

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

O.A. No. 1242 of 1993 decided on 6.2.1998.

Name of Applicant : Kamaljeet Singh & ors

By Advocate : Shri B.S. Mainee

Versus

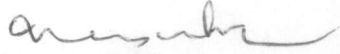
Name of respondent/s The General Manager, N.Rly,  
Baroda House, New Delhi & ors

By Advocate : Shri R.L. Dhawan

Corum:

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)  
Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/~~No~~
2. Whether to be circulated to the other Benches of the Tribunal. - ~~Yes~~/No

  
(N. Sahu)  
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1242 of 1993

New Delhi, this the 6<sup>th</sup> day of February, 1998

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)  
Hon'ble Mr. N. Sahu, Member (Admnv)

1. Kamaljeet Singh S/o Sh. Tara Singh, C&W Fitter, Grade-III, CWS/Ghaziabad.
2. Gursharan Singh, S/o Shri Harbans Singh, C&W Fitter, Grade-III, Ghaziabad.
3. Sushil Kumar, S/o Sh. Late Balati Ram, C&W Fitter, Grade-III, CWS, Ghaziabad
4. Sihor Ram, S/o Madhoi Ram, C&W Fitter, Grade-III, CWS, Ghaziabad
5. Bastiram, S/o Jhutha Ram, C&W Fitter, Grade-III, CWS, Ghaziabad
6. Nand Lal Pd. S/o Bhagwan Das, C&W Fitter, Grade-III, CWS, Ghaziabad
7. Ram Niwas Singh S/o late Sh. Shankar Singh C&W Fitter, Grade-III, CWS, Ghaziabad
8. Ashok Kumar Singh S/o Rampukar Singh, C&W Fitter, Grade-III, CWS, N. Delhi Coaching.
9. Anil Kumar Topno S/o H.M. Topno, C&W Fitter, Grade-III, CDO/H. Nizamuddin
10. Sushil Tirkey, S/o Enbanuel Tirkey, C&W Fitter, Grade-III, CDO/H. Nizamuddin
11. Dila Ram S/o Achhar Singh, C&W Fitter, Grade-III, CWS/N. Dli Coaching
12. Manohar Lal, S/o Hanuman, C&W Fitter, Grade-III, CWS/N. Dli Coaching
13. Puran Chandra Sunal, S/o Jai Krishan Sunal C&W Fitter, Grade-III, CWS/N. Dli Coaching
14. Gopi VT, S/o Thankappan VM C&W Fitter, Grade-III, CWS/N. Dli Coaching
15. Sanjay Singh S/o Budh Singh C&W Fitter, Grade-III, CWS/N. Dli Coaching
16. Ram Prakash Sharma, S/o Om Prakash Sharma, C&W Fitter, Grade-III, CWS/N. Dli Coaching



9/16

17. Sharad Chandra Dixit, S/o Ram Dularey Lal, C&W Fitter, Grade-III, CWS/N.Dli Coaching.
  18. Krishna Kumar S/o Baru Ram, C&W Fitter, Grade-III, CDO/Rohtak
  19. Dharam Pal Singh, S/o Amichand C&W Fitter, Grade-III, CDO/ Rohtak
  20. Rajendra Prasad S/o Pooran Mal, C&W Fitter, Grade-III, CDO/Biwani,
  21. Rampaul S/o Sadhu Ram, C&W Fitter, Grade-III, CWS/Panipat
  22. Rakesh Kumar Saini S/o Dhani Ram Saini C&W Fitter, Grade-III, CWS/Panipat
  23. Raj Mohan S/o Jallu Ram C&W Fitter, Grade-III, CWS/Panipat
  24. Pradeep Kumar S/o Arjun Singh C&W Fitter, Grade-III, CWS/Panipat
  25. Jasbir Singh S/o Rai Singh, C&W Fitter, Grade-III, CWS/Panipat
  26. Manoj Kumar S/o Shame Chand, C&W Fitter, Grade-III, CWS/Panipat
  27. Pawan Kumar S/o Kundan Lal, C&W Fitter, Grade-III, CWS/Panipat
  28. Balbir Singh S/o Joga Singh, C&W Fitter, Grade-III, CWS/N.Dli Coaching
  29. Rijender Parshad, S/o Ajudhia Prakash C&W Fitter, Grade-III, CWS/N.Dli Coaching
  30. Ramender Kumar S/o Ram Naharia, C&W Fitter, Grade-III, CDO H, Nizamuddin.
  31. Om Prakash, S/o Mangle Ram C&W Fitter, Grade-III, CWS/Jind
  32. Ramesh Sharma S/o Sh Dharam Pal C&W Fitter, Grade-III, CWS/Panipat
- APPLICANTS
- All through B.S. Mainee Adv. 240  
Jagriti Encl. Delhi 92

(By Advocate - Shri B.S. Mainee)

**Versus**

1. The General Manager, N.Rly. Baroda House, New Delhi.



declared that the posting orders of the applicants were issued on 12.10.1989. The applicants joined

2. The Divl.Rly. Manager, N.Rly, State Entry Road, New Delhi.
3. Sh Raghbir Singh S/o Sh Magat Ram Fitter, Grade-III, under C&W Supdt. Meerut City.
4. Sh.Rajbir Singh S/o Sh.Harbans Singh, Under C&W Superintendent Ghaziabad, Fitter Gr.III.
5. Sh.Bhagat Singh S/o Bhoop Singh under Supdt C&W Ghaziabad.
6. Sh.Amar Nath S/o Sh Dayal Chand under C&W Supdt. Ghaziabad. - RESPONDENTS

(By Advocate Shri R.L.Dhawan)

O R D E R

By Mr. N. Sahu, Member (Admnv) -


In this Original Application the applicants seek a direction to the respondents to include their names in the seniority list of Fitter Grade-III above the promotees. These promotees are placed in the seniority list from serial nos. 537 to 704. Accordingly they want consideration for Fitter Grade-II on this revised seniority list.

2. The brief facts leading to this dispute are in a short compass. The applicants were directly recruited as Fitter Grade-III and had undergone training for six months. They completed the said training on 31.8.1989. They were trade tested after the training on 14.9.1989. It is an admitted fact that the applicants were found fit in the trade test. The grievance is that the respondents deliberately delayed their posting in order to accommodate 252 Khalasis empanelled for the post of Fitter Grade-III on 11.10.1989. It was only after the said panel was declared that the posting orders of the applicants were issued on 12.10.1989. The applicants joined



from 13.10.1989 to 15.10.1989. It is alleged that the promotee Fitters Grade-III joined later on 16.10.1989. The impugned seniority list issued in February, 1992 places the promotees above the direct recruits. Representations to assign seniority in accordance with the date of joining the post which is earlier to that of the promotees have not been replied to. The fall out of the placing of the applicants below the promotees is that by the impugned Annexure-A-1. Respondent no.2 has initiated a trade test for the post of Fitter Grade-II by his letter dated 29.4.1993 ignoring the applicants. There were 254 candidates who were called for this trade test but the applicants' names did not figure there. The applicants claim that persons junior to them were called for interview. Several representations made to the Senior Divisional Mechanical Engineer (C&W), DRM Office, New Delhi and Sr.DPO, DRM Office, New Delhi were not answered.

3. After notice the respondents state that the list of promotees to fill up the post of Fitter Grade -III was decided and issued on 11.10.1989. The applicants' cases were under process for assessment of vacancy position and their posting orders were finally issued only on 12.10.1989. The promotee Fitters Grade-III have been posted in their old places of work and they are deemed to have been promoted immediately on 11.10.1989. Strictly in accordance with this seniority list the seniors were considered for prescribed trade test for promotion as



Fitter Grade-II. The delay in joining of the promotees in their places of work should not debar them of their seniority.

4. Respondents 4 to 6 state that as per Annexure-A-2 para 4 which is a letter of appointment to the direct recruit (applicants) there is no guarantee of employment on completion of training period even after passing trade test but he will be appointed subject to availability of vacancies of C&W Fitter. Because the panel of promotees was issued one day before the issue of the panel of direct recruits, the private respondents claim that they are enbloc senior to the direct recruits in terms of Para 302 of the Indian Railway Establishment Manual, Vol.1, Revised Edition - 1989, which stipulates that-

"In category of posts partially filled by direct recruitment and partially filled by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and date of joining the working post after due process in the case of direct recruit"

5. We have perused the file produced by the respondents pertaining to selection of direct recruits by the Railway Recruitment Board. The only point on which the applicants were interested in their MA 2435/95 is whether an order dated 20.9.1989 is stated to have been passed by the Sr.DPO or not. It is because of this simple point that an early hearing is sought. The file shows that 21 Skilled Fitters recruited by the Railway Recruitment Board and put in for orientation training for six months

from 15.3.1989 have been found suitable and are posted at the stations indicated against each. This order dated 14.9.1989 was put up by the AME (C&W). This was approved by the DME/Chg. & DME(C&W) on the same day. This was also approved by the Sr.DME(C&W) on 20.9.1989. On 26.9.1989 the Sr.DPO approved it but directed "To be issued only after the posting order of promotee Gr.III Fitters are issued". The next page shows that all the 21 candidates were shown their station of posting and this order was also approved on 3.10.1989 by the hierarchy. On 12.10.1989 the orders of appointment of 52 persons, including the above 21 candidates, were issued.

6. We are of the view that the decision to hold back the posting orders of the direct recruits was a conscious deliberate administrative act. We are not inclined to read into this any malafide intention to deliberately deprive the applicants of their seniority. The decision to issue the orders of promotees one day before, was not an impulsive or partisan act on the part of the respondents. These promotees had put in long years of service and were waiting to get promoted in the promotion quota. Their promotions were also waiting to be considered. There is nothing arbitrary or partial or prejudicial in what the respondents had done. They wanted the promotees who had put in a large number of years of service at various levels to be senior to the direct recruits. They could have done that in August, 1989 or July, 1989 because the vacancies existed and the promotees were waiting to get promoted. It so



happens in an administrative set up that official deliberations get delayed and the respondents thought that in order to render justice to the promotees for the long years of service in lower cadres, they should be given enbloc seniority over the direct recruits. We do not think that there is any malafide in this action.

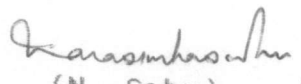
7. Let us examine the question of legality of withholding. After nearly a decade we are not inclined to disturb the seniority position. This is for two reasons. One is the defacto doctrine. The promotees were made senior in October, 1989 to the direct recruits and nearly a decade passed over and the promotees had been actually working and perceived to be senior to the applicants. A disturbance at this stage would amount to putting the administration in turmoil and jeopardising the legitimate expectation of the promotees. By efflux of time they had believed themselves to be senior.

8. Further, we do not also think that this simple small weightage given to the promotees is either unfair or improper. The doctrine of weightage for a person who had put in long years of service has been upheld by the Apex Court in a number of departmental disputes between direct recruits and promotees. We do not think that by placing these promotees over the direct recruits any illegality has been committed. As long as the administrative decision is honest and objective and subserves the larger interest of the administration as a whole, the

Courts should not interfere. The second aspect is that the Apex Court has always frowned upon disturbing a seniority list which has been acted upon for a long time.

9. Finally, even under the rule position how would the applicants gain? Although the orders could have been issued on 3.10.1989 this Court cannot deem ~~that~~ the orders were issued on 3.10.1989. Even if the Court can give such a direction the ultimate crucial date, for seniority, is, the date of joining, for the direct recruits and that date of joining is after the date of promotion orders of the promotees. Even if this Court can give an order, which we are not inclined to, for a deeming posting order as 3.10.1989, even so the date of joining being <sup>a</sup>~~the~~ question of fact, the applicants could not be senior to the promotees, under the rules position as extracted above and this rule not being challenged has to be followed. We, therefore, see no merit in this application.

10. In the result, the Original Application is dismissed. The parties shall bear their own costs.

  
(N. Sahu) 6/2/98  
Member (Admnv)

  
(Dr. Jose P. Verghese)  
Vice Chairman(J)

rkv.