

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO.989/89
M.A. No.190/94

New Delhi this 25th day of February 1994

The Hon'ble Mr. J.P. Sharma, Member (J)
The Hon'ble Mr. B.K. Singh, Member (A)

Shri K.P.Seth,
son of Shri Satya Narain,
Permanent Way Inspector (Special),
Northern Railway,
Kanpur,

2. Shri P.K. Srivastava,
Son of Shri CD Lal Srivastava,
Permanent Way Inspector,
Railway Colony,
Mirzapur (M.P.)

3. Shri Rama Shankar,
Son of Shri Late SS Lall,
Permanent Way Inspector,
Northern Railway,
Bharwari, U.P.

4. Shri R.S. Gangwar,
son of Shri Surinder Singh,
Permanent Way Inspector,
Northern Railway,
Allahabad

5. Shri M.L. Agarwal,
son of Shri Late Ram Murthy Agarwal,
Instructor, CET Academy,
Northern Railway, Kanpur

6. Shri A.A. Khan,
Son of Shri Moh. Ali Khan,
Instructor, CET Academy,
Northern Railway, Kanpur

7. Shri A. Gulhare,
Son of Shri Mangli Prasad,
Superintendent,
Thermit Portion Plant,
Lucknow, U.P.

8. Shri BS Kushwaha,
son of Shri Bahoo Singh,
Permanent Way Inspector,
Northern Railway, Tundla, U.P.

9. Shri G.N. Mishra,
son of Shri SN Mishra,
PWI, Northern Railway,
Tundla U.P.

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10. Shri S.C. Tiwari,
son of Shri B.P. Tiwari,
Permanent Way Inspector,
Northern Railway, Tundla U.P.
11. Shri N.K. Arora,
Son of Shri Sri Lal Arora,
PWI, Planning,
Divisional Railway Manager's Officer,
Northern Railway, Allahabad
12. Shri A.K. Singh,
son of late Sri Anand Singh,
PWI, Northern Railway,
Lucknow, U.P.

... Applicants

(By Advocate B.S. Mainee)

Versus

1. The Union of India,
through the General Manager,
Northern Railway, New Delhi
2. The Divisional Railway Manager,
Delhi Division, Northern Railway,
State Entry Road,
New Delhi.
3. The Divisional Railway Manager,
Allahabad Division, Northern Railway,
Allahabad.

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4. Shri D.L. Sachdeva
5. Shri V.K. Mehra
6. Shri A.C. Rao
7. Shri Sudhoo Ram
8. Shri A.K. Jain
9. Shri S.C. Gupta
10. Shri J.N. Gulati
11. Shri Ved Parkash
12. Shri Harbans-Lal Singh
13. Shri B.D. Dungrial
14. Shri K.K. Anand
15. Shri S.S. Nigogi
16. Shri Kasturi Lal
17. Shri Subhash Chander
18. Shri Shankarpal singh
19. Shri N.K. Arora
20. Shri N.K. Kohli

All PWIs
Northern Railways

(By Advocate : Shri B.K. Aggarwal, Counsel
for Respondent Nos. 1 to 3

Shri K.N.R. Pillay, counsel for
Respondent Nos. 4-20.3.

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O R D E R

Mr. J.P. Sharma, Member (J)

The applicants filed an application under Section 19 of the Administrative Tribunal Act, 1985 assailing the order dated 10.2.1989 passed by the Divisional Railway Manager, New Delhi declaring the provisional result of the selection of Permanent Way Inspector (PWI) Grade I (Rs.2000-3200), and the order dated 21.4.1989 issued by the Divisional Railway Manager (DRM) Report proposing to hold written test and viva voce test for selection for the post of PWI Grade I (2000-3200).

2. The applicants have prayed for quashing of the two impugned orders and directing the respondents to hold the selection for the post of PWI Grade 700-900 on the basis of the combined seniority for the regular vacancies which were available and has arisen prior to decentralization. They have also sought for a direction to the respondents to recalculate the upgraded vacancies taking into account the work charge post also and consider the applicant against the upgraded post with effect from 1.1.1984 with fixation of pay and arrears.

3. By the Judgement dated 22.11.1991, the application was allowed with certain directions to the respondents setting aside the orders dated 10.2.1989 and 21.4.1989 passed by DRM, New Delhi and Allahabad respectively. Shri D.L. Sachdeva and others filed SLP before the Hon'ble Supreme Court which was disposed of in November.

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1992 with the direction that the petitioners may apply for review to the Tribunal if so advised and apply for interim relief. RA No. 331/92 was filed on 26.10.992 with a prayer for condonation of delay. Notice was issued to the original applicants and after hearing the parties the review application was admitted and the review applicants were made respondents in original application from Serial Nos 4 to 20 and the applicants as well as the respondents have been re-heard on the merits of the case.

4. The case of the applicants is that on 1.5.1984 the Railway Board issued instructions on cadre review and re-structuring of Group 'C' cadre as a result of which the percentage of posts at various levels of PWIs was changed. All the applicants were promoted as PW I Grade II (Scale Rs.550-750) under the order dated 24.3.1984. The promotions in pursuance of re-structuring were to be given effect from 1.1.1984. At that time all the posts in Grade I and Grade II of PWIs were controlled by the Headquarters of the Northern Railway. Promotions from Grade I to the other of PWIs were made on the basis of inter-divisional Association combined Seniority of Northern Railway on the basis of criteria prescribed for selection. However, by the order dated 28.8.1984 Grade I and Grade II of PWIs which was centrally controlled by the Headquarters office is to de-centralised to be controlled by the respective Divisional Managers with effect from 1.1.1984. For the purpose of promotions/confirmations and transfers etc. the policy

of decentralization was given effect to and the staff working in the respective division continued to work was keeping their lien/seniority on those divisions. However, the Railway Board issued another instructions by the letter dated 25.1.1985 and the decentralization of the post of PWIs in Grade I was cancelled and was decided that these posts will continue to be controlled by the Headquarters office, Cadre the Grade II PWIs in the decentralised category under the control of respective DRM. However, the policy was again changed by the Northern Railway Headquarters by its order dated 3.9.1987 that the posts of PWIs Grade I will be decentralised and the complete control will be vested in the DRMs.

5. The grievance of the applicants is that at the time of the re-structuring of the cadre in 1984, the number of posts to be upgraded of PWI Grade I were not correctly worked out. Secondly, the respondents had delayed the filling up of many posts in the Grade II of PWIs which were lying vacant since 1982 onwards. It is because of the applicant that if the conclusion have been rightly done of the number of upgraded posts, then they would have been promoted as PWI Grade I with effect from 1.1.1984 on the basis of their seniority and service records. These posts should have been filled up in accordance with the combined inter divisional seniority which was prevailing at that time. By virtue of decentralization the posts of PWI Grade I and again re-centralization and sometimes

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after second time de-centralizing the posts of PWIs the seniority of the applicants have been distorted and their promotion prospectus have been jeopardised. The next promotion to PWIs in Grade I in the scale of Rs. 840-1200 (pre-revised) gazetted post of Assistant Engineer which is controlled by the Headquarters office for which combined seniority is prepared on the basis of the regular promotion in the Grade I of PWI. It is also pointed out that DRM, New Delhi, has issued the promotion orders for 15 officials by the impugned order of February 1989 and the DRM report has gone ahead with the process of the regular selection for the post of PWI Grade I though the vacancies arose before decentralization.

6. The applicants have also filed the seniority list of PWI Grade III in Northern Railway as on 1.3.1978 (Annexure A-10) and that except D.L. Sachdeva, Respondent No. 4 all the other 14 persons empanelled as a result of selection in Delhi Division are junior to the applicants as they were promoted long after March 1984. The respondents did not file any reply earlier and they filed it only subsequently when the review application of Respondent No. 4 to 20 was entertained and contested the application opposing the grant of the reliefs. Private respondents 4 to 20 ~~are~~ have filed reply to the original application almost in taking the same point as averred in the counter by the official respondents.

7. We have heard the counsel for both the parties and perused the record. During the course of the

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arguments Shri B.S. Mainee for the applicants did not press for the relief of accounting the work charge posts also while re-calculating the upgraded vacancies occurred due to re-structuring by the Railway Boards Order dated 1.5.1984. In view of this, this aspect of the matter needs no consideration. However the counsel for the applicant could not show any order of the Railway Board that work charge posts should be taken into account while determining the number of posts to be upgraded. Also, the distribution of posts by percentages applies only to the posts in the regular cadre. Work charge posts are sanctioned on worth of charge as per requirements of the work and not by percentages. In this connection a reference was made to the Railway Board's letter dated 1.5.1984 wherein clause 2 it is mentioned that for the purpose of re-structuring, the cadre strength as on 1.1.1984 will be taken into account and will include rest giver and leave reserve posts. In view of the above facts the judgement under review need modification with regard to the direction in sub para b of para 10 wherein a direction was issued to the respondents to also consider work charge posts in re-calculating the vacancies in the post of PWI Grade I. That direction, therefore, is stands deleted by this judgement.

8. When the judgement under review was delivered the official respondents did not contest the application but now after review in the review application the official respondents have filed their reply

opposing the grant of the relief prayed for. The applicant has also filed rejoinder to the aforesaid counter also. The newly added respondents have also filed the reply opposing the grant of the relief prayed for. The applicants have also filed the rejoinder and the respondents filed an additional affidavit in reply to which the applicants have also filed rejoinder affidavit. The issue to be decided in this case is whether the applicant sare liable to be included in the number of posts of PWIs to be up-graded to the grade of Rs.700-900? The contention of the learned counsel for the applicants is that the respondents have not correctly calculated the post of PWI Grade I. It is argued by the learned counsel for the applicants that all the posts of PWI in the Grade of Rs. 700-900 which were vacant/ arose as a result of upgradation/resultant posts should have been filled up with effect from 1.1.1984 in accordance with the combined inter divisional seniority which was prevailing at the time when the vacancies had arisen. The applicants have enclosed a copy of the combined seniority list of PWI grade of Rs. 700-900 in the Northern Railway as on 1.3.1978 (Annexure A10) and the list of persons placed on the provisional panel as a result of selection of PWI Grade I in Delhi Division Annx. A I. It is argued by the learned counsel that except Shri D.L. Sachdeva all the 14 persons promoted to PWI Grade I are Junior to the applicants. It is not in doubt that vacancies in any cadre have to be filled up in accordance with the rules in force when the vacancies arose and reliance has been

placed on the judgement of Hon'ble Supreme Court y.v. Rangaiah and ors. Vs. J. Srinivas Rao and ors. reported in 1983 (3) SCC P.284. The whole dispute is regarding the number of vacancies which were existing on 1.1.1984 and vacancies which have arisen due to upgradation as well as resultant vacancies in the PUI Grade from 1.1.1984 to 3.9.1987. The case of the applicant is that they were as many as 57 vacancies which had arisen due to normal wear and tear i.e. retirement, promotions, death etc. which were not filled up by headquarters office in accordance with the combined seniority and the divisions were directed to fill up these posts according to divisional seniority and the panel formed by the Delhi Division impugned in this case is in respect of respondent Nos. 4 to 20 filling up the vacancies which had arisen prior to decentralization. It is a fact that the selection for Delhi Division was initiated in 1988. The respondents both official and unofficial have stated that the applicants have only challenged the selection of Delhi Division and the Memo dated 21.4.1989 whereby Allahabad Division have initiated selection for the post of PUI Grade I notifying the date of written test and supplementary test on 8.5.1989 and 15.5.1989 respectively. In the northern railway there are as many as 9 divisions besides Allahabad and Delhi, Lucknow, Moradabad, Bikaner, Jhodpur, Construction Division. The applicants have not challenged the steps taken by the other divisions for filling up the vacancies though they made as per the averment of the applicants have arisen after 1.1.1984 till

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decentralization on 3.9.1987. There is a clear case by official respondents that the vacancies were allotted to various divisions to fill up the same by selection as per divisional seniority list. Thus, the applicants cannot challenge the vacancies which according to them should have been filled up on the basis of the combined seniority list of PWI Grade I only as most of the vacancies have been obviously taken up by the respective divisions besides Delhi and Allahabad to be filled up by selection on the divisional seniority list. This stands as a hurdle in the way of the applicants even if their contention is accepted for arguments sake as none of those who have taken the selection in other divisions and appears to have been empanelled have been arrayed as opposite parties in this application. A person cannot be condemned & heard and the Supreme Court has observed in the case of Probodh Verma Vs. State of Uttar Pradesh 1985 (2) SLR P 714 and Ashok Singh Vs. State of Madhya Pradesh 1988 (6) SLR 496 SC that in writ jurisdiction the court should not decide a petition seeking quashing of a select list without impleading those born on the seniority list who are necessary parties. Though the official respondents have not placed on record any panel prepared by divisions other than Allahabad and Delhi but it is expected that when the vacancies have been earmarked for various divisions and the nature of the post of PWI needs to be filled up for the seniority reasons it has to be inferred with the averments made by the official respondents in their reply are correct that other divisions besides Allahabad and Delhi have held selection and filled up the posts after decentralization. It has also been stated that selection in Bikaner and Jodhpur Division were held on 15.11.1988 and 18.2.1999. The panels were prepared subsequent to decentralization on 3.9.1987.

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The stand of the official respondents is also that all the posts have been filled up besides 157 posts on the basis of upgradation and in this connection the respondents have preferred to the panel prepared on 22.2.1985, 25.5.1985, 19.8.1987 and 3.9.1987 with regard to the vacancies arising before decentralization filling up 68, 54, 9 and 4⁺³ i.e. 132 and 3 vacancies were kept unfilled because of certain vigilance against some of the selected persons. 22 vacancies of SC/ST of reserved quota were unfilled and were distributed to the various divisions. Thus, there remains no vacancies to be filled up on the basis of upgradation by the order of the Railway Board dated 1.5.1984. The applicants therefore cannot claim to be regularised in any of such vacancies as they are junior in the combined seniority list as on 1.3.1978. Since both the parties have given contradictory version about the vacancies falling after 1.1.1984 till 3.9.1987, the Tribunal cannot enter into roving enquiry in that respect. However, when the vacancies have occurred these are not if filled up automatically on the very date when the vacancies existed. The vacancies are calculated before any selection is initiated by the administration and in that event the provisions of Rule 215 of Indian Railway Establishment Manual has to be complied with which lays down that existing vacancies and those anticipated during the course of next one year + 20 % of the anticipated vacancies have unforeseen contingency have to be earmarked to be filled up in the selection. It is also a fact that ad hoc promotion which is a practice adopted by the respondents should not have been

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restored and that could have been done only in the case of extreme emergency on the basis of seniority. In fact when the post of PWI Grade I decentralised on 28.8.1984 i.e. soon after the order of upgradation of the Railway Board dated 1.5.1984 there were certain representations by the PWIs that juniors may get the chance in the divisional seniority and senior will be ignored so the order was issued on 5.1.1985 cancelling the order of decentralization. Thereafter again by the order dated 3.9.1987 the Grade I of PWI was decentralised and was to be controlled by the respective DRM. In view of this situations the selection process could not take place as the Headquarters itself was passing one order after another regarding the manner of filling up the posts of PWI. The applicants have not challenged that scheme of decentralization nor they have come forward at the relevant time that the vacancies which have arisen before decentralization before 3.9.1987, be filled up by the combined seniority list and they have only filed this application on 10.5.1989. By the order dated 12.5.1989 all the selections were ordered by to be made subject to the outcome of the O.A. This order was modified by the order dated 7.12.1989 that no regular promotion shall be made only until further orders but promotions to the posts of Assistant Engineer in the Grade of Rs. 840-1200 the promotions could be made. In spite of assailing the memo dated 21.4.1989 the applicant in this case Shri K.P. Seth, P.K. Srivastava, Rama Shanker, R.S. Gangwar, M.L. Aggarwal, A.K. Khan, A.K. Gulhara, B.S. Kushwa, S.C. Tiwari, N.K. Arora Shri G.N. Mishra were allowed to take the selection. The case of the respondents is also that these applicants have also taken the selection conducted by the Allahabad Bench Division and as a result of that selection a

panel was declared in April 1991 in which Shri K.P. Seth Shri M.L. Aggarwal, Shri P.K. Srivastava, Shri R.S. Gangwar have been empanelled on the basis of having passed the selection. The other applicants could not be selected and therefore could not be empanelled. The contention of the learned counsel that the careers of the applicants have been seriously damaged by the respondents's action for not filling up the existing posts on the basis of combined seniority prior to decentralization has to be considered in the light of the above selection. Thus seniority plays a vital role in the career of a person but they themselves are to blame as not having agitated the matter in 1987 itself when the respondents after decentralization have not called for any selection on the basis of combined seniority list and they have filed this application in 1989, when the Delhi division have already declared the panel and the Allahabad Division have initiated the process of selection. It shall not be justified to unsettle the settled posts. Another anomalous position arise if the selection initiated by the Allahabad Division is cancelled then four of the applicants named above who have been empanelled could have to suffer only because the selection process was not initiated earlier by the headquarters on the basis of combined seniority list.

We cannot ignore the fact that the vacancies have to be determined before the process of selection is initiated and it is not a right of any aggrieved person to calculate the vacancies for filling up the very moment the vacancy has occurred. Even 22 vacancies which remained unfilled to SC/ST and have arisen because

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of upgradation have been distributed to the various divisions to be filled up. The respondents in such an event cannot be said to have acted arbitrarily or in a mala fide manner. Though their action may not be justified.

The learned counsel for the applicant has also placed reliance on the judgement in the case of S.K. Sharma (O.A.No. 2063/88) V. Union of India. That case was related to Signal Inspector Grade III, the Principal Bench in that case has taken the views that promotion ~~is~~ to the post of Signal Inspector Grade II shall be considered by the respondents on the basis of inter-divisional seniority for the entire Northern Railway and the applicants in those cases shall be given promotion to the post of Signal Inspector Grade II after considering their case on the basis of inter-divisional seniority. The contention of the learned counsel is that the case of the applicant is in para-materia with the Signal Inspectors and they should also be given the same benefit. However, that case is distinguishable on the point that Signal Inspector has assailed the selection in the year 1988 itself after the order of decentralization dated 3.9.1987. Thus, the judgement does not help the applicant's case.

In view of the above facts and circumstances except the applicants who have ~~ap~~ passed the selection held in Allahabad Division and ~~it~~ which was subject to the outcome of the O.A. can only be granted the limited relief of seniority which shall be fixed in their case on the basis of inter-divisional seniority and they will be given seniority from the

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date any person junior to them in the inter-divisional seniority list has been given promotion to PWI Gr.I. These applicants are Shri K.P. Seth, Shri M.L. Aggarwal, Shri P.K. Srivastava and Shri R.S. Gangwar. The other applicants are not entitled to any grant of relief. The application, therefore, is disposed of in the manner that the impugned orders dated 10.2.1989 and the order of DRM, Allahabad initiating selection of PWI Grade I by the Order dated 21.4.1989 are not interferred with and the relief in that regard is disallowed. However, a direction is issued to the respondents to give the benefit of the seniority to the applicants Shri K.P. Seth, Shri M.L. Aggarwal, Shri P.K. Srivastava and Shri R.S. Gangwar who have been selected and empanelled in the selection initiated for PWI Grade I by DRM, Allahabad by the impugned order of April 1989 shall be granted the seniority in the grade on the basis of combined seniority list ^{in any vacancy of} of PWIs ~~existing~~ before decentralization i.e. before 3.9.1987 and they shall be entitled to all benefits arising therefrom which have been granted to any of the juniors ~~to have~~ in the combined seniority list. Costs on parties. The direction be complied with expeditiously within four months from the date of receipt of the copy of the orders.

(B.K. Singh)
Member(A)

(J.P. Sharma)
Member(J)

Mittal