

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 109/1991

DATE OF DECISION: 17.01.1992

SHRI VIJAYPAL SINGH & 5 OTHERS

...APPLICANTS

VS.

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM

SHRI I.K. RASGOTRA, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI B.S. MAINEE

FOR THE RESPONDENTS

...SHRI ROMESH GAUTAM

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporters or not?

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicants in the present case were Train Clerk and the next promotion is to the post of Guard Grade 'C'. The respondents have issued a seniority list in which the applicants have been shown junior in the grade of Guard 'C' from those who have been promoted from other sources, i.e., from Assistant Guard, Shunting Jamadar, concerned staff and direct recruits. The applicants made a representation through the union for assignment of proper seniority in the grade of Guard in favour of Shri Vijaypal Singh on which the impugned order dt. 23.3.1990 (Annexure A1) was passed by Senior D.P.O.

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rejecting the claim of the Train Clerk for assignment of seniority from the date from which they were given adhoc promotion w.e.f. 24.8.1978 and applicant No.1, Shri Vijaypal Singh w.e.f. December, 1978. The grievance of the applicants is that the applicants have been placed junior to direct recruits and promotees from other categories although the direct recruits and promotees from other categories had been appointed/promoted after the ad hoc promotion of the applicants.

2. In this application, applicants have prayed for the following reliefs :-

- (a) For quashing of the impugned order dt. 23.3.1990 and further directing the respondents to assign seniority to the applicants from the date of their ad hoc promotion treating the direct recruits and promotees from other categories appointed/promoted after ad hoc promotion of the applicants as junior to the applicants.
- (b) To grant other consequential benefits to the applicants.

3. The facts are that the posts of Grand Grade 'C' are filled up as per percentage given in para-4.3 of the application, which is not denied by the respondents. The chart is as follows :

i)	Train Clerk	31%
ii)	Assistant Guard	10%
iii)	Shunting Jamadar	16 $\frac{2}{3}$ %
iv)	Concerned staff	20%
v)	Direct quota	22 $\frac{1}{3}$ %

The applicants filed the letter of their ad hoc promotion dt. 24.8.1978 which is as follows :-

"The following Trains Clerks are appointed to officiate as Guard 'C' and are posted to work as such on the stations as noted against their names. It should be made clear to them that these are purely temporary and ad hoc arrangement which do not bestow upon them any right to seek permanent absorption as Guard Gr. 'C' and are liable to be replaced on availability of staff from other eligible categories. They should be given 14 days local training and brief instructions in the duties of Guard by the sub i/c noted against their names who will issue them temporary competency certificates. They are also required to pass medical examination in class-A2 if not already passed or over due the same."

It is not disputed that the post of Guard Grade 'C' is a selection post. The selection for the post of Guard Grade 'C' was held in the year 1981 when all the applicants met the grade and were placed on the panel after having passed the selection successfully. After this empanelment of the applicants, they were all sent for training to pass the Guard's promotion category (Annexure P3) in 1981 vide letter dt. 19.10.1981 (Annexure A3). In the meantime, there was a selection from other sources from the direct recruits and promotees from other categories and they have been assigned seniority above the applicant in the seniority list issued of Guard Grade 'C' vide letter dt. 12.10.1987 (Annexure A4). The names of the applicants in the said seniority list have been placed at Sl.No.157(A), 145, 149, 154, 157 and 148. The applicants have challenged this seniority list.

4. The respondents contested the application and stated that the applicants along with other Train Clerks were promoted on

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ad hoc basis after giving only 14 days' local training. This promotion was purely temporary and it was an ad hoc arrangement and so merely a stop gap arrangement with the condition that the applicants were liable to be replaced on availability of staff from other eligible categories. The applicants, however, continued on ad hoc basis from 1978 to 1981 only as a stop gap arrangement.

During this period from 1978 to 1981, 69 employees from different categories including 40 Train Clerks were declared suitable against promotee quota and 35 persons joined the division against direct quota. All these 40 Train Clerks who were declared suitable during the period 1978 to 1981 were senior to all the 26 Train Clerks who were promoted on temporary and ad hoc basis including the applicants. There was a selection in 1981 and the applicants were empanelled in that selection, while direct recruits had already joined between 1978 and 1981, after proper empanelment in selection. The applicants have been given seniority from the date of regular promotion after holding suitability from amongst all the eligible categories as per prescribed quota held in 1981. As such, they have been placed at the correct place below also direct recruits and promotees, who joined/promoted as Guard Grade 'C' during 1978 and 1981, i.e., before the suitability in which the applicants were declared suitable and have been

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held senior to the applicants. The applicants have wrongly contended in the application that the suitability was not conducted in time. The applicants have also admitted in the application that those direct recruits and promotees from other categories joined/promoted during 1978 to 1981. 35 probationary Guards joined the division against direct quota during 1978-1981. It is said that the rota quota system did not fail. Thus according to the respondents, the applicants have no case.

5. We have heard the learned counsel for the parties at length and have gone through the record of the case. The applicants in the case have prayed for assignment of proper seniority in the grade of Guard 'C' and from the date when they were promoted on ad hoc basis from the cadre of Train Clerks. In this connection, the learned counsel for the applicants has referred to the case of Shri K.N.Mishra and Ors. Vs. Union of India and Others, ATR 1986(2) CAT 270 and also the judgement by the Principal Bench in OA 989/1986 decided on 26.7.1987 of clerks working under the Northern Railway, Ghaziabad and prayed for assignment of their seniority when they were promoted as Junior Clerks in the pay scale of Rs.260-400 and in the said judgement, the relief was granted to them and their

ad hoc service was counted for seniority. The relevant portion of the case of Shri K.N. Mishra (supra) is quoted below :-

"In sum, the benefit of the long period of service would accrue to all promotees, who continuously officiated against long term vacancies and long term vacancies would be those that are not for a few days or a few months or are otherwise adventitious. Irrespective of whether the posts were temporary or permanent, so long as the promotion was against long term or substantive vacancies and not against short term or fortuitous vacancies, the period of continuous officiation would have to be reckoned for determining seniority..."

The learned counsel has also referred to a decision of the Principal Bench in OA 1142/1989 decided on 5.9.1988, which was the case of the employees working in Class-IV posts under the Northern Railway and promoted on ad hoc basis to Junior Clerks. In this case, the judgement referred to above in OA 989/1986 decided on 26.7.1987 has been relied upon. In that case, it was directed that the seniority of the applicants in the grade of Junior Clerks etc. should be reckoned on the basis of their continuous officiation from 1983. It is not disputed that the promotion to Grade 'C' Guard is from different sources in a said percentage and the promotion is only after a selection, written test and viva-voce. The applicants themselves have admitted in the Original Applications that initially they were promoted on ad hoc basis and in fact the order of their promotion (Annexure A2) goes to show that they were given only ad hoc promotion and a short

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training of 14 days and it was specifically mentioned that they are liable to be replaced when eligible staff is available and this ad hoc promotion will not give them an advantage either of regularisation or of seniority.

Thus, the promotion in the case of the applicants in 1978 was only of ad hoc nature, rather a stop gap arrangement without following the procedure prescribed by the Extant Rules for promotion. In the Full Bench decision in Shri R.D.Gupta & Ors. Vs. UOI (OA 1147/1988) decided by the Principal Bench on 7.8.1989, after considering the whole matter, it has been decided, which is as follows :-

- "(i) Total length of service reckoned from the actual date of promotion in accordance with the recruitment rules should count for determining the inter se seniority of the promotees.
- (ii) Period served on ad hoc basis before the DPC finding fit for promotion cannot count for seniority.
- (iii) Reasons given for dismissing Special Leave Petition constitute a binding precedent under Article 141."

In the judgement by the Constitution Bench of the Hon'ble Supreme Court in the Direct Recruits Class-II Engineers' Association & Anr. Vs. State of Maharashtra, the Hon'ble Supreme Court has laid down the principles for assigning seniority. In case of promotees and direct recruits, matter has been summed up in para-44. Sub-para(A) of para 44 is material which is quoted below :-

"Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority."

The applicants have undergone selection in the year 1981 and were empanelled thereafter. They were also sent for further training as per instructions for passing the training course for regularisation in Grade 'C' of Guard. In the meantime, since 1978 to 1981, the persons from different categories, i.e., from Assistant Guards, Shunting Jamadar, concerned staff and direct quota were also selected and appointed and their selection has been earlier to that of the selection of the present applicants. The respondents have clearly stated in the counter that 40 Train Clerks, who were empanelled earlier have been shown senior to 69 other incumbents, who came from other sources. The applicants do not figure in those 40 Train Clerks, who have been empanelled on the basis of earlier selection. The selection of the applicants has taken place subsequently and they were sent for training much later than those who were selected and recruited from other sources.

6. It is necessary that the pre appointment test prescribed under the rules and administrative instructions where the rules are silent should be cleared, in order to come at par with similarly situated other incumbents from other sources. In the present case, the selection was must and the applicants were selected in a subsequent selection, so

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they cannot have a march-over those persons, who have already been selected and recruited according to rules.

7. The learned counsel for the applicant also urged that the quota and rota system has broken down, but there is nothing on record to show this fact. In fact, the percentage from various sources has been fixed and the respondents in their counter have clearly stated that the persons from different sources were selected in the Grade 'C' Guard during the period 1978 to 1981. The applicants did not show as to in which year selection from other sources has not taken place. In fact, the applicants have admitted in the Original Application that their selection has been delayed. But it is evident or established from the record that the selection has been delayed because of administrative fault. The process of selection takes some time when the vacancies are calculated and they are adjusted in different proportions to different sources of recruitment. Thus the process of selection commences from the date of promotion of the applicants in 1978 and continued till 1981. The applicants, therefore, cannot have any grudge that their selection has been delayed. In view of the above facts, the judgements relief on by the learned counsel for the applicants referred to above, cannot be

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applied to their case. The Full Bench decision in
Shri R.D. Gupta and the decision in the case of Direct
Recruits Class-II Engineers' Association & Anr. Vs. State
of Maharashtra fully cover the present case.

8. We find that the applicants have been rightly
assigned their seniority and the applicants have been
rightly communicated by the impugned order their placement
in the seniority of Guard Grade 'C'. In view of the above
discussion, we find that the application is devoid of
merit and is dismissed leaving the parties to bear their
own costs.

J.P. Sharma
(J.P. SHARMA) 17.1.52
MEMBER (J)

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