

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/0229/2012

Pronounced on : 07.05.2019
(Reserved on : 15.04.2019)

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

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Balu Ram, S/o Sh. Bilas Ram, aged about 47 years, R/o Plot No.25, Prem Nagar, Digari Kalan, Behind Marwar School, Jodhpur. Presently working on the post of Tech-I in Shop No.4 Carriage Workshop, North Western Railway, Jodhpur.

...APPLICANT

BY ADVOCATE : Mr. S.K. Malik

VERSUS

1. Union of India through the General Manager, North Western Railway, Jaipur.
2. Chief Workshop Manager, Carriage Workshop, North Western Railway, Jodhpur.
3. The Senior Personnel Officer, Carriage Workshop, North Western Railway, Jodhpur.
4. Sh. Jamta Ram, Tech.-I, T.No.10616, Shop No.4, Carriage Workshop N.W. Railway, Jodhpur.
5. Sh. Om Prakash, Tech.-I, T.No.10672, Shop No.4, Carriage Workshop, N.W. Railway, Jodhpur.

RESPONDENTS

BY ADVOCATE: Mr. Salil Trivedi, counsel for R1 to R3
 Mr. Deepak Kanoji, counsel for R4
 None for R5.

ORDER

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Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

- “(i) By an appropriate writ, order or direction impugned order dated 03.01.2012 (Annexure A1) be declared illegal and be quashed and set aside as if the same was never passed against the applicant.
- (ii) By an order or direction respondents may kindly be directed to place the applicant above respondents no.4 & 5 in seniority of Tech. Grade-I (MW) with all consequential benefits.”

2. This OA has been made against the impugned order dated 03.01.2012 (Annexure A1) passed by respondent no.3 wherein the applicant has been made junior to respondents no.4 & 5.

3. The brief facts of the case as narrated by the applicant are that the applicant was initially appointed on the post of Khallasi in the scale of Rs.750-940 w.e.f. 03.09.1989 in the Division. As per the Railway policy, the applicant and 23 other employees were transferred to workshop, vide office order dated 22.03.1993 and allotted different shops. As per merit, respondents no.4 & 5 were appointed on the post of Khallasi against ST short fall vide office order dated 16.02.1993 and they were placed at Sl.No.39 & 37 of merit list. They joined the duties on 01.05.1993 and 17.02.1993 respectively. After appearing in the Trade Test, the applicant was promoted on the post of Skilled Lister Driver Gr.III in the scale of Rs.950-1500, vide office order dated 19.04.1994 (Annexure A3). Thereafter, the applicant appeared for Trade Test for promotion to the post of Skilled Mill Right Fitter Grade-II in the pay scale of Rs.1200-1800

wherein the applicant was declared successful vide letter dated 03.06.1995 (Annexure A4).

4. Respondents no.4 & 5 also appeared and got promoted in the Trade Test to the post of Skilled Oiler Grade-III in the scale of Rs.950-1500, vide office order dated 14.10.1995 (Annexure A6). The applicant was promoted on the post of Skilled Lister Driver Grade-III in Class-III post, vide office order dated 19.04.1994 whereas respondents no.4 & 5 were promoted after trade test on the post of Skilled Oiler Grade-III as Class-III employee vide office order dated 14.10.1995. Thus the applicant has become senior to respondents no.4 & 5 as per Para 319 of IREM, 1989. The applicant was further promoted to the post of Skilled Fitter Grade-II (MW) in the scale of Rs.1200-1800, vide office order dated 08.05.1996 (Annexure A7). Respondent no.5 was promoted on the post of Skilled Fitter Grade-II vide office order dated 22.05.1998 (Annexure A8). Applicant and respondent no.4 were promoted on the post of Tech.I (MW) and Tech.II (MW), vide office order dated 27.06.1998 (Annexure A10) respectively. Thereafter, respondent no.5 appeared and got promoted in the Trade Test of Tech. Grade-I, vide office order dated 16.05.2000 (Annexure A12).

5. Respondent no.4 filed a representation dated 25.06.2008 for claiming seniority above applicant and respondent no.5, the said representation was rejected by the official respondents, vide letter dated 12.03.2009. Respondent no.4 has preferred an OA No.164/2009 before the Tribunal by challenging the letter dated 12.03.2009. In the meantime, as on 01.05.2010 (Annexure A14) respondents prepared the seniority list of Tech.(MW) Grade-I, II & III wherein Tech.I (MW) applicant's name shown at S.No.31, respondent no.5 name has been shown at S.No.32 and respondent no.4 name has been shown as Tech.II(MW) at S.No.16. Under

the pressure of the Union when the matter of seniority was sub-judice before the Court respondents vide impugned order dated 03.01.2012 lower down the seniority of applicant below respondents no.4 & 5 contrary to the provision of law. Though applicant is all along senior to respondents no.4 & 5 right from initial appointment as well as in Grade-III, II & I as per documentary proof.

6. Aggrieved of impugned order at Annexure A1, applicant made representation dated 13.01.2012 highlighting the factual position and stating therein that since matter of seniority is sub-judice before the Tribunal in OA No.164/2009, how the seniority has been changed, which is contrary to the provision of Railway Rules. Respondents vide their letter dated 06.02.2012 (Annexure A16) decided the representation that the said impugned order shall subject to final decision of OA No.164/2009. The respondents have produced the impugned order dated 03.01.2012 before the Tribunal and said that applicant Jamta Ram has been given performa promotion from the date of his immediate junior i.e. applicant and submitted that the OA does not survive. The counsel for the applicant and respondent no.5 raised the objection before the Tribunal about the impugned order. While disposing of the OA the Tribunal vide its order dated 14.02.2012 (Annexure A17) observed that the order is not being passed on merit, if this latest order of the official respondents give rise to cause of action for either the applicant or two private respondents no.4 & 5, they shall be free to approach the appropriate forum. Thereafter, the applicant again made detailed representation dated 27.03.2012 (Annexure A18) before the respondents highlighting the entire position of his promotions made from time to time and the private respondents, requesting therein to accord seniority to him above private respondents.

Since no reply was received then reminder dated 20.04.2012 (Annexure A19) was submitted before the respondents but of no vain.

7. Learned counsel for the respondents submitted that the factual matrix is not in dispute. Drawing our attention to the provisional seniority list of Tech.I (MW) PB-1 Gr.5200-20200 Gr.Pay of Rs.2800 of N.W. Railways, Jodhpur, he submitted that as on 01.05.2010 the applicant does not find a place in this seniority list. In support of his submissions, he also drew our attention to Para 215 of IREM which he submitted is relevant to regulate seniority of the candidates for promotion to Tech. Gr.I (MW). It is further relevant to mention here that the applicant came to the workshop on bottom seniority and as his date of appointment was 03.09.1989. Accordingly, he fulfilled the minimum required services of 3 years.

8. Thus, his application was considered for trade test and was promoted as Scale Lister Driver Grade-III and, thereafter, he was promoted on the post of Technician Grade-II and Grade-I. It is wrong on the part of the applicant to contend that he was all along senior to the respondents no.4 & 5. As a matter of fact, the applicant was not senior in Group 'D' seniority. ***It is only because of the conditions put in the notification for the post of Lister Driver, the applicant was promoted earlier to the respondents no.4 & 5.***

9. It is also relevant to submit here that the respondent no.5 filed an OA No.164/2009 before this Tribunal, the matter was reviewed by the competent authority of Court cases at headquarters level and as per the directions received from headquarters office vide their letter dated 29.02.2011, the matter was considered objectively and thereafter, office letter dated 03.01.2012 was issued by correcting the seniority of the

respondent no.4 was assigned the proforma seniority by virtue of the provisions contained in para 2 to 8 of IREM 1989.

10. Learned counsel for the respondents relying on para 215 of IREM stated that the seniority of the applicant in the Group 'D' is deemed to be considered as bottom seniority and he was therefore placed below Shri Om Prakash and Shri Jamta Ram, vide order dated 03.04.2019 issued by the respondent Department.

11. Countering these submissions made by the respondents, the counsel for the applicant reiterated that the applicant was promoted on the post of Skilled Lister Driver Grade-III in Class-III post, vide office order dated 19.04.1994 whereas respondents no.4 & 5 were promoted after trade test on the post of Skilled Oiler Grade-III as Class-III employee vide office order dated 14.10.1995. Thus the applicant has become senior to respondents no.4 & 5 as per Para 319 of IREM, 1989. The applicant and respondent no.4 were promoted on the post of Tech.I (MW) and Tech.II (MW), vide office order dated 27.06.1998 (Annexure A10) respectively. Thereafter, respondent no.5 appeared and got promoted in the Trade Test of Tech. Grade-I, vide office order dated 16.05.2000 (Annexure A12). Admittedly, the applicant fulfilled the minimum required services of 3 years. Para 319 of IREM which deals with seniority of promotion which is as follows:-

"319.Seniority on Promotion to no selection posts.

- (a) Promotion to non-selection posts shall be on the basis of seniority-cum-suitability, suitability being judged by the authority competent to fill the post, by oral and/or written test or a departmental examination or a trade test or by scrutiny of record of service as considered necessary. The only exception to this would be in cases where for administrative convenience, which should be recorded in writing, the competent authority considers it necessary to appoint a railway servant other than the seniority most suitable railway servant to officiate purely in ad hoc capacity in a short tem

vacancy not exceeding two months as a rule and four months in any case. This will, however, not give the junior railway servant any advantage not otherwise due to him and will not confer on him any right to continue in that post in preference to his senior who are found suitable."

The applicant once promoted in his turn after being found suitable against a vacancy, which is non-fortuious, should be considered as senior in that grade to all others who are subsequently promoted after being found suitable. The suitability of the applicant for promotion should be judged on the date of the vacancy in the higher grade, or as close to it as possible.

12. The learned counsel for the applicant also cited the judgments in the case of Munni Lal Vs. UOI in OA No.304/2004, which is an identical matter. Drawing upon the judgments of the Hon'ble Apex Court, the counsel drew our attention to the Supreme Court in the case of **UOI & Anr. Vs. V.N. Bhat** in Civil Appeals No.8375 of 1997 with No.8329 of 2003, decided on 16.10.2003 (2004) SCC (L&S) 167 wherein the Hon'ble Apex Court has held that **"even on voluntary transfer, employee only loses seniority and not other benefits and cannot be deprived of his experience and eligibility for promotion.**

13. Learned counsel for the applicant also relied upon the judgment in the case of **A.J. Fernandis Vs. Divisional Manager, South Central Railway & Ors.,** in Civil Appeal Nos.2962-63 of 1989, decided on 05.12.2000 (2001) 1 SCC 240 wherein it has been held that a person not selected could have no grievance against further promotion of a person who was selected for the feeder post – Railway Establishment Manual, R.180.

14. Heard the rival contentions of both the counsel for the parties and perused the pleadings on record. It is an admitted fact that the applicant

has been senior in all along Group 'C' post. The factual matrix is admitted. However, the respondents have made a case that the case for promotion to Lister Driver is required to be regulated by Para 228 & 215 of the IREM. The respondents admit that the applicant meets the eligibility criteria of three years service required.

15. It is an admitted fact that the applicant was promoted to the post of Skilled Lister Driver Gr.III in a Class III post vide office order dated 19.04.1994 whereas private respondents no. 4 & 5 were promoted after trade test on the post of Skilled Oiler Gr.III as Class III employee vide office order dated 14.10.1995. It is clear therefore that the applicant has become senior to respondents no.4 & 5 as per Para 319 of IREM, 1989.

16. The applicant and respondent no.4 were then promoted on the post of Tech.I (MW) and Tech.II (MW) vide office order dated 27.06.1998 (Annexure A10) respectively. Thereafter, respondent no.5 appeared and got promoted in the trade test of Tech.I vide office order dated 16.05.2000 (Annexure A12).

17. It would be seen therefore that the applicant meets the requirement stipulated as per Para 319 of IREM for promotion to the non-selection post being senior as he had cleared the trade test earlier. The subsequent change in the seniority appears to be the outcome of an OA No.164/2009 filed by respondent no.5. It also appears from the pleadings and submissions made that the change in seniority of respondents no.4 & 5 were consequent to the OA No.164/2009 filed by respondent no.5 and subsequently respondent department had given proforma promotion to Shri Jamta Ram. The Tribunal vide its order dated 14.02.2012 (Annexure A17) had clearly stated that order is not being passed on merit and therefore either applicant or the private respondents no.4 & 5 could

approach the appropriate forum for redressal of their grievance. It appears that this order of the respondent department was passed in haste and deserves to be quashed. It is therefore quashed.

18. In this view of the matter, it appears that the impugned order at Annexure A1 dated 03.01.2012 deserves to be quashed. It is therefore quashed and set aside and with a direction to the competent authority to place the applicant above respondents no.4 & 5 in seniority of Tech. Grade-I (MW) with all consequential benefits within a period of three months' from the date of receipt of a copy of this order.

19. The O.A. is accordingly allowed, as stated above, with no order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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