

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 49/2005

WITH

MISC. APPLICATION NO. 359/2005

Date of Order:

29/01/2010

CORAM:

**HON'BLE Dr. K.S. SUGATHAN, ADMINISTRATIVE MEMBER
HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER**

B.R. Punia S/o Shri Kishna Ram Punia, aged about 42 years, Section Engineer, Office of Divisional Railway Manager (Drawing Section), Jaipur Division, N.W.R., Jaipur, R/o E-130, Kataria Colony, Ram Nagar Extension, Sodala, Jaipur.

Mr. P.V. Calla, Counsel for applicant.

...Applicant

VERSUS

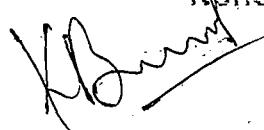
1. The Union of India through the General Manager, North Western Railway, Opposite Railway Hospital, Jaipur.
2. The Divisional Railway Manager (E), Jaipur Division, North Western Railway, Jaipur.
3. Shri Virendra Singh Yadav, Section Engineer, Office of Divisional Railway Manager (Drawing Section), Jaipur.
4. Shri Arvind Kumar Pareek, Section Engineer, Office of Divisional Railway Manager (Drawing Section), Jaipur.
5. Shri B.P. Goyal, Section Engineer, Office of Divisional Railway Manager, Ajmer Division, Ajmer.

...Respondents.

Mr. S.P. Sharma, counsel for respondents No. 1 & 2.

Mr. S. Shrivastava, counsel for respondents No. 3 & 4.

None present for respondent No. 5

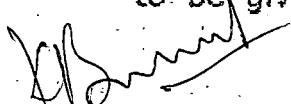


ORDER**(Per Hon'ble Dr. K.B. Suresh, Judicial Member)**

The applicant claims for quashment of Annexure-A/1 order dated 12.10.2004 whereby respondents No. 3 & 4 have been given promotion on the post of Chief Draftsman/Section Engineer, and for deletion of name of the respondents No.3 & 4 from Annexure-A of eligibility list Annexure-A/2 and place them in the eligibility list treating his promotion w.e.f. 01.11.2003 and for a direction for the respondents No.3 & 4 to be shown below the name of the applicant in the combined seniority list issued for promotion to the post of Assistant Engineer vide notification dated 11.01.2005. He also prays for corollary and consequential benefits pertinent to the above. Apparently, the applicant was selected to the post of Section Engineer after having undergone the selection process vide Annexure A/4 dated 01.01.1998. Apparently, the respondents No. 3 & 4 were given promotion to the same scale w.e.f. 01.11.2003 but in combined eligibility list prepared for the purpose of selection to the post of Assistant Engineer applicant laments that he was placed below the respondents No.3 & 4. Apparently, this Court has directed vide an interim order to consider the applicant as well, even though, the respondents has placed him in a reserve list for the selection given for Assistant Engineer. But it seems that the applicant had failed and his complaint is that because of the filing of the Original Application he was selectively prejudiced.



2. The respondents No. 1 & 2 had filed a reply by which they would content that an out of turn of promotion was granted to the respondents No.3 & 4 of through various cadres at the same line because Railway has discovered that somehow or other they had suffered an unmerited loss and following representation from a Trade Union a decision was taken by the General Manager in the permanent negotiating machinery at the Headquarters and they were granted proforma promotion. They would admit that the applicant was working in the same pay scale w.e.f. 01.01.1998 but this pay scale was given w.e.f. 05.12.1997 to respondents No.3 & 4 because one person named Shri Sita Ram Sharma who had been their junior, was promoted on that day and, therefore, they were given promotion at the decision of the General Manager at the instance of the Trade Union. They would say that Section Engineer post was being controlled from Headquarters since 1997, even though, later it came to be controlled by the Divisional Rail Manager. For the fitter category to the Junior Engineer, the railway should aver that; wrongly they assumed that only 07 vacancies were available and they had not promoted the third and forth respondents at that time who were next in line and since if they had been promoted then, their career progression would had been quicker, therefore, after discussion with the Trade Union and as agreed to by the General Manager with the Trade Union a three tier promotion was given retrospectively. Apparently, taking power from paragraph 228 of the Indian Railway Establishment Manual and since paragraph 227 would say no exemptions were to be given to pass a prescribed promotional course applicant



would thus question it. Paragraph 228 of the IREM relates to promotion by seniority list and not for promotion by selection, as the case here and, therefore, readily it can be seen that an erroneous promotion had been given to the respondents No.3 & 4. It may be because of pressure from Trade Union or some other but even a specific entitlement could neither the counsel for the respondents No. 1 & 2 nor the counsel for respondents No. 3 & 4 was able to prove or rely on a specific Rule or legal provision, which would enable the Railway authorities to provide out of turn promotion in a selection post without even holding the selection process. Paragraph 228 of IREM is applicable only if a promotion/appointment have been denied for administrative error and, therefore, their seniority list should be assigned vis-à-vis their juniors, but that is not the case here. This is not a promotion by a seniority list but a promotion by selection and, therefore, paragraph 228 do not have any application. But the paragraph 228 of IREM would also say that in Sub clause-II (a) the orders of notification of promotion or appointment of a regular servant should be cancelled as soon as it is brought to the notice of the appointing authority that such a promotion or appointment has resulted from a factual error and the Railway servant concerned, should, immediately on such cancellation, be brought to the position which he would have held but for the incorrect orders of promotion or appointment. In paragraph 228 of IREM in Sub Clause-II (d) it would say that cases of erroneous promotion/appointment in a substantive or officiating capacity should be viewed with serious concern, and suitable disciplinary action

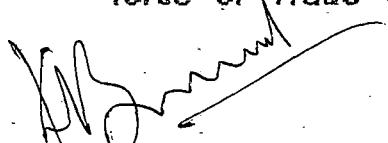
should be taken against the officers and staff responsible for such erroneous promotion of appointment. The orders refixing the pay should be issued expressly under Rule 2927-R.II.

3. We heard the respondents No.3 & 4 and they would say that his rightful promotion which were not made available to them for reasons beyond his control were got corrected, even though, obliquely through the action of the permanent negotiating machinery. They would say that being aggrieved for non-empanelment in the panel of 1992 they put forth their grievances before the Divisional Head through recognized union. But since DRM has not taken any decision the then G.M. of the erstwhile Zone held talks with concerned Union and wherein it was decided that due benefits would be given to them; and in J.E. Gr.-II; even though date of order was 12.09.2003 the effect was predicated to 20.10.1992 and for J.E. Gr.-I even though the date of order was on 16.01.2004 the effective date was predicated to 24.09.1994 and for Section Engineer (Drg.) an out of turn promotion without even attending a selection process was given to them vide order dated 12.10.2004 and to take effect from 05/12/06.1997. Apparently, because a junior one Shri Sita Ram Sharma had been selected normally by selection and was placed in that pay scale on that day. This abuse of power has resulted in serious prejudice to them, submits, the applicant.

4. We had asked both the counsel for the respondents to show us the competence of the General Manager or the Divisional Head

to pass the impugned order as we had already explained that paragraph 228 of the IREM do not confer sufficient material to cause the respondents No.1 & 2 to pass said order beside it will be an erroneous promotion granted out of turn on an imaginary ground and that too on retrospective dates without any reason or rhyme.

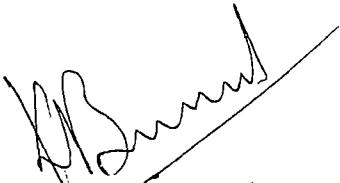
5. It appears that earlier also this Tribunal had directed the respondents to file an additional reply finding the same lacunae implicit in their reply but the additional reply filed by them was also vague in the extreme and not answering any of the points which was raised for consideration. The applicant would say that the actions of the official respondents are arbitrary and for oblique reasons. Counsel for the applicant would also say that the actions of the respondents are not in good faith, irregular and unsustainable. The respondents were unable to point out any Rule or methodology which empowered the respondents No.1 & 2 to pass the impugned order. Since, they were unable to do so, clearly a deliberate error has been concluded by the respondents No.1 & 2 and, therefore, the Annexure A/1 and A/2 are hereby quashed. Since, at the discussion at the bar it has come out that the General Manager may have acted under severe pressure from the Trade Union so as to pass the impugned orders (Annexures A/1 & A/2) and through following his direction the Division Rail Manager (E), respondent No.2 had issued the same. But at the same time, it is incumbent on the higher officers to resist illegal force of Trade Union as well. As the pressure of collective



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bargaining is not intended for obtaining specific personal benefits without the sanction of law, such circumstances of Trade Union administration are to be eschewed clearly the respondents No.1 & 2 had failed in this respect. Even though, we have understood after discussion at the bar that methodology they had adopted is born out of fear rather than favour, we cannot fail to criticize them. But in this circumstance we are not imposing any costs on respondents No.1 & 2. The OA is allowed as above; the respondents No.3 & 4 brought back to status quo ante and the eligibility list shall be restructured in consonance with the above directions and recast within a period of 3 months from the date of receipt of this order. O.A. is allowed but without any costs ~~and the~~ ^W

~~No.3 for joining together is also allowed.~~


(Dr. K.S. Suresh)
Member Judicial


(Dr. K.S. Sugathan)
Member Administrative

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