

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

O.A. No./T.A. No. 1216 of 1997

Date of decision 31.10.2003

Akhilesh Kumar & another Applicant(s)

Sri Sudhir Agarwal Counsel for the
Applicant (s)

VERSUS
Union of India & others Respondent (s)

Sri Amit ShindeKar Counsel for the
Respondent(s)

C O R A M

Hon'ble Mr. Justice R.R.K. Trivedi, V.C./Member()

Hon'ble Mr. D.R. Tiwari Member (A)

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether their Lordship wish to see the fair copy of the judgment ? Yes
4. Whether to be circulated to all Benches ?

D. D. D.
Signature

PIYUSH/

(B)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1216 of 1997

Dated : This the 29th day of October, 2003
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HON'BLE MR. JUSTICE R.R.K. TRIVEDI, V.C.
HON'BLE MR. D.R. TIWARI, MEMBER (A)

- 1- Akhilesh Kumar a/a 35 years
S/o Sri C.L.Sharma, Posted
as Assistant Programmer,
Computer Centre, Diesel
Locomotive Works, Varanasi.
- 2- Anand Shanker Srivastava a/a
S/o Sri B.P.Srivastava,
presently Posted as Assistant
Programmer, Computer Centre,
Diesel Locomotive Works,
Varanasi.

... . . . Applicants.

Counsel for the applicant : Shri S. Agarwal.

Counsel

VERSUS

- 1- Union of India through the Secretary,
Ministry of Railways, New Delhi.
- 2- The General Manager, Diesel Locomotive
Works, Varanasi.
- 3- The Financial Adviser and Chief Accounts
Officer, Diesel Locomotive Works, Varanasi.
- 4- The Accounts Officer (Admn.) Diesel
Locomotive Works, Varanasi.
- 5- Sri M.N.Verma, Posted as Data Processing
Supdt., Electronic Data Processing Centre,
Diesel Locomotive Works, Varanasi.
- 6- Smt. M. Sheela Linda, Posted as Senior
Console Operator Electronic Data
Processing Centre, Diesel Locomotive Works,
Varanasi.
- 7- Sri Ashok Kumar, Posted as Assistant Programmer,
Electronic Data Processing Centre, Diesel
Locomotive Works, Varanasi.
- 8- Sri R.N.S. Maurya, Data Processing Supdt.,
Electronic Data Processing Centre, Diesel
Locomotive Works.
- 9- Sri Harihar Nath, Working as Assistant Programmer,
Electronic Data Processing Centre, Diesel
Locomotive Works, Varanasi.

..... Respondents.
Counsel for respondent : Shri A.Sthalekar.

D/for

ORDER

(14)

By Hon'ble Mr. D.R. Tiwari, Member (A)

By this O.A., filed under section 19 of Administrative Tribunals Act, 1985, the applicants have prayed for the following relief(s) :

- "i) to quash the order dated 21.10.1997 (Annexure A-2) by which the respondents has rejected the representation of the applicants.
- ii) to setaside the impugned seniority list dated 15.7.1997 (Annexure A-1) by which the applicants have been shown junior to respondents 5 to 9 and
- iii) to declare paras 203.5 of Indian Railway Establishment Manual as ultravires being violative of Articles 14 and 16 of the Constitution."

2. The facts of the case, in brief, are that the applicants initially belonged to the cadre of Design on the post of Head Draftsman in the pay scale of Rs.1600-2660. In pursuance of the notification dated 20.10.1993 (Annexure A-3), the applicants and the respondent No.7 applied for selection to the post of Assistant Programmer in Electronic Data Processing Centre (hereinafter called E.D.P. Centre) in Diesel Locomotive Works, Varanasi (hereinafter called D.L.W.). The applicants were selected and appointed on the post of Assistant Programmer on 23.11.1994 in E.D.P. Centre and after passing the requisite training, were absorbed in E.D.P. Department and severed their lien from Design Department (Annexure A-4). The respondent No.7 qualified in the subsequent selection in 1996 and appointed as Assistant Programmer on 23.7.1996 and severed lien from the Mechanical Department.

3. A notification dated 20.11.1997 (Annexure C.A.-I) was issued to form a panel of three candidates for Group 'B' (Gazetted) posts of programmer in the grade of Rs.2375-3750 E.D.P. in

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Centre of D.L.W. The respondents prepared and issued the integrated seniority list of Group 'C', officials and invited objection from all concerned. The applicants represented against the integrity seniority list on the ground that among after ~~other~~ ^{other} ~~things, they were~~ working in higher grade than those who have been shown above the applicants.

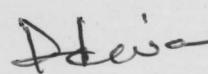
4- The applicants have also assailed the validity of the para 203.5 of I.R.E.M. Vol-I, 1989 Revised Edition on the ground that the provisions contained are arbitrary and discriminatory and it amounts to treating unequals as equals as it gives weightage to length of service ignoring the higher grades.

5- The respondents, on the other hand, has resisted the contention of the applicants. The private respondent ~~have also~~ resisted the claim of the applicants. The respondents have submitted that in E.D.P. Centre of D.L.W. the staff of following three seniority streams are working and ~~are~~ ^{are} eligible to appear in the selection for the post of programmer Group 'B', Grade of Rs.2,375-3,750.

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- a) Stream-1, Data Processing Superintendent in Grade of Rs.2000-3200 (R.P.)
- b) Stream-2, Senior Console Operator in the grade of Rs.2000-3200 (R.P.) and Console Superintendent in the grade of Rs. 2375-3500 (R.P.)
- c) Stream-3, Assistant Programmer in Grade 2375-3500 (R.P.)

It is stated that before determining the eligibility of the of the staff to appear in selection, the integrity seniority of staff working in three streams, mentioned above, was



prepared in accordance with the rules contained in para 203.5 of I.R.E.M. Vol.-I 1989 Edition and Clarification issued by the Railway Board in the light of judgment given by the Central Administrative Tribunal vide their letter dated 22.12.1988 (Annexure-C.A.2). The integrated seniority was notified by letter dated 15.7.1997 (Annexure A-1). The applicants and three other staff represented which was examined in consultation with Railway Board and the applicants were informed by letter dated 21.10.1997 (Annexure C.A.-5). Subsequently, the names of 10 staff, who were eligible to appear in the selection, were notified on 15.7.1997.

6- The respondents have further stated that respondent no.7, although did not qualify in the earlier selection for the post of Assistant programmer alongwith the applicants and have qualified in the subsequent selection and appointed as Assistant programmer in E.D.P. Centre w.e.f. 23.7.1996. But he was holding a post in scale of Rs.2000-3200 w.e.f. 01.4.1992 on regular basis in his parent cadre and for the purpose of integrated seniority, only the length of regular service of each employee in grade Rs.2000-3200 and above has to be taken into account, irrespective of the fact whether the employee is working in Rs.2000-3200 or in Rs.2375-3500. He was shown above in the seniority list than the applicants as the regular position of applicants in grade of Rs.2000-3200 is later than respondent No.7.

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7. We have carefully considered the rival contention of the parties and perused the pleadings.

8. During the course of hearing, the senior learned counsel, Sri S. Agarwal appearing for applicants, have forcefully argued that the para 203.5 of I.R.E.M is arbitrary and it is against the provisions of "The Indian Railways, Electronics Data Processing (Gazetted Posts) Recruitment Rules, 1989" (hereinafter called Rule 1989). His contention is that the President in exercise of powers under proviso to Article 309 of the Constitution has made the Rules 1989. It has statutory force and any executive instruction contrary to the provisions of the Rules 1989 would be invalid. He has put forth the argument that para 203.5 of I.R.E.M is nothing but the executive instruction issued by the Ministry of Railways from time to time. He says that it treats un-equals as equals. He relies on the decision of Supreme Court in 1994 Vol-II SCC 411 (Shakuntla Sharma Vs. H.C. Himanchal). He has further placed reliance on the judgment of Allahabad High Court in the case of B.N. Singh Vs. U.P. Public Service Tribunal (1985) UPLBEC 251. The crucial question, which falls for consideration, is whether para 203.5 of I.R.E.M. is invalid in view of Rule 1989 issued by the President. It may be stated that the Rule, 1989 relates to the provision relating to appointment etc. of gazetted posts of the E.D.P. Centre. It provides for age, qualification, the posts, the method of recruitment etc. It has clearly provided for method of selection/promotion to Group B gazetted posts. The feeder cadre for promotion is

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is the Group 'C' posts. It stipulates composite method of recruitment i.e. by promotion failing which by transfer on deputation and failing which by direct recruitment. It may be mentioned that the Railway Board, in exercise of statutory powers conferred on it by the Indian Railway Establishment Code, frames rules and issues instruction as incorporated in I.R.E.M. including para 203.5. Even if it is held that the provisions of I.R.E.M. has no statutory force as enjoyed by Rule 1989, it may be said that the executive instruction are supplementary to statutory Rules. Secondly, the para 203.5 provides for determination of seniority in feeder grade from different streams. It deals with the group 'C', posts and does not speak about the method of promotion and appointment to group 'B' gazetted post. The case of Shakuntala Sharma (Supra) is distinguishable as the issue decided was the inequitous provision of Recruitment Rules. Similarly, the case of B.N.Singh (Supra) has been decided in context of different facts and circumstances. It is now clear that the para 203. of I.R.E.M. and Rule 1989 operate in different areas as the former relates to determination of seniority among group 'C' officials whereas the latter provides for recruitment to the posts of group 'B', gazetted. Hence, the contention of the counsel for the applicants appears to be misplaced.

9- In view of the facts and circumstances mentioned above, the O.A. fails and is dismissed, with no order as to costs.

No. of pages - 2
Member - A

Vice-Chairman

Asthana/-