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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2908 OF 2001

D.K. Verma
employed as Dy. Chief Commercial
Manager, Central Railway,
New Administrative Building,
2nd Floor, C.S.T., Mumbai 400 001. ...Petitioner

Vs.

1. Union of India
through the Secretary,
Ministry of Railways,
Railway Board,
Rail Bhavan,
New Delhi 110 001.

2. The General Manager,
Central Railway,
Headquarters Office,
C.S.T., Mumbai 400 001. ...Respondents

.....
Mr. Ramesh Ramamurthy along with Mr. Saikumar Ramamurthy,
Advocate for the petitioner.

Mr. Suresh Kumar, Advocate for respondent Nos.1 and 2.
.....

**CORAM : SMT. V.K. TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

RESERVED ON : 18th JANUARY, 2018.

PRONOUNCED ON : 25th JANUARY, 2018.

ORDER (PER : M.S.KARNIK, J.) :- :-

The challenge in this petition is to an order dated 26th July 2001 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai ('the Tribunal' for short) in O.A. No.1158 of 1996.

2. The facts of the case in a nutshell are thus :-

The petitioner was promoted to Group B cadre on regular basis by the Limited Departmental Competitive Examination ('LDCE' for short) method by selection on 25/8/1983. Sometime in 1985, Writ Petition came to be filed in this Court by seven employees of the Central Railway in the legal cadre in respect of the seniority assigned to them in Group B on their promotion on seniority-cum-suitability basis. Learned Counsel for the petitioner has pointed out that the petitioner was not a party to the said petition nor his promotion or seniority in Group B was challenged.

3. The said Writ Petition was transferred to the Tribunal and renumbered as TA No.389 of 1987. TA No. 389 of 1987 was

decided by the Tribunal by allowing T.A. filed by the applicants in the said TA. The Tribunal quashed the seniority list of 1981 and 1983 with directions to prepare a fresh seniority list and give promotion to the applicants in the T.A. with retrospective effect in Group B on that basis.

4. By a Notification dated 12/6/1991, the petitioner was appointed to Group A (Junior Scale) in Indian Railway Traffic Service with effect from 10/4/1991 and the name of the petitioner finds place at serial No.2 in the said Notification. By an order dated 12/11/1991, the Railway Board fixed the seniority of promotee Group A officers and the petitioner was given deemed seniority as per Rule from 10/4/1986. The name of the petitioner finds place at serial No.14 in the said list.

5. The respondent - Railways by an order dated 17/7/1992 in implementation of the judgment and order of the Tribunal in TA No.389 of 1987 interpolated the names of the applicants in the said TA in the promotion list of the year 1983 of persons promoted by seniority-cum-suitability basis. In the

submission of learned Counsel for the petitioner, promotions granted by LDCE method and seniority granted on that basis was not disturbed.

6. In view of the interpolation of the applicants in TA No.389 of 1987 in the promotion panel of 1983 of Group B, the consequent promotion in Group A was modified by Railways and the promotion granted to the petitioner to Group A was cancelled by Notification dated 28/9/1995 and the petitioner was reverted.

7. Notification dated 28/9/1995 was challenged by the petitioner and others who were affected by filing O.A.No.1271 of 1995 before the Tribunal. However, the petitioner withdrew himself from the said O.A. and filed independent O.A. No.1158 of 1996 challenging his reversion from Group A. It is material to note here that the petitioners in O.A.No. 1271 of 1995 except the present petitioner were parties to TA No.389 of 1987.

8. O.A.No.1271 of 1995 and O.A.No.1158 of 1996 were

decided by common judgment and both the O.As. were dismissed by the Tribunal. The order dated 26/7/2001 passed by the Tribunal is impugned by the petitioner in this petition.

9. Learned Counsel for the petitioner Shri Ramamurthy contended that as the petitioner was not party respondent in TA No.389 of 1987, any change of seniority in respect of the applicants who were party to TA No.389 of 1987 cannot and will not affect the seniority of the petitioner either in Group A or Group B. In his submission, the Tribunal completely failed to consider the aspect that in the implementation of the order passed by the Tribunal in TA No.389 of 1987, the respondents cannot disturb the seniority and the consequential promotion so granted to him if the petitioner was not a party to the said proceedings viz. TA No.389 of 1987.

10. In the submission of the learned Counsel for the petitioner, the petitioner had filed independent O.A. No.1158 of 1995 and as he was not party to TA No.389 of 1987, the Tribunal should have considered the case of the applicant

independently on merits. In his submission, the Tribunal has erred in merely adopting the reasoning in O.A.No.1271 of 1995.

11. Learned Counsel for the petitioner would further contend that the applicants in O.A.No.1271 of 1995 were respondents in TA No.389 of 1987 and therefore said judgment would bind the applicants in O.A.No.1271 of 1995 and not the petitioner whose case in O.A. is totally different as he was not party to TA No.389 of 1987. It is further contended by learned Counsel for the petitioner that the applicants in TA No.389 of 1987 were claiming the benefits of seniority on the basis of their promotion to Group B on seniority-cum-fitness basis. The petitioner was not similarly placed since he was promoted on the basis of LDCE held in 1983. This aspect has been completely overlooked by the Tribunal. It is therefore the submission of the learned Counsel that as the petitioner was selected by different method, while implementing the judgment in TA No.389 of 1987 the respondents were not justified in disturbing the seniority granted to the petitioner.

12. It is further contended by the learned Counsel for the petitioner that the petitioner's seniority or his promotion was never under challenge and therefore, without there being a challenge to his seniority or order of promotion, the question of cancelling his promotion or disturbing his seniority did not arise at all. It is further contended by the learned Counsel that he was not given any opportunity of being heard before cancelling the promotion granted to petitioner to Group A.

13. Learned Counsel for the petitioner invited our attention to the decision of the Apex Court in the case of **N.T. Devin Katti and others Vs. Karnataka Public Service Commission and others, (1990) 3 SCC 157**, wherein it is held that “if it is not possible to interpolate persons in the promotion list or panel then supernumerary posts should be created to accommodate them.” In the submission of the learned Counsel for the petitioner, instead of getting promotion from 1991 he has been promoted from 1996 in Group A, thereby losing seniority in Group A. This would affect his retiral benefits, fixation of pay,

etc. and there would be huge reduction in his pension.

14. Per contra, learned Counsel for the respondents supported the order passed by the Tribunal. Learned Counsel invited our attention to the order passed in TA No.389 of 1987. He contended that the applicants in O.A.No. 1271 of 1995 were party respondents in TA No.389 of 1987. In his submission, the order passed by the Tribunal was challenged before the Apex Court. The order passed by the Tribunal was confirmed right upto the Apex Court. Learned Counsel submitted that in compliance with the order passed by the Tribunal to which the applicants in O.A.No. 1271 of 1995 were parties, it was necessary to interpolate the names of the applicant in said TA No.389 of 1987 at appropriate place in the panel for Group B posts published vide office Memo dated 30/6/1983. The revised panel was consequently prepared by the order dated 17/7/1992. As a consequence of this interpolation which was in compliance with the order passed by the Tribunal, resultant seniority of the applicants in O.A.No.1271 of 1995 and the present petitioner in

O.A.No.1158 of 1996 changed with the issuance of the Notification dated 28/9/1995. Substantive appointments of the applicants in O.A.No.1271 of 1995 and the petitioner already made previously therefore had to be cancelled.

15. Learned Counsel for the respondents further pointed out that admittedly applicants in O.A.No.1271 of 1995 are senior to the petitioner. In his submission, if the applicants in O.A.No.1271 of 1995 who were parties in TA No.389 of 1987 and were duly heard, the petitioner cannot expect to succeed merely because he was not a party in TA No.389 of 1987. In his submission, if the argument of the petitioner is to be accepted then the petitioner will have to be placed in the seniority list above the applicants in O.A.No.1271 of 1995 who are admittedly senior to the petitioner.

16. Having heard learned Counsel for the petitioner and learned Counsel for the respondents, we are of the opinion that the order passed by the Tribunal does not call for any

interference for the reasons below mentioned.

17. The petitioner was granted deemed date of seniority as per rule from 10/4/1986 by order dated 10/11/1991 of the Railway Board while fixing the seniority of Promotee Officers. However, the respondents while implementing the order passed by the Tribunal in T.A.No.389 of 1987 interpolated the names of the applicants in the said T.A.No.389 of 1987 in the promotion list of the year 1983. It is not in dispute that the challenge to the order in T.A.No.389 of 1987 before the Apex Court failed and the order of the Tribunal came to be confirmed. All the applicants in O.A.No.1271 of 1995 were party respondents to T.A.No.389 of 1987 and were duly heard. The petitioner, however, was not a party to T.A.No.389 of 1987. It is a matter of record that initially the petitioner was party to O.A.No. 1271 of 1995. He however withdrew himself from the said O.A. and filed the separate O.A.No. 1158 of 1996.

18. As a result of the implementation of the order passed

by the Tribunal in T.A.No.389 of 1987 the names of the applicants in the said T.A. were interpolated at appropriate places with the result seniority list underwent a change and the applicants in O.A.No.1271 of 1995 had to be pushed down. The Tribunal was of the opinion that the order passed in T.A.No.389 of 1987 was not challenged by the applicants in O.A.No.1271 of 1995 or the present petitioner. The order in T.A.No. 389 of 1987 has thus attained finality. The plaintiff's contention is that he was not a party to T.A.No.389 of 1987 and therefore, the decision in the said T.A. was not binding on him. In our opinion, as the applicants in O.A.No.1271 of 1995, who admittedly are senior to the petitioner were party respondents in T.A.No.389 of 1987 and duly heard, it therefore cannot be said that the judgment passed in T.A.No.389 of 1987 cannot be implemented qua the petitioner only because the petitioner was not party to the said T.A.No.389 of 1987.

19. In our opinion, if in the implementation of the order passed by the Tribunal in T.A.No.389 of 1987 the respondents

have issued the impugned Notification dated 28/9/1995, we do not find any material irregularity with the approach of the respondents in issuing the Notification even though the Notification may have affected the petitioner's seniority and consequential promotion. Moreover, this is not a case where affected employees were not before the Tribunal in T.A.No.389 of 1987. In fact all the applicants in O.A.No. 1271 of 1995 were party respondents in T.A.No.389 of 1987. Admittedly, the applicants in O.A. No.1271 of 1995 are senior to the petitioner. In this view of the matter, it cannot be said that the decision in T.A.No.389 of 1987 is not binding on the petitioner only because he was not a party to the said T.A. Moreover, the petitioner has not challenged the decision in T.A.No.389 of 1987. The challenge to the decision in T.A.No. 389 of 1987 before the Apex Court by the applicants in O.A.No. 1271 of 1995 who are senior to the petitioner has also failed.

20. In our opinion, the Tribunal was right in coming to the conclusion that having regard to the dismissal of O.A.No.

1271 of 1995, no relief can be granted to the petitioner. Therefore, we do not find any infirmity with the order passed by the Tribunal so as to warrant any interference in the exercise of our writ jurisdiction under Article 226 of the Constitution of India.

21. The Writ Petition is dismissed with no order as to costs. Rule is discharged.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)