

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(5)

O.A. NO. 1916/2002

New Delhi, this the 17th day of October, 2003

HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)
HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

1. Mukul Kumar,
S/o Shri S.S. Saxena,
Director, Deptt. of Heavy,
NDLS
2. Gajanand Prasad,
S/o Shri O.P. Sharma,
Dy. COS/C
CAO/C/N. Railway, New Delhi
3. Shri Rajiv Kumar Vyas,
S/o Shri Bachan Lal Vyas,
Dy. CDM
G.M. N. Railway, New Delhi

... Applicants

(By Advocate : Shri B.S. Mainee)

Versus

Union of India : Through

1. The Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan, New Delhi
2. Shri Yogender Kumar,
Deputy Controller (Store),
Central Railways,
Chennai
3. Shri K. Choudhary,
Deputy C.O.,
Eastern Railway,
Jamalpur

... Respondents

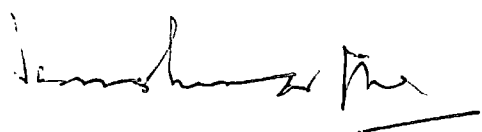
(By Advocate : Shri E.X. Joseph with
Shri Rajinder Khatter)

O R D E R

BY SARWESHWAR JHA, MEMBER (A) :

Heard.

2. The applicants have preferred this Original Application against the orders of the respondents issued vide No. E (O)III/2000 S.R./07 dated 4.5.2000 and further vide No. E (O)III/2002/9 dated 18.9.2002 placed at



(12)

Annexure A-1 to the OA and Annexure R-III to the counter.

The applicants have prayed that the impugned seniority list as circulated by the respondents vide their letter of 4.5.2000 be quashed and that the respondents be directed to modify the said seniority list in accordance with the principles as laid down by the Department of Personnel & Training (DOP&T) vide their Notification dated 22.11.1996, a copy of which is placed at Annexure A-4 to the OA, assigning seniority to the applicants over and above respondents Nos. 2 and 3.

3. The facts of the matter, briefly, are that the applicants were appointed in the Railways as Store Officers on their selection on the basis of the examination held by the UPSC in the year 1982 for recruitment to the Indian Railways Stores Service (IRSS) (Group 'A'). The applicants joined the Railways on 12.3.1984 onwards and their names have accordingly been shown in the seniority list at serial Nos. 40, 45 and 52. They were promoted to the senior time scale in the year 1988 on different dates of the said year. When it was decided that the officers of the Indian Supply Service (ISS) working in the DGS&D would be transferred to the Ministry of Railways along with their work/posts leading to their merger at the appropriate level in the IRSS cadre, the DOP&T vide their Office Memorandum No.28017/1/84-Estt.(D) dated 22.11.1996 laid down the principles/guidelines for fixing the seniority of the Officers of the IRSS on merger. According to the said Office Memorandum, an ISS Officer should be merged in the JAG/Senior Scale/Junior Scale respectively of IRSS and his seniority should be fixed in that grade with reference to the date from which he has been continuously holding, on regular basis, the JAG/Senior Scale/Junior Scale, as the case may be, in ISS subject to the maintenance of his inter-se seniority with other JAG/Senior Scale/Junior Scale ISS Officers. In the said Office Memorandum,

[Handwritten signature]

the DOP&T also clarified that it would not be in order to place the ISS officers at the bottom of IRSS Officers and that batch/year of examination or deemed date of promotion/entry would also not be relevant for fixation of seniority in the case of merger.

4. The applicants had approached this Tribunal earlier also vide OA No. 255/2002 which was decided on 31st January, 2002 with a direction to the respondents that 'ends of justice will be duly served if at this stage and without issuing a notice to the respondents, they are called upon to decide applicants' representations dated 16.1.2000 and 29.5.2000 by passing a reasoned and speaking order within a period of two months'. It is observed that the guidelines issued by the DOP&T vide their O.M. dated 22.11.1996, as referred to herein above, had also been referred to in the orders of this Tribunal given in OA No. 255/2002.

5. The respondents, in compliance of the said orders of the Tribunal, passed their impugned speaking order vide Office Memorandum No. E(0)III/CC/2002/9 dated 18.9.2002 (Annexure R-III to the Counter) in which they have taken a position that the claim of Shri Mukul Kumar and 10 other IRSS Officers, as brought out in their representations dated 16.1.2000 and 29.5.2000, is not tenable, for the reasons as given in the said Office Memorandum.

6. The applicants have reiterated most of the arguments which they had submitted in support of their contention that they be assigned seniority above respondents Nos. 2 and 3 to the OA as they had done in their previous OA. They have, however, emphasised that they had made the other prayers also in their previous OA as what they have prayed for in the present OA, like modification in the seniority



list and revision of the same in accordance with the principles laid down by the DOP&T.

7. In the counter submitted by the respondents, they have also referred to the instructions issued by the DOP&T vide their Office Memorandum dated 22.11.1996 (Annexure R-I) and have drawn particular attention to the following portion in the said Office Memorandum:-

"4. Since the posts have been transferred alongwith work from DGS&D to Ministry of Railways, it is not necessary to obtain option from ISS Officers for this purpose. However, Ministry of Law (Department of Legal Affairs) may be consulted in this regard.

5. It is also not considered necessary to obtain the concurrence of the UPSC for such merger which is consequent of Cabinet decision in this regard."

8. The respondents seem to have followed the said instructions of the DOP&T while assigning seniority to the applicants. They have informed that the question of fixation of seniority of 7 ISS Officers who were working in the Ministry of Railways in IRSS was entrusted to a Departmental Committee comprising 3 SA Grade Officers who assigned the seniority to these 7 ISS Officers including respondents Nos. 2 and 3 (S/Shri Yogender Kumar and K.C. Choudhary) following the instructions of the DOP&T as contained in their Office Memorandum dated 22.11.1996. To be specific, they have submitted that, while Shri Yogender Kumar had been working in the Senior Scale from 30.11.1988, Shri K. Choudhary had been continuously working in the Senior Scale w.e.f. 13.11.1988. These two officers were, therefore, interpolated above Shri A.K. Singh, IRSS of 1982 batch (DITS : 10.12.1985) who was promoted to Senior Scale on 10.12.1988. Shri A.K. Singh being senior to Shri Mukul Kumar (applicant No.1) and the other applicants in the OA being junior to Shri Mukul Kumar, the interpolation



of S/Shri Yogendra Kumar and K. Choudhary on the basis of their having worked in the Senior Scale, following the methodology provided by the DOP&T, has been correctly done, as held by the respondents. They have further clarified that S/Shri Yogendra Kumar and K. Choudhary (respondents Nos. 2 and 3), keeping in view their positions in 1982 batch of IRSS, as explained in the counter, were interpolated in the JAG of the IRSS and placed above Shri A.K. Singh in the JA Grade, and accordingly the contention of the applicants that the seniority of these two respondents has not been correctly fixed in terms of instructions of the DOP&T as contained in their Office Memorandum dated 22.11.1996 is not correct. In this connection, they have referred to a chart showing the positions of the applicants vis-a-vis the respondents Nos. 2 and 3 at Annexure R-II.


9. The applicants have vehemently stressed their positions and contentions that they should have been given the seniority higher than that of the respondents Nos. 2 and 3. In the rejoinder, while they have maintained that the applicants should have been given higher seniority by virtue of the fact that they had started working continuously in the JAG of the Service from an earlier date than the respondents Nos. 2 & 3, they have no answer to why, then, the seniority of Shri A.K. Singh, who entered the JAG still later than the respondents Nos. 2 and 3 should not have been sought to be altered by the applicants. In this case, the argument of the learned counsel of the applicants centered around the fact that it was not relevant for them to do so and that his seniority based on his position in the merit list prepared on the basis of the initial examination held for recruitment to the Service. It was observed that the



(15)

learned counsel was trying to seek relief under both the Rules relating to fixation of seniority on the basis of the positions of the Officers in the merit list prepared on the results of the initial examination for recruitment to the Service (IRSS) and also under the instructions of the DOP&T as contained in their Office Memorandum dated 22.11.1996 in the case of the applicants. The learned counsel was not prepared to observe the same principles for fixing seniority in respect of the applicants as well as Shri A.K. Singh. He was also not in a position to convince us as to why he did not seek relief in respect of the applicants with reference to the case of Shri A.K. Singh. A question was raised that the instructions of the DOP&T were very specific to fixation of seniority on the merger of the ISS with IRSS and that the case of the applicants should have been resolved only with reference to the said instructions and that the question of seniority based on merit should not have been brought in the discussion. The learned counsel for the applicants could not throw much light on this aspect.

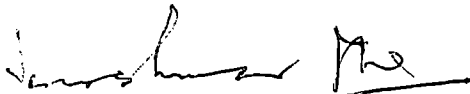
10. After having heard the learned counsel for the parties and after having gone through the averments made by the two sides, we are of the considered opinion that the applicants have not shown consistency in their prayers and have not been able to convince us of the basis on which their prayers for quashing the impugned orders of the respondents fixing seniority of the Junior Administrative Grade Officers of the Indian Railway Store Service and also rejecting their representations have been made. Thus, finding no merit in their case, we are not inclined to interfere with the fixation of seniority of




.....7

Junior Administrative Grade Officers of the IRSS as done by the respondents vide their letter No. E(0)III-2000/SR/07 dated 4.5.2000 and accordingly we dismiss this Original Application being devoid of merit.

There shall be no order as to costs.


(SARVESHWAR JHA)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)

/pkt/