

Central Administrative Tribunal, Principal Bench

Original Application No.1895 of 1998

New Delhi, this the 25th day of August, 2000

Hon'ble Mr. V.K. Majotra, Member (A)

Hon'ble Mr. Kuldip Singh, Member (J)

1. Surinder Kumar Sharma S/o Shri Sewak Ram Sharma,
R/o Diesel Shed Tughlakabad,
New Delhi.
2. Rakesh Pal Singh S/o Shri Mangal Singh
R/o Diesel Shed Tughlakabad,
New Delhi. ...Applicants

(By Advocate - Ms. Meenu Mainee, proxy for Shri G.D. Bhandari)

Versus

The Union of India through

1. The General Manager,
Northern Railway, HQ. Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
New Delhi.
3. Principal,
System Training School,
Northern Railway/Charbagh,
Lucknow.
4. Shri Nanehey Singh
S/o Shri Sri Ram
Jr. Engineer Grade-I (Electrical)
Diesel Shed Tughlakabad, Northern Railway,
New Delhi.
5. Shri Anil Kumar S/o Shri Dhani Ram
Jr. Engineer Grade-I (Electrical)
Diesel Shed Tughlakabad, Northern Railway,
New Delhi.
6. Shri Gurmukh Singh S/o Shri Karam Singh
Jr. Engineer Grade-I (Electrical)
Diesel Shed Shakur Basti,
New Delhi.
7. Shri P.K. Sehgal S/o Shri S.R. Sehgal
Jr. Engineer Grade-I (Electrical)
Diesel Shed Shakur Basti,
New Delhi. - Respondents

(By Advocate - Shri R.L. Dhawan for official respondents and Sh. O.P. Gupta for private respondents).

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O R D E R (ORAL)

By Hon'ble Mr. V.K. Majotra, Member (A)

The applicants have challenged seniority list dated 31.12.1996 (Annexure A-1) whereby the applicants, direct recruits, who joined the Departmental Training Course on 5.9.90 and successfully completed the same on 4.9.92, have been placed juniors to the promotee respondents who joined the Training Course on 4.10.90 and completed the same on 3.10.92. Applicants' representation dated 27.1.97 (Annexure A-2) followed by another representation dated 15.7.97 (Annexure A-3) remained unresponded. In the meanwhile respondent Nos. 4 to 7 were further promoted from grade Rs.1400-2300 to the next higher grade of Rs.1600-2660 from 14.9.95. The applicants were selected as Apprentice Assistant Chargeman (Electrical) [hereinafter referred to as AAC(E)] Grade Rs.1400-2300 in the Northern Railway. After completion of various formalities, they joined the training course on 5.9.90 and completed the scheduled training on 4.9.92. The applicants were posted as AAC(E) vide Annexure A-9 dated 31.12.92. It has been alleged that the final interview result of the applicants was declared vide letter dated 23.9.92 (Annexure A-13) only after absorbing all the promotees as also those who joined from other Railway Recruitment Boards in January, 1989. The applicants claim that respondents 4 to 7 have been given seniority in violation of the provisions of rules 302 and 303 of IREM Volume-I. The applicants were selected by Railway Recruitment Board Chandigarh in

December, 1988 for the post of AAC(E) grade Rs.1400-2300 while respondents 4 to 7, the promotees were selected much later but the respondents with mala fide intention detained the applicants and sent the promotees to undergo the training preferentially over the duly selected applicants resulting in wrong assignment of seniority to applicants.

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2. Applicants have sought setting aside and quashing of the seniority list dated 31.12.1996 (Annexure A-1) and direction to the respondents to reckon applicants' seniority on the basis of their having passed the prescribed training within one year as per the employment notice with consequential benefits.

3. In their counter, respondents 1 to 3 have stated that the applicants were selected by the Railway Recruitment Board Chandigarh for the post of AAC(E) grade Rs.1400-2300 in accordance with the Recruitment Rules contained in para 140 of IREM Vol.I, which provides that the vacancies of chargeman in the scale of Rs.1400-2300 will be filled by induction of Apprentice Mechanics - 50% from open market through Railway Recruitment Boards and 25 % from serving matriculate employees with 3 years service in skilled grade(s) and below 45 years of age as Intermediate Apprentice Mechanics selected from open market through Railway Recruitment Boards ^{who receive} ~~which give~~ training for a period of 2 years on payment of stipend. In the case of Intermediate Apprentice Mechanics appointed against 25% quota from amongst serving employees, their period

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of training will be 2 years but they will get full pay and allowances of the post for which they are selected during the period of training. In terms of para 302 of IREM Vol.I in categories of posts partially filled by direct recruitment and partially by promotion, the criteria for determination of seniority is the date of regular promotion after due process of selection in the case of promotees and the date of joining the working post after due process in the case of direct recruits, subject to maintenance of interse seniority of promotees and direct recruits amongst themselves. According to the respondents, the applicants joined the working post of chargeman grade Rs.1400-2300 on 9.12.92. They were assigned seniority below respondents 4 to 7 who were selected as Intermediate Apprentice Mechanic against 25% quota for serving employees and they are accorded posting as chargeman grade Rs.1400-2300 on 5.10.92, i.e., earlier than the applicants. Thus the applicants were correctly shown in the seniority list dated 1.6.93 (Annexure G). These respondents have raised a preliminary objection regarding limitation stating that the applicants have been assigned seniority in the seniority list dated 1.6.93 lower than the respondents 4 to 7. If they were aggrieved, they should have filed their OA within the limitation period. These respondents have further contended that the applicants have no vested right for being deputed for training at an early date. It is a settled legal position that merely because a candidate is selected and kept in waiting list, he does not acquire any absolute right for appointment. Respondents 4 to 7 had completed the requisite

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training from 4.10.90 to 3.10.92 (Annexure A-10) and on completion of their training, they were appointed as chargeman grade Rs.1400-2300 on 5.10.92 vis-a-vis the applicants who were appointed on 9.12.92.

4. Respondents 4 to 7 in their counter have stated that they were declared successful and were placed on select list dated 7.6.90 for the post of Intermediate Chargeman (Annexure E) against 25% quota. They were sent on training on 1.10.92. After their training, they were posted with effect from 5.10.92. On the other hand, the respondents were sent for training on 1.10.92 though their selection had been declared on 7.6.90. The respondents were appointed as Chargeman grade Rs.1400-2300 vide Annexure F whereafter the seniority list dated 1.6.93 was brought out. These respondents have also taken the plea of limitation as the cause of action for the applicants had arisen with the seniority list dated 1.6.93. According to these respondents, the provisions of rules 302 and 303 of IREM Vol.I have been fully complied with in according seniority and promotion to these respondents by respondents 1 to 3.

5. We have heard learned counsel of private as well as official respondents. We have waited for the learned counsel of applicants till 2.30 P.M. Although Ms. Meenu Mainee appearing as proxy on behalf of Shri Bhandari, learned counsel for the applicants requested for adjournment on account of Shri Bhandari, we could not accommodate the request and have proceeded under Rule 15 of CAT (Procedure) Rules.



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6. Learned counsel of respondents 1 to 3 and 4 to 7 have contended that cause of action of the applicants arose with the issuance of seniority list dated 1.6.93 (Annexure G to the counter of respondents 4 to 7) and not w.e.f. the seniority list dated 31.12.1996 (Annexure A-1 to the OA). Our attention has also been drawn to Annexure A-19 dated 14.9.95 in which the applicants had requested the respondents to prepare a fresh seniority list placing their names above those of respondents 4 to 7. Annexure A-1 dated 31.12.1996 appears to be only a periodic repetition of the earlier seniority list dated 1.6.93. The issuing of periodic seniority list does not give a fresh cause of action to the applicants. In our view the cause of action for the applicants had arisen with the issuing of earlier seniority list dated 1.6.93. The present O.A. has been filed on 24.9.98, i.e., after a lapse of more than 5 years from the issuance of seniority list dated 1.6.93. Learned counsel of the applicants contended that the cause of action for the applicants had arisen with the issuance of fresh seniority list dated 31.12.1996. We are unable to accept the contention of the learned counsel of the applicants in this behalf, in view of the fact that seniority list had been issued on 1.6.93, ^{and by} applicants had made a representation on the basis of the same for seeking allocation of seniority over the respondents. Reliance is placed on the law laid down by Hon'ble Supreme Court in the case of Gurdev Singh Vs. State of Punjab, JT 1991 (3) SC 465 that statute of limitation intended to provide a time limit for all

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suits conceivable. Repeated representations do not extend the period of limitation as per the law laid down by Hon'ble Supreme Court in the case of S.S. Rathore Vs. State of M.P., SLJ 1990 (1) SC 98.

7. Though the present OA, as discussed above, is hit by limitation ^{but} yet we proceed to discuss the merits of the case as well.

8. Rule 302 of the IREM Vol.1 reads as follows:-

Para 302- Seniority in initial recruitment grades.

Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in case of promotees and date of joining the working post after due process in case of direct recruitment, subject to maintenance of inter se seniority of promotees and direct recruits among themselves. When dates of entry into a grade of promoted railway servants and direct recruits are the same, they should be put in alternate positions, the promotees being senior to direct recruits, maintaining inter-se seniority of each group.

Note:

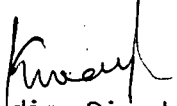
— In case, training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training (No.E[NG] I-78-SR-6-42 dated 7.4.1982)." (emphasis supplied)

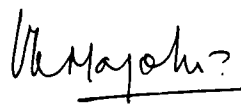
9. In the present OA, the categories of posts involved are partially filled by direct recruitment and partially by promotion. In terms of Para 302 of IREM Vol.I, the criteria for determination of

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seniority in respect of categories of posts partially filled by direct recruitment and partially by promotion is the date of regular promotion after due process of selection in the case of promotees and the date of joining the working post after due process in the case of direct recruits subject to maintenance of inter-se seniority of promotees and direct recruits amongst themselves. We find that the applicants after completing the training, joined the working post of chargeman grade Rs.1400-2300 on 9.12.92 (Annexure A-15). On the other hand, respondents 4 to 7 were selected as Intermediate Apprentice Mechanics against 25% quota for serving employees ^{and} _L were earlier posted as chargeman grade Rs.1400-2300 from 5.10.92. Thus, from the facts of the case and on application of the principles envisaged in Para 302 of the IREM Vol.I in respect of the direct recruits as well as promotees, we find that the applicants were correctly shown in the seniority lists dated 1.6.93 and 31.12.96 and they have not been able to establish the case for interference with the OA.

10. Having regard to the reasons and discussion made above, we do not find any merit in the OA, which is dismissed accordingly. No costs.


(Kuldip Singh)
Member (J)


(V.K. Majotra)
Member (A)

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