

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

C.A.No./T.A.No. 1225/97

Date of decision 1. 11. 06

Dr M.K. Srivastava Applicant(s)

Sri S.K. Om Counsel for the applicant(s)

Versus

Union of India & Others Respondent(s)

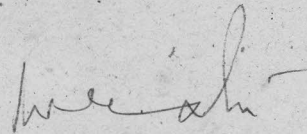
Sri V.K. Goel, Sri D.P. Singh & Sri R.K. Srivastava Counsel for the respondent(s)

CORAM

Hon'ble Mr: Judge Klem Karan V.C./Member()

Hon'ble Mr: P.K. Chatterji 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?
4. Whether to be circulated to all Benches?



SIGNATURE.

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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 1st day November 2006.

Original Application No. 1225 of 1997

Hon'ble Mr. Justice Khem Karan, Vice-Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

Dr. Manoj Kumar Srivastava,
S/o Late K.K. Srivastava,
Presently working as Law Assistant, N.E. Railway,
GORAKHPUR.

. . . . Applicant

By Adv: Sri S.K. Om

V E R S U S

1. Union of India, through General Manager,
N.E. Railway,
GORAKHPUR.
2. Chief Personnel Officer,
N.E. Railway,
GORAKHPUR.
3. Chief Commercial Manager,
N.E. Railway,
GORAKHPUR.
4. Sri Amit Kumar Srivastava
5. Sri Javed Akhtar
6. Sri Iqbal Parvez
7. Sri Krishna Gopal Singh
8. Sri Raj Kumar Gupta
9. Sri Krisha Kunwar Lal
10. Prem Prakesh Dubey

Working as Chief Law Assistant in N.E. Railway,
Gorakhpur.
11. Sri S.K. Srivastava
12. Sri Sheo Kumar Sagar
13. Sri Basant Lal

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14. Sri R.N. Mishra

15. Sri Ved Prakash Tripathi

Working as Law Assistant in N.E. Railway
Gorakhpur.

16. Sri Nageshwar Singh, Chief Law Assistant under
D.R.M. (P), N.E. Railway, Varanasi.

. . . . Respondents

By Adv: Sri V.K. Goel, Sri D.P. Singh &
Sri R.K. Srivastava

O R D E R

By Hon'ble Mr. P.K. Chatterji, AM

The applicant in this OA has been aggrieved with the respondents who while promoting him as Law Assistant on general selection allegedly did not give him his due seniority. His contention is that the selection of Law Assistant being general selection, his seniority in the panel of selected candidates should have been fixed strictly on merit. There is no room for considering inter-se-seniority of the selected candidates in according~~by~~ the seniority in the panel.

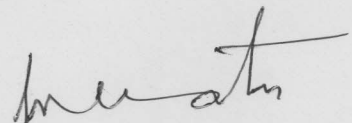
2. The applicant who is working with the Railways was promoted as Senior Booking Clerk on 30.09.1993. In 1994-95 the respondents made a selection for Law Assistant. This is an open selection whereby the candidates belonging to different cadres and grades can appear for the selection. The only requirement is that he should be a Law graduate. The applicant of this OA qualified in the written test and also cleared

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the viva-voce and the panel was declared by the respondents on 29.03.1995 in which the applicant appeared at Sl. No. 14.

3. The applicant further submitted that according to rules and the concerned notification panel was to be prepared on merit position only in the selection. Although the applicant joined as Law Assistant on 29.03.1995, he was aggrieved that he was not accorded his due seniority as per merit as inter-se-seniority of the selected candidates were maintained. His contention is that if the panel was prepared only on the basis of merit position in the selection then his position would be much higher than Sl. No. 14.

4. In this regard the applicant says that the method of general selection is elaborated in IREM Vol. I under Rule 219 (g) and 219 (i). According to the applicant, the reading of these provisions would indicate that in deciding seniority in the panel the only consideration to be given were ~~on~~ marks in the written test and the viva-voce. The applicant in his OA has furnished the judgments of the Apex Court in *M. Ramjayaram Vs. General Manager, South Central Railway & others, Civil Appeal no. 5085 of 1996* dated 15.03.1996, (Annexure 5). He has also cited the judgment of this Tribunal in *OA No. 511 of 1992, Rajesh Kumar Srivastava Vs. Union of India & Others* decided on 27.05.1996.



5. The respondents have denied the contention of the applicant and have categorically submitted that the seniority of the applicant was fixed in the panel of Law Assistant as per rules. The respondents have stated that the Apex Court's judgment would not apply to the case of the applicant as his case was decided before the pronouncement of the judgment of the Apex Court. Secondly, the decision of the Apex Court related to whether the seniority factor in the process of selection as laid down in IREM Vol. I under Rule 219 was correct or not. The 15% mark, which was to be given on seniority, was considered by the Apex Court to be not correct.

6. In this OA, the respondents averred, it is not the question whether the process of selection was done according to rules. It is not the contention of the applicant that his selection was not on merit as per the rules. His contention is that, after the selection the seniority of the selected candidates also should have been decided strictly on the basis of the marks obtained by them in the written test. However, the rules specify otherwise and so the inter-se-seniority of the selected candidates was used as the criterion to decide the seniority position of the candidates in the panel.

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7. It was also pointed out by the respondents that besides being barred by limitation this OA should also be disallowed on the ground that the applicant having taken the benefit of selection and having joined as Law Assistant, he cannot challenge the selfsame order. The respondents have referred to a Hon'ble Supreme Court's judgment in case of **Sanat Kumar Dwivedi Vs. Dharjila Sahakari Bhoomi Vikas Bank Maryadit & Others, 2001 (9) SCC 402.**

8. Let us now consider the main point on which this OA should be decided and for that it would be necessary to go through the relevant provisions of IREM and also the judgments referred to by the learned counsel for both the parties. The relevant provisions in the IREM i.e. 219 (g) and (i) are as follows:

"219 (g): Selection should be made primarily on the basis of overall merit, but for the guidance of Selection Board the factors to be taken into account and their relative weight are laid down below:-

	Maximum Marks	Qualifying Marks
(i) Professional ability	50	30
(ii) Personality, address, Leadership and academic Qualification	20	--
(iii) A record of service	15	--
(iv) Seniority	15	--

NOTE: (i) The item 'record of service' should also take into consideration in the performance of the employee in essential Training School/Institute apart from the examining CRS and other relevant records.

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(ii) Candidates must obtain a minimum of 30 marks in professional ability and 60% marks of the aggregate for being placed on the panel. Where both written and oral

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tests are held for adjudging the professional ability, the written test should not be of less than 35 marks and the candidates must secure 60% marks in written test for the purpose of being called in viva-voce test. This procedure is also applicable for filling up of general posts. Provided that 60% of the total of the marks prescribed for written examination and for seniority will also be the basis for calling candidates for viva-voce test instead of 60% of the marks for the written examination.

.....

(i) For general posts i.e. those outside the normal channel of promotion for which candidates are called from different categories whether in the same department or from different departments, the selection procedure should be as under:-

- (i) All eligible staff irrespective of the department in which they may be working who satisfy the prescribed conditions of eligibility and volunteer for the post should be subjected to a selection which should consist of both written and viva-voce test; and
- (ii) The Selection Board call for viva-voce test all candidates who secure not less than 60% marks in the written test. The final panel should be drawn up on the basis of marks obtained in the written and viva-voce test in accordance with the procedure for filling selection posts."

The respondents claim that while general selection of the candidates would be made on the basis of 219 (g) and 219 (i) seniority in the panel after the selection should be on the basis of rule 320. So it would also be pertinent to quote the provisions 320 to which the Apex Court had referred in its judgment in **M. Ramjayaram** (supra) :

"320. RELATIVE SENIORITY OF EMPLOYEES IN AN INTERMEDIATE GRADE BELONGING TO DIFFERENT SENIORITY UNITS APPEARING FOR A SELECTION/NON-SELECTION POST IN HIGHER GRADE.

When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter-seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to the proviso that only non-fortuitous service should be taken into account for this purpose.

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Note: Non-fortuitous service means the service rendered after the date of regular promotion after due process."

Let us now look the relevant portion of the decision of the Apex Court in case of **M. Ramjayaram**, the relevant portion is quoted below:

"In this case the contesting respondents are not from the same unit but of different units, Rule 320 stands excluded, weight of 15 marks for seniority given to the respondents obviously is illegal. Therefore, there is force in the contention of the appellant that his non-selection tantamount to arbitrary exercise of power on the part of the respondent Nos. 1 and 2. We set aside the order of the CAT, Hyderabad made in O.C No. 1039/92 dated March 21, 1995. The respondents are directed to consider the selection according to rules and make appointment according to law.

The appeal is accordingly allowed. No costs."

The learned counsel for the applicant referred to the judgment of this Tribunal in OA No. 511 of 1992 in support of his claim. The relevant portion of the same is as follows:

". . .

14. After giving our anxious consideration to the material placed on record as above, we come to the conclusion that instant selection for the post of Law Assistant has not been done as per the laid down rules for the general posts net in the normal channel of promotion. The basis on which the name of the applicant has been deleted and that of the respondent No. 4 has been added is also against the rules. From the marks obtained as detailed earlier in para 7 above, the applicant is at Sl No. 3 as per the merit even if for a moment the plea of the respondents to error in indicating the seniority of respondent No. 4 is accepted. The applicant by virtue of higher merit than the respondent No. 4 is accepted and the name of the applicant has been deleted due to wrong interpretation of the rules.

Since the selection has not been conducted as per the laid down rules and in normal course, the same should have been quashed. Since the selection itself has not been challenged, we refrain from passing any such order. However, the impugned order dated 2.4.92 deleting the name of the applicant and inserting the name of respondent No. 4 deserves to be quashed.

15. In view of the facts that the selection itself being not as per rules, and the impugned order deserves to be quashed, we do not intend to examine

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the other contentions with regard to applicant being senior in view of the higher scale in which he was working than the respondent No. 4 and the deletion of the name from the panel being done without giving show cause notice.

16. For the reason indicated above, the application is allowed quashing the impugned order dated 2.4.92. The applicant will be promoted forthwith restoring the panel position, seniority and pay fixation as if he was not reverted. He will also be paid the arrears for the period till he is repromoted in the post of Law Assistant. No order as to costs."

9. Let us now examine the rival claims in the light of the aforementioned rules of the IREM and the relevant decisions of the Tribunal/Courts.

- a. The respondents' arguments are mainly that Rule 302 should apply in deciding and fixing the seniority in the panel after selection for the reason that the ruling of the Apex Court that it should be ruled out came after the selection was finalized in this particular case, and the ruling of the Apex Court does not have retrospective effect. We have given our thought to this matter. However, we are unable to satisfy ourselves that Rule 320 should apply in this case in deciding the seniority in the panel. Learned counsel for the respondents has submitted during the hearing that the relevant rule to decide the general selection in the category of Law Assistant or Rule 219 (g), Rule 219 (i) and Rule 320. We are unable to understand why Rule 320 will apply because rule 210 (i) lays down clearly the manner of deciding the seniority in the panel after the process of selection as per Rule 219 (g). If we take a close look of Rule 219 (i) and 320, the contradiction became clear. Rule 219 (i) clearly lays down that once the selection is made on the basis of Security ~~of~~ 60% and above, seniority in the panel should be decided on the

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basis of marks in the written test and viva-voce. There is no other seniority factor.

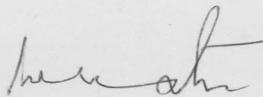
Rule 320 speaks of seniority being decided by length of service in the same or equivalent grade. But in the case of selection of Law Assistant, we have ^{been} told that and it is not disputed that candidates come from different grades, departments and seniority. Many of them would not belong to the same or equivalent grades for this reason Rule 320 is not appropriate in this selection. It was only this aspect which was clarified by the Apex Court in the case of **M. Ramjayaram** (supra). It is not a new ruling that has been pronounced by the Apex Court, but ~~the~~ mere clarification of the Rule, which was not being appropriately applied by the respondents. For this reason the argument that Rule 320 should apply in this case of selection of Law Assistant and the Rule of the Apex Court should not be retrospectively applied (as cited by the respondents) is not tenable.

- b. The other contention of the respondents is that having taken advantage of his selection as Law Assistant and having joined the post he cannot question its validity. In support the respondents have cited the judgment of the apex court in **Sanat Kumar Dwivedi's** case (supra). We have given our thought to this aspect as well, but we are unable to accept the contention of the respondents. The decision of the Apex Court would not apply in this case for the reason that the applicant has not questioned the manner of selection made by the respondents to the post of Law Assistant. What he is questioning is seniority given to him after the selection. As he has no dispute with

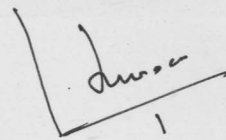
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the manner of selection, naturally he has ~~not~~ refused the selection to the post of Law Assistant and, therefore, ~~his was~~ having joined as Law Assistant should not preclude his claiming appropriate seniority in the panel.

10. For the aforementioned reasons, we are of the view that there is merit in the OA, which should be allowed. We, therefore, allow this OA with the direction to the respondents to decide the seniority appropriately on the basis of the relevant rules i.e. 219 (g) and (i) and give him consequential benefits. No cost.



Member (A)



Vice-Chairman

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