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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 858/88

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DATE OF DECISION 06-1-94

Shri K.R.Harshe & Anr. Petitioner

Shri G.K.Masand Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri N.K.Srinivasan Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri N.K.Verma, Member (A)

The Hon'ble ~~Smt.~~ Smt. Lakshmi Swaminathan, 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 ?

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

N.K.Verma
(N.K.VERMA)
MEMBER (A)

(AS)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 858/88

Shri Kedar Raghunath Harshe & Anr. ... Applicants

V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Member (A) Shri N.K.Verma
Hon'ble Member (J) Smt.Lakshmi Swaminathan

Appearance

Shri G.K.Masand
Advocate
for the Applicant

Shri N.K.Srinivasan
Advocate
for the Respondents

JUDGEMENT

Dated: 6 January 1994

(PER: N.K.Verma, Member (A))

In this OA. the applicants, K.R.Harshe and C.R.Rane have prayed for quashing the seniority list issued by the respondents under Memorandum dated 2.8.1988 pertaining to the Office Clerks with a request that Respondents No. 1 and 2 be directed to draw up fresh seniority list wherein the applicants and others similarly situated appointed as Office Clerks between 1983 to 1987 against certain quota and on compassionate grounds be assigned seniority above Respondents No. 3 to 27. The applicant has also requested for interim relief of restraining the respondents from giving effect to the impugned seniority list. This prayer for interim relief was, however, not granted while the OA. was admitted by this Bench.

2. The applicant was appointed as Office Clerk in the Head Quarters Office of the Western Railway at Churchgate on 22.3.1984 on compassionate grounds after the death of his father who was a Railway Employee at the time of his death. The applicant No. 2 Chandrashekhar R.Rane is a physically handicapped person and was appointed as Office Clerk in the same office on 9.9.1985 against the quota reserved for physically handicapped persons. It is alleged that Respondents 3 to 27 have been appointed in the year 1987 much after the appointment of applicants No. 1 & 2 in March, 1984 and September, 1985 respectively. The applicants having promoted to next higher post of Senior Clerk w.e.f. December, 1985 and November, 1986 respectively whereas Respondents 3 to 27 have been promoted to the post of Senior Clerks in or after August, 1988. A written suitability test for filling up 23 vacancies of Senior Clerks was initiated by Respondents 1 & 2 in which 23 senior most employees as shown in List 'A' (appended with the application) were to be considered first and in the event of employees from list 'A' not been found suitable, candidates from List 'B' would be called for the Written Suitability Test. The name of the Applicant No. 1 appeared at Sr.No.8 of the List 'B' issued on 28.4.1988. Names of Respondents 3 to 27 did not figure in that list. However, one day prior to the date fixed for conducting the written suitability test which was fixed on 21.5.1988, the respondents issued an order cancelling that test to be held on 21.5.1988 without assigning any reasons. The applicant and others who were eligible to appear in the written suitability test made an application to Respondent No. 2 requesting him to fix Suitability Test immediately without loss of time. In the meantime, Respondents No. 1 & 2 notified a fresh seniority list vide Memorandum dated 2.8.1988

in which Respondents 3 to 27 though appointed much after the appointment of applicants as Office Clerks were shown above the applicants. This was the seniority list against which objections were invited within one month of the notification. The applicants and others similarly placed employees made representations to the Respondent No. 2 on 30.8.1988 which have not been disposed of so far. While this representation was pending, the respondents fixed the suitability test vide a Memorandum issued on 29.10.1988. The applicants came to the Tribunal for granting ad-interim stay of the holding of the test and for fixation of their seniority as per the representation, giving injunction against impugned seniority list or in any other manner proceeding with the holding of the suitability test notified vide Memorandum dated 7.10.1988.

3. In their written statement, the respondents brought to notice that Respondents 3 to 27 were selected much earlier to the applicants against Employment Notice No. 2480-81 under Category No.25 for which the selection process was started in the year 1980-81. While they have generally admitted the contentions of the applicants of their being appointed on the compassionate ground and against reserved quota for handicapped etc., they have denied the submissions made in the OA. in regard to Chapter III of the Indian Railway Establishment Manual (IREM), dealing with seniority. The respondents have averred as per Para 306 of the I.R.E.M. reads as under :-

"306. Candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by paragraph 305."

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In terms of this provisions, the candidates who were selected earlier and belonging to earlier panel will rank senior to those selected later. Accordingly, Respondents 3 to 27 were assigned seniority as they belong to an earlier selection though appointed later. They have therefore said that the seniority list issued by them calling for objections under the impugned memorandum dated 2.8.1988 was as per the I.R.E.M. They have also admitted that the suitability test had to be postponed because of the mistake on the part of the respondents in as much as the applicants and others were wrongly listed who were called for suitability test excluding the Respondents 3 to 27. They have further submitted that the applicants were called for appearing at written suitability test on 24.12.1988 as per the seniority rightly assigned to them and they were never deprived of their right to appear in the suitability test.

4. During the arguments Shri Masand on behalf of the applicant made a strenuous plea that Rule 306 talks of inter-se seniority of persons selected through a selection process among themselves. Shri Masand took us over to Para 306 to 309 of the I.R.E.M. which deals with the seniority in initial recruitment grades. Para 302 is the general clause says that :

"302. Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. In categories of posts partially filled by direct recruitment and partially by promotion, criterion for determination of seniority should be the date of promotion in the case of a promotee and date of joining the working post in the case of a direct recruit, subject to maintenance of inter-se seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same, they should be put in alternate positions, the promotees being senior to the first direct recruits maintaining inter-se seniority of each group.

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There is a note below this regarding the Asstt. Surgeons which is not relevant for our purpose. Para 303 speaks about seniority of candidates recruited through the Railway Service Commission or by any other recruiting authority with regard to their initial training at training schools. Para 304 stipulates :

"When two or more candidates are declared to be of equal merit at one and the same examination/selection, their relative seniority is determined by the date of birth-the older candidate being the senior."

Para 305 states that :

"When, however, a candidate whose seniority is to be determined under paragraphs 303 and 304 above, cannot join duty within a reasonable time after the receipt of orders of appointment, the appointing authority may determine his seniority by placing him below all the candidates selected at the same examination/selection, who have joined within the period allowed for reporting to duty or even below candidates selected at subsequent examination/selection who have joined before him."

The relevant paragraph for this OA. is Para 306, according to which candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by Para 305. Para 309 speaks of seniority on promotion. Paragraph 306 applies equally to seniority in promotion vacancies, due allowance being made for delay if any in joining the new posts in the exigencies of service. Shri Masand based his entire arguments on the points that the purport of Para 306 was on appointments through selections. When two selections are made, the candidates selected in the earlier selection will rank senior to those selected later irrespective of the dates of posting. The applicant No. 1 in this case was not appointed through any process of selection as it was a case of compassionate appointment in relaxation of rules and hence

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Para 306 of the IREM will not be applicable and the applicant who joined the posting of Office Clerk earlier to the candidates selected through an earlier employment notice, but who had to wait for their appointments due to delay in administrative process. So far as the appointment against the handicapped quota is concerned, this cannot be said to be a selection as the Applicant No. 2 was appointed through a simple test prescribed by the railway administration and not through the open selection by the Railway Recruitment Board. Shri Masand stated that the handicapped persons are not appointed through Railway Rectt. Board but directly from the Employment Exchange for which Railways are suppose to conduct a written examination separately which is evaluated by a committee of three senior officers including a medical officer. This selection through written examination cannot be brought at par with the selection held by the Railway Recruitment Board. Therefore the Applicant No. 2 is also out of the ambit of Para 306 of the I.R.E.M. and his seniority should count from the date he was appointed and joined and he should rank senior to all those respondents who were appointed/joined later.

5. Shri N.K.Srinivasan appearing for the respondents stated that there is a quota for physically handicapped persons who are categorised as (a) blind, (b) deaf, (c) orthopaedically handicapped for whom 3% of the vacancies are reserved. It has been stipulated that recruitment for filling up physically handicapped quota is to be made by the Railways themselves after notifying to the Employment Exchanges, Special Employment Exchanges and the nearest vocational rehabilitation centres for the physically handicapped persons. The vacancies are not only to be notified in such agencies but are also to be filled through them. The physically handicapped persons are allowed concessions in regard to age and mere pass

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marks in Matric against the minimum of 50% marks applicable to other candidates besides they are exempted from examination fees and medical examination etc. Besides, the recruitment through the Employment Exchange/Special Employment Exchanges, handicapped persons are also recruited through the Railway Recruitment Board if the candidates are properly registered with the Special Employment Exchange and possess a certificate of special handicap. The appointment of such candidates may be counted against the Handicapped Quota. Shri Srinivasan also averred that recruitment to the posts in the railways with regard to the handicapped persons is made through both these channels, i.e. through the Employment Notice of Railway Recruitment Board and also directly by the railways themselves through the agency of Employment Exchange/Special Employment Exchanges. This selection process thus naturally enables a very large number of persons under these categories to be subjected to the written test and selected by a process of viva-voce of the candidates by the selection committee. Hence such candidates who are selected through this process will also get covered by the Para 306.

6. We have given very anxious consideration to the submissions made by the learned counsel for the applicants who has based his entire claim on the submissions that the applicants are entirely out of the ambit of Para 306 by virtue of the special recruitment enjoined for compassionate appointment and the handicapped persons. The appointments to the various categories of posts in Group 'C' & 'D' in the railways are made through the Railway Rectt. Board, through the Employment Notices given from time to time and selections are made on the basis of prescribed procedure. The respondents in this case were accordingly selected against an Employment Notice issued in 1980-81. The railway respondents have submitted that while

the process of appointment of some candidates was in operation, there was a freeze order imposed by the Railway Board on 15.10.1985 because of the irregularities noticed in the said selection. The Respondents No. 3 to 27 were left out for appointment and they had to wait till the freeze order was lifted by the Railway Board in April, 1987. Hence, these respondents had to compulsorily wait for their appointment orders for no fault of their own. The delay on the part of Railways cannot be ascribed to the respondents for which they must not suffer civil consequences. Nobody else appointed after the selection in 1983 can claim seniority over them by virtue of the fact that these respondents joined service only in 1987. The case of the Applicant No. 1 is definitely on a different footing as he was appointed in relaxation of rules of recruitment on compassionate ground. However, that rule will not permit the Applicant No. 1 to have an unintended benefit of obtaining seniority over the respondents who are fully covered under Para 306. The rules of Recruitment on Compassionate grounds envisage giving financial support to the indigent family by giving an appointment to sons/wards/wife of the deceased official in relaxation of rules of recruitment. This special dispensation cannot entitle the applicant also to jump over others duly selected by prescribed procedure against vacancies announced earlier. We are not, therefore, persuaded by the argument of the learned counsel for the applicant that Applicant No. 1 will have to be given seniority by virtue of his joining the post earlier to the respondents. The application in the case of Applicant No. 1 is, therefore, not acceptable.

7. So far as Applicant No. 2 is concerned, he is as much governed by the process of selection as in case of the respondents when they appeared in test and in viva-voce test conducted by Railway Board. Hence Applicant No. 2 cannot claim seniority

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over the respondents who are admittedly belong to earlier selection.

8. In the conspectus of circumstances, we find that this application has no merit and the applicants have no grounds for claiming the seniority over the respondents.

9. The application is dismissed with no order as to costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

N.K. Verma
(N.K. VERMA)
MEMBER (A)

mrj.