

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE ^{2nd} DAY OF SEPTEMBER, 2003

Original Application No. 363 of 1996

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI, V.C.

HON.MR.D.R.TIWARI, MEMBER(A)

1. Mohd. umar Ali, a/a 40 years
Son of Shri Ahmed Ali

2. Pawan Kumar Sharma
Son of Shri R.N.Sharma

3. Shri Mahendra Kumar Soni
Son of Shri M.L.Soni

4. Ramesh Chandra Namdeo
Son of Shri R.L.Namdeo

5. Santosh Kumar Kotie
Son of Shri L.R.Kotie

6. Madan manohar Lal Srivastava
Son of Shri V.M.Srivastava

All presently posted as Guard 'C'
under Chief Yard Master,
Central railway, Jhansi.

7. Shiv Kumar Sharma
Son of Sri Kaushal kumar Sharma

8. Mahesh Chandra Agrawal
Son of Shri R.C.Agrawal

9. Arun Kumar Sharma
Son of Shri S.P.Sharma

Applicant No.7 to 9 are presently
posted as Guard 'C' under
Chief Yard Master, Agra.

.. Applicants

(By Adv: shri Sudhir Agrawal)

Versus

1. Union of India through the Secretary
Ministry of Railways, New Delhi

2. The Railway Board, Rail Bhawan
New Delhi through its Chairman

3. The General Manager,
Central railway, Bombay.

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4. The Divisional Railway Manager/
Divisional Railway Manager(P)
Central Railway, Jhansi.
5. H.K.Asthana, son of Shri B.B.Asthana
(Guard) resident of House No.508(A)
Railway Colony Rani Laxmi Nagar, Jhansi
6. V.P.Tiwari, son of late Shri Moti Lal
(Guard), Central Railway, Jhansi
resident of Chamānganj, Sipri
Bazar, Jhansi.
7. B.B.Srivastava, son of Late K.S.
Srivastava(Guard) Central
Railway, Jhansi, resident of R.B.III
645 A Rani Laxmi Nagar Railway
Colony, Jhansi.
8. D.P.Goswami, son of Sri A.P.
Goswami(Guard), Central Railway
Jhansi, resident of House No.706 B
Mission Road Railway Colony Jhansi.

(By Adv: shri Prashant Mathur) .. Respondents
Alongwith OA No.1348 of 1996

Brij Mohan Sharma, a/a 41 years
Son of Sri H.L.Sharma, resident of
House No.719 Near Chitra Cinema
Civil Lines, Jhansi U.P.,
presently posted as Guard under
Chief Yard Master, Central
Railway, Jhansi.

.. Applicant

(By Adv: shri R.K.Pandey)

(By Adv: Shri R.K.Pandey)

Versus

1. Union of India through the Secretary
Ministry of Railways, New Delhi.
2. Chairman, Railway Board, Rail
Bhawan, new Delhi.
3. General Manager, Central Railway
Jhansi.
4. Divisional Railway Manager/
D.R.M.(P), Central Railway, Jhansi.

.. Respondents

(By Adv: shri K.P.Singh)

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O R D E R (Reserved)

JUSTICE R.R.K. TRIVEDI, V.C.

In both the aforesaid O.A.s the questions of facts and law are similar and both can be disposed of conveniently by a common order against which counsel for parties have no objection. O.A. No. 363 of 1996 shall be the leading case.

The facts in short, giving rise to the aforesaid cases are that Railway Service Commission Bombay invited applications for the post of Guard vide Employment Notice No.3 of 1975-76 (category-23). The advertisement was published some time in the year 1977. In pursuance of the advertisement applicants applied for appointment as Guards. They appeared in written test and viva-voce and finally they were selected and their names appeared in merit list published by Railway Service Commission. A copy of the list has been filed as (Annexure 3). The names of the applicants are shown under the heading 'Jhansi Division and Jabalpur Division'. As the vacancies were not available to accommodate all the selected candidates, applicants were offered appointment as Office Clerks, which they accepted and joined as Office Clerks in Jhansi Division in 1979. From letter dated 12.11.1980 (Annexure A-6) it appears that in view of the Railway Board's letter dated 22.6.1979 the Chairman Railway Service Commission Bombay, recommended 195 candidates who were born on Central Railway Panel of Guards, for offer of appointment in the category of Office Clerks in Railways. In response to the offer 148 candidates accepted appointment as Office Clerks and they were appointed in various units. Applicants were appointed in Jhansi Division. It may be mentioned here that one Ishwar Chandra Mishra was also appointed as

Office clerk in Jhansi Division. Applicants made representations before respondents for their appointment as Guards for which they were selected. The request was, however, turned down by respondents, aggrieved by which applicants filed OA No. 250 of 1989 in this Tribunal. There were 26 applicants. The OA was initially filed before Principal Bench which was transferred to this Tribunal. The OA was however dismissed by order dated 30.4.1990 as time barred. Against the order of this Tribunal applicants filed SLP No.6811/91 before Hon'ble Supreme Court in which delay was condoned and it was registered as Civil Appeal No.3489/91. Hon'ble Supreme Court disposed of the appeal finally by order dated 3.9.1991 by following order:-

" on perusal of the record and hearing counsel for parties, we are of the view that such an order would meet the ends of justice in this case. We, accordingly direct that the appellants shall be permitted to join as Guard 'C' grade at the lowest stage but their present pay shall be protected by treating it to be a personal pay until by increment it reaches the stage where it can merge in the current pay at a future date. These adjustments shall be made in respect of the vacancies that may arise from now onwards.

The appeal is accordingly disposed of. No order as to costs. "

In pursuance of the above order of Hon'ble Supreme Court respondents appointed applicants as Gurads Grade 'C' on different dates. A chart showing their appointment as Clerks and the posting as Guards ~~have~~ been filed as (Annexure 9) to the OA. It may be mentioned here that when the order of Hon'ble Supreme Court was being given effect the applicants had already been promoted as Head Clerks. ~~They~~ completed requisite training before they

were appointed as Guards. After their appointment as Guards applicants raised the claim that they may be given seniority from the date the candidates who were successful in the selection of Guards ^{along with the applicants} were given appointment, and according to their merit position in the panel. This request of the applicants was rejected by the respondents aggrieved by which they have filed the present O.As.

Resisting the claim of the applicants respondents have filed counter reply. Parties have also filed supplementary counter and supplementary rejoinder.

We have heard Shri Sudhir Agrawal and Shri R.K.Pandey learned counsel for the applicants and Shri Prashant Mathur and Shri K.P.Singh learned counsel for respondents and perused the record.

The learned counsel for the applicant has submitted that applicants are entitled ^{for} the seniority from the date the selectees for Guards were allowed to join and for this purpose reliance has been placed in paragraph 302 and 306 of the Indian Railway Establishment Manual, Vol-1. It has also been submitted that one Ishwar Chandra Mishra who was selected alongwith the applicants mentioned at Sl.No.7 in (Annexure A-3), was also appointed as Office Clerk. He was applicant alongwith present applicants in filing OA No.250 of 1989 and was also appellant before the Hon'ble Supreme Court. He was appointed Guard in pursuance of the order of Hon'ble Supreme Court in Jhansi Division. Ishwar Chandra Mishra claimed seniority over Mr.M.K.Awasthi(R.S.C merit No.203) and Shri Mahendra Kumar Agrawal(R.S.C Merit No.200) which was allowed. The merit position of Ishwar Chandra Mishra was 180. It is submitted that the order^{for}

passed in favour of Ishwar Chandra Mishra dated 14.10.1996 and 20.1.1997 restoring him seniority from the date his juniors were appointed as Guards, ~~were~~ challenged before Principal Bench of this Tribunal in OA No.920/97. OA has been dismissed by order dated 1.6.2000, a copy of the order has been placed before us by the counsel for applicant for perusal. The counsel for the applicant has submitted that applicants are entitled for relief which has been granted to Ishwar Chandra Mishra and which has been upheld by Principal Bench of this Tribunal.

Shri prashant Mathur learned counsel appearing for the respondents, on the other hand, submitted that the applicants are not entitled for the benefit of seniority as claimed by them. It is submitted that such a relief is barred by constructive resjudicata. The applicants claimed for seniority in OA No.250/89 which was not granted to them by Hon'ble Supreme Court. It is also submitted that applicants were compensated by Hon'ble Supreme Court by directing respondents to give them pay protection and the applicants cannot claim double benefit. It is further submitted that the factual position in case of Ishwar Chandra Mishra was entirely different. In his application form he had opted Sholapur division and Bombay division in South Central railway and thus as Guard he was ~~to be~~ posted there. The applicants on the contrary, had opted for Jhansi and Jabalpur division and thus they have been appointed in the divisions they had mentioned in their application forms at the time of selection, they cannot claim same benefit here. The applicants ~~have~~ not mentioned any name which may be junior to applicants in the merit list of the Railway Service Commission and he was appointed as Guard initially. It is submitted that in these facts and circumstances the case of Ishwar Chandra

Mishra is distinguishable. It is also submitted that provisions contained in para 302 and 306 are not applicable in the present case. As the applicants have been appointed ~~under fresh vacancies~~ after completing requisite training on a much later date. It is also submitted that the services rendered by applicants as Office Clerks which is entirely different cadre, cannot be counted for determining seniority of the applicants as Guards. The respondents have rightly reckoned the seniority of the applicants from the date they were appointed as Guards and there is no illegality.

We have carefully considered the submissions made by the counsel for parties. There is no much disputes about facts stated above. The only question for determination is whether applicants are entitled for the seniority from the date they were selected for appointment as Guards ^{and} ~~and~~ ^{as} their co-selectees were appointed as Guards.

The applicants were appointed as Office Clerks and they joined on 24.9.1979. The stand of the respondents was that they were appointed after they expressed their willingness to join as Clerks. The relevant paragraph of the letter dated 12.11.1980(Annexure 6) which is being reproduced below:-

"The acceptance of appointment as office clerk was left to the choice of each individual. Should an individual not choose to accept the post of office clerk, his name would have continued to remain on the panel of Guards for offering appointment as Guards before the expiry of the panel. A copy of the Commission's letter addressed to each candidate is enclosed."

From the aforesaid, it is clear that to avoid risk of expiry of the panel of Guard the applicant opted to join as office clerk. They joined as office clerks and were granted promotion. The OA No.250 of 1989 filed by applicants was dismissed as time barred. Hon'ble Supreme

court, however, by order dated 3.9.1991 granted relief to the applicants as mentioned above. Before passing the ~~final~~ order an order was passed on 7.1.1991 which was to the following effect.

"The matter is adjourned to 14.1.1991. counsel will inform the court on that date as to whether the petitioners are prepared to join as Guard grade 'C' at the lowest of the pay to such posts subject to protection of their present pay as personal pay."

The applicants expressed their willingness then order was passed. The impact of this order was that the services rendered by applicants as office clerk were recognised and their pay was protected. Hon'ble Supreme Court could have also granted the benefit of seniority but it was not allowed probably for the reason that the services rendered as office clerk, which is a different cadre, could not be clubbed for computing the seniority of the applicants as Guards. The applicants were directed to be adjusted against the vacancies which became available after the judgment of Hon'ble Supreme Court. They completed their training thereafter. It is not the case of the applicants that they have been adjusted against the vacancies for which they were selected in 1978-1979. We find no principle on which basis the applicants may claim seniority. Reliance has been placed by counsel for applicant on paragraph 302 and 306 but in the peculiar facts and circumstances of the present case they cannot be applied. The applicants have been appointed as Guards grade 'C' in pursuance of the order of Hon'ble Supreme court which is based on consent of the applicants and appears to have been passed under Article 142 of the Constitution of India. Without undergoing training applicants could not ^{have} joined as Guards. Their seniority has

rightly been computed from the date they joined as Guards grade 'C' after completing the training. If applicants are allowed pay protection as well as the seniority as claimed by them it shall result in double benefit to the applicants for which they are not entitled. Opting ~~by them~~ for pay protection it shall be deemed that they gave up claim of seniority and the present claim is thus barred by constructive resjudicata.

The counsel for the applicant has placed much reliance on the judgment of Principal Bench in OA No.920 of 1997 dated 1.6.2000. However, the order of the Principal Bench has been passed entirely in different set of facts. In that case applicants of the OA No.920 of 1997 requested for change of their division which was allowed and they came to Jhansi division, ~~and were put in bottom~~ seniority in Jhansi division as per rules. Ishwar Chandra Mishra was appointed in pursuance of the order of Hon'ble Supreme court. Thus, giving seniority to Ishwar Chandra Mishra above such applicants, who were already put in bottom seniority, interest of those who were appointed Guards grade 'C' during the period 24.4.1979 and the date the applicants were appointed as Guard grade 'C', could not be effected. In the present case, this is not the factual situation before us. The applicants have not been able to show that any person below in merit had joined at Jhansi division on transfer and has been placed in bottom seniority and above applicants. Thus, the order of the Principal Bench is distinguishable. The applicants are not found entitled for the claim of seniority as Guards grade 'C' from the period prior to their appointment as such. The orders passed dated 5.12.1995 and 21.11.1994

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are justified and do not suffer from any error of law.

The OA has ~~no~~ merit and ~~is~~ accordingly dismissed. No order as to costs.