

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

O.A.NO.: 667 OF 2005
 [Patna, this 27th, the 27th Day of February, 2009]

C O R A M

HON'BLE MS. SADHNA SRIVASTAVA, MEMBER [JUDL.]

HON'BLE MR. AMIT KUSHARI, MEMBER [ADMN.]

1. Arvind Kumar Gupta, Hd. Typist, S/o Late Narayan Ram Aged about 44 years, Office of DRM [Rajbhasa]/Samastipur.
2. Pramod Kumar, Hd. Typist, S/o Late Bindeshwari Prasad, DRM [Commercial], E.C.Railway, Samastipur.
3. Dilip Kumar Arora, Hd. Typist, S/o Late Ram Lal Arora, [Engg.], E.C.Railway, Samastipur.
4. Chandra Mohan Jha, Sr. Typist, S/o Late Nand Jha, DRM [Commercial], E.C.Railway/Samastipur.
5. Kamal Kishore Singh, Sr. Typist, S/o Late Narayan Singh, DSC [RPF] Office/E.C.Railway, Samastipur.
6. Shyamal Kumar, Sr. Typist, S/o Late M.M.Chakraborty, CWM Office/ E.C.Railway/Samastipur.
7. Rajendra Pathak, Sr. Typist, S/o Late P.R.Pathak, AEE [W]/ E.C.Railway, Samastipur.
8. Sunita Das, Sr. Typist, W/o Sri S.L.Das, DRM [Electric]/ E.C.Railway/Samastipur.
9. Anirudh Singh, Sr. Typist, S/o Sri Brikedar Singh, CWM office/E.C.Railway, Samastipur.
10. Protim Dutta, Sr. Typist, S/o Late B.N.Dutta, DRM [P] Office, E.C.Railway/Samastipur.
11. K.P.Srivastava, Sr. Typist, S/o Late Shiv Kumar Lal, DRM [P]/ E.C.Railway/Samastipur.
12. Rijwanullah Khan, Sr. Typist, S/o Md. Habib Khan, DCOS Office/E.C.Railway, Samastipur.
13. Chaitali Awasthi, Sr. Typist, W/o Late Sanjeev Kumar, DRM [Signal]/

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E.C.Railway/SPJ.
By Advocate :- Shri A.K.Chakraborty.

.....APPLICANTS

Vs.

1. The Union of India through the Chairman, Railway Board, Rail Bhavan, New Delhi.
2. The General Manager, E.C.Railway/Hajipur, District – Vaishali [Bihar].
3. The General Manager, N.E.Railway/Gorakhpur, Distt-Gorakhpur [U.P.]
4. The General Manager [Personnel] i.e. [CPO/CPO (Non-Gaz.)/Dy. CPO(HRD)/Dy.CPO [Gaz.)/APO (HRD)/E.C.Railway, Hajipur.
5. The General Manager [Personnel] i.e. (CPO/CPO (Non Faz.)/Dy.CPO (Con.)/SPO (Con.)/APO)/N.E.Railway/Gorakhpur.
6. The Chief Administrative Officer [Construction]/N.E.Railway/ Gorakhpur.
7. The Chief Administrative Officer [Con.]/E.C.Railway/ Hajipur at Patna.
8. The Divisional Railway Manager/E.C.Railway/Samastipur.
9. The Divisional Railway Manager (Personnel) i.e. (Sr. DPO/DPO/APO)/ E.C.Railway/Samastipur.
10. Bharti Sinha, W/o Sri K.P.Sinha, presently Hd. Typist, Office of DRM [Optg.]/E.C.Railway/ Samastipur.
11. Rama Kant Chaudhary, presently Chief Typist, Office of the Dy. Chief Engineer [Construction]/E.C.Railway/Samastipur.
12. Yogendra Pd. Ambastha, presently Chief Typist, Office of the Dy. Chief Engineer [Construction]/E.C.Railway/Samastipur.
13. Arun Ram, presently Chief Typist, DRM[P]/Office, E.C.Railway/Samastipur.
14. Raja Ram Ojha, presently Sr. Typist, DRM (P) Office/ E.C.Railway/ Samastipur.

.....RESPONDENTS.

By Advocate :- Shri M.N.Parbat, ASC.

Shri Gautam Bose, Sr. Adv. for pvt. Respsns.



O R D E R

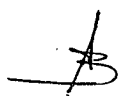
Sadhna Srivastava, M[J] :- The applicants claim re-fixation of their seniority in the cadre of Typist. They seek a direction to set aside seniority list of Typists dated 25.01.1999. They further seek quashing of the order dated 21.03.2005 passed by General Manager, E.C.Railway, Hazipur upholding the seniority list dated 25.01.1999 and refusing to refer the matter to Railway Board on the ground that seniority list dated 25.01.1999 is in accordance with the circular issued by Railway Board itself from time to time.

2. The facts are that the applicants had filed, earlier, OA 88 of 1999 for the same relief, i.e., quashing the seniority list dated 25.01.1999. The said OA was dismissed vide judgment and order dated 08.08.2001. CWJC No. 13628 of 2001 and CWJC No. 1790 of 2002, filed against the above said judgment of Tribunal, were also dismissed. However, on the basis of a skeleton observation in para 13 of the judgment the applicants jointly filed representation as contained in Annexure-3 repeating the same prayer as was made in OA 88 of 1999. The said representation has been dismissed by order dated 21.03.2005. Therefore, this OA.

3. We have heard the learned counsel of parties and perused the record.

4. The solitary observation in para 13 of the judgment, inter-alia, reads as follows :-

“The seniority list has been drawn up in the light of the circulars, as has been drawn up in the light of the circulars, as referred to therein. The concerned respondent was asked to take necessary action in the matter in the light of those instructions,



which does not include the inspection note, which is at Annexure-4. If any applicant has any specific objection against the private respondents, with reference to the seniority list, which is at Annexure-13, he will be at liberty to file representation before the concerned authority for consideration and decision, as per prescribed instructions and rules on the subject.”

The above observation gave liberty to individual applicant to raise objection, if any. It did not permit the applicants to raise the same pleadings before the department.

5. We also must mention the basic issue involved in the earlier case, i.e., OA 88 of 1999. The basic issue has been clearly set out in para 7 of the judgment which reads as under :-

“The basic issue for consideration in the instant case is whether the lien of persons working on construction side can be fixed within the defined geographical unit of open line or not, specially in the context of status of open line and construction organization. The Railways have two set up, namely, Open line, which is divided on zonal or divisional basis and the officers/staff working under the Headquarter/Zone/Division are known as Officer/staff of Open line. It is involved with basic operation of Railway and has permanent set up. On the other hand, there is construction organization involved in undertaking the activities of converting the meter gauge into Broad Gauge and other projects also. On completion of a particular project, it moves from one place to another. We were given to understand that normal practice is to post officer/staff on the construction organization on deputation taken from open line. In some cases, there has been direct recruitments also but their lien is fixed with open line of the defined geographical unit in which



construction organization is located, even though the said organization is under the control of Chief Administrative Officer located at the Headquarter. Normally, appointments are made on the cadre post and the concerned staff get their promotion as per AVC. When it was detected by the respondents that some candidates were appointed in construction organization, without fixing their lien and seniority in the cadre post, a decision was taken to fix their seniority in the cadre post, as construction organization has no separate AVC. The lien of employee working in construction side is fixed at zonal/divisional level with open line staff, and as such, they become the staff of the same unit. This is done with a view to avoid disparity in the prospect of promotion between the staff of open line and construction organization.”

6. There is no dispute about the date of appointment of private respondents in the cadre of Typist in the scale of Rs.950-1500. The seniority list dated 25.01.1999 has been drawn on the basis of the date of regular appointment. What was referred to in para 13 has to be read in the context of the judgment as a whole. The principle on which the respondents fixed seniority was clearly spelled out in the earlier judgment. The Tribunal also agreed with the department as to the principles on the basis of which the seniority was determined. The liberty was granted only to the effect that if there was any specific objection available to any particular employee within the parameters of principles adopted for fixation of seniority, he/she may make a representation. Instead the applicants filed representation seeking the department to review or reassess the judgment of Tribunal already confirmed by High Court.

7. We have given our anxious consideration to the facts and



circumstances. We are of the definite opinion that the present OA has been filed on the same set of facts challenging the same circulars and orders of Railway Board which were duly considered in OA 88 of 1999. Once the Tribunal dismissed the OA and the order of Tribunal was confirmed by the High Court as well, the judgment has attained finality in as much as no SLP was filed against the judgment of Tribunal and High Court.

8. Resultantly, the OA is dismissed without any order as to cost.


[Amit Kushari]/M[A]


[Sadhna Srivastava]/M[J]

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