

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Review Application NO.50 of 2002.

IN

ORIGINAL APPLICATION NO.1115 of 1998.

ALLAHABAD THIS THE 2nd ^{Sept} TH DAY OF AUGUST 2005.

HON'BLE MR. D.R. TIWARI, A.M
HON'BLE MR. K.B.S RAJAN, J.M

Union of India through General Manager, North
Eastern Railway, Gorakhpur and
others.....Applicants.

By Advocate : Sri P Mathur.

VERSUS

Vijay Kumar Upadhyaya and
others.....Respondents.

By Advocate : Sri S.K. Om

O R D E R

By Hon'ble Mr. K.B.S Rajan, J.M

1. This Bench of the Tribunal, following the decision of the Jaipur Bench and Patna Bench allowed OA No. 1115/98 vide order dated 30-01-2002, wherein the question was as to what should be the date of seniority in respect of the Fireman Grade A/Diesel Assistant - Date of commencement of training or the date of joining the duty. The decision was that the date of commencement of training as Fireman Grade A/Diesel Assistant would decide the date of seniority. However, later on, the Jaipur Bench, on a review, filed by the Railways, allowed the Review application and dismissed the OA. On the basis of the said

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decision in the Review Application, the Railways have now knocked at the doors of this Tribunal for a similar decision in the Review application No. 50.07.

2. At the very outset, it must be stated that when a decision of a coordinate bench is followed or adopted, any change in the decision, either in the Review application or in appeal against the same by way of writ petition, would have a telescopic effect in the later decision. Nevertheless, we have given our consideration to arrive at a decision whether should we follow the Jaipur Bench in the Review Application or is there any plausible possibility of coming to a different conclusion by which the matter may have to be referred to a larger Bench.

3. The capsuláted facts of the case, just essential to decide the controversy are as under:-

(a) The applicants were appointed on the post of Fireman Grade A in the scale of Rs 225 - 230. This appointment was preceded by a training for a period of 24 months, during which period the applicants were treated as temporary Fireman Grade A and it was only after their qualifying in the training that they would be absorbed in the post of Fireman Grade A against the existing vacancies. The applicants joined the training on various dates in early 1989 and completed their training the result of which was announced in March, 1989 for 11 of the applicants and in April, 1989 for the remaining. All were posted as Fireman Grade A during the period ranging from June, 1991 to April, 1992 in the scale of Rs 950 - 1500.

(b) The post of Fireman Grade A was redesignated as diesel Assistant and when the seniority of the Diesel Assistant was published in 1994, the

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applicants could find their name figuring with their seniority reckoning from the date of joining the post of Fireman Grade A and not from the date of their initial training. This gave them a cause of action to agitate for their seniority from the date they were deputed for training which was two years anterior to their actual date of posting as Fireman Grade A. After exhausting their departmental remedy, a statutory requirement under Sec. 20 of the A.T. Act, 1985, the applicant filed OA 1115/98.

(c) The respondents contested the OA. Their preliminary objection was that by the time the seniority was challenged, certain other persons senior to the applicants had certain rights crystallized and as such, they ought to have been impleaded as respondents and failure to so implead would non-suit the applicants. This technical objection was however, overruled by the Bench, by referring to the law laid down by the Apex Court in the case of General Manager, South Central Railway vs A.V.R. Siddanthi (AIR 1974 SC 1755).

(d) On merit, the Bench had in its order dated 30-01-2002 held as under:-

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

For the reasons stated above, we allow the 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".

(e) In fact, the order of the Jaipur Bench, which was relied upon and followed in its entirety by this Bench was subjected to review and the review application No. 7/97 in OA 188/91 was allowed and the OA No. 188/91 stood dismissed on 21-11-2000, i.e. much prior to the passing of the above order dated 30-01-2002. This has been pointed out by the Railways in this present Review Application No. 50/02 in OA 1115/98.

(f) The Jaipur Bench in the Review Application No. 7/97 discussed the provisions of Rule 302 IREM and allowed the Review Application and dismissed the O.A.

4. It would be appropriate to take the support of the decision of the Apex Court at this juncture. Training, prior to actual posting could be of two types. One is that for which stipend is given and the individual is not inducted into the service. Another is a training with the scale of pay with availability of increment in the prescribed scale followed by actual posting. Such training is comparable to what is called the "in service training". Of course, there would be some tests after the completion of the training and one has to qualify the same before performing the duties. Irrespective of whether a training is apprenticeship training or in service

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training if there be a rule regulating the seniority and the said rule has a statutory force (or instructions in the absence of a statutory rule), the rule/instruction has to be applied, so long as the vires of the rules is not under challenge or the rule has already been held to be constitutional.

(a) The general rule on seniority is spelt out by the Apex Court in the case of **N.K. Chauhan v. State of Gujarat, (1977) 1 SCC 308, at page 328 :**

Seniority, normally, is measured by length of continuous, officiating service - the actual is easily accepted as the legal. This does not preclude a different prescription, constitutionality tests being satisfied.

(b) *In the absence of any valid rule of seniority date of continuous officiation provides a valid rule of seniority. Apex Court in the case of **Kamal Kanti Dutta v. Union of India, (1980) 4 SCC 38, at page 60***

(c) *In Suraj Parkash Gupta v. State of J&K, (2000) 7 SCC 561, at page 597 the Apex Court has held, "in service jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim seniority from a date when he was not borne in the service. This principle is*

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well settled. In *N.K. Chauhan v. State of Gujarat*" and in *Keshav Chandra Joshi v. Union of India*, 1992 Supp (1) SCC 272, at page 281 the Apex Court has held "The direct recruit, on selection by the Public Service Commission is required to undergo training for two years in the college as a part of the selection and on obtaining diploma, the Governor is to appoint him to the substantive post of Assistant Conservator of Forest on probation. The service of the direct recruits is to be counted from the date of discharging the duties of the post and on successful completion of the probation within two years or extended period and passing the tests and on confirmation thereof by the Governor, he becomes a member of the service in substantive capacity.

(d) An identical issue as in the case in hand came up before the Apex Court in the case of **State of H.P. v. J.L. Sharma, (1998) 1 SCC 727**, wherein the Apex Court has held as under:-

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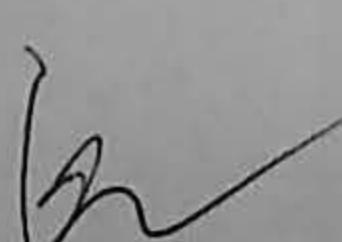
4. The learned counsel appearing for the appellant-State contends that the Rules framed by the Governor under proviso to Article 309 of the Constitution dealing with the conditions of service in respect of Himachal Pradesh Forest Service (Class II) is called the Himachal Pradesh Forest Service (Class II) Recruitment, Promotion and Certain Conditions of Service Rules, 1966. Rule (4) thereof provides that the method of recruitment to the post in the said service, age-limit, qualifications and other matters connected therewith shall be as specified in columns 5 to 18 of the said Schedule. Thus the

Schedule itself becomes a part of the statutory Recruitment Rules determining the conditions of service. By notification dated 30-4-1986 Schedules to the Rules were amended and in column (10) the following provision was inserted:

"The candidates selected for training at Forest Research Institute and Colleges, Dehradun or at any other place, shall while undergoing the training be treated as 'in-service' candidates from the date of joining the Institute. During the period of training, the candidates shall receive pay in the lowest stage of the pay scale of HPFS-II applicable to the service and allowances admissible thereon during the first year and at the second stage of that scale during the second year:

Provided that the second increment shall be granted only when a direct recruit has passed the prescribed examination(s) from the institute/college concerned."

5. In view of the amended provisions of the Recruitment Rules, the training period of a direct recruit will have to be treated as "in service", and therefore, the said period necessarily will have to be counted for the purpose of determining the seniority of a direct recruit in the service. The Tribunal, according to the learned counsel for the appellant, was in error in interpreting the aforesaid provision of the Rules. In support of his contention reliance has been placed on a decision of this Court in the case of R.S. Ajara v. State of Gujarat¹. Mr Sharma, the learned counsel appearing for the promotee-respondents, on the other hand contended that the Rules read as a whole clearly indicate that the amended provisions merely conferred a right upon a candidate joining the Institute for training to get pay in the lowest stage of the pay scale of Himachal Pradesh Forest Service Class II and the



said training period cannot be counted for the purpose of determining the seniority of the direct recruits. According to the learned counsel, if column (10) of the Rules is interpreted to mean that the training period of a direct recruit would also be counted for seniority then the said interpretation will be repugnant to the several other provisions of the Rules and it will not be possible to harmonize the inconsistencies. The learned counsel further contended that in view of the decision of this Court in *Prafulla Kumar Swain v. Prakash Chandra Misra*² which is a three-Judge Bench judgment of this Court, the training period of a direct recruit cannot be counted for determining seniority in the service. According to the learned counsel the aforesaid amended provisions do not purport to fix the seniority of the direct recruits and it merely specified the monetary emoluments which a selected candidate would get during the period of training. They do not become members of the service during the period of training but merely treated as "in service". This is also apparent from the letters issued by the State Government to the successful candidates indicating that the officers shall be on probation for two years on joining the Department of the Forest Farming and Conservation after completion of their S.F.S. course from their respective batches commencing from 1-4-1985, 1-11-1985 and 1-4-1986. The learned counsel further urged that column (7) of the Schedule clearly provides that before becoming a member of the service, a direct recruit has to obtain certain essential qualifications, one of them being a Diploma course at the Forest Research Institute and College, Dehradun or its equivalent. This being the position a direct recruit cannot be said to be a member of the service even before obtaining the

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essential qualifications, and therefore, the training period cannot be counted for the purpose of seniority. In this connection, the learned counsel in his written notes has placed reliance on the judgment of this Court in A.N. Sehgal v. Raje Ram Sheoran³. It was further urged that under the Rules even a direct recruit is required to undergo probation for a period of two years, and therefore, until successful completion of the said probation period there is no appointment to the cadre and consequently no question of counting the training period for the purpose of seniority. In this view of the matter, the counsel urged that the Tribunal rightly disposed of the application by holding that the training period of direct recruits will be treated only for the purpose of getting pay and not for the purpose of seniority.

6. In view of the rival submissions at the Bar the only question that arises for consideration is as to what is the correct interpretation of column (10) of the amended Recruitment Rules which statutorily declares the period of training to be "in service". Under the Constitution under Article 309 the legislature has the power to regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. Under proviso to Article 309 the President in case of the Union and the Governor in case of a State has been empowered to make rules regulating the recruitment and conditions of service of persons appointed until provision in that behalf is made by or under an Act of the appropriate legislature. In exercise of such power under the proviso to Article 309 the Recruitment Rules to the Himachal Pradesh Forest Service Class II has been made and the said Rules also has been amended. The amended

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Rules, therefore, is a competent legislation determining the service conditions of persons recruited to the Himachal Pradesh Forest Service Class II. In R.S. Ajara case¹ this Court considered the question as to whether training period of a direct recruit can be taken into account for fixation of seniority in the cadre. In that case, the statutory Recruitment Rules did not at all deal with the question of seniority of the officers directly recruited and promotees. The Government, however, passed a resolution dated 31-1-1992 declaring therein that the training period of directly recruited Assistant Conservators of Forests in Gujarat State Forest Service, Class II, shall be taken into account for the purposes of seniority. This Court considered the aforesaid resolution of the Government and came to hold that since in the statutory Recruitment Rules there is no provision for determination of inter se seniority between the promotees and direct recruits and there being no provision which can be said to be contrary to the aforesaid administrative resolution of the State Government, the resolution must be held to be valid and the period during which a direct recruit undergoes training can be taken into account for determining his seniority in the cadre of Class II Forest Service. The case in hand is a much stronger case than the case which was for consideration before this Court in R.S. Ajara¹ since in the present case the statutory Recruitment Rules itself contained the stipulation that the training period shall be treated to be "in service". We are unable to accept the interpretation given by the Tribunal to the amended provisions of column (10) of the Rules to the effect that the training period of direct recruits will be treated only for the purpose of getting pay and not for

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the purpose of seniority. If really the legislative intent would have been to grant pay to the candidates while on training then it would not have been necessary to indicate that "while undergoing the training be treated as 'in-service' candidates from the date of joining the Institute". The language of column (10) as amended by the Third Amendment Rules of 1986 is clear and unambiguous and unequivocally indicates that the period of training shall be treated as "in service". We do not find any prohibition or restrictions in the statutory rules prohibiting the "in service" period for being counted for the purpose of seniority. This being the position in our considered opinion the Tribunal committed serious error of law in holding that the training period will be treated to be "in service" only for the purpose of getting pay and not for the purpose of seniority. No such limited interpretation can be given to the express language used in column (10) and on the other hand on giving a full effect to the provisions of column (10) the conclusion is irresistible that the training period will be treated as a part of the service and will necessarily, therefore, be counted for the seniority of the direct recruits. The decision of this Court in Prafulla Kumar Swain case 1993 Supp (3) SCC 181 on which the learned counsel for the respondent relied upon is of no assistance inasmuch as in the said case Regulation 12(c) in unmistakable terms had provided that the training period will not count as service under Government and service will count only from the date of appointment to the service after successful completion of the course of training. In fact the aforesaid decision has been duly noticed by this Court in R.S. Ajara case (1997) 3 SCC 641 and on account of the distinctive features of

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regulation containing a prohibition it has been held that the decision is of no application. We have also considered the submissions of the learned counsel for the respondent that such interpretation of ours would be repugnant to other provisions of the Recruitment Rules but on a thorough scrutiny of the Rules we do not find any repugnancy which can be said to occur on account of the interpretation given by us to column (10) of the Schedule and other columns in the Schedule. We have also carefully gone through the decision of this Court in the case of A.N. Sehgal 1992 Supp (1) SCC 304 and we do not find anything stated therein contrary to what we have indicated in the present case in interpreting the provisions of the Recruitment Rules determining the service conditions of the employees of the Himachal Pradesh Forest Service Class II. In the aforesaid premises the impugned judgment and order of the Tribunal is set aside and OA No. 109 of 1987 stands dismissed. It is held that the training period of the direct recruits shall be counted for determining the seniority in the service provided of course the said direct recruit successfully completes the training and then is absorbed in Class II Forest Service. This appeal is allowed but in the circumstances there will be no order as to costs".

5. From the above decisions it is clear that where the Rules exist that seniority has to be from the date of joining the service after the training, the same has to be followed. Instead, if the statutory provisions rule otherwise (i.e. seniority is to commence from the date of the training), then seniority would be so determined. In the absence of anything, date of continuous officiation would decide the date of seniority as held in the case of N.K.

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Chauhan (*supra*) as also Suraj Parkash Gupta (*supra*).

6. As regards the rule position is concerned, Rule 302 of the IREM is the relevant Rule. Of course, this has no statutory force, (*vide G.M., South Central Rly. v. A.V.R. Siddhantti, (1974) 4 SCC 335*, wherein at page 345 the Apex Court has observed, 'We have perused paras 302, 303 and 304 of the Indian Railway Establishment Manual, Chapter III, 2nd Edn., relied upon by Mr Sanghi.') The rule runs as under:-

"302. Seniority in initial recruitment grades.— Unless specifically stated otherwise the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after the process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter se seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same, they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter se seniority of each group.

Note.— 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 recruitment shall be the

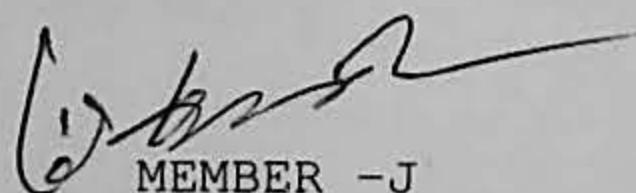
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date he would have normally come to a working post after completion of the prescribed period of training."

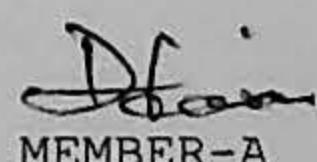
7. In the case of Anuradha Mukherjee (Smt) v. Union of India, (1996) 9 SCC 59 the above rule came up for consideration in connection with a seniority issue and after quoting the said Rule, the Apex Court has held, "The inter se seniority of the 20% direct recruits on the one hand and limited recruitment graduate Grade II Clerks and promotees on the other, shall be determined in accordance with para 302 of the Railway Establishment Manual (Volume I) in the manner indicated above"

8. In view of the same, and taking into account the order of the Coordinate Bench (Jaipur Bench in Review Application 7/97) the Review application is allowed and order dated 30-01-2002 is recalled and the O.A. is dismissed.

9. Under the above circumstances, there shall be no order as to cost.



MEMBER - J



MEMBER - A

Manish/-