

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 247 of 2001

Jabalpur, this the 28th day of April, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. A.S. Sanghvi, Judicial Member

T.Govindrajan,
son of Shri G.S.T.Chari,
aged about 50 years,
Section Engineer, Central ~~W.M.~~,
Railways, Electric Loco Shade,
Itarsi(MP) Shed

APPLICANT

(By Advocate - None)

VERSUS

1. Union of India,
through the General Manager
Central Railways, Chhatrapati
Shivaji Terminus, Mumbai(M.S.).
2. Divisional Railway Manager,
Central Railways, Bhopal(MP)
3. Shri Bashir Mohammad,
Senior Section Engineer,
A.C.Loco Shade, Central
Railways, Itarsi(MP)
4. Shri N.Janan Kumar,
Senior Section Engineer,
Central Railways, Kurla,
Car Shed, Mumbai(M.S.)

RESPONDENTS

(By Advocate - Shri M.N. Banerjee on behalf of
Shri S.P. Sinha)

O R D E R (ORAL)

By A.S.Sanghvi, Judicial Member -

The applicant, who is working as Section Engineer under the respondent no. 2, has approached this Tribunal with a grievance that he was not given the benefit of upgradation in the year 1984 and as such while his juniors i.e. respondents no. 3 and 4 have been promoted to the post of Senior Section Engineer he has remained only Section Engineer. He has claimed promotion to the post of Senior Section Engineer from the date the respondents no. 3 and 4 were given the promotion contending that his seniority was wrongly fixed in the post of Foreman and on his challenging the action of the respondents by way of OA No. 707/89 before this Tribunal,

the Tribunal had held vide its order dated 16.11.1995 that if the persons junior to him have been considered for promotion have been to the post of Foreman, the applicant ought to/ considered by the respondents. When the respondents did not consider his case in proper perspective, he had moved contempt petition No. 45/96 but the respondents therein had contended that he had not appeared in the test for the post of Foreman and since it was a selection post, he could only be promoted by way of selection. Though he contended that he was not given the benefit of upgradation of 1984 and 1993 as at that time there was no test for filling up the post and the posts were to be filled in on the basis of seniority-cum-merit. The contempt petition had come to be disposed of by the Tribunal on the ground that no junior of the applicant was considered. He had again filed an OA No. 296/97 challenging the promotion of respondents no. 3 and 4 and praying for consideration of his case by review D.P.C. but the Tribunal had dismissed the said OA vide order dated 21.3.2000 on the ground that the O.A. had become infructuous as the promotion to the applicant was also given. According to him when he was promoted as a Section Engineer the respondents nos. 3 and 4 were already working on that post and were drawing the salary in the pay scale of Rs. 7450-11500/- while he has been given the pay scale of Rs. 6500-10500/-. According to him the benefit which was extended to the respondent no. 3 vide order dated 11.12.1996 should have been extended to him and his pay ought to have been fixed accordingly i.e. he should have been given promotion to the post of Senior Section Engineer in the pay scale of Rs. 7450-11500/-.

2. The respondents in their reply have refuted the allegations of the applicant and contended inter-alia that since the applicant was not found fit for promotion by the D.P.C. he was not promoted to the post concerned. The non-promotion of the applicant in the year 1984 or thereafter was already considered by the Tribunal in OAs filed by him and as such the same cannot be agitated by the applicant in this O.A. They have contended

that at the time of upgradation of 1993 the dispute of seniority between the applicant and respondent no. 3 was decided by the Mumbai Division during the pendency of OA No. 296/97 and he was promoted in the grade of Rs. 2000-3200(Rs. 6500-10500 - RPS) from 1.1.1993 i.e. the date from which the respondent no. 3 was promoted. When this was brought to the notice of the Tribunal in OA No. 296/97, the Tribunal had dismissed the O.A. vide order dated 21.3.2000. The applicant subsequently made a representation on 1.5.2000 claiming further promotion on the post of Senior Section Engineer in the grade of Rs. 3450-11500/-. The respondent no. 3 was already promoted on that post and, therefore, the case of the applicant was also considered and his ACRs for the previous three years were examined and considered by the D.P.C. He was, however, not found fit for promotion.

3. We have heard the learned counsel for both the parties and duly considered the rival contentions.

4. It is quite clear from the reply of the respondents that the grievances made by the applicant of his non-promotion vis-a-vis his juniors respondents nos. 3 and 4, are not well founded. So far as the grievance regarding his promotion in the year 1984 or 1993 is concerned, the same had been the subject matters of the earlier O.As filed by the applicant, hence cannot be reagitated by the applicant in this O.A. Further more the reply of the respondents clarify the position that he had been given promotion on the post of Section Engineer w.e.f. 1.3.1993 i.e. from the date his junior i.e. respondent no. 3 was promoted. He, therefore, cannot make any grievance so far non-promotion to the post of Section Engineer w.e.f. 1.1.1993 is concerned. The applicant has however contended that he ought to have been promoted alongwith respondents nos. 3 and 4 w.e.f. 2.3.2000 to the post of Senior Section Engineer. The respondents have clarified that he was considered for such promotion alongwith respondent no. 3 but he was not found

fit for promotion. The right of the applicant is not to claim promotion to a particular post but to be considered for promotion. The applicant cannot, therefore, by way of right claim that he ought to have been promoted alongwith respondent no. 3 as the respondent no. 3 was his junior. The reply of the respondents nos. 1 and 2 makes it clear that the applicant was considered for promotion but when he was not found fit, he could not be promoted. The rejoinder of the applicant contains an admission that there was an adverse entry recorded in his ACRS which prevented him from getting promotion as Senior Section Engineer. This admission itself is sufficient to deny the relief prayed for by the applicant in this O.A. When the applicant was not found fit or suitable to be promoted by the competent authority, he cannot claim that because his junior was promoted earlier to him he also ought to have been promoted.

5. For the foregoing reasons, we do not find any substance in this O.A. and are of the considered opinion that the O.A. deserves to be dismissed. We, therefore, dismiss the O.A. with no order as to costs.

A. S. Sanghvi
(A.S. Sanghvi)
Member (Judicial)

M.P. Singh
(M.P. Singh)
Vice Chairman

/na/

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
चुदितिनिधि डाक्टर डिस:-
(1) सहित, उच्च राजालाय दार एसोसिएशन, जबलपुर
(2) आकेडम श्री/श्रीमती/वडुके काउंसल
(3) पत्त्यारी श्री/श्रीमती/वडुके काउंसल
(4) बंगल, लेपारा, जबलपुर न्यायपीठ
सूचना एवं आवश्यक कार्यवाही देतु

Chandras
उच्च राजालाय
12-5-04

Tusseed
12-5-04

A. P. Mandre
MP Banerjee