

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO:712 of 1999

Date of Decision: 5/4/2004

V.M.Kantharia

Applicant

Shri G.S.Walia

Advocate for the
Applicant

Versus

Union of India & 3 others

Respondents

Shri V.S.Masurkar


Advocate for the
Respondents

CORAM:

Hon'ble Shri A.K.Agarwal - Vice Chairman

Hon'ble Shri Muzaffar Husain - Member (J)

- (i) To be referred to the reported or not? x
- (ii) Whether it needs to be circulated to other Benches of the Tribunal? x
- (iii) Library. x


(Muzaffar Husain)
Member (J)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this the 5th day of April, 2004

Coram: Hon'ble Mr.A.K.Agarwal - Vice Chairman
Hon'ble Mr.Muzaffar Husain - Member (J)

O.A.712 of 1999

V.M.Kantharia,
Motorman/Driving Inspector,
Western Railways, Churchgate,
Mumbai.
R/o 145/7 Western Rly.Quarters,
Prabhat Colony, Santacruz (East),
Bombay.
(By Advocate Shri G.S.Walia)

- Applicant

Versus

1. Union of India
through the General Manager,
Western Railways,
Headquarter's Office,
Mumbai.
2. Divisional Railway Manager,
Mumbai Division, Western Railways,
DRM's Office, Mumbai Central,
Mumbai.
3. S.K.Tiwari
4. R.B.Mathur
(Respondents 3 & 4 are Motorman/
Driving Inspectors,
Motorman Inspector's Office,
Station Building, Churchgate,
Mumbai.
(By Advocate Shri V.S.Masurkar) -

Respondents

O R D E R

By Hon'ble Mr.Muzaffar Husain, Member (J) -

The applicant has filed this OA feeling aggrieved by order dated 21.4.1999 (Exhibit-A) issued by the Office of respondent no.2 whereby he has been treated junior in the cadre of Motorman Inspector/Driving Inspector in the scale of Rs.2000-3200/- (RPS) even to those employees who have been subsequently empanelled as such.



....2/-

2. The applicant has sought the following reliefs -

(a) The impugned order dated 21.4.1999 (Exhibit-A) be quashed and set aside.

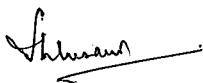
(b) The Hon'ble Tribunal be pleased to hold and declare that the applicant is to be assigned seniority as Motorman Inspector/Driving Inspector on the basis of his empanelment vide order dated 11.8.1989 and that he should be considered for further promotion in the scale of Rs.2375-3500/- on the basis of this position and seniority list dated 12.5.1995.

(c) It may be held and declared that the applicant is senior to respondent no.3 as a Motorman, Motorman Inspector/Driving Inspector.

(d) Cost of this OA be provided for.

(e) Any other or further orders as to this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case may be passed.

3. The learned counsel for the applicant submitted that the panel dated 11.8.1989 for the post of Motorman Inspector was issued prior to the decision of the Hon'ble Supreme Court in the case of R.K.Sabharwal and others Vs. State of Punjab and others, 1995 SCC (L&S) 548 which is held to be operative w.e.f.



10.2.1995. The applicant submits that he is senior to respondents 3 & 4 on the post of Motorman in the grade of Rs.1600-2660/-. Furthermore, the applicant belongs to earlier panel while respondents 3 & 4 belong to the subsequent panel. As per Paras 306 and 309 of the Indian Railway Establishment Manual persons belonging to earlier panel are senior to those belonging to subsequent panel. The applicant has placed reliance on the decision in the case of Rana Priya Ghattak Vs. Union of India & ors., 1987 (2) ATC 739. The applicant has further submitted that he has since been retired.

4. We have heard the learned counsel of parties and considered submissions made on their behalf.

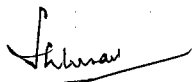
5. A perusal of the record indicates that this OA was filed on 19.8.1999. On 25.10.1999, the Tribunal passed interim order which reads as under -

"
We direct that further promotions, if any, to the post of Sr.Driving Inspector can be done only on the basis of the seniority list of MI/DI dated 12.05.1995 (Annexure-F to the O.A.) and this interim order shall be in force for a period of fourteen days from today....."

6. On 31.1.2000, the Tribunal passed the order as follows -

"Heard both sides.

The OA is ADMITTED. The interim order dated 25.10.1999 is made absolute till the disposal of the application or till further orders.



...4/-

Liberty to either party to apply for modification of the interim order, if there is any change in circumstances.

Liberty to the applicant to file rejoinder, if any, within 6 weeks.

....."

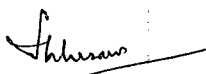
7. The applicant was promoted vide order dated 23.8.1989 (Exhibit R-I). The relevant portion of the said order is reproduced as under -

"4. Shri V.M.Kantharia (SC) Motorman scale Rs.1600-2660 (RP) promoted and posted as MI/DI (Inspector) scale Rs.2000 - 3200 (RP) on pay Rs.3200/- against the existing vacancy as he has also passed the selection of MI/DI (Inspector)."

8 Earlier the applicant has filed OA 579 of 1990. The Division Bench of this Tribunal on 7.6.1994, in Para 3 of its order held as under -

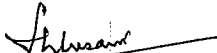
".....In the present case there is no basis for the apprehension that the applicant could be reverted. However, we make it clear that the applicant should not be reverted from the post of MI/DI on the ground that his name has been wrongly included in the panel prepared on 11.8.1989. We are not inclined to decide the inter-se seniority between the applicant and V.Ramagopal because that question has to be decided by the Supreme Court in J.C.Mallik's case. With these directions this application is disposed of. No order as to costs."


9. It is undisputed position that the applicant was promoted on 23.8.1989 and he was not reverted due to the order passed by the C.A.T. Since the applicant is now retired the relief of seniority has become infructuous. The rights of the applicant have been protected by the interim orders of the Tribunal right from the beginning of filing of this OA in the year 1999. Interim orders were granted to this effect that for further



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promotion can be done on the basis of seniority list of MI/DI dated 12.5.1995. This interim order was subsequently made absolute by order dated 31.10.1999 passed by this Tribunal. The applicant was therefore promoted along with respondents 3 and 4 and worked on this post till his retirement. Therefore the interim order is made absolute. The OA is disposed of accordingly. No order as to costs.


(Muzaffar Husain)
Member (J)


(A.K. Agarwal)
Vice Chairman

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