

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 233 of 1997.

Date of Decision: 12.06.2002.

Shri Harish Chandra Sharma & Another, Applicants.

Shri N. C. Saini, Advocate for Applicants.

Versus

Union of India & Others, Respondent(s)

Shri S. C. Dhavan Advocate for Respondent(s) No.1 & 2.

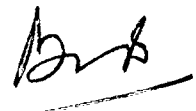
CORAM:

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? Yes.


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

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 233 of 1997.

Dated this Wednesday, the 12th day of June, 2002.

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

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

1. Harish Chandra Sharma
Senior B.C.
Masjid Rly. Station, C.Rly.
Residing at - 305, Swami
Servanand Co.Op Housing Scty.,
Ulhasnagar - 4,
Dist. Thane.

2. Banvarilal Rai,
Senior B.C.
Thane Railway Station,
C. Railway.
Residing at : 306, Swami
Shanti Prakash Apartment,
Ulhasnagar -4, Dist. Thane.

... Applicants.

(By Advocate Shri N. C. Saini)

VERSUS

1. Union of India through
The General Manager,
Central Railway,
C.S.T., Mumbai - 400 001.

2. The Divisional Rly. Manager,
Central Railway, C.S.T.,
Mumbai - 400 001.

3. Madan Mohan Kashyap,
Sr. B.C., C.S.T.M.,
C.Rly., Mumbai.

4. Arun Kumar Tyagi,
Sr. B.C., C. Rly.,
Kalyan.

5. Yeshwant Bhilwani,
Sr. B.C. Pune, C. Rly.,
Dist. Pune.

6. Vinod Kumar Srivastava,
Sr. P.C., Dadar, C. Rly.

7. Vijay Kumar Pardeshi,
H.B.C., C.Rly.,
Sandhurst Road.

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8. Barco Frank Sequeira,
Sr. B.C., C.S.T.M.,
C. Rly., Mumbai.
9. Arvind Kumar,
Sr. B.C., C. Railway,
Dadar.
10. Om Prakash,
Sr. B.C., C. Railway,
Kalyan.
11. Hari Om Gupta,
Sr. B.C., C. Railway,
Kalyan.
12. Rajendra Sitaram,
Sr. B.C., C. Rly.,
Ghatkopar.
13. Subodh Kumar Bhuptani,
Sr. B.C., C. Rly.,
Ghatkopar.
14. Anil Kumar Tiwari,
Sr. B.C., C. Railway,
Kalyan.
15. Shyam Veer Singh,
Sr. P.C., C. Railway,
Dadar.
16. S. P. Patil,
Sr. B.C., C. Railway,
Kurla Terminus.
17. Tejram Hariram,
Sr. B.C., C. Railway,
Thane.
18. Rakesh Kumar Tiwari,
Sr. B.C., C. Railway,
Kalyan.
19. S. Y. Ahire,
Sr. B.C., C.S.T.M.
C. Railway, Mumbai.
20. M.A. Hiwale,
Sr. B.C., C. Railway,
C.S.T.M., Mumbai.
21. Vilas Kumar Anvekar,
Sr. P.C., Central Railway,
C.S.T.M., Mumbai.
22. Lal Chand Prajapati,
Sr. B.C., C. Rly.,
23. Girish Bhale D.,
Sr. Goods Foreman,
C.Rly., Dist. Pune.

Ans

24. Subhash D. Zada,
J.F.D., Bhusaval Division
Dist. Jalgaon.
25. R. M. Vaidhya,
Sr. Goods Foreman,
C. Railway,
Dist. Pune, Pune.
26. K.S. Murari,
Sr. Booking Clerk,
C. Railway,
King's Circle Station.
27. Pratap Singh,
Sr. Booking Clerk,
C. Rly., Thane.
28. M. P. Sharma,
Sr. Booking Clerk,
Central Railway,
Kalyan, Dist. Thane.
29. Mr. V. K. Shandyaz,
Guard, A/o. A.Y.M.,
Kalyan.
30. Mr. J. P. Saini,
Guard, C/o. A.Y.M.,
Kalyan, Dist. Thane.
31. Ashok Pal Chaudhary,
Sr. Booking Clerk,
C.S.T.M., Mumbai.
32. Ashok Kumar Tangdi,
Sr. Booking Clerk,
Kalva, Dist. Thane.

... Respondents.

(By Advocate Shri S. C. Dhavan
for Respondent Nos. 1 and 2).

O R D E R (ORAL)

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

This application is made by two Applicants who, are aggrieved by the Impugned Order dated 12.12.1996, where reassigning of seniority of Commercial Clerks has been done. The Applicants state that they are adversely affected by such reassignment of seniority.

Bns

2. The basic facts, as brought out by applicants are that they were promoted as Office Clerks (Grade Class-III) in April, 1984, under Employment Notice No. 1/83-84. It is averred that vide Order dated 16.03.1990, i.e. first in 1990 and later through the challenged order, in 1996, certain persons have been provided seniority above the Applicants.

3. The Respondents in their Written Statement while admitting that the Applicants were promoted in April, 1984, consequent of Employment Notice 1/83-84 have stated that prior to this an Employment Notice was issued bearing No. 2/80-81 and 1/82. Certain persons were selected and placed in the panel but could not be appointed earlier due to vigilance investigation at the level of Railway Recruitment Board (R.R.B. in short). The panel came to be finalised by the R.R.B. only in December, 1996 and appointments were made thereafter.

4. The question that arises before us is whether persons who were selected out of a selection process initiated earlier but actually appointed later will carry higher seniority to those who were appointed earlier, even though from a selection process initiated later. In fact, this is the question that has to be decided by us in this O.A. We have gone through the papers in the case and have heard the Learned Counsel on both sides, at some length.

5. Learned Counsel for the Applicant, Shri N. C. Saini, who argued the case, in detail, first brought us to the relevant provisions in the I.R.E.M., namely - 302 and 306. It was contended by him that the provisions contained in para 302 will apply and not those in para 306. These provisions read 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 a 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 process 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.

306. Candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the date of posting except in the case referred by paragraph 305 above.

The second point taken by the Learned Counsel was that it is totally arbitrary and not allowable in law that persons who were not in service, and were perhaps serving elsewhere are provided higher seniority to those who were all the time working for the Railways and the gap is of five years, he argued. Learned Counsel for the Applicant also emphasized the point that Private Respondents arrayed by him have chosen not to appear before the Tribunal.

6. Learned Counsel for the Respondents argued the case with reference to para 306. The case was adjourned on the last occasion to allow the respective parties to produce any case law

or the practice followed by the Railways on this peculiar situation which has arisen. We find that the matter is no longer res integra. Learned Counsel for the Respondents has brought to our notice a copy of the judgement and order made by this Tribunal in a batch of O.As. bearing Nos. 549/91, 550/91 and 552/91. The order was made on 30.07.1997. We have gone through this judgement carefully in the Court with the assistance of both Learned Counsel. A copy had been provided to Learned Counsel for Respondents, who argued that this judgement was not applicable as some of the people in one of the O.As. therein had not been selected through R.R.B. We find that the Tribunal has carefully considered the main question that is before us in the O.A. The provisions of para 302 and 306 has been discussed, as also some of the arguments raised by the Learned Counsel therein which are akin to the arguments raised here. The Tribunal has arrived at the conclusion that persons who are appointed as a result of a selection notified earlier shall have the right to seniority even though they had come to be appointed, in actual terms on a subsequent date. We also note that provisions contained in para 306 of the I.R.E.M. have not been challenged by the applicants in the O.A. before us.

7. Learned Counsel for the Applicant, Shri Saini, had attempted to draw support from the judgement of the Hyderabad Bench of this Tribunal made in O.A. No. 962/92 on 20.09.1995 [Hyder Hussain & Others V/s. Chief Personnel Officer, SC Rlys, Secunderabad & Others reported at 1996 (1) CAT ATJ 235]. We have gone through that judgement and find that it refers to seniority vis-a-vis para 303 (a) of I.R.E.M. and the aspect of training was the issue involved therein vis-a-vis inter-se seniority. The basic ratio decided there is that it is not proper to compare the

merits of officials on the basis of marks obtained at different examinations. We are not convinced that this case law applies to the present case. On the other hand, the judgement in the batch of O.As. cited by us earlier, raises and answers the very specific point that is before us, in clear terms after discussing the merits. We have no reason to disagree with it.


Learned Counsel for the Applicant also cited the Principal Bench judgement of this Tribunal made in O.A. No.793/91 [Shri Shashi Kumar V/s. Union of India & Ors. reported at 1996 (1) CAT ATJ 446]. Here also, the point decided is not specifically the point before us and we are not convinced that this judgement will help the cause of the Applicant.

8. In view of the above discussions, we are not convinced that any interference is called for by us in the matter. The O.A. is therefore dismissed. No order as to costs.


(S. L. JAIN)
MEMBER (J)


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

OS*

order/Judgement despatched
to Applicant/Respondent (s)
on 2.7.2002

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