

(18)

04/05/2012

OA No. 213/2010

Mr. C. B. Sharma, Counsel for applicant.

Mr. Anupam Agarwal, Counsel for respondent Nos. 1 to 4.

None present for respondent No. 5.

Heard.

O.A. is disposed of by a separate order on the separate Sheets for the reasons recorded therein.

Anil Kumar

[Anil Kumar]

Member (A)

K. S. Rathore

[Justice K. S. Rathore]

Member (J)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 213/2010

DATE OF ORDER: 04.05.2012

CORAM

**HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Ishwar Lal Sharma S/o late Shri Radhey Shyam Sharma, aged about 53 years, R/o Ward No. 5, Chuli Gate Parvati Sadan, behind Chawanda Devi, Gangapur City and presently working as Movement Inspector, West Central Railway, Gangapur City.

Mr. C.B. Sharma, counsel for applicant.Applicant

VERSUS

1. Railway Board through its Chairman, Ministry of Railway, Rail Bhawan, New Delhi.
2. Union of India, through General Manager, West Central Zone, West Central Railway, Jabalpur.
3. Divisional Railway Manager, West Central Railway, Kota Division, Kota.
4. Senior Divisional Transportation Manager, West Central Railway, Kota Division, Kota.
5. Shri Bhajan Lal Meena, Movement Inspector, West Central Railway, Kota Division, Kota.

....Respondents

Mr. Anupam Agarwal, counsel for respondent nos. 1 to 4.
None present for respondent no. 5.

ORDER (ORAL)

This is the second round of litigation. Earlier the applicant has filed O.A. No. 187/2005 praying for the following reliefs: -

- (i). That the entire record relating to the case be called for and after perusing the same respondents may be directed to promote the applicant in the scale of Rs. 7450-11500 as per his seniority in Movement Inspector by declaring merger of Movement Inspector with the other cadres is against the Scheme with all consequential benefits.
- (ii) That the respondents be further directed to interpolate the name of the applicant in the seniority list dated 29.12.2004 (Annexure A/8) at serial no. 23 as shown



- 1. in seniority list dated 29.09.2004 (Annexure a/7) by deleting name from serial no. 61 to the scale Rs. 6500-10500 with all consequential benefits.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the cost of this application may be awarded."

The Original Application No. 187/2005 was disposed of vide order dated 06th March, 2009. While disposing of the Original Application No. 187/2005, this Bench of the Tribunal has held as under: -

"4. we are of the view that it was not permissible for the respondents to act on the basis of the decision taken with the Union to merge new category i.e. category of Movement Inspector into Station Master / Assistant Station Master which category has not been included by the Railway Board. Since the action of the respondents may amounts to over-reaching the decision taken by the Railway Board vide RBE 171/2003, we left this question open to be decided by the Railway Board. Accordingly, the present OA is disposed of at this stage without going into merit of the case and the Railway Board is directed to look into the matter in the light of the observation made hereinabove and take appropriate decision within a period of three months from the date of receipt of a copy of this order as to whether it was permissible for the authorities of West Central Zone to treat the cadre of Movement Inspector having merged into cadre of Station Master / Assistant Station master in the absence of any such decision taken by the Railway Board and thus granting promotion on the basis of combined seniority list."

Pursuant to the direction issued by this Bench of the Tribunal, the Railway Board has considered the merger of the cadre of Station Master / Assistant Station Master, and passed speaking order dated 05.06.2009 (Annex. A/1). This order dated 05.06.2009 (Annex. A/1) has been assailed by the applicant by way of filing the present Original Application, and has prayed for the following reliefs: -



- "(i) That the entire record relating to the case be called for and after perusing the same respondents may be directed to promote the applicant in the scale of Rs. 7450-11,500 as per his seniority in Movement Inspector with all consequential benefits.
- (ii) That the further merger of Movement Inspector with the other cadres be declared illegal and against the policy framed by the Railway Board at Annexure-A/6 by quashing promotion in the scale of Rs. 7450-11,500 vide Annexure-A/13 to extent of against the vacancies of movement inspectors including promotion of respondent No. 5 with all consequential benefits.
- (iii) That the respondents be further directed to interpolate the name of the applicant in the seniority list dated 29/12/2004 (Annexure A/10) at serial no. 23 as shown in seniority list dated 29/9/2004 (Annexure-A/9) by deleting name from serial No. 61 with all consequential benefits.
- (iv) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the costs of this application may be awarded."

2. As per impugned order dated 05.06.2009 (Annex. A/1), the Railway Board has observed that 'in terms of para 124 of Indian Railway Establishment Code Vol.I General Managers of Indian Railways are fully empowered to make rules with regards to Railway servants in Group 'C' & 'D' under their control provided they are not inconsistent with any rules made by the President or the Ministry of Railways, and decision taken by a General Manager to merge the Movement Inspector's cadre into the unified ASM/SM cadre is not inconsistent vis-à-vis the decision taken by Ministry of Railways and, as such, the said decision is permissible in terms of para 124 of IREC Vol.I.

3. The Railway Board's decision dated 05.06.2009 (Annex. A/1) is challenged on the ground that the action of the



respondents is arbitrary, illegal and unjustified in connection with not allowing higher pay scale of Rs. 7450-11500 to the post of Movement Inspector in spite of the fact that applicant is senior most in the cadre and respondents also having vacancies prior to 01.11.2003

4. Learned counsel appearing for the respondents has strongly controverted this fact and stated that the applicant has not placed the correct fact on record. In fact by office order dated 26.04.2000, selection was initiated for filling up of 02 posts of Movement Inspector in the pay scale of Rs. 6500-10500 and eligibility list was prepared wherein the name of the applicant is at serial No. 1, while the name of Shri Umesh Kumar Jain was at serial No. 2. Applicant failed to qualify, thus, Shri Umesh Kumar Jain was selected. The post of Movement Inspector, pay scale of Rs. 7450-11500, was a headquarter control post and accordingly Shri Umesh Kumar Jain was promoted vide order dated 22.02.2000. The applicant's services were regularized in the scale of Rs. 6500-10500 on being selected and placed in the final panel dated 24.05.2002, admittedly after the selection and promotion of Shri Umesh Kumar Jain. Thus, the claim of the applicant is contrary to the facts and circumstances of the case.

5. Learned counsel appearing for the applicant placed reliance upon the judgment rendered by Principal Bench of this Tribunal in the case of All India Station Masters' Association, New Delhi, and Ors. etc. etc. vs. Union of India and Ors.



reported in 2006 (1) ATJ 515, in which the Principal Bench of this Tribunal has observed as under: -

"55. In the result, for the foregoing reasons, all the three OAs are partly allowed and the order passed by the respondents on representation dated 23.7.2004 is set aside. Respondents are directed to re-examine the issue of merger of these categories and pass a detailed, speaking and reasoned order in the light of our observations, within three months from the date of receipt of the certified copy of this order till then, the merger shall not be further given effect to. Any action taken in the past shall be subject to the decision of the respondents. No costs."

As such, the Principal Bench of this Tribunal has quashed the merger order dated 23.07.2004. After quashing and setting aside of the merger, the Tribunal has directed to re-consider the issue of merger and pass a detailed, speaking and reasoned order.

6. Learned counsel appearing for the respondents submits that the General Manager is fully competent to frame rules with regard to the Railway Servants in Group 'C' and 'D' under their control with the approval of the Ministry of Railway. He further submits that the ratio decided by the Principal Bench of the Tribunal in the case of **All India Station Masters' Association, New Delhi, and Ors. etc. etc. vs. Union of India and Ors.** (supra) is not applicable to the facts and circumstances of the present case.

7. We have considered the rival submissions made on behalf of the respective parties and carefully gone through the pleadings as well as documents available on record and the judgment referred by the learned counsel for the applicant.



8. The applicant is not able to make out the case that he being a senior most is entitled to be given promotion on the post of Movement Inspector in the pay scale of Rs. 7450-11500 as he was not qualified, and the next person namely Shri Umesh Kumar Jain was qualified and, as such, was given promotion on the post of Movement Inspector in the pay scale of Rs. 7450-11500 vide order dated 22.02.2000, and at that time the applicant was not even regularized in the pay scale of Rs. 6500-10500, he was only regularized on 24.05.2002 after the promotion of Shri Umesh Kumar Jain in the pay scale of Rs. 7450-11500.

9. As the decision to merge the Movement Inspector's cadre into the unified ASM/SM cadre has been upheld by the Railway Board pursuant to the direction issued by this Bench of the Tribunal in OA No. 187/2005 filed by the present applicant, thus, we find no illegality in the order impugned dated 05.06.2009 (Annex. A/1), which provides that the General Managers of Indian Railways are fully empowered to make rules with regards to Railway servants in Group 'C' & 'D' under their control in terms of para 124 of Indian Railway Establishment Code Vol.I.

10. Accordingly, the Original Application being bereft of any merit; fails and is hereby dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)

MEMBER (A)

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)