

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application Nos. 251 & 489-494 of 2004
Cuttack, this the 2nd day of May, 2005

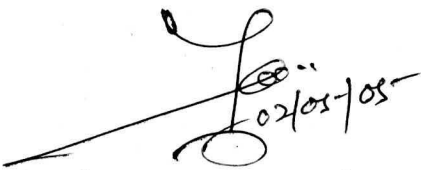
Venugopal H. & six others Applicants

Vs

Union of India & others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 75 No
2. Whether it be circulated to all the Benches of the 75 No
Central Administrative Tribunal or not ?


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SAHA)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application Nos. 251 & 489-494 of 2004
Cuttack, this the 2nd day of May, 2005

CORAM :

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI M.R.MOHANTY, MEMBER (J)

.....

1. Venugopal H., aged about 36 years, S/o. K.Hariharan.
2. R.D.Kumar, aged about 33 years, S/o. R.V.Patra, presently officiating Loco Shunter, at-Koraput.
3. Ch. Sankara Rao, aged about 32 years, S/o. Satyanarayan.
4. L.S.Rao, aged about 32 years, S/o. L.Appana.
5. S.M.D.Krishna, aged about 31 years, S/o. Rambabu.
6. G.Jagandham, aged about 33 years, S/o. G.K.Naidu.
7. S.K.Panda, aged about 31 years, S/o. V.Panda, working at Koraput.

Presently all the officiating Loco shunter, At-Koraput.
Diesel Driver Assistants (DDA), Loco under Sr. DME,
Waltair East Coast Railway, Visakhapatnam.

..... Applicants

By the Advocates

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M/s. A.Kanungo, S.R.Mishra,
M.K.Biswal.

VERSUS

1. Union of India, through General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar.
2. Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar.
3. Divisional Railway Manager, East Coast Railway, Dandaparthi Visakhapatnam.
4. Divisional Personal Officer, Office of the Divisional Railway Manager, East Coast Railway, Dandaparthi, Visakhapatnam.

5. Senior Divisional Mechanical Engineer, Office of the Divisional Railway Manager, East Coast Railway, Dandaparthi, Visakhapatnam.

..... Respondents

By the Advocate

- Mr. R.C.Rath (For R-1, 3, 4&5)

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN :

Shri Venugopal H. and six others, all officiating Diesel Driver Assistants (DDA, in short) under Sr. DME, Waltair, has filed this O.A. challenging the letter dated 13.11.03 (Annexure-4) issued by Divisional Personnel Officer (DPO, in short), Waltair, disposing their appeal submitted to Divisional Railway Manager (DRM, in short) recasting their seniority position in the seniority list of Assistant Diesel Drivers. They have assailed the said letter being illegal, arbitrary and contrary to law and have sought for a direction to be issued to the Respondent No.2 to consider their appeal dated 21.11.03 (Annexure-5).

2. The case of the applicants in a nutshell is that they were appointed as Diesel Drivers by Railway Recruitment Board (RRB, in short), Bhubaneswar in the year 1996. They were a group of 150 candidates who were sent for training to Kharagpur Railway Training School in five batches, their batch being the first batch of the candidates to be sent on training and joined service as Assistant Diesel Drivers on 19.9.96.

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Their seniority position among the 150 direct recruits should have been determined in terms of Rules 302 of Indian Railway Establishment Manual (IREM, in short) which stipulates that the seniority among the incumbents in a particular grade should be governed by the date of appointment to the grade. They have also by referring to Rule 303 of IREM has submitted that the applicants having been sent for training in the first batch should be treated as seniors to those who had joined the training school on subsequent dates. Their grievance is that the said rule position was overlooked by the Respondents in preparing the combined seniority list of Assistant Drivers published in the year 2000; against which they had represented but without any success. They have repudiated the contention of the Respondents that their seniority position can not be fixed higher in terms of Estt. Sl.No. 59/93 and 66/95 issued by the Chief Personnel Officer, Garden Reach.

3. The Respondents in their counter reply have taken the stand that the application is not maintainable, in the first instance, on the ground of jurisdiction. They have pointed out that the applicants belong to the Waltair Division of the East Coast Railways, and territorially, they are under the jurisdiction of Hyderabad Bench of this Tribunal. In terms of Rule 6 of the Administrative Tribunal Rules, 1985 they should have ventilated their grievance before that Bench and on that ground alone this O.A. is liable to be dismissed on account of lack of territorial jurisdiction.

4. On the facts of the case, they have stoutly

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contested the plea of the applicants that their seniority position should have been determined in accordance with para-303 as quoted by them. They have, on the other hand, stated that the seniority position of the applicants are to be fixed only in accordance with the amended Rule as contained in Estt.Sl.No. 66/95 by partially modifying that Rule. They have also submitted that earlier in terms of para-303(a), "the candidates who were sent for initial training to the training schools used to rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against the working post and those who joined the subsequent courses in any reason whatsoever and those who passes the examination in subsequent chances would rank junior to those who had passed the examination in earlier courses." By deleting the second part of the earlier order, i.e., those who would join subsequent courses for any reasons whatsoever and those who pass the examination in subsequent examination would rank junior to those who had passed the examination in earlier courses. The seniority rule has been amended to the extent that the inter se seniority of the officials belonging to the same batch of recruits will abide by the results at the end of the course examination, even though taken separately. Then, elaborating the said modification in the Rule, i.e., para-303(a) of IREM, Vol.I, they have given details of the marks obtained by the applicants at the end of the course examination as well as other employees who were said to have been juniors to the applicants to show that the ranking among

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these officials has been done strictly in terms of the merit secured by the officials at the examination held at the end of the training period before being posted against working posts. They have on these grounds held that the O.A. is bereft of merit.

5. The applicants have also filed a rejoinder where they have submitted that the Respondents had applied the principles of unamended rules in determining the seniority of the trainees who had been appointed as Diesel Assistant in Khurda and in Sambalpur Division, and they have demanded parity in application of seniority rules on the principle of equity as enshrined under Article 14 of the Constitution.

6. We have heard the Ld. Counsel for both the parties and have perused the records placed before us.

7. The Respondents have contested the O.A. on two grounds. Firstly, that under Rule-6 of CAT(Procedures) Rules it lacks territorial jurisdiction, and, secondly, that the seniority principles are to be guided by the amended provision of Rule 303(a).

8. On the point of territorial jurisdiction, we have referred to Rule-6 of the Central Administrative Tribunal (Procedures) Rules, 1987 for the facility of consideration of the matter. We quote the said Rule as follows :

"An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction-

(i) the applicant is posted for the time being,
or

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(ii) the cause of action, wholly or in part, has arisen :

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter."

From the above, it would be found that if the cause of action wholly or in part had arisen in the territorial jurisdiction of the Bench, the application is admissible in this case. It is true that the applicants belong to Waltair Division of East Coast Railways which falls within the territorial jurisdiction of Andhra Pradesh, and therefore, amenable to the jurisdiction of Hyderabad Bench of this Tribunal. But, it is also seen that the applicants have sought relief from this Tribunal with a prayer to issue direction to Respondent No.2 to consider their appeal dated 21.11.03 and the said Respondent No.2 being located at Chandrasekharapur, Bhubaneswar, is within the territorial jurisdiction of this Tribunal, and, therefore, this O.A. is maintainable before us.

9. With regard to the application of Rule 303(a) of IREM, Vol.I, there is no dispute. The dispute lies in the fact that the applicants have relied on the provision of Rule 303(a) as it existed before 10.9.91. However, they have omitted to see that the said Rules for seniority underwent a change with effect from 10.9.91 when the Railway Board by virtue of the letter No. E(NG) I/90/SR6/51, dated

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10.9.91 revised the provision of Rule 303(a) to read as follows :

"Candidates who are sent for initial training to training schools will rank in seniority in the relevant grade based on the order of merit obtained at the examination held at the end of the training period before being posted against working post."

By virtue of amendment, the administration had deleted the earlier condition that the trainees who are sent to the training schools subsequently are to rank junior; instead it has been provided by amendment that the candidates who belong to the same batch of recruitment by RRB, their inter se seniority, like in the present case, will be determined strictly according to their order of merit obtained at the examination held at the end of the training period before being posted against working post irrespective to their date of joining the working post. As the applicants were recruited after October, 1991, they are governed by the provisions of the amended Rule. It was, therefore, clarified by the Chief Personnel Officer to their Divisional Railway Manager, East Coast Railway, Visakhapatnam by his letter dated 5.8.04, under Annexure-R/2, that for administrative convenience, slotted system was adopted, and, thereafter, candidates imparted training. It is, therefore, obvious that the seniority can be assigned only when the entire list of the candidates underwent training. The amendment to Rule-303(a), as carried out by Railway Board's order dated 10.9.91

appears to be reasonable and equitable for the candidates who are recruited in large number in a batch and they are required to wait for their turn to be deputed for training. The amended position of law takes away the element of capricious and arbitrariness in the matter of determination of seniority of direct recruits coming through RRB. The intention of the rule makers in amending the provision of Rule-303(a) being in the right direction, we see no reason not to uphold the decision of Respondent No.2 in rejecting the prayer of the applicants for recasting their seniority. We, therefore, uphold the validity of the amended Rule-303(a), and accordingly, dispose of this O.A. being devoid of merit. No costs.

Mohanty
02/05/2005
(M.R. MOHANTY)
MEMBER (JUDICIAL)

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(B.N. SOM)
VICE-CHAIRMAN

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