

O.A. 550/91

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1.

O.M. No. 549/91

Original Application No. 549/91, 550/91 and 552/91

On the *Wednesday* day of July 1997.

CORAM: Hon'ble Shri B.S. Hegde, Member(J)

Hon'ble Shri M.R. Kolhatkar, Member (A)

A.R. Muranjan,
Senior Clerk,
O/o Controller of Stores,
Central Railway, Bombay VT
Bombay Residing at
C-1, 56/8, Shreerang
Society, Thane.

A.A. Pawar,
Senior Clerk
O/o Controller of Stores
Central Railway, Bombay VT
Bombay residing at
10/ Old Byculla Police line,
Hansraj Lane, Byculla
Bombay.

D.Y. Patil,
Senior Clerk
O/o Controller of Stores,
Central Railway, Bombay VT
Bombay. residing at
67/263, Hutatma,
D.B. Koyande Road, Mazagaon
Bombay.

K.N. Nikale,
Senior Clerk
O/O Controller of Stores
Central Railway, Bombay VT
Bombay residing at
215/8452, Yug-Pravartak,
Kannamwar Nagar -I,
Vikhroli (East)
Bombay.

... Applicants in
O.A. 549/91

V.S. Raghavan,
Senior Clerk
O/o Controller of Stores
Central Railway, Bombay VT
Bombay residing at
R/No.18/A, Watve Bldg.
Dr. Rajendraprasad Road
Dombivli (East).

S.M. Chettiar,
Senior Clerk
O/o Stores Department,
Central Railway, Bombay VT
Bombay residing at
Benedict Apartment, Block No.6
1st floor, Konoj, Ambarnath(W).

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P.G. Kadam,
Senior Clerk
O/o Controller of Stores
Central Railway, Bombay VT,
Bombay residing at
89/B, Sawant Niwar,
Near Parsee Bunglow,
S.M. Road, Sion-Chunabhatti
Bombay.

S.H. Sawant,
Senior Clerk
O/o Controller of Stores
Central Railway, Bombay VT
Bombay residing at
11/B1, 10, Saicharan
Co-operative Housing Society
Ltd., Sai Baba Nagar (opp)
Manisha Nagar, Kalwa (West)
Thane (Dist).

V.B. Divte,
Senior Clerk
O/o Controller of Stores
Central Railway, Bombay VT
Bombay residing at
R B II/982/6 Kalyan
Kolsewadi, Dist Thane.

... Applicants in
O.A. 550/91.

A.A. Rane,
Senior Clerk
O/o Controller of Stores,
Central Railway, Bombay VT
Bombay residing at
19/163, Siddharth Nagar
No.5, Goregaon(West)
Bombay.

S.P. Jamshetkar
Senior Clerk
O/o Controller of Stores
Central Railway, Bombay VT
Bombay residing at
44, Jai Hanuman Chawl,
Devipada, Borivali(East)
Bombay.

M.D. Sawant,
Senior Clerk
O/O Controller of Stores
Central Railway, Bombay VT
Bombay residing at
1/352, Surve House,
M.G. Road, Behind Kiran Ind.
Estate, Goregaon(West)
Bombay.

Mrs. P.A. Bonde,
Senior Clerk
O/o Controller of Stores
Central Railway, Bombay VT
Bombay residing at R/No.8
Gouri Sadan 1st A
Near Ganesh Nagar, 52 Chawl,
Subhash Road, Dombivli(West)

By Advocate Shri S.N. Pillai.

... Applicants in
O.A. 552/91.

Union of India through
the General Manager,
Central Railway,
Bombay.

Chief Personnel Officer,
Central Railway,
Bombay VT,
Bombay.

Thomas John Kutty.

Hemant R. Surve.

Mrs. Smita R. Kulkarni.

Shri W.D. Kulkarni.

Mrs. Smita A. Gaikwad.

Mrs. I.S. Mitragotri.

Mrs. B.P. Gavali.

Mr. Shaikh Azeemuddin.

P.M. Bhasakar.

Mrs. M.M. Naidu.

U.V. Talwadekar.

Mrs. Praveen Ahmed.

Mrs. Nalini R.

Mrs. Rani Julka.

Mrs. S.V. Waghdare.

Mrs. Mirza S.J.

Miss. Nirza J.N.

Mrs. N.S. Shirke.

Mrs. A.A. Pagare.

Mrs. Balani K.S.

Mrs. R.U. Padte

Mrs. A.N. Navalkar.

Mrs. D.D. Kulkarni.

Mrs. Anita Shukla.

Miss. Asha K. Kataria.

Mrs. M.N. Tolani.

Miss. Jat. S.B.

Mrs. S.K. Acharekar.

Mrs. M.V. Nachane.

Mrs. S.S. Kulkarni.

Mrs. P.B. Wagle.

Miss. Ahuja Pushpa S.

Mrs. K.S. Motwani.

Miss. Meena M. Juvekar.

Miss Rajshirke N.S.

Mrs. V.J. Joshi.

Mrs. V.A. Kamble.

Miss. Patel N.N.

Mrs. V.P. Joshi.

Shri P.M. Yashwantrao.

H.S. Pradhan.

Mrs. Sunita Satam.

Shri Sunilkumar Shrivastav.

Shripati S.V.

Sunilkumar Avasthi.

Bhavsar V.B.

Panjabi H.K.

S.P. Gupta.

Surve S.H.

P. Sonawane.

Shivkumar.

S.P. Mishra.

Subodh K. Tiwari.

A.M.A.R. Qureshi.

M.S. Patil.

D.G. Mahisare.

Respondents Nos 3 to 58 all are working as Sr. Clerks in the office of Controller of Stores, Central Railway, Bombay V.T. Bombay.

... Respondents.

By Advocate Shri V.G. Rege.

ORDER

Per Shri B.S. Hegde, Member (J)

In all the three O.As the impugned orders are same though the method of recruitment/

appointment are different. Since the issue involved in these O.As are same, they are being disposed of by a common order. The arguments advanced in O.A. 549/91 would apply to other O.As except some minor difference which are set out separately.

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2. In this O.A. the applicant has prayed for quashing the seniority list of Junior Clerks in the grade of Rs. 950 - 1550, issued by the respondents vide letter dated 27.8.90 and assignment of seniority in the post of Junior Clerks vide their letter dated 5.1.90 respectively. Though the applicants have requested for interim relief of restraining the respondents from giving effect to the impugned seniority list, The said prayer was not granted while admitting the O.As on 3.10.91 with an observation that any further promotions made on the basis of the impugned seniority list will be subject to the final outcome of this application.

3. The applicants are filing this O.A. in a representative capacity for and on behalf of themselves as well as others similarly placed employees working in the Office of Controller of Stores, Bombay. The seniority list of Junior Clerks dated 29.8.90 issued by the respondents being juniors to the applicants having been appointed as Junior Clerks much after the appointment of the applicants to the said post have been assigned seniority position above the applicants in the impugned seniority list. The respondents has also issued a letter dated 5.1.90 by which they have laid down the policy for assignment of seniority in the post of Junior Clerks. It is submitted that pursuant to the employment notice

2/82-83, the applicants appeared in the selection held by the Railway Service Commission for the post of Tracer in the scale of Rs. 260 - 430. All of them have been selected for the post of Tracer. However, they could not be appointed due to change in policy, instead, they have been considered for initial recruitment to the posts of Non-Technical Categories in the pay scale of Rs. 260 - 430. They gave their willingness for accepting the alternative appointment before 30.6.85. Thereafter they were being interviewed and were appointed as Junior Clerks in July 1986. In due course all the applicants were promoted to Senior Clerk in the department in the pay scale of Rs. 1200 - 2040 vide order dated 18.8.89. The applicants also states that they appeared in the suitability test and were declared successful vide their letter dated 31.5.90.

4. Whereas respondent No. 3 to 58 who joined the Railway organisation as Junior Clerks in the Stores department have been directly recruited as Junior Clerks in the Office of Controller of Stores, Central Railway in the year 1987. The then Railway Service Commission now re-designated as Railway Recruitment Board issued employment notice 2/80-81 for making appointments in category 25, Clerks, Ticket Collectors etc. In the matter of conducting the selection against the said employment notice certain complaints were received regarding irregularities practised in conducting the selection. The Railway Board entrusted the investigations into those irregularities initially to the Vigilance Organisation of the Railways and subsequently to the Central Bureau of Investigation. During the pendency of the investigations, certain vacancies were filled in by appointments of candidates

included in the panel prepared and communicated to the Zonal Railways including Central Railway by the said Railway Service Commission. Since the investigations into the entire matter were then pending, the appointments of the candidates made in the meanwhile, were therefore treated to be provisional. Some of the candidates who appeared for the selection, approached the Courts, viz. the Hon'ble High Court of Judicature in Bombay and/or the Hon'ble Central Administrative Tribunal and as per the directives issued by the Courts, the appointments of the persons have also been made. The investigations were completed in the year 1987 and the panels were thereafter finalised and communicated to the concerned Zonal Railways by the Railway Recruitment Board. These persons, whose name were included in the panel finalised and communicated to the Zonal Railways were selected in the selection held pursuant to the employment notice 2/80-81. However, their appointments were delayed due to the pendency of the investigations and enquiries into the complaints by the Vigilance Organisation/ Central Bureau of Investigation. Some of these persons came to be appointed finally in the year 1987. Delay in their appointments could not be attributed to these persons and though they have been appointed in the year 1987, their interest was in the said special facts and circumstances, therefore, required to be protected and the same has been done by the Railway Board by issuing various circulars/Executive instructions in exercise of powers vested in the Railway Board under Rule 123 of Indian Railway Establishment Code Vol. I. One of such circular dated 8.9.86 issued by the Railway Board stating

that the appointments of persons made during the period of pendency of the investigations of complaints pursuant to employment notice 2/80-81 is subject to the condition that the candidates pertaining to the panel prepared/finalised against category No.25 of employment notice 2/80-81 are to be absorbed and assigned seniority above the candidates who are recruited from the panel pertaining to the later selections/examinations.

5. The respondents in support of their contention relied upon para 306 of Chapter III of Indian Railway Establishment Manual, Volume I, which states that candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by paragraph 305. In terms of this provision candidates selected by the earlier panel but they have given selection later. Accordingly respondents No. 3 to 58 have been correctly assigned seniority and it is further submitted that the principles laid down in the letter dated 5.1.90 is in accordance with the provisions of paragraph 306 of the Indian Railway Establishment Manual, Volume I. Paragraph 305, which is in the following terms, is not applicable to the cases of persons appointed in the Railway Service pursuant to the selection in connection with the employment notice No.2/80-81.

6. The contention of the learned counsel for the applicant, Shri Pillai is that the selection conducted by the Railway Service Commission have been frozen and the ban was lifted only in 1987.

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They were appointed in July 1987. Thereafter they were promoted as senior Clerks on 15.11.90, much after the applicants were promoted to the post of Senior Clerk in 1989 and their promotions were regularised vide letter dated 31.5.90. Secondly the applicants were substantively promoted from class IV to Class III and posted as Junior Clerks in January 1984, i.e. much before respondent Nos 3 to 58 were appointed, therefore the respondent No. 3 to 58 are junior to applicants and further no seniority list was published till 1990. Thereby the seniority assigned to the applicants are arbitrary and illegal and the same required to be modified, but the same was rejected on 13.3.91, keeping in view of their circular dated 5.1.90. Since the next promotion is Head Clerk which is based on seniority, in view of over riding seniority given to respondent Nos 3 to 58 their chance of promotion are considerably reduced.

7. Regarding the facts there is no dispute, the only contention of the applicants is that though they have been promoted earlier than the respondent Nos 3 to 58 they have been assigned seniority which is not in accordance with the existing procedure and Rules. 1986 letter is only instruction and has no sanction of the President, the principles of assigning seniority has been laid down under Rule 302 and 306 of the Indian Railway Establishment Manual which are statutory rules. Para 306 of IREM apply to different groups of candidates who have undergone same method of selection. It does not contemplate the seniority of Direct recruit and promotees. Seniority of Direct recruits and promotees is determined under para 302. The said contention is not tenable and the same is rejected for the reasons given below: Since the

applicants were selected by panel dated 13.5.83, whereas the respondent Nos 3 to 58 were selected in 1987, therefore, the applicants have selected and appointed also earlier and they should be shown as senior than the respondents. It is conceded that in para 302 of IREM applies, the applicants are senior and if para 306 applies, are senior, therefore CPO has no authority to change the principles laid down under IREM or by instructions, therefore such instructions are contrary to Rules. In support of the contention he relied upon the decision of the Supreme Court in the case of Abdul Sakoor V/s. Union of India 1992(3) All India SLJ 416 and also the decision cited by the counsel for the respondents is not applicable to the facts of this case.

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8. The applicants were initially appointed in group 'D' categories, between 1978 to 1983. They were promoted to Junior Clerk (group 'C') in 1984. They have further promoted to Senior Clerk on 31.5.1989 and regularised in the posts of Senior Clerk vide order dated 31.5.90.

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9. The applicants are not selected through Railway Recruitment Board. They have been appointed by the Railways on compassionate grounds in 1984-85, whereas the respondent Nos. 3 to 58 were recruited through Railway Recruitment Board in 1989, their panel finalised in 1987, therefore, their seniority should be from the date of recommendation by Railway Recruitment Board. They stand on the different footing as they were appointed in relaxation of Rules of recruitment on compassionate grounds.

However, that rule will not permit the applicants to have an unintended benefit of obtaining seniority over the respondents No.3 to 58 who are fully covered under Rule 306. The Rules of recruitment on Compassionate grounds envisage giving financial support to the indigent family by giving an appointment to sons/wards/wife of the deceased official in relaxation of rules of recruitment. This special dispensation cannot entitle the applicants also to jump over others duly selected by prescribed procedure against vacancies announced earlier. We are not, therefore, persuaded by the argument of the learned counsel for the applicant and the same is rejected.

10. The learned counsel for the applicants, Shri S.N. Pillai has filed written arguments after the hearing of the case was over. We have carefully considered the written arguments of the applicants and pleadings of the parties. In support of their contention, the learned counsel for the respondents relied upon the decision of this Tribunal in the case of Kedar Reghunath Harshe and Anr. V/s. Union of India and Ors. in O.A. 858/88 decided on 6.1.94. In that case also similar issue arose for consideration i.e. quashing the seniority list issued by the respondents i.e. Western Railway dated 2.8.88 and sought for draw of fresh seniority list etc. The Tribunal after considering the rival contention of the parties and keeping in view of para 306 of IREM ultimately dismissed the O.A. as devoid of merits. The facts and circumstances of this case is squarely comes under the purview of the above judgement. In support of their contention the respondents draws our attention to the various circulars issued by the Railway Board, wherein it is clearly envisaged that

the seniority will have to be fixed under para 306 of IREM Vol.I read with circulars issued by the Railway Board.

11. As stated earlier the only contention raised by the applicants is that they should be given higher seniority than respondent Nos 3 to 58. In the impugned seniority list the private respondents are shown senior to the applicants as per seniority list dated 29.8.90.

12. Considering various facts and circumstances of the case, we are of the considered view that the applicants have no right to seniority over respondent Nos 3 to 58 because of the fact that the applicants have been promoted in the year 1984 and the present private respondents though, are appointed in the year 1987, some are appointed earlier to the direction of the Tribunal. However, the selection of respondent Nos 3 to 58 goes back to 1981. We are in agreement with the decision taken by the respondents that the seniority will have to be fixed in the light of the provision in para 306 of IREM Vol.I read with various circulars issued by the Railway Board and consequent thereon the instructions issued by the General Manager's letter dated 5.1.90 which is just and proper and in accordance with the Rules. Therefore, we feel that there is no merit in these applications and the same are dismissed but no order as to costs.

(M.R. Kolhatkar)
Member (A)

(B.S. Hegde.)
Member (J)