

A3

Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.618 of 1987 (C.M.Writ Petition No.10102 of 1985)

Rajendra Gupta ... Applicant
Vs.

General Manager, Northern Railway and 7 others ... Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This transferred application is Civil Misc.Writ Petition filed under Art.226 of the Constitution of India and has been received by transfer from the High Court of Judicature at Allahabad under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The material facts of this case are that the applicant was recruited as Apprentice Assistant 'C'/Man (Electric) and on completion of the training for a period of two years, the Apprentices had to be appointed as Electric Chargeman 'B' (for short El.CB). During the training period, the Apprentices had to get a stipend. The applicant and other members of his batch had joined the training at Kanpur on 30.11.1980 but on being found suitable only after a year's training, they were given regular posting as El.CB in the grade of Rs.425-700 w.e.f. 12.10.1981. The respondent nos. 5 to 8 are promotee El.CB. The respondent no.5 was appointed in the grade of Rs.425-700 w.e.f. 29.4.1982 while the respondent nos. 6 to 8 were appointed in this grade w.e.f. 24.5.1982. As the applicant is the direct appointee from an earlier date, he claimed himself senior to respondent nos.5 to 8. The respondent nos. 1 to 4 ~~further~~ promoted the respondent no.5 to the post of Electric Chargeman 'A' in the grade of Rs.550-750 w.e.f. 14.8.1984 and the respondent nos. 6 to 8 were also subsequently promoted as El.CA. The applicant filed representation against these prejudicial

AB

acts of the respondent nos. 1 to 4 but when no heed was paid, he filed the present petition for a direction to the respondents to fix his seniority w.e.f. 12.10.1981 and for quashing the promotion orders of respondent nos. 6 to 8 to the post of El.CA and for a further direction to the respondent nos. 1 to 4 that no ^{other} ~~promotee~~ El.CB be promoted ^{before} ~~after~~ his ^{promotion} ~~appointment~~ in the higher grade.

3. The petition has been contested on behalf of the respondent nos. 1 to 4 only and in the counter and supplementary counter affidavits filed on their behalf, it was stated that the seniority of the applicant and other persons of his batch, who were initially appointed as Apprentice Electric Chargemen, has to be reckoned from the date of completion of their two years' training and their contention that as they were found suitable, their period of training was curtailed and their seniority be considered from 12.10.1981, is not correct. On the curtailment of the training of the applicant and other persons of his batch, the matter was referred by the General Manager to the Railway Board and the Railway Board had conveyed its approval on 28.11.1981 on the condition that the seniority of such Apprentices in the grade of Cl.CB will be reckoned only after the normal completion of training and necessary amendment was also made in this connection in Para 302 of the Indian Railways Establishment Manual relating to inter-se seniority. There is a provision for direct recruitment of Assistant Electric Chargemen in the scale of Rs.425-700 to the extent of 50% and by virtue of 25% quota of selection from serving eligible highly skilled Grade I Artisans the respondent nos. 5 to 8 were promoted against their own quota according to rules and their seniority has to be counted from the date of their taking over charge on promotional post. The seniority of the applicant in the grade of El.CB has to be counted from Dec.1982 on the completion of his usual term of two years' training and as respondent nos. 5 to 8 were promoted in the meantime, they are senior to the

A3/3

applicant and they were rightly promoted in the higher grade earlier than him. The seniority of the applicant has been rightly determined in accordance with rules and the promotion of the respondent nos. 5 to 8 is also in order and the contentions made on behalf of the applicant to the contrary are not correct and he is not entitled to get any relief.

4. The applicant filed rejoinder and supplementary affidavits reiterating the facts stated by him in his writ petition. It was further stated by him that the respondent no.7 had also entered in service in Novr.1980 with the applicant and he had also not completed his two years' training but was appointed in grade of Rs.550-750 by an order dated 24.7.1982, which is contrary to rules. One Rajendra Prasad, who is a Scheduled Caste candidate and is not a party to this writ petition, is also of the batch of the applicant and had not completed two years' training but was considered for the higher post in the grade of Rs.700-900. The stand of the respondent nos. 1 to 4 is, therefore, not correct that he was not in regular cadre till the expiry of 2 years from Novr.1980. He was treated as a regular incumbent from the very beginning. He was granted annual increment and his provident fund was also deducted with retrospective effect from January,1984. The applicant was, thus, treated in regular service as El.CB before the respondent nos. 5 to 8 were promoted. The orders dated 8.3.1982 and 31.12.1982 issued by the respondent nos. 1 to 4 reckoning the seniority of the applicant from a subsequent date other than the date of joining the service by the applicant are illegal, arbitrary and contrary to the well known principles of law and the seniority of the applicant, therefore, could not be adversely affected and he is senior to respondent nos. 5 to 8 and their promotions made in higher grade earlier than the applicant are liable to be set-aside.

AB
4

5. Regarding respondent no.7, it was stated by the respondent nos. 1 to 4 in the supplementary counter affidavit that the respondent no.7 is not a direct appointee of the batch of the applicant but is a promotee official and the allegations made by the applicant about him are incorrect.

6. We have carefully considered the various contentions raised on behalf of the parties and have also gone through the relevant record. Annexure 1 to the writ petition is the copy of an order dated 5.11.1980 of the Personnel Officer, Headquarters Office, Northern Railway, New Delhi informing that the persons of the batch of the applicant were selected for training in the duties of Apprentice Asstt. Chargemen (Electric). This order stipulates that the training was for a period of 2 years and on the completion of the training, the Apprentices had to serve the Railway Department atleast for a period of 5 years failing which, they had to return the training charges. During training period, they had to receive stipend at a much lower rate @Rs.280-12-404 plus dearness allowance as admissible under the rules. Annexure 2 is a copy of the order dated 12.10.81 of the General Manager, Northern Railway stating that on curtailing the usual training period of the Apprentices and on finding them suitable for posting, they were posted as Asstt. Electric Chargemen at the places noted against their names. The applicant treats this order as the order of his appointment in the grade of Rs.425-700. It is not in dispute that on this date, the respondent nos. 5 to 7 were working in lower grades in the Railway Department. The respondent no.5 was promoted as El.CB in the grade of Rs.425-700 by order dated 29.4.1982, copy annexure 3. The respondent nos. 6,7 and 8 were appointed as El.CB in the grade of Rs.425-700 thereafter vide order dated 4.5.1982, copy annexure 4 and the contention of the applicant is that as the respondent nos. 5 to 7 were promoted in the grade of Rs.425-700 subsequent to his date of appointment in

AB
S

this grade, they are junior to him.

7. It appears that the applicant deliberately did not make a mention of certain other important orders issued by the General Manager, Northern Railway and the Railway Board, which are relevant for the purposes of this case. Their copies have been filed by the respondent nos. 1 to 4 with their counter affidavit. Annexure CA-1 is the letter dated 28.11.1981 issued by the Railway Board to the General Manager, Northern Railway with reference to his letter dated 19.11.1981 in connection with the curtailment of training of freshly recruited trainee Chargemen. This letter states that the Railway Ministry has examined the matter and has no objection to the reduction in the training period from 1 year to 6 months to the trainees upto 31.12.1982 subject to the following conditions:-

"(i) The reduction of the training period will not effect the efficiency of the incumbents.

(ii) The seniority will be reckoned only after the normal completion of training and,

(iii) The payment during the reduction period of training will be equal to the stipend. Railway may, however, grant the stipend and difference between the scale of pay and stipend as personal pay."

After the receipt of this letter of the Railway Board, the General Manager Northern Railway issued another letter on 8.3.1982 giving reference to his office note dated 12.10.1981 (under which the training period of the applicant and the other members of his batch was curtailed) and some other letters and stated that the Railway Board has now conveyed its no objection to the curtailment of the training period from 2 years to 6 months to Apprentice Trainee Chargemen upto 31.12.1982 on the condition that the seniority will be reckoned only after the normal completion of the training and the payment during the reduction period of training will be equal to stipend.

A further notice, copy annexure CA-3 was issued as a follow up action by the Divisional Personnel Officer Allahabad in the light of the letter of the General Manager.

8. The Railway Ministry, by its letter no. E(NG)I-78-SR6-42 dated 7.4.1982 also made an amendment by adding note(ii) to the following effect in rule 302 of the Indian Railways Establishment Manual:-

" In case the training period of a direct recruit is curtailed in the exigencies of service the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training."

The contention of the respondent nos. 1 to 4, therefore, is that in accordance with ^{the} orders of the Railway Board and the General Manager of the Northern Railway, as discussed above, the seniority of the applicant in the grade of Rs.425-700 has to be reckoned from 1.12.1982 and not from the date alleged by the applicant.

9. In view of above, the only relevant point for consideration in this case is ~~now~~ whether by passing an order subsequent to the appointment of the applicant as El.CB, his seniority could be affected to his disadvantage under the various orders relied upon by the respondents? The settled law is that the terms and conditions of a Government servant are initially ^{governed by} appointed by contract of service and afterwards by rules of his service. The applicant joined ^{the} Railway administration as Apprentice Asstt. Charge-man Electric on 30.11.1980 with a ^{clear} ~~subsequent~~ stipulation that for two years, he has to undergo training and during this period, he will have to get a stipend, which was lower than the grade of El.CB. The terms of his joining the training further provided that on successful completion of the training, he had to serve the railway administration for a minimum period of 5 years, if required by the administration, and no guarantee or promise of employment could be given to the trainee as the same was dependent on the availability of the vacancy. This is condition no.9 of annexure 1 under which

A3
7

the applicant had joined the training under the contesting respondents for two years. The applicant, thus, joined the training with eyes open and with a clear understanding that there was no guarantee of appointment under the Railway administration after completing training and the duration of his training was two years. It was merely a chance that under the exigencies of service, the General Manager, Northern Railway decided to curtail the training of the Apprentices of the batch of the applicant and gave them regular appointment as El.CB in the grade of Rs.425-700 w.e.f. 12.10.1981 i.e. after a period of training of less than 1 year only. The question to be considered is whether the General Manager was empowered to do it?

In case ^{it is being} ~~he was~~ competent to do so, we would have accepted the contention of the applicant. It, however, appears that under the relevant rules of the Railway administration for the appointment of El.CB, a minimum training of 2 years as Apprentice is required for direct appointees and as it related to the terms and conditions of his service and the policy governing the same, the General Manager was not competent to reduce the period of training and give appointment to the Apprentices direct without completion of the requisite training. It is on account of this lack of power and jurisdiction in the General Manager that he had to make a reference to the Ministry of Railways and after considering the request of the General Manager, the Railway Ministry had approved the curtailment of the period of training of the Apprentices on three specific conditions contained in letter dated 8.3.1982, copy annexure CA-2.

10. This letter shows that the Railway Ministry gave utmost importance to the efficiency of the incumbents and that is why, under condition no.(i), it was laid down that the reduction of the training period should not affect the efficiency of the incumbents. Under condition no.(ii), the Railway Ministry decided that the Apprentices should not get any undue advantage in the matter of

as was the case
in the application to no
ministerialists to the British
Government as bases to the minimum
and maximum and the best of both conditions
as was the case, the General Manager
of the company was given to believe that the
Government had no objection to the completion
of the American bridge without compensation
to the American company.

A3
8

seniority due to the curtailment of the training and their seniority should be reckoned only after the normal ^{completion} ~~conditions~~ of the training. To safeguard the interest of the trainees, whose period of training was curtailed, the Railway Ministry provided under condition no.(iii) that the candidates could be granted stipend and the difference between scale of pay and stipend as personal pay. This was in consonance ^{with} of the principle of natural justice as after taking the work of regular incumbent as El.CB, the candidates could not be allowed the stipend payable to the Apprentices. We are, therefore, of the view that the General Manager Northern Railway exceeded his jurisdiction in giving the appointment to the applicant and other members of his batch as El.CB before the completion of the requisite training of two years without prior approval of the Railway Ministry. The order dated 12.10.1981 of the General Manager appointing the applicant as El.CB before the completion of the requisite ^{training} period was, therefore, bad in law and without jurisdiction and it has to be read subject to the approval given by the Railway Ministry under its letter dated 8.3.1982, copy annexure CA-2. We may further point out that the General manager accepted these directions of the Railway Ministry and consequently, took corrective measures by issuing several orders, copy contained in annexure CA-3. We are, therefore, unable to accept the contention of the applicant and hold that his seniority in the grade of El.CB has to be reckoned from the date of his completing two years' training i.e. 1.12.1982. As the respondent nos. 5 to 7 were promoted in this grade in the meantime, they became senior to the applicant and under the rules, ^{as} inter-se seniority between the direct and promotee appointees contained in rule 302 of the Indian Railway Establishment Manual in categories of posts partially filled by direct recruitment and partially by promotion criterian for determining the seniority should be the date of promotion in the case of a promotee and the date of joining the post in the case

AB
g

of direct recruits. Respondent nos. 5 to 8 were, therefore, rightly promoted in the higher grade of El.CA earlier than the applicant and his grievance against their promotion is not genuine.

11. In view of the above considerations, we find no force in the contentions raised by the applicant and his petition is accordingly dismissed directing the parties to bear their own costs.

Bhawan
5.1.88

MEMBER (A)

Dated: January, 5, 1988
kkb

S. Narayan
5.1.88

MEMBER (J)