

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO. 6
PRESCOT ROAD, MUMBAI - 1

O.A.Nos. 123/93 AND O.A. No. 510/94

DATED THIS 14th DAY OF MARCH, 1996.

Coram: Hon. Shri B.S. Hegde, Member (J)
Hon. Shri P.P. Srivastava, Member (A)

O.A. No. 123/93:

C. Xavier Kuriakose & 37 ors
C/o. Mr. Ramesh Ramamurthy,
Advocate for the applicants
CAT Bar Association
'Gulestan', 3rd floor,
Prescot Road, Bombay

(By Mr. M.S. Ramamurthy with
Mr. Ramesh Ramamurthy, Counsel)

..Applicants

V/s.

Union of India through
General Manager
Western Railway
Churchgate
Bombay 400020 & 13 others

(by Mr. P.M.A. Nair, Counsel
for Respondents Nos. 1 to 3)

..Respondents

Respondents Nos. 4 to 14
(By Mrs. N V Masurkar, Counsel)

..Intervenors/
Added respondents

O.A. No. 510/94:

Jitendra J. & 10 others
all working as Diesel Asstt.
Drivers in Bombay Division
of Western Railway

(By Mrs. N.V. Masurkar, Counsel)

..Applicants

V/s.

Union of India through
General Manager, Western Rly.,
Churchgate, Bonbay 20 & 49 ors.

(By Mr. P.M.A. Nair for R.1 to 4
Mr. M S Ramamurthy for R.5 to 50)

..Respondents

ORDER

(Per: B.S. Hegde, Member (J))

1. These two O.A.s viz., O.A. No. 123/93 and O.A. No. 510/94 are being decided by a common judgment/order as the main cause of action in both the OAs is similar. Heard the counsel for the parties at length.

O.A. No. 123/93:

2. The Applicants in this case were working as Diesel Assistant/Assistant Driver (Electrical) in the scale of Rs.950-1500 in Bombay Division of Western Railway. The Applicants were recruited somewhere in the year 1988 through Railway Recruitment Board and were sent for training. Applicants submit that after their qualifying test was taken and thereafter regular posting orders were given to the Applicants as Diesel Assistant/Assistant Driver (Electrical). A seniority list dated 26.12.1991 was issued by the respondents for Diesel Assistant/Electrical Assistant Driver and Firemen. The names of the applicants therein appeared from Sr. Nos. 1 to 46. This seniority list is placed at Exhibit 'C' of this O.A. The Respondents later on published revised seniority list dated 16.10.1992. In this revised seniority list the Applicants have been brought out by 106 places. The names of the applicants are shown at Sr. Nos. 107 to 142 and many of the employees who were shown junior to the Applicants in the earlier seniority list of 26.12.1991 are shown senior in this revised seniority list dated 16.10.1992. The employees who were previously junior to the

applicants in the seniority list of 26.12.91 and are now shown to be seniors in the revised seniority list of 16.10.1992 to the applicants are the rankers. This revised new seniority list dated 16.10.92 is placed at Exhibit 'E'.

3. The dispute of seniority between the direct recruits and rankers has arisen as a result of the respondent administration treating the reduction in training period from 52 weeks to 26 weeks as curtailment of the same. In the first instance, the 1991 seniority list was prepared where the direct recruits were given seniority on the basis of their date of posting after 26 weeks of training while in the seniority list of 1992 the applicants have been given seniority on the basis of their notionally completing the training period after 52 weeks. The Rule governing the date of seniority is contained in the Indian Railway Establishment Manual (I.R.E.M.) in para 302 and Note Below that Rule which reads as under:

"302. Seniority in initial recruitment grades:

Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due promotion in the case of direct recruit subject to maintenance of inter-se-seniority

of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se-seniority of each group.

"NOTE:- In case the training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training."

4. In terms of the above Rule, the Direct Recruits will not be entitled to count their seniority from the date of joining the work force if the training is curtailed in the exigencies of service and they will be granted the seniority only from the date they would have notionally completed the training period prescribed. However, if the training period is revised by the Competent Authority then the training will be treated as complete on the basis of revised training and the applicants will be entitled to seniority from the date of joining the working force after revised training period. Therefore, the important issue to be decided in this O.A. is if the training period which was 52 weeks and has been changed to 26 weeks was as a result of curtailment or was as a result of revision of training.

5. The Lt. Counsel for the Applicants has argued that the competent authority, in this case CMPE (R&L), had issued a letter dated 20.06.1988

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which is placed at Annexure 'R1' wherein the Chief Mechanical Engineer has approved of curtailment of training to 26 weeks. This letter, on which the counsel for the Applicant has relied, reads as under:

" WESTERN RAILWAY

Headquarters Office,
Churchgate,
Bombay - 400 020

No. E (R&T) 890/8/4 Vol.V Dt. 20th June 1988

Sub.: Initial training of directly recruited Diesel Assistants from RRBs.

Central Railway is following the programme of 26 weeks training for newly recruited Diesel Assistants through RRBs. On Western Railway, the training programme, at present, consists of 52 weeks. CME has approved curtailment of this training to 26 weeks on the lines of Central Railway. I am enclosing a photo-stat copy of the programme being followed by Central Railway.

You may kindly work-out a similar programme for Western Railway and circulate to all concerned keeping in view the initial training period to 26 weeks for directly recruited Diesel Assistants/First-Firemen for both BG & NG.

Encl.: As above

Sd/-xxxx
CMPE 'R&L) "

6. I.d. Counsel for the applicants has argued that this curtailment of training from 52 weeks to 26 weeks, which is approved by the Chief Mechanical Engineer, who is the highest authority in the concerned department, is in view of the revision of the training programme and therefore the training imparted to the direct recruits of 26 weeks duration can only be termed as a revised training and the provision of IREM 302 Note below

would not be attracted in the case of the applicant, since there is no curtailment of the training in the case of the applicants.

7. The respondent administration have submitted their written statement dated 27.6.95, placed at page 124 of the O.A., wherein they have brought out that the training period for Diesel Asstt./ Electric Asstt. was curtailed from 52 weeks to 26 weeks as a distress solution when there was actual shortage of trained hands for the smooth operation of the train services, duly approved by the competent authority, as per the instructions received from Head Quarters office of Churchgate, Bombay, in terms of their letter dated 20.6.88. They have further mentioned in the written statement, in para 6, that the seniority of the applicants was revised on the basis of the Rules contained in IRES para 302 Note Below as the direct recruits who are given training before regular absorption on the basis of curtailment of training duration ~~they~~ will not be getting any advantage in the matter of seniority by virtue of earlier absorption on the post due to the said curtailment in the training due to exigencies of essential services. Respondents have also placed on record as Annexure R2 Headquarter Office, Western Railway, letter dated 21.9.92 wherein it has been brought out that the training for direct recruits was one year which was reduced to 26 weeks as a distress solution in June 1988 and since the

present position has improved the competent authority has decided full training prescribed by the Railways should be adhered to. Thus from the above assertion of the respondents, it is clear that the respondent administration have curtailed the training in the exigencies of service to 26 weeks while the full training period provided for is 52 weeks.

8. The rankers who were given the seniority by the respondent administration in 1992 seniority list had prayed for joining as Intervenors in this O.A. and they were permitted to do so. Ld. Counsel for the Intervenors Smt. Masurkar argued on the same lines as has been taken by the administration in their written reply.

9. It is seen that the respondents have changed their stand and have submitted an affidavit which is placed at page 299 of the OA dated 30.1.96. In this affidavit the respondent administration have said that in terms of the Railway Board's letter dated 10.5.95, which is annexed to the affidavit, the Board have clarified that 26 weeks training is not a curtailment but a revision of training period. The Board's letter which is annexed to this affidavit reads as under:

"Sub.: Denial of seniority to directly recruited Electrical Assistants on Kota Division.

" Reference correspondence resting with your letter, No.EM 1030/8/12 dated 6.4.95 on the above subject.

Board have carefully considered the matter in the light of all the available facts and documents and have concluded that it is not a case of curtailment of the prescribed training period from 52 to 26 weeks for the concerned employees, in the exigencies of service but one of revision of training period from 6.7.88 to 30.10.92. It has accordingly been decided that the concerned Apprentice Elec. Asstts. be allowed seniority from the date of coming over to a working post after completion of 26 weeks training as per the normal rules.

Necessary action in the matter may be taken accordingly, under advice to the Board.

Receipt of this letter may please be acknowledged.

Sd/-
(K.B. LALL)
Director Establishment(N)
Railway Board

From this letter it will be seen that this was a decision in the case of Electrical Assistants of Kota Division and they have held that on the basis of facts and documents the case is not that of curtailment of training, but one of revisional training period between period from 6.7.88 to 30.10.92 and therefore, the concerned Apprentice Electrical Assistant be allowed seniority from the date of coming over to the working force after completion of 26 weeks of training. Since the subject matter was pertaining to a Division with which we are not concerned, we had advised the

1d. Counsel for the Railways to produce the original file which has resulted into this decision. We have gone through the concerned document and we have gone through the file submitted by the respondent administration and we have no doubt that the decision of the Railway Board dated 10.5.1995 pertains to Kota Division and it cannot be extended as a general decision to be applicable over the whole railways especially at Bombay Division with which the present O.A. is concerned. We are, therefore, unable to accept the revised plea of the respondents at this juncture that the training period of 52 weeks to 26 weeks is a revision on the Bombay Division also based on the Railway Board's decision dated 10.5.95. It is understandable that respondent administration want to extend the decision of Railway Board in the case of Kota Division to the whole of Western Railway for administrative reasons, but we are unable to accept the same for reasons of equity and justice.

10. We are, therefore, satisfied that the curtailment of training from 52 weeks to 26 weeks was as a measure of exigency of service and would not give benefit of seniority to the applicants. Therefore, the seniority is required to be determined in terms of Indian Railway Establishment Manual Rule 302 Note Below and the seniority is required to be given to the applicants from the date of their completion of 52 weeks of training.

11. 1d. Counsel for the Applicants has also brought out that even if the notional seniority is taken into consideration there are glaring mistakes in the seniority list of 1992 and many of the applicants

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have been shown junior even if their seniority is considered on the basis of their notional date of coming to working force after completion of 52 weeks of training. Since we are not considering any individual case in this O.A. we give liberty to the applicants to submit representation to the respondents in this regard which would be considered by the respondents and dispose of the same by passing a speaking order.

12. In the result we do not find any merit in the present O.A. and the same is dismissed with no order as to costs.

O.A. No. 510/94 :

13. This O.A. is interlinked with O.A. No. 129/93 inasmuch as the Intervenors in O.A. No. 123/92 are the Applicants in this O.A. and the Applicants in O.A. No. 123/92 are private respondents in this O.A.

14. Id. Counsel for the applicants in this O.A. has primarily argued that the applicants herein should be given seniority from the date they were working on ad hoc basis before regular selection. According to the applicants they were officiating on ad hoc basis from 1986 onwards and the respondents did not conduct the selection for the post of diesel assistant. Selection was conducted only in 1989 and the applicants were regularised with effect from 11.10.1989 although the applicants were entitled to be regularised from the date of their ad hoc promotion.

15. The main argument of the Ld. Counsel for this applicants in this case is that in terms of the recruitment rules the post of Diesel Assistant etc., are required to be filled in completely by rankers. The various methods of fillingup the vacancies have been brought out in Annexure A4 of the O.A. in administrative circular dated 17/20.11.87. In para 4 the procedure for filling up the vacancies has been ennumerated, which reads as under:

"i) The vacancies in the grade of First Fireman (Rs.950-1500) will be filled cent percent by promotion of Second Fireman in scale Rs.825-1200 by a process of selection but without any restriction of age or qualification. Shortfall, if any, will be made good by direct recruitment through Railway Recruitment Boards.

"ii) The vacancies in the grade of Diesel Assistant/Electric Assistant may be filled as under:

a) 50% of the vacancies shall be filled by lateral induction from among First Fireman who are atleast 8th Class pass and are below 45 years of age; in the case of shortfall, by promotion by usual selection procedure from among Second Firemen who are atleast 8th Class pass and are below 45 years of age.

b) Balance 50% of vacancies shall be filled by lateral induction of matriculate First Fireman with minimum three years of continuous service, shortfall if any, by promotion of Matriculate Second Firemen through departmental examination.

c) Shortfall, if any, against (a) and (b) above shall be made good by direct recruitment through the Railway Recruitment Boards.

d) Wherever the existing AVC provides for 20% of the vacancies in the grade of Electric Assistants being filled from amongst Artisan who are atleast 8th Class pass and below

45 years of age, the same practice may continue and the mode as indicated at (a) and (b) above will apply to the remaining 80% of the vacancies in this category."

1d. Counsel for the applicants argued that since the Applicants had a right to the post before the direct recruits in terms of this circular they should be regularised against the vacancies which were existing in the year 1987, which were being occupied by them on ad hoc basis.

16. Respondents on the other hand ^{have} ~~has~~ argued that in terms of the Rules, the seniority can only be granted from the date of regular promotion and the Rules do not permit granting of seniority from the date of ad hoc promotion.

17. Id. Counsel for the private respondents Mr. M.S. Ramamurthy, has also argued on the same lines and have quoted varicus judgments in support of his contentions, especially the case of THE DIRECT RECRUIT CLASS-II ENGINEERING OFFICERS' ASSOCIATION AND OTHERS V. STATE OF MAHARASHTRA & ORS., AIR 1990 SC 1607.

18. As far as the Rules are concerned, the applicants would not be entitled to the benefit of ad hoc service for the purpose of seniority in terms of the ratio laid down in the DIRECT RECRUIT CLASS-II ENGINEERING OFFICERS' ASSOCIATION (supra). It may be mentioned that the case of the applicants is not covered by any of the provisions brought out in the Direct Recruits (Supra) case. The ad-hoc services

could have been considered for the purpose of seniority only in case if the ad hoc promotion was made after following the Rules for promotion. No material has been produced before us to show that the promotion on ad hoc basis was in accordance with the Rules, and therefore the benefit of the ratio under the Direct Recruitment Case (*supra*) cannot be extended to the applicants in this O.A.

19. We, therefore, see no merit in the O.A. of the Applicants as far as their prayer for counting the ad-hoc service for the purpose of seniority is concerned. The other reliefs prayed for in this O.A. have not been pressed as they were also the subject matter which was considered in O.A.No.123/93. O.A.No. 510/94 is accordingly dismissed with no order as to costs.

20. Before we part with this judgment we want to comment upon the indifferent attitude shown by the Western Railway Administration during the hearing of this case. Counsel for the Western Railway Administration Mr. P.M.A. Nair had on more than one occasion shown his helplessness that he is not getting the assistance from the concerned officers in complying with the direction given by us. He had even requested our permission to withdraw his name from the case, but we had not permitted him to withdraw from the case and requested him to assist the Tribunal. We, therefore, record our

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appreciation for the assistance rendered by
Mr. P.M.A. Nair while arguing the cases.

(P.P. Srivastava)
Member (A)

(B.S. Hegde)
Member (J)

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