

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

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T. A. No.

510/86

198

DATE OF DECISION 19.4.1990Shri A. Vishvanath & Ors.

Petitioner

Shri K.K. Malpathak

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri S.K. Gupde, O.S.

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G. Sreedharan Nair, Vice-Chairman,

The Hon'ble Mr. M. Y. Priolkar, 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 ? *✓*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *✓*

if
 (M.Y. PRIOLKAR)
 MEMBER (A).

(20)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Tr. Application No.510/86.

Shri A.Vishvanath & Others. ... Applicants
V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Vice-Chairman, Shri G.Sreedharan Nair,
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:-

Shri K.K.Malpathak for the
applicant and Shri S.K.Gupde,
Office Superintendent from
the office of the respondents.

JUDGMENT:-

(Per Shri M.Y.Priolkar, Member(A)) Dated: 19.4.1990
The applicants who are ⁴ members of ⁴ Loco Running Staff of
Bombay Division of the Western Railway are aggrieved by
the fixation of their seniority in the cadre of Assistant
Drivers. The posts of Assistant Drivers are filled 80%
by direct recruitment and 20% by promotion of departmental
candidates. On selection, the concerned employees have to
undergo a training course and their seniority is based on
the ranking given according to marks obtained in an
examination held on completion of the training. According
to the applicants, a seniority list dated 28.3.1980 of
Assistant Drivers in which the applicants were assigned
correct seniority was replaced by a new seniority list
dated 23.10.1982 and again by another seniority list
dated 28.1.1983, purportedly with a view to protect the
interest of those candidates who could not join the
training course of Assistant Drivers on administrative
grounds. The applicants, therefore, filed a Writ Petition
in the Bombay High Court (No.1070/1983) on 21.3.1983.

praying, primarily, for a declaration that the seniority list dated 28.3.1980 (Exhibit 'D') is the correct and proper seniority list. This Writ Petition is now before us renumbered as Tr.No.510/86 on transfer to ~~us~~ this Tribunal.

2. According to the respondents, it does happen some times that candidates selected and nominated for undergoing training in a particular batch cannot be sent for training due to administrative exigencies. In consultation with the recognised trade unions, therefore, a principle has been evolved to fix the seniority of such persons in the batch in which they would have normally undergone training, even though they had actually undergone such training in a subsequent batch.

3. The respondents have also stated that the seniority list dated 28.3.1980 was a provisional list, circulated to enable the aggrieved employees, if any, to submit their representations against that seniority list. It was found that the seniority of Respondents 1 to 21 who were shown below the applicants in that provisional seniority list, was not correctly fixed keeping in view the principle referred to above, evolved after consultation with the recognised Unions, since they could not be relieved by the heads of their departments, on administrative grounds, for undergoing training in the batch in which the applicants were nominated. On the basis of the marks obtained by them in the examination conducted for trainees in a subsequent batch vis-a-vis the marks obtained by the applicants in their examination, the applicants have been placed below Respondents Nos. 1 to 21 in the seniority lists dated 23.10.1982 and 28.1.1983.

4. Admittedly, Respondents Nos. 1 to 21 were selected along with the applicants and were nominated for

undergoing training along with the applicants, but, for administrative reasons, could not join the training course along with the applicants. It will not, therefore, be equitable to make them suffer a loss in their seniority for no fault of theirs. Further, since the examinations conducted at the end of training of each batch will evidently be of the same standard, we do not also see anything unreasonable or irrational in fixing their seniority vis-a-vis the applicants on the basis of the marks obtained in their respective examinations.

5. The learned Counsel for the applicants, however, contended that this principle, though it may seem equitable, is not covered by any rules and in fact it contravenes Rules 302 and 303 of the Railway Establishment Code. We are unable to accept this contention. According to Rule 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. A specific provision having, however, been made in Rule 303, the present case will be covered under Rule 303(a) which is as follows:-

"The seniority of candidates recruited through the Railway Service Commission or by any other recruiting authority should be determined as under:-

Candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts".

6. The above rule will have to be read along with Rule 317 which states that a railway servant who, for reasons beyond his control is unable to appear in the examination/test in his turn along with others, shall be given the examination/test immediately he is available and if he passes the same, he shall be entitled for promotion.

to the post as if he had passed the examination/test in his turn. A note at the end of Rule 317 states that the expression "reasons beyond his control" appearing in that rule will include cases of Administration not relieving the railway servant for such examination or test.

7. In the light of the foregoing discussion we are satisfied that the principle referred to earlier, which is evolved by Railway administration in consultation with the recognised Unions, and on which the impugned seniority lists of 23.10.1982 and 28.1.1983 are based, is within the framework of Rule 303(a) read with Rule 317 of the Railway Establishment Code. We do not, therefore, see any merit in this application which is, accordingly, dismissed, with no order as to costs.


(M.Y. PRIOLKAR)
MEMBER(A)


(G. SREEDHARAN NAIR)
VICE-CHAIRMAN.