

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 9/1993

Date of Decision:

24/6/99

N.N.More & ors.

Applicant.

Sh.G.S.Walia

Advocate for
Applicant.

Versus

U.O.I. & ors.

Respondent(s)

Sh.V.S.Masurkar

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice K.M.Agarwal, Chairman

Hon'ble Shri. R.K.Ahooja, Member(A)

- (1) To be referred to the Reporter or not? *ye*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *no*

(Signature)
(R.K.Ahooja)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

D.A. No.8/93

THIS THE 24th DAY OF JUNE, 1999.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR.R.K.AHOODJA, MEMBER(A)

1. N.N.More
2. H.M.Vaidya
3. V.K.Mandavkar
4. B.B.Jaiswal

..... Applicants

All working as Sub Overseer Mistry
in the office of the Dy.Chief
Engineer (Construction)
Station Building, 8th Floor,
Churchgate, Western Railway,
Bombay-400 020

C/o Shri G.S.Walia
Office No.16, Bora Masjid Street
Maharashtra Bhavan, Fort, Behind
Handloom House, Bombay-400 001.

(BY ADVOCATE SHRI G.S.WALIA)

vs.

1. Union of India through
General Manager, Western Railway,
Churchgate, Bombay-400 020.
2. Chief Engineer (Construction)
Station Building, 8th Floor,
Churchgate, Bombay-400 020.
3. Dy.Chief Engineer(Construction)
Station Building, 8th Floor,
Churchgate, Bombay-400 020.
4. Divisional Railway Manager,
Bombay Division, Western Railway,
Bombay Central,
Bombay-400 008.

..... Respondents

(BY ADVOCATE SHRI V.S.MASURKAR)

ORDER

R.K.AHOODJA, MEMBER(A):

The brief facts of the case are that the applicants
were recruited as Khalasis in Bombay Division between the
years 1974 to 1976. By letter dated 9.11.1984, the Headquarter
Office of the Western Railway circulated a vacancy notice stating
that the Survey and Construction Department was in urgent need

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of about 16 Sub-Overseer Mistries(for short, SOM). As the concerned Railway Divisions were not able to provide staff on the basis of the tests conducted by them, the applications were invited from any Artisan category or Class IV staff of Engineering Department, who had completed 3 years of regular continuous service and who were willing to come on transfer to Survey and Construction Department. It was further provided that the transfer of the staff will be governed by the following terms and conditions:-

1. They will be liable to be posted anywhere in any of the above project, and once posted will have seniority with the adjacent division.

2. Their lien will continue to be maintained on open line. In case of reversion they will return to parent unit.

3. They will be eligible for regular posting only when they qualify in pre-promotion training in ZTS/UD."

A further letter was issued on 4.10.1985 on the same subject and it was provided that the appointment will now be confined to only three divisions and the select list of those found fit will be used only for the purpose of temporary vacancies in the Construction Work Department. It was further provided as follows:-

"On the expiry of workcharged posts, they will return to their parent category according to their position in the select list. They will not be eligible for absorption on any project outside the divn.

Their lien will continue to be maintained in their parent cadre and they will be eligible for all promotions as per rules in the channel of promotion where they hold lien.

They will have to qualify in pre-promotion training in ZTS/Udaipur."

2. The applicants were thereafter temporarily promoted as SOM against temporary vacancies on the aforequoted terms and conditions.

3. The grievances of the applicants now is that though they were on selection ~~they were~~ sent to Udaipur for regular training as SOM and were thereafter working regularly, by the impugned order they have been posted as Khalasis while at the same time certain other employees who were promoted after them on ad hoc basis as SOM have been allowed to continue in the higher posts.

4. The respondents in their reply have pointed out to the terms and conditions under which the applicants were appointed and submit that the applicants have ~~now~~ been reverted back on the terms and conditions stipulated in the promotion letter dated 3.3.1986.

5. We have heard the learned counsel for the parties. Shri G.S. Malia, learned counsel for the applicants submitted that the Survey and Construction Department and Open Line were now regarded as one unit in so far as the inter-se seniority of those working in either department was concerned. He pointed out that while earlier there used to be to/separate seniority of the staff working in the Open Line and the Survey and Construction ^{later} by Railway's letter dated 25.10.1983 these two separate cadres were combined in order to ensure that there was no disparity in the prospects of promotion between Open Line staff and construction staff. Consequently the persons who had been promoted to the post of SOM now in the Open Line later to the date of promotion of the applicants are to be regarded as juniors to the applicants. On that basis, the applicants cannot be reverted while their juniors are being continued in the higher posts.

6. Though on the face of it, this argument would appear to carry substance, on a closer examination, we find that it has no ground to stand on. The applicants were working before their promotion as Class IV staff in the post of Khalasis. It has been claimed by the respondents and not denied by the applicants that the posts of SOM

are to be filled through the next below level of Artisan Grade I and Grade II. The Class IV staff belonged to the still lower level. The claim of the applicants is that there being no eligible persons in the category of Artisans, the respondents had allowed Group 'D' staff also to appear in the test for selection as is permissible under the rules. But what the applicant does not state is whether the so called juniors who have been promoted in the Open Line as SOM belonged to the Artisan category or that of Group 'D' category. Since ~~these~~ those who were promoted in the Open Line after the applicants were not from the Group 'D' category, the applicants cannot claim that they were juniors to the applicants. The promotion of the applicants in terms of their appointment letters was not on regular basis but only on short-term contingencies of workcharged posts with a clear stipulation that the appointees were liable to be reverted back to the original cadre to which they belonged. That being so, they could not claim inter se seniority with Open Line appointees since this inter se seniority could only be established amongst regular appointees. As far as the claim that one set of ad hoc appointees cannot be replaced by another set of ad hoc appointees, the applicants cannot claim parity with those promoted from amongst the Artisan categories.

7. We, therefore, find that the applicants cannot claim to continue as SOM either on the basis of their being regularly appointed or on the basis that the persons promoted after them in the Open Line are still continuing as SOM.

8. In the result, this O.A. fails and is accordingly dismissed. No costs.

Jon
(K.M.AGARWAL)
Chairman

R.K. Ahuja
(R.K.Ahujia)
Member(A)