

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

O.A.774/87.

DATE OF DECISION: 03.12.1992.

Brijesh Narain & Anr.

..Petitioners.

Versus

The Secretary,
Railway Board and others.

..Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the petitioners. Shri O.P. Gupta, Counsel.
For the Respondents 1 to 4. Shri O.N. Moolri, Counsel.
For the Respondent No.5. Shri B.S. Maine, Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioners, Shri Brijesh Narain Gupta and Shri Mukesh Kumar Sharma, have sought a direction in this case declaring that the seniority list dated 3.10.1985 (Annexure 'A') is contrary to law in so far as it assigns seniority to them below Respondents 5 to 49. There is a further prayer for a direction to assign seniority to the petitioners above Smt. Oma Oak placing the petitioner No. 1 at Serial No. 47-A and petitioner No. 2 at Serial No. 47-B in the seniority list of Reservation Supervisors in the grade of Rs.455-700. The names of the petitioners are found in the seniority list in the lower cadre of Assistant Reservation Supervisors in the scale of Rs.425-640 at Serial Nos. 44 and 43 respectively.

16

2. The two petitioners had, in response to the advertisement inviting applications for filling up the post of Enquiry-cum-Reservation Clerks in the Western Railway in the scale of Rs.330-560 dated 1.2.1978, offered themselves as candidates. The Railway Recruitment Board selected the petitioners and included them in the panel of selected candidates. The petitioners were informed by the Railway Service Commission, Bombay on 14.1.1980 that they have qualified in the interview and that their final appointment will be made by the Central Railway who would in due course send them offer of appointment provided they are otherwise suitable. Unfortunately for the petitioners, no appointment orders were issued in their favour. After a lapse of considerable time, they were offered appointment by the Central Railway in the lower cadre of Commercial Clerks in the lower scale of Rs.260-430. The petitioners did not accept the said offer of appointment and insisted on their cases being considered for appointment as Enquiry-cum-Reservation Clerk in the scale of Rs.330-560. Ultimately, the petitioners were sent offer of appointment and were sent for training in December, 1982. They were allocated to the Kota Division in the Western Railway. After training both the petitioners were appointed as Enquiry-cum-Reservation Clerk w.e.f. 5.5.1983. In due course, they secured further promotion as Assistant Reservation Supervisor in the scale of Rs.425-640. The Western Railway authorities

have circulated the seniority list dated 3.10.1985 in which the petitioners' names are included in the seniority list of Assistant Reservation Supervisor, as already stated. The petitioners claim that they are entitled to be placed in the seniority list of Reservation Supervisors in the higher scale of Rs.455-700.

3. On the facts admitted it is obvious that the petitioners started their career on 5.5.1983 as Enquiry-cum-Reservation Clerks. On that basis seniority was assigned to them at Serial No. 44 and 43 which cannot be faulted. Though the petitioners have brought the grievance about assigning of proper ranking in the seniority list, in truth and substance they have a grievance about their not having been appointed as Enquiry-cum-Reservation Clerk in the Western Railway in the year 1980. The contention of Shri Gupta, learned counsel for the petitioners, is that the applications having been invited for the post of Enquiry-cum-Reservation Clerk by the Railway for the vacancies of the Western Railway Recruitment Board, the petitioners having become qualified for appointment by their selection, they are entitled to be treated as having been included in the select list prepared in the year 1980 and accorded seniority on that basis in the cadre of Enquiry-cum-Reservation Clerks. Shri Gupta relied upon the rules which provide that the candidates included in the earlier select list are entitled to claim seniority over those who are placed in the subsequent select list and that the seniority inter se has to be determined on the basis of the ranking in the select list and not on the basis of the dates of assuming

charge. There cannot be any dispute about these principles.

4. So far as the selection of the petitioners is concerned, they were duly informed by communication dated 14.1.1980 that they have to await orders of appointment from the Central Railway. The petitioners never made any grievance at this stage on the ground that they having applied for the posts in Western Railway, they were entitled to be offered appointment in the Western Railway and not in the Central Railway.

5. So far as the posts in the Central Railway are concerned, there is material to show as asserted by the respondents in the reply that there were 80 vacancies which were all required to be filled up from among the female candidates. Annexure K produced by the petitioner shows that an indent was placed on the Railway Recruitment Board for recruitment of 80 female candidates. It further shows that only 23 female candidates were selected and the remaining 57 male candidates were not selected. Annexure R-1 produced by the respondents is a Railway Board's letter dated 30.6.1978 which says that the Government has decided to have only women candidates as Reservation Clerks in the offices in four metropolitan cities of Bombay, Calcutta, Delhi and Madras and they should constitute a seniority unit separate from the rest of the Enquiry and Reservation cadre in the Railways. The stand taken by the respondents is that though the petitioners were selected, they could not be appointed by the Central Railway as there was a mandate to fill up all the vacancies from among the

19

female candidates. Hence, the available 23 female candidates were appointed and the remaining 57 being male candidates were not appointed. It is well settled now that mere selection does not confer a right to be appointed vide AIR 1973 SC 2216 between

State of Haryana Vs. Subash Chander. Besides, if the petitioners had any grievance about their not having been given appointment in the Central Railway though there were vacancies and about the action taken to treat those vacancies as available for only female candidates, they should have agitated their rights in time from the date of accrual of the cause of action in the year 1980. This cannot be agitated in the petition filed on 15.5.1987. The claim of the petitioners is clearly barred by time.

6. Though the petitioners were not offered appointment in the Central Railway on the ground that there is a direction to fill up those vacancies from among the female candidates, an attempt was made to help persons like the petitioners who were found to be duly qualified for appointment. The first attempt was made to offer them the post in the lower cadre in the Central Railway. That was not accepted by the petitioners. It is in this background that an attempt was made if the petitioners could be accommodated elsewhere. In the meanwhile, 16 vacancies of Enquiry-cum-Reservation Clerk had arisen in the Western Railway and a requisition for filling up the same was given to the Railway Recruitment Board. A decision was taken to offer appointment to the petitioners and other similarly

situate against those vacancies in the years 1982-1983. The select list having lapsed after an expiry of one year, they would not have been entitled to appointment. Having regard to the equity, relaxation was made and the petitioners and other similarly situate were offered appointment for filling up the available 16 vacancies in the year 1982-1983 in the Western Railway. We thus find on a close scrutiny of the facts produced before us that though the petitioners had no legal right to secure appointment in the vacancies that occurred in the year 1982-1983, having regard to the equity involved an attempt was made to offer them appointment. The petitioners having secured appointment in the vacancies that arose in the year 1982-1983 cannot claim their seniority from an anterior date. The appointment not having been secured by them as a direct consequence of their selection in the year 1983 but by the process of relaxation and by way of helping the petitioners, they cannot claim relief, as prayed for by them, in this petition.

6. So far as Oma Oak and others are concerned, the petitioners have not placed any material before us to show that they were all candidates along with the petitioners who were selected along with them in the year 1980 and they have been given preferential treatment whereas similar treatment has not been given to them. In the absence of proper pleadings and material, this contention also does not merit acceptance.

7. For the reasons stated above, this petition fails and is accordingly dismissed. No costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

Malimath
(V.S. MALIMATH)
CHAIRMAN

'SRD'
041292