

Central Administrative Tribunal
Principal Bench, New Delhi

(2)

O.A.No.1102/2001

This the 27th day of July 2011

Hon'ble Shri M.L. Chauhan, Member (J)
Hon'ble Shri A.K. Jain, Member (A)

1. S K Paliwal s/o Shri S P Paliwal
2. R K Sexana s/o Shri Goya Parsahad
3. Nand Kishore s/o Shri Chetan Singh
4. V K Verma s/o Shri D P Verma
5. Kishan Singh s/o Shri Viri Singh

All are presently working as Head TTE in Northern Railway
Delhi Division

..Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through
the General Manager
Northern Railway, Baroda House,
New Delhi
2. The Divisional Railway Manager
Northern Railway, Delhi Division
Near New Delhi Rly. Station,
New Delhi
3. The Sr. Divisional Personnel Officer
Northern Railway, Delhi Division
Near New Delhi Rly. Station,
New Delhi
4. Shri D.R. Sarna
Through the Sr. DPO
DRM's Office, Northern Railway
Delhi Division,
New Delhi

..Respondents

(By Advocates: Shri R L Dhawan for respondents 1 to 3 –
Shri VSR Krishna for respondent 4)

ORDER

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Shri M.L. Chauhan:

This case has a chequered history. The applicants were initially appointed as Ticket Collector (for short TC) in the year 1980 through the Railway Recruitment Board on 24.2.1980. It may be stated that respondent No.4 was initially appointed as Account Clerk on 15.5.1979. As per the case projected by the applicants in the OA, respondent No.4, who was appointed as Account Clerk on 15.5.1979, has applied for the aforesaid post of TC before his joining against the said post through Railway Recruitment Board against direct recruitment and was selected as TC along with the applicants on 22.2.1980. It is further the case of the applicants that they as well as respondent No.4 were sent for one month's training for the post of TC w.e.f. 24.2.1980 to 23.3.1980 and the applicants completed the training successfully but respondent No.4 was declared failed in the training and his name was not included in the merit list prepared at the end of the training period. It is, however, stated that respondent No.4 completed his training in subsequent chance only on 22.12.1980.

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2. According to the applicants, as per Para 303 (A) of the IREM Volume I, the seniority of the candidates recruited through the Railway Recruitment Board should be entertained in the order of merit obtained at the examination held at the end of the training period before being posted against working posts. Further those, who join the subsequent courses for any reasons whatsoever and those who pass the examination in subsequent chances, will rank junior to those who has passed the examination in earlier courses. Thus, according to the applicants in case of direct recruitment through Railway Recruitment Board, the date of appointment should be treated as the date of posting after completion of training successfully and as per the above provision the date of appointment of the applicants were treated as 24.4.1980, whereas they were appointed on 22.2.1980.

3. It is also stated that after appointment first promotion was granted to the applicants as well as respondent No.4 to the post of Sr. TCR as per seniority list dated 28.2.1985 in which the applicants were shown above the name of respondent No.4. Since the official respondents did not publish the seniority list keeping in view the aforesaid provision and issued a seniority list dated 28.10.1987

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showing the date of appointment of respondent No.4 as 15.5.1979 and he was placed above the applicants in the seniority list, followed by another seniority list dated 4.7.1988, the applicants made a representation on 19.9.1988 regarding assigning the seniority to respondent No.4 above them.

4. It is further the case of the applicants that in the year 1993 the official respondents vide the letter dated 16.4.1993 published a provisional seniority list of STE/Sr. TCR in which the name of respondent No.4 was shown above the name of the applicants on the basis of his date of appointment as 15.5.1979 that was the date of appointment of respondent No.4 as Account Clerk. The applicants have further stated that against the said seniority list dated 16.4.1993, they made representation dated 11.5.1993. It is further stated that the official respondents considered the representation of the applicant as per rule and vide the letter dated 28.3.1994 the name of respondent No.4 was shown below the name of the applicants and that respondent No.4 was shown to have been inducted in the cadre of TC w.e.f. 22.12.1980.

W.L.

5. The applicants has also stated that another seniority list was published after a lapse of about three years, i.e., on 25.7.1997 wherein respondent No.4 was also shown below the applicants. Against the said seniority list dated 25.7.1997, respondent No.4 filed OA-597/1998 before this Tribunal, in which the applicants in this OA were not impleaded as party respondents, whereas in fact the challenge in the seniority list was assigning the higher seniority to the present applicants. This Tribunal without noticing the provisions of Para 303 (A) of IREM, vide the order dated 28.8.2000, disposed of the aforesaid OA with a direction to "the respondents to correct the seniority list and assign seniority to the applicant at an appropriate place as per his date of appointment i.e. 24.2.1980". It was also observed that "while correcting the seniority list, respondents shall also follow the rules, instructions and judicial pronouncements on the subject".

6. The grievance of the applicants herein is that the official respondents without following the rules, instructions and law of the land and also without giving any reasonable opportunity to the affected persons, i.e., the applicants herein, revised the seniority of the applicants

as well as respondent No.4 vide the order dated 29.11.2000 treating the date of appointment of respondent No.4 as 24.2.1980 without considering the fact that the date of appointment of the applicants was the same as 24.2.1980, whereas the applicants, who were also appointed on the same day, were assigned seniority in the said cadre w.e.f. 24.4.1980, i.e., after completion of training.

7. The representation made against the said seniority list was also rejected vide the order dated 8.1.2001 without passing any reasoned and speaking order. Against the said seniority list dated 29.11.2000 and the order dated 8.1.2011, the applicants have filed the present OA but the same was earlier dismissed vide the order dated 19.7.2002 without considering the case on merits on the ground of latches. The review petition filed against the order of the Tribunal dated 19.7.2002 was also dismissed. Thereafter the matter was carried to the High Court by filing WP (C) No.1038-40/2004. The High Court vide its order dated 8.7.2010 set aside the order of this Tribunal dated 19.7.2002 with a direction to re-decide the issue after hearing the parties. The High Court has further observed that the judgment rendered by this Tribunal on

28.8.2000 in OA-597/1998 filed by respondent No.4 herein may not be treated as binding and this Tribunal was directed to decide the issue again after hearing the parties. That is how this OA has been restored to its original number and the matter is required to be heard again.

8. We have heard the learned counsel for the parties at length and have gone through the material placed on record, including the additional affidavit filed by the applicants on 21.7.2011.

9. Admittedly, both the applicants as well as respondent No.4 were inducted in the cadre of TC in the year 1980 when they were appointed through Railway Recruitment Board on 24.2.1980 and respondent No.4 was initially appointed in the Railways in the year 1979 as Account Clerk on 15.5.1979. It is not in dispute that applicants and respondent No.4 though were appointed on the post of TC on 24.2.1980 but they were required to undergo training and in fact they were sent for one month's training w.e.f. 24.2.1980 to 23.3.1980. It is also not in dispute that the applicants completed the aforesaid training and thus joined the post of TC w.e.f. 24.2.1980, whereas respondent No.4 could not complete the training

successfully and completed the training in subsequent chance only on 22.12.1980. It cannot also be disputed that as per Para 303 (A) of IREM Volume I, seniority of the applicants recruited through the Railway Recruitment Board has to be determined as per provisions contained therein. At this stage, it will be useful to quote Para 303 (A) of IREM, which thus reads:-

"(a) Candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts. Those who join the subsequent courses for any reasons whatsoever and those who pass the examination in subsequent chances, will rank junior to those who has passed the examination in earlier courses."

10. Thus, as can be seen from the portion as quoted above, it is evident that the seniority to the applicants has to be assigned w.e.f. 24.4.1980 when they were given posting order on completion of training successfully, whereas respondent No.4 has to be assigned seniority w.e.f. 22.12.1980 when he joined the post after completion of training successfully but the official respondents in total disregard of the said rule issued two seniority lists dated 28.2.1985 and 28.10.1987 whereby the date of appointment of respondent No.4 was shown as

15.5.1979. We fail to understand how respondent No.4 could have been assigned seniority w.e.f. 15.5.1979 when he was not even born in the cadre of TC, as he was initially appointed on 24.4.1980 when he along with the applicants qualified the selection, which was conducted through the Railway Recruitment Board.

11. This mistake was also perpetuated by the official respondents when they published the provisional seniority list of STE/Sr. TCR on 16.4.1993. Releasing their mistake and consequent upon the representation made by the applicants to the seniority list dated 16.4.1993, the official respondents issued another seniority list dated 28.3.1994 strictly in accordance with the provisions contained in Para 303 (A) of IREM wherein the name of respondent No.4 was shown below the applicants by assigning him seniority in the cadre of TC when he passed the training on 22.12.1980. Thereafter, the official respondents issued seniority list in the year 1997 where the names of the applicants were shown below respondent No.4.

12. It may be stated here that the respondent No.4 did not challenge the validity of the seniority list dated 28.3.1994 but respondent No.4 herein filed OA-597/98

against the subsequent seniority list dated 25.7.1997, which OA was allowed by this Tribunal even without hearing the applicant therein. At this stage, it will be useful to quote paragraph 10 of the judgment of this Tribunal in OA-597/1998, which thus reads:-

"10. Accordingly we dispose of this OA directing the respondents to correct the seniority list and assign seniority to the applicant at an appropriate place as per his date of appointment i.e. 24.2.1980 and as per their stand taken in the counter affidavit. While correcting the seniority list, respondents shall also follow the rules, instructions and judicial pronouncements on the subject."

13. As can be seen from the portion as quoted above, this Tribunal has passed the judgment in favour of the applicant therein and respondent No.4 in the present OA, thereby stating that he should be assigned seniority w.e.f. 24.2.1980 as per the stand taken by the official respondents in the counter reply. It was further observed that "while correcting the seniority list, respondents shall also follow the rules, instructions and judicial pronouncements on the subject".

14. We agree with the submissions made by the learned counsel for the applicants that in fact this Tribunal has not decided the issue on merits and the judgment was

rendered on the basis of concession made by the respondents in the reply, which concession was de hors the provisions contained in Para 303 (A) of IREM. 42

15. That apart, in terms of the aforesaid order, it was incumbent upon the official respondents to consider the case in the light of rules, instructions and judicial pronouncements on the subject but to say the least the official respondents in order to give undue benefit to respondent No.4, who was the applicant in the aforesaid OA (OA-597/1998), assigned the seniority to the applicants herein in the cadre of TC showing the date of appointment as 24.2.1980. The said seniority list has been placed on record as Annexure A-2. The name of respondent No.4 has been shown at Sl.No.6 and his date of appointment has been shown as 15.5.1975, whereas the date of appointment of the applicants is shown as 24.4.1980. We fail to understand how the official respondents could take into consideration two dates for the purpose of assigning seniority when admittedly the applicants as well as respondent No.4 were appointed as TC on 24.2.1980. In the case of respondent No.4, the date of seniority has been assigned w.e.f. 24.2.1980 when he has not completed the training whereas the seniority to

the applicants was assigned after completion of training, i.e., 24.4.1980. Thus, it appears that someone in the department were bent upon to assign the seniority to respondent No.4 contrary to provision contained in Para 303 (A) of IREM and not only that a wrong affidavit was also filed before the court of law to the effect that respondent No.4 is entitled for seniority w.e.f. 24.2.1980, which forms basis to grant relief to respondent No.4. We are saying so because the official respondents have themselves assigned the correct seniority to the applicants vide the seniority lists dated 28.3.1994 and 25.7.1997 in accordance with rule. When the action of the official respondents was challenged by the present respondent No.4 before this Tribunal, someone had filed a wrong affidavit whereby conceding the claim in favour of the applicant therein and the affected parties, i.e., the present applicants were not made the party respondents in those proceedings. It was under these circumstances that High Court in order to do justice to the applicants has recorded a categorical finding that the decision rendered by this Tribunal on 28.8.2000 in OA-597/1998 filed by respondent No.4 herein may not be treated as binding. At this stage, we also wish to reproduce paragraph 13 of the judgment of the High Court, which thus reads:-

"13. Under the circumstances we dispose of the petition setting aside the impugned order dated 19.07.2002 as also the order dated 10.03.2003 refusing to review the earlier orders passed by the Tribunal and as a consequence restore OA No.1102/2001 filed by the petitioners for fresh adjudication by the Central Administrative Tribunal with a direction to the Central Administrative Tribunal to re-decide the issue after hearing the parties and while so doing not to treat the decision rendered by the Tribunal on 28.08.2000 in OA No.597/1998 filed by D.R. Sarna as binding. We make it clear to the Tribunal that at the remanded stage the Tribunal would serve the respondents in the OA including Shri D.R. Sarna, lest the problem which has arisen on account of the Tribunal deciding D.R. Sarna's petition without ensuring that the parties which were likely to be effected by the decision were before it, is not repeated for the next time.

16. It may also be stated here that when the action of the official respondents was challenged by the present applicants in this OA, it was dismissed by this Tribunal earlier taking into consideration the contentions raised by learned counsel for respondent No.4 regarding limitation and also taking into account the fact that pursuant to the seniority list respondent No.4 has been promoted to the post of Head TT, which will amount to settling the unsettled position. The Tribunal dismissed this OA earlier on the ground that issue settled cannot be re-opened after a long lapse of time. The High Court vide its judgment dated 8.7.2010 has categorically held that the findings given by

the Tribunal on both counts are ex facie wrong. At this stage, it will be useful to quote paragraphs 2 to 12 of the judgment of the High Court, which thus reads:-

"2. The issue at hand is short.

3. Direct recruitments to the post of TCR were made in the Indian Railways in the year 1980. The petitioners as also respondent No.4 Shri D.R. Sarna were inducted together in the year 1980.

4. In the seniority list for the post in question which were circulated between the years 1985 till 1994 D.R. Sarna was shown senior to the petitioners but in the seniority list circulated in the year 1997 he was shown junior.

5. Shri D.R. Sarna filed OA No.5971998 praying that his induction in the service on 22.04.1980 had to be treated as the basis for fixing his seniority. He claimed seniority over the petitioners. But petitioners were not impleaded as respondents in the petition filed by D.R. Sarna.

6. D.R. Sarna succeeded and directions were issued to the Railway Authorities to re-fix the seniority of Shri D.R. Sarna reckoning his entry into the cadre on 22.04.1980 and this resulted in a seniority list being revised and circulated on 29.11.2000 giving seniority to Shri D.R. Sarna above the petitioners.

7. The petitioners challenged the revised seniority list pointing out that when D.R. Sarna filed the OA in which he got relief, petitioners were not impleaded as a party and hence said decision does not bind them. Issues were raised on merits.

8. Vide impugned order the Tribunal has held that the claim of the petitioners are highly belated and on merits it has been held that issue of inter-se seniority having been settled when D.R. Sarna filed

his petition i.e. OA No.597/1998 the issue got settled and could not be re-agitated.

9. Ex-facie, the Tribunal is wrong on both counts.

10. On the issue of the claim of the petitioners before the Tribunal being belated, suffice would it be to state the cause of action accrued to the petitioners when the seniority list was revised to their disadvantage which took place on 29.11.2000 and petitioners promptly approached the Central Administrative Tribunal.

11. On the other issue, suffice would it be to state that the decision of the Tribunal in OA No.597/1998 filed by D.R. Sarna cannot be held as conclusive of the controversy between the parties for the reason undisputedly the petitioners were not impleaded as respondents by D.R. Sarna.

12. It is settled law that where a decision is rendered by a Court or a Tribunal which is adverse to the interest of a party, the said decision cannot bind the party affected unless the party was given an opportunity of being heard."

17. We respectfully agree with the findings recorded by the High Court whereby the earlier judgment of this Tribunal in the instant case has been quashed and set aside and the matter has been remitted back to the Tribunal to hear afresh. We are of the firm view that the seniority assigned to the applicants as well as respondent No.4 in terms of the letter dated 28.3.1994 and in terms of annual seniority list dated 25.7.1997 was correctly assigned as per the provisions contained in Para 303 (A) of IREM.

Admittedly, the seniority has to be assigned after successful completion of training period. Since the applicants have completed the training on 24.4.1980 and respondent No.4, who was sent for training along with the applicants, was declared failed but qualified and completed training successfully subsequently on 22.12.1980, has to be assigned seniority from that date not from the earlier date.

18. The contention raised by the learned counsel for respondent No.4 that the applicants have been promoted to a further post earlier to respondent No.4 is wholly misplaced and misconceived inasmuch as the applicants were also promoted to the post of Senior TCR vide the order dated 28.2.1985 and have also been promoted to the post of Head TCR on 24.7.1993, i.e., the date on which respondent No.4 was also promoted as Senior TCR and Head TCR.

19. For the foregoing reasons, we are of the view that the applicants have made out a case for grant of reliefs. Accordingly, the OA is allowed and the impugned orders at Annexures A-1 and A-2 are quashed and set aside and the seniority assigned to the applicants in terms of Para 12

303 (A) of IREM as per the seniority lists dated 2.3.1994 and 25.7.1994 is legal and valid seniority, so far as respondent No.4 is concerned. No costs.



(A.K. Jain)
Member (A)



(M L Chauhan)
Member (J)

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Final MA 3100/12 - complete