

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.OA 1240 of 97

Present : Hon'ble Mr.S.Biswas, Administrative Member

Hon'ble Mr.A.Sathath Khan, Judicial Member

SHARAFAT HUSSAIN

AND 3 OTHERS.

...APPLICANTS

VERSUS

1. Union of India, service through the
Chairman, Railway recruitment Board,
M.M.Building, 4th floor,
16, Strand Road, Calcutta-1.

2. The General Manager,
S.E.Rly., Garden Reach,
Calcutta-43.

3. The Dy.Controller of Stores,
S.E.Rly., Kharagpur,
Dist.: Midnapore.

4. The Chief Security Commissioner,
Railway Protection Force,
S.E.Rly., Garden Reach;
Calcutta.

...RESPONDENTS

For the applicants : Mr.P.C.Das, counsel

For the respondents: Mr.S.R.Kar, counsel
Dr.S.Sinha, counsel

Heard on : 25.4.03

Date of order : 02.05.2003

O R D E R

A.Sathath Khan, J.M.

The applicants have approached this Tribunal for directing the respondents to fix their appropriate interse seniority and grant them due Promotion from 1.4.86 and also for consequential arrear benefits from 1.4.86 with 18% interest.

...2/-

2. The contentions of the applicants are that though they passed the written examination pursuant to the Employment Notice No.1/84, the respondents failed to appoint them initially and they were appointed only after the order dated 19.1.94 of this Tribunal in OA 845/88 and order dated 25.2.94 in OA 568/89, that the respondents have failed to fix the proper seniority of the applicants from 1.4.86, that in a similar matter in OA 830/91 decided on 8.1.96 this Tribunal directed the respondents to assign their interse seniority, that the respondents have not replied to the notice sent by the applicants' counsel on 8.7.97 regarding fixing of their interse seniority and that the applicants are entitled to fixation of their seniority in the light of the order of this Tribunal in OA 830/91. Hence this OA has been filed.

3. The respondents contended that the applicants were appointed pursuant to the orders of this Tribunal dated 19.1.94 and 25.2.94, that the seniority of the applicants have been fixed taking into consideration their date of joining as per the order of this Tribunal dated 5.2.93 in CCP 86/92 in OA 837/89, that the reliefs claimed by the applicants on the basis of the order in OA 830/91 is not admissible to the applicants and that there are no merits in this case. Hence the respondents pray for the dismissal of the above OA.

4. Heard the ld. counsel for the applicants and the respondents and considered all the pleadings and relevant records of the case.

5. The point for consideration in this case is whether the applicants are entitled to seniority on the basis of their position in the merit list or on the basis of their date of joining. The ld. counsel for the applicants vehemently contended that the applicants are entitled to seniority on the basis of their position in the merit list as held by this Tribunal on 8.1.96 in OA 830/91. On the contrary, the ld. counsel for the

respondents contended that the applicants are entitled to seniority on the basis of their date of joining as held by this Tribunal on 5.2.93 in CCP 86/92 in OA 837/89. The order of this Tribunal dated 8.1.96 in OA 830/91 reads as follows :

"i) Respondent No.3 i.e. the Chairman, RRM, Calcutta, shall within two months from the date of communication of this order, separately convey to the petitioner as well as to respondent No.2 i.e. General Manager, Eastern Railway the specific position of the petitioner in the panel of consolidated panel for the examination in question for the purpose of determination of her inter se seniority amongst those appointed from the said panel. The relative position of the petitioner in such panel shall be ascribed keeping in view her aggregate marks and the relative aggregate marks of other candidates already appointed from the said panel.

ii) Respondent No.2 i.e. General Manager, E.Rly. shall subject to completion of other pre-requisite formalities within 2 months from the date of communication of this order give appointment to the petitioner as per recommendation of the Chairman, RRB already sent to him and as per the further recommendation of the Chairman, RRB assign her appropriate inter se seniority subsequently.

iii) There shall be no order as to costs.

The order of this Tribunal dated 5.2.93 in CCP 86/92 in OA 837/89 reads as under :

"On hearing both the parties, we find that the names of the applicants have already been forwarded to the General Manager, E.Rly. & S.E.Rly., for giving them appointment in December 1992. Both the General Managers will now order the appointment to these 13 persons in the next available vacancy as per their position on merit and the applicants shall not claim any retrospective seniority. They will get the seniority from the date of joining. The process shall be initiated within a period of one month from the date of communication of the order as and when vacancy arises."

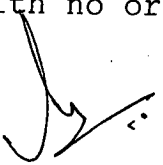
The ld.counsel for the applicants further contended that in a similar case relating to Employment Notice No. 1/85 this

Tribunal by its order dated 15.2.02 in OA 173/97 has held that the order of the Tribunal dated 5.2.93 in CCP 86/92 is a short order without reasons and that the order of this Tribunal dated 8.1.96 in OA 830/91 is a well considered one and hence the ~~later~~ later order be followed. Normally the inter se seniority of the candidates in a select panel should be decided on the basis of their placing in the merit list on the basis of the marks obtained by them. However, the ld. counsel for the respondents submitted that all the records relating to the case have been destroyed by a devastating fire in the M.M. Building in which the office of the RRB was situated on 7.11.98 and that the respondents are unable to determine the merit, seniority or inter se seniority of the applicants. It is really unfortunate that all the records pertaining to the case have been destroyed due to a natural calamity which is beyond the control of the respondents. It is pertinent to note that the order dated 8.1.96 in OA 830/91 directing the respondents to fix the inter se seniority of the applicants therein on the basis of their position in the merit list was passed before the destruction of the records in the said fire accident. In view of the fact that all the relevant records have been destroyed in the said fire accident on 7.11.98, it will be unfair and unjust to direct the respondents to fix the inter se seniority of the applicants in accordance with their position in the merit list on the basis of the marks obtained by them because it is something which is impossible in the absence of the relevant records. Under these peculiar facts and circumstances of this case and taking into consideration the ground realities, the only alternative available is to direct the respondents to fix the inter se seniority of the applicants on the basis of their date of joining. The contention of the ld. counsel for the applicants to fix the inter se seniority of the applicants from 1.4.86 is baseless and unreasonable and the same cannot be accepted. The further contention of the ld. counsel for the

applicants for arrears from 1.4.86 is also without any basis and the same is not sustainable.


6. Under these circumstances, the respondents are directed to fix the inter se seniority of the applicants on the basis of their date of joining and complete the same within 3 months from the date of receipt of this order. We further direct that the respondents should adopt the same uniform principle in fixing the inter se seniority on the basis of their date of joining duty in respect of all the candidates selected and appointed pursuant to the Employment Notice No.1/84. If the applicants are aggrieved by the seniority list to be published by the respondents on any other ground, they will be at liberty to make representation to the respondents and then approach this Tribunal if so advised.

7. In the result the OA is disposed of as indicated above with no order as to costs.


MEMBER(J)

in

2/5/2003


MEMBER(A)