

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 24th day of March, 2010

ORIGINAL APPLICATION NO. 200/2006

CORAM:

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

Ashok Kumar Mathur son of Shri Brij Lal Mathur, aged about 53 years, resident of 11/49, Brahampuri Ajmer (Rajasthan). Presently posted as Head Clerk in the office of the Assistant Controller of Stores (Loco Stores), North Western Railways, Ajmer.

.....APPLICANT

(By Advocate: Mr. P.P. Mathur)

VERSUS

1. The General Manager, Western Railway, Church Gate, Mumbai.
2. The General Manager, North Western Railway, Station Road, Jaipur.
3. The Deputy Controller of Stores, North Western Railway, District Ajmer.
4. B.K. Joshi, Retired Deputy CMM, 174 Saras Milk Parlour, Panchsheel Colony, Ajmer.
5. Shabuddin, Retired Senior Personnel Manager, North Western Railway, Jaipur, resident of Chudi Bazar, Diggi Bazar, Ajmer.
6. Lakhpat Singh Choudhary, Deputy Chief Material Manager, General Store, Department North Western Railway, Ajmer, Nagar, Ajmer.

.....RESPONDENTS

(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following relief:-

"It is, therefore, humbly prayed that this Hon'ble Tribunal may very graciously be pleased to allow this Original Application, call for entire record relating to the case and grant the following relief:-

- a) quash and set aside the order dated 6.5.2005 (Annexure A/) and 15.9.2005.

- b) Direct the respondents to recast the seniority of the applicant on the basis of his date of appointment as Clerk above all those who were appointed later. The consequential benefits including promotion on higher posts of Senior Clerk, Head Clerk, Chief Clerk, Office Superintendent Grade II etc. and seniority may also be given at least from the earliest date when any of his junior was promoted including Behari Lal Mishra. The consequential benefits of pay fixation and arrears along with interest of 18% may also be allowed in favour of the applicant.
- c) that exemplary cost may be imposed upon the respondents for pretending that justice has been done. Cost of and incidental to this original application may be awarded in favour of the applicant.
- d) any other order or direction, which this Hon'ble Tribunal deem fit in the facts and circumstances of the case may also be allowed in favour of the applicant."

2. The grievance of the applicant in this case is that the order passed by this Tribunal in OA No. 131/2001 dated 12.07.2004, which has been affirmed by the Hon'ble High Court, has not been correctly implemented. It is further stated that when the judgment of this Tribunal in earlier OA was not implemented, the applicant filed Contempt Petition No. 54/2004. It was during the pendency of this Contempt Petition that the impugned order dated 06.05.2005 (Annexure A/1) was passed whereby the name of the applicant was incorporated at sr. no. 17 B, below the name of Shri Harmendra Singh and above the name of Shri Rajendra Singh, who was impleaded by the applicant as Respondent no. 3 in the earlier OA and whose name find mention at sr. no. 18 of the seniority list dated 22.09.1995. This Tribunal disposed of the Contempt Petition vide order dated 01.06.2005 as this Tribunal was of the view that the order of this Tribunal passed in earlier OA has been substantially complied with. In the operative portion, it was also made clear that in case the applicant is aggrieved by the order dated 06.05.2005; it will be open for him to re-agitate the matter by filing the fresh OA. Accordingly, the applicant has filed the present OA for the aforesaid relief thereby praying for quashing the order dated 06.05.2005 (Annexure A/1) and order dated 15.09.2005 (Annexure A/2) whereby the representation of the applicant was rejected.

3. Notice of this application was given to the respondents. The respondents have justified their action on the ground that the seniority of the applicant vis-à-vis other respondents was re-determined in terms of provisions contained in Para No. 302 of IREM and since the applicant was appointed in terms of Para No. 302 of IREM on 16.04.1984, as such his name was correctly shown at sr. no. 17 B in terms of the seniority list dated 22.09.1985 (Page No. 44 of the Paper Book). The respondents have also categorically stated that the judgment of this Tribunal has been complied with.

4. In order to decide the point in issue as to whether the applicant has been granted benefit in terms of the order passed by this Tribunal in earlier OA No. 131/2001 decided on 12.07.2004, it will be appropriate to reproduce Para No. 15 of the judgment, which reads as under:-

"15. In the premise, the OA has substance and the same stands allowed accordingly. The respondents are directed to assign the seniority to the applicant on the post of Clerk with effect from 31.01.1984 and the applicant would be entitled to all consequential benefits. The impugned seniority list is ordered to be modified accordingly. However, in the facts and circumstances of this case, the parties are directed bear their own costs."

5. As can be seen from the portion, as reproduced above, it is clear that the respondents were directed to assign the seniority to the applicant on the post of Clerk with effect from 31.01.1984 alongwith all consequential benefits and to modify the impugned seniority list accordingly. There is no dispute that pursuant to the aforesaid order passed by this Tribunal, which has been affirmed by the Hon'ble High court, the applicant has been granted monetary benefits with effect from 31.01.1984. However, if the impugned order dated 06.05.2005 (Annexure A/1) is seen in the light of the earlier seniority list dated 22.09.1985, the applicant has been assigned seniority based upon his appointment in the cadre of Clerk on 16.04.1984 as his name has been incorporated below Harmendra Singh, whose date of

appointment is 13.04.1984 and above Shri Rajendra Singh, whose date of appointment is 30.04.1984. Thus, according to us, the seniority assigned by the respondents at sr. no. 17 B vide impugned order dated 06.05.2005 (Annexure A/1) is in contravention of the decision rendered by this Tribunal in earlier OA, operative portion of which has been reproduced above.

6. Learned counsel for the respondents submits that the present OA is not maintainable in view of the fact that the applicant is re-agitating the issue, which was raised in the earlier OA and also that in sum & substance, the grievance of the applicant is regarding the execution of the earlier order. Learned counsel for the respondents also submits that no relief can be granted to the applicant in view of the order passed by the Tribunal in the Contempt Petition.

7. We have given due consideration to the submission made by the learned counsel for the respondents. We are of the view that the submission so made by the learned counsel for the respondents deserves out right rejection. The applicant is not seeking execution of the earlier order dated 12.07.2004 passed in OA No. 131/2004. In fact pursuant to the order passed by this Tribunal in earlier OA, the respondents have passed the fresh order dated 06.05.2005 (Annexure A/1) whereby the applicant has been granted monetary benefits with effect from 31.01.1984 but the applicant has not been granted benefit of seniority on the post of Clerk with effect from 31.01.1984. The said benefit has been granted with effect from the joining the post i.e. 16.04.1984. Thus, this being a fresh order, the applicant has the right to challenge the validity of this order and the present OA is not in the nature of execution application.

8. The second contention of the learned counsel for the respondents that since the notices have been discharged against respondents in the Contempt Petition, as such, this OA could not have been filed, is also mis-conceived. It may be stated that in the Contempt Petition, the Court/Tribunal is required to consider whether there is willful disobedience of the order passed by the court/Tribunal.

It is settled position that in the Contempt Petition neither the Court/Tribunal can pass fresh direction nor can go into merit of the order passed and the Court has to consider whether the direction given by the Court in original case has been complied with or not. Thus it was in view of this settled position that the Tribunal has come to the conclusion not to proceed with the Contempt Petition and notices were discharged. Simultaneously, the Court has also clarified that it will be permissible for the applicant to file fresh OA in case the order passed by this Tribunal has not been fully complied with or has been wrongly implemented.

9. On merit, learned counsel for the respondents has justified the order dated 06.05.2005 on the ground that the applicant could not have been assigned seniority with effect from 31.01.1984 in view of the provision contained in Para No. 302 of the IREM and the law settled by the Apex court. Suffice it to say that it is not permissible for us to go into this question in this OA as rightly or wrongly, this Tribunal has given categorical finding in earlier OA No. 131/2001 that the applicant shall be assigned seniority with effect from 31.01.1984. Based upon this categorical finding given by this Tribunal, which has been affirmed by the Hon'ble High court, it was incumbent upon the respondents to implement the judgment even if the same may be contrary to rule or to the decision rendered by the Apex Court and it was not permissible for the Administrative Authority to ignore the judgment rendered by this Tribunal by passing order contrary to the decision so taken.

10. Thus in view of what has been stated above, we are of the view that the impugned order dated 06.05.2005 (Annexure A/1) so far as it relates to assignment of seniority at sr. no. 17-B to the applicant is quashed and set aside. The applicant shall be assigned seniority with effect from 31.01.1984 on the basis of the judgment rendered by this Tribunal. Based on seniority so determined, the applicant shall also be entitled to all the consequential benefits with effect from 31.01.1984.

The respondents are directed to do needful in the light of the

observations made above within a period of three months from the date of receipt of a copy of this order.

11. Learned counsel for the applicant further argued that impugned order dated 06.05.2005 (Annexure A/1) has not been passed by the competent authority and it was passed by Respondent no. 5 on his own level and without approval of the competent authority, as such, it is bad on this ground also. For that purpose, learned counsel for the applicant had submitted that he has sought information under the Right to Information Act, whether approval of competent authority was taken by respondent no. 5, or whether any Note-sheet was drawn before passing the impugned order dated 06.05.2005 (Annexure A/1). Learned counsel for the applicant submits that pursuant to the information so received, it is clear that no such approval was sought from the competent authority.

12. We have given due consideration to the submission made by the learned counsel for the applicant. We are not required to go into this question and in case the impugned order dated 06.05.2005 has been passed by Respondent no. 5 without approval of the competent authority, such aspect can be looked into by the competent authority on administrative side.

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


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ