

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 1111/92

Date of Decision : 4th September 2011

J.B.Mane Applicant

Shri G.S.Walia Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Smt.Shanta Shastri, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other *no*
Benches of the Tribunal ?
- (iii) Library *yes*

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1111/92

Dated this the 4th day of September 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastry, Member (A)

Janardhan B.Mane,
Senior Draftsman/Estimator,
Head Quarters Office,
Western Railway Signal Deptt.,
Bombay.

...Applicant

By Advocate Shri G.S.Walia

vs.

1. Union of India
through General Manager,
Western Railway,
Churchgate, Bombay.
2. Chief Signal and Telecommuni-
cation Engineer,
Western Railway Headquarters,
Churchgate, Bombay.
3. Smt.S.S.Patel,
Head Estimator,
Signal & Telecommunication
Department, Headquarter Office,
Western Railway, Bombay.
4. R.N.Kale
5. R.H.Mahatre
6. S.G.Chauhan
7. G.N.Bandwalkar
8. N.N.Kadu
9. P.V.Gore

Respondents No. 4 to 9
are working as Sr.Draftsman/
Estimator, C/o. C.S.T.E.,
Western Railway, Churchgate,
Bombay.

...Respondents

J.V. -

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O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside the order dated 14.10.1992 and 19.10.1992 (Exhibit-'A' & 'J' respectively) with a declaration that the date of regularisation of the applicant as a Senior Draftsman/Sr.Estimator is 31.7.1990 and he is entitled on that basis for all consequential benefits, such as seniority, promotion, increments, backwages etc

2. The applicant was selected by the Railway Recruitment Board as an Apprentice Senior Draftsman/Sr.Estimator in the scale of Rs.1400-2300 on 31.7.1989 and was given the said pay scale for a period of one year of training vide Exhibit 'B'. After completion of one year of successful training, the appointment was to be regularised. His services were regularised after the said period of one year's training as he was found suitable for regular appointment. By Memorandum dated 14.11.1990 he was posted against a working post w.e.f. 31.7.1990 in the scale of Rs.1400-2300 (Exhibit-'C'). By a corrigendum dated 15.11.1990 the said letter dated 14.11.1990 was treated as cancelled till further orders. (Annexure-'D'). By another Memorandum dated 18.12.1990 the service of the applicant was regularised w.e.f. 31.7.1990 which was the due date in the said post. (Annexure-'E'). By another corrigendum dated 14.10.1992, the

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respondents with the approval of the competent authority have sought to regularise the services of the applicant as a Senior Draftsman/Sr.Estimator w.e.f. 14.12.1990 instead of from 31.7.1990 and the said period, i.e. from 31.7.1990 to 13.12.1990 is to be treated as extended period of training.

3. The grievance of the applicant is that though the certificate for completion of training was given on 14.12.1990, yet the applicant had been posted against a working post w.e.f. 31.7.1990 independently. The post was vacant against which he was recruited and was also working during the period of training and thereafter. The respondents failed to conduct the test of the applicant immediately on completion of the training period, as the concerned officer was on leave. The applicant claims that the competent authority has given to understand that even if the test was subsequently conducted that would not adversely affect the date of regularisation or seniority of the applicant. It is further alleged that in case of Signal and Telecommunication Branch of the respondents though the test which was conducted subsequently, the actual date of completion of the training has been always treated as the date of regularisation which is the date on which the employee is due for regularisation. The delay in conducting the test or examination has never operated against the concerned employee for adversely changing the date of regularisation or seniority. The respondents have unilaterally

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altered the date of regularisation which has made the applicant junior to some of the promotees who were promoted against the promotees' quota between the period from 31.7.1990 to 14.12.1990. The seniority of the direct recruits, i.e. the applicant is to be reckoned with reference to the date of absorption/regularisation against linking posting. The change of the date of regularisation or posting of the applicant against the working post, the persons who were promoted during the period from 31.7.1990 to 14.12.1990 whose seniority is to be reckoned with reference to the date of the promotion have become senior to the applicant. The seniority list was issued by the respondents on 22/23.1.1991 in which the applicant's name was at Sr.No.6. However, by Memorandum dated 5.6.1992, one Smt.S.S.Patel, who is junior to the applicant as a Senior Draftsman/Sr.Estimator was promoted as a Head Estimator in the scale of Rs.1600-2660 which is a non selection post ignoring and without considering the applicant. The applicant represented the matter vide representation dated 10.6.1992 and 15.7.1992 to which he received the reply dated 19.10.1992.

4. The official respondents (Respondents No. 1 & 2) have filed a separate written statement. Respondents No. 3, 5 and 6 have also filed the separate written statement. The official respondents (Respondents No.1 & 2) resisted the claim of the applicant and stated that the result for the posting of the applicant as Senior Draftsman/Sr.Estimator was approved on or

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about 18.12.1990 (Annexure-'R-1'). The applicant was earlier shown as senior to Respondents No. 3 to 9 inadvertently due to issue of an order No.E(P&T)890/18/2/2 Vol.IV dated 18.12.1990 whereby erroneously the applicant was posted with retrospective effect. The said mistake of posting of the applicant w.e.f. 31.7.1990 was, however, rectified and regularised by order No.E(P&T)890/18/2/2 dated 14.10.1992. The Respondents No. 4 to 9 are senior as they have passed the requisite selection for the post of Senior Draftsman on 17.8.1990 whereas the applicant after completion of training and passing the final retention test was posted as Sr.Draftsman/Estimator only on 18.12.1990. The date of entering into the service as Senior Draftsman for the applicant as per rules shall be 18.12.1990 and not 31.7.1990. This position has been clarified by order No.E(P&T)890/18/2/2 dated 14.10.1992. It is denied that any assurance was given by the competent authority to the applicant that the seniority of the applicant would not be affected. Details given by the applicant about the promotion/posting of all other departments of the respondents have no relevance whatsoever to the present case. The applicant has not challenged the promotion of Respondent No.3, as Senior Sraftsman Smt.S.S.Patel who was promoted prior to 1987 and that she was regularly selected for the post of Senior Draftsman on 17.8.1990, hence she was shown as senior as she had required qualification and condition of 2 years service in lower grade, which is as per rules and procedure. There was no deliberate delay in conducting the test and absorbing the applicant. This is done as per the prcedure laid down in Circular No.E(P&T)890/18/2/2 dated 14.10.92. Hence, prayed for dismissal of the OA. along with the costs.

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5. The Respondents No. 3, 5 and 6 have filed the separate written statement alleging that the applicant has suppressed material information. Recruitment Rules are framed by the Railway Establishment and in view of Rule 156 Railway Establishment Manual (R-1) appointment of the applicant in itself is irregular and unintended benefit has been given and granted to the applicant by the Respondents No. 1 and 2. The Signal and Telecommunication Department is a separate Department and there is no training centre for Signal and Telecommunication Department. Till 1986 no direct recruitment was made by Respondent No. 1 and 2 in Signal and Telecommunication Department in view of the undertaking before the Hon'ble High Court, Bombay. In 1986 there were 12 posts and 12 vacancies of Senior Draughtsman. In selection process 11 candidates have passed all tests and only 6 candidates were empanelled, suppressing result of another five candidates. The Recruitment Rules prescribes training of two years to direct recruits while promotees were provided with 4 months' refresher course and no other training was prescribed for them. The said course is prescribed only for the departmental candidates for refreshing their knowledge and know-how about the work of the Department. The training contemplated under the Recruitment Rules was never provided to any of the candidate appointed as direct recruits. Till regularisation of the direct recruits, the result of subsequent selection was suppressed in respect of promotees and withheld their promotions with malafide intention to grant the benefit of

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seniority to direct recruits. The regularisation made by the Respondents No. 1 and 2 of the direct recruits is illegal and contrary to the Recruitment Rules, therefore is liable to be quashed and set aside. The applicant has no cause of action whatsoever as the appointment of the applicant in itself is irregular and subsequent claims which are sought to be made cannot be granted to the person who has no right to hold the post in itself. The training period of two years cannot be counted as service as after training the candidate has to undergo the Departmental Examination and has to pass the said examination successfully. However, in the present case, no examination was held for the purpose of determining competency of the applicant which reveals that the undue and unintended benefit has been deliberately granted to the applicant. The stipend prescribed during the training period is as per Recruitment Rules Rs.1200-1400. However, Respondents No. 1 and 2 have granted regular time scale to the applicant in breach of Recruitment Rules. The said fact reveals that Respondents No. 1 and 2 had special interest in the applicant, therefore his training period is curtailed without any authority. The applicant has attended 4 months refresher course and not 2 years training course. The authorities are not empowered to amend the Recruitment Rules and appoint persons of their choice. The act of Respondents No. 1 & 2 falls beyond the scope of powers to be exercised by the said authority under the rules and therefore itself illegal, null and void, resulting the appointment and regularisation of the

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applicant itself void, which is in breach of rules and without authority. The applicant was appointed by letter dated 5.12.1989 by General Manager which is an irregular and illegal appointment. After 2 years training which was to be undertaken by the applicant, he should have appeared for the test. The period of training has been reduced by the General Manager without authority and power and therefore the corrigendum issued by C.S.T.E. is without any authority, illegal, null and void resulting regularisation of the applicant to be without any consequences. The orders issued regarding promotees of the Department are in excess of the powers under Recruitment Rules and therefore illegal and cannot be challenged by the applicant. The applicant himself is responsible for the consequences arising out of his silence. Promotees were working as Senior Draughtsman and were discharging duties and functions of direct recruits even prior to their regular orders of promotion and appointment of the applicant. The applicant has not challenged the order of promotion of Respondent No. 3, though he is a party to the OA. The matter deserves to be referred to the competent authority for the regularisation of the applicant. Hence, the alleged regularisation by order dated 19.4.1992 is illegal as the order passed by an authority not competent to pass the same, therefore, the applicant is not entitled to any seniority. Hence, prayed for dismissal of the OA. along with cost.

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6. The applicant has filed rejoinder with reference to reply of Respondents No. 1 & 2 alleging that he has not suppressed any material facts, in view of the Employment Notice No. 1/85 published in the Indian Express, the period of training was one year (Ex.'K'). Shri Harikrishan Meena, I.A.Siddiqui, Manoj C.Prajapati and Kamlesh Panwar were appointed in pursuance of the said advertisement as Senior Draughtsmen and they have been regularised after completion of one year training vide Memorandum No. E (R & T) 890/18/2/2, Vol.III dated 27.9.1988 (Exhibit-'L'). Though this Memorandum was issued on 27.9.1988, their regularisation had taken place with retrospective effect. The applicant also belongs to the same batch and was appointed pursuant to the same advertisement and selection. Hence, he is entitled to have his seniority fixed on the basis of merit obtained by him in the said selection conducted by the Railway Recruitment Board. The final test of the applicant could not be conducted due to administrative reasons. As the final test has been delayed on account of clear administrative reasons, the applicant has not to suffer as all other persons have been given seniority with retrospective effect. The applicant is entitled to have his seniority counted from 31.7.1990. The applicant was year's training. The regularisation has to take effect from the date the applicant completed one year's training, i.e. 31.7.1990. The official respondents have been following a consistent policy of giving seniority and absorption on the due date to the

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trainees. The corrigendum issued by the official respondents was incorrect and amounts to discrimination. The official Respondents No. 1 & 2 not only gave assurance to the applicant but in fact put up a proposal that the applicant should be assigned seniority from his due date and was actually given seniority accordingly. The responsibility for holding an examination or test lies with Respondents No. 1 & 2. Due to administrative reasons if examination is not conducted, the employee cannot be allowed to suffer. The applicant was working independently in a vacancy. There was no reason for extension of training of the applicant and in fact the training was not extended.

7. The Respondents No. 3, 5 & 6 have challenged the appointment of the applicant, payment to him in the scale of Rs.1400-2300 and alleged that the respondents were having special interest in the applicant, his training period is curtailed without any authority as according to the rules, training period is two years. The applicant is appointed after due selection in view of the Memorandum dated 5.12.1989 w.e.f. 31.7.1989. Even after issue of the said Memorandum, appointment of the applicant, the private respondents failed to agitate the said matter. Now they are raising this plea when the applicant has filed the present OA. They are estopped from challenging the issue of Memorandum, the appointment of the applicant, payment to the applicant in the scale of Rs.1400-2300, period of training to be imparted to the applicant on account of laches and delay even if they have some cause to challenge the same.

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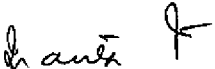
8. Similarly, they are further estopped to challenge the keeping^{of} the post vacant by the respondents (official respondents) and providing undue advantage to the applicant - direct recruits. Even if the private respondents have filed the OA., on the date of filing the written statement, their claim was barred by time. It is also worth mentioning that being the respondents, they are not able to get a relief except that the claim of the applicant can be denied. Keeping in view the claim of the applicant, the matter regarding appointment of the applicant, appointment in the scale of Rs.1400-2300, curtailment of training period, undue advantage to the applicant cannot be challenged by the private respondents (Respondents No. 3 to 9).

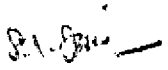
9. The grievance of the applicant is limited that his training period is extended on account of the fact that the ^h official was not available which resulted^h in his supersession by private Respondents No. 3 to 9. The learned counsel for the applicant relied on 1989 SCC (L&S) 417, State of Maharashtra vs. Jagannath Achyut Karandikar which lays down the proposition that lowering of seniority in promotional post of Superintendents because of late passing of departmental examination for promotion - Incumbents should not be penalised for Government's lapse to hold the examination in certain years though rules enjoining government to hold examination every year. Similar is the situation in the present case. The applicant was posted as

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Senior Draftsman on 31.7.1989 and after completion of one year of successful training, the appointment was to be regularised. The applicant alleges that respondents failed to take the test of the applicant immediately on completion of training period as the concerned officer was on leave. The official respondents defended the case on the ground that the private Respondents No. 4 to 9 have passed the requisite selection earlier while the applicant passed thereafter. As it is not the fault of the applicant when he was not examined after the training - as fixed by the order and timely. The delay is on the part of the official respondents to conduct the said test, the applicant cannot be penalised.

10. In the result, OA. deserves to be allowed and is allowed. Orders dated 14.10.1992 and 19.10.1992 (Exhibit-'A' & 'J' respectively) are quashed and set aside, the date of regularisation of the applicant as Senior Draftsman/Sr.Estimator is 31.7.1990 and he is entitled on the said basis for all consequential benefits such as seniority, promotion, increment, back wages etc. This exercise be completed within three months from the date of receipt of the copy of the order. No order as to costs.


(SMT.SHANTA SHASTRY)
MEMBER (A)


(S.L.JAIN)
MEMBER (J)

mrj.