

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI.

OA 1547/91

Date of decision: 23.9.92

Sh. Hari Shankar Sharma &  
5 others ... Applicants

versus

Union of India & Ors. ... Respondents

CORAM: THE HON'BLE SH.S.P.MUKERJI, VICE-CHAIRMAN(A)  
THE HON'BLE SH.T.S.OBEROI, MEMBER(J)

For the Applicants ... Sh.B.S.Mainee, Counsel

For the Respondents ... Sh.Rajesh, Counsel.

1. Whether local reporters may be allowed to see the Judgement? *Ans.*
2. Whether to be referred to the reporter or not? *Ans.*

JUDGEMENT

(DELIVERED BY HON'BLE SH.S.P.MUKERJI, VICE-CHAIRMAN)

In this application dated 22.4.91, the six applicants who have been working as Diesel Assistant in the Northern Railway have prayed that their names be included in the seniority list of the cadre of First Fireman by taking into account their ad hoc service in that capacity. According to the applicants they were promoted as First Fireman in the grade of Rs.950-1500 on ad hoc basis vide order dated 18.2.88(Annexure A-2). They have been continuously working as such after their ad hoc promotion and they were finally selected for regular promotion and placed in the panel dated 24.2.89(Annexure A-3). They are claiming seniority in the <sup>cadre</sup> First Fireman by taking into account their ad hoc service from 1987 to 1988. Their grievance is that a number of direct recruits joined their Division between 18.2.88 and 14.2.89 while the applicants who have been working on ad hoc basis, <sup>but</sup> their seniority has been given from the dates they were recruited as First Fireman

instead from the date they completed 18 months apprentice training. The applicants have on that basis challenged the seniority list issued on 16.7.90 (Annexure A-4). The applicants represented against the seniority list but their representations were rejected vide <sup>the</sup> impugned order at Annexure A-1. The applicants claim that the seniority between them and the direct recruits should be based on the date of ad hoc promotion of the promotees and the dates of joining to the working posts after completing 18 months training course for the direct recruits. The impugned seniority list contains the names of many junior direct recruits on the basis of their dates of recruitment while the names of the applicants are missing. They have referred to the judgement of the Supreme Court in Narender Chadha ~~ass~~ case and the recent decision of the Constitution Bench in the Direct Recruit Class II Engineering Officers' Association & ors. Vs. State of Maharashtra & others (JT 1990 (2) SC 264) in support of their claim of seniority based on ad hoc promotion.

2. In the counter affidavit the respondents have stated that the applicants were promoted as First Fireman purely on ad hoc basis indicating that they will have no right for regular appointment to the post. Their seniority has been fixed from the dates of their empanelment maintaining their inter se seniority in terms of para 302 of the Indian Railway Establishment Manual extracted at Annexure R-1. They have admitted that the seniority of direct recruits to the First Fireman cadre is assigned from the date of their induction in the post on regular basis after completion of their training. They have stated that the seniority of directs from

Sl.No.509 to 534 has been determined from the dates of their induction in the cadre of First Fireman on regular basis after successful completion of their training. They have clarified that these direct recruits after completion of their training during <sup>joined the post</sup> 1986 and 1987 <sup>before</sup> <sub>as</sub> the selection of the applicants, who were included in the panel on 24.2.89.

3. We have heard the learned counsel for both the parties and gone through the documents carefully. The final word on the question of seniority between the direct recruits and the promotees has been <sup>said</sup> <sub>stated</sub> in the judgement of the Constitution Bench of the Hon'ble Supreme Court in the Direct Recruit Class II Engineering Officers' Association & Ors. Vs. State of Maharashtra & ors. (JT 1990(2) SC 264). In that judgement the court summed up their conclusions the relevant parts of which are quoted below:-

" (A) 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.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

4. From the facts of the case it is clear that the applicants were not appointed on 18.2.88 in accordance with the recruitment rules as otherwise it was not necessary for them to be considered for inclusion in the panel issued on 24.2.89 (Annexure A-3). From the perusal of the order <sup>of</sup> ad hoc promotion

23

of the applicants at Annexure A-2 dated 18.2.88, it is not clear whether there was any regular selection made and whether all eligible candidates were considered. In the order dated 24.2.89(Annexure A-3) <sup>however</sup> ~~above~~, a reference has been made to the process of selection. From the order dated 18.2.88(Annexure A-2) it further appears that many of the candidates promoted on ad hoc basis did not undergo the training necessary for promotion as First Fireman. It was made clear in the order that the promotions are ad hoc and temporary and that they will be reverted as soon as regular Foremen are appointed. Their promotions were, therefore, of stop-gap character. Had they continued for 5 to 10 years on ad hoc basis perhaps a presumption could have been made that their promotion was not of stop-gap nature. But the fact remains that between their ad hoc appointment on 18.2.88 and regular empanelment on 24.2.89, the gap is of only of a year and thus the ad hoc promotion cannot be interpreted to <sup>have been</sup> be on a long term basis. In that light, the aforesaid ruling of the Supreme Court clearly debars such ad hoc officiation for the purpose of seniority <sup>over the</sup> among direct recruits. The respondents have clearly stated that the direct recruits have been given their seniority based on the dates of their induction <sup>to</sup> ~~on~~ regular posts after completion of their training. In the facts and circumstances, we see no force in the application and dismiss the same without any order as to costs.

*23.9.92*  
(T.S.OBEROI)  
MEMBER(J)

*S.P.M.*  
(S.P.MUKERJI)  
VICE-CHAIRMAN(A)