

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. / 347/1992
T.A.NO.

DATE OF DECISION 31st March 1999

Shri K.B. Pandya Petitioner

Mr. C.S. Upadhyay Advocate for the Petitioner [s]
Versus

Union of India & Ors. Respondent

Mr. R.M. Vin Advocate for the Respondent [s]

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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, It needs to be circulated to other Benches of the Tribunal ?

NO

Shri K.B. Pandya,
Working as a Goods Guard
Under Bhavnagar Para of
Western Railway, residing
At Railway Sinha Colony,
Quarter No.451-B, Gurukrupa,
Bhavnagar.

: Applicant

(Advocate : Mr. C.S. Upadhyay)

Versus

1. The Union of India, through
the General Manager,
Western Railway, Churchgate,
Mumbai.
2. The Divisional Railway Manager (E)
Western Railway,
Bhavnagar Para, Bhavnagar.

: Respondents

(Advocate : Mr.R.M. Vin)

JUDGEMENT
O.A 347 of 1992

Date : 31/3/99

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

This is the second round of litigation filed by the applicant for re-fixing the seniority in the grade of Goods Guard (in the scale of 1200-2040) in accordance with the letter dated 23.10.91(annexure A-6) of the respondents. The applicant prayed for certain other reliefs like his selection to the post of Passenger Guard in the scale of 1350-2200. However, at the time of admission, the applicant restricted his relief to the question of fixation of seniority in the post of Goods Guard in the scale of 1200-2040. The present O.A was admitted only with regard to this relief.

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2. The case of the applicant is that he earlier filed O.A 488 of 88 challenging the selection to the post of Goods Guard and the letter dated 14.04.88 declaring the ^{results in the} written suitability test mainly on the ground that the applicant being a reserved candidate, ought to have been given suitable pre-selection / pre-promotion coaching by the authorities. As the authorities did not give such training before holding the test and finalised the panel in which the applicant was declared failed, the applicant challenged the selection. During the course of the pendency of the O.A, the respondents sent the applicant for training and thereafter the applicant was declared successful in the written test for promotion to the post of Goods Guard and accordingly the applicant's name was interpolated in the result notified on 14.04.88 at sr. no.27 i.e after the name of Sri Pritam Singh vide order dated 07.02.90 (annexure A-3). In the light of the order passed by the respondents, interpolating the name of the applicant in the result notified on 14.04.88, the applicant with-drew the said O.A as the respondents redressed the grievance of the applicant. However, vide order dated 23.10.91, the respondents published a seniority list (annexure A-6) in which the applicant's name was shown below the direct recruits who were appointed after Oct'88 at sr. no. 32 (annexure A-6). As the seniority list published on 23.10.91 was contrary to the order dated 07.02.90 (annexure A-3) of the respondents, the applicant has challenged the same in the present O.A.

3. The respondents in their reply, have stated that as the applicant could not pass the written test in 1988, he cannot be given seniority with the persons who passed in the test

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in the year 1988.. The contention of the respondents is that the applicant qualified in the written test held on 29.01.90 and therefore he was placed below the direct recruits (sr. no. 25 to 31) at sr. no.32 (annexure A-6). It was contended that as per quota and the rules, direct recruits ranks senior to the applicant.

4. Mr. Upadhyay, counsel for the applicant and Mr. R.M. Vin, counsel for the respondents filed written arguments and submitted that the matter may be decided in the light of the submissions and the pleadings. In the written submission, the applicant reiterated his main contention in of the O.A and stated that the applicant is entitled to claim seniority below the promotees in the year 1988 on the basis of the letter of the respondents dated 07.02.90 (annexure A-3). As the respondents interpolated his name in the result notified on 14.04.88 at sr. no.27, it was contended that the applicant ought to have been given seniority in a accordance with the selection made in the year 1988. Having conceded the claim of the applicant, it was contended that the respondents should not be allowed to go back on the same. In the written submission of the respondents, the respondents contended that the applicant had not impleaded the affected persons who according to the applicant have been wrongly ranked over him and therefore the O.A is liable to be rejected. It was further contended on merits that the applicant qualified in the written test only subsequent to the posting of Sri Ramsingh T at sr. no. 14 and D.V. Parmar at sr. no. 17 and the direct recruits and therefore, the action of the respondents is in order.

5. We have carefully considered the written submissions of both sides and the pleadings. The main question for consideration is whether the applicant is entitled to

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claim seniority on the basis of selection held in 1988. The case of the applicant is that the applicant belonged to S-C community and as per the rules, the employees belonging to Schedule Caste and Schedule Tribe are required to be given suitable pre-selection / pre-promotion coaching before the conduct of the examination in 1988. The applicant challenged the selection in O.A 488 of 88. During the pendency of the O.A, the respondents sent the applicant for pre-selection training and thereafter conducted examination in which he was declared successful. The respondents thereafter issued an order dated 07.02.90 and interpolated his name in the result notified on 14.04.88 at sr. no. 27. The para-3 of the order dated 07.02.90 reads as follows :-

"3. Shri K.B. Pandya (SC) Asst-Guard BVC after undergoing the said Training at UD appeared in the written test for promotion to the post of Goods Guard 1200-2040 (RP) and he is found suitable for the above post in the written test held on 29.01.90. Accordingly, his name is interpolated in the result notified on 14.04.88 at sr. no. 27."

In accordance with this letter, the applicant was also subsequently promoted as Goods Guard. However, the respondents without following the principles of natural justice, unilaterally revised the seniority of the applicant in the year 1991 and shown his seniority at sl. No. 32 vide letter dated 23.10.91 (annexure A-6). The action of the respondents in the facts and circumstances, is arbitrary and not in accordance with the rules and instructions. The seniority list published under Annexure A-6 is contrary to the order dated 07.02.90 (annexure A-3) of the respondents.

6. With regard to the contention that the applicant had not impleaded the affected

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parties, we may state that the main relief claimed by the applicant is only against the Union of India for giving effect to the order dated 07.02.90 (Annexure A-3) of the respondents and consequential order. In the case of A. Janardhan V/s. U.O.I (1983 SCC (L & S) 467) the Hon'ble Supreme Court had held that as no relief has been claimed against the Seniors of the appellant, failure to implead them would not disentitle the appellant to claim relief. At para-36 of the said judgement, the apex court observed as follows :-

"36. It was contended that those members who have scored a march over the appellant in 1974 seniority list having not been impleaded as respondents, no relief can be given to the appellant. In the writ petition filed in the High Court, there were in all 418 respondents. Amongst them, first two were Union of India and Engineer-in-Chief, Army Headquarters, and the rest Presumably must be those shown senior to the appellant. By an order made by the High Court, the names of respondents 3 to 418 were deleted since notices could not be served on them on account of the difficulty in ascertaining their present addresses on their transfers subsequent to the filing of these petitions. However, it clearly appears that some direct recruits led by Mr. Chitkara appeared through counsel Shri Murlidhar Rao and had made the submissions on behalf of the direct recruits. Further an application was made to this court by nine direct recruits led by Shri T. Sudhakar for being impleaded as parties, which application was granted and Mr. P.R.Mridul, learned senior counsel appeared for them. Therefore, the case of direct recruits has not gone unrepresented and the contention can be negated on this short ground. However, there is a more cogent reason why we would not countenance this contention. In this case, appellant does not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union

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Government restraining it from up setting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents. We may in this connection refer to G.M, South Central Railway, Secundrabad V. A.V.R. Siddhanti. Repelling a contention on behalf of the appellant that the writ petitioners did not implead about 120 employees who were likely to be effected by the decision in the case, this court observed that {SCC para 15, p. 341 : SCC (L & S) p. 296} the respondents (Original petitioners) are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of Government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and against any individual and therefore, even if technically the direct recruits were not before the court, the petition is not likely to fail on that ground. The contention of the respondents for this additional reason must also be negatived."

In the light of the above, we reject this contention.

7. In the facts and circumstances, we allow this O.A and quash the seniority list published under letter dated 23.10.91 (annexure A-6), so far as the applicant is concerned and direct the respondents to re-fix the seniority of the applicant in pursuance to their order dated 07.02.90 (annexure A-3) and instructions of the Railway Board and grant seniority as if he had qualified in the written test in 1988 and his name interpolated in the result notified on 14.04.88 at sr. no.27. The applicant is also entitled to all

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consequential benefits on the basis of the revised seniority. We further direct that this exercise should be completed within three months from the date of receipt of a copy of this order. O.A is disposed of accordingly. No costs.

P. C. Kannan



(P.C. KANNAN)
MEMBER (J)

V. Ramakrishnan
31/3/1985

(V. Ramakrishnan)
Vice Chairman

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DATE	OFFICE REPORT	ORDER
<p>19.8.99</p>	<p>Office objection in MA St. 492/99 not removed. <u>Answer</u> 20.8.99</p>	<p>Mr. Vin prays for time to remove office objections in MA St.492/99.</p> <p>Adjourned to 22.9.1999.</p> <p>(A.S.Sanghavi) Member (J)</p> <p>(V.Ramakrishnan) Vice Chairman</p> <p>etc.</p>

तारीख DATE	कार्यालय टिप्पणी OFFICE REPORT	आदेश ORDER
22.9.99		<p>Seen MA St.492/99. A copy has been given to Mr. Upadhyaya. Other objection waived. Registry to give a regular number.</p> <p>Heard Mr. Vin on MA 500/99 read with MA 564/99 for extension of time. Mr.Upadhyaya have no objection to grant further time. MA 500/99 allowed and the time extended upto 4.11.99.</p> <p>500(99/564)B MA's disposed of as above.</p> <p> (P.C.Kannan) Member (J)</p> <p> (V.Ramakrishnan) Vice Chairman</p> <p>vtc.</p>

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22.9.99		<p>Seen MA St.492/99. A copy has been given to Mr. Upadhyaya. Other objection waived. Registry to give a regular number.</p> <p>Heard Mr. Vin on MA 500/99 read with MA 564/99 for extension of time. Mr.Upadhyaya have no objection to grant further time. MA 500/99 allowed and the time extended upto 4.11.99.</p> <p>^{500/99 & 564/99} MA's disposed of as above.</p> <p>(P.C.Kannan) Member (J)</p> <p>(V.Ramakrishnan) Vice Chairman</p> <p>vtc.</p>