

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 25th day of March, 2011

Original Application No.255/2007

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

Hazari Lal Meena
s/o Shri Ram Niwas Meena,
at present working as
Chief Office Superintendent (COS)
General and Administrative Department,
Office of S.D.G.M.,
Headquarter NWR, Jaipur,
r/o Q.No.16, New Railway Colony,
Durgapura Railway Station,
Jaipur.

.. Applicant

(By Advocate: Shri P.V.Calla)

Versus

1. The Union of India
through the General Manager,
North Western Railway,
Headquarter Office,
Opposite Railway Hospital,
Jaipur
2. Shri Rajendra Singh Meena,
Chief Office Superintendent,
Office of S.D.G.M.
Headquarter Office,
North Western Railway,
Jaipur

.. Respondents

(By Advocate: Ms. Sonal Singh, proxy counsel for Shri Alok Garg, for
resp. No.1 and Shri S.Shrivastava for resp. No.2)

ORDER (ORAL)

The applicant preferred this Original Application against the impugned order dated 12.6.2007 (Ann.A/1) as the official respondents vide impugned order dated 12.6.2007 unsettled the settled position of the applicant which is not only contrary to the Railway Board's circular on the subject but also contrary to the facts and grounds of the case.

2. Brief facts of the case are that the applicant applied for the post of Senior Clerk as direct recruit (ground quota) through Railway Recruitment Board, Ahmedabad. On being selected, the applicant was appointed as Senior Clerk on 23.08.1985 and was posted at Rajkot Division. Thereafter, he was promoted on the post of Head Clerk on 5.6.1986 and after completion of two years' regular service as Head Clerk, his candidature was considered for promotion to the post of Chief Clerk (OS-II) and was taken on panel for the post of Chief Clerk being found eligible vide order dated 12.5.1987 (Ann.A/2).

3. In the year 1996, Ministry of Railways decided to create certain new zones and in this regard North Western Railway (NWR) zone was created and applications were invited for opting new zone. Initially the applicant submitted his application on 4.2.1997 for his transfer to NWR and thereafter he also represented on 30.7.2002 and 30.8.2002. The option given by the applicant was accepted and he was relieved from Rajkot Division to join at Jaipur on 17.9.2002 and he joined at Jaipur on 18.9.2002.

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4. While the applicant was working at NWR, Jaipur zone, the Rajkot Division proposed to conduct a selection for the post of Chief Office Superintendent (COS) but the eligibility list prepared by the respondents does not contain name of the applicant. Regarding not including name of the applicant in the eligibility list prepared at Rajkot Division, the applicant submitted his representation dated 24.3.2003 and through this representation he prayed that his candidature may be considered for selection to the post of COS and the same has been decided by the Rajkot Division, which was communicated to the applicant through letter dated 18.8.2003 stating that the applicant is eligible to be considered for selection to the post of COS and further it was requested that the applicant may be relieved to attend the office of D.R.M. Rajkot Division on 10.9.2003 for appearing in the written test for the selection of the above post. The applicant appeared in the aforesaid selection and empanelled for the post of COS vide letter dated 5.11.2003.

5. In the meantime, a combined provisional seniority list of ministerial cadre working at the strength of Headquarter office, NWR General and Administrative Branch was issued on 22.8.2003. In the said seniority list of OS Grade-I name of the applicant find place at Sl.No.2 whereas name of respondent No.2 find place at Sl.No.1.

6. Aggrieved from the position in the provisional seniority list below respondent No.2, the applicant made representation to respondent No.1 stating that the correct date of joining as OS Grade-I scale in respect of respondent No.2 is 1.6.1993 and the date of joining in this scale in respect of the applicant is 1.3.1993,



therefore, in the provisional seniority list of OS Grade-I, his name may be included at Sl.No.1. The respondents issued a fresh provisional seniority list on 20.5.2004 showing name of the applicant at Sl.No.1 above the name of respondent No.2.

7. After considering representations made by the affected employees against the provisional seniority list dated 20.5.2004, a final seniority list dated 26.8.2005 was issued and since then the applicant is maintaining his position in the seniority list of OS Grade-I at Sl.No.1.

8. The respondent No.2 made a representation dated 13.11.2006 after more than 2 years of finalization of the seniority list. The same was considered and seniority of respondent No.2 has been fixed at Sl.No.1.

9. Being aggrieved by the action of the official respondents, the applicant preferred this Original Application before the Tribunal on the ground that as per Railway Board Circular dated 16.3.2004 (Ann.A/22) the seniority of the officers who have joined Headquarter office of the new zonal railway or whose lien has been transferred thereto as on 31.10.2003 should be determined on the basis of position and cadre held by them in the parent railway on regular basis. It has further been contended that so far as seniority is concerned, once a seniority list is made final, the same cannot be altered by the administration, as in the present case, initially a provisional seniority list was issued on 20.5.2004 and the same was made final on 26.8.2004. Having considered the representation filed by respondent No.2 on 13.11.2006 against the provisional seniority



list dated 20.5.2004, which was never challenged by respondent No.2 and the same has attained finality and after attaining finality, the same cannot be reviewed.

10. Per contra, the learned counsel appearing on behalf of respondent No.1 submitted that the reasons for correction in seniority are elaborately stated in the impugned order Ann.A/1. The respondent No.2 was promoted by his old parent railway to the post of OS Grade-I as on 1.6.2006 due to undergoing punishment for withholding of increments for three months w.e.f. 1.3.2003 without future effect, otherwise he was entitled for promotion to the post of OS Grade-I w.e.f. 1.3.2003 and as per Railway Board's instructions issued vide letter dated 28.11.2002 (Ann.R/1), penalty of withholding of increment is imposed for a specific period and the order does not specify whether it has effect on seniority and increments in the higher grade or post, it should be assumed that the orders will have no effect on seniority or increment. Accordingly, through the order dated 12.6.2007 the correct position in seniority was duly given.

11. Respondent No.2 Shri Rajendra Singh Meena, also strongly contorted the submissions made on behalf of the applicant and submitted that during the service tenure of OS Grade-II, respondent No.2 was inflicted with minor penalty of withholding of increment for one year without cumulative effect vide order dated 15.2.93 which was subsequently reduced from one year to only 3 months by the appellate authority vide its order dated 30.4.1993. Within few months thereafter, scheme of restructuring of cadre was



implemented with regard of ministerial staff of operating department vide order dated 16.12.1993 and respondent No.2 was posted to officiate on upgraded post of OS Grade-I w.e.f. 1.6.1993 instead of 1.3.1993 because of the said penalty. Subsequently, seniority list of Superintendent (Optg.) grade Rs. 2000-3200 was prepared by the Bikaner Division wherein respondent No.2 was rightly shown senior to Iswar Dass and the same was made effective from 1.3.1993 for the reason that order of penalty had no adverse effect on the seniority of respondent No.2 as stipulated in the Railway Board RB No.E54 RG-6-19 dated 9.8.1953 regarding assignment of seniority in case like respondent wherein it has categorically been mentioned that "withholding of increment whether with or without cumulative effect will not affect the seniority of the employee concerned, unless the penalty provides for loss of seniority".

12. Having heard the rival submissions of the respective parties and upon perusal of the relevant rules, notification and circular issued by the respondents from time to time as well as the Discipline, Appeal and Conduct Rules, it is not disputed that the applicant was shown senior than respondent No.2 in the provisional seniority list as well as in the final seniority list. It is also not disputed that representation regarding provisional as well as final seniority list has been rejected and on the basis of fresh representation made on behalf of Union admittedly after a lapse of two years, respondent No.2 has been assigned seniority above the applicant considering

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Para-9 under the Heading 'Withholding of Increments or Promotion', which speaks as under :-

"(9) Seniority :- Withholding of increment whether with or without cumulative effect will not affect the seniority of the employee concerned, unless the penalty provides for loss of seniority. [RB's No.E 54 G-6-19 of 9.8.1983]

As per the clarification regarding promotion of person undergoing penalty as stipulated in R.B.E. 89/2005, which is to be following effect:-

"Attention is invited to Board's letter No. E(D&A) 70/RG 6-71, dated 3.6.1971, inter alia laying down that the fact of imposition of the penalty of 'withholding of increments' or 'reduction to lower stage in the time scale of pay on a railway servant does not stand in the way of his consideration for promotion. Such Railway servant should also be considered for promotion by the Departmental Promotion Committee which meet after the imposition of the said penalty and after due consideration of full facts leading to imposition of the penalty, if he is still considered fit for promotion, the promotion may be given but only after the expiry of the currency of penalty.

2. Ministry of Railways have since considered the question of pay fixation and date of commencement of eligibility service in such cases, in the light of clarification issued by the Department of Personnel & Training and have decided that since the promotion is to take effect only from a date subsequent to the expiry of the currency of the penalty, the employee would be entitled to pay fixation in the promotional grade with effect from the date of actual promotion only. Even if a person junior to him in the panel is promoted earlier, it will have no bearing on the pay to be allowed on promotion to the employee on whom a penalty was imposed and there shall be no stepping up of his pay with reference to his junior. Similarly, as the employee undergoing penalty is not to be promoted during the currency of the penalty, the eligibility service in the promotional grade for further promotion shall also commence only from the date of actual promotion and in no case it may be related even notionally to the date of promotion of the junior in the panel. However, his late promotion will not have any affect on his seniority which would be fixed according to his position in the panel on the basis of which he is promoted on the expiry of the period of currency of the penalty."



Further, vide R.B.E. No.27/93 regarding promotion of officers who have been imposed penalty of withholding of increment, the following provision has been made:-

".....

On reconsideration, the Railway Board have decided that where the penalty of withholding of increment imposed on a Railway Officer is to become operative from a future date, the person concerned should be promoted in his turn prospectively with reference to his position in the earlier panel of the DPC and penalty imposed in the promotion grade for a period which would not result in greater monetary loss."

13. In the case of respondent No.2 admittedly, penalty of withholding of increment was imposed for a period of three months only and having considered the relevant rules and notification and also reiterated by the Government of India, Ministry of Railways (Railway Board) vide RBE No.217/2002 dated 28.11.2002, relevant portion of which thus reads:-

"It has been brought to the notice of the Board by the NFIR that while imposing the penalty of 'reduction to a lower grade, post etc.' for a specified period, the authorities use the terms 'cumulative or recurring effect', to convey the effect of penalty in the higher grade or post, on restoration of the railway servant to that higher grade or post on expiry of the penalty.

2. It has been alleged that in such cases the railway administration(s) also denies seniority in the higher grade or post in addition to the effect of the penalty on the future increments of the railway servant thought the authority imposing the penalty has not given any specific direction that seniority shall also be affected on restoration of the Railway servant to that higher grade or post after expiry of the penalty. Attention in this connection has been drawn to the instructions contained in Board's letter No.E(D&A) ..3 RG 6-5 dated 22.4.1974. These instructions which were issued in pursuance to discussions in the forum of JCM/DC lay down that in cases where the penalty of reduction to a lower grade or post etc. is imposed for a specified



period and the order does not specify whether it has effect on seniority and increments in the higher grade or post on restoration of the railway servant to that higher grade or post, it should be assumed that the order will not have the effect on seniority or increments."

Thus, the respondent Department has refixed the seniority in pursuance of the aforesaid circular and rules. As the applicant has categorically pleaded in the OA that after inviting objections and after deciding the objections, final seniority has been published and after two years of its attaining finality, the respondents have no powers to plead that this might have not raised by the applicant before the respondents.

14. Therefore, after thoroughly considering the submissions made on behalf of the parties, we are of the view that the applicant be given opportunity to raise these issues before the department by way of making fresh representation and the respondents are directed to consider the case of the applicant in pursuance of the notifications and rules to this effect whether power of reviewing and re-determining seniority list has been properly exercised or not.

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

Anil Kumar
(ANIL KUMAR)
Admv. Member

K. S. Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

R/