

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:758.98

DATE OF DECISION: 14th Jan, 2005

Shri S.K. Agnihotri and others Applicant.

Shri G.S. Walia Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri V.D.Vadhavkar for R1 and 2 Advocate for
Shri D.V.Gangal for R3 Respondent(s)

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? No

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

(3) Library. Yes

Alm/-
(S.L.Jain)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO:758/98

the 26th day of JANUARY 2000

CORAM:HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

HON'BLE SHRI S.L.JAIN, MEMBER(J)

1. Shri S.K.Agnihotri,
Presently working as
Chargeman Grade A
Under Chief Workshop Manager,
Matunga Workshop,
Central Railway,
Bombay - 400 019.
2. Shri P.K.Pai,
Presently working as
Chargeman Grade B,
Under Chief Workshop Manager,
Matunga Workshop,
Central Railway,
Bombay - 400 019.
3. Shri N.S.Sengar,
Present working as
Chargeman Grade A,
Under Chief Workshop Manager,
Matunga Workshop,
Central Railway,
Bombay - 400 019.
4. Shri V.R.Chavan,
Presently working as
Chargeman Grade B,
Under Chief Workshop Manager,
Matunga Workshop,
Central Railway,
Bombay - 400 019. ... Applicants.

By Advocate Shri G.S.Walia

V/s

1. Union of India, through
General Manager,
Central Railway,
Head Quarters Office,
Mumbai C.S.T.,
MUMBAI - 400 001.
2. Chief Workshop Manager,
Matunga Workshop,
Central Railway,
Bombay - 400 019.

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3. Shri Vikas Eknath Patil,
Presently working as
Junior Engineer II,
Under Chief Workshop Manager,
Matunga Workshop,
Central Railway,
Mumbai - 400 019.
4. Shri G.P.Thomas,
Presently working as
Junior Engineer II,
Under Chief Workshop Manager,
Matunga Workshop,
Central Railway,
Mumbai - 400 019.
5. Shri P.S.Talekar,
Presently working as
Junior Engineer II,
Under Chief Workshop Manager,
Matunga Workshop,
Central Railway,
Mumbai - 400 019.

... Respondents.

By Advocate Shri V.D.Vadhavkar (R-1 & 2).

By Advocate Shri D.V.Gangal (R-3).

ORDER

(Per Shri S.L.Jain, Member (J))

This is an application filed by Shri S.K.Agnihortri and 3 Ors seeking the relief that this Tribunal declare that the applicants are senior to private respondents Nos.3,4 and 5 as chargeman grade-B. They thus seek the quashing of the Impugned order dated 4/9/98(Ex-A).

2. The facts of the case, as put forth by applicants are, in brief, as follows:-

a. The applicants were recruited as direct recruits to the post of Chargeman Grade-B (now called JE Grade-II) and were absorbed and were directed to undergo training.

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b. Applicants state that private respondents 3 to 5 appeared for selection of intermediate apprentices, were not selected but were later empanelled and sent for training in view of orders of this Tribunal dated 31/10/1995. They aver that the present applicants were not parties in that OA. It is contended by applicants that the only direction in the decision on that OA was one of empanelment, and no direction was given by the Tribunal for promotion or grant of seniority of these cases. It is contended that the order of reversion (impugned order) is bad in law.

3. The official respondents viz. R-1 and R-2 have filed a statement in reply. Similarly, there are reply statements from respondent Nos.3, 4 and 5.

4. The official respondents state that the entire issue has risen as a result of the implementation of the orders passed by this Tribunal through a(common)judgement dated 31/10/95 in OAs No. 982/92 and 482/92. A preliminary objection is taken to the effect that the four applicants and three private respondents belong to three different seniority lists. Applicants 1 and 2 and R-3 belong to one list (welders) and have no commonality in seniority vis-a-vis respondent Nos.4 and 5. Hence it is contended that the OA is not maintainable in view of this deficiency. It is stated that the three private respondents were treated qualified in the selection held on 2/2/92 in view of the Tribunal's order which has not been challenged.

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5. The respondents refer (in reply statement) to para 140(i) of Indian Railway Establishment Manual (IREM) and cite the recruitment rule in para-5. It is stated that none of the three private respondents had been selected as a result of the selection process conducted in February, and March of 1992. However, the orders were issued for their empanelment persuant to the aforesaid orders of this Tribunal. It is stated that there seniority is maintained tradewise, and that the applicants are junior to the three private respondents and that this position is reflected in Exhibits marked R-2 and R-3.

6. Another technical point that is taken viz. that the applicants have not pleaded (in their OA) the ground of non-completion of two years service in the grade 5000-8000 by the Respondents. The dates of appointments of the applicants as mechanical apprentice/chargeman B are detailed out at page-9 of the written statement. The main burden of the respondents statement is that their action in according seniority and reversion arises out of the orders of the Tribunal and that they are duty bound to do so.

7. We have carefully seen all the papers filed in this case including rejoinder, etc and have heard the learned counsels on both sides.

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8. The learned counsel for the applicants took us through the various documents to first highlight the position regarding rules and facts and circumstances of the case. He strenuously argued the point that in para-7 of the judgement of the Tribunal, a limited relief has been granted by the Tribunal and that it has been stated that the applicants be sent on training on the footing that they are empanelled. He argued that it was specifically indicated in the judgement that "in the facts of the case, we are not inclined to grant any other [relief to the applicant." It was stated that applicant Shri Agnihotri was ~~absorbed~~ earlier in the grade of R-3 to R-5 was absorbed on 17/1/98. Then there were several positions lower and not eligible for promotion.

9. The learned Counsel for applicants also made a number of other points, recorded in gist below:-

a) Private respondents had not completed two years in relevant scale of Rs.5000-8000 and hence were not eligible for promotion. Railway Board's (RB) Letter in this regard stated the actual need for service as the criterion for eligibility.

Learned counsel cited the case law in the case at (1996 SCC L&S 967) Union of India & Ors v/s. M.Bhaskar and Others.

b) The importance of the circular of RB dated 19/2/97 was stressed and it was stated that this circular was issued before the judgement in the case referred to above was pronounced.

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- c) The reliance of the respondent on 1984 circular was wrong and therefore the impugned order was invalid.
- d) It was stated that for direct recruits, the date of seniority was the date of absorption after training, whereas for promotees, it was the date of regular appointment after training and exam. Support was drawn from Kuttyappan's case (1997 SCC L&S 83)
- e) the application of para-306 of IREM to applicants was not allowed in this case and the case was covered by para-302
- f) Even assuming that notional seniority is to be given, the action of the respondents in not giving a notice to applicants was wrong. Support was sought from the judgement in the case cited (1998(1) SC SLJ 189) .

10. Arguing the case on behalf of the official respondents, their learned counsel, Shri Vadhavkar reiterated the technical objections made. As already referred to above, he contended that the joint application not maintainable. He argued that there was no common seniority and the applicants were made chargemen B only because of the Tribunals decision. Learned counsel went so far to say that non implementation of this judgement would have made the Respondents liable for contempt. The other technical points made by respondents in written statement were reiterated strenuously.

11. It was further argued by official respondents that both direct recruits and promotees were apprentices. The Tribunal had found violation in that para-219 of IREM was not followed. The matter had gone to High Court. Learned counsel drew our attention to para-7 of judgement in WP-5144 and stated that some seniority had to be granted as per directions therein.

12. Learned counsel for official respondents cited the letter of RB of 1984 and 1987, It was contended that the letter of 1984 does not get superceded by the one of 1987 and hence action in promoting without two years service was as per rules. He contended that the Supreme Court judgement cited by other side was not relevant and also stated that no notice of reversion were necessary since promotions were adhoc.

13. The case for R-4 and R-5 was argued by Shri Natarajan who stated that he fully supported the contention of counsel for R-1. He further made the following additional points:-

- a) There could be no seniority in two different units. There are different trades involved and hence a common application is not tenable.
- b) Respondents were empanelled as of right of a decision of Tribunal and were 1992 trainees.
- c) There was no rule requiring two years service before being eligible for promotion.

d) Applicant's could not be made parties in the OA in 1992 since they were not even in service at that time.

14. Learned counsel Shri Gangal argued the case for R-3. The arguments and contentions made by him are recorded in gist, below:-

- a) Para 16 of IREM and para 140 be seen. In a sense both categories are direct recruits.
- b) The applicants could not possibly have been made parties in OA No.982. Since they entered service only in 1993, 38 persons who could be made parties were indeed made parties and despite that the Tribunal ordered empanelment.
- c) Learned Counsel drew our attention to para 140 of the IREN and stated that seniority wasnot a criteria and panel was drawn on the basis of marks obtained.
- d) the letter of 1984 helps the case of R-3 as it was not superceded by the subsequent letter.
- e) Shri Gangal concluded his arguments by stating that besides the points he has made he fully support the arguments made by Shri Natarajan Counsel for R-4 and R-5.

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15. The respondent No.4 has stated in para 5 of his written statement as under:

" This respondent further states that he is senior to the following persons in terms of Notification No.CWM/MTN/CON/C.1/App.Mech. dated 14.8.98 (copy annexed hereto as Exhibit R-4/B) in the same seniority unit as Applicant No.3:

1. Jatashankar R.Achebar
2. Sitaram F.Singh
3. G.D. Dube
4. Rampal Singh

If, the relief (a) as prayed for is granted, Applicant No.3 will become senior not only to this respondent but also to the above three persons who are admittedly senior to the applicant No.3. These persons have not been made parties to this application. The application as now filed, thus, suffers from non-joinder of necessary parties."

16. The respondent No.1 and 2 have stated in para 5.2 of his written statement as under:

In implementation of this Hon'ble Tribunals directions dated 31.10.1995, naturally the applicants who are juniors to the originally selected 38 (Trade wise) have

rightly been treated as juniors to the three private respondents. Respondents also consider it appropriate to annex (Marked as Exh.R.II/R III, a copy each of Notifications No. CWM/MTN/CON/C1/App.Mech. dated 14.8.98 and 4.12.98 giving relative position of the three private respondents vis-a-vis tradewise selected inter-apprentices (in original 38) as a result of selection held pursuant to notification dated 31.10.90. While the three private respondents have been made parties other Apprentices(Intermediate) from amongst the original list of 38 who are now (after implementation of judgement dated 31.10.95) placed below the three private respondents have not been made parties. Thus this OA also deserves to be dismissed on grounds of non-rejoinder of necessary parties.

17. On perusal of the pleadings of the parties, it is clear that the respondents have raised the plea of non-joinder of necessary parties. The learned counsel for the applicants relied on (1996) 33 ATC 363 V.P. Shrivastava and others V/s State of M.P. and others decided by the Apex Court of the land which lays down the following proposition:-

"In view of the admitted position that the appellants - direct recruits were appointed in accordance with the

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Recruitment Rules, 1965 and the respondents-promotees were appointed on promotion on adhoc basis not in accordance with the procedure prescribed for promotion under the 1965 Recruitment Rules, the Tribunal erred in law in declaring the promotees to the senior to the direct recruits solely on the ground that the promotees were appointed on 27.9.1980 whereas the direct recruits were appointed on 29.9.1980.

Since the very principle of determination of inter se seniority adopted by the State Government was challenged, the only necessary party is the State itself and not the affected party and therefore non-inclusion of affected party wil not be fatal to the case."

18. In the present case principle of determination of inter se seniority is not the subject of challenge but the application of the principle wrongly is being challenged, hence the said authority does not help the applicants.

19. All the persons likely to be afected, if the relief asked for is granted, they are necessary parties to the proceedings. In absence of the necessary parties the OA suffers from the defect of non-joinder of necessary parties and is liable to be dismissed only on this count alone.

20. The respondent No.4 has stated in para 3 and 4 of his written statement regarding the mis-joinder of parties and non-maintainability of the joint application which is as under:

" The respondent further states that he belongs to the seniority unit of Painter - Polisher Trade and except for Applicant No.3, the other applicants belong to different trades and seniority units and they have no connection with this respondent. Further Respondent No. 3 and 5 also belong to different trades and different seniority units. They thus have no cause of action against the respondent. This respondent states and submits that the application as now filed is not tenable due to misjoinder of parties.

This respondent further states that the applicants who have joined together to file a joint application belong to different trades having different channel of promotion. The subject matter being their seniority vis a vis Respondents 3, 4, and 5 they have no common cause of action and the joint application as now filed is without jurisdiction and on this ground alone, the application is liable to be dismissed."

21. The respondent No.3 has stated in para 5 of his written statement regarding misjoinder of parties and non-maintainability of the joint application as under:

"This respondent submits that the applicants have no right to file a joint Original Application as they belong to different seniority units and different cadres and hence the application is not maintainable on account of this misjoinder of applicants. Moreover, the respondents also belong to different seniority units and therefore also the application is not maintainable on account of misjoinder of parties."

22. The respondent No. 1 and 2 have also averred as under in para 2 of their written statement:

"It is submitted that the main prayer in the application (para 8(a) requests for a declaration that applicants are senior to all the private respondents viz. respondent Nos 3, 4, and 5. The fact however is that all the seven employees involved viz. four applicants and three private respondents belong to three different seniority lists. It is clarified that applicants No.1 and 2 and respondent No.3 belong to a particular seniority list viz the one belonging to Welders Trade. This applicants No.1 and 2 have no seniority as such for next promotion vis-a-vis

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Respondent No. 4 and 5. Applicant No.3 and respondent No.4 belong to the Painters Tradse seniority list. Thus applicant No.3 has no seniority as such for next promotion Vis-a-vis respondent No. 3 and 5. Applicant No.4 and respondent No.5 belong to Fitters Trade seniority list. Thus applicant No.4 has no seniority as such for next promotion vis-a-vis respondent No. 3 and 4. This position is admitted position as in opening sentence of para 1 of the OA the applicants themselves pray for assigning correct seniority in the respective Trades. The respondents, therefore, reiterate that prayer for joint application be rejected and the OA is liable to be dismissed on this ground alone."

23. The pleadings clearly makes out a case of misjoinder of parties, cause of action and non-maintainability of the joint application as there is no common cause of action.

24. If we examine the case on merits respondent No.3 has alleged in para 2 and 7 as under:

"With reference to para 1 of the Original Application this respondent submits that the Original Application is completely misconceived and not maintainable because the respondent No.3 belongs to 1990 batch, whereas the applicants belong to 1993 batch. Secondly, this

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respondent belongs to the panel of 1992 and for the vacancies of the year 1990, where as the applicants belong to 1993 batch. No doubt, the applicants are direct recruits, and the respondents are promotees. This respondent submits that it is well settled principle of service jurisprudence that those belong to earlier panel are senior to those who belong to later panel. Consequently there can be no comparison between the respondents and the Applicant and the seniority question raised is not at all maintainable."

This respondent submits that as already stated above, the quota has nothing to do, and hence the seniority granted to this respondent by the Railway administration is absolutely correct because it is in consonance with the order of the Hon'ble Tribunal, by which he stood selected in 1992 panel. The question of on what date this respondent joined the working post is irrelevant as he has been rightly granted notional promotions, postings and seniority in accordance with panel position of 1992 and marks obtained at the conclusion of apprentice training as apprentice mechanics. This respondent cannot be differently treated than his batch-mates of 1992 batch. The Original Application must fail on the simple ground that the applicants are not challenging posting,

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promotions, seniority of his batch-mates of 1992 panel and the applicants cannot therefore single out this respondent or others who are part and parcel of 1992 panel. The applicants are aware that they have no case vis-a-vis 1992 batch and the applicants belong to 1993 batch."

25. The respondent No. 1 and 2 have also alleged the same facts in para 5.1 of their written statement which is as under:

"For filling up 25% quota Apprentices Mechanics serving skilled staff referred to as intermediate Apprentice a Notification was issued on 31.10.90 respondents 3 to 5 applied alongwith others and took up the written test held on 2.2.92. On qualifying in the written test the said three respondents took up the viva held on 28.3.92. 38 candidates were finally selected vide notification dated 18.4.92. None of the three Private respondents were selected. The results were challenged by these three and some toher staff in OA Nos 482/92 and 982/92 before Hon'ble CAT Mumbai during June/Sept.92. The main ground on which the OAs were filed was that the panels were drawn up in violation of para 219 IREM. The applicants in the two OAs filed in theyear 1992 and who are Private respondent in the present OA became entitled for empanelment pursuant to the selection held as per notification dated 31.10.90. it is to be noted from Exh. 'E' to the OA viz. Hon'ble CAT's order dated 31.10.95

contained a specific direction to create supernumerary posts. Thus the order did not envisage any substitution as such. Thus the successful amongst the applicants in OA Nos 482/92 and 982/92 acquired the same rights in all respects as the originally selected 38 employees. It is to be noted that the applicants in the present OA nowhere challenge seniority of the originally selected 38 candidates over them. They have neither any case in this respect because the applicants were recruited as Apprentice Mechanics with effect from 29.9.1993. This date is incidentally not only later than the selection date of Inter Apprentices viz. but also later than the date on which OA Nos 482/92 and 982/92 were filled.

26. The finding in OA 482/92 and 982/92 recorded by the Tribunal in para 7 is as under:

« In the light of the above findings, we held that all applicants, except applicant No.3 and 5 in OA No 482/92 have cleared the test. Their inclusion in the panel will of course depends on their seniority. All those who have cleared the test as held by us and atleast one of whose juniors are included in 1992 panel are entitled to succeed i.e. entitled to be empanelled.

The ends of justice would be met if the respondents create corresponding number of supernumerary posts of Apprentice Mechanics and send them for training on the footing that they were empanelled. We direct accordingly.

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27. The said finding clearly makes out a case that the empanelment of the respondents was according to their seniority in the test. The said facts are established by the order of the Tribunal in OA 482/92 and 982/92. Thus the applicants belong to the vacancy of 1993 while respondents belong to vacancy of 1990. Hence the applicants cannot and are not entitled to claim seniority over and against the respondents.

28. In view of the facts and proposition of law stated above, claim of the applicants is bad, on account of non-joinder of necessary parties, mis-joinder of parties and even on merits, applicants are not entitled to succeed. Hence it is not necessary to examine the other points raised by the parties which are not material for deciding the case.

29. In the result OA is liable to be dismissed and is dismissed having no merits. No order as to costs.

S.L.Jain
(S.L.Jain)
Member (J)

14/11/2000

B.N.Bahadur

(B.N.Bahadur)
Member (A)

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