

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 277/96

Dated this Thursday the 27th day of September, 2001.

B.K. Raghuram & Another

Applicant

Mr.G.S. Walia

Avocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondent.

Mr.S.C. Dhawan,

Respondents.

CORAM :

Hon'ble Shri Justice V. Rajagopala Reddy, Vice
Chairman.
Hon'ble Smt. Shanta Shastry, Member (A).

- (i) To be referred to the Reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ? *NO*
- (iii) Library. *yes*

Open
(V.Rajagopala Reddy,
Vice Chairman.)

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI PENCH: MUMBAI

Original Application No.277 of 1996
Dated this Thursday the 27th Day of September, 2001.

Counsel:

The Hon'ble Shri Justice V.Rajagopala Reddy, Vice Chairman
The Hon'ble Smt. Shanta Shastri, Member (Admn.)

Between:

1. B.K.Raghuram, working as Divisional Electrical Engineer, Central Railway, Kalyan.
2. P.N.Karunakaran, working as Senior Electrical Engineer, Metropolitan Transport Project, Churchgate, Mumbai.Applicants

(Applicants by Shri G.S.Walia, Advocate)

a n d

1. Union of India, through General Manager, Central Railway, Headquarters office, Mumbai V.T., Mumbai-400 001.
2. The Secretary, Railway Board, Rail Bhawan, New Delhi-110 001.
3. T.Mohan, Divl.Electrical Engineer, Central Railway Headquarters, Mumbai V.T., Mumbai-400 001.
4. J.N.Tewari, Divl.Electrical Engineer, Central Railway Headquarters, Mumbai V.T., Mumbai-400 001.
5. R.K.Sethi, Divl.Electrical Engineer, Central Railway Headquarters, Mumbai V.T., Mumbai-400 001.

....Respondents

(Respondents 1 and 2 by Shri S.C.Dhawan, Advocate)

(Respondents 3 to 5 by M/s Masurkar, Advocate)

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O R D E R:

(Per Hon'ble Sri Justice V. Rajagopal Reddy, Vice Chairman)

The lowest rung of Group 'A' of Indian Railway Senior Electrical Engineering Service is junior scale Rs.2200-4000/- . Promotion to Group 'A' is made from amongst eligible Group 'B' officers belonging to Electrical Engineering Department, who have put in minimum of 3 years non-continuous service in the grade. The promotion is by way of selection.

2. The two applicants were promoted to Group 'B' on 8.4.80 and 2.1.81 respectively. The respondents 3,4 and 5 were promoted to Group 'B' on 17.10.84, 5.1.87 and 2.1.87 respectively. The applicants as well as the private respondents were considered for promotion and were recommended by the DPC which met in February, 1992 and were appointed to Group 'A' Junior scale by order dated 25.4.1992. The DPC prepared year-wise panels against 99 vacancies and recommended 94 officers for promotion. A notification dated 24.4.1992 was issued promoting them, which comprises of the applicants and the private respondents. Though the applicants are admittedly senior to the private respondents, however, they were shown as junior in the select list.

3. The fixation of seniority of Group 'B' Officers promoted to Group 'A' should be in accordance with the principles laid down for determining the seniority of officers appointed to various Class 1 services from different sources specified in various recruitment rules.

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The seniority in Class 1 (Group 'A') has to be determined as per the principles shown in the Railway Board's letter dated 30.11.1976.

4. In terms of the principle (vii), it is the case of the applicants that they were entitled to for full 5 years weightage as their total service of Group 'B' was more than 10 years on the date of the DPC, whereas the respondents 4 and 5 having hardly 3 years of Group 'B' service and respondent no.3, only 6 years of service to their credit, are entitled as per (vii) (b) of the principles, to 1.5 years and 3 years' weightage respectively. But the respondents had given 5 years of weightage to all. Even applying the principle (vii) (a), they are not entitled to 5 years' weightage. Hence, aggrieved by their seniority position in the above seniority list, the applicants brought this OA before us.

5. Respondents 1 and 2 have filed their replies. The maintainability of the OA was questioned by them, on grounds of the statutory remedy of making a representation having not been exhausted and on limitation. It is their case that the promotion to Group 'A' being on merit basis the respective seniority of the Group 'B' officers will not play much role either in selection as well as in fixation of seniority in Group 'A'. It was averred that the applicants were considered by the DPC against promotion quota of the year 1990 and as respondents 3 to 5 having obtained comparatively better gradation and assessment of their Annual Confidential Reports, they were placed above the applicants in the selection list. It was further

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everred in the reply that the applicants as well as the respondents 3 to 5 were all entitled to the weightage of 5 years in terms of the principle (vii). Accordingly, the date of increment on time scale of these officers were fixed as 3.3.1987 counting 5 years backwards from the date of induction into Group 'A' i.e., 3.3.1992. Their relative positions in the seniority list shown in the impugned letter dated 10.2.1994 were fixed on the basis of their positions in the order of selection and giving weightage as per the aforesaid principles of determining seniority. As the applicants were placed lower in the order of selection, they cannot be placed above the respondents 3,4 and 5 in the seniority list.

6. We have heard Counsel for the Applicant and Official Respondents and Private Respondents 3 to 5.

7. We do not find substance in the contentions of the learned Counsel for the respondents as to maintainability of the OA or as to the plea of limitation. It is true that the applicant had not exhausted remedy by way of making representation against the impugned order as required under Section 20 of the Administrative Tribunals Act. The representations made by the applicants were only against the notification dated 25.4.1992 promoting the Group 'B' officers to Group 'A' officers. It should be kept in mind that the OA was filed in 1996 and after hearing both the sides, the OA stood admitted. The question as to maintainability of the OA should have been raised at the admission. We deem it not in the interests of justice to reject the application on the ground of not exhausting the

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remedies, at the stage of final hearing and to drive him to make a representation and if it were to be rejected, to approach the Tribunal. This course appears to be not only not in the interest of justice but also causing grave injustice to the applicant.

8. It is contended by the learned Counsel for the Respondents that as the impugned order was passed on 10.2.1994 and as this OA was filed in 1996, the OA is barred by limitation. But it is to be noted that the applicants having been aggrieved by the notification dated 25.4.1992 and they also filed OA.No.1133/94 questioning the said notification and as per the Judgement in the above OA, a fresh notification was issued superseding the notification on 11.6.1996, but so far as the applicants are concerned, their position therein was maintained. The seniority of the applicants basically depends upon their position in the select list. We find that the limitation in this case ran only after 11.6.96. Hence, we find no substance in the plea of limitation.

9. The only issue that arises for consideration in this case is as to fixation of seniority of the applicants. It is their case that as they were admittedly senior to the Respondent Nos.3 to 5 having more length of service in Group 'B', though they were shown lower in the order of selection, if the principles for determining seniority, were rightly followed, they should have been shown as seniors to Respondent Nos.3 to 5 in Group 'A'. Though the applicants raised the plea in the OA that Respondents 3 to 5 were not entitled to have been promoted to Group 'A', the



learned Counsel for the Applicants Shri G.S.Walia made grievance only on the question as to fixation of seniority of applicants vis-a-vis Respondents 3 to 5 in Group 'A' as shown in the impugned order dated 10.2.1994.

10. The method of promotion from junior scale to senior scale is found in para 209 (B), which reads as under:-

"209 (B) Promotion from Group 'B' to Group 'A' (Junior Scale) - (1) Appointments to the posts in the junior scale shall be made by selection on merit from amongst Group 'B' officers of the departments concerned with not less than 3 years of non-fortuitous service in the grade".

The promotions of the applicants was thus made on the basis of their merit by a duly constituted DPC and in the Notification dated 25.4.92 they were shown below Respondents 3 to 5 in the order of their merit. Even in the Notification dated 11.6.96, their positions remained the same.

11. The Railway Board in its letter dated 30.11.1976 has circulated the principles laid down by the President for determining the seniority of officers appointed to the Indian Railway Service (Cl.I). Principle (i) makes it clear that it should be on the basis of the "date for increment on time scale to be specifically determined in each case in accordance with these principles". Principle (vii) reads as under:-

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"In the case of Class II Officers permanently promoted to Class I Services, if two or more than two officers are promoted on the same date their relative seniority will be in the order of selection. Subject to the aforesaid provision the seniority of officers, permanently promoted from Class II to Class I Services, shall be determined by giving weightage based on:

(a) the year of service connected by the initial pay on permanent promotion to Class I Service;

or

(b) Half the total number of years of continuous service in Class II, both officiating & permanent;

whichever is higher, subject to a maximum weightage of five years."

A reading of the above shows that, if two or more are promoted on the same date, their relative seniority will be first in the order of their selection. Subject to the above basic principle, such officers seniority shall then be fixed by giving weightage based on their years of service, connected by initial pay on permanent promotion to Class I services or half the total period of service in Class II; subject to maximum weightage of five years.

12. It is not disputed that 5 years' weightage was given to the applicants as well as to Respondents 3 to 5. The learned Counsel for the Applicants in this regard submits that Private Respondents 3 to 5 were not entitled for the benefit of the 5 years weightage as the Respondent No.4 and 5 hardly had completed 3 years of total service in Group 'E' officers whereas Respondent No.3 had 6 years of service. Principle (vii) (b) provides that half of the total number of years of continuous service in the Class

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II, could only to be counted. It is argued that even applying Clause (a), the respondents 3 to 5 are not entitled for 5 years' weightage.

13. The seniority has thus to be determined on two considerations:- (1) Primarily on the order of selection, and (2) On the basis of weightage.

14. The contention that the names in the select list dated 25.4.92 should be placed in accordance with the seniority of the applicants in Group 'B' is wholly untenable, as the selection was based on merit. The select list was prepared in accordance with their rank. The respondents i.e., R-3 to 5 were stated to have obtained higher rank in their selection compared to the applicants. Hence, they were placed higher than the applicants.

15. The weightage has to be determined on the years of service;

- a) connected by the initial pay on promotion; or
- b) half the length of service in Clause II. Only 5 years maximum weightage could be allowed.

There is no serious dispute that, if Clause (b) was applied, the respondents 3 to 5 would not get 5 years weightage.

The question then is was Clause (a) made applicable to them? In this regard, however, the reply is

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vague. It was only stated that all of them including the applicants, got 5 years' weightage, which Clause was made applicable was not stated. Learned Counsel Sri Dhawan strenuously contends that only Clause (a) was made applicable. For this argument, learned Counsel, however, could not place reliance, on any averment in the reply or from any other material ~~paper~~ on record.

16. The learned Counsel Sri Dhawan seeks to place reliance upon the decision of the Supreme Court in A.K.NIGAM & OTHERS Vs. SUNIL MISHRA AND ANOTHER ((1994) 27 Administrative Tribunals Cases 665). In that case Clause (a) of Principle (vii) was held applicable and though the appellants were promoted in 1984 to the junior scale and they had only 5 years of length of service on the date of promotion, they were held as entitled to the weightage of 5 years, for purpose of seniority. It is seen from the facts of that case that the Clause (a) was made applicable on the basis of date of increment on time scale in accordance with the rules. It was also ~~held~~ that determination of date of increment on the time scale was not under challenge. In the instant case, however, the challenge itself is as to the date of determination of date of increment in Clause (a), the validity of the principles for the purpose of fixation of seniority was accepted. When that is in controversy in the present case, the respondents should have focused their attention to the said controversy in the reply. But, curiously, the reply was silent in this aspect.

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17. In the background of the factual matrix, where the official respondents failed to clarify the ~~case~~ ^{core} issues, serious doubts as to validity of the fixation of seniority remain unresolved. We are therefore constrained to hold that the applicants succeeded in their case to doubt the validity of the impugned seniority list, in so far as the parties in the case are concerned.

18. We therefore quash the impugned proceedings. ✓ Respondents 1 and 2 are directed to draw up proceedings giving ^{leave} fixing the seniority of the applicants vis-a-vis respondents 3 to 5, within 3 months from the date of receipt of a copy of this Order.

19. OA accordingly allowed. No costs.

Shanta Shastri
(SMT. SHANTA SHASTRY)

MEMBER (ADMN.)

Ch. Jayachandran
(V. RAJACOPAIA REDDY)
VICE CHAIRMAN

Dated: this the 27th day of September, 2001.
H./Dsn.