

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW~~ BOMBAY BENCH

O.A. No.
T.A. No. 43/87

198

DATE OF DECISION 26-3-92

B.N.Gaikwad & Ors. Petitioner

Mr. D.V.Gangal Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

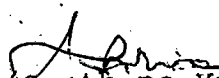
Mr. V.G.Rege Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. Santhana Krishnan, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? NO
2. To be referred to the Reporter or not ? NO
3. Whether their Lordships wish to see the fair copy of the Judgement ? NO
4. Whether in needs to be circulated to other Benches of the Tribunal ? NO


(Santhana Krishnan)
M (A)

(18)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
* * * * *

Tr. A.No.43/87

B.N.Gaikwad & Ors.

... Applicants

V/s

Union of India & Ors.

... Respondents

CORAM : Hon'ble Member (A), Shri M.Y.Priolkar
Hon'ble Member (J), Shri Santhana Krishnan

Appearances:

Mr. D.V.Gangal, Advocate
for the applicant and
Mr. V.G.Rege, Counsel
for the respondents.

JUDGMENT:

Dated : 26-3-92

{Per. Santhana Krishnan, Member (J)}

The applicants as Plaintiffs originally filed R.C.S. No.473/1984 before the Court of Civil Judge, Senior Division, Solapur, for a declaration that the seniority list prepared and published by the 2nd defendant in the year 1978 is defective, illegal, arbitrary and hence not binding on the plaintiffs and also claiming permanent injunction restraining the defendants from superceding the plaintiffs and granting promotion to junior employees in preference to the plaintiffs to the post of Fireman Grade-II and also for mandatory injunction to rectify the graduation list, etc. The above suit was filed before the City Civil Judge on 5.7.1984. Subsequently the applicants amended the reliefs and now claimed only the following reliefs namely:

- i) Hold and declare that the plaintiffs are entitled to be granted seniority position by treating their seniority from the date of screening, and
- ii) Hold and declare that the candidates who are screened earlier will always rank enblock senior to the candidates who are screened or selected later.

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2. The above said plaint was transferred before this Tribunal for consideration.

3. The main contention of the applicants in this application is that they were screened in pursuance of notification issued in the year 1970 and found suitable in the said screening. They were appointed in pursuance of this screening. The date of reckoning seniority in the post of Yard Khalasies will be the date on which the plaintiffs so screened. According to them they shall rank senior to all the candidates who were screened subsequent to the screening of 1970 in which they were so screened. Their grievance is that while they were working as Yard Khalasies from the year 1963 onwards, the respondents while giving benefit to loyal servants who were on duty, selected the sons and dependents of such loyal employees in the railway service in the year 1974-75 as Yard Khalasis and other categories and finalised the seniority list of Yard Khalasis on the basis that they were seniors to the applicants.

4. The respondents filed a reply and also an additional reply resisting the claim of the applicants.

5. Heard the learned counsel for the applicants as well as the respondents and necessary records and files were perused.

6. The applicants originally preferred this application mainly challenging the seniority which according to them published in the year 1978. The respondents point out in their reply that the seniority was not published in the year 1978 but only on 24.5.1980. The list was prepared as on 31.3.1979. The seniority of the plaintiffs against direct recruits was correctly fixed therein. After the publication of seniority list those persons who were aggrieved or those who it is alleged to have been

wrongly placed in the list were given a chance to make representation. If no representation was made, it is deemed that the concerned persons accept the seniority list. All the plaintiffs except plaintiff No.8 and 11 made representations against this seniority list on 9.6.1980 and they were replied on 9.7.1980. Hence, according to them the present application is barred by limitation. We find some force in the contention of the respondents on this aspect.

7. Though the applicants claim now in their reliefs that they are entitled to be granted seniority position by treating their seniority from the date of screening, they in fact challenge the seniority list published on 24.5.80. In fact the applicants themselves admit in para 3 of the application that the respondents are going to promote about 50 to 60 posts of Fireman Grade-II on the basis of the above seniority list. In effect the applicants grievance is against the seniority list dated 24.5.1980. The contention of the respondents that many of the applicants made representations and they sent a reply on 9.7.80 is not disputed by the applicants by a rejoinder. Further, the applicants made the above said amendment on 8.2.89, long after the filing of the plaint basically charging the entire cause of action. Hence, the present application questioning the seniority nearly after four years is clearly barred by limitation.

8.) Even taking for granted that the applicants are entitled to urge their claim on merit, it is admitted in the application that the applicants were originally working as Yard Khalasis. They have not produced any order of appointment. The contention of the applicants is that they were screened in the year 1970 and as such their



seniority should count from that year. The applicants fail to produce any rule or any authority to show that the applicants are entitled to count their seniority from the date of their screening. It is the specific case of the respondents that the applicants were originally working as casual labourers and thereafter attained temporary status with their continuing to work beyond six months. Such labourers were eligible to apply for or to be considered for absorption on regular cadre in response to a notice and after selection/screening by Committee Officers. After such screening plaintiffs have been appointed on regular basis on the dates shown in Annexure-A. From this list it is clear that Plaintiff Nos.1 to 4 were absorbed on 18.12.73, plaintiff Nos.8 to 14 from 21.4.78 and rest of the plaintiffs from February 1975 and July 1975. According to them the seniority of the casual labourers is reckoned from their date of regularisation in service. They admit that they have selected directly some of the sons of Railway employees who were loyal during the strike on regular scale of pay against 20% vacancies reserved for them on special consideration. The appointment of those employees is regular and their seniority is to be counted from the date of their regular appointment. The plaintiffs who also remained loyal during the strike were also amply rewarded by giving the benefit of one advance increment. The respondents have also produced necessary file to establish the same. They have further pointed out that as per seniority list of 24.5.1980 they have given promotion upto serial No.849 and the plaintiffs who are at serial No.878 onwards will be considered for promotion when their turn comes. Further, they have rightly pointed out that

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the plaintiffs claim of seniority is not maintainable without challenging the seniority list and without impleading the persons affected. As the applicants failed to challenge the seniority list dated 24.5.1980 and have also failed to add the persons who will be affected by giving them seniority, the plaintiffs are not entitled to claim any relief in this application.

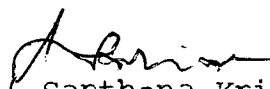
9. Further, the respondents have also pointed out in their additional reply that the criteria for seniority is the date of appointment from which one is appointed to the post on regular basis and as such the plaintiffs who were appointed on regular basis only from 1973 onwards cannot claim any seniority over the direct recruits. It is to be pointed out at this stage that the direct recruits were admittedly appointed only during the period of 1974-75. In the original reply it is admitted that some of the plaintiffs' services were regularised prior to 1974-75. Those plaintiffs whose services were regularised prior to that of the selection of the direct recruits are no doubt entitled to claim seniority over those direct recruits. But neither the applicants nor the respondents gave the date of selection of direct recruits during the year 1974-75. Hence, we have to only observe that such of the applicants whose services were regularised prior to the date of selection of direct recruits are entitled to claim seniority over them. But in view of the decision arrived at para 7 namely that the claim is barred by limitation, the applicants are not entitled to claim any relief in this application.


10. On this aspect the learned counsel appearing for the respondents also placed reliance on para 302 of Indian Railway Establishment Manual which states that unless

specifically stated otherwise the seniority amongst the incumbents of a post in a grade is governed by the date of appointment to the grade. No doubt, the para 302 points out how the seniority has to be given between the direct recruits and the promotees. Learned counsel for the applicants placed reliance on para 306 which only states that candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the date of posting except the case covered by para 305 above.

Neither para 302 nor para 306 state, that merely because the applicants are screened in the year 1970 they are entitled to claim seniority over the direct recruits who were recruited in the year 1975. The seniority commences only from the date of regular appointment and not from the date of screening. ^{except those shown in para 9} As the applicants are appointed on regular basis only after the direct recruits in the year 1974-75 the applicants are not entitled to claim any relief in this application. The applicants have not filed any rejoinder disputing the case of the respondents about the dates of their regular appointment. As the applicants failed to establish that they are entitled to claim seniority from the date of screening they cannot claim any relief in this application.

11. In view of above discussion we find no merit in this application and accordingly this application fails and is dismissed with no order as to costs.


(Santhana Krishnan)
Member (J)


(M.Y. Priolkar)
Member(A)

v/-