

Letter on, Shri N. C. Goyal, Counsel
for respds. No. 1 & 2 and Shri Subhash
Biswas, Counsel for respds. No. 3 & 4
Present before us.

Praveen
(J. P. Shukla)
Administrative Member

Alka
(M. L. Chauhan)
Judicial Member

30/10/07 order pronounced today
in the open court by the
aforesaid Bench.


30/10/07.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 31st day of October, 2007

ORIGINAL APPLICATION No.322/2006

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

Anand Prakash Sajnani,
s/o Shri K.S.Sajnani,
aged 42 years,
working as Reservation Supervisor,
Railway Station, Ajmer,
Scale Rs. 5500-9000 and
r/o 604/27, Police Chowki Street,
Ramganj,
Ajmer.

.. Applicant

(By Advocate: Shri P.V.Calla)

Versus

1. Union of India
through General Manager,
Noth-Western Railway,
Jaipur
2. The Divisional Railway Manager,
North Western Railway,
Ajmer.
3. Shri Sudhir Bhatnagar,
Reservation Supervisor,
c/o Station Superintendent,
Railway Station,
Ajmer.
4. Shri Rajesh Chand Kapil,
Reservation Supervisor,
c/o Station Superintendent,

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Railway Station, Ajmer.

.. Respondents

(By Advocate: Shri N.C.Goyal & Shri Subhash Bisawa)

O R D E R

Per M.L.Chauhan, Member (J)

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

- "i) That the Hon'ble Tribunal may kindly issue by an appropriate orders or directions and writ and direct the respondents to declare the applicant senior to respondent Nos. 3 and 4.
- ii) Cost of the application may be awarded to the applicant.
- iii) Any other direction and orders which is deems proper in the facts and circumstances of the case may kindly be allowed to the applicant.

2. Briefly stated, facts of the case, so far as relevant for disposal of this case, are that while working on the post of Assistant Station Master (ASM) in the grade of Rs. 1400-2300/5000-8000 applicant was medically de-categorised. It may be stated that the post of ASM is non-selection post and while granting the aforesaid grade to the applicant, promotion from the lower grade Rs. 1200-2040/4500-7000 was given to the applicant after preparing a select list. Subsequently, on his medical de-categorisation the applicant was offered alternative job of Booking Clerk (Coaching Branch) in the same grade. The applicant has

challenged the order of giving him alternative job of Booking Clerk before this Bench of the Tribunal and this Bench vide order dated 21.11.1994 directed the respondents to post him on the post of Reservation Supervisor in the same grade of Rs. 1400-2300 and the applicant was offered the post of Reservation Supervisor vide order 3.2.95 on which post he joined his duty on 11.2.95. The grievance of the applicant in this OA is regarding assigning higher seniority to respondent No.3 and 4 over and above him in the cadre of Reservation Supervisor. According to the applicant, he is entitled to seniority in the said cadre w.e.f. 19.4.1991, the date from which he is holding the post of ASM in the scale of Rs. 1400-2300/5000-8000, whereas respondent Nos. 3 and 4 were promoted as Reservation Supervisor vide order dated 23.3.1992 (Ann.A5), as such they could not have been placed senior to the applicant. It is on the basis of these averments the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. Respondent Nos. 1 & 2 and 3 & 4 have filed separate replies. The facts as stated above, are not disputed by the official respondent Nos. 1 and 2 in the reply. The stand taken by the respondents, as can be seen from para 4.3 of the reply is that respondent Nos. 3 and 4 were promoted as Reservation

Supervisor in the scale of Rs. 1400-2300 w.e.f. 16.4.1991 i.e. prior to promotion of the applicant in the scale of Rs. 1400-2300. It is further stated that the order dated 23.3.92 (Ann.A5) is an order of regularization of private respondent Nos. 3 and 4 on the post of Reservation Supervisor. It is further stated that post of Reservation Supervisor is non-selection post and by administrative error, the respondent Nos. 3 and 4 were promoted on ad-hoc basis w.e.f. 16.4.1991 but they were regularized with back date w.e.f. 23.3.92. The official respondents have categorically admitted that orders of ad-hoc promotion of respondent Nos. 3 and 4 were wrongly issued. We will advert to this part of the pleading in the later part of the judgment in detail.

The official respondents have also taken the plea that the present application is time barred. According to official respondents, the respondents have not received the representation of the applicant dated 30.3.2006 (Ann.A1). It is further stated that the representation dated 11.8.2004 (Ann.A2) does not automatically extent the period of limitation, as such, the application is time barred in view of the provisions contained in Section 21 of the Administrative Tribunals Act, 1985.

The stand taken by private respondents as can be seen from para 4.3 is that the post of Reservation Supervisor scale Rs. 1400-2300 is non-selection post

and promotion is made on the basis of seniority, service record and confidential report against clear cut vacancy. No ad-hoc promotion can be made on non-selection post. The mistake of adhoc promotion and subsequent regularization vide letter dated 23.3.92 (Ann.A/5) was subsequently rectified by the administration vide order dated 14.7.04 (Ann.A8).

4. The applicant has filed rejoinder to the reply filed by respondent Nos. 3 and 4 thereby reiterating the submissions made in the OA.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. First of all we would like to deal with the preliminary objections taken by the respondents regarding delay in filing the OA. From the material placed on record, it is evident that the applicant was posted against the post of Reservation Supervisor vide order dated 3.2.1995 on which post the applicant joined on 11.2.95. The grievance of the applicant in this case is regarding provisional seniority list dated 11.3.04 (Ann.A6) whereby name of applicant was shown above respondent No.4 and below respondent No.3 in the seniority list. Since respondents No.4 in this tentative seniority list was shown junior to the applicant, as such, there should have been any grievance qua respondent No.4. It is clear from the

tentative seniority list (Ann.A6) that objections were invited from the affected persons within one month. It is not the case of the private respondents that this seniority was made final. However, vide another letter dated 14.7.2004 (Ann.A8), the respondents again issued a tentative seniority in which corrections were proposed to be made in the tentative seniority list dated 11.3.2004 by showing respondent No.4 over and above the applicant at Sl.No.5 whereas the applicant was to be shown at Sl.No.6 in the tentative seniority list vide Ann.A8. It is also mentioned that this seniority list is provisional and it is open for the employees to file representations/raise objections within a period of one month. Even this seniority list was not made final. This fact is evident from the show-cause notice dated 3.6.2005 (Ann.A9) whereby even the tentative seniority list dated 14.7.2004 was proposed to be again modified by placing name of the applicant at Sl.No.12. However, this show-cause notice dated 3.6.2005 was withdrawn on 25.11.2005. The ~~fact~~ ^{is} of withdrawal of this show-cause notice dated 3.6.2005 (Ann.A9) was that the official respondents were to act on the tentative seniority list dated 14.7.2004 (Ann.A8). The present OA was filed by the applicant on 28.8.2006 within one year of withdrawal of the show-cause notice on 25.11.2005. There is nothing on record to suggest that the tentative seniority list dated 14.7.2004 was made final

subsequently. Any how, the fact remains that prior to 25.11.2005, the official respondents were contemplating change in the seniority list dated 14.7.2004. Thus, according to us, the plea of limitation taken by the respondents is wholly misconceived and deserves out right rejection.

Now let us consider the case of the applicant on merit. As already stated above, it is not in dispute that the applicant was granted the scale of Rs. 1400-2300 in the cadre of ASM w.e.f. 19.4.1991. It is also not in dispute that the applicant was medically de-categorised and he was offered alternative job in the grade of Rs. 1400-2300 w.e.f. 9.1.1992. Initially the said alternative job was offered on the post of Booking Clerk. However later on he was offered job on the post of Reservation Supervisor in the same grade in the year 1995 when he has obtained favourable order from the Tribunal. How the seniority has to be determined in a case of the person who is medically de-categorised is governed by para 1314 (a) of the IREM, which thus reads:-

"1314 (a) Seniority- The medically de-categorised staff absorbed in alternative posts, whether in the same or other cadres, should be allowed seniority in the grade of absorption with reference to the length of service rendered in the equivalent or corresponding grade irrespective of rate of pay fixed in grade of absorption...."

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The fact that the applicant is entitled to the seniority w.e.f. 19.4.1991 in terms of the aforesaid provision is not in dispute, rather the private respondents as well as the official respondent in the reply have stated that the applicant is entitled to the seniority in terms of the aforesaid rule.

Now the further question requires consideration is that from which date the private respondents are entitled to the seniority who were promoted on the post of Reservation Supervisor on ad-hoc basis w.e.f. 16.4.1991 and their services were regularized w.e.f. 23.3.92 on the basis of the select list. As already stated above, the stand taken by the official respondents is that the respondent No. 3 and 4 were wrongly promoted due to administrative error w.e.f. 16.4.1991 but they were regularized on the post with back date w.e.f. 23.3.1992 (Ann.A5). At this stage, it will be useful to quote relevant portion of para 4.3 which thus reads:-

It is submitted that the post of Reservation Supervisor is a non-selection post and by administrative error the respondent No. 3 & 4 were promoted on that post on adhoc basis with effect from 16.4.91 but they were regularized on that post with back date vide order dated 23.3.92 (Annexure A/5). It is also admitted fact that the order for adhoc promotion of the respondent No. 3 &4 were wrongly issued as there can not be adhoc promotion against the non-selection post. The adhoc promotion of the private respondent No. 3 and 4 has correctly been regularized with effect from 16.4.91 i.e. the date when they were promoted as adhoc in the scale of Rs. 1400-2300.

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At this stage, it will also be useful to quota relevant portion of para 4 (iii) of the reply filed on behalf of the respondent Nos. 3 and 4 which thus reads:-

"That the contents of Para 4(iii) are not admitted as alleged by the applicant. It is submitted that the post of reservation supervisor scale 1400-2300 is a non-selection post & promotion to this post is made purely on the basis of seniority, service record and CRs against clear cut vacancy. No adhoc promotion can be made in non-selection posts. The mistake of adhoc promotion and subsequent regularization vide letter dt. 23.03.92 (A/5) was subsequently rectified by the administration vide order dated 14.7.04 (A/8)."

Thus, the stand taken by the respondents in the reply is that no adhoc promotion can be made in non-selection posts and promotion of respondent Nos. 3 and 4 in the grade of Rs. 1400-2300 against the post of Reservation Supervisor was regularized subsequently vide letter dated 23.3.92 (Ann.A5) with retrospective effect. At the outset, it may be stated that the stand taken by the official respondents to the effect that services of respondent Nos. 3 and 4 were regularized from retrospective date vide order dated 23.3.92 (Ann.A5) is factually incorrect. Reading of this order makes it clear that four persons including respondent Nos. 3 and 4 were granted promotion from the date of issuance of the select list. Admittedly, when the private respondents were promoted on 16.4.1991 on ad-hoc basis no selection process was conducted. Para 213 (a) of the IREM deals with the question of promotion

which stipulates that a railway servant may be promoted to fill any post whether a selection post or a non selection post only if he is considered fit to perform the duties attached to the post. Further, Para 214 (a) deals with promotion to non-selection posts which stipulates that non-selection posts will be filled by promotion of the senior most suitable railway servant. The suitability whether an individual or a group of railway servants being determined by the authority competent to fill the posts on the basis of the record of service and/or departmental tests, if necessary. The principles to be followed for promotion to non-selection post has also been enumerated in para 214. Thus, perusal of Para 213 and 214 of the IREM which deal with the question of promotion makes it clear that promotion can be given only when the person concerned is considered fit to perform the duties of the higher post and the person can be considered fit only when he passes the prescribed selection for that purpose.

How the seniority has to be granted to the promotee railway servant is governed by para 302 of the IREM. The said provision stipulates that date of regular promotion after due process of selection would be the date from which the seniority in the cadre would count. The appointment of respondent Nos. 3 and 4 in the cadre of Reservation Supervisor would be the date on which they were promoted after the regular

selection by due process of selection. Therefore, for private respondents the relevant date would be 23.3.1992 and in the case of applicant it would be 19.4.91 in term of para 1314 (a). Further, the official respondents have mis-read the order dated 23.3.92 (Ann.A5) thereby contending that on the basis of this order respondent Nos. 3 and 4 have been granted promotion from back date. As already stated above, the opening portion of this order makes it clear that respondent Nos. 3 and 4 have been granted regular promotion from prospective date from the date of issue of the select list and their services were regularized from that date and not from retrospective date. The official respondents as well as respondent Nos. 3 and 4 in these pleadings have admitted that respondent Nos. 3 and 4 could not have been granted ad-hoc promotion which promotion was granted to them erroneously. If a promotion has been granted erroneously that period cannot be considered for the purpose of seniority especially when rule on the point stipulate that seniority can be granted from the date of regular promotion after due process of selection. In the instant case, respondent Nos. 3 and 4 were selected after due process vide order dated 23.3.1992, as such, they cannot be assigned seniority w.e.f. 16.4.1991.

The matter on this point is also no longer res-integra and the same stand decided by the decision of

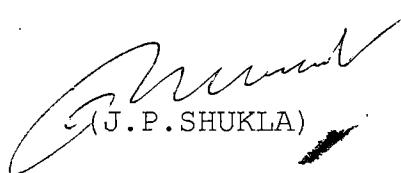
the Apex Court in the case of Swapan Kumal Pal and ors. vs. Samitabhar Chakraborty and ors, 2001 SCC (L&S) 880. The question which arose for consideration before the Apex Court was whether the adhoc promotion can be held to be a regular promotion after due process of selection, merely because the suitability test had not been held at regular intervals, as was required to be held under para 214(c) (v) of the Railway Establishment Manual and further whether regular promotion given to ad hoc employees by holding a test dated back to the date of adhoc promotion. The Hon'ble Supreme Court after interpreting the provisions of para 213 and 214 which deals with the question of promotion in respect of non-selection post and after considering various decision of the Apex Court and also considering the rules of seniority as stipulated in para 302 of the IREM held that the date of seniority of the promotee can be counted only from the date of regular promotion after due process of selection. It was further held that the period of adhoc promotion preceding the date of regular promotion would not count towards the seniority. It was further held that even the subsequent regularization in the present case by the DRM could not have the effect of changing the principles of seniority governed by the provisions of the IREM. The law laid down by the Apex Court in the case of Swapan

Kumar Pal (supra) is squarely applicable in the facts and circumstances of this case.

Before parting with the matter, we will fail in our duty if we do not notice the case law referred to by respondent Nos. 3 and 4. The learned counsel for the respondent Nos. 3 and 4 placed reliance on the judgment of the Apex Court in the case of Ramesh Chand Sharma etc. vs. Udhamp Singh Kamal, 2000 (2) AISLJ 89, whereby the Apex Court has held that an application filed after a lapse of more than 3 years without praying for condonation of delay is barred by limitation under Section 21 of the Administrative Tribunals Act and the same cannot be entertained. As already stated above, this judgment of the Apex Court is not applicable in the facts and circumstances of the case. As noticed above, The official respondents have not finalized the seniority list till November, 2005 and they were inviting objections against the provisional seniority lists issued from time to time. Further, the learned counsel for respondent Nos. 3 and 4 has also placed reliance on the judgment of the Apex Court in the case of Ajit Kumar Rath vs. State of Orissa, 2000 (2) AISLJ 108 regarding counting of adhoc period for the purpose of seniority. We fail to understand how respondent Nos. 3 and 4 can draw assistance from the judgment rendered by the Apex Court in the case of Ajit Kumar Rath (supra) which was

a case where promotion of the appellant therein was made against a permanent vacancy in accordance with the service rules. As per rule, the Chief Engineer was the officer authorized to make selection on the basis of merit. In fact such selection was made by the Chief Engineer pending concurrence of the Public Service Commission and selected persons were appointed on adhoc basis. However, the services of the appellants were regularized after the concurrence form the Commission. It was in that context, the Apex Court held that since promotion of the appellant has been made in accordance with rules pending concurrence of the Public Service Commission, shall count for the purpose of seniority in terms of Rule 26. As already stated above, it is not the case here. The official respondents as well as private respondent Nos. 3 and 4 have admitted in the reply that there is no provision for adhoc promotion in non-selection posts. Thus, respondent Nos. 3 and 4 could not have been promoted. Further, such adhoc promotion was not made in accordance with rules and rule regarding seniority as stipulated in para 302 mandate that seniority of promotee has to be assigned from the date of regular selection in accordance with due process. Thus, adhoc promotion of respondent Nos. 3 and 4 was contrary to the rules, as such they cannot drive any benefit of their past adhoc services for the purpose of seniority.

7. For the foregoing reasons, the OA is allowed. The official respondents are directed to place the applicant at the appropriate place over and above private respondent Nos. 3 and 4. No order as to costs.



(J.P.SHUKLA)

Adm. Member



(M.L.CHAUHAN)

Judl. Member

R/