

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 739 of 2000

Jabalpur this the 16<sup>th</sup> day of July, 2004

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

Roshanlal Jaiswal, son of Shri  
Shyamlal Jaiswal, aged 47 years,  
working as Fitter Gr. I Central  
Railway, AC Shed, Itarsi. ... Applicant

(By Advocate - None)

V e r s u s

1. Union of India, through  
its General Manager,  
Central Railway,  
Mumbai CST.
2. Divisional Railway Manager,  
Central Railway, Bhopal. ... Respondents

(By Advocate - Shri M.N. Banerjee)

O R D E R

By Madan Mohan, Judicial Member -

None is present for the applicant. Since it is an old case of 2000, we proceed to dispose of this Original Application by invoking the provisions of Rule 15 of CAT (Procedure) Rules, 1987. Heard the learned counsel for the respondents and perused the records carefully.

2. By filing this Original Application the applicant has claimed the following main relief :

"i. to direct the respondents to consider the applicant for promotion to the post of Masters Craftsman from the date his juniors were promoted as MCM i.e. from 4.2.1997."

3. The brief facts of the case are that the applicant was initially appointed as Machinest Grade-III on 9.5.77 and was thereafter promoted as Machinist Grade-II in the year 1986. The applicant was belonging to the Steam cadre of the Electrical Department. However, with the closure of steam division, the

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applicant was declared surplus. That after being declared surplus, and on the basis of option given by him, he was absorbed as Fitter Grade-II in the pay scale of Rs. 1200-2800/- in Electrical Department vide order dated 15.11.1990. The applicant was thereafter promoted as Fitter Grade-I in the scale of Rs. 1320-2040/- with effect from 1.2.1992 and confirmed with effect from 1.2.1992. Despite of his absorption in the grade of Fitter the applicant was not considered for promotion to the post of Master Craftsman. The applicant represented the matter to the competent authority on 19.5.1997 and 18.11.1998. The Senior Divisional Personnel Manager, vide his letter dated 23.9.1998 addressed to the Senior Division Electrical Engineer (TRS) informed that the applicant's seniority has been corrected as per the order dated 15.11.1990 and in the grade of Rs. 1320-2040/- the applicant has been regularised. The applicant was not given any benefit of promotion in the Machinist grade because on papers he was shown as absorbed in Fitter grade in the year 1990, though physically he was made to work as Machinist. The applicant has been subjected to supersession by his juniors. As the applicant has no grievance against the juniors who are promoted, he has not impleaded them as a party in the instant case. The Controlling authority vide proposal dated 29.5.1998, forwarded the case of the applicant with the recommendation to consider him for promotion, but no heed was paid by the respondents. Aggrieved by the inaction of the respondents the applicant preferred a petition before the Tribunal as OA No. 99/2000 and the same was disposed of with a direction to the respondents to decide the representation of the applicant by speaking orders. The applicant submitted that it is wrong on the part of the respondents to mention that the services of the applicant in Fitter Grade-I was regularised with effect from 20.6.1995, whereas the fact is that the applicant was regularised in the Machineman Grade-I w.e.f. 1.2.1992 and as per the admission of Senior Divisional Personnel



Officer the applicant was regularised as Fitter Grade-I w.e.f. 20.7.1993. The applicant has been deprived the benefits of upgradation on the ground that since the TRS was an open cadre and the lien of the applicant being in his parent cadre, therefore the same cannot be given. The applicant states that he belonged to the Steam Loco cadre which was abolished and the applicant was absorbed in TRS (Elect.) in the year 1990, thus his parent department being the TRS, it is wrong on the part of the respondents to deprive the applicant of the benefit of restructuring which was made applicable to the technical staff with effect from 1.3.1993 vide Railway Board's letter dated 27.1.1993. Aggrieved by this the applicant has filed this OA claiming the aforesaid reliefs.

4. The learned counsel for the respondents argued that the cadre of TRS/BPL was closed on 31.1.1995 and by mistake his name was placed as Machineman in the seniority list dated 16/22.3.1995. The representation of the applicant has been considered and he has been assigned seniority in Fitter Grade-I, Technician Grade-I, by provisional seniority dated 10.9.1998. The respondents further argued that the TRS cadre at Bhopal was open upto 31.1.1995 and the lien of the staff working at TRS Bhopal was maintained upto 31.1.1995 at their parent cadre in parent division. Therefore the applicant's lien was at Jabalpur division i.e. his parent division and cadre. In letter dated 23.9.1998, the confirmation date of the applicant was wrongly mentioned as 20.7.1993 as Fitter Grade-I as at that time the cadre of TRS/BPL was open and no regular promotion could be made in open cadre. The applicant was regularised in Fitter Grade-I/Technician Grade-I w.e.f. 20.6.1995 after closing the cadre. At the time of upgradation with effect from 1.3.1993 vide Railway Board's letter dated 27.1.1993 the lien of the applicant was maintained at Jabalpur division as

Machineman Grade-II. The applicant has not alleged the name of any employee in the parent cadre who has been promoted over the applicant. The respondents further argued that as the applicant was transferred from Jabalpur Division to Open cadre of TRS/Bhopal and his lien was at Jabalpur division upto 31.1.1995, on enquiry the DRM(P)/Jabalpur has informed vide letter dated 26.6.2000, that no one junior to the applicant has been promoted in his parent cadre between 15.11.1990 to 31.1.1995. Hence, the Original Application is liable to be dismissed.

5. After hearing the learned counsel for the respondents and on perusal of the records and pleadings, we find that the submission of the applicant in the OA that the respondents have gravely prejudiced the active service career of the applicant and he has been subjected to supersession by the juniors, seems to be not proper because in his OA itself he has mentioned in paragraph 4.7 that he has no grievance against the juniors who are promoted and therefore they are not impleaded as party in the instant case. The argument of the respondents in this regard seems to be proper that the juniors as alleged by the applicant must be made necessary party in this OA because they shall be adversely effected if any order is passed by the <sup>adverse</sup> Tribunal. Legally no orders can be passed by any court, without affording opportunity of hearing to the party. Hence, the alleged employees who are said to be juniors by the applicant are necessary party in this OA. We also find that the applicant was working at Jabalpur Division as Machineman Grade-II in the scale of Rs. 330-480/- and after screening was transferred to Bhopal Division as fitter Grade-II in the grade of Rs. 1200-1800/-. The applicant was promoted on adhoc basis as Highly Skilled Fitter Grade-I vide order dated 20.7.1993. The cadre of TRS/Bhopal was closed on 31.1.1995 and by mistake his name

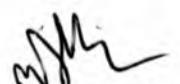


was placed as Machineman in the seniority list dated 16/22.03.1995. The representation of the applicant in this regard was also rejected. The final seniority list dated 28.7.1999 (Annexure R-1) was published. We also noticed that the TRS cadre at Bhopal was opened upto 31.1.1995 and the lien of the staff working at TRS Bhopal was maintained upto 31.1.95 at the parent cadre in parent division. Therefore, the applicant's lien was at Jabalpur division i.e. his parent division and cadre. Vide letter dated 23.9.1998 the confirmation date of the applicant was wrongly mentioned as 20.7.1993 as Fitter Grade-I as at that time the cadre of TRS/BPL was open and no regular promotion could be made in open cadre. The applicant was regularised in Fitter Grade-I/Technician Grade-I w.e.f. 20.6.1995 after closing the cadre. It is, therefore, clear that the applicant was assigned the seniority only after closure of the TRS on 31.1.1995. Hence, the respondents have not committed any irregularity in assigning the seniority below one Shri Raghunath Tukaram as the applicant came to be absorbed on his own option and was assigned bottom seniority as per rules. Therefore, the claim of the applicant that he should have been assigned the seniority from the date he came on transfer i.e. with effect from 15.11.1990 is not tenable and is rejected.

6. In view of the aforesaid, we do not find any merit in this case and accordingly, the Original Application is dismissed. No costs.

  
(Madan Mohan)  
Judicial Member

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(M.P. Singh)  
Vice Chairman