

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 178/2000

Jabalpur, this the 5th day of February, 2004

Hon'ble Shri M.P.Singh, Vice Chairman  
Hon'ble Shri G.Shanthappa, Member (J)

Baij Nath s/o Sh. Chhakodi,  
Technician Grade II (TRS)  
Token No. 250, R/o New Yard,  
Electric Loco-shed,  
Itarsi, Distt. Hoshangabad (MP).

...Applicant

(By Advocate: Shri L.S.Rajput)

-versus-

1. Union of India through  
The General Manager,  
Central Railway,  
Mumbai-CST (Maharashtra)
2. The Divisional Railway Manager,  
Central Railway,  
Habibganj, Bhopal (MP).
3. The Senior Divisional Electrical  
Engineer (TRS),  
Central Railway,  
New Yard Itarsi  
Distt. Hoshangabad (MP).

...Respondents

(By Advocate: Shri S.P.Sinha)

ORDER (ORAL)

By G.Shanthappa, Judicial Member -

The above O.A. has been filed by the applicant  
seeking the following main reliefs:-

- a) To direct the respondents to give promotions to the applicant retrospectively from the date his juniors have been promoted as Artisan Grade II & Grade I.
- b) To direct the respondents to refix the pay of the applicant and make payment of arrears, flowing from such refixation as per revised seniority.



c) To direct the respondents to complete the service particulars of the applicant correctly and place him at the appropriate place in the seniority list.

2. The brief facts of the case are that the applicant was originally appointed in Group 'D' as Ladder man on 26.7.1979 in Steam Loco-Shed at Itarsi. Subsequently, he was promoted as Pointsman in the Diesel Loco-shed where he worked from 26.1.1987 to 8.5.1990 in Group 'C' post in the grade of Rs. 950-1500/- (RPS).

2.1 Due to introduction of Electric Traction on Bhopal Division a new cadre known as Traction Rolling Stock (TRS) was formed and staff from various other 'C' cadres were screened and absorbed in the cadre. The TRS cadre was kept open upto 31.1.1995. The applicant also applied for absorption in the said cadre in response to the Notification issued by the respondents. The case of the applicant is that he was screened alongwith others and was absorbed as Technician Grade-III on 8.5.1990 in the same grade of Rs. 950-1500/- (RPS). Under the said order the applicant was transferred alongwith the post from Steam shed Itarsi to Electric Loco Shed Itarsi, where he joined on 8.5.1990.

2.2 On closure of cadre of TRS Itarsi on 31.1.1995 a provisional seniority list of Artisan staff was published on 31.3.1995. In the said seniority list, the/applicant is shown at serial no. 148. As stated above regarding posting of screened staff, the respondents have issued a Note dated 5.4.1990 which states that the staff which is listed alongwith the Note are suitable to work in TRS/ET, the staff should be transferred alongwith the post from Steam shed Itarsi to Electric Loco-shed, Itarsi. Under the said Note, they have notified as under:

"I. ARTISANS:

Grade - I	Rs. 1320-2040	- 5 Nos.
Grade- II	Rs. 1200-1800	- 1 No.
Grade - III	Rs. 950-1500	- 5 Nos."

2.3 The applicant is at serial no. 11 in Artisan Category, under the designation of Pointsman in the scale of Rs.950-1500/-. The respondents have issued the orders dated 29.12.1994 regarding closure of cadre at Loco-shed (TRS), Itarsi on Bhopal Division. Certain principles were also laid down for determining the seniority of non-gazetted staff of TRS cadre of Bhopal Division. The principle No. 2(A) is as under:-

"2A. The seniority of staff transferred from different C.Rly. units on or before 31.1.1995 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 31.1.1995."

2.4. Subsequently, the provisional list was prepared in which the service particulars of the applicant were not shown but the name of the applicant appeared at serial no.209 against which the applicant submitted his representation with the request to correctly show his service particulars in the said seniority list. On the said representation, the second respondent has published the final seniority list on 15.6.95 as per Annexure A-1 in which the respondents have mentioned the seniority of the applicant at serial no. 148 but the service particulars of the applicant were still missing and the position was again incorrect. Against the said incorrect position, the applicant submitted a representation and approached the second respondent through third respondent with the request to issue final seniority list because of the fact that he came to know that the final seniority is incorrect as juniors to the applicant have been promoted as Grade-II.

2.5 The name of the applicant was sent for trade test for the first time for promotion as Grade-II on 22.6.1995 but no trade test was conducted for want of service particulars of the applicant. The name of the applicant was at serial no. 64 in the list. The second respondent asked the third respondent to arrange for trade test in the grade of Rs.1200-

1800/- and send the result. But no test was arranged by the third respondent upto 27.12.1996. The applicant submitted repeated requests for promotion as Grade-II as juniors to the applicant were promoted long before. No promotion was ordered in favour of the applicant for want of service records and other particulars of the applicant. There was no fault on the part of the applicant, even then the request of the applicant was considered. The second respondent again published a seniority list dated 10.09.1998 as provisional in which the name of the applicant appeared at serial no. 166 but all the service particulars of the applicant were missing. As per column 7, the respondents have mentioned 'particulars not available'. The false date of birth of the applicant is mentioned as 28.1.1967 whereas the correct date of birth of the applicant is 26.07.1979. Similarly, the date of promotion as Grade-II shown as 17.12.1996 is also incorrect.

2.6 A large number of juniors to the applicant have been promoted as Grade-II, the applicant submitted his representation dated 16.11.1998, 25.11.1998, 26.3.1999 and finally on 16.7.99 followed by a legal notice sent to the respondents. When the respondents did not take any action on the representations and legal notice, the applicant approached this Tribunal by filing the present O.A. for seeking the aforesaid reliefs.

3. Per contra, the respondents have filed their reply denying the averments made in the O.A. Respondents have contended that the service record of the applicant was not traceable and on account of the same he could not be placed/ at the proper place in the seniority list. Now, the service book of the applicant has been reconstituted as per rules and he has been assigned proper seniority and given due promotion.

3.2 For promotion from Grade III to Grade II, passing of professional trade test is mandatory. As the applicant passed the trade test in first attempt, he has been promoted and

seniority has been assigned from the date his immediate junior was promoted i.e. from 20.06.1995. The service particulars of the applicant are as follows:-

"1. Date of Birth 15.06.1959  
2. Date of appointment 26.07.1979  
3. Promotion in the Gr.950-1500(RS)26.01.1987  
4. Promotion in the Gr.1200-1800(RS)20.06.1995"

3.3 The name of the applicant has been interpolated at serial no. 12A assigning proper seniority to the applicant in the Grade-III in the scale of Rs. 950-1500(RPS). His junior Shri Ashok Trimbak was promoted from 20.06.1995 and as the applicant has passed the trade test in the first attempt, hence the order of promotion for Grade-II has been issued. For next promotion to Grade I, the applicant was sent for trade test, which is a mandatory condition for promotion to Gr.I, but the applicant failed in the said trade test. Hence, there was no question of giving him promotion to the Grade-I. Had the applicant passed the trade test in the first attempt, he would have been given the promotion as Grade-I from the date his juniors were promoted. The relevant portion of the reply is extracted as under:-

"8(b)...Since for promotion to Gr.II and Gr.I, passing of professional trade test is mandatory the promotion is made on passing the trade test. Since the applicant passed the trade test in first attempt for Gr.II, he has been given promotion as Gr.II from the date his immediate junior was promoted. As regards his promotion to Gr.I, the applicant was sent for trade test but the applicant could not pass the same and hence there is no question of his promotion to Gr.I from the date his junior was promoted. His junior was promoted only after qualifying in the trade test and hence the applicant cannot claim promotion without passing the trade test. Had the applicant passed the trade test for Grade-I in first attempt, he would have become entitled for promotion to Gr.I alongwith his juniors. Thus the claim for promotion to Gr.I is not tenable. However, the case of the applicant shall be reviewed on the basis of Railway Board's Circular dated 13.08.1999."



3.4 The respondents had issued the service particulars of the applicant vide Annexure R-1 which was subsequently withdrawn vide Annexure R-2 dated 30.08.2000 without giving a reasonable opportunity of hearing to the applicant. The respondents have also taken the ground that the application is barred by limitation. However, the due seniority has been assigned to the applicant. Since, the relief of the applicant has been granted, the application has become infructuous and is liable to be dismissed as infructuous.

4. The applicant has filed the rejoinder to the reply filed by the respondents stating that the undisputed facts are that the applicant was absorbed as Artisan Gr.III on 8.5.1990 in the pay scale of Rs. 950-1500/-(RS) in the open cadre of TRS. The applicant has been promoted as Artisan Gr. II w.e.f. 20.06.1995 and have also been interpolated at serial no. 12A in the seniority list of 15.6.1995 in the grade of Rs. 950-1500(RS) and further in the grade II w.e.f. 20.6.1995 at serial no. 43A in the seniority list dated 10.09.1998.

4.1 It was decided by the respondents to merge the Grade Rs. 950-1500(RS) and Grade Rs. 1200-1800(RS) (Grade II & Grade I) in a common single grade and the existing trade test syllabus as prescribed for promotion from skilled grade III to skilled grade II was to be followed. Accordingly all Grade II who were called for trade test on 30.6.1977 for promotion to Grade I were promoted without any trade test but the applicant was not considered because the service register was not readily available as admitted by the respondents.

4.2 In another letter dated 24.11.1998, the above two grades have been demerged as Grade I and Grade II with an improved pay scale of Rs. 4500-7000(RSRF) for Grade I. All other seniors and juniors to the applicant have been given Grade I in the pay scale of Rs. 4500-7000 from April, 1996

without any trade test and the trade test ordered on 30.6.97 was dropped. The applicant is thus due for promotion as Artisan Grade I from the date his next junior from S.C. community was promoted, for that no trade test is required as per the Railway Board's letter dated 13.08.1998.

4.3 The applicant has denied the contention of the respondents that the O.A. is barred by limitation on the ground that the loss of service book is a continuing wrong and its consequences. Hence, the O.A. is within limitation.

5. The respondents have filed objection to the filing of rejoinder contending that since the applicant has got the relief, as prayed for in the O.A., by fixing his seniority at serial no. 43A which was corrected and fixed at serial no. 95-A. Inspite of the said correction, the applicant has wrongly stated that his seniority was fixed at serial no. 43-A. As regards to trade test, the respondents have stated that it was cancelled and further proceedings were stayed. They have denied that all persons, who were called for trade test on 30.6.1997, were promoted as Grade-I.

5.1 One Shri Om Prakash, who is not junior to the applicant, was Grade-II in his parent cadre from 25.7.1994 while the applicant was promoted as Grade II on 30.06.1995. Thus, there is no question of promoting the applicant as none of the juniors were promoted. The applicant did not challenge the correctness of the seniority in Grade-II fixed by letter dated 30.08.2000 hence the seniority fixed as Grade-III and Grade-II was final.

5.2 Apart from the above objections, the respondents have reiterated the stand taken in their reply.

6. We have heard the learned counsel for both the parties and have perused the pleadings available on record.



7. Both the parties have admitted that half of the relief has been granted and the promotion has been given to the applicant upto 20.06.1995.

7.1 After careful consideration of the record, we find that the respondents have not mentioned the service particulars of the applicant at serial no. 148, which belongs to the applicant. Under columns nos. 5 & 6 regarding date of birth and date of appointment, no dates have been mentioned for want of non-availability of service records. The respondents are finding fault with the applicant as per Annexure A-4 regarding principles for determining the seniority of non-gazetted staff of TRS cadre of Bhopal Division. The seniority of staff transferred from different Central Railways Units on or before 31.5.1995 shall be based on rules applicable to inter-se seniority depending upon the length of substantive post held by them in their parent cadre as on 31.5.1995.

7.2 The applicant has complied the principles laid down in the Railway Circular dated 29.12.1994 as per Annexure A-4. The respondents have also admitted in their reply that there was a mistake in maintaining the service records, hence the seniority of the applicant was not properly maintained. The respondents have produced Annexure R-4 which shows that for promotion from Technician Gr.II to Technician Grade-I in the Artisan category, only ACRs are required to be gone into instead of trade test. When such being the case, there is no necessity for insisting on trade test as mentioned by the respondents in their reply. The respondents are not supposed to insist for trade test. Since the applicant has fulfilled all the conditions, he has been given the seniority. When the seniority of the applicant has been fixed, the action of the respondents denying the promotion to the applicant

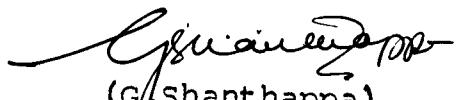
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as Grade-I on the ground that he has not passed the trade test is not tenable in the eye of law and is against their own record.

7.3. The act of the respondent withdrawing the order at Annexure R-1 by passing an order i.e. Annexure R-2 during the pendency of the present case without obtaining prior permission from this Tribunal and without giving opportunity to the applicant is illegal and contrary to the rules.

7.4 After perusing the rule position and the mistake of the respondents, we are convinced that applicant should not suffer.

8. For the reasons stated above, the O.A. is allowed with directions to the respondents to consider the case of the applicant for promotion to the post of Technical Grade-I in the Artisan category from the date his juniors were promoted only on the basis of annual confidential reports and without insisting upon the passing of trade test. Respondents are further directed to refix the pay of the applicant and pay him arrears of pay and allowances flowing from such refixation with all consequential benefits. The above directions should be complied with within a period of three months from the date of receipt of a copy of this order. No costs.

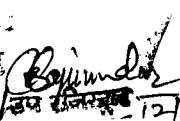
  
(G. Shanthappa)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman

/na/

पृष्ठांकन की ओर/उद्या..... तिथि.....  
मुख्यमंत्री का द्वारा दिया गया अवलम्बन  
(1) रामेश, उत्तर कार्यालय का कार्यालय कार्यालय, नावलपुर  
(2) आपेक्षन श्री/महिला/रुपरेखा का कार्यालय L S Rayput  
(3) प्रत्यार्थी श्री/श्रीमती/रुपरेखा का कार्यालय SP Sinha  
(4) विधायक, कोर्ट व उपराज्यकार्यालय का कार्यालय द्वारा  
सूचना एवं अवलम्बन कार्यालय द्वारा

~~Entered  
13/2/04~~

  
Date 12/2/04