

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 444/1994/199

Date of Decision: 20.02.1997

K. Surya Rao

Petitioner/s

Mr. M.W. Harsulkar

Advocate for the  
Petitioner/s

V/s.

U.O.I. & 3 ors.

Respondent/s

Mr. P.S. Lambat

Advocate for the  
Respondent/s

CORAM:

Hon'ble Shri Justice K.M. Agarwal, Chairman

Hon'ble Shri P.P. Srivastava, Member (A)

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to  
other Benches of the Tribunal ?

  
CHAIRMAN

trk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH,  
CIRCUIT SITTING AT NAGPUR, C.G.O. Complex  
'C' WING, SEMINARY HILLS, GROUND FLOOR,  
NAGPUR

O.A. No. 444/94

DATED : 20th DAY OF FEBRUARY, 1997

Coram : Hon. Shri Justice K.M. Agarwal, Chairman  
Hon. Shri P.P. Srivastava, Member (A).

Shri K. Surya Rao  
Driver 'C' Grade (Goods)  
R/o. Railway Quarter  
No. 4/3, S.E. Railway Colony,  
Ajni, Nagpur 440003

(By Adv. Mr. Gole with Mr.  
M.W. Harsulkar)

..Applicant

V/s.

1. Divisional Railway Manager,  
S.E. Railway, Nagpur
2. Union of India  
through General Manager  
S.E. Railway  
Garden Reach, Calcutta 43
3. Anthony Manual,  
aged about 50 years  
Driver 'A' grade  
(Passenger)  
R/o. C/o. TFR(G) S.E.Rly.,  
Traction Foreman  
Running, Nagpur
4. Brij Mohan Tiwari  
aged about 50 years  
Driver 'C' Grade (Goods)  
R/o. C/o. TFR(G),  
S.E. Rly., Traction Foreman  
Running, Nagpur

(By Adv. Shri P.S. Lambat)

..Respondents.

ORDER

(Per: K.M. Agarwal, Chairman)

This is an application under Section 19  
of the Administrative Tribunals Act, 1985 by a 'C' Grade  
Driver in Railway employment, inter-alia, for the follow-  
ing main reliefs:

- i) for deemed promotion as 'C' grade  
Driver with effect from 7.8.1987  
and as 'A' grade Driver with effect

from the date his junior Respondent No.3 was promoted as such.

- ii) for treating him as regularly promoted driver grade 'C' with effect from the date his juniors were so regularised.
- iii) and for directing the concerned Railway authorities to call him for selection as Driver grade 'A' along with those called for such selection by Divisional Personnel Officer, S.E. Railway, Nagpur, vide his letters dated 30.12.1993 and 7.2.1994.

2. It is not disputed that the applicant is senior to respondents 3 and 4 in Railway service as Engine Drivers. He was subjected to Departmental Enquiry and awarded punishment of withholding promotion to the next higher grade of Diesel Assistant for a period of 5 years by order dated 7.8.1982 (Annexure R-1). The third Respondent, though junior to the applicant, was first promoted to the post of grade 'C' Driver in the year 1987, because of the currency of the period of punishment. After the expiry of the period of punishment, the applicant was also promoted to the said grade with effect from 18.8.1989. The 4th Respondent was subsequently promoted to the said post in 1993. In December 1993 and February 1994, it appears that a decision was taken by the authorities to conduct the selection of Passenger Drivers in the higher pay scale and accordingly called various eligible grade 'C' drivers, including Respondents 3 and 4, for the said selection on specified dates. The applicant was excluded from such selection process. Being aggrieved, the applicant has approached this Tribunal for the said reliefs.

3. During the course of arguments, the learned counsel for the applicant gave up all other reliefs, except that for directing the authorities to call the applicant as well for selection as grade 'A' Driver along with those

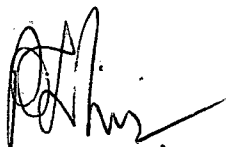
called for such selection vide letters dated 30.12.1993 and 7.2.1994 of the Divisional Personnel Officer, S.E. Railway, Nagpur.

4. The Ld. Counsel for the Department of Railways vehemently opposed the petition by submitting that because of the punishment awarded in 1982, the applicant was not entitled to be considered for selection to grade 'A' Driver. He further drew our attention to paragraphs 6 and 12 of the reply filed on behalf of the Respondents 1 and 2 to submit that there were just reasons for such exclusion. It was also submitted that the selection has already taken place and persons selected are working as grade 'A' drivers and, therefore, the petition has become infructuous.

5. After giving serious consideration to the rival contentions of the learned counsel for the parties, we are of the view that this application must be allowed. Admittedly on the date of promotion of the applicant as grade 'C' Driver, the punishment period of 5 years had expired. The 4th respondent Shri Brij Mohan Tiwari was subsequently promoted in 1993 as Driver grade 'C' and, thus, he was junior to the applicant. Shri Tiwari was called for selection. His name appeared at S.No.31 in the list given in letter dated 30.12.1993 of the Divisional Personnel Officer. The applicant fulfilled and possessed all requisite eligibility qualifications as were fulfilled and possessed by his junior Shri B M Tiwari. Additional persons named and called for selection vide subsequent letter dated 7.2.1994 were all juniors to the applicant and possessed qualifications similar to those possessed by the applicant. We, therefore, hold that

there was no justification for giving different treatment to the applicant by excluding his name for consideration for grade 'A' Driver. The fact that the selection has already taken place is no ground to refuse the relief claimed by the applicant. Accordingly the petition deserves to be allowed to the extent of directing the Respondents 1 and 2 to consider the case of applicant for selection to the post of grade 'A' Driver and if selected, to give him seniority above his junior Shri B.M. Tiwari in the seniority list of grade 'A' Drivers.

6. In the result, this application succeeds and it is hereby allowed. The respondents 1 and 2 are directed to consider the case of the applicant for selection to the post of grade "A" Driver and if selected, to give him seniority above his junior Shri B.M. Tiwari in the seniority list of grade "A" Drivers. No order as to costs.

  
(P.P. Srivastava)  
Member(A)

  
(K.M. Agarwal)  
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: MUMBAI

Review Petition No.51/97 in  
OA No.444/94.

This the 16<sup>th</sup> day of July, 1997

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN  
HON'BLE MR.P.P.SRIVASTAVA, MEMBER(A)

Shri K.Surya Rao  
Driver Passenger(Electrical)  
R/o Railway Quarter No.4/3  
S.E.Railway Colony, Ajni,  
Nagpur-440003.

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Applicant.

Vs.

1. Divisional Railway Manager  
South Eastern Railway  
Nagpur.
2. Union of India, through  
General Manager, S.E.Railway  
Garden Reach  
Calcutta - 43
3. Anthony Manual  
Driver Passenger(Electrical)  
R/o TFR(G), S.E.Railway  
Traction Foreman Running  
Nagpur.
4. Brij Mohan Tiwari  
Driver 'C' Grade (Goods)  
R/o, C/O TFR(G), S.E.Railway  
Traction Foreman Running  
Nagpur.

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Respondents

ORDER(IN CIRCULATION)

JUSTICE K.M.AGARWAL, CHAIRMAN:

We find no error apparent on the face of the record  
of our order dated 20.2.1997 passed in OA No.444/94 and,  
therefore, no question arises for review of the order.  
Accordingly, the Review Petition is hereby dismissed.

  
( K. M. AGARWAL )  
CHAIRMAN

  
( P.P.SRIVASTAVA )  
MEMBER(A)