

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 887/97

Date of Decision : *2nd August 2001*

S.K.Singh _____ Applicant

Shri K.R.Yelwe _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents

Shri A.I.Bhatkar _____ Advocate for the
Respondents

CORAM :

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

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

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other ~~the~~ Benches of the Tribunal ?
- (iii) Library *yes*

J.L.JAIN
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.887/97

Dated this the 2nd day of August 2001.

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

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

1. Sumit Kumar Singh
2. Bharat C.Ganit
3. Smir Kumar B.
4. Sahebrao S.Salve
5. Prakash B.Deshpande
6. Dinesh Kumar R. Naik
7. Brijendrapal Singh
8. Prashant V.Sonar

All are Assistant Drivers,
C/o Office of the Chief Traction
Crew Controller,
Western Railway,
Balsad - 396 001.

...Applicants

By Advocate Shri K.R.Yelwe

vs.

1. Union of India through
The General Manager,
Western Railway,
Churchgate, Bombay.
2. Divisional Railway Manager (E),
Western Railway, Bombay Central.
3. Divisional Electrical Engineer (O),
Western Railway, Bombay Central,
Bombay.
4. Sr.Divisional Mechanical Engineer (E),
Western Railway, Bombay Central,
Bombay.
5. Girish P. Rathod,
Assistant Electrical Driver
working under Chief Traction
Crew Controller, Balsar,
Western Railway.

..2/-

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6. Dharan Singh,
Assistant Electrical Driver
working under Chief Traction
Crew Controller, Balsar,
Western Railway.

7. Kailash Choudhari,
Assistant Electrical Driver,
Working under Chief Traction
Crew Controller, Balsar,
Western Railway.

...Respondents

By Advocate Shri A.I.Bhatkar

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to set aside the seniority list published under Circular dated 25.9.1997 (Ex.'A-2'), direction to the respondents to stay the seniority position of the applicant as provided in the list dated 16.10.1996 (Ex.'A-10') and restraining the respondents from acting upon the impugned seniority list dated 25.9.1997 (Ex.'A-2').

2. The Divisional Railway Manager, Western Railway, Mumbai issued Notification No.E/L/1025/5/4 Vol.III dated 7.9.1994 inviting application for filling the posts of DSL Assistant/Electrical Assistants in the pay scale of Rs.950-1500, in which the applicants were working at that time in running cadre and for holding the Selection Board for the same mentioning the eligibility criteria and the applications were to be submitted by 28.9.1994 through proper channel along with copies of documents in support of educational/technical qualification.

SLJ/811 ..3/-

Accordingly, applicants submitted their application to Divisional Railway Manager, BCT for the post of Diesel Assistant/Electrical Assistant. A written test was held for the said post on 22nd and 29th October, 1994 and the result of successful candidates was declared on 1.11.1994 which included the names of applicants who passed in the written test. The viva-voce test of the successful candidates was held on 8.11.1994 and final result after completion of medical test of the selected candidates was published on 16.11.1994. In compliance thereof, letter dated 22.12.1994 issued by DRM, Bombay to all the Heads of Diesel and Electrical shed for releasing the selected candidates for the purpose of sending them for initial training of transportation at Principal Zonal Training Centre, Udaipur which was to commence from 12.1.1995 to 16.2.1995. Applicants attended the training commencing from 12.1.1995. After full training imparted by the Training School, Udaipur and Baroda, the training of 37 weeks was duly completed by the applicants and they were absorbed by DRM, Bombay BCT. The date of joining the Chief Traction Crew Controller Balsar is 4.10.1995. A seniority list of 10.10.1996 was issued by the DRM, Bombay wherein applicants were given seniority on the basis of the date of absorption and the applicants batch was placed at Sr.No.405 onwards. They were promoted in the 20% quota from artisan category to the post of Electrical Assistant as provided in para 138 (d) of IREM. The applicants were called for qualifying test after completion of all formalities, promoted and actually joined the post of Electrical Assistant on 10.10.1995.

PL.871/

..4/-

3. The respondents also resorted to Direct Recruitment for the post of Diesel Assistant/Electrical Assistant and the said apprentice direct recruits were issued posting orders to various CTCC, subject to their passing absorption/qualifying test whenever required. The posting of the said direct recruits was made subject to the condition that they shall rank below all departmental Diesel Assistants/Assistant Drivers posted vide office order dated 4.10.1995. The Respondents No.5 to 7 the Direct recruits, after qualifying the absorption test, joined their post of Diesel/Electrical Assistant on and from 12.10.1995 and were shown as junior to the applicants as per seniority list dated 16.10.1996.

4. The grievance of the applicants is that so far as Direct recruits are concerned, their seniority is dependent on completion of prescribed training period which is provided in Railway Board letter No.E(NG) 1-78-SR-6-42 dated 7.4.1982 ACs 132 as shown in the note below para 302 of IREM. So far as the Direct recruits are concerned, the rules in the form of Railway Board's letter prescribe a training period of 52 weeks, whereas the promotees who by the nature of their duties at the Loco Sheds and by virtue of their experience as the artisan are not required to undergo training which is required to be undergone by direct recruits being totally new without any kind of experience of Diesel and Electrical Engine. Prior to being absorbed in the category of Electrical Assistant, all the applicants had

S. V. J.

..5/-

experience of maintenance of Electrical/Diesel engines of about 5 to 6 years and even for 15 years in some cases of other promotees. Therefore, so far as training required to be given to the rankers naturally differs from employee to employee depending upon the nature of job performed by them earlier. There is no question of comparing the training period of Direct recruits with that of the promotees. Applicants being senior to the direct recruits are required to be first considered for further promotion to the post of Goods Driver in the scale of Rs.1350-2200 as prescribed in para 138 (2) of the IREM for which they are required to be first sent for training for the said promotion and keeping in view the said rules a letter dated 21.8.1997 was issued by the respondents for keeping the applicants in readiness for going to training for promotional course. In the most surprising manner and in gross violation of their powers the administration without implementing the orders of sending applicants on training resorted to pick and choose the candidates for the purpose of sending for training. The applicants represented the matter vide representation dated 29.8.1997. The respondents have also issued a fresh seniority list to achieve the said object which is impugned. Hence, this OA. for the above said reliefs.

5. The claim is resisted by the respondents stating that the applicants have not exhausted the departmental remedies, even though the time to represent against the seniority list was available to the respondents, they failed to avail the same and

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pursue the remedy by filing the OA. Hence, the OA. is not maintainable. Seniority list was circulated vide letter dated 16.10.1996 and about 62 persons are included in the present seniority list above and over the applicants as per orders issued by the competent authority with regard to the assignment of the seniority in the cadre. If any orders are passed in favour of the applicants then these 62 persons will be directly affected and these 62 persons have not been impleaded as party respondents. The OA. suffers from the defects of non-joinder of the necessary parties. The respondents have alleged that the vacancies in the cadre of Diesel/Electrical Assistants are to be filled up as under :-

" (a) 50% of the vacancies shall be filled by lateral induction from amongst first Fireman who are at least VIII Class passed and are below 45 years of age, short fall, if any, by promotion by usual selection procedure from amongst second Fireman who are VIII Class passed and are below 45 years of age.

(b) balance 50% of the vacancies shall be filled by lateral induction of Matriculate first Fireman with minimum 3 years of continuous service short fall, if any, by promotion from amongst Matriculates second Fireman through Departmental examination.

(c) Short fall, if any, against (a) and (b) above, shall be made good by Departmental Examination from amongst Matriculate cleaners with minimum 5 years continuous service.

(d) Short fall, if any, against (c) above shall be made good by lateral induction of skilled Artisan (Diesel/Electrical Fitter) subject to maximum of 20% of the vacancies.

(e) If still there is some short fall, it shall be made good by direct recruitment through Railway recruitment Board with minimum qualification of Matriculation plus I.T.I. in any of the specified trade or diploma in Electrical or Mechanical or Electronic Engineering (in lieu of I.T.I.)."

As there are various sources of recruitment to the post of Diesel/Electrical Assistants and the vacancies are to be filled up by way of promotion and direct recruitment. Even among the promotees, there are two types of promotees, i.e. those who have come from the grade of Fireman and those who have come from the grade of Artisan, Cleaner, etc. Fireman is the running category and no training period is prescribed for them. As and when they are appointed on regular basis, the seniority is counted from that date. The training is prescribed for those rankers who have come from the grade of Artisan, Cleaner, etc. and those who have been directly recruited to the post of Diesel/Electrical Assistants and the said training period is of 52 weeks. The seniority is to be counted from their notional date of completion of full initial training of 52 weeks. As applicants are from the category of Artisan therefore they were required to complete the training of 52 weeks. However, the training period was curtailed and they were appointed to the regular post. However, the seniority ought to have been fixed from the notional date of completion of full initial training of 52 weeks. The error was corrected after request was being made and certain guidance from the competent authority. Hence, prayed for dismissal of the OA. along with cost.

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..8/-

6. Rule 302 of I.R.E.M. is 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 position, 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.

(No.E (NG) I-78-SR-6-42 dt.7.4.1982 ACS.132)."
(Underlined by us)

7. The perusal of the same makes it clear that the criteria for determination of seniority in categories of posts partially filled by promotion, should be the date of regular promotion after due process in the case of promotee. The Note appended to the Rule provides a relaxation to the Direct Recruits when their training period is curtailed. It cannot be read in a way that when the training period is curtailed in respect of rankers, the principle incorporated in the Rule, i.e. the date of regular promotion does not apply.

8. Suffice to say that the official respondents are blowing hot and cold together for the reason that on one hand they have prescribed the period of training 37 weeks for rankers, which they have completed, posted them after completion of all formalities, and in pursuance thereof, they joined on 10.10.1995 as Electrical Assistant, now they are saying that the training period is curtailed, hence they should be placed in the seniority list after the Direct Recruits. There is no provision for curtailment of the training of the rankers, the training period is also not curtailed, and was for 37 weeks only. The training period of 52 weeks is even not prescribed for rankers. In such circumstance, nothing can be read in the IREM 302 which is not incorporated therein.

9. In addition to it, when in respect of Direct Recruits, in case of curtailment of training a relaxation is being provided, why such an equal treatment should not be provided, even assuming, though not a fact, that training period being 52 weeks and is reduced to 37 weeks only.

10. On examination of the case from any angle, the action of the official respondents cannot be upheld.

11. Another defence of the respondents is that the applicants have not exhausted the departmental remedies, hence OA. is not maintainable. The respondents published the seniority list on 25.9.1997, the applicants filed the OA. on 29.9.1997, OA. was

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admitted on 24.10.1997. The official respondents failed to raise this plea before admission of the OA., hence they are barred to raise the plea now.

12. It is worth mentioning that the official respondents, if they intend to have settled the grievance of the applicants, one month was available with them, to settle it and they must have treated the OA. as representation and must have stated that after taking into consideration the grievance of the applicants, that they are amending the seniority list. Not only this, the official respondents have further raised the plea justifying their actions. Hence, as the OA. is admitted after service of the notice on official respondents and hearing, it does not lie now in their mouth to raise such a plea and their conduct also do not warrant to allow them to raise such a plea when they are justifying their action.

13. The further defence of the official respondents is non joinder of parties who are being affected, in case the claim of the applicants is allowed. The applicants have amended the OA. and Respondents No. 5,6 & 7 are the affected persons if the OA. is allowed. They represent the Direct Recruits. Thus, we find that there is sufficient representation for the affected persons, i.e. Direct Recruits.

J.M.81/-

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14. In the result, we do not find any substance in the defences raised by the respondents.

15. OA. deserves to be allowed and is allowed accordingly. The Seniority List dated 25.9.1997 'Ex-2' and any action taken by the respondents based on the said seniority list is hereby quashed and set aside. The seniority of the applicants shall be as per Seniority List dated 16.10.1996 Ex. 'A-10'. The official respondents shall bear the costs of the applicants amounting to Rs.1,000/- payable to Applicant No. 1 for and on behalf of all the applicants within three months from the date of receipt of copy of the order.

SLJ
(S.L.JAIN)

MEMBER (J)

Bn Bahadur
(B.N.BAHADUR) 02/08/01

MEMBER (A)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Contempt Petition No.7/99
in
Original Application No.887/97

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. Shri S.K. Singh
2. Bjarat C. Ganit
3. Smir Kumar B.
4. Sahebrao S. Salve
5. Prakash B. Deshpande
6. Dinesh Kumar R. Naik
7. Brijendrapal Singh
8. Prashant V. Sonar. Applicants.

[Applicants by Mr.K.R. Yelwe, Advocate]

vs.

1. Pankaj Malviya,
DRM, W. Railway, B.C.T.,
Mumbai.
2. Tiwari
Sr.Divisional Electrical
Engineer (Traction Operating),
Western Railway, B.C.T.,
Mumbai. Respondents.

[Respondents by Shri A.I. Bhatkar, Advocate]

Order on Contempt Petition (Oral)

This Contempt Petition was filed on 29.1.1999 on the ground of wilful dis-obedience of interim order. The O.A. stands finally disposed of on 2.8.2001. The Learned Counsel for the Applicants, Shri K.R. Yelwe, states that the applicants now do not want to proceed further with this application and therefore ~~their~~ respondents presence is not necessary.

B. Venk

Since the Contempt matter is between the Tribunal and the Contemner Respondents, the notice was ordered to be issued to the Contemner Respondents on 31.5.1999 fixing 19.7.1999. However, as much time has elapsed in the matter and the ^{0. Asame} has been finally disposed of while contempt alleged is against an ^{0. Asame} interim order which has merged in final order, we do not consider it necessary to proceed with the matter.

2. For the aforesaid reasons, the notice issued dated 19.7.1999 is discharged and the proceedings are dropped.

The Contempt Petition No.7/99 is finally disposed of.

B.N. Bahadur

(B.N. Bahadur)
Member (A)

B. Dikshit

(Birendra Dikshit)
Vice Chairman.

H.