IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

केन्द्रीय प्रशासनिक अधिकरण (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निःशुल्क प्रति

O.A. No. 404/ 1992
T.A. No.

DATE OF DECISION 22.12.1998

Madan Lal & others — Petitioner

Mr. M.S.Singhvi — Advocate for the Petitioner (s)

Versus

Union of India & others — Respondent

Mr. S.S.Vyas — Advocate for the Respondent (s) (Official)

Mr. R.R.Vyas, Counsel for the private respondents.

CORAM :

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

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs [illegible]

Sd/-
(Gopal Singh)
MEMBER (ADMN.)

Sd/-
(A.K. Misra)
MEMBER (JUDL.)

Judl. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

Date of Order: 22.12.1998

(1) O.A. No.404/92 Madan Lal & 63 others

With

(2) O.A. No.172/96 Pukh Raj P & 7 others

With

(3) O.A. No.175/96 Madan Lal & 17 others

With

(4) O.A. No.179/96 Champa Lal C & 5 others

With

(5) O.A. No.180/96 Iqbal Khan & 14 others

With

(6) O.A. No.201/96 Chandra Mani Pandey & 12 others

With

(7) O.A. No.203/96 Robert Field & 7 others

...Applicants

VERSUS

1. The Union of India through the General Manager, Western Railway, Church Gate, Bombay.
2. The Divisional Railway Manager, Western Railway, Ajmer.
3. The Divisional Personnel Officer, Western Railway, Ajmer.
4. 4 to 40 private respondents.

...Respondents

With

(8) O.A. No.70/95 Sanjay Kumar Sharma & 11 others

...Applicants

VERSUS

1. The Union of India through the General Manager, Western Railway, Church Gate, Bombay.
2. The Chief Motive Power Engineer (R&L), Western Railway, Church Gate, Bombay.
3. The Divisional Personnel Officer, Western Railway, Ajmer.
4. 4 & 5 private respondents.

...Respondents

Mr. M.S. Singhvi, Counsel for the applicants in all the O.As. except in O.A. No.70/95.

Mr. R.N. Upadhyay, Counsel for the applicants in O.A. No.70/95.

Mr. S.S.Vyas, Counsel for the respondents Nos. 1 to 4 in O.A. Nos.172, 175, 179, 180, 201 & 203 of 1996 and respondents Nos. 1 to 3 in O.A. No.404/92 & 70/95.

Mr. R.R.Vyas, Counsel for the respondents Nos. 4 to 17 and 19 to 36 in O.A. No.404/92.

None present for other respondents except respondent No.37, who was dropped, in O.A. No.404/92.
Mr. R.N. Upadhyay, Counsel for the respondent No.5 in O.A. Nos.172, 175, 179, 180, 201 & 203 of 1996.

Mr. M.S. Singhvi, Counsel for the respondent No.4 in O.A. No.70/95.

None present for respondent No.5 in O.A. No.70/95.

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 in Original Applications listed at Sl. No. 1 to 7 above are rankers and holding the post of Diesel Assistants on ad hoc basis. They were appointed to the post of Diesel Assistant on ad hoc basis on various dates in the year 1986 to 1988. They are claiming seniority over the direct recruits (respondents Nos. 4 to 40).

2. Applicants in the O.A. No.70/95 listed at Sl. No.8 above are the direct recruit Diesel Assistants and they were appointed as Diesel Assistants w.e.f. 11.1.1989. These direct recruits are claiming seniority over the rankers (applicants in O.As. listed at Sl. No. 1 to 7).

3. The seniority is governed by the same rules and regulations and, therefore, all these applications are disposed of by this order.

4. Applicants in O.As. listed at Sl. No. 1 to 7 above have filed applications under Section 19 of the Administrative Tribunals Act, 1985 praying as under:

(i) That by an appropriate order or direction, the order dated 10.5.1995 (Annx. A/2) passed by the Railway Board be declared illegal and be quashed.

(ii) That by an appropriate order or direction, the order dated 29.11.1995 (Annx. A/1) passed by the respondent No.1 be declared illegal and be quashed with all consequential benefits.

(iii) That if during the pendency of these Original Applications any order is issued in implementation of the orders dated 10.5.1995 (Annx. A/2) and 29.11.1995 (Annx. A/1) then that order be also declared illegal and be quashed with all consequential benefits.

5. Applicants in O.A. No.70/95 listed at Sl.No.8 above have filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for a direction to the respondents not to give effect to the seniority list dated 24.11.1994 and that the applicants be provisionally allowed to be sent for training for the post of Shunters and be provisionally appointed to the said post. In fact, they are challenging the position assigned to the rankers in the seniority list dated 24.11.1994, who have been placed above the applicants in the said seniority list.

6. Operation of orders dated 29.11.1995 and 10.5.1995 has been stayed by this Tribunal vide its order dated 24.5.1996.

7. Applicants' case in O.As. listed at Sl. No. 1 to 7 above is that they were initially appointed as Cleaner, promoted on ad hoc basis as 2nd Fireman & Ist Fireman, drafted on the post of Diesel Assistant on various dates in the year 1986 to 1988 and further promoted to the post of Shunters/Goods Drivers. That the respondents did not hold selections for the post of Ist Fireman from 1986 for two years and in the selection held in January-February, 1989 all the applicants were empanelled for the post of Ist Fireman (Annx. A/9). That as per para 137 of IREM, vacancies in the cadre of Diesel Assistants are required to be filled up by lateral induction of Ist Fireman and 2nd Fireman subject to eligibility conditions. Shortfall if any is required to be filled up by direct recruitment through Railway Recruitment Board. That the respondents without following the codal provisions appointed a number of Diesel Assistants vide order dated 11.1.1989 (Annx. A/13) by direct recruitment. Further the training of direct recruits was curtaileld to 26 weeks from 52 weeks. That this curtailent of training was declared as revision of training period and the direct recruits were sought to be assigned seniority from the date of taking over charge of regular post after completion of 26 weeks training and were proposed to be placed in the seniority list above the rankers who were holding the post of Diesel Assistants on ad hoc basis prior to the appointment of direct recruits, in terms of the impugned orders at Annexures A/1 and A/2 though as per rules, the direct recruits were required to be given seniority from the date of holding regular posts after completion of 52 weeks training. Thus the arguments of the applicants can be summarised as under:

(i) The respondents should have assessed the vacancies in the cadre of Diesel Assistants yearwise.

(ii) Selection from among rankers should have been done annually.

(iii) Only after selection from amongst the rankers, remaining vacancies if any, should have been filled up by direct recruitment.

(iv) Curtailment of training of 52 weeks to 26 weeks should not have been treated as revision of training period.

(v) If these codal provisions are followed, the direct recruits would not become senior to the rankers.

8. The case of the applicants in O.A. No.70/95 (listed at Sl.No.8) is that as per rules, seniority to rankers can be assigned from a date after their selection to the post after due process. Since the rankers were declared selected after the direct recruits had joined their posts after due process, the rankers cannot be assigned seniority above the direct recruits.

9. Notices of these O.As. were issued to the respondents and they have filed their reply. Official respondents in their reply have admitted that due to some unavoidable administrative reasons selection for the post of Fireman could not be held since the year 1986 and selections were made in the year 1989. They have, however, asserted that "vacancies have been assessed for ranker and direct recruits and selection for the rankers have been initiated and for direct recruits indent was placed to the Railway Recruitment Board, so the quota fixed for ranker and direct recruits has been followed as laid down in the procedure". It has also been contended by the

official respondents that the training period was revised by the competent authority (General Manager, P. E.) and the direct recruits are being proposed to be assigned the seniority over the rankers, as per rules and order of the Railway Board.

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

11. For better appreciation of the issues involved in this case, we may examine para 137 of I.R.E.M. which is extracted below:

> "(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 Ist Fireman who are at least 8th class pass and are below 45 years of age, in the case of shortfall, by promotion by usual selection procedure from among 2nd Fireman who are at least 8th class pass and are below 45 years of age.
>
> (b) Balance 50% of vacancies shall be filled by lateral induction of matriculate Ist Fireman with minimum three years of continuous service, shoftfall, if any, by promotion of Matriculate 2nd Fireman 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 Assistants 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."

12. A perusal of para 137 of IREM Volume I reveals that 50% of the vacancies in the cadre of Diesel Assistants are to be filled up by later induction from amongst Ist Fireman and in the case of shortfall by promotion by usual selection procedure from amongst 2nd Fireman. Balance 50% of the vacancies are to be filled up by lateral induction of Matriculate Ist Fireman and shortfall, if any, by promotion of Matriculate 2nd Fireman through departmental examination. In case there are still vacancies left to be filled up

(20)

by the above procedure, the shortfall if any shall be made good by direct recruitment. It would, thus, be seen that the department has to condsider the rankers for lateral induction/promotion to the post of Diesel Assistant and only if there is a shortfall, direct recruitment is to be resorted to. The respondents have submitted that "vacancies have been assessed for rankers and direct recruits and selection for rankers have been initiated and for direct recruits indent was placed to the Railway Recruitment Board, so the quota fixed for rankers and direct recruits has been followed as laid down in the procedure". This argument of the respondents cannot be sustained as para 137 provides for filling up the post first from amongst the rankers and balance if any by direct recruitment. Both the process of filling up the post in the cadre of the Diesel Assistant cannot run together. It is very clear from para 137 that vacancies in the cadre of Diesel Assistant should first be filled up by lateral induction/promotion from amongst the rankers and shortfall if any, should be filled up by direct recruitment. Thus it was a lapse on the part of the respondents to have placed the indent with the Railway Recruitment Board simultaneously. In the light of above discuss we conclude that the appointment of direct recruits as Diesel Assistant was against the rules and can at best be treated as ad hoc.

13. Coming to the assessment of the vacancies yearwise, our attention has been drawn to para 215 (f) (i) which is reproduced below:

> "The assessment of vacancies for selection post within the cadre will include the existing vacancies and those anticipated during the course of next one year plus 20% of anticipated vacancies for unforeseen contingencies. For selection in the construction organisation, 50% of the number of posts which exist in the grade under consideration for a period of one year on the assessment date and which are

likely to continue should be taken into account. For ex-cadre post, actual vacancies plus those anticipated in the next two years should be taken into account."

14. A closer reading of this para would reveal that assessment of vacancies is required to be done every year. Further in terms of para 216 of IREM, it has been specifically provided that ad hoc promotion should be avoided as far as possible both in selection and non-selection posts, where it was found inescapable and have to be made in the exegencies of service, they should be resorted to only sparingly and only for a short duration of 3 to 4 months. It has further been provided that in regard to selection posts, it is essential that all the selection should be conducted regularly. While there is no objection to ad hoc promotion being made in leave vacancies and short duration vacancies, ad hoc promotion against regular promotion should be made only after obtaining Chief Personnel Officer's approval. The Chief Personnel Officer is required to review selections of all posts afresh. The Chief Personnel Officer is required to keep record of having accorded approval to such ad hoc promotion and review the progress made in filling up these posts by selected persons every month. It would, thus, be seen that the selection of various posts has to be done on regular basis and the ad hoc promotion should be resorted to sparingly and that too for 3 or 4 months. Further ad hoc promotion against regular promotion posts has to be with the approval of the Chief Personnel Officer who has to regularly review the progress of filling up these posts on regular basis. It has been admitted by the respondents that they could not conduct selection to the post of Fireman from 1986 and the selection was only conducted in 1989 though the rankers were holding the post of Diesel Assistants on ad hoc basis for sufficiently long periods. It is not the case of the respondents that these ad hoc promotion/appointments were continued with the approval of the Chief Personnel Officer. We thus find that the respondents have deviated

(21)

from the established procedure as provided in the rules. The respondents have estimated the vacancies only in 1989 when they initiated the case for filling up the vacancies in the cadre of Diesel Assistants by lateral induction/promotion or through direct recruitment. Assessment of vacancies every year would also imply that rankers eligible for lateral induction/promotion on the cut of date for that year would only be considered. Assessment of vacancies for three years in one go may sometime result in a ranker being considered for a vacancy for which he was not eligible. The department is free to fill up the vacancies at one time but it is utmost necessary that vacancies should be assessed yearwise and candidates eligible for particular year should only be considered for the vacancies of that year.

15. In final analysis we observe that:

(i) Vacancies in the cadre of Diesel Assistants should be assessed yearwise from 1986 onwards.

(ii) Ist Fireman/2nd Fireman eligible for filling up the vacancies in the cadre of Diesel Assistant for that year should be considered first for filling up the vacancies of that year, notwithstanding the fact that they were regularly selected in the year 1989.

16. Coming to the question of seniority amongst direct recruits and rankers, the moot question is whether direct recruits should rank seniors to the rankers eligible for promotion/lateral induction to the cadre of Diesel Assistant for the year 1986 to 1988 and secondly, the curtailment of their training from 52 weeks to 26 weeks should be considered as curtailment or revision in the period of training. Both these questions

are being dealt with in subsequent paragraphs.

17. As has been mentioned earlier the post of Diesel Assistants are to be filled up by lateral induction of Ist Fireman and/or promotion of 2nd Fireman and balance if any should be made good by the direct recruitment through Railway Recruitment Board in terms of para 137 of IREM. It would thus be seen that Ist Fireman and/or 2nd Fireman have prior claim to be appointed to the post of Diesel Assistant. In the instant case vacancies in the cadre of Diesel Assistants pertain to the years 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 Assistants 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 Ist 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 Assistant. 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 the

22

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.

18. On the question of training, it is seen that the rules provide for 52 weeks training for the direct recruits. This training was curtailed to 26 weeks in exegencies of work. In terms of Note below para 302 of IREM Volume-I, in case of curtailment of training, the direct recruits would be entitled for seniority from the date they would have completed the normal training of 52 weeks. This has all along been the stand of the official respondents. However, the Railway Board vide its letter dated 10.5.1995 addressed to the General Manager, Western Railway, Bombay, has ordered that it is not a case of curtailment of prescribed training from 52 to 26 weeks for the concerned employees in the exigencies of service but one of revision of training period from 6.7.1988 to 30.10.1992. With the issue of this letter by the Railway Board the official respondents have changed their stand. On a query to the learned counsel of the respondents as to what were the consideration for revising the period of the training and that too only for the period from 6.7.1988 to 30.10.1992, the learned counsel for the respondents could not produce any satisfactory reply. It has been alleged by the rankers that the curtailment of training period was treated as a revision of training period under political pressure. As has been mentioned above, the learned counsel for the respondents could not produce any valid reasons for treating the curtailment of training period as revision of training period and that too for the period from 6.7.1988 to 30.10.1992 only, we are inclined to agree to the view that this cannot be treated as a revision of training period. Thus, this would be curtailment of the training period and, therefore, in terms of Note below para 302 of IREM, the direct recruits would be entitled to be given

seniority ~~xxxx~~ after the normal period of training of 52 weeks, i.e., after 28.5.1989. Thus, the impugned orders dated 29.11.1995 and 10.5.1995 deserve to be set aside and are hereby quashed. Accordingly, the seniority list of Diesel Assistants drawn up in pursuance of the orders dated 29.11.1995 and 10.5.1995 is also set aside.

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

20. The O.As are accordingly disposed of with the above directions leaving the parties to bear their own costs.

Sd/-
(Gopal Singh)
MEMBER (ADMN.)

Sd/-
(A.K. Misra)
MEMBER (JUDL.)

Aviator/

Part II and III destroyed in my presence on 12.4.2006 under the supervision of section officer (J) as per order dated 28/2/2006

Section Officer (Record)

प्रमाणित
सत्य प्रतिलिपि
अनुभाग अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर