

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 365/94

DATE OF DECISION: 26/7/2000

Shri R.Sundaram & Anr.

-----Applicant.

Shri D.V.Gangal

-----Advocate for
Applicant.

Versus

Union of India & Anr.

-----Respondents.

Shri S.C.Dhawan

-----Advocate for
Respondents.

CORAM:

Hon'ble Shri A.V.Haridasan, Vice Chairman
Hon'ble Shri Govindan.S.Tampi, Member(A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to
other Benches of the Tribunal?
3. Library.

(GOVINDAN.S.TAMPI)
MEMBER(A)

abp

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**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:365/94
DATED THE 26 OF JULY,2000**

**CORAM:HON.SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON.SHRI GOVINDAN.S.TAMPI, MEMBER(A).**

1. Shri R.Sundaram,
Shop Superintendent,
Matunga Work-shop ,
Central Railway,
residing at Quarter No.F-17,
Central Railway Quarters,
Parel, Bombay - 400 012.
2. Shri R.Y.Kaujalgikar,
also working as Shop
Superintendent, Matunga
Workshop, Central Railway
residing at Quarter No.F-12,
Central Railway Quarters,
Matunga, Bombay - 400 019. ... Applicant.

● By Advocate Shri D.V.Gangal

V/s.

1. Union of India, through
The General Manager,
Central Railway,
Bombay V.T.
2. The Chief Personnel Officer,
Central Railway,
Bombay V.T. ... Respondents

By Advocate Shri S.C.Dhawan

O R D E R

● Per Shri Govindan.S.Tampi, Member(A).

OA.No.365/94, filed by Shri R.Sundaram and another
against the Union of India and the Chief Personnel Officer,
Central Railway, Bomaby seek the following reliefs:-

- i) preparation of a seniority list of Dy.Shop Supdt/
Shop Supdts;
- ii) permission to the applicants for selection to class
II in terms of letter No.HPB/661/142/D/WS/CLII/LGS
of 14/2/93, issued by the Respondent No.2.

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- iii) grant of benefit of adhoc service as Dy.Shop Supdt. to the applicants in terms of the ratio in para 44(b) of the decision in Direct Recruit class II Engineers Assn's case and
- iv) declaration of 1991 and 1994 seniority lists to be provisional.

2. Applicants 1 & 2 were working uninterruptedly as adhoc Dy.Shop Superintendents since 7/12/78 and 5/8/80 respectively till 1/1/84 when they were regularised. They were subsequently promoted as Shop Superintendents on 12/7/86 and 3/9/81, respectively. They allege that they were denied the benefit of their seniority when selection to the next post, a class II post was announced, inspite of the decision of this Tribunal of 24/9/91, in OA-323/1989, in which two of their juniors Shri H.C.Bhole and K.J.Anthony were applicants and beneficiaries. As the OA 323/89 was filed against the seniority list of 22/12/1988, the benefits which flowed to Bhole and Anthony, admittedly their juniors, should be extended to them also. The decision in the said OA, related to the grant of consequential benefits by taking into consideration the adhoc service. Therefore, when their juniors were considered for selection, they also should have been similarly considered. Their representation, filed on 31/12/93, filed alongwith 39 others, and advocates notice, sent on their behalf on 21/2/1994, did not evoke any reply. They seek interpolation in the panel declared on 16/9/91, where their juniors also came to be interpolated. They also state that seniority list issued on 22/8/89 by Matunga Workshop should have been confirmed. They further plead that Railways should have drawn panel for promotion to Class-II on a year to year basis instead of clubbing/bunching vacancies which they have not done

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between 1981 to 1991. Even when selection is not done from year to year, rules provide that panels be drawn yearwise including the seniors. This principle has not been done in the instant case, leading to irregularities which would have to be obviated, plead the applicants.

3. Respondents in their reply dated 18/6/94 point out that the applicants who were originally chargemen were promoted as Du.Shop Superintendent on 7/12/78 and 5/8/80 only on a local arrangement to meet the exigencies of service, and following the restructuring adopted in Railway Board's letter No.PC.III/83/UPG/3 dated 1/5/1984, the applicants were promoted as Assistant Shop Superintendent in the revised scale w.e.f. 1/1/1984. Hon'ble Apex Court's decision in Direct Recruit Class-II Engineering Officers Associations's case was not applicable in the case of the applicants who cannot count their adhoc service towards seniority for Class-II post. Applicants were not in the consideration zone for promotion to class-II on 1X3 formula and hence their non promotion. Applicants have not contested the seniority list dated 3/1/94. Further, for promotion to class-II, all Shop Superintendents working in the grade of Rs.700-900/2000-3200, in all the workshops have to be considered on the basis of integrated seniority. Criterion for fixing the seniority for Class-II post was non-fortuitous service rendered in the grade of Rs.700-900, without taking into consideration promotion made in the meanwhile to the grade of Rs.840-1040/ which was only a local adhoc arrangement. The applicants' seniority was being maintained correctly and the

decision of CAT, Jabalpur Bench in the case of B.K.Chaturvedi of Loco Steam was not applicable to the applicant. Respondents have correctly given effect to the decision of Bombay Bench in OA-323/89, by S.K.Saxena and others. They deny that H.C.Boley and K.J.Anthony, applicants therein were ⁱⁿ correctly considered for promotion to class II and they were seniors to the present applicants. Not having challenged the seniority list of 1989, the applicants were only trying to take benefit out of the attempts of others in OA-323/89 (Bhole and Anthony) and OA No.1230/93 (Mulchand and Bennett). Applicants in OA-323/89 were called for selection on the basis of their length of non- fortuitous service in Rs.700-900/2000-3200 grade, without considering their adhoc service. In fact Bhole and Anthony were chargeman A since 11/10/72 while the applicants were promoted to that grade only on 11/7/73 and 28/2/76. They were regularly promoted as Dy.Shop Superintendents w.e.f. 1/1/84, and belonged to different trades. Applicants claims for higher placement in the seniority lists of 1989 or 1993 was wrong. It was wrong to say that in OA-323/89, benefit of adhoc promotion was extended but the decision was to deny it, if while the adhoc promotion were effected without considering the claims of all qualified individuals. The seniority list of 22/8/89 dof Matunga Workshop was not confirmed, as the same was not accepted by the Headquarters, its not having been made as per the rule of integrated seniority. There was no need to conduct selection test annually. Selection for 1994 was completed on 21/4/94 on the basis of the test on 9.1.94/27.2.94 and viva voce on 18/4/94.

Not having protested about it at the relevant time, the applicants have no case presently. As no irregularity has been committed by them and they have acted properly throughout. Respondents plead that the applicants pleas should be dismissed.

4. Heard Shri Gangal, the learned counsel for the applicants and Shri Dhawan, the learned counsel for the respondents. Shri Gangal reiterates the submission in the written plea and says that the applicants were correctly entitled to the benefits of the decision in OA-323/89, filed by some of their colleagues, including their juniors Bhole and Anthony. He also points out that the applicants had an uninterrupted adhoc status since 1981 to 1984 when they were regularised and therefore their plea for selection to class II alongwith their juniors should succeed. Shri Dhawan, on the other hand, argued that integrated seniority list was the basis for promotion and that only non- fortuitous service- service rendered after the date the regular promotion after due process- should be counted as prescribed in para 320 of IREM. Respondents having acted correctly and properly, there was no ground for disturbing what was done by them, he pleads.

5. Rival contentions and position have been carefully examined. Applicants have in this case sought the benefit of the decision in OA No.323/89, wherein two persons whom they considered to be their juniors were parties and plead that they should be given the advantage of their adhoc service. In OA-323/89 filed by Shri S.K.Saxena and Others, Bhole and Anthony were also applicants and they were therefore given the benefit of the decision when the seniority was recast and steps taken

thereafter. It is the plea of the applicants that they should also get the benefit as they were promoted as Dy. Shop Superintendents on adhoc basis earlier and continued to be so till the regularisation, and also on account of a combined seniority list of 22/8/89. This plea would have some strength if the applicants were actually so throughout. It is a matter on record that Bhole and Anthony were working as Chargemen A from 11/10/72 as against the applicants who became Chargemen A on 11/7/73 and 28/2/76, ~~All~~ came to the rank of Assistant Superintendent on regular basis w.e.f. 1/1/84. Therefore, the applicants cannot have a claim over Anthony and Bhole. It is also evident that the applicants promotion was on adhoc basis without any statutory selection process having been gone through and therefore the benefit of continuous adhoc service cannot be granted to them as pointed out by the Hon'ble Apex Court in the Civil appeal No.5086/1994 of M.K.Shanmughan and Anr. Besides. para 321 of IREM also makes it clear that for arriving at continuous service only non-fortuitous service-service rendered after the date of nregular promotion after due process- should be taken into account. Applicants have not been able to show that their adhoc service was of non-fortuitous nature, i.e. made after due process, and therefore they can get the benefit onlyfrom the date of their regularisation i.e. 1/1/84. Bhole and Anthony were also regularised on the same day and they were ~~above~~ the applicants in the integrated list which formed the basis for selection. Applicants cannot seek or obtain any benefit out of the unconfirmed seniority list of 22/8/89 which was not approved

phrases after. If it is the basis of the application that they should also get the benefit as they were promoted as D.A. jobs superintendents on which basis earlier and continuing to be so till the regularization, and also on account of a combined seniority list of 25/8/88. This basis would have some significance if the applications were sufficiently so pronounced. If it is a matter on record that before and Authority were working as Charadeem A from 11/10/85 as against the applications who became Charadeem A on 11/13/83 and 28/5/86, it will come to the rank of Assistant superintendents on regular basis w.e.f. 1/1/84. Therefore, the applications cannot have a claim over Authority and Bholi. If it is also evident that the applications promotion was on which basis without any separate selection process having been done previously and therefore the benefit of continuous which service cannot be claimed to be given as pointed out by the Hon'ble Apex Court in the Civil Appeal No. 2080/1994 of M.K. Sharmabhai and Mr. Baidya. Besides, para 351 of IREM also makes it clear that for service rendered continuous service only non-torlutions service-service should be taken into account. Applications have not been able to show that their adhoc service was of non-torlutions nature, i.e., made after the process, and therefore they can get the benefit only if the dates of their regularization i.e., 1/1/84. Bholi and Authority are also regularised on the same day and they were soon after applications in the unregistered list which formed the basis for selection. Applications cannot seek or obtain any benefit out of

by the Railway Headquarters being not in conformity with the Rules. Their plea against the 1994 selection which was a due process also, has no force as they had made no protest before it actually started. In view of all the above, we are convinced that the appellants have not made out any case in law, against the action taken by the respondents, in pursuance of the decision of the Tribunal in OA-323/89.

6. In the result the application seeking the extension of the benefits arising from the decision of the Tribunal in OA-323/89, and promotion to Class-II, alongwith Bhole and Anthony, applicants in that OA and consequential benefits fails and is rejected. Parties to bear their own costs.

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M (GOVINDAN.S.TAMPI)
MEMBER(A)


(A.V. HARIDASAN)
VICE CHAIRMAN

abp.