

29

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO. 42/2004

New Delhi, this the 5th day of June, 2006

HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

1. Shri J.K. Sethi,
S/o Shri Late M.R. Sethi,
Under Sr. Elect. Engineer,
Northern Railway,
Baroda House, New Delhi
2. Shri Gurmeet Singh,
S/o Shri Raghubir Singh,
J.E. II,
Under Divisional Railway Manager,
Northern Railway,
Ambala

... APPLICANTS

(By Advocate: Shri B.S. Mainee)

VERSUS

Union of India : Through

1. The General Manager,
Northern Railway,
Baroda House, New Delhi
2. Shri Arya Kumar,
J.E.II, Sr. DEE/EMU/Ghaziabad
3. Shri Kailash Chand (SC),
JE-II,
Dy. CEE(C), New Delhi
4. Shri Ashok Kumar,
J.E.
Sr. DEE/G/New Delhi
5. Shri R.K. Malik,
JE-II, SEE(HQ),
Baroda House, New Delhi
6. Shri Sant Giri Goswami,
Sr. DEE (G),
New Delhi

...RESPONDENTS

(By Advocate: Shri S.M. Arif)

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O R D E R

By Mukesh Kumar Gupta:

MA No.43/2004 seeking joining together in one OA under rule 4(5) of CAT (Procedure) Rules, 1985 is allowed.

2. In this second round of litigation, two applicants challenge validity of order dated 26.06.2003 rejecting their representation for revision of seniority list. They also seek direction to Respondent No.1 to assign them seniority in accordance with rules particularly rule/para 302 of IREM Vol.I, placing them senior to those who had been selected under intermediate apprentice quota with consequential benefits.

3. The facts which are required to be noticed are that applicants were initially appointed as Junior Draftsmen in the grade of Rs.4,000-6,000/- in the Electrical Branch, Northern Railway HQrs. Office. The next higher post for which they were eligible for promotion is Junior Engineer-II in the pay scale of Rs.5,000-8,000/-. As per Recruitment Rules, the said post is to be filled by following manner:-

- (i) 50% by direct recruitment through RRB
- (ii) 25% by induction of inter apprentices from amongst Asstt. Draftsmen
- (iii) 25% by promotion by selection from amongst Assistant Draftsmen.

4. The designation of Assistant Draftsmen and Junior Draftsmen is one and the same thing. Applicants were promoted under 25% promotional quota for which written examination was held on 13.11.1999 followed by viva-voce test on 11.01.2000. Final result was declared on 04.02.2000 and promotion order was issued vide order dated 14.03.2000. Applicants' names appear therein at serial Nos. 6 & 7 respectively. Their grievance is that selection against 25% of

inter apprentices quota was held by conducting written examination on 07.06.1999 followed by viva voce test on 12.7.1999 and final results were declared on 16.7.1999. Officials selected under the said quota were required to undergo a training of 18 months before they could be allowed to join the promotional post of JE-II. They were deputed for said training vide communication dated 23.08.1999, which was to commence on 06.09.1999 and was to complete on 06.03.2001. While the officials selected against aforesaid quota were still under training, respondent issued notice dated 14.3.2000 posting them in the higher promotional post and thereafter they were again sent for training. This action of Respondent was wrong, arbitrary and illegal and actuated by favoritism and contrary to the rules and law. A provisional seniority list was issued vide Circular dated 11.12.2001 (A/7) wherein applicants figure at serial Nos. 13 and 14 respectively, while Respondents 2 - 6 appear at serial Nos. 5, 6, 7, 8 and 9 respectively. Applicants submitted representation dated 04.01.2002 stating that the seniority assigned to such officials was contrary to rules as they could not have appointed during the pendency of the training period and they were liable to be posted only after completion of training. Said representation was rejected by passing a non-speaking order dated 11.4.2002. Under these circumstances, 5 officials, including the applicants, filed OA No.2884/2002 which was disposed of in limine vide order dated 12.12.2002 directing Respondent No.1 to consider the same and pass a speaking order. Applicants were also directed to submit a fresh representation with two weeks. In compliance of aforesaid direction, they submitted further representation dated 24.1.2003 reiterating the contentions noticed hereinabove, besides inviting their attention to Para 302 of IREM Vol.I. Said representation also was rejected by Respondent No.1 vide the

impugned communication dated 26.06.2003, validity of which is under challenge in the present proceedings.

5. Shri B.S. Mainee, learned counsel appearing for applicants reiterated contentions noticed hereinabove besides stating that in terms of Circular dated 16.11.1990 vide which Railway Board clarified the date of joining the working post in the case of intermediate apprentices selected departmentally against quota prescribed would be the same as in the case of direct recruitment, i.e. after completion of prescribed period of training.

6. Respondents resisted applicants' claim stating that in the year 1997 there had been 21 vacancies of JE-II (Drg) out of which 6 posts were earmarked for promotee quota, 5 posts were earmarked for intermediate quota vacancies and 10 posts for direct recruitment against the prescribed quota of 25%, 25% and 50% quota respectively. Selection out of promotee quota against 6 posts on being finalized, a panel was issued on 5.6.1998. To fill up 5 posts of intermediate apprentice quota, a panel of 5 candidates was declared on 16.7.1999. Candidates so empanelled were directed to undergo for pre-requisite training for a period of 18 months. The Railway Board vide letter dated 15.10.1998 issued restructuring orders, according to which, the cadre of Assistant Draftsman Grade Rs.4,000-6,000/- was to be abolished gradually. Following guidelines were also issued by the Railway Board:-

"50% of the posts lying vacant in Grade Rs.4000-6000 as on 1.9.1998 shall stand surrendered and the remaining 50% will be upgraded to Grade Rs.5000-8000. As and when more posts in the Grade Rs.5000-8000 fall vacant in future 50% of such posts shall be upgraded to Rs.5000-8000 and 50% surrendered. Such reviews will be done every six months w.e.f. 1.9.1998. The posts surrendered in the above manner shall not be credited to the surplus staff bank. In the circumstances

the number of posts in the Gr.Rs.4000-6000 and Rs.5000-8000 will keep changing till all posts in the Grade Rs.4000-6000 stand abolished in the manner indicated above. While the posts in Grade Rs.4000-6000 will be worked off progressively acting also the percentage of posts in Grade Rs.5000-8000 which will finally become 30% of the cadre strength as on 1.9.1998, the posts in Grade Rs.5500-9000 will be kept at 20% of the cadre strength as on 1.9.1998, those in Grade Rs.6500-10500 at 35.5% and the posts in Grade Rs.7450-11500 will be kept at 4.5% of the cadre strength as on 1.9.1998.

In partial modification of the existing instructions on the subject, it has also been decided that the posts in the cadre of Drawing Design and Estimating shall be filled in the following manner:-

a) *Additional posts becoming available in Grade Rs.5000-8000 as a result of working off and upgradation of the posts in Grade Rs.4000-6000 shall be filled by promotion of the staff in Grade Rs.4000-6000 through the normal mode of selection.*

b) *Till such time the posts in Grade Rs.4000-6000 continue to exist the vacancies in Grade Rs.5000-8000 arising in normal course will continue to be filled as per the existing procedure except that the direct recruitment quota of 50% for Diploma Holders will stand enhanced to 100% of the vacancies. After the posts in Grade Rs.4000-6000 are fully worked off, posts in Grade Rs.5000-8000 will be filled up entirely by direct recruitment of diploma holders in relevant Engg. Discipline through RRBs."*

7. To implement the above order of re-structuring, 12 vacancies of JE-II (Drg) were calculated out of which, 8 candidates were placed on the panel and promotion orders were issued on 14/15.3.2000 without any training, which included the applicants herein. Respondents 2 – 6 were selected against intermediate apprentice quota, which was finalized in July 1999. In order to decide applicants' seniority in view of the peculiar facts and circumstances, it was decided by the competent authority that seniority of Junior Draftsman Grade Rs.4,000-6,000/- either selected against intermediate apprentice quota, promotee quota or against the upgraded post will be based on their seniority in the grade of Rs.4,000-6,000/- as Junior Draftsmen

treating that all would have been selected against the upgraded posts. The candidates, who were earlier selected against 25 intermediate apprentice quota would have also been selected along with applicants in the year 2000 and retained their original seniority of Junior Draftsmen.

8. Shri S.M. Arif, learned counsel for Respondent No.1 vehemently contended that the impugned order dated 26.6.2003 has been passed in the peculiar facts of the present case and no injustice or prejudice has been caused to the applicants, particularly when they were junior to Respondents 2 – 6 in the feeder grade.

9. We have heard learned counsel for parties and perused the pleadings as well as materials placed on record carefully.

10. Before proceeding further it would be expedient to notice the contents of impugned communication dated 26.06.2003, which is the genesis of the present O.A. read thus:

"In compliance to Hon'ble CAT/New Delhi's directions in OA No.2884/2002 filed by Shri J.K. Sethi, JE Grade II (Drawing) and Others, I have carefully considered the various issues raised in the representation submitted by the applicants dated 18/24.1.2003 and my observations and decision is as mentioned below:

I agree that under normal circumstances candidates joining on promotion as JE-II through promotee quota will rank senior to those who are empanelled against Intermediate Apprentice quota and join the working post of JE-II on completion of requisite training.

In the present case, in year 1997 21 vacancies of JE-II/Drawing grade Rs.5000-8000 were calculated to be filled in through promotee, Intermediate Apprentice and direct recruitment quota respectively in the ratio of 25:25:50. A panel of six posts through promotee quota selection was issued on 5.6.1998 and a panel for 5 posts through Intermediate Apprentice quota selection was declared on 16.7.1999. Candidates placed on the panel of Intermediate Apprentice quota were, however, required to be sent for a training of 18 months (a pre-

requisite for promotion) before being appointed to the working post of JE grade-II.

Railway Board vide their letter No.PC-V/97/I/11/3 dated 28.9.1998 issued an upgradation scheme for the drawing, design, estimates staff envisaging upgradation of 50% of vacant posts of JDMs in grade Rs.4000-6000 to the level of Rs.5000-8000 and surrender 50% of the vacant posts in grade Rs.4000-6000. Upgradation scheme also froze further recruitment at the level of Rs.4000-6000; revision of percentages at various levels and progressive elimination of grade Rs.4000-6000 besides introduction of an apex grade Rs.7450-11500 for the category. In the wake of implementation of same, 12 vacancies in grade Rs.5000-8000 were calculated for which all available 26 JDMs in grade Rs.4000-6000 were called for selection out of which 8 were finally placed on the panel which was declared on 4.2.2000. These eight were promoted to the working posts without training on 14/15.3.2000.

Thus on one hand we had 5 JDMs selected against IMA quota for the vacancies calculated in the year 1997 and undergoing training to be completed on 5.3.2001 and on the other hand we had eight candidates who got selected against the upgraded posts/revised distribution of posts etc. and promoted on 14/15.3.2000.

Normally with the arrival of restructuring/upgradation orders in year 1998 for this cadre which envisaged progressive elimination of grade Rs.4000-6000 and this cadre henceforth to start at the level of Rs.5000-8000 (through direct recruitment only); further progression of Intermediate Apprentice quota examination / empanelment taken in hand could have been halted in year 1999. However, as the same was allowed to progress further a peculiar situation was obtained with some of senior JDMs in grade Rs.4000-6000 getting through in Intermediate Apprenticed quota examination and not taking the promotee quota examination held later against upgraded/restructured posts. This apparently has led to serious distortions in determining interse seniority between those selected against Intermediate Apprentice quota versus those selected against upgraded/restructured posts (through promotee quota selection made).

Keeping in view the peculiar situation as obtaining above, it has, therefore, been decided that seniority of all the JDMs (grade Rs.4000-6000) either selected against Intermediate Apprentice quota who were promoted on completion of training or selected against upgraded/restructured posts will be assigned the seniority in grade Rs.5000-8000 on the basis of their seniority in the grade Rs.4000-6000 as JDMs treating that all would have selected against the upgraded posts together." (emphasis supplied)

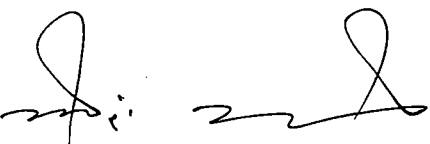
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11. We have bestowed our careful consideration to the rival contentions raised by the parties and find that Respondents 2 – 6 were selected against intermediate apprentice quota against the vacancies of the year 1997 though the applicants who were promoted in the year 2000 were selected against the cadre restructuring order dated 28.09.1998. We may also note the fact that it is not disputed by the applicants that Respondents 2 – 6 were senior to them as JDMS and were also liable to be considered against promotion quota. Right to consideration for promotion is a fundamental right as held in 2000 (8) SCC 395 **Badri Nath vs. Government of Tamil Nadu & Ors**, which has to be "fair" and not a mere consideration. Since Respondents 2 – 6 have been selected against the intermediate apprentice quota, they were treated as selected against promotion quota, particularly in view of the upgradation scheme dated 28th September, 1998, which course of action adopted by Respondent No.1, in our considered view, is a just and equitable one. We may also note the fact that Respondents 2 – 6 were promoted vide order dated 14.3.2000 (A/6) in the pay scale of Rs.5,000-8,000/- with immediate effect, validity of which has not been challenged by the applicants. We may further note the fact that applicants' basic bone of contention is that seniority is governed under para 302 of the IREM Vol. I, though on bestowing our careful consideration to the entire Chapter-III of the said IREM Vol. I, we find that Para-306 provides that "candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by paragraph 305 above." (Emphasis supplied). It is not in dispute that Respondents 2 – 6 were appointed pursuant to earlier selection in comparison to the applicants, as it was

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the selection for the vacancies of year 1997 against which Respondents 2 – 6 were promoted, while applicants were promoted against the cadre restructuring order dated 15.10.1998. The excessive reliance placed by applicants on Circular dated 16.11.1990, in our considered view, is not justified as the same is inapplicable in the facts and circumstances of the present case, as the said Circular has in specific stated that: "necessary amendment of para 302 of the Indian Railway Establishment Manual is being separately issued accordingly." Despite our repeated query to the learned counsel for applicants as to when such amendment had been issued, no satisfactory answer was coming forth. Moreover, it is well settled that administrative notifications cannot supersede the statutory rules. No specific date of amendment of para 302 of the said IREM Vol. 1 has either been disclosed in the pleadings or pointed out even during the course of hearing.

12. On bestowing our careful consideration to the entire aspect and taking cumulative view, particularly in the peculiar circumstances under which the impugned action has been taken by Respondent No.1, we find no illegality or arbitrariness in the impugned action. Accordingly OA is held to be devoid of merit, and the same is accordingly dismissed. No costs.


(Mukesh Kumar Gupta)
Member (J)


(V.K. Majotra) 576/06
Vice Chairman (A)

/PKR/