

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

Original Applications Nos. 1659/1993 & 2141/1997

New Delhi this the 10th day of September, 1999.

**Hon'ble Mr. Justice K. M. Agarwal, Chairman
Hon'ble Mr N. Sahu, Member (Admnv)**

O.A. 1659/1993

1. Ms. Manisha Sharma D/o Mr. S.P. Sharma, 257/1B, Railway Officers' Colony, Panchkuian Road, New Delhi -110 001.
2. Mr. Vinayak Rao S/o Mr. K. Vasudeva Rao, B.No. 609-A, Railway Officers' Colony, Kota Ju. (Rajasthan)-324002.
3. Ms. Uma Ranade (nee Keshav Gokhle) D/o Mr. K.B. Gokhle, B-5, Railway Officers' Colony, Jhansi.
4. Ms. Indumati Srinivasan D/o Mr. C. S. Srinivasan, 320, 14th Main Road, Rajmahal Villas Extn., Bangalore-560080.
5. Mr. Dhruv Singh S/O Mr. K.S. Singh, RB-V/878, Rly. Officers' Colony, Jhansi.
6. Mr. Om Prakash D/o Mr. K.N. Pandit, Baker Ganj Gola Road, Patna-600004.
7. Mr. Ranjanesh Sahai S/o Mr. M.K. Sahai, 974-B/RB-V, Rly. Officers' Colony, Jhansi.
8. Ms. Manika Jaiswal (nee Bisaria) D/o Mr. M.S. Bisaria, B-1035, Indira Nagar, Lucknow.
9. Mr. Prashant Mishra S/o Mr. K. K. Mishra, C/O Dr. (Mrs.) A. Mishra, Kumar Kumj Colony, Moradabad-244001 (UP). - Applicants
(By Shri Suhail Dutt with Shri Viplav Sharma & Ms. Mridul Sharma, Advocates)

Versus

1. Union of India through the Secretary, Railway Board, Rail Bhawan, New Delhi.
2. The Principal, Railway Staff College, Lalbaug, Baroda.
3. Sh. Mohit Sinha, Dy. Director (Stats.), Railway Board, Rail Bhawan, New Delhi.

4. Sh. Vishwanathan Jayaraman, D.A.O. Mysore Division, C/O Divl. Rly. Manager, Mysore Division, Southern Railway, Mysore.

5. Ms. Tanuja Pandey, D.A.O., Allahabad Division, C/O Divl. Rly. Manager, N. Rly, Allahabad Division, Allahabad (UP).

6. Ms. Sumita Sarkar, Sr. Accounts Officer (Stores), C/O F&CAO, Eastern Railway/HQ., Calcutta.

7. Sh. Amit Kaushik, W.A.O./Jhansi Workshop, C/O Dy. C.M.E., Jhansi Workshop, Central Railways, Jhansi, (U.P.).

8. Sh. P. Sivaram Prasad, S.A.O., C/O FA&CAO's Office, South Eastern Railway/HQ., Calcutta.

9. Sh. A.K. Vajpayee, D.A.O., Lucknow Division, C/O DRM, North Eastern Rly, Lucknow Division, Lucknow. U.P.

10. Sh. S. K. Kaushik, T.C.O., C/O FA&CAO's Office, South Central Railway/ Hq., Secunderabad.

11. Sh. Brajendra Kumar, D.A.O./Sonepur Division, C/O Divl. Rly. Mgr, North Eastern Rly, Sonepur Division, Sonepur (Bihar).

12. Sh. Pawan Singh, D.A.O., Khurda Road Division, C/O Divl. Rly. Mgr., South Eastern Railway, Khurda Road, Khurda Division.

13. Sh. Jagmohan Gupta, W.A.O./Parel, C/O FA&CAO/West Central Railway/HQ., Bombay VT, Bombay.

14. Smt. Binita Narain Dass, D.A.O./Dhanbad, C/O Divl. Rly. Manager, Eastern Railway, Dhanbad (Bihar).

15. Sh. R.K. Minocha, W.A.O./Izzatnagar, C/O D.R.M., North Eastern Rly., Izzatnagar Division, Bareilly (UP).

16. Sh. P.K. Bansia, S.A.O/Ic., C/O FA&CAO, Western Railway/HQ., Churchgate, Bombay.

17. Ms. Kakoli Mitra, S.A.O./Const., Ahmedabad, C/O FA&CAO, Western Railway/HQ., Churchgate, Bombay.

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18. Sanjay Luvania, D.A.O./Rajkot Division, C/O Divl. Rly. Mgr., Western Rly, Rajkot Division, Rajkot (Gujarat).
19. Ms. Ruby Ahluwalia, S.A.O./IC., C/O FA&CAO, Western Railway/HQ., Churchgate, Bombay.
20. Sh. A.K.Singh, D.A.O./Nagpur, C/O DRM, South Eastern Rly, Nagpur Division, Nagpur (Maharashtra). - Respondents
(By Shri K. T. S. Tulsi, ASG with Shri Madhav Panikar for Official Respondents, and Shri S. P. Singha, Adv., for Respondents 3, 7, 9 & 12)

(2) O.A. 2141/1997

Ms. Neelam Sanghi Agarwal, C/O Dr. Sanjeev Sanghi, 6-J, Street I.I.T. Campus, Hauz Khas, New Delhi-110016. - Applicant

(By Shri K. R. Sachdeva, Advocate)

Versus

1. Union of India through Secretary, Railway Board, Rail Bhawan, New Delhi.
2. Principal, Railway Staff College, Lal Bagh, Baroda.
3. Bandilamudi Singaih, C/O FA&CAO, S.R. Head Quarter, Southern Railway, Madras.
4. Sh. Amitabh Banarjee (NR), D.A.O. Delhi Division, D.R.M. Office, New Delhi.
5. Purna Mani Kyan Parupudi (SER), Deputy FA&CAO, Construction, Southern Railway, Bangalore.
6. Manjusha Gupta (NER), Faizabad Road, Lucknow.
7. P.V.Leela (NR), S.A.O.(T), Traffic Accounts Office, Kishan Ganj, Delhi.
8. Anand Prakash, Sr.D.A.O., Bhusawal Division, Central Railway, Bhusawal.
9. Preeti Rastogi (WR), S.A.O. (Budget), Northern Railway (HQ), Baroda House, New Delhi.
10. Sh.Arun K. Bijalwan (SR), Joint Director Finance-II, R.D.S.O. Lucknow.

11. Santosh Kr. Pattanayak (SER),
Sr.D.A.O., Visakhapatnam Divn., South
Eastern Railway, Visakhapatnam, A.P.

12. Avinash Verma, Dy. FA&CAO & S&W,
Eastern Railway Headquarters, Howraw.

13. Ms. Prerna Sood (SR),
S.A.O.(Administration), Northern
Railway HQ., Baroda House, New Delhi.

14. Ms. Anita Narain Biswas (WR),
Sr.EDPMI, Western Railway Headquarters
Churchgate, Mumbai.

15. Jai Narain Pandey, Dy. C.V.O.
Accounts, North Eastern Railway Head
Quarters Gorakhpur, U.P.

16. Yogesh Kr. Srivastava, Sr.EDPM, North
Eastern Railway Head Quarters,
Gorakhpur (UP).

17. Gundinder Singh Hira, Dy. FA&CAO,
D.C.W. Patiala, Punjab.

18. Prabhat Kr. Sinha, Sr.DAO, Sialdah
Division, Eastern Railway, Howraw. - Respondents
(By Shri K. T. S. Tulsi, ASG with
Shri Madhav Panikar, Adv. for Official
Respondents)

Common Order

By Mr.N.Sahu, Member(Admnv)-

The prayer in OA 1659/93 is to quash the impugned seniority list dated 16.3.1993 which revised to the disadvantage of the applicants their inter se seniority with other members of the batch. The applicants seek a direction to restore their seniority strictly on the basis of the rank secured by them in the Civil Services Examination (in short 'CSE'), 1986 and also declare that the instruction dated 3.7.1987 is ultra vires the statutory rules. In OA 2141/97 the prayer is to quash the seniority list dated 7.5.1997 and direct the respondents to restore her seniority fixed by the rank in the UPSC merit list pursuant to

the CSE, 1988 conducted by the UPSC. The applicant also seeks a direction to promote her to the Junior Administrative Grade keeping her original seniority position.

2. The background facts and the issues involved in both the OAs being common they are taken up together for disposal in a common order.

3. Briefly stated, the applicants in O.A. No. 1659/93, belong to the 1986 batch and the applicant in O.A. No. 2141/97 belongs to the 1988 batch of candidates selected by the U.P.S.C. for All India Services. All the applicants in both the O.As were allotted Indian Railway Accounts Service, (in short, "IRAS"). They were, thus, direct recruits to IRAS. Prior to the impugned basis for fixation of inter se seniority of direct recruits to the post of IRAS, the relative seniority of such officers by direct recruitment used to be determined by the order of their merit in the select list prepared by the U.P.S.C. This was in accordance with paragraph 4 of the General Principles for determination of Seniority in the Central Services laid down by the Department of Personnel and Training vide its office memorandum No. 22011/7/86-Estt.(D), dated the 3rd July, 1986, which reads as follows :

"4. Direct Recruits.- Notwithstanding the provisions of para 3 above, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment, on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection:

Provided that where persons recruited initially on temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment seniority shall follow the order of confirmation and not the original order of merit."

Now the basis adopted is as indicated in the Railway Board's letter No.E(Trg)86(13)/3 dated 3.7.1987, which is impugned. According to the new basis for fixation of inter se seniority of direct recruits to the post of IRAS, marks obtained by the officers from the Director, Lal Bahadur Shastri National Academy of Administration, (in short, "LBSNAA"), Mussoorie and Principal, Railway Staff College, (in short 'RSC') Baroda during the period of their training are also taken into account. It appears that on this new basis, the seniority of the applicants in both the O.As on the basis of merit list prepared by the U.P.S.C. is disturbed and, therefore, they have filed the aforesaid O.As for the said reliefs.

4. The grounds raised by the applicants in the pleadings and written arguments are as under :-

(i) 37 probationers of the 1986 CSE batch joined IRAS at different places on 8 different dates spread over a period of 1 year 7 months; while 16 probationers joined the RSC Baroda on 15.2.1988, at least two probationers joined a year later on 6.3.1989. There was no common classes, common training and uniform evaluation. The IRAS Rules, 1966 framed under Article 309 of the Constitution prescribes a period of probation of two years and prescribes for the termination of the appointment if an individual fails to pass all the departmental tests

within three years of the date of appointment. We shall take as an illustrative example while dealing with all the facts and arguments the case of applicant no.1 in OA No.1659/93. She successfully completed her foundation course training and got a letter of appointment on 11.1.1988, paragraph 5.2 of which conveyed that the inter se seniority of the probationers would be decided on the basis of marks obtained by them during the probationary period along with the marks obtained by them in the UPSC examination. This was obviously pursuant to the administrative instructions dated 3.7.1987. It is important to note the language in paragraph 6.2 of the instructions which is as follows :- "The inter-se seniority of Group A probationers of a particular examination batch and of a particular service, on their confirmation to junior scale, will now be decided on the basis of marks obtained by them during the probationary period as indicated above and marks obtained by them in the U.P.S.C. competition (or during the apprenticeship training of for SCRA's)". Two conditions were fixed : all probationers of a particular service will commence and complete their probationary training together. The most important ground raised by the applicants is that this condition has not been satisfied.

(ii) The instructions dated 3.7.1987 were issued as a consequence of the decision taken in the DOPT's meeting dated 13.6.1986 wherein all the Central Government services were advised to make suitable amendments to their rules so as to provide for the inclusion of marks obtained during training period

including Director's assessment to make the probationary training more effective. It is pointed out that such a provision is available even before 1986 in the Indian Administrative Service and Indian Police Service Recruitment Rules as part of the Rules. Accordingly the cadre controlling authorities of other services did not implement this suggestion till the rules were amended. The Indian Revenue Services amended the rules in 1994 and the Indian Railway Service amended the rules in 1997 to bring the above provision as part of the Rules and thereafter only this was implemented. The point made by the learned counsel for the applicants is that the Railway Administration had introduced this provision as early as on 3.7.1987 by way of administrative instructions, which it is settled law cannot override or be inconsistent with statutory rules.

(iii) Applicant no.1 in OA 1659/93 was promoted to Senior Scale on adhoc basis in November, 1990 and regularised in August, 1991 and her UPSC order of merit as no.1 was preserved. A Gazette notification was issued on March 18, 1991 confirming all the CSE 1986 batch probationers in the same UPSC order of merit. It was only after 5 1/2 years after the applicant's joining IRAS that the impugned seniority list dated 16.3.1993 was issued altering her seniority from no.1 to no.10. Even in OA 2141/97 the change in seniority position has been issued by the revised seniority list dated 7.5.1997 six years after the completion of probation of the applicant and 8 years after her joining the service, changing her seniority from serial no. 3 to serial no.19. The

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applicant impugns this as malafide and illegal.

(iv) According to the additional affidavit filed, another seniority list dated 17.3.1998 which is also impugned included the name of Shri S. Bhattacharjee at no.1 from his earlier rank at no.10. This brought the applicant down by one more position. Shri Bhattacharjee joined probationary training on 6.3.1989 i.e. roughly two years after the applicants had joined.

(v) The applicant's contention is to set aside the administrative instructions dated 3.7.1987 on the ground that there is no intelligible nexus between probationary training and fixation of inter se seniority.

(vi) Probationary training can have a bearing on confirmation, grant of increment or extension of probationary period but there is no justification to link inter se seniority with probationary training. The rules require probationers to pass only departmental tests in terms of Rule 30 of the IRAS Rules. There is no scope in the rules for disturbing inter se seniority and administrative instructions cannot supersede or amend statutory rules of service.

(vii) Even according to para 10.3 of the letter dated 3.7.1987 on the basis of which the impugned seniority lists are issued, it is mentioned that for IRAS probationers the marks regarding performance will be awarded by the Principal, RSC, Baroda as per instructions which were never issued.

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5. The learned senior counsel Shri K.T.S.Tulsi appearing for the Union of India submits that the IRAS Rules, 1966 do not provide for the mode of determination of inter se seniority between the direct recruits. Therefore, this being an unoccupied field, the Government is fully empowered to issue administrative instructions prescribing the method of inter se seniority. He submits that there is no conflict between the rules and the instructions. He further submits that the instructions dated 1.7.1987 were issued for streamlining the probationary training and for making training more effective. He states that the detailed guidelines were incorporated to minimise the chances of subjective assessment. He disputes the submissions of the applicants that if the marks awarded to the different applicants under the head of Director's assessment were to be excluded it would radically change the order of merit. He states that except for two or three probationers the performance of the others did not undergo a radical change as a result of Director's assessment. The detailed marks in respect of each of the probationers of 1986 batch was made available in two sealed covers. He cites the decision in the case of M.P.Chanodria Vs. State of M.P. (1996) 11 SCC 173 wherein the Hon'ble Supreme Court has upheld the procedure of determination of seniority according to performance in the departmental examination.

6. We have carefully considered the submissions. The contentions of the rival counsel are focussed on the legality of the instructions dated

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3.7.1987 on the basis of which the marks obtained during probationary training will be aggregated with UPSC marks. The inter se seniority position of the probationers of that batch will consequently be refixed. The next important aspect of the argument of the applicants is related to wrongful and arbitrary implementation of the impugned administrative instructions. We are satisfied, even without going into the legality or validity of the impugned administrative instructions, the implementation is so arbitrary and whimsical that it does not conform to openness, fair play and transparency which are hallmarks of rule of law.

(i) First : The conditions for implementation of the scheme as mentioned above were not fulfilled, namely, that all the probationers shall commence and complete their training together so that they can have a uniform training and uniform assessment as a batch. As mentioned above 37 probationers of 1986 batch joined at different places on different dates over a period of 19 months and completed their training over a span of 6 1/2 years. It is inconceivable as to how comparative merit assessment is possible. In such a situation the basic condition of implementation of the scheme has not been adhered to.

(ii) Secondly, Respondent no.2 has been given unfettered discretion. It is alleged that seniority of respondents 3 to 20 have been revised in their favour due to alleged favouritism shown by respondent no.2. Most glaring is the instance of 14 probationers of applicant no.1 (Manisha Sharma)'s

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batch, who have failed repeatedly in departmental examinations but have gained rank in seniority. Shri J.S.Thakur and Ms.Kohali Mitra who repeatedly failed to pass departmental tests within the three year period as per rules, should have their services terminated under Rule 3 of the Recruitment Rules, 1966. But, they either maintained or gained their rank in the impugned seniority list. 350 marks were allocated for Director's Assessment. It was a subjective assessment without any objective components on periodical feedbacks on subjects like: knowledge of law; mental ability; managerial ability; sports activity; cultural activities etc. Annexure R-5 to the counter shows how the Director's assessment played havoc with regard to six of the nine applicants (Sl. Nos. 2, 3, 5, 6, 8 and 9).

(iii) Third : We have gone through the sheet furnished in a sealed cover. We will take the example of Ms. Manisha Sharma who secured the first position in the UPSC merit list. Her UPSC marks were 1068. She secured 583.14 marks in the written examinations in RSC Baroda. She secured 229 marks by way of Director's assessment. Her merit position in RSC is 15 and her revised merit is 10. There is no break up of this 229 and as to how it was arrived at. Respondents 1 & 2 never disclosed the detailed marks of the applicant. Detailed break up and basis of awarding general performance marks and marks for maintenance of diaries and separate marks for practical and field training had never been exhibited or communicated to the applicant. Written reports of the marks of every semester were never communicated to

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the applicant, on the contrary oral feed back of the performance of the probationers for 210 marks were stated to be obtained. There is neither any method nor proof about what the oral feed back was. The probationers were like students of a professional school. Each semester and for each course they are entitled to know the marks obtained by them. If they had been failing to come up to the standard, they should have been forewarned about it so that they might improve in the next semester. They should have been sent progress card in order to show transparency, fair play and objectivity. As to what exactly was the feed back from the Group Monitors, how the feed back was transposed into marks, what was the method of appraisal; how marks were given under various heads; were never made known. Thus, the entire system lacked transparency; fair play and objectivity. In the IAS and IPS where this scheme was introduced the probationers were never kept in the dark. Within six months of the training and even during the training they knew the marks under each head. Assessments made and the advice given are all noted and the performance appraisal was a contemporary record. On the contrary, we have in the applicants' case a mysterious system of what has been called oral feed back of probationers' performance conveyed to the Director who also did not convey what her assessment was in the course of the training. It is stated that these marks were exhibited in the notice board. This is contrary to instructions which say that this should have been individually communicated contemporaneously at the end of each semester because these marks eventually tell

upon the seniority. The practice is, therefore, contrary to para 6.4 of the administrative instructions dated 3.7.1987 under which respondent no.2 was to communicate within six months after completion of probationary period and this could not be done because the probationary training never commenced or completed together.

(iv) Fourthly, as per para 10.3 of the instructions, marks in relation to the head of Department's assessment were to be awarded by the Principle RSC Baroda as per separate instructions. This was not done. Respondent no.2 arrogated to herself the authority contrary to these instructions. It is alleged without contradiction that daily diaries were not supervised and assessed and the assessment marks were never communicated.

(v) Fifthly, the most important point is that on 24.8.1987 the date of appointment to IRAS of the applicants in OA 1659/93 the UPSC order of merit was taken as the basis for fixation of seniority. This rule continued for conferment to Junior Scale and promotion to Senior Scale according to Rule 19 Note 2 of the IRAS 1966 Rules. Applicant no.1 [to take one instance] was given promotion to Senior Scale prior to respondent no.5. At the time when the promotions to Junior Scale and Senior Scale were made, the probationary marks by way of Director's assessment at the RSC were available to the respondents. They did not take that into account and granted the promotions in accordance with the UPSC merit ranking. It is inconsistent as to how they suddenly altered this confirmed position in 1993. The most fair and

reasonable thing should have been to openly declare the results in 1988 or 1989 and publish inter se seniority variations then and there. On the contrary they took six years to change the seniority and in the meanwhile the applicants were promoted according to UPSC ranking. We are of the view that this was an arbitrary exercise of power and falls foul of Article 14 of the Constitution.

(vi) Sixth, in OA 2141/97 admittedly the marks were never communicated either during the training period or thereafter. Even before us, her marks are not shown. We are unable to understand as to why para 6.4 directed that secrecy should be maintained in transmission of the records of probationers. We are surprised that for students who have come from an open competition and accustomed to absolute objectivity in evaluation, the Government is a party to such unwholesome secrecy. In para 10.2 of the letter dated 3.7.1987 it is stated that the Course Director would interview the probationers at frequent intervals regarding progress made by them and obtain the feed back from field offices. It is submitted by the applicants that not a single memo or warning was issued indicating them that ~~their~~ performance was not up to the mark. The Course Director had the power to award 350 out of 1250 marks. The respondents themselves had realised the scope of the Director's subjective hegemony and issued revised instructions dated 5.11.1996. ^{before} ~~the~~ respondents did not furnish the break up of marks under various heads. We endorse that there was needless subjectivity and lack of

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evident from the among many aspects, namely, 16
fairness, because the probationers who failed
repeatedly in departmental examinations have been
shown to gain rank in the impugned seniority lists.

7. We, therefore, direct that the applicants in OA 1659/93 and the applicant in OA 2141/97 shall be restored back to their original seniority as maintained as per UPSC merit ranking and maintained subsequently till their promotion to Senior Scale and their aforesaid seniority shall not be disturbed on account of the assessments made during the probationary period. Only the provisions of Rule 3 of IRAS Rules relating to passing of Departmental examinations and continuation of probation period shall be complied with. We do not find it necessary to go into the vires of the instructions dated 3.7.1987. We also make it very clear that this order is confined only to the applicants and shall not be read as affecting the impugned seniority lists with regard to others.

8. In the light of the above order, respondent 1 ~~shall~~ while restoring the UPSC seniority of the applicant in OA 2141/97 shall consider her promotion to Junior Administrative Grade in accordance with rules and pass order within 12 weeks from the date of receipt of a copy of this order.

9. In the result, the OAs are disposed of with the above directions, leaving the parties to bear their own costs.

Pratam Singh
Pratam Singh
Court Officer
Central Administrative Tribunal
Principal Bench
Endekot House, New Delhi

10/9/99

(K.M. Agarwal)
Chairman

(N. Sahu)
Member(Admnv)