

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A.No 251/89
TA .No.

Date of Decision: 14.05.99

Mrs. M.B. Surve & 15 Ors. : **Petitioner(s)**

Mr. G.I. Desai : **Advocate for the petitioner(s)**

Versus

Union of India & Ors : **Respondent**

Mr. N.S. Shevde & Mr. K.K. Shah for private respondent: **Advocate for the respondent(s)**

CORAM

Hon'ble Mr. V. Radhakrishnan : **Member(A)**

Hon'ble Mr.P.C.Kannan : **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?
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?

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1. Mrs. M.M. Surve.
2. Shri. P.S. Shah.
3. Shri. A.B. Joshi.
4. Shri. D.L. Shah.
5. Shri. A.R. Mehta.
6. Shri. B.R. Patel.
7. Shri. I.R. Dhameja.
8. Shri. M.M. Shah.
9. Shri. P.C. Patel.
10. Shri. J. G. Bhavsar.
11. Miss Purnima D. Parikh.
12. Shri. N.G. Dongare.
13. Mrs. Sadhna B. Parekh.
14. Shri. D.B. Savalani.
15. Shri. P.D. Patel.
16. Shri. R.D. Desai.

All C/o. M.B. Surve,
A-4/304 Haridham Flats,
Manjalpur, GIDC Road,
Baroda.

...-Applicants.

(Advocate : Mr. G.I. Desai)

V/s.

1. Union of India,
(Notice to be served through
the Secretary, Ministry of
Railway, Rail Bhavan,
New Delhi)
2. The General Manager,
Western Railway,
Churchgate, Mumbai.



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3. Divisional Railway Manager,
Western Railway,
Pratapnagar,
Baroda-4.
4. Shri. H.D. Desai
5. Shri. Suryavansi.
6. Shri. M.N. Patel.
7. Shri. V.H. Patel.
8. Shri. S.S. Singh.
9. Shri. V.G. Thakkar.
10. Shri. N.K. Mahani.
11. Mrs. S.P. Trivedi.
12. Mrs. P.H. Patel.
13. Mrs. J.R. Patel.

All C/o. H.D. Desai,
Establishment Branch,
Mechanical Section,
Western Railway,
D.R.M. Office, Baroda-4.

...-Respondents.

(Advocate : Mr. N.S. Shevde & Mr. K.K. Shah)

JUDGEMENT
O.A 251 OF 1989

Date : 14.05.99

Per Hon'ble Shri P.C. Kannan : Member (J).

The applicants have filed the above O.A under section 19 of the Administrative Tribunals Act and prayed for the following reliefs :-

- (A) Declaring that the applicants are entitled to reckon their seniority from the date of their actual promotion to the post of Senior Clerk ;

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- (B) quashing and setting aside the Seniority list and the impugned order dated 25.01.89 qua the applicants and the respondents ;
- (C) directing the respondent-authorities to reckon the seniority of the applicants from the date of their actual appointment/promotion to the post of Senior Clerks and grant all consequential benefits like fixation of pay, arrears of salary, promotion etc. on that basis ;
- (E) granting such other and further reliefs as may be deemed fit and proper ;
- (F) awarding the costs of this application.

2. The applicants are Senior Clerks in the scale of Rs.1200-2040/-. They were promoted to the post of Senior Clerks between 30.12.81 to 01.06.85 as given in Annexure A-2. Recruitment to the Senior Clerk cadre is from the following source :- (I) Promotion from junior clerks, (ii) Appointment through open market and (iii) Graduate clerks quota.

3. The applicants claim that they were promoted between December '81 to 01.06.85 and they have been officiating as Senior Clerk. In terms of the rules, promotion to the post of Senior Clerk is made after passing the suitability test. The applicant states that the respondent authority had not conducted the suitability test as and when it should have been conducted and the suitability test was conducted only on 25.08.85 and 06.10.85 and the result of suitability test was declared on 06.11.85 and the respondents assigned that date to the applicant for the purpose of reckoning seniority in

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the seniority list of Senior Clerks despite the fact that they have been continuously officiating as Senior Clerks prior to 06.11.85. The applicant claim that the action of the respondents in not reckoning seniority from the date of officiating continuously against the non-fortuitous vacancies of the senior clerks is not in accordance with the rules and therefore claimed seniority from the date of officiation.

4. The applicant further states that in the seniority list of class-III staff Senior Clerk, the applicants figures at sr. no. 194 to 210 and at 214 whereas the respondents 4 to 13 who are junior to the applicants figures at sr. no. 184 to 193. The respondents have put the applicants as juniors on the ground that the applicants did not pass the seniority test and they were holding the post purely on ad-hoc basis from the year 1981 to '85 and that the respondents 4 to 13 have been appointed on regular basis from the year 1985. The applicant claim that the respondents did not conducted the suitability test as and when it ought to have been conducted and therefore they cannot be held responsible for not passing the suitability test.

5. The applicants also contended that the respondents themselves had issued instructions regarding the conduct of the suitability test within 6 months and senior persons officiating on non-fortuitous vacancies to be

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considered senior to the persons appointed / promoted thereafter (Annexure A-4, A-5).

6. The applicants states that they preferred representation to the respondents vide their letter dated 12.04.88 (Annexure A-6) and another representation dated 08.07.88 (Annexure A-7). The respondents vide their reply dated 25.01.89 (Annexure A-8) stated that as per the provisions of paras-320 of chapter-III of IREM, seniority of Railway servant who are required to pass the suitability test before they are promoted to non selection post is required to be regulated on the basis of the date of passing of the suitability test and therefore the applicants were rightly given the seniority from the date of passing suitability test i.e. 06.11.85. Thereafter the applicants have filed the present O.A.

7. The respondents in their reply stated that seniority of the applicants have been correctly fixed in terms of paras-302 and 320 of the IREM and as per rules, the respondents 4 to 13 are selected for the post of Senior Clerk in the scale of Rs.1200-2040 against 20% quota of direct recruitment i.e. graduate quota and their seniority has been fixed from the date of joining the working post ^(before 6.11.85) whereas the applicants at sr. no.194 to 210 and 214 are rankers



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and they are assigned seniority from the date of passing the suitability test as per para-302 of IREM. As the applicant had passed the suitability test only on 06.11.85, they were not entitled for seniority over the respondents 4 to 13 as their seniority is to be reckoned from the date they are regularly appointed as Senior Clerk. It was further stated that delay in conducting the suitability test by the administration does not make any change in the principle of assignment of seniority for direct recruits and rankers. It was also contended that the instructions issued by the respondents for the conduct of suitability test etc are directory and not mandatory.

8. We have heard Mr. Desai, counsel for the applicant and Shri N.S. Shevde, counsel for the official respondent and Mr. K.K. Shah, counsel for the private respondents. Shri Desai also filed written submissions. Mr. Desai, counsel for the applicants forcefully contended that the applicants were officiating continuously against non-fortuitous vacancies of senior clerks, from 1981 onwards and non-conducting of suitability test in time shall not be held against them for denying them seniority from the date of their continuous officiating. He also referred to the circular dated 31.07.73 in this regard. He contended that the suitability of a candidate for a



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promotion to non-selection post should be judged on the date of occurrence of vacancy in the higher grade or as close to it as possible. A Railway servant once promoted against a post which is non-fortuitous should be considered as Senior in that grade to all others who are subsequently promoted. In support of his contention, he referred to the following judgements :-

- (1) U.O.I. V/s. Mohan Singh Rathore, [1997 (1) SLJ 232] ;
- (2) State of Maharashtra V/s. J.A. Korandikar [AIR 1989 SC 1133] ;
- (3) Vinod Kumar Sangal V/s. U.O.I. [1995 (4) SCL 246] ;
- (4) O.P. Singla V/s. U.O.I. [AIR 1984 SC 1595] ;
- (5) Narendra Chadha & Others V/s. U.O.I. & Others [1986 (1) SLJ 287] ;
- (6) S.L. Jain V/s. U.O.I. & Others [AIR 1986 (2) CAT 4346] ;
- (7) R.B. Vyas V/s. U.O.I. {O.A 535 OF '85 decided on 03.01.92 by the Bombay Bench of CAT}.

9. Mr. K.K. Shah, counsel for the private respondents referred to the judgement of the Supreme Court in the case of Anuradha Mukherjee and Ors v/s. U.O.I. [1996 (9) SCC 59] and submitted that in this case, the Apex Court considered the principles to be followed for fixing the inter-se seniority of Clerks grade-'I' in the scale of 330-560/- under the Railway Administration. He submitted that the facts of the present O.A is identical with the facts of that case and that the judgement of the Supreme Court in the above case would directly apply to the facts of this case. He submitted that the judgement of the apex court in Anuradha's case [1996 (9) SCC 599]

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is distinguishable with the facts of the present O.A. Mr. Shevde pointed out that in the light of the judgement in the above case, Railway Board had also issued instructions to General Manager vide letter dated 07.10.87 for fixing seniority of Senior Clerks and the seniority list challenged in this case is in accordance with the instructions issued by the Railway Board and also on the basis of the Supreme Court judgement in the Anuradha's Case.

10. We have carefully considered the submissions of the counsels and examined the pleadings.

11. The applicants in this case were promoted on ad-hoc basis between the years 1981 and 1985. The applicants under the rules, are entitled to promotion only on the basis of the results of the suitability test. However, suitability test was not conducted and it was only after the suitability test conducted on 25.08.85 and 06.10.85, the applicants were regularised w.e.f. 06.11.85 i.e., the date on which the result of suitability test was declared. The respondents 4 to 13 who figures at serial no. 154 to 193 in the seniority list were selected for the post of senior clerk against 20% quota of direct recruitment (i.e., graduate quota) and they joined the post between 08.07.85 to 01.08.85 (Annexure A-2). In terms of the provisions of IREM, the respondents 4 to 13 were given seniority from the date of joining the

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working post. As the applicants are rankers, they were assigned seniority on promotion to the post of Senior Clerk from the date of passing of the suitability test even though the applicants were continuously working in the said post on ad-hoc basis between 1981 to 1985 (Annexure A-2). In the matter of fixing inter-se seniority of direct recruits on the one hand and those recruited from Grade-II Clerks by limited departmental Competitive exam (graduate quota) or promotees has to be determined in accordance with para 302 of IREM which reads as follows :-

(Vol. I- Revised Edn., 1989) ~~which reads 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 date he would have normally come to a working post after completion of the prescribed period of training."

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12. The Hon'ble Supreme Court in Anuradha's case, ~~and~~ in the light of the facts, made the following observations in paragraphs 13 to 15.

"13. A narration of these facts clearly indicates the following conclusions :

- (1) Vacancies in the posts of Senior Clerks existing prior to 01.10.1980 were 40%. Of them 20% were reserved for direct recruits by competitive examination through the recruitment agency viz., Railway Service Commission and 80% for promotees.
- (2) Vacancies in the posts of Senior Clerks arising on and from 01.10.1980 were 57.5%. Of them 20% would go to direct recruits and 80% to promotees.
- (3) Among the in-service graduates out of 80%, 13-1/3rd % posts are reserved for graduates Clerks (Grade II). They were eligible for competition as open candidates subject to relaxation of age qualification. The unfilled posts will be thrown open to open market candidates.
- (3) The balance vacancies would be available to in-service non-graduate candidates. Seniority-cum-suitability was the basis on which they were entitled to be considered for promotion.
- (4) For the vacancies which had arisen after 02.10.1980, 13-1/3rd % and 10% were reserved for graduate Clerks, (Grade II) subject to their availability. They would be recruited on the principle of seniority-cum-suitability. If no suitable in-service candidate is available the balance vacancies will be filled up along with 10% vacancies by candidates from open market. 80% vacancies will be available to non-graduates, seniority-cum-suitability being the principle for promotion of non-graduate Clerks (Grade II) also.

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- (5) As a one-time measure, recruitment through Railway Service Commission was dispensed with and limited recruitment by departmental competitive examination would be conducted for selection of the graduate Grade II Clerks.
- (6) All in-service graduate Clerks (Grade II) appointed to Grade I scale would get only pro forma promotion as Grade I Clerks from 01.10.1980 without any monetary benefits except for the purposes of pension. They are entitled to emoluments with effect from the date they actually took over the charge. It would be available for computation of pensionary benefits. The inter se seniority would be as per para 302 i.e., the date of seniority in the grade is the date of appointment to a post in that grade. The grant of higher pay, as a rule, does not confer seniority above the existing incumbents regularly appointed to the post. Among direct recruits and promotees, the date of joining the working post is the date for the direct recruits and date of regular promotion, after completion of the process to order promotion, is the date for the promotees. Inter se seniority is alternative, i.e., promotee first and direct recruit would be below him and the same would continue in the order of merit in the respective lists and the roaster maintained by the Railway Administration. In other words, promotee would be senior to direct recruit.

14. It is seen that such of the graduate Clerks though appointed as Grade II Clerks after 01.10.1980 by process of selection through open competitive examination or limited recruitment by departmental examination were upgraded under the aforesaid rules, they would not get the promotion with effect from the pro forma date of 01.10.1980 but only from the date of their actual appointment as Grade II Clerks, notionally as Grade I Clerks since their appointments are after 01.10.1980. 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.

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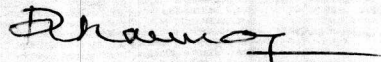
15. We have yet another source who claim parity with others. They are ad-hoc appointees de hors the rules. They are the appellants in CAs Nos. @ SLPs Nos. 2473-77 of 1995. Admittedly, they were appointed de hors the rules. Therefore, they can get seniority not from the date of their initial appointment but from the date on which they are actually appointed in accordance with the rules and their appointment and seniority would take effect from the date of selection after due completion of the process and they would be junior to in-service as well as direct recruit candidates. The inter se seniority should be reckoned accordingly."

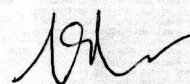
13. Mr. Desai referred to a number of judgements of the Supreme Court and other cases as referred to in this written submission. In the light of the authoritative pronouncement of the Supreme Court in Anuradha's case which is applicable to the facts of the present case as it pertains to the same cadre, we hold that the judgement of the Supreme Court in Anuradha's case would apply to the facts of the present case. The Supreme Court in the above judgement has observed that inter-se seniority will be governed by para-302 of the IREM and ad-hoc promotees would get seniority not from the date of the initial appointment but from the date on which they are actually selected and appointed in accordance with the rules. As the applicants appointment before 06.11.85 are ad-hoc and de hors the rules, they cannot get seniority from the date of their initial appointment. The applicant ^{can} ~~can~~ get seniority only from the date of qualifying in the suitability test

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and appointment to the post in accordance with the rules. In the light of the law laid down by the Supreme Court in the above case, the applicants would get seniority with effect from the date of qualifying in the suitability test. In view of the above, the O.A fails and accordingly dismissed. No costs.


(P.C. Kannan)
Member (J)


(V. Radhakrishnan)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

G.A./T.A./R.A./C.P./M.A. NO: 52/2001 in O.A. 251/89

Mr./Mrs. A B Joshi & A Mr./Mrs. M S Bired
(APPLICANT) (COUNSEL)

V/S

Mr./Mrs. Union of India Mr./Mrs. _____
(RESPONDENT) (COUNSEL)

DATE	OFFICE ORDER	ORDER
6.9.2000	None present cases are not yet remanded Time granted upto 10/9/2000 At 11.9.2000 Sd/- 2618 210 Feb	
7/10/2000	None present cases are not yet remanded In the interest of justice Time is granted again upto 31/10/2000 At 31/10/2000 Sd/- 11/10 DR (D) H. B. B.	
31/10/2000	None present cases are still not completed with In the interest of justice and in fact matter was filed on 17.8.2000 office is directed to place this matter before the Bench on 7.11.2000 for passing appropriate orders Sd/- 2111 H. B. B.	

DATE : OFFICE REPORT

O R D E R

7.11.2000

Mr.Trivedi for the applicant not present.
Adjourned to 6.12.2000.

AS
(A.S.Sanghavi)
Member (J)

vtc.

6.12.2000

Mr. Trivedi says that he will remove the office objection within a week. Adjourned to 15.12.2000.

AS
(A.S.Sanghavi)
Member (J)

VR
(V. Ramakrishnan)
Vice Chairman

sm

15.12.2000

Mr.Trivedi says that there is minor objection which he will be removing on Monday.

Adjourned to 17.1.2001.

PK
(P.C.Kannan)
Member (J)

VR
(V.Ramakrishnan)
Vice Chairman

vtc.

17.1.2001

objection no. 4
 (SCA no. 1)
 SCA not included
 in my order under
 objection

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 2311
 SCA no. 1
 04/25/99
 for 24/1

The objection on page-2 of MA
 pointed out was
 SCA
 about the number
 preferred in 04/25/99
 before the Hon'ble
 High Court, which has not
 yet been furnished
 and hence removal
 of objection exists.

ALL
 08/24/01

Mr. M.S Trivedi submits that he has
 removed all the Office objections, Registry to
 give regular number, & if all the objections
 are removed. Adjourned to 9.2.2001.

PM

(P.C.Kannan)
 Member (J)

mv

9.2.2001

The registry has brought out that there is
 objection is still to be removed. Mr. M.S.Trive
 to take necessary steps. Adjourned to 13.3.2001

(A.S.Sanghavi)
 Member (J)

(V.Ramakrishnan)
 Vice Chairman

sm

દિનાંક
Dateકચ્છલિય ટિપ્પણી
Office Reportઆદેશ
Order

13.3.2001

Mr. Trivedi says he will be giving the
page No. of M.A during the course of the day.
Adjourned to 28.3.2001.

(V.Ramakrishnan)
Vice Chairman

mv

28.3.2001

Mr. Trivedi is not present now.
Adjourned to 9.4.2001.

(V.Ramakrishnan)
Vice Chairman

9-4-2001

As the learned Member of
the Bench is not available,
the matter is adjourned
to 2-4-2001

sm

9-4-01
cot

24.4.2001

Mr. Trivedi has filed a leave note.
Adjourned as a last chance to 15.6.2001.

(V. Ramakrishnan)
Vice Chairman

sm

15.6.2001

Objections still not removed. place it
before Division Bench on 20.6.2001.

(V.Ramakrishnan)
Vice Chairman

vtc.

प्रारूप संख्या 4
FORM NO. 4

दिनांक
Date

कार्यालय टिप्पणी
Office Report

आदेश
Order

20.6.2001

Mr. Trivedi had not removed the office objections. Even though it was adjourned from time to time. On 24.4.2001 it was adjourned to 15.6.2001. Objections have not removed either on that date nor even today. Registration declined.

(A.S. Sanghvi)
Member (J)

(V. Ramakrishnan)
Vice Chairman

sm

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પ્રારૂપ સંખ્યા 4 R.A.St.41/00 with MA St.54
FORM NO. 4 in O.A. 251/89

નાંક Date	કાર્યાલય ટિપ્પણી Office Report	આદેશ Order
20.6.2001		<p>Mr.Trivedi submits that he has removed the office objections. The registry to verify, if objections had been removed by this morning, to give a regular number. Otherwise it was adjourned as a last chance to today, registration will be declined.</p> <p>(A.S. Sanghavi) Member (J)</p> <p>(V.Ramakrishnan) Vice Chairmen</p> <p>vtc.</p>

Received
this matter
today. J
Kos
02/7/01.

z^d

Date of Decision : 12/12/2001

Mr. M. S. Trivedi : Advocate for the Applicant (s)

Union of India & Ors. : Respondent (s)

_____ : Advocate for the Respondent(s)

THE HON'BLE MR. A. S. SANGHVI : MEMBER [J]

THE HON'BLE MR. G. C. SRIVASTAVA : MEMBER [A]

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
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 ?

- 1) Shri. Ajit B. Joshi
- 2) Shri. A. R. Mehta
5/25 - Prabhunagar Society,
Asarva, Ahmedabad - 16.

- Applicants -

Advocate : Mr. M. S. Trivedi

Versus

1. Union of India, through,
The Secretary,
Ministry of Railway,
Rail Bhavan,
New Delhi.
2. The General Manager,
W. Rly., Church gate,
Mumbai.
3. The Divisional Rly., Manager,
W. Rly., Pratapnagar
Baroda - 390 004.

- Respondents -

(Decision by Circulation)

ORDER
R.A 52 of 2001
In
O.A 251 of 1989

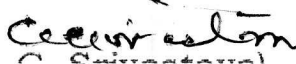
Date : 12/12/2001


Per Hon'ble Shri. A. S. Sanghvi : Member (J).

This review application is preferred by the applicant of O.A No. 251 of 1989 praying for the review of the orders passed therein. The O.A 251 of 89 is decided by the Tribunal on dated 14.5.99 holding that the applicant would get seniority with effect from the date of qualifying in the suitability test. This review

application is moved by the applicant on dated 17th August 2000 with no explanation as to how the same is within limitation. Furthermore, the office objections were removed by the learned advocate of the applicant only on 20th June 2001 and as such the R.A is registered and given the regular number on 20th June 2001. It is therefore quite obvious that the R.A is not filed within the prescribed period of 30 days of the passing of the order in O.A 251 of 89 and as such it is hopelessly time barred. The applicant along with this R.A has moved the M.A for condoning the delay but the M.A also is not given any regular number, as the office objections have not been removed by the applicant. As such there is no delay condone application on record.

2. It appears that after the O.A was decided the applicant had preferred special C.A before the Hon'ble High Court but the same had also been withdrawn by the applicant. The filing of a special C.A. before the Hon'ble High Court however does not extend the period of limitation for filing review before this Tribunal. Hence, we hold that R.A is hopelessly time barred and cannot be entertained. The same is therefore rejected with no order as to costs.


(G. C. Srivastava)
Member (A)


(A. S. Sanghvi)
Member (J)