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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

16.08.2011

OA No. 46/2011

Mr. C.B. Sharma, Counsel for applicant.
Mr. R.G. Gupta, Counsel for official respondents.
None present for private respondents.

Put up on 09.09.2011. In the meanwhile, the private respondents may file their reply.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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

AHQ

9.9.2011

9.9.2011

Mr. C.B. Sharma, Counsel for applicant
Mr. R.G. Gupta, Counsel for official respondents
None present for private 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)

*Reply not
Received by R-3
On*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 9th day of September, 2011

ORIGINAL APPLICATION No. 46/2011

CORAM :

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

Nek Ram Verma son of Shri Nand Kishore aged about 56 years, resident of Chandra Ghata, Behind Mahawatn Ki Maszid,
Ward No. 31, Kota and presently working as Chief Office Superintendent, Wagon Repair Shop, under Chief Works Manager, West Central Railway, Kota Divison, Kota.

... Applicant

(By Advocate : Mr. C.B. Sharma)

Versus

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur (M.P.).
2. Chief Works Manager, Wagon Repair Shop, West Central Railway, Kota Division, Kota.
3. Shri Kishan Chand Jatav, Chief Office Superintendent (Budget), Wagon Repair Shop, under Chief Works Manager, West Central Railway, Kota Division, Kota.

... Respondents

(By Advocate : Mr. R.G. Gupta)

ORDER (ORAL)

The applicant has filed this OA with the prayer that the respondents may be directed to maintain seniority of the applicant in the promoted cadres and over & above respondent no. 3 in the cadre of Chief Office Superintendent, scale Rs.9300-34800 plus Rs.4600/- Grade pay by quashing the order dated 23.12.2010 (Annexure A/1) with the notice dated 29.11.2010 (Annexure A/2) with all consequential benefits. The applicant has further prayed that the respondents may be further directed not to curtail

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the rights/benefits of the applicant while extending any benefit to respondent no. 3 and any benefits without disturbing pay & allowances and seniority of the applicant.

2. Brief facts of the case are that the respondents issued a seniority list on 16.11.1990 in which the name of the applicant was at sr. no. 20 and the name of the Shri Kishan Chand Jatav, respondent no. 3, was at sr. no. 17 and further the name of Hori Lal at sr. no. 44. Shri Hori Lal did not challenge the seniority list till 1993. Shri Hori Lal made a representation in the year 1993 and instead of deciding the representation on the basis of existing rules, the respondents had decided the question of seniority in the joint meeting of the Union. Hori Lal was given seniority at sr. no. 17 in place of Kishan Chand Jatav and Kishan Chand Jatav was placed at sr. no. 44 in place of Hori Lal. Aggrieved by this order of the respondents, Kishan Chand Jatav approached this Hon'ble Tribunal by filing OA No. 545/1994. This Tribunal decided the said OA vide order dated 13.09.200 by giving the following directions:-

"We accordingly dispose of this OA with a direction to the respondents to re-work out the seniority in the cadres of Junior Clerk and Senior Clerk without taking into consideration the decision arrived at in the joint meeting held on 30.3.88 (Annexure A/9) and strictly on the basis of rules regarding seniority, as contained in IREM Vol. I. This direction may be carried out within a period of four months from the date of receipt of a copy of this order. There be will no order as to costs."

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Thereafter, a DB Civil Writ Petition No. 1327/2001 was filed before the Hon'ble High Court. Hon'ble High Court vide its order dated 04.10.2010 issued the following directions:-

"In view of the fact that respondent no. 3 has died, as prayed let the petitioners consider the grievance of respondent no. 1 with respect to the seniority in view of the stand taken by them, the order passed by the Tribunal and subsequent events.

The petition stands disposed of."

3. In compliance of this direction, the respondents issued notice dated 29.11.2010 (Annexure A/2) for deciding the seniority of Kishan Chand Jatav. The applicant filed a representation against this notice. Thereafter, the respondents passed an order dated 23.12.2010 (Annexure A/1) fixing the seniority of Kishan Chand Jatav again at sr. no. 17 of the seniority list and as a consequential benefits, Shri Kishan Chand Jatav was also declared senior to all Chief Office Superintendent. Aggrieved by this order, the applicant has filed this present OA. According to the applicant, he was also promoted on the basis of his seniority and also passed the departmental examination from time to time and applicant was promoted when his senior, Shri Bheru Lal was failed and all the promotions earned by the applicant were regular promotions. Therefore, his seniority cannot be disturbed and if the respondents wants to extend benefits to Shri Kishan Chand, the same can be by way of creating supernumerary post from time to time. That the respondent no. 2 did not consider the facts & circumstances of his representation and passed the order dated

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23.12.2010 by which respondent no. 3 has been allowed seniority in place of Late Hori Lal in the cadre of Senior Clerk and further allowed seniority over & above the applicant in the cadre of Chief Office Superintendent.

4. The respondents have filed their reply. In their reply, they have stated that after joint meeting of the administration with both the Union, Late Shri Hori Lal was treated senior to Shri Kishan Chand Jatav, respondent no. 3, in the seniority list dated 30.11.1990. Being affected party, seniority dispute was agitated by respondent no. 3 by filing OA No. 545/1995 decided by the Tribunal on 13.09.2000 against which Railway Department filed DB Civil Writ Petition No. 1327/2001 before the Hon'ble Rajasthan High Court, which was decided on 04.10.2010. Now seniority of the parties was to be reshuffled in compliance of order dated 04.10.2010. Therefore in the course of compliance of the order dated 04.10.2010, notice of information was given to the parties including the applicant and office order dated 23.12.2010 (Annexure A/1) and letter/notice dated 29.11.2010 (Annexure A/2) were issued. Now quashing of order dated 23.12.2010 (Annexure A/1) in compliance of order dated 04.10.2010 or any other compliance like Annexure A/2 is not within the jurisdiction of this Tribunal. Hence the OA being not maintainable is liable to be dismissed with costs.

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5. The respondents have also stated that relief against any effect of compliance of any court of law can be sought from a superior court of law. This Hon'ble Tribunal cannot grant any relief against compliance or order dated 04.10.2010 passed by the Hon'ble High Court as clearly mentioned in Annexure A/2. Hence the OA is devoid of merit is liable to be dismissed with costs. The respondents have also stated that the matter of seniority stands decided concurrently earlier on 13.09.2000 by the Hon'ble Tribunal, Jaipur Bench in OA No. 545/1994 against which Railway Department filed DB Civil Writ Petition No. 1327/2001, which was decided on 04.10.2010, maintaining the decision of this Hon'ble Tribunal. Therefore, the dispute under OA is res-judicata and not maintainable and is liable to be dismissed with costs. That the applicant is only technically affected in consequence of compliance of order dated 04.10.2010 (Annexure A/14), which is inevitable and no remedial relief can be sought by the applicant from this Hon'ble Tribunal as per law. That on account of compliance of Hon'ble Court orders, no pecuniary loss is accrued to the applicant. Only technically compliance of court directions is made. Benefit of pay protection is available to the applicant and no monetary loss caused to the applicant. In the selection process for office Superintendent II, Shri Nek Ram Verma appeared and selected on reserved post but Shri Kishan Chand Jatav could not appeared in the said selection process because of his lower position in seniority whereas upon High Court decision and grant of seniority, he became

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eligible. Shri Kishan Chand Jatav on the strength of his own seniority since before decision from Hon'ble High Court, he is working on the post of Office Superintendent. As per Railway Board rules, if any employee is working on the post of higher grade then he will not appear in the selection process of lower grade post. Therefore, from the date of promotion of Shri Nek Ram Verma (SC) on the post of Office Superintendent-I and Office Superintendent II, proforma/notional promotion was granted to Shri Kishan Chand Jatav (SC) and salary of Shri Nek Ram was protected. Consequent upon implementation of VI Pay Commission grade of Chief Office Superintendent PB-2 7450-11500 and Office Superintendent-I 6500-10500 were merged and PB-2 Rs.9300-34800 plus Rs.4600 Grade Pay was converted into one post of Chief Office Superintendent. The seniority in favour of Shri Kishan Chand Jatav over & above Shri Hori Lal was granted due to the orders of the Hon'ble Tribunal as well as Hon'ble High Court. Shri Kishan Chand Jatav prosecuted the case against Late Shri Hori Lal but since Shri Nek Ram being junior to Shri Hori Lal was affected adversely. That the seniority position of the applicant, Nek Ram appear at sr. no. 20 whereas the seniority position of respondent no. 3 appeared at sr. no. 17 in the seniority list dated 16.11.1990 (Annexure A/3). That the seniority post of the applicant appeared at sr. no. 13 whereas the name of Late Shri Hori Lal appeared at sr. no. 11 in the seniority list (Annexure A/5) and since respondent no. 3 has been held senior to Late Shri Hori Lal, hence he is

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senior to the applicant also. The applicant has not pointed specifically as to what rules/regulations have been violated while fixing of the seniority of respondent no. 3 as a consequence of judgment/order of the Tribunal and the judgment of the Hon'ble High Court. There was no change of seniority of Shri Nek Ram Verma (SC). Shri Kishan Chand Jatav has been granted seniority over & above Late Shri Hori Lal. There is no curtailment in the benefit available to the applicant from time to time. That the representation of the applicant was forwarded to the competent authority but in view of compliance of the order of the Hon'ble High Court, the same was not admissible. The applicant has not been placed under any adverse position. The respondents have submitted that in compliance of order of the Hon'ble High Court (Annexure A/14), Shri Kishan Chand Jatav (SC) has been assigned seniority in the grade of Senior Clerk over Nek Ram Verma (SC) and accordingly, in the matter of promotion of upper grades also, seniority will be affected whereas compliance has been made without adversely monetarily affecting any employee. The applicant has no right to seek any relief in this case. The respondents have filed the office order dated 10.02.2011 (Annexure R/2). The respondents have stated that the order dated 23.12.2010 (Annexure A/1) is nothing but compliance of the order of the Hon'ble High Court and the Tribunal. Therefore, this OA has no merit and needs to be dismissed.

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6. Heard learned counsel for the parties and perused the documents on record. It is not disputed between the parties that the seniority list was issued on 16.11.1990 (Annexure A/3) by the railway authorities in which the name of respondent no. 3, Shri Kishan Chand Jatav, is at sr. no. 17. The name of the applicant at sr. no. 20 and the name of Late Shri Hori Lal is at sr. no. 44. This seniority position was not agitated by the applicant and this implies that he has accepted the seniority of Shri Kishan Chand Jatav over & above him as on 16.11.1990. Subsequently, Shri Hori Lal agitated his seniority position viz.a.viz. Shri Kishan Chand Jatav. The Railway authorities fixed the seniority of Hori Lal in place of Shri Kishan Chand Jatav at sr. no. 17 and Shri Kishan Chand Jatav was brought down in seniority at the place of Hori Lal. Thus Late Shri Hori Lal became senior to the applicant whose name remained at sr. no. 20. The applicant did not agitate this change of seniority before any appropriate forum. This means that the applicant, Shri Nek Ram, has accepted the seniority of Hori Lal at sr. no. 17 over & above him. However, aggrieved by this decision of the Railway authorities, Shri Kishan Chand Jatav agitated the matter before this Hon'ble Tribunal by filing OA No. 545/1994, which was decided on 13.09.2000 by this Tribunal. The Tribunal directed the Railway authorities that the seniority be re-work out in the cadres of Junior Clerk and Senior Clerk without taking into consideration the decision arrived at in the joint meeting held on 30.03.1998 and strictly on the basis of the rules regarding seniority, as

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contained in IREM Vol. I. This decision of the Hon'ble Tribunal was agitated by the Railway authorities before the Hon'ble High Court by filing DB Civil Writ Petition No. 1327/2001. Hon'ble High Court decided the matter on 04.10.2010 in which they upheld the decision of the Hon'ble Tribunal and directed that in view of the fact that respondent no. 3 has died, as prayed let the petitions consider grievance of respondent no. 1 with respect to the seniority in view of the stand taken by them, the order passed by the Tribunal and subsequent events.

7. In compliance of the order of the Hon'ble High Court, the respondents issued the notice and show cause notice to change the seniority of Shri Kishan Chand Jatav (SC) and subsequently passed the order dated 23.12.2010 (Annexure A/1) thereby restoring the seniority of respondent no. 3 at sr. no. 17. In the meantime applicant got promotions from time to time according to his seniority and respondent no. 3 got his promotions according to his seniority, which was, however, not under dispute. Now the applicant prays that since he has been promoted on different posts prior to respondent no. 3, therefore, now respondent no. 3 cannot be made senior to him in those positions and remain senior to respondent no. 3 in the cadre of Chief Office Superintendent in the scale of Rs. 9300-34800/- plus 4600 Grade Pay. It is an admitted fact that the applicant was promoted earlier to respondent no. 3 in the cadre of Chief Office Superintendent Grade II and Chief Office

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Superintendent Grade I but it was due to the fact that respondent no. 3 was given seniority at sr. no. 44 instead of sr. no. 17 by the official respondents and, therefore, he could not appear in the selection process for the higher post due to his lower seniority position. Now since his seniority has been restored at sr. no. 17 without disturbing the seniority of the applicant at sr. no. 20, there is no reason for the applicant to agitate the seniority of respondent no. 3. Even in the seniority list at Annexure A/5, the name of Hori Lal is at sr. no. 11 while the name of the applicant is at sr. no. 13. Therefore, if the respondent no. 3 is restored to his seniority, then he will be senior to the applicant. Even in the seniority list at Annexure A/5, the action of the official respondents in re-working out seniority of respondent no. 3 is as per the directions of this Tribunal as well as directions of the Hon'ble High Court. Therefore, we do not find any infirmity/illegality in the action of the official respondents in re-determining the seniority of respondent no. 3. Learned counsel for the applicant has also not pointed out any rule/circular which has been violated by the official respondents while re-determining the seniority of respondent no. 3. Therefore, we do not find any reason to interfere with the order passed by the official respondents dated 23.12.2010 (Annexure A/1). The respondents have clearly stated that on account of the orders passed by them, no pecuniary loss is accrued to the applicant, the benefit of pay protection is available to the applicant and no monetary loss is caused to

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him. Thus we find that there is no merit in the OA and the same is hereby dismissed with no order as to costs.

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(Anil Kumar)
Member (A)

AHQ

K. S. Rathore

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