

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00905/14**

Reserved on: 03.01.2019
Pronounced on: 17.01.2019

C O R A M

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Narendra Prasad, Son of Shri Badri Mistri, Fitter Grade-I, under Senior Section Engineer (Water Supply), E.C. Railway, Samastipur.

..... Applicant.

- By Advocate: - Mr. S.N. Madhuvan

-Versus-

1. The Union of India through the General Manager, East Central Railway, Hajipur.
2. The General Manager (Personnel), East Central Railway, Hajipur.
3. The Divisional Railway Manager, East Central Railway, Samastipur.
4. The Addl. Divisional Railway Manager(P), E.C. Railway, Samastipur.
5. The Divisional Railway Manager (P), E.C. Railway, Samastiu.
6. The Senior Divisional Engineer (Co-ordination), E.C. Railway, Samastipur.
7. Shri Biltu Mistri, Fitter MCM, under Senior Section Engineer, EC Railway, Darbhanga.

..... Respondents.

- By Advocate(s): - Mr. S.K. Griyaghey

O R D E R

Per Dinesh Sharma, A.M.:- The case of the applicant is that through various orders he was granted Temporary Status (Time Scale) w.e.f. 28.12.1977 and later w.e.f. 16.01.1981 and 05.04.1985. Although respondent no. 7 was recruited after the applicant he was granted promotion to the Fitter Grade-III, Grade-II and Grade-I w.e.f. 15.12.1987, 06.11.1990 and 01.03.1993 respectively. On the other hand, because of administrative error the applicant was granted promotions as Fitter Grade-

III, Gr. II and Gr. I w.e.f. 18.12.1990, 01.03.1993 and 01.11.2003 respectively. Upon his representation against it the appropriate authority after, realising the administrative fault, issued an order dated 14.05.2004 where the applicant was given seniority on proforma basis above respondent no. 7. The respondents also issued letter on 01.02.2005 in which the name of the applicant was placed above respondent no. 7. However, after this by a letter dated 30.11.2005 the DRM(P) issued a letter reversing this and declaring that the seniority list issued on 01.04.2002 and 01.04.2005 were correct. The respondents issued another seniority list dated 10.07.2005 showing respondent no. 7 placed above the applicant. The applicant preferred OA 507/2006 before this Tribunal challenging the order dated 30.11.2005 and 17.01.2006. The Tribunal disposed of this OA by an order dated 19.07.2012 with a direction to the respondent no. 3, DRM, EC Railway, Samastipur to re-consider the matter of seniority of the applicant in the light of the submissions made in the OA and the rejoinder as also the observation made in that order and pass a reasoned and speaking order. The applicant has now approached this Tribunal against the speaking order dated 28.07.2014 passed by the DRM on the ground that this speaking order is in violation of the observations and directions of this Tribunal in OA 507/2006. The reasons mentioned in the impugned order are absolutely unjustified and it is *prima facie* a non-speaking order.

2. The respondents in their reply have denied the claim of the applicant. They have pointed out that the order of this Tribunal in OA 507/2006 itself had made it clear about the unsustainability of the

applicant's claim since the respondent no. 7 was apparently senior to the applicant on account of his earlier entry by way of regular appointment. While the applicant was engaged as casual labour he was working in various time scales under different categories and was absorbed in regular service much later than the respondent no. 7. The respondents have also alleged that the speaking order is in full compliance of the order of this Tribunal as para 2005 of IREM Manual V-II the service rendered by casual labour prior to absorption in temporary/permanent/regular cadre will not count for the purpose of seniority. Regarding the office order dated 14.05.2004 by which the applicant was granted seniority over private respondent the official respondents have submitted that order was issued erroneously. It was examined subsequently and the mistake was rectified. The respondents have also raised the issue of limitation since the cause of action, according to them, arose in the year 1987-1990 when respondent no. 7 was regularised before the applicant.

3. The applicant, in his rejoinder, has reiterated his earlier position and explained the reason for delay in filing the OA since he was shown above respondent no. 7 by the order dated 14.05.2004 and letter dated 01.02.2005. He was put below him again only by letter dated 30.11.2015. He has been contesting this in various forums since then.

4. After going through the pleadings and hearing the learned counsel of both the parties, it is clear that the Tribunal, by its order dated 19.07.2012 in OA 507/2006 (Annexure A/14), came to the conclusion that the applicant cannot challenge the seniority of respondent no. 7 since he

should have done it at the time of appointment of respondent no. 7 to Fitter Gr. III. However, a direction was issued to DRM, since he had amended the seniority of the applicant by letter dated 30.11.2005, holding that the seniority list of 2002 and 2005 was correct but without cancelling the memo dated 14.05.2004 and giving an opportunity to the applicant, to pass a reasoned and speaking order. Now in compliance of this direction, a speaking order has been issued (Annexure A/15) in which it is clarified that office order dated 14.05.2004 was against the provision of Para-2005 of IREM V-II. Rectifying this mistake office orders dated 30.11.2005 and 17.01.2006 were issued reiterating that seniority list as on 01.04.2002 and 01.04.2005 are correct and as per rules. Since the official respondents have made it clear that the placing of applicant above respondent no. 7 was by way of an error and it has been corrected and since this Tribunal had already come to the conclusion that the respondent no. 7 did become senior to the applicant by way of his earlier regularisation, we do not find any merit in the OA. The OA is, therefore, dismissed. No order as to costs.

**[Dinesh Sharma]
Administrative Member
Srк.**

**[Jayesh V. Bhairavia]
Judicial Member**