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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 650 of 2005

Jabalpur this the ^{August}~~2nd~~ day of ~~July~~, 2006

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

Murat Lal Vishwakarma, aged about 45 years,
S/o Shri Kandhi Lal Vishwakarma, Carpenter
Grade-I (TRS) West Central Railway,
New Katni Junction, resident of 515,
Indira Jyoti Colony, Housing Board, Katni (MP)

Applicant

(By Advocate – Shri L.S.Rajput)

Versus

- UNION OF INDIA-Through
1. General Manager,
West Central Railway,
Indira-market, Near Railway
Station, Jabalpur (MP) 482001
 2. Divisional Railway Manager,
West Central Railway,
Jabalpur (MP).
 3. Shri Sita Ram S/o Shri Chetram Carpenter
Grade II (TRS) C/o Senior DEE (TRS),
West Central Railway,
Near Katni Junction (MP)

Respondents

(By Advocate – Shri H.B. Shrivastava)

ORDER

By A.K. Gaur, Judicial Member :-

By means of this OA, the applicant has prayed for quashing of order dated 28.6.2005 (Annexure-A-1) and also for issuance of a direction to respondents No.1 and 2 assigning him original seniority as Carpenter grade-III, II and I, and not to disturb the status of the applicant as Carpenter Gr.I.

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2. The brief facts of the case are that the applicant was screened for regular Group-D post and was found suitable for the post of Gangman (Group-D) and was posted as Gangman on 26.7.1990 in the grade of Rs.775-1025 (RPS). On 31.10.94 he was trade tested and posted as Trolley man in TRD cadre, after being selected in the test. In 1995 he passed the trade test for the post of Carpenter Gr.III in the grade of Rs.950-1500 (RPS) in TRD cadre and was posted as such. It is contended on behalf of the applicant that during 1995, TRD and TRS cadres were under the administrative control of one Sr. DEE, and both the cadres were functioning. He was transferred vide order dated 20.6.1995 (Annexure-A-2) and was posted as Carpenter Gr.III in TRS cadre. He was further promoted after having passed the trade test as Carpenter Gr.II on 23.7.1998. After being found suitable the applicant was further screened and promoted ^{to} for the post of Artisan Grade I as Carpenter Gr.I (TRS) in the pay scale of Rs.4500-7000 (RSRP) vide order dated 10/11.7.2000 (Annexure-A-4) wherein, it has been clearly mentioned that "promotions are provisional subject to the judgement of Supreme Court/High Court/CATs in respect of petitions/appeals pending in these Courts. The employees who are promoted may be warned that their promotions are purely temporary on trial basis and it would not confer any prescriptive right to continue in the grade in reference to their seniors." According to the applicant, the respondent No.2 published a provisional seniority list on 12.10.2000 (Annexure-A-5) wherein the date of promotion of the applicant as Carpenter Gr.I is shown as 28.7.2000 against the sanctioned post and the private respondent No.3 is just shown below the applicant as Carpenter Gr.III in the grade of Rs.3050-4590/- (RSRP) with the date of promotion as 6.1.1998 and the respondent No.3 was further promoted as Carpenter Gr.I on 12.4.2004. A show cause notice was issued to the applicant by the respondent No.2 on 26.4.2005 (Annexure-A-6) regarding refixation of seniority of respondent No.3 above the applicant. After the receipt of the show cause notice a detailed representation ^{was} ~~has been~~ submitted by the applicant on 30.4.2005 (Annexure-A-7) and after considering the

objections contained in the aforesaid representation, the respondent No.2 circulated a revised seniority list on 24.5.2005 (Annexure-A-8). In this revised seniority list the applicant is shown at S.No.1 promoted as Carpenter Grade I on adhoc basis, the date of promotion of Carpenter Gr.II is mentioned as 21.8.2002 and the name of respondent No.3 is mentioned at Sr. No.2, the date of promotion of Carpenter Gr.II is mentioned as 12.4.2004. Having aggrieved by the aforesaid action of the respondents, the applicant represented against the seniority list in which the applicant is promoted as Carpenter Gr.I on adhoc basis. Vide impugned order dated 28.6.2005, the respondent No.2 has finally down graded the seniority position of the applicant below the respondent No.3. The apprehension of the applicant is that the respondents might issue a reversion order of the applicant at any time. Hence, this OA.

3. The answering respondents have filed their reply stating that while issuing notices to the respondents, this Tribunal has passed an interim order directing the respondents to maintain the status-quo, the said order is still continuing. The case of the applicant and respondent No.3 relates to inter-se seniority amongst them on their option to come to a new cadre of TRD/TRS formed in Jabalpur Division due to electrification of some area in Jabalpur Division. The Traction Rolling Depot (in short 'TRD') came into existence w.e.f. 18.1.93, and was closed on 7.7.1999. The Traction Rolling Stock (in short 'TRS') cadre was formed in 1995, and closed on 20.8.2002. In order to meet exigencies of service and requirement of staff in the above said two newly formed cadre, options were called from the existing staff working in Railways to work in these cadres from Group-C and D employees working in various department. It is also urged on behalf of the respondents that it was made clear to such optees that all promotions given to them in the newly formed cadre will be on ad-hoc basis and they will be at liberty either to continue in the newly formed cadres or go back to their parent departments on closure of the cadres as their lien was maintained in their respected departments. The

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seniority of staff who opted to remain in the newly formed cadres has been fixed in the respective cadres on the closure as per guide lines issued by headquarters office letter dated 30.7.2002 (Annexure-R-1)

4. It is contended on behalf of the respondents that the applicant was appointed on 29.11.1983, on daily rates of pay and subsequently regularized in Group-D post w.e.f. 26.7.1990. He opted to come to TRD cadre on 31.10.1994, and after passing of trade ~~test~~^{ex} for the post of Carpenter Gr.III, ~~in~~ he was promoted as such in TRD cadre and thereafter he was transferred in TRS cadre on 23.6.1995. The promotion of the applicant to Group-C cadre was on ad-hoc basis till the closure of TRS cadre i.e. on 20.8.2002. The applicant was regularized in TRS cadre as Carpenter Gr.III in the scale of Rs.950-1500/- w.e.f. 20.8.2002. He was subsequently promoted to Carpenter Gr.II in the scale of Rs.4000-6000/- w.e.f. 20.7.1998 on adhoc basis and subsequently regularized ^{on} 21.8.2002. He was further promoted on ad-hoc basis as Carpenter Gr.I in the scale of Rs.4500-7000/- w.e.f. 11/28.7.2000 and is continuing as such. On the other hand, the respondent no.3 submitted a representation against the seniority list circulated on 24.5.2005 and since both of them have ~~de~~ joined the TRS cadre when it was opened, the respondent No.3 is entitled to get seniority over the applicant in as much as that he was appointed in Engineering Department on 19.6.1982 and was regularized in Group-D post on 19.7.1989 whereas the applicant was regularized on 26.7.1990.

5. We have heard counsel for the parties and carefully perused the records.

6. The learned counsel for the applicant has submitted a comparative chart, in which the particulars of the applicant and respondent No.3 are shown. It has been argued by the learned counsel for the applicant that from the perusal of the aforesaid chart, it is crystal clear that the applicant is senior to respondent No.3 from the date of closure ^y of TRD cadre from 7.7.1999 and subsequently in TRS

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cadre in all grades and all times. According to the applicant, a Group-D employee will get seniority from the date of joining the cadre.

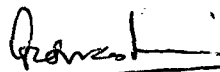
7. On the other hand, the learned counsel for the respondents has invited our attention towards letter dated 30.7.2002 (Annexure-R-1) issued by the headquarters office, Personnel Branch, Mumbai, CST wherein, the principles are mentioned with regard to seniority of non-gazetted staff of TRS cadre of Jabalpur and NKJ. In paragraph 5.2 of the said letter it is mentioned that "The seniority of staff transferred from different units of Central Railway on or before 20.8.2002 shall be based on rules applicable to inter-se seniority depending upon the length of substantive post held by these staff in their parent cadre as on 20.8.2002." According to the aforesaid rule the date of regular appointment as Gangman of respondent No.3 is 19.7.1989, whereas the date of regular appointment of the applicant is 26.7.1990. In view of the aforesaid letter dated 30.7.2002 the seniority of such staff shall be based on the length of substantive post held by the staff in their parent department as on 20.8.2002. On the crucial date i.e. 20.8.2002 the respondent No.3 will be held senior to the applicant as per the aforesaid letter. The contention of the applicant is that he is senior to the respondent No.3 from the date of closure of TRD cadre on 7.7.1999 and subsequently in TRS cadre in all grades and all times is meaningless. It is seen from the reply that respondent No.3 was appointed in engineering department and granted monthly rates of pay from 19.6.1982 and subsequently regularized in Group-D post on 19.7.1989, whereas the applicant was granted monthly rates of pay from 29.11.1984 and subsequently regularized on Group-D post in his parent cadre on 26.7.1990. Thus, the respondents No.3 has rightly been shown senior to the applicant in Annexure-A-1. The seniority of the respondent No.3 and the applicant has been decided in accordance with the instructions contained in letter dated 30.7.2002 and in this letter it is clearly specified that "All promotion orders issued for this cadre prior to date of closure of cadre i.e. 20.8.2002 are deemed fortuitous and purely ad-hoc without any prescriptive right for the

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staff for any such posting, promotions in the grade." The learned counsel for the respondents has relied upon a decision of Hon'ble Supreme Court reported in 2005 Vol. 3 ATJ 161-**Ram Shankar Bhattacharjee Vs. Gauhati High Court** with a view to buttress the contention that **when no process of promotion was undertaken and no eligible and competing claims considered, mere posting to a superior post with higher pay does not amount to promotion, nor such posting confer any right to claim seniority.** We are fully in agreement with the aforesaid proposition of law and in our considered view the respondent No.3 has rightly been held to be senior to the applicant in the seniority list. There is not an iota of evidence to show that the applicant has been promoted regularly on 7.7.1999 in TRS, when it was closed. As a matter of fact, the applicant was working in TRS cadre from 13.3.1996 and could not have been promoted in TRD when he was not on the strength of TRD cadre. The respondent No.3 has rightly been assigned the seniority over the applicant. The respondents have not violated the principles of natural justice and have correctly changed the seniority position of the applicant after due notice to him. We are of the considered view that the seniority of the respondent No.3 has correctly been fixed in terms of instructions issued in Annexure-R-1.

8. In view of the above observations, the OA is liable to be dismissed. Accordingly, the same is dismissed. No order as to costs.


(A.K. Gaur)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

skm

पृष्ठोक्त सं ओ/न्या.....जबलपुर, दि.....

पत्तिनिधि अन्वेषित:-

(1) सचिव, उच्च न्यायालय एवं एडमिनिस्ट्रेशन, जबलपुर

(2) आदेशक श्री/श्रीमती/श्री/श्रीमती.....के कार्यालय

(3) प्रत्यक्ष श्री/श्रीमती/श्री/श्रीमती.....के कार्यालय

(4) गंधपाल, यूपीडी, जबलपुर न्यायालय

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

Issued
on 8/8/06
