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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn.No. O.A. 896/1991. DATE OF DECISION: 23 -7-1992.

Shri Mohinder Singh & Ors. Applicants.

V/s.

Union of India Respondents.

CORAM: Hon'ble Mr. T.S. Oberoi, Member (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri B.S. Mainee, counsel for the applicants.
Shri Romesh Gautam, counsel for the respondents.

JUDGMENT

(delivered by Hon'ble Mr. P.C. Jain, Member)

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicants, namely, Shri Mohinder Singh, Shri Mangal Singh and Shri Ram Niwas, who are working as Pointsman in the Northern Railway, have impugned Order dated 4.12.1991 (Annexure A-1) by which they, along with some others, have been assigned seniority as Pointsman 'B' Grade with effect from 21.6.1990, and prayed for the following reliefs: -

- 8.1. That this hon'ble tribunal may be pleased to quash the impugned orders directing the respondents to assign seniority to the applicants from the date they were originally appointed as Pointsmen in 1982/1984.
- 8.2. That this hon'ble tribunal may be further pleased to direct the respondents to consider the applicants for empanelment as Pointsmen (A) in the selection which was held in 1988 and in which the applicants had also appeared and the result of which was declared on 12-1-89.
- 8.3. That any other or further orders, as this Hon'ble tribunal may deem fit and proper under the circumstances of the case may also be passed in favour of the applicants.
- 8.4. That the costs of the proceedings may also be awarded in favour of the applicants."

2. Briefly stated, the facts of the case are that the applicants were initially engaged as casual labour in Bikaner

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Division and were later appointed as Pointsman purely on ad-hoc basis. Applicant No.1, viz., Shri Mohinder Singh, was appointed vide letter dated 13.10.82, applicant No.2, viz., Shri Mangal Singh, was appointed vide letter dated 25.11.1982 (Annexure A-2) and Applicant No.3, viz., Shri Ram Niwas, whose appointment letter has not been placed on record, is stated to have been appointed vide letter dated 18.1.1984. Although no recruitment rules relating to this post have been filed by either party, yet admittedly they were to be regularised only on passing the Psychological test and in the appointment letters, it was made clear to them that they would remain ad-hoc until they passed the Psychological test for the Pointsman post. Applicants No.1 and 2 appeared in the Psychological test held from 16.8.82 to 18.8.82, but according to them, the result thereof was never communicated to them, and that they continued thereafter. According to them, it was made clear in the letter for holding the Psychological test that they would be regularised as Pointsman 'B' on their being declared successful in the Psychological test and in case they failed they were not to be allowed to continue as Pointsman. In other words, they base their claim for having passed the said Psychological test on the plea that they were allowed to continue as Pointsman. According to the respondents, however, the result of the Psychological test in which the applicants appeared was not declared so far as the applicants are concerned as they failed in the said test and that they were allowed to continue as Pointsman Grade 'B' only on ad-hoc basis. In connection with selection for promotion to the post of Pointsman Grade 'A', written tests were held on 6.8.88, 10.8.88 and 13.8.88 and a list of the Pointsmen who had qualified in the said test and were to be called for viva-voce fixed for 10.9.88, 11.9.88 and 12.9.88 was circulated vide letter dated 4.9.1988 (Annexure A-3). The applicants herein were also allowed to appear in the said written test and they were shown to have passed the written test, but their names were included

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in the list of candidates who were allowed provisionally as they had failed in Psychological test. It was also indicated therein that "They shall have to undergo Psychological test again and in case they fail again they shall have to go to their original substantive post". The applicants were allowed to appear in the viva-voce test also, but none of them is shown to have come in the final selection list (Annexure A-5), declared on 12.1.1989. Meanwhile, all the three applicants were called for the Psychological test held on 24.12.1988 and 25.12.1988, vide letter dated 21.12.1988 (Annexure A-4), and all of them qualified in the same, vide communication dated 21.6.1990 (Annexure R-2), but they have been declared 'Suitable as Pointsman Gr. 'B'/Leverman Gr. 'B'. Thus, as per the impugned order dated 4.2.1991 (Annexure A-1), the respondents have regularised the applicants as Pointsman 'B' Grade with effect from 21.6.1990 and are assigning them seniority as Pointsman 'B' Grade with effect from the same date. Aggrieved by the decision of the respondents, the applicants have filed this O.A., praying for assigning them seniority as Pointsman from the date they were originally appointed as Pointsman and that they should be included in the panel of Pointsmen 'A' on the basis of the selection held in 1988, the result of which was declared on 12.1.89.

3. We have gone through the record of the case and heard the learned counsel for the parties. The case is disposed of at the stage of admission itself.

4. The main grounds taken by the applicants are that since they were never reverted from the post of Pointsman ever since their appointment as such and their failure in the Psychological test in 1982 was never communicated to them till December, 1988 when they were called for Psychological test once again, the impugned order is unfair, unjust, arbitrary and discriminatory. According to them, if they had not qualified in the Psychological test of 1982, they should have been called for re-test immediately after 1982 because that test had been conducted throughout from 1982 to 1988 and a large
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number of Pointsmen who were appointed subsequently but had passed the Psychological test have been declared senior to the applicants.

5. The case of the respondents, however, is that the applicants were appointed as Pointsmen purely temporarily on ad-hoc basis and that they would continue to be ad-hoc until they passed the Psychological test. As for the Pointsmen Grade 'A' test, the respondents have taken the plea that the applicants were allowed to appear in the same provisionally and since they could not qualify the Psychological Test/Viva-voce earlier, their names could not be included in the panel of that year.

6. In the rejoinder, the applicants have stated that they are entitled to seniority from the date from which they have been continuously working as Pointsmen as all their earlier service is followed by regularisation, and that their names did not find place in the panel of Pointsmen 'A' Grade of 1988 merely because the respondents did not take their seniority into consideration from the date(s) of their appointment.

7. An analysis of the foregoing facts shows that the case of the applicants has some force inasmuch as they were allowed to continue as Pointsmen without any break in service, nor were they communicated that they had failed in the Psychological test held in 1982, so far as applicants No.1 and 2 are concerned. So far as applicant No.3 is concerned, there is nothing on record to show that he appeared in any Psychological test at the time of his appointment in 1984 or subsequent thereto till he was called for the Psychological test held in December, 1988 in which he qualified, as stated above. No recruitment rule/order has been produced by either party to show if the Psychological test for the post of Pointsmen Grade 'B' was a condition precedent and if it was so, it is not clear as to how the respondents allowed the applicants to continue in the post for such a long period and even allowed them to appear for the selection test for Pointsmen Grade 'A'.

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However, since the written examination for Pointsman Grade 'A' was followed by viva-voce also and the final selection list was declared on the basis of the aggregate of the two, it cannot be taken for granted that the applicants had come upto the mark in the viva-voce also. In all fairness to the applicants, we come to the conclusion that the applicants are entitled to seniority from the date they were originally appointed as Pointsman Grade 'B' since all their ad-hoc service is followed by their regular appointment in the Pointsman Grade 'B', but so far as their second prayer for their empanelment in the list of Pointsman 'A' on the basis of 1988 examination is concerned, the same cannot be granted.

8. In the light of the foregoing discussion, the impugned order dated 4.12.1991 is hereby quashed and set aside. The respondents are directed to assign seniority to the applicants from their respective dates of appointment as Pointman ^{Grade B/C} in 1982/1984. The O.A. is thus partly allowed.
No costs.

Sen. 23/7/92
(P.C. JAIN)
MEMBER(A)

Sen. 23.7.92
(T.S. OBEROI)
MEMBER(J)