

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.1030/1995

Thursday this the 24th day of April, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (A)
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

1. C.T. Adsule working as
PWI Grade III,
Western Railway,
Bombay Division at
Valsad, Gujarat State.
2. Rajesh Pillai working as
PWI Grade III,
Under Dy. Chief Engineer (TS)
Headquarters Office,
Western Railway,
Churchgate,
Bombay-400 020.
3. Lal Bahadur working as
PWI Grade III,
Bombay Division,
Western Railway at Dondaiche,
District Dhule, Maharashtra.

C/o G.S. Walia
Advocate, High Court
16, Maharashtra Bhavan,
Bora Masjid Street,
Fort Bombay-400 001.

..Applicants

By Advocate Shri G.S. Walia.

Versus

1. Union of India through
General Manager,
Western Railway,
Headquarters Office,
Churchgate,
Bombay-400 020.
2. Divisional Railway Manager,
Bombay Division,
Western Railway,
Bombay Central,
Bombay-400 008.
3. Sharad Kumar Singh
4. Ramesh P. Malkani
5. Akhilesh Kumar Mishra

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6. Manoj Kumar Upadhyay
7. Sushil Kumar Shah
8. Rajeev Kumar Saxena
9. R. Arunachalam
10. Omprakash Verma
11. Jayesh S. Kadam
12. Ramsawrup Meena
13. Bhuvanchandra Sati
14. Lakhanla Meena
15. Prem Prakash
16. Kamal Kumar
17. Bhakti Singh P. Parmar
18. Abdul Qayyum
19. Bhagat Singh Rawat
20. Debashish B. Bandopadhyay

Respondent Nos. 3 to 20
working as PEI III
Notice to be served through
Divisional Railway Manager,
Bombay Division,
Western Railway,
Bombay Central,
Bombay-400 008.

..Respondents

By Advocate: Shri V.S. Masurkar.

ORDER

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

This is a joint application filed by the applicants
praying for the assignment of correct seniority to the
applicants in the cadre of PWI Grade-III scale Rs.1400-2300 (RPS).

2. Facts in brief are that the applicants were ^{initially} appointed

as Permanent Way Mistry (hereinafter referred to as PWM) in the pay scale of Rs.1400-2300 (RPS). From the post of PWM, the next promotional post is PWI Grade-III though in the same scale of Rs.1400-2300 (RPS). The recruitment to the post of PWI Grade-III is partially by way of direct recruitment to the extent of 66 $\frac{2}{3}$ % of the vacancies and 33.1/3% by way of promotion by the departmental candidates for the respective years. The applicants allege that though vacancies existed in the year 1990, 1991 and 1992 and applicants had been making representations for conducting the departmental test, but the same was delayed due to the administrative reasons. Even 10 vacancies were available for departmental quota as per letter dated 26.9.90 but the applicants continued making representation to the department for departmental examination but the same was not held due to administrative reasons and in one of their reply to the representation of the applicants, they were informed that the applicants do not come within the zone of eligibility even though they had put in more than 3.1/2 years of service whereas only 2 years service is required and besides that after the Notification of the examination, willingness and unwillingness of the candidates are obtained and various candidates who are senior enough but are illiterate gave their unwillingness and then the zone of consideration is decided from amongst the candidates who are willing to appear in the examination. Thus the letter issued by the department informing the applicants that they are not within the zone of consideration was an erroneous one. However, the applicants were given ad hoc appointments though clear vacancies were available. Exhibit 'C' is a letter

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vide which the applicants were given ad hoc promotion.

3. The applicants further submit that a batch of direct recruits numbering about 18 also came to be recruited by an order dated 15.7.1993 vide Exhibit-E and thereafter regular selection for departmental candidates was also held and candidates who were not having 2 years regular service as Permanent Way Mistry were also allowed to appear and vide an order dated 5.9.94, panel was declared and all the applicants were also selected on regular basis vide Annexure-G. Though panel had been declared vide Exhibit-G on 5.9.94, but the order for appointment was issued on 25.1.1995 and no reason has been given for the delay in the issue of the order dated 25.1.1995 so the applicants allege that since the vacancies existed for the earlier years and the applicants had been working on ad hoc basis as PWI Grade-III so they are entitled to be adjusted and granted seniority for the vacancies for the earlier years and they are to be granted ^{seniority} against the vacancies which existed in the earlier years and in any case at least from the date when they had started working on ad hoc basis.

4. The applicants further allege that they apprehend ^{which} that further promotion to PWI Grade-II is made from amongst PWI Grade-III and if the correct seniority is not assigned to the applicants then the direct recruits will be shown senior and the chances of the applicants for promotion to PWI Grade-II will be adversely affected so the applicants have prayed that this Tribunal may hold that the applicants are entitled to have their seniority fixed from the date from which the regular vacancies arose in the cadre of PWI Grade-III

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or the date the applicants were promoted on ad hoc basis ~~w.e.f.~~ all consequential benefits.

5. The respondents are contesting the DA and raised an objection as regards territorial jurisdiction as one of the applicants is working in Valsad which is in the State of Gujarat. The second objection taken by the respondents is that the application is premature as the applicants had not made any representation for assigning them seniority nor the applicants have annexed a list of 15.7.95 vide which the direct recruits were appointed or alleged to have been shown seniors to the applicants. However, the facts with regard to the ad hoc promotion and appointment of direct recruits from the dates more or less are admitted.

6. We have heard the learned counsel for the parties and gone through the records of the case.

7. It is an admitted case that the applicants were appointed on ad hoc basis earlier to the appointment of the ~~private~~ respondents who were direct recruits as PWI Grade-III, so the short question to be seen is whether the applicants are entitled to include ad hoc service for the purpose of reckoning their seniority. The applicants in support of their case have referred to a judgment reported in 2000 SCC (L&S) 444 entitled as T. Vijayan and Others Vs. Divisional Railway Manager and Others which is also a Railways case and in the similar circumstances departmental candidates ^{who} were promoted as ^{process} Fireman Grade 'A' and regular selection for promotion quota though it had started in the year 1987 but could be completed in 1992 and culminated in selection of all the respondents who were consequently regularised w.e.f. 16.12.1991 and in the meanwhile

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pursuant to an advertisement in the year 1985 direct recruits were recruited and were appointed in the year 1990 and in such circumstances it was held that the applicants were entitled to count their ad hoc service towards seniority provided the promotees had been appointed in their quota and in accordance with the rules. In that very judgment it has been observed that since in Railways ad hoc appointment was permissible in view of para 216 of the Indian Railway Establishment Manual and if the ad hoc appointment is followed by regularisation without any break then the employee is entitled to count the service rendered on ad hoc basis towards his seniority provided the vacancy in his quota was available.

8. In this case there is no denial that the vacancies were not available in the quota for promotees and ad hoc promotions were made as per the para 216 of the IREM so we are of the considered opinion that the applicants are entitled to count their services towards seniority from the date of their ad hoc appointments.

9. But before concluding the judgment we find that the respondents have taken ^a strong objection that no representation ^{has been made} to the department regarding ^{correct} assigning of the ^{seniority} and for that purpose OA is not ^{maintainable} as per Section 20 of the AT Act and has to be dismissed. In reply to this learned counsel for the applicant has submitted that Section 20 requires that a representation is to be made if ~~a statutory remedy~~ ^{correctly} was available, but since no statutory remedy is available so the application cannot be dismissed. Even otherwise the Tribunal has

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power to dispense with the same. However, from a perusal of the OA itself we find that the applicants have nowhere alleged which seniority list they are challenging nor any such list has been annexed with the OA. Even otherwise it is a well settled law that when a seniority list is issued or published before that a tentative seniority list is circulated, objections are invited from all quarters and the same are decided only then final seniority list is issued and in this case we find that there is not an iota of allegations with regard to the framing of the seniority list by the department at all. However, the applicants had approached the court apprehending that while considering the case for further promotion PWI Grade-II the applicants will not be considered as their ad hoc services will not be included for seniority purposes. Keeping in view the same, we find that this OA can be disposed of with a direction to the authorities as under:-

- (i) That the respondents shall prepare and publish the seniority list of PWI Grade-III in accordance with the extant rules, instructions and judicial pronouncements on the subject within a period of 3 months from the date of receipt of a copy of this order.
- (ii) The respondents are further directed that before making any further promotion to PWI Grade-II seniority list shall be finalised.
- (iii) If thereafter also any grievance with regard to assigning of seniority survives, the applicants will be at liberty to approach the Tribunal again in accordance with law.

No costs.

Shanta
(MRS. SHANTA SHASTRY)
MEMBER (A)

Kuldip Singh
(KULDIP SINGH)
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Contempt Petition No.84/2001
in
Original Application No.1030/95

Dated this Tuesday the 4th September, 2001

Coram : Hon'ble Shri Justice Birendra Dikshit, Vice Chairman
Hon'ble Shri B.N. Bahadur, Member (A).

1. C.T. Adsule,
working as
PWI Grade III,
Western Railway,
Bombay Division at Valsad,
Gujarat State.
2. Rajesh Pillai,
working as,
PWI Grade III,
Under Dy. Chief Engineer (TR),
Headquarters Office,
Western Railway, Churchgate,
Mumbai - 400 020.

.. Petitioners.

[Petitioners: by Mr.G.S. Walia, Advocate]

Vs.

1. Niklesh Jain,
DRM,
DRM's Office,
Western Railway,
Mumbai Central,
Mumbai - 400 008.
2. Sanjay Singh,
Sr.DPO,
Western Railway,
Mumbai Central,
Mumbai - 400 008.

.. Contemners.

[Contemners by Shri V.S. Bhosker, Advocate]

Tribunal's Order on Contempt Petition.

This Contempt Petition has been filed by applicants on
the ground of wilful dis-obedience of Order dated 20.4.1001
passed on O.A. 1030/95.

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taking action. We hope that respondents will now not delay the matter as period of 3 months stands expired even after publication of provisional seniority list.

4. The other arguments of Learned Counsel for applicants are that applicants are interested in execution of the order than to get the respondents punished. The present Contempt Petition is not a remedy for executing the order. However, as we have already expressed that reasonable time has not expired after publication of the provisional seniority list and inviting objections and we are not taking action against respondents at this stage we hope that the department will not give effect to any order to the prejudice of applicants unless final seniority list is published ~~in accordance~~ as directed by us in the judgment dated 20.4.2001.

5. The Learned Counsel for applicant has pointed out that despite passing of the order the respondents should not have prepared panel before finalising seniority list. We are of the view that the preparation of panel is not in violation of our order. However, it is kept open for applicants to agitate their objections ^{by seeking remedy afresh} in case they feel the preparation of panel is not legally sustainable. This they can do by objecting either before authorities or by a separate O.A.

6. For aforesaid reasons, the Contempt Petition No.84/2001 is dismissed, with no order as to costs.


(B.N. Bahadur)
Member (A)


(Birendra Dikshit)
Vice Chairman.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

C.P.No.27/2003 in OA.NO.1030/95

Dated this the 1 day of 4th July 2003.

CORAM : Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Shri Shankar Prasad, Member (A)

1. C.T.Adsule
2. Rajesh Pillay
3. Lal Bahadur

...Applicants

All are working as PWI
Grade III, Western Railway,
Mumbai Division.

By Advocate Shri G.S.Walia

vs.

Shri Kaushal Kishore,
Divisional Railway Manager,
Mumbai Division,
Western railway,
Mumbai Central,
Mumbai.

...Respondents

By Advocate Shri V.S.Masurkar

O R D E R

{Per : Shri Kuldip Singh, Member (J)}

The applicants had filed OA.NO.1030/95. The said OA. was decided on 20.4.2001 with the directions to the respondents that the respondents shall prepare and publish the seniority list of PWI Grade III in accordance with the extant rules, instructions and judicial pronouncements on the subject within a period of 3 months. It was also observed in the said OA. that the applicants

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were entitled to count their services towards seniority from the date of their adhoc appointments. The respondents were further directed that before making any further promotion to PWI Grade-II seniority list shall be finalised. Since the order was not obeyed, the applicants had filed C.P. earlier also which was numbered as C.P.No.84/2001. The earlier C.P. was filed on the ground that despite the order of the OA., the respondents had prepared a panel before finalising seniority list. The Court decided that C.P. stating that 'we are of the view that the preparation of panel is not in violation of order'. So the C.P. was dismissed. Besides that while deciding the earlier C.P., Court also observed that reasonable time has not expired after publication of the provisional seniority list and inviting objections and thus the Court has refused to take any action and C.P. was dismissed.

2. In the present C.P. the applicants again alleged that they had requested the respondents to implement the judgement but respondents even now had not implemented the judgement and on the contrary they are going ahead with further promotions. The objection to that has also been taken by the applicants and now the respondents are going ahead with the selection of PWI Grade I, wherein the employees who are junior to the applicants have been called for selection and the applicants have been ignored. So they stated that contempt proceedings be drawn against the respondents.

3. The respondents in their reply plead that they have filed Writ Petition against the order of the Tribunal which is pending before the Hon'ble Bombay High Court and respondents have already decided the representation of the applicants vide speaking order dated 24.4.2003 (Ex.R-1). The respondents further submit that they have prepared a seniority list and circulated the same as per Ex.R-2. The respondents are relying upon the judgement of the Hon'ble Supreme Court in the case of J.S.Parihar vs. Ganpat Duggar & Ors. reported in AIR 1997 SC 113, wherein it was held that once seniority list has been prepared by the Govt. as per the directions given by the Court, the Contempt Court cannot, even though the list be not in conformity with the directions, consider it to be the wilful violation of the order and order redrawal of list by considering the matter on merit. Thus, there is no wilful violation of the order and no contempt proceedings can be drawn.

4. We have heard the learned counsel for the parties and gone through the record.

5. The learned counsel for the applicants submitted that judgement of this Court was pronounced on 20.4.2001 and thereafter the respondents had issued the seniority list which was notified on 10.5.2001 and objections were invited. But the same is not in accordance with the directions given by this Court. Hence, the respondents are in contempt of the Court. As

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against this, Shri V.S.Masurkar submitted that, first of all, the respondents have filed a Writ Petition against the orders of this Tribunal. Secondly, since the seniority list has been issued in accordance with the rules, there is no wilful disobedience on the part of the respondents. Hence, no action for contempt proceedings against the respondents can be initiated. In view of this, we find that when the respondents had already issued the seniority list after the pronouncement of the judgement of this case and they have also invited objections for the provisional seniority which was further finalised and the objections of the applicants have been considered, so contempt proceedings can not be initiated. The applicants can challenge the same by filing a fresh OA.

6. We are of the considered opinion that no contempt lies. Hence, C.P. is dismissed.


(SHANKAR PRASAD)

MEMBER (A)


(KULDIP SINGH)

MEMBER (J)

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