

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

**M.A. No. 892/2018, MA No. 3991/2017, MA
No.2084/2016 and MA No. 3585/2016 In
C.P. No.657/2017 In
O.A No.591/2009**

Reserved On:24.09.2018

Pronounced on:27.09.2018

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Shri S. Kameshwar,
Working as Under Secretary
Ministry of Railways (Railway Board)
Rail Bhawan, Raisina Road, New Delhi-110001.
R/o 275, Laxmi Bai Nagar, New Delhi-110 023. ...Petitioner

(By Advocate: Ms. Jyoti Singh, Sr. Advocate with
Shri N.K. Bhatnagar)

Versus

1. Mr. Ashwani Lohani
Chairman Railway Board,
Ministry of Railways,
Rail Bhavan, Raisina Road,
New Delhi-110 001.
2. Mr. Ravinder Gupta,
Member Rolling Stock,
Officiating as Member Staff,
Ministry of Railways,
Rail Bhavan, Raisina Road,
New Delhi-110 001.
3. Mr. R.K. Verma
Secretary Railway Board
Ministry of Railways,
Rail Bhavan, Raisina Road,
New Delhi-110 001.

4. Mr. Chetan Prakash Jain
Ex. Dir. (Estt)(GC)
Ministry of Railways,
Rail Bhavan, Raisina Road,
New Delhi-110 001.

5. Mr. Shekhar Kashyap
Under Secretary (E),
Ministry of Railways,
Rail Bhavan, Raisina Road,
New Delhi-110 001.

Respondents

(By Advocate: Shri V.S.R. Krishna with Shri Shailendra Tiwary)

ORDER

By Mr. V. Ajay Kumar, Member (J)

OA No.591/2009 and OA No. 2981/2009 were disposed of by this Tribunal by a common order dated 31.05.2016.

2. The applicants in OA No.591/2009, 5 in number, are Departmental Promotee Section Officers (DRSOs for short) and some of them were later promoted to the grade of Under Secretary. Their grievance is that while the Directly Recruited Section Officers through the UPSC have been promoted to the even higher grades after completing the eligibility service required for grant of such further promotions, but the applicants were either been promoted after considerable delay, or have not been promoted at all till now. OA No. 2981/2009 was filed by the UPSC selected DRSOs, canvassing exactly the opposite points, and still, at the same time, assailing the same impugned Memorandum dated 22.12.2008. This

Tribunal, vide the above referred common order, disposed of both the OAs as under:-

“182. With these directions, these two connected OAs are disposed of, and the impugned Memorandum dated 22.12.2008 issued by the Secretary Railway Board, is set aside, and he is directed to issue fresh year-wise Seniority Lists of Section Officers from 1970 onwards, taking into account the above principles. The Respondent No.1 is, therefore, directed to re-cast the entire year-wise Seniority Lists of the RBSS at the level of Section Officers, from the very beginning of the RBSS as a Service, on the basis of principles as have been explained above, which may again be summarised as below:-

“i) The latin maxims *fiat justitia et pereat mundus* or *fiat justitia ruat caelum*, commonly ascribed to Ferdinand I, Holy Roman Emperor, and roughly meaning **“let there be justice, though the world perish”,** or **“let justice be done, though the heavens fall”** would apply, and, justice must be done, regardless of the result otherwise, and the law of the land shall be applied, and the plea of the official respondents that there would be chaos or mayhem, if the practice and system of assigning *inter-se* seniority of SOs as had been adopted by them is ordered to be changed is rejected outright. Let chaos and mayhem prevail once, so that *inter-se* seniority of the respective sides are fixed in a legal manner, once and for all, and in future also.

ii) Each and every person can claim seniority in the cadre of Section Officers only from the date of his substantive appointment in that cadre, irrespective of the year during which the vacancy which he came to substantively occupy had arisen earlier;

iii) This proposition would apply to all categories of Section Officers, whether they were Direct Recruits nominated by UPSC, or Departmental Promotees, through any of the routes of (i) seniority-cum-merit-based promotion after 8 years' of continuous service, or (ii) accelerated promotion through LDCE route, after completion of 4 years' of service as Assistants, or (iii) through promotion of the Stenographers in respect of the two earmarked vacancies, which continued to be so earmarked till the promulgation of the RBSS Amendment Rules of 2004;

iv) No weightage whatsoever can be, or shall be given to anybody in respect of any In-charge, or ad hoc, or officiating basis appointment as Section Officers, even if he had been included in the Select List of SOs by the DPC already, before his assuming charge as such, or had qualified for accelerated promotion being granted to him through the LDCE route, before his assuming charge as such, until such a person comes to substantively occupy

the post of SO either in the regular DP quota, or the DR quota transferred to the DP mode after having remained unfilled for two years.

v) The seniority in the cadre of Section Officers at level-3 of RBSS so determined, in the manner as indicated above, shall alone be taken into consideration of further promotions to level-2 and level-1 of RBSS thereafter.

vi) The Respondent No.1 shall, after finalization of the SOs' level Seniority List, convene DPCs or Review DPCs, for considering year-wise further promotions of all the incumbent SOs in that seniority list as Under Secretaries and Deputy Secretaries etc., and so on.

183. However, it is further made clear that after undertaking such proper promotions, if any individual is found to have already enjoyed higher emoluments fortuitously in the meanwhile, in view of his having been wrongly so promoted to the promotional posts concerned earlier than when it actually became due to him, as per law, and as per the Review DPCs etc., no recoveries in respect of the excess salary and emoluments, paid already to him in such promotional posts, due to erroneous promotions having been granted earlier to any individual incumbent, before they became due to such individual, no recoveries of any amounts already disbursed due to the fault of the official respondents shall be effected.

184. There shall be no order as to costs".

3. Applicant No.3 in OA No. 591/2009, i.e., Shri S. Kameshwar, filed the instant CP alleging violation of the common orders of this Tribunal dated 31.05.2016 in OA No.591/2009 with OA No.2981/2009.

4. Mrs. Jyoti Singh, the learned Senior Counsel appearing for the petitioner in the instant CP submits that though the respondents, in purported partial compliance of the orders in the OAs, issued a seniority list, but instead of convening the DPCs or Review DPCs for considering year-wise further promotions of the incumbents SOs in that seniority list as Under Secretaries and Deputy Secretaries etc., i.e., in terms of Para No.182 (vi), promoted ineligible persons to the

higher posts, on ad hoc basis. Accordingly, the learned Senior Counsel submits that the respondents are liable to be punished for the disobedience of the orders of this Tribunal.

5. On the other hand Shri V.S.R. Krishna with Shri Shailendra Tiwary, learned counsel appearing for the respondents submits that the OA No.591/2009 was filed by 5 applicants jointly together and after obtaining leave, that all of them are identically placed and having a common cause of action, and out of the same, the 3rd applicant filed the instant CP, whereas the 1st applicant, i.e., Shri N.K. Sharma, who initially filed W.P. (C) No.10591/2017 and on disposal of the same with liberty to approach this Tribunal against the seniority list, which was issued in compliance of the orders of this Tribunal in the OA, filed an independent OA which is pending as on today. The applicants once joined together and filed an OA, cannot maintain different proceedings by way of a CP and a fresh OA. The learned counsel further submits that since admittedly, the seniority list which was issued in compliance of the orders of this Tribunal in the OA was already challenged by way of fresh OAs, the instant CP may be listed along with the said OAs and to be disposed of jointly.

6. He further submits that since this Tribunal has not debarred the respondents from making any ad hoc arrangements, the action of the respondents in effecting ad hoc promotions pending the

process of regular promotions, cannot be treated as a contempt of the orders of this Tribunal.

7. It is not in dispute that the respondents have issued a fresh seniority list in partial compliance of the orders of this Tribunal in the instant OA and the said seniority list is under challenge before this Tribunal in a fresh OA filed by the applicants in OA No.591/2009 and also by other similarly placed persons.

8. In the circumstances and in the fitness of things, in order to determine whether alleged action of the respondents amounts to wilful violation of the orders of this Tribunal, in the OA, the instant CP is required to be decided along with the said OAs. Accordingly, we order to list the instant CP along with OA No.2278/2018 on 17.12.2018, on which date the said OA was directed to be listed for hearing.

(A.K. BISHNOI)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

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