

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 1403 OF 1995
ALLAHABAD THIS THE 3rd DAY OF June, 2003

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A
HON'BLE MR. A. K. BHATNAGAR, MEMBER-J

1. Kaushlesh Kumar,
aged about 36 years,
son of Sri Bhawani Prasad,
presently posted as Driver grade III
in the office of Bridge Inspector (M),
Allahabad.

2. Hari Shanker,
aged about 38 years,
son of Sri Ram Nidhi,
R/o Bridge, M.M.R.,
Allahabad.

.....Applicants

(By Advocate Shri V.K. Srivastava)

Versus

1. Union of India,
through its General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Deputy Chief Engineer,
Bridge Line,
Northern Railway, Lajpat Nagar,
New Delhi.
3. Assistant Engineer,
Bridge Line Engineer,
Northern Railway,
Allahabad.
4. Mohd. Sabir,



son of Sri Suba Sheikh,
presently posted/working as Driver Grade-III,
in the office of Bridge Inspector (M)
Northern Railway, Allahabad.

.....Respondents

(By Advocate Shri P. Mathur)

ORDER

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER-A

In this O.A. filed under section 19 of Administrative
Tribunals Act 1985, the applicant has prayed for the
following reliefs:-

"(I) That by means of suitable order or direction
in the nature of certiorari to quash the order
dated 25.1.1993 and 17.8.1995 (Annexure-4) and 6
to the application).

(ii) to issue a writ, order or direction in the
nature of mandamus directing the respondents to
assign the correct seniority position over Mohd.
Saquir by setting aside order dated 25.1.1993.

It is further prayed that the applicant may be
given all the benefits of pay scale and post and
other benefit as are admissible under rule to the
applicant as the junior Mohd. Saquir is getting.

(iii) to issue any other order or direction as this
court (Tribunal) may deem fit and proper under the
circumstances of the case.

(iv) to issue cost of the application to the applicant."

2. The facts, in short, are that the applicant was
initially engaged as Khalasi on 12.08.1978 in Bridge Survey.
He attained temporary status on 12.10.1979. The applicant
no.1 was promoted as Motor Driver on 12.04.1982 and
applicant no.2 as Motor Driver on 29.11.1982. In seniority
list of Motor Driver Grade III dated 17.08.1991 (Annexure-1)
the name of applicant no.1 ^{he} figured ^{at} at serial no.3,

applicant no.2 at serial no.5 and that of respondent no.4 at serial no.4. In another seniority list published by respondent no.2 i.e. Deputy Chief Engineer (Annexure-2) applicant no.1 is shown at serial no.15, respondent no.4 at serial no.20 and applicant no.2 at serial 21. Again in the Combined Seniority list issued by respondent no.2 (Annexure-3) applicant no.1 is placed at serial no.15, applicant no.2 at serial 20 and respondent no.4 at serial no.21. However, in the letter dated 25.01.1993 by Assistant Bridge Engineer addressed to Senior Civil Engineer/Bridges/Line regarding assignment of seniority, the name of respondent no.4 has been shown above applicant no.1. The applicant no.1 made a representation to respondent no.2 i.e. Deputy Chief Engineer in May 1993 followed by another representation on 05.04.1994. Applicant no.2 also filed a representation before respondent no.2 on 30.10.1992. The respondent no.2 informed respondent no.3 i.e. Assistant Bridge Engineer vide letter dated 17.08.1995 (Annexure-IV) regarding assignment of seniority of applicant no.1 ^{in Vis-a-Vis} Respondent no.4 intimating that applicant no.1 stands junior to respondent no.4 as benefit of ad-hoc period cannot be extended for determining seniority as per rules. Aggrieved by this the applicants have filed this O.A. which has been contested by the respondents.

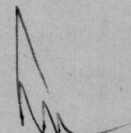
3. Shri V.K. Srivastava, counsel for the applicant submitted that applicant no.1 was promoted as Motor Driver with effect from 12.04.1982 whereas respondent no.4 is working as Motor Driver since 25.12.1985. Besides respondent no.4 was transferred to Allahabad on his own request in March 1990. Therefore, under no circumstances respondent no.4 can be senior to applicants. This is also established by perusal of Annexure 1 to 3 i.e.

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various seniority lists in which respondent no.4 has been shown junior to applicant no.1. The applicant has placed reliance on judgment of Hon'ble Supreme Court in T. Vijayan and others Versus Divisional Railways Manager and Others reported in ^h2000 SC-SLR 501^h.

4. Shri Prashant Mathur, learned counsel for the respondents submitted that the impugned orders^h dated 17.08.1995 and 11.09.1995 are self explanatory. The matter had been discussed in the Permanent Negotiation Machinery Meeting (in short P.M.M.M.) with the recognised union and the decision taken therein was duly communicated that the seniority of the applicants would be considered from the date they passed the trade test and the benefit of ad-hoc period could not be extended in view of the rule^h on^h the subject. Respondent no.4 was transferred to Allahabad at his own request on 16.03.1990 in the capacity of Driver Grade-III whereas the applicants at that time were only ad-hoc^h. The seniority of ad-hoc employees cannot be treated at par with the regular employees. Respondent no. 4 Mohd. Saquir has been regularised on 21.11.1977 whereas the services of the applicants were regularised only with effect from 22.3.1994. Besides respondent no.4 was trade tested in the year 1985 for skilled cadre and was placed on the panel whereas the applicants were trade tested for the post of Motor Driver Scale of Rs950-1500/- only in the year 1994.

5. The learned counsel for the respondents further submitted that the seniority position of the applicants was not in accordance with rules/instructions on the subject



as the same was to be prepared Division wise and as such it was revised and the individuals were placed at appropriate places taking into account all the factors which inadvertently were not taken into account earlier while issuing seniority lists.

6. We have heard counsel for the parties, considered their submissions and perused the record.

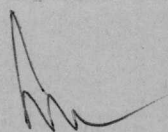
7. In the present case the controversy is regarding seniority of applicants vis-a-vis respondent no.4 i.e. Mohd. Saquir and the point in issue is whether ad-hoc period is to be counted for seniority purpose^h or not. It is an admitted fact that respondent no.4 has passed the trade test in 1985. He was posted to Allahabad Division in 1990 on his own request and the applicants were working as ad-hoc employees and were regularised only after they passed^h the trade test in 1994. Their^h seniority has to be regulated under para 312 of Indian Railway Establishment Manual VOL-I which reads as under:-

"312. TRANSFER ON REQUEST-The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective to the date of confirmation or length of officiating or temporary service of the transferred railway servants.

NOTE:-(i) This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway.

(Rly. Bd. No. E(NG) I-85 SR 6/14 of 21.1.1986).

(ii) The expression "relevant grade" applies to grade where there is an element of direct recruitment. Transfers on request from



Railway employees working in such grades may be accepted in such grades. No such transfers should be allowed in the intermediates grades in which all the intermediates grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no element of direct recruitment. (No.E(NG) I-69 SR 6/15, dated 24.6.1969 ACS-14)."

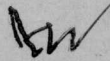
8. In view of the provisions of the above ^hquoted rule, respondent no.4 has to be placed below the applicants who were already working in the division. It has also been alleged by the applicants ^hthat the trade test in Delhi Division was held earlier and no trade test was held in Allahabad Division for a very long period. Obviously if no trade test was conducted by the respondents in Allahabad Division the applicants could not have passed ^hthe same earlier. This fact has not been denied by the respondents. ^hThe very fact that the applicants ^hwere working for a very long period i.e. from 1982 on ad-hoc basis followed by regularisation as per rules ^hhence ^hthe applicants are entitled for seniority. The law has been laid down by the Hon'ble Supreme Court in case of T. Vijayan (Supra) in which the Hon'ble Supreme Court has laid down that ad-hoc promotion subsequently regularised is to be reckoned ^hfor ^hdetermining the seniority.

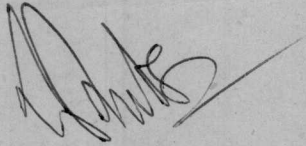
9. We would also like to observe that the applicants were fully eligible for the post and since no trade test was held in Allahabad Division the applicants continued as ad-hoc ^htherefore ^hthey cannot be made to suffer. The perusal of the letter dated 12.08.1991 filed as annexure-2 and also the seniority list filed as annexure-2 leaves no doubt in our mind that the applicants no.1 was senior to respondent no.4 and his seniority could not have been affected to ^hhis ^hdetriment for inaction on the part of

the respondents by not holding trade test timely.

10. For the reasons stated above we are of the considered view that the applicants ^{are} eligible for the relief prayed for. The O.A. is allowed. Impugned order dated 25.01.1993 (Annexure-4) and 17.08.1995 (Annexure-6) ^{is} quashed. The applicants will be assigned correct seniority over respondent no.4 and they shall be entitled for all consequential benefits except the arrears.

11. There will be no order as to costs.


Member-J


Member-A

/Neelam/