

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

.....

Original Application No.111/2002

Jabalpur, this the 15<sup>th</sup> day of June, 2004

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri Madan Mohan, Member (Judicial)

Shri Munne Khan  
s/o Shri Kale Khan  
aged 61 years,  
R/o Col. Ganj, Opp. Head Post Office,  
Guna-473 001 (M.P.)

...Applicant

(By Advocate: Ms. P.L. Shrivastava)

-versus-

1. Union of India through  
General Manager,  
Central Railway,  
Mumbai, C.S.T.
2. Divisional Railway Manager,  
Central Railway,  
Bhopal.

...Respondents

(By Advocate: Shri N.S. Ruprah)

O R D E R

By Madan Mohan, Member (Judicial)-

By filing the present original application, the applicant has sought the following main reliefs:

- (i) direct the respondents to properly reckon the seniority of the applicant on the post of Master Craftsman and Fitter Grade-I respectively by granting him the benefit of Master Craftsman from retrospective date and be further pleased to direct the respondents to pay the arrears of salary thereon.
2. The brief facts of the case are that the applicant was promoted to the post of Fitter Grade-I vide order dated 28.2.1991 in the scale of Rs. 1320-2040 (RPS). After the aforesaid promotion a representation was submitted to respondent no. 2 through proper channel that the applicant ought to have been promoted to the post of Fitter Grade-I in the year 1988. In the said representation dated 23.5.1997

OR

it has been clearly detailed that the applicant was transferred w.e.f. 7.7.1988 from Bima to Guna on the post of Fitter Grade-II. The applicant ought to have been posted as Fitter Grade-I but since at the material time, the then Sr. D.M.E. vide his letter dated 16.7.1988 had downgraded the said Fitter Grade-I post temporarily, as such the applicant was denied the benefit.

2.1 The respondents vide their letter dated 28.8.1988 issued the promotion list wherein it was specifically mentioned that post of Fitter Grade-I was downgraded temporarily on 16.7.1988 at Guna and, therefore, the applicant be given his seniority accordingly. The applicant ought to have been promoted to the said post in the year 1988 instead of 1991, a fact well realised by the authorities concerned. It is to mention further that employee junior to applicant i.e. one Shri Onkar Prasad Gokul was promoted from the post of Fitter Grade-I to the post of Master Craftsman in the year 1995 itself despite the fact that he was junior to the applicant. It is also explicit from the said letter that illegality has been committed in the case of the applicant and that he ought to have been promoted as Fitter Grade-I w.e.f. 28.8.1988 and therefore he is entitled to arrears of pay thereof. The grievance of the applicant was also taken up by the scrutiny committee, which is explicit from the correspondence of 3.9.1997, whereint it was decided that the applicant's seniority be reckoned from 1988 and that he be paid the arrears of Fitter Grade-I w.e.f. 1989.

2.2 Shri P.K. Shrivastava, the then Superintendent, vide his correspondence of 26.3.1998 informed the respondents no. 2 that it has already been decided that the seniority of the applicant to the post of Fitter Grade-I be



reckoned w.e.<sup>1</sup>. 1988 and he be paid arrears w.e.<sup>1</sup>. 1989. It is relevant to mention here that Shri Onkar Prasad Gokul who was much junior to the applicant was promoted to the post of Master Craftsman w.e.<sup>1</sup>. 11.6.1995 and thereby the applicant was denied and deprived of his legal benefits, despite the fact that there was necessary averments by the authorities concerned to the respondent no.2. The respondents vide their order dated 5.3.2001 promoted the applicant to the post of Master Craftsman. Instead of promoting the applicant from a retrospective date i.e. when his junior Onkar Prasad Gokul was promoted, the rights of the applicant have not only been infringed upon but also his future benefits have come to be marred inasmuch as the right which accrued to him in and about the year 1995 and despite repeated averments by the authorities, the respondent no. 2 deliberately with a mala<sup>1</sup>ide intention failed to consider the genuine request of the applicant. The applicant stood superannuated w.e.<sup>f</sup>. 31.3.2001 . The act of the respondents innot reckoning the seniority of the applicant to the post of Fitter Grade-I and not granting him the benefit of Master Craftsman from a date when his junior came to be promoted, is not only illegal, improper but mala<sup>1</sup>ide and unjustified for the facts and reasons mentioned above.

3. Heard the learned counsel for both the parties.
4. It is argued on behalf of the applicant that the respondent Railways have in its correspondence of 26.3.1988 has admitted to reckon the seniority of the applicant w.e.<sup>1</sup>. 1998 due to temporary downgrading the post. Perusal of the said document reveals that by mistake committed by the respondents due to temporary downgrading the post of Fitter Grade-I the seniority of the applicant was disturbed resulting in supersession by his junior to the post of Master Craftsman. The applicant could not approach this Tribunal due to his medical illness and he stood retired/superannuated w.e.<sup>f</sup>.

31.3.2001. Therefore, on the basis of the material on record, the applicant's seniority is to be reckoned in the post of Fitter Grade-I w.e.f. 1988 and the applicant ought to have been promoted from the date from which his junior was promoted. Our attention was drawn towards letter dated 26.3.1998 which fully supports the claim/arguments of the applicant.

5. In reply, it is argued on behalf of the respondents that on the basis of the seniority position of the applicant in the post of Fitter Grade-I, Shri Onkar Prasad was promoted to the post of Master Craftsman w.e.f. 1.6.1995 which promotion order was never challenged by the applicant. The respondents passed an order dated 22.08.1997 whereby the applicant was given proforma promotion to the post of Fitter Grade-I w.e.f. 28.08.1988 and the actual difference was paid w.e.f. 1.6.1999. But he never represented against the said order and never said that he should have been promoted from an earlier date. The applicant was further promoted to the post of Master Craftsman on 5.3.2001 (A/7). On receipt of the said letter, the applicant never represented to say that he should have been promoted to the post of Master Craftsman from an earlier date. Thus when the applicant was promoted to the post of Master Craftsman after Shri Onkar Prasad, and he can have no grievance against the placement of Shri Onkar Prasad in the seniority list of Master Craftsman dated 18.8.2000 (Annexure R-4). The applicant has not even bothered to file Annexure R-4, what does he want to challenge is thus not even placed before this Tribunal. In the seniority list dated 18.8.2000, the applicant does not even find place whereas Shri Onkar Prasad is at serial no.8. Learned counsel further argued that the applicant has not made Onkar Prasad as a party Shri/against whom he is claiming seniority, who is the necessary party in this case. Hence, no adverse order can be passed by this Tribunal against Shri Onkar Prasad without giving him opportunity of hearing, in the interest of justice. It is further argued that the relief claimed by the applicant

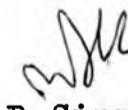
18

in the O.A. are vague as it does not mention any date from which he wants his promotion. He has simply mentioned in relief clause 8(i) to properly reckon the seniority of the applicant on the post of Master Craftsman and Fitter Grade-I respectively by granting him the benefit of Master Craftsman from retrospective date. No specific date has been mentioned. Hence, on this ground the O.A. is liable to be dismissed.

6. After hearing the learned counsel for both the parties and careful perusal of the relevant record, we find that the applicant has not challenged the promotion order of Shri Onkar Prasad dated 1.6.1995. He has also not impleaded Shri Onkar Prasad as a party in this case against whom he is claiming the seniority while he is the necessary party to be impleaded in the O.A. if any order is required to be passed against him. Since Shri Onkar Prasad has not been made a party, no adverse order can be passed against him without giving him an opportunity of hearing. We have also perused the relief claimed by the applicant which does not specify as to from which date he wants his promotion to the post of Master Craftsman and, therefore, the relief seems to be very vague and ambiguous.

7. In the facts and circumstances of the case, we find that the original application No. 111/2002 is bereft of merit and deserves to be dismissed which is accordingly dismissed. No costs.

  
(Madan Mohan)  
Member (J)

  
(M.P. Singh)  
Vice Chairman

/na/

प्रांगण सं. ओ/न्या..... जबलपुर, दि.....  
दस्तावेज आवेदन:-  
(1) सचिव, उच्च न्यायालय वाई एसोसिएटेज, जबलपुर  
(2) आवेदक श्री/श्रीमती/कु..... के काउंसल  
(3) प्रत्यर्थी श्री/श्रीमती/कु..... के काउंसल  
(4) वायपाल, कैप्पडा, जबलपुर न्यायपीठ  
सूचना एवं आवश्यक कार्यवाही द्वा  
MS. P. L. Shrivastava  
MS. Ruprajk  
Rajendra  
उप २४.६.९४

Issued  
On 24.6.94  
By