

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 945 of 1994.

Dated this Friday, the 14th day of September, 2001.

Satishchandra Chiranjilal & 2 Others, Applicant.

None present. Advocate for the
Applicant.

VERSUS

Union of India & Another, Respondents.

Shri S. C. Dhavan, Advocate for
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri Kuldip Singh, Member (J).

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other No
Benches of the Tribunal ?
- (iii) Library. No


(B.N. BAHADUR)
MEMBER (A).

OS*

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Dated this Friday, the 14th day of September, 2001.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri Kuldip Singh, Member (J).

1. Satishchandra Chiranjilal,
Bridge Inspector,
Residing at Rly. Qtr. No.
RB.II/1077/E,
Railway Colony, Guard Line,
Bhusawal.
2. Pradeep Madhavrao Kulkarni,
Bridge Inspector,
R/o. Rly. Qtr. No. RB.IV/910/B,
Mission Row,
Bhusawal.
3. Omprakash Pathak,
Bridge Inspector,
Central Railway,
R/o. Rly. Qtr. No. RB.II/874/D,
North Colony, Limpus Club Area,
Bhusawal.

... Applicants.

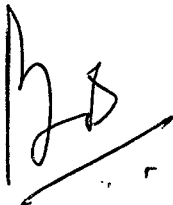
(By Advocate - None present)

VERSUS

1. Union of India through
The General Manger,
Central Railway,
Bombay V.T., Bombay.
2. Chief Personnel Officer (Engg.),
Central Railway,
Bombay V.T., Bombay.

... Respondents.

(By Advocate - Shri S. C. Dhavan)



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O R D E R (ORAL)

PER : Shri B. N. Bahadur, Member (A).

There are three Applicants in this case, seeking the relief from this Tribunal as follows :

"(i) The respondents be directed to interpolate the names of the applicants in the integrated seniority list which is prepared for AEN's selection as they were superceded by the juniors of other stream of candidates who were selected to that grade after about two years.

(ii) The applicants beg to submit that they are continuously working against the post of Sr. BRIs in Grade Rs. 2000-3200 (RPS) from the date of their ad hoc promotion which was further regularised by conducting proper selection.

(iii) In terms of the provisions of para 203.5 of Indian Railway Establishment Manual, Volume I, Revised Edition 1989 which was mentioned in the grounds sub-para (i) the applicants are entitled to treat their service on non-fortuitous basis and their names are liable to be interpolated in the integrated seniority list of candidates of AEN's selection.

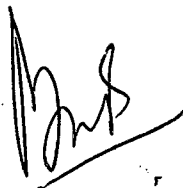
(iv) Due to falacy adopted by Respondent No. 2, proper selections were not conducted for the posts of applicants/Sr. BRIs Gr. 2000-3200 (RPS) by which great prejudice is caused to the applicants as mentioned in the above paras.

(v) The respondents who are at fault by which the great prejudice is caused to the applicants be saddled with the costs of this application and also the applicants be allowed all compensatory costs as they are forced to file this application.

(vi) The applicants be granted any other suitable reliefs by the Hon'ble cat as deem fit."

In fact, a perusal of the facts and the grounds taken show that the relief really asked for is to the effect that the ad hoc

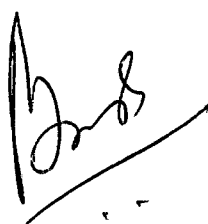
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service between the three dates of their ad hoc appointment, namely - 01.11.1987, 21.05.1988 and 11.07.1988 till the date of their regular appointment i.e. 16.06.1989 should be treated as regular service/non-fortuitous service for their placement in the integrated seniority list for consideration of promotion to the higher post of Assistant Executive Engineer (A.E.N.)


2. The facts of the case are that the Applicants were appointed on ad hoc basis on the above mentioned dates as Bridge Inspector. The next stage of promotion is the post of A.E.N. to which there are more than one feeder cadre, one of them being that of the Bridge Inspector. The Applicants made the point that other persons, like S/Shri D.P. Chabra, B. K. Sahu, A.K. Sharma & Others, are 'A' grade Chargeman, which is a parallel feeder cadre, and were working there from about 1989. They were considered as eligible candidates for L.G.S. seniority list and that these Chargemen were junior to the Applicants on the basis that they had worked less in the grade of Rs. 2000-3200. The Applicants states that their representation had no effect in providing them the benefits sought. They have cited number of case laws on the basis of which they seek support for their cause. Importantly, one of the ground which has been brought forth is the decision rendered by the Tribunal in the case of Gurucharan Singh Penfer V/s. Union of India & Others in O.A. No. 449/89 (a copy of this judgement is annexed at Exhibit -V by the Applicants). Quoting from the judgement in this case, the

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Applicants state that the benefit should be made available to them on the same basis, since their case is similar to that of Penfer. It is with such grievance that the Applicants are before us, seeking the relief as described above.

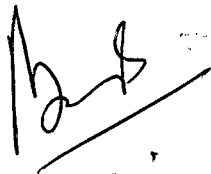
3. The Respondents in this case have filed a Written Statement of reply, resisting the claims made by the Applicants and stating that the Applicants had, in fact, accepted their seniority position in the letter dated 22.12.1993 which have been annexed as Exhibit-IV by the Applicants themselves. As such, they are estopped from contending otherwise. The Respondents deny that the Applicants were working as Bridge Inspectors on non-fortuitous basis from the dates cited above, viz. 01.11.1987, 21.05.1988 and 11.07.1988 and aver that the correct position of seniority has been provided to the Applicants on the basis of their regular selection to the grade of Rs. 2000-3200. Such regular promotion was provided to the Applicants on 16.06.1989 and hence, this would be the date that would be taken for purpose of drawing up common seniority list. It is stated that S/Shri D.P. Chabra, B. K. Sahu and A.K. Sharma, whose names/cases have been cited by the Applicants are working in Workshop cadre, which is a parallel feeder stream and that they were regularly promoted in the grade Rs. 2000-3200 on 29.12.1988, 03.01.1989 and 29.12.1988 respectively. All these dates are earlier to the date of regular promotion of the Applicant.



4. In the Written Statement the Respondents have, also taken certain stands in regard to the case of Gurucharan S. Penfer which case they have tried to distinguish. This point was argued at some length by Learned Counsel for Respondents.

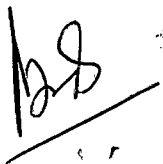
5. In the further part of the Written Statement, the Respondents have tried to meet the averments of the Applicants, parawise. There was no presence on behalf of the Applicants today either in person or through Advocate. However, written arguments have been submitted by their Learned Counsel. These has been taken on record and have been carefully considered alongwith the pleadings made. We have also heard the Learned
Counsel for Respondents, Shri S. C. Dhavan and considered the papers in the case.

6. In the written arguments put forth on behalf of the Applicants, the facts are described at first and it is stated that the claim of the Applicants have been denied by way of non interpolation of names correctly in the seniority list prepared for selection to the post of Assistant Engineer held from different streams, namely - the cadres of Inspector of Works, P.W. Inspectors, Bridge Inspectors and Chargeman. The one important point sought to be reiterated here is that the claim of the Applicants is based on para 203.5 of the I.R.E.M. and that the Applicants are enjoying non-fortuitous service in the scale of Rs. 2000-3200 right from the date of ad hoc promotion without any break.



7. Learned Counsel for the Respondents, Shri S. C. Dhavan, explained the facts of the case and took the stand that the appointment of the three applicants on ad hoc basis on the three dates referred to above, was a mere stop gap arrangement and that such promotions were made available to the Applicants without the regular selection process being undertaken. The regular appointment, after due process as per rules, was conducted later and on this basis, regular appointments were made only from 16.06.1989. The interpolation of seniority in the common list of feeder service was thus available only on this basis of regular appointment. Shri Dhavan argued that para 203.5 of I.R.E.M. talked of non-fortuitous service which could be claimed only from 16.06.1989. Learned Counsel tried to differentiate the judgement of G. S. Penfer, and stated that this issue has been now decided in a catena of judgement by the Supreme Court. He cited the judgement of T. Vijayan V/s. Union of India. He also cited the case of Davinder Bhatia & Others V/s. Union of India & Ors. reported at 1999 (1) SLJ 13.

8. The core issue that needs to be decided here in fact, is whether the benefit of service rendered between the dates of adhoc promotion of the three Applicants and the date of regularisation should be available to them for the purpose of interpolation of their names in the common seniority list for consideration of promotion to the higher post. Firstly, let us consider the provision at para 203.5 of I.E.R.M. which reads as under :



"203.5 Since employees from the different streams will be eligible to appear for the selection, their integrated seniority for purposes of selection should be determined on the basis of total length of non-fortuitous service rendered in grade Rs. 2000-3200 (R.S.) and above. In other words, the date of appointment to the grade Rs. 2000-3200 (R.S.) on a non-fortuitous basis will be the creterion.

From a careful perusal of this provision, we have no doubt in concluding that in the present case non-fortuitous service means regular service in normal circumstances. We have gone into the case of G.S. Penfer and find that certain benefits have no doubt been provided by this Bench of the Tribunal. However, we have before us a few judgements in which the law in this regard has been settled by the Hon'ble Supreme Court. The basic point made is that the benefit of ad hoc service can be made available for various purposes, including those of seniority, only after such ad hoc service is made as per rules and after due process of selection, as stipulated in the Recruitment Rules and importantly, after due consideration of seniority. An analysis of this have been made at some length in the judgement rendered by this Tribunal in a batch of O.As. (No. 386/97 and others) pronounced on 10.12.1998 (Kurup Case). In the present case, the point to be seen is, whether the appointment made in respect of the three Applicants (w.e.f. 01.11.1987, 21.05.1988 and 11.07.1988) have been made by fully satisfying all the above conditions. We find that the appointments have been made, as

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stated by Respondents, without following the regular procedure. Such procedure came to be followed only in respect of the selections made for regularisation w.e.f. 16.06.1989. There is no contradiction to this fact, nor provision of any evidence to the contrary, by the Applicant.

9. Under the above circumstances, the ratio decided by the Hon'ble Supreme Court in the matter of Davinder Bhatia & Others V/s. Union of India & others reported at 1999 (1) SLJ 13 will apply. In this case also, the matter was of similar nature. We quote below the relevant part of the last paragraph :

"The appellants, no doubt, have been brought to the reservation side prior to 1978 but admittedly there had been no process of selection in their case and they were posted as Enquiry-cum-Reservation Clerks merely on ad hoc basis as a stop gap arrangement. The post of Enquiry-cum-Reservation clerk being a selection post, the persons like the appellants who were posted against those posts without going through the process of selection on ad hoc basis do not have a right to be in the cadre until and unless they are duly regularised after going through a process of selection."

In view of the above ratio settled by the Hon'ble Supreme Court being clearly applicable to the facts and circumstances here, we cannot provide any benefits to the Applicant herein on the basis of G.S. Penfer's case, which was decided by this Tribunal. Since the case of Davinder Bhatia discusses the issue in detail, no repetition of discussion is necessary to arrive at the conclusion that no interference is warranted in the present case. Though the point of limitation was argued on both sides,



we are not going into the question of limitation since we have decided the issue on merits.

10. In the consequence, this O.A. is hereby dismissed with no orders as to costs.



(KULDIP SINGH)
MEMBER (J)



(B. N. BAHADUR)
MEMBER (A).

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