

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A.394/2015

Dated this Friday the 8th day of December, 2017.

**Coram: Hon'ble Shri Arvind J. Rohee, Member (J)
Hon'ble Shri R. Vijaykumar, Member (A).**

Shri N.B. Navasare,
Aged 49 yrs., Occu: Serving as SSE
(Works), Central Railway, Manmad
Taluka, Nandgaon, Dist. Nashik
Residing at:
Railway Quarter No.RB-II/724/C,
Panchwati Colony, Manmad,
District:- Nashik 423 104. .. Applicant.
**(By Advocate Shri Mohan Rawat, proxy
counsel for Shri R.G. Panchal).**

Versus

1. Union of India, through
Secretary,
Ministry of Railway,
Rail Bhavan, South Block,
New Delhi-110 010.
2. The DRM (P/Engineering),
Central Railway, Bhusawal,
Tal-Bhusawal, Dist. Jalgaon-
425201.
3. The Chief Personnel Officer
(Engg) Headquarters Office,
Personnel Branch,
Central Railway, Mumbai CST,
Mumbai-400 001. .. Respondents.
(By Advocate Shri V.D. Vadhavkar).

Order reserved on : 25.10.2017

Order delivered on : 08.12.2017

O R D E R

Per : Arvind J. Rohee, Member (J)

The applicant who is presently working as
Senior Section Engineer (S.S.E.) with the Respondent
No.2 in Bhusawal Division of Central Railway has

grievance regarding the impugned order dated 02.07.2015 (Annexure A-1) by which pre-04.02.2011 seniority list was restored and reversion of the applicant to the post of Junior Engineer (Works), approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"(a) This Hon'ble Tribunal be pleased to quash and set aside the impugned Order dated 2.7.2015 issued by the respondent No.3 thereby restoring the mistake or illegality in fixation of seniority existing prior to 4.2.2011 and, thereby also reverting the applicant from the post of Senior Engineer (Works) GP 4600/- to that of Junior Engineer (Words) GP 4200/-.

(b) This Hon'ble Tribunal be pleased to direct the Respondents to pay arrears/differences in the pay to the applicant on account of his promotion to the post of SE (WKS) GP 4600/- wef 10/06/2006 vide Order bearing No.12/2011 dated 15/02/2011.

(c) Cost of this Application may kindly be provided;

(d) any such other and further relief as the applicant may, in law, be entitled to;"

2. The applicant was empanelled on 10.10.1990 by Railway Recruitment Board and was appointed on the post of Inspector of Works (IOW-III) on 27.02.1991, after undergoing induction training. In all 11 empanelled candidates were appointed at Bhusawal Division in the same capacity. It is stated that as

per Para 303 of the Indian Railway Establishment Manual (IREM) the seniority based on the merit/marks obtained in the examination held at the end of the training is required to be prepared. However, according to applicant it was not so prepared and the respondents relied upon merit list prepared by the Railway Recruitment Board (RRB) at the time of selection.

3. It is stated that subsequently the respondents realized their mistake in the year 2010, vide Headquarter letter dated 07.09.2010 (Annexure A-4) and it was rectified by publishing seniority list as per merit/performance in induction training. It is stated that in the initial training the applicant has secured 71.33% marks, whereas the junior Shri Y.D. Shirsat has secured 67.33% marks. However, he was shown as senior to the applicant, although he joined subsequent to the applicant on 10.03.1991.

4. Subsequently vide order dated 15.02.2011 (Annexure A-5) the applicant was promoted to the post of SSE (Works) with notional effect from 10.06.2006, when Shri Y.D. Shirsat was so promoted. The applicant accordingly joined the promotion post.

5. Thereafter the respondents issued Headquarter letter dated 02.03.2015 (Annexure A-2) restoring the previous seniority based on the RRB merit position on the ground that since it was wrongly rectified earlier

without approval of Competent Authority. In pursuance of the aforesaid Headquarter letter, a show cause notice dated 07.04.2015 (Annexure A-3) was issued to the applicant calling upon him to explain as to why he should not be reverted from the post of SSE with Grade Pay Rs.4600/- that of JE (Works) with Grade Pay Rs.4200/-. The applicant immediately submitted his reply/representation dated 24.04.2015 (Annexure A-6) clarifying the position and based on the provisions of Para 303 of IREM and protested the illegal action on the part of the respondents regarding proposed action of reverting him. His representation was however, rejected vide impugned order dated 02.07.2015 (Annexure A-1) which is challenged in the present O.A.

6. The relief sought and challenge to the impugned order are based on the following grounds as mentioned in Para 5 of the O.A. The same are reproduced here for ready reference:-

"a. That, the impugned Order dated 2.7.2015 is illegal being in violation of the settled policy and principles contained in Indian Railway Establishment Manual-1 (Revised Edition 1989).

b. As per para 2045 of Railway General code (old)- Ref.308 A-says that all rules, orders and sanctions issued by an Authority take effect from the date of issue of rule, order or sanction is conveyed. IREM is published on 05.05.1990.

c. That, the impugned Order dated 2.7.2015 is completely illegal

being in gross violation of applicant's fundamental rights under Art 14, 16 and 21 r/w article 311(2) of the Constitution of India besides Railway Rules of Railway Board.

d. That, it is well settled that right to promotion is a fundamental right. The Apex Court in the case of C.O. Arumugam and Ors. vs. State of Tamil Nadu and Ors. (1991 Supp(2)SCC 199) held as follows: "5. As to the merits of the matter, it is necessary to state that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Article 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds only". However the applicant's promotion had already been postponed from 2006 to 2011 without any such reasonable grounds but only due to the mistake of the respondents alone and now also the applicant is deprived of his fundamental right to promotion as he is to be reverted from the promoted post as a consequence of the impugned Order dated 2.7.2015.

e. That, the seniority prepared earlier in violation of rules of Railway Board had been corrected by the respondents on 4.2.2011 themselves, for any illegality can never be allowed to be perpetuated by any reason whatsoever. However, the impugned Order dated 2.7.2015 appears to have been issued to restore the mistake or illegality in fixation of seniority existing prior to 4.2.2011 and then perpetuate and legalize the said mistake or illegality in fixation of seniority existing prior to 4.2.2011 inasmuch as it is clearly stated in the show cause notice itself as under "the seniority position prevailing since 1992, even if not correct, could not be altered in 2010".

f. The vide Order dated

15/02/2011 the applicant was promoted to the present post of SSE (Wks) with notional effect from 10/06/2006 and was thus denied the pay of promoted post wef 10/06/2006 but gross injustice has been caused to applicant by denying promotion to him till 2011. This fact itself shows the applicant had already been subjected to injustice by denying promotion to him till 2011 and they by promoting the applicant without any pay of promoted post with effect from 10/6/2006 though the applicant is entitled for the benefits of pay of promoted post wef 10/06/2006.

g. The HQ letter dated 02/03/2015 and Show cause Notice dated 07/04/2015, as well as impugned Order dated 2.7.2015, are in fact not all justified in view of the very Para 321(b) which reads as follows:- staff concerned may be allowed to represent about the assignment of their seniority position within a period of one year after the publishing of the seniority list. No cases for revision to seniority list should be entertained beyond the period as the seniority revised and correctly fixed on 07/09/2010 and therefore the same could not be revised beyond the period of one year.

h. That, from above it is clear that the seniority illegally prepared earlier in violation of rules of Railway Board had been corrected by the respondents on 4.2.2011 themselves, for any illegality can never be allowed to be perpetuated by any reason whatsoever. However, vide the impugned Order dated 2.7.2015 the Respondent No.3 has virtually reviewed his own order and restored the mistake or illegality in fixation of seniority existing prior to 4.2.2011. Referring to the catena of judgments, the Apex Court in the Kalabharti Advertising V. Hemant Vimalnath Narichania & Ors. (2010) 9 SCC 437, held that the power to review is not an inherent power.

It must be conferred by law either expressly/specifically or by necessary implication and in the absence of any provisions in the Act or Rules, review of an earlier Order is impermissible as review is creation of a statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in the absence of any statutory provision for the same is a nullity, being without jurisdiction. Therefore, the impugned order dated 2.7.2015 is a nullity in the eyes of law as the Respondent No.3 had no statutory power to review his own order.

i. That, the applicant may kindly be allowed to plead any other relevant ground at the time of hearing if so required."

7. In the O.A. the applicant prayed for interim relief to stay the impugned order and his reversion to the post of Junior Engineer. By the order dated 23.07.2015, while issuing notice, the respondents were directed to maintain the status-quo ante so far as the previous post of the applicant is concerned. This interim order was then continued from time to time which is still in force.

8. On notice the respondents appeared and filed short reply dated 07.10.2015 opposing grant of ad-interim relief. Subsequently a detailed reply was filed on 04.05.2016 denying all the adverse averments, contentions and grounds raised in the O.A. The action on the part of the respondents in restoring the previous seniority list published in the year 1996, on the basis of the RRB merit position was supported on

the ground that since it was not challenged by anybody and continued to be operational for long time, after consultation with the Union Members and considering all circumstances then prevailing it was not open to rectify the same in the year 2011 and to publish it based on the provisions of Para 303 of IREM. As such the mistake was again rectified by restoring the previous seniority list and hence the applicant who was shown as junior to Shri Y.D. Shirsat cannot get any relief or actual promotion from 10.06.2006. The same was correctly granted to him on notional basis and hence the decision taken by the respondents to revert the applicant to the post of JE-I is perfectly right which cannot be interfered.

9. The seniority position vis-a-vis the applicant and Shri Y.D. Shirsat and Shri P.K. Raikwar referred by the applicant in the O.A. is stated in the following tabular form:-

Sr. No.	Name (S/Shri)	Date of appointment	Seniority Published in 1993 by HQ office on the basis of RRB merit	% of ZRTI	Seniority Position as on 01.05.1996
01.	Y.D. Shirsath (ST)	19.03.1991	251	67.33	15
02.	P.K. Raikwar (ST)	24.01.1991	260	51.68	17
03.	N.B. Navsare (ST)	27.02.1991	262	71.33	18

10. It is stated that the seniority list of the above cadre of IOW was published in the year 1993 and again in 1996 in which it was clearly stated that the representation if any should be submitted and as per Para 321 (b) of IREM representations will not be entertained beyond the period of one year after publication of the seniority list. Nobody represented against the said seniority list and hence those two seniority lists were finalised and the same cannot be challenged subsequently. It is stated that in the seniority list published in the year 2010 the applicant was shown junior to Shri Y.D. Shirsat and Shri P.K. Raikwar.

11. It is stated that the matter of seniority was again raised in the year 2010 that the applicant is seniormost and Bhusawal Division referred this matter to Headquarter and on the basis of the advise letter No.HPB/661/RE/Wks/BSL/Seniority dated 07.09.2010 the seniority was changed whereby the applicant was placed above Shri Y.D. Shirsat.

12. When the issue regarding correct fixation of seniority of Shri Y.D. Shirsat again arose in the year 2013, the records were examined by the Junior Personnel Officer and following mistakes were found in the decision conveyed in the Headquarter letter dated 07.09.2010 (Annexure A-4) and 04.02.2011. A copy of the letter dated 04.02.2011 is annexed as Exhibit R-

3:-

"i) The decision did not have the approval of any of the Chief Personnel Officers though it was purely an Establishment matter for which the custodian of records and custodian of rules is the Personnel Branch.

ii) The points raised by Shri Shirsath in his representation against the Show Cause notice were not examined properly including the point of limitation under Para 321(b) IREM Vol.I. (The seniority list was published way back in 1993, 1996 and thereafter from time to time and the seniority position prevailing since then could not have been altered in the year 2010 even if Shri Shirsath had not raised the point of limitation."

13. As such with the approval of the Chief Personnel Officer, Bhusawal Division it was advised to issue show cause notice to the applicant seeking his representation as to why on the basis of the above position of law the seniority position between him and Shri Y.D. Shirsat be not restored as was prevailing in the year 1993.

14. The applicant's representation to the show cause notice has raised the following two points:-

"1. Seniority list on the basis of the principle of 'Merit after Training' has not been prepared at the earlier time and even today.

2. Changing the seniority will amount to violation of Para 114 of IREM-I."

15. The applicant's representation has been

considered and disposed of. The decision was then communicated to him vide letter dated 02.07.2015 denying that seniority list was not published earlier. The seniority lists were published way back in 1993 and 1996 and thereafter also from time to time in the year 2003, 2006 and 2010. The applicant was placed in the 1993 seniority at Sr.No.262 and at Sr.No.18 in the seniority list of 1996. It is stated that nobody filed any objection to the above seniority lists and hence it attained finality. The issue regarding preparation of seniority list as per merit order after training was not raised by anybody and hence those lists cannot be subsequently rectified on the basis of the merit order after training, which was wrongly done without approval of the Competent Authority as stated earlier. Hence it was necessary to rectify the mistake and restored the previous seniority list of 1993, 1996, 2003, 2006 and 2010 in which the applicant was shown as junior to Shri Y.D. Shirsat. Considering applicant's position in the seniority list, he was granted proforma promotion from 10.06.2006 and actual promotion from 15.02.2011. Reliance was placed on Para 321 (b) of IREM, in which elaborate provisions regarding seniority list and procedure to be followed are stated. Once the seniority list is prepared, in case anybody has objection to it, he should submit a representation within one year and consequently any

representation received thereafter cannot be considered. Reliance was also placed on Para 114 of IREM which gives power to the General Manager or the Chief Personnel Officer in special circumstances to relax or modify the Recruitment Rules in individual cases.

16. It is stated that in pursuance of the headquarter letter dated 04.02.2011 seniority of pre-04.02.2011 position was restored, as if no change was made. The same was advised to the applicant vide impugned letter dated 02.07.2015. He made appeal against it to the Additional General Manager in which the decision taken by the Chief Personnel Officer was confirmed vide order dated 05.12.2015 (Exhibit R-4). The applicant has, therefore, no case.

17. It is also stated that the applicant has not impleaded Shri Y.D. Shirsat and Shri P.K. Raikwar as party respondents and hence the O.A. is bad for non-joinder of necessary parties. The O.A. is also liable to be dismissed on the ground of delay and laches since no steps were taken by the applicant from the year 1993 onwards by raising any objection about the seniority and failed to approach this Tribunal on earlier occasion. It is stated that the applicant was considered for promotion to the post of Section Engineer (Works) when Shri Y.D. Shirsat was already promoted to the said post. The Division referred this

matter to Headquarters and on the basis of the advice obtained in Headquarters letter dated 04.02.2011 seniority was changed and the applicant was placed above Shri Y.D. Shirsat. However, this position did not come into effect, as there was no approval to it from the Competent Authority.

18. It is stated that the applicant has been promoted in the year 2011 notionally with effect from 10.06.2006 as per change in the seniority vide Headquarters letter dated 07.09.2011. However, since the applicant is not shouldered with the responsibility of promotion post from 10.06.2000 and taken over charge of the said post in the year 2011, actual pay was drawn from the said date when he actually took over as SE. As such there is no question of grant of arrears of pay to the applicant, since he did not work on the promotion post from 10.06.2006.

19. It is stated that reversion of the applicant from Grade Pay Rs.4600/- to Grade Pay Rs.4200/- is in accordance with rules and there is no malafide intention in doing so. It is denied that the applicant is deprived of his right to promotion. The decision of Hon'ble Apex Court cited by the applicant is not applicable in this case and he has been rightly considered and promoted as SSE in Grade Pay Rs.4600/- in time. As such there is no violation of any

fundamental right of applicant as alleged by him.

20. It is stated that as per the provisions of Para 321 (b) of the IREM, it is obvious that the settled things cannot be unsettle. Accordingly interse seniority position prevailing since 1993 cannot be altered. On this issue the Competent Authority i.e. Chief Personnel Officer has reviewed the case and issued the order as under:-

"Alteration of settled seniority in 2010 is hereby treated as rescinded. Para 321(b) will operate. Seniority to be taken to pre 2010 position, as if no change in 2010 had been made."

21. Accordingly the applicant was advised vide letter dated 02.07.2015 and decision to revert him is perfectly right.

22. The decision rendered by the Hon'ble Supreme Court in **B.S. Bajwa and Anr Vs. State of Punjab & Others, 1998(1) SCSLJ 168** is relied upon in which it has been held that question of seniority cannot be reopened after lapse of reasonable time because that results in disturbing the settled position. As such delay itself was sufficient to decline interference under Article 226 of Constitution. The O.A. is, therefore, liable to be dismissed.

23. The applicant then submitted a rejoinder on 26.09.2016 denying all the adverse averments and contentions made in the reply and reiterated the

grounds stated in the O.A. in support of his claim.

24. The issue raised regarding limitation to approach this Tribunal is also denied on the ground that preparation of seniority list itself in the year 1993 and onwards was basically incorrect since it was not prepared on the basis of the merit position in the training and was based on RRB merit position, although this was continued till the year 2010. On the representation made, the same was rectified, although it may be stated that there is no approval of the higher authority to it, the same has been prepared following provisions of Para 303 of IREM. It is, however, denied that the rectification is not approved by the higher authorities. The marks obtained by the 12 candidates in the training held in the year 1991 is stated in the tabular form, which is reproduced here:-

Sr.No.	Name of Candidate	% of marks Obtained in ZRTI Course	Remarks
1.	F.G. Sayyad	74.66%	
2.	S.C. Sharma	73.00%	
3.	N.B. Koli (Navsare)	71.33%	
4.	Y.D. Shirsath	67.33%	
5.	K.O. Potdar	58.33%	
6.	S.B. Sonule		Results can be made available from ZRTI BSL/ are available in SR of each employee.
7.	S.M. Khandar		
8.	H.K. Sharma		
9.	P.S. Bhusari		
10.	A.K.D. Raibole		
11.	P.K. Raikwar	51.68%	Passed in relaxed standard

25. It is thus obvious that applicant stood 3rd in order of merit and whereas Shri Y.D. Shirsat, fourth and Shri B.K. Raikwar at 11th position that too

in a relaxed standard. In any case both of them cannot be said to be senior to the applicant, although they secured more marks in RRB examination. The O.A. is, therefore, liable to be allowed.

26. The respondents again filed reply to the rejoinder on 05.12.2016 reiterating the grounds stated in the rejoinder. Reliance was placed on the RBE 92 dated 04.06.1992.

27. On 25.10.2017, when the matter was called out for final hearing, heard Shri Mohan Rawat, proxy counsel for Shri R.G. Panchal, learned Advocate for the applicant and the reply arguments of Shri V.D. Vadhavkar, learned Advocate for the respondents. Both the parties have also filed written submissions.

28. We have carefully gone through the pleadings and various documents relied upon by the parties in support of their rival contentions.

FINDINGS

29. The only controversy involved for resolution of this Tribunal in the present O.A. is whether the action on the part of the respondents in restoring the previous seniority list published by them based on RRB merit and reverting the applicant from the post of Sr. Engineer (Works) Grade Pay Rs.4600/- to that of Junior Engineer (Works) Grade Pay Rs.4200/- is illegal, improper or incorrect and hence is liable to be set aside. It is also to be considered whether the

applicant is entitled to actual promotion to the post of Section Engineer (Works) from 10.06.2006, which was granted to him on notional basis.

30. It is not disputed that after RRB Selection, the empanelled candidates were deputed to the induction training and thereafter seniority list was published in the year 1993, 1996 and 2010 in different cadres based on the RRB merit. However, in this respect, the learned Advocate for the applicant has invited our attention to the provisions of Para 303 of IREM which reads as under:-

"303. The seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority should be determined as under:-

(a) Candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts. Those who join the subsequent courses for any reason whatsoever and those who pass the examination in subsequent chances, will rank junior to those who had passed the examination in earlier courses."

(b) In the case of candidate who do not have to undergo any training in training school, the seniority should be determined on the basis of the merit order assigned by the Railway Recruitment Board or other recruiting authority."

31. In this respect it is pointed out by the

respondents that prior to 1990 there was no induction training prescribed for the post of Inspector of Works. However, thereafter in pursuance of the aforesaid provision, since induction training was prescribed the seniority can be determined only on the basis of the merit position secured on the basis of the marks allotted to the trainees considering their performance during training period. This has nothing to do with the merit prepared by the RRB while preparing Select Panel, for the reason that RRB prepares merit list only on the basis of the performance in the written test and the personal interview (if prescribed), whereas after undergoing training seniority is fixed on the basis of the performance and conduct during the entire period of training and on the basis of position secured in examination to be held at the end of the training.

32. The record shows that the respondents have realised the mistake committed and hence revised the seniority list and prepared it by following the provisions of Para 303 of IREM. Admittedly the applicant has secured 71.33% marks in the examination conducted at the end of the training course and hence he should have been placed senior to Shri P.K. Raikwar and others who have secured less marks than him in the induction training course. However, the mistake continued till the year 2010 and thereafter it was

rectified. The only objection raised by the respondents, for such rectification is that it was not approved by the Competent Authority i.e. Chief Personnel Officer and to the seniority lists published in the year 1993, 1995 and 2010 based on RRB Merit, nobody raised any objection to it, within a statutory period of one year from its publication as prescribed under Para 321(b) of IREM and hence it is final and is not liable to be rectified/modified at subsequent point of time.

33. However, considering the fact that the very preparation of seniority list based on RRB merit ignoring the provisions of Para 303 of IREM itself was ab-initio null and void. The same was corrected subsequently and hence although it does not have approval of the Competent Authority the respondents are not justified in saying that the previous seniority list which was prepared on the basis of the RRB merit is the correct seniority and it cannot be rectified. As such, the decision taken by the respondents to restore the incorrect seniority list based on the RRB merit and totally ignoring the merit position secured by the trainees in the induction training course is illegal and incorrect. Based on it the further decision to revert the applicant to the post of Junior Engineer is also incorrect. As such it is necessary to restore the seniority list issued by

the respondents based on the merit position secured in induction training course. Thus the applicant is entitled to the first relief. For the above reasons the objection raised by respondents regarding limitation to approach this Tribunal and O.A. is barred on that count is baseless and irrelevant, hence we reject it.

34. However, so far as the second relief claimed is concerned, the applicant is seeking actual promotion from 10.06.2006 in the post of Section Engineer (Works), when the notional promotion was granted to him from that date. Although the applicant was aware of this order dated 15.12.2011 since when it was issued, he has not made any grievance in this behalf till filing of the present O.A. and a grievance was made only after the respondents have issued impugned order dated 02.07.2015. In such circumstances of the case, it cannot be said that for claiming the said relief the O.A. is within limitation.

35. Even otherwise the applicant since made no protest against the said order and accepted the order of his promotion on notional basis with actual promotion from 15.02.2011, no grievance can be made at belated stage. Although notional promotion is granted his pay must have been fixed on 10.06.2006 in promotion cadre and he must have been granted the

further increments and his pay on the date of actual promotion must have been fixed accordingly. In any case, the applicant is not entitled to get actual promotion from 10.06.2006 as claimed by him and the consequential benefits including arrears/difference in pay etc.

36(a). In the result, the O.A. is partly allowed, so far as the prayer clause 8(a) is concerned.

(b). Consequently the impugned order dated 02.07.2015 (Annexure A-1) issued by the Respondent No.3 restoring the incorrect seniority based on the RRB merit and a decision to revert the applicant to the post of Junior Engineer (Works) in Grade Pay Rs.4200/- is hereby quashed and set aside.

(c). However, the applicant is not entitled to get the actual promotion from 10.06.2006 and hence relief claimed in Para 8(b) cannot be granted to him.

37. In the facts and circumstances of the case, the parties are directed to bear their respective cost of this O.A.

(R. Vijaykumar)
Member (A)

(Arvind J. Rohee)
Member (J).

H.