

(2) 7.
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
...

O.A.No.2111 of 1993

New Delhi, this 9th day of March, 1999.

HON'BLE MR. JUSTICE S. VENKATRAMAN, VICE CHAIRMAN(J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER(A)

1. Bindeshwari Sah
S/o Shri Raghunath Sah
R/o Q.No.84/D/3 Railway Colony
Tughlakabad
New Delhi.
2. M. P. Thakur
S/o Inderdeo Thakur
R/o Q.No.82/C/4 Railway Colony
Tughlakabad
New Delhi.
3. B. K. Mandal
S/o Late C. Mandal
R/o Q.No.92/C/2 Railway Colony
Tughlakabad
New Delhi.
4. Md. Khairati
S/o Iddu Mian
R/o Q.No.102/B/1 Railway Colony
Tughlakabad
New Delhi.
5. Janardan Prasad
S/o Shri Jagdish Prasad
R/o Q.No.87/D/1 Railway Colony
Tughlakabad
New Delhi.
6. R.J. Upadhya
S/o Shri S.C. Upadhya
R/o Q.No.90/C/3 Railway Colony
Tughlakabad
New Delhi.

... Applicants

By Advocate: Shri Mahesh Srivastava

versus

1. Union of India, through
General Manager
Northern Railway
Baroda House
New Delhi.
2. Divisional Railway Manager
Northern Railway
Pahar Ganj
New Delhi.

3. Assistant Personnel Officer (M)
Diesal Shed
Tughlakabad
Northern Railway
New Delhi.

... Respondents

By Advocate: Mrs Sunita Rao

O R D E R (ORAL)

HON'BLE MR. S. VENKATRAMAN, VC(J)

The learned counsel for the applicants submits that at present the applicants 1,2,4 & 5 have got relief and as such they do not press their claim in this application and that this application is now restricted only to the claims of applicants 3 & 6 viz., B.K. Mandal and R.J. Upadhyay respectively. Reference to applicants in the order shall be taken as applicants 3 & 6.

2. The applicants who were Fitter Grade-III were declared surplus in 1971 and transferred to Delhi Division in the same grade. At Delhi as they were shown as juniors to even some Diesel Cleaners, they filed a C.W.P.No.295/79 in the High Court of Delhi which was transferred to the Tribunal as T.449/85. In that case the Tribunal passed an order, the operating portion of which is reproduced hereunder:-

"We see no difficulty in allowing the petition to the extent of directing that the petitioners should reckon their seniority in the grade of Fitter-III on the basis of para 312 of the Establishment Manual, i.e., bottom seniority on the date of their transfer

2

to Delhi, but they should not be ranked junior to those who on the date of the petitioners' absorption in Delhi were not regularly holding the working posts of Fitter Grade III but were in the lower grade of Diesel Cleaners. We order accordingly and direct that the seniority of the petitioners should be revised accordingly with all consequential benefits of seniority, consideration for higher promotion when their juniors were so considered and arrears of pay and allowances in case they are considered and found fit for promotion from the dates their juniors in the revised seniority list got such promotion. There will be no order as to costs."

3. Pursuant to the order of the Tribunal the respondents issued a revised seniority list dated 9.4.89 (Annexure B). In that seniority list, the applicant No.6 was given the revised seniority number as Fitter Grade-III as 54, revised number in the grade of SFF-II as 29 and the revised number in the grade of HSF-I as 20. The applicant No.3 was given the revised numbers as 47, 31 and 22 in the three grades. Though one Shri R.S. Kapoor was given numbers as 53, 27 & 18 in the three grades, the number given to Shri R.S. Kapoor in HSF-I was changed from 18 to 35/A and the seniority as grade-III was changed from 53 to

2

87/A below Shri Varan Dev. The applicants were satisfied with the seniority given at Annexure B as modified by the order dated September 1989 which is produced along with MA.457/98.

4. The respondents in 1992 issued Annexure C proposing to revise the seniority of Diesel Electrical Fitters Grade-II and H.S. Electrical Fitter Grade-I as per the list enclosed to it. In the seniority list of Electrical Fitter Grade-II Shri R.S. Kapoor's seniority was given as 31 while the seniority of applicants 3 & 6 was given as 44 and 41 respectively. The applicants were thus proposed to be brought below Shri R.S. Kapoor in Grade-II. Likewise, in Grade-I Shri R.S. Kapoor was proposed to be given number 24 while applicants 3 & 6 were proposed to be given number 36 and 29 respectively. The applicants who were aggrieved by the proposal gave a representation objecting to the same. The respondents have rejected that representation by order Annexure A. By that order the respondents have intimated the applicants that no fresh fact came on record in the application of the applicants and, therefore, the provisional list should be treated as final. The applicants have now challenged Annexure A and the seniority list Annexure C.

5. The main contention raised by the learned counsel for applicants is that in pursuance of the directions given by the Tribunal in the earlier case, the respondents had fixed the seniority of Shri R.S. Kapoor below the applicants in all the three cadres, that the material on

2

.5.

record shows that Shri R.S. Kapoor came to Delhi Division of the Railways in 1975 as Fitter Grade-III while the applicants came to the Delhi Division as Fitter Grade-III in 1971 itself, that this fact can be gathered from Annexure R-1 produced by the respondents themselves, that in view of the orders passed by the Tribunal the applicants' seniority in Grade-III had to be given above Shri R. S. Kapoor and they were entitled to all consequential benefits including promotion to higher grade from the date their junior Shri R.S. Kapoor was promoted to the cadre, that respondents having issued Annexure B by way of implementation of the directions given by the Tribunal could not have in 1992 again assigned Shri R.S. Kapoor seniority higher than that of applicants 3 & 6.

6. The only defence taken by the respondents is that because S/Shri Bhagwan Dass, Jaswant Rai, Gurcharan Singh, Devinder Singh, Krishan Kumar, Pritam Singh and Heera Lal etc. were promoted as Electric Fitter Grade-III on 29.9.1970, 6.10.1970, 9.5.1971 and 22.5.1971 and even prior to joining of the applicants in Delhi Division on 12.11.1971 as per Annexure R-II they were given higher seniority. It is seen that that the respondents have nowhere specifically pleaded as to when Shri R.S.Kapoor who has been named in the application came to Delhi Division. It is also not explained as to how Shri R.S.Kapoor having been given a revised seniority number in pursuance of the order of the Tribunal which was below the number assigned to applicants 3 & 6, has again been assigned higher seniority in the 1992 list. Even now we are unable to

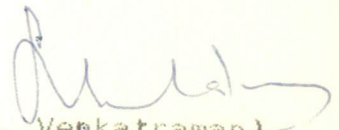
2

understand this position. The impugned order issued by the respondents, to say the least, cannot be considered to be an order at all when the applicants had challenged the seniority assigned to them and when the earlier seniority list revised in 1989 gave seniority to the applicants which was higher than the seniority given to Shri R.S. Kapoor, the least that was expected of the respondents was to assign some reason for reviving the seniority again and giving Shri R.S. Kapoor higher seniority now. The impugned order will have to be quashed on the ground that it is not a speaking order. We do not want to give any positive direction to the respondents regarding the seniority to be given to ~~be given~~ to the applicants vis-a-vis Shri R.S. Kapoor at this stage in view of the fact that Shri R.S. Kapoor is not before us.

7. In the circumstances, we feel that it would be appropriate to direct the respondents to reconsider the question of seniority of applicants 3 & 6 vis-a-vis Shri R.S. Kapoor after giving opportunity to Shri R.S. Kapoor also to put forth his representation if any, and pass a speaking order taking into consideration the various facts we have highlighted above. We order accordingly and quash Annexure A order dated 5.3.1993. The respondents are given three months' time from the date of receipt of a copy of this order to implement this order. No costs.


(K. Muthukumar)
Member (A)

dbc


(S. Venkatraman)
Vice-Chairman (J)