

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

(10)

OA.No.2173/93

New Delhi, dated this the 8th of August, 1994

Shri N.V. Krishnan, Hon. Vice Chairman(A)

Shri C.J. Roy, Hon. Member(J)

1. Shri Sravan Kumar,
S/o Shri Molkhi Ram.
2. Shri Ram Mehar,
S/o Surta.
3. Shri Mewa Lal,
S/o Shri Gomti.
4. Shri Karan Singh,
S/o Shri Kundan.

(All are Drivers working under
Deputy Controller of Stores,
Northern Railway, Shakurbasti).

...Applicants

By Advocate: Shri B.S. Maine.

versus

Union of India through

1. General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Dy. Controller of Stores,
Northern Railway,
Stores Depot,
Shakurbasti, Delhi.

...Respondents

By Advocate: Shri R.L. Dhawan.

O R D E R (Oral)

By Shri N.V. Krishnan.

The four applicants before us who are Motor Lorry Drivers in the pay scale of Rs.950-1500/-, are aggrieved by the Annexure A-1 order dated 17.9.93 of the respondents. By this order, respondents have notified a trade test for the post of Motor Lorry Driver(MLD) in the grade of Rs.1200-1800 to be held on 13.10.93. Six persons have been called for this

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test namely, S/Shri Surinder Singh, Hukam Singh, Nand Prakash, Amar Singh, Ram Verma, Darya Singh. The contention of the applicants is that, out of these six persons, only Surinder Singh was promoted as MLD in the lower scale of Rs.950-1500/- on the basis of the 1985 panel, in which the names of the applicants have also been included and is senior to the applicants. Others are junior to the applicants. It is stated that these five persons were appointed as MLD in the lower scale of Rs.950-1500/- on the basis of the inclusion of their names in the panels of the subsequent years and the order passed in 1986, 1987 and 1988 and hence, junior to the applicants.

2. Though the names of the applicants were included in the 1985 panel, yet, the respondents did not promote them as MLD in the lower scale and instead, initiated action to prepare a fresh panel. That action was challenged by the applicants in OA.1987/89, which has been decided on 16.3.90 (Annexure A-3). It was noted therein, that the case of the applicants was that they were included in the panel of 7 persons in 1985 after holding a trade test for MLD. However, only 3 persons were promoted and the remaining 4 were not yet promoted. Nevertheless, the respondents initiated action on 4.2.89 to call for fresh applications to fill up the post. This was challenged in that OA. In the reply to that OA, the respondents contended that the life of a panel was only for six months and that no employee was empanelled in 1985 considering the matter, the Tribunal gave a direction as follows:-

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"Having regard to the facts and circumstances of the case, we order and direct that the remaining three employees including the applicants who are on the suitability list prepared in December, 1985, should also be promoted before holding a fresh selection/operating the selection, held in 1989".

A review filed against this decision was also dismissed.

3. Admittedly, on the basis of these directions, the applicants S/Shri Karan Singh, Mewa Lal and Ram Mehar have been promoted respectively on 10.5.89, 14.8.91 and 10.8.91. The other applicant Shri Sravan Kumar has been promoted on 31.7.93 on adhoc basis, as he is stated to have been involved in a criminal case.

4. In the present application, the contention of the applicant is that without considering the applicants who belong to 1985 panel of selection, the respondents cannot proceed with the selection by calling persons, who admittedly, have been appointed as MLD on the basis of 1986, 1988 and 1989 panels.

In the circumstances, the applicants have prayed for a direction to the respondents to consider them also in accordance with the seniority list for the trade test to be held for the post of MLD in the senior grade the pay scale of 1200-1800/-, ie. next higher scale.

5. The respondents have filed their reply in which they have stated that a copy of the seniority list of MLD Grade-i Rs.1320-2040, Grade-II Rs.1200-1800, Grade-III Rs.950-1500 was issued to all persons on 9.6.93 ('Annexure R-1'), which reads as follows:-

"The seniority list of MLD gr.I Rs.1320-2040('RPS'), Gr.II Rs.1200-1800 ('RPS'), Gr.III Rs.950-1500 ('RPS') is sent herewith for getting the same noted from the staff concerned. The objection if any from the staff will be entertained within a month after the issue of this letter. If no objection is received with the said period it will be assumed that seniority list is correct and will be treated as final."

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6. It is stated that though the persons were given an opportunity to file their objections, the applicants did not file any such objection, and accordingly, that seniority list was finalised. In that seniority list, which includes the names of persons promoted upto 1.4.93, the names of only three applicants, 'ie., excluding the name of applicant Shri Sravan Kumar', have ~~been~~ been mentioned at Sl.No.16, 18 and 19. They are juniors to the 5 persons other than Surinder Singh, who have been called for the trade test by the impugned Annexure A-1 order. It is, therefore, contended that the applicant had suppressed this information and approached this Tribunal seeking the reliefs without disclosing the true facts.

7. The applicant thereafter, filed MA.243/94 seeking to amend the original application. It is stated in the MA that the seniority list produced by the respondents 'Annexure R-1' was never brought to the notice of the applicants, and as such, the applicants were deprived of the opportunity to file objections against that seniority list. It is also stated that the applicants have been placed on the panel of 1985 and that, therefore, they were senior to those, who have been empanelled in 1986, 1987 and 1988. The MA has also sought for amendment of the OA by incorporating an additional prayer to quash the seniority list Annexure R-1 and to direct the respondents to revise the seniority list in accordance with the rules by placing the names of the applicants below Surinder Singh at Sl.No.5 of the 1985 panel. As the respondents did not file any reply to the MA, this MA was allowed and the OA was also allowed accordingly. An amended OA has been filed in which the Annexure R1 seniority list is also challenged.

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7. In reply to the amended OA, the respondents have repeated the reply given by them earlier. It is contended that the applicants were wrongly invited to appear in the trade test in 1985 and that the applicants were not empanelled at all in 1985. It is further stated that the applicants were also considered in the trade test held in 1988, but being juniors, they were not called to appear in the trade test. Applications were again called in 1989, but the names of the applicants were again omitted.

8. It is contended that in accordance with the rules regulating seniority in Chapter-III of the IREM (Volume-I), the seniority of the applicants have been fixed properly. An averment is also made that the applicants were aware of the seniority list issued on 7.5.93 and that, the applicants have made a false statement in their OA stating that no seniority list have been issued by the respondents.

9. In these circumstances, the respondents contend that the application should be dismissed on merit and that it deserves to be dismissed.

10. The applicants have filed a rejoinder, more or less reiterating the same points as has been stated in the OA.

11. We have heard the learned counsel for the parties at great length. The learned counsel for the applicant made two submissions. Firstly, they have been taken by surprise by the production of the seniority list, which was never brought to their notice, inspite of the directions given in the Annexure R-1 memorandum. Secondly, their right to be promoted on the basis of the 1985 panel was initially denied to them. This was challenged and their right in this behalf in the

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earlier OA filed by them (OA.1987/89) which was allowed on 16.3.90. In pursuance thereto, they were, no doubt promoted from later dates. Yet, by virtue of the principle that persons belonging to the earlier panel will remain senior to the persons belonging to a later panel irrespective of the dates of promotion, the applicants ought to be treated as seniors to the persons promoted from the panel of 1986, 1987 and 1988. They rely on Rules 306 and 309 of the IREM, which read as follows:-

"306. 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."

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"309. SENIORITY ON PROMOTION:- Paragraph 306 above applies equally to seniority in promotion vacancies in one and the same category due allowance being made for delay, if any, in joining the new posts in the exigencies of service."

12. The learned counsel for the respondents contend that there were no panel of 1985 and the applicants were called wrongly for the trade test and that Rule 302 of the IREM clearly states the date of promotion that would count for seniority. Further, the seniority list has been brought to the notice of the applicants in as much copies have been endorsed to the Divisional Secretary of the recognised staff Unions and this would be sufficient compliance of the directions that the seniority list be brought to the notice of the staff concerned.

13. We have carefully considered this matter. We are of the view that the judgement in OA.1987/89 (Annexure A-3) is final and the respondents cannot be heard to say any thing now in respect of the 1985 panel. Shri R.L. Dhawan, counsel for the respondents brought to our notice that even this judgement does

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not state that the panel of 1985 existed. We are unable to agree. The case, of both applicants and the respondents in that OA was that there was a panel.

The contention of the respondents was firstly that the panel had a limited life and secondly, the names of the applicants were not included in the panel.

The Tribunal has found that a suitability list containing the names of seven persons was prepared.

The learned counsel pointed out that as the 'expression' panel has been avoided, it has to be concluded that there was no such panel at all and that, therefore, Rule 306 and 309 of the IREM will have no application. We are of the view that the expression 'suitability list' is no different from a panel. These expressions are interchangeable. A panel is really a list of suitable persons arranged in the order of seniority or merits as the case may be for appointment. It can be called a panel or a suitability list. That being the case, we conclude, that the earlier judgement, has held, that there was a panel, that the names of the applicants were included in it, and that they were entitled to be promoted before holding a fresh selection.

14. The second question is about the seniority list.

We are of the view that when the respondents did not file reply to the MA.243/93, in which the allegation has been made that the seniority list was not brought to the notice of the applicants, it clearly means that this allegation has been admitted. Nothing would have been simpler for the respondents than to produce the original records to show that, as a matter of fact, every individual was informed about the seniority list. We are unable to accept the plea

of the learned counsel for the respondents, that service of a copy of the seniority list on the Divisional Secretary of the approved Staff Unions is to be treated as an intimation to the concerned staff members about the publication of the seniority list. This argument does not hold good, for, the circular itself directs that the members of the staff may be informed and not their Unions.

15. In the circumstances, it is clear that the applicants were not put on notice in so far as the Annexure R-1 seniority list is concerned. In the circumstances, the question for consideration, is, what relief may be granted to the applicants. We are of the view that it is not for us at this stage, to consider on merit, whether the seniority list has been rightly prepared or not. The applicants had to be given an opportunity in this regard, as we have come to the conclusion that they have had no such opportunity earlier. Therefore, in so far as the seniority list is concerned, it has to be left to the authorities concerned to finalise it. However, the applicants have sufficiently established a *prima facie* case that the seniority list of MLD in the grade of 950-1500 should be fixed by placing persons promoted from an earlier panel, above persons, who have been promoted from a later panel. Without, therefore, wishing to express any final opinion in this regard and after making it clear that the observations we have made in this regard are strictly confined to the disposal of the OA, we are of the view that in the circumstances, justice demands that the applicants case should also be considered along with other persons, who have already been called for trade test.

In that regard, we had already issued an interim order to the same effect on 12.10.93. Admittedly, in pursuance of that order, the applicants were put to trade test and the respondents have admitted that they have qualified for promotion to the post of Grade-II MLD. In this view of the matter, we are of the opinion that the applicants are entitled for a provisional declaration that they should be appointed as MLD in the grade of 1200-1800 in preference to the persons at Sl.No.2 to 3 mentioned in Annexure A-1 order. However, the aforesaid order will not apply at present to Shri Sravan Kumar, as it is stated, that a criminal case is pending against him. His case would be decided only after the results of the criminal case is known.

16. In the circumstances, we dispose of this OA with the following orders and directions:-

(i) The applicants, including Sravan Kumar are permitted to file representations against the Annexure R-1 seniority list within a period of one month from the date of receipt of this order, and in case, such representations are received, the respondents are directed to consider and pass appropriate orders in accordance with law within a period of two months thereafter, under intimation to the applicants.

(ii) In the meanwhile, we declare that the applicants except Sravan Kumar, are entitled to be appointed on a purely provisional basis to the posts of MLD Grade-II in the scale of Rs.1200-1800 in preference to persons at Sl.No.2-6

mentioned in the Annexure A-1 notice.

In case, appointments are to be made, respondents are directed to appoint the applicants, except Sravan Kumar, provisionally as declared above.

(iii) This provisional appointment will ultimately abide by the position assigned to the applicants in the seniority list after consideration of the representation as mentioned at (i) above, meaning thereby, that, in case the respondents find that the applicants are senior to the persons at Sl.No.2-6 of Annexure A-1, the provisional promotion to the post of MLD Grade-II will be confirmed. But if the respondents determine that the applicants are junior to those persons, the respondents are at liberty to revert the applicants.

(iv) We make it clear that in case any adverse order is passed against the applicants, it is open to them to approach the Tribunal with a fresh application. If after having promoted the applicants, except Sravan Kumar provisionally, the respondents direct their reversion after determining their seniority, such order of reversion will not take effect for a period of two weeks from the date on which that order is served on them.

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(v) The case of the applicant Sravan Kumar shall be considered after the criminal case is over.

17. OA disposed of accordingly. No costs.

Verbal
'C.J. ROY'
MEMBER (J)

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Verbal
N.V. KRISHNAN
VICE CHAIRMAN (A)

*Ask M.A. for clarifications
of Judgment order.*