

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 884/94.

Date of Decision:

25/02/2000

K.D.Chothe & two Ors.

Applicant.

Shri B.Ranganathan

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar for R-1 to R-3
and Shri G.K.Masand for R-4

Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri. S.L.Jain, Member (J).

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to other Benches of the Tribunal? No

(3) Library? No.

B.N.BAHADUR

(B.N.BAHADUR)
MEMBER(A)

25/02/2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.884/94.

This, Friday the 25th day of FEBRUARY 2000.

Coram: Hon'ble Shri B.N.Bahadur, Member (A),
Hon'ble Shri S.L.Jain, Member (J).

1. K.D.Chothe,

2. G.Bhattacharya,

3. Subrata Ghosh,
C/o. Kamalkishore Tated,
Advocate High Court,
Room No.34-B,
Hanuman Building,
308, Perin Nariman Street,
Fort, Bombay - 400 001.

(By Advocate Shri B.Ranganathan)

... Applicants.

Vs.

1. General Manager,
Central Railway - I, Bombay VT.,
Bombay - 400 001.

2. Chief Personnel Officer,
Central Railway, Bombay V.T.,
Bombay - 400 001.

3. Chief Workshop Manager,
Central Railway, Parel,
Bombay - 400 012.

4. Shri U.A.Parab,
Chargeman,
Sal.No.86199699,
Central Railway, Parel,
Bombay - 400 0012.

(By Advocate Shri V.S.Masurkar
for R-1 to R-3 and by
Shri G.K.Masand for R-4).

... Respondents.

: O R D E R :

(Per Shri B.N.Bahadur, Member (A)).

The three applicants in this case are direct recruits and Diploma holders holding the post of Chargeman 'B' of Mill Wright Trade with Western Railway. They are before the Tribunal seeking the quashing of the impugned order No.25/1992 dated 25.5.1992. They also seek a direction to concerned authorities

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to rectify the seniority list by bringing down Respondent No.4 (Shri U.A.Parab) to a position in which he correctly belongs and also for proper fixation of applicants' seniority.

2. The facts of the case, as presented by the applicants are that, prior to appointment of applicants as Chargeman 'B' a promotional selection was undertaken and three persons viz. S/Shri S.H.Sharma, P.R.Palande and S.K.Satam were declared as placed in the panel. A memo was issued on 29th December, 1989 where S/Shri S.H.Sharma, U.A.Parab and Palande 's names were announced. Thereafter, on representations by Shri Satam against the selection of Shri Parab, on the ground that he was a Diesel Assistant and not from the Mill Wright trade, the panel was revised vide letter dated 31.3.1990 and the name of Shri S.K.Satam was introduced, deleting the name of Shri U.A.Parab. In the meanwhile, under office order dt. 10.4.1990 S/Shri Sharma, Palande and Satam were appointed as Chargeman after which the applicants in the OA were appointed as Mill Wright trade.

3. Recounting developments, further, it is stated that since Shri S.H.Sharma expired in June, 1991, respondents issued a memo on 25.5.1992 revising the panel and regularising Shri U.A.Parab in the post of Chargeman 'B', with retrospective effect from 25.6.1991. This action, it is contended, supercedes applicants who were direct recruits, and it is in grievance of this action, and consequential effect on their promotional prospects, that the applicants are before us, seeking the relief as described.

4. A written statement in reply has been filed by Res-

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pondent No.1 to 3 and a separate written statement reply has been filed by Respondent No.4, Shri U.A.Parab. The Respondents 1 to 3 give the facts of the case, the gist of these being that it is first denied that Shri U.A.Parab was not eligible for being included in the earlier panel from 25 per cent quota. However, since it came to the notice of the Department, through a representation by Shri Satam that Shri Parab was junior, Shri Parab's name was deleted and replaced him by Shri Satam. This is due to a mistake which was corrected. Later, Shri Parab preferred an appeal to the effect that he had worked for 11 years in Mill Wright Shop and was suffering by not being accommodated either in Mill Wright cadre or in Diesel cadre.

5. It is further stated that in order to rectify the administrative error and minimise hardships of Mr.U.A.Parab, he was designated as Mill Wright Shop in May, 1992, and was placed next to Shri Satam, his immediate senior. Subsequently, since Shri Sharma expired, the panel was revised through approval by next Competent Authority and the name of Shri Parab included, and his ad-hoc promotion regularised with retrospective effect from 25.6.1991. With all these facts explained, the respondents deny all allegations made and justify their action.

6. Respondent No.4, ^(R-4) in his reply statement, takes up the point regarding limitation and contends that the application suffers from delay and laches, and is badly barred by limitation. The Respondent No.4 states that he belonged to the Mill Wright Section, at the time of the selection process, as is clear from the statement annexed to the O.A. Respondent No.4 contends that he was appointed at Katni Junction as Diesel Mechanic



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in 1969, promoted to skilled category and thereafter transferred, in the interest of administration, to Parel Workshop and posted in Mill Wright section effective from 19.9.1972. Thereafter, he was promoted in the same Mill Wright trade on 25.11.1988 and further as Chargeman 'B' from 7.7.1991; he cites Ex. 'B' in this regard. Further details on facts have been described by Respondent No.4 who in the statement of contends that through the impugned order dt. 25.5.1992 the injustice done to him has been corrected. He prays for the dismissal of the application.

7. We have heard the learned counsels on either side viz. Shri B.Ranganathan for the applicant, Shri V.S.Masurkar for the official respondents (R-1 to R-3) and Shri G.K.Masand for R-4.

8. The learned counsel for the applicant took us over the facts of the case, in detail, referring us to the various annexures and the rules, etc. He made the contention that Shri Parab is not from Mill Wright trade and that the applicants are senior and regular and made the point that once Parab's name was deleted, it was patently wrong to the respondents to have again interpolated his name in a revised panel in view of representations etc. The learned counsel stated that the action of granting retrospective seniority above the applicants was a cause of severe grievance for the applicants, and that a fourth name cannot be added to the panel. He argued that when the applicants joined, Respondent No.4 was not in the panel and his seniority, therefore, has to be lower to that of the applicants.

9. The learned counsel for the applicant Shri B.Ranganathan referred to paras 220 and 221 of the Indian Railways Establishment Manual (IREM) and made the point that even

for , argument's sake if interpolation was to be made on a later date, it could not be with retrospective effect. Summing up his arguments, the learned counsel focussed on the point that the inclusion of the name of R-4 at an intermediate stage, at which it was done, was wrong. Also that this action and the grant of retrospective effect will affect the promotion of the applicants. He averred that correction of a panel before it is exhausted is bad in terms of rules and even alleged that all these exercises were done to favour R-4.

10. The learned counsel for the applicant Shri B.Ranganathan cited the case of Registrar General of India and Anr. Vs. V.Thippa Setty and Ors. (1999 SCC (L&S) 253), to make the point that regularisation should not be retrospective.

11. Arguing the case on behalf of official respondents, their learned counsel Shri V.S.Masurkar first stated that no mala fide was involved and the applicant had very wrongly attributed mala fide. The counsel for the respondents reiterated the points made in their written statement and specially took us over the point at para 4, to show how a very legitimate mistake had been corrected in placing Shri Satam in the panel instead of Shri Parab as admittedly Shri Parab was junior. Counsel for respondents referred to the seniority list at pages 17 and 18 of the paper book to make this point. He stated that it was later on found, as described in the written statement, that injustice had been done to Shri Parab and this was corrected after Shri Sharma, unfortunately, expired. He sought the support of the seniority list in this regard.



12. The point of limitation was taken up by the counsel for Respondents No.1 to 3 who made the strenuous assertion that the application is barred by limitation; ~~that~~ also that it had wrongly been stated in para 3 of the OA that application was within the limitation period. Also there was no petition for condonation of delay.

13. The case for R-4 was argued by his learned counsel Shri G.K.Masand, who took us over the facts of the case in detail and made his arguments at some length. While the facts are not being repeated, the gist of his arguments are as below:

- (a) The application is hit by delay and laches and barred by limitation, since applicant should have come up within one year after May, 1992.
- (b) It is important to note that the applicant was transferred in public interest to the Mill Wright trade and hence what was he cannot suffer by a conscious act of Government. It was not a request transfer that applicant's seniority should suffer. He also made the point that lists at pages 17 and 18 are not seniority lists, but are only posting orders.
- (c) It was agreed that the promotion of R-4 was ad-hoc, but contended that he was selected at the very next meeting as can be seen from written reply of official respondents at para 5.
- (d) It was contended that even if representation by R-4 was delayed, it was not bad in terms of rules since the limitation law applied only in Courts, and not before administrative departments.
- (e) It was argued that if per se the modification of



panel was wrong, then the earlier act of removal of the name of R-4 from panel was also wrong. The applicants are not affected and cannot question the action.

(f) The Railway Administration are entitled to give retrospective effect as per para 228 of IREM. The case of Rajbir Singh and Ors. (1992 SCC (L&S) 153) was cited in support of R-4, and it was argued that it was settled here that seniority will count from the date of ad-hoc selection.

(g) The point of limitation was stressed by drawing support from the case of Ramesh Sharma Vs. Udam Singh (1999 (6) SIR 812 para 2).

14. We have carefully considered all the papers in this case including Rejoinders and the Annexures etc. and have also considered the arguments made before us by the learned counsels.

15. The basic facts of the case are not in dispute and have been cited above. A panel was drawn up where Shri Parab (R-4) was included. This was found to cause injury to the rightful interests of Shri Satam, and Shri Satam's name replaced Shri Parab's name. Later, Shri Parab's name was included and he was given benefit that is under challenge, after the demise of Shri Sharma. Now, we must recapitulate here the thrust of the argument of the learned counsel for the applicant. His main point is that the change and interpolating that was done by way of modification of the panel was wrong, inasmuch as, there was no grounds for modifying a panel before it had been exhausted. Consequently, he argued that his promotion prospects would suffer and this was the grievance caused to him.

16. The crucial question that comes up before us in the case is whether the changes made in the panels as described above were wrong, either in the facts and circumstances of the case, or with reference



to rules or were wrong in terms of any of the case laws cited. At the outset, our attention was drawn to para 5(ii) of the OA where it is pointed out that there is a provision for amending the panel, but by one higher authority to the one approving the panel. In fact, Rule 220 and 221 which are relevant were cited by both sides. Rule 221 does provide, *inter alia*, that the removal of a Railway servant's name from the panel would require specific approval of an authority next above that which initially approved the panel. Thus, admittedly, there is a provision in the rules for amendment and it cannot be held that per se any action to modify the panel would be wrong, as per rules. Good cause should certainly exists for it. In regard to the first modification through which Shri Satam's name replaced the name of R-4 there is no controversy or contest. The dispute arises once Shri Parab's name is introduced. Now, one of the contentions was that Shri Parab had no right of seniority in the Mill Wright trade. We reject this objection on the ground that it has been stated that R-4 was transferred in administrative interest from the Diesel cadre to the Mill Wright cadre. This point has been made in the affidavit at page 64 of the paper book, it has not been controverted by any document filed or by any other evidence. Obviously, this must have been considered by official respondents and in such circumstances, Shri Parab's genuine interest cannot be jeopardised for no fault of his. Similarly, it is not as though he was suddenly brought to the Mill Wright trade and that this promotion followed within a short time. He was brought to the Mill Wright cadre long years ago and in fact, it is stated that he had 11 years service in the Mill Wright cadre (R-4 states that he came to Mill Wright cadre in 1978). In these facts and circumstances, there is force in the contention of the official respondents, that R-4 could



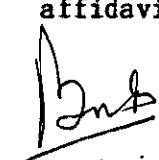
not have been made to suffer in both cadres. He could not be penalised for a decision of the administration transferring him and hence the consideration of seniority was not an illegal act. It is well settled that mistakes genuinely made can be rectified, and in the absence of any material to that effect, we are also not able to accept the contention of malice attributed to respondents during arguments, by counsel for applicants. No materials is discernable to establish the assertion made.

17. In regard to retrospective seniority which was also contested, our attention was drawn to Rule 228 of IREM. It is stated therein, *inter alia*, that:

"The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time".

The Railway Authorities have arrived at the date of seniority of R-4 with reference to this interse seniority of Shri S.K.Satam and therefore, considering the position of rules, we cannot hold their action to be wrong or mala fide.

18. In regard to the authority which had approved the modification, we take note that the rules require that such modification shall be approved at a level one higher than the level of the officer originally approving the panel. It is clearly stated in the affidavit of the official respondents at para 5, that the revised panel was approved by the next higher Competent Authority i.e. C.W.M. Parel on 23.5.1992. We have no reason to doubt the veracity of this statement made on affidavit by Dy. C.M.E., Parel, in the absence of any record to the



contrary. We do note the case law cited by Shri G.K.Masand in the case of Rajbir Singh Vs. Union of India to the effect that period of ad-hoc service on promotion in substantive vacancy subsequently regularised must be counted for seniority.

19. The case of Thippa Setty was seen, and it is not directly applicable in the present case.

20. In view of the above position that emerges from the facts and circumstances of the case, as also the rules relevant to the present case, it is clear that no convincing case has been made out by the applicants as will call for interference by this Tribunal. It has not been established that the revision of the panels leading to the inclusion of R-4 in the panel and provision of seniority was made contrary to the rules or was mala fide. If the action leads to an adverse effect on the promotion prospects of the applicants, this cannot be a ground for providing any relief so long as fixation of seniority is not done contrary to rules. In view of these discussions, there is no case made out by the applicants for the reliefs they seek.

21. In consequence, this application is hereby dismissed, with no order as to costs.

S.L.JAIN
(S.L.JAIN)
MEMBER(J)

B.

B.N.BAHADUR

(B.N.BAHADUR)
MEMBER(A)

25/2/2000