

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No.339 of 1996

date of order 6-2-2001

T.A. Rao, Goods Driver under IRM(P), Chakradharpur  
Division, S.E.Railway.

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Applicant

-versus-

1. Union of India through the General Manager, S.E. Railway, Garden Reach, Calcutta.
2. Chief personnel Officer, S.E. Railway, Garden Reach, Calcutta.
3. Divisional Railway Manager (P), Chakradharpur.
4. IRM, Vishakhapatnam.
5. Senior Divisional Personnel Officer, S.E.Railway, Chakradharpur.
6. Sr.DPO, SE Railway, Vishakhapatnam.
7. V. B.Tiwari (CKP), posted as LI (E) Waltair, Division, S.E.Railway.
8. S.N.Singh (CKP), posted as LI (R) Chakradharpur Dn, S.E.Railway.
9. G.S.Rao (ADA) posted as LI (E) Waltair Dn., SE Railway.
10. K.S.R.Pathro (WAT), posted as LI (S) in Waltair Dn, S.E.Railway.

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Respondents

Counsel for the applicant ..Shri R.K.Choubey.

Counsel for the respondents..Shri G.Bose.

C O R A M : Hon'ble Mr. Justice S.Narayan, Vice-Chairman  
Hon'ble Mr. L.R.K.Prasad, Member (A)

O R D E R

L.R.K.Prasad, Member (A) :-

Through this application following reliefs  
have been sought:-

- (i) The respondents be directed to place the seniority of the applicant at Serial no. 64 in the integrated seniority list dated 21.4.1995 and issue modified order of

posting as per final option given at the time of selection.

(ii) cost of the litigation.

2. The background of the case is that the applicant was initially recruited on 11.7.1962 as Group 'D' staff. He was promoted to Apprentice Fireman 'A' after passing the examination conducted by the Railway Service Commission on 28.3.1964. He was further promoted as Electrical Goods Driver. The integrated provisional seniority list of Electrical Goods drivers was published on 18.7.1989 (Annexure-A/1) in which the applicant has been placed at Serial no.225, whereas respondent nos.7 and 8 are at Serial nos.269 and 263 respectively. In the revised seniority list of Electrical Goods Driver of C.K.P. Division published on 19.7.1990 (Annexure-A/2), the applicant was shown at Serial no.254, whereas respondent nos.7 and 8 were at Serial nos.274 and 268 respectively. On 11.3.1991, yet another seniority list was published (Annexure-A/3) in which while the applicant was at Serial No. 247, respondent nos.7 and 8 are at Serial nos.267 and 261 respectively.

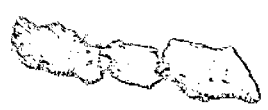

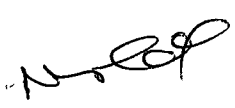
3. vide letter dated 25.10.1994, options were called for selection to the post of CC(E)/LC/LI(E) in the scale of Rs,2000-3200 (RPS). The letter dated 21.4.1995 (Annexure-A/4) indicates that 309 options were received from the willing candidates and integrated seniority list was attached with the said letter with the instruction that the same may be examined and if any error/omission is found, or if any representation from the staff is received, same may be sent to the office of CPO, S.E. Railway for necessary rectification.

It was also made clear in the said letter that remarks on the prepared integrated seniority list should reach CPO's office within 15 days, failing which the selection will proceed. In the integrated seniority list attached with letter dated 21.4.1995 (Annexure-A/4), respondent no. 9 has been placed at Serial no. 148, whereas the applicant is at Serial no. 228. According to applicant, this is erroneous on the ground that the seniority list is required to be maintained on the basis of promotion as Electrical Goods Driver. Against the integrated seniority list, the applicant filed a representation dated 2.5.1995 (Annexure-A/5). Thereafter, seniority list of Electrical Goods Drivers (Annexure-A/6 of the CKP Division was published on 25.8.1995 wherein the applicant has been shown at Serial no. 164 and respondent nos. 7 and 8 at serial no. 176 and Serial no. 176 respectively. The applicant made a representation on 27.2.1996 (Annexure-A/7), but without any positive result.

4. It is stated that vide order dated 4.9.1992 (Annexure-A/8), the applicant was promoted on ad hoc basis in the scale of Rs. 2000-3200 (RPS) and posted to WAT Division. It is clarified in the said office order that the applicant was promoted purely on ad hoc basis and he would be reverted to his former post on posting of regular incumbent. vide letter dated 19.5.1995 (Annexure-A/9), date and venue of the selection for LI(E), LC(E)/CC(E) in the scale of Rs. 2000-3200 (RPS) were intimated along with the names of the candidates including the applicant. It was made clear in the said letter that the persons mentioned therein, including the applicant, should be asked to attend the said selection test. The selection test for LI(E), LC(E)/CC(E) was held on 6.6.1995. It is stated that the result of the selection was

published vide Memo dated 16.10.1995 and posting order issued on 31st October 1995, which are at Annexure-A/10. As the applicant was not empanelled, he made a representation on 7.11.1995 before the appropriate authority. In the second panel, which was released on 23.2.1996, the name of the applicant figured at Serial no.12 which is at Annexure-A/13. vide office order dated 16.4.1996 (Annexure-A/17), the applicant has been posted in BSP Division which, according to the applicant, is contrary to his option. It is alleged that while his juniors have been accommodated, as per their choice, the same has been ignored in his case, thereby causing discrimination against him.

5. While opposing the above application, the respondents have stated that the application is not maintainable due to non-joinder of necessary parties. This application is also hit by the principle of res judicata, estoppel, waiver and acquiescence as well as barred by limitation. Regarding relevant provisional seniority list published on 19th July 1990, it is stated that the same was reviewed and corrected by seniority list dated 3.9.1990 and in the said list, the applicant was placed at Serial No. 255, whereas respondent nos.7 and 8 were placed at Serial Nos.275 and 269 respectively. The seniority list was further corrected on 11.3.1991 in which the position of the applicant is at Serial no.247, whereas respondent nos.7 and 8 are a Serial nos. 267 and 261 respectively. It is clarified that the seniority list dated 21.4.1995 had been recast before publishing the panel based on the parent divisional relative seniority list supplied by the concerned Division. The said seniority list was recast on 10.12.1996. The reasons for placement of the applicant are contained in the letter of DRM(P), CKP dated 13.12.1995 (Annexure-R-1). A suitable reply regarding representation



of the applicant was given to the General Secretary, SERMC on 19.1.1996 (Annexure-R-2). It is pointed out that respondent no.7 was assigned seniority as Goods ~~Driver~~ from 7.1.1980 on the basis of judgment of this Bench dated 29.7.1993 passed in O.A.222/89. The applicant was not party in O.A.222/89. Regarding respondent no.8, it is stated that as he was junior to the applicant, he has been empanelled in the provisional part panel circulated on 23.2.1996 wherein the said respondent has been assigned serial no.15, whereas the position of the applicant is 12. It is asserted that the correct seniority position of the applicant has been mentioned in the recast seniority list without disturbing his parent divisional relative seniority position of Electrical goods Driver, which was in accordance with the judgment passed by Hon'ble Supreme Court, as maintained by Chakradharpur Division, as per seniority list published by them on 25.8.1995. On the allegation of the applicant regarding publication of piecemeal panel for the post <sup>in</sup> of question in the scale of Rs.2000-3200, it is pointed out that there was a vacancy of 192 posts of running supervisors in the said scale (UR-149, SC-29 and ST-14). Empanelment order dated 16.10.1995 was issued for 164 staff and for the remaining staff, it was issued after dereserving of 28 posts for which no SC/ST candidates were available. In the circumstances, the respondents had no alternative but to publish the panel in the manner as indicated above. It is stated that as per seniority position, the applicant was posted to Bilaspur Division and thereafter when the vacancy was available, the applicant was brought in BCHL under WAT Division.

6. The applicant has filed rejoinder to written statement challenging the stand taken by the respondents, both

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from legal and factual point of view. While highlighting the points already made in O.A., the applicant pointed out that selection for loco running supervisory post was held for 192 posts between 29.5.1995 to 1.8.1995.


7. We have considered the matter in the light of submissions made by the parties and materials on record. It is admitted position that vide letter dated 25.10.1994, options were called for selection to the post of CC(E)/LC/LI(E) in the scale of Rs.2000-3200 (RPS). The selection test was held for 192 posts in question.

A provisional part panel for the said post was published for 164 candidates on 16.10.1995. Another list for remaining staff for 28 posts was issued after dereservation of the said posts for which no SC/ST candidates were available. Regarding piecemeal publication of the panel for the posts, the respondents have explained the position which are considered satisfactory.

8. The basic issue for consideration in the instant O.A. is with regard to determination of seniority of the applicant vis-a-vis respondent nos.7 to 10. The claim of the applicant is that he should be placed at serial no.64 in the seniority list which has been appended with the letter of the concerned respondent dated 21.4.1995 (Annexure-A/4) which is with regard to selection for the post in the scale of Rs.2000-3200 (RPS) for which 309 options had been received from the willing candidates. It is clarified in the said letter that out of 309 options received, 196 staff from different divisions have been integrated in the integrated seniority list based on the date of regular promotion as Goods driver in the scale of Rs.1350-2200/RPS and divisional seniority position as

provided by the Division. It is further stated that the entire seniority list attached with the aforesaid letter be examined and if any error/omission is found or if any representation from the staff is received, same may be sent to the office of concerned authority.

The remarks on the prepared integrated seniority list was to reach within 15 days from the date of issue of the letter. The applicant has stated that against the said integrated seniority list, he made a representation on 2.5.1995 (Annexure-A/5) before respondent no.3. In reply, the respondents have stated that the representation of the applicant was examined and a suitable reply was given on 19.1.1996 (Annexure-R-2). In the said reply, the respondents have clearly stated that ad hoc promotion cannot give right to an employee to hold the post and claim seniority until the employee has been regularised through a positive act of regular selection. It further states that the correct seniority position of Shri T.Appa Rao has been maintained in the recast seniority list without disturbing his parent divisional relative seniority position of Electrical Goods Driver which was in accordance with the judgment passed by the Hon'ble Supreme Court as maintained by CKP Division, as per the seniority list published by them on 25.8.1995. It is observed that the applicant had been shown senior to respondent nos.7 and 8 before issuance of letter dated 21.4.1995 (Annexure-A/4).

  
The respondents have clarified that the seniority list attached with the letter dated 21.4.1995 had been recast before publishing the panel based on the parent divisional relative seniority list supplied by concerned Division. The said seniority list was recast on 10.12.1996. So far as

Shri V.B. Tiwari (respondent no.7) is concerned, the respondents have stated that he was assigned seniority as Goods Driver from 7.1.1980 on the basis of judgment of this Tribunal dated 29.7.1993 in O.A.222/89 in which he was one of the 71 applicants and the said judgment has been implemented only in respect of the applicants of O.A. 222/89. The present applicant was not party in O.A.222/89. As regards respondent no.8, it has been clarified that he was junior to the applicant and, as such, he has been empanelled in the provisional part panel circulated on 23.2.1996 assigning position at Serial no.15, whereas the applicant has been placed at Serial no.12. However, it is contended by the applicant that respondent no.7 has always been junior to him and the benefits of orders in O.A.222/89 be also given to him.

9. We have gone through the order of the Hon'ble Supreme Court passed in Civil Appeal Nos.2727 to 2729 of 1991 on February 13, 1992 in the matter of Sheo Shankar Pandey and others vs. Union of India & others. Civil Appeal Nos.2727 and 2728 of 1991 arose out of a petition filed before CAT, Patna (O.A.222/89) by the appellants in Civil Appeal Nos.2728 and 2729 of 1991 who are respondents in Civil Appeal No.2727/91 questioning the provisional gradation list of Electrical Goods Driver prepared by South Eastern Railway with a prayer for a direction to finalise the same on the basis of their claim of seniority. Another petition registered as O.A.13/90 by the Tribunal gave rise to Civil Appeal No.2729/91. In the aforesaid cases, the Hon'ble Supreme Court held as follows:-

- "a) The decree in the Title Suit No.1 of 1973 became final and the parties are bound by the same.
- b) The decree, aforesaid, settled the question of inter se seniority only in the grade of Assistant Electric Drivers and no further.



- c) The question of the seniority of the parties in the category of Goods Drivers has to be decided in accordance with the decision on the rival contentions of the parties as indicated in paragraph 11 above.
- d) The direction in the impugned judgment to prepare a final gradation list of the Goods Drivers is correct, but the observations in paragraph 13 and 14 of the impugned judgment have to be ignored and instead the Tribunal will have to indicate the correct criteria after rehearing the parties.
- e) The same principle will govern the entire category of First Firemen including the 17 appellants in the Civil Appeal No.2728 of 1991 and they will either succeed or fail along with the other First Firemen."

10. We have also taken note of the order of this Tribunal passed in O.A.222/89 on 29.7.1993. Certain paragraphs of the orders/observations of this Tribunal passed in the aforesaid O.A. are reproduced below:-

"17. The above facts make it quite clear that the applicants after their promotion, by selection, have become Electric Goods Driver and above. Their seniority should, therefore, be in accordance with their promotion on the post of Electric Goods Driver which is based on selection and not mere seniority in the lower grade."

"18. It has been finally decided by the Hon'ble Supreme Court that the decision in the Title Suit No.1 of 1973 has become final and that by that decree the issue which was settled there, was the seniority in question only in the cadre of Assistant Electric Drivers. Therefore, the decree of Title Suit No.1 of 1973 will not affect the seniority position of Electric Goods Drivers who have been promoted on the basis of selection. Their seniority has to be determined in accordance with the rules of

the department in the grade of Electric Goods drivers. The applicants whether given promotion earlier or during pendency of the Title Suit or afterwarwards make no difference as during this entire period rules of seniority remained the same and were not changed. There is nothing on the record to suggest that at the time of promotion of remaining seventeen applicants seniority rules were changed. Therefore, the seniority rules as were in force, shall be the guiding factor for entire number of the applicants on their promotion to the post of Electrical Goods Driver."

"19. Consequently, the application is allowed with directions to the respondents to finalise the provisional graduation list of Electric Goods drivers dated 18.7.1989 (Annexure-7) after due consideration of the representations filed by the applicants against it. In doing so the respondents shall not give any weight to the Civil Court decree in T.S.No.1/1973. These directions shall be complied with by the respondents within a period of three months from the communication of this order."

11. It is the claim of the applicant that he is entitled for same benefit as has been granted to similarly situated persons in terms of the order of this Tribunal dated 29.7.1993 passed in O.A.222/89. He has stated that Shri V.B. Tiwary, Goods Driver, CKP, is junior to him in all seniority lists published from 1970 to 1995. While he has been given benefit of order in O.A.222/89, the case of the applicant has been ignored. In this regard, the respondents have clarified the position that as the applicant was not party in O.A.222/89, the same benefit could not be extended to him. It is observed that position regarding fixation of seniority of the applicant

has been explained in the letter of DRM(P), Chakradharpur dated 13.12.1995 (Annexure-R-1). It is stated that seniority of Electrical Goods Driver was published on 25.8.1995, consequent on the judgment of the Hon'ble Supreme Court in SLP No. 3857 dated 29.7.1988 and decree of T.S.No.1/73 and also on the basis of judgment of CAT, Patna passed in O.A.222/89 on 18.1.1990 and 29.7.1993. Accordingly, the seniority of the applicants of O.A.222/89 only have been assigned from the date of promotion as Electrical Goods Driver and the rest of the staff, who were not the applicants, their seniority have been assigned from the date the seniority position as Electrical Assistant Driver. In the above seniority list, the name of Shri T.Appa Rao has been placed at Serial no.164 assigning his seniority from the date of promotion as Electrical Goods Driver and other staff since he was not applicant in that case. It is, therefore, not the stand of the respondents that the case of the applicant in the instant O.A. is not covered by the orders of this Tribunal passed in O.A.222/89. The applicant has been denied the benefit of the order of O.A.222/89 on the ground that he was not a party in O.A.222/89. If the case of the applicant is covered by the orders passed by the Tribunal in O.A.222/89 on 29.7.1993, there is no reason as to why the applicant should be deprived of the same benefit just because he was not party in the said O.A. So far as the seniority of Electrical Goods drivers are concerned, this Tribunal has already laid down certain guidelines which are referred to in para 10 above.

12. So far as posting of the applicant on promotion to CC (E)/LC/LI (E) in the scale of Rs.2000-3200 is concerned, on his being found suitable, he was posted at BSP. Later

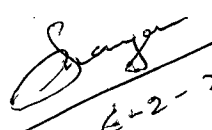
on he has been brought back to WAT Division, which was his choice. This fact has not been rebutted by the applicant. Accordingly, his posting in question got settled and it does not require any adjudication.

13. In view of the facts and circumstances of the case, as stated above, we are of the considered opinion that the prayer of the applicant regarding his seniority in the grade of Electrical Goods Driver requires to be re-examined in the light of orders of this Tribunal passed in O.A.222/89 on 29.7.1993 and the orders of the Hon'ble Supreme Court as referred to in para 9 and 11 above, whereafter appropriate orders should be passed by the respondents on the prayer of the applicant regarding fixation of seniority at the level of Electrical Goods Driver. Accordingly, we dispose of this instant application with direction upon the respondents to re-examine the prayer of the applicant for fixation of his seniority in the grade of Electrical Goods Driver in the light of observations made by us hereinabove and pass appropriate order in the matter within a period of four months from the date of communication of this order.

14. No order as to the costs.

  
(L.R.K. Prasad)  
Member (A)

6.2.2001

  
(S. Narayan)  
Vice-Chairman

6-2-2001