

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 22nd day of March, 2010

ORIGINAL APPLICATION NO. 145/2005

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Sunil Kumar Sinha son of Shri Nag Narayan Prasad aged about 45 years, resident of Quarter No. S/3, Type 3 Road No. 2 Ganpati Nagar, Railway Colony, Jaipur. Presently serving as Jr. Engineer I under SSE (C&W), NWR, Jaipur.

.....APPLICANT

(By Advocate: Mr. S. Shrivastava)

VERSUS

1. Union of India through General Manager, North Western Railway, in front of Railway Hospital, Jaipur.
2. Divisional Railway Manager, North Western Railway.
3. Mahendra Singh Powar, Junior Engineer I, working under SSE (C&W), NWR, Rewari, Haryana.
4. Shambhu Narayan, Junior Engineer I, working under SSE (C&W), NWR, Rewari, Haryana.

.....RESPONDENTS

(By Advocate: Mr. V.S. Gurjar)

ORDER (ORAL)

Initially the grievance of the applicant was regarding assignment of seniority to Respondent no. 3 namely Shri Mahendra Singh Powar in the cadre of Junior Engineer Grade I at sr. no. 1 vide seniority list dated 14.10.2003 whereas no seniority was assigned to Respondent no. 4, Shri Shambhu Narayan and the name of the applicant was shown in the lower grade of Rs.5000-8000/- as at the relevant time, the applicant was reverted to the said grade from higher pay scale of Rs.5500-9000/-. Further grievance of the applicant was that the based

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on that seniority list, the respondents have issued a notification dated 15.03.2005 whereby 5 post(s) of Section Engineer (C&W) in the pay scale of Rs.6500-10500/- was notified and the name of the respondents nos. 3 & 4 were shown in the eligibility list at sr. no. 1 & 2 respectively in List 'A' whereas the name of the applicant was shown in List 'B' (Annexure A/2). However, subsequently on representation of the applicant, the name of the applicant was shown at sr. no. 3 whereas the name of respondent nos. 3 & 4 was shown at sr. no. 1 & 2 respectively of the List 'A'. It is also not in dispute that pursuant to the said list, the applicant and respondents nos. 3 & 4 have qualified the selection test but since there were only two posts of Section Engineer available in General category, the applicant could not be empanelled and respondents nos. 3 & 4 were granted promotion to the post of Section Engineer with effect from 17.06.2005 during the pendency of this OA. It was based on these facts, the applicant has filed this OA thereby praying for quashing the seniority list dated 14.10.2003 (Annexure A/1), notification dated 15.03.2005 (Annexure A/2) and notification dated 30/31.03.2005 (Annexure A/3) whereby the name of the applicant was shown in the eligibility list at sr. no. 3 whereas the names of respondent nos. 3 & 4 were shown at sr. no. 1 & 2 respectively.

2. Notice of this OA was given to the respondents. The respondents have filed their reply. The stand taken by the respondents in the reply was that since respondent nos. 3 & 4 were promoted in the pay scale of Rs.5500-9000 w.e.f. 15.05.1991 whereas the applicant was promoted w.e.f. 22.04.1992 in the said scale, as such, respondents

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nos. 3 & 4, who no doubt initially belongs to Rewari unit of Bikaner Division and were brought to Jaipur Division after the creation of North Western Railway with effect from 01.04.2003, were rightly assigned seniority above the applicant in the Jaipur Division. The respondents have further stated that vide seniority list dated 14.10.2003 (Annexure A/1), respondent no. 4 was provisionally kept at sr. no. 20 but pursuant to the judgment rendered by the Principal Bench, whereby the Principal Bench has directed to the respondents to decide the issue of seniority of respondent no. 4, respondent no. 4 as well as respondent no. 3 were again assigned seniority vide order dated 01.10.2004 (Annexure R/5) thereby treating the date of promotion of respondents nos. 3 & 4 as 18.06.1991 and 15.06.91 respectively after being declared as surplus in Bikaner Division. Since the validity of the order dated 01.10.2004 (Annexure R/5) was not under challenge before this Tribunal in the un-amended OA, the applicant moved an application for amending the OA thereby incorporating additional averment by way of Para No. 4.14 thereby contending that respondent no. 4 could not have been absorbed in Jaipur Division after being declared surplus in Bikaner Division in terms of Railway Board circular and in any case from the date of initial appointment. As such, official respondents have wrongly given the benefit of seniority to respondent no. 4 as per order dated 01.10.2004, which was annexed with the Amended OA as Annexure A/9. Based on this averment, additional relief clause was also sought to be inserted [Para 8(f)] thereby praying for quashing the order dated 01.10.2004 (Annexure A/9) by which respondent no. 4 was wrongly given seniority against the instructions laid down in the Circular dated 25.05.2004 issued by the Railway

Board. It may be stated here that the said application for amendment was allowed by the Bench without giving notice of this application to respondent nos. 3 & 4 who were un-represented. As such, on account of this inadvertent lapse thereby permitting the applicant to challenge the order of the Department dated 01.10.2004 after a lapse of about 6 years without notice to the affected parties, rights of respondents nos. 3 & 4 have been materially affected on account of ex-parte order passed by this Tribunal thereby allowing amendment vide order dated 27.01.2010. It may also be relevant to mentioned here that official respondents by way additional affidavit have stated that pursuant to notification dated 15.03.2005 (Annexure A/2) read with notification dated 30/31.3.2005 (Annexure A/3), the name of respondent no. 3 was considered because no final decision was taken by the Department although respondent no. 3 had given option of absorption in Bikaner Division and the matter was pending. Thus, till no transfer order was issued in terms of option exercised by respondent no. 3 and his lien was at Jaipur Division, as such, he was rightly promoted from the post of Junior Engineer in the pay scale of Rs.5500-9000/- on which he was working with effect from 15.06.1991. It is further stated that respondent no. 3 was reverted vide order dated 27.12.2005 consequent upon his absorption in Bikaner Division and again this resultant vacancy was filled up by way of selection vide order dated 05.09.2006.

3. We have heard the learned counsel for the parties and have gone through the material placed on record. Learned counsel for the applicant submits that applicant has not been promoted against the

vacancy which fell vacant on account of reversion of respondent no. 3 but he was selected pursuant to the subsequent notification. The applicant was promoted as Section Engineer vide order dated 05.09.2006 (Annexure AR/6). According to the learned counsel for the applicant, the applicant was entitled to be promoted w.e.f. 17.06.2005 pursuant to panel dated 14.06.2005 (Annexure R/3).

4. We have given due consideration to the submission made by the learned counsel for the applicant. In order to do justice between the parties and the fact that the validity of the seniority order dated 01.10.2004 (Annexure A/9) was challenged by the applicant in the year 2010 which formed the basis for issuance of notification dated 15.03.2005 (Annexure A/2) and notification dated 30/31.03.2005 (Annexure A/3) and this Tribunal has allowed the application for amendment without giving notice to the affected parties i.e. respondent nos. 3 & 4, it will be in the interest of justice if the matter is remitted back to the respondents' authorities to consider the issue regarding grant of seniority to respondents nos. 3 & 4 in Jaipur Division w.e.f. 15/16.06.1991 after giving notice to the applicant, as according to the applicant no such seniority with effect from 15.06.1991/18.06.1991 could have been granted to respondent nos. 3 & 4 who were declared surplus in Bikaner Division, which formed part of the Northern Railway and as such at the most, they could have been assigned seniority in Jaipur Division from prospective date when they were absorbed in that Division. Accordingly, the matter is remitted back to respondent no. 2 to decide the issue of seniority in the grade of Rs.5500-9000/- as determined vide order dated 01.10.2004

(Annexure A/9) afresh after giving notice to the applicant as well as respondent nos. 3 & 4 and pass appropriate order within a period of three months from the date of receipt of a copy of this order. It is hereby clarified that we have not gone into merit of the case and issue regarding the seniority qua the applicant vis-à-vis Respondent nos. 3 & 4 in Jaipur Division in the grade of Rs.5500-9000/- shall be determined on the basis of instructions/order issued by the Railway authorities from time to time. It is further clarified that in case the applicant is assigned seniority over & above respondent nos. 3 & 4, in that eventuality respondent shall also consider granting promotion to the applicant on the post of Section Engineer in the pay scale of Rs.6500-10500 notionally without any back wages, from the date from which it was granted to Respondent nos. 3 & 4.

5. With these observations, the OA is disposed of with no order as to costs.

BLK
(B.L. KHATRI)
MEMBER (A)

MLC
(M.L. CHAUHAN)
MEMBER (J)

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