

(2) CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~XXXX~~ No.2884/1997

(7) Decided on: 17.11.98

Suresh Kumar sharmaApplicant(s)

(By Shri M.L.Sharma Advocate)

Versus

U.O.I. & OthersRespondent(s)

(By Shri R.L.Dhawan Advocate)

CORAM:

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter *yes*
or not?

2. Whether to be circulated to the other *A*
Benches of the Tribunal?

[Signature]
(K.Muthukumar)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRACTICAL BENCH

O.A. No. 2884 of 1997

New Delhi this the 17th day of November, 1998

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

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Suresh Kumar Sharma
H.T.O.,
Telephone Exchange,
Trunk Road,
D.R.M. Office (N.R.),
New Delhi.

Applicant

By Advocate Shri M.L. Sharma.

Versus

Union of India through:

1. The General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
C/o DRM Office, Northern Railway,
New Delhi.
3. Shri Purshottam Lal
H.T.O.,
C/o DRM, Northern Railway,
New Delhi.
4. Shri Khazan Chand
H.T.O.,
C/o D.R.M., Northern Railway,
New Delhi.

.. Respondents

By Advocate Shri R.L. Dhawan.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant assails his seniority position as shown by the respondents in their seniority list for the post of Senior Telephone Operator and Head Telephone Operator. His case is that he was appointed as Telephone Operator on regular basis and he had joined the duty on 11.2.1975 and he was assigned seniority No.19 in the post of T.O. in the seniority list issued in 1987, Annexure A-3. By this seniority list,

respondent Nos. 3 and 4 were shown as juniors to him in the seniority No. 22 and 23. He was subsequently promoted as Senior Telephone Operator. The respondents in their seniority list circulated on 20.1.1992 showed the applicant's position in the seniority list as being junior to respondent Nos. 3 and 4 indicating the date of appointment as Telephone Operator as 26.5.1975.

2. The applicant submits that he had raised his objections to the aforesaid seniority list which was duly forwarded by the Superintendent of Telephone Exchange of Trunk Telephone Exchange, Northern Railway, D.R.M. Office, New Delhi vide his letter dated 25.2.1992, Annexure A-5. Despite his objection, no order was passed and the seniority of the applicant was continued to be shown in the same manner and is shown as junior to respondents No. 3 and 4 even in the seniority list circulated in July, 1994.

3. In the separate rejoinder-affidavit filed by the applicant in reply to the respondents affidavit filed on 18th September, 1998, the applicant submits that he and respondent No. 3 were selected as Telephone Operators on a regular basis by the orders of the General Manager dated 7th November, 1974 and he was directed for medical examination. It is stated that medical examination was delayed in his case and he was given fit only on 7.2.75 and he was directed to report for training on 11.2.75 and after completing the training period, he joined as regular Telephone Operator on 16.3.75 which should be his date of appointment and not 15.5.75 as shown at S.No.19 in the seniority list circulated in 1987. He also contends that the respondents have subsequently shown his date

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of appointment as 26.5.75 in the seniority list of 1992; Respondents No.3 and 4 were shown as seniors to him. In the subsequent seniority list of 1994, they have shown his date of appointment as 6.5.75 although in the above two seniority lists he was continued to be shown as junior to respondent Nos. 3 and 4. The applicant's main contention is that respondent No.3 was junior in the panel for selection as Telephone Operator and was rightly shown as junior to him in the seniority list of 1987 but subsequently, the respondents have brought down his seniority and shown him as junior to respondents No.3 and 4. The applicant contends that respondent No.3 was given a medical fitness certificate in time on 2.1.1975 itself whereas for no fault of his, he was given fitness certificate on 7.2.75 and after completion of training, he was appointed on regular Telephone Operator on 16.3.75 and not on 6.5.75 as shown by the respondents in the seniority list circulated in 1994. He has, therefore, prayed for a suitable direction to the respondents to correct his seniority position as being senior to respondent Nos. 3 and 4.

4. The respondent Nos. 1 and 2 in their counter-reply have averred that the application is barred by limitation as the applicant cannot challenge the seniority list issued on 20.1.92 and 5.8.1994 in the year 1997 when he had filed this application. Based on the appointment of the applicant vis-a-vis respondents No.3 and 4, they have submitted that respondent No.3 was appointed on 24.2.1975 and respondent No.4 on 30.4.75 and the applicant was appointed on 6.5.75 after completion of training and medical examination etc. They also

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contend that respondent No.3 was offered appointment as Telephone Operator on 2.1.1975 and was regularly posted as Telephone Operator on 24.2.1975. The applicant was admittedly offered appointment on 11.2.75 and was regularly posted on 6.5.75 as is seen from the seniority list of 1987. In respect of respondent No.4 it is stated that he was appointed as Telephone Operator on probation from the promotion quota for Group "B" to Group "C" on 6.1.75 and was regularly posted after training on 30.4.75. During the period of training their status was only that of a probationer and they were entitled to stipend and only after regular appointment as Telephone Operator, they were entitled to regular placement. They reiterate that the applicant was appointed only on 6.5.75 i.e. later than respondent Nos. 3 and 4, who were appointed on 24.2.75 and 30.4.75 respectively and were, therefore, rightly shown as senior to the applicant.

5. We have heard the learned counsel for the parties and have perused the records including the departmental file and impugned seniority lists.

6. In the seniority list circulated it is seen that the applicant was deputed for training on his selection as probationary Telephone Operator with effect from 11.2.1975 for a period of 30 days from which period he had to be paid stipend. The applicant himself admits that after he was given the medical fitness certificate he was posted as a regular Telephone Operator on 16.3.75. However in the seniority list of September, 1987, he was shown at S.No.19 with the date of appointment as 15.5.1975 and respondent Nos. 3 and 4 were

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shown as juniors having been appointed with the date of appointment as 24.2.75 and 30.4.75. In the seniority list of Head Telephone Operators circulated in July, 1992, respondents No.3 and 4 were shown senior to the applicant and the date of appointment of the applicant was also shown as 6.5.1975. The applicant is, therefore, aggrieved by the revised seniority list placing him as junior to respondent Nos. 3 and 4. We have seen the original records including the letters of appointment etc. of the applicant as well as of respondents No.3 and 4. Although the applicant contends having joined the post on 11.2.75 and respondents No. 3 and 4 having joined on 24.2.75 and 30.4.75, the respondents have averred that the provisional seniority list issued in 1987 had to be corrected as it had shown the position of applicant wrongly as senior to respondent Nos. 3 and 4. In respect of respondent No.3 he was appointed on the basis of the order dated 2.1.75 appointing him as Probationary Telephone Operator. This appointment followed his selection held in October, 1974 and he was declared suitable after passing medical test and he joined on 3.1.1975. So the date of probationary appointment thus commenced from 3.1.1975. In the case of respondent No.4 the applicant himself admits in the rejoinder that respondent No.4 was appointed on 6.1.1975 against the promotion quota and after completion of training etc. he was posted as Telephone Operator on 30.4.75. Thereafter, his date of appointment on promotion as Telephone Operator was 6.1.75.

7. In the case of the applicant, however, from the records it is seen that he was offered appointment by the

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letter dated 11.2.1975 and after training he was shown to have been appointed from 14.3.75 by the order of the respondents dated 6.5.75. From this it will be clear that the applicant was offered appointment on probation from 6.2.75 and he reported on 11.2.75 (After-Noon). Thus, his probation should be deemed to have commenced w.e.f. 11.2.75 onwards. Regarding the delay in submission of medical certificate, we cannot accept the contention of the applicant. Medical Examination was accepted in batches as is seen from the Northern Railway Headquarters Letter dated 7.11.1974. Therefore, the applicant cannot agitate this matter at this time and there is no allegation of any mala fide on this ground against the respondents.

8. From the foregoing it is clear that while the applicant's date of appointment on probation was 11.2.75 (A/N), the position of the applicant vis-a-vis the respondents will be that the applicant having commenced his probation on 11.2.75 cannot claim seniority over the respondents No.3 and 4 who have commenced their probation from 2.1.75 and 6.1.75 respectively. It is only to make this position clear that the respondents have revised the seniority list placing the respondent Nos. 3 and 4 as senior to the applicant with the dates of commencement of probation as above. The date of appointment after training in respect of the applicant should be shown as 14.3.75 and not as 6.5.75 as shown in the seniority list. This, however, does not alter the seniority position of the applicant to make him senior to the respondents No.3 and 4. Besides the seniority has been

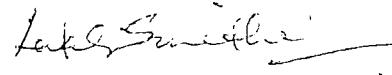
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slightly reckoned by the respondents from the dates of initial appointment on probation, namely, Purshottam Lal from 2.1.75, Khazan Chand from 6.1.75 and Suresh Kumar Sharma (applicant) with effect from 14.3.75.

9. In the light of the above, we do not find any merit in the application and same is accordingly dismissed. In the circumstances, there shall be no order as to costs.


(K. MUTHUKUMAR)

MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)

MEMBER (J)

Rakesh