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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.920/97

New Delhi, this the 1st day of June, 2000.

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. H.O. GUPTA, MEMBER (A)

1. Sh. T.P.Saraswat, S/O Sh. Kishanlal Saraswat, Guard 'A', under Station Manager, Agra Cantt.
2. Sh. Omprakash Verma, S/O Sh. Bachan Lal, Guard, under Station Manager, Agra Cantt.
3. Sh. A.K.Dosit, S/O Sh. Panna Lal Dixit, Guard Gr.'A', under Station Manager, Agra Cantt.
4. Sh. Ram Mohan Sharma, S/O Sh. Prasad Sharma, Guard, under Station Manager, Agra Cantt.
5. Sh. Rajender Prasad Sharma, S/O Sh. Keshav Deo Sharma, Guard, under Station Manager, Agra Cantt.
6. Sh. Vikram Singh, S/O Sh. Harprasad Singh, Guard, under Station Manager, Agra Cantt.
7. Sh. S.R.Garg, Guard, under Station Manager, Agra Cantt.
8. Sh. K.N.Sharma, S/O Sh. B.K.Sharma, Guard, under Station Manager, Agra Cantt.

.....Applicants.

(By Advocate: Sh. B.S.Mainee)

VERSUS

Union of India : Through

1. The Secretary, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi.
2. The General Manager, Central Railway, Mumbai C.S.T. (Maharashtra).
3. The Divisional Railway Manager, Central Railway, Jhansi.
4. Sh. I.C.Mishra, Goods Guard under Chief Yard Master, Jhansi.

... Respondents.

(By Advocate: None for the respondents.)

O R D E R

Hon'ble Mr. H.O.Gupta, M (A):

In the OA, the applicants are aggrieved of their incorrect assignment of seniority inasmuch as respondent No.4 has been assigned the seniority over them, based on DRM Jhansi orders dated 14.10.96 (Annexure A-1) & 20.1.97 (Annexure A-2). In relief, they are seeking a direction to quash the said impugned orders.

2.0 The facts of the case are that:

2.1 The applicants were selected through Railway Service Commission, Bombay and were appointed as Guards in 1978. Subsequently, the applicants sought transfer to Jhansi Division at their own request accepting bottom seniority. Such transfer took place during the years 1980 to 1983.

2.2 Some other candidates who were also selected for the post of Guards, were not appointed as Guards for administrative reasons, were given option to accept the post of Office Clerk in the grade and respondent No.4 is one of them who was appointed as Office Clerk.

2.3 Respondent No.4 and some other similarly situated persons made representations for change of their category to Guards in 1980. Although, General Manager, Central Railway recommended their case to Railway Board but the Railway Board rejected the recommendations of the General Manager vide their letter dated 8.1.81 (Annexure A-3).

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2.4 After about eight years, the respondent No.4 and others filed a petition in Allahabad Bench of this Tribunal praying for direction to the respondents to absorb them as Guards and assign them seniority in the cadre of Guard from the date of their original appointment as Office Clerk. This petition was not allowed by the Allahabad Bench of this Tribunal. The petitioners therein filed SLP before Hon'ble Supreme Court. The Supreme Court vide their order dated 3.9.91 (Annexure A-6), disposed of the SLP with a direction that:-

".....the appellants shall be permitted to join as Grade 'C' Guards at the lowest stage but their present pay shall be protected treating it to be personal until by increment it reaches the stage where it can merge in the current pay at a future date. These adjustments shall be made in respect of all the vacancies that may arise from now onwards."

2.5 Thereafter, the respondents having permitted the respondent No.4 to join as Guard "C" issued the orders Annexures A-1 and A-2, which have been challenged in the OA.

3.0 In reply, the official respondents have stated that:-

3.1 They have rectified the administrative error committed earlier by the Department to give legal claim to respondent No.4.

3.2 Respondent No.4 who was selected for the post of Guard, was posted as Clerk due to administrative reason

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in Jhansi Division. The applicants were selected as Guards and were posted in different Divisions of Jabalpur, Sholapur and Bhusawal Divisions, whereas respondent No.4 was selected as Guard for Jhansi Division, although he was initially posted as Clerk for want of vacancy.

3.3 Respondent No.4 was accorded seniority over his juniors considering his order in merit. Respondent No.4 was empanelled at merit order No.180 in Jhansi Division, whereas the applicants came to Jhansi Division at their own request from other Division accepting the bottom seniority. The action of the respondents is contrary neither to the decision of Allahabad Bench of this Tribunal nor to the decision of Supreme Court as none of the Courts have decided about the seniority issue. The Railway Board regretted the proposal for absorption as Guard but did not decide seniority issue. The seniority issue was decided by the respondents after the judgement of the Apex Court in accordance with the Rules.

3.4 The private respondent No.4 in his reply, has stated that the official respondents did not appoint Guards as per merit positions of the panel, instead, appointed on 'pick and choose' basis. His juniors were appointed as Guard whereas he was appointed in the clerical grade. It is in this background that they approached Allahabad Bench of this Tribunal and also filed S.L.P. The Hon'ble Apex Court did not touch the issue of seniority. He was legally assigned the seniority as Guard 'C' based on his panel position by the official respondents

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4.0 We have heard Sh. B.S. Maine, learned counsel for the applicants and perused the records.

4.1 It is a fact that respondent No.4 was initially selected for the post of Guard but due to the non-availability of vacancies of Guard, he was posted as Clerk. It is also stated that respondent No.4 was assigned the seniority ^{of P} in order ~~to~~ merit in the panel of Guard which is not denied by the applicant. It is also not denied by the parties that the question of seniority was not before the Hon'ble Apex Court. It is also a fact that the applicants sought change from their Division and came to Jhansi Division by accepting lower seniority in Jhansi Division as per rules.

4.2 During the course of the arguments, Sh. B.S. Maine, learned counsel for applicants stressed the point that after such a long period of about 14 years, the respondents cannot disturb the seniority of the applicants. We find that the case was agitated in Allahabad Bench of this Tribunal and thereafter before the Supreme Court and thereafter the respondents fixed the seniority of the applicants. The respondents in their reply have categorically stated that they have accorded the seniority based on the merit position of respondent No.4 in the panel of Guards and further that the applicants have accepted the bottom seniority in Jhansi Division at their own request and, therefore, respondent No.4 would find place over the applicants in the seniority list as per rules.

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5.0 In view of the aforesaid discussions, we are not inclined to interfere with the orders of the respondents dated 14.10.96 (Annexure A-1) and 20.1.97 (Annexure A-2) according the seniority of respondent No.4 over the applicants.

6.0 Accordingly, the OA is dismissed with no order as to costs.

H.O.Gupta
(H.O.Gupta)
Member (A)

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

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