification. The applicant further submitted that in his service record, his caste has been mentioned as Khangar which is included in the list of SC and, therefore, it is proved beyond doubt that he had submitted his caste certificate at the time of his appointment and he cannot be penalized for the lapse committed by the respondents in not recording Khangar as an SC.

7. We have heard the arguments advanced on behalf of the parties and have also gone through the material on record.

8. On perusal of the seniority list of Pointsman as circulated on 16.8.1991 (annexure A-8), it is seen that the applicant has been shown as senior to respondent no.3, but in the revised list that was issued on 15.1.1996 (annexure R-1), the position has been reversed and respondent no.3 was shown senior to the applicant. In this seniority list he has been shown as of general category whereas respondent no.3 has been shown as SC category. There is nothing on record to show that the applicant had submitted any objection to this seniority list. This <sup>assertion on</sup> ~~statement~~ of the respondents has not been controverted by the applicant in his rejoinder. In view of this, the submission of the respondents that this seniority list has become final and cannot be challenged after a lapse of 9 years carries weight.

9. The applicant has not given any convincing evidence to support his contention that he had submitted his caste certificate at the time of his initial appointment in 1979. The fact that his caste i.e. Khangar is mentioned in his service record (annexure R-6) does not conclusively prove that he had submitted his SC certificate at the time of his initial appointment. It can, therefore,

61

be reasonably believed that the respondents came to know of the SC status of the applicant for the first time on 27/28.3.2002 when the union raised this issue. At that time also it was not mentioned that the applicant had submitted this certificate at the time of his initial appointment and, that he should get the benefit of being an SC right from the date of his initial appointment.

10. The respondents cannot be found fault with for getting the certificate verified by the issuing authority as it had been presented not by the applicant himself but by the union and that too more than 20 years after the initial appointment. They cannot also be found fault with for not giving the benefit of SC status to the applicant from the date of initial appointment. However, since it has been admitted by the respondents that the fact of the applicant being an SC candidate came to the notice of the respondents on 27/28.3.2002 and this claim was found correct after verification, equity and fairness demands that this benefit should be extended to him with effect from 27/28.3.2002 and not from a later date after the verification report was received. We are, therefore, inclined to grant this much relief to the applicant that the benefit of being an SC should be extended to him with effect from 27/28.3.2002 and not from 10.1.2003. Accordingly, if any junior person has been promoted on or after 27/28.3.2002, the applicant should also be promoted with effect from the same date along with all consequential benefits. It goes without saying that for this purpose the seniority list issued on 15.1.1996, which has already become final, should be the basis.

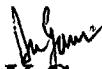
11. In view of the above, we quash and set aside the impugned order dated 27.3.2003/ 10.4.2003 (annexure A-1) and direct the respondents to extend the benefit of being an SC to the applicant with effect from 27/28.3.2002 and grant him promotion and other consequential benefits on the basis of his seniority accordingly. This direction should be implemented within a period of three

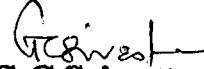
C

7

months from the date of receipt of a copy of this order. The prayer of the applicant to quash and set aside the promotion order of respondent no.3 is rejected as respondent no.3 has clearly been senior to the applicant as per the seniority list of 15.1.1996, which has become final.

12. In the result, the OA is partly allowed with the directions as contained in the preceding paragraph. No order as to costs.

  
**(A.K. Gaur)**  
 Judicial Member

  
**(Dr. G.C. Srivastava)**  
 Vice Chairman

rkv

मूलांकन सं. ओ/व्या..... जवलपुर, दि.....

प्रतिलिपि अध्योगिता:-

- (1) सचिव, उच्च जगदाधार एवं उच्च दिवान्हाज, जवलपुर
- (2) अध्येदार ~~श्री/श्रीमती/मु.~~ के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/मु. के काउंसल
- (4) वांशपाल, कोपाळ, जवलपुर राज्या  
सूचना एवं वाक्यका कार्यालय

*S. K. Nagpal*  
*02/235*  
*S. P. Singh*  
*02/238*

उप रजिस्ट्रार

*Issued  
on 12/10/06  
B*