

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA  
OA/050/00265/2007**

Date of Order: 29.01.2019

**C O R A M**

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

Jagan Thakur, son of Shyam Sundar Thakur, resident of Patahi Jagarnath, PS-Sadar, District- Muzaffarpur, at present posted as Carpenter Grade-III at Goraul.

..... Applicant.

- By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Chairman, Railway Board, New Delhi.
2. The Divisional Railway Manager, East Central Railway, Sonepur.
3. The Assistant Divisional Engineer, East Central Railway, Muzaffarpur. Varanasi.
4. Dev Narayan Sharma, Son of name not known to the applicant, Carpenter Grade-I, SEI (Works), Sonpur, District-Chaptra.

..... Respondents.

- By Advocate(s): - Mr. Mukund Jee with Mr. Shiv Kumar

**O R D E R**  
**[ORAL]**

**Per Dinesh Sharma, A.M.:-** This OA was filed before this Tribunal in the year 2007 seeking relief for a direction to the respondents to give the applicant promotion in higher grade with effect from the date of office order No. 296/06 dated 05.06.2006 (Annexure- 6). His claim is that he and one Dev Narayan Sharma (who was later added as respondent no. 4) were respectively at sl. no. 7 and 6 of the seniority list in Carpenter Grade-III (Rs. 3050-4590/-) (Ref. Annexure 3). Though Shri Dev Narayan Sharma has been promoted as Carpenter Grade-II vide office order no. 221 dated 30.03.2005 (w.e.f. 01.08.1996) and further promoted as Grade-I vide Office Order No.

296 dated 09.06.2006, the applicant is still continuing as Carpenter Grade-III which is totally unjust.

2. The respondents in their written statement denied the claim of the applicant and alleged that Shri Dev Narayan Sharma is in Sub Division, AEN/Sonepur and as such his seniority cannot be compared with the applicant who is in a different sub-division as their seniority unit is different.

3. The applicant in his rejoinder claimed that the employees of a Division could be transferred any time from one Sub Division to other and therefore their seniority could not be treated at the Sub Division level.

4. This Tribunal, after going through all materials on record and hearing both the parties, had allowed this OA by its order dated 03.07.2012 and directed the respondents to grant promotion to the applicant at par with the private respondents in the scale of Carpenter-II and I. This order also made it clear that since the applicant had not shouldered the higher responsibility of the promotional post he shall not be paid any salary for the same. His seniority will however be reckoned from the date the said junior has been so promoted and his actual pay shall be made from the date he joined as such. The order also imposed a cost of Rs. 5,000/- towards legal expenses "since the applicant was wrongly left out and he was compelled to seek justice".

5. The official respondents filed a writ before the Hon'ble High Court, Patna in CWJC No. 5918 of 2014 where the Hon'ble High Court found that "new facts have been raised by the parties which require examination

by the Tribunal". The parties were directed to file supplementary affidavit to produce additional documents for additional facts for consideration of the matter by the Tribunal afresh.

6. The applicant has now filed an MA/050/00130/2017 alleging that the Railways have misled the Hon'ble High Court stating that the applicant and the respondent no. 4 belong to different cadres which is quite wrong and contrary to the documents already enclosed with the OA (as evident from Annexures A/3, A/6 and A/9).

7. The respondents have filed a supplementary written statement in which they have enclosed the Supplementary Affidavit filed by them on behalf of petitioner Railways in the Hon'ble High Court, Patna in CWJC No. 4913/2014. This Supplementary Affidavit maintains that the seniority list of Grades from sl. No. 2 to 5 ( Khalasi Helper, Skilled Artisan, Higher Skilled Gr. II and Higher Skilled Gr. I) are maintained at the sub divisional level. They have quoted from the letter bearing reference no. Ka/281/5/W&Way/Engg./Sonepur dated 24.08.1995 (Annexure-6 to this affidavit) which states that promotions are to be done at sub divisional level. They have also alleged that in the light of these instructions, a list dated 14.01.1999 (attached as Annexure-9 to his rejoinder before this Tribunal) cannot be treated as a combined seniority list as the same was published prior to finalisation of seniority at the Sub-Division/Unit level.

8. After having gone through the pleadings, other materials on record and hearing the learned counsels of both the parties, it is clear that the only issue which needs to be further looked into at this stage is whether

the seniority list of Artisans (to which both the applicant and respondent no. 4 belong) is to be maintained at divisional level or sub divisional level. The earlier decision of this Tribunal had clearly found that the seniority was to be considered at the divisional level. This Tribunal had based its decision on the communication issued under the signature of General Manager (Personnel) on 14.01.1999 (Annexure A/9 and Annexure A/10). Though the respondents had claimed in their pleadings that the seniority list were to be maintained at the sub divisional level they had not produced the documents which are now produced (and were also produced before the Hon'ble High Court) in the form of Annexure - 4, Annexure-5, Annexure-6, Annexure-7 and Annexure-8 of the affidavit filed before the Hon'ble High Court. These documents do provide conclusive evidence of seniority being maintained at the sub divisional level. The applicants have not produced anything to deny it except for reiterating the earlier stand of seniority being maintained at the divisional level and citing Annexure - 9 and 10 to support their contention. They had also cited letter dated 01.04.2003 (Annexure 3) but it does not help their case since that letter itself mentions that the seniority will be determined at sub-division level. In the light of the documents now brought on record, the claim of the applicant to be treated above or at par with respondent no. 4 is not sustainable as per the rules.

9. However, the fact remains that while one person in one sub division, in the same occupation, has got two promotions the other person has not got any. It is not denied that both of them have been working for close to 2 decades in the same division (though in different subdivisions).

Hence, considerations of equity demand that the applicant should also get roughly similar avenue of promotion as is available to other persons doing the same work in another sub division. We, therefore, dispose of this OA with a direction to the respondents to consider the request of the applicant for promotion and provide him a chance for promotion/financial upgradation on egalitarian considerations. It is expected that the respondents will not take a very rule bound and legalistic view and treat this case with principles of equity in mind. The OA is disposed of accordingly. No order as to costs.

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

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