

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application 528/2000

Jabalpur, this the 19th day of April, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

Hari Baboo Arun, S/o
Shri Sukhdeo, aged
about 41 years, 84,
Panchsheel Nagar,
Behind Mela Ground,
Gwalior(M.P.)

APPLICANT

(By Advocate - Shri V. Tripathi) on behalf of
Shri S. Paul)

VERSUS

1. Union of India,
Through its Secretary,
Ministry of Railway,
Railway Board,
New Delhi.
2. Deputy Controller of Stores,
"CWE & G", Central Railway,
Jhansi.
3. M.C. Agrawal,
Office Superintendent Gr.II,
C/o Dy. Controller of Stores,
"CWE & G", Central Railway,
Jhansi.

RESPONDENTS

(By Advocate - Shri M.N. Banerjee)

O R D E R (ORAL)

By M.P. Singh, Vice Chairman -

By filing this OA, the applicant has sought the
following main reliefs :-

"(b) Set aside the seniority list dated 19.6.99
(Annexure-A-1) by commanding the Respondent No.1 to
place the applicant over and above the private
respondent;

(c) direct the respondents to provide all
consequential benefits to the applicant including
stepping up pay at par with Shri Agrawal, promotions
if any takes place on the post of OS-I and all other
consequential benefits".



2. The admitted facts of the case are that the applicant, who belongs to Scheduled Caste, was appointed as Jr. Clerk in the year 1980 whereas the private respondent No.3 was appointed on the said post in the year 1974. Both of them were promoted to the next higher grade of Senior Clerk. Thereafter the applicant was promoted as Head Clerk on 28.4.87 and the private respondent No.3 was promoted on 24.6.87. Although the applicant was junior to private respondent No.3, in the initial grade of Jr. Clerk by 6 years, he was promoted to the post of Head Clerk earlier than private respondent No.3 by way of accelerated promotion against reserved vacancy. The next promotion from Head Clerk is to the post of Office Superintendent Gr.II (in short 'OS-II'). The private respondent No.3 was promoted on adhoc basis as OS-II on 15.7.95 against the General vacancy. Subsequently regular selection was held and the applicant was also given opportunity to appear in the selection against general vacancy and he has been promoted for the post of OS-II alongwith private respondent No.3. However, the respondents have issued a seniority list of OS-II as on 1.5.1999 (Annexure-A-1) in which the name of the applicant has been shown at serial No.22 whereas the private respondent No.3 is placed at serial No.18. Aggrieved by this seniority list the applicant has filed this OA claiming the aforesaid reliefs.

3. Heard the learned counsel for the applicant and respondents.

4. The respondents have filed their reply in which they have stated that as per the instructions issued by the Railway Board which contained in the newly IREM (Annexure-R-1) inserted para 319A/2 although, private-respondent No.3 got promotion to the post of Head Clerk, later than the applicant, he became senior to the applicant, as the



private respondent No.3 was senior to him in the lower grade of Sr. Clerk.

5. on the other hand the learned counsel for the applicant states that Railway Board has further amended para 319A of the IREM by issuing the letter dated 8.3.2002 which reads as follows:-

"3. also Accordingly, the Ministry of Railways have/considered the matter and decided to negate the effects of para 319A of Indian Railway Establishment Manual, Vol.I, 1989. It has therefore been decided as follows :

- (i) (a) SC/ST Railway servants shall, on their promotion by virtue of rule of reservation/roster, be entitled to consequential seniority also; and
- (b) the above decision shall be effective from 17th June, 1995.
- (ii) The provisions contained in Para 319A of Indian Railway Establishment Manual, Vol.I 1989 as introduced vide ACS Nos.25 and 44 issued under this Ministry's letters No E(NG)I-97/SR6/3 dated 28.2.97 and 15.5.98 shall stand withdrawn and cease to have effect from 17.6.95.
- (iii) Seniority of the Railway servants determined in the light of Para 319A ibid shall be revised as if this para never existed. However, as indicated in the opening para of this letter since the earlier instructions issued pursuant to Hon'ble Supreme Court's judgment in Virpal Singh Chauhan's case (JY-1995(7)SC231) as incorporated in para 319A ibid were effective from 10.2.95 and in the light of revised instructions now being issued being made effective from 17.6.95 the question as to how the cases falling between 10.2.95 and 16.6.95 should be regulated, is under consideration in consultation with the Department of Personnel & Training. Therefore separate instructions in this regard will follow.
- (iv) (a) on the basis of the revised seniority consequential benefits like promotion, pay, pension etc. should be allowed to the concerned SC/ST Railway servants (but without arrears by applying principle of 'no work no pay').
- (b) For this purpose senior SC/ST Railway servants may be granted promotion with effect from the date of promotion of their immediate junior general/OBC Railway servants.

(c) Such promotion of SC/ST Railway servants may be ordered with the approval of Appointing authority of the post to which the Railway servant is to be promoted at each level after following normal procedure viz selection/non-selection.

(v) Except seniority other consequential benefits like promotion, pay etc. (including retiral benefits in respect of those who have already retired) allowed to general/OBC Railway servants by virtue of implementation of provisions of para 319A of IREM, Vol.I 1989 and/or in pursuance of this directions of CAT/Court should be protected as personal to them".

6. The learned counsel for the respondents has relied upon a judgment in the case of Ajit Singh vs. State of Punjab (1999) 7 SCC 209 : 1999 SCC (L&S) 1239. The learned counsel for the respondents has also stated that although the general candidates promoted later to the higher post, and scheduled caste candidates promoted earlier by virtue of rule of reservation, the General candidates will regain his seniority over such earlier promotee in pursuance of the aforesaid decision of the Hon'ble Supreme Court. The learned counsel for the respondents has further stated that in view of Eighty-fifth Amendment in the Constitution of India and subsequent instructions issued by the DOP&T and Railway Board, the applicant had earlier got accelerated promotion and regained seniority in the feeder grade. The learned counsel for the respondents has also stated that there is multiplicity of reliefs claimed by the applicant in this O.A., therefore, the O.A. is not maintainable and also states that the applicant had not filed any representation to the respondents bringing out this proposition to their notice, as he has approached this Tribunal immediately after ^{provisional} ~~provisional~~ publication of seniority list of OS-II.

6.1 The learned counsel for the applicant is not pressing the other reliefs. He states that he will be satisfied, if the applicant is granted due seniority in the Gr. of OS-II and consequential benefits arising out of due fixation of the seniority in the Gr. of OS-II.

7. We have given careful consideration to the



contentions made by the learned counsel for the parties. The admitted position is that the applicant has been appointed as Jr. Clerk in the year 1980 whereas the private respondent No.3 was appointed in the year 1974. Subsequently, the applicant was appointed as Head Clerk on 28.4.87 whereas private respondent No.3 was appointed as Head Clerk on 24.6.87. The judgment of the Hon'ble Supreme Court and the instructions of DOP&T relied upon by both the counsel, are not applicable in the present case. As the applicant as well as private respondent No.3 were promoted to the post of Head Clerk in the year 1987, at that point of time neither the judgment of the Hon'ble Supreme Court in the case of Ajit Singh(supra) ^{and} ^{was available} nor Government had issued any instructions in pursuance ^{of} aforesaid judgment. Since in the present case fixation of seniority relates to the year 1987, neither the instructions issued by the Government nor judgment ^{of the Hon'ble Supreme Court (supra)} ^{are} applicable in the present case. Since the learned counsel for the respondents has stated that no representation has been given by the applicant against the impugned provisional seniority list (Annexure-A-1) and they have not been able to look into the grievance, he has suggested that if a representation is filed by the applicant, then the grievances of the applicant can be looked into by them by taking a decision about the seniority of the applicant in the Gr. of OS-II.

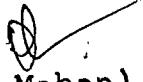
8. In the facts and circumstances of the case we deem it appropriate to direct the applicant to submit a detailed representation to the respondents to fix his due seniority in the grade of OS-II within a period of one month from the date of receipt of copy of this order. We do so accordingly. If the applicant complies with this order, the respondents are directed to take a decision on such representation of the applicant

2/2

: 6 :

by passing a detailed, reasoned and speaking order in the light of judgment of the Hon'ble Supreme Court and also the instructions issued by the Govt from time to time and also in the light of observation made above within a period of 4 months from the date of receipt of such representation.

9. In the result the OA is disposed of in the above terms. No costs.

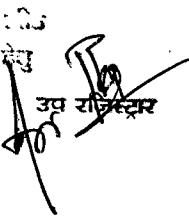

(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

SKM

पृष्ठांकन सं. ओ/व्या.....जबलपुर, दि.....
प्रतिलिपि दाखिला:-

(1) सदिक, जबलपुर दाखिला दाखिला, जबलपुर
(2) लालेश्वर शिवार्थी/का.....के बाहंसल S. Paul
(3) राम शिवार्थी/का.....के बाहंसल M. N. Banerjee
(4) अमर शिवार्थी/का.....
सूचना एवं आवश्यक कार्यवाही हेतु


उप सचिव


Xxxxx
12/5/09