

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 1230/93

Date of Decision : 21/7/2000

Mulchand Tahilramani & Anr. Applicant.

Shri G.K.Masand Advocate for the Applicant.

VERSUS

Union of India & Others, Respondents.

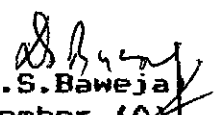
Shri S.C.Dhawan Advocate for the Respondents.

CORAM :

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

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

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library ✓


(D.S.Baweja)
Member (A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1238/93

Dated this the 21st day of July 2000.

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

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

1. Mulchand Tahilramani

2. K.H.Bennet

Working as Asst.Works Manager,
C.W.M's Office, Central Railway,
Carriage Workshop,
Matunga, Bombay.

...Applicants

By Advocate Shri G.K.Masand

V/S.

Union of India through

1. The General Manager,
Central Railway,
Bombay V.T.

2. The Chief Mechanical Engineer (P),
Central Railway, Bombay V.T.

3. Chief Personnel Officer (A),
Central Railway, Bombay V.T.

... Respondents

By Advocate Shri S.C.Dhawan

ORDER

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

Applicant No. 1 while working in Carriage Workshop,
Central Railway, Matunga was promoted as Assistant Shop
Superintendent in the grade of Rs.700-900/2000-3200 on 16.7.1973.

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Applicant No. 2 was promoted as Assistant Shop Superintendent w.e.f. 14.1.1974. On account of this promotion, both the applicants were eligible to be considered for promotion in Group 'B' as Assistant Works Manager. A selection was notified for filling up the vacancies of Assistant Works Manager in Group 'B' in the Workshop and drawing office streams in Mechanical Department. The names of the applicants were included in the list of the eligible candidates. Both the applicants appeared in the written test on 30.4.1989 and 7.5.1989. Both the applicants passed in the written test, the result of which was notified on 25.6.1991. The applicants appeared in viva voce test on 19.7.1991. However, it is alleged that till the filing of the OA. on 22.11.1993, the result of the selection had not been declared. It is the case of the applicants that in the integrated seniority list of the eligible candidates issued by the respondents for selection to Group 'B' posts of Assistant Works Manager, Workshop Stream, the seniority of the applicants as Assistant Shop Superintendent had not been correctly indicated in terms of the Railway Board letter dated 22.12.1988. The applicants submit that their seniority has been shown based on the date of promotion as 29.4.1980 and not with reference to the dates of their actual promotion in 1973 and 1974. In view of this, a number of persons who are junior to the applicants have been shown senior to them in the said seniority list. The applicants had filed earlier OA.NO.323/89 challenging the integrated seniority list seeking revision of their position in the integrated seniority list based on their actual promotions in 1973 and 1974. This OA. was disposed of as per order dated

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24.9.1991. The applicants contend that in the order dated 24.9.1991, the respondents were directed to count the entire period of adhoc service towards seniority and applicants be allowed seniority position in the integrated seniority list from the date of adhoc posting in the grade of Rs.2000-3200 and not from the date of their empanelment from 29.4.1980. The Applicant No.1 made a representations dated 20.7.1993 & 8.9.1993 for counting his seniority from the date of adhoc promotion. The Applicant No.2 made similar representations on 21.7.1993 and 16.10.1993. In these representations, the applicants have taken a stand that the respondents have failed to implement the directions as per order dated 24.9.1991 in OA.NO.323/89. However, the applicants did not get any reply to these representations. Feeling aggrieved, the present OA. has been filed jointly by both the applicants on 22.11.1993.

2. The applicants have sought the following reliefs :-(a) to direct the respondents to count the seniority of the applicants in the grade of Rs.2000-3200 from the date of their adhoc promotion, i.e. 16.7.1973 and 14.1.1974 respectively instead of 29.4.1980. (b) The pay of the applicants be fixed in Group 'B' after counting their seniority from 16.7.1973 and 14.1.1974 respectively in the grade of Rs.2000-3200. (c) to direct respondents to pay the arrears of difference of pay after fixation of their pay as per the due seniority as claimed.(d) direct respondents to give all consequential benefits to the

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applicants after refixation of their pay vis-a-vis their juniors.

(e) The respondents be directed to finalise the selection for promotion to Group 'B' posts of Assistant Works Manager held on 30.4.1989.

3. The respondents have opposed the application through the written statement. The respondents at the out set have pointed out that the applicants had suppressed the material facts with regard to declaration of panel. The respondents submit that the panel was notified on 16.9.1991 provisionally and subsequently the final panel has been notified on 30.4.1992 i.e. much before the OA. was filed. The respondents have also opposed the application on 3 technical grounds, namely, (a) there is no common cause of action to the applicants who have filed joint application and therefore the joint application as filed is not maintainable and deserves to be dismissed. (b) The application is barred by limitation. (c) The application is bad in law for non joinder of the necessary parties as the applicants are seeking seniority from the date of adhoc promotion without making the affected employees as party respondents as they are necessary party.

On merits, the respondents contend that the applicants were promoted as Assistant Shop Superintendent in the grade of Rs.2000-3200 on 6.7.1973 and 4.9.1974 respectively purely on adhoc basis as temporary and local arrangement, as will be seen from the copy of the promotion orders brought on the record. The

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applicants were regularly promoted only from 29.4.1980 after going through regular process of selection as per the extant rules. In view of this, the adhoc service cannot be counted for the purpose of seniority as claimed by the applicants. The respondents further contend that in the integrated seniority list the names of the applicants have been correctly indicated counting non-fortuitous service rendered in the grade of Rs.2000-3200 from 29.4.1980, i.e. date of regular promotion in terms of the instructions of the Railway Board in letters dated 22.12.1988 and 31.8.1989. Therefore, the claim of the applicants that the juniors have been shown as senior to the applicants is not tenable. The respondents further submit that the applicants have not disclosed the names of the alleged juniors who are shown as seniors. The applicants could not be placed on the select panel within the vacancies available for the general category. In view of these facts, the respondents plead that the OA. deserves to be dismissed.

4. Subsequently to filing of the OA., the applicants have filed an amendment application seeking the relief of placing the names of the applicants in the panel declared on 16.9.1991 as per their seniority in the grade of Rs.2000-3200 w.e.f. 16.7.1973 and 14.1.1975. This amendment application has been allowed.

5. The applicants have filed rejoinder reply. The applicants have controverted the technical objections raised by

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the respondents with regard to non common cause of action to the applicants, non-joinder of necessary parties and OA. being barred by limitation. On merits, while refuting the submissions of the respondents, the applicants have reiterated their grounds taken in the OA.

6. The applicants have filed additional affidavit bringing out that in the same Workshop, the selection in respect of the other trades were held early and thereby the persons working on adhoc were regularised earlier. In the case of applicants' trade, the holding of the regular selection was delayed. This has put the applicants in disadvantageous position in the integrated seniority list. Since holding of selection has been delayed by the respondents, the applicants cannot be made to suffer in the seniority vis-a-vis to their juniors who are shown senior in the integrated seniority list.

7. We have heard the arguments of Shri G.K.Masand, learned counsel for the applicants and Shri S.C.Dhawan, learned counsel for the respondents.

8. The respondents have contended that the applicants in the present OA. do not have a common cause of action as the issue involved is that of seniority and there is no common order under challenge and therefore the joint application is not maintainable. Considering the facts of the case, we are unable to accept this plea. Both the applicants are seeking the same

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reliefs and the grounds to support the ~~same~~ ^{reliefs} and the grounds to support the same are identical. Therefore, we have no hesitation to hold that the applicants have a common cause of action.

9. The main relief prayed for on which the other reliefs depend to flow as a consequence is that the respondents be directed to count the seniority of the applicants in the grade of Rs.2000-3200 from the date of their adhoc posting that is from 16.7.1973 and 14.1.1974 respectively instead of 29.4.1980. The applicants in the OA. have brought out in para 4 (e) that they had earlier filed OA.NO.323/1989 and the Tribunal as per order dated 24.9.1991 had directed the respondents that the entire period of adhoc promotion is to be counted towards seniority in the grade of Rs.2000-3200 and not from the date of empanelment for regularisation. Further, in para 6 of the OA., it is averred that respondents have failed to implement the order dated 24.9.1991 and therefore have committed the contempt of Court. With these submissions, it is obvious that as per the applicants, the matter agitated in the present OA. stood already concluded as per the order dated 24.9.1991. In such a situation, the present OA. is, therefore, nothing but an application praying for ^{execution} ~~extention~~ of ^{the} order dated 24.4.1991. However, on carefully going through the OA., it is noted that the averments made and grounds taken are such as if the matter is being agitated for the first time and ^{the} relief had not been granted as per the order dated

24.9.1991. The counsel for the applicant also argued the matter as a fresh OA. without reference to the grounds taken in the earlier OA.No.323/1989 and the findings recorded in the order dated 24.9.1991. The counsel for the respondents during the hearing contended that matter raised in the present OA. is already concluded as per order dated 24.9.1991 and the relief prayed for has been rejected as per this order. If this is so, then it is to be seen whether the present OA. attracts the principles of res judicata. To examine the matter from these angles, we have called for the record of the earlier OA.No.323/89. We have also carefully gone through the order dated 24.9.1991. We note that OA.No.323/89 was filed by the applicants along with the others challenging the integrated seniority list of the eligible candidates issued as per letter dated 20.3.1989 for selection to the Group 'B' post of Assistant Works Manager. In this seniority list, the position to the applicants in the list was provided based on the regular promotion in the grade of Rs.2000-3200. The claim of the applicants was that they ^{have} are entitled for seniority counting the period of adhoc promotion as it was against regular vacancies. The applicants relied upon the provisions of para 321 of Indian Railway Establishment Manual and the Railway Board's Circular dated 30.8.1983 as referred to in the order dated 24.9.1991. After considering the rival contentions and the cited judgements/orders, the Bench rejected the claim of the applicants for counting period of adhoc service for the purpose of counting seniority. Relevant portion from para 4 of the order is reproduced below :-

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" Learned counsel then contended that upto 1986 their services in any case were not to be treated fortuitous and as such certain rights accrued to them till that period as such they are entitled to benefit of the same which in any event would have been to their benefits if selection would have been made during this period. In the Ahmedabad case relied on by the applicant there was no consideration of seniority between the ad hoc promotees and the seniors in the cadre who were not promoted on adhoc basis and further in that there was no dispute that the earlier promotion on temporary basis to non-fortuitous vacancies. The facts of the instant case in which apart from existence of senior in cadre waiting for their turn in selection post the promotion has been stated to be stop gap and on ad hoc basis to meet exigencies of situation. In the Railway Board's circular dated 30.8.1983 it has been provided that only staff who held the respective grades on a regular basis shall be considered eligible for selection promotions. The applicants became entitled for selection in this view from the date of regularisation which seems to have been done and that is why three of them were allowed to appear in test. The question of counting the entire period of adhoc promotion in view of Circular of 1983 would have arisen if all of them would have been included in the zone of consideration and would have been selected and continued on the said promotion post. The same having not happened the applicants plea of counting of entire period towards seniority has got to be rejected."

From the above findings recorded, we are inclined to subscribe to the stand of the respondents that the claim for counting seniority in the grade of Rs.700-900/2000-3200 from the date of adhoc promotion had been rejected as per the order dated 24.9.1991. The applicant^{has} agitated the same matter through the present OA. ^{for} seeking the same relief. The present OA. is therefore hit by the principles of res judicata and is therefore not maintainable.

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From the above findings recorded, we are inclined to subscribe to the stand of the respondents that the claim for counting seniority in the grade of Rs. 700-900/2300-3200 from the date of adhoc promotion had been rejected as per the order dated 24.9.1991. The applicant has agitated the same matter through the present OA, seeking the same relief. The present OA is therefore hit by the principles of res judicata and is therefore not maintainable.

10. Both the sides have cited judgements/orders to support their grounds on merits. They are not being detailed and reviewed here in view of our conclusion above. Similarly, the technical objections of OA. being hit by the vice of non joinder of the necessary parties and being barred by limitation are not being gone into.

11. Since the main relief of grant of seniority in the grade of Rs.2000-3200 is barred by the principles of res judicata, then the other reliefs prayed for which are consequent to this relief will not survive and therefore stand rejected.

12. In the result of the above, the OA. is hit by the principles of res judicata and therefore not maintainable. The OA. is dismissed accordingly with no order as to costs.


(S.L.JAIN)

MEMBER (J)


(D.S.BANEJA)

MEMBER (A)

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