

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**

O.A.No. 240/1993

Ahmedabad this the 26th day of February, 2001.

Hon'ble Mr. V. Ramakrishnan, Vice Chairman
Hon'ble Mr. A.S. Sanghavi, Judicial Member

1. Drarmendrakumar Morarilal
2. Devendrakumar Bhagmal
3. Ramanuj Dayaram Verma
4. Anilkumar Ramkishan Gupta
5. Avadesh Sukhraj
6. Rajeshkumar Narayanlal
7. Rajeev R. Mishra
8. Subhashchandra Upadhyaya
9. (As per M.A.288/93 joined
270 other applicants as party)

All at present working as Diesel Assistant
At Gandhidham, Dist. Kutch
State of Gujarat.

Applicants.

By Advocate: Mr. P.H. Pathak

VERSUS

1. Divisional Railway Manager
Ajmer.
2. Union of India,
Notice to be served through
The General Manager
Western Railway,
Churchgate, Bombay.

Respondents

By Advocate: Mr. N.S. Shevde

ORDER (Oral)

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

We have heard Mr. Pathak for the applicants and Mr. Shevde for the respondents.

2. The applicants were recruited to the post of Diesel Assistants on the basis of an advertisement of the Railway Recruitment Board, employment notice No. 1/87, copy at Annexure A-1. They are direct recruits to the level of diesel assistants. They claim that their seniority has not been properly determined and some of the direct recruits diesel assistant (not apprentices) who had not completed a full training period of 18 months have been given their seniority after completion of a condensed course of training whereas their seniority can be assigned only on completion of the normal period of training namely 18 months. They also state that some of the rankers promoted to the list of Diesel Assistant were regularly promoted only at later stage after the applicants, and as such they should rank junior to them. According to them the seniority should be determined in the following order.

1. Direct recruits to Diesel Assistants like the applicants 3.11.1989.
2. Direct recruits to First Fireman/diesel assistant 11.1.1990.
3. 1st Fireman(promotee)/rankers different dates of their drafting.

There is also an averment in para 7 of the OA that some of the employees have filed application challenging the same seniority list in OA 310/92 and as such, the present applicants have also filed this OA.

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3. The present applicants have referred to OA 310/92 where the issue regarding seniority of rankers and promotees was considered which is also the issue here. In that OA also, the same seniority list as in the present application was challenged which was disposed of by the Tribunal by its order dated 15.10.99. While disposing of this OA the Tribunal had noted that the identical issue has been considered by the Jodhpur Bench of this Tribunal in OA 404/92 decided on 22.12.98. This Bench had directed the Railway Administration to regulate the seniority of applicant in accordance with the decision of Jodhpur Bench in OA 404/92 and batch of connected cases.

4. We may mention that the Jodhpur Bench had taken note of the rule position in this regard and has elaborately set out the reason for their decision. We may in this connection refer to para 17 of this judgment, part of which is extracted below:

In the instant case vacancies in the cadre of Diesel Assistant pertain to the year 1986 to 1988. According to para 137 of IREM, rankers should have first been appointed to these posts and balance vacancies if any would require to be filled up by the direct recruitment. The respondents have not given the distributions of the vacancies yearwise. Thus in our opinion vacancies in the cadre of Diesel Assistant should first be filled up by the appointment of rankers to the post and, therefore, they would rank senior to the direct recruits. It is a fact that rankers were officiating on ad hoc basis on the post of Diesel Assistants from a date much earlier than the appointment of direct recruits as Diesel Assistants. It is also a fact that the respondents did not conduct the selection for 1st Fireman regularly and this has resulted in the present dispute. Had the respondents conducted the

selection regularly the rankers would have been appointed regularly to the post of Diesel Assistants. It is also a fact that when selection was held by the respondents in the year 1989, all the rankers officiating as Diesel Assistants on ad hoc basis were found qualified to hold the post of Diesel Assistants. To say that ad hoc appointment does not confer any right on the appointee for regularisation, would be true to a certain extent. But when the rankers are allowed to continue on ad hoc appointment for number of years and no selection is held for their regularisation as per rules this argument of the respondents would not be tenable. 'Since all the rankers were found qualified in the selection, it would be just and proper to appoint the rankers on regular basis prior to the appointment of direct recruits. Thus in our opinion all the rankers who were officiating as Diesel Assistant on ad hoc basis prior to the date of appointment of direct recruits and have qualified the selection test held in January - February, 1989 would rank senior to the direct recruits.'

The Jodhpur Bench disposed of the OA with the following directions;

"In the light of the above discussion, we are of the view that :

- (i) The post of Diesel Assistant for the year 1986, 1987 and 1988 should first be filled up from amongst the rankers who were holding the post of Diesel Assistant on ad hoc basis and who were found qualified to the post in the selection test held subsequently;
- (ii) The appointment of direct recruits to the post of Diesel Assistants would be treated as ad hoc till they are appointed against the regular post and they will be entitled to seniority from the notional date of completion of normal training of 52 weeks or the date they are appointed on regular basis

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whichever is later. This would imply that the rankers would rank senior to the direct recruits."

5. It will be seen from the above that the Jodhpur Bench had held that the rankers would rank senior to the direct recruits in view of the rule position and that even if the period of training is curtailed in respect of direct recruit, date of the appointment to the working post should be taken only on completion of the normal period of training.

6. We may refer ~~to~~ in this connection ^{to} para 137 of IREM which reads as follows:

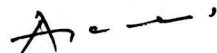
137. (1) The vacancies in the grade of Diesel Assistant in scale Rs.950-1500 may be filled as under:-

- (a) 50% of the vacancies shall be filled by lateral induction from among First Firemen who are atleast 8th Class pass and are below 45 years of age; in the case of shortfall, by promotion by usual selection procedure from among second Firemen who are atleast 8th class pass and are below 45 years of age.
- (b) Balance 50% of vacancies shall be filled by lateral induction of matriculate First Firemen with minimum three years of continuous service, shortfall, if any, by promotion of Matriculate Second Firemen through departmental examination.
- (c) Shortfall, if any, against (a) and (b) above shall be made good by direct recruitment through the Railway Recruitment Boards

(2) Diesel Asstts. Have avenue of promotion to the post of Shunters (grade Rs. 1200-2040), Goods Drivers (1350-2200) and so on in the running cadre as per procedure in force.

Mr. Pathak says that some promotees were not eligible to be considered as they had not put in three years of minimum service and they do not come in the zone of consideration. Rule 137 as already brought out above lays down the criteria of eligibility. No other rule or provision has been shown to us. There is nothing in the OA to suggest that the rankers in the seniority list were not eligible. As regards the zone of consideration it would apply more to the direct recruits as in terms of IREM para 137 only when vacancies exist after exhausting the list of First Fireman and Second Fireman the direct recruits will come into the picture and it is therefore, incumbent on the Railway Administration to consider ~~all~~ the First Fireman and Second Fireman first before considering the claims of any direct recruits.

7. The issues involved in the present OA are squarely covered by the decision in OA 310/92 decided by this Tribunal on 5.10.99 where also the same seniority list was challenged and which followed the decision of the Jodhpur Bench. The rights of the present applicants shall accordingly be regulated in accordance with the above decision. The OA is finally disposed of with no order as to costs.



(A.S. Sanghavi)
Member(J)

Vtc.



(V. Ramakrishnan)
Vice Chairman

FORM NO. 21
(See Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AMMEDABAD BENCH

OA/TA/RA/CE/ 240 of 93

Dharmendra Kumar M. APPLICANT (S)

VERSUS

Union of Andhra & Ors. RESPONDENT (S)

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C. P. S.

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Certified that the file is complete in all aspect

Signature of S.O. (J)

Signature of Dealing Hand