

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No.131/2013

with

MA Nos.169/2015, 214/13 & 197/2015

Dated this the 6th day of August, 2020

Coram :

Hon'ble Shri J.V.Bhairavia, Member (J)

Hon'ble Dr. A.K.Dubey, Member (A)

Shri Rameshchandra M. Patel,
S/o.Shri Madhavbhai Revabhai Patel,
Aged 59 years,
Working as Sr.Typist
Under Division Office, W.Rly. PRTN
R/O: B/101, Vishala Apartment,
Nr. Poonam Complex, Waghodia Road,
Vadodara – 390 019.

Applicant

(By Advocate : Ms.S.S.Chaturvedi)

VERSUS

1. Union of India,
Notice to be served through
The General Manager
Western Railway, Churchgate,
Mumbai 400 020.
2. Divisional Railway Manager (E)
Western Railway,
Pratapnagar,
Baroda – 390 004.
3. Shri Vinod Chandra I. Patel,
Working as Head Typist,
Under C/o Divisional
Signal & Telecom Engineer (Micro Wave).
4. Shri Prafulla N. Salvi
Working as Senior Typist,
Under Sr. Divisional Commercial Manager Office, Respondents

Respondent No.3 and 4
Notice to be served through Divisional Railway Manager,
New Divisional Railway Manager's Office building,
Above control office,
Western Railway, Pratapnagar,
Baroda 399 004
(By Advocate : Ms.R.R.Patel)

O R D E R (Oral)

Per:Jayesh V.Bhairavia, Member (J)

1. In the instant O.A., it is the grievance of the applicant that vide impugned corrigendum dated 16.2.2004 (Annexure A-4), 28.2.2005 (Annexure A-3) and order dated 19.7.2012 (Annexure A-1), the respondents had erroneously assigned the seniority of private respondent No.3 namely Vinodchandra I. Patel and illegally promoted him as Head Typist/ Chief Typist by depriving the right of applicant for promotion though he is senior to the private respondent No.3. The representation of the applicant was not considered. Hence, he filed the present OA and sought the following reliefs:-

“8.1 Lord ships be pleased to admit this petition. And be pleased to issue order quash and setting aside Annexure, A/1, A/3 and A/4. (As the corrigendum without issue of show cause notice).

8.2 And be pleased to direct the respondent to quash and set aside the private respondents name from Annexure A and interpolated the applicant name in Annexure A as Hd. Typist with all consequential benefit.

8.3 The order for be call for the record.”

2. The brief facts as stated by the applicant in the present O.A. are as under:-

- 2.1 The applicant while working as Gangman under PWI KSE was transferred and promoted to officiate as Typist in the scale of Rs.260-400 (RP) purely on adhoc basis and posted under DDE (TRS) BRC against the work charged post vide order dated 23.3.1984 (Annexure A-12) with further condition that he will be reverted to his substantive post when regular candidate will be available.

2.2 Vide order dated 10.7.1989, the DRM(E) BRC i.e. respondent No.2 herein declared the provisional panel for the post of Typist of the candidate who remained successful in written and in speed test. In the said provisional panel, the name of the applicant was placed at serial No.6 (Annexure A-10). Thereafter, vide order dated 15.7.1990 (Annexure A-11), the respondent No.2 issued an order whereby the Class-IV staff who were officiating as Typist on adhoc basis on being placed on provisional panel of Typist vide memo dated 10.7.1989 were regularised as Typist in the scale of Rs.950-1500 (RP) and further ordered to continue them against the present post. In the said order the name of the applicant was placed at Sl.No.6 working at the Office of AEA (E) BRC.

2.3. The respondents had assigned seniority to the applicant along with other w.e.f. 05.07.1990 i.e., the date of issuance of order for regularisation. The respondents have not assigned the seniority from the date the provisional panel was declared i.e., order dated 10.7.1989.

2.4 The respondents had circulated the seniority list on 27.4.1992 (Annexure A-9) wherein the name of the applicant was placed at Sl. No.92 whereas the name of the private respondent No.3 i.e. Vinodchandra I.Patel appeared at Sl. No.95 and name of one Shri Prafulal N. Salvi was placed at Sl.No.96.

2.5 The respondent No.2 vide order dated 20.12.1996 (Annexure A-8) circulated the seniority list of Junior Typist working with BRC Division wherein the name of the applicant was placed at Sl.No.3 and his date for continuing officiating scale of Rs.950-1500 was mentioned as 10.7.1989 whereas the name of the private respondent No.3 was

placed at Sl.No.7 and his date from which continued in officiating scale of Rs.950-1500 (RP) was mentioned as 30.12.1989.

2.6 The Divisional Office, Vadodara had issued Memorandum dated 29.5.1998 (Annexure A-7) whereby the applicant who was placed at Sl.No.3 in the said order has been promoted to the post of Senior Typist in the scale of Rs.4000-6000 and the private respondent No.3 who was placed at Sl. No.4 in the said order was also promoted as Senior Typist.

2.7 The respondents had issued seniority list of Senior Typist vide order dated 06.11.2003 (Annexure A-6) wherein the name of the applicant appeared at Sl.No.27. The date of appointment was indicated as **05.07.1990** and date from which continuously officiating was indicated as 11.02.1999 whereas the name of the private respondent No.3 was placed at Sl.No.28 and the date of his appointment was indicated as **30.12.1989** the date from which his continuous officiating was indicated i.e, 30.12.1999. Further, the name of the private respondent No.4 i.e. Shri P.N.Salvi was placed at Sl.No.29 and the date of his appointment was indicated as **12.03.1990** and no date for his continuously officiating was not mentioned in the said seniority list dated 06.11.2003. Subsequently, the respondents vide corrigendum dated **16.2.2004 (Annexure A-4)** assigned the seniority of Shri P.N.Salvi and placed him at Sl.No.1 in the seniority list published dated 20.12.1996 (Annexure A-8 refer) and also changed the seniority list dated 6.11.2003 and assigned the seniority to Shri P.N.Salvi at Sl. No.23(A) instead of Sl.No.29.

- 2.8 Aggrieved by the seniority list date 06.11.2003 the applicant had submitted representation 01.04.2004, 02.07.2012 and 04.07.2012. The recognition union had also raised their grievance by submitted representation 27.5.2004 against the said seniority list (Annexure A-13 & A-14 refers).
- 2.9 It is further contended that the Divisional Office vide letter dated 28.10.2005 (Annexure A-3) revised the seniority list of Mr.Vinodchandra I. Patel by stating that said Vinodchandra I.Patel was recruited against compassionate ground against handicapped quota as Junior Typist on 30.12.1989. Accordingly, the name of Shri V.I.Patel was placed above Shri P.N.Salvi and below to one Shri Muthu C. in the seniority list of Senior Typists published vide memorandum dated 17.9.2004.
- 2.10 It is contended that vide order dated 10.4.2012 the respondents had promoted Mr.Vinodchandra I Patel (respondent No.3 herein) as Head Typist, the said order is impugned herein. The applicant further contended that vide communication dated 19.7.2012 (Annexure A-1), the DRM(E) BRC informed the Secretary of Employees Association that the name of Shri Vinodchandra I.Patel was wrongly shown at Sl.No.4 in the seniority list published on 30.6.2011. Therefore, vide corrigendum dated 29.9.2011 the name of said V.I.Patel was placed at Sl. No.1(A) instead of Sl. No.4 and accordingly, he was promoted as Head Typist, the said order dated 19.07.2012 also impugned herein. It is further contended that the vide impugned order dated 10.04.2013 (Annexure A/16) also granted promotion to respondent No.4 as Chief/Head Typist. The main grievance of the applicant is that though

he is senior to the private respondent Nos.3 and 4, his juniors were granted promotion which deprived him of his legitimate promotion as Chief/Head Typist. Therefore, aggrieved with said impugned orders Annexure A, A-1, A-3, A-4, A-16, he filed the present OA and prayed to quash and set aside the said orders as the same were arbitrary, illegal and in violation of Articles 14 & 16 of the Constitution of India.

3. Per contra, the official respondents have filed their reply and denied the claim of the applicant. The respondents have contended as under :-

3.1 It is contended that though the name of the applicant was placed on panel dated 10.7.1989 (Annexure A-10) for grant of promotion to the post of Junior Typist, the regular promotion to the post of Junior Typists was effected in the case of applicant w.e.f. 05.07.1990 (Annexure A-11) only. Accordingly, his seniority in the cadre of Junior Typist was also fixed w.e.f. 05.07.1990 in terms of the Para 302 of Chapter-3 of IREM Volume – I, 1989. (Annexure R-1). Therefore, it is not correct on the part of the applicant to claim his seniority w.e.f. the date the empanelment list for Junior Typist published on 10.07.1989. In fact he was promoted and regularised as Junior Typist only on 05.07.1990.

3.2 It is contended that in the year 1992, the office of Divisional Office of Baroda published provisional seniority list dated 27.04.1992 of Junior Typists, and thereafter, on 20.12.1996 another seniority list was published (Annexure 8 & 9).

In the year 1998/1999, the applicant and the private respondents were granted promotion to the post of Senior Typist. The provisional seniority list for Senior Typist was published on 06.11.2003 (Annexure

A/6). Thereafter, revised seniority list was notified on 13/17.09.2004 (Annexure A/5).

3.3 It is further contended that on receipt of representation from respondent No.4 herein, disputing his position in the seniority list of Junior Typist dated 20.12.1996 and seniority list dated 6.11.2003, the said grievance was considered and accepted by the competent authority, and accordingly, revised seniority list was issued vide corrigendum dated 16.2.2004 (Annexure A-4) with regard to assigning correct seniority to the respondent No.4. Thus, the name of Shri P.N.Salvi was placed at Sl.No.1 instead of Sl. No.8 in the seniority list of Junior Typist dated 20.12.1996 and in the seniority list for Senior Typist dated 6.11.2003, by way of said corrigendum he was placed at Sl. No.23(A) instead of Sl.No.29. The said rectification was approved by the competent authority while considering the representation of the Trade Union with respect to their demand to assign correct seniority to said Shri P.N.Salvi.

At the same time, the respondents had also contended that the representation of the private respondent No.3, i.e, Mr.V.I.Patel was also considered by the competent authority with regard to assigning the correct seniority to him. Accordingly, the Divisional Office, Baroda vide its order dated 28.10.2005 (Annexure A/3) revised the seniority of respondent No.3 taking into consideration the fact that he was appointed on compassionate ground against handicapped quota as Junior Typist w.e.f. 30.12.1989. Accordingly, name of Mr. V.I. Patel has been ordered to be placed above respondent No.4, i.e., Mr.Salvi and below to Shri Muthu C. in the seniority list of Senior Typist

published on 17.09.2004. Therefore, it is not correct on the part of the applicant to allege that the respondents had illegally or arbitrarily interpolated the name of applicant in the seniority list. In fact both respondent Nos.3 and 4 are senior to the applicant and accordingly, the correct seniority has been assigned to them including the applicant herein.

3.4 It is contended that it is not correct on the part of the applicant to state that corrigendum with respect to seniority list dated 30.6.2011 was issued on 19.7.2012 (Annexure A-3) assigned wrong seniority to Mr.V.I.Patel. In this regard, the respondents have stated that infact, the said communication dated 19.7.2012 was not the corrigendum but the same was reply of the respondents, in response to the representation dated 02.07.2012 of the Trade Union. Infact in the seniority list of Senior Typist published on 30.6.2011 wherein, the name of applicant and the name of respondent No.4, i.e., Mr.Salvi were erroneously shown above in position to the name of respondent No.3 Mr.V.I.Patel. Therefore, said error was rectified vide corrigendum dated 29.9.2011 (Annexure R-2) and the name of Mr.V.I. Patel was placed at Sl. No.1A below one Shri P.G.Brahmabhati (Serial No.1), and above Shri P.N.Salvi Sl. No.2. Therefore, both the private respondent Nos.3 and 4 were found senior to the applicant and accordingly, the respondents had granted promotion to the post of Chief/Head Typist to said private respondents. Under the circumstances, the applicant has no right to claim to be appointed on promotional post. The seniority of respondent Nos.3 and 4 were revised in the year 2004 and 2005 respectively. Thereafter, in the year 2012 the respondent No.3 was appointed as Head/Chief Typist, the

applicant has raised the grievance almost after 10 years, the said belated stale claim is not maintainable and even otherwise no right whatsoever of the applicant has been infringed. Therefore, the claim of applicant is without any merit and not entitled for any relief.

4. The applicant has filed his rejoinder and reiterates the submissions. The applicant has placed additional annexures alongwith the said rejoinder (i.e., Annexure A/16- A to A/38) and additionally, submitted that :-

4.1 The applicant was working on ad-hoc basis w.e.f 23.03.1984 (Annexure A/12) prior to his selection on 10.07.1989 and suffered a loss of seniority considering his date of regular promotion from 05.07.1990.

4.2 It is contended that as per instructions contained in Railway Board's letter dated 27.02.86 (Annexure A/36) panel formed by the departmental selection board and approved by the competent authority shall remain in force for two years from the date of approval of the same by the competent authority or till they are exhausted whichever is earlier and keeping in view of the Board's orders provisional panel would have been considered the final date of panel as 10.07.1989.

4.3 It is contended that appointments of respondent No.3 was on compassionate grounds against physically handicapped quota after following the regular recruitment process. The appointments given on compassionate ground by the division in initial recruitment grades had not been assigned their seniority. Respondent Nos.3 and 4 have been shown as junior to the applicant in the seniority list of Junior Typists and Senior Typists notified in the year 1992, 1996 and 2003 since both the private respondents were appointed as Junior Typist after the declaration of provisional panel of Junior Typists which was published

on 10.07.1989. The respondent No.3 was appointed on 30.12.1989 as Hindi Typist at the Scale of Rs.950 – 1500 (on pay Rs.950/-) and the respondent No.4 was appointed on 12.03.1990. Therefore, the respondents ought to have restored the seniority of the applicant w.e.f. 10.07.1989, the date of inclusion of his name in the select panel list for Junior Typists and not from the date he was given charge/appointment as Junior Typists i.e., on 05.07.1990.

- 4.4 The respondents had erroneously revised and fixed the seniority of the respondent Nos.3 and 4 that to after 12 – 13 years and wrongly granted promotion for the post of Head Typist/Chief Typist.
5. Heard the learned counsel for both the parties at length. We have perused the materials on record. The main grievance of the applicant appears to be against the revision of seniority list of private respondent Nos.3 and 4 and grant of promotion to them to the post of Chief/Head Typists.
6. The learned counsel for the applicant submitted since the applicant was working as Gangman and subsequently, he had been successful in the screening for promotion to the post of Junior Typist, name of the applicant was empanelled in the panel/list declared by the respondents on 10.07.1989. Therefore, from the said date, i.e., 10.07.1989, he should be considered as regular appointed/promoted to the post of Junior Typist and not from the date of his regularization to the post of Junior Typists i.e., on 05.07.1990. It is also pleaded by the applicant that the private respondent Nos.3 and 4 were appointed as Junior Typists under direct quota i.e., by way of compassionate appointment, and that too after the declaration of the panel of promotional candidate.

Therefore, he should be considered senior to the said private respondents who were appointed on regular basis after the declaration of the name of the applicant in the panel list for the post of Junior Typist. On the basis of the said submission, it is claimed by the applicant that since he is senior to the private respondent Nos. 3 and 4, he ought to have been granted further promotion to the post of Chief/Head Typists.

7. It is noticed that, undisputedly, the respondent No.3 i.e., Mr.V.I.Patel was appointed on compassionate ground against handicapped quota as Hindi Typist vide order dated 30.12.1989 in the pay scale of Junior Typist. Similarly, the respondent No.4 i.e., Mr.P.N.Salvi was appointed directly against handicapped quota as Junior Typist vide order dated 12.03.1990, whereas, the applicant who was initially engaged as Gangman and subsequently, he was selected for promotional post as Junior Typist and his name was included in the empanelment list published on 10.07.1989. However, the applicant was appointed on regular basis as Junior Typist only on 05.07.1990 and on the said date he assumed the charge of Junior Typist. The record further reveals that the respondents had granted promotion to the post of Senior Typist including the applicant and the respondent Nos. 3 and 4. The provisional seniority lists were published on 06.11.2003 and 13/17.09.2004 (Annexures A/5 and A/6 respectively). Against the said seniority list, the respondent Nos.3 and 4 submitted their objection. In response to it by considering the date of regular appointment of private respondent No.3 as Junior Typist i.e., 30.12.1989, the competent authority i.e., respondent No.2 vide its order dated 28.10.2005 (Annexure A/3) had fixed the seniority and placed his name above to

Mr.P.N.Salvi and below to one Shri Muthu C. in the seniority list of Senior Typists published on 17.09.2004. Similarly, in the case of respondent No.4 vide order dated 16.02.2004 (Annexure A/4) since he was appointed on regular basis on 12.03.1990 as Junior Typist, his name was placed at Sl. No.1 in the seniority list of Junior Typist instead of Sl.No.8 and in the seniority list of Senior Typists his name was changed to Sl. No.23-A instead of Sl.No.29 vide order dated 16.02.2004 (Annexure A/4). Thus, the private respondent Nos.3 and 4 both were assigned their seniority in the cadre of Junior Typist as per their date of regular appointment and accordingly, the seniority list of Senior Typists were also revised and fixed. Both the private respondents remain senior to the applicant.

The record produced before us also reveals that while considering the grievance of the Trade Union as well as the applicant with respect to seniority assigned to respondent Nos.3 and 4, the respondent i.e., DRM(E), BRC vide its letter dated 7.01.2006 informed ADEN (W) BRC that the criteria of seniority would be the date of **regular promotion** and date of joining in the case of direct recruit. The applicant Mr.R.M.Patel has been selected as typist vide panel dated 10.07.1989 and regularized via order dated 05.07.1990. The respondent Nos.3 and 4 were direct recruits and appointed much earlier than the regular promotion of the applicant. The representation of the applicant was not found meritorious by the said Divisional Office.

In view of aforesaid factual matrix, it is seen that the respondents have followed the rules for assigning the seniority to their employees. It is also noticed that as per Para 302, Chapter III of IREM Vol.I

(Annexure R/1) in categories of post partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit. The seniority among the incumbents of the post in a grade is governed by the date of appointment to the grade. In the present case, as noticed hereinabove, admittedly, the applicant was regularly promoted only on 05.07.1990 and then only, entered into the grade applicable to the Junior Typists, whereas the private respondent Nos.3 and 4 were regularly appointed by way of direct recruitment prior to the applicant as also they were granted the grade of Junior Typist much before the applicant. Under the circumstances, we do not find any infirmities in the impugned decisions revising and fixing the seniority of respondent Nos.3 and 4 and granting promotion accordingly. Therefore, it cannot be said that applicant who is admittedly, junior to the respondent Nos.3 and 4 was deprived of promotion to the post of Chief/Head Typists. Thus, the O.A. lacks merit, and the same is dismissed. M.A if any stand disposed off accordingly. No Costs.

(Dr.A.K.Dubey)
Administrative Member

(Jayesh.V.Bhairavia)
Judicial Member