

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.737/1997

Date of order :

Present : Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman
Hon'ble Mr. N.D. Dayal, Administrative Member

TANMOY DAS & 7 ORS.

.....Applicants

VS.

1. Union of India service through the General Manager, Eastern Rly., Fairlie Place, Cal-1.
2. The General Manager, Eastern Railway, Fairlie Place, Cal-1.
3. The Chief Personnel Officer, Eastern Railway, Fairlie Place, Cal-1.
4. The Chief Electrical Engineer, Eastern Railway, Fairlie Place, Cal-1
5. The Divisional Rly. Manager, Asansol, Eastern Railway, Burdwan
6. The Senior Divisional Personnel Officer, Asansol, Eastern Railway, Dist.Burdwan
7. The Senior Divisional Electrical Engineer(TRS), Asansol, Eastern Railway, Dist. Burdwan

.....Respondents

For the applicant : Mr. S.K. Dutta, counsel
For the respondents : Mrs. R. Basu, counsel

Heard on : 18.3.04 : Order on : 23.4.04


ORDER

Per Justice B. Panigrahi, V.C.

This application is directed against the speaking order dated 1.11.1996 (Annexure 'E') passed in compliance with the direction of this Tribunal dated 29.8.1996 in O.A.No.188/1996 filed by the present applicants earlier.

2. Briefly stated the case for the applicants is that they were initially appointed as Fitter Grade-III either directly through Railway Service Commission or after passing requisite trade test in between the year 1979-1983. They were further promoted to the post of Fitter Grade-II in the year 1993-95 after passing the requisite trade


test. Some departmental employees who also appeared with the applicants for being promoted to the skilled grade of Fitter Grade-III or other trades, could not qualify, and therefore, were working in the semi-skilled grade. The Railway Board vide its letter dated 13.11.1982 reclassified the different artisan grades and directed placement of semi-skilled grade to Skilled grade with effect from 1.8.1978. Accordingly those employees who could not pass the trade test earlier and were working in the semi-skilled grade, were directly placed in the skilled grade with effect from 1.8.1978. The grievance of the applicants is that these employees who did not pass the trade test earlier, have now been placed above them as they were given seniority from the date of their placement in the skilled grade i.e. from 1.8.1978. According to the applicants, this action of the respondent authorities is not justified as those employees could not pass the trade test earlier and were, therefore, working in the lower grade while the applicants were placed in the skilled grade after having passed the requisite trade test. It is further stated that the question whether such reclassified skilled artisans should be granted seniority from the date of their placement in the skilled grade with effect from 1.8.1978 or from the date when they passed the trade test subsequently was the subject matter of challenge before this Tribunal in earlier O.As filed by different set of employees and the matter was finally settled by the Apex Court on the basis of Railway Board's clarificatory circular dated 26.3.1990 which was relied on before the Hon'ble Supreme Court in the SLPs filed by the respective parties before the Hon'ble Apex Court against the decision of the Tribunal vide SLP 642-642A/1988, SLP No.7158/1988 and SLP No.14907 of 1988. The Hon'ble Supreme Court vide its order dated 12.2.1992 disposed of those SLPs directing to follow the Railway Board's decision dated 26.3.1990. According to this decision of the Railway Board the semi-skilled artisans reclassified as skilled grade should get their seniority in skilled Grade-III only from the date of passing the trade test for skilled grade cognate trade and not from 1.8.1978.



2. Since the applicants were placed junior to such reclassified staff by granting them seniority from 1.8.1978 in violation of the Railway Board's aforesaid order, they filed O.A.No.188/1996 before this Tribunal which was decided on 29.8.1996 directing the respondents to dispose of their pending representations within a certain specified period. Pursuant to that direction of the Tribunal the impugned speaking order dated 1.11.1996 has been passed in which the respondent authorities rejected the claim of the applicants and held that the reclassified staff in Skilled Grade-III have been rightly granted seniority from 1.8.1978 as in the order of reclassification of 1982 issued by the Railway Board there was no provision for passing the trade test. Being aggrieved by this decision the applicants have filed the instant O.A. challenging the said speaking order and seeking a direction on them to fix their seniority according to the Railway Board's order dt. 26.3.90 as approved by the Hon'ble Supreme Court mentioned above.

3. No reply has been filed by the respondent authorities though the case has been pending since 1997. During the course of hearing, however, ld. counsel for the respondents has argued the case on merits and after conclusion of the hearing both parties have submitted written arguments.

4. Mr. S.K. Dutta, ld. counsel for the applicants has argued that the respondents are taking very queer stand in the matter of fixation of seniority of the applicants. While in the earlier group cases before this Tribunal vide Annexure 'A' i.e. in O.A.498/1986 (Lalit Bhowmick & Ors. Vs. Union of India & Ors.) they took a stand that the date of passing of trade test should be the criteria for fixation of seniority in skilled Grade-III and not the date of reclassification i.e. from 1.8.1978, but in the instant case they are taking a different stand. The Railway Board also supported this stand vide its circular dated 26.3.1990 and held that passing of trade test for skilled Grade-III in cognate trade should be the crucial date for



fixation of seniority. It may be noted that the Tribunal in earlier O.As held otherwise and directed that seniority should be fixed from the date of reclassification i.e. 1.8.1978 since there was no provision in the Railway Board's order dated 1982 for passing trade test for placement in skilled Grade-III. However, in view of the Railway Board's order the Hon'ble Supreme Court disposed of the SLPs filed against the decision of the Tribunal by directing that the Railway Board's order should be followed. According to Mr. Dutta, when the respondents took a stand that date of passing of trade test should be the criteria for fixation of seniority, which was subsequently approved by the Railway Board and also the Hon'ble Supreme Court, in the instant case they are taking a totally different stand which is diametrically opposite i.e. they are taking the stand which the Tribunal in earlier O.As held but which was reversed by the Hon'ble Supreme Court based on the Railway Board's circular of 1990. Mr. Dutta has also referred to the letter dated 18.2.1997 written by the Chief C.P.O. regarding fixation of seniority in the skilled grade in TRS wing reiterating the stand taken by the Railway Board as above. However, in the speaking order altogether different stand has been taken and, therefore, this speaking order cannot be allowed to stand and should be quashed.

5. As already stated the respondents did not file any reply. Mrs. R. Basu in her written statement has only stated that the Fitter category is not a cognate trade and, therefore, their seniority cannot be governed by the aforesaid Railway Board's decision of 26.3.1990.

6. Except this stand of the respondents there is nothing on record to establish that the present applicants are not similarly circumstanced like the applicants of the earlier O.As. It is also not explained by the respondents as to why the Fitter category is not a cognate trade. On the other hand we find that in the earlier O.As the applicants were also Fitter Grade-III and, therefore, the respondents cannot take this stand in their written submission which is of course

not a verified reply, more so when in the speaking order no such stand has been taken. The relevant portion of the Railway Board's order dated 26.3.1990 is as below:-

"It is clarified that even the semi-skilled artisans reclassified as skilled under Board's letter No.E(P&A)I/82/JC/1 dated 13/11/1982 are to get seniority in Skilled Grade-III only from the date of passing a trade test for Skilled Grade-III in a cognate trade and not from 1/8/1978 i.e. the date which was taken into consideration for fixing their pay on proforma basis. This was made clear to the Railways under Board's letter No.E(P&A)I/82/JC/1 Vol.II(Part) dated 31/7/1987.

In view of this, the point raised by the petitioners in O.A.No.642/88 would be adequately met.

It is pertinent to point out here that on the same point an SLP has been filed by Eastern Railway on 22/11/88 against the judgement passed in O.A.No.498 of 1986 by CAT/Calcutta-Lalit Kumar Bhowmick and Others Vs. Union of India. In that case the CAT had directed that seniority to the semi-skilled reclassified as skilled under Railway Board's letter of 13/11/1982 should be given from 1/8/1978 i.e. the date from which they were given the benefit of proforma fixation of pay. The SLP was filed by Eastern Railway on the ground that these persons could have been given seniority only from the date of passing the trade test for Skilled Grade-III in a cognate trade. It will be desirable to arrange the bearing of this SLP also alongwith O.A.No.642/88."

In the speaking order however we find that the stand taken is simply reiteration of the observations of this Tribunal in earlier O.As vide this judgment dated 26.4.1988 (Annexure 'A'). By that common judgment four O.As were disposed of. There three O.As were filed by a group of employees some of whom were also Fitter Grade-III who claimed seniority over the private respondents therein on the ground that they passed the trade test while the private respondents did not and they were simply placed in the skilled grade by virtue of the Railway Board's order of 1982. Therefore, the applicants, who passed the trade test should be held senior to the private respondents, who did not pass the trade test and were reclassified as skilled grade from 1978. However, in the other O.A. i.e. O.A.No.498/1986 (Lalit Kumar Bhowmick & Ors. Vs. Union of India & Ors.), the applicants were claiming seniority from 1.8.1978 on the ground that there was no trade test prescribed for upgradation benefit

and, therefore, they should be granted seniority from the date of their upgradation i.e. 1.8.1978 without undergoing any trade test. In that O.A. the respondents took the stand that trade test was the criteria for fixation of seniority. The Tribunal while dismissing the first group of applications, allowed the O.A.No.498/1986 holding that since there was no trade test prescribed, the seniority should be fixed from the date of reclassification i.e. 1.8.1978 and not from the date of passing of trade test. However, on the basis of the Railway Board's order quoted above, the aforesaid decision of the Tribunal was reversed by the Hon'ble Supreme Court in SLPs directing to follow the Railway Board's order.

If the Railway Board's order is followed in the present case, then the applicants cannot be denied their seniority above those who could not pass the trade test but were placed in the skilled grade on the basis of reclassification order of 1982, but it appears that in the speaking order the respondent are taking a different stand from what has been prescribed by the Railway Board's order dated 26.3.1990. In our opinion being the zonal railway local respondents should follow the Railway Board's order as opined by the CPO in its letter dated 18.2.1997(Annexure 'F'). It is, however, a different question whether any trade test for being placed in the skilled grade was prescribed or not. Even if no such trade test was prescribed and seniority should be given from the date of placement as contended in the speaking order, in that event the Rly. Board decision of 1990 has to be amended appropriately. Until and unless Board's decision is amended, benefit of seniority cannot be given from 1978 automatically without clearing the trade test.

8. In view of the discussion made above we allow this O.A. and quash the speaking order dated 1.11.1996 and direct the respondents to follow Railway Board's order dated 26.3.1990 in the matter of fixation of seniority of the applicants and other similarly situated persons