

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JODHPUR BENCH: JODHPUR

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ORIGINAL APPLICATION NO: 275/2003

Date of decision: 10.9.2004

Roshan Lal Agarwal and Ors.

... .. Applicants

Mr. Rajesh Shah

... .. Advocate for the Applicants

VERSUS

Union of India and Others

... .. Respondents.

Mr. Salil Trivedi

... .. Advocate for Respondents.

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

HON'BLE MR. G.R. PATWARDHAN, 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? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

*[Signature]*  
[ G.R. Patwardhan ]  
Administrative Member

*[Signature]*  
[ J.K. KAUSHIK ]  
Judicial Member.

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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH: JODHPUR.**

**Original Application No.275/2003**

**Date of decision:** 10.9.2004

**Hon'ble Mr. J K Kaushik, Judicial Member.**

**Hon'ble Mr. G R Patwardhan, Administrative Member.**

1. Roshan Lal Agarwal s/o Shri Nemi Chand Ji Agrawal, B/C Aged 60 years, R/o 16/661, shiv Nagar, Pahada, Udaipur Rajasthan
2. Nathi Lal Verma, S/o Shri Paras Ram Ji B/c Verma, aged 60 r/o station Supdt. Bagri Sajjanpur Distt. Pali.
3. Manoj Kumar S/o Shri Ram Kishan, B/c Ram ( SC) aged about 47 years, r/o Station Supdt Sirohi at present Station Superintenant, Falna Distt. Pali.

: Applicants.

Rep. By Mr. Rajesh Shah, : Counsel for the applicants.

**Versus**

1. Union of India through the General Manager, North Western Railway, Jaipur, Rajasthan.
2. Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.

: Respondents.

Rep. By Mr. Salil Trivedi:- Counsel for the respondent.



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**ORDER**

**Per Mr. J K Kaushik, Judicial Member.**

Roshan Lal Agarwal, Nathi Lal Verma and Manoj Kumar, have filed this joint application for seeking the following reliefs:

"(a) It is most respectfully submitted that the seniority list & order dated 05.08.2003 ( Annex. A/5 ) & notification dated 05.08.2003 ( Annex. A/6 ) may be quashed & set aside by holding that the seniority of the applicants shall be counted from the date of their ad hoc appointments.

(b) It is most respectfully submitted that the period of ad hoc services rendered by the applicants may be taken into the account determining the seniority.

(c) It is most respectfully submitted that the year wise vacancy for the determination of the seniority may be determined and in consequence for that the benefit may be rendered to the applicants for both the cadre i.e. 6500-10500 & 7450-11500

(d) The selection procedure for the next higher cadre i.e. Rs. 7450-11500 shall not be finalized till the decision of this original application.

(e) It is, most respectfully prayed that fresh seniority list shall be made in accordance with law and settled preposition of the law given by the Hon'ble Apex Court."



2. The material admitted facts leading to the filing of this O.A as culled out from the pleadings of the parties are that the applicants were initially appointed as Station Master on various dates. They were promoted to the post of Station Superintendent grade of Rs. 2000-3200/ 6500-10500 on adhoc basis with effect from 25.04.95, 21.01.95 and 06.11.97 respectively. The applicant No. 3 i.e. Shri Manoj Kumar belongs to SC community. All of them were serving in the erstwhile Western Railway of Ajmer Division before the new zone named North-West Railway, Jaipur came into existence.

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3. The further case of the applicants is that there were 65 vacancies which were determined in the year 1996 and a notification for the same came to be issued on 18.06.96. The selection to the said post was finalised only vide order dated 09.03.99 at Annex. R/1 wherein the name of the applicants are placed at Sl. No. 12, 8 & 46 respectively. The applicants and other similarly situated persons were given regular promotion with effect from 09.03.99 vide letter No. 25.09.2001 ( Annex. R/3). Subsequently, a seniority list has been issued on 05.08.2003 at Annex. A/5 and the names of the applicants have been placed at Sl. Nos. 25, 23 & 35 respectively. The applicants have been assigned seniority from the date of their empanelment and have not been given the benefit of their adhoc services.



4. The further case is that a new zone came into existence and on the basis of the option some persons from other divisions have been allowed to join in the Ajmer Division of the new zone i.e. North Western Zone, Jaipur. Their names have been placed at Sl. No. 7 to 13 of the impugned seniority list at page 30 ( Annex. A/5) of the paper book. Basically they are junior to the applicants on the feeder post to the post of Station Superintendent i.e. in Rs. 2000-3200, but they have been shown as senior to the applicants since in their parent division they had passed the selection to the post of Station Superintendent on

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26.02.98 itself. The seniority has been assigned to the applicants and the persons who came on option basis from other Divisions on the basis of the date of passing of the selection.

5. As regards the variances, the respondents had taken an objection regarding three persons who were initially shown as applicants but not employed within the territorial jurisdiction of this Bench of the Tribunal. However, the said objection has been settled on the prayer of the learned counsel for the applicants for deletion of their names. Another objection regarding the maintainability of the O.A is that the applicants have not impleaded the persons above whom they are claiming seniority and therefore the O.A suffers from non-joinder of necessary parties and therefore no relief can be granted in this case in the absence of such affected persons. It has also been averred that it is not only that the applicants who were working on adhoc basis but certain other seniors to them were also working on adhoc basis and all of them were assigned seniority from the date of their substantive entry from the date of passing the selection to the post of Station Superintendent. Under the rules seniority to an incumbent is assigned from the date of his substantive entry in the grade and in the instant case, the applicants were empanelled only on 08.03.99. The adhoc services cannot count for seniority on a particular post. Certain other modifications were made in the seniority list since a new



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Ahmedabad division of Western Railway came into existence and therefore a fresh seniority list was issued on 05.08.2003. The selection which was ordered to be initiated vide Annex. A.6 has been cancelled due to subsequent development in as much as re-structuring scheme in certain Group 'C' and Group 'D' cadre has been introduced by the Railway Board and as per the very scheme the selection which have not been finalised on 01.11.93 were to be cancelled/abandoned. The representations of the applicants have been turned down. In the absence of any criteria for counting the seniority from the date of adhoc promotion, the grounds raised in the O.A have been denied.



6. We have heard the elaborate arguments advanced by the learned counsel for both the parties and have anxiously considered the pleadings, records of this case. The respondents were fair enough to make available the records relating to the selection especially the determination of the vacancies as was directed by this Bench of the Tribunal. The learned counsel for the applicant has reiterated the facts and grounds narrated in the pleadings of the applicants. He has cited numerous decisions in support of the case of the applicants. The learned counsel for the applicants has submitted that the applicants were promoted to the post of Station Superintendent against the existing vacancies in the year 1996 itself. He has contended that perhaps due to the litigations and certain stay orders passed

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by the Ahmedabad Bench of this Tribunal, the selection in the Ajmer Division could not be finalised. Had the selection been finalised at an earlier date, they would have not faced the episode and they would have been senior to their erstwhile juniors in other divisions. They have in fact been employed against non-fortuitous vacancies. He has also contended that in other divisions, the selections were held in-time and the individuals got their regular promotions without any loss in seniority. The situation has been beyond the control of the applicants and there was absolutely no fault or dereliction which could be fastened to the applicants in particulars and other persons of the erstwhile Ajmer Division of Western Railway in general. In such a peculiar situation, persons who are appointed on a much later dated cannot be allowed to score a march over the senior like the applicants and the whole action of the respondents is against fair play and natural justice.



7. He has contended that as regards the preliminary objection of the respondents relating to the non-impleadment of necessary parties, the applicants are not claiming any relief against any such persons as their claim is against the Union of India. Their basic claim is that their adhoc promotion should be treated as against non fortuitous vacancies. Their relief is that they should be treated as regularly promoted from the date of their initial appointment on adhoc basis. He has also invited our

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attention to the Railway Board Circular dated 30.03.1983, where such a provision has been made. It has been provided that while considering the staff of different seniority units, the total length of continuous service in the same or equivalent grade rendered by the employee concerned determines the seniority vis-à-vis the other staff. Thus the preliminary objection cannot be sustained.

8. On the other hand the learned counsel for the respondents has strenuously opposed the contentions of the learned counsel for the applicants and has laid enormous stress on the preliminary objections. He has submitted that in case of seniority dispute, persons over whom seniority is claimed are the necessary parties and in their absence relief claimed cannot be granted. Besides that no proper adjudication can be done in such matters in absence of affected person. He has next contended that seniority on promotion is regulated by para 302 of the IREM Vol. I which provides that a person on promotion gets seniority when one has joined the promotional post after going through the regular process of selection or on passing the suitability test as the case may be. Since the applicants have passed the selection on a much later date than the persons who came from other divisions, the applicants cannot claim seniority over them. He has endeavoured hard to persuade us that the selection in Ajmer division could not be finalised since



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there were interim orders from the Ahmedabad Bench of the Tribunal and the moment it has been finalised, the applicants have been given seniority from the date of their empanelment on regular basis. There is no rule to count the services rendered on adhoc basis and until one gets through the process of selection for promotion. The respondents cannot be said to be committed any illegality or arbitrariness and the O.A deserves to be dismissed.



9. We have considered the rival submissions put forth by both the learned counsel for the parties. As far as the peripheral question regarding the preliminary objection of non-imleadment of necessary parties concerned, the basic claim of the applicants is that the period of adhoc service rendered by them being against non-fortuitous vacancies should be taken into consideration while determining their seniority. I.e. the basic question to be decided in this case is as to whether the adhoc service pending selection can be counted towards seniority on regularisation of the individuals or not. In case the period of adhoc services is to be counted for the seniority purposes, the applicants would have a case and in case the adhoc service is not to be counted for seniority the applicants have no claim. In our considered opinion, we do not think that this is a case where the applicants are claiming any seniority simpliciter. Their fight is for counting the adhoc service towards seniority and this

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claim can lie only against the Union of India and not against any individual. In this view of the matter we are not impressed with the submissions and the pleas of the learned counsel for the respondents and therefore the preliminary objection cannot be sustained and stands over-ruled.

10. Now advertng to the factual aspect of the matter, there is no dispute as far as the material facts are concerned. It is a fact that the applicants were senior in the feeder grade to the number of persons who have been allowed to come to Ajmer Division of North Western Railway from other divisions. It is also the fact that the applicants have passed the selection to the post of Station Superintendent vide letter dated 08.03.99, whereas persons belonging to other divisions have passed the similar examination on 26.02.98. There is no dispute that the applicants have been working on adhoc basis between the years 1995 and 1997, much earlier to the date of promotion of the persons from other divisions. It is also the fact that vacancies were promulgated in the year 1996. We have also gathered information regarding the vacancy position in the erstwhile Ajmer Division as on 16.05.96 from the records produced before us, as per which the existing vacancies were 52, anticipated vacancies due to retirement were 8, anticipated vacancies due to promotion in higher grade 3 and 2 vacancies were meant for unforeseen contingencies and therefore a panel of 65 candidates



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was prepared and the name of the applicants were placed at Sl. No. 12,8 and 46 respectively. This clearly indicates that all the applicants have been promoted on Adhoc basis against non fortuitous vacancies. It is also an admitted fact by both sides that there was delay in finalisation of selection due to pendency of litigations and court orders for which the applicants were not responsible. On the other hand, there was no such obstruction in respect of other divisions where the selections were held in-time.



11. The primary question which has to be answered by us is as to whether, if an employee is promoted on Adhoc basis against non fortuitous vacancy pending selection, which got delayed for no fault of the individual employees, would count for seniority or not after one has been empanelled for the same and regularisation thereof. To appreciate the controversy involved, we find it expedient to refer the relevant rules which governs the seniority in the case of railway servant. i.e. para 302 and 320 of the Indian Railway Establishment Manual Vol I, which read as under:

**"302: Seniority in Initial recruitment grades**

Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority

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should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-se-seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se-seniority of each group.

320 **Relative Seniority of employees in an intermediate Grade belonging to different seniority units appearing for a selection/non-selection post in higher grade.**



When a post (selection as well as non selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter-seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to the proviso that only non fortuitous service should be taken into account for this purpose.

A perusal of the aforesaid would reveal that para 302 starts with words "unless specifically stated otherwise" meaning thereby that where specific rule has been framed to regulate a particular matter that rule shall apply and 302 is thus a general rule. As per the general rule, the seniority is to be assigned from the date one is appointed after regular selection and in case the posts are partially filled by direct recruitment and partially filled by promotion, the criteria would be the date of regular promotion. However, that is not the case here since the posts are filled 100% by promotion. In the instant case, it is para 320 which would regulate the issue since persons are coming from different seniority units. A mere perusal of the said

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rule envisages that in such cases, the total length of continuous service in the same or equivalent grade held by an employee shall be determining factor for assigning the inter se seniority. However, this is subject to the proviso that only non fortuitous service should be taken into account for this purpose. In the instant case, we have already held that the applicants were though promoted on adhoc basis, but were promoted against non fortuitous vacancies pending selection. Thus the applicants total service rendered on the post of Station Superintendent would have to be reckoned towards seniority. The natural corollary would be that the Adhoc service rendered by the applicants shall count for the purpose of seniority and if that be so, seniority assigned to them vide the impugned seniority list cannot be sustained.



12. As far as the Railway Board circular dated 30.08.1983 is concerned, the same relates to determining of relative seniority as amongst the various staff in respect of those posts which are controlled by the headquarters of a Zonal Railway. It also makes a mention and defines the non fortuitous vacancies. Incidentally, we find that there is annotation in para 4 of the said circular that the same shall be valid for a period of three years from 01.08.83. It has not been brought to our notice by either party as to whether it has been further extended or not. In this

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view of the matter, we are unable to examine this case in relation to the applicability or otherwise of the said circular.

13. Numerous judgements have been cited on behalf of the applicants on the same proposition and we also feel that most of them have no relevance to the facts and circumstances of this case and therefore to avoid plethora of these cases, we would like to refer to the order passed by Ahmedabad Bench of this Tribunal in **Girdharlal J Dabhi and ors vs. Union of India and ors.** [ AISLJ 1987(4) 316], which is self some to the present one, and wherein para 321 of IREM 1964 ( present para 320 of IREM vol. I of 1989) has been interpreted and examined. That was case wherein in Rajkot division the selection was not held for years together and in other divisions selections have been completed and that has resulted in loss of seniority to adhoc promotees of Rajkot Division. The Tribunal has unequivocally held that promotion on adhoc basis was against non-fortuitous vacancies and as such the same should count for seniority. The facts of the instant case are similar and the said decision squarely covers the controversy involved in the instant case. Incidentally, even the matter relating to non joinder of necessary parties also came up for adjudications and the Ahmedabad Bench of this Tribunal came to the following conclusions:

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"4. We have considered the rival contentions carefully. So far as the question of non joinder of necessary parties is concerned, we are of the view that this objection has no merit at this stage. The claim of the applicants is based on the provisions of Rule 321 of Chapter III of Indian Railway Establishment Manual and therefore it is not directed against any person in particular. They only want their seniority to be fixed in accordance with that rule. Therefore, the question of impleading persons who might be affected by the applications of the rule does not arise. Moreover, this litigation has been pending now for seven years and all persons in the offices in which the applicants are working would surely be aware of this litigation. If any person felt that he would be affected by it he could have approached either the civil court or this Tribunal for being impleaded as a respondent. Therefore at this stage seven years after the litigation started we are not inclined to dismiss this application on the technical ground of non-joinder of parties.



5. Coming to the merits of the application there is force in the contention of Shri Gogia that the process of regular promotion to the grade of Rs. 425-700 had been delayed in the Rajkot Division vis-à-vis other divisions. In any case Rule 321 of Chapter III of Indian Railway Establishment Manual is very clear on the subject of relative seniority. There is no dispute that the applicants who were selected for regular promotion in 1979 were working regularly in the scale of Rs. 425-700 from that year. It is also not disputed that their earlier promotion to the scale of Rs. 425-700 on temporary basis was to non-fortuitous vacancies. Rule 321 therefore becomes applicable to them and they should be given seniority in the grade of Rs.425-700 on the basis of their continuous officiation therein. Shri Kyada was right in pointing out that the applicants could have represented for fixation of their seniority under the said Rule 321 after their regular promotion in 1979 and if they had done so, the Railway authorities might have considered their representation favourably. In view of this, we would direct the respondents to re-draw the impugned seniority list at Exhibit 39 by granting applicant's seniority in conformity with the aforesaid Rule 321. After doing so the respondents should consider the case of the applicants for promotion from the date their immediate juniors according to the revised seniority list were considered for promotion and if found fit grant them promotion from the respective dates from which their juniors were promoted and give them all consequential benefits including monetary benefits. We would direct the respondents to complete this process within six months from the date of receipt of this order.

In the result the application is allowed as indicated above. Parties to bear their own costs."

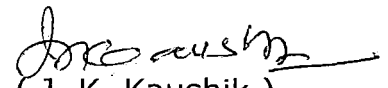
Hence we have absolutely no hesitation in applying the said decision to the present case and decide the O.A on similar lines.



14. In the result the O.A has ample force and substance and the same stands allowed accordingly. The impugned order dated 05.08.2003 (Annex. A/5) stands quashed accordingly. The respondents are directed to re-draw the seniority list Annex. A/5 by granting the applicants seniority in conformity with para 320 of IREM Vol. I. The applicants shall also be entitled to all consequential benefits. This order shall be complied with within a period of three months from the date of communication of this order. The parties are directed to bear their own costs.

— G.R.

( G.R. Patwardhan )  
Administrative Member

  
( J. K. Kaushik )  
Judicial Member.

Jsv.



Shah  
(Rajesh Shah)  
13/9/04

R. Lenny  
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