

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT CAMP : INDORE

Original Application No.844 of 1997

Indore, this the 14th day of May, 2003

Hon'ble Mr.R.K.Upadhyaya-Administrative Member
Hon'ble Mr.A.K.Bhatnagar-Judicial Member

Shri K.K.Pillai s/o Shri G.Gopala Pillai,
Ex I.O.W. Gr.I R/o Devi Sadan, Near R.N.T.
Shool, Rajput Boarding House, Ratlam-457001 - APPLICANT

(By Advocate - Shri N.D.Mukhiya)

Versus

1. Union of India, through the General Manager
W.Rly.Churchgate Bombay-20.
2. Divisional Rail Manager, W.Rly, Do Batti,
Ratlam-457001 (MP) - RESPONDENTS

(By Advocate - Shri Y.I.Mehta, Sr. Advocate
with Shri H.Y.Mehta)

O R D E R

By R.K.Upadhyaya, Administrative Member -

The applicant has claimed a direction to interpolate his name in the combined seniority list of Inspector of Works (for short 'IOW') Grade-II in the scale of Rs.1600-2660 with effect from 12.7.1988 and has also sought a direction for his consideration for further promotion in the scale of Rs.2000-3200 as IOW Gr.I and next promotion in the scale of Rs.2375-3500 in the grade of CIOW. The applicant has also prayed for cost of Rs.5,000/-.

2. The claim of the applicant is that earlier he had filed O.A.No.719/90 which was disposed of vide oral order dated 16.1.1995 wherein this Tribunal had granted him benefit of notional seniority in the post of IOW Grade-III w.e.f. 26.5.1987. The learned counsel stated that since he was not given the benefit of that order

properly, he had filed MA No.509 of 1996 wherein this Tribunal had observed that if there is any further grievance of the applicant, he may approach the Tribunal by filing a fresh application. Accordingly, the present application has been filed claiming the reliefs as stated earlier. The learned counsel stated that the applicant's juniors have been trade tested in the year 1991 and have been promoted in 1992. The applicant was not allowed to appear in the selection process because of his wrong seniority, therefore, the respondents should have given further promotion to the grade of IOW Gr.I and CIOW with effect from the same date from which his juniors were promoted.

3. The learned counsel of the respondents has stated that the applicant had filed OA No.719/1990 which was decided in January, 1995. If the applicant was aggrieved by not being allowed in the selection process of the year 1991, he should have challenged the same in that OA. If any grievance was there prior to the disposal of that OA in the month of January, 1995, the same should have been placed before the Tribunal for its consideration. The applicant having not done so, cannot be allowed to get benefit of his inaction. In this connection, the learned counsel of the respondents further invited attention to the decision dated 16.1.1995 in OA 719/1990 wherein it has been stated that the applicant "will not be entitled to any other benefit other than the notional seniority on the post of I.O.W. Grade-III". This Tribunal in that order merely stated that the respondents were directed to give notional seniority to the applicant on the post of IOW Grade-III with effect from 26.5.1987 at par with Hazari Singh. It is also stated by the learned counsel that the applicant subsequently

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passed the selection process in the year 1994 and he was promoted to the post of IOW Gr.I in the year 1994. If he was not satisfied with his promotion in the year 1994, he should have agitated the same immediately when the cause of action arose in the year 1994. The present OA filed on 26.8.1997 is barred by limitation and deserves to be dismissed on this preliminary ground alone. It was further pointed out that the applicant passed the selection process in the year 1994, therefore, he cannot be granted any benefit of his selection in the year 1994 from a date prior to that in the year 1991 or 1992. The applicant had not appeared in the selection process of 1991 or 1992 and 1993. If he was aggrieved of that, he could have made such a request before this Tribunal during the pendency of that OA 719/90. It was also submitted by the learned counsel that the claim of the applicant for promotion from a date when his juniors were promoted cannot be entertained without making such juniors as party to the present OA as none of the juniors are impleaded as party. Therefore, this petition also deserves to be dismissed for non-joinder of necessary parties.

4. The learned counsel of the applicant invited attention to the provisions contained in Para 228 of IREM wherein it is desired that any selection made should be implemented immediately on the preparation of the panel. He has also brought to our notice order dated 9.1.1996 (Annexure-A-17) in the case of Shri P.K. Shrivastava wherein he has been given benefit of promotion to IOW Gr.I in the scale of Rs.2000-3200 with effect from 30.11.1989. It is stated by the learned counsel that the applicant's claim is at par with the case of Shri P.K. Shrivastava inasmuch as the benefit of seniority from a back date should be given to the applicant also.



5. We have heard the learned counsel of the parties and have perused the material available on record.

6. Initially the learned counsel of the applicant pressed his Misc. Application for calling of the revised seniority list which was rejected by our order dated 12.5.2003 on the ground that the basic issue for consideration is whether the applicant having qualified the selection of 1994 can still be given benefit in the year 1991. Even if the applicant was senior in the grade of IOW Gr.II and IOW Gr.III, his case for seniority and promotion to the grade of IOW Gr.I could not be considered unless he had passed the selection process. There is no dispute that the applicant was declared successful in the selection of the year 1994 and was promoted as IOW Gr.I in that year also. The learned counsel of the applicant was specifically directed to bring to our consideration the relevant rules on the subject to show that the applicant may be given benefit of promotion in the year 1991 even though he was selected in the year 1994. Except reference to the provisions contained in Para 228 of the IREM and the case of Shri P.K.Shrivastava, nothing further has been brought to our notice. As has been rightly pointed out by the learned counsel of the respondents, the provisions of Para 228 of IREM are not relevant in this case. The case of Shri P.K.Shrivastava is also not comparable with that of the applicant. In that case, the employee was not allowed to participate in the selection on account of administrative reasons. Since he was not allowed to participate in the selection process, he has been given the benefit as per provisions of the rules. It is also undisputed that the juniors who have been promoted in the year 1992 had appeared in the

selection process of the year 1991. Therefore, merely because the applicant was senior in the grade of IOW Gr.III he cannot ~~be~~ automatically seek promotion at par with the juniors in the grade of IOW Gr.I. The promotion ~~is~~ to IOW Gr.I is ~~based on~~ selection and unless someone ~~has~~ cleared the selection, he cannot be considered for promotion. It is also rightly stated by the learned counsel of the respondents that the applicant having been promoted in the grade of IOW Gr.I in the year 1994 cannot ask for his promotion from 1991 by filing this OA in the year 1997 without explaining the reason for delay. The applicant has also not impleaded his juniors as party. Therefore, on these two technical grounds alone the application deserves to be dismissed.

7. For the reasons mentioned in the preceding paragraph, the reliefs claimed by the applicant cannot be allowed. Therefore, this O.A. is dismissed without any order as to costs.

AB
(A.K.Bhatnagar)
Judicial Member

URB
(R.K.Upadhyaya)
Administrative Member.

rkv.

पूर्णांकन सं. ओ/न्या.....जबलपुर, दि.....
प्रतिलिपि अंचले दित:-

(1) सहिद, उच्च व्यायालय दार एमोसिएशन, जबलपुर
(2) आदेदक श्री/श्रीमती/ज्ञु के काउंसल *AK (S. MULANI) 2, Adm. IXD*
(3) प्रत्यर्पि श्री/श्रीमती/ज्ञु के काउंसल *YD (MULANI), Adm. IXD*
(4) व्यायपाल, केप्रा., जबलपुर न्यायदीठ
सूचना एवं आवश्यक कार्यकारी देतु

Seal
दिनांक
29/5/03

signed
29/5/03
or