

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

O.A. No. 449 of 2005

Dated : 27th April, 2012

C O R A M

Hon'ble Shri A.K.Jain, Member [Administrative]
Hon'ble Mrs.Bidisha Banerjee, Member [Judicial]

1. Aftab Alam son of Sri Riyazuddin, resident of Subazpura, P.O. - Khagaul, District - Patna, presently working as Khalasi Helper under Sr. S.E. [Elect], T.L., Patna Junction.

2. Rabinder Singh son of Late Murari Singh, resident of Mohalla - Jai Prakash Nagar, P.O. - Jakkanpur, District - Patna working as Khalasi Helper under Sr. S.E. [Elect], T.L. Patna Junction.

By Advocate : Shri M.P.Dixit & Shri S.K.Dixit

Applicants

Vrs.

1. The Union of India through G.M., E.C. Railway, Hajipur.
2. Chief Personnel Officer, E.C. Railway, Hajipur.
3. Divisional Railway Manager, E.C. Railway, Danapur.
4. Sr. Divisional Personnel Officer, E.C. Railway, Danapur.
5. Sr. Divisional Electrical Engineer, E.C. Railway, Danapur.
6. Sri Vijay Kumar, S/o Late Chaitu Gope, Choti Khagaul, P.O. Khagaul, District - Patna.
7. Sri Shankar Sao, S/o Late Makhkhan Sao, Rly. Qr. No. 750-A, Loco Colony, Khagaul, Patna.
8. Sri Rajesh Kumar, S/o Late Shanti Bhagat, Athmal Gola, District -Patna.
9. Sri Birendra Paswan, S/o Late Ganesh Hajara, H/o Sharma Nanda Yadav. Garikhana, Danapur, Patna.
10. Sri Kedar Rai, S/o late Ambika Rai, Village - Chkiya, P.O. B.T. P.S. & District - Begusarai.
11. Sri Sanjiv Kumar, S/o Late Ram Chander Singh, C/o Sri Ajay Mishra, Chhoti Badalpur, Patna.

By Advocate : Shri A.K.K. Sahar, ASC

Shri Gautam Bose, Pvt. Respondent.

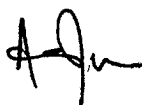
Respondents.

ORDER

A.K.Jain, Member [Administrative] :-

This OA has been jointly filed by

two applicants praying for a direction upon the respondents to give effect to their

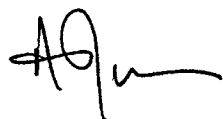


own promotion order dated 21.04.2005 [Annexure-A/9] to the post of Electrical Fitter Grade III [T.L.] in the scale of Rs. 3050-4590 under 25% departmental quota with effect from the date their juniors were so promoted vide Annexure-A/2 dated 07.08.2003 and further to direct the respondents to grant all consequential benefits including arrears of pay and seniority etc. from the date of promotion of their juniors. They have also prayed for quashing and setting aside the corrigendum letter issued by the respondents whereby the seniority list dated 18.05.2004 has been rectified as referred to in para 8 of the written statement verified on 27.02.2006 and filed by the respondents.

2. On the basis of an intervenor petition filed by six successful candidates and also an MA filed by the applicant to implead them as parties to OA, they were allowed to be impleaded as private respondents no.6 to 11.

3. Written statement has been filed by the official as well as private respondents. Rejoinder to the written statement of official respondents has also been filed by the applicant.

4. The case of the applicants is that they were initially appointed in the Railway on 25.06.1997 and 16.11.1997 respectively and granted temporary status in the pay scale of Rs. 2550-3200 with effect from 22.10.1997 and 15.03.1998 respectively. They were confirmed on the post of Khalasi Helper in the same pay scale w.e.f. 04.12.1998. While working in the scale of Rs. 2550-3200, they were declared suitable for the post of Khalasi Helper in the pay scale of Rs. 2650-4000 in the year 2002 [para 4.2 and 4.03 of OA]. Thereafter, they appeared in the written test held on 18.01.2003 for promotion as Electrical Fitter Grade III [T.L.] in the pay scale of Rs. 3050-4590 against 25% quota and were declared suitable [Annexure-A/1]. Then they were called for viva voce test on 18.04.2003 in which they appeared. The final result was published on 07.08.2003 in which only 10 persons were declared successful [Annexure-A/2]. It is the contention of the applicants that the said result was on the basis of seniority and not marks and that



the names of the applicants did not find place in the panel because their seniority was counted from the date of regularization instead of from the date of granting temporary status. Had they been granted seniority from the date of temporary status, their names would have found place in the panel. The applicants have claimed that they submitted representations on 25.07.2003 and 07.08.2003 against non inclusion of their names in the panel [copies not enclosed].

5. The further contention of the applicants is that one Sri Amardeo Pandey, loco substitute, was also given the benefit of seniority from the date of his regularization instead of the date of temporary status. He filed OA No. 67 of 2002 and thereafter, he was granted the benefit of seniority w.e.f. the date of temporary status vide order issued by C.P.O., ECR, Hajipur [Annexure-A/3]. Then the applicants and some others filed joint representation to the concerned authorities on 17.02.2004 and 25.03.2004 for fixation of their seniority w.e.f. the date of temporary status and also for granting consequential benefits [Annexure-A/4 and A/4(a)].

6. The applicants have stated that the respondents corrected the seniority list from the date of temporary status vide a provisional list of seniority of Khalasi Helper [TL] as on 01.04.2004 issued on 18.05.2004. In this list which names of the applicants appeared at Sl. No. 12 and 15. The respondents also invited objections, if any, within one month from the date of publication of the list [Annexure-A/5]. Six persons including one Birendra Paswan filed representations against the seniority list dated 18.05.2004. The objection raised were examined and no illegality was found in the said seniority list. Accordingly, reply was sent to those petitioners on 12.08.2004 [Annexure-A/6].

7. The applicants have claimed that they again submitted representation for amending the panel. They have referred to an internal file note of OS/E claiming that in the said note it was mentioned that if vacancies were available, then the petitioners could be given benefit of 6004 after selection/Trade Test. It was

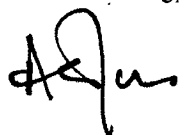


further mentioned that the vacancies were available and the applicants were to be placed at Sl. No. 9 and 10 of Annexure-A/2 [Reference para 4.12]. The applicants have stated that in view of this factual position, they were called for trade test on 19.04.2005 and were finally selected for the post of Electrician Grade III [T.L.] against 25% departmental quota vide order dated 21.04.2005 [Annexure-A/9]. It is the claim of the applicants that in view of Sl. No. 6004, Railway Board's order dated 17.09.2004, now Rule 228 of IREM Vol.I [1989 edition], they were entitled to be promoted w.e.f. 07.08.2003 i.e. the date on which their juniors were promoted vide order dated 07.08.2003 [Annexure-A/2].

8. In their written statement, the Railway respondents have submitted that both the applicants were regularised as Khalasi in the pay scale of Rs. 2550-3200 from substitute vide order dated 04.12.1998. They were promoted as Khalasi Helper in the scale of Rs. 2650-4000 vide order dated 05.12.2002. They were called for selection for 10 posts [UR-8, SC-1, ST-1] of Technician Grade III in the scale of Rs.3050-4590 on optional basis against 25% quota. Though they qualified in written test but they were not finally selected by the selection Committee.

9. It is further contention of the Railway respondents that seniority list of Khalasi Helper was prepared on the basis of regular absorption and published on 01.03.2004. However, in view of order passed by this Tribunal in OA No. 67 of 2002 in the case of Amardeo Pandey vs. U.O.I., the then C.P.O., ECR, Hajipur passed an order that the seniority of Shri Pandey be reckoned with effect from 09.06.1988 i.e. the date of granting temporary status. Accordingly, the seniority was re-assigned and a provisional list was published on 18.05.2004. In the said seniority list the applicants were assigned seniority above 2 staff who were selected against 25% departmental quota vide Annexure-A/2 and therefore, they were given the benefit of Sl. No. 6004 and called for Trade Test erroneously.

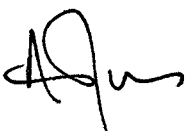
10. On representation of staff and recognized unions, the said list was again examined and it was found that as per rules vide CPO/CCC Sl.No. 151/88 the



seniority of substitutes absorbed in regular post should be reckoned from the date of regular absorption and that the seniority list published on this basis on 01.03.2004 should hold good. Accordingly, corrigendum was issued and intimation letters were also issued. In view of these facts, the official respondents have submitted that the applicants were not entitled to any relief sought for in para 8.

11. The applicants, contesting the averments made by the Railway respondents in written statement that fixation of seniority was as per CPO/CCC Sl. No.151/88, have stated that the issue was already settled by this Tribunal in OA 67 of 2002 which would prevail over any circular or instruction of the Railway. The letters dated 27.08.2004 and 30.11.2004 written by the respondents in reply to Shri B.N.Thakur, President Karpuri Thakur Vichar Manch Smarak Nyas and Shri Suresh Prasad Unit Secretary, ECR, Danapur showed that CPO, ECR, Hajipur had already settled the matter and benefit of seniority was granted w.e.f. the date of temporary status [Annexure-A/10 and A/11 of rejoinder]. The applicant have, therefore, reiterated their claim and also submitted that the statement made by the official respondents regarding rectification of seniority list dated 18.05.2004 and corrigendum/intimation were wrong, false and baseless as the respondents neither disclosed any date nor annexed copy of the corrigendum.

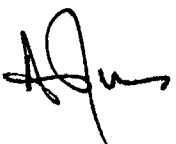
12. The private respondents in their written statement have stated that all the private respondents except Shri Birendra Paswan [Respondent No.9] were direct recruits in Group 'D' as Khalasi appointed on 17.07.1998, 18.07.1998, 08.08.1998, 10.09.1998 and 08.05.1998 respectively. Responent No. 9 was initially appointed as substitute bungalow peon and was posted against substitute Khalasi in C&W Department on 02.09.1994. Subsequently, he became permanent and posted in Train Lighting on 21.10.1998. On the other hand, the applicants were initially posted as substitutes on 25.06.1997 and 16.11.1997 and were regularized on 04.12.1998. Thus, all the private respondents joined as regular employees before



the applicants. Again, in the seniority list of Group 'D' published in November, 1998, the applicants' names were not there as they were not borne on the cadre till then, whereas the names of the private respondents figured at Sl. No. 19, 22, 28, 31, 30, 29 [Annexure-R/1 of written statement of private respondents]. On 01.03.2004, another seniority list of Khalasi Helper was issued in which names of respondents no.6 to 9 appeared at Sl. No. 10, 11, 14, 15. Respondents No. 10 and 11, had already been promoted as Technician Grade III against 25% departmental quota. Therefore, their names were not there in the said list [Annexure-R/2 of written statement of private respondents]. However, all of a sudden, the list was changed by the respondents by a seniority list of 18.05.2004 in which applicants were at Sl. No. 12 and 15 and private respondents 6 to 9 were at Sl. No. 20, 21, 24 and 25 respectively. The private respondents no.10 and 11 who were already promoted were served show cause notice as to why they should not be reverted. The private respondents no.10 and 11 filed their representation and after going through that, the railway administration rectified the mistake and another seniority list was published [Annexure-R/4 of written statement of private respondents].

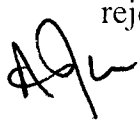
13. It is the contention of the private respondents that after reviewing the matter, the order of CPO dated 10.11.2003 was withdrawn by the respondents vide order dated 17.02.2006 [Annexure-R/5 of written statement of private respondents]. They have also annexed another seniority list of TL Technician in Lighting Group of Electrical [G] as on 01.04.2006 [Annexure-R/6 of the written statement]. In the said list, the respondents no. 7 to 9 have been shown above applicant no.1. They have also stated that the internal notings on file referred to by the applicants cannot be relied upon as the same were not orders and also not communicated. The private respondents have, therefore, prayed for dismissal of the OA.

14. Heard the learned counsels for the applicant, for the official respondents and for the private respondents.



15. The learned counsel for the applicants, stated that the seniority lists annexed with the written statement filed by the private respondents could not be relied upon the as same being official documents, should have been filed by official respondents. He also submitted that the order dated 10.11.2003 was passed by CPO. The same could have been reviewed and withdrawn only by a superior authority and not successor CPO. Hence the order dated 17.02.2006 withdrawing the earlier order of CPO was not maintainable in the eyes of law. He added that in case of calculating qualifying service for pension, the period spent as Temporary Status employee is added. The same is also to be reckoned for fixation of seniority.

16. The learned counsel for the railway respondents reiterating averments made in the written statement filed on behalf of the official respondents, stated that the C.P.O. in his order passed in compliance of the order dated 15/28.05.2003 passed by the Tribunal in OA No. 07 of 2002 in the case of Amardeo Pandey vs. U.O. I. & Others, wrongly mentioned the rule position. When this was detected, the mistake was rectified. He added that the order passed by CPO was an administrative order and not an order under DA Rules etc. There was no legal bar on an authority to rectify bonafide its mistakes and the successor in the post could certainly do so. He also drew attention to para 302 of IREM Vol. I [1989 Edition], according to which seniority in initial recruitment grades is governed by the date of appointment to the grade. He further elaborated that appointment as Khalasi from substitute was not promotion but the same was initial recruitment in grade on regular basis. Hence, para 228 of IREM [1989 Edition] was not applicable. Moreover, counting past service/rendered as substitute or part thereof towards period of regular service for the purpose of pension does not imply that the said service would also be counted for the purpose of seniority fixation. He, therefore, submitted that the claim of the applicant was not tenable and hence, merits rejection.




17. The learned counsel for private respondents for the private respondents stated that the applicants had not challenged the authenticity of documents filed by them by filing rejoinder. As such, merely on the ground that the said documents were filed by them, the same did not become unreliable. He added that the applicants did not challenge the seniority list of 1998 at appropriate time on the ground now being stated by him. Their claim was only on the basis of an erroneously prepared list. In any case, said erroneous list was duly rectified subsequently by issuing corrigendum and as such the corrected list would prevail.

18. The learned counsel for the private respondents placed reliance on the judgments of Hon'ble Supreme Court of India in the case of **M. Ramakotaiah and others vs. Union of India & others reported in 2007 AIR SCW 2004** on the issue of fixation of seniority of casual labours absorbed as regular employees.

19. We have perused the records and considered the submission made by the parties.

20. At the outset, we note that the applicants qualified only in the written test. The final result was published after viva voce. Qualifying in the written test does not *per se* imply that merely on the basis of seniority, one would qualify in the final result based on written test and viva voce. Even if for arguments sake, the claim of applicants that on the basis of seniority as claimed by them, they would have found place in the panel at 9th and 10th position, is accepted then the next question which arises is whether on regularization of a casual worker/substitute who was granted temporary status, as a Group 'D' employee, seniority of the said employee as regular Group 'D' employee is to be fixed on the basis of date of granting temporary status or from the date of regularization.

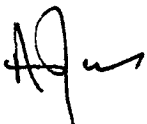
21. To substantiate their claim on seniority, the applicants have referred to the Tribunals order dated 15/28.05.2003 passed in OA No. 67/2002 in the matter of Amardeo Pandey. We note that in the case of Amardeo Pandey, the Tribunal did not give any findings on the issues involved and simply disposed of the OA at



admission stage with direction to the respondents to consider representation of the applicant therein as per rules and pass order. Thus, it cannot be said that the Tribunal settled the matter.

22. We also note that the applicants have submitted^{that M-} the documents filed by the private respondents could not be relied upon on the ground that the same being official documents should have been filed by railway respondents. On perusal of the pleadings, we find no inconsistency in the averments made by the parties and these documents. The applicants have themselves stated that after passing order in OA No. 67 of 2002 in the case of Amardeo Pandey, they represented and then the respondents corrected th seniority list. This shows that there was a seniority list earlier in which applicants were placed based on their date of regular absorption. Again, the applicants have stated that no corrigendum was issued nor any list rectifying that was published on 18.05.2004. The official respondents have stated that they rectified the mistake and issued corrigendum and issued seniority list as on 01.03.2004 published earlier. The private respondents have annexed copy of corrigendum and a revised list. On the basis of this, the respondents have not given the applicants benefit based on the list of 18.05.2004. We, therefore, find no reason not to rely on these documents. In any case, as stated earlier, the main issue relates to fixation of seniority with effect from the date of granting temporary status and once that is settled, this matter whether corrigendum was issued or not will not be of any significance.

23. As regards the question of competence of successor CPO to revise the order of his predecessor, we are in agreement with the learned counsel for the respondents that the order passed by CPO earlier was an administrative order without quoting rules. The authority has inherent right to rectify bonafide mistakes. It is not an order in the nature of review of an order passed in disciplinary proceedings or in quasi judicial capacity where statutory provisions exist for appeal/review.



24. The applicants have also stated that the benefit of Sl. 6004, Railway Board's order dated 17.09.64 now para 228 of IREM Vol. I [1989], was agreed to by the respondents in the office note referred to in para 4.12 of the OA and that is why they were called for trade test on 19.04.2005 whereafter they were finally selected but not given seniority with effect from the date on which their juniors were given promotion on 07.08.2003. The reference to the said office notes by the applicants is not supported by any official document/orders conveyed officially or under RTI Act. Hence, we are not inclined to place reliance on that as these^{are} are internal noting and not orders.

25. We also note that Sl.6004 which is Railway Board's letter no. E[NG]63 PM1/92 dated 15/17.9.64 NR 2709, ER 6004 reads as follows :

“Officiating Office Orders. Appropriate office orders must be issued while arranging promotion. When it could not be issued because the vacancy was for a short duration originally, office orders may be issued later with the approval of competent authority and a certificate of having shouldered higher responsibility.

Senior overlooked. Where senior employee is overlooked due to erroneous seniority, administrative error, or other causes, the case should be dealt with on merits and on promotion correct seniority be assigned. On promotion pay in higher grade will be fixed proforma at the stage where he would have reached if he was promoted at the proper time. Enhanced pay will be given from the day of actual promotion. If the seniority was fixed as per rules correctly, but later due to change of rules it was revised upwards, no benefit of proforma fixation will be admissible.”

[Barri's Railway Establishment Manual by M.L.Jand 2nd Edition 1983 published by Bahri Brothers, Delhi.]

26. Para 228 of IREM Vol. I [1989 Edition] reads as follows :

“228. Erroneous Promotions. - [1] Sometimes due to administrative errors, staff are over-looked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types :-

[i] Where a person has not been promoted at all because of

administrative error, and

[ii] Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts.

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[b] Any consequential promotion or appointments of other railway servants made on the basis of the incorrect promotion or appointment of a particular railway servant will also be regarded as erroneous and such cases also will be regulated on the lines indicated in the preceding paragraph."

27. It is clear that Sl. 6004 was later on incorporated as para 228 of IREM, Vol.I. This paragraph relates to erroneous promotions. Absorption of Substitutes as regular employees is not a promotion. Again, this paragraph does not deal with fixation of seniority. It only deals with actions to be taken when a promotion or denial thereof is detected to be erroneous. In the instant case, question of applicability of this para will arise once the issue of seniority fixation is settled.

28. The private respondents have also placed reliance on the judgment in the case of M. Ramakotaiah [supra]. The said case related to Casual Workers granted temporary status. The issues involved was also counting seniority from the date of acquiring temporary status vis-a-vis from the date of regularization/absorption of a casual worker. Since, the applicants therein were appointed as casual labour in 1971, the Hon'ble Court discussed the unammended and amended paragraph 2511 [a] of IREM and also the judgment of Hon'ble Supreme Court in the case of *V. Kameshwari vs. U.O. I. & ors. [1993 AIR SC W 3559 : 1993 Supp. (2) SCC 407]* at length. In that case the Hon'ble Court held that in case of casual workers granted temporary status, the seniority shall be counted from the date of their regular

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absorption. Thus, if the applicants were not Substitutes and only Casual Workers, this position shall apply.

29. We would like to mention here that neither the applicants nor the official respondents in their written statement have categorically stated whether the applicants were initially appointed as Substitute Khalasi or contingency paid casual Khalasis. The private respondents have, however, stated that the applicants of this OA were appointed as Substitutes. The CPO in his order dated 17.02.2006 has also referred to para 1515 IREM Vol.I [1989 Edition] which relates to Substitutes.

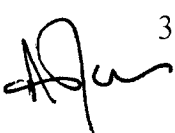
30. We further note that, the CPO passed the order as contained in Annexure-A/3 in compliance of the order passed by the Tribunal in OA 67 of 2002. Though the CPO observed that as per extant rules, seniority of substitute would be reckoned with from the date on which he attained temporary status, but he did not mention the Rule. On the other hand in the order passed by his successor withdrawing the said order, the CPO has mentioned the rule position by referring to para 1515 of IREM Vol. I [Edition 1989], which reads as under :

“1515. Rights and privileges admissible to the Substitutes. - Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of four months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection.

Note. - The conferment of temporary status on the Substitutes on completion of four months continuous service will not entitle them to automatic absorption/appointment to railway service unless they are in turn for such appointment on the basis of their position in select lists and/or they are selected in the approved manner for appointment to regular railway posts.”

[Extracts from the order of CPO dated 17.02.2006]

31. The respondents have also referred to paragraph 302 of IREM Vol.I [1989




Edition], which reads as under :

“302. Seniority in initial recruitment grades – Unless specially stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts.”

32. In view of above quoted rule position and our observations hereinabove including those in para 27 of this order, we are of the view that the claim of the applicants for counting seniority with effect from the date of granting temporary status is not in accordance with the above quoted provisions and hence can not be accepted.

33. In view of our observations as above, we do not find any merit in this case.

The OA is, therefore, dismissed being devoid of merit. No order as to costs.



[Bidisha Banerjee]

Member [Judicial]

mps.



[A.K. Jain]

Member [Administrative]