

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1257/97
T.A. No.

199

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DATE OF DECISION 31-5-2000

Sh. Birbal Singh

....Petitioner

Sh. P. M. Ahlawat

....Advocate for the
Petitioner(s)

VERSUS

UOI through the GM(NR)
and ors.

....Respondent

Sh. R. L. Dhawan

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri H.O. Gupta, Member (A)

1. To be referred to the Registrar or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 1257/97

New Delhi this the 31st day of May, 2000

(24)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri H.O. Gupta, Member(A).

Birbal Singh,
S/o Shri Ram Bahadur Singh,
Driver,
Assistant Bridge Engineer (Special),
Northern Railway, Lajpat Nagar,
New Delhi. Applicant.

By Advocate Shri P.M. Ahlawat.

Versus

Union of India, through

1. The General Manager,
Northern Railway,
Baroda House, New Delhi-110001.
2. Shri Ram Sewak
S/o Shri Raja Ram,
Driver Grade II,
C/o Assistant Bridge Engineer (Line),
Northern Railway,
Tilak Bridge, New Delhi. Respondents.
3. Shri Sarwan Kumar,
S/o Shri Saliq Ram,
Driver Grade-II,
C/o Assistant Bridge Engineer (Line),
Northern Railway,
Tilak Bridge, New Delhi. Respondents.

By Advocate Shri R.L. Dhawan.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has impugned the order passed by respondent 1 dated 22.4.1996/6.5.1996 (Annexure A-I), in which it has been stated that the applicant cannot be given the benefit of seniority at par with S/Shri Ram Sewak and Sarwan Kumar, Motor Driver Grade-II, who have been impleaded as respondents 2 and 3 in the O.A.

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(25)

2. In the aforesaid impugned order, the respondents have stated that respondents 2 and 3 were given direct recruitment as Motor Drivers Grade-III as they were considered fit for the said posts at the time of initial appointment with effect from 12.6.1979 and 15.6.1979, respectively. According to them, the applicant was trade-tested from Khalasi unskilled to Motor Driver in 1981 and, therefore, respondents 2 and 3 remained senior to him. This stand taken by the official respondents has been assailed by Shri P.M. Ahlawat, learned counsel for the applicant. He has submitted that both respondents 2 and 3 were initially engaged as casual labourers on 12.6.1979 and 15.6.1979, respectively, whereas the applicant had been initially engaged as casual labourer w.e.f. 29.11.1977. He has also submitted that according to the seniority list of Class III of ABE/L/TRJ as on 31.3.1994, the applicant has more working days to his credit as compared to the other two persons as in August, 1989. Shri P.M. Ahlawat, learned counsel, has submitted that respondents 2 and 3 are junior to the applicant and have also not been trade-tested in the skilled category of Motor Drivers, as submitted by the respondents in their reply.

3. Respondent 1 has stated in paragraph 1 of the reply that respondents 2 and 3 were directly appointed after qualifying in the trade test in the skilled category of Motor Drivers in the pay scale of Rs.260-400 (RPS) w.e.f. 15.6.1978 and 7.11.1978 (sic) They have stated that on the other hand the applicant was promoted as Motor Driver Grade-III in the same panel after passing the trade-test of Motor Driver on 6.2.1981. Hence, Shri R.L. Dhawan, learned counsel has

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contended that these two persons were senior to the applicant, and there was no violation of the Rules while promoting them as Motor Drivers Grade-II.

4. As no documents had been annexed by respondent 1 regarding the aforesaid averments made in the reply that respondents 2 and 3 were directly recruited as Motor Drivers w.e.f. 15.6.1978 and 7.11.1978, respectively, we had asked them to produce the Service Books of these two persons. This has been done by the learned counsel for the respondents and we have perused the Service Books.

5. In the first page of the Service Book of respondent 2, it is seen that he has been designated as Motor Driver and his date of appointment is shown as 12.6.1979. Similarly, in the case of respondent 3, his designation has also been given as Motor Driver and the date of appointment is shown as 15.6.1979. In both the cases, it has also been stated that the new appointments have been done after completion of 120 days. On the second page of both the Service Books of respondents 2 and 3, there is a note which reads as follows:

"Granted revised scale of pay w.e.f. 12.6.1979 (15.6.1979 in case of respondent 3) as Motor Driver in grade 260-400 R/S as a temporary measure on local arrangement and pending selection by Screening Committee which the candidate will have to qualify in case of his failures the services will be terminated and subject to pass the medical test in B-I as approved by SEN (Bridges, N.Dls) letter No. 252-E/1(BE) of 1.6.79"

(Emphasis added)

6. From the above, it is seen that neither of the respondents 2 and 3 have been appointed as Motor Drivers in the skilled category, in the pay scale of Rs. 260-400 on a

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regular basis, as stated by Respondent 1 in the reply. The statement of Respondent 1 that they have been appointed as Motor Drivers in the skilled category w.e.f. 15.6.1978 and 7.11.1978, respectively, after qualifying the trade test is totally incorrect, as seen from the records submitted by them. In view of these facts, we had called upon respondent 1 to produce the relevant file from which the statement made in paragraph I of the counter reply has been given. Subsequently, Shri R.L. Dhawan, learned counsel, has submitted that they have not been able to trace the relevant file which they were required to produce by order dated 25.5.2000. The above facts clearly show that respondent 1 has not been able to substantiate the contentions that respondents 2 and 3 were directly appointed, after qualifying the trade test. In fact, the entries in the relevant Service Books of these two persons clearly show to the contrary that they were appointed as Motor Drivers w.e.f. 12.6.1979 and 15.6.1979, respectively, as a temporary measure on local arrangement basis, pending selection by the Screening Committee. In the facts and circumstances of the case, the statements made by respondent 1 are not based on records, which is a serious matter and shall be looked into by the General Manager/ respondent 1, to fix responsibility on the concerned official(s) who have made the wrong statements before the Tribunal. In the facts and circumstances of the case, we find merit in the application that the subsequent promotions given to respondents 2 and 3 as ad hoc Motor Drivers Grade-II, which is not based on correct seniority, are liable to be quashed and set aside.

7. In the result, for the reasons given above, the application is allowed with the following directions:

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(i) The impugned order dated 22.4.96/6.5.1996 is quashed and set aside;

(ii) Respondent 1 to consider the case of the
applicant for promotion as Driver Grade-II and assign
him the correct seniority over respondents 2 and 3 as
Driver Grade-III with consequential benefits in
accordance with law;

(iii) The General Manager shall take suitable action against the concerned official(s) regarding the observations made in para 6 above;

(iv) The above action shall be taken within two months from the date of receipt of a copy of this order;

(v) In the circumstances of the case, Respondent 1 shall pay Rs. 4000/- (Rupees four thousand) as costs to the applicant.

(H.O. Gupta)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

'SRD'