

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 8th day of August 2002.

Original Application no. 371 of 1996.

Hon'ble Maj Gen KK Srivastava, Member-A
Hon'ble Mr AK Bhatnagar, Member-J

1. Girish Prasad,
S/o Sri MR Bhatt
R/o Qr. No. L-31-A,
Railway Colony, Dehradun.
2. Rakesh Kumar,
S/o Shri B. Singh,
R/o Qr. H-287/B,
Railway Hathala Colony,
Moradabad.
3. Subhash Chandra,
S/o Sri YR Singh,
R/o Railway Qr. No. H-15-C, Harthala Colony,
Moradabad.
4. Hari Singh, S/o Sri Chandra Singh,
R/o L-27-F, Railway Colony,
Dehradun.
5. Rajesh Kumar Tomar,
S/o Sri K.S. Tomar, Diesel Asstt.,
R/o Qr. no. WW 5C, RPF, Colony, Line par,
Northern Railway, Moradabad.

... Applicant

By Adv : Sri Sudhir Agarwal
Sri KK Mishra

Versus

1. Union of India through, General Manager,
Ministry of Railways,
New Delhi.
2. Divisional Railway Manager,
Norther Railway, Moradabad.
3. Senior Divisional Mechenical Engineer,
Northern Railway, Moradabad.

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4. Senior Divisional Personnel Manager,
Northern Railway, Moradabad.
5. Shanta Ram, S/o Shri Nathu Ram,
At present posted at Shunter,
C/o Foreman, Roja Loco Shed,
Shahnjahanpur.
6. Abad Mohammed,
Shunter C/o Foreman, Loco Shed,
Moradabad.

... Respondents

By Adv : Sri AV Srivastava
Sri SK Gupta

ORDER

Hon'ble Maj Gen KK Srivastava, Member-A.

In this OA 5 applicants have challenged the seniority list dated 5.12.1995 (Ann A-II) and have prayed that the same be quashed and respondents No. 1 to 4 be directed to determine inter-se seniority of first fireman directly recruited and publish a fresh seniority list showing the names of applicants senior to respondent no.5.

2. The facts, in short, as per the applicants are that applicants no. 1 to 5 after passing the suitability test, were appointed as Apprentice Fireman in scale of Rs. 950-1500 on 10.12.1987, 11.12.1987, 30.12.1987, 2.1.1988 & 15.12.1987 respectively. Respondents no. 5 to 6 joined on 13.7.1987 and 26.5.1987 as Apprentice Fireman. After completing first phase training for 1 month at Loco Shed Moradabad, 51 candidates including the applicants and respondents were sent for second phase training at Zonal Training School (in short ZTS) Chandausi on 17.10.1988. After examination conducted by ZTS Chandausi a merit list

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was prepared for the purpose of seniority (Ann A-1). After successful training one batch out of 51 candidates joined actual working post of Fireman A whereas the remaining joined subsequently. Provisional seniority list was published on 4.3.1992 (Ann A-2) and ^hrepresentations^h were filed by aggrieved persons including the applicants. In 1994, the respondents started filling the post of Diesel Assistants from Fireman 'A' on the basis of merit position obtained by 20 candidates out of 51 at ZTS Chandausi ⁱⁿ T-17 ^{Course} second phase examination and respondents no. 5 & 6, though lower in merit than the applicants except respondent no. 6 who was clubbed with applicant no. 5 but lower in merit than applicants no. 1, 2 & 3 were considered and appointed as Diesel Assistant. The matter was agitated and a correct seniority list was published on 5.6.1995 (Ann A-6) though ^hwith^h drawn later on by respondents due to pressure ^hexerted^h upon by service Union. Another seniority list was published on 28.6.1995/5.7.1995 (Ann A-7) 187 persons from ranker quota were given seniority over the applicants. The applicants represented against this on 10.7.1995, 24.7.1995 & 7.8.1995 but respondents did not consider their representations and published the impugned seniority list on 5.12.1995. On the basis of impugned seniority list a panel of 261 candidates was drawn excluding applicants for selection to the post of Goods Train Driver in the pay scale of Rs. 1350-2200. Hence this OA which has been contested by the respondents by filing counter reply.

3. Shri Sudhir Agarwal learned counsel for the ^happlicant^h submitted that applicant no. 1 obtained second

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position, applicant no. 2 fifth position, applicant no. 3 seventh position, applicant no. 4 seventeenth position and applicant no. 5 eleventh position in the examination conducted by ZTS Chandausi whereas respondent no. 5 secured 25th position and respondents no. 6 secured 11th position and the seniority of the applicants should have been fixed according to the merit they obtained but it has not been done by the respondents. The respondents did not publish the seniority list for ^a quite some time and started making ⁱⁿ promotions ⁱⁿ amongst the departmental candidates for the post of Shunter/Goods Driver.

4. The learned counsel submitted that respondents published a provisional seniority list on 4.3.1992 (Ann A2). The merit of the applicants obtained in the examination conducted by ZTS Chandausi was ignored while fixing the seniority. Hence applicants filed representations and a correct seniority list was published on 5.6.1995. However, the respondents under pressure of service Union withdrew the same and irregularly issued the seniority list on 5.7.1995 giving seniority to 187 promotees above the applicants and on the basis of an incorrect seniority list dated 5.7.1995 a panel of 261 candidates for appearing in the selection of Goods Train Driver has been drawn.

5. Sri Agarwal further submitted that since the applicants have already been given the training to be promoted to the post of Goods Driver their names should

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have been included. Rule 303 of Indian Railway Establishment Manual (in short IREM) Vol I lays down the principle of fixing seniority but the respondents have totally ignored the provisions of Rule 303 of IREM Vol I. It has also been submitted that applicant no. 1 had been spared for training of Goods Driver at Tuglakabad but was withdrawn subsequently because of seniority list dated 5.7.1995. The promotees were converted/promoted as Firemen 'A'/Diesel Assistant after the applicants had already joined the service as Fireman 'A'. Therefore the promotees could never rank senior to applicants. Such an action is illegal and invalid. The applicants are entitled to get the promotion of Goods Driver in Pay Scale of Rs. 1350-2200. The learned counsel also contended that the applicants should have been given a chance ^{by the} put forward their stand specially when they had represented but respondents did no such thing violating the principles of natural justice. The final seniority list dated 5.12.1995 is not in conformity with the Rule 303 of IREM Vol I and is liable to be quashed.

6. Shri Sudhir Agarwal learned counsel for the applicants submitted that the plea of the respondents that Para 303 of IREM Vol I stands amended by circular dated 19.3.1993 cannot held good because the amendment will be applicable prospectively and not retrospectively in view of Hon'ble Supreme Court decision in P Mohan Reddy Vs. EAA Charles, (2001) 4 SCC 433. As regards limitation, the OA is well within period of limitation because the applicants represented when the provisional seniority list dated

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4.3.1992 was issued. Since correct seniority list was published on 5.6.1995 the applicants were satisfied. The grievance of the applicants is based on seniority list dated 5.12.1995 and the OA has been filed well within period of limitation on 14.3.1996.

7. Resisting the claim of the applicants Sri AV Srivastava, learned counsel for the respondents submitted that the first list was issued on 4.3.1992. The applicants should have raised objection. The list dated 5.6.1995 was not final. Applicants kept mum for more than 3 years. Besides respondent no. 5 & 6 joined the working post in 1992. Therefore in these set of facts the date of 1992 is relevant for cause of action and the OA is patently ~~is~~ barred by period of limitation.

8. Learned counsel for the respondents submitted that respondent no. 5 and 6 are directly recruited by Railway Recruitment Board (in short RRB) and they were sent for training earlier and were posted on working post prior to applicants. As per Rule 302 of IREM Vol I seniority is to be fixed from the date of joining working posts. Rule 303 of IREM stands amended by Railway Board's Circular dated 19.3.1993.

9. Sri AV Srivastava, learned counsel for the respondents argued that Railway Board ^{is} competent to frame rules/Policy retrospectively. Since Rule 303 of IREM Vol I has been amended, the applicants cannot rely

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upon the unamended rule. Besides respondent no. 5 & 6 joined the working post in 1992. The learned counsel invited our attention to Annexure V, VI & VII to counter reply of respondent no. 6 and submitted that applicants received their training at ZTS Chandausi from 11.4.1988 to 30.4.1988. While training of respondent no. 6 commenced on 7.9.1987. The applicants secured their working appointment much after respondent no. 6. The appointment letter of the applicants is dated 13.7.1989 whereas that of respondent no. 6 is dated 2.1.1989. Therefore respondents no. 6 is senior to applicants and they should have no grievance in this regard.

10. We have heard counsel for the parties, considered their submissions and perused records. The first argument advanced by the respondent's counsel is that the OA is barred by period of limitation because the cause of action arose in 1992. We do not agree with this. The plea, that the impugned seniority list dated 5.12.1995 has been framed on the basis of seniority list issued in the year 1992 ie 4.3.1992 and also the respondents 5 and 6 joined their working post in 1992, the applicants should have agitated the matter within period of limitation, has no force. The respondents have also argued that the seniority list dated 4.3.1992, which as per the respondents, is basis for impugned seniority list dated 5.12.1995 is also a provisional list. In fact, the final seniority list has been issued on 5.12.1995. Therefore, the cause of action arose on that date. The OA has been filed on 14.3.1996 well within the period of limitation.

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11. The main controversy before us is as to how should the seniority be fixed whether on the basis of joining the working post or as per the merit list of the examination conducted by ZTS Chandausi. We have perused Ann A-1 of the OA which gives the merit position of the applicants as well as respondents no. 5 & 6. The following is merit position of applicants via-a-vis the respondent no. 5 & 6 as per result of ZTS Chandausi (Ann A-1):-

	Merit Position
i. Applicant no. 1 Girish Prasad (Sr No 45)	2nd
ii. Applicant no. 2 Rakesh Kumar (Sr No 2)	5th
iii. Applicant no. 3 Subhash Chandra (sr no 5)	7th
iv. Applicant no. 5 Rajesh Kumar Tomar (Sr no 4)	11th
v. Respondents no. 6 Abad Mohammad (sr no. 09)	11th
vi. Applicant no. 4 Hari Singh (Sr no. 36)	17th
vii. Respondent no.5 Shanta Ram (Sr no. 48)	25th

This is admitted by respondents but they have maintained that the seniority has been fixed keeping in view the joining on working post and also in accordance with Rule 303 of IREM Vol I as amended by Railway Board's circular dated 19.3.1993. In order to appreciate the controversy unamended Rule 303 of IREM Vol I is reproduced below:-

"1.2 Seniority of recruited candidates. The seniority of candidates recruited through the Railway Service Commission or otherwise should be determined as under :-

- (a) Candidates who are sent for initial training to a training school will rank in seniority in the relevant grade, in the order of merit obtained at the examination held at the end of training period before being posted against working posts. Those who pass exam in second chance will rank junior to those who passed ^{high} first chance. In case candidates9/-


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secure equal marks, the seniority will be as per merit of Service Commission.

- (b) In the case of candidates who do not undergo any training, the seniority should be determined on the basis of the merit order, assigned by the Railway Service Commission or other recruiting authority."

12. The reading of above rule makes it clear that Rule 303 of IREM Vol I is the foundation of seniority and accordingly the seniority has to be fixed on the basis of position in order of merit. The course T-17 conducted by ZTS Chandausi was attended by applicants as well as respondents and its second phase concluded on 25.11.1988. Therefore, the position secured by applicants as well as respondents no. 5 & 6 is quite relevant. The course concluded on 25.11.1988 and therefore the seniority of the applicants and respondents has to be fixed as per unamended rule 303 of IREM Vol I. The rule 303 has been amended by circular dated 19.3.1993 and, therefore, the respondents cannot apply the same retrospectively. The Hon'ble Supreme Court in case of Mohan Reddy (supra) has held that the directions given by the Court in relation to a rule of seniority after considering the same must be followed in preparing the seniority list unless a valid rule to the contrary with retrospective effect comes into existence. On perusal of Railway Board's circular dated 19.3.1993 we are of the view that in absence of any mention of specific date of the amendment to Rule 303 of IREM Vol I, the amended rule has ^{to be} ~~been~~ operative prospectively and in no case retrospectively. Therefore, the action of respondents fixing the seniority in accordance with amended rule 303 of IREM Vol I is incorrect and illegal. We would

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also like to observe here that in case the seniority is to be fixed from the date one joins the working post, Rule 303 of IREM Vol I is rendered ⁱⁿoperative ⁱⁿ which is not so. Rule 302 and 303 of IREM Vol I have to be read together. The impugned seniority list dated 5.12.1995 suffers from error of law and liable to be **quashed**. The applicants are entitled for protection of their interest.

13. In the facts and circumstances and our aforesaid discussion, the OA is allowed. The impugned seniority list dated 5.12.1995 (Ann A-II) is quashed. The respondents are directed to prepare a fresh seniority list in accordance with unamended Rule 303 of IREM Vol I. The applicants shall be entitled for all consequential ^{in selection} benefits including promotion subject to their clearing ^{as} provided in rules. The respondents are directed to comply with the order within four months from the date of its communication.

14. There shall be no order as to costs.


Member-J


Member-A

Dated : 08 / 08 / 2002

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