

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 3rd day of July 1997.

ORIGINAL APPLICATION NO. 1573 OF 1992.

CORAM : Hon'ble Dr. R.K. Saxena, Member (J)

Hon'ble Mr. D.S. Baweja, Member (A)

1. S.C. Soti, aged about 29 years,
Working as Section Controller,
Northern Railway, R/o 384 A Jigar Colony,
Moradabad.

2. S.N. Lal, aged about 31 years, Working
as Section Controller, Northern Railway,
R/o Cheria Tola, Linepar, Moradabad.

3. S.R. Diwakar, aged about 36 years,
Working as Section Controller,
Northern Railway, R/o Chiria Tola, Linepar,
Moradabad.

4. V.K. Sarkar, aged about 29 years,
Working as Section Controller, Northern Railway,
R/o Chiria Tola, Linepar, Moradabad.

5. M.S. Meena, aged about 33 years,
Working as Section Controller, Northern Railway,
R/o Chiria Tola, Linepar, Moradabad.

.... Applicants

C/A Shri Sanjay Kumar Om .

- 2 -

Versus

1. Union of India through General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Moradabad.
3. Senior Divisional Personnel Officer,
Northern Railway,
Moradabad.
4. S.V. Mandal, Working as Section Controller,
Northern Railway, Moradabad.
5. S.K. Gupta, Working as Section Controller,
Northern Railway, Moradabad.
6. V.K. Upadhyaya, Working as Section Controller,
Northern Railway, Moradabad.
7. P.V. Singh, Working as Section Controller,
Northern Railway, Moradabad.

..... Respondents.

C/A Shri P. Mathur (for respondents 1 - 3)

ORDER

Hon'ble Mr. D.S. Baweja, A.M.

1. This application has been jointly filed by five applicants seeking the following reliefs :-

- (a) quashing of order dated 3.9.92 whereby respondents 4 to 7 have been promoted as Deputy Chief Controller.
- (b) to issue direction to promote the applicants to the post of Deputy Chief Controller in the grade of Rs 2000-3200 w.e.f. 3.9.1992 and pay all the arrears of salary.
- (c) to issue direction to treat the petitioners as finally absorbed in the grade of Rs 1600-2600 w.e.f. 1.4.90.

2. All the applicants are directly recruited Traffic Apprentices of Moradabad Division, Northern Railway. They joined the training on 15.11.87 alongwith others. They were required to undergo two years of training. After success full completion of the training, all the Traffic Apprentices were sent to the allotted Division as per letter dated 16.2.90 for further posting. The applicants were allotted Moradabad Division. On reporting to the Division, vide letter dated 6.3.90, they were directed to undergo further rotational training as Assistant Ward Master and Section Controller six months each and Station Master and Assistant Station Master three months each and their seniority will be decided on the basis of their performance in the rotational training. The applicants were finally posted in the scale of Rs 1400-2600 vide order dated 10.2.1992. Being

- 4 -

aggrieved by this, the present application has been filed on 3.11.92.

3. The main grounds advanced in support of their case are (a) There is no provision for rotational training after completion of the training of two years as prescribed as per para 125 (2)(iii) of Indian Railway Establishment Manual. (b) The Apprentices who have completed training alongwith the applicants and allotted to other Divisions have not been subjected to this additional training. The applicants only have been singled out for the additional rotational training. (c) As a result of this, the respondents 4 to 7 who were juniors to the applicants have become senior and vide the impugned orders, they have been promoted as Deputy Section Controller and in fact the applicants were required to be promoted in their place.

The applicants contend that the action of the respondents is illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India.

4. The official respondents have filed Counter reply. It is admitted in para 9 that as per para 125 (i)(ii)(iii) of Indian Railway Establishment Manual, the period of training of the Traffic Apprentices is 2 years and thereafter they are absorbed in the category of Station Master / Yard Master / Traffic Inspector in the scale Rs 1400-2600 and Section Controller in the grade of Rs 1400-2600. The respondents submit that in terms of letter dated 16.2.1990, Divisions were allotted and the offer of appointment was to be issued by the

- 5 -

concerned Division. In view of this, the letter dated 16.2.1990 was issued by the Moradabad Division. The cadre of the applicants has been decided at the end of the rotational training and they have been posted as Section Controller vide order dated 10.2.1992. Their seniority for further promotion in the Controller Cadre will reckon from this date. The action has been taken as per the extant rules and the respondents have not acted illegally, arbitrarily and in violation of the Article 14 and 16 of the Constitution of India. The respondents have also opposed the application as the applicants have sought plural remedies in the same application which is not allowed Under Rule 10 of the Administrative Tribunal (Procedures) Rules, 1987.

5. Notices were issued to respondent no. 4 to 7 but no counter reply has been filed on their behalf. Further neither they have appeared in person nor have been represented through a Counsel. In view of this, we have proceeded ex-parte against them.

6. The applicants have filed the rejoinder reply controverting the submissions of the respondents and reaffirming the grounds taken in the application.

7. We have heard Shri Sanjay Kumar Om learned counsel for the applicants and Shri Prashant Mathur learned counsel for the respondents. The material on record has been also carefully studied.

- 6 -

8. Based on the rival contentions, the question which falls for determination is whether the applicants were required to undergo the rotational training of 1½ years over and above the training of two years. It is admitted that the applicants were recruited as Traffic Apprentices. The applicants have submitted that they were required to undergo two years of training and have cited the support of the rules laid down in para 125(2) (iii) of Indian Railway Establishment Manual. The respondents in para 9 of the Counter reply have admitted this referring to para 125. On pursual of the letter dated 16.2.90, we find that the Traffic Apprentices after completion of the training of 2 years were directed to the various allotted Divisions. In terms of the provisions of para 125(2)(iii) and submissions of the respondents in para 9, the applicants should have been posted against the working post as Station Master / Yard Master/ Traffic Inspector or Section Controller. However vide letter dated 16.2.90 at A-2, Moradabad Division placed the applicants on further training of 1½ years with rotation in various disciplines. When the prescribed training for the Traffic Apprentices is 2 years as admitted by the respondents, then the basis for subjecting the applicants to additional rotational training is not understood on pursual of the documents brought on record at Annexure A-1, A-2, A-3 A-5 and A-6 by the applicants and the consideration of the averments made by the respondents in the counter reply, we cannot held from remarking that the respondents have tried to justify patently wrong action through evasive submissions. The applicants have strongly contended in the original application as well as during

- 7 -

the hearing that no additional training had been given to their colleagues allotted to the other Divisions. The respondents in the Counter reply have simply maintained total silence on this aspect while replying the relevant averments for the original application. Further the contents of letters at A-2, A-3 and A-6 expose the contradictions in the submission of the respondents. The letter at A-2 dated 16.2.90 addressed to one of the applicants is said to be appointment offer laying down the terms of conditions. The letter mentions the training of 2 years and the final cadre and seniority will be decide on the basis of performance of the end of training. The word "2 years of period" have been scored out by drawing lines without any inhails by the official who has done it. Further this letter does not mention anything about the stipend and admissible during the training period. This letter when read with A-3 reveals the confusion in taking further action by Moradabad after the Apprentices were posted in the Divisions as per the Headquarter letter at A-1. The letter 13.3.90 at A-3 lays down that the final cadre of absorption will be decided on the basis of satisfactory performance at the end of $1\frac{1}{2}$ years of rotational training and the seniority in the cadre of final absorption will be fixed from the date of their taking over independent duty in the cadre of their first rotational posting. This letter covers 3 of the applicants and two are shown posed as Assistant Yard Master (AYM) and one as Section Controller. This means that the seniority will count from the date the first rotational training starts . This stipulation

is in contradiction to the provision in A-2 where it is laid down that the seniority will be decided at the end of 1½ years of rotational training. Keeping these observations in view with regard to the contents of A-2 and A-3, now we come to A-6 which is the seniority list of the Section Controllers issued on 10.8.92. In this seniority list, the applicants are shown working as Section Controller on different dates in 1990. We are not able to make out the reasons for different dates of working as Section Controller when all had completed training together leaving aside this issue, the seniority list at A-6 confirms that the applicants had been allowed seniority on completion of 2 years of prescribed training. This is also clear from the submissions in para 12 and 13 of the Counter Reply. Having fixed the seniority in this way, we are not able to understand the contention of the respondents that the cadre of final absorption would be decided at the end of 1½ years of rotational training and satisfactory completion of the same. The letter dated 12.7.1988 brought on record at OA-2 makes the position quite clear. The letter lays down the channel of promotion for the Section Controllers and absorption of the Traffic Apprentices against 15% direct recruitment recruitment quota is provided to be done after completion of 2 years of training in the Zonal Training School Chandausi.

9. In consideration of the above facts, it becomes quite obvious that stand taken by the respondents does not become sustainable. The

Traffic Apprentices were not required to undergo the additional rotational training of $1\frac{1}{2}$ years after completion of the prescribed training of two years. As a request though the applicants have been allowed seniority in the cadre of Section Controller after completion of the prescribed training, but the delay in posting against the working post have deprived them of their due chance of promotion to the next grade on account of not completing two years of service in the lower grade as required as per the rules!

10. In the light of the above deliberations in para 8 and 9, we find merit in the contention of the applicants. The action taken by the respondents to subject the applicants to a further period of $1\frac{1}{2}$ years of training is not legally sustainable. The applicants have been deprived of the posting against the working post on the completion of the prescribed training as per Annexure A-1. In view of this, the applicants will be deemed to have been posted on the working post as due without the additional training of $1\frac{1}{2}$ years. The applicants will be also deemed to have completed two years of service in the lower grade based on the due date of posting against the working post. In the light of these directions, the promotion order dated 3.9.92 deserves to be quashed and the applicants shall be considered for promotion against these vacancies if found fit otherwise as per the extant rules for promotion to the grade of Rs 2000-3200. The applicants shall be also entitled for all the consequential benefits including the arrears of salary and allowances from the due date of posting on the

Traffic Apprentices were not required to undergo the additional rotational training of 1½ years after completion of the prescribed training of two years. As a request though the applicants have been allowed seniority in the cadre of Section Controller after completion of the prescribed training, but the delay in posting against the working post have deprived them of their due chance of promotion to the next grade on account of not completing two years of service in the lower grade as required as per the rules.

10. In the light of the above deliberations in para 8 and 9, we find merit in the contention of the applicants. The action taken by the respondents to subject the applicants to a further period of 1½ years of training is not legally sustainable. The applicants have been deprived of the posting against the working post on the completion of the prescribed training as per Annexure A-1. In view of this, the applicants will be deemed to have been posted on the working post as due without the additional training of 1½ years. The applicants will be also deemed to have completed two years of service in the lower grade based on the due date of posting against the working post. In the light of these directions, the promotion order dated 3.9.92 deserves to be quashed and the applicants shall be considered for promotion against these vacancies if found fit otherwise as per the extant rules for promotion to the grade of Rs 2000-3200. The applicants shall be also entitled for all the consequential benefits including the arrears of salary and allowances from the due date of posting on the

- 10 -

working post and on promotion in the grade of Rs 2000-3200, if found fit.

11. The respondents have opposed the application on the plea that the same is not maintainable as plural remedies covering seniority and promotion have been challenged in the single application. In view of the deliberations in para 8 and 9 above, we do not find any merit in this contention. In the present case, the issue involved is whether the applicants were required to undergo the additional rotational training over and above the prescribed training of 2 years. The promotion of the applicants to the next higher grade has been affected on account of the additional training. Therefore, the reliefs prayed for are interconnected and flow from each other.

12. In the result of the above, we allow the application with the directions as detailed in para 10 above. No order as to costs.

MEMBER (A)

MEMBER (J)

am/

*Concord
An*