

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 30th day of July, 2010

Original Application No. 412/2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. K.S.SUGATHAN, MEMBER (ADMV.)

Badrishwar Atray
s/o Shri Ramesh Chand Atray,
working as Junior Engineer-II,
Office of Senior Section Engineer,
P.R.D., Sawai Madhopur,
Kota Division, r/o Q.No.207-A,
Railway Colony,
Sawai Madhopur.

.. Applicant

(BY Advocate: Shri P.V.Callia)

Versus

1. Union of India
through General Manager,
West Central Railway,
Jabalpur.
2. The Divisional Railway Manager,
Kota Division,
Kota.

.... Respondents

(By Advocate: Shri Siya Ram, proxy counsel for Shri Tej Prakash
Sharma)

ORDER

Per Hon'ble Mr. M.L.Chauhan, M(J)

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

✓

- (i) the impugned communication dated 18.4.2006 Annexure-A/2 may kindly be declared illegal and the official respondents may kindly be directed to fix the seniority of the applicant in the cadre of Electrical Chargeman (now redesignated as J.E.-II) at appropriate place treating his date of promotion in the said cadre as 3/6.11.1995 in the seniority list Annexure-A/1 dated 17.5.2005;
- (ii) further by an appropriate order the provisions contained para 302 of IREM Vol.I may kindly be declared unconstitutional in so far as not granting seniority to an employee promoted on adhoc basis followed by regular promotion;
- (iii) the Original Application may kindly be allowed with costs.
- (iv) Any other relief to which the applicants are found entitled, in the facts and circumstances of the present case, may also be granted in favour of applicants.

2. Briefly stated, facts of the case, so far relevant for decision of this OA, are that the applicant was initially appointed as Electrical Fitter Gr.III and was ultimately promoted as Electrical Chargeman, (subsequently redesignated as Junior Engineer-II) on ad-hoc basis vide order dated 3/6.11.1995 (Ann.A/3) in the pay scale of Rs. 1400-2300 (revised Rs. 5000-8000). Thereafter name of the applicant was placed in the panel of Junior Engineer-II (JE-II) vide order dated 17.8.2004 (Ann.A/5) after qualifying the selection test for the said post and subsequently his services were regularized vide order dated 26.8.2004. Based upon his regularization of service, the applicant was assigned seniority vide order dated 17.5.2005 from the date of his regularization as JE-II and his name has been shown at Sl.No.7. The grievance of the applicant in this case is that the respondents have wrongly shown against the column No.6, the date of working of the applicant in the cadre as 26.8.2004 whereas the

same should have been shown as 6.11.1995, when he was granted ad-hoc promotion against the post of Chargeman (now JE-II). It is on the basis of these facts, the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. It may be stated that the applicant has also filed representation dated 11.2.2005 prior to issuance of the final seniority list whereby the only contention raised by the applicant was that service rendered by him on ad-hoc basis w.e.f. 6.11.1995 against the post of JE-II should be counted for the purpose of seniority.

4. Notice of this application was given to the respondents. The facts, as stated above, have not been disputed by the respondents. The respondents have stated that the seniority assigned to the applicant is strictly in conformity with the provisions contained under Para 302 of the Indian Railway Establishment Manual (IREM), Vol. I. According to the respondents, the applicant was promoted as JE-II, scale Rs. 5000-8000 purely on ad-hoc basis vide office order dated 4.9.1995 and was posted under TFO (TRD) VMA and his place of posting was however changed from TFO (TRD) VMA to CTFO (TRD) LKE vide Annexure A/3. It is further stated that since the applicant was promoted as JE-II purely on ad-hoc basis, as such, he was placed on the panel after qualifying the requisite selection vide order dated 17.8.2004 (Ann.A/5). Accordingly, he was promoted and regularized vide order dated 26.8.2004 in terms of Para 302 of the IREM. Thus, his seniority was correctly assigned.

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

6. The question which requires our consideration is whether the applicant is entitled to the seniority w.e.f. 6.11.1995 when he was given ad-hoc promotion in the grade of Rs. 5000-8000 on the post of Electrical Chargeman (JE-II) or w.e.f. 26.8.2004 when services of the applicant were regularized pursuant to placement of the applicant in the panel after qualifying the requisite selection vide order dated 17.8.2004 (Ann.A/5).

7. The matter on this point is no longer res-integra and the same is squarely covered by the decision rendered by the Apex Court in the case of Swapan Kumar Pal and Ors. Vs. Samitabhar Chakraborty and Ors., 2001 SCC (L&S) 880 whereby the Apex Court after considering the provisions Para 302 of the Indian Railway Establishment Manual (IREM) alongwith the note appended thereto has held that seniority has to be fixed from the date of promotion after regular selection by due process. It was further held that period of ad hoc promotion preceding that date would not count towards seniority. That was a case where adhoc promotion was made to the Senior Clerk by the railway administration between 9.12.1982 to 7.1.1984. Later on, they were found suitable in the test held, result of which was declared on 28.2.1985. The Apex Court observed that it is true that they had been continuing from their respective dates of ad hoc promotion till they were regularized after being selected through due process. But that by itself cannot confer a right on them to claim the adhoc period of service to be tagged on for the purpose of their seniority, inasmuch as, there is no provision which says that an employee on being regularly promoted, such regular

promotion would date back to the date of original promotion in the cadre, which might have been on adhoc basis. It is further held that when the service conditions are governed by a set of rules, in the absence of any rules, it cannot be held that regular promotion would relate back to the date of adhoc promotion itself.

8. At this stage, it will also be useful to quote para 302 of the IREM which is in the following terms:-

"302. Seniority in initial recruitment grades.- Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotees and the date of joining the working post after due process in the case of direct recruits, subject to maintenance of inter se seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter se seniority of each group.

Note.- In case the training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training."

9. Thus, in view of what has been stated above, we are of the firm view that the applicant has not made out a case for our interference and the seniority assigned to the applicant in the cadre of JE-II vide impugned order dated 17.5.2005 (Ann.A/1) is in conformity with the provisions contained in para 302 of the IREM as upheld by the Hon'ble Apex Court. Further, the decision in the case

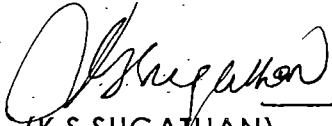
of Swapan Kumar Pal (supra) was also further reiterated by the Hon'ble Apex Court in the case of Union of India vs. Dharam Pal etc., JT 2009 (2) SC 679.

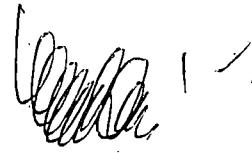
10. That apart, we are also of the view that the applicant has also not substantiated his claim as on what basis the provisions of Para 302 of the IREM can be declared unconstitutional as this para specifically stipulates that regular promotion after due process of selection shall be counted for the purpose of seniority. Thus, from reading of this statutory provision it is evident that for the purpose of seniority service rendered after due selection shall be taken into consideration and not fortuitous service where promotion/appointment has been given without undergoing the selection process. According to us, the provisions so incorporated in the statute book is in conformity of the constitutional provisions where selection to the post has to be made in accordance with the rules and not dehors the rules.

11. The learned counsel for the applicant further argued that respondents have not taken into consideration the ad-hoc services rendered by the applicant on the post of JE-II for the purpose of making regular appointment to the higher post of JE-I. In this case the applicant has neither challenged selection of JE-I on any ground nor specific prayer to this aspect has been made. From the facts stated in the reply, it appears that the applicant has also been given ad-hoc promotion on the post of JE-I keeping in view his seniority position as well as vacancy available. Thus, no finding on this aspect is called for whether ad-hoc services rendered by the

applicant on the post of JE-II can be counted for the purpose of regular promotion to the post of JE-I or not.

12. With these observations, the OA stands disposed of with no order as to costs.


(K.S.SUGATHAN)
Admv. Member


(M.L.CHAUHAN)
Judl. Member

R/