

(18)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

~~O.A. No.~~

T. A. No. 216/87

198

DATE OF DECISION 29-8-1991

C.K. Sunder Petitioner

Mr. S.V. Akhokar Advocate for the Petitioner(s)

Versus

Union of India Respondent


Mr. S.K. Sanyal Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice U.C. Srivastava, Vice-Chairman

The Hon'ble Mr. P.S. Chaudhuri, Member(A)

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


(P.S. CHAUDHURI)

(19)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

Tr.216/87

C.K.Sunder,
Sr.Divisional Engineer,
Central Railway,
R/o.30 S.E.Rly. Layout,
Rana Pratap Nagar,
Nagpur.

.. Applicant

vs.

Union of India
through
The General Manager,
Central Railway,
Bombay.

.. Respondent

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman

Hon'ble Shri P.S.Chaudhuri,
Member(A)

Appearances:

1. Mr.S.V.Akholkar
Advocate for the
Applicant.
2. Mr.S.K.Sanyal
Counsel for the
Respondent.

JUDGMENT:

(Per P.S.Chaudhuri, Member(A))

Date: 29-8-1991

This application has come to the Tribunal by way of transfer under Section 29 of the Administrative Tribunals Act, 1985 from the Nagpur Bench of the Bombay High Court in terms of its order dtd. 12.9.1986 on Writ Petition No.216/87 which was filed before it on 10-3-1981. In it the petitioner(the applicant) who was working as Sr.Divisional Engineer, Central Railway, Nagpur is seeking a direction to fix his seniority in the Indian Railway Service of Engineers(for short IRSE) on the basis of the date 9-8-1961.

2. We may briefly state the relevant factual background. By letter dated 12-12-1956 the applicant was offered appointment as Temporary Assistant Engineer and joined service on 2-1-1957 on Western Railway. By notification dated 11.8.1969 the applicant was appointed permanently to IRSE in the Junior Scale with effect from 29-3-1966. One Mr.L.J.Prasad also joined service in an identical post on 30-1-1957. The said Mr.Prasad submitted his resignation and was relieved from his duties on 17-1-1960. Subsequently Mr.Prasad requested the Railway Board to take him back in service and on his request being agreed to, he eventually rejoined Central Railway on 13-3-1961. Later, it was decided in consultation with the Union Public Service Commission(for short,UPSC) that Mr.Prasad may be assigned seniority at the bottom of the batch of Temporary Assistant Engineers recruited on the recommendations of UPSC under their letter dated 28-8-1956.

3. By letter dated 17-9-1965, as clarified by letter dtd. 26-5-1972, the Railway Board issued instructions that weightage in seniority shall be granted to temporary officers on the basis of half of the length of service counted from the date of joining service to the date of absorption in Class-I service, subject to a maximum weightage of 5 years. As the implementation of the orders dated 26-5-1972 was likely to present some difficulties, by a further clarification dtd. 19-8-1972 the Railway Board issued three clarifications of which only two concern us.

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The first was that "the position is that Temporary Assistant Officers are absorbed in Class I by a positive act of selection on All India basis and, therefore, their inter-seniority, as shown in the Notifications issued from time to time, is to be maintained, irrespective of the extent of weightage in seniority admissible on the basis of the orders communicated in Board's letter dtd. 26-5-1972". The second was that "as the inter-se seniority is based on the merit position, the weightage in seniority given to an officer with longer service, as a Temporary Assistant Officer, should be such as to place him in seniority below an officer who has been assigned a higher merit position in the relevant notification, although such an officer has rendered less service as a Temporary Assistant Officer."

4. By letter dated 16-5-1974 the Railway Board notified that the applicant's date for increment on time scale for the purpose of seniority had been fixed as 21-9-1963. In this letter dated 16-5-1974 Mr.L.J.Prasad was shown as senior to the applicant and his date for increment on time scale for the purpose of seniority was shown as 21-9-1963. The date for increment on the time scale for the purpose of seniority for one Mr.A.K.Lahiri was shown as 9-8-1961 and those for M/s.H.G.Aranake and K.B.Thorat were shown as 8-9-1961.

5. By letter dated 19-6-1974 the applicant represented that "I find that my date of increment

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in time scale for the purpose of seniority has been fixed as 21-9-1963, though it should have been fixed on 16-8-1961 " based on the date of joining service being 2-1-1957 and date of absorption in Class I service being 29-3-1966 and questioned the allotment of the date of 21-9-1963 to him on the basis of the date fixed for Mr.L.J.Prasad. He went on making representations and eventually by letter dated 28-6-1980 he was informed that there was no justification for revising his seniority. Being aggrieved he filed this Writ Petition.

6. The respondents have opposed the transferred application by filing their written statement. We have heard Mr.S.V.Akholkar, holding the brief of Mr.P.G. Palshikar, learned counsel for the applicant and Mr.S.K.Sanyal, learned counsel for the respondents.

7. It was contended on behalf of the applicant that by order dated 17-9-1965 read with order dated 26-5-1972(supra) he was entitled to weightage on the basis of half the period between 2-1-1957, on which date he joined service, and 29-3-1966, the date on which he was absorbed in Class I Service. This period is 9years 2 months and 27 days and so half of it is 4years 7 months and 14 days which is less than 5 years. Thus, the applicant is entitled to a weightage of 4 years 7months and 14 days and so is entitled to a date of increment in time scale for purposes of seniority of 16-8-1961 as detailed in his representation dtd. 19-6-1974(supra). But this contention is not well founded. As we have mentioned earlier, the letters dated 17-9-65 and 26-5-1972 were further clarified

by letter dated 19-8-1972(supra). In terms of the letter dated 19-8-1972, there are limitations on the amount of weightage in seniority that the applicant can be given. The first limitation is a maximum of 5 years; this does not impinge on the applicant in any way as he is only asking for 4 years 7 months and 14 days weightage. The second limitation is that inter-seniority, as shown in Notifications issued from time to time, is to be maintained, irrespective of the extent of weightage in seniority admissible in terms of the letter dated 26-5-1972(supra). The third limitation is that the weightage in seniority shall only be as much as will place him in seniority below an officer who has been assigned a higher merit position. So it becomes necessary to see the inter-se seniority and merit position of the applicant qua the others mentioned by him.

8. It is the agreed position that Temporary Assistant Engineers were recruited over some length of time on the basis ^{of} ~~different~~ lists provided by UPSC from time to time. From the record made available to us by the respondents it is seen that Mr.A.K.Lahiri was recruited against a list dtd. 1-10-1955 supplied by UPSC whereas M/s.H.G.Aranake, K.B.Thorat and L.J.Prasad were all originally recruited against such a list dated 28-8-1956 and the applicant was recruited against a list dated 12-9-1956. There is thus no doubt that Mr.A.K.Lahiri has been correctly shown as senior to the applicant and so there is no way in which the applicant can link the weightage

given to him in the date for increment on time scale for purpose of seniority with that given to Mr.A.K.Lahiri.

9. The applicant's next contention was that although he was recruited by a list dated 12-9-1956 that list had been issued in continuation of the lists dated 31-7-1956 and 28-8-1956 and so all three lists should be considered to be one single list. Even if that be so, it is not disputed that M/s.H.G.Aranake and K.B.Thorat would rank as senior to the applicant as they would have got a higher merit position in the three lists read together. Thus, the position of the applicant qua M/s. H.G.Aranake and K.B.Thorat is exactly the same as his position qua Mr.A.K.Lahiri and so this submission is also of no avail to the applicant.

10. We then have to see how far this submission that the lists dated 31-7-1956 and 28-8-1956 are actually two parts of one and the same list helps the applicant qua Mr.L.J.Prasad. The applicant bases his submission on the written statement of the respondents to the effect that "Shri Prasad may be assigned seniority at the bottom of the batch of the temporary Assistant Engineers including the petitioner recruited on the recommendations of the Commission under their letter dated 28-8-1956". It is his contention that since indisputably Mr.Prasad is at the bottom of this list he becomes junior to the applicant and so Mr.Prasad's date for increment for purposes of

seniority will not affect the weightage to which the applicant is entitled. The respondents contend that the inclusion of the words "including petitioner" is an obvious error because the applicant was not recruited on the basis of the letter dtd. 28-8-1956, the applicant's name does not find a place in that letter and the applicant was, in fact, indisputably recruited on the basis of a letter dated 12-9-1956. It is their ~~no~~ further submission that the letter dtd. 28-8-1956 clearly says that it is the final list of 150 candidates. It is their submission that there is thus no way in which the letter dtd. 12-9-1956 can be deemed to be a continuation of the letter dtd. 28-8-1956. We see considerable merit in the respondents' submissions and are of the opinion that the list dated 12-9-1956 on the basis of which the applicant was recruited is quite distinct from, and later than, the list dated 28-8-1956 by which Mr. L. J. Prasad was recruited.

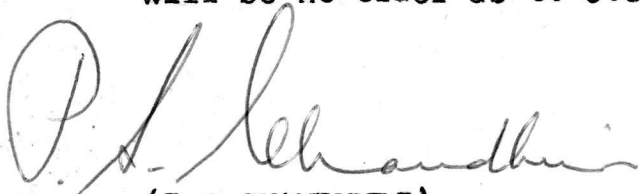
11. So the next point which we have to examine is whether Mr. Prasad was to be placed at the bottom of the list dtd. 28-8-1956 or was to be placed at the bottom of the lists dtd. 28-8-1956 and 12-9-1956. The record shows that the concurrence of UPSC was asked for and obtained to Mr. L. J. Prasad being assigned seniority at the bottom of the list contained in the letter dtd. 28-8-1956. So it follows that ^{as} the applicant was recruited against a subsequent list sent by UPSC, ^{he} so ranks as junior to Mr. L. J. Prasad. Against this background we have no difficulty in holding that even after Mr. L. J. Prasad's seniority

was depressed, he was correctly assigned seniority above the applicant.

12. This brings us to the final question as to whether it was mandatory on the part of the respondents to give the applicant the full weightage for seniority that he claims his service of 9 years 2 months and 27 days entitled him to. From the letter dtd. 19-8-72(supra) it is quite clear that weightage is subject to limitation based on seniority and merit position. Reading these two limitations together it is clear that weightage for seniority shall only be as much as will place an officer below another officer who has been placed above him in a final list based on seniority and merit position. That is precisely what has been done in the case of the applicant. He has rightly been assigned a seniority position below Mr.L.J.Prasad and the inevitable consequence of this is that the weightage that he can be given is limited to the amount that results in his being placed below Mr.Prasad in the seniority list.

13. In this view of the matter we see no merit in the Transferred Application and are of the view that it deserves to be dismissed.

14. We accordingly dismiss the Transferred Application. In the circumstances of the case there will be no order as to costs.



(P.S. CHAUDHURI)
Member(A)

29.8.1991



(U.C. SRIVASTAVA)
Vice-Chairman