

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 371/93

Transfer Application No.

Date of Decision 10-06-97

P.K.Pande

Petitioner/s

Shri G.K.Masand with Shri Tulskar

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri S.C.Dhawan for R-1&2

Shri P.G.Zare for R-3 to 6


Advocate for
the Respondents


CORAM :

Hon'ble Shri. B.S.Hegde, Member (J)

Hon'ble Shri. M.R.Kolhatkar, Member (A)

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


(M.R.KOLHATKAR)
MEMBER (A)


(B.S.HEGDE)
MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA.NO.371/93

Pronounced this the 10th day of June 1997

CORAM: Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri M.R.Kolhatkar, Member (A)

Pramod Kumar Pande
Working as Assistant Comml.Manager
(Ticket Checking) at Head Quarters,
Office of the Chief Commercial Manager,
Central Railway, Bombay V.T. Bombay.

By Advocate Shri G.K.Masand with
Shri Tulskar

... Applicant

V/S.

1. Union of India through the
General Manager, Central Railway,
Bombay V.T., Bombay.
2. The Chief Personnel Officer (C),
Central Railway, Bombay V.T.,
Bombay.
3. Y.K.Tripathi
working as Asstt.Comml.Manager,
In the Office of Div.Rly.Manager,
Jabalpur Division, Central Railway,
Jabalpur.
4. D.Varma
working as Asstt.Comml.Manager,
(Reservation),
In the Office of Div.Rly.Manager,
Bombay Division, Central Railway,
Bombay.
5. G.S.Awasthi
working as Asstt.Comml.Manager,
In the office of Div.Rly.Manager,
Central Rly.Sholapur Division,
Sholapur.
6. K.H.Saxena
Working as Asstt.Comml.Manager,
in the Office of Div.Rly.Manager,
Bhusawal Division, Central Railway,
Bhusawal.
7. V.K.Shukla
working as Asstt.Comml.Manager
In the office of Div.Rly.Manager,
Jhansi Division, Central Railway,
Jhansi.
8. P.L.Khanna
working as Asstt.Catering Manager,
In the office of Chief Comml.Mgr.
Central Rly. Bombay V.T., Bombay.

By Advocate Shri S.C.Dhawan
C.G.S.C. for Respondents No.1 & 2.

Shri P.G.Zare for Respondents No. 3 to 6

... Respondents

O R D E R

(Per: Shri M.R.Kolhatkar, Member (A))

In this OA, the applicant has challenged the communication dated 19.12.1988 at Ex.'A' and communication dated 1.8.1989 at Ex-'B' relating to re-fixation of seniority of the staff of Commercial Supervisors in Gr.Rs.2000-3200. According to the applicant, he was in the first batch along with three apprentices in a panel of 21 candidates recruited through Railway Service Commission. He joined in November, 1977 and completed his training in 1979. The integrated seniority was notified on 30.9.1988 in which he was shown as senior-most amongst all apprentices. However, the communication dated 19.12.1988 was issued on the basis of the representation made by one Shri V.T.Nikam. It was Shri Nikam's contention that he was senior in terms of final examination of apprentices conducted by Headquarters. The applicant contends, however, that the test conducted by the Headquarters was only a suitability test and what is required to be considered is the marks obtained in the examination of the Training School and on the basis of the examination of the training school, he having attended the training in the first batch was on the top of the seniority list and this was in accordance with Indian Railway Establishment Manual Rule 303 (a) which reads as below :-

"303. The seniority of candidates recruited through the Railway Service Commission or by any other recruiting authority should be determined as under :-

- (a) Candidates who are sent for initial training to training school will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts."

2. According to the applicant, he was not only at the top at the batch at the time of training but subsequently at all the stages of promotion, namely, promotion to the grade of Rs.550-750 on 6.10.1981 and promotion to the grade of Rs.700-900 on 1.1.1984, ^{the one} he was first to be promoted amongst all. In the seniority position as in September, 1988, the applicant was at S.No. 142 whereas the private respondents, Sr.No. 3 to 8 were at S.No. 156, 146, 144, 152, 145 and 153 and therefore seniority could not have been changed by the communication dated 19.12.1988 on ^{his} the basis of a solitary representation as a result of which seniority has gone down from 142 to 171. According to the applicant, the communication dated 19.12.1988 making changes in the seniority list is also in violation of principles of natural justice because no show cause notice was issued to him as to why his seniority should not be modified for the reasons indicated. Moreover, in the communication dated 1.8.1989 it is stated that the applicant was assigned higher seniority position by mistake and the same has been rectified. However, what that mistake was has not at all been made clear and the applicant has been subjected to adverse civil consequences in violation of principles of natural justice and therefore the communication dated 1.8.1989 is also vitiated.

3. Respondents have raised a preliminary objection that the OA. is barred by limitation in terms of the binding ratio of the Supreme Court judgement in S.S. Rathore vs. State of M.P., AIR 1990 SC 10. The applicant has been aggrieved by the communication dated 19.12.1988 and by the communication dated 1.8.1989 and therefore in terms of the law laid down by the S.S.Rathore's case the cause of action arose latest on 1.8.1989. The applicant ought to have ~~been~~ approached the Tribunal within six months. The applicant may have represented subsequently, but the repeated representation not provided by law do not extend the period of limitation and therefore the OA. should be dismissed at the threshold.

4. The counsel for the respondents has also invited our attention to the latest Supreme Court judgement in L.Chandra Kumar vs. Union of India & Ors. 1997(2) SLR 1 (SC) Civil Appeal No. 481 of 1980 etc. decided on 18.3.1997, which was a judgement by seven member Bench. In that judgement, in para 16 the Hon'ble Supreme Court has observed that A.T.Act specifies strict limitation periods and does not vest the Tribunal with the power to condone delay. It is further contended that the applicant is required to explain each day's delay. The applicant has not taken the trouble of explaining the delay even in a general way while filing the OA. which was filed on 6.4.1993, i.e. almost 3 years after the cause of action arose.

5. The counsel for the respondents has further submitted that the interpretation given by the applicant to the IREM Rule 303(a) is not correct. The applicant along with the apprentices who are sent in batches to the Zonal Training School, Bhusawal are imparted two years training. The applicant after completion of training was given posting as Commercial Inspector. The applicant

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may have been first to have joined in a working
post but he was wrongly promoted to Gr.Rs.550-750(RS)
w.e.f. 6.10.1981 as per the wrong seniority maintained
in the Division. The final examination took place
at the headquarters and the applicant was low in rank
in terms of the results of the examination.

6. In our view, the OAst is barred by limitation
view the
keeping in ratio laid down in S.S.Rathore's case.

The counsel for the applicant, however, argued that
the case is required to be considered on merits because
there is an identical case interpreting Rule 303 of
IREM reported at (1996) 33 ATC 8 Hyder Hussain & Ors.
vs. Chief Personnel Officer, S.C.Railway & Ors. in
which the Tribunal has interpreted Rule 303(a) in
Para 9 as below :-

"9. So, it is just and proper to construe
the first limb of Para 303 (a) as under :-

"Whenever the candidates selected in
pursuance of particular notification are
sent for training in batches by following
panel position in the select list, those
who were sent in the later batch for
training have to be placed below those
who were sent for training in the earlier
batch.

Inter se seniority of those who were
sent in the same batch of training has
to be determined on the basis of the
marks secured in the examination that
is held after the training."

7. It is true that the instant
case is required
to be considered from the point of applicability of
of that case case
the ratio because that also relates to Railways and
interprets Rule 303(a) in relation to a similar cadre
of the Railways, namely, Inspector of Works rather
than the Commercial Inspectors cadre which is under
consideration in the present OA. We note in this
connection that in Hyder Hussain's case quoted
above panel position is followed for

sending the selected candidates for training and accordingly ^{Hyd. Bench} (L) has interpreted Rule 303 by specifying that its interpretation ^{would} apply in ~~the~~ case of candidates selected in particular panel ^{are} sent in batches strictly according to panel position. We, therefore, wanted to know whether in the present case ^{also} candidates selected for training were sent for training in batches by following the panel position. The panel dated 8.9.1977 was produced before us by the counsel for the respondents. According to the order of merit, the first 14 candidates who are undoubtedly recommended by R.S.C. are as below :-

1. Rajan Vasan Vaswani
2. Girija Shankar Awasthy
3. Rakesh Kumar Saxena
4. Pramod Kumar Pandey
5. Naresh Kumar Dewani
6. Dhirendra Verma
7. Devidas Kashinath Khairnar
8. Chitranjan Goswami
9. Yashwant Kumar Tripathi
10. Chaitanya Prabhakar Joshi
11. Krishan Mohan Saxena
12. Vijay Kumar Shukla
13. Bhaisare Harishchandra Pandurang
14. Purshotamlal

The averment of the applicant is that in the first batch the apprentices who were sent for training were the applicant (P.K.Pande), A.P.Misra and C.Goswami. It is clear from the panel position that the applicant was only at Sl.No. 4 of the Panel and so far as private respondents are concerned, Respondent No.5 (G.S.Awasthi) and Respondent No. 6 (R.K.Saxena) are above him in the panel but they were not in the first batch sent for training.

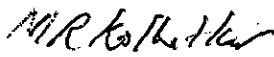
Although, the applicant cannot deny that they are higher in merit than the applicant from the point of view of panel position, the contention of the applicant is that he completed the training in the Z.T.S. first and he was the first to join in the working post and on that basis he is entitled to rank senior. But this contention of the applicant is not borne out either by a plain reading of the rules or by the interpretation given to the rules by the Hyderabad Bench of the Tribunal. Moreover, Rule 303(a) talks of "order of merit obtained at the examination held at the end of training" and not order of merit at the Zonal Training School. Overall training lasts for two years. It cannot, therefore, be accepted that because the applicant joined Bhusawal Training School first, he, therefore, in terms of Rule 303(a) is entitled to be considered irrespective of merit position obtained by him in the examination at the end of the training period.

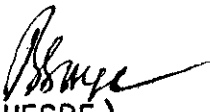
8. In our view, therefore, the ratio of Hyder Hussain's case does not help the applicant and the interpretation placed by us on Rule 303 (a) shows that the department was right to rectify the seniority list.

9. The next question is whether the communication dated 19.12.1988 may be interfered with on the ground that it violates the principles of natural justice. In our view, the communication dated 19.12.1988 has to be read along with communication dtd. 1.8.1989 because the applicant represented against the first communication and he was given a speaking reply by the second communication and, therefore, in our view, these communications are not liable to be interfered with on the grounds of violation of principles of natural justice.

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10. We are, therefore, of the view that both ~~on the grounds~~ of limitation as well as on merit the OA. is liable to be dismissed. We, accordingly, dismiss the OA. with no orders as to costs.


(M.R. KOLHATKAR)
MEMBER (A)


(B.S. HEGDE)
MEMBER (J)

mrj.