

6

12/1

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.511 of 1986

Patrik Boxla & Others..

Applicants

Versus

Divisional Railway Manager,
Eastern Railway, Mughalsarai
and Another.

Respondents.

Hon. Justice S. Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

37/

This is a petition under Section 19 of the Administrative Tribunals Act XIII of 1985. The petitioners Patrik Boxla and two others are Fireman grade 'A' in the Loco Shed at Mughalsarai. They are by this petition, challenging the seniority list issued on 3.10.85 by the respondents by which the applicants have been made junior to Laxman Prasad and K.L.Gond who were below them in the seniority list published and finalised on 4.3.82 as also the consequential orders of promotion issued on 26.12.85 in favour of two of their juniors. The petitioners have prayed for quashing the seniority list dated 3.10.1985 and the promotion list dated 26.12.85 and for issue of direction to the respondents to give them promotion in accordance with the seniority list of 4.3.1982.

2. The petitioners' appointments and promotions were done as follows :-

	Apptt.as Sub Cleaner	Fireman 'C'	Fireman 'B'	Fireman 'A'
Petitioner No. 1.	18.4.76	8.12.79	22.9.83	Dec., 1985
" 2.	27.6.76	1979	1983	1985
" 3.	1.7.76	23.11.79	22.9.83	Dec., 1985
Laxman Pd.	18.2.76	23.1.82	6.12.84	Dec., 1985
K.L.Gond	22.4.76	23.1.82	6.12.84	Dec., 1985

According to them the seniority list of 4.3.1982 had become final and therefore it could not be subsequently disturbed.

3. The respondents case is that the seniority list published on 4.3.1982 was erroneous inasmuch as it was based on the date of promotion as Fireman 'C' and not from the date of initial appointment. The seniority list varies from time to time due to promotions, transfer, retirement etc. The new seniority list published on 3.10.1985 superseded the earlier one. This seniority list was based on length of service. The dates of appointment being as shown in the chart in para supra the two persons who were appointed on 18.2.76 and 22.4.76 respectively were actually senior to the petitioner 1 and petitioner 2 & 3 respectively. Promotions have, therefore, been made in accordance with the seniority list published on 3.10.85. According to the respondents the seniority list is always provisional and not final. The petitioners were initially recruited as

(2) (12/3)

substitutes and then regularized as Cleaners. Their seniority was fixed on the basis of date of appointment. The list submitted by the petitioners is a copy of the original written by hand and the word "Antem" has been substituted for "Anantem" by the person who has written it. The list of 4.3.82 was thus provisional and not final.

4. We have heard the learned counsel for both sides and have also seen the case file. The short question involved is the method of determining seniority. The law on this point is very clear. It is also the right of the Government to regulate and determine the same and if no statutory inhibition is shown to be contravened no relief is due.

5. In Janardhan Versus Union of India (AIR 1983 SC.769) the Hon'ble Supreme Court has observed that

" It is a well recognised principle of service jurisprudence that any rule of seniority has to satisfy the test of equality of opportunity in public service as enshrined in Article 16 of the Constitution.....in the absence of any other valid rule for determining inter-se-seniority of members belonging to the same service the rule of continuous officiation or the length of service or date of entering service and continuous uninterrupted service, thereafter, would be valid and could satisfy the test of Article 16....."

The respondents have said in para 4 of their reply :

"The seniority list dated 3.10.85 has been

published keeping in view the length of service of the employees...."

Again in para 9 they have said ".....As per decision taken with Trade Union Representatives the seniority was given effect from the date of appointment." They have not mentioned if any valid rules exist for determining seniority why they have adopted a principle after discussion with the Trade Unions.

The petitioners as also the two persons whose revised seniority has affected them were engaged as substitutes.

6. In terms of para 2511 of the Indian Railways Establishment Manual and Railway Board's letter No.E(NG)ii/83/CL/SC/9 of 7.5.83 (Ref.Railway Establishment Manual, Bahri Brothers. 1985 Edn.Page 774), the service of casual labour/substitute prior to absorption in regular service after screening does not count for purposes of seniority. It is the date of their regular absorption that determines seniority vis-a-vis others. However, the casual labour/substitute are entitled to count only 1/2 of the service rendered after attaining temporary status and before regularization for pensionary benefits. Thus it cannot be said that valid rules do not exist. In terms of these rules the seniority counts from the date of regular absorption. It is not dependant on the total length of service as substitutes as the averment made by the respondents has indicated.

7. The respondents in their reply in para 7 have said : " ~~xxxxxxxx~~ The contentions of the applicants that the respondents have violated the seniority list dated 4.3.82 is not correct because seniority list is always provisional & not final....."

We do not understand on what principles the respondents have averred that seniority list is always provisional. Seniority is an important element in the service career of an employee. If the seniority will always remain provisional one would never be ~~seen~~ ^{sure} where one stands vis-a-vis others and such a situation is difficult to comprehend. Para 322(b) of the Indian Railway Establishment Manual says :

" the staff concerned may be allowed to represent about the assignment of their seniority position within a period of one year after the publishing of seniority lists. No cases for revision in seniority lists should be entertained beyond this period."

This in itself shows that what is envisaged here is a sort of finality. It has to be so. After adequate opportunity has been given to the concerned employees to represent ^{and} the representations have been considered the seniority lists reach finality.

2/ 8. It is thus clear that the seniority has to be from the date of regularization of all the casual labour and substitutes. The date of engagement as substitute has no relevance with it. The petitioners as well as others were appointed a substitute in 1976. It is not known when they were regularized. The reply by the respondents shows that they have given these substitutes seniority from the date of engagement as substitutes. This is against the rules and therefore, such a seniority list is incorrect and has

11




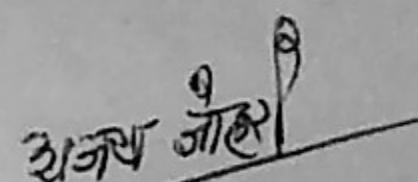
- 6 -

to be quashed and any promotions made on that basis also do not hold good.

9. Under the circumstances we order that the respondents will recast the seniority list of the concerned substitutes in accordance with the rules and give the petitioners their rightful place in the same on the basis of date of regularization and promotions will be made on the basis of list. Promotions already made by the order dated 26.12.85 are quashed.

10. The petition is disposed of accordingly. There are no orders as to the costs.


V.C.


A.M.

Dated the 24th April, 1987
RKM