



CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

1) O.A. No.2724/2003
2) O.A. No.2775/2003

This the 17th day of May, 2004

HON'BLE SHRI V.K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

1) O.A. No.2724/2003

1. Tej Pal Singh S/O Chuttan Singh
2. Hari Ram S/O Mittal Singh
3. Kishori Lal S/O Madhu Ram

All are working as Mason Grade-I
under I.O.W. Northern Railway,
New Delhi Railway Station. Applicants

(By Shri Yogesh Sharma, Advocate)

-versus-

1. Union of India through
General Manager,
Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Delhi Division, Near New Delhi
Railway Station, New Delhi. Respondents

(By Shri Ashwani Bhardwaj, Advocate)

2) O.A. No.2775/2003

Jai Kishan S/O Sang Ram,
working as Mason Grade-I,
Under I.O.W., Northern Railway,
New Delhi Railway Station. Applicant

(By Shri Yogesh Sharma, Advocate)

-versus-

1. Union of India through
General Manager,
Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Delhi Division, Near New Delhi
Railway Station, New Delhi. Respondents

(By Shri Ashwani Bhardwaj, Advocate)

b

ORDER

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)

In both these OAs Annexure A-1 dated 31.10.2003 has been challenged whereby applicants' promotion to Mason Grade-I (scale Rs.4500-7500) was found to be erroneous and respondents have decided to revert them to the post of Mason Grade-II in the lower scale of Rs.4000-6000. The facts and issues involved ^h in these OAs being identical, they are being disposed of by this common order.

2. It has been contended on behalf of the applicants that they had been promoted as per rules, procedure and by the competent authority and as such, the show cause notice and the impugned orders of reversion are illegal. It is further contended that earlier in the year 1993 when the applicants were promoted, the promotion of Artisan was made on the basis of seniority maintained at the sub-divisional level and that now in the year 2002 for the first time the criterion has been changed ^h ~~to~~ ^h seniority on divisional basis. However, the new rules/instructions cannot be applied retrospectively. It has further been stated that while the applicants were promoted in 1993 and are now working in Grade-I (Rs.4500-7000), their seniority is being recast ^h ~~two~~ ^h pushing them ^h two grades below the Grade-I after a lapse of 10 years. Applicants have placed reliance on the Full Bench decision dated 20.9.2002 in OA No.875/98 **Ram Pal & Ors. vs. UOI & Ors.**, where similarly situated persons working as painter, carpenter, mason and fitter etc. who were

11

- 3 -

promoted on the basis of sub-divisional seniority and were reverted, were granted relief of re-promotion.

3. On the other hand, the learned counsel of respondents stated that the promotions made upto Grade-III (Rs.3050-4590) are to be made by the respective AENs on the basis of sub-divisional seniority and from Grade-II (Rs.4000-6000) and above, the promotions are being made on the basis of combined divisional seniority. The applicants as per their date of promotion as Mason Grade-III (Rs.3050-4590) were junior. Hence, their claim for promotion to Grade-I (Rs.4500-7000) is not tenable. Respondents have stated that the aforesaid Full Bench decision relied upon by the applicants is not applicable to the facts of the present case. They have also stated that no juniors to the applicants have been retained/promoted by the respondents.

4. We have heard the learned counsel of both sides.

5. The learned counsel of applicants stated that applicants had been promoted in 1993 on the basis of seniority lists maintained at sub-divisional level. He further maintained that there are no instructions of the department regarding maintenance of seniority list at the divisional level for the post of Mason Grade-II and as such, respondents erred in reverting the applicants from the post of Mason Grade-I to the post of Mason Grade-II by changing the basis from seniority maintained at sub-divisional level to seniority at the divisional

b

level. The learned counsel stated that the promotion accorded to the applicants as Mason Grade-I in the year 1993 has not been erroneous and as such respondents have illegally and arbitrarily reverted the applicants. According to the learned counsel the applicants had been promoted ^{by DRM} ~~on~~ approval of DSE while no departmental enquiries were pending against them. Thus, their promotion had been absolutely in order both on the ground of seniority as also the procedure. The learned counsel relied upon 1973 (2) SLR 499 **Banchhanidhi Das vs. State of Orissa & Ors.** contending that respondents having promoted the applicants on the basis of sub-divisional seniority several years ago, are estopped from withdrawing the promotion after a long lapse of time.

6. On the other hand, the learned counsel of respondents contended that the aforesaid Full Bench decision is not applicable to the present case. He further contended that instructions relating to maintenance of seniority at the divisional level are available and had to be applied in the present case resulting in reversion of the applicants as erroneous promotions had been accorded to them on the basis of seniority at the sub-divisional level.

7. While the arguments were heard on 29.4.2004, the learned counsel of respondents was called upon to produce instructions relating to maintenance of seniority at the divisional level by 30.4.2004. Respondents have failed to produce any such instructions of the Government till today, i.e., 13.5.2004.

8. The only ground taken by the respondents for considering the applicants' promotion as Mason Grade-I in 1993 as erroneous is that they were promoted as such taking into consideration their seniority maintained at sub-divisional level. The basis for promotion to the post of Grade-I is the seniority of Mason Grade-II at the divisional level as per Government instructions. Respondents have failed to produce any such Government instructions prescribing seniority at the divisional level for promotion of Mason Grade-II to the post of Mason Grade-I. The applicants were promoted as Mason Grade-I w.e.f. 1.1.1993 on the basis of seniority at sub-divisional level. In the counter affidavit, respondents have only stated that the seniority list has been prepared as per the applicable rules and instructions on the subject. This is a very vague statement in view of the fact that no such instructions have been produced before us. Even if instructions at the relevant time when the applicants were promoted provided for consideration of seniority at the sub-divisional level, change, if any, in the instructions providing seniority at divisional level as basis for promotion at a later stage would have prospective effect only. Promotions made in 1993 on the basis of instructions obtaining at the relevant time cannot be considered to be erroneous. The aforementioned Full Bench case relates to reversion of staff in the engineering department of the Railways at the sub-divisional office on approval of the competent authority. Similar is the situation in the present case. The related OA was allowed setting aside the cancellation

lb

of earlier promotion of applicants therein and consequential benefits were accorded.

9. In the case of Banchhanidhi Das (supra) respondents had given promotion by granting exemption from prescribed qualifications. It was held that Government and Council were estopped from withdrawing the order of exemption, no matter it was wrongly or rightly passed. The ratio of the aforesaid Full Bench case as well as that of the case of Banchhanidhi Das are applicable to the facts of the present case. In the event of respondents having failed to produce instructions providing seniority at divisional level as basis for promotion to the post of Mason Grade-I, respondents cannot be allowed to withdraw applicants' promotion to the post of Mason Grade-I accorded to them more than a decade ago on the basis of seniority at the sub-divisional level.

10. In the result, for the reasons given above, these OAs succeeds and are allowed. Impugned orders dated 31.10.2003 are quashed and set aside. No costs.

S. Raju
(Shanker Raju)
Member (J)

/as/

V. K. Majotra
(V. K. Majotra)
Vice Chairman (A)