

Central Administrative Tribunal, Principal Bench

(9)

Original Application No. 356 of 1998

New Delhi, this the 12th day of September, 2000

Hon'ble Mr.Kuldeep Singh, Member(Judicial)
Hon'ble Mrs. Shanta Shastry, Member (Admnv)

1. Shri Arun Shanker, S/o Shri Uma Shankar, Working as Commercial Inspector, Northern Railway, Baroda House, New Delhi, R/o House No.115, Venus Apartments, Inder Enclave, Rohtak Road, Delhi-110041.
2. Shri Surinder Pal Singh, S/o Shri Ajit Singh Working as Commercial Inspector, Northern Railway, Baroda House, New Delhi, Resident of-Applicants

(By Advocate Shri S.K.Sawhney)

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Chelmsford Road, New Delhi. - Respondents

(By Advocate Shri R.P.Agarwal)

O R D E R

By Mrs.Shanta Shastry, Member (Admnv)-

In this case applicants 1 & 2 initially joined as Goods Clerk and Booking Clerk respectively on 9th May, 1977 and 18th April, 1973 respectively. Thereafter both of them were selected as Commercial Apprentices against 10% departmental quota vide letter dated 17.7.1984. Both of them underwent training for the period from 23.8.1984 to 23.12.1985. On completion of their training they were posted in Delhi Division vide letter dated 23.1.1986.

2. The respondents issued a seniority list dated 1.10.1987 wherein the applicants were assigned seniority with reference to their date of posting and not with reference to the date of their empanelment. Aggrieved by aforesaid seniority, the applicants submitted a representation on 12.10.1987 (Annexure-A-11) to assign them seniority with reference to their date of

empanelment i.e. 17.7.1984. However, there was no response. In the meantime some similarly placed persons in Allahabad Division filed OA No.1232 of 1988 (Lal Bahadur Chauhan & others Vs. Union of India and others) before the Allahabad Bench of this Tribunal. The same was decided on 25.11.1992 in favour of the applicants in that OA. The applicants in the present case also approached the respondents to give them the benefit of the judgment in the case of Lal Bahadur Chauhan (supra). The respondents filed SLP against the said judgment. However, it was dismissed on 2.3.1994 and thereafter the judgment was implemented in April, 1995. Again the applicants being similarly situated made a joint representation on 2.5.1995 followed by reminders and finally their representation was rejected on 21.1.1998 wherein it was clearly stated that it was not feasible to recast the seniority of the applicants as requested by them.

3. It is the contention of the applicants that they were similarly placed as the applicants in the case of Lal Bahadur Chauhan (supra). In fact the applicants in that case had also undergone training along with the present applicants and were also placed on the panel earlier to the date of their being sent on training. The applicants are drawing support from the Supreme Court judgment in Prem Devi Vs. Delhi Administration, I (1989) ATLT (SC)730 for extending the benefit of the decision in the case of Lal Bahadur Chauhan (supra). Further the learned counsel also states that the applicants are entitled to be treated as promotees under Para 302 of Indian Railway Establishment Manual, 1989

(for short 'IREM'). The grounds mentioned by the respondents in the impugned order had already been considered and rejected by the Tribunal in the case of Lal Bahadur Chauhan (supra).

4. The respondents have taken a plea of limitation as the applicants are praying for their seniority as Commercial Inspector from the date of their placement on the panel of 17.7.1984 instead of from 23.1.1986. The cause of action, therefore, arose on the issue of order dated 23.1.1986. Further the seniority list was issued on 1.10.1987. The present OA has been filed on 13.2.1998 i.e. after expiry of more than 9 years. Repeated unsuccessful representations do not create any fresh cause of action. Limitation cannot be extended on that ground as has been well held by the Hon'ble Supreme Court in the case of S.S.Rathore Vs. State of M.P., (1989) 4 SCC 582. The respondents assert that as per Para 302 of the IREM the seniority to direct recruits is given from their date of resumption of duty. Accordingly, the applicants have been assigned the seniority from the date they resumed their duties as Commercial Inspector. There is no provision in the rule to assign seniority from the date of empanelment to the candidates recruited directly or appointed through promotional quota. According to the respondents the Allahabad Bench of the Tribunal in the case of Lal Bahadur Chauhan (supra) has allowed the benefit of seniority to Commercial Apprentices above the erstwhile juniors only and has not struck down the principle of allowing seniority from the date of joining as laid down in Para 302 ibid.

5. We have given our careful consideration to the

arguments advanced by the learned counsel for both the parties and have also perused the decision in the case of Lal Bahadur Chauhan (supra). We find that the applicants' case is fully covered by the decision in the case of Lal Bahadur Chauhan and the benefit of the judgment should have been extended to them. The argument of the respondents that according to Para 302 ibid the seniority can be given only from the date of joining and not from the date of empanelment has been taken care of in the judgment of Allahabad Bench of the Tribunal in the case of Lal Bahadur Chauhan (supra). The Tribunal held that the applicants fall within the category of promotees and not under the category of direct recruits and, therefore, Para 302 ibid is not applicable in their case. The respondents were, therefore, asked to refix the seniority of those applicants published on 10.2.1987 while allowing their case.

6. Since the applicants in the present case are similarly placed as the applicants in the case of Lal Bahadur Chauhan (supra), the argument of the respondents is not tenable especially when their SLP was also dismissed by the Hon'ble Supreme Court. Further, we find that the General Manager of the Railways himself recommended to the Railway Board, ^{the} granting of the benefit of the judgment in the case of Lal Bahadur Chauhan vide his letter dated 3.7.1995 (Annexure-A-10) to Commercial Apprentices in Ferozpur Division. It establishes that the persons in Ferozpur Division were similarly situated as those in Allahabad Division.

7. The only point that remains for consideration is of limitation. As has been pointed out by the

respondents the cause of action actually arose in 1986 when the applicants posting orders were issued after they had completed their training. A seniority list was issued on 1.10.1987. The applicants made representations. Normally, they should have approached the Tribunal after six months of making their representations, which they have not done. The decision in the case of Lal Bahadur Chauhan (supra) was given in 1992. The applicants should have approached at least immediately thereafter. No doubt there has been a delay on the part of the applicants in approaching this Tribunal. However, it is seen that their representation was rejected on merits in 1998 by the impugned order dated 21.1.1998. This has given rise to the fresh cause of action. It has been held in the case of S.Raghuraman Vs. Union of India, (1989) 11 ATC 495 (Mad) that limitation starts from the rejection of the second representation which has been so rejected after consideration at length and not by mere reference to the rejection of the earlier representation. In the instant case as has been already pointed out, the respondents have rejected the representation clearly on merits only on 29.1.1998. This being so, we are inclined to over-rule the objection regarding limitation particularly when we feel that it was not proper on the part of the respondents to have denied the benefit of the judgment in the case of Lal Bahadur Chauhan (supra) wherein the applicants happened to be colleagues of the applicants in this case. In the facts and circumstances of the case, the applicants are entitled to similar relief as was granted to the Commercial Apprentices in Allahabad Division in pursuance of the judgment in the

case of Lal Bahadur Chauhan (supra).

8. In the result, the OA is allowed. The respondents are directed to recast the seniority of the applicants on the post of Commercial Inspector from the date of their empanelment w.e.f. 17.7.1984. However, the applicants shall not be entitled to any back wages or arrears and their pay shall be fixed on proforma basis. In the facts and circumstances of the case the parties shall bear their own costs.

Shanta

(Mrs. Shanta Shastry)
Member (Admnv)

Kuldeep

(Kuldeep Singh)
Member (Judicial)

rkv