

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

C.A.No.413/2004
M.A.No.678/2004

(S)

New Delhi this the 7th day of May, 2004

Hon'ble Shri V.K. Majotra, Vice Chairman(A)
Hon'ble Shri Shanker Raju, Member(J)

1. Ajit Kumar Singh,
2. Hari Mohan Tiwari,
3. Manoj Kumar Chaudhari,
4. Mukesh Chand Kashyap,
5. Rijender Kumar,
6. S.K.Srivastava,
7. Dinesh Kumar,
8. Ramesh chander 'T'
9. Ramesh chander 'A'
10. Ram Bilash Gupta,
11. Shyam Singh,
12. Vijay Kumar Raghav,
13. Jai Parkash Singh,
14. Rakesh Tomar,
15. M.C.Kaushik,
16. Pyare Lal,
17. Bachan Ram Gupta,
18. Narender Singh yadav,
19. Rajesh Kumar Chaudhary,
20. Amit Ghosa,
21. Malkhan Singh,
22. S.K.Yadav,
23. A.K.Singhal,
24. Afroz Ahmad,
25. Dinesh Upadhyay,
26. Devender Kumar,
27. Ramesh Kumar Gupta,
28. Prem Chander Verma,
29. K.K.Mandal,

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30. Raj Kumar Singh Rana,
31. P.N.Prajapati,
32. Chander Shekhar,
33. Om Parkash Saroj,
34. Net Ram Sharma,
35. Pardeep Kumar,
36. Ram Parkash,
37. Nagender Kumar Sharma,
38. Hemant Kumar Joshi,
39. P.S.Katiyar,
40. Manoj Malhotra,
41. A.K.Singh,
42. Vijender Jha,
43. Shambhu Chorasia,
44. Prem Kumar,
45. V.K.Gupta,
46. Navneet Kumar.
47. Ashok Kumar,
48. Satish Kumar Jha,
49. Kaushlender Singh,
50. D.D.Sharma,
51. Vinod Parshad,
52. Anil Kumar IV,
53. H.S.Sisodia,
54. Nand Lal Verma,
55. Brij Bhushan Aggarwal,
56. Girdhari Lal,
57. Sandeep Kumar Sharma,
58. Rattan Singh Jyas,
59. Vinod Kumar Sharma,
60. Attar Singh-II
61. Ajay Singh,
62. Parmod Kumar Sharma,

63. Jaibir Singh,
64. Kishal Pal Singh,
65. Gajender Singh,
66. Surender Upadhyaya,
67. Mahinder Giri,
68. Resham Pal Singh,

All are working as Diesel Assistant/First Fireman at Northern Railway, Muradabad Division, Muradabad.

(By Advocate: Shri B.S. Mainee with
Shri Yogesh Sharma) ***Applicants.

Versus

1. Union of India through The General Manager,
Northern Railway, Baroda House, New Delhi.
2. The General Manager,
Northern Railway, Baroda House,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway, Muradabad Division,
Muradabad.
4. Sh. Dhani Ram,
5. Sh. Yogesh Kumar,
6. Sh. Ram Chandra,
7. Sh. Virendra Kumar-III

Respondents No.4 to 7 are working as Diesel Asstt./First Fireman in Northern Railway Muradabad Division c/o respondent No.3.

. . . Respondents.

(By Advocate: Shri R.L. Dhawan with Shri
H.P. Chakravarty proxy counsel for Shri
M.L. Sharma)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicants impugn respondents' order dated 10.2.2004 as well as seniority list circulated vide order of even date. They have assailed the action of the respondents relegating them in seniority and further going ahead with the promotions.

2. In the representative capacity affected parties have been impleaded as private respondents.

3. By an interim order dated 19.2.2004 respondents have been restrained from giving effect to the promotions on the basis of seniority list dated 10.2.2004.

4. Applicants were directly recruited through Railway Recruitment Board (RRB). A panel was prepared on 6.8.91 for promotion from second Fireman to first Fireman. Few of the persons have been promoted without imparting training. Subsequently in the year 1992-93 others have also been promoted from the panel. A seniority list dated 5.7.95 was circulated where ranker quota was given seniority over the direct recruits which has been responded to by them.

5. In OA-371/96 filed before the Allahabad Bench of the Tribunal and by an order dated 8.8.2002 seniority list was set aside with a direction to issue a fresh seniority list in accordance with unamended Rule 303 of IREM-I.

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6. Few of the applicants in the present OA had come before this Tribunal in OA-458/96, assailing the action of the respondents to assign proper seniority on completion of 18 months of training. By an order dated 12.1.2000 OA was dismissed as bereft of merit.

7. In compliance of the directions of Allahabad Bench of the Tribunal a fresh seniority list was issued on 24.2.2003 where applicants were shown above the promotees on the basis of panel dated 6.8.1991. This seniority list has been assailed before the Tribunal which is sub judice. A letter dated 31.10.2003 circulated by the respondents laid down criteria for fixing the seniority of direct recruits as well as promotees it has been clarified vide letter dated 18.12.2003 regarding training schedule of Diesel Assistant, which was fixed as 18 months and for promotion four months.

8. Vide letter dated 10.2.2004 headquarters office directed DRM, Moradabad to assign seniority of direct recruits from the date of completion of 24 months of training.

9. In pursuance of the above, seniority list dated 10.2.2002 was published, fixing the seniority of applicants below promotees, which would form basis of selection for further promotion to the post of Goods Driver, giving rise to the present OA.

10. Learned counsel for official respondents Sh. R.L. Dhawan filed MA-678/2004 for vacation of the interim order passed by the Tribunal on the ground that OA is bad for non-joinder of proper and necessary parties, as persons



who are likely to be adversely affected have not been arrayed as parties. He further states that the OA is barred by the doctrine of res judicata and suppression of material fact as few of applicants had approached the Tribunal in OA-458/96 with a grievance of 18 months training which has been dismissed. This fact has not been disclosed in para-7 of the OA. However, the respondents' produced before us a notice dated 24.2.2002, which has been issued in continuation of order dated 10.2.2004, circulating the seniority list of first Fireman/Diesel Assistants, treating the seniority list to be provisional with an opportunity of two weeks to the affected employees to put their objections against the assignment of seniority.

11. On the other hand, learned counsel of applicants contends that the issue in the present OA is different from what has been contended in OA-458/96. Treatment of applicants as apprentice cannot be countenanced as they have been appointed through RRB and their seniority is to be determined from joining the working post.

12. On careful consideration of the rival contentions we find that a challenge has been made to the seniority list dated 10.2.2004 which was to form basis of further promotion on selection basis. The subsequent developments which have taken place during the pendency of the OA where the aforesaid seniority list has been treated to be provisional with liberty to the concerned employees to put objections in the form of representation, at present the grievance of applicants as to further promotion on the basis of the seniority where their positions are relegated is

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pre-mature. Unless on objections the seniority list is finalised and steps are taken to hold selection for further promotion to cause of action arises to applicants.

13. On pointing out this to the learned counsel for applicants it has been stated that few of the employees have put objections to the notice circulated on 24.2.2004.

14. Ends of justice would be duly met if the present OA is disposed of at this stage with a direction to the respondents that in so far as applicants who have responded by way of their objections in the form of representation to the notice dated 24.2.2004 the same would be considered while finalising the seniority list. However, those who have not preferred any representation, if they prefer representations, i.e., objections to the provisional seniority list dated 10.2.2004 within two weeks from the date of receipt of the copy of this order the same shall be entertained by them. The respondents shall, at the time of finalising the seniority list, consider the objections put-forth by applicants and finalise the seniority list within a period of three months thereafter, taking into consideration the decision of the Tribunal as well as rules and instructions on the subject. If, on finalising of the seniority list, applicants are still aggrieved, it shall be open to them to approach this court in accordance with law, if so advised.

15. The preliminary objections and contentions on merits are not adjudicated upon.

16. There shall be no order as to costs.

S Raju
(Shanker Raju)

Member (J)

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V.K. Majotra
(V.K. Majotra)
Vice-Chairman(A)

7/5/04