

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 364 of 1999.

Dated this ⁴ day of July, 2003.

Shri A.A.Tiwari & Ors. Applicant.

Shri G.S.Walia Advocate for
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. S. Masurkar, R.1 & 2
Shri A.I.Bhatkar - R.3 Advocate for
Respondents.

CORAM : Hon'ble Shri Kuldip Singh, Member (J).

Hon'ble Shri Shankar Prasad, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other ^{no} Benches of the Tribunal ?
- (iii) Library.


(SHANKAR PRASAD)
MEMBER (A).

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**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:364/1999
DATED THE 4th DAY OF JULY, 2003.**

**CORAM:HON'BLE SHRI KULDIP SINGH, MEMBER(J)
HON'BLE SHRI SHANKAR PRASAD, MEMBER(A)**

1. A.A.Tiwari
Working as Sr.Motorman,
Western Railway,
Churchgate,
Mumbai - 400 020.

2. Nari D Manekji,
Working as Sr.Motorman
Western Railway,
Churchgate,
Mumbai - 400 020

3. Abraham Thomas
Working as Sr.Motorman,
Western Railway,
Churchgate,
Mumbai - 400 020

... Applicants

By Advocate Shri G.S.Walia

V/s.

1. Union of India, through
General Manager,
Western Railway,
Head Quarters Office,
Churchgate,
Mumbai - 400 020.

2. Divisional Railway Manager,
Mumbai Division,
Western Railway,
Bombay Central,
Mumbai - 400 008.

... Official Respondents

By Advocate Shri V.S.Masurkar

3. S.N.Sinwal,
Sr.Motorman,
C/o.Motorman Inspector,
Churchgate Station,
Western Railway,
Mumbai - 400 020.

... Respondents

By Advocate Shri A.I.Bhatkar

...2.

:2:

(ORDER)

Per Shri Shankar Prasad, Member(A)

The applicants had submitted a representation dated 24/9/1998 against the decision of respondent Railway Administration incorporating the name of one Shri S.N.Sinwal above their names vide order dated 8/9/1998. The said representation was followed by another representation dated 19/3/1999. These representations had been rejected vide order dated 30/3/1999 indicating therein that their inter se seniority has been decided on the basis of total length of continuous service in the same or different grade held by employees in terms of para 320 of IREM, Volume-I. Aggrieved by the said order the applicant has preferred the instant OA.

2. The case of the applicants as briefly set out in their representation of 19/3/1999 is as follows:-

We draw your attention that Motor Man is not a channel of promotion for loco staff drawn from any traction. It is a separate unit of itself. When Railway electrification was being done we would be render surplus as steam traction was on verge of abolition on mainline. Application for Motor Man vacancy were called and were selected as per requirement. We all have come from steam side. Steam staff who were selected for Motor Man post were in Lower Grade, and the grade of Motor Man was 425-640 at that time. C.A.T Ahmedabad in their decision of writ petition 370/93 filed by Telegraph Branch of B.R.C Division, date of entry in grade criteria for Seniority when staff redeployed from one cadre to other cadre. This is based on the Supreme Court decision in case of Shri V.K.Dubey V/s. Union of India (1997) 5 SCC 81.

2. Following further submissions have been made by the applicant:- *Sh*

a) The respondent Railway Administration have themselves set out in para 4(ix) of the written statement filed in OA-771/1990 that Motor Man is a recruitment category to which appointment are made by Railway Recruitment Board or by notification calling for application from serving Railway employees fulfilling the required qualifications and that it is therefore not a promotion

post. It is further denied that employees who are in higher scale of pay are selected which is illegal and contrary to provisions of statutory rules.

b) The interse seniority between these employees is sought to be disturbed after almost 24 years. It has been held by Apex Court in B.S.Bajwa V/s. State of Punjab 1998 AIR SCW 3883 that such petitions are liable to be dismissed on grounds of laches. He has also relied on the decision of this Tribunal in OA-188/2001 in the case of V.G.Nair which has been decided on these principles.

c) Rule 321(b) of IREM provides that objections against draft seniority list have to be filed within a year of the publication of the draft seniority list and not thereafter. The draft seniority list has been earlier published in 1982 and 1986 against which there was no objection. They were subsequently granted insitu promotion in which also the applicants have been shown as senior to respondent no.3 Shri S.N.Sinwal. It was only when the seniority list was published in 1997 that the respondent-3 filed representation which was rejected in the following terms:-

The request of Shri S.N.Sinwal that he should be placed above A.A.Tiwari as he was being a driver in 1973 cannot be considered because he was reverted as a shunter on 18/9/1973 (wherein he had put in three months as a driver) and further promoted as a driver on 17/1/1976 vide DRM KTT's letter No.E/A1030/5/57 dt.26/8/1983 he has been considered as a driver w.e.f. 14/9/1973 on paper promotion. However he is not eligible to get his seniority fixed on the basis of paper promotion of Driver Gr.'C' issued on 26/8/83 as he has already been selected as a M/Man in the year 1976 and then is already terminated from Driver cadre on selection as a M/Man. Under the circumstances there is no ground for seniority of 1973. Revised seniority as per the above is enclosed for placing on Notice Board.

It was therefore not open to the Railway Administration to reopen the issue in 1998.

d) He has relied on decision in the case of Ms.Indira V/s. Union of India, OA-570/2000 in which the applicants were console operators, an ex cadre post. The applications had been invited from different sources. The question was of their interse seniority. A question that arose was whether such selection were regulated by sub clause (i) or (j) of Rule 219. The Mumbai Bench felt "in the circumstances they have no hesitation in holding that in respect of ex cadre post, the procedure to be applied will be that contained in clause (j) and not clause (i) of Rule 219 of IREM.

e) He has also relied on the decision of Apex Court in the case of V.K.Dubey V/s. Union of India and Ors which governed seniority of re-deployed surplus staff.

It was contended that their seniority will be governed by rule 302 of IREM.

3. The case of respondents in brief is that due to closure of Loco/steam shed, the surplus staff have been absorbed as Motor Man and their seniority was to be assigned as per existing Railway Rules i.e. General Manager Establishment's letter of June, 1971. The seniority of Drivers Grade 'C' which was earlier reckoned divisionwise would be reckoned gauge wise for promotion as driver 'B' and driver 'A' and would be maintained in Headquarters with effect from 1/1/1972. This provide that in case a driver get transferred from one division to another, during the meantime he would have his seniority protected.

In terms of Gazette No.9/1973-74 dated 1/8/1973 and 14/1973-74 dated 16/10/1973, Steam/Diesel Drivers grade 'B' scale Rs.210-380(AS) who opt for coming over as Motorman will have their seniority fixed with reference to total length of service as Driver Grade 'B' with only nonfurtuous service counting for this period and the interse seniority amongst the Steam/Diesel drivers will be maintained. In accordance with these, the criteria of Driver Grade 'C' seniority on gauge basis was adopted for the purpose of fixation of seniority on promotion to the post of Motorman. In terms of the said two notifications referred to above, the lien in seniority was continued to be maintained in parent department till absorption as Motorman and after absorption as Motorman, the basis of total length of continuous service in same or equivalent cadre held by the employee was

determining factor adopted for assigning the interse seniority in terms of GM(E) CCG's letter of March, 1976.

The private respondent no.3 was a driver in Kota Division and there was litigation on the interpretation of this 1976 circular which was carried to the Rajasthan High Court. The private respondent had asked for seniority in terms of this circular and the decision of High Court. This matter was also raised in PNM meeting. Referring to the arguments of the applicants he has stated -

a) The limitation as mentioned in the above judgements applies only to the Courts and Tribunals and not to administration. The administration can correct its mistake even after long lapse of time. He has relied on a decision of the Apex Court in Naresh Kumar and Ors V/s. State of Haryana reported at 2003 (1) ATJ 249 SC.

b) The decision in V.G.Nair's case has been stayed by the Mumbai High Court while the writ petition filed by Railway in the case of Ms. Indira Rai has been rejected.

c) The seniority is governed by Rule 320.

4. Private respondent have adopted the arguments of Railway Administration and have relied on the decision of Apex Court in the case of State of Maharashtra V/s. J.A.Karandikar (1989) 10 ATC 593

5. The first ground of the applicants is that it is general principle of service law that matters relating to seniority should not be reopened after a long lapse of time, more so if the rights of other persons have crystallised during this period. The Apex Court has held in K.R.Mudgal & Ors V/s. R.P.Singh & Ors 1986(4) SCC 531

"Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petitions filed after several years. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties. A government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. In the present case the appellants had been put to the necessity of defending their appointments as well as their seniority after nearly three decades. This kind of fruitless and harmful litigation should be discouraged. The High Court was wrong in rejecting the preliminary objection raised on behalf of the appellants (who were respondents in the writ petition before the Higher Court) on the ground of laches."

Similar is the decision in Bajwa's case (*supra*) where the Apex Court has held:-

"The undisputed facts appearing from the record are along sufficient to dismiss the writ petition on the ground of laches because the grievance made by B.S.Bajwa and B.D.Kapoor only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the other aforesaid persons and the rights *inter se* had crystallised which ought not to have been re-opened after the lapse of such a long period. At every stage the others were promoted before B.S.Bajwa and B.D.Kapoor and this position was known to B.S.Bajwa and B.D.Kapoor right from the begining as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be re-opened in such situation after the lapse of reasonable period because that results in disturbing the settled position which is not justifiable." *¶*

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6. The private respondent has relied on the decision of Apex Court in State of Maharashtra V/s. J.A.Karandikar 1989(10) ATC 593. The matter before the Apex Court were the resolution/recruitment rules prescribing examination for members of upper divisions of Subordinate Secretariat Service. The Government had the responsibility for conducting the examination, which were not held. Accordingly the employees could not clear the examinations ⁱⁿ prescribed period. It was under these circumstances that the Apex Court held that employees could not be penalised. The facts are clearly distinguishable.

7. The official respondents have relied on the decision in Naresh Kumar & Ors. V/s. State of Haryana. The service conditions were initially approved by IG Police and were later revised by the Superintendent of Police, who is the appointing authority, with the approval of the IGP. The later order also changed the criteria for determination of seniority. The later order was accordingly challenged before the Apex Court and the Apex Court negated the plea in view of the provisions of Punjab Police ^{Manual} matter and other materials. It is clearly distinguishable.

8. A plain reading of Rule 321(b) of IREM will show that the representation against seniority list has to be filed within one year and that the same shall not be entertained thereafter. As has been indicated in para 3 above the seniority list was published on a number of occasions from 1982 and the private respondent never objected. Even in the promotion order he was shown as junior to the applicants. Thus he could not have challenged it subsequently.

9. The respondents have also talked about the PNM decision. M.L.Jand's Railways Establishment Manual states the following about procedures of PNM. "All disciplinary matters and subjects like promotions, transfers, etc of individual members of the staff which do not involve any general principle will be excluded from the scope of the discussions at these levels, except at the discretion of the officer concerned. Where however, Unions have been given certain privileges in these matters those will not ordinarily be curtailed."

It has not been indicated as to why the individual matter was discussed and that too after the draft seniority lists have not been objected to in prescribed period.

10. The respondents have not enclosed the two notifications, GM CCGs letter of March 1976 or the decision of Rajasthan High Court. What is indeed surprising is that even though the representation of private respondent was rejected in 1997 after the decision in PNM, the matter has been reopened and decided afresh. No reasons have been assigned as to why the earlier decision was incorrect. The letter dated 8/9/1998 basically refers to DRM(E) KTTs earlier letter of 26/8/83. The same had been considered on the earlier occasion also. Thus the later decision is bad for being non speaking.

11. In view of what has been discussed above, the application is allowed and the order dated 8/9/1998 incorporating the name of private respondent S.N.Sinwal above Shri A.A.Tiwari and others is set aside. There will be no order as to costs.

Shankar Prasad
(SHANKAR PRASAD)
MEMBER(A)

Kuldeep
(KULDIP SINGH)
MEMBER(J)