

IN THE CENTRAL ASSEMBLY
BOMBAY BENCH
CAMPAGNE

O.A. NO: 1250/92

199

T.A. NO:

25-4-96

DATE OF DECISION

Petitioner

P.K.Gupta & Others

Advocate for the Petitioners

Shri C.S.Taide

Versus

Respondent

Union of India & Others

Advocate for the Respondent(s)

Shri P.S.Lambat

CORAM:

The Hon'ble Mr. Justice M.S.Deshpande, Vice Chairman.

The Hon'ble Mr. P.P.Srivastava, Member(A).

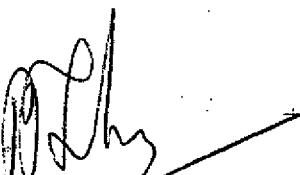
1. Whether Reporters of local papers may be allowed to see the Judgement ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the Judgement ?

4. Whether it needs to be circulated to other Benches of the Tribunal ?

No


(P.P. SRIVASTAVA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH CAMP AT NAGPUR.

ORIGINAL APPLICATION NO.1250/92.

P.K.Gupta & Others

... Applicants.

V/s.

Union of India & Others

... Respondents.

CORAM: Hon'ble Shri Justice M.S.Deshpande, Vice Chairman.

Hon'ble Shri P.P.Srivastava, Member(A).

APPEARANCES:

Shri C.S.Taide, Counsel for
Applicants.

Shri P.S.Lambat, Counsel for
Respondents.

JUDGMENT:

DATED : 25-4-95

(Per Shri P.P.Srivastava, Member(A).)

This is a joint application by 29 Diesel Assistants and Shri P.K.Gupta, Diesel Assistant is placed at Sr.No.1. The facts as brought out in Shri P.K.Gupta's case would be applicable in all other cases.

2. The Applicant No.1 was offered temporary appointment as Assistant Electric Driver to undergo training in electrical department for a period of 18 months vide order dated 26/5/88 at Annexure-2. The applicant has brought out that the respondents' administration directed the applicants to report to Nagpur Division for being utilised as Diesel Assistants due to acute shortage of staff in that category. This order dt. 14/7/88 is placed at Annexure-3. It has been stipulated in the letter that he may be utilised as Diesel Assistant during need of Diesel Assistant in Nagpur Division without hampering his seniority. The applicant has further submitted that the respondent administration have changed the designation as Diesel Assistant and that their training period is required to be governed by provisions of Railway Ministry letter dt. 26/8/78 placed at Annexure-4., wherein training periods for various category has been written. The applicants have



...2/-

mentioned at item No.33, the training period for Diesel Assistant is shown as up to one year for diploma holders and since the Applicants have been posted as Diesel Assistant from the very begining, their training period cannot be treated as more than one year. They have further submitted that they were given training from 24/7/88 to 18/11/88 and were declared passed in the training and were sent for being utilised for the post of Diesel Assistants vide respondents' letter dt. 19/11/88, placed at Annexure-V. The Applicants joined the post of Diesel Assistants on 10/2/89 at Nagpur Division and therefore are entitled to be treated for the purpose of seniority on the working post from 10/2/89. The Applicants have therefore prayed that the order posting the applicants as regular Diesel Assistant on completion of 18 months training vide order dated 26/5/92 at Annexure-XI may be quashed. The Counsel for the Applicant has brought to our notice the rule Governing the seniority as per Indian Railway Establishment Manual rule No.302. The rule reads as under:-

"Unless specifically otherwise, the seniority among the incumbants of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on railway servant, seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter se seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same, they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter se seniority of each group.

Note: - In case the training period of direct recruit

is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training.

(No. E(NG) I-78-SR-6-42, dt. 7.4.1982, A.C.S.132)."

3. The Counsel for the Applicant has argued that the applicants were posted as Diesel Assistant and since in their case the period of training was curtailed by the Competent Authority, they should be governed by the rules as applicable to Diesel Assistants and not those which are applicable to Electric Assistants.

4. The Respondents have brought out that the applicants were recruited in the post of Diesel Assistant and Assistant Electric Driver and were given training accordingly. The Respondents have brought out in the Written Statement that the Applicants were given 18 months training at page-5 of the Written Statement. The Respondents have also brought out ~~in~~ page-3 that the Diesel Assistant and the Assistant Electric Driver in pay scale 950-1800 (RPS) are having common seniority ~~having~~ their channel of promotion in the category of Goods Driver, Passenger Driver, Mail/Express Driver, etc.

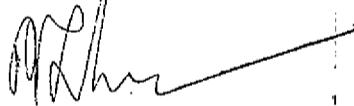
5. The Counsel for the Respondents has argued that the recruitment has been done for both the posts and the notification for recruitment which has been Annexed by the Applicant at page-62 as Annexure-XIV, period of training has been shown as 18 months. ~~the~~ the Counsel for the Respondents has also argued that the letter of recruitment dt. 26/5/88 issued to Applicant placed at Annexure-2 (placed at page-45) shows the period of training as 18 months. The Counsel for the respondents has also argued that in terms of rule 302 of Indian Railway Establishment Manual the note appended below the rule clearly lays down that in case the training period of direct recruit is curtailed in the exigencies of service, the date of joining the



working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training. In the case of the applicant, the training period was curtailed with a view to utilising them as Diesel Assistant in the exigencies of service. However, this utilisation for exigencies of service in no way can be construed to mean reduction in the training period for the purpose of seniority.

6. We are inclined to agree with the Counsel for Respondents in this case in view of the fact that the notification as well as the letter of appointment has clearly indicated 18 training period of 18 months and in view of the provisions of the rule 302 of Indian Railway Establishment Manual, we are of the opinion that the respondents have correctly shown the seniority of the applicants after completion of 18 months training.

We therefore do not find any merit in the case of the applicants and the same is dismissed. There will be no orders as to costs.


(P.P. SRIVASTAVA)
MEMBER (A)


(M.S. DESHPANDE)
VICE CHAIRMAN

abp.