

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING No.6
PRESCOT ROAD, MUMBAI 400001

O.A.No. 750 of 1994

DATED : THIS 21st DAY OF JULY, 1998

Coram : Hon. Shri Justice R.G. Vaidyanatha, V.C.
Hon. Shri D.S. Baewja, Member(A)

1. Shri Samson Stanley
 2. Smt. Shanta Rajan
 3. Smt. Sunita D'Souza
 4. Smt. B.J. D'Mello
 5. Smt. Meenakshi S.
 6. Smt. Ratnamohan
 7. Smt. Rachna R. Bagwe
 8. Smt. Narayani Muthuswamy
 9. Smt. Lalita M.V.
 - 10 Smt. Seetalakshmi V.
 - 11 Smt. Lalita S.
 - 12 Smt. Ambujam B. Nair
 - 13 Smt. Paralkar V.R.
- (Applicants 1 to 13 working
as Senior Stenographers in
Grade Rs.1400-2600 in
Western Railway, Bombay Divn.,
Mumbai)

(By Adv. Mr. M.S.Ramamurthy)

..Applicants

V/s.

1. Union of India
through the General Manager
Western Railway
Churchgate,
Mumbai 400020
2. Chief Personnel Officer
Western Railway
Churchgate
Mumbai 400008
3. Senior Divisional Personnel
Officer, Western Railway
Divisional Railway Manager's
Office, Bombay Central,
Mumbai 400008

(By Adv. Mr. V.S. Masurkar,
Central Government Senior Standing
Counsel)

..Respondents

Ref


O R D E R

(Per: R.G.Vaidyanatha, Vice Chairman)

1. Thirteen persons have filed this joint Application claiming for regularisation of services and consequential benefits. The Respondents have filed reply. We have heard the learned counsel appearing on both the sides.
2. The applicants are now working as Senior Stenographers (Confidential Assistants) in the scale Rs.1400-2600 in the Western Railway. The applicants came to be appointed as Stenographers in the years 1981 / 1982 through the Railway Recruitment Board in the scale of Rs.1200-2040 in the Bombay Division of Western Railway. All the applicants came to be promoted as Senior Stenographers on ad hoc basis in the grade of Rs.1400-2600 on different dates from 1984 to 1988. The applicants are entitled to be regularised in their promoted post after ascertaining their speed in a speed test. That was the only requirement for making regular promotions. But the respondents did not hold the speed test and there was considerable delay for a number of years in holding the speed test. It was also alleged that in other Divisions of Western Railway speed tests are held from time to time. It is also stated that the applicants Nos. 1 to 6 had already passed the speed test at the time of their initial recruitment itself and therefore they are exempted from passing any further speed test. Therefore, the promotion of applicants 1 to 6 should have been on regular basis from the inception itself and need not have been on


Ry

on ad hoc basis. Then it is stated that after a number of representations from the applicants and by the Union, the respondents held speed test in stenography in the year 1993. Applicants Nos. 7 to 13 passed in the speed test. The respondents have now issued the order regularising the services of all the applicants in the promoted post from July 1993 i.e., the date of their passing in the speed test. Earlier the respondents have issued the seniority list of the senior stenographers dated 5.3.93 in which the names of the applicants are not shown. It is stated that the applicants cannot be penalised or denied the benefit of seniority and regularisation due to delay on the part of the respondents in conducting the speed test in Bombay Division. That the applicants had all the necessary qualifications for being promoted to the post of Senior Stenographers and therefore the applicant's regularisation should be from the date of their initial ad hoc promotion and not from the date of actual regularisation order issued in 1993. Therefore, the applicants have approached this Tribunal praying for regularisation of their services in the post of senior stenographers from the date of their initial date of promotion, to grant the applicants the seniority from that date and the applicants be correctly shown in the seniority list dated 5.3.93, alternatively it is prayed that atleast applicants 1 to 6, who had all the necessary qualifications and are exempted from speed test, are entitled to be regularised in the post of senior stenographer from the date of ~~their~~ initial ad hoc promotion.



3. The respondents in their reply have stated that the present joint application by different applicants is not maintainable in law; that the application is barred by time; it is admitted that there was some delay in holding the speed test, but the applicants who were promoted on ad hoc basis cannot claim their ad hoc services for the purpose of seniority or they cannot claim regularisation from the date of their initial ad hoc promotion. It is also stated that the applicants were working in workcharged establishment and therefore they cannot be promoted in the regular vacancies at the relevant time. The applicants are entitled to regular promotion only after passing the speed test, that the ad hoc promotion will not give them any right of seniority or any other claim. Hence the applicants are not entitled for any of the reliefs prayed for in the O.A.

4. Mr. M.S.Ramamurthy, learned senior Counsel appearing from the applicants took us through the pleadings and documents on record and contended that all the applicants are entitled to regularisation from the date of their initial ad hoc appointment. He also made an alternative submission that applicants Nos.1 to 6 are entitled to regularisation in their present promoted post from the date of their initial ad hoc promotion. On the other hand the learned counsel for the respondents while opposing the claim of the applicants on merits also raised some objections about the maintainability of the application.



5. In the light of the arguments addressed before us, the points that fall for determination in this case are : -


- (i) Whether the application is bad for non-joinder of necessary parties ?
- (ii) Whether the application is not maintainable on the ground of applicants not having exhausted departmental remedies ?
- (iii) Whether the joint application by thirteen applicants is not maintainable ?
- (iv) Whether all the applicants or alternatively applicants Nos. 1 to 6 are entitled to regularisation in the present promoted post of senior stenographers in the pay scale of Rs.1400-2600 as claimed ?
- (v) Whether all or any of the applicants are entitled to the consequential relief of seniority and proper placement in the seniority list dated 5.3.1993 ?
- (vi) What relief ?

ky

6. Point (i) :

The learned counsel for the respondents contended that since the applicants are claiming changes in the seniority list, the O.A. is not maintainable since the employees shown in the seniority list dated 5.3.93 are not made parties to this O.A. He placed reliance on two authorities in support of this argument -

- In 1996(3) SCC 587 (J. JOSE DHANAPPAUL Vs. S. THOMAS & ORS) it is was a case of seeking cancellation of appointment of a particular person and the O.A. was filed without impleading that person. It was therefore held that since the person to be affected by the order is not made a party the application is not maintainable.
- In 1995 SCC(L&S) 373 (ISHWAR SINGH AJAY KUMAR & ORS Vs. KULDIP SINGH & ORS)
 - it was a case of again challenging the appointment of candidates who are shown in the select list. The selected candidates were not made parties. It was therefore held that the writ petition was not maintainable.

In our view none of the above two decisions have any bearing on the facts of this case. The applicants are not challenging the correctness of the seniority list dated 5.3.1993 nor are they questioning the placement given to the persons mentioned therein. The applicants case about seniority is 

based on principle of law viz., whether their ad hoc services should be regularised or not. If the Tribunal holds that the applicants ad hoc services should be regularised from the date of their initial ad hoc promotion then automatically the applicants names would have to be shown in the proper place as per the date of their initial ad hoc promotion. The applicants have no grievance against any of the officials mentioned in the seniority list dated 5.3.93, but their names have not been shown at the respective places. Here the question of seniority is dependent on the principle to be decided by the Tribunal. In such a case it is not necessary that the persons shown in the seniority list dated 5.3.93 should be made as party respondents to this case.

In AIR 1983 SC 769 (A. JANARDHANA Vs. UNION OF INDIA & ORS), the Supreme Court rejected a similar argument (vide para 36 of the reported judgment) and observed that in cases of this type ^{when} the seniority is claimed on ^a the principle there is no necessity to include all the persons likely to be affected as ^{parties} party to the case.

In the facts and circumstances of the case, we therefore hold that the application is not bad for non-joinder of necessary parties. Point No.(i) is answered accordingly.

7. Point (ii) :

It is true that under Section 20 of the Administrative Tribunals Act, 1985, a party has to approach this Tribunal after availing remedies available to him under the service rules. But there is no *hy*

blanket prohibition for entertaining a petition if other remedy is not exhausted. But section 20 only says that the Tribunal shall not ordinarily admit such a petition. This is only an enabling provision. Therefore in a given case the Tribunal may admit an application even though other remedy is not exhausted. We are not at the stage of admission. This is a case of 1994. The O.A. was admitted long back. Now, after 4½ years, we cannot throw away the application on the ground that the applicants have not exhausted the remedy under the service rules. What is the remedy that is available to the applicants, except making a representation to the respondents. We know what is the stand of the respondents. The respondents are not conceding the request of the applicants for regularisation. Therefore, if the applicants had made an earlier representation it would not have improved the matter. In addition to this it is on record that applicants ^{union had} ~~junior~~ have taken up the matter with the respondents and since it did not yield any result the applicants were compelled to approach this Tribunal. Therefore, under these circumstances, we do not find any merit in the Respondents contention that the application is not maintainable for not exhausting the other remedies. Point (ii) is answered accordingly.

8. Point (iii):

Even here we must say that such an argument about joint-application being not maintainable cannot now be pressed at the time of final hearing. The respondents should have pressed their plea at the time of admission and if the Tribunal has been persuaded to accept that argument, the Tribunal would have given a direction to the applicants to

fu

file separate applications and the matter would have been dealt with. But after four years this Tribunal cannot now tell the applicants that each one should file a separate application. Learned counsel for the respondents placed reliance on an unreported judgment of a Division Bench of this Tribunal dated 16.3.1991 in O.A. No. 865/90 (NAGARAJA & ORS. Vs. THE UNION OF INDIA & ORS.) where no doubt it is observed that Joint Application is not maintainable if the causes of action are different.

But if we peruse the allegations in the application all of them have a common cause and a common prayer viz., that they are entitled to be regularised from the date of their initial ad hoc promotion. If they have got a common cause and common prayer then there is no difficulty to hold that application has rightly been filed and rightly admitted by this Tribunal. As for as applicants 1 to 6 are concerned there is a common alternative prayer which can be granted, if they prove their case. We therefore find no merit in this hyper technical and belated point ~~to be~~ pressed into service at the time of final hearing on behalf of the respondents. Point No.(iii) is answered accordingly.

Ry

9. Point (iv) :

The learned counsel for the applicants contended vehemently that all the applicants are entitled to regularisation on the principle of continuous officiation which should be counted for the purpose of seniority and regularisation. While the learned counsel for the Respondents contended that any length of ad hoc service which is contrary to rules cannot give right of either seniority or regularisation. Learned counsel for the applicants also contended about the delay on the part of Bombay Division in holding the speed test every year. It is true that there has been delay on the part of the Bombay Division in holding the speed test for number of years. But that cannot give any right to the applicants to claim seniority or regularisation. There is no machinery provided for ^{simultaneously} conducting/holding of test in each division. The learned counsel for the applicant was commenting about the delay of few years in holding the test. In our view even ^a delay of one day might affect the seniority of an employee. Suppose in Ratlam Division the examination is held on 10th March and results are declared and the officials are promoted on the same day or next day. Let us say 30 candidates are promoted in Ratlam Division. On 12th March if the test is held at Bombay Division and on 13th March 10 persons are promoted. In such a case eventhough there is only one day delay in holding the test all the 30 persons of Ratlam Division will be senior to the 10 persons of the Bombay Division.

Ry

In the service matters it happens like this. There is no overall controlling machinery to fix uniform dates for holding tests in each Division.

10. Learned counsel for the applicant has relied on three authorities -

In AIR 1981 SC 41 (BALESHWAR DASS & ORS. Vs. STATE OF U.P. & ORS.,) it is observed that continuous officiation should be applied to determine seniority. The relevant portion of Supreme Court's ^{views} as mentioned in the Head Note is as follows:

".... If the appointment is to a post and the capacity in which the appointment is made of indefinite duration, if the Public Service Commission has been consulted and approved, if the test prescribed have been taken and passed, if probation has been prescribed and has been proved, one may well say that the post was held by the incumbent in a substantial capacity. ..."

It is, therefore, seen that the ad hoc appointment or ad hoc promotion must be as per rules including passing of test etc. Then only the continuous officiation principle is attracted.

In 1993(24) ATC 932 (STATE OF W.B. & ORS. Vs. AGHORE NATH DEY & ORS.) no doubt it is observed that length of ad hoc service should be counted for the purpose of seniority. It has been clearly mentioned in para 22 of the reported judgement that the ad hoc appointment must be according to rules. Then, in para 26 it is observed that since the ad hoc appointments were not according to Rule 11, the ad hoc appointments must be held not according

Ry

to rules and therefore not entitled to count for seniority.

11. In view of the law declared by the Apex Court, we have to hold that whenever ad hoc promotion is made as per rules then subsequently regularised the ad hoc period counts for seniority. However, if it is shown that the ad hoc promotion was not as per rules, then the ad hoc service cannot be counted for the purpose of seniority.

12. The learned counsel for the applicant placed strong reliance on a decision of Ahmedabad Bench of the Tribunal in the case of GIRDHARLAL J. DABHI & ORS. Vs. UNION OF INDIA & ORS. (1987(4)AISLJ 316). It is no doubt an identical case and on all fours as far as the present case is concerned. That was also a case of Railway where the selection process was completed in other Divisions and was not held in Rajkot Division, ad hoc appointments were made and there was long delay in holding test and passing order of confirmation. The Bench relied on Rule 321 of the Indian Railway Establishment Manual and held that when we are concerned with employees in different seniority units then continuous officiation in the promotional post should be counted for the purpose of seniority. Since we are concerned with different seniority units of Western Railway, the above decision is no doubt directly applicable to the facts of the present case. If the above decision is applied to this case then no doubt all the applicants will be entitled to be regularised from the date

Ry

of their initial ad hoc promotion. After deep examination and scrutiny we found that the Ahmedabad Bench judgment was on the basis of the old Rule 321 in the 1968 edition of IREM. But we have to apply the present law which is as per 1989 revised edition of IREM. The old Rule 321 has now been renumbered as Rule 320. As for the main part of the rule there is no change from the old Rule 321 to new Rule 320. But there is an addition to the new rule in the form of a "NOTE" for defining as to what is meant by non-fortutious service.

Rule 320 of the IREM 1989

reads as follows :

"320. RELATIVE SENIORITY OF EMPLOYEES IN AN INTERMEDIATE GRADE BELONGING TO DIFFERENT SENIORITY UNITS APPEARING FOR A SELECTION/NON-SELECTION POST IN HIGHER GRADE.

When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter-seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to the proviso that only non-fortuitous service should be taken into account for this purpose.


NOTE: Non-fortutious service means the service rendered after the date of regular promotion after due process."

13. But in the old rule 321 of 1968 edition of IREM the above note does not find a place. Therefore the decision of the Ahmedabad Bench based on the main para of the then Rule 321 cannot be faulted, since we are now concerned with the new Rule 320 along with the newly added note which says that non-fortutious

service means the service rendered after the date of "regular promotion after due process". It is nobody's case that applicants case was one of regular promotion after due process. The appointments were made on ad hoc basis and it is not disputed that to get the promotion the applicants had to pass the speed test. Since the promotion is not after due process as defined in the note, Hence the benefit of Rule 320 is not available to the applicants in general.

14. In view of the discussions made above and particularly with reference to Rule 320, we hold that continuous officiation in ad hoc promotion made after due process should count for the purpose of regularisation and seniority and not otherwise.

15. The learned counsel for the respondents contended that Rule 320 is not applicable but Rule 302 is applicable. According to us, Rule 302 applies for considering seniority in a particular cadre. We are not concerned about seniority of the applicants in the cadre of senior stenographer in Bombay Division. It is only for such purpose Rule 302 is attracted. But we are concerned about seniority position amongst officials coming from different seniority units. In the Western Railway there are number of Divisions and there are senior stenographers in all the Divisions. The question is as to how to integrate the seniority amongst senior stenographers in different divisions and not in the same Division. If it is the seniority in the same Division Rule 302 applies, but if it is a



question of seniority in different seniority units or different Divisions then Rule 320 is attracted.

16. After having given our view on the question of law, now let us see on facts whether all or any of the applicants answer the test mentioned above. As ^{for} as applicants 7 to 13 are concerned they had not passed speed test when they were appointed on ad hoc promotion. Therefore, their initial ad hoc promotion was contrary to rules or at any rate not according to the rules. Passing of a speed test is a must for promotion to the post of senior stenographer. Admittedly applicants 7 to 13 had not passed the test and therefore their initial ad hoc promotion was not according to rules. They passed the test only in 1993. Hence applicants 7 to 13 cannot claim any seniority or retrospective regularisation from the date of their initial date of ad hoc promotion. The argument about delay on the part of the Bombay Division in holding the test is irrelevant when we are considering the question of seniority under Rule 320. As for as Applicants 1 to 6 are concerned, no doubt they are also shown to have been appointed on ad hoc basis initially. It is an admitted fact that these applicants 1 to 6 had passed the speed test ^{even} given at the time of initial recruitment in the earlier cadre in 1981 itself. Therefore, when applicants 1 to 6 came to be appointed on ad hoc basis in 1984 or later nothing more could have been done to give them regular promotion. Therefore, the initial ad hoc promotion of applicants 1 to 6 was as per rules because there was no necessity for them to undergo any speed test and they were exempted

[Signature]

from passing any test as per the rules. Since their initial ad hoc promotion was as per rules and they are not obliged to pass any speed test their subsequent regularisation has to be from the date of their initial ad hoc promotion in the light of the observations of the Supreme Court in the two decisions mentioned above and in view of the specific provision in Rule 320.

17. For the above reasons, we hold that the applicants 1 to 6 are entitled to be regularised from the date of their initial ad hoc promotion. Point (iv) is answered accordingly.

18. Point (v):

In view of our finding on point (iv) we hold that applicants Nos. 1 to 6 are entitled to seniority and proper placement in the seniority list dated 5.3.93 taking seniority from the date of their initial ad hoc promotion. We may also mention here that there is no dispute about the dates of their initial ad hoc promotion and the dates of initial promotion of applicants 1 to 6 are as follows:

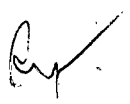
S1. No.	Name	Date of ad-hoc promotion
1	Shri Samson Stanley	8.8.1984
2	Smt. Shanta Rajan	21.8.84
3	Smt. Sunita D'Souza	18.10.1984
4	Smt. B.J. D'Mello	11.12.1984
5	Smt. Meenakshi S.	21.7.1985
6	Smt. Ratnamohan	3.6.1986



19. We hold that the above applicants 1 to 6 are entitled to be placed in the seniority list dated 5.3.93 taking their regular promotion and regularisation retrospectively from the above dates of initial ad hoc promotion. Point (v) is answered accordingly.

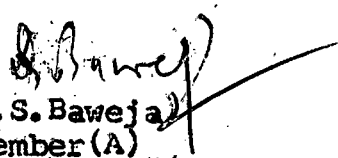
20. In the result the application is allowed as follows :

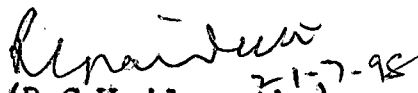
- (1) Applicants 1 to 6 are deemed to have been regularised on promotion in the grade of Rs.1400-2600 from the date of their initial ad hoc appointment;
- (2) The names of applicants 1 to 6 shall be interpolated in the seniority list dated 5.3.93 in proper place on the basis of their initial ad hoc appointment as mentioned in para 18 above.
- (3) Applicants 1 to 6 are also entitled to consequential benefits like promotion to next grade on the basis of now declared seniority and whatever consequential benefits that flow as per rules.
- (4) The claim of applicants 7 to 13 for retrospective regularisation and placement in the seniority list of 5.3.93 is rejected.



..18..

- (5) In the circumstances of the case
there would be no order as to costs.


(D. S. Baweja)
Member (A)


(R. G. Vaidyanatha)
Vice Chairman

trk