

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 235/92
T.A.NO.

DATE OF DECISION 6-3-98

Mohmad Javed Iqbal Petitioner

Mr. R.R. Tripathi Advocate for the Petitioner [s]

Versus

Union of India and Others Respondent

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

CORAM

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

The 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 ?

Shri Mohmad Javed Iqbal,
Junction Plot,
9th Street,
Vivekanand Bhavan,
RAJKOT.

... Applicant

(Advocate: Mr. R.R. Tripathi)

VERSUS

1. Union of India,
Notice to be served through
the General Manager,
Western Railway,
Churchgate, BOMBAY.
2. Divisional Railway Manager,
Western Railway,
Rajkot Division,
RAJKOT.
3. Sr. Divisional Operating -
Superintendent,
Western Railway,
Rajkot Division,
RAJKOT.

... Respondents

(Advocate: Mr. N.S. Shevde)

JUDGMENT

O.A./235/92

Dated: 6-3-98

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

The grievance of the applicant, a railway employee, relates to the action of the Railway Administration in giving him the post of Assistant Yard Master (AYM) instead of a regular posting as Assistant Train Controller which carries a higher scale.

Contd...3/-

2. The applicant was selected as a Traffic Apprentice and was sent in March, 1988 to the Training School at Udaipur. According to him, after the successful completion of the training in Udaipur, his position in the merit list is 6A. As per the scheme of the Railways, the Traffic Apprentices who successfully complete the training are absorbed in four different branches of the Traffic Department namely:

- (1) Asstt. Train Controller, in the pay scale of Rs.1400-2600/-. (ATNL)
- (2) Asstt. Yard Master (AYM), in the pay scale of Rs.1400-2300/-.
- (3) Asstt. Station Master (ASM) in the pay scale of Rs.1400-2300/-.
- (4) Transportation Inspector (TI), in the pay scale of Rs.1400-2300/-.

After the training, the applicant was posted by the Rajkot Division by the order dated 21.3.90 as at Annexure A-2 as Assistant Yard Master in the scale of Rs.1400-2300/-. This order deals with 9 traffic apprentices who had successfully completed the training and allotted to Rajkot Division. Of these, 9, three have been posted as Assistant Train Controller in the scale of Rs.1400-2600/- while the others were posted as Assistant Station Master, Assistant Yard Master etc. in the lower scale of Rs.1400-2300/-. The 3 posted as Assistant Train Controller by this order are Ajay N. Bavishi, Joejo Joseph and Mukesh Gaur. The applicant does not dispute that both Mukesh Gaur and Joejo Joseph had secured a better position in the merit list than himself.

He however refers to the case of Ajay N. Bavishi, who according to him, had secured the 7th rank which is below that of the applicant who has secured the rank of 6A and says that the applicant should have been posted as Assistant Train Controller in the higher scale rather than Bavishi. He has however not impleaded Bavishi as a respondent. It is seen from the rejoinder that an order was issued on 21.02.94 (Annexure A-6) by which the applicant was given the grade of Rs.1600-2660/- and his pay was fixed at Rs.1600/- on the date of appointment after training, but this order of 21.02.94 was cancelled by another letter dated 13.1.97 (Annexure A-7) according to which the applicant was brought back to the scale of Rs.1400-2300/-. The applicant submits that the Railways cannot follow an arbitrary policy while allotting persons to the higher scale and they should have been gone on the basis of merit while preferring persons to be posted as ATNL in the scale of Rs.1400-2600/-.

3. The respondents resist the application on the ground that posting as ATNL was done keeping in view their aptitude and suitability and it was decided to post the applicant to another stream and not as ATNL. The Railways state that the order of merit in the test held in the training school is not a criterion for posting of persons as ATNL.

4. We have heard Mr. R.R. Tripathi for the applicant and Mr. Shevde, the learned standing counsel for the Railway

Administration.

5. Mr. Tripathi submits that Railways should adopt reasonable criteria while allocating persons to different wings when one of the wings i.e. ATNL carries a higher scale and it is expected that those who have secured a higher position in the merit list are posted to this wing. He further submits that the Railways cannot brush aside the claim of persons on the ground that some branch officers make the posting based on aptitude and suitability. The learned counsel refers to the decision of the Jabalpur Bench of the Tribunal in OA/112/93 (Kuldeep Dwivedi vs. Union of India and Others) disposed of on 17.11.94. A copy of this is enclosed as Annexure A-5 to the present OA. Mr. Tripathi submits that the issue, in fact, is covered by the decision of the Ahmedabad Bench in OA/164/92 disposed of on 23.8.96. A copy of this judgement is also enclosed as Annexure A-5. In this case, Shri Shushil Kumar Shukla who had secured third rank has approached the Tribunal as he was not given the post of ATNL. The Tribunal allowed the OA and held that the Railways cannot post persons who obtain lower rank to a higher scale ignoring the claims of more meritorious candidates. There was a further direction in the OA to consider the applicant therein for the post of ATNL in the available vacancies or in the next vacancy within a period of three months. Mr. Tripathi says that the present applicant is entitled to the ^{same} relief.

CR

Contd...6/-

6. Mr. Shevde for the respondents states that when there is a common test, the Railways can post persons to the various wings as per the aptitude and they cannot claim to be sent to any particular wing as a matter of right. He seeks to distinguish the decision of the Jabalpur Bench of the Tribunal from the present case as the issue in the Jabalpur case was that the options given by the candidates were not kept in view by the Railway Administration. He further submits that the applicant may give his option for ATNL and as and when vacancy arises in this wing, he may be given such a posting on the occurrence of a vacancy. Mr. Shevde also is not sure whether the merit order as shown in the letter dated 4.8.89 as at Annexure A-1 is final. He states that it is possible that there might be a further merit list.

7. We have carefully considered the submissions of both sides.

8. The Railway Administration, no doubt, has the discretion to allot people to different wings and no person can claim that he should be given the post of his choice. However this discretion cannot be exercised arbitrarily when the post in one of the wings is clearly higher than those in the other wings as it carries a higher pay scale. The Railways are expected to follow transparent norms and criteria while allotting persons to the posts in the ATNL^{wing} which carries a higher scale. The most rational criterion would be the order of merit subject to reserva-

tions for SC, ST etc. The Railways have sought to deviate from such criteria by stating that the persons are allotted to the posts in the higher scale depending on their aptitude. The main reason given by the Railways in not allotting the applicant to the wing of ATNL is that such allotment is done after conducting an aptitude test by some officers. The Railways have not brought out anywhere as to the relevant rules and instructions which regulate conducting of such aptitude tests. In particular, we are not informed as to the composition of the Board which conducts this test, the methodology followed, weightage, if any, assigned to such tests.

9. In the absence of any rules, instructions or guidelines shown to us regarding the aptitude test, we hold that this cannot stand in the way of the applicant being given the higher scale. It is also relevant to mention that even after the issue of the impugned order dated 21.3.90 (Annexure A-2) the applicant was asked to work as ATNL up to February, 1991 and thereafter from May, 1991 onwards for quite some period. The Railways therefore ^{cannot} take the stand that he did not have the aptitude to work as ATNL. We find from the order dated 21.8.90 (Annexure A-2) that the applicant's merit number is shown as 7 of 6.8.88. As the training was held in 1988, this merit order is as per their performance in the written test. The merit position of different candidates after the completion of the training is indicated in the memo dated 4.8.89 (Annexure A-1). This list consists of 12 persons of whom 9 have been allotted to

Rajkot Division. We find from this that among the persons allotted to Rajkot Division, the merit order is as follows:

SN.	Names, S/Shri	Scale	Posted		Merit as
			as	at	per Memo
					dt. 4.8.89
(1)	Mukesh Gaur	1400-2600	ATNL	MSH	2
(2)	Shushilkumar Shukla	1400-2300	AYM	RJT	3
(3)	Joejo Joseph	1400-2600	ATNL	RJT	4
(4)	Rajendrakumar Purohit	1400-2300	AYM	HXP	5
(5)	Mohmed J Shaikh	1400-2300	AYM	HXP	6A
(6)	Ajay N Bhavishi	1400-2600	ATNL	RJT	7
(7)	Subhaschandra Sharma	1400-2300	ASM	DNW	13
(8)	Tapankumar Bhagat (ST)	1400-2300	ASM	BHTA	18
(9)	Srikrishnan S	1400-2300	ASM	MEKD	26

10. The inter se merit of the various candidates seems to be as above. Mr. Shevde is not sure whether Annexure A, dated 4.8.89 reflects the final merit list. The respondents however have not taken this plea in their reply statement. We find that when Shushil Kumar Shukla had approached the Tribunal in OA/164/92, the Tribunal had stated in its order dated 23.8.1996 that he had obtained 3rd rank in the merit list. A review petition was filed (Review Application 5 of 97) seeking review of the order of the Tribunal which was dismissed on 12.8.97. We have gone through the Review Application and find that the Railways have taken the stand in the R/A that the posting is not to be given on the basis of merits at the Training School,

Udaipur but the competent authority can decide the posting of the candidates in the above categories. It further contended that the posting of the applicant was given after due consideration of his aptitude and that all apprentices cannot be absorbed in ATNL category alone. In the Review Application, the Railways did not deny the averment of the applicant and accepted by the Tribunal that he had secured the third rank as per the memo dated 4.8.89. We also find from the order of the Railways dated 13.1.97 (enclosed as Annexure A-7 to the Rejoinder of the applicant) that so far as Shushil Kumar Shukla is concerned, he was absorbed in the category of Deputy TNL in the light of the Tribunal's judgment in OA/164/92. This would show that the merit list is, in fact, as shown in the memo ~~as~~ at Annexure A-1. We therefore hold that the order of merit is as indicated in the memo dated 4.8.89 of Annexure A-1.

11. In the said RA, there was also a mention that the Railway Board had granted common pay scale of Rs.1600-2600/- to all categories relating to traffic apprentices with retrospective effect from 24.3.88. This position seems to have undergone a change as is seen from the letter dated 13.1.97 of Divisional Office, Rajkot as at Annexure A-7 which clearly observed that so far as Mohd. Javed Sheikh, the present applicant, is concerned the grade of Rs.1400-2300/- will hold good in his case.

12. Of the three persons who were initially allotted to the scale of Rs.1400-2600/-, Mukesh Gaur had secured a

higher position in the order of merit than the applicant as is seen from Annexure A-1. The rank of Shri R.K. Purohit is shown as 5 which is higher than that of the applicant. Even in the final list, Purohit has secured a higher rank than the applicant. He was posted as Assistant Yard Master in the scale of Rs.1400-2300/- by the order dated 21.3.90 as at Annexure A-2. We however find from the memo dated 21.2.94 as at Annexure A-6 that he was transferred to JP Division. So far as Shushil Kumar Shukla is concerned, who also has a better rank, he has since been given the scale of Rs.1400-2600/- based on the directions of the Tribunal. It would seem from this that there is no person in Rajkot Division who has got a better rank and who has not been given the post of ATNL.

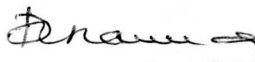
13. The respondents have taken a plea that the applicant should have sought redressal from the railway administration itself before approaching the Tribunal. We however find that the applicant had requested for posting as ATNL and this was turned down by the Department by the DRM, Rajkot by the letter dated 21.3.91 as at Annexure R-1 on the ground that change of category is not permissible. As such, this contention of the respondents is without merit. We may also refer in this connection to the observations of the Jabalpur Bench that the issue is not a question of change of cadre but one of wrong allotment of cadre.

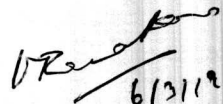
14. We also note that the Railways had carried out the directions of the Tribunal in the case of Shushil Kumar Shukla as is seen from their order dated 13.1.97 as at

Annexure A-7.

15. In the light of the position as brought out above, we quash the letter dated 21.3.91 (Annexure A-5) and direct the Railway Administration to allot the applicant on a regular basis to the post of Assistant Train Controller in the available vacancy or in the next vacancy which arises within a period of three months from the date of receipt of a copy of this order. For the purpose of seniority, the applicant shall be deemed to have been allotted to the cadre of ATNL from the date due to him on the basis of his position in the merit list. The Railways shall circulate a draft seniority list including the name of the applicant and dispose of any objections received to the list but in accordance with the law.

16. With the above directions, the OA is finally disposed of. No costs.


(P.C. Kannan)
Member (J)


6/3/1998
(V. Ramakrishnan)
Vice Chairman

hki