

(2024) 01 CAT CK 0005

In the Central Administrative Tribunal

Case No : Original Application No. 1635 Of 2011, 1204 Of 2009

Tarun Kumar Mishra, S/o Late Narbada Prasad

APPELLANT

Vs

Union Of India Through The Secretary, Railway Board, Rail
Bhawan, New Delhi & Others

RESPONDENT

Date of Decision : 03-01-2024

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Indian Railways Establishment Manual, 1989 — Rule 228(1), 306

Citation : (2024) 01 CAT CK 0005

Hon'ble Judges : Om Prakash VII, Member (J); Mohan Pyare, Member (A)

Bench : Division Bench

Advocate : Ajay Rajendra, Rajni Kant Rai

Final Decision : Dismissed

Judgement

Om Prakash -VII, Member (J)

1. Shri Akhilesh Kumar Singh brief holder of Shri Ajay Rajendra, learned counsel for the applicants and Shri Rajni Kant Rai, learned counsel for the respondents were present at the time of hearing.

2. Both the Original Applications are being decided with the consent of learned counsels for the parties by a common order as the controversy involved in both the cases are similar and identical.

3. The applicants have filed these Original Applications under section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

Reliefs in OA No. 1635/2011.

"i) to issue a suitable order quashing the impugned order dated 09.07.2009 passed by the Divisional Railway Manager, N.C.R. Allahabad Annexure No.1 to the OA.

ii) to issue a suitable order or direction to the respondent No.2 to assign correct

seniority position to the applicant notionally, and grant all other monetary benefits in comparison to his junior employees who have been erroneously promoted on 12.10.1998 by the respondents as Goods Driver (Electric) on the basis of wrong seniority list dated 4.1.1998.

iii) to issue any other order or direction to the respondents to which this Hon'ble Court may deem fit in the great interest of justice.

iv) Award cost of the application".

Reliefs in OA No. 1204/2009

"i) to issue a suitable order quashing the impugned order dated 05.08.2009 passed by the Divisional Railway Manager, N.C.R. Allahabad Annexure No.1 to the OA.

ii) to issue a suitable order or direction to the respondent No.2 to assign correct seniority position to the applicant and grant all other monetary benefits in comparison to his junior employees who have been erroneously promoted on 12.10.1998 by the respondents as Goods Driver (Electric) on the basis of wrong seniority list dated 4.1.1998.

iii) to issue any other order or direction to the respondents to which this Hon'ble Court may deem fit in the great interest of justice.

iv) Award cost of the application.

4. The brief facts of the OA No. 1635/2011 are that the applicant was posted in April 1988 on the post of Assistant Electric Driver at Kanpur and thereafter he was promoted as Electric Shunter in the year 1992. He passed PE-3 course (competency certificate) in the year 1995. The main grievance of the applicant was that some much junior persons were promoted by the respondents as Electric Shunter ignoring the applicant and many other senior employees. Being aggrieved, the applicant and other employees submitted representations but no action was taken by the respondents on the representation of the applicant. Thereafter, many Assistant Electric Drivers filed OA No. 1024 of 1995 before this Tribunal, which was allowed by the Tribunal by its order dated 18.12.1996 with the direction to the respondents to promote the applicants from the post of Assistant Electric Drivers to the next higher grade in electric side on the basis of length of service as Assistant Electric Drivers in accordance with the principle enunciated by the Hon'ble Supreme Court in Ram Narain Singh's case. The order of the Tribunal was challenged before the Hon'ble Supreme Court which was upheld by the Hon'ble Supreme Court by judgment dated 7.4.1997 passed in Civil Appeal No. 2883 of 1997 V.K. Dubey and others Vs. Union of India and in SLP No. 5028 of 1997 UOI Vs. Raj Kishore Singh and others. Respondents, flouted the decision of the Hon'ble Supreme Court, issued notification dated 14.8.1997 for promotion on the next higher post of Goods Driver to be filled from Assistant Electric Drivers and Electric Shunters on the basis of wrong seniority list dated 12.8.1997. When his immediate juniors were promoted, the applicant

filed a representation dated 4.6.2008 before the respondents. When no action has been taken by the respondents on the said representation, the applicant filed OA No. 343 of 2009, which was disposed of finally by the Tribunal by order dated 1.4.2009 directing the respondents to decide the representation of the applicant. The respondent No. 3 has decided the representation of the applicant by the impugned order dated 09.07.2009, which was assailed in this O.A.

5. The brief facts of the OA No. 1204/2009 are that the applicant was posted in April 1987 on the post of Assistant Electric Driver. The main grievance of the applicant was that some much junior persons were promoted by the respondents as Electric Shunter ignoring the applicant and many other senior employees. Being aggrieved, the applicant and other employees submitted representations but no action was taken by the respondents on the representation of the applicant. Thereafter, many Assistant Electric Drivers filed OA No. 1024 of 1995 before this Tribunal, which was allowed by the Tribunal by its order dated 18.12.1996 with the direction to the respondents to promote the applicants from the post of Assistant Electric Drivers to the next higher grade in electric side on the basis of length of service as Assistant Electric Drivers in accordance with the principle enunciated by the Hon'ble Supreme Court in Ram Narain Singh's case. The order of the Tribunal was challenged before the Hon'ble Supreme Court which was upheld by the Hon'ble Supreme Court by judgment dated 7.4.1997 passed in Civil Appeal No. 2883 of 1997 V.K. Dubey and others Vs. Union of India and in SLP No. 5028 of 1997 UOI Vs. Raj Kishore Singh and others. Respondents, flouted the decision of the Hon'ble Supreme Court, issued notification dated 14.8.1997 for promotion on the next higher post of Goods Driver to be filled from Assistant Electric Drivers and Electric Shunters on the basis of wrong seniority list dated 12.8.1997. When his immediate juniors were promoted, the applicant filed a representation dated 4.6.2008 before the respondents. When no action has been taken by the respondents on the said representation, the applicant filed OA No. 1023 of 2008 which was disposed of finally by the Tribunal by order dated 23.09.2008 directing the respondents to decide the representation of the applicant. The respondent No. 3 has decided the representation of the applicant by the impugned order dated 25.03.2009, which was assailed in this O.A.

6. We have heard learned counsel for the parties and perused the records.

7. Learned counsel for the applicants submitted that due to wrong assignment of relative seniority position in the seniority list dated 4.1.1998 on account to administrative error, much more junior employees to the applicant have been promoted as Goods Driver in the pay scale of Rs. 5000-8000, thus the applicant has suffered a loss of seniority and monetary benefits. He further submitted that applicants are fully entitled for assignment of correct seniority and monetary benefits under Rule 228 (1) of the IREM 1989 Ed. Vol. -1. Learned counsel contended that in his case Rule 306 of IREM is not at all applicable but respondents have wrongly and illegally applied in these cases. Learned counsel for the applicants further contended that applicant preferred a representation

dated 06.03.2010 before the respondents claiming seniority and monetary benefits in comparison to his juniors who were promoted erroneously. The said representation was rejected on 09.07.2009 ignoring the Rule 228(1) of IREM. Learned counsel submitted that rejection of representation on ground that applicants could not clear the exam in 1998 and passed it at a later date and therefore he cannot claim parity with juniors who passed exam at an earlier date is wrong since there is no question of passing the examination in 1998 since the respondents had taken the examination on basis of wrong seniority list and promoted juniors to the post of Goods Driver (Electric).

8. Learned counsel for respondents vehemently opposes the claim of the applicant and by way of his counter affidavit, he submits that the seniority list dated 04.01.1998 was revised and prepared on the basis of the various judgments passed by the adjudicatory forums keeping in view the seniority of the employees. The applicants could not clear the examination of 1998 and therefore their junior passing the exams were promoted over them. Learned counsel further placed on record the order of the Tribunal dated 24.08.2023 (Bachcha Jha Vs. Union of India) passed in OA No. 1061 of 2009 and contended that nature of appointment, work and responsibility of the post of the applicant is exactly the same as the applicants of that OA and the OA of Bachcha Jha (supra) has been dismissed by this Tribunal. Hence both the OAs be dismissed on the same footing as discussed in the order of the Bachcha Jha also.

9. We have considered the rival submission of the parties and have gone through the entire record.

10. From the perusal of record, it is evident that applicants have not denied that applicants of these OAs are similarly situated employee to those of OA No. 1061/2009 (Bachcha Jha Vs. Union of India and others), which was dismissed by this Tribunal vide order dated 24.08.2023. We have seen the order of the Tribunal dated 24.08.2023 (Bachcha Jha Vs. Union of India and others) in which applicant of that OA was seeking to correct his seniority position and grant him all the consequential monetary benefits in comparison to his junior employees who were promoted on 12.10.1998 by the respondents as Goods Driver (Electric) and the aforesaid OA was dismissed being devoid of merit. The relevant portions of aforesaid OA are reproduced below:-

"9. As the facts of the case have already been recorded above in detail, the same are not reiterated for the sake of brevity. Applicant is resting his case on the fact that the respondents are basing their actions on seniority list dated 04.01.1998 which has been set aside by the Tribunal. However, respondents in their counter affidavit have controverted the stand of applicant regarding the seniority list and averred that seniority list was combined and fresh seniority list was issued as per length of service as Electric Assistant Driver as per the judgments passed in various litigations which has not been rebutted by the applicant.

10. From the facts as coming out in the respective case of the parties, it is

coming out that (1) the respondents had revised the seniority list as per the directions given by the Tribunal / Hon'ble High Court; (2) Applicant did not pass the examination in 1998 and since his juniors passed the examination, they were placed above the applicant in the seniority list and later, when the applicant also got selected on the post of Goods Driver vide notification dated 01.04.2001, his pay was accordingly fixed from the date it became due.

11. Therefore, taking into consideration the entire facts and circumstances of the case as have been deliberated upon in the preceding paragraphs, this Tribunal is of the considered opinion that no merit sustains in the instant OA and the same is liable to be dismissed and is accordingly, dismissed being devoid of merits”.

11. In the instant OAs also, applicants are claiming to assign correct seniority position and grant them all other monetary benefits in comparison to their junior employees who have been promoted on 12.10.1998 by the respondents as Goods Driver (Electric) on the basis of seniority list dated 4.1.1998. Thus, we are of the view that both OAs are being decided on the basis of judgment delivered in OA No. 1061 of 2009 (Bachcha Jha Vs. Union of India and others).

12. In the case of State of Karnataka & Others vs. C. Lalitha, (2006) 2 SCC 747, Hon'ble Apex Court has held as under:-

“29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently.”

13. Considering the facts and circumstances of the case and in the light of the observation made by this Tribunal In OA No. 1061 of 2009 (Bachcha Jha Vs. Union of India and others), we are of the considered opinion that both the OAs are liable to be dismissed and are accordingly dismissed being devoid of merits. No order as to costs. All associated MAs are disposed of. Copies of this order be kept in OA No. 1204/2009.