

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.359/2000.

Monday, this the 30th day of April, 2001.

Coram: Hon'ble Shri Justice Ashok Agarwal, Chairman,
Hon'ble Smt. Shanta Shastry, Member (A).

R.G.Namdeo,
2/6, Central Railway Officer's
Colony,
Mazgaon,
Mumbai - 400 010.
(By Advocate Shri S.S.Karkera)

...Applicant.

Vs.

1. Union of India through
The Secretary,
Railway Board,
Rail Bhawan,
New Delhi - 110 001.

2. General Manager,
Central Railway,
Headquarters Office,
Chatrapati Shivaji Terminus,
Mumbai - 400 001.
(By Advocate Shri Suresh Kumar)

...Respondents.

: O R D E R (ORAL) :

{Per Smt. Shanta Shastry, Member (A)}

The main issue for consideration in this application is the loss of seniority of the applicant due to his joining the service late. He has, therefore, challenged the seniority list published vide order 26.9.1997, whereby he has been placed at Sl.No.50. According to him, he is entitled to have his seniority fixed on the basis of his merit obtained in the UPSC examination conducted in the year 1988 with all consequential benefits of promotion, arrears of salary, pay and further regular promotions.

2. The applicant appeared in the Combined Engineering

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Services Examination conducted by UPSC in the year 1988 for selection to various Group 'A' and Group 'B' Engineering Services of Central Government. On the basis of the merit list in the examination, he was allowed^{to} to Group 'A' services i.e. Indian Railway Service of Engineers (for short, IRSE). He received intimation about his selection around December, 1989 and he has told that he ~~was~~^{would} actually received^{the} the letter of appointment in due course of time, ~~but~~^{but} before the appointment letter could be received by the applicant, he requested for extension of time to join the service in the Railways. It is stated by the applicant that he wanted to appear in the Civil Service Examination for the year 1990 and therefore, he was seeking extension of time. The Ministry of Railways granted him the extension of time by one year with certain conditions. These conditions were accepted by the applicant. He, thereafter joined the Railways on 7.1.1991 with the 1989 exam batch of the IRSE. He completed his probation on 7.1.1994 and became due for fixing seniority in his batch. The seniority was fixed by letter dt. 17.4.1997 and the further letter dt. 26.9.1997.

3. It is the contention of the applicant that since he had to appear in another Civil Service Examination, he had sought the extension of time and therefore, he should not have been subjected to loss of seniority. In this connection, the Learned Counsel for the applicant refers to the Judgment of the Supreme Court in the case of Mohankumar Singhania & Ors. Vs. Union of India & Ors with a batch of petitions (1992 SCC (L&S) 455). As per this Judgment, the finding given is that if a candidate has to sit for another Civil Service Examination ^{he} they would not lose

seniority even though joining his earlier service late. Based on this Judgment and also Central Administrative Tribunals Judgment, the Department of Personnel & Training issued OM dt. 7.1.1993. It has been decided therein that a candidate who obtained permission to abstain from joining training to appear in the next CSE will retain his original seniority. This decision will be applicable to probationers appointed to different services on the basis of the CSE held in 1987 onwards. If the relevant Service Rules has already been amended to depress the seniority of such probationers in light of instructions issued by this Department earlier, necessary steps may kindly be taken immediately for restoring the seniority by carrying out suitable further amendment with retrospective effect wherever necessary. In the present case, the applicant joined in 1991. Therefore, the Learned Counsel for the applicant submits that he will be entitled to the benefit of the aforesaid OM of the Department of Personnel. Further, the applicant has also drawn our attention to amendment carried out by the Ministry of Railways in their own Rules, whereby the principle (4) for fixing of seniority in cases of joining late by the candidates has been deleted.

4. The Learned Counsel for the Respondents submits that a similar case was decided by this very Tribunal in December, 1999 in OA No.925/97. The applicant therein, also belonged to the same batch and had appeared for the same examination conducted by the UPSC in the year 1988. The case is identical to that and since that OA came to be dismissed, the present OA also is liable to be dismissed.

5. We have heard the Learned Counsel for both the parties

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and have given careful consideration to the matter. In our considered view, since this Tribunal has already decided an identical OA earlier in December, 1999 and the facts are similar, the issue is similar, we cannot take a view different than the one taken in the earlier OA. It is further seen that the applicant had accepted the conditions prescribed by the Ministry of Railways while granting extension to join the service. It was made crystal clear in this matter that while he will be allowed to join the training along with 1989 batch, he will be given bottom seniority in the 1988 batch of IRSE. Though the OM dt. 7.1.1993 gives protection in seniority to those joining late on account of appearing in another Civil Services Examination, the order granting extension of time to the applicant stipulated specific conditions. The same ^{was} accepted by the applicant without protest. The Railway Rules were amended after the applicant joined the service. Therefore, having accepted these conditions, the applicant cannot now challenge the same. We are also bound to follow our earlier Judgment in this matter.

6. In the facts and circumstances of the case, the OA is dismissed, with no orders as to costs.

Shanta

(SHANTA SHASTRY)
MEMBER(A)

Ashok Agarwal
(ASHOK AGARWAL)
CHAIRMAN

B.