

(18)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

14.7.2011

OA 204/2008

Mr. Nand Kishore, counsel for applicant.
Mr. Anupam Agarwal, counsel for respondents.

Heard in part. Learned counsel for the respondents is directed to keep ready for perusal of the Tribunal the seniority list for the cadre of Senior Clerk of the year 1991, on the next date of hearing.

Put up for further arguments on 3.8.2011. IR to continue till the next date.

CC to learned counsel for the parties.

Recd @
Cky
CS
21/7/11

Reg
spc

Anil Kumar
(Anil Kumar)
Member (A)

K. S. Rathore
(Justice K.S. Rathore)
Member (J)

vk

3.8.2011

Mr. Nand Kishore, Counsel for applicant
Mr. Anupam Agarwal, Counsel for respondents

Heard. The OA is disposed of by
a separate order

Anil Kumar
(Anil Kumar)
M(A)

K. S. Rathore
(Justice K.S. Rathore)
M(J)

3.8.2011

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 3rd day of August, 2011

CORAM:

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

OA No. 204/20008

Jai Kishan Meena
s/o Shri Puni Ram Meena,
working as Office Supdt.
Grade 500-9000 under Section Engineer,
West Central Railway,
Sawai Madhopur r/o 224-E,
M.G.Colony, Sawai Madhopur,
District Sawai Madhopur

... Applicant

(By Advocate : Shri Nand Kishore)

Versus

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

... Respondents

(By Advocate : Shri Anupam Agarwal)

OA No. 245/20008

Jai Kishan Meena
s/o Shri Puni Ram Meena,
working as Office Supdt.
Grade 500-9000 under Section Engineer,
West Central Railway,
Sawai Madhopur r/o 224-E,
M.G.Colony, Sawai Madhopur,
District Sawai Madhopur

... Applicant

(By Advocate : Shri Nand Kishore)

Versus

1. Union of India
through General Manager,
West Central Railway,
Jabalpur.
2. Divisional Railway Manager,
West Central Railway,
Kota.
3. Shri Govind Ram Meena,
Head Clerk, West Central Railway,
SSE (P Way), Indergarh,
Sumerganj Mandi of Kota Division,
Tehsil Bundi, Raj.

... Respondents

(By Advocate : Shri Anupam Agarwal)

ORDER (ORAL)

Both the OAs preferred by the applicant one against the show-cause notice and another against the order dated 16.3.2006 involving similar question of law and facts are being decided by this common order.



2. OA No.204/2008 is directed against the order dated 21.5.2008 (Ann.A/1) which is a show cause notice. The applicant was promoted as Office Superintendent-II (OS-II) and the promotion order issued Vide Ann.A/3 has been further revised in terms of Railway Board's letter dated 17.2.2006 and date of promotion has been given from 1.11.2003. In the seniority list published by the respondents vide letter dated 20.7.2011 name of the applicant appeared at Sl.No. 36 and date of promotion has been shown as 27.9.96 as Head Clerk but name of one Shri Govind Ram Meena does not appear in this seniority list. In January, 2008 the respondent No.2 published seniority list of OS-II in the scale of Rs. 5500-9000 in which name of the applicant appears at Sl.No.39 and date of promotion has been shown as 25.11.2004. Name of Shri Govind Ram Meena does not appear in the seniority list of OS-II but appear in the scale of Rs. 4500-7000 at Sl.No. 25 and through Ann.A/1 representations/objections were invited.

3. This Tribunal vide interim order dated 3.6.2008 restrained the respondents from proceeding further in the matter pursuant to the impugned show-cause notice dated 21.5.2008 till the next date and notices were issued to the respondents.

4. The respondents have submitted their reply. In the reply, it is stated that the name of the applicant appear at Sl.No.66



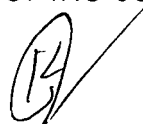
in the seniority list and name of Shri Govind Ram Meena does not appear because by the time of issuance of the seniority list, his seniority in the cadre of Senior Clerk scale Rs. 4500-7000 was under consideration with the administration and the same was decided by the office order dated 16.3.2006. Accordingly vide office order dated 10.4.2007 he was accorded proforma promotion in corresponding higher grade of Head Clerk scale Rs. 5000-8000 at par with his junior Shri Amrit Lal Meena taking into consideration his effective seniority in the cadre of Senior Clerk since 1991 and as per the seniority list published on 6.8.1991, the applicant is junior to Shri Amrit Lal Meena and being senior Shri Govind Ram Meena has been assigned seniority at Sl.No.58-A i.e. below Shri Ramjilal Kalosia (at No. 58) and above Shri Gopal Lal (at No.59). In the same seniority list name of junior ST employee Shri Amrit Lal Meena appears at Sl.No.72 while name of the applicant appears at Sl.No.73. As such, the applicant is junior to Shri Govind Ram Meena.

5. The applicant alleged that he came to know about the seniority list after submission of the reply filed by the respondents and since the applicant has not challenged the seniority list, therefore, the applicant preferred another OA No.245/2008 and in OA No. 245/2008 the applicant challenged order dated 16.3.2006 and order dated 22.12.1998.



6. With regard to challenge to the order dated 16.3.2006, the respondents have raised objection regarding maintainability of the OA as the order impugned has been challenged by the applicant after a lapse of about 2 years and submitted that it is therefore barred by limitation. By way of filing application for condonation of delay the applicant submits that all of sudden respondents letter dated 16.3.2006 has been issued. This letter has not been addressed or endorsed to the applicant and was never made available at the Notice Board for the information of staff. Therefore, the above information have been concealed by the official respondents which may tantamount a fraud or mistake on the part of the official respondents. The applicant came to know only when a show cause notice was served to the applicant against which the applicant filed OA No.204/2008 and stay has been granted by the Hon'ble Tribunal and when he came to know about the impugned order dated 16.3.2006, then he obtained a copy through the Trade Union and filed OA No.245/2008. Therefore, the limitation shall now begin to run until the applicant could with reasonable diligence, have discovered it.

7. The submissions made above have been controverted by the respondents and have submitted that bare perusal of Ann.A/1 would reveal that a copy of the same was endorsed



to the concerned as mentioned therein. The applicant being a member of the union cannot take shelter of its non endorsement to him. In fact it being pertaining to the respondent No.3 cannot be endorsed to him. Not only this, it is clear from this letter that the same is addressed to all concerned. Since the applicant failed to impugn the order dated 16.3.2006 in the earlier OA, therefore, only after going through the reply given by the respondent, he opted to prefer this OA. Reply to OA No.204/2008 was submitted by the respondents and copy was given to the applicant on 17.6.2008 and after receipt of reply, OA No.245/2008 has been filed before this Tribunal on 24.6.2008, admittedly, after receipt of reply.

8. In OA 245/2008, the Tribunal vide its interim order dated 30.6.2008 restrained the respondents from proceeding further on the basis of the impugned order dated 16.3.2006.

9. Having heard the submissions of the respective parties and upon perusal of the material available on record as well as the provisions of law, it is not disputed that the applicant was transferred to Kota Division on mutual transfer vide order dated 7.8.1990. The applicant was placed in the select list of Head Clerks by office order dated 1.9.1997 and was promoted by office order dated 19.9.1997 and the same was



subsequently revised vide Ann.A/2 and the promotion was made effective from 27.9.1996.

10. We directed the respondents to place the seniority list of the cadre of Senior Clerk of the year 1991 for perusal of this Tribunal and as per directions, the respondents have placed the same for our perusal. Upon perusal, it reveals that in the seniority list issued in the year 1991, name of Shri Govind Ram Meena does not appear because by that the time of issuance of the seniority list in the cadre of Senior Clerk scale Rs. 4500-7000 his seniority was under consideration and was decided only vide order dated 16.3.2006 and accordingly Shri Govind Ram Meena was promoted as Senior Clerk in the scale of Rs. 4500-7000 w.e.f. 23/23.5.89 vide office order dated 22/23.5.89 and Shri Govind Ram Meena qualified the suitability test of Senior Clerk vide office order dated 25.4.1989 whereas the applicant joined the division on mutual transfer on 7.8.1990. Admittedly, Shri Govind Ram Meena is senior than the applicant who was accorded proforma promotion in corresponding higher grade of Head Clerk scale Rs. 5000-8000 vide order dated 10.4.2007 at par with his junior Shri Amrit Lal Meena by taking into consideration his effective seniority in the cadre of Senior Clerk since 1991 and Shri Govind Ram Meena has been assigned seniority at Sl.No.58-A i.e below Shri Ramji Lal Kalosia and above Shri Gopal Lal whereas



applicant's name appears at Sl.No.73 and seniority of Smt. Sadhana Meena has not been changed and has been assigned the same seniority unit i.e. WBSM Group on account of mutual transfer without affecting their seniority.

11. We have carefully gone through the explanation given by the applicant. The explanation for seeking condonation of delay given is not acceptable that he is not aware of the order dated 16.3.2006 whereas the said letter was addressed to the concerned employee and also to the Trade Union. Thus, the OA No.245/2008 deserves to be dismissed not only in view of the judgment rendered by the Supreme Court in the case of D.C.S.Negi vs. Union of India and ors., in SLP (Civil) No.7956/2011 dated 7.3.2011 but also on merit and, as such, same is accordingly dismissed.

12. OA No.204/2008 which has been filed against the show-cause notice whereby the applicant was called upon to submit explanation. The applicant has not been able to convince us as to why the show-cause notice which has been issued by the respondents is per-se illegal and contrary to law and without submitting objections/explanation against the show-cause notice, preferred this OA. The applicant could have submitted representation/objection in lieu of the show-cause notice. Consequently, the OA is premature and deserves to be dismissed and is hereby dismissed.



13. With these observations, both the OAs stand disposed of with no order as to costs.

14. The interim order passed in these OAs stand vacated.

15. In view of disposal of the OAs, no order is required to be passed in MA No. 262/2008, which is accordingly disposed of.

Anil Kumar

(ANIL KUMAR)
Admv. Member

K.S. Rathore

(JUSTICE K.S.RATHORE)
Judl. Member

R/