

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH



O.A.NO. /57/91
~~T.A.NO.~~

DATE OF DECISION th 24 April 2000

S.P.Trangri and another Petitioner

Mr. G.R.Malhotra Advocate for the Petitioner [s]
Versus

Union of India & another Respondent

Mr. N.S.Shevde Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. A.S.Sanghavi, 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 ?

TH

1. S.P.Trangri
49/1, Samrat Nagar
Nr. Isanpur Char Rasta
Ahmedabad- 380 052.

2. S.K.Sharma
48/1, Samrat Nagar
Nr. Isanpur Char Rasta
Ahmedabad- 380 052.

Applicants

Advocate: Mr. G.K.Malhotra

Versus

1. Union of India
through the General Manager
Western Railway
Churchgate, Bombay.

2. Chief Engineer
Survey & Construction
Western Railway
Churchgate, Bombay.

Re

Respondents

Advocate: Mr. N.S.Shevde-

JUDGEMENT

IN

O.A./57/91

Dated th24 April 2000

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:

The applicants serving in the Railway administration in the cadre of Inspector of Works are aggrieved by the speaking order dated 8.6.1990 by the Chief Engineer, Survey & Construction in Western Railway (copy at Annexure A-6) which has rejected their claim for upgradation of their seniority in the of IOW Cadre. They have approached the Tribunal seeking that their seniority at the level of IOW Gr.II

should be fixed at Sr.No.40-A and 40-B and that they should be shown above one Shri L.M.Khanna. They also want that they should be given the special grade in the pay scale of Rs.2000-3800 as given to some persons whom they claim to be their juniors.

2. This is not the first round of litigation. The applicants had appeared for recruitment for the level of Assistant Inspector of Works conducted by the Staff Selection Commission. The applicant No.1 was at Sr.No.29 and applicant No.2 was at Sr.No. 69 in the merit list for the selection. The Staff Selection Commission had prepared the merit list in 1958. However the applicants were given offer of appointment only in February 1962. One Ved Prakash who was shown at Sr.No.96 in the merit list was however appointed on 6.10.61 in the open line and as he joined earlier he was shown as senior to applicants. The applicant had submitted representation to the authorities on 1.8.57 and this was replied to by the Railway admn. by their letter dated 4.10.72 and not satisfied with the reply the applicants had approached the High Court of Gujarat in 1979. With the constitution of this Tribunal the Gujarat High Court transferred their cases as TA/26 of 1986 and TA/27/1986 to this Tribunal.

The Tribunal had disposed of the Transfer Applications by its order dated 2.11.1987. In that order, it observed that the respondents should determine the

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seniority of the applicants vis-a-vis others on the basis of the order of merit recommended by the Staff Selection Commission. It also stated that the rules governing the determination of the seniority like the quota for direct recruitment vis-a-vis ^{rankings} ~~ranking~~ should be kept in view and that the Tribunal only upheld that their cases should be considered for appropriate ranks in the order of ~~maxix~~ seniority without ignoring their claim to an offer of appointment from a date earlier than that of their juniors. The Railway admn. implemented the direction of the Tribunal and decided by their letter dated 31.10.1998 (Annexure A-2) that Shri Sharma would be placed at Sr.No.54-A i.e. between Shri D.B.Solanki whose name was at Sr.No.54 and Shri Ved Prakash at Sr.No.55 in the seniority list of IOW Grade-III. In view of this revised position, Shri Sharma's name has been interpolated at Sr.No. 140 in the combined seniority list of IOW Grade-III. Again Shri Sharma's position in the seniority list of IOW Grade-II was fixed at Sr.No.69-A below Shri M.S.Vyas at Sr.No.69 and above Shri Ved Prakash at Sr.No.70. Similarly, in respect of Shri S.P. Trangri Applicant No.1 his seniority number in the combined seniority of IOW Grade-III was fixed at Sr.No. ~~12~~ 119-A and his position in the seniority list of combined seniority list of IOW Grade-II was

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fixed at 61-A. In other words both the applicants were shown above Shri Ved Prakash who was admittedly their junior. The applicant/s were not still satisfied by this order and approached the Tribunal in OA/736 of 1998 seeking that in the combined seniority list of IOW Grade-III they should be placed at Sr.No.95-A and 95-B instead of at 119-A and 140 and in the combined list of IOW Grade-II they should be shown at Sr.No.40-A and 40-B. The Tribunal disposed of this O.A. 736/98 by its order dated 12.1.99 directing that the O.A. may be treated as representation and the respondents should give a speaking order regarding their decision according to the seniority lists and that such a speaking order should be passed by the Chief Engineer Survey ~~in~~ Construction Department. Pursuant to such a direction the Chief Engineer Survey passed the speaking order dated 8.6.1990 where he has not accepted the claim for further upgradation of the seniority position of the applicants in the IOW Cadre. He has given detailed reasons and summarised the same as follows:-

" In the circumstances stated above, the seniority position of these applicants as fixed by Chief Engineer (E) CCG vide their letter dt.31.10.88 is in order and I find no justification to change their seniority mainly due to the following reasons:-

1. The records of 1958 are not traceable to ascertain the reasons for not offering them appointment till February 1962;



2. There might not have been any vacancy in the Divisions to which these applicants were originally allotted after their selection as Assistant Inspector of Works, to give them appointment prior to February 1962.
3. There are no juniors belonging to the applicants' Railway Service Commission's batch working in the same Division shown as senior in the seniority list.
4. It is not feasible to disturb the seniority of the established cadre after a gap of 32 years which would cause numerous disputes and grievances to others who belong to the same seniority units".

This speaking order is challenged in the present O.A. by the applicants.

3. We have heard Mr. G.R.Malhotra for the applicants and Mr. Shevde for the respondents.
4. Mr. Malhotra says that the Tribunal while disposing of TA-26 of 86 and TA 27 of 86 had upheld the contention that the persons who had occupied lower position in the merit list cannot be given a higher seniority position than the applicants. He also says that as per para 306 and 303 of the I.R.F.M. candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting. Para 303 says that candidates who were sent for initial training ^{to} the Training School will rank their seniority in the order of merit obtained at Examination held at the end of the training period before being posted against working posts. He submits that one

one Shri L.N.Khanna who according to him is junior has been given a higher position in the seniority list. What is more, he even became an Assistant Engineer on ad hoc basis whereas the applicant retired as IOW Grade-I. He submits that the applicant should be given notional benefits at least for their pensionary benefits on par with Khanna.

5. Mr. Shevde for the Railways administration resists the O.A. He contends that pursuant to the direction of the Tribunal seniority of the applicant's IOW Cadre has been upgraded. The applicants were still not satisfied and wanted a higher seniority. The Tribunal had directed to treat the O.A. as a representation and it should be disposed of by a speaking order. Accordingly the Chief Engineer had given a detailed speaking order where he had given cogent reasons as to why the claim for further upgradation could not be agreed to. Mr. Shevde submits that in Grade-III of the IOW cadre, seniority is maintained divisionwise. He submits that the applicant No.1 was allotted to Jaipur Division and applicant No.2 Shri Sharma was initially holding the post of Asstt. Inspector of Works in Kota Division and subsequently, ^{his lieu} has been changed to Ajmer Division. No person who got a lower position in the merit list as compared to the applicants and working in the same division has been given higher seniority. Mr.

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Shevde ~~xxxx~~ also says that the practice followed at that time was to take into account the preference given by the candidates while allotting them to different divisions and at the relevant time there was no practice to offer appointment to the selected candidates on occurrence of vacancies in different divisions of the Western Railway, according to the merit order of the selected candidates.

As regards Shri Khanna who is supposed to be junior, Mr. Shevde says that Khanna was appointed on regular basis as IOW Grade-II in Ratlam Division from 24.8.79 whereas the applicant No.1 of Jaipur Division was appointed to Grade- II on 27.4.85 and Applicant No.2 from Ajmer Division was appointed also in 1985 as IOW Grade-II. As such Khanna cannot be regarded as junior to the applicants when he was allocated to a different Division. For these reasons, he says that O.A. is devoid of merit and it should be dismissed.

6. We have carefully considered the rival contentions. Mr. Shevde has referred to the practice followed at that time in allowing the candidates to the various divisions and offer them appointment only when vacancies arise in the concerned divisions. This resulted in a situation where the applicants who were put in the merit list in 1958 but appointments were given to them only from February 1962 whereas

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Ved Prakash who secured a lower rank got appointment in October 1961. Pursuant to the directions of the Tribunal in TA 26 and 27 of 1986 we find that respondents have ensured that the applicants position was restored above that of Ved Prakash as applicant No.2 was at Sr.No.54-A whereas Mr. Ved Prakash was shown at Sr.No.55. The applicant No.1 got a still higher position much above Ved Prakash. The present grievance of ^{the} applicant, essentially relates to Khanna. ~~Mr. Shevde has contended that Khanna.~~ Mr. Shevde has contended that Khanna was appointed through a different scheme namely from the Apprenticeship quota and he was also allotted to a different division namely Ratlam Division. In the absence of records it is not possible to know the exact position of vacancies in the Apprenticeship quota and against the general quota. It is possible that the vacancy existed against the quota for apprenticeship and not for other direct recruits.

Mr. Malhotra has also relied on the provisions of para 306 of the IREM. Para 306 reads as follows:-

"306. Candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by paragraph 305 above."

Para 303 also refers to candidates who are sent for initial training to Training Schools. It

also states that candidates will rank in seniority in the relative grade in the order of merit in the examination held at the end of the training period before being posted against working post. It also says that those who joined subsequently for any reasons whatsoever and those who passed the examination in subsequent chance will rank below the candidates who had passed the examination earlier.

It is not in dispute that in respect of the IOW Cadre the seniority is maintained division-wise and Khanna was posted to Ratlam Division and the applicant No.1 to Jaipur Division and applicant No.2 initially to Kota and subsequently to Ajmer Division. Para 306 will apply to the persons belonging to the same seniority & unit. It is not the case here. We also are not aware as to whether Khanna went for training earlier than the applicant. Details of the training and merit position of Khanna and the year in which Khanna and the applicants were sent for training are not brought out. We take note of the clear averment of the Railways that no person who had secured lower position in the merit order has been shown as senior to the applicants in the seniority list in the concerned division.

There is also merit in the contention of the Railways that it is not possible to disturb the seniority of the established cadres after a

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gap of 32 years which would cause enormous disturbance and grievances to others who belong to the same seniority unit. The stand of the Railways that the records of 1958 are not traceable in 1990 cannot be regarded as unreasonable. What the applicants want to do is to unsettle the seniority list from 1962 onwards and they had approached the High Court only in 1979 and their petitions were transferred to this Tribunal in 1986. It is true that when disposing of T.A./26 and 27 of 1986 the Tribunal had made certain observations in this regard but all the same, it is well settled by the law laid down by the Supreme Court that seniority matters should not be disturbed or unsettled after a lapse of many years as it will lead to serious administrative dislocation.

As early as in 1970 in the case of P.S. Sadasive Swamy AIR 1974 S.C.2271 the Supreme Court held that seniority matters should not be agitated after lapse of many years. In the case of Govt. of A.P. vs. M.A. Kareem AIR 1991 (2) SL the Supreme Court observed that courts and Tribals should be slow in disturbing the settled affairs of a service for such a long period. In the case of K.R. Mudgal and others vs. R.P. Singh and others AIR 1986- SC 2086 the Hon'ble Supreme Court has made weighty observations by its constituent Bench in Malcom Lawrence Cécil D'souza

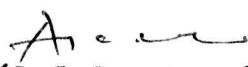
India (1975) Supply S.L.R. 409 that raking up the matters like seniority after such a long time is likely to result in administrative inconvenience and difficulties and it would be in the interest of the smoothness and efficiency of service that such matters should be given a quietus after a lapse of some time.


7. In the light of the foregoing discussion we hold that it is not a fit case for the Tribunal to interfere with the stand of the authorities as brought out by the speaking order dated 8.6.90 from the Chief Engineer Survey & Construction as at Annexure A-6. The O.A. fails and is dismissed with no orders as to costs.

8. Before we part with the records, we would like to state that the problem in this case has arisen essentially because the Railways did not follow the policy of offering appointments strictly on the basis of the merit order as recommended by the Staff Selection Commission, whenever a vacancy arose. They have contended that the practice followed at that time was to take into account the preference for divisions given by the candidates. The correct course would have been to offer the earliest vacancies to the person at the top of the merit list and only if he refuses and insists on a particular division, it should be offered to the next candidate in the merit list and the more meritorious candidate would then have to

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wait for a vacancy to arise in the preferred division. We do not know the practice followed by the Railways in this regard at present. We expect that appropriate steps will be taken to ensure that the anomaly where a candidate holding a higher rank in the merit position for no fault on his part gets his appointment later than the candidate who has secured a lower rank in the merit order is no longer allowed to persist. Send a copy of this order to the General Manager W.Rly.


(A. S. Sanghavi)
Member (J)


(V. Ramakrishnan)
Vice Chairman

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