

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 214/88

~~Transfer Application No:~~

DATE OF DECISION 2.9.93.

Shri Kalidas Guha & 4 others Petitioner

Shri D.V. Gangal Advocate for the Petitioners

Versus

Union of India & 5 Others. Respondent

Mr.V.G. Rege, for Resp. No.1 and 2. Advocate for the Respondent(s)

Mr.G.S. Walia, for Respondent No.3

CORAM:

The Hon'ble Shri Justice M.S. Deshpande, Vice Chairman.

The Hon'ble ~~Ms.~~ Usha Savara, Member (A).

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 ? } No
4. Whether it needs to be circulated to other Benches of the Tribunal ? }


(USHA SAVARA)
MEMBER(A).

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(16)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

O.A.214/88.

Shri Kalidas Guha
& 4 Others.

.. Applicants.

Vs.

Union of India & Others.

.. Respondents.

Coram : Hon'ble Shri Justice M.S. Deshpande, Vice
Chairman.
Hon'ble Ms. Usha Savara, Member (A).

Appearances:

1. Mr.D.V. Gangal, Counsel
for the applicant.
2. Mr.V.G. Rege, Counsel
for Respondent Nos.1 & 2.
3. Mr.G.S. Walia, Counsel
for Respondent No.3.

JUDGMENT:

Date : 3.9.93 -

[Per : Ms. Usha Savara, Hon'ble Member (A)]

The short point for adjudication is whether the 5 applicants were senior to the 4 respondents. Both the applicants and the respondents possessed the same qualifications, and were appointed to the same post - that of Chargeman 'B' initially. Since the applicants had joined the post in 1978, 1971, 1973 and 1977, while the respondents had, admittedly joined Railway Service in the same post in 1978 only, it is the applicants' case that they were senior to the respondents, and that the respondents had been granted illegal favours.

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2. The applicants had appeared for screening for the post of Chargeman 'B' for Traction Machine Workshop, Nasik (in short T.M.W.) which was under construction in 1979. Notification was dated 5.11.1979 issued by the Chief Personnel Officer, Central Railway, inviting applications from the employees of the Electrical Department of the Central Railway, Traction Workshop at Chittaranjan Locomotive Workshop for Chargeman 'B' only, and all Civil Engineering & Mechanical Engineering of S & T Workshops for the posts of Chargeman 'B' having specific qualifications. The offer was subject to certain conditions.

3. The applicants were selected vide letter dated 10.9.1980 and were posted in T.M.W. as Chargeman 'B'. Guha, Nigam & Korde were promoted as Chargeman 'A' on ad hoc basis on 29.4.1983 and were granted regular promotions on 1.1.1984. Shri Khan was granted regular promotion on 1.1.1984, and Shri Burhanpurkar was promoted on 10.1.1985 on regular basis.

4. The respondents 3 and 4 were selected by the Railway Service Commission in 1978 and appointed as Chargeman 'B' on 20.2.1980 after 18 months training period, and after passing the suitability test at Traction Rolling Stock, Bhusaval. Respondents 5 and 6 passed the suitability test after 24 months training period, and were posted as Chargeman 'B' on 1.8.1980. The applicants' case is that they were senior to the respondents but the respondents were given benefits with reference to the Traction Rolling Stock Organisation, where their liens were maintained, *hpl.*

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although they were working at T.M.W., Nasik. The respondents were given notional promotion w.e.f. 25.6.1983 as their junior, Shri Beant Singh, was promoted as Chargeman 'A' on regular basis in Traction Rolling Stock (BSL). This promotion was irregular, according to the applicants, as an individual can be appointed substantively at one post only. It is also the applicants' grievance that the respondents though junior to them, were not required to be screened for T.M.W., Nasik, which was a precondition according to the notification dated 5.11.1979. On this ground, the applicants' had been discriminated against, and therefore the appointments of the respondents were arbitrary, and illegal in T.M.W., Nasik, and they should be declared to be junior to the applicants.

5. Reply has been filed on behalf of the respondents 1 and 2, and respondents 4 to 6. Respondent No.3 has adopted the reply filed by respondents 4 to 6. The facts are undisputed. The applicants were screened for T.M.W., Nasik, which was under construction in 1979. They were selected and joined T.M.W. vide letter dated 10.9.1980 in the grade of 425-700 as Chargeman 'B'. They had joined the workshop cadre with the clear understanding that they were not liable to be re-transferred to their parent cadre. They came from different Departments like Kurla Carshed, Electrical Loco Shed, Kalyan and Electrical (OSM). Till such time as the cadre was not closed in T.M.W., the employees brought to the T.M.W. would be eligible for promotion/selection in their erstwhile parent units. The cadre was closed on 17.12.1986, and from that date, the staff ceased to have any link for promotion with their parent cadre. (Ex.II, Para 3). *W*

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6. The respondents' case is that respondents 3 to 6 were factually earmarked for posting in T.M.W. after their training. However, as T.M.W. was temporary organisation till 17.12.1986, the respondents 3 to 6 were allowed to have their lien in Traction Rolling Stock Organisation, Bhusawal. Similarly, persons who were brought from other departments or branch/section, were allowed to have their lien in some other department, branch/section so as to give them security of service. It was for this reason that respondents 3 to 6 were promoted to the post of Chargeman 'A' from 25.6.1983 in the Traction Machine Workshop itself while the applicants were placed in the seniority in accordance with their position in their parent cadres i.e. Traction Rolling Stock, Central Railway, Bombay, and in Maintenance in Bhusawal. The applicants were promoted to the post of Chargeman 'A' w.e.f. 1.1.1984 only, and therefore the respondents 3 to 6 were shown senior to the applicants. However, the charge of discrimination and favoritism is wholly misplaced. Shri Rege, learned counsel for the respondents 1 and 2 referred to Ex.I being notification dated 5.11.1979 in response to which the applicants had volunteered for joining T.M.W. Shri Rege pointed out all of the conditions. The length of non-fortuitous service in the grade in which they were working on the date of closure of the cadre i.e. 17.12.1986 would determine the seniority as and when the cadre was closed. The applicants were holding the position of Chargeman 'A' on 17.12.1986 i.e. the date of closure of the cadre in T.M.W., Nasik. They had held this position since 1.1.1984, whereas the respondents 3 to 6 had been promoted as Chargeman 'A' on 25.6.1983. In the circumstances, the respondents were senior to the applicants, and shown as such in the seniority list on

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15.6.1987. On the basis of this list, the selection for the post of Junior Shop Superintendent Gr. Rs.2000-3200/- in T.M.W. was held. The respondents 3 to 6 came within the zone of consideration for this selection, were ~~permitted~~ to appear and the panel was announced on 1.2.1988. The applicants', Shri Guha and Shri Korde were also empanelled, and have already been promoted as Jr. Shop Supdts. Shri Nigam failed in the selection. If the panel is declared illegal, as prayed by the applicants, then the applicants 1 and 3 will have to refund the payment received by them in the grade of Rs.2000-3200/-. The learned Counsel also produced the original advertisement/Employment notice No.1/77-78. The learned Counsel for the applicants, Shri Gangal had challenged the averment of the respondents that respondents 3 to 6 had been directly recruited, and they were allotted and appointed directly in the T.M.W. Nasik. In support of his contention, Shri Rege produced the list of successful candidates, and some correspondence dated 16.8.1977, 3.9.1977 and 26.7.1978.

7. We have heard the learned Counsel at length. Shri Gangal placed emphasis on the Chapter III of Railway Establishment Manual, which deals with seniority, and how it is to be determined. So far as inter-se seniority is concerned, there can be no doubt that those who are earlier must rank senior to those, who are selected ~~selected~~ on ~~or~~ later date. That is the general rule. This, however, will not be applicable to the facts peculiar to the case before us. The material fact is the setting up of a new unit, the Traction Machine Workshop at Nasik, and the supervisory staff required for manning it on a day to day basis, till the date of

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closure of the cadre. Some posts were filled in by direct recruitment, and for those which remained vacant, applications were invited from the existing employees of the Electrical department of the Central Railway, and Traction Workshop at Chittaranjan Locomotive Workshop, and all civil engineering and Mechanical Engineering and S.T. Workshops for the post of Chargeman 'B' having specific qualifications and with specific conditions as laid down in Ex.I i.e. notification dated 5.11.1979. It was a comprehensive notification and the conditions laid down were as follows:-

- "a) They will be subjected to screening for suitability for this Workshops.
- b) They will be taken in the same grade in which they are working at present.
- c) On their coming over to this workshop cadre, they will not be liable for re-transfer to the parent units.
- d) Length of non-fortuitous service in the grade in which they are working on the date of closure of the cadre will determine the seniority as and when cadre of this workshop is closed. Till then they will be eligible to be considered for promotion selection in their ersewhile parent unit.
- e) After the cadre is closed they will not be eligible to seek any further promotion in their parent cadre.
- f) They will not be provided with any railway quarter.
- g) Staff selected will have to vacate their quarters at their old station.
- h) Their seniority in TMW Nasik will be provisional.
- i) They will be subjected for conversion training, if any, prescribed. They should qualify in the conversion training before considering for absorption. If they do not qualify they will be returned back to parent dept.

h.d.

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- j) Employees should have been regularly selected or should have been working on seniority-cum-suitability basis in their respective grades and should not be over 50 years of age as on 1.1.78."

The applicants' parent cadre was Traction Rolling Stock, Bombay, when they volunteered for appointment to the post of Chargeman 'B' in T.M.W. Nasik. According to the condition (a) of the notification, they were subjected to a screening for suitability. According to (b) they were taken in the same grade in which they were working. (c) is a clarification that having come over to the workshop cadre, the officials are not liable to be re-transferred to their parent cadre. Clause (d) lays down how seniority is to be determined on the date of closure of the cadre. Till the cadre is closed, officials will be eligible to be considered for promotion/selection in their erstwhile parent unit. But, after the cadre is closed, they will not be eligible for promotion in their parent cadre. It is to be remembered that T.M.W. was in the process of being set up. The new cadre, which came into existence on 17.11.1986, i.e. on the date of closure of cadre, comprised of officials holding lien in other departments/sections, which could only be transferred to T.M.W. on the date of closure of the cadre. Therefore, the seniority of officials in the cadre, in which their lien was maintained had to be taken into account while fixing their seniority in T.M.W. on closure of the cadre. According to Clause (d) of the notification, what was relevant was the length of non-fortuitous service in the grade in which they were working on the date of closure of the cadre, which would determine the seniority. For instance, on 17.12.1986, Applicant No.1 was posted as Chargeman 'A'. He had been promoted to this grade on

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1.1.1984, and therefore his seniority would be determined only with reference to his service in this grade. On the other hand, Respondent No.3 was also working as Chargeman 'A' on 17.12.1986, but he had been promoted on 25.6.1983, and therefore had put in more service in the grade and was senior to the applicant No.1. The respondents no. 3 to 6 also got the benefit of the second part of clause (d) i.e. till the closure of the cadre, they were eligible to be considered for promotion in their erstwhile parent cadre. The applicants were also subject to this, but since there were no promotions in their parent cadre, they could not avail of this. We fail to see any discrimination as alleged.

8. The employment notice was given by Western Railway and the selection would normally be restricted to that Railway only. If, however, vacancies in those categories occur on other Railways, the same would be met from amongst eligible applications under the notice. By letter dated 3.9.1977, the Chairman, Railway Service Commission had informed the Chief Personnel Officer, Central Railway, that his demand for candidates for the post of Apprentice Mechanics (Elect.) would be met out of the candidates to be selected against category No.2 of E.N.No.1/77-78-App. Elec. Chargeman advertised for Western Railway. The C.P.O. was also required to inform how many applications had been utilised and the balance required by the Central Railway. On 26.7.1978 the C.P.O. forwarded 7 applications received through Railway Service Commission recommended for the post of Apprentice Mechanica(Electrical). Respondent No.3

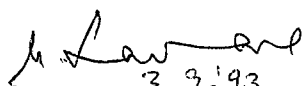
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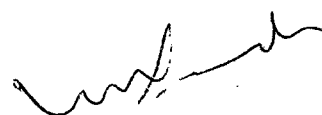
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figures among the seven and was marked to T i.e. Traction department. Though the names of Respondents No. 4 to 6 are not on this letter, a reasonable presumption can be raised that the respondents 3 to 6 were allotted to T.M.W. Nasik, or were factually earmarked for posting in the T.M.W. after training as claimed by the respondents. As the organisation was temporary till 17.12.1986, the lien of the respondents had to be kept in the Traction Rolling Stock Organisation, Bhusawal. There was, therefore, no question of their volunteering vide letter dated 5.11.1979, or being screened before their appointment. Once we accept that seniority has been fixed as per notification dated 5.11.1979 all the prayers of the applicants have to be rejected.

9. In the circumstances, we have to hold that the applicants are not entitled to any relief, and there is no merit in the application. The application is rejected and there is no order as to costs.


3.9.93.
(USHA SAVARA)
MEMBER (A).


(M.S. DESHPANDE)
VICE CHAIRMAN.

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