

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 912/93

Date of Decision : 22.11.2000

C.Digamber & Ors. Applicant.

Shri G.S.Walia

Advocate for the  
Applicant.

VERSUS

Union of India & Ors. Respondents.

Shri S.C.Dhawan


Advocate for the  
Respondents.

CORAM :

The Hon'ble Shri B.S.Jai Parameshwar, Member (J)

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

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

  
(B.S. Jai Parameshwar)  
MEMBER (J)  
22.11.00

mrj\*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.912/93

Wednesday this the 22nd day of November, 2000.

CORAM : Hon'ble Shri B.S.Jai Parameshwar, Member (J)

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

1. Chandrakant Digamber
2. Haridas Yedu
3. Bhima Pandurang
4. Vasant Raghunath
5. Pandit Umrao

All working as Carpenters  
in the Carpentry Trade of  
the Kurduwadi Workshop,  
Central Railway, Bombay.

... Applicants

By Advocate Shri G.S.Walia

V/S.

1. Union of India through  
General Manager,  
Central Railway,  
Bombay V.T., Bombay.
2. Chief Personnel Officer,  
Central Railway,  
Bombay V.T., Bombay.
3. Works Manager,  
Central Railway Workshop,  
Kurduwadi, Maharashtra.
4. D.G.Survase
5. B.A.Gosavi
6. Namdeo Vishnu

... Respondents

Respondents Nos.4,5 and 6  
working as Carpenter Gr.I  
under Respondent No. 3.

By Advocate Shri S.C.Dhawan

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O R D E R (ORAL)

{Per : Shri B.S.Jai Parameshwar, Member (J)}

Heard Shri G.S.Walia, learned counsel for the applicants and Shri S.C.Dhawan, learned Standing Counsel for the respondents. Notice issued to Respondents No. 4, 5 and 6 served, called absent.

2. There are 5 applicants in this OA. The applicants were working as Skilled Carpenters in the scale of Rs.260-400 during the year 1983. On 1.8.1983 a seniority list was published and the applicants were shown therein at Sr.No.5,7,11,15 and 18 respectively. On 27.10.1984, the respondents issued an order regarding assignment of seniority of Carpenters wherein it was mentioned that the Railway Board by its letter dated 13.11.1982 had issued certain instructions to re-classify certain category of existing semi-skilled posts in the scale of Rs.210-380 as skilled post in the scale of Rs.260-400 w.e.f. 1.8.1978. The said letter dated 16/27.10.1984 of the Railway Board is at Ex.'B' page 12 to the OA. Paras 2 & 3 read as follows :-

" 2. Employees promoted/appointed earlier between 13.11.1982 and 1.8.1978 have been posted after conducting the prescribed standard Trade Test and the employees re-classified have been posted to the upgraded posts without passing through such trade tests."

3. Revised seniority list has been compiled based on the instructions contained in ACME/PR's letter No. E.1/252-8 dated 26.11.1983 and CPO(M)/BBVT's letter No.HPB/706/M-U/D/ Act. Appr. dated 27.4.1984 and is circulated for the information of all concerned and is sent herewith."

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3. The Respondents by their letter dated 26.6.1987 (Order No.57 of 1987) proposed to revert the junior-most employees promoted as Carpenters on the basis of the revised seniority list published earlier and to promote the senior-most eligible candidates vice them. The order of the seniority given to the applicants and Respondents No. 4 to 6 was also mentioned therein. The letter dated 26.6.1987 is at Ex.'C'. The said order was passed in continuation of Office Order No. 54 of 1987.

4. Pursuant to the said order dated 26.6.1987 an Office Order No. 57 of 1987 was issued wherein the Respondent No. 5 who was working as Carpenter Skilled Grade I was reverted to the post of Carpenter Highly Skilled Grade II. The Respondent No. 4 who was working as Carpenter Skilled Grade I was reverted to Highly Skilled Grade II and Respondent No. 6 was also reverted from the post of Skilled Grade I to the post of Highly Skilled Grade II. Thus, Respondents No. 4 to 6 were reverted w.e.f. 26.6.1987.

5. At that time the Applicant No. 1 was promoted as Carpenter w.e.f. 4.7.1985 and was made eligible for proforma fixation of pay on passing the Trade Test. The Applicant No. 2 who was working as Carpenter Grade II in the scale of Rs.1200-1800 was promoted to officiate as Carpenter Highly Skilled Grade I in the scale of Rs.1320-2040 w.e.f. 1.7.1986. He was also made eligible for proforma fixation of pay from



1.7.1986 on passing the Trade Test of Highly Skilled Grade I held on 18.3.1987. Further, he was made eligible for arrears from the date of passing the Trade Test. The applicants submit that though it was mentioned in the last para in the letter dated 26.6.1987 that the employees were promoted on temporary measure and would not constitute claim or bestow on them any prescriptive right in any way for consideration in the event of such or similar Temp./Perm. vacancies occurring at later date or to continue in the same grade and post in preference to his seniors. It was also mentioned that the promotions are subject to termination without prior notice if so warranted in the exigencies of service. The applicants<sup>1 and 2</sup> do not dispute the said conditions imposed on them while they were given promotion to Highly Skilled Grade I and also state that they were eligible for difference of pay on passing the Trade Test. The applicants submit that incorporation of conditions in the said order do not affect their cause in any manner.

6. By Office Order No.4/92 the Respondent No. 3 issued a promotion order in the Kurduwadi Workshop wherein it was mentioned that the seniority was revised and the Respondents No. 4 to 6 were shown as seniors to the applicants wherein the basic pay of the applicants were reduced and that of the Respondents No. 4 to 6 were increased.

7. They submit that the change in seniority was done without giving them any opportunity<sup>and</sup> was in violation of principles of natural justice. They have annexed at Ex.'D1' a copy of the order dated 7.1.1992.

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8. The Applicants submit that their promotion as Highly Skilled Grade I was effected after due process of law and thereafter they became eligible for all consequential benefits of promotion including fixation of pay and arrears thereof. The pay of the applicants cannot now be reduced without giving a show cause notice and without following the principles of natural justice. They submit that the change in the seniority list has serious civil consequences. By order dated 21.7.1993, the WAO, Parel ordered to recover over payments made to the applicants. The order dated 21.7.1993 is at Ex. 'E' page 16 to the OA.

9. Being aggrieved by the action of the respondents, the applicants have filed this OA. for the following reliefs :-

" (a) to hold and declare that the applicants are senior to the Respondents No. 4 to 6 as Carpenter Grade-I.

(b) to quash and set aside the seniority list dated 7.1.1992 vide office order 04 of 1992 and

(c) to hold and declare that the basic pay of the applicant was rightly fixed and cannot be reduced and the respondents are not entitled to recover any amount on the grounds of alleged over payment."

10. Applicants have challenged the action of the respondents on the following grounds :-

(a) The change in the seniority list has been effected without giving them a notice.

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(b) The action of the respondents in granting seniority to the Respondents No. 4 to 6 is irregular and arbitrary.

(c) The pay of the applicants cannot be reduced without a notice to them and without following the principles of natural justice.

(d) The Respondents No. 1 to 3 cannot recover any amount from the salary of the applicants on the alleged ground of over-payment. The applicants have worked as Skilled Grade-I and shouldered the higher responsibility and as such they are entitled to such payment. Further, they submit that their basic pay cannot be reduced after their promotion having been effected by due process of law, i.e. by holding the Trade Test.

11. On 3.9.1993 an interim order in terms of Para 9 (a) of the application was issued.

12. The respondents have filed the reply. They submit that the Applicant No. 1 was appointed as Khalasi on 8.3.1994. The Applicants No. 2 & 3 were appointed as Khalasi on 14.12.1962 and

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6.2.1964 respectively, in divisions and transferred on own request to Kurduwadi Workshop on 28.10.1967 and 10.8.1968 respectively. Promotion from Khalasi to Grade III Carpenter was on the basis of seniority cum suitability.

13. The Respondent No. 5 was also appointed as Khalasi on 4.2.1963 and transferred to Kurduwadi on 7.2.1968 on his own request. Applicants No. 4 & 5 were appointed as Khalasi on 9.10.1978. Further, they submit that the Respondents No. 4 to 6 were not in service during the above said period from 1962 to 1967. All the applicants and the Respondent No. 5 were promoted as Basic Tradesman Carpenter during the period from 1968 to 1980 in the scale of Rs.210-290 and the Respondents No. 4 to 6 were not in service at that time.

14. The Respondent No. 4 was appointed as Skilled Carpenter Grade III against 25% Direct Recruitment quota on 26.5.1980. Applicants No. 1, 2 & 3 were all trade tested and were later promoted as Skilled carpenter grade III w.e.f. 2.5.1979, 1.8.1980 and 9.7.1982. Respondent No. 5 was trade tested and promoted as Skilled carpenter Gr.III w.e.f. 1.1.1982 and the Respondent No. 4 is senior to all the applicants except Applicant No. 1. Applicant No. 1 was promoted as Skilled Gr.III w.e.f. 2.5.1979. Respondent No. 5 Shri B.A.Gosavi is senior to Applicant No. 3. Respondent No. 6 was working as Khalasi in the scale of Rs.196-232/Rs.750-940 (RPS) was promoted

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as Skilled Carpenter Gr. III from 1.5.1982 against 25% quota for departmental Khalasis. Later, Applicants No. 4 & 5 working as Khalasi were promoted as Skilled Carpenter Grade III w.e.f. 18.12.1981 against re-classification vide Board's order dated 13.11.1982 and hence they are junior to Respondent No. 6, Shri Namdeo Vishnu.

15. Applicant No. 1 is senior to all the Applicants No. 2 to 5 and the Respondents No. 4 to 6 in Skilled Carpenter Grade III in the scale of Rs.260-400 and promotion to Grade II Carpenter is from Grade III Carpenter and is based on seniority cum suitability. The Applicants No. 1 & 2 and Respondents No. 4 to 6 were called for Trade Test along with one Shri Laxman Tulshiram and were found unsuitable for the post of Skilled Grade I Carpenter held on 28.1.1985 and 11.2.1986. Subsequently, the other junior three employees, namely, Respondents No. 4 to 6 were called for Trade Test and were found suitable. The Respondents No. 4 to 6 were later reverted w.e.f. 26.6.1987 and in those vacancies Applicants No. 1 & 2 were promoted as Skilled Grade I w.e.f. 6.5.1985, 1.7.1985 and 1.7.1986 respectively vide office order No. 57 of 1987 dated 26.6.1987. The Pay fixation and seniority was revised vide Office Order No. 4/1992 dated 7.1.1992. The applicants and others submitted representation dated 16.1.1992 against the order dated 7.1.1992. The SPO PR in letter dated 23.1.1992 advised not to give effect and that the status-quo should be maintained till further advise. However,

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the impugned order dated 7.1.1992 was implemented after obtaining clearance from Head Quarter's office and CWM's Parel letter dated 19.12.1992. They submit that a proposal regarding arrears of payment and recovery of over payment was sent to WAO PR for verification and financial concurrence vide CWM PR's letter dated 26.5.1993. Workshop Accounts Officer, Parel verified and gave his concurrence to the above proposal vide his letter dated 21.7.1993. They submit that over payment to the Applicants No. 1 & 2 have not been recovered so far. They further submit that in view of interim order recovery has not been effected. They admit that consequent upon the reversion of the Respondents No. 4 to 6, the applicants No. 1 & 2 were promoted to Skilled Grade I to Grade II and were given proforma fixation. It was generally stated that promotion order was issued with certain conditions. The Applicants No. 4 & 5 were promoted against re-classification without Trade Test vide Board's order dated 13.11.1982. The Respondent No. 4 was appointed against 25% quota and the Respondent No. 6 was posted as Skilled Dept. 25% quota for inservice Khalasis. Thus, they submit that the action taken by them is in order and they have also furnished the detailed service position of the applicants and the Respondents No. 4 to 6 in Ex.'R-1'. Thus they pray for dismissal of the application.

16. Admittedly, the applicants were shown in the seniority list dated 1.8.1983 at Sr.No.5,7,11,17 & 18 and at that time, the Respondents No. 4 to 6 were shown at Sr.No.14,19 and 10

respectively. Only on the basis of the instructions issued by the Railway Board's letter dated 13.11.1982, semi-skilled posts were re-classified as skilled posts in the scale of Rs.260-400 w.e.f. 1.8.1978. This is evident from Ex.'B' dated 27.10.1984 in para 2 & 3 of the letter which is extracted above.

17. On the basis of the revised seniority list, the Respondents No. 4 to 6 were reverted and on that basis the applicants<sup>1 and 2.</sup> were promoted with retrospective dates and even the applicants were entitled for fixation of pay as per Office Order No. 57/87 Ex.'C' dated 26.6.1987. Even though certain conditions were laid down in the letter dated 26.6.1987, it is clear that at that time the Respondents No. 4 to 6 were reverted on account of revision of seniority. When it is so, the respondents without giving an opportunity to the applicants could not have attempted to revise the seniority by the impugned letter dated 7.1.1992.

18. If the respondents felt that the applicants were given promotion by the order dated 26.6.1987 and modification was necessary, then they should have given an opportunity to the applicants indicating the reasons on the basis of which they proposed to revise the seniority. That has not been done. What the respondents now attempted to explain in the reply could have been done prior to issue of letter dated 7.1.1992. They should have given an opportunity to the applicants to have their say in the matter.

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19. The learned counsel for the applicant during the course of his arguments relied upon the decision of the Hon'ble Supreme Court in the case of Bhagwan Shukla vs. Union of India & Ors. (reported in 1994 SCC (L&S) 1320) to contend that once the pay fixed on promotion, reduction without giving an opportunity is violative of principles of natural justice. Further, he relied upon the decision of the Hon'ble Supreme Court in the case of K.I. Shephard & Ors. vs. Union of India & Ors. (reported in 1987 SCC (L&S) 438) to contend that even in emergent situations, compliance with at least minimum requirements<sup>of</sup> natural justice rules is a condition precedent to taking any action which affects adverse civil consequences such as loss of livelihood etc. He also relied upon the decision of Hon'ble Supreme Court in the case of B.S. Bajwa & Anr. vs. State of Punjab & Ors., (reported in 1998 SCC (L&S) 611) to contend that seniority position of the applicants had been determined by order dated 26.6.1987 and that could not have been modified or altered without giving them an opportunity.

20. As against this, the learned counsel for the respondents contended that for promotion from Highly Skilled Grade II to Highly Skilled Grade I seniority cum suitability is the criteria but the applicants were found not suitable on the basis of the Trade Test conducted and therefore they have not been promoted. The Respondents No.4 to 6 thus regained the seniority. Thus, they relied upon Ex.'R-1' wherein the relative position of the applicants and the Respondents No.4 to 6 are shown.



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21. The main contention of the applicants in this OA. is that the action of the respondents in changing their seniority position and attempting to recover the pay already paid without giving them an opportunity is irregular. This is the main ground to challenge the impugned letter dated 7.1.1992 and the action in proposing to recover the payments made to them. As already observed, the applicants have discharged their duties in the Highly Skilled Gr.I. When that was so, after a lapse of about 5 years the respondents issued order dated 7.1.1992 to recover over payments.

22. If they felt that the order dated 26.6.1987 which was made reverting the private Respondents No. 4 to 6 and promoting the applicants was not in order, then they should have given an opportunity to the affected parties.

23. Even now we are reserving liberty to the respondents to consider the case of the applicants strictly adhering to the principles of natural justice. As the letter dated 7.1.1992 has been issued without following the principles of natural justice, the same is not sustainable in law. Hence, the said letter is liable to be set aside.

24. In that view of the matter, we issue the following directions :-

(a) The Impugned letter dated 7.1.1992 is hereby set aside.

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(b) The respondents shall not recover any over payment until they consider and decide the cases of the applicants and respondents 5 to 6 on the basis of Ex.'R-1'.

(c) The same shall be made after giving necessary opportunities to the affected parties.

(d) If the respondents desire that the seniorty has to be altered or modified, they must give sufficient opportunities to the affected parties keeping in mind that settled position in seniority shall not be unsettled after lapse of considerable time.

(e) The applicants are entitled to consequential benefits on setting aside the impugned order dated 7.1.1992.

25. With the above directions, the OA. is allowed. No order as to costs.

  
(SMT. SHANTA SHASTRY)

MEMBER (A)

  
(B.S. JAI PARAMESHWAR)

22.11.00  
MEMBER (J)

mrj.