

10

In the Central Administrative Tribunal

Principal Bench: New Delhi

OA No. 2038/1994

New Delhi this the 5th day of May 1995.

Hon'ble Sh. N.V.Krishnan, Vice-Chairman(A)

Hon'ble Dr. A.Vedavalli, Member (J)

1. Shri D.S.Malik,
Head Draftsman (Construction)
Northern Railway, H.Q. Office,
Baroda House, New Delhi
2. Sh. J.N.S.Yadav,
S/o Sh. R.S.Yadav,
Head Draftsman(Contn)
Northern Railway, H.Q. Office
Baroda House, New Delhi.
3. Sh. K.N. Gupta,
S/o Sh. Satya Narayan
Head Draftsman(Contn)
Northern Railway, H.Q. Office
Baroda House, New Delhi.
4. Sh. Subhash Chander
S/o Sh. Mathura Dasji
Head Draftsman(Contn)
Northern Railway, H.Q. Office,
Baroda House, New Delhi.

.....Applicants

(By Advocate Sh. B.S.Mainee)

Versus

1. The Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. Sh. Kamal Kumar Sethi
Sr.Drafts man
Baroda House,
New Delhi.
4. Sh. N.K.Jain
C/D Man,Baroda House
New Delhi.
5. Sh. Krishna Kirtisaran
Sr.D/Man,Baroda House,
New Delhi.
6. Sh. Gurdev Singh
Sr.D/Man,Baroda House,
New Delhi.
7. Sh. Bharat Singh,
Sr.D/Man,Baroda House
New Delhi.

8. Sh. Ashok Kumar
Sr.D/Man, Baroda House,
New Delhi.

9. Sh. A.K.Srivastava,
Head D/Man, Baroda House,
New Delhi.

10. Sh. Sarnam Singh Choudhary
Sr.D/Man, Baroda House,
New Delhi.

11. Sh. B.S.Kaini,
Sr.D/Man, Baroda House,
New Delhi.

12. Sh. Om Parkash,
Sr. D/Man, Baroda House,
New Delhi.

13. Sh. B.N.Uprety,
Chief D/Man, Baroda House,
New Delhi.

.....Respondents.

By Advocate : 1 & 2 Sh. H.K.Gangwani
3 to 13 Sh. Imtiaz Ahmed

ORDER (Oral)

Hon'ble Shri N.V.Krishnan, Vice-Chairman (A)

The applicants approached this Tribunal when they came to know that their seniority in the grade of Sr.Draftsman was being revised to their detriment by the second respondent (General Manager Northern Railway) in pursuance of a decision communicated by the first respondent (the Railway Board) in the letter dated 20-7-94 (Annexure A-1).

2. When the OA came up on 10-10-94 for admission, Notice was directed to be issued to the respondents. They were also directed to maintain ~~the~~ status quo of the applicants. That direction is still continuing.

3. The official respondents (Railways) have filed a reply explaining the background as to how the second respondent assigned to the various applicants seniority w.e.f. 31.12.81 and 1.1.84 though they had no right to get the seniority from the dates, because they were actually promoted and appointed as Sr. Draftsman in 1992. It was further pointed out that the Annexure A-1 letter is an internal communication of the first respondent to the second respondent. No decision has been

12

communicated to the applicants. When the second respondent received the Annexure A-1, letter, he has issued a notice on 6-10-94 to the applicants as well as to some other persons whose seniority is proposed to be revised for the reasons mentioned in that notice. (A copy of that notice has been filed by the private respondents as Annexure R-1 with their reply). The applicants and others were given a weeks' time to give their reply. Instead of giving the reply, they have rushed to this Tribunal. The 1st counsel for the Railways submitted that a decision on the issue of seniority should not be rendered by us. It is open to the applicants to file a reply which will be considered on merits.

4. The private respondents have also submitted a separate reply. Their learned counsel also endorsed the stand of the Railways.

5. The learned counsel for the applicant submits that this would be only an empty formality because first respondent has already taken a decision on merits and the second respondent can do nothing in the matter, except to comply with the directions, irrespective of, whatever representation/reply is made by the applicants.

6. We have considered the matter carefully. For disposal of this OA, it is not necessary to state the background in which the dispute about seniority has arisen. The only question is whether this OA should be disposed of on merits or the applicants should, in the first instance, be directed to file a reply to the notice already issued to them and respondents be directed to take a decision on merits after considering the representation.

7. The mere fact that the first respondent has taken a decision is no ground to dispose of this OA. That decision has to be taken to start proceedings for ~~raising~~ ^{slvi} the seniority.

13

Therefore the Annexure A-1 letter can not be taken as a final decision by any party, including Respondent No.1. It would have been a final decision, if the second respondent acted upon it and revised the seniority list, without notice.

That is not the case. The second respondent has issued a show cause notice. Therefore, we are of the view that this OA is premature.

8. In the circumstances, we dispose of this OA granting permission to the applicants to file their reply/representation to the ~~Respondent No.1~~ notice dated 6.10.94, within 15 days from the date of receipt of this order by the counsel. In case such replies/representations are received, the second respondent is directed to consider them on merits, without being tied down by the Annexure A-1 letter, the first respondent. If, on a consideration of the representations, the second respondent feels that there is no necessity to change the seniority list, ~~because~~ administrative propriety would require ~~that~~ ^{it} he shall submit the matter to the first respondent for a final decision.

9. In case the respondent's propose to revert the applicants from the higher post held by them to the post of Sr.Draftsman, because the decision taken is against them, then such order of reversion will remain stayed, for a period of 15 days from the date of its service on the applicants. The first respondent too is directed to take a decision after considering the representations on their merit. The final decision of the second respondent or the first respondent, ~~in~~ ^{was} the case may be, shall be communicated to the applicants. In case the Railways find that the applicants are evading service of orders of reversion, it is open to them to seek suitable directions in this regard.

10. OA disposed of as above.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

N.V.Krishnan
(N.V.Krishnan)
Vice-Chairman (A)