

O.A. Stamp 186/88

CAT 3/11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI
Ahmedabad.

O.A./T.A. No. 184 198

Examinant Dube & Co Applicant(s)

P.H. Pathak --- Adv.

Versus

Union of India Govt Respondent(s)

B.R. Kujada --- Adv.

Sr. No.	Date	Orders
5. u. w		Seniority / Promotion (Copy not served) - RPAD received from Applicant. - RPAD received from Respon. no 2, 4, 5, 6, 7.
26/4	6/6/88	Pl. issue notice reg. admitted - offer admission to Respo
6/6/88		- RPAD received from Respon. no. 2, 4, 5, 6, 7.
6/6/88		Resp. Registrar being on leave, this matter is adjourned on 16-6-88.
22/6/88		Issue notice on Respd- 2 to 7. - RPAD received from Respd. no. 2. - notice received back from Respd. no. 7 with an endorsement that addressee has change of address. From mittapur. - RPAD received from applicant.
22/6		Respo no 7 is not served. Notice for service on him be sent to the Station Master, Himatnagar Rly Station with a letter of request to send with a letter of acknowledgment. Filed on 18-7-88

Seniority / Promotion

with a letter of acknowledgment
Filed on 18-7-88

13-7-88

22/6

(P.T.O.)

Sr. No.	Date	Orders
		- RPAO received from SSS Station Master, H'nagar Rly, Station, H'nagar. letter dated 23/5/85.
127		Fixed for service of notice on repro us) tender for the Stu. Maha teinavagan on 19-7-88
197		on examination of the record it appears that the admission at post-admission work are served upon repro us) as he has not appeared. It is only the notice for further consideration which is not served. Mr. Kiyada has filed reply for repro us 1982. The rep failed to file reply. Hence fixed for filing rejoinder on 1-8-88
198		Rejoinder was filed Mr. Pabhar map for time Fixed for filing rejoinder on 19-8-88
198		Mr. Pabhar map for rejoinder time Fixed on 6-9-88 for filing rejoinder

619 Rejoinder is now filed
Fix for final hearing in Jan 89
619

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.

No./O.A./T.A./ 184 /1988

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Laxmikant Dube & ors. Applicant(s).

Versus

P.H. Pathan Adv. for the petitioner(s).

Union of India & ors. Respondent(s)

B.R. Kshirsagar Adv. for the Respondent(s).

SR. NO. DATE.

ORDERS.

(1) 8/3/91 Date of hearing. D

Informed

or

6/3/91
R.P.A. Recd from App.:

C 173/91

~~R.P.A. Recd from Respm.~~ 3/4 (173/81)

29/3/91 Notice dated 6/3/91 received back from Respm. 7 with an endorsement that 'Do complete Address'.

ST/19/1 FH.

OA/184/88

Coram : Hon'ble Mr. P.H. Trivedi : Vice Chairman
Hon'ble Mr. P.M. Joshi : Judicial Member

5/4/1988

Heard Mr. P.H.Pathak and Mr.B.R.Kyada learned advocates for the applicants and the respondents. Advance copy not served to the learned advocate for the respondents. The case be posted in the normal course after 15 days in order to enable the learned advocate to make submissions in this regard. The case be posted on 20/4/1988 for admission.

P.H. Trivedi
(P.H.Trivedi)
Vice Chairman

P.M. Joshi
(P.M.Joshi)
Judicial Member

a.a.bhatt

O.A./184/88


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CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman
Hon'ble Mr. P.M. Joshi .. Judicial Member

21/04/1988

Heard Mr. P.H. Pathak and Mr. B.R. Kyada,
learned advocates for the applicant and respondents
respectively. Admit. Issue notice on the ~~xxxx~~
respondents to reply on merit within 45 days of this
order. The case be adjourned to 6/6/88 for further
direction. before Registrar


(P H Trivedi)
Vice Chairman


(P M Joshi)
Judicial Member

*Mogera

M.A./75/89
in
O.A./185/88

C/Sy/K)

(S)

Coram : Hon'ble Mr.A.V.Haridasan : Judicial Member
Hon'ble Mr.M.M.Singh : Administrative Member

09/04/1990

This is an application, calling up on the respondents to produce certain documents. The respondents have not filed any reply. The learned counsel for the respondents submitted that the production of documents are not material for the disposal of the case. On going through the pleadings in the case, we are convinced that the documents called for are material. Therefore, the ^{MA} application is allowed and the respondents are directed to produce the documents within 2 weeks from the date of this order.

M M Singh

(M.M.Singh)
Administrative Member

A.V. Haridasan

(A.V.Haridasan)
Judicial Member

AIT

O.A./184/88

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CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman
Hon'ble Mr. S.Santhanakrishnan .. Judicial Member

8.3.1991

Neither petitioner nor his advocate present. Learned advocate Mr. B.R. Kyada for the respondents states that he has been unable to produce the documents ordered in M.A./75/89 in O.A./185/88 dt. 9.4.1990 and undertakes to do this within a period of 10 days. Allowed. The case be posted in first week of April, 1991 for final hearing.


(S Santhanakrishnan)
Judicial Member


(P H Trivedi)
Vice Chairman

*Mogera

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW DELHI~~

O.A. No. 184 OF 1986
~~DA No.~~

DATE OF DECISION 05-04-1991

Shri Laxmikant Dube & Ors. Petitioner

Shri P.H.Pathak Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Shri B.R.Kyada. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H.Trivedi : Vice Chairman

The Hon'ble Mr. R.C.Bhatt : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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1. Shri Laxmikant Dube,
2. Shri Krishnakumar Mishra.
3. Shri Ubi Dullakhan Baloch,
4. Shri Arya Bhushan Gupta ,

C/o., Laxmikant Dube,
Head Trainee Examiner (W.R.),
Railway Station,
Mithapur - 361345.

....Applicants.

Versus

1. Union of India,
Notice to be served through
The General Manager,
Western Railway,
Churchgate,
Bombay.
2. Divisional Mechanical Engineer (E),
Western Railway,
Divisional Office,
Kothi Compound,
Rajkot.
3. Shri Lalikumar C.H., T.X.R.,
C/o. Carriage & Weagon Superintendent,
Western Railway,
Hapa,
Jamnagar.
4. Yashvantrai M., T.X.R.,
C/o. Carriage & Weagon Department,
Western Railway,
Morbi.
5. Roopsingh Parmar H. , T.X.R.,
Western Railway,
C/o. C.W. Sup. Hapa,
Dist. Jamnagar.
6. Tarunkumar, J.
Western Railway,
H. T. X. R.,
C/o. Carriage And Weagon Superintendent,
Hapa,
Dist. Jamnagar.
7. Vinodrai R. H. T. X. R.,
Carriage & Weagon Superintendent,
Mithapur.

...Respondents.

O.A./184/88

Coram : Hon'ble Mr. P. H. Trivedi : Vice Chairman
Hon'ble Mr. R. C. Bhatt : Judicial Member

ORAL ORDER

Per : Hon'ble Mr. P. H. Trivedi : Vice Chairman

Date: 5-04-1991

Heard Mr. P. H. Pathak, learned advocate for the
petitioner. In this case the petitioner is agrieved by (1),

The respondents placing him by their decision, the Petitioner Mr.U.N.Bloch at Sl.No.85, while he was at No.75, in the seniority list as per order dated 1.1.1987, Annexure-A/2, without giving him a opportunity to make a representation against it as the impugned order dated 1.1.1987, plainly causes adverse consequences to him.

2. The petitioner's representation against the above order has not been yet replied to, as admitted by the respondents in para 6 of their reply.

3. According to the petitioner the respondents under the Rules applicable are required to confirm the direct recruitment and the promotees from the date of passing the examination prescribed by the rule which in terms is preceded by three years' training for the direct recruitment and two years for the promotees in support of which he cites the chart given at page-35, of Manual, Railway Establishment Rules & Labour Laws, as reported below :

Other Apprentices : -Apart from the Mechanical Apprentices, there are some other Apprentices also on the Railways. The educational qualifications, age limits and period of their training are given below :

Apprentices	Educational Qualifications	Age limit	Period of training
T.X.R.	(i)Matriculation or equivalent.	15-19 years	5 years
	(ii)Diploma holders or skilled artisans.		2 Years.

4. He also contends that there are specific quotas to be filled by promotions and by direct recruitment for which he cites from the same publication sub para 10 at page.36.

(10) Train Examiners :- 40 per cent of the posts in the category of Train Examiners are filled up by promotion of Artisans, 20 per cent of the vacancies are reserved for existing Artisans going as Apprentice T.X.Rs.

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with age relaxation upto 35 years and remaining 40 per cent of vacancies are filled up by direct recruitment of Apprentice T.X.Rs. from the open market through Railway Service Commission.

5. According to the petitioner confirmation is to be given and seniority is to be counted from the date on which he passes the examination, in case of both direct recruitees and promotees in support of which he cites the instructions at para-41. The petitioner's case therefore, is that by the impugned orders and as shown from the reply the respondents have clearly departed from the rules and instructions governing the subject when they have ordered that in the case of promotees confirmation, is made from the date of which promotees are sent for training and not from the date of which the examinations are passed by the promotees and that for such a change or departure there is no authority of Rules or instructions, and accordingly such action is illegal.

6. The petitioner has joined only 5 respondents (respondents 3 to 7), who are affected by the reliefs he seeks. He does not dispute that the ambit of the person affected would be very many more than the persons joined as respondents. When it was asked how relief can be given without joining of these parties who are affected, learned advocate for the petitioner submitted that when principles of seniority are under challenge all persons affected are not necessary parties, when the principles of the validity of the departure of the rules is to be settled. In reply the respondents have stated that the representation of the petitioner has not been disposed of and the seniority list has not been yet published as stated in the para 6. The respondents have also pleaded that in the case of promotees training and passing of the examination may not be even necessary for confirmation because unlike direct recruits' experience

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available to the promotees. The reply of the respondents has not clearly shown whether there was a considered decision to depart from the rule of counting seniority or confirmation from the date of the examination passed in the case of the promotees. If so, there ought to have been a rule or instruction supersiding the earlier instructions in the case of promotees. On the other hand for the support of the petitioner has drawn from various rules and instructions, he has shown, do not add-up to a clear proof of the promotees being eligible for confirmation from the date of sending them for training. It is only stipulated that passing the test is a prerequisite, which means on passing the examination, promotion, can be given on the date on which confirmation can be given or seniority counted. The training is for the promotion post and it could be the position that after the decision of promotion is taken, the training is offered. We however, do not come to any conclusion regarding the validity of the position, as affecting other parties in this case as it is not clear what is the guiding principle in the matter.

7. Earlier by an order dated 9th April, 1990, in MA/75/89, this Tribunal had decided that production of documents required by petitioner as are material and the respondents were directed to produce them within two weeks from the date of this order. When the case was taken up for hearing learned advocate for the respondents states that these documents are not hitherto produced and stated that he would need further time to produce them, if available. Learned advocate for the petitioner objected to this, because there was no statement from the respondents that the documents were even ascertained to be available, to which the learned advocate for the respondents stated that according to him the documents were not relevant and if they are not produced, the Court could proceed with the case on the basis of whether adverse inference could be drawn. He emphidically stated that he

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had no more to be state in the reply already filed and requested permission to be absent when the case was resumed for hearing. We have however, heard the learned advocate Mr.P.H.Pathak, on the basis of the statement made by him.

8. We are unable to persuade ourselves that either side has brought out all the facts and rules required for formulating the conclusions on the issues raised. The petitioner has satisfactorily established that before finalising his seniority in which his position is reduced from 75 to 85, he has not been allowed to make any representation. On the other hand the respondents states that the seniority list has not been finalised and the petitioner's case is pending disposal. The respondents has not established that prior to the issue of the order dated 1.1.1987, the petitioner was given an opportunity to make representation and on the other hand they have taken the plea that as if merely corrects errors, there was no need for it. Even if a error is sought to be corrected, it effect is that if leaves the petitioner in a position worse than before, if natural justice is to be followed. If requires, that the petitioner is allowed to represent and in this case it has not been done. On the other hand to establish this case the petitioner has to clearly show that (A) the rules on which he relies makes it necessary for the respondents to give confirmation only from the date of passing the examination for themselves as also after others affected by it, so far as promotees are concerned, (B) That the other promotees have been arbitrarily given such promotions and that they are junior to the petitioner. It is held in a number of cases that the Tribunals do not decide the question of seniority, as it relates to examination, of record for ascertaining facts. In the circumstances of this, case therefore, we can only make the following order.

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9. The representation of the petitioners regarding their seniority shall be decided by a speaking order by respondent no.2, and in doing so he may cite the rules or instructions on which he draws his support for the promotees being given the date of confirmation from the date on which they are sent for training. If the petitioners are aggrieved by the said speaking order they are at liberty to approach the Tribunal with a fresh application.

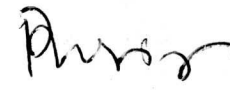
10. Seniority of Mr.Bouch may not be treated as final as per Annexure-A/2, until the speaking order is passed.

11. In passing the speaking order the respondent no.2, shall be given an opportunity to be heard.

12. The speaking order by Divisional Railway Manager be passed within 4 months from the date of this order. Copy thereof may be given to the respondents. With this observations and directions the case is disposed of.

No order as to costs.


(R.C. Bhatt)
Judicial Member


(P.H. Trivedi)
Vice Chairman

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