

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH: JODHPUR.

O.A. No.304/96

Date of Order: 29.5.1998

1. Suresh Chandra Bhardwaj s/o Shri Bhag Chand Bhardwaj, Sectional Controller, Control Office, Divisional Office, Northern Railway, Bikaner, r/o Near Tulsi Circle, Bikaner.
2. Prem Singh Rathore s/o Shri Durga Singh Rathore, Sectional Controller, Northern Railway, Divisional Office, Bikaner. r/o House of Col. Hukam Singh, Behind Government Press, Hanuman Hatha, Bikaner.

... Applicant

VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Divisional Office, Bikaner.
3. Senior Divisional Personnel Officer, Northern Railway, Bikaner Division, Bikaner.
4. Kishan Singh, Sectional Controller, Hanumangarh.
5. Munni Lal Singh, Sectional Controller, Bikaner.
6. Hari Lal Kureel, Sectional Controller, Hanumangarh.
7. Vipan Yadav, Sectional Controller, Bikaner.
8. Ratan Singh Tanwar, Sectional Controller, Bikaner.
9. Manohar Lal Raina, Sectional Controller, Hanumangarh.
10. Jaspal Midda, Sectional Controller, Hanumangarh.

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... Respondents

Mr. Y.K. Sharma, Counsel for the applicants.

Mr. S.S. Vyas, Counsel for the respondents No. 1 to 3.

None Present for respondents No. 4 to 10.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member

Hon'ble Mr. Gopal Singh, Administrative member

O R D E R

Per Hon'ble Mr. Gopal Singh

Applicants, Suresh Chandra Bhardwaj and Prem Singh Rathore, have filed this application Under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned order dated 2.8.1995 (Annex. A/1) and also for issuing a direction to the respondents to fixing the seniority of the applicants over and above respondent No. 4 to 10.

2. The case of the applicants is that they were recruited as Traffic Apprentice in the grade Rs.1600-2660 (RPS) by the Railway Recruitment Board, Ajmer. After successful completion of training from 15.11.1991 to 14.11.1993, both the applicants were posted to Bikaner Division vide letter dated 2/3.12.1993 by the Northern Railway Headquarters, alongwith seven other candidates. All these Traffic Apprentices were given various postings under letter dated 12.1.1994 (Annex. A/2) of the office of Divisional Railway Manager, Northern Railway, Bikaner. The contention of the applicants is that while rest of the candidates were given postings as Yard Master grade 1600-2660 and Station Master grade 1600-2660, they were posted as Sectional Controller grade 1400-2600 on starting salary of Rs. 1600/= and thus the applicants have been discriminated against in giving appointments though they had passed the same examination and had under gone the same training.

Vyas

3. In reply the official respondents have submitted that the Traffic Apprentices do not have any grade and therefore as per Railway Board's letter dated 15.5.1987 (Annex. R/1) Traffic Apprentice can be appointed as Sectional Controller/Yard Master/Station Master. It is also asserted by the official respondents that before giving the appointment as Sectional Controller, the applicants were given an offer of appointment for the post of Sectional Controller in the grade of 1400-2600 vide letter dated 5.1.1994 (Annex. R/2) and on acceptance of the terms and conditions laid down in this letter of 5.1.1994, they were appointed as Sectional Controller. As regards seniority, it has been submitted by the official respondents that the seniority of the applicants has been assigned as per para 302 and 303 'A' of IREM Volume I. The official respondents have also stated that respondent Nos. 4 to 10 were promoted as Sectional Controller much earlier to the applicants and therefore they have been rightly given the seniority over the applicants. It has also been stated by the official respondents that as per channel of promotion, the Sectional Controller grade 1400-2600 straight away gets promotion as Deputy Chief Controller grade 2000-3200 and they are not required to be promoted in the grade of 1600-2660 before promoting them in the grade of 2000-3200 as Deputy Chief Controller. It has also been stated that the applicants have since been promoted as Deputy Chief Controller grade 2000-3200 as per their seniority.

4. We have heard the learned counsel for both the parties and carefully perused the records of the case.

5. The learned counsel for the official respondents have justified the postings of the applicants as Sectional Controller grade 1400-2600 in terms of Railway Board's letter dated 15.5.1987 (Annex. R/2). The relevant portion of this letter are extracted below:

"2. The questions relating to recruitment of Traffic/Commercial Apprentices, the scales in which such recruitment should be made, the qualifications and period of training etc. have been under review by the Railway Board for some time past. As a result of such review the Board have decided as under:

i) The scheme of recruitment of Traffic and Commercial

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Apprentices should continue.

ii) In future, the recruitment of these Apprentices should be made to grade Rs. 550-750/1600-2660 (RP). Traffic Apprentices absorbed in the cadre of Section Controllers in scale Rs. 470-750/1400-2600 (RP) will be fixed at starting pay of Rs. 1600/= on absorption. The recruitment of Traffic Apprentices may be suitably staggered in view of sub para (viii) below.

viii) In future the period of training for Traffic Apprentices also will be two years as against three years as is the case at present.

xii) Apprentices already under training will be absorbed only in scale Rs. 455-700 (RS)/1400-2300 (RP) or 470-750 (RS)/1400-2600(RP), as the case may be for which they have been recruited.

xiii) No recruitment in scale Rs. 455-700 (RS)/1400-2300 (RP) will henceforth be made except to the extent panels have already been received by Railway Administration from the Railway Recruitment Boards in the case of open market quota and panels have already published in the case of departmental quota.

xv) Traffic/Commercial Apprentices working in the lower scale of Rs.455-700(RS)/1400-2300 (RP) and 470-750 (RS)/1400-2600(RP) on getting selected for recruitment in the higher scale of Rs. 550-750 (RS)/1600-2660 (RP) as per the above provisions, will not be required to be sent for training again. They will, however, have to appear for and qualify the final retention test alongwith their batchments and their seniority will be regularised as per normal rules alongwith other candidates in that batch."

It would be seen from the above that henceforth (i.e. after 15.5.1987) recruitment of Traffic Apprentice should be made in the grade of 1600-2660 (RP). The present applicants have been recruited in the year 1991 on the basis of Railway Recruitment Board, Ajmer Employment Notice No. 3 of 1989, wherein the scale of the post was clearly mentioned as 1600-2660 and as such the arguments of the official respondents that in terms of the letter dated 15.5.1987, the Traffic Apprentices can be posted as Sectional Controller in the scale of 1400-2600 is not tenable and therefore, the same is rejected. It has also been mentioned in para 2

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(ii) above that Traffic Apprentices absorbed in the cadre of Sectional Controller in the scale of 1400-2600 (RP) will be fixed at the starting pay of Rs. 1600/= on absorption. It may be pointed out here that applicants' case is not that of absorption and as such this clause cannot be applied to them. This clause may be applicable only to persons who were absorbed as Sectional Controller in the scale of 1400-2600. The arguments of the respondents that the applicants have accepted the terms and conditions of offer of appointment mentioned in letter dated 5.1.1994 wherein they were offered the post of Sectional Controller scale 1400-2600 (RPS) is also not tenable since the applicants were recruited in the scale of 1600-2660. They could have been posted as Sectional Controller (if there were any rules in this regard) but they should not have been offered the scale of pay lower than the scale for which they were recruited. The learned counsel for the official respondents have not been able to show us any rules/instructions whereby Traffic Apprentices recruited in the scale of 1600-2660 could be appointed as Sectional Controller in the scale of 1400-2600. As regards acceptance of offer of appointment as Sectional Controller in the scale of 1400-2600, it can only be said that in present day condition of unemployment every unemployed person would jump upon a job whatever be terms and conditions. But it would be unjust to appoint a person in a lower grade than the grade for which he was recruited. This would amount to exploitation of the adverse circumstances in which unemployed person is placed.

6. It would also be seen from para 2 (xv) above that Traffic Apprentices working in the lower scale of 1400-2300 and 1400-2600 on getting selected for recruitment in the higher scale of 1600-2660 will not be required to undergo training again but they will have to appear for and qualify the final retention test. In our opinion, Traffic Apprentices recruited for the scale 1600-2600 and posted in the scale 1400-2600 would be put at disadvantage vis a vis their batchmates who have been posted as Yard Master/Station Master in the scale of 1600-2660, in terms of the above provisions and, therefore, the statement of the official respondents that Section Controller in the scale of 1400-2600 would get automatic promotion to the scale of 2000-3200 does not appear to be logical in terms of the para 2 (xv) mentioned above. We are, therefore, of the firm view that the applicants should have been given the scale of 1600-2660 on their appointment in the Railways irrespective of the fact that they have been posted as Section

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Controller.

7. As has been mentioned above, many of the batchmates of the applicants have been posted as Yard Master/Station Master, whereas the applicants have been posted as Section Controller. The candidates who have been posted as Yard Master/Station Master grade 1600-2660 would have been given seniority alongwith other Yard Masters/Station Masters, similar to the applicants who have been given place in the seniority list of Section Controller. In this connection Rules 303 (a) would be relevant and is extracted below:

"303. The seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority should be determined as under:

(a) Candidates who are sent for initial training to training schools will 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 working posts. Those who join the subsequent courses for any reason whatsoever and those who pass the examination in subsequent chances, will rank junior to those who had passed the examination in earlier courses."

It is clear from the above provisions that all the directly recruited Traffic Apprentices should have been placed in one seniority list in a division irrespective of the post to which they have been appointed so that they can be considered for future promotion as per their combined seniority list. As such we fail to understand as to why the applicants were given seniority alongwith Section Controller scale 1400-2600. It has also been averred by the official respondents that the applicants have been given promotion to the next higher grade 2000-3200 as per their seniority. It is not clear from this statement as to from which seniority list they were promoted and whether they got their promotion alongwith their batchmates who had joined the Railways as Traffic Apprentices through the same examination. As a matter of fact, they should have been considered for promotion to the next higher grade alongwith other Traffic Apprentices who were recruited through the same examination. In view of the above discussions, it is clear that the applicants have been put at disadvantage vis a vis their batchmates right from the date they were given the appointment and this amounts to

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discrimination amongst equals.

8. It is a fact that the applicants have accepted the terms and conditions of offer of appointment to the post of Section Controller in the scale of 1400-2600 and this offer of appointment has not been challenged in this application. We would not like to give any direction in this regard at this stage. However, in regard to seniority of the applicants, we are firmly of the view that their seniority should be fixed as per rules alongwith their other batchmates who were recruited as Traffic Apprentices grade 1600-2660 through the same examination and the applicants should be considered for future promotion in terms of the seniority list as mentioned above. In the light of the above discussion the impugned order Annexure A/1 deserves to be quashed.

9. The O.A. is, therefore, accepted. The impugned order Annexure A/1 dated 2.8.1995, is hereby quashed. The respondents are hereby directed that the applicants should be given seniority alongwith their batchmates for the purpose of future promotion and may be considered for future promotion alongwith their batchmates. No order as to costs.

Gopal Singh
(Gopal Singh)
Administrative Member

A.K. Misra
(A.K. Misra)
Judicial Member

Aviator/