

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JABALPUR BENCH, JABALPUR

...

Date of Order : 25-7-2003

O.A. NO. 732/1998

A. Aloysius S/o Antony D'Cruz, aged 62 years, (Retired Station Supdt. Gr.II, Kumhari Station), R/o HNO. 1/1945, Near Catholic Church, G.E. Road, PO Tatibandh, Distt. & Tehsil Raipur (MP).

..... Applicant.

Versus

1. Union of India through Chairman, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, South Eastern Railway, Garden Reach, Calcutta 700 043.
3. Divisional Railway Manager, South Eastern Railway, Bilaspur (MP).
4. Senior Divisional Personnel Officer, South Eastern Railway, Bilaspur (MP).
5. Shri M. Gopalan, (Retired Station Superintendent Gr. I, Bhatapara Station ) Through : Sr.Divisional Personnel Officer, South Eastern Railway, Bilaspur.

..... Respondents.

Mr. S. Paul, Advocate, present for the applicant.  
Mr. M.N. Banerjee, Advocate, present for the respondents.

...

CORAM :

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER  
HON'BLE MR. ANAND KUMAR BHATT, ADMINISTRATIVE MEMBER

...

ORDER

( per Mr. J.K.Kaushik, Judl.Member )

The applicant Shri A. Aloysius, has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, for seeking directions to the respondents to consider his case for promotion to the post of Dy.Station Superintendent in the scale of Rs. 550-750, Station Superintendent (SS) Grade-II scale Rs.700-900 w.e.f. 1.8.82/1.8.83 and as SS Grade-I in the scale of Rs. 2375-3500 (RPS) w.e.f. 1.3.93 as per the modified selection procedure at par with his next junior i.e. Shri M.Gopalan (Respondent No. 5) with all benefits including the due

fixation of pay and revision of pension etc.

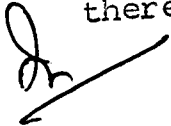
2. Skipping the superfluities, the necessary facts leading to filing of this OA are that applicant was initially appointed as Assistant Station Master on 8.5.1959. He enjoyed further promotions to the post of Assistant Station Master Grade Rs. 425-640<sup>Rs.455-700;</sup> as Dy. Station Superintendent Grade Rs. 550-750 and as S.S. Grade-II in the scale of Rs. 2000-3200 w.e.f. 15.4.71, 1.8.83, 1.1.84 and 21.12.89 respectively. His further case is that he retired on superannuation from the post of S.S. Grade-II on 31.8.1994. Prior to the retirement as on 1.3.93 a Seniority List in respect of SS Grade-II was issued on 9/13.7.94 (Annex.A/4) wherein applicant's name is placed at Sl. No. 53.

3. Further, one Shri M. Gopalan (Respondent No.5), has been always junior to applicant and his particulars are indicated at Sl.No. 61 in the Seniority List at Annexure A/4. The said Shri Gopalan was initially appointed as Assistant Station Master on 26.6.60 and enjoyed further promotions to the post of Assistant Station Master scale Rs. 425-640, 455-700 and as SS Grade-II in the scale of Rs. 2000-3200 and SS Grade-I in the scale of Rs. 2375-3500 w.e.f. 1.8.83, 11.5.89, 6.2.91 and 1.3.93 respectively. It would be pertinent to mention here that the Seniority List dated 9/13.7.94 was corrected in view of the verdict of Hon'ble the Supreme Court in cases of some individuals. Further, vide Annexure A/14 dated 11.7.97, Shri M. Gopalan, has been extended the benefit of promotion in SS Grade-II w.e.f. 1.8.82/1.8.83 and in SS Grade-I after finalisation of his case of promotion. It has been averred in the pleadings that the said respondent has been promoted to Grade-I w.e.f. 1.3.93 under the restructuring scheme.

4. The O.A. has been filed on number of grounds which have been enumerated in the O.A. but we shall d

the specific grounds which have been pressed during arguments in later part of this order.

5. A detailed counter reply has been filed on behalf of official respondents. The main defence as set out in it is that Shri Gopalan was promoted as Dy. SS scale Rs. 550-750 and 700-900 from the same date i.e. 1.8.83 as he was non-petitioner in Station Master's group. This was done in view of the directions of the Chief Personnel Officer in respect of the staff who were in Station Master's optees but, not Assistant Station Master to Assistant Station Master optees. The applicant was in ASM Group whereas Shri Gopalan was of SM group. Shri Gopalan had been promoted w.e.f. 7.1.97 on taking over higher responsibilities and he was not promoted as SS Grade I w.e.f. 1.3.93. After arranging promotion to Shri Gopalan in the scale Rs. 700-900 as SS Grade-II w.e.f. 1.8.82, his seniority was revised along with other petitioners and non-petitioners and as a result, he became senior to applicant in grade 700-900. In all, twenty four persons were given the benefit as per Supreme Court's judgement. Some junior persons to Shri Gopalan were promoted on regular basis w.e.f. 1.3.93 as SS Grade I but he was given the responsibility of the promoted post w.e.f. 11.7.97 and not from 1.3.93. A chance was given to change the earlier options but the applicant did not change his option and also did not submit any application for change of his earlier option. It is also averred that options were called about 30 years back and the same are not readily traceable. The applicant has accepted promotion as per the first channel and he never objected to the promotion and senior position and after so many years he cannot challenge the same. No question of any comparison arises. The applicant therefore, is not tenable and deserves to be dismissed.



6. A detailed rejoinder has been filed controverting the averments made in reply and also bringing the various rules position and certain additional documents. The written arguments have also been placed on record.

7. We have heard the learned counsel for the parties and have given our anxious consideration and thought to their arguments, pleadings and the records of the case.

8. The learned counsel for applicant has reiterated the facts and grounds raised in his pleadings and there is no major variance as far as the facts of the case are concerned except that there is little quarrel as regards the seniority position of applicant vis-a-vis Shri Gopalan. He has submitted that once applicant as well as Shri Gopalan has joined in SM cadre and have been enjoying further promotions and finally they are at common seniority even on a specific decision from the Supreme Court and the applicant has always enjoyed the higher position in the seniority as well as has got his further promotions at a much earlier date to the private respondent, he was also entitled for consideration for promotion to the post of SS Grade-I in 2375-2500 scale w.e.f. 1.3.93 with other consequential benefits thereof. But, his case has been totally neglected and there has been an infraction of Articles 14 and 16 of the Constitution of India inasmuch as his right for consideration of promotion has been given good bye. Thus, there has been infringement of his Fundamental Right as enshrined in these articles of the Constitution.

9. On the contrary, Shri Banerjee, learned counsel for respondents has tried to distinguish applicant's case with that of Shri Gopalan on the basis of option and has submitted that applicant opted for ASM cadre and Shri Gopalan opted for SM cadre and that is the reason Shri Gopalan

*[Handwritten signature]*

superseded him w.e.f. 1.3.83 in the pay scale of Rs.2000-3200. A very specific query was made during the course of arguments as to whether there are different seniority lists for SS Grade-II or there is only one seniority list which has been placed on the record. Shri Banerjee, was at difficulty to answer this query and could not point out any rule which provided that different seniority list is to be maintained. It was also inquired from him as to whether any corrigendum has been issued to the Seniority List (Annex.A/4) changing the position of applicant vis-a-vis Shri Gopalan, practically there was no answer to this query also. He further submitted that Shri Gopalan has been given promotion in the Grade Rs. 2375-3500 (SS-Grade-I) w.e.f. 1.7.97 and from that date he has shouldered responsibilities of the post and not from 1.3.93. Thus, no illegality has been committed in respect of the applicant and the O.A. has absolutely no substance and, therefore, no interference is called for by this Tribunal.

10. We have considered the rival contentions raised on behalf of the parties.

11. The admitted facts of the case are that the final seniority list was promulgated on 9-12.7.94 for the post of SS Grade-II in the scale Rs. 2000-3200 wherein, applicant is at Sl. No. 53 and Shri Gopalan (Private Respondent) is at Sl. No. 61. The official respondents have not referred to any corrigendum to the said seniority list or any other order showing that Shri M. Gopalan became senior to applicant. We have also not been shown any further separate seniority list indicating that ASM group was having different seniority list than SM group. The learned counsel for respondents has also not been able to point out any such rule. The inescapable conclusion is that the Seniority List (Annex.A/4) was the final seniority list and it contains the names of applicant and that of the respondent No.5. That is precisely the

22

reason to have a comparison of applicant's position vis-a-vis the said Shri Gopalan. It is also not the case of respondents that applicant was not found fit for promotion either to the post of SS Grade-II w.e.f. 1.1.83 or to the post of S.S. Grade-I w.e.f. 1.3.93. ~~xxxxxxxxxxxxxx~~ The applicant has retired from service on 31.8.94 and Shri Gopalan was promoted earlier to this date i.e. w.e.f. 1.3.93. As is borne out from the records, as a matter of fact Shri Gopalan was promoted w.e.f. 1.3.93, might be that he has been given promotion on 7.1.97 at par with his juniors, we do not find any reason whatsoever as to why applicant's case has not been considered despite the fact that he was senior to Shri Gopalan and have no other obstruction for granting benefit of promotion as prayed in this O.A.

12. Before parting with the case, we think it expedient appropriate to point out that there has been lot of repetition which can be actually described as 'multiplicity of pleadings' which has resulted in plethora. This inevitably compelled us to make lot of efforts which could have otherwise been avoided. We would have appreciated the learned counsel for applicant had the pleadings of the case been drawn succinctly. We hope that this shall be taken care of in future.

13. The upshot of the aforesaid discussions is that the Original Application has much force and substance and it stands allowed. The applicant shall be entitled for promotion in the scale Rs. 550-750(RS) as Dy. Station Superintendent and in scale Rs. 700-900(RS) as Station Superintendent Grade-II w.e.f. 1.8.82/1.8.83 and also as Station Superintendent in Grade I in the scale of Rs. 2375-3500 (RPS) w.e.f. 1.3.93, with all the consequential benefits at par with his next junior Shri M. Gopalan (Respondent No.5). The retiral benefits as also the Pension shall also be revised accordingly.

2

