

M

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1123 of 2003

New Delhi, this the 13th day of January, 2004

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)  
HON'BLE MR. S.A. SINGH, MEMBER (A)

Hans Raj Mena  
S/o Shri Ganga Dhar Meena  
Working as E&R Supervisor  
Under CCM/PM, IRCA Building,  
DRM Office, New Delhi.

...Applicant

By Advocate: Shri Yogesh Sharma.

Versus

1. Union of India through the General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.
  2. The Divisional Railway Manager,  
Northern Railway,  
Delhi Division,  
Near New Delhi Railway Station,  
New Delhi.
  3. The Divisional Personnel Officer,  
DRM's Office, Northern Railway,  
Delhi Division,  
Near New Delhi Railway Station,  
New Delhi.
  4. Shri Ram Kesh Meena  
E&R Supervisor through  
Chief Enquiry and Reservation Supervisor,  
Northern Railway Station,  
Ghaziabad (UP).
- ..Respondents

(By Advocate: Shri S.M. Arif, counsel for respondent  
Nos. 1 to 3.

Shri V.S.R. Krishna, counsel for  
respondent No.4.

O R D E R (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

Applicant has assailed an order dated  
5.2.2003, Annexure A-1 and order dated 17.3.2002,  
Annexure A-2 as well as order dated 4.4.2003, Annexure  
A-3 by which the respondents have fixed the seniority of  
the applicant below one Shri Ramkesh Meena, respondent  
No.4 after more than 12 years which is illegal, unjust,

K

45

arbitrary and against the principle of natural justice.

2. Facts, as alleged by the applicant are that he was initially appointed as Enquiry & Reservation Clerk through RRB in the year 1990 on 3.1.1990. Thereafter he was promoted as Enquiry-cum-Reservation Clerk wherefrom he was promoted as Enquiry & Reservation Clerk Supervisor in the grade of Rs.5500-9000 on 13.2.1997 on which post he was working. The applicant further alleges that in the year 2001 one Shri Yadav Chand Boipai, Enquiry and Reservation Clerk filed an OA 2661/2001 for his promotion to the post of E&RC in the grade of Rs.1400-2300 as the junior persons to him were promoted and the OA of said Shri Boipai was decided in his favour vide judgment dated 22.1.2002 which had been implemented also.

3. It is further submitted that in the grade of Rs.5500-9000 i.e. E&RC Shri Ramkesh Meena is a junior most person and the department had issued a show cause notice vide GM(P) Northern Railway, Baroda House to him vide his letter dated 11.12.2002 for his reversion as E&RC Rs.5000-8000 when show cause notice was issued to him. A reply was submitted by Shri Meena to the said notice and it was stated that applicant being junior to him in the cadre of E&RC cannot challenge the same after more than 12 years.

4. It is further alleged that respondent No.3 revised the seniority of the respondent No.4 and placed him above the applicant vide order dated 5.2.2003 at

h

S.No. 126A in the seniority list dated 28.5.1993. The applicant made a detailed representation against that, but to no effect.

5. In the grounds to challenge the impugned order the applicant submitted that the seniority list was issued on 28.5.1993 and on the basis of the said seniority list applicant had been given two promotions in the grade of Rs.1400-2300 (5000-8000) and then to the grade of Rs.5500-8000 earlier than the private respondent No.4 Ramkesh Meena who did not challenge the seniority of the applicant since 1989 and now to avoid his reversion he has challenged the same which is not permissible as per the law laid down in the case of M.L.C. D Souza vs. U.O.I., 1975 (2) SLR 255 where it has been held that seniority once settled cannot be reopened after a lapse of time.

6. It is further stated that the respondents have passed the impugned order while interpreting the provision of para 303(a) of the IREM which is totally illegal. It is also submitted that the respondent No.4 had undertaken IA-12 course in the same batch and on the basis of said result also the applicant who obtained higher merit has been declared senior to Ramkesh Meena but respondents had misinterpreted the provisions of Para 303(a) to the disadvantage of the applicant.

7. Respondents are contesting the OA. The official respondents in their reply admitted the facts and submitted that because the OA of Shri Bopai was decided in his favour and respondent No.3 was directed to

h

2  
4.

grant him the benefit of pay in the grade of Rs.1400-2300/5000-8000 w.e.f. 16.9.1992 and to further consider his case for promotion in the grade of Rs.1600-2660 (Rs.5500-9000) on which date his juniors were so promoted so it is in compliance of the said order a show cause notice was given to Ramkesh Meena who in turn had challenged the seniority of the applicant.

8. It is also submitted that the I-12 course which was conducted at Zonal Training School, Chandausi from 28.8.1989 to 18.12.1989 where both the applicant and respondent No.4 has undergone the course along with Ramkesh Meena, who had passed the same whereas the applicant had got supplementary in I-12 course. So on examination of the said case thoroughly it was found that since applicant had passed the I-12 course subsequently which goes to show that as per the provisions as contained in the IREM the candidates who are sent for initial training in the Zonal Training School will rank in seniority in the relevant grade in the merit obtained in the examination held at the end of the training before being posted against working posts and those who pass the examination in the subsequent chances, will rank junior to those who had passed the examination in earlier chances. Thus it is stated that the applicant passed the test in a subsequent chance so he has become junior to respondent No.4.

K

9. As regards the downgrading of the applicant is concerned it is denied that it is against the principles of unsettling the settled position because the order has been passed in compliance of the orders passed by this Tribunal, as such the same cannot be challenged.

10. Respondent No.4 who has also filed counter-affidavit has also taken the very same pleas.

11. We have heard the learned counsel for the respective parties and gone through the record.

12. As regards the attending of T-12 course by applicant as well as respondent No.4 is concerned the only document placed on record is Annexure R-4 which is the result of T-12 course (w.e.f. 28.8.1989 to 18.12.1989). Against the name of the applicant itself it is written supplementary only whereas against the name of respondent No.4 in the first column it was written withheld and subsequently it was held as passed. We may mention that the same was withheld due to non-availability of SC/ST candidate and was regularised subsequently. Referring to the mark sheet of the private respondent as well as applicant it is submitted that the applicant had not qualified the test but at the end of the course he was declared supplementary candidate from which an inference can be drawn that the applicant had cleared the examination in a subsequent chance and as per the provisions of para 303 he has to be placed below the private respondent.

h

13. The learned counsel appearing for the applicant submitted that the provisions of para 303 itself provides that the candidates who are sent for initial training to training schools will get higher seniority in the relevant grade in the order of merit obtained at the examination held at the end of training period before being posted against working posts. Those who are in 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.

14. The learned counsel for the applicant submitted that in this case the applicant as well as the private respondent was sent for initial training simultaneously. The applicant's result was not declared as if he had failed in the training rather it is stated supplementary whereas respondent No.4 might have passed the same but that does not mean that the applicant has joined after the result of supplementary test was declared and the merit list was prepared and on the basis of the merit obtained in the examination these persons were posted against working posts. As regards appearing in the examination in the subsequent chances is concerned, those who joined the course in the subsequent year for any reason and passed the same in the subsequent chances, their seniority cannot be interlinked with the subsequent examination for the same course. This subsequent chances mean that a person was in the subsequent course only as such he has to be assigned proper seniority.

15

20

.7.

15. It is further stated that when this interpretation was adopted at the time of casting the merit list the applicant had thereafter been given two promotions on the basis of said seniority list and for 12 years the respondent No.4 remained silent and did not challenge the same so now he cannot challenge the settled position and in support of his contention the counsel for the applicant has also relied upon a judgment given in OA No. 1102/2001 entitled as S.K. Paliwal VS. U.O.I. & Others wherein relying upon the judgment of the Delhi High Court in Suraj Bhan & Another Vs. Rajinder Pal Singh Lamba & Others, 2000 (2) SLJ HC DB 66 has held that the settled position cannot be unsettled and while passing the order the court had referred to the judgment of the Apex Court in M.L.C. D'souza Vs. U.O.I., 1975 (2) SLR 255 which has also been relied upon by the applicant in this case.

16. On the contrary the learned counsel for the respondents submitted that while complying with the judgment in Bhupia's case (Supra), Bhupia had to be assigned proper seniority and given consequential benefits as directed by the Tribunal and in order to do so, juniormost person has to make room for Bhupia and since the applicant had passed the examination in a supplementary test whereas respondent No.4 had been declared successful at the first instance so the respondent No.4 should be declared senior.

h

17. In our view this contention of the respondent has no merits because as regards the position of para 303 of the IREM is concerned, the same does not help the respondent in any way.

18. Para 303-A does not speak about supplementary examination of the same course though there is a mention of subsequent chances of appearing in the examination but that has been mentioned in context of those persons who joined the subsequent course for the whatsoever reason being and those who passed the examination in the subsequent chances, will rank junior to those who had passed the examination in the earlier courses.

19. The use of the word and the interpretation of word "subsequent chances" is also linked with the candidate who joined the "subsequent course" whereas it has nothing to do with the earlier operation of the sub-para (a) of the 303 which only says that candidates who are sent for initial training to training schools will rank higher 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. So it appears from the three seniority lists issued in different grades the respondents department had itself not taken care of the examination undergone by the applicant and had taken as if he is also a candidate for initial training along with respondent No.4 and after properly considering their merits they had placed the applicant above respondent No.4. The final result showing the merit has not been placed on record but the fact that earlier three

km



seniority lists had been issued, that is not disputed meaning thereby that the seniority position which reflected in the earlier years seniority lists had already been settled and the applicant had also been given promotion based on seniority list of 1993 so it is too late in the day to rake up the seniority again by respondent No.4 when he did not rake up this issue when the earlier seniority lists were issued. So following the law as laid down in the judgment cited (Supra) by the learned counsel for the applicant we find that the settled position of seniority cannot be unsettled.

20. Hence, we allow the OA and quash the order Annexures A-1, A-2 and A-3 as same being illegal and against the law laid down by the Hon'ble Supreme Court in D'souza (Supra) case. We further direct that the seniority of the applicant be restored as it stood before the impugned orders were passed. This may be done within a period of 3 months from the date of receipt of a copy of this order. No costs.

(S.A. SINGH)  
MEMBER (A)

(KULDIP SINGH)  
MEMBER (JUDL)

/Rakesh