

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.1270/99

Wednesday, this the 31th day of January, 2001

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

1. K.K.Srivastava
S/O Shri R.L.Srivastava
C/O CBS Bareilly, NR.
2. A.N.Jha,
S/O S.L.Jha
C/O CBS Bareilly, NR.
3. Ramesh Chand
S/O Shiv Nandan Prashad
C/O CBS Bareilly, NR.
4. Ashok Kumar
S/O Bulaki Ram,
C/O CBS Moradabad, NR
5. Rajesh Kumar Gupta,
S/O JS Gupta,
C/O CBS Moradabad, NR
6. Azadar Hussain,
S/O Hashim Ali,
C/O Mushtaq Manjil
Parkar Road, Moradabad.
7. Ravinder Singh,
S/O Late Shri Darshan Singh,
C/O CBS Moradabad, NR
8. Vivek Kumar Ghai,
S/O Late Shri MR Ghai,
C/O CPS Moradabad, NR
9. Rajesh Kumar Srivastava,
S/O Shri V.B.Lal Srivastava,
C/O CPS Moradabad, NR.
10. Desh Bandhu Sharma
S/O Ved Mani Sharma
C/O CMI Moradabad.
11. Shri Nabi Mohammad
S/O Shri Nafiz U1 Hasan,
C/O S.S. Nagina
12. Shri Dinesh Kumar,
S/O Maiku Lal,
C/O S.S.Najibabad
13. Ram Avtar
S/O Khacheru Singh
C/O CBS Laksar
14. R.K.Shyam,
C/O Chander Bhan
C/O CBS Laksar

15. Amar Nath Sharma
S/O Shri B.L.Sharma
C/O CBS Haridwar

16. Vinod Kumar Mishra
S/O Srinivas Mishra

17. Tehzeeb Haider Zaidi,
S/O late Zulfiqar Haider
C/O CBS Chandausi

18. Udai Beer Singh,
S/O Bhup Singh,
C/O CMI Chandausi

19. Ayodhya Prasad,
S/O Bhagwati Prasad
C/O CMI Chandausi

20. Anil Kumar Tewari,
S/O A.R.Tewari,
C/O S.S.Moradabad.

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****Applicants.

(By Advocate: Shri Anis Suhrawardy with
Shri S.Mehndi Imam)

VERSUS

1. Union of India
through its General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Divisional Railway Manager,
Northern Raiilway,
DRM Office,
Moradabad.

3. Senior Divisional Personnel Officer,
Northern Railway,
DRM Office,
Moradabad.

..Respondents.

(By Advocate: Mr. R.L.Dhawan)

O R D E R (ORAL)

Hon'ble Shri S.A.T. Rizvi, M (A):-

The applicants, twenty in number, presently working as Coaching Clerks and initially recruited as Mobile Booking Clerks (MBCs) on daily wage basis way-back in the late 1970s and early 1980s, are aggrieved by the respondents' orders dated 8.9.98 and 4.12.98. The prayer

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made is for a direction to the respondents to regularise the applicants by granting them temporary status in terms of the Tribunal's earlier order dated 4.6.90. Another prayer made is for a direction to the respondents to grant consequential benefits including appropriate seniority with retrospective effect in consonance with the aforesaid direction of the Tribunal dated 4.6.90. The aforesaid impugned order dated 4.12.98 is also sought to be quashed and set aside.

2. Before we proceed further, we would like to appreciate the implications of the orders referred to by the applicants and the prayers made in the relief column of the OA. We find that by impugning the respondents' order of 8.9.98, the applicants seek to contend that persons junior to them have been promoted and their claims were ignored at the time the promotions were made. The other order impugned by the applicants is an order rejecting the representation of the applicants challenging the seniority list earlier circulated by the respondents on 22.7.97. We thus find that the basic issue arising in this OA is with regard to seniority. The seniority list, as already mentioned, was circulated on 22.7.97. If the applicants were aggrieved by the order in which entries made in that list, they had the option to represent in the matter. We find on the other hand that the applicants did not challenge the aforesaid seniority list and it is precisely on this basis that their representation has been turned down by the respondents. Having regard to the aforesaid grievance, the applicants could also approach this Tribunal well in

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(17)

time. They have not done so either and now they seek to challenge the same by an indirect method. What they have done is that instead of challenging the seniority list, they have challenged the respondents' order rejecting their representation in the matter. They have also tried to achieve the same object by challenging the aforesaid order of promotion on the ground that juniors to them have been promoted thereby.

3. The applicants have filed a representation on 10.9.98 challenging the aforesaid promotion order of 8.9.98. We have perused the aforesaid representation and find that the same does not bring out any ground on the basis of which the applicants claim seniority over the persons promoted by means of the aforesaid order of 8.9.98. The representation merely asserts that the persons promoted were junior to the applicants but does not make any reference whatsoever to any specific rule under which they claim seniority or the instructions, if any, relied upon for the purpos or to any factual circumstance that could go in their favour.

4. During the course of the arguments, the learned counsel appearing for the applicants has strenuously urged that the orders of this Tribunal dated 4.6.90 placed on record have not been properly and fairly implemented insofar as the applicants are concerned. The operative portion of the aforesaid order is reproduced below for the sake of convenience:-

"15. In view of the above discussion, we order and direct that respondents shall:

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(b)

i) regularise the Mobile Booking Clerks who were engaged prior to 17.11.1986 by absorption against regular vacancies on completion of three years service and not 1095 actual working days. (emphasis supplied)

This will be, however, subject to the fulfilment of other conditions as provided in the Railway Board's letters dated 21.4.1982 and 20.4.1985.~

ii) confer temporary status with all attending benefits on the applicants after they have completed four months service as Mobile Booking Clerks in accordance with the terms of their engagement. The period of four months shall be counted irrespective of number of hours put in on any particular day, having regard to the fact that the services of the Mobile Booking Clerks were available for full days.

iii) make payment of back wages from the date of termination of service in accordance with orders dated 5/12.5.1986, till the date they were taken back on duty consequent to the recall of the Hon'ble Supreme Court's order dated 18.3.1988 at the same rates at which they were employed prior to the date of termination of the services. This will be applicable only to those Mobile Booking Clerks whose services were disengaged and reengaged in consequence of Hon'ble Supreme Court's orders dated 18.3.1988 and recall of the said order vide Hon'ble Court's order dated 30.9.1988."

5. According to the learned counsel, no doubt the aforesaid orders have been complied with and the applicants along with the others have been granted temporary status and have also been regularised/absorbed in the wake of the aforesaid order. However, what he has stressed is that at the time of grant of temporary status as also on the occasion of regularisation/absorption, the respondents have not cared to have regard to the actual

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(a)

seniority of the applicants. In support of his claim, the learned counsel has referred to the statement placed at page 59 of the paper book which we find is a list of the applicants and the others screened by the respondents on certain dates. The aforesaid statement shows, inter alia, the date of first appointment of the persons screened and also the total number of days put in by each one of them presumably as on the date of screening. The learned counsel has referred to a few names in an attempt listed in the aforesaid statement to show to us that the applicants, though senior to the others in terms of the total number of days put in, were not considered for promotion at the proper time with the result that they have been rendered junior to those who had put in lesser number of days shown in the same statement. He also pointed out that the applicants, as reflected in the same statement, were appointed as MBCs earlier than the other persons. He has again referred to a few names to prove his point. Thus, based on the aforesaid two factors, namely, the date of first appointment and the total number of days put in, the learned counsel has tried to argue that in any case, they should have been granted temporary status as well as should have been regularised/absorbed earlier than the others who have been promoted by the respondents' order dated 8.9.98. Referring to the orders made by this Tribunal on 4.6.90, which has been read out in considerable detail by the learned counsel, we have not come across any observation made by the Tribunal in that case which would show that at the time of granting temporary status or at the stage of regularisation /absorption, the dates of first

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appointment and/or the number of days put in, would be material and these factors would be applied in determining the inter-se-seniority of those on whom temporary status was conferred and also of those regularised/absorbed. All that has been mentioned in the directions of this Tribunal in the aforesaid case is that temporary status would be conferred on the applicants in that case which include the applicants in the present OA after they have completed four months' service as MBCs. The same also provided that the period of four months shall be counted irrespective of the number of hours put in on any particular date having regard to the fact that the services of the MBCs were available for full days. Arguing on the basis of the date of initial appointment and the number of total days put in at the time of screening, the learned counsel appearing for the applicants has not quite succeeded in convincing us that the applicants had actually completed the period of four months as MBCs before the others had done so.

6. The regularisation/absorption of MBCs was, we find, supposed to flow from the conferment of temporary status. After the aforesaid status had been conferred, the persons concerned were to be considered for regularisation/absorption. This is what has been done by the respondents who have regularised/absorbed the applicants w.e.f. 17.2.95. There is no dispute about the existence of this order which is placed at pages 69-70 of the paper book. It clearly provides that the applicants have been regularised/absorbed as Coaching Clerks w.e.f. 17.2.95. The learned counsel has, during

the course of arguments, referred to the question of training undergone by the applicants and has tried to argue that the others promoted by the impugned order of 8.9.98, might have not undergone training and on this account, the applicants would have a better claim to be considered for regularisation/absorption earlier than the others. The learned counsel appearing for the respondents has contended that the others have also undergone similar training and only thereafter they have been considered for regularisation/absorption. If the applicants had raised a plea in their OA that the others have not undergone the aforesaid training, the respondents would have put in record to show that that was not the case. In view of this, the plea advanced by the learned counsel for the applicants is rejected.

7. The learned counsel appearing for the respondents has contended that temporary status was conferred on the applicants w.e.f. 17.9.90 and they were thereafter regularised/absorbed on 17.2.95 and that has been done totally in accordance with the relevant instructions. In regard to seniority, the learned counsel has relied on Rule 302 of the IREM Volume I 1989 Edition which provides as under:-

"302. Seniority in initial recruitment grades - Unless specially stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade...."

8. In the present case, the applicants have been regularised/absorbed and this has been done by a

procedure which cannot be termed as direct recruitment nor can it be equated with regular promotion. All that has happened is that by way of regularisation/absorption, the applicants have been appointed w.e.f. 17.2.95 and thus, their seniority will be counted with effect from the same date.

9. On a perusal of the reply filed by the respondents, we find that by a letter dated 21.10.91 (Annexure A-13), the applicants were informed that the case for their regularisation would be considered subject to the availability of vacancies against direct recruitment quota. This, according to us, should have given rise to a grievance, if the applicants had felt that by delaying their regularisation they were going to lose seniority over the others. No representation was then made by the applicant and as we have seen that after they were regularised w.e.f. 17.2.95, again, they did not represent. We, therefore, take it that the applicants were fully satisfied with their regularisation made effective from 17.2.95. They cannot, therefore, claim seniority based on any other date which might be arrived at by referring to the dates of initial appointment as MBCs or to the number of days they had put in at the time of screening (page 59 of the paper book).

10. The learned counsel appearing for the respondents has raised the issue of res judicata. We find substance in the arguments advanced by him. We find that by the order dated 4.6.90, this Tribunal had provided for conferment of temporary status as well as

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regularisation/absorption of the applicants along with the others. From the prayer clause 8 (i) of the OA, we find that the applicants have again made a request for conferment of temporary status as well as regularisation, both issues having already been settled by the aforesaid order dated 4.6.90. To this extent, we are inclined to agree with the learned counsel for the respondents that the same issues could not have been raised in this OA de-novo.

11. The learned counsel for the respondents has also raised the issue of limitation. We have already seen that the main issue stressed by the learned counsel for the applicants is with regard to inter-se-seniority. The respondents had circulated the seniority list on 22.7.97 giving one month's time to the applicants and the others to file objections. From the records placed before us, it would seem that the applicants did not file any representation in the matter. The aforesaid list, therefore, became final and binding a month after 22.7.97 insofar as the applicants are concerned. The same could not be questioned belatedly by filing the present OA filed as late as in April, 1999, i.e., much after the prescribed period has expired. We are not inclined to accept that the aforesaid seniority list was not circulated and had not become available to the applicants. There is force in the arguments advanced by the learned counsel for the respondents. We, therefore, find that the OA suffers from the vice of latches and delay.

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(11)

12. In the circumstances outlined in the proceedings paragraphs, we find that the OA is devoid of any merit and besides suffers from latches and delay. The same is also barred by the principle analogous to res judicata. The OA is accordingly dismissed without any order as to costs.

S.A.T. Rizvi

(S.A.T. Rizvi)
Member (A)

Ashok Agarwal
(Ashok Agarwal)
Chairman