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(17)

GENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Applications Nos. 572 and 578 of 2000

Jabalpur, this the 12<sup>th</sup> day of March, 2004

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

(1) Original Application No. 572 of 2000

Arvind Kumar Jain, aged about 38  
years S/o Shri U.C. Jain, Section  
Engineer(TRD) Central Railway  
resident of RB-II/13.B. TRD Colony,  
Obedullaganj Distt. Raisen(M.P.)

APPLICANT

(By Advocate - Shri L.S. Rajput)

VERSUS

Union of India, Through,

1. The General Manager,  
Central Railway,  
Mumbai-CST(Maharashtra)
2. The Divisional Railway Manager,  
Central Railway,  
Habibganj - Bhopal(M.P.)

RESPONDENTS

(By Advocate - Shri S.P. Singh)

(2) Original Application No. 573 of 2000

Nitya Nand Pandey, aged about 36 years  
S/o Late Shri D.N. Pandey, Section  
Engineer(TRD) Central Railway,  
resident of 75, Jai Prakash Nagar,  
Itarsi, Distt. Hoshangabad(M.P.)

APPLICANT

(By Advocate- Shri L.S. Rajput)

VERSUS

Union of India, Through,

1. The General Manager,  
Central Railway,  
Mumbai-CST(Maharashtra)
2. The Divisional Railway Manager,  
Central Railway,  
Habibganj - Bhopal(M.P.)

RESPONDENTS

(By Advocate - Shri S.P. Singh)



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O R D E R

By M.P. Singh, Vice Chairman -

As in both these OAs the issue involved is common, and the facts and grounds raised are identical, these are being disposed of by this common order.

2. The applicants in these OAs have claimed the following main reliefs :-

"(a) Quash the impugned order dated 23/26.6.2000 (Annexure-A-1) being ab-initio-void & against the Establishment rules framed by the Railway Board & published in the IREM - Vol-I-1989.

(a)(a) to quash the seniority lists dated 4.4.2000 & 17.7.2000(Annexure-A-8/Annexure-R-2 & Annexure-R-3 respectively and also the last paras of speaking order dated 3.4.2000 being honest & void-ab-initio".

(b) Direct the respondents not revert the applicant from the post of S.E.(TRD) Grade R.6500-10,500 (RSRP) as the applicant has been promoted to this grade after qualifying in the selection & working on this post on regular basis since last about 3/4 years.

3. The brief facts of the case are that one Shri G.S.Saxena had earlier filed O.A.No.357/1993 in which he had sought a direction of the Tribunal to quash the Order No.12-TRD-1993 dated 13.4.1993 passed by the Divisional Railway Manager (D) by which he was reverted from the post of Traction Foreman to Assistant Foreman and also for granting him seniority in the grade of Chargeman Grade 'A' over and above respondents nos.3 to 8. He had also prayed that he be allowed to continue in the grade of Traction Foreman in the scale of Rs.2000-3200. In the aforesaid OA 357/1993, S/Shri P.K.S.Kushwaha, Harsh Wardhan, K.K.Sahu, <sup>present</sup> N.N.Pandey(applicant in OA 578/2000), S.K.Gupta, and <sup>with reference No. 15</sup> Arvind Kumar Jain(present applicant in OA 572/2000). In the <sup>with reference No. 15</sup> said O.A.357/1993 the Tribunal vide its order dated 25.6.1999 has passed the following order:-

"9. Even the respondents confirm that the applicant was regularly promoted on 9.5.1991. As far as the private respondents are concerned, we direct the

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respondents to consider their promotion from the date their fitness is considered for that purpose in accordance with the rules. While doing so, the applicant's claim that he belongs to OHE Group while private-respondents belongs to TPS/CLIA-CAR groups and there cannot be merger for promotion should also be examined. The private respondents should be only promoted from the date they are considered fit and not from a retrospective date. The respondents shall pass speaking orders as to how they have complied with the rules in promoting the private respondents no.3 to 8. It is only after that, they shall decide their seniority vis-a-vis the applicant. To put it differently, respondent no.2 shall examine the claim of seniority in the light of the applicant's contention that he was already regularly promoted to a higher grade of Rs.1600-2660 when private respondents were working in the lower grade of Rs.1400-2300. There seems to be no rule to support retrospective promotion from outside the cadre. He shall thereafter proceed to revise the seniority accordingly.

10. In view of the Apex decision cited above, we are unable to hold that Annexure A-2, A-3, A-4 and A-5 are legal orders and accordingly the private respondents can't claim seniority from the retrospective date mentioned therein. We also set aside Annexure A-7 reverting the applicant to lower grade till such time fresh orders are passed in respect of private respondents and their interse seniority is fixed."

Consequent to the aforesaid order passed by the Tribunal the present applicants, who were respondents in the said OA 357/1993 are to be reverted.

4. We find that in compliance of the aforesaid order dated 25.6.1999 in OA 357/1993 the official respondents have passed a speaking order dated 3.4.2000 (Annexure-R-4) wherein it has been specifically stated that in view of the observation and directives of this Tribunal the seniority of the applicants (private-respondents in OA 357/1993) in the post of JE-I is amended to give prospective effect from the date of issue of promotion order as shown in the annexure enclosed with the said order. Consequently the applicants were proposed to be reverted vide impugned order dated 23/26.6.2000.

5. The contention of the applicants is that in the case of erroneous promotion, provisions of Para 228 of the

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IREM provides that a railway servant who has been erroneously promoted and appointed to a post in a substantive capacity, procedure prescribed by the Railway Board for rescinding the irregular confirmation of a railway servant should be followed and only thereafter the railway servant concerned should be brought down.

The learned counsel contends that no such procedure has been followed in the case of the applicants and therefore the impugned orders passed by the respondents may be quashed. In this regard, we may observe that the respondents have passed the impugned orders in compliance to the orders of the Tribunal dated 25.6.1999 in OA 357/93, in which the applicants were private respondents. Therefore, the respondents are within their rights to take consequential action in compliance with the order of the Tribunal, without resorting to the provisions of Para 228 ibid.

6. The other contention of the applicants is that the same ratio as laid down in the aforesaid judgement dated 25.6.1999 in OA 357/93 that they should be promoted from the date they are considered fit, has not been made applicable in the case of similarly placed persons. We find that since the persons against which the applicants want relief, have not been made parties to these OAs, No adverse orders can be passed by this Tribunal without giving them any opportunity of hearing.

7. In the result, both the aforesaid OAs have no<sup>2</sup> merits and they are accordingly dismissed. The interim orders of stay passed in both the OAs are hereby stand vacated. No costs.

—Sd/-

(Madan Mohan)  
Judicial Member

rkv.

Sd/-  
(M.P.Singh)  
Vice Chairman