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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

**BOMBAY BENCH**

O.A. No. 579/87

198

~~Ex-Amt. No.~~

DATE OF DECISION

1, 11, 91

S.S.Dogra & 5 Ors.

Petitioner

Mr. G.S.Walia

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. R.K.Shetty

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.Y.Priolkar, Member (A)

The Hon'ble Mr. D.K.Agrawal, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal? ✗

MGIPRRND-12 CAT/86-3-12-86-15,000

*D.K. Agrawal*  
( D.K.Agrawal )  
M(J)

1/11/91

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

\* \* \* \* \*

Original Application No.579/87

1. S.S.Dogra
2. H.R.Shah
3. B.D.Ghadiali
4. D.C.Upadhyay
5. M.Subramanya
6. R.M.Parikh

C/o. Shri G.S.Walia, Advocate,  
89/10, W.Rly. Employees' Colony,  
Matunga Road,  
Bombay 400 019.

... Applicants

V/s

1. Union of India, through  
General Manager, Western Railway,  
Churchgate, Bombay 400 020.
2. General Manager, Western Railway,  
Churchgate, Bombay 400 020.
3. Chief Electrical Engineer,  
Western Railway, Churchgate,  
Bombay 400 020.

... Respondents

CORAM : Hon'ble Member (A), Shri M.Y.Priolkar  
Hon'ble Member (J), Shri D.K.Agrawal

Appearances:

Mr. G.S.Walia, Advocate for  
the applicants, Mr.R.K.Shetty,  
Advocate for the respondents  
and Mr.M.S.Ramamurthy,  
Advocate for the interveners.

JUDGEMENT:

Dated : 31st October 1991.

[Per. D.K.Agrawal, Member (J)]

The above named applicants have raised a grievance in this application, under Section 19 of the Administrative Tribunals Act, 1985, filed on 25.8.1987 against exclusion of their names from the list of eligible candidates entitled to compete for selection to Group-B post of Assistant Electrical Engineers in the Western Railway vide notification No.E(G)1024/7/1 dated 13.7.1987. However, the said selection has already been finalised and implemented.

*D.K. Agrawal*

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No stay order was granted probably because the counsel for the applicants made a statement that the interim relief was not pressed as reflected in the order sheet ✓ dated 31.8.1987. In this manner the application itself has become infructuous. However, we feel that the question of seniority which has been indirectly raised (no specific relief claiming seniority has been prayed) on the basis of the fact whether the services rendered by the applicants in the Virar-Sabarmati Electrification Project was fortuitous or non-fortuitous needs to be answered. It may also be stated here that vide order dated 13.6.1989 11 persons were permitted to intervene in this case. The statement of the interveners dated 18.7.1989 has already been taken on record.

2. The facts lie in an <sup>narrow</sup> ~~entire~~ compass. ✓ The Western Railway undertook electrification of the Virar-Sabarmati Section which project came to be known as V.S.R.E. Project. This unit being a new organisation, the required manpower in the various grades of supervisory cadre <sup>which</sup> ~~which~~ was proposed to be drawn from the following four streams of the supervisory cadre obtaining in the Electrical Department of the Railway at the relevant time:-

- i) General Services
- ii) DC Traction (Rolling Stock)
- iii) DC Traction (Sub-Station and Overhead Equipment)
- iv) Drawing Office Unit.

3. The applicants at serial No. 3 & 5 namely Mr.B.D.Ghadiali and Mr.M.Subramanya belonging to the General Services stream, applicant No.1 namely Mr.S.S. Dogra belonging to the DC Traction (Overhead Equipment), applicant No.6 namely Mr. R.M.Parikh belonging to the fourth stream i.e. Drawing Office Unit volunteered to

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be posted (which was in the nature of deputation as discussed later) retaining their lien in the parent cadre. The applicants No.2 & 4 namely Mr.H.R.Shah and Mr.D.C.Upadhyay were directly recruited as temporary Electrical Supervisors for the above said project. After the said project was completed in phases over a number of years, taking into account the seniority of staff drafted from various cadres, their promotions etc. two steps were taken, firstly following three streams were added in the Electrical Department of the Western Railway:-

- i) AC Traction Distribution
- ii) AC Traction Rolling Stock
- iii) AC Traction Running Supervisors.

The second step was to create a new cadre by an order dated 29.1.1982 in the grade of Rs.550-750 (revised) and the applicants' seniority was determined in the said cadre. The cadre having been created further step was taken in consultation with the recognised Unions on the Western Railway, Western Railway Employees Union and Western Railway Mazdoors Sangh. In this connection notification dated 20.9.1982 (Annexure-A to the interveners application) was issued. It was further decided in consultation with the recognised Unions to bring the said units/streams in the open line Electrical Department for the purpose of promotion to Class-II (Gazetted) posts of Assistant Electrical Engineers hitherto filled on the basis of inter-stream seniority of all the eligible Class-III staff serving in the various department of electrical streams of Western Railway. The railway authorities in consultation with the two recognised Unions took a decision that seniority of such employees working in the VSRE Project may be fixed

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on the basis of the date of promotion to the grade of Rs.700-900 on regular basis. A copy of the minutes has been filed as Annexure-C to the interveners application dated 18.7.1989.

4. In the background of the above facts the only question is as to whether the services rendered by the applicants in the VSRE Project prior to 27.1.1982 was fortuitous or non-fortuitous. The law on the subject is very clear. Temporary fortuitous and ad-hoc promotions cannot be taken for seniority even if one is later-on found to be qualified to hold the post. Such an observation was made by the Supreme Court in the case of Keshav Chandra Joshi & Ors. v. Union of India & Ors., 1991(2) SLJ (SC) 42, although the said case related to Forest Service. Then in the case of S.N.Chakraborty v. Union of India & Ors., 1990 (3) SLJ (CAT) 437 it was held that the interse seniority in the Railway Electrification is not relevant for the purpose of absorption in Open Line. The facts in the said case were that the applicant was appointed in the Construction Organisation but instead of retrenching him the Railway Administration considered his case sympathetically and absorbed him in Open Line Cadre after due selection on a particular day. The applicant claimed seniority for the period he had worked in the temporary organisation of Electrification. The claim of the applicant was negatived by the Jabalpur Bench of the Tribunal. Therefore, we are of the opinion that applicant Nos. 1, 3, 5 & 6 who retained their lien in the Open Line parent department and were also considered for selections and/or promotions in their parent department as and when occasion arose for such promotions or selections cannot be made to steal a march over their seniors in the parent department notwithstanding the fact that they earned ad-hoc

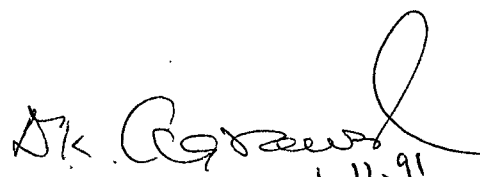
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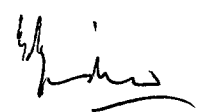
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promotions in the VSRE Project. The other two applicants i.e. No. 2 & 4 who were new faces in the VSRE Project have also no claim to seniority or promotion. The above named applicants, thus, cannot lay any claim to seniority or promotion unless their cadre was formed by order dated 29.1.1982 in the grade of Rs.550-750 because the services rendered by them in the VSRE Project which was in the nature of a Construction Project were only fortuitous and not non-fortuitous. Consequently they are only entitled to the benefit of seniority in the grade of Rs.700-900 with effect from 1.8.1983, the date of their regularisation in the said grade. We may also add that the applicants having failed to agitate the order dated 29.1.1982 or 20.9.1982 or 4.6.1983, their claim is belated and suffers from laches of delay. The Railway Administration has also rightly pleaded in para 3.5 of their reply that the applicants petition should be deemed to be barred by limitation because they failed to prefer a claim against the selection of Assistant Electrical Engineers held in the year 1976 or 1984 or 1985. In this manner we are of the opinion that the claim of the applicants is devoid of merit as well as barred by time. In fact the litigation initiated by the applicants is fruitless and merely an attempt to unsettle the settled position without any legal ground.

5. In the result the application is dismissed with no order as to costs.

  
( D.K. Agrawal )  
Member(J)

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( M.Y. Priolkar )  
Member(A)