

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.551/01

Wednesday this the 13th day of August 2003

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Gopalakrishna Sarma
Junior Engineer (Trainee)
O/o. the Section Engineer,
Electrical Power,
Southern Railway, Trivandrum.

Applicant

[By advocate Mr.P.Ramakrishnan]

Versus

1. Union of India, represented by
General Manager, Southern Railway,
Chennai.
2. The Chief Personnel Officer,
Southern Railway, Head Quarters Office,
Personnel Branch, Chennai - 3.
3. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum.
4. K.N.Sreeraj, Junior Engineer (Trainee)
Lighting and Power,
Southern Railway,
Cochin Harbour Terminus.
5. C.Sudarsanan, Electrical Fitter,
Train Lighting, Southern Railway,
Quilon.
6. N.Sebastian, Electrical Fitter,
Train Lighting, Southern Railway,
Cochin Harbour Terminus.
7. K.S.Sethuraman, Electrical Fitter,
Train Lighting, Southern Railway,
Alapuzha.

Respondents

[By advocate Mrs.Sumathi Dandapani(R1-3),
Mr.P.K.Madhusoodhanan(R4), Mr.T.C.Govindaswamy (R7)]

The application having been heard on 13th August 2003 the
Tribunal on the same day delivered the following :

O R D E R
HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

The applicant who commenced his service as a directly
recruited trainee skilled artizan pursuant to a selection

2

conducted by the Railway Recruitment Board in 1989, and had been regularly appointed as Electrical Fitter/Train Lighting on 11.10.1990 and has thereafter been promoted as Junior Engineer and undergoing training at the time of filing the application aggrieved that his seniority is proposed to be revised by A-5 dated 15.3.2000 has filed this application seeking an order quashing Annexure A-5 and all steps taken pursuant to Annexure A-5 whereby the applicant is assigned seniority below respondents 4 to 7 and direct them to hold the applicant as senior to respondents 4 to 7 in the cadre of Electrical Fitter/Train Lighting and not to alter the seniority position of the applicant vis-a-vis respondents 4 to 7 as stated in A-2 and A-3 and for a direction that the finalisation of the proposal in Annexure A5 without giving notice to the applicant is illegal. It is alleged in the application that although the applicant and respondents 4 to 7 were selected by the Railway Recruitment Board in one selection in view of the fact that the applicant was appointed earlier and because he had been granted higher position on merit in the examination held after the end of the training in accordance with the provisions contained in paragraph 303(a) of the Indian Railway Establishment Manual he is entitled to be placed above respondents 4 to 7 in the gradation list. It is alleged that A-5 show cause notice was not communicated to the applicant and that he had a chance to see it only a week before filing the application and that in any event the revision of the seniority of applicant without informing him the reason for doing so is illegal as it is against the principles of natural justice.

2. Respondents 1 to 3 in their reply statement seeks to justify the impugned action taken under A-5 because it was in

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conformity with the provisions of paragraph 303(b) of the Indian Railway Establishment Manual as the applicant and the respondents 4 to 7 prior to their appointment to the working post had not been sent for training in any training school but has been given only on the job training. In such cases their seniority is to be determined on the basis of the placement in the select panel of the Railway Recruitment Board, according to the respondents. The contention of the applicant that A-5 was not served on him is not true to facts as it has been communicated to all concerned by Annexure R-1 letter. It is also contended that the action proposed in A-5 was taken pursuant to the decision of the Ernakulam Bench of the C.A.T. in O.A.No.1143/99 filed by the 4th respondent in this case. In any case, since the action is strictly in accordance with the rules on the subject, respondents pray that the Tribunal may not interfere. The 4th respondent has filed a reply statement contesting the claim of the applicant. It has been contended by the 4th respondent that the applicant having been placed at serial number 38 in the panel prepared by Railway Recruitment Board who being lower than the party respondent the action taken is fully in conformity with the provisions of paragraph 303 of the Indian Railway Establishment Manual Vol.I. The 7th respondent has also filed a reply statement justifying the impugned action on the ground that placement in the seniority list should be based on merit in the select panel. The 7th respondent contend that even after A-5 Annexure R-7 letter dated 28.9.2000 had been issued to everybody including the applicant which clearly stated that proposal in the A-5 has been given effect to as no representation was received against the proposal from six persons named in that letter where the applicant is the first one.

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3. We have gone through the pleadings and materials placed on record and have heard the arguments of the learned counsel appearing for the applicant and also for the respondents. The revision of seniority proposed in A-5 is challenged by the applicants on two grounds.

1. That A-5 was not communicated to him.

2. Seniority should have been based on the provisions contained in paragraph 303(a) of the Indian Railway Establishment Manual Vol.I.

4. The learned counsel for the applicant vehemently argued that since A-5 notice has not been communicated to him any action pursuant to that amount to denial of principles of natural justice. On the question of applicability of paragraph 303(a) the learned counsel state that as the applicant as also the respondents 4 to 7 having been appointed on work after training and as the applicant was graded higher in the examination held at the end of the training, in view of the provisions contained in paragraph 303(a) of Indian Railway Establishment Manual, he should have been placed above respondents 4 to 7 as has been rightly done in A-2 and A-3 and no change was required. The learned counsel appearing for the Respondents contended that neither the applicant nor Respondents 4 to 7 had been sent to training schools and were given only the job training therefore the provisions of paragraph 303(a) does not apply and what is applicable is provision of paragraph 303(b), according to him. Regarding the non-communication of the show cause notice the learned counsel argued that the contention of the applicant that

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it has not been received by him cannot be believed because R-1 was addressed to him and the office copy of the R-1 shows the date of despatch as 3.4.2000. The learned counsel for all the respondents argued that even after the issue of A-5, Annexure R7 had been issued to all concerned including the applicant whose name appears at the top of the letter. The arguments that the applicant has not been served with a copy of A-5 and that there was denial of opportunity to make a representation does not have any substance, argued the learned counsel. An identical question as involved in this case was considered by the Tribunal in an earlier application filed by the 4th respondent in this case in O.A.No.1135/2000. It was observed by the Division Bench as follows:

8. Para 303 of the Indian Railway Establishment Manual relied on by the applicant and the respondents read as under :

" 303. The seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority should be determined as under :

a. candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts. Those who join the subsequent courses for any reason whatsoever and those who pass the examination in subsequent chances, will rank junior to those who have passed the examination in earlier courses ;

b. in the case of candidates who do not have to undergo any training in training school, the seniority should be determined on the basis of the merit order assigned by the Railway Recruitment Board or other recruiting authority."

9. We find from the above that the training referred in the above para is one which is given in the training school and a merit order is assigned at the examination conducted at the end of the training, before being posted against the working post. According to the respondents, no such examination is conducted in the Training School and hence para 303(b) is applicable for assignment of seniority of Trainee Electrical Fitters. We do not find any material placed before us to reject this plea.

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10. The next ground advanced by the applicant was that A-7 had not been communicated or informed to the applicant and even if it was conceded for argument sake that it was initiated to him, it could not override the provisions in the Rule regulating seniority contained in A-1 IREM Vol.I. A-7 letter dated 26.5.1989 reads as under :

DRM/P/MAS TPJ MDU PGT TVC SBD & MYS
CWM/CN/PER.LW/PER.CEE/S/PER.Dy.CR/EWS/AJJ
CWM/S&T/PTJ. Dy.CMW/MYSS,CWM.GOC,SPS/RPM

Sub: Recruitment to skilled Artizan Categories.
Ref: This office letter of even number dated 25.1.84.

The existing instructions provided that where directly recruited candidates are course completed Act Apprentices in the same trade or ITI qualified in the same trade, they may be appointed in the working posts straightaway without subjecting them to any training. The decision on this is taken on the basis of certificates produced by the candidates in the absence of mention regarding trade testing of such candidates in the above quoted letter.

2. As per the extant orders, eligibility of promotion to skilled artisan post is determined based on passing the trade test as per the trade test syllabi. The candidates who are to undergo training are subjected to a test or trade test at the conclusion of the training.

3. It has been decided accordingly that the selected persons who are course completed Act Apprentices in the relevant trade or ITI qualified in the relevant trade should also be subjected to a trade test at the time of their appointment without training. Only if they qualify in the trade test, they should be appointed as skilled artisans without training. In the case of those who fail in such a trade test, a second opportunity may be given by the next higher authority and in case they fail in that test also, they should be subjected to training as in the case of others.

4. The above instructions will take immediate effect and will apply to recruitment panels drawn on and after the date of issue of this letter. The existing procedure in regard to trade testing and approval of panel of the trade test for serving employees shall equally apply to the above cases also.

5. It is also clarified that irrespective of the date of appointment in the working posts, either after successful completion of the training or directly appointed after qualifying in the trade test, their seniority will be reckoned only based on the merit order assigned in the

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recruitment panel.

Sd/-
for Chief Personnel Officer"

11. Admittedly, the applicant and respondents 3 & 4 were appointed after 26th May 1989. So they are squarely covered by the contents of this letter. The facts remains that the applicant had been put on training for one year. Respondents 3 & 4 were also put on training. On carefully going through this letter, we do not find that it is in any way opposed to the provisions of IREM. Further, the above letter is a circular laying down the principle of determining the seniority. In our view, these are part of the service conditions applicable to all similar employees and hence we do not find any force in the applicant's plea of its non-applicability to him because of its non-communication to him specifically. Further A-7 is not under challenge in this OA.

5. Further we find that the contention of the official respondents that neither the applicant nor respondents 4 to 7 were sent for training to a training school and they were given training while working on the job has not been controverted by the applicant by filing a rejoinder. The provisions of paragraph 303(a) will apply in a case where those who were recruited directly were given training at training school and examination was also held at the end of the training. The applicant has not established by an evidence that an examination was held at the end of the training in which he was graded higher in merit. The action under A-5 therefore is perfectly in compliance with the provisions of paragraph 303(b) of the Indian Railway Establishment Manual and even if applicant's plea that he had not been served with a copy of A-5, the action being strictly in accordance with the rules cannot be faulted. Further in the circumstances of the case, we are not inclined to accept the argument of the applicant that he was notified of A-5.

6. In the light of what is stated above, we find no merit in

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the application and therefore we dismiss the same. No costs.

(Dated the 13th day of August 2003)



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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