

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO./521/92

T.A.NO.

DATE OF DECISION 30th March 2000

Nayan G. Joshi

Petitioner

Mr. K.K. Shah

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.

A.S. Sanghavi, Member (J)

JUDGMENT

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

Nayan G. Joshi
Sr. Clerk
Working under Dy. C.O.S. Office
Sabarmati, Ahmedabad.

Residing at:

27, Jay- laxmi Society
Sabarmati 'D' cabin,
Ahmedabad- 380 019.

Applicant

Advocate: Mr. K.K.Shah

Versus

1. Union of India
Notice to be served through:
The General Manager (E)
Western Railway
Head Quarter Office
Churchgate
Bombay- 400 020.
2. Dy. Controlar of Stores
Store Depot
Western Railway
Sabarmati
Ahmedabad.
3. Shri Vaswani
Asst. Personnel Officer
Western Railway
Sabarmati, Ahmedabad.
4. Bhadresh Acharya
Head Clerk
Notice to be served through
respondent No.2, namely,
Dy. C.O.S., Sabarmati
Ahmedabad.
5. Kamal S. Tolani
Head Clerk
Notice to be served through
respondent No.2, namely,
Dy. C.O.S., Sabarmati
Ahmedabad.

Respondents

Advocate: Mr. N.S. Shevde-

JUDGEMENT

IN

Dated th30 March 2000

O.A./521/92

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

The applicant a Railway servant has challenged the order dated 16.12.1992 as at Annexure A which promotes K. S.Tolani and B.A. Acharya Respondents No.4 and 5- to the level of Head Clerk ignoring him. According to the applicant, Tolani and Acharya are junior to him.

2. We have heard Mr. K.K. Shah for the applicant and Mr. N.S. Shevde for the respondents.

3. The applicant was appointed to the Railway Service on compassionate ground as his father died in harness. He has also passed graduation. He was appointed to the level of Clerk in 1987 and was confirmed as such on 16.7.89. Bhadrash Acharya was appointed as Clerk on 24.5.88 and was confirmed w.e.f. 27.4.90 and M Kamal S. Tolani was appointed as Clerk on 13.11.87 and confirmed w.e.f. 4.5.90. It is not in dispute that at the level of Junior clerk the applicant was senior. He was also allowed to function as Senior Clerk in the higher scale of 1200-2040 on ad hoc basis

and eventually after passing the written suitability test of Senior Clerk he was regularised as such by order dated 28.5.91 as at Annexure A-1. In this order, the names of the private respondents do not appear. The post of Head Clerk is a promotional post from Sr.Clerk which is a non-selection post and is filled up on the basis of seniority-cum-suitability. However, the private respondents were promoted as Head Clerk by order dated 16.12.1992 whereas the applicant was not so promoted. The applicant has contended that as he was senior to the private respondents and as the post of Head Clerk is a non-selection post, his supersession would be violative of the Railway Board's rules and instructions. It is also contended in the rejoinder statement that the applicant having been allowed to function as Senior Clerk on ad hoc basis earlier than the private respondents, he should be deemed to be senior at the level of Senior Clerk. There is also an averment that there has been delay in holding the suitability test for promotion to the level of Senior Clerks and this has adversely affected the applicant's prospects and the action of the respondents does not conform to Para 320 of the Indian Railway Establishment Manual.

4. The respondents have taken the line that while the applicant was senior to the private respondents at the level of Junior Clerk, this position did not hold good at the level of Senior Clerk. They bring out that the post of Senior Clerks could be filled up not only by promotion from Clerks but there is another mode of appointing Senior Clerks namely by persons who have passed the selection by Railway Recruitment Board against quota reserved for serving graduates. Bhadresha Acharya and Tolani the private respondents appeared for the selection for the category of Senior Clerks from amongst the serving graduates of Junior Clerks conducted by the Railway Recruitment Board and they succeeded in such selection. They have, therefore, been treated as direct recruits and as posts were available at the level of Senior Clerks against serving graduate quota, they were accommodated against such posts. In other words as direct recruits, they joined the working post after due process w.e.f. 29.1.91. So far as the applicant is concerned, even though he is a graduate, he did not compete in the examination held for serving junior clerks who were graduates for appointment as Senior Clerks. He

was, therefore, considered for promotion to the level of Senior Clerks on regular basis on his passing the suitability test which was held on 21.3.91 and he was taken as regularised at this level from 21.3.91 by order dated 5.2.93 as at Annexure R-4 to the reply statement. As the applicant was regularised as Sr. Clerk w.e.f. 21.3.91 whereas the private respondents became regular w.e.f. 29.1.91 as per the order of that date as at Annexure R-3 the private respondents became senior to the applicant at the level of Senior Clerk. The post of Head Clerk is a non-selection post and as Acharya and Tolani were senior to the applicant at the level of Senior Clerk, they got promotion as Head Clerk earlier than the applicant. The applicant was subsequently promoted temporarily to officiate as Head Clerk by order dated 26.12.92 (a copy at Annexure R-6 to the reply statement) whereas the private respondents were promoted by order dated 16.12.92.

5. Mr. K.K.Shah submits that when the vacancy arose at the level of Head Clerks, the seniority list of Senior Clerks was the one which was circulated by order dated 10.8.81 as at Annexure A-3. In this list the applicant is shown at

Sr.No.34 whereas Acharya is shown at 35 and Tolant at Sr.No.39. He submits that no doubt there is a subsequent seniority list, circulated by order dated 6.2.93 where ~~a~~ the applicant is shown as junior to the private respondents. Mr. Shah says that this seems to be an after thought as the applicant has filed O.A. in December 1992 and the promotion order of the private respondents as Head Clerk was issued on 16.12.92 before the revised seniority list was circulated by order dated 6.2.93. Mr. Shah contends that there is nothing to indicate that the private respondents filed objections to the earlier seniority list dated 10.8.91 where they were shown ^{as} junior to the applicant. Mr. Shah also urges that the applicant having been given ad hoc promotion as Senior Clerk earlier to the private respondents had a legitimate expectation for promotion as Head-Clerk earlier than the private respondents. The fact that he appeared in the suitability test later is not his fault but that of the Railway Administration who did not hold the suitability test in time with the result that it was held only in March 1991 whereas the private respondents had been absorbed in January 1991. He says in such a situation the seniority of the applicant should be reckoned from the date of his ad hoc promotion and he should be

treated as senior to the private respondents at the level of senior clerks and should have been promoted as Head Clerk prior to the private respondents.

6. Mr. Shevde for the Railway administration resists the O.A. He submits that the seniority list circulated in February 1993 would clearly show that the applicant was shown ^{as} junior to the private respondents at the level of Senior Clerk. In any case, in terms of provisions of para 302 of the IREM, the private respondents who came against the direct recruitment quota became senior to the applicant at the level of Senior Clerks. He says that the seniority list of 10th August 1991 no doubt shows the position of the applicant above those of private respondents but in the remarks column it is clearly mentioned that the private respondents are direct recruits against serving graduate quota, whereas the applicant opted for Ministerial post and passed test of Senior Clerk. Mr. Shevde says that the seniority list has to conform to the statutory requirement as laid down in para 302 of the IREM according to which the private respondents are senior. He also does not agree that there is any delay in holding the suitability test or that the revised seniority list of February 1993 was an

after thought.

7. We have carefully considered the contentions of both sides. It is not in dispute that the applicant was senior to the private respondents at the level of Junior Clerk. He has contended that he should be treated as senior to them at the level of Senior Clerk and by virtue of seniority he should have been promoted as Head Clerk (which is a non-selection post) prior to the private respondents. The main grounds now urged in support of the O.A. are that the ad hoc promotion as Senior Clerk should also be counted for the purpose of reckoning seniority because of delay in holding the suitability test and secondly in the seniority list circulated in August 1991 the applicant is shown at Sr.No.34. There is also an averment in the rejoinder statement that showing the applicant as junior would be contrary to the provisions of Rule 320.

8. It is not in dispute that there is a quota for serving graduates junior clerks to be directly appointed as Senior Clerks and that the same would constitute another recruitment channel. The private respondents appeared in such a test whereas the applicant did not do so even though he is a graduate. The applicant therefore had to be accommodated as Senior Clerk against the quota for promotion through suitability test. Mr. Shevde says that with the introduction of Graduates quota, ^{the post of} Senior

Senior Clerks came to be filled up partly by way of direct recruitment and partly by way of promotion. Para 302 of the IREM regulates the ~~promotion~~ ^{final} of seniority ~~posts~~ in such cases. We may extract the relevant portion as follows:-

"302. Seniority in initial recruitment grades-
xxx xxx xxx 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 due 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."

If we apply this rule we find that the private respondents had ~~succeed~~^{ed} in the examination held by the Railway Recruitment Board for direct recruitment to the level of Senior Clerks against the serving graduate quota. We notice from the letter dated 30.11.90 from the Headquarters of Railway as at Annexure R-II to the reply statement, that the merit order of Kamal Tolani^{is} at Sr.No.28 and Acharya is at Sr.No.34. We find that Kamal Tolani is shown senior to Bhadresh Acharya in the seniority list circulated on 6.2.93 even though at the level of Junior Clerks Achayara^{was} and Tolanki^{Senior}. The order dated 29.1.91 clearly mentions

that Tolani and Acharya are adjusted against the serving graduate quota. In other words, posts were available at the level of Senior Clerks against the quota meant for serving graduates and after the successful completion of the examination held by the Railway Recruitment Board, they have been appointed against the Graduates quota of Senior Clerks on regular basis. Mr. Shevde has brought out that this is clearly a case of joining the working post after due process in the case of direct recruits and they will count their seniority w.e.f. 29.1.91. So far as the applicant is concerned, he came on promotion quota. He passed the suitability test held on 21.3.91 and was regularised w.e.f. that date by the order dated 5.2.93. There is also another order dated 28.5.91 which regularised him as Senior Clerk. The seniority of the applicant would thus count from the date of regular promotion after due process of his passing the suitability test held on 21.3.91. He has therefore been shown as junior to the private respondents at the level of Senior Clerks.

9. Mr. Shevde's submissions have proceeded on the assumption that the filling up of graduates quota through the examination of the Railway Recruitment Board is in the nature of direct recruitment. It may be argued that as the examination for the graduates

quota conducted by the Railway Recruitment Board, is restricted to serving junior clerks, The same is not a direct recruitment but it is also one mode of promotion, the other being the promotion through suitability test. In such a situation also, the private respondents succeeded in the competitive examination held by the Railway Recruitment Board for the graduates quota before 29.1.91 and ^{as} vacancies against graduates quota were available, they were accommodated against such vacancies by the order dated 29.1.91 whereas the applicant appeared in the suitability test held on 24.3.91 and was regularised as such w.e.f. 24.3.91. It is clear that the date of regular promotion after due process in respect of the private respondents is 29.1.91 whereas for the applicant it is 24.3.91 as the suitability test was held only on that date. Viewed from this angle also, the private respondents are senior to the applicant at the level of the Senior Clerk.

10. Mr. K.K.Shah has argued that the period of ad hoc service should also count for the purpose of reckoning seniority and has alleged that there was delay in holding the suitability test. This contention

is not tenable in view of the clear provisions in I.R.E.M. referred to earlier. There is also nothing to show that there was any great delay in holding the suitability test. In the rejoinder statement there is a mention that it was held after a gap of one year which is not excessive. We do not agree with the interpretation that seniority should be counted from the date the vacancy arose and not from the date of regular promotion after due process, as such ~~the~~ stand would be contrary to the provisions of ~~para 302~~ of the IREM. 12

11. There was also a reference in the rejoinder statement that the action of the Railway admn. in reckoning the applicant as junior would be contrary to para 320. Para 320 deals with relative seniority of employees in the intermediate grade who belong to different seniority units appearing for a selection/non-selection post in higher grade. In the present case, the applicant as also the private respondents belong to the same seniority unit namely that of the Senior Clerk. Para 320 is not relevant to the present case.

12. Mr. Shah has also relied on the seniority list ~~on the seniority list~~ circulated by Railway admn. dated 10.8.91. We find from the remarks column in that seniority list, there is a clear indication that private respondents have passed the test of senior clerks 12

against serving Graduate quota whereas the applicant is shown as having passed the test of Senior Clerk which means the suitability test, against promotion quota. The ranking given in the seniority list to the applicant vis-a-vis the private respondents should have been revised. But in view of the clear position that the private respondents were appointed regularly as Senior Clerks after due process of R.R.B. Exam. w.e.f. 29.1.91 whereas the applicant was promoted after due process of suitability test on 21.3.91, the seniority position of the applicant would be later than that of the private respondents at the level of Senior Clerk in terms of provisions of IREM. Any seniority list has to conform to the statutory provision as per which the private respondents are in fact senior to the applicant.

13. In the light of the foregoing discussion we hold that the seniority of the applicant is correctly determined as below that of the private respondents at the level of Senior Clerk. The private respondents had a right to be considered for promotion earlier than the applicant to the non-selection post of Head Clerk.

14. The O.A. is thus devoid of merit and is dismissed with no orders as to costs.

As per
(A.S. Sanghavi)
Member (J)

V. Ramakrishnan
30/3/2000
(V. Ramakrishnan)
Vice Chairman

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