

IN THE CENTRL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

Regn. No O.A. No. 877/86

Date of decision 05.05.1992

V.K. Shukla

Applicant

Shri K.N.R. Pillay

Counsel for the applicant

vs.

Union of India

Respondents

Shri Jagjit Singh

Counsel for the respondents

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman(J).

The Hon'ble Mr. L.P. Gupta, Member (A).

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgment of the Bench delivered by Hon'ble Shri L.P. Gupta, Member (A).)

JUDGMENT (ORAL)

This is an application filed under Section 19 of the Administrative Tribunals Act of 1985. 9 applicants were initially recruited as Apprentice Mechanics and sent for two years training in the Electrical Department after selection through Railway Service Commission and, as per the merit order, assigned in the Construction Organisation and the Bombay Division from various dates. All these applicants have been subsequently transferred to the newly formed Traction Distribution Maintenance Organisation (TDMO), Jhansi Division, along with volunteers of other Groups like O.H.E. Bombay Division, Electrical Multiple Units Bombay, General Service, etc. The applicants were to undergo training for two years, but their training was curtailed by the respondents who were in urgent need of filling a large number

of vacancies of supervisory staff that had remained unfilled. By letter dated 4.10.79 (Annexure R-VII), the Chief Personnel Officer, in anticipation of Railway Board's approval, decided that Apprentice Mechanics in question should be examined on completion of 12 months training and absorbed against working posts if found fit. Such Apprentice Mechanics should be clearly warned that they will be assigned seniority on the basis of marks obtained by them in the examination and that their seniority vis-a-vis directly recruited Apprentice Mechanics who have undergone full period of 24 months training and those promoted from ranks will be regulated taking into account the stipulated 24 months of training and not the curtailed period of 12 months training.

2. The relief sought by the applicants is that the respondents should be directed to declare the seniority of Traction Distribution Department, Jhansi Division, and the respondents should be directed not to allow the ex-cadre staff to encroach into the cadre of the applicants. Earlier, in the application, mention has also been made about quashing of seniority list of 24.4.84, though in the main relief this has not been so prayed.

3. The learned counsel for the applicants argued that:-

- (i) the applicants have a claim for determination of their seniority in any case;
- (ii) in determination of their seniority, the dates they joined the working post should be taken as the date of entry;
- (iii) ad-hoc or fortuitous service of promotees should not be reckoned for counting of seniority of promotees.

The learned counsel for the respondents argued that:-

- (i) that the relief prayed for should be seen where there is no mention of any seniority list;
- (ii) the applicants at this <sup>late</sup> stage cannot ask for any modification in the seniority list of 1984 which has been finalised and when the applicants have been assigned proper seniority. Therefore, there is no question of commanding the respondents to indicate their seniority when the seniority has been finally determined;

(iii) the seniority list cannot be questioned at this stage since it pertains to the year 1984 and the applicants by OA of 1986 cannot challenge the list;

(iv) the applicants belong to Bombay and Jhansi Divisions and, therefore, the Principal Bench has no jurisdiction.

4. We shall deal with the contentions of the learned counsel for the respondents from the last point upwards. As regards jurisdiction, by order dated 24.10.86, it was directed that the matter should be taken up for hearing by the Principal Bench. As regards limitation, we agree that the <sup>questioning</sup> question of the seniority list of 1984 cannot be prayed for by an O.A. of 1986, more so, when this has not been specifically prayed for under the relief clause of the O.A. Notwithstanding what has been said above, it may be mentioned that the learned counsel for the applicants brought out that the seniority list of 1984 was not within their knowledge at all and the Jhansi Division has been writing to the Bombay Division for a copy of the seniority list. He has averred in the application that it was only through informal contact that in June, 1985, the applicants managed to secure a copy of the seniority list. Prior to June 1985, they were making representations for fixation of seniority and when they came to know about the seniority list in June, 1985, they represented against that in their representation dated 8.10.85 and by subsequent representations dated 3.3.86, 23.4.86 and 12.6.86 but they got no results. Both the counsels had no difference of opinion on the point that the seniority list was given to the Unions, but the contention of the learned counsel for the applicants was that the Unions had not circulated the copies to the applicants. In any case, seniority list must be well known to the persons concerned since it is of vital interest to them in regard to their service career.

5. While we do not proceed to examine whether the seniority list should be quashed or not, the applicants; however, certainly can claim that their seniority should be indicated and if the seniority list came to their notice only in 1985, any discrepancy or defects

can be urged by them by O.A. of 1986. In any case, we feel that there is sufficient cause to consider whether in the determination of seniority, certain vital points raised by the applicants are covered or not.

6. One of the vital points is about the determination of seniority of direct recruits from the date of joining the working post. Rule 302 of the IREM (Indian Railway Establishment Manual) (1968 Edn.) (subsequent edition of 1989 would not be relevant as the applicants were appointed in 1978) lays down that in categories of posts partially filled by direct recruitment and partially by promotion, criterion for determination of seniority should be the date of promotion in case of a promotee and date of joining the working post in the case of a direct recruit (emphasis ours). It was further held in the case of *Pramod Kumar & Ors. Vs. Union of India & Ors.* (ATR 1986 (1) CAT 209) that if the normal training period of two years is compressed and concentrated to six months and the test is held after six months, it will be as good as the test that was held after two years. It was also observed therein that those who passed the departmental test earlier will rank senior to those who passed the departmental test later. It is observed from Annexure 3 to the application that by letter dated 19.11.79, the result of the departmental examination was declared. It is also mentioned therein that those who failed in the written test should be advised of their performance and their training continued and they should prepare well now and take their test after 18 months. The plea of the respondents that the training was curtailed with the condition that their seniority will be counted only after two years which was the stipulated period of training will not be of much avail in the face of the clear rule in the IREM as mentioned above and the <sup>insertion</sup> ~~observance~~ of the Tribunal in the case referred to earlier. If the training was curtailed in the public interest and if the tests that were to be held after two years were taken after one year of concentrated training, such of the applicants as had qualified themselves duly in the tests and directed to join the working posts should not be made to rank junior to a promotee who was a later entrant to the working post or to a direct recruit who passed the test subsequently.

7. The other important point raised by the applicants was that the promotees were promoted without any determination of suitability and their such ad hoc promotions should be taken as fortuitous and should count for seniority only after regularisation. According to the arguments of the learned counsel for the respondents, the post in question was not a selection post prior to 29.9.81 and from 29.9.81 it has become a selection post. By order dated 25.11.83, the respondents also ordered that promotions made earlier than 29.9.81 according to then existing practice, will not be disturbed.

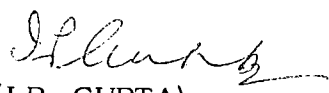
Whatever the position may be in regard to promotion prior to 29.9.81, we cannot at this belated stage take up the question of validity or otherwise of such promotions. The Administrative Tribunals Act came into force on 1.11.1985 and, therefore, only cases preceeding upto 3 years can be examined. In other words, any promotion from 1.11.82 onwards can at best be examined. There seems to be no dispute on the point that after 29.9.81, the post has been treated as a selection post and is still being so treated. Therefore, the legality or illegality of promotions made prior to 1981 is not being considered here.

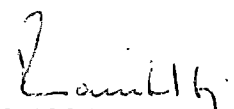
8. In the conspectus of the aforesaid facts of this particular case and in view of the above view of the matter, we direct the respondents to indicate the appropriate seniority of the applicants as early as possible, preferably within six months from the date of receipt of a copy of this order. The only direction that we would like to give in regard to determination of seniority is that in the case of the applicants, the dates they joined the Working Post on qualifying themselves in the prescribed tests after training should be relevant in view of what has been said above. Those who are aggrieved by the placement of the applicants in the seniority list on the basis of the date of joining the working post as the basis for seniority should be given an opportunity to represent and such representations should be considered by the respondents.

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9. With the aforesaid directions and order, the application is finally disposed of with no order as to costs.

  
(L.P. GUPTA)  
MEMBER (A)

  
(RAM PAL SINGH)  
VICE-CHAIRMAN (J)