

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 228 of 1998

Jabalpur, this the 14th day of August, 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

U.N Pathak (Reservation Supervisor),
S/o. late Shri Ramlal Pathak,
aged about 57 years, resident of
behind Bank Colony, Itarsi,
Distt. Hoshangabad :M.P.

APPLICANT

(By Advocate - Shri P.R. Bhave)

VERSUS

1. Union of India, through the Secretary
Ministry of Railways, Rail Bhawan,
New Delhi.
2. General Manager, Central Railway,
Mumbai (CST)
3. Chief Personnel Officer (Commercial),
Mumbai (CST).
4. Divisional Railway Mnager (Personnel),
Central Railway, Bhopal Division,
Bhopal : M.P.
5. Shri Mahendra Jeet Singh, Assistant
Chief Reservation Supervisor,
C/o D.R.M.(C), Central Railway,
Bhopal Division, Bhopal : M.P.

RESPONDENTS

(By Advocate - Shri D.K. Tripathi holding brief of
Shri N.S. Ruprah)

O R D E R

By J.K. Kaushik, Judicial Member -

Shri U.N. Pathak has filed this OA for claiming
the following main reliefs.

- (i) A writ in the nature of mandamus may please
be issued commanding the respondents to accord
due seniority to the applicant as Reservation
Supervisor on his redeployment vide order
dt. 12.4.1994 (ANNEXURE-A/1)
- (ii) A writ in the nature of mandamus may please
be further issued commanding the respondents
to consider the case of the applicant for his
promotion as Assistant Chief Reservation
Supervisor w.e.f. 22.11.1994 when his juniors
have been promoted vide order Annexure-A/2.

ii(a) A writ in the nature of mandamus may please be issued commanding the respondents No. 1 to 4 to modify the order dt. 12/16.6.98 (An.A/5) to the effect that applicant's promotion shall be with retrospective effect from 22.11.94 and to place him over and above his juniors in the matter of seniority in the cadre of Asstt. Chief Reservation Supervisor

(iii) A writ in the nature of mandamus may also be issued commanding the respondents to pay all the arrears of salary and extend all consequential benefits to the applicant by fixing his salary in the grade of Rs. 1600 - 2660/- (RPS) w.e.f. 22.11.1994 within a period of two months, failure of which an interest at the rate of 16% may please be imposed and the same may please be directed to be recovered from the erring officer.


2. The brief facts of the case relevant for resolving the controversy involved therein are that the applicant was appointed as Telegraphic Signaller vide order dated 8.6.1960. He enjoyed his further promotion to the post of Head Signaller Grade-II from 5.2.1988. He was declared surplus on the post of Head Signaller Grade-II in the scale of Rs.1400-2300 and he was deployed on the post of Reservation Supervisor (sic - ECRC) in the scale of Rs.1400-2300 on 12.4.1994. The further facts of the case are that as per the channel of promotion, next promotion for the post of Reservation Supervisor is Assistant Chief Reservation Supervisor which is to be done on the basis of seniority-cum-suitability. Number of juniors to the applicant were promoted to the post of Assistant Reservation Supervisor and one of them Shri Mahendra Jeet Singh is impleaded as party in the array of respondents. The applicant represented in the matter and submitted that as per the rules in force in case of redeployment one does not lose his seniority. It is only when one opts for a particular cadre or ask for change from one division to another or there is a mutual exchange transfer from one cadre to another, one gets bottom seniority. He represented in the matter against his supersession. He was promoted to the post of Assistant Reservation Supervisor in the grade of Rs.5500-9000 vide order dated 12.6.1998(Annexure-A-5) but

this was with immediate effect and not with retrospective effect from 22.11.1994 when his juniors were promoted. His case was taken up with the higher authority vide Annexure-A-3 and it has been clearly stated therein that the applicant was asked to submit his second option for the post of ECRC (Enquiry-cum-Reservation-Clerk) and he submitted his option clearly indicating that he should be given his full seniority with protection of pay and on this option he was allowed the redeployment. However, the applicant has not been given his due promotion at par with his next junior. The Original Application has been filed on number of grounds mentioned therein.

3. The respondents have contested the case and have filed a detailed reply to the Original Application. They have submitted that the applicant was promoted to the post of Head Signaller in the grade of Rs.1400-2300 on 5.2.1988. Thereafter, he was redeployed in Commercial cadre and absorbed on the post of ECRC in the grade of Rs.1400-2300 vide order dated 15.11.1994 but his seniority was wrongly given from 5.2.1988 by giving him the weightage of service rendered by him in his parent department. Further defence of the respondents is that the next promotion of the applicant to the post of ARS on 22.11.1994 was on a-dhoc basis and did not give him any ^{prescriptive} ~~prospective~~ right to the seniority and subsequently he has been promoted vide order dated 12.6.1998 on regular basis to the post of ARS in the scale of Rs.5500-9000. The matter was considered by the headquarters and vide circular dated 31.8.1994 (Annexure-R-II) and letter dated 7.9.1998 (Annexure-R-III) it has been decided that surplus Telegraph Signallers are to be deployed as ECRC at bottom seniority and thereby the applicant became entitled to the seniority from 27.9.1994 when he was posted after completing the prescribed training and he has been further promoted as Head ECRC with effect from 9.7.1999. Hence the applicant has no case.

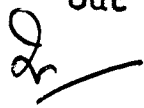
4. We have heard the learned counsel of parties and have bestowed our earnest consideration to the pleadings and records of this case.

5. The learned counsel of the applicant has submitted that the option which was asked from the applicant was not with the specific condition of bottom seniority. He has invited out attention to the letter dated 31.3.1997 (Annexure-A-3) wherein the Divisional Railway Manager has taken up the matter regarding the seniority of the applicant with the Headquarters. It has been specifically mentioned there that on the option of the applicant the respondents have acted. It is also submitted that as per the option of the applicant he clearly indicated that he would go on the post of ECRC only on the condition if he is given original seniority in the grade as well as his pay is protected. The learned counsel for the applicant has further contended that the orders on which the respondents are relying i.e. Annexures-R-II and R-III have been passed subsequent to the date of his absorption and such conditions cannot be put subsequent to his absorption and that too contrary to his very option. The action of the respondents is after thought and he is fully entitled to the claim of his seniority on the post of ECRC from 5.2.1988, the date from which he entered into the grade of Head Signaller in the scale of Rs.1400-2300.

6. On the contrary, the learned counsel of the respondents has reiterated the defence of the respondents as set out in their reply. It has been submitted that the matter regarding the grant of seniority to the applicant and also regarding their protection of pay on the post of ECRC remained under consideration with the higher authorities and the same could be only finalised a little later than that of the absorption of the applicant. As per the decision taken by the higher authorities the applicant is not entitled to any relief of grant of seniority from the date of entering into the grade on the post of Head  signaller.


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7. We have considered the rival contentions raised on behalf of both the parties. As far as the facts of the case are concerned there seems to be no dispute. It is admitted that while submitting his second option for his redeployment on the post of ECRC the applicant clearly indicated that he would accept the said posting if he is given his full seniority and his pay is protected. This condition was acceptable to the authorities. The applicant changed his position on the promises of the respondents. There is no doubt that Annexure-R-II and R-III have been subsequently issued to the date of absorption of the applicant. Both these cannot change the seniority position of the applicant inasmuch as the applicant has already changed his position which became irreversible and this position was changed on the promises made by the respondents. Now, the respondents cannot be permitted to turn about and take a different stand. Otherwise also we have not been shown any rule to the contrary by the respondents as to once the applicant has been re-deployed at the instance of the administration why he should not be allowed to carry his own seniority. In our considered view the respondents cannot be allowed to blow hot and cold together or approbate and reprobate and should not play with the fundamental rights of their employees. They are expected to keep their house clean and should not act in such a manner that the faith of the individuals become unpredictable and the employees are kept under hanging sword of uncertainty by changing their service conditions unilaterally and that too making it effective from retrospective date. Therefore, the contentions of the applicant are well founded and there is force in this Original application. The applicant has not been given a fair treatment and has been arbitrarily singled out for no fault of his own.



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8. In the result, there is a force and substance in this Original Application and the same is hereby allowed. The respondents are directed to assign the seniority to the applicant on the post of ECRC with effect from the date he entered in the grade to the post of Head Signaller i.e. 5.2.1988 and he shall be allowed all consequential benefits including the promotion, pay fixation etc. This order shall be complied with within a period of three months from the date of communication of this order. No costs.


(Anand Kumar Bhatt)
Administrative Member

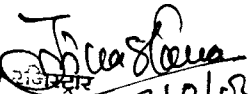

(J.K. Kaushik)
Judicial Member.

rkv.

पृष्ठकन सं ओ/न्या.....जबलपुर, दि.....
प्रतिनिधि

- (1) सहायक, उच्च न्यायालय, जबलपुर
(2) जज (अधीनस्थ), उच्च न्यायालय, जबलपुर
(3) सहायक, उच्च न्यायालय, जबलपुर
(4) सहायक, उच्च न्यायालय, जबलपुर

P. R. Raghav - Adm
N. S. Ruprah - Adm


27/8/03

Issued
on 28.8.03
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