

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA NO.2388/2012

Order reserved on 01.02.2017
Order pronounced on 08.02.2017

HON'BLE MR P.K. BASU, MEMBER (A)
HON'BLE DR B.A. AGRAWAL, MEMBER (J)

Mohd. Hanif,
S/o Late Shri Abdul Aziz,
Senior Section Engineer [P. Way],
North Central Railway,
Railway Station Kosi Kalan,
Distt. Mathura [U.P].

...Applicant

(By Advocate: Mrs. Meenu Mainee)

VERSUS

Union of India through

1. General Manager,
North-Central Railway,
Allahabad.
2. Divl. Railway Manager,
North-Central Railway,
Agra Cantt.

...Respondents

(By Advocate: Mr. Satpal Singh)

:ORDER:

DR BRAHM AVTAR AGRAWAL, MEMBER (J):

This is the second round of litigation by the applicant claiming that his seniority in the post of Section Engineer (Permanent Way) should be counted w.e.f. 25.08.1994, i.e., the date of his appointment as Section Engineer on ad hoc basis, and

not w.e.f. 13.05.1999 when he was regularly promoted as Section Engineer on passing the requisite examination. This has a bearing on his claim to subsequent promotion as an Assistant Engineer. His earlier OA, i.e., the OA No.1035/2010 was disposed of by this Tribunal on 22.04.2010 (vide Annexure A-12) as follows:

"We have heard counsel for the applicant. Since it is stated by the counsel for the applicant that his representation has not even been considered by the respondents, this OA is disposed of, at the admission stage itself, without going into the merits of the case by directing the respondents to decide the representation of the applicant by passing a reasoned and speaking order within a period of two months from the date of receipt of a copy of this order under intimation to the applicant. No costs."

2. A 'Speaking Order' was then passed by the respondents on 07.07.2010 (vide Annexure A-13), which is reproduced hereinunder:

"In compliance of Hon'ble CAT, Principal Bench, New Delhi's orders dated 22.04.10 in OA No.1035/2010, I have gone through the representation dated 18.09.2009 submitted by Shri Mohd. Hanif, SSE(P-Way)/AGC to GM/P. On going through his representation, I have observed that his main grievance is for promotion from Gr. 'C' to Gr. 'B' to the post of AEN against 70% quota vacancies for the assessment year 2005-07 in Civil Engineering Department. The background of the case on the basis of the facts available on record is as under:-

1. H
e was called in the selection as per the seniority position assigned to him in the seniority list dated 26.10.06. He had passed the written test and became eligible for calling in the viva-voce test. He appeared in the viva-voce test but due to pendency of a major penalty charge-sheet against him in a Vigilance oriented case as on the date of declaration of panel on 07.11.2007, his result was kept in sealed cover and was not declared in terms of instructions contained in paras 2(ii) and 3.1 of Railway Board's letter No.E (D&A) 92 RG 6-149 (A) dated 21.01.1993. In this charge-sheet, he was imposed the penalty of reduction of pay by three stages below reducing his pay from Rs.22,330 to Rs.20,420 in PB Rs.9300-34800+GP-4600 on 17.06.2009 for a period of 01 year without cumulative

effect by the DA. In the appeal, the appellate authority on 29.04.2009 reduced the penalty of reduction in pay from Rs.22,330 to Rs.20,420 imposed by the DA from one year to six months without cumulative effect. Thus, the penalty imposed on him expired on 17.09.2009.

2. I
n the meanwhile, a new development about wrong assignment of seniority to him took place as a result of which the matter was examined in threadbare by Agra division and the following facts came to light:-

2.1 I
nitially, when integrated seniority list for selection to the post of AEN against 70% quota vacancies in Civil Engineering Department was issued on 26.10.2006 vide letter No.797-E/NCR/Group 'B' /Inter-se-seniority/Engg. by the Headquarters Office, the date of regular promotion in Grade 6500-10,500 of Shri Mohd. Hanif, SE(P-Way) was shown as 25.08.1994 on the basis of the position received from AGC division. Accordingly, he was placed at SN-71 in the integrated seniority list. However, subsequently on scrutiny of his service record, it came to the notice of AGC division that his date of regular promotion in Grade 6500-10,500 is 13.05.1999 and not 25.08.1994 as shown earlier which is his date of ad-hoc promotion. Accordingly, on the basis of revised seniority position received from AGC division vide letter No.P/Agra/Seniority/Engg./4 dated 26.11.2008, his date of regular promotion was rectified from 25.08.1994 to 13.05.1999 and his seniority was determined on the basis of his non-fortuitous length of service in Grade 6500-10500 which counts from 13.05.1999. On the basis of his revised seniority position, his name in the integrated seniority list dated 26.10.2006 was shifted from SN-71 to 191-A placing him below Shri J.L. Sharma, SE/W and above Shri A.K. Sharma, SE/W.

2.2 B
efore changing his seniority, AGC Division has issued a notice to all concerned vide letter No.P/Agra/Seniority/Engg/4 dated 18.07.2008 that Shri Mohd. Hanif has been assigned correct seniority in Grade 6500-10500 w.e.f. 13.05.1999 modifying his incorrect seniority position assigned earlier w.e.f. 25.08.1994 in Grade 6500-10500. For this, objections if any were also invited from the employees within one month time. Accordingly, Shri Mohd. Hanif gave a representation on 11.08.2008 objecting the change in his seniority. After considering his representation, a final decision was taken by the competent authority to modify his seniority and he was assigned seniority on the basis of his date of regular promotion Grade in 6500-10500 w.e.f. 13.05.1999. He was communicated the decision vide AGC division's letter No.P/Agra/Seniority/Engg/4 dated 25.11.2008 through a common notice and individual letter dated 25.11.2008.

3. A
 s per provision in para 203.5, Chapter-II, Section-A of IREM Vol-I, the seniority for Group 'B' selection is to be determined on the basis of non-fortuitous length of service in Grade 6500-10500. He was assigned seniority on the basis of his ad-hoc date of promotion in Grade 6500-10500 by AGC division which is against the provision of para 203.5 of IREM Vol-I. The date of ad-hoc promotion in Grade 6500-10500 i.e. 25.08.1994 was not to be reckoned for seniority purpose but inadvertently and by oversight, AGC division committed this mistake which was later rectified when the mistake came to notice.
4. O
 n the basis of his correct date of regular promotion i.e. 13.05.1999 in Grade 6500-10500 and modified seniority assigned to him vide letter No.797-E/NCR/Civil Engineering/70%/seniority/08 dated 31.03.10, he does not come in turn for placement in the provisional panel of AEN as only the senior most 57 UR candidates could find place in the panel. There were 08 more UR candidates senior to him who could not find place on the panel. It is mentioned here that as per instructions contained in Board's letter No.E(GP) 78/2/107 dated 08.12.1978 and the provision in para 204.9 of IREM Vol-I, the panel against 70% quota selection is to be formed in order of seniority. I have seen that the panel was to be formed for 74 vacancies (UR-57, SC-11 & ST-06) against which 64 employees (UR-57, SC-06 & ST-01) were placed in the panel.

In light of the facts that 08 employees senior to Shri Mohd. Hanif have also passed the selection but could not find a place in the panel for want of the UR vacancy and his seniority position in the integrated seniority list issued on 26.10.2006 has undergone a change from SN-71 to 191-A and he ranks below in seniority to 08 employees, it is not possible to promote him to the post of AEN (G. 'B') against 70% quota vacancies.

This disposes of his representation dated 18.09.2009. The orders may be communicated to him."

3. Correction of the 'administrative wrong' was done after issuance of a notice to the applicant and after considering his objections. Therefore, the same cannot be questioned on the ground of violation of principles of natural justice.
4. Incidentally, the applicant first filed the OA No.4391/2010 challenging the aforesaid 'Speaking Order', which he withdrew

with liberty to challenge the seniority list dated 21.07.2008/25.11.2008 (Annexure A-1), vide the Tribunal's order dated 10.08.2011 (Annexure A-14). Followed the instant OA.

5. Should the applicant's ad hoc service as Section Engineer from 25.08.1994 to 13.05.1999 count towards his seniority as such? This is the precise question in the instant OA.

6. The aforesaid ad hoc promotion was not as per rules and can be termed as fortuitous, as the applicant had not passed the requisite examination before he became Section Engineer on ad hoc basis. Therefore, the said officiation cannot be taken into account for considering seniority. We may, in this context, refer to **Direct Recruit Class-II Engineering Officers' Association Vs. State of Maharashtra** [(1990) 2 SCC 715].

7. Reliance by the learned counsel for the applicant on Debabrata Dash & Anr. Vs. Jatindra Prasad Das & Ors. [2013 (2) SLJ 306 (SC)] also seems to be misplaced. In this case, which revolves round its own peculiar facts and rules, the whole service of the writ petitioner as an ad hoc Additional District Judge (Fast Track Court) was not counted towards seniority.

8. In the light of the above, we are of the view that the OA is devoid of merits. The same is, therefore, dismissed. No order as to costs.

(DR B.A. AGRAWAL)
MEMBER (J)

(P.K. BASU)
MEMBER (A)

/JK/