

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 30th day of January 2002.

QUORUM : HON. MR. S. DAYAL, A.M.

HON. MR. RAFIQUDDIN, J.M.

O.A. No. 1115 of 1998.

1. Vijai Kumar Upadhyay s/o Brijesh Narain Upadhyay a/a 30 years, Diesel Assistant, Qr.No.555-L, Bichhiya Railway Colony, N.E. Railway, Gorakhpur.
2. Hirday Prakash Pandey s/o Sri B.N. Pandey a/a 31 years, Diesel Asstt. Q.No. nil, Moh. Sheopur, Shahbazganj, P.O. Padri Ba-zar, District Gorakhpur.
3. Noor-e-Alam s/o Sri Abdullah a/a 30 years, Diesel Asstt. Q.No.161-E, Jatepur Railway Colony, N.E. Railway, Gorakhpur.
4. Gorakhnath s/o Sri Shyamdeo Prasad a/a 36 years, Diesel Asstt., Q.No.642-B, Baulia Railway Colony, N.E. Railway, Gorakhpur.
5. Rakesh Kumar Srivastava s/o Sri Ram Chandra Lal a/a 31 years, Diesel Asstt. r/o Moh. Sudiyakuan, near Laxmi Memorial Convent School, Post Basharatpur, Gorakhpur.
6. Aarif Jamal Ansari s/o Sri Mohammad Siddique a/a 30 yrs. Diesel Asstt. r/o Moh. Turkmanpur, M.S. Enterprises, Post Geeta Press, Gorakhpur.
7. Rakesh Kumar Srivastava s/o Sri Yogendra Lal Srivastava a/a 30 years, Diesel Asstt. r/o Moh. Saketpuri, Boring No.10, Post Gorakhpur, Gorakhpur.
8. Rasheed Ahmad Khan s/o Sri Ali Ahmad Khan a/a 31 years, Diesel Asstt. r/o Moh. Ghosipur, near Masjid, Gorakhpur.
9. Rajesh Kumar Srivastava s/o Sri Prem Narain Srivastava a/a 30 years, Diesel Asstt. r/o Q.No.15-D, Ramgarh Tal Railway Colony, N.E. Railway, Gorakhpur.
10. S. Anwar Abbas s/o Sri S.N. Abbas a/a 31 years, Diesel Asstt. r/o E-2027 Rajajipuram, Tal Katora Road, Lucknow.
11. Shakil Ahmad Siddiqui s/o Sri Jamil Ahmad a/a 29 years, Diesel Asstt. r/o H.No.5, Moh. Shah Maroof Road, Gorakhpur City, Gorakhpur.
12. Mohammad Karim s/o Sri Mohammad Yusuf Khan a/a 31 years

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- Diesel Asstt. r/o H.No.298, Moh. Vazirabad Colony, Post Gorakhnath, Gorakhpur.
13. Manoj Kumar Srivastava s/o Sri R.P. Srivastava a/a 31 years Diesel Assistant r/o Moh. Ekta Nagar (Rajendra Nagar), Post Gorakhnath, Gorakhpur.
14. Mahendra Pratap Singh s/o Sri Udai Pratap Singh a/a 30 yrs. Diesel Asstt. r/o Moh.Mohan Lalpur, Post Sadar, Gorakhpur.
15. Sant Bahadur Singh s/o Sri Ram Niwas Singh a/a 31 years, Diesel Asstt. r/o Q.No.L/58-M, Bauliya Railway Colony, N.E. Railway, Gorakhpur.
16. P.P. Bhatt s/o Sri Jokhan Prasad Bhatt a/a 29 years, Diesel Asstt. r/o Q.No. 622-G, Bauliya Railway Colony, N.E. Rly., Gorakhpur.
17. Shallesh Kumar Shama s/o Sri Bansh Bahadur a/a 30 years, Diesel Asstt. r/o Q.No.T-2 'F' Railway Station Colony, N.E. Railway, Gorakhpur.

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..... Applicants.

Counsel for applicants : Sri S.K. Om.

Versus

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. Chief Personal Officer, Northern Eastern Railway, Gorakhpur
3. Divisional Rail Manager, N.E. Railway, Lucknow.

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..... Respondents.

Counsel for respondents : Sri P. Mathur.

O R D E R (ORAL)

BY HON. MR. RAFIQUDDIN, J.M.

The applicants, who are 17 in number, have filed this O.A. seeking directions to be issued to the respondents to assign the seniority to the applicants in the category of Fireman Grade A/Diesel Assistants w.e.f. the date they were sent for training as paid apprentices Fireman grade A/Diesel Assistant, and grant of all consequential benefits to the applicants as a consequence of assigning their seniority, after quashing the order dated 9.9.98 passed by the DRM, NER,

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Lucknow (Respondent No.3).

2. The case of the applicants, as disclosed in the O.A., is that the applicants were appointed on the post of Fireman grade A in the scale of Rs.225-230. The applicants were also sent for training for a period of 24 months in terms of the extent rules which stipulates that the applicants will be posted as temporary Fireman grade A after passing the training examination against the existing vacancies. It is further stated that the Applicant Nos.1 to 12 joined the training on 16.2.89, 14 & 16 on 3.5.89, 13 on 4.5.89 and 17 on 30.8.90. The applicants successfully completed their training course and the result of applicant Nos.1 to 11 was declared on 15/18.3.91 whereas the result of remaining applicants were declared between 20.4.91 to 23.4.91. After passing the examination on 18.3.91, the applicants Nos.1 to 11 were posted as Fireman grade A in the scale of Rs.950-1500 vide office order dated 8.4.91 and the remaining applicants were also posted during the period from 11.6.91 to 8.4.92.

3. The applicants, who were initially appointed as Fireman grade A, have been redesignated as Diesel Assistant in the same pay scale. The applicants claim that they are entitled to be assigned the seniority in the category of Diesel Assistant on the basis of their dates of appointment as paid apprentices. However, the respondents have issued the seniority list of the category of Fireman grade A vide letter dated 29.8.94 in which the applicants have been assigned seniority in the category from the date of their completion of training. Thus, the seniority list prepared by the respondents is illegal because the applicants have not been assigned the position correctly by giving the benefit of their training period. The applicants submitted representations for redressal of their grievances but the respondents have turned down their request vide impugned order dated 9.9.98 and have denied the seniority from their date of appointments.

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4. Respondents have denied the claim of the applicant. The case of the respondents is that the seniority of the applicants has been fixed in pursuance of the specific rules and instructions already on the subject. It is further stated that seniority has been made absolute and as such certain rights have been accrued to the individuals, who have not been made party to the proceeding. As such the claim of the applicants suffers from error of law, i.e. non-joinder of the necessary parties.

5. We have heard the arguments of Sri S.K. Qm for applicants and Sri P. Mathur for respondents.

6. The only point for consideration in the present O.A. is whether the applicants are entitled for fixation of their seniority from the date they ^B were joined the post or the date ^{for} completion of their training.

7. The learned counsel for the respondents has raised a preliminary objection stating that the present O.A. is not maintainable for non-joinder of the necessary parties because the applicants have not impleaded the persons, who are likely to be affected, if the criterion for fixation the seniority of the applicants from the date of completion of their training is fixed by this Tribunal. It is, however, contended by the learned counsel for the applicants that since in the present case a policy decision taken by the respondents ^{is} being challenged by the applicants, it is not at all necessary to implead all the affected parties. In support of his contention, he has placed reliance on the decision of the apex court in the case of the General Manager, South Central Railway Vs. A.V.R. Siddhanti & Others (AIR 1974 SC 1755). The relevant para of the decision is as under :-

"As regards the second objection, it is to be noted that the decisions of the Railway Board impugned in the writ petition contain administrative rules of general application, regulating absorption in permanent departments, fixation of seniority, pay etc. of the employees of the erst-while Grain Shop departments. The

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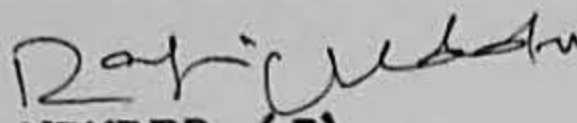
Respondents-petitioners are impleaching the validity of those policy decisions on the ground of their being violative of Arts. 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of Govt. servant is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. In the present case, the relief is claimed only against the Railway which has been impleaded through its representative. No list or order fixing seniority of the petitioners vis-a-vis particular individuals, pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioner's seniority in accordance with the principles laid-down in the Board's decision of October 16, 1952, were at the most, proper parties and not necessary parties and their non-joinder could not be fatal to the writ petition."

8. We also agree with the contention of the learned counsel for the applicants because in the present case the applicants have challenged the decision taken by the respondents in fixing their seniority. We, therefore, do not find any ground that the present O.A. is liable to be dismissed on the aforesaid objection raised by the learned counsel for the respondents. As regards the question of fixation of seniority of the applicants, the learned counsel for the applicants has brought to our notice the decision of Jaipur Bench of the Tribunal given in O.A. No. 188/91 decided on 18.12.1996 in which the same controversy was involved, which was followed by the Patna Bench in O.A. no. 259/98 decided on 23.10.2000. The view taken in the aforesaid decisions is to the effect that seniority in such cases should be counted from the date of the joining of the Apprentice and not from the later date on which such persons were appointed on regular basis as Diesel Asstt. It may also be stated that this view was taken on the basis of the decision of the apex court in the case of M.P. Pradhan Vs. Union of India & Others (AIR 1990 SC 891). We have also considered these decisions and we are not inclined to take a different view on this point and hold that the applicants are also entitled for fixation of their seniority in the

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cadre of Fireman 'A' / Diesel Asstt. w.e.f. the date they joined as Trainee Fireman 'A'.

9. For the reasons stated above, we allow this O.A. and direct the respondent no.3 to assign the seniority of the applicants from the date of their appointment as paid Apprentice. This exercise will be completed within a period of four months from the date of receipt of copy of this order. No costs.


MEMBER (J)


MEMBER (A)

GIRISH/-