

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 617/91

Date of Decision: 30-11-1998

A.B.Mishra & Ors.

Applicant.

Shri G.S.Walia

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.R.Shetty

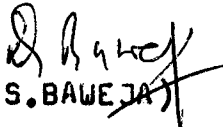
Advocate for
Respondent(s)

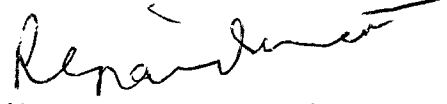
CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. D.S.Baweja, Member (A)

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? ✓


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO.617/91

Pronounced this the 30th day of November 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

1. A.B.Mishra
2. S.C.Panzade
3. A.S.Athavle
4. M.S.Thakur
5. S.S.Kulkarni

All working as Chargeman
Grade 'A' in Parel Workshop,
Central Railway, Parel,
Bombay-400 012.

By Advocate Shri G.S.Walia

... Applicants

V/S.

Union of India through

1. Secretary, Railway Board,
Rail Bhavan, New Delhi.
2. General Manager,
Central Railway,
Bombay V.T., Bombay.
3. Chief Workshop Manager,
Central Railway, Parel,
Bombay.
4. R.R.Yadav,
Chargeman,
C/O Chief Workshop Manager,
Central Railway, Parel, Bombay.
5. B.B.Trivedi,
Chargeman,
C/o. Chief Workshop Manager,
Central Railway, Parel, Bombay.

By Advocate Shri R.R.Shetty

... Respondents

O R D E R

(Per: Shri D.S.Baweja, Member (A))

This OA. has been filed jointly by
five applicants who at the time of filing the OA.
were working as Chargeman Grade 'A' in Parel Workshop,
Central Railway, Mumbai in the grade of Rs.1600-2660(RPS)

seeking the relief of quashing the impugned orders dated 16.3.1991 and 19.10.1991 and declaring them senior to Respondents No. 4 & 5 in the grade of Chargeman Grade 'B', scale of Rs.1400-2300 (RPS).

2. The applicants have submitted that post of Chargeman Grade 'B' scale of Rs.1400-2300(RPS) is filled in by three sources, (a) 50% by direct recruitment, (b) 25% by promotion from lower grade from the serving staff and (c) 25% by selection of Intermediate Apprentices from the serving staff. The Applicant No. 1 was recruited directly against the 50% quota while the Applicants No. 2 to 5 were selected as Intermediate Apprentices against 25% quota. After completion of training, they have been absorbed on the working post as under :-

- | | | | |
|------|-----------------|---|-------------|
| i) | Applicant No. 1 | - | 14.7.1987 |
| ii) | " | 2 | - 27.6.1988 |
| iii) | " | 3 | - 18.1.1988 |
| iv) | " | 4 | - 18.1.1988 |
| v) | " | 5 | - 18.1.1988 |

The applicants submit that they were not allowed seniority correctly following the extant rules as per which they were required to be assigned seniority in accordance with the quota reserved for each source of filling up of the post of chargeman Grade 'B' as indicated above. A panel was declared on 19.5.1987 for five candidates against 25% promotional quota from the rankers. The candidates from this panel were given seniority above the applicants. The Applicant No. 1 made

a representation against ^{correct} seniority being not allowed to him. After considering his representation, as per order dated 26.11.1990, the Applicant No. 1 was assigned seniority over Respondents No. 4 & 5 on the ground that they were promoted in excess of the quota meant for departmental promotees against 25% quota. Subsequently, the Applicants No. 2 to 5 also made a representation on 5.2.1991 seeking seniority above Respondents No. 4 & 5. This representation was also allowed and as per order dated 14.3.1991, Applicants No. 2 to 5 were assigned seniority above Respondents No. 4 & 5. However, this letter was cancelled immediately on 16.3.1991 without assigning any reasons. Thereafter, the present OA. has been filed on 13.9.1991. Applicant No. 1 has filed this OA. on the apprehension that his seniority will be also modified in the same way as has been done in respect of Applicants No. 2 to 5. Subsequent to filing of this OA., the official respondents have assigned seniority to Respondents No. 4 & 5 above all the applicants as per the order dated 19.10.1991 which has been brought on record through an amendment application.

3. Based on the above background, the applicants have sought the following reliefs :-

- (a) To quash the impugned orders dated 16.3.1991 and 19.10.1991.
- (b) To declare that applicants are entitled to have their seniority assigned within their respective quota from the date such a vacancy arose in the two categories.

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(c) To declare that Applicants No. 1 to 5
are senior to Respondents No. 4 & 5 as
Chargeman 'B' and as Chargeman Grade 'A'.

4. The main contention of the applicants is that the Respondents No. 4 & 5 were promoted in excess of quota meant for departmental promotees and therefore when the promotion of the incumbent belonging to different sources of recruitment is made in excess of the prescribed quota then such promotion would not entitle seniority beyond the respective quota and the period of continuous officiating in such a situation will not count for seniority. The applicants through amendment have brought on record that the respondents have followed this principle in respect of other categories where also the posts /are to be filled up from different sources but not followed for the ~~and~~ they /applicants/ have been discriminated. Through Para 4.9, it is stated that direct recruitment was made against 50% quota in the cadre of Diesel Transmission, Diesel Mechanic and Sheet Metal. The ~~candidates were~~ posted as Chargeman Grade 'B' in their respective cadre, in the 1991 after completion of /training. In the meantime, panels for promotees against 25% quota for these categories were also declared but these promotees were in excess of quota although they were promoted in 1990. In the seniority list issued on 16.7.1993, the excess promotees have been shown below the direct recruits who had come in the working post in 1991. This indicates that the respondents have followed the rules ~~correctly~~ in allotting seniority to the direct recruits and the promotees. In the case of the applicants, this principle has been not followed ^{have} and the respondents /acted arbitrarily and discriminately by indicating Respondents No. 4 & 5 senior to the

applicants. The applicants have also challenged the impugned order on the plea that their seniority has been changed without any show cause notice and thereby in violation of principles of natural justice. It is further stated that the impugned orders are non-speaking giving no reasons and therefore are void ab-initio.

5. The official Respondents No. 1 to 3 have opposed the application through the written statement. The basic facts with regard to the recruitment and posting of the applicants on the working posts as indicated in the OA. are admitted. The respondents submit that the Respondents No. 4 & 5 along with three others were promoted on adhoc basis on various dates from 1980 to 1983. A Notification was issued on 29.9.1986 for filling 5 vacancies against the rankers quota. Although the quota was for 3 vacancies, but it was decided to increase it to 5 vacancies in view of the fact that there was no chance of direct recruits against 50% quota or intermediate apprentice against 25% quota being available for posting till November, 1989. The panel for the promotees was declared on 19.5.1987 and they were declared as regularly promoted from this date. Since the promotees have been promoted earlier to the date of joining of the Applicants No. 1 & 5 after completion of the training, the Respondents No. 4 & 5 have been allowed seniority correctly. It is further stated that on representation made by Applicant No. 1 first

and subsequently by Applicants No. 2 to 5, they were allowed seniority above the Respondents No. 4 & 5. However, this decision was taken erroneously^{ly} and not in line^{with the rules} and therefore the recognised union for on the matter being taken up by consideration in the PNM meeting, the matter was reviewed and the Respondents No. 4 & 5 were allotted seniority above applicants No. ① & 5 as was done originally. The Respondents plead that the action of allowing seniority to Respondents No. 4 & 5 above applicants No. 1 & 5 is in terms of provisions of Para 102(ii), 302 and 306 of Indian Railway Establishment Manual (IREM). The respondents therefore submit that the applicants have no case and the OA. deserves to be dismissed.

6. The Respondent No. 5 has filed written statement opposing the application. The grounds advanced in opposing the application and in controverting the averments made by the applicants in the OA. are more or less the same as that of the official respondents in the written statement.

7. The applicants have filed rejoinder reply both for written statement of Respondents No. 1 to 3 as well as for Respondent No. 5. The applicants have controverted the submissions of the respondents and reiterating the grounds taken in the OA. The applicants have stated that provisions of Para 102 (ii) of IREM are applicable only when the recruitment/promotion are made within the quota prescribed and not when the promotions are done in excess of the quota. It is further stated that

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Para 306 of IREM is not applicable to the case of the applicants as provisions of this Para are applicable in case all the persons are belonging to the same category and the mode of recruitment. It is further submitted that in the present case, the dispute is in respect of the seniority between direct recruits and promotees who were governed by different mode of selection and recruitment laid down for each category.

8. We have heard the arguments of Shri G.S.Walia and Shri R.R.Shetty, learned counsel for the applicants and respondents respectively.

9. From the rival averments, it is noted that the post of Chargeman Grade 'B' is to be filled from three sources, viz. 50% by direct recruitment, 25% from intermediate apprentices from the serving staff and 25% against promotion from the rankers. It is also noted that the Applicant No. 1 was recruited against 50% quota while Applicants No. 2 to 5 were recruited against 25% quota of intermediate apprentices. Respondents are No. 4 & 5 belonging to promotees quota. From the fact averments of the respondents, it is admitted by the respondents that the promotees were promoted in excess of the quota when the panel was declared on 19.5.1987. The respondents have justified that as against the quota of three vacancies for the promotees, a panel for 5 was prepared on the ground that there was no chance of any direct recruit being available till November, 1989.



Keeping in view these facts, it is to be deliberated whether the seniority allowed to Respondents No. 4 & 5 above the applicants No. 1 to 5 is sustainable.

10. The applicants have contended that since it is an admitted fact that Respondents No. 4 & 5 were promoted in excess of quota, in terms of the proposition of law laid down by the Hon'ble Supreme Court through several judgements, the promotees are not entitled to have seniority beyond the quota fixed for the promotees. The counsel for the applicants during the arguments cited the following judgements of the Hon'ble Supreme Court in support of their case:-

- (a) Awadh Prasad Singh & Ors. Vs. State of Bihar & Ors. (1990) 14 ATC 717.
- (b) T.N.Saxena & Ors. vs. State of U.P. & Ors. 1992 SCC (L&S) 82.
- (c) A.N.Sehgal & Ors. vs. Raje Ram Sheoran & Ors. 1993 SCC (L&S) 675.
- (d) Madan Gopal Garg vs. State of Punjab & Ors. 1995 (3) SLJ (SC) 152.
- (e) M.S.L.Patil, Anutavt Conservator of Forests vs. State of Maharashtra, 1997 (1) SC SLJ 304.
- (f) R.K.Antony vs. B.Murleedharan & Ors. along with other cases, 1998 AIR SCW 3031.

On going through these judgements, it is noted that all the judgements cover the case of seniority in respect of the posts which are filled up by different sources, i.e. by direct recruitment and promotion.



Their Lordships in these judgements have laid down the law that when the posts are to be filled by direct recruitment and promotees as per the quota laid down, any appointment in excess of the quota prescribed for the promotees cannot prejudice the rights of the direct recruits. When the promotion is outside the quota, the seniority would be reckoned from the date of seniority within the quota. The Hon'ble Supreme Court in the case of T.N.Saxena has also held that seniority is to be regulated on the basis of quota as prescribed in the rules where such a rule is framed.

11. The Respondent No. 5 in his written statement has relied upon the judgement of Hon'ble Supreme Court in the case of Direct Recruit Class II Engineers Officers' Association & Ors. vs. State of Maharashtra & Ors., 1992 (2) SLJ 40., taking a plea that the quota rule had failed as no recruitment was done from 1983 to 1987. The Respondent^{No.5} has referred to Head Note 3 in support of his contention. On going through this judgement, it is noted that the same does not apply to the present case. In the case before the Supreme Court, the quota rule was not fixed as it allow^{ed} the discretion^{to modify} according to the demand of the exigency. As per the documentary evidence brought on record, we find that the quota has been fixed for the three categories and the rules do not provide^{for} any discretion to change this ratio as exigency demand. Therefore, this judgement is not of any avail to the case of the Respondents No. 4, 5.

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12. As stated earlier, the respondents have justified their action in allowing seniority to Respondents No. 4 & 5 above the applicants No. 1 to 5 stating that the same is in accordance with the rules as laid down in Para 102(ii), 302 and 306 of Indian Railway Establishment Manual. The matter now will be examined to find out if the action taken by the respondents is according to the rules cited and the law laid down by the Hon'ble Supreme Court in the judgements as mentioned above. The respondents referring to provisions in Para 102 (ii) have contended that the quota prescribed for the various categories will be relevant only at the recruitment stage and will have no relevance for fixation of seniority. On carefully going through this Para, we are not inclined to agree with the interpretation of the respondents. It is nowhere mentioned that in case the required quota cannot be filled for one category, then the shortfall can be filled up with the excess quota for the other category. This rule clearly provides for carryforward of the shortfall of a particular year which may be made good in the following year. It is, however, noted that this rule does not provide for any benefit of retrospective seniority to be given in case the shortfall quota is carried forward to be filled in the subsequent year. As to how the seniority is to be allowed to the direct recruits and promotees, the provisions are made in Para 302 of IREM relied upon by the respondents. Para 306 has no relevance to issue as this pertains to promotion within the same category. On going through the Para 302, it is noted that for categories or posts filled partly by direct recruits or partly by promotees, the criteria is to

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be by the date of regular promotion after due process of selection in case of promotees and the date of joining on the working post in the case of direct recruits subject to maintenance of inter se seniority of direct recruits and promotees among themselves. This provision implies that if the promotees are promoted earlier to direct recruits and having been posted on the working post, they will become senior to the direct recruits. Provisions in the Para 302 do not envisage that the promotees can be promoted in excess of the quota. The provisions of this para are based on the premise that when the post is to be filled from different sources, the process for recruitment/promotion may not get completed on the same date and the candidates from the different sources may become available for posting on the different dates. This is amplified by taking an illustration :- Supposing there are 100 vacancies of Chargeman Grade 'B' on 1.1.1995 and as per quota laid down, 50 vacancies are to be filled by direct recruitment, 25 by intermediate apprentices and 25 by promotion. After identification of vacancies and deciding the vacancies to be filled for each category as per quota, the recruitment process is started. It is quite likely that the process for the promotion from rankers gets finalised first in 1995 itself and the promotees are promoted from the date the panel is declared. The candidates from the other two sources are available after recruitment subsequently in 1996 and are due for posting on working post after completion of training in 1998. The direct recruits will be placed below the promotees although they are recruited against the vacancies of 1995 when selection for promotee was ordered. As per the provisions of Para 302, the direct recruits will not be allowed

seniority retrospectively with reference to the year of availability of the vacancies. However, if any excess promotions are done for the promotees' category on account of the fact that the direct recruits may not be available and the posts are required to be filled up, in that case the promotees could be promoted but they will have to wait for regular promotion till the vacancies arise against the quota of the promotees. This would mean that the promotees promoted in excess of quota will not get seniority over the direct recruits posted on the working post subsequently even though they might have been promoted from the panel earlier. This is precisely what has happened in the present case. As per the data given by the respondents in Para 6 of the written statement, there were 10 vacancies in 1986 against which the selection for promotees was ordered for 5 vacancies instead of 3 as per the quota. It is also noted that the selection for the intermediate apprentices had been also completed at the same time as the intermediate apprentices have completed their training in January, 1988. The Applicant No. 1 was also available against the direct quota as he has completed his training of two years on 18.1.1987. In the face of the situation of direct recruits being available from other two sources, the rankers who are promoted in excess of the quota could not have been given seniority over the direct recruits. Three applicants from the promotees' panel had been promoted in 1987 and have legitimate right to have seniority from their date of promotion against quota of three but other two candidates, i.e. Respondents No. 4 & 5 in excess over the quota could not be allowed seniority from the date of promotion over the Applicants No. 1 to 3. Keeping this background in view, we have


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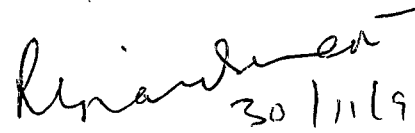
no hesitation to hold that the seniority allowed to Respondents No. 4 & 5 is not in accordance with the rules as cited by the respondents as well as the general law laid down by the Hon'ble Supreme Court in the various judgements relied upon by the applicants. In view of this, the applicants have merit in their case and the impugned orders deserve to be quashed.

13. From the data furnished in paragraph 6 of the written statement of the respondents, it is noted that as against the quota of 2 for the Intermediate apprentices against 25% quota, the recruitment of 4 had been done. The respondents have not come up with any explanation as to why the excess recruitment against this quota was allowed. Our findings recorded in earlier paras, ^{that} the Respondents No. 4 & 5 are not eligible to get seniority from the date of promotion as they were in excess of the quota, would be also applicable to the case of applicants belonging to the category of Intermediate apprentices who have been promoted in excess of quota of two. Therefore, fairness and justice would demand that ^y the Respondents No. 4 & 5 are not allowed seniority from the date of promotion on account of being in excess of quota, the applicants No. 4 & 5 belonging to intermediate apprentices category and promoted in excess are also not allowed seniority from the date of being posted on the working post. It would be appropriate that the relative seniority of Applicants No. 4 & 5 and that of Respondents No. 4 & 5 is determined by the respondents keeping in view the availability of vacancies against the respective quota in terms of rules laid down.

14. In the result of the above, the OA.
is allowed with the following directions :-

- (a) The impugned orders dated 16.3.1991 and 19.10.1991 are quashed. The applicants No. 1 to 3 will be placed senior to the Respondents No. 4 & 5 in the seniority of Chargeman Grade 'B'. Based on this, their seniority as Chargeman Grade 'A' will also be suitably allowed.
- (b) The relative seniority of Respondents No. 4 & 5 and Applicants No. 4 & 5 who are both promoted in excess of quota will be fixed by the respondents keeping in view the rules and the availability of vacancies in the respective quota as per the observations made in Para above and in accordance with the rules.
- (c) Interim order dated 27.11.1991 if operating is vacated.
- (d) No order as to costs.


(D.S. BAWEJA)
MEMBER (A)


30/11/98
(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.