

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

O.A. No. 323/89

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~~XXXX~~ No.DATE OF DECISION 24.9.1991S.K.SAXENA and four others PetitionerG.S.WALIA Advocate for the Petitioner(s)

Versus

UNION OF INDIA AND OTHERS RespondentS.C.DHAVAN Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. JUSTICE U.C.SRIVASTAVA, Vice-Chairman

The Hon'ble Mr. M.Y.PRIOLKAR, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *ye*
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 it needs to be circulated to other Benches of the Tribunal? *no*



(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY.

ORIGINAL APPLICATION NO.323/89.

1. S.K. Saxena
2. Mulchand Tahalramani
3. K.H. Bannet
4. H.C. Bhole
5. K.J. Antony  
C/o.G.S. Walia,  
Advocate, High Court,  
89/10, Western Railway  
Employees' Colony,  
Matunga Road, Bombay-400019.

.. Applicants.

V/s.

1. Union of India, through  
General Manager,  
Central Railway,  
Bombay - 400 001.
2. Chief Personnel Officer,  
Central Railway,  
Bombay - 400 001.

.. Respondents.

CORAM : Hon'ble Shri Justice U.C. Srivastava, Vice Chairman.  
Hon'ble Shri M.Y. Priolkar, Member (A).

Appearances:

Mr.G.S. Walia, Advocate  
for the applicant.

Mr.S.C. Dhawan, Advocate  
for the Respondents.

JUDGMENT

DATED: 24-9-91.

{ PER : Hon'ble Shri U.C. Srivastava, Vice Chairman }

The applicants who are working as Senior Supervisors (Shop Superintends) in the Central Railway Bombay V.T. in the scale of Rs.840-1040 (RS)/Rs.2375-3500 (RPS) have approached the Tribunal raising grievance

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against the seniority which according to them has wrongly been fixed with a further prayer that the respondents be directed to call them for selection to the higher post on basis of fresh seniority list so drawn that is <sup>on</sup> the post of Assistant Workshop Manager in Class II Gazetted Service. The proximate reason for approaching the Tribunal was the letter dated 16.3.1989 issued by respondents stating that Group 'C' staff for promotion to Group 'B' post against 75% in mechanical department for three different streams viz. (a) Loco Open Line Stream (b) C&W Open Line Stream and (c) Workshop and Drawing Office Streams which was to be held in April, 1989. ~~The~~ The seniority list circulated on the basis of length in non-fortuitous service in the scale of Rs.2000-3200 as Assistant Workshop Superintendent did not include their names although according to applicants they were promoted against regular and long term vacancies as Assistant Shop Superintendent in the scale of Rs.700-900 (RS) and not against short term or leave vacancies between 1980 to 1984 (first 2 in 1980 3rd in 1983 and last two in 1984). The applicants pleaded that in view of para 321 of the Indian Railway Establishment Manual the entire period is to be counted towards their seniority and fortuitous service. The applicants have also relied on circular dated 30.8.1983 issued by Railway Board clarifying that non-fortuitous vacancies shall mean those vacancies which arise on account of retirement, resignation, death or other terminal events or which vacancies arise due to long term promotion of employees or creation of new long term vacancies and shall not include vacancies arising due to leave or other such short term vacancies. The applicants claim that they were promoted

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on officiating basis against long term and non-fortuitous vacancies as Assistant Shop Superintendent and subsequently selected and regularised. The selection were delayed considerably and when hold they were regularised as such they are entitled to count the entire period. Their representation remains unreplied against this deprivation of period towards seniority. They have relied on a decision of Ahmedabad Bench (copy filed) regarding same department <sup>in respect of a</sup> though different post in which it has been hold that interse seniority is to be based on length of non-fortuitous service even if such <sup>In this connection see Bench relied</sup> services are subsequently regularised ~~relying~~ on para 321 of Railway Establishment Manual.

2. The respondents have opposed the application and have filed a written reply. It has been stated that post of Assistant Workshop Manager is a selection post which cannot be claimed as a right and for which one has to qualify both in written and viva-voce test and empanelment by a duly constituted selection board, only three applicants viz. 1,2,3 were within zone of consideration out of which applicant no.1 voluntarily did not appear in the written test. It has been stated that seniority has been correctly fixed in terms of Railway Board's letter dated 28.12.1988 by counting combined length of non fortuitous service rendered in the grade of Rs.2000-3200(RPS) and above ignoring the promotion to the grade of Rs.2375-3500 (RPS). The first three applicants position in seniority list circulated on 7.4.1989 was correctly shown and the officials (who filed the instant application on 28.4.1989) have suppressed it and have also not filed any representation against it. They were

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working on adhoc basis in the exigencies of service as a local-gap arrangement and they are not entitled to count the said period towards seniority. The period prior to date of regular promotion cannot be treated as non-fortuitous for the purpose of integrated seniority for workshop stream for Class II selection. Regarding Railway Boards' letter dated 30.8.1983 the same was valid upto 30.8.1986 only. A reference to Supreme Court decision in Delhi Water Supply Sewage Disposal Committee and Others Vs. R.K. Kashyap in which it has been laid down that if ad hoc or temporary appointment is made without considering the claim of services in the cadre, the services rendered in such appointment should not be counted for seniority in the cadre.

3. <sup>also</sup> Reference has been made to the case of B.K. Chaturvedi then pending subsequently decided by Jabalpur Bench giving certain directions was reviewed and now the Government is implementing it. Learned counsel for the applicant stated that he would not rely on the said judgement or would claim any benefit of it but would confine his case on the Railway Boards circular which admittedly was alive till 1986.

4. <sup>then</sup> Learned counsel contended that upto 1986 their services in any case were not to be treated fortuitous and as such certain rights accrued to them till that period as such they are entitled to benefit of the same which in any event would have been to their benefits if selection would have been made during this period. In the Ahmedabad case

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relied on by the applicant there was no consideration of seniority between the ad hoc promotees and the seniors in the cadre who were not promoted on ad hoc basis and further in that there was no dispute that the earlier promotion on temporary basis to non-fortuitous vacancies. The facts of the instant case in which apart from existence of senior in cadre waiting for their turn in selection post the promotion has been stated to be stop gap and on ad hoc basis to meet exigencies of situation. In the Railway Board's circular dated 30.8.1983 it has been provided that only staff who held the respective grades on a regular basis shall be considered eligible for selection promotions. The applicants became entitled for selection in this view from the date of regularisation which seems to have been done and that is why three of them were allowed to appear in test. The question of counting the entire period of adhoc promotion in view of Circular of 1983 would have arisen if all of them would have been included in the zone of consideration and would have been selected and continued on the said promotion post. The same having not happened the applicants plea of counting of entire period towards seniority has got to be rejected. In the case of A.K. Verma Vs. Union of India (Civil Appeal No.4237 of 1988) decided by Hon'ble Supreme Court of India on 16th August, 1989 has no applicability as in the said case the date of regularisation for junior after promotion of senior was fixed as the date on which vacancy became available. The case relied on by Respondent by Delhi Water Supply case is applicable in the instant case in view of facts of the case. However, we close the case with the direction taking into

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consideration the ad hoc promotion of applicants the respondents would expeditiously take steps for selection giving more than one opportunity to appear in the same and in case they are selected they will be promoted and then they will be given opportunity of hearing so far as seniority is concerned before the same is refixed. There will be no order as to costs.

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

  
( U.C. SRIVASTAVA )  
VICE CHAIRMAN.