

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 18/88

Transfer Application No: ----

DATE OF DECISION 20 July 93.

B.S.Anand

Petitioner

Mr.G.S.Walia

Advocate for the Petitioners

Versus

U.O.I. & Ors.

Respondent

Mr.R.K.Shetty

Advocate for the Respondent(s)

CORAM:

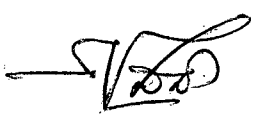
The Hon'ble Shri A.B.Gorthi, Member(A)

The Hon'ble Shri M.D.Deshmukh, 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 ?

yes

no


(V.D.DESHMUKH)
M(J)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.18/88

B.S.Anand,
Sr.Electrical Foreman,
at Gangapur City in
Kota Division of the
Western Railway.

.. Applicant

-versus-

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 - 400020.
4. Divisional Railway Manager,
Western Railway, Kota
Division of W.Rly., Kota.
5. Deleted
6. V.K.Gupta,
Gupta Cottage,
Opposite Post Office,
P.O.Road,
Kota Jn.324 002.

.. Respondents

Coram: Hon'ble Shri A.B.Gorthi, Member(A)

Hon'ble Shri V.D.Deshmukh, Member(J)

Appearances:

1. Mr.G.S.Walia
Advocate for the
Applicant.
2. Mr.R.K.Shetty
Counsel for
Respondents No.
1 to 4.

JUDGMENT:

(Per V.D.Deshmukh, Member(J))

Date: 20 July 93.

The applicant filed the present
application claiming that the Office Order

dt.13-9-84 issued by the Divisional Railway Manager's office, Kota Division, concerning the seniority of the applicant and the respondents No.5 and 6, and the seniority list issued on 30th June, 1987 be quashed. Briefly stated he ^{is} claimed seniority over the respondents No.5 & 6, Mr.Chhotey Lal and Mr.V.K.Gupta. However, the respondent No.5 expired during the pendency of the application and the learned advocate for the applicant stated that the applicant restricted his claim to his seniority vice the respondent No.6 only.

2. The official respondents filed their written statement. We heard the learned advocates for the applicant and the respondents No.1 to 4. The respondent No.6 was not present personally or through his advocate but we have taken into consideration his written statement and the documents relied upon by him.

3. The applicant was originally appointed as Electrical Chargeman Gr.'B' in the scale of Rs.425-700(RS) in December, 1975 in Northern Railway. He was promoted as Electrical Chargeman Gr.'A' in the scale of Rs.550-750(RS) under the order dt. 29-5-82.

4. The applicant at his own request was transferred to the Western Railway ^{on 13th} /or ☐ about 13th January, 1983 in the same scale i.e. Rs.550-750 (RS) and was posted at Kota.

5. The applicant contents that on 21-2-84 the respondent No.4 i.e. the Divisional Railway Manager(DRM) Western Railway, Kota Division Kota issued the office order under which four employees

who included the respondents No.5 and 6 were regularised with effect from the date from which they were working ^{on} ad-hoc basis in the scale of Rs.550-750(RS). The letter is Ex.'B' to the application and it states that the employees mentioned therein had passed the suitability test of scale Rs.550-750 vide office order dt. 14-2-84 and hence they were regularised from the respective dates mentioned in the letter. The respondent No.6 was regularised w.e.f. 9-2-82. According to applicant this order was malafide and illegal and was passed with a view to deprive the applicant of his seniority in the scale of Rs.550-750. His contention is that the regularisation of respondent No.5 w.e.f. 21st December, 1981 and that of respondent No.6 w.e.f. 9th February, 1982 was highly irregular and against the rules. The DRM by his office order dt. 24-4-84 modified the earlier office order dt. 21-2-84 and ordered that the respondent No.5 and 6 were regularised from the date shown in the letter i.e. 22-2-82. Thus the date from which the respondents No.5 & 6 were regularised were modified to 22-2-82.

6. The respondent No.4 issued office order dt. 13-9-84 consequent upon the transfer of the applicant to Kota Division of Western Railway from Northern Railway. This letter (Annexure 'E') states that the seniority of the applicant in the scale of Rs.550-750 in Kota Division was assigned in terms of para 312 of Indian Railway Establishment Manual(I.R.E.M).

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This office order showed the respondent No.5 and 6 as seniors to the applicant. According to applicant the respondents No.5 & 6 were working in the scale of Rs.550-750 on ad-hoc basis and they could not be regularised w.e.f. 22-2-1982 and given seniority above the applicant.

7. The respondent No.1 to 4 and also the respondent No.6 challenged the application on the ground of jurisdiction. It is their contention that as the impugned order dt. 13-9-84 is passed by the DRM Kota Division, the challenge to this order shall lie within the jurisdiction of the Jodhpur Bench of this Tribunal. The applicant is also working in Kota Division. It has been urged by the respondent No.6 that as the applicant is working in Kota Division and also as the impugned order was issued by the DRM at Kota, in view of the O.M. dt. 13-8-85 issued by the Govt. of India, Ministry of Personnel and Training, the application can be entertained only by the Jodhpur Bench of this Tribunal. Mr. Walia however contended that the ^{combined} seniority list is issued by the Headquarters which is situated at Churchgate, Bombay and therefore this Bench has the jurisdiction to entertain the application. The applicant, no doubt, challenges the order issued by the DRM at Kota and the seniority list dt. 30-6-87 Ex.I which was also issued by the Kota Division, ^{however}, Mr. Walia pointed out that the Headquarter's office at ^{combined} Churchgate, Bombay has issued the seniority list which is Ex.R-II to the written statement of the respondents No.1 to 4 in which also the respondents No.5 & 6 are shown senior to the applicant and therefore this Bench has the jurisdiction to

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entertain the application. We find that as the general seniority list is issued by the Headquarter's office the application cannot be rejected on the ground of jurisdiction.

8. Mr. Walia's main contention was that the period for which the respondents No.5 and 6 worked on ad-hoc basis in the scale of Rs.550-750 could not be taken into consideration while fixing the seniority. He relied upon several decisions in this respect. However, we find that it is not necessary to go into that question at all in view of the very material development which has been pointed out by the respondent No.6. The respondent No.6 had filed O.A. 87/87, Vinod Kumar Gupta vs. U.O.I. & Ors., which was decided on 19-5-88. The copy of the judgment is attached to the written statement of respondent No.6. The respondent No.6 had challenged the combined seniority list dt. 24-6-86 which is also under challenge in the present application. It was his contention before the Jodhpur Bench that the combined final seniority list of 24-6-86 was based on incorrect information according to which the number of vacancies in Kota, Ratlam and Dohad Workshops was assumed as 27 as against the actual vacancies numbering 39. It was his contention that in view of the vacancies occurring and the Railway Board's letter dt. 30-8-83, he was entitled to be treated to have been promoted regularly w.e.f. 1st October, 1980. The Jodhpur Bench found that this error, as to the number of ^{actual} vacancies had been discovered in a joint meeting held in the office of DRM between APO Ratlam and APO Kota on 10th and 11th December, 1986; and in this connection referred to the extracts from the minutes of the

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said meeting. Minutes of the said meeting
~~for~~ ^{were} ~~are~~ enclosed to D.O. dated 19th December, 1986.

By this D.O. a request was made to recast the combined seniority of the employees in the grade of Rs.550-750 on the basis of the fresh information furnished by Ratlam Division. The Hon'ble Members observed that as the respondents had not filed the reply despite several opportunities afforded to them they had to decide the application on the basis of the record. The judgment states that after hearing the arguments addressed at the Bar and considering the entire material on record the proper course for the authorities to follow was to recast the combined seniority of AEF/Senior Electrical Chargeman in the pay scale of Rs.550-750 in accordance with law and in the light of Annexure-10 and the enclosures thereto. Consequently the respondents were directed to recast the combined seniority list accordingly. The most material development is that expressly in reference to the above decision in O.A. 87/87 of the Jodhpur Bench and also the decision of the same Bench in O.A.86/87 the respondents No. 1 to 4 have recast the combined seniority list and the learned counsel for respondents No.1 to 4 have placed before us the recast seniority list.

9. In the combined seniority list dt. 24-6-86 the deceased respondent No.5 stood at Sr.No.210 while the respondent No.6 was placed at Sr.No.211 and the applicant at Sr.No.213. In the combined seniority list as it has been recast as per the directions given by the Jodhpur Bench the respondent No.5 is placed at Sr.No.89, respondent No.6 at Sr.No.103 and applicant at Sr.No.167. The applicant claims seniority in the

present application only as against the respondent No.6. However, in the recast seniority list 64 other officials in the same grade have been given seniority over the applicant and below the respondent No.6. It is difficult for us to ignore this fact especially as the combined seniority list has been recast as per the directions given by the Jodhpur Bench.

10. It was contended by Mr. Walia that the judgment of the Jodhpur Bench in O.A.87/87 was not binding on the applicant as he was not a party to that judgment. He also contended that the judgment was not binding on either party as the official respondent had not filed the reply to the application filed by the present Respondent No.6. He also pointed out that the Hon'ble Members had observed in the said judgment "Nothing contained herein should be taken to be an expression of opinion on our part regarding the merits or otherwise of either party's case." The judgment of the Jodhpur Bench was given on 19th May, 1988. The respondent No.1 to 4 acted upon the judgment and actually published the seniority ^{list} under the Headquarter's letter dt. 14th September, 88. There is absolutely nothing to show that either the applicant or any other concerned employee has challenged the decision of the Jodhpur Bench either by way of review petition or by way of an appeal. As has been stated earlier the most material circumstance is that the respondents have actually acted upon this judgment. As the judgment is entirely based on the facts there is no question of our differing with the judgment. In this ^{view} of the matter we find that the relief claimed by the applicant in the present application cannot be granted.

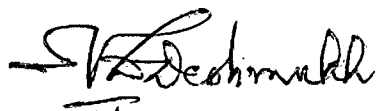
11. It is admitted position that as the applicant was transferred from Northern Railway to Western Railway on his recast his seniority has to be fixed as per para 312 in I.R.E.M. The seniority has to be bottom seniority and it has to be below the existing confirmed and officiating railway servants in the relevant grade in the promotion group, irrespective of the date of confirmation or length of officiating service of the transferred railway servant. It was the contention of Mr. Walia that as the regularisation of respondent No.6, who was functioning in the relevant grade on adhoc basis w.e.f. 22-2-82 was illegal, he could not be given seniority over the applicant as the applicant joined the Kota Division on 13th January, 1983. The judgment of the Jodhpur Bench in O.A 87/87 (supra) holds that the seniority of respondent No.6 as fixed in the combined seniority list of 24-6-86 was incorrect and the respondent No.6 was entitled to higher seniority. The fresh combined seniority list dt. 14th September, 1988 shows the date of continuous officiating against non fortuitous vacancy in case of respondent No.6 as ~~the~~ 1st October, 1980 and that of the applicant as 13th January, 1983. As this date has been fixed as per the directions given in the judgment of the Jodhpur Bench the respondent No.6 is entitled to be placed in the combined seniority list as per that date. He stands regularised from that date and would be entitled to fixation of seniority in reference to that date even under para 312 of the I.R.E.M. Considering all these circumstances and the developments to which we have referred above we find that the

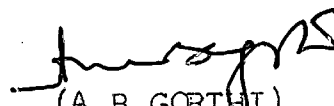
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application is liable to be dismissed.

12. Mr. Walia contended that although the combined seniority list was recast pursuant to the decision of the Jodhpur Bench, the applicant in the present application was challenging only the office order dt. 13-9-84 of the DRM, Kota Division and the seniority list dt. 30-6-87 issued by the Kota Division. If the application is directed only against the said order and the seniority list issued by the Kota Division, obviously it shall not be within the jurisdiction of this Bench.

13. In view of the reasons discussed above the application is dismissed with no order as to costs.


(V.D. DESHMUKH)
Member(J)


(A.B. GORTNI)
Member(A)

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