

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 179/89
TAxNO.

DATE OF DECISION

30-12-96
~~November 1996~~

Mr.P.K.Mittal & Ors.

Petitioner

Mr.K.K.Shah

Advocate for the Petitioner [s]

Versus

Union of India & Ors.

Respondent

Mr.N.S.Shevde

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. K.Ramamoorthy

:

Member (A)

The Hon'ble Mr. T.N. Bhat

:

Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ? *yes*
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

[Signature]

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- 1) P.K.Mittal
 - 2) A.K.Sharma
 - 3) S.N.Singh
 - 4) M.M.Telang
 - 5) D.C.Agrawal
 - 6) N.R.Kale
 - 7) S.N.Tripathi
 - 8) H.S.Saxena

C/o. Kiran K.Shah
 Advocate
 3, Achalayatan Society
 Div.-II, B/H Mamnagar Fire
 Station, Navrangpura,
 Ahmedabad- 380 009.

Applicants

Advocate: Mr. K.K.Shah-

1. Union of India
 Notice to be served through:
 The Chairman
 Railway Board, Rail Bhavan, New Delhi.
2. The General Manager
 Western Railway, Churchgate, Bombay-
 400 020.
3. Chief Engineer (E)
 Western Railway, Churchgate, Bombay-400 020.
- 4) Mr. Fremsing Rana
- 5) Mr. Rameswarsingh
- 6) Mr. Rakesh Jain
- 7) Mr. S.P.Singh
- 8) Mr. Hariom Goel
- 9) Mr. Delip Kumar M
- 10) Mr. Suchir Kumar Bajaj
- 11) Mr. Umesh Kumar
- 12) Mr. B.B.Math
- 13) Mr. S.C.Sinha
- 24) Mr. V.Joseph
- 15) Mr. R.C.Arora
- 16) Mr. Shes Prasad
- 17) Mr. Yogendra Mishra
- 18) Mr. S.D.Panday
- 19) Mr. Bhagwan Singh
- 20) Mr. R.W.Gupta
- 21) Mr. A.K.Sariya
- 22) Mr. S.C.Sharma
- 23) Mr. P.K.Saxena
- 24) Mr. Hetsing
- 25) Mr. S.P.Singh
- 26) Mr. Vikram Jeetsing
- 27) Mr. D.K.Sarin
- 28) Mr. D.C.Yadav
- 29) Mr. K.C.Banvir
- 30) Mr. S.K.Srivastava
- 31) Mr. B.L.Sahu
- 32) Mr. G.S.Ahuluvaha
- 33) Mr. Shankarlal
- 34) Mr. R.M.Kaushik
- 35) Mr. B.C.Yadav
- 36) Mr. A.K.Sharma
- 37) Mr. A.K.Sharma
- 38) Mr. B.P.Sharma (Sd) Mr. C.P. Singh
- 40) Mr. Motilal
- 41) Mr. A.K.Nerula
- 42) Mr. H.B.Lal
- 43) Mr. H.K.Solanki
- 44) Mr. Ram Prasad
- 45) Mr. G.K.Sajjan
- 46) Mr. S.M.Sinha

(16)

- 47) Mr. Y.C. Pathak
- 48) Mr. P.T. Vargis
- 49) Mr. Chandra Kant
- 50) Mr. D.P. Chandelani

(Respondents No. 4 to 50 to be served through Respondents No. 3).

..... Respondents-

Advocate: Mr. N.S. Shevde-

JUDGEMENT

IN

O.A. NO. 179/89

Dated

30.12.86
~~November 1986~~

Per Hon'ble Mr. K. Ramamoorthy, Member (A):

This application has been filed against the seniority position assigned to the applicants.

2. The applicants are direct recruit P.W.Is who were sent for training at Udaipur. After training merit position to the applicants have been assigned by the Training School at Udaipur. For instance the first applicant was given rank of 15 at the Training School. According to the applicants were also given correct seniority in the seniority list of 1983 as per Rule 303 of INEM. However in the 1989 seniority list it was found that the applicants have been given a seniority position lower than some of the persons who were earlier junior to them in the 1983 seniority. The applicants have challenged this change in the seniority position.

3. The respondents in their reply have contended that there was no error in the assignment of seniority position in the 1989 list. While disputing the fact that on completion of service

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training the applicants enjoyed higher ranking as was reflected in the seniority list published in 1983 which was prepared as per rules in existence at that time when the seniority was maintained on Western Railway basis, subsequently, a decision was taken to de-centralise the cadre management and posts ~~xxxx~~ upto Engineering Supervisors in the grade of Rs. 550-750 were placed under the control of the divisions resulting in promotions on divisional basis. This order has been passed vide No. E/E/834/5 dated 6/2/1985. It was further stipulated in that order itself that seniority list on divisional basis for grade 425-700 and 550-750 as on 1.4.85 should be notified. Consequently, as per the vacancies in the individual divisions persons get promoted to the scale upto the scale of 550-750 (R) and the date of appointment to this grade determined the grade seniority for further promotions. In the order of 6.2.85 it has been specifically mentioned that further promotion to the scale 700-900 would depend on the combined seniority and therefore the different grades on which individual P.W.Is were appointed to the grade 550-750 also get reflected in the different seniority position. It is this factor which has resulted in changes in the seniority position. This is as per the scheme of de-centralisation for which there had been consistent demands from all the Trade Unions. The 1989 seniority list being a reflection of this position, there is no illegality in the seniority list and therefore the petition should be disallowed. The applicant No.1 in this case had also been accordingly informed vide

letter dated 7th March 1989- Being a short reply, the same is reproduced below:-

" The representation of Shri P.K.Mittal received with your letter quoted above has been examined. It is stated that the combined seniority of FWI Gr. II notified vide this letter No. E/E/1030/5/1/3 dated 1.2.89 was prepared on the basis of entry in the grade of each employee as advised by the respective division and not on the merit list obtained from ZTS UD FWI grade is a promotion grade hence the seniority is fixed on the basis of entry in grade.

The employee may be informed accordingly".

4. The learned counsel for the applicants and the respondents were heard at length.

5. It is true that in one sense, the applicants' grievance arose when their juniors got promoted to 350-750 grade in their respective divisions even earlier than the present applicants because of the fact that the promotions upto this level were required to be given on divisional basis. According to the applicant they became aware of this fact only when the matter came to their notice when promotions in the ~~grxxxxf~~ grade of 700-900 were being considered. It is for the first time that this disparity came to their notice when the combined seniority lists were circulated on 8.3.1989 vide Annexure A-3. It is the contention of the counsel for the applicants that at the time of their recruitment, the P.W.Is were recruited on Western Railway basis and their seniority was also to be governed by the ranking obtained at the end of the training. This position is not disputed by the Respondent Department also as could be seen in their written averments. The applicants are also

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at the same time aware of the fact of decentralisation as the applicants themselves have annexed at A-4 the relevant circular in this behalf.

6. The learned counsel for the applicant however urged that the mere fact that the Trade Unions agreed to the scheme cannot extinguish the rights of the applicants which accrued to them at the time of their recruitment as direct P.W.I. The learned counsel sought to bring to his aid the Supreme Court decision in the case of S.B.Sarkar and Others versus Union of India (1990)(3) SCC 168 further clarified in their judgement dated 14.9.1993 (1993 (3) SCC 152) that mere approval by the Union cannot extinguish the rights of minority members who might be adversely affected. That case, however, is based on the facts of ¹⁵ a particular case and will not be of much help in deciding the present case. In the case decided by the Supreme Court the question related to question of time given for exercising an option. The learned counsel of the applicant also drew our attention to a decision given by this Bench of Tribunal on 20th January 1995 in O.A.253 of 1990 wherein also some ^{no} _^provisions were given to the juniors. This judgement also has relevance basically to the particular facts of that case where a vacancy was available even before a common cadre came into being. This cannot also therefore be stated to be applicable to this case, on all tracks.

7. The main grounds advanced by the applicants can be summarised as under:-

(i) The letter of 13.3.85 which conveyed the scheme of decentralisation of post of Engineering Supervisors upto the level of grade 550-750 should be declared as null and void.

(2) The Department cannot change the criteria for seniority from the original criteria of the ranking obtained at the Zonal Training School to a criterion of counting the date of entry to a particular grade.

(3) The implementation of such scheme could be only after issuing a letter to each one of the affected persons.

(4) The respondents have failed to publish such seniority list from time to time.

8 The case of the respondents is that the present position has arisen as a direct fall-out of the scheme of de-centralisation. In point of fact, the counsel for respondents has pointed out that there has been further de-centralisation for posts even upto 700-900 (revised scale is being Rs. 2000-3200) and promotions to be given in this grade will therefore be henceforth according to divisional seniority.

9. As is seen from the reply at A/3 the issue centers round the question as to whether the decision to prepare a seniority list on the basis of date of entry in the grade by each employee as devised by the respective division and not on the merit list obtained from Zonal Training School, Udaipur is the correct decision, since on this basis, how the seniority list of 8.3.89 ^{in this application} impugned/ has been prepared.

10 The Tribunal has ~~xx xxix~~ considered at length the averments made in this case as also the arguments made by the learned counsel of the applicants and respondents.

11. As regards the objection to the scheme as such, it is open to any department to make changes

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in the cadre structure as per exigencies and need in a particular case. The de-centralisation has been effected looking to the size of the cadre. The decentralisation also has followed a vociferous demand from the Trade Unions concerned and the necessary decision has also been communicated to all concerned including the Trade Unions concerned as seen from letter dated 6.2.85, further, communicated vide GM(E) CCG's letter dated 18.3.85 (A-4) and thereafter ^{down} ~~the~~ ^{line} ~~same~~. It is also significant that the applicants themselves have been beneficiaries under the scheme inasmuch as they have accepted one promotion atleast on divisional basis whereby the transfer liability of the applicants to outside the division which was a distinct possibility if it were a Western Railway cadre, was averted. This restricted transfer liability also meant more rapid or less rapid promotion depending on vacancies in a particular division. Having accepted one promotion in 550-750 grade, to challenge the scheme itself only at the next promotion cannot be sustained. As per document produced by the applicant with the rejoinder dated 8.2.93, the first Divisional Seniority list of 1988 has not been questioned by applicant. The question ^{of} there having been vacancies even prior to decentralisation cannot therefore be raised at this stage. It is also significant to note that the process of decentralisation has even thereafter continued and in 1993, the next grade i.e. 700-900 has also been included in the Divisional promotion scale. This further decentralisation of scheme has not been challenged by the

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applicants either. Therefore, ~~on~~ the merit of the decision to decentralise the promotions confined to a division, cannot be faulted as being arbitrary. Such a decision is well within the competence of the respondent department.

12 The scheme of decentralisation as envisaged involved change in the order of promotion as promotions will be now confined to the persons in in the decentralised unit. Such an action is covered by Rule 306 and 309. The principle of seniority being governed by G grade seniority is also laid down in Rule 302. If therefore a decision is taken to decentralise a cadre, any resultant change in the position regarding seniority cannot be challenged merely on the ground that the rule of seniority once fixed under one Rule undergoes a change.

131 As regards the contention that scheme should have been communicated to all the persons adversely affected, apart from the fact that the scheme has been given wide publicity through the Trade Unions and through the ^{official} optional channels as indicated earlier in para ~~11.4.4.1~~ ^{11.4.4.2} it is very difficult to pinpoint the persons who could be stated to have been adversely affected as the question is one of balance between the seniority position and the transfer or promotion restricted ^{to} one's division. That apart, it is difficult to accept the fact on the face of the various communications referred by the applicants themselves that applicants were unaware of the decentralisation scheme or that promotions were to be now confined only to divisions especially when these persons did

promotions in 500-700 on the basis of the seniority only. We are also given to understand on 2.1.1992 applicants have been promoted further in the ^{next} scale of Rs.2000-3200 also.

14} There is some merit in the argument that seniority lists should have been published ^{or} ~~from~~ ⁱⁿ an year to year basis so that the applicants would have been aware of the changes in their seniority position. This procedural infirmity however should not distract us from the basic issue regarding the change of seniority consequent to a decentralisation process and the fact that seniority lists were not published every year cannot be held as a valid ground for challenging the scheme itself. It is also clear that seniority list which has been impugned, has been drawn up on the basis of promotions obtained by individuals because of decentralisation scheme which means promotion at varying times, depending on the vacancies in a particular division and the promotions which were originally confined to govern their promotion to two scales i.e. 425-700 and 500-700 ^{now} has been extended 700-900.

15. After analysing the various contentions ^{as a} the Tribunal sees no infirmity as such in following the grade seniority for drawing up of the seniority list consequent to the particular decentralisation scheme and therefore this particular application is devoid of merit and has therefore to be disallowed.

16. Before such disposing of this matter, however, the Tribunal would like the respondent to reconsider the issue as to whether the

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respondent department should not consider introducing a new rule in such circumstances to treat the base seniority as the criterion at the time of another promotion at the centralised level. The ~~Government~~ Divisions being of different sizes and growth potential, the promotions at three grade levels ~~as~~ will necessarily result in variations vastly different from the original rank pattern which ^{makes} ~~makes~~ the seniority position in a direct recruitment scheme. The Government of India ~~which~~ operates all India Services Cadre where also consideration of the empanelment ^{is} ~~for~~ posts in the Government of India ^{is} on batch basis inspite of different promotions received at the State level subject of course to the service records which can ^{determine} ~~take out~~ ^{regent} withholding of promotions on administrative grounds.

With the above remarks the application is disallowed with however no orders as to cost.

(T.N. Bhat)
Member (J)

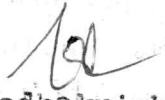
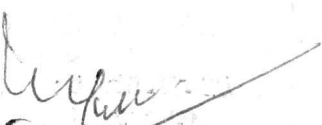

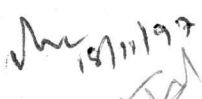
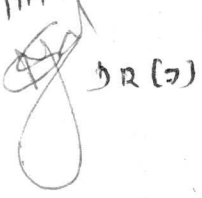
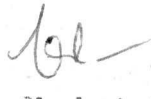
(K. Ramamoorthy)
Member (A)

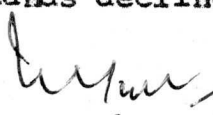

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Date	Office Report	ORDER
6.3.97	<p>one one come to remove office objection we may put this matter on 24-3-97 for order 18-3-97. <i>DR (J)</i></p>	<p>Sick note filed by Mr.K.K.Shah One week time is permitted to remove the office objections. Registry to fix the matter, only after removal of office objections. <i>(V.Radhakrishnan)</i> Member(A)</p>
3 7.	<p>one one come to remove office objection we may put this matter on 8-4-97 for order 4-4-97. <i>DR (J)</i></p>	<p>None present. As a final chance, one weeks time is given for removal of office objections, failing which registration will be declined. Registry to fix the matter accordingly. <i>(V.Radhakrishnan)</i> Member(A)</p>
8.4.1997.	<p>one one come to remove obj. we may put this matter on 23-4-97 21-4-97. <i>DR (J)</i></p>	<p>At the request of Mr.K.K.Shah, as a final chance, one weeks time is allowed for removal of office objections. No further time will be given. Registry to fix the matter accordingly. <i>(V.Radhakrishnan)</i> Member(A)</p>

Date	Office Report	ORDER
23.4.97	<p>we No one come to remove object we may put this matter on 8-5-97</p> <p>DR (SI)</p>	<p>Further two weeks time is permitted to remove the office objections. Registry to fix the matter for hearing accordingly.</p> <p>(V.Radhakrishnan) Member(A)</p> <p>npm</p>
8.5.97	<p>No one come to remove objection we may put this matter on 12-6-97</p> <p>DR (SI)</p>	<p>Sick note filed by Mr.K.K.Shah.</p> <p>Further two weeks time is given for removal of office objections. Registry to fix the matter for hearing after summer vacation.</p> <p>(V.Radhakrishnan) Member(A)</p> <p>ait.</p>
12.6.97	<p>No one come to remove obj. we may put this on 20-6-97</p> <p>DR (SI)</p>	<p>Leave note filed by Mr.K.K.Shah. Further one week time is given for removal of office objections. This will be the last chance.</p> <p>(V.Radhakrishnan) Member(A)</p> <p>npm</p>
20.6.97	<p>No one come to remove obj. we may put this matter on 11-7-97</p> <p>DR (SI)</p>	<p>Further two weeks time is permitted to the applicant to remove the office objection.</p> <p>(T.N. Bhat) Member (J)</p> <p>(V.Radhakrishnan) Member(A)</p> <p>npm</p>

Date	Office Report	ORDER
11.7.97.	<p>No one came to remove obj. we may put this matter on 31-7-97</p> <p>24-7-97 DR (J)</p>	<p>Sick note filed by Mr.K.K.Shah.</p> <p>Further two weeks time is allowed to remove the office objections. Registry to fix the case accordingly.</p> <p>(V.Radhakrishnan) Member (A)</p> <p>ait.</p>
31.7.97.	<p>No one came to remove obj. we may put this file on 20-8-97 F/o.</p> <p>14-8-97 DR (J)</p>	<p>At the request of Mr.K.K.Shah, further two weeks time is allowed to remove the office objections. No further time will be given. Registry to fix the matter accordingly.</p> <p>(T.N.Bhat) Member (J)</p> <p>(V.Radhakrishnan) Member (A)</p> <p>ait.</p>
20.8.97	<p>No one came to remove obj. we may put this matter on 1-9-97</p> <p>28-8-97 For DR (J) 28-8-97</p>	<p>Leave note filed by Mr.K.K.Shah. At the Xavier for Mr.Shah, the applicant is permitted one week time to remove the office objections. Registry to fix the matter accordingly.</p> <p>(V.Radhakrishnan) Member (A)</p> <p>npm</p>

Date	Office Report	ORDER
1.9.97	<p>No one come to remove obj. we may put this matter on 25.9.97</p> <p>R 23-9-97 DR (J)</p>	<p>Further two weeks time is permitted to the applicant to remove the office objections. Registry to fix the matter accordingly.</p> <p> (V. Radhakrishnan) Member (A)</p>
25.9.97	<p>No one come to remove obj. we may put this matter on 16.10.97</p> <p>R 9.10.97 DR (J) 16.10.97</p>	<p>At the request of Mr. P. P. Bhatt for Mr. K. K. Shah further two weeks time is permitted to the applicant to remove the office objections.</p> <p> (T. N. Bhat) Member (J)</p> <p> (V. Radhakrishnan) Member (A)</p>
16.10.97	<p>No one come to remove objections. we may put up this matter on 24.11.97</p> <p> 24.11.97  DR (J)</p>	<p>At the request of Mr. K. K. Shah, further <u>four weeks</u> time is permitted to enable him to remove office objections, as a last chance.</p> <p> (V. Radhakrishnan) Member (A)</p>

Date	Office Report	ORDER
24.11.97		<p>Inspite of several opportunities being given to the applicant,for removing office objections,objections have not yet removed. Hence registration of RAST/10/97 stands declined.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">  (T.N. Bhat) Member(J) </div> <div style="text-align: center;">  (V.Radhakrishnan) Member(A) </div> </div> <p style="margin-top: 20px;">npm</p>