

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.25/1998.

Date of decision : 14th Feb. 2003.

Applicant.

Mr. R. Ramesh

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Mr. Suresh Kumar

Advocate for
Respondents.

CORAM :

Hon'ble Shri A.S.Sanghvi, Member (J).
Hon'ble Shri G.C.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?
(3) Library.

A
(A.S.SANGHVI)
MEMBER(J).

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.25/1998.

Mumbai, this the 14th day of February 2003.

Hon'ble Shri A.S.Sanghvi, Member (J),
Hon'ble Shri G.C.Srivastava, Member (A).

1. Amarkumar R.Sahu,
Quarter No. D/291/B,
Block No.12,
Igatpuri.
2. Rajendra B. Prajapati,
Quarter No.D/225/B,
Block No. 20,
Igatpuri.
3. Omendrakumar Mishra,
D/288/A, Block No.12,
Igatpuri.
4. Subhash N.Borse,
Quarter in Block No.20
at Igatpuri.
(By Advocate Mr.R.Ramesh)

...Applicants.

v.

1. Union of India,
through the General Manager,
Central Railway,
Chhatrapati Shivaji Terminus,
Mumbai - 400 001.
2. The Divisional Rail Manager,
Bhusaval Division,
Central Railway, Divisional Office,
Bhusaval, Dist. Jalgaon.
3. The Divisional Rail Manager (Personnel)
Bhusaval Division,
Central Railway, Divisional Office,
Bhusaval, Dist. Jalgaon.
4. Sr. Divisional Electrical Engineer (TRO),
Bhusaval Division,
Central Railway, Divisional Office,
Bhusaval,
Dist. Jalgaon.
(By Advocate Mr.Suresh Kumar)

...Respondents.

: O R D E R :

By A.S.Sanghvi, Member (J).

The applicants are the Goods Drivers absorbed in Bhusaval Division and their grievance is that their seniority is not

...2.

rightly fixed in the seniority list of 18.9.1997. Their prayer is that they should be shown at Sl.No.92 in the seniority list and accordingly the respondents should call them for selection for the post of Passenger Driver as modified on 31.12.1997. They have also sought to restrain the respondents from holding the selection for the post of Passenger Driver from the category of Senior Goods Driver or Goods Driver till the seniority list of 18.9.1997 is corrected and they are assigned the correct seniority. The case of the applicants, briefly stated is that they were directly recruited as Assistant Drivers by Railway Recruitment Board, Mumbai in 1990 and after successful therein at Bhusaval have been promoted as Goods Driver. However, the provisional seniority list published by the Respondents for the first time on 16.8.1996 did not give them the correct seniority and therefore, they had represented against the assigning of the wrong seniority to them. There the applicants were shown at Sl.Nos. 234, 237, 238 and 241. Though according to them, they ought to have been given seniority after Sl.No.209 in the seniority list. Their representation was rejected by the Respondents and the reason given was that the persons at Sl.Nos. 240 and 241 were recruited in September, 1990, whereas, the applicants are recruited in October, 1990. So far the employees at Sl.Nos. 210 to 213 were concerned, it was stated that they were appointed earlier to the applicants and had come over to Bhusaval Division only in 1991 on their own request. The applicants have contended that if they had come to Bhusaval Division from outside on their own request they ought to have been given bottom seniority and they could not have been shown

senior to the applicants. According to them, even after their representation against the provisional seniority list, the respondents published the final seniority list on 18.9.1997 reflecting the wrong position assigned to the applicants. The applicants, therefore, again represented their case vide their letter dt. 13.11.1997 and prayed for re-assigning the seniority list in the seniority list. According to the applicant, wrong seniority is assigned to the employees from Sl.No.92 to 190 as they were recruited in October, 1990. They have further contended that on the basis of this final seniority list, the respondents have started selection for the post of Passenger Drivers and the selection is based on viva voce only. Since the selection is based on wrong seniority list and only persons upto Sl.No.99 are called for selection, they are being left out even though they are entitled to the seniority from 1992 onwards. They have, therefore, moved this OA and prayed for correction of the seniority list etc.

2. The Respondents, on the other hand, in their reply have contended, inter alia, that the OA is barred due to non-joinder of necessary parties, as the persons affected by any orders passed are not joined in this OA and orders are being sought behind their back. They have also contended that there is no merit in the say of the applicants that they are senior to the other employees and they are given wrong seniority in the seniority list. According to them, as per the correction slip No.9 and Indian Railway Establishment Manual (IREM) para 303 the correct seniority has been assigned to the applicants in view of their not securing sufficient marks in the examination held after

the training. They have given the details of the marks secured by the employees at Sl.No.92 to 99 and also the marks secured by the applicants, pointing out that applicants had secured less marks than the employees at Sl.Nos. 92 to 99. It is also pointed out by the Respondents that the employees at Sl.Nos.77 to 81 of the final seniority list are selected through Railway Recruitment Board for the post of Assistant Driver in 1987-88 and they had joined in July/August, 1988. They had requested for transfer to Bhusaval Division and on the grant of their request they were transferred to Bhusaval Division in June, 1991 as Assistant Driver. They were duly qualified and working as Assistant Driver in Bhusaval Division even before the applicants were posted in Bhusaval, for training. In fact, applicants were not born in cadre when these employees were already working as regular employees. They were, therefore, assigned the correct seniority. It is also stated by the Respondents that earlier in the provisional seniority list, the applicants were assigned the seniority at Sl.No.234, 237, 238 and 241 and after their representations their seniority is revised and they are assigned the seniority at Sl.Nos. 100, 105, 109 and 119. According to the Respondents, this clearly indicates that the representation of the applicant was duly considered. The applicants' are, however, without any reason or rhyme re-agitated the whole question. They have maintained that the applicants are assigned the correct seniority and have prayed that the OA be dismissed with costs.

3. We have heard the Learned Counsel for both parties at length and have duly considered the rival contentions.

4. Mr.Suresh Kumar, Learned Counsel for the Respondents

had, at the outset, raised by way of preliminary objection, the question of the non-joinder of the necessary parties. According to Mr. Suresh Kumar, the applicants are already assigned seniority at 100, 105, 109 and 119 in the seniority list, but still they are aggrieved and are claiming seniority from Sl.No.92 onwards. Since the seniority list is already finalised, any change in the seniority list will require hearing of the affected parties. He has pointed out that the employees assigned the seniority at Sl. Nos. 92 to 99 are not made parties in this OA and inspite of that fact the applicants want that they should be given seniority at Sl.No.92 onwards, clearly affecting the rights of the persons already assigned the same seniority. Mr. Ramesh, Learned Counsel for the applicant admitting the position that the persons assigned the seniority from 1992 to 1999 have not been made parties in this OA and are not given any opportunity of being heard, has however, submitted that the seniority list is prepared by the Respondents and the burden of revising the seniority list is also on the Respondents and as such those persons who are assigned seniority at 92 to 99 are not the necessary parties.

5. We are unable to agree with the submissions of Mr. Ramesh Ramamurthy for the applicant. It is quite obvious that if any revision is to be made in the seniority list as claimed by the applicants, then the persons standing at Sl.No.92 to 99 are the most necessary parties to this litigation as they would be the person most affected by any orders passed in this O.A. By getting higher seniority in the final seniority list a right is created in favour of the persons at Sl.No.92 to 99 can that right of being considered for promotion ahead of persons shown below in

the seniority cannot be snatched away without hearing those persons. We, therefore find, that on this preliminary objection raised by Mr. Suresh Kumar for the Respondents, the OA deserves to be rejected. In the case of M. Bheemaiah and Ors. Vs. Deputy Commissioner of Excise reported in 2002 SCC (L&S 1004, the Supreme Court, dealing with a similar case in clear terms observed that when the presence affected are not joined as parties then no relief can be granted to the applicants of the OA. In para 8 of the Judgment, the Supreme Court has observed as under :

"though it is possible to contend that appellants are not at fault, we find that assigning them any date anterior to the dates assigned to those in other districts is likely to affect the seniority of all the candidates in other districts. Candidates from the other Districts have not been made parties before the Tribunal nor in this Court. In the circumstances, as all the necessary parties are not before us, we are not inclined to interfere in the appeal."

6. The ratio of the above decision clearly applies to the facts of the instant case and we have no hesitation in holding that the OA deserves to be rejected on this ground alone.

7. Even on merit we find that the applicants have no case at all. The Respondents have pointed out that the seniority was as per the correction slip No.9 and the amended IREM para 303 (a). The correction slip No.9 providing for amendment of para 303 recites as under :

"Candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in the order of merit obtained in the examination held at the end of the training period before being posted against working post. Those who join the subsequent courses and those who pass the examination in subsequent chances will rank junior to those who had passed the examination. In case, however, persons belonging to the same RRB panel are sent for initial training in batches due to administrative reasons and not because of reasons

attributable to the candidates, the inter-se seniority will be regulated batchwise provided persons higher up in the panel of RRB not sent for training in the approximate batch (as per seniority) due to administrative reasons shall be clubbed along with the candidates who took the training in the appropriate batch for the purpose of regulating the interse seniority provided such persons pass the examination at the end of the training in the first attempt."

8. Mr.Ramesh for the applicant has submitted that the seniority is not fixed as per the correction slip No.9 and that persons of the same batch who were sent for training to Bhusaval have not been given the seniority as per the RRB panel to give seniority on extraneous grounds. Mr.Suresh Kumar, on the other hand, as pointed out that as per the correct slip the employees of the same batch were required to be given seniority as per their merit in the examination after their training at Bhusaval. According to him, since the employees at Sl.No.92 to 99 had secured more marks than the applicants in the examination after the training was over, they were assigned higher seniority than that of the applicants.

9. So far, the applicants in the RRB panel is concerned nothing is prayed before us to show that applicants were senior to the Sl.Nos. 92 99 of the final seniority list of 'Goods Driver, in RRB panel. Even if for the sake of argument it is believed that applicants were given seniority list of the 'Goods Driver', the correct interpretation of the correction slip leaves no room for doubt that persons having more merit after the training were required to be given seniority over the other employees of the same batch the seniority in the RRB panel was

given a go-bye when the training period is over. The unamended para 303 of the IREM spoke about giving seniority on the basis of merit even to the employees of the next batch, but realising the difficulty of the administration in sending all the employees in one batch for training it was deemed fit by the Railway Board to amend para 303 and introduced the amendment regarding the consideration for seniority of the employees of the same batch, but even while amending para 303 the provision regarding the placement in seniority of the successfully trained employees on merit was not deleted or not affected and as such it cannot be said that the employees at Sl.No.92 to 99 were wrongly assigned the seniority over the applicants. It is not disputed by the applicants that they had secured more marks in the examination conducted after the training. In the circumstances, it does not lie in the mouth of the applicants to claim that they have been done injustice in not assigning the seniority over those possessed more merit than they are. We find that no case for interfering with the final seniority list is made out by the applicants.

The O.A. is clearly devoid of any merit and deserves to be rejected both on the ground of non-joinder of necessary parties, as well as being devoid of merit. The same is therefore, rejected with no orders as to costs.

G.C.Srivastava
(G.C.SRIVASTAVA)
MEMBER(A)

A.S.Sanghvi
(A.S.SANGHVI)
MEMBER(J)

B.