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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

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Date of Decision: 05.06.2002

OA 179/98 with MA 115/98

Govind Narain Sharma, Assistant Operating Manager, N/Rly,
Bikaner.

... Applicant

v/s

1. Union of India through General Manager, N/Rly,
Baroda House, New Delhi.
2. General Manager (P), HQ Office, Baroda House,
New Delhi.
3. Shri Hari Ram, Asstt. Commercial Manager (C)
4. Shri Daya Ram, Asstt. Manager (C)
5. Dharam Singh Commercial Manager (C)
6. K.N.Srivastava (C)
Krishan Lal (RES)
A.K.Wahi (Res)
Hoshyar Singh (M & S)
Praveen Kashyap (C)
11. E.P.Singh, Assistant Manager (C)
12. Ubaidur Rehman
13. Vinod Kumar
14. P.K.Varshney
All Assistant Commercial Manager c/o General Manager
(P), Baroda House, N/Rly, New Delhi.

... Respondents

CORAM:

HON'BLE MR.JUSTICE O.P.GARG, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

For the Applicant	... None
For Respondents No.1&2	... Mr. Manoj Bhandari
For other respondents	... None

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O R D E R

PER HON'BLE MR. A. P. NAGRATH, ADM. MEMBER

The applicant was working as Assistant Operating Manager at the time of filing of this OA i.e. a Group-B Officer in the Operating Branch of Transporation (Traffic) & Commercial Department (TTCD, for short). A provisional seniority list of Group-B Officers was issued vide letter dated 17.4.96 (Ann.A/5). The applicant has been placed at S.No.74 of this list, whereas private respondents No.3 to 14 have been placed above him. He protested against the position assigned to him by submitting a representation dated 17.4.96, followed by reminder dated 10.5.96. His representation came to be decided by order dated 7.5.97 (Ann.A/1). By filing this OA, the applicant has challenged the said seniority list and has prayed for quashing and setting aside the same with further direction to the respondents to revise the said seniority list by placing the applicant over and above respondents No.3 to 14.

2. The applicant has filed MA 115/98 for seeking condonation of delay in filing the OA. We find, the cause of action had arisen on rejection of his representation by order dated 7.5.97 and this OA has been filed in April, 1998. Thus, the OA has been filed well within time, as prescribed under Section 21 of the Administrative Tribunals Act, 1985. There was no necessity of filing this MA as no delay has been caused in this case. The MA is disposed of as unnecessary and the OA is treated



to have been filed in time. The plea of the respondents on this score opposing condonation of delay has no basis and the same is rejected.

3. There was none to represent the applicant. Shri Manoj Bhandari appeared for the respondents and argued at length. We have perused all the relevant documents in this case. Shri Bhandari also handed over a copy of the final seniority list concerning the applicant and the private respondents, which was issued on 2.9.98.

4. From the averments made in the OA we find the ground on which the seniority assigned to the applicant has been challenged is that the panel regarding his selection to Group-B was issued on 5.6.92, whereas in respect of respondents No.3 to 14 the same was issued on 19.10.92. In non-gazetted Group-C posts, the applicant contends that he was senior to all the private respondents. In this background, his plea is that he cannot be made junior to respondents No.3 to 14 merely on the ground that they were actually appointed against vacancies in Group-B earlier than the applicant. In support of his contention, the applicant has relied upon Para 203.5 of IREM Vol.I, which provides that since employees from different streams will be eligible to appear for the selection, their integrated seniority for purposes of the selection should be determined on the basis of total length of non-fortuitous service rendered in grade Rs.2000-3200 and above. Applicant's



plea is that in grade Rs.2000-3200 he has been senior to all the private respondents and that he was selected in Group-B also earlier than these respondents. He has alleged that the administration deliberately hurried with the posting of the private respondents even though their panel was formed late and such an action cannot be made the basis for lowering the seniority of the applicant. While referring to letter dated 7.5.97 (Ann.A/1), by which his representation was disposed of, the applicant has stated that the reasoning given by the respondents is not sustainable because the respondents have made the date of appointment in Group-B as the ground for granting higher seniority to the private respondents, which action itself is arbitrary. The applicant has also referred to the provisions of Para 306 of IREM to contend that candidates appointed at an earlier selection shall be senior to those selected later irrespective of the date of posting. Since the applicant claims to have been empanelled earlier, he asserts to be placed above respondents No.3 to 14 in seniority.

5. The learned counsel for the respondents justified the action of the department of assigning seniority to respondents No.3 to 14 above the applicant by stating that this action was strictly in accordance with the policy ~~is~~ on the subject. The respondents have filed Ann.R/2, letter dated 25.1.83, by which it had been decided that vacancies in TTCD should be filled up by

conducting separate selections for Operating Branch and for Commercial Branch. This applies to selections against 70% quota as also against 30% quota of Limited Departmental Competitive Examination. The learned counsel for the respondents also drew our attention to letter dated 21.9.84 (Ann.R/1), which regulates the manner in which seniority in Group-B is to be assigned. He urged that since the action is strictly in conformity with the policy, there was no ground made out for granting any relief to the applicant. The learned counsel also cited the cases of M.P.Oil Extraction & Anr. v. State of M.P. & Ors., (1997) 7 SCC 592, and State of A.P. v. V.C.Subbarayudu & Ors., (1998) 2 SCC 516, to contend that since the action is strictly in accordance with the policy of the department, there is no scope for the Tribunal to intervene, as per the law laid down by the Apex Court in these two cases.

6. We have carefully considered the averments of the applicant, reply of the respondents and arguments advanced by the learned counsel for the respondents.

7. TTCD comprises of two branches i.e. Operating and Commercial. The applicant belongs to the Operating Branch, whereas respondents No.3 to 14 belong to Commercial Branch. ^W In Group-C and Group-D are two distinct disciplines. Only for further promotion to Group-A posts, the officers in Group-B are considered based on their inter-se seniority. For this purpose,

a combined seniority list of Group-B Officers of TTCD is framed. The impugned seniority list includes the names of the officers from the Operating Branch as also of the Commercial Branch. It is not in dispute in this case that the applicant has a longer length of non-fortuitous service in Group-C ~~as~~ grade Rs.2000-3200. It is also not in dispute that the panel for promotion to Group-B for Operating Branch was declared on 5.6.92 and that for Commercial Branch was declared later i.e. on 19.10.92. Respondents No.3 to 14 actually came to be appointed in Group-B on dates earlier than the applicant. The applicant was appointed on 8.10.93, whereas last of the private respondent, Shri P.K. Varshney, was appointed on 30.9.93 with others having been appointed earlier. The policy as to how seniority in Group-B is to be regulated has been clearly spelled out in letter dated 21.9.84 (Annexure 1). Para-3, which is relevant for the purpose, is reproduced below :-

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"3. After a careful consideration, in consultation with the Class II Officers' Federation, the Ministry have decided as follows :

- i) Where appointments to Group-B are made on different dates, the date of appointment, which will govern the extent of non-fortuitous service, will form the basis for determining the combined seniority;
- ii) If appointments to Group-B, in the different streams are made from one and the same date, the seniority of such Group-B officers for purposes of further advancement would be determined on the basis of their relative seniority in Group-C, without however

disturbing the inter-se seniority of the officers of each stream."

It is obvious that where appointments to Group-B are made in different dates, the date of appointment governs the length of non- fortuitous service and that forms the basis for determining combined seniority. It is not a new policy and has been issued way back in 1984. The decision to conduct separate selections to Group-B posts in TTCD had also been taken as far back as 25.1.83. The applicant has not challenged the policy contained in letter dated 21.9.84 and we also do not find any illegality in this policy. Though the learned counsel for the respondents had placed reliance on the judgements of Hon'ble the Supreme Court in the two cases cited supra, we do not consider that was necessary in this case as the applicant has nowhere questioned the policy and we are not required to deal with that ~~aspects~~ aspect of the matter. The applicant has supported his case by referring to Para 203.5 of IREM . We have perused the same and we find that this relates to preparing an inter-se seniority list from different streams for the purpose of selection to Group-B from Group-C. The matter before us relates to seniority in Group-B itself. The provisions of Para 203.5 are inapplicable in this case. The applicant has also made Para 306 as a basis in his support. Obviously, he has misconstrued the provisions of this Para. This ~~is~~ obviously relates to the selections in the same discipline, meaning thereby, if one panel of Operating Branch has been issued then the candidates in that panel will rank senior

to those who find a place in the next panel of Operating Branch. This cannot have any relation with the panel of other Branches.

8. On analysis of these facts and the rule position, we find that the action of the respondents is in conformity with the ~~xx~~ policy spelled out in the letter dated 21.9.84 (Ann.R/1). The same has been made the basis in the letter dated 7.5.97 (Ann.A/1) while rejecting the representation of the applicant. We do not see any infirmity or illegality either in the letter dated 7.5.97 or in the seniority list dated 17.4.96 (Ann.A/5).

9. We, therefore, dismiss this OA as having no merits. No costs.

lwp

(A. P. NAGRATH)
MEMBER (A)

AG
(JUSTICE O. P. GARG)
VICE CHAIRMAN

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