

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

OPEN COURT / PRE DELIVERY JUDGMENT IN OA 284/97

Hon'ble Vice Chairman / Member (J) / Member (A)

may kindly see the above Judgment for
approval / signature.

for judgement on
24/9/2001.

19.9.2001.

V.C. / Member (J) / Member (A) (K/S) (SRA)

Hon'ble Vice Chairman

Hon'ble Member (J)

I agree SRA

Hon'ble Member (A) (K/S)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 284 of 1997.

Transfer Application No.

Date of Decision 24/9/2001.

Mangesh D. Khatu & 6 Ors.

Petitioner/s

Mr. Ramesh Ramamurthy.

Advocate for
the Petitioners

Versus

UOI & Ors.

Respondent/s

Mr. V. S. Masurkar (For Res. 1 & 2)

Mr. G. S. Walia (For Res. 3 & 4).

Advocate for
the Respondents

CORAM :

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

Hon'ble Shri. S. K. Agrawal, Member (A)

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

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

SLJm

CENTRAL ADMINISTRATIVE TRIBUNAL : MUMBAI BRANCH

No. O.A. No.284 of 1997

Mumbai, this 24th day of September, 2001.

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

Hon'ble Shri S.K.Agrawal, Member (A).

1. Mangesh D.Khatu.
2. H.R.Khadke.
3. B.P.Singh.
4. Kiran G.Aswalkar.
5. Joseph K.
6. Ramswaroop Singh.
7. N.C.Mahale.

(By Shri Ramesh Ramamurthy, Advocate)

All working as ELCs, Group-C, in the Elect. (Power) Department of the Western Railway at Mumbai Central.

... Applicants

A N D

1. Union of India through General Manager, Western Railway, H.Q. Office, Churchgate, Mumbai - 400 020.
2. Divisional Railway Manager, Western Railway, Divl. Office, Mumbai Central, Mumbai-400 008.
3. Shakeel Ahmed.
4. Sanjeev Kulkarni.
5. Sharad B.Chavan.

(Respondent Nos.3 to 5 working as ELCs under Sr.D.E.E. (P) BCT to be served through Sr.D.E.E. (P), BCT).

6. Shivaji Babar.
7. Nishigandha Sonawane.
8. Harish Shukla.
9. Sitaram Maurya.
10. Prashant Kanade.

(By Shri V.S.Masurkar, Advocate - For Res. 1 & 2)

Shri G.S.Walia, Advocate - For Res. 3 & 4).

... Respondents

(Per Shri S.K.Agrawal, Member (A)).

Shri Ramesh Ramamurthy for the applicants, Mr.V.S.Masurkar for Respondents 1 & 2 and Shri G.S.Walia for Respondents 3 & 4.

2. There are 7 applicants in this O.A. who are aggrieved with the promotion order dated 4.3.1997 of the

(R-3 to 10)

direct recruits assigning them higher seniority by the respondent over the applicants vide seniority list notified vide letter dated 21.5.1996.

3. The applicants were selected on 16.9.1992 for the post of Apprentice Mechanics in the scale of Rs.1400-2300/- (RPS) against 25% Rankers quota from the skilled Artisan staff of the Electrical (Power) Department, ECT. After their selection, the applicants had to undergo 2 years training before their absorption against the working post. A memorandum dated 21.9.1992 was issued by the respondents by which schedule of training was intimated to the applicants. In this letter it was mentioned that the applicants will be relieved on 1.10.1992 for joining the training.

4. It has been mentioned by the ^{learned} counsel for the applicants that after completion of 2 years training, the applicants were finally examined before their eventual absorption and they were placed on the panel vide memorandum dated 9.2.1995. Thereafter their absorption letter was issued by the respondents vide letter dated 27.2.1995.

5. In the meanwhile, the Respondent-Railway Administration appointed candidates through Railway Recruitment Board (RRB) as Apprentice Electricians against direct recruitment quota. These direct recruits also had to undergo 2 years training from 1.10.1992 vide letter dated 20th October, 1992. It is the case of the applicants that no direct recruit was deputed for 2 years training before the applicants.

6. It is also submitted by the applicants' counsel that respondent no.2, namely, Divisional Railway Manager, Western



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Railway, vide letter dated 17.1.1994 referred the case of the direct recruits to respondent no.1, namely, General Manager, Western Railway, who vide letter dated 18.2.1994, approved the curtailment period of training of the direct recruits with the condition that - "their seniority and increment will be regulated in terms of Note below Rule 302 of the IREM (Revised Edition) read with Railway Board's letter dated 27.11.1990."

7. It has also been submitted by the applicants' counsel that though the applicants were placed on the panel vide memorandum dated 9.10.1995 and direct recruit Electricians were placed on the panel vide letter dated 24.6.1994, their seniority and increment will be regulated in terms of Note below Rule 302 of the IREM (Revised Edition) read with Railway Board's letter dated 27.11.1990. The said Note reads as under :

"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."

(No.E(NG)I-78-SR-6-42 dated 7.4.1982 ACS 132)

8. It has been submitted by the 1d.counsel for the applicants that in terms of the said Note below Rule 302 of the IREM, the date of joining the working post in case of such direct recruits shall be the date they would have normally come to a working post after completion of the prescribed period of training. The applicant submitted that in the present case, the prescribed period of training is 2 years. Therefore, seniority of the direct recruits will be counted from the date they completed 2 years prescribed training from the date they were deputed for training. Further, in the said seniority list, the date of appointment of all the Rankers i.e. the applicants, has been shown as 1.10.1992. It is, therefore, the case of the applicants that the direct

recruits who will complete 2 years training after the Rankers,
namely, the applicants, will be senior to them.

9. The 1d.counsel for the applicants has argued that the applicants had completed training on 30th September, 1994, and thereafter, they were deployed to work as Electrician in the respective departments, but their formal letter of absorption was deliberately delayed by the respondents in order to give illegal benefit of seniority below the direct recruits.

10. The counsel for the applicants has also referred to the decision passed ^{1st} on March, 1996, by another Division Bench of this Tribunal in O.A.123 of 1993 on identical facts which was decided in favour of the applicants.

11. The 1d.counsel for the respondents has, however, contended that the seniority of the applicants vis-a-vis direct recruits has been rightly determined in terms of Rule 302 of the Indian Railway Establishment Manual. The said Rule 302 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 a railway servant seniority above those who are already appointed against regular posts. In categories of post partially filled by direct recruitment and partially by promotion after due process in the case of promotees and the date of joining the working post after due process in the case of direct recruit result, 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 recruit 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 direct recruit shall be the date we would have normally come to a working post after completion of the prescribed period of training.

(No.E (NG) 1-78-SR-6-42 dated 7.4.1982 ACS 132)"

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12. The counsel for the respondents has also taken support from the decision of the Hon'ble Supreme Court in the case of *Uttiyappan vs. UOI & Ors.* (1997 SCC (L&S) 83), wherein on similar facts it was observed by their Lordships as under :

"A reading of these Rules would clearly indicate that the process of selection bears no relevance. What is material in determination of the inter se seniority between regularly promoted in-service candidates and those selected by direct recruitment during the process of selection is that in the case of the former the seniority starts from the date on which they joined the working post after completion of the process while in the case of direct recruits their inter se seniority would start from the date of their entry into the grade. Therefore, as regards the direct recruits, the date of first entry and joining the post is the criteria, in the case of the promotees it would be the date on which they start working in the post after completion of the process. It is not in dispute that training is one of the conditions for completion of the process. Until the training is completed, they cannot work on regular basis in the promotional post."

13. Heard the 1d.counsel for the applicants as well as the respondents.

14. The factual position of this case is that in terms of Headquarter Office letter dated 30th April, 1992, 25 candidates were allotted to Electrical (Power) Department to undergo 2 years training for regular absorption against working posts on completion of pre-appointment formalities. However, due to delay in police verification, medical examination and other formalities, out of the said 25 candidates, only 19 joined and they were sent for training on 12.8.1992 and onwards, whereas, the remaining were sent for training as and when they reported for duty. In the meantime, selection of 14 candidates from 25% direct recruits/ Rankers quota was finalised. Since the said Rankers are already Railway servant, there is no question of pre-appointment formalities like police verification, medical examination, etc., in their case and hence, they were straightaway sent for training w.e.f.



1.10.1992. Since there was acute shortage of EIC in Electrical (Power) Department, the Controlling Incharge i.e. Sr.D.E.E.(P) had sent a proposal to Headquarter Office for sanction of curtailment of the training period of 19 candidates recruited against RRB quota. The Headquarter Office by their letter 18th February, 1994, approved the curtailment of training period of Apprentice EIC who were recruited through RRB. After receipt of the approval for curtailment of the training period with regard to the said Apprentice, their final written test and viva-voce test was conducted and they were placed in the panel in the order of merit on the basis of the marks obtained in the written test vide letter dated 24.6.1994. However, it is not a disputed fact that the applicants on passing the written test, were placed on the panel only on 9.1.1995 against the working posts, whereas EIC from RRB/direct recruitment of candidates on curtailment of the training period and after passing the written test were placed on the panel in order of merit in the written test conducted on 24.6.1994, but their posting was done against the working post on 12.8.1994. However, in the case of the applicants, on completion of their prescribed training, they were placed on the panel on 9.2.1995 and posting orders issued on 27.2.1995. Due to procedural delay in conducting the written test and posting, their intervening period from the date of training and date of completion of Apprenticeship training period and date of passing against working position was treated as extended period of training with stipend in terms of Railway Board letter dated 17.1.1969. Thus, in terms of Note below Rule 302 of IREM even after taking the date of joining the working posts



in the case of direct recruits after completion of the prescribed period of training of 2 years i.e. 12.8.1992 and completion of training on 11.8.1994, the date of their joining the post even without curtailment of the training period shall be earlier to the date when the applicants' were placed on the panel on 9.2.1995 and their posting orders issued on 27.2.1995.

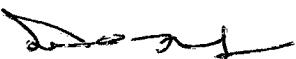
15. We are, however, strictly bound by the judgment of the Apex Court in the case cited above. As held by their Lordship in the above case, in the case of direct recruits, the date of first entry and joining the post is the criteria for determination of the seniority, whereas in the case of promotees, it would be the date on which they start working in the post after completion of the process.

16. In view of the above, we are of the view that the seniority determined by the respondents in respect of the applicants as well as the direct recruits is not in conformity with the ratio decided by the Hon'ble Supreme Court and, therefore, deserves to be quashed. The principle to be applied is the date of first entry in the grade in respect of Direct Recruits and in case of promotees - joining the working post.

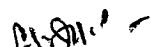
17. The earlier decision of this Tribunal in O.A. No.123 of 1993, as referred to by the 1d.counsel for the applicants, applies when Note below Rule 302 comes into play, which relates to date of entry in a grade. The seniority list (Column 7 of seniority list Annexure 'A/2'), after applying the ratio of the said case, the dates deserves to be corrected i.e. the dates of completion of two years training ought to be mentioned and not the dates when they have not completed the training period of 2 years, though their training period is curtailed.

18. We, therefore, dispose of the O.A. with the direction to the respondents to amend the seniority list based on the principle decided within a period of three months from the date of receipt of copy of the order.

19. No order as to costs.



(S.K.Agrawal)
Member (A)



(S.L.Jain)
Member (J)

r.s.