

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

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Original Application No. 432 of 2002

New Delhi, this the 12th day of February, 2004

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

1. Shri Roshan Lal Rahi
Divl. Operating Manager,
Northern Railway,
DRM's Office, Ferozpur (PB).
2. Shri M.M. Sharma
Sr. Commercial/CI,
Northern Railway,
NOCR Building, State Entry Road,
New Delhi-110 055.
3. Shri Mahavir Singh
S/o Shri Mool Chand
ADWL/IRCA, DRM's Office,
Accounts Building,
State Entry Road,
New Delhi-110 055.
4. Shri B.K. Shukla
S/o Shri P.N. Shukla
Station Manager,
Northern Railway,
New Delhi-110 055.
5. Shri Ram Avtar Prasad,
S/o B.N. Prasad
Assistant Traffic Manager,
Northern Railway,
Baroda House,
New Delhi-110 001.
6. Shri S.S. Dhaliya
Asstt. Transportation Manager,
Northern Railway,
Baroda House,
New Delhi-110 001. ...Applicants

By Advocate: Shri S.K. Sawhney.

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House, New Delhi-110001.
2. Shri A.K. Wahi
Sr. Commercial Manager (DB)
IRCA Reservation Office,
Northern Railway,
1st floor,
Chelmsford Road,
New Delhi-110 055.

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3. Shri Deepak
Presenting Officer,
Railway Claims Tribunal,
First Floor, Gandhi Bhawan,
Shaheed Smarak Near Kachehri,
Lucknow (UP).
4. Shri T.P.S. Meena
Divisional Commercial Manager,
Northern Railway,
DRM's Office, Moradabad.
5. Shri M.S. Meena
Divisional Commercial Manager,
Northern Railway,
DRM's Office, Moradabad.
6. Shri Dharam Singh
Sr. Traffic Manager (FOIS)
Northern Railway,
Baroda House, New Delhi-110 001.
7. Shri K.N. Srivastava
Sr. Commercial Manager, CDRF,
Northern Railway,
Baroda House, New Delhi.
8. Shri Praveen Kasnyap
254/1C Railway Flats,
P.K. Road,
New Delhi-110 001.
9. Shri L.P. Singh
Assistant Commercial Manager/CL,
Northern Railway, Varanasi (UP).
10. Shri Ubaidi Rehman
Public Relation Officer,
Northern Railway, DRM's Office,
Nawab Yusuf Road,
Allahabad (UP).
11. Shri Vinod Kumar
Assistant Commercial Manager/CL,
Northern Railway,
DRM's Office,
Lucknow (UP).
12. Shri P.K. Varshney
Assistant Commercial Manager,
Northern Railway,
DRM's Office,
Lucknow (UP).
13. Mrs. Juel Kujur
254/3D Railway Flats,
P.K. Road,
New Delhi-110 001.

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14. Mr. V.K. Sharma
J-3/20 IInd Floor,
Kirkheee Extension,
Near Malviya Public School,
Malviya Nagar, New Delhi.
15. Shri R.K. Rawat
Divisional Operating Manager/RE,
Northern Railway,
DRM's Office, Moradabad (UP), ... Respondents

By Advocate. Shri R.P. Aggarwal, Counsel for
respondent No.1

Shri G.D. Bhandari, Counsel for
respondents No.14 and 15.

ORDER

By Hon ble Mr Kuldip Singh, Member (I)

This is a joint application filed by applicants as they have a common grievance against the impugned order dated 5.10.2001 whereby the representations of the applicants dated 30.9.1998 have been considered by the General Manager and who had passed a speaking order thereon which is enclosed with this Annexure A-1 whereby the said representations of the applicants had been turned down.

2. Facts in brief are that the applicants are Group B officers of Northern Railway belonging to the Traffic Department. They further claim that promotion to Group B posts in the Traffic Department is made from eligible categories in Commercial as well as Transportation Departments.

3. It is further stated that in terms of Rule 201-202 of IREM Vol.I panels for Group B posts are formed every two years separately for Traffic and Commercial Branches and seniority is determined by

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placing these panels of Traffic and Commercial Branches one below the other alternatively, i.e., a panel declared earlier would be placed above the panel declared later. Inter-se seniority on the same panel was determined on the basis of panel position of the employee in the selection as per the panel recommended by the UPC. This practice has been continued till 1994 when impugned seniority list Annexure A-2 was issued by the respondents.

4. It is further stated that the earlier seniority lists were issued on 1.2.1994 which is stated to be correctly drawn as per the provisions of Rule 201-202 of the IREM.

5. It is further submitted that as per the practice prevailing on other Zonal Railways, vacancies in Group B posts in the Traffic Department were filled by single process of selection held simultaneously for Commercial and Traffic Departments separately and this practice was followed under the provisions of Railway Board letter dated 21.9.1984 but the same was not given effect to on the Northern Railway till date. On the Northern Railway panels for Group B were formed separately for Traffic and Commercial Branches and the selections were not processed simultaneously on the same date.

6. It is further stated that seniority in terms of letter dated 21.9.1984 could be determined only if the initial process of selection for Commercial/Traffic Branches is initiated on common date which was never

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followed on Northern Railway so it is submitted that the reasons given by respondent No.2 to interpolate the names of candidates at S.No.2,3,4,5,13 and 14 are arbitrary and cannot be sustained.

7. It is further stated that the name of Shri R.K. Rawat is stated to have been interpolated in compliance of the judgment given in OA 616/88 but the said judgment had not given any such type of direction. The only prayer granted by the Tribunal was to consider Shri R.K. Rawat for future selections. Similarly no reason has been given for recommending the names of S/Shri A.K. Wahi, Deepak Sharma, V.K. Sharma for change in seniority position in Group C which interpolated the names of the said persons. Aggrieved by this act of respondents in determining the seniority, the applicants approached the Tribunal in OA No. 1332/1998 which was decided vide Annexure A-3 respondents vide judgment dated 22.7.1998, Annexure A-3. Thereafter respondents issued seniority list dated 2.9.1998, Annexure A-2 which was challenged being contrary to rules in OA 1940/1999 which was decided vide judgment dated 26.3.2001, Annexure A-4 and respondents were directed to pass a reasoned order on the representation of the applicants which was again rejected vide impugned order. Thus it is stated that the act of the respondents revising seniority list dated 1.2.1994, Annexure A-7 with the issue of the latest seniority list dated 2.9.1998, Annexure A-2 is illegal.

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8. It is further stated that the Railway Board instructions of 21.9.1984 were implemented in April, 1997 and now the respondents want to implement those instructions so when the respondents were in breach of instructions, they cannot implement it now.

9. It is further alleged that the respondents have improperly promoted persons from Commercial Panel whereas the persons from Traffic and Commercial panels can be posted vice-versa. Thus the applicants pray that this court should quash the seniority lists dated 1.4.1996, 1.4.1997 and 2.9.1998 and direct the respondents to act on the seniority list dated 1.2.1994 and applicants be considered for promotion to the higher position based on the seniority list dated 1.2.1994.

10. Respondents who are contesting the OA submitted that the Railway Board vide their letter dated 25.1.1988 decided that the selection for promotion to Group B service in the transportation (Traffic) and Commercial Departments should be organised separately. Accordingly, the selection for both these departments are being conducted separately after 2.3.1988.

11. It is further stated that in accordance with the instructions of the Railway Board of 21.9.1984 the seniority of Group B officers empanelled streamwise has to be drawn for the purpose of considering them for promotion to the senior scale and for the purpose of their induction to Junior Scale of IRIS, is as under:-

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(a) Where appointments in Group B are made on different dates, the date of appointment, which govern the extent of non-fortuitous service will form the basis for determining the combined seniority.

(b) If appointments to Group B in the different streams are made from and the same date, the seniority of such Group B officers for the purpose of their further advancement would be determined on the basis of their relative seniority in Group C, without, however, disturbing the inter-se seniority of the officers of each stream.

12. It is further stated that all the vacancies in Group 'B' are filled by promotion on the basis of selection of eligible Group C employees and also on the basis of Limited Departmental Competitive Examination whenever the scheme is in force and where the scheme of LDCE is in force, selection is held to fill 75% of the vacancies and LDCE is held to fill the remaining 25% of the vacancies and as per Para 201.2 frequency of panel-selection for appointment to Group B posts should be held once in two years. However, when due to unforeseen developments, such as creation of new posts, upgradation etc. the panel drawn gets exhausted and the biennial selection is away by more than six months a fresh selection may be held. Assessment of vacancies is made as per para 202.2. Thus it is submitted that the rules do not provide for holding different examination/selection in respect of traffic and Commercial Departments and for fixing seniority.

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13. It is further stated that combined selection for promotion to Group B service of Commercial and Operating Department pertaining to the year 1978-79 was finalised only on 2.3.88 which was done as per the Railway Boards letter dated 25.1.1983 and the panel was finalised as under:-

(a) That the officers empanelled against 70% quota in the Operating Department whose panel was declared on 17.8.1988.

(b) After these the officers empanelled against 30% quota in the Operating Department whose panel was declared on 11.9.1989 were taken.

(c) Thereafter the officers of the Commercial Department empanelled on 7.7.1989 against 70% quota were taken and the officers placed on the panel against 30% quota in the Commercial Department, whose panel was issued on 25.1.1991 and which has been upheld in O.A. 1/9/1998, i.e., Govind Narain Sharma Vs. Union of India. Thus it is submitted that the seniority list dated 2.9.1998 has been issued strictly in accordance with the policy of the Railway Board issued vide letter dated 25.1.1983 and 21.9.1984. Thus the representations of the applicants had been rightly rejected.

14. It is further stated that after discussion with Northern Railway Group B officers, the revised provisional seniority list was drawn as per the relevant

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provisions and in supersession of the previous seniority list in the Traffic and Commercial Department was issued on 17.4.1996 and objections, if any, were called.

15. Seniority list dated 1.2.1994 of the Group B officers of the Traffic and Commercial Department was issued vide Annexure A-7. Against the above seniority list Shri M.M. Sharma filed an OA 1332/98 before this Tribunal and vide order dated 22.7.1998 the Tribunal directed the respondents to recast the seniority list of Group B officers of the Traffic and Commercial Department in accordance with instructions of the Railway Board and accordingly vide letter dated 2.3.1998 combined seniority list of Group B officers of the Traffic and Commercial department as per extant instructions of the Railway Board as contained in their letter dated 25.1.1983 and 21.9.1984 were circulated.

16. It is further submitted that the persons found placed on the either of the panel in the event of non-availability of the vacancy in their own stream are considered for promotion on the other department (viz. Traffic or Commercial and vice-versa) in the exigencies of services. However, such promotion of officers do not call for any change in their own panel.

17. It is further submitted that prior to the implementation of the instructions dated 25.1.1983 there used to be a combined selection for Traffic and Commercial Department. The combined selection for the year 1978-79 could be finalised only on 2.3.1988 due to the cases pending before the High Court. Separate

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selections have been conducted in accordance with the instructions issued on 25.1.1983 and 21.9.1984 so accordingly their seniority on promotion to Group B is to be reckoned from the date of their taking over charge on promotion to Group B without disturbing their panel position in original in Group B.

18. It is further submitted that factual position with regard to S/Shri A.K. Wahi, V.K. Sharma and Deepak Kumar is that according to the instructions as contained in letter dated 30.1.1997 and 21.7.1997 the seniority position of these persons in Class-III was revised and it is only due to change of their Class-III seniority position led to revisions of their seniority position in Group B also by interpolating their names in the earlier panel framed for the year 1988-89 with the approval of the Railway Board vide their letter dated 30.4.98.

19. It is further stated that it is not for the first time that the interpolation of these persons have been challenged because Shri M.M. Sharma who had filed an OA 1332/98 had also challenged the same and the Tribunal directed the respondents to dispose of the representation within a period of 4 months. Similarly Shri I.P.S. Meena and Shri R.N. Meena presently working as JAG had found place in the panel for selection to the post of ACM and the Railway Board had approved interpolation of his name in the panel for selection to Group B in the Traffic and Commercial department against 25% quota for the year 19-8-79. So in terms of

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the order dated 5.11.1993 his name was placed on the panel against the vacancy caused due to interpolation of the names of Shri R.N. Meena.

20. Similarly the name of Shri R.K. Rawat who found place on the panel for Group B post of ACM vide this office letter dated 12.10.1995 has been interpolated in the earlier panel of 1988-89 of operating department issued on 17.8.1988 in compliance of the order dated 5.3.1993 in OA 616/88 and after obtaining approval from the Railway Board the seniority of Shri R.K. Rawat was revised in Group C which warranted change/revision of his seniority position in Group B as well.

21. Respondent No.5 Shri M.S. Meena had appeared in the selection for the post of ACM against 25% quota vacancies for the year 1989 and had qualified the same but because of pendency of OA 381/90 at Lucknow Bench his name could not be placed on the panel and one vacancy was kept till finalisation of OA 381/90 and on the finalisation of the same the name of respondent No.5 was placed on the panel of ACM in terms of letter dated 5.11.1993, Annexure R-10.

22. As regards the case of S/Shri Gharam Singh K.M. Srivastava, Praveen Kashyap, Ubaidur Rehman, Vinod Kumar and P.K. Varshney is concerned it is stated that in terms of letter dated 19.10.1992 all these persons found place on the panel for promotion from Class-III to Group B against 75% quota vacancies. Thus it is submitted that in compliance of the order dated 2.11.1993

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passed by this Tribunal in OA No. 1532/98 the seniority list has been issued in conformity with the instructions as contained in Railway Board's letter dated 25.1.1983 and 21.9.1984. thus it is prayed that the OA be dismissed.

23. Private respondent 14 and 15 have also filed their counter-affidavit. Private respondents have taken a preliminary objection that the representation which has been rejected vide impugned order but the same has not been placed on record. Private respondents also allege that according to the OA the seniority list dated 1.2.1994 has been superseded so the applicants had filed representation dated 30.9.1998 and two OAs which were filed earlier by both of them on each occasion directing the respondents to consider their objection and a perusal of the judgment given in OA 1322/98 shows that some objections had already been filed but no opportunity was given to them to file fresh objections dated 30.9.1998 which was filed after the judgment was pronounced on 21.7.1998 and even when the respondents have been magnanimous in terms of the directions in OA No. 1940/99 and they passed a speaking order filed as Annexure A-1.

24. Thus it is stated that the issue with regard to the correctness of the seniority list dated 1.2.1994 cannot be agitated at this stage, as such the same is barred by limitation.

25. It is further stated that there is a contrast in para 1 read with para 8. In para 1 the applicants have impugned order dated 5.10.2001 but in para 8

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applicants have prayed for quashing of seniority lists dated 17.4.1996, 1.4.1997 and 2.9.1998. Though seniority list of 2.9.1998 and the seniority list of 1996 and 1997 has not been placed on record which is an abuse of process of law since the order which is sought to be quashed is not on judicial record.

26. It is further stated that the investigation of the promotion sought on the basis of the seniority list dated 12.1994 which has already been superseded in terms of the directions of the Railway Board, a speaking order has also been passed as Annexure A-1.

27. It is further stated that since the new seniority list have been issued on the basis of the policy decision of the Railway Board and since the Railway Board has not been made a party so the OA also suffers for non-joinder of parties. Thus it is prayed that the OA be dismissed.

28. In the rejoinder the applicants have reiterated their pleadings, as contained in the OA.

29. The main contention of the applicants is that according to Rule 201-202 panels for Group B posts are formed separately for Traffic and Commercial Departments and that practice had continued till 1994 when impugned seniority list was issued by the respondents when examinations of two different branches were continued separately their names were placed one below the other stream alternatively and the panel declared earlier were placed above the panel declared later. According to the

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applicants this position continued till 1994 but when the seniority list of 2.9.1998 was issued, this practice has been given a go by with retrospective date.

30. The official respondents denied this position and submitted that para 201-202 did not prescribe the criteria of determining the seniority by placing the panels alternatively rather para 201-202 speak about conducting the examination as per the vacancies available and the mode of assessment of vacancies, frequency of panel-selection for appointment to group B posts which have to be held once in every two years but does not at all mention of holding of different selections for Traffic and Commercial department for fixing seniority.

31. The seniority is to be determined in accordance with the instructions issued by Railway Board dated 25.1.1983 and 21.9.1984 which has already been upheld in OA No. 179/98 decided by the Jodhpur Bench of the CAI vide their judgment dated 5.6.2002. In that the applicant had also challenged the seniority list of 17.4.1996 which is also sought to be quashed by the applicants in the present OA and the Hon ble Jodhpur Bench of the Tribunal did not find any fault in the seniority list of 1996. Tribunal also did not find any informity in the letter dated 2.9.1997 and found that the same has been issued in accordance with the instructions dated 21.9.1984 and the OA was dismissed.

32. Thus we find that the Hon ble Jodhpur Bench of the Tribunal has upheld the principle of determining the seniority as enshrined in the Railway Board circulars

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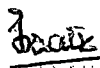
dated 21.1.1983 and 21.9.1984 and the grievance of the applicants in this case is also that the instructions issued by the Railway Board vide circular dated 21.9.1984 had never been applied to Northern Railway till date and cannot be applied even now. But we find that this contention of the learned counsel for the applicants has no merit because the instructions which had been issued vide letter dated 21.9.1984 had been issued by the Railway Board which clearly show that when appointments to Group B are made on different dates, the date of appointment will govern the non-fortuitous service which formed the basis for determining the combined seniority and appointments to Group B are made in different streams from one and the same date and the seniority of such Group B officers for the purpose of further advancement would be determined on the basis of their relative seniority in Group C and the same principle have been followed by the respondents while rejecting the alleged representation of the applicants.

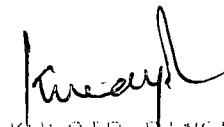
33. The respondents have clearly stated that while rejecting the representation of the applicants the seniority lists dated 21.9.1994 and 25.1.1983 already existed^b. So now in accordance with the directives of the Railway Board the seniority lists dated 25.1.1983 and 21.9.1984 the same has been discussed with the recognised association of the officers also and thereafter vide directive of the Railway Board the inter-se seniority list of both these streams was issued vide letter dated 17.4.1996.

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34. It is also on record that the seniority list dated 17.4.1996 has been upheld by the Hon'ble Jodhpur Bench of the CAT so challenge to the said seniority is no more resintegra and the respondents also in their order for rejection of the representation of the applicants have given clear reason as to why those candidates had been interpolated later on because of the intervention of the Tribunal particularly in OA 381/90 of Lucknow Bench. Though the applicants have also alleged that earlier there was a practice for holding separate examination for Traffic and Commercial Department and panel of all these panels were placed alternatively on the basis of the dates of their result and the panel declared above the other one but no rules or instructions have been placed on record which show that on what basis that practice was being followed. But on the contrary the letter dated 21.9.1984 gives clear instructions as to how the seniority is to be determined and since the 1996 seniority has already been upheld so the latter seniority list which have also been issued on the basis of 1996 seniority list read with the instructions of the Railway Board dated 25.1.1983 and 21.9.1984 clearly show that nothing wrong has been done. so we find that there is no case to interference.

35. In view of the above, OA has no merits and the same is dismissed. No costs.


(S.K. NAIK)
MEMBER (A)


(KULOIP SINGH)
MEMBER (J)

Rakesh