

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO:789/1998

Date of Decision: 10/12/2002

Shri P.S.Dube

Applicant

Shri G.S.Walia

Advocate for the
Applicant

Versus

Union of India & Anr

Respondents

Shri S.C.Dhawan

Advocate for the
Respondents

CORAM:

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

Hon'ble Smt. Shanta Shastri, Member(A)

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

Shanta S
(SMT. SHANTA SHASTRY)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:789/1998
DATED THE 12 DAY OF Dec, 2002.

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)

P.S.Dube,
Chargeman Grade-B,
Smithy Shop, Matunga,
Under Chief Workshop Manager,
Carriage and Wagon Workshop,
Central Railway, Matunga,
Mumbai - 400 019.

... Applicant

(By Advocate Shri G.S.Walia)

V/s.

Union of India
through

1. General Manager,
Central Railway,
Head Quarters Office,
Mumbai C.S.T.,
Mumbai - 400 001.
2. Chief Workshop Manager,
Carriage and Wagon Workshop,
Central Railway,
Matunga,
Mumbai - 400 019.

... Respondents

(By Advocate Shri S.C.Dhawan)

O R D E R

Per Smt.Shanta Shastri, Member(A)

The present application filed by the applicant for assignment of grade seniority to him as Chargemam Grade 'B' according to the merit order in the panel/batch in which he was selected. The applicant has therefore prayed to quash and set aside the order dated 7/7/1998 and to assign him grade seniority with all resulting benefits including further promotion on the basis of that seniority.

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2. The applicant appeared for selection to the post of Chargeman Grade 'B' against 25% quota reserved for inducting intermediate apprentices, as a result of selection of Skilled Artisans from the Mechanical Department. He was selected vide panel dated 18/4/1992 as intermediate apprentice. He was deputed for training of two years and on completion of his training he was absorbed as Chargeman Grade 'B' with effect from 19/9/1994 vide order dated 23/9/1994. The batch mates of the applicant were however absorbed earlier i.e. from July, 1994.

3. The contention of the applicant is since he was sent for training alongwith other batch mates, he also should have been shown alongwith them for purposes of seniority instead his seniority has been shown later.

4. The respondents have pointed out that though the applicant belonged to the panel of 18/4/1992 (Sr.No.20 of the panel) he requested for change of his trade from Trimmer to Smith during the course of the training period. His request was granted and after completion of extended training period he was given the appointment.

5. The contention of the applicant is that the seniority according to the rules is based on the merit obtained by the employee in the batch or panel in which he is selected whereas the respondents have denied batchwise seniority to the applicant on the ground that he had requested for change of trade from trimmer to smith. According to him, change of trade during the apprentice period has no relevance to assignment of seniority which is granted on the basis of merit obtained in the batch in which an employee has been selected. According to the applicant

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he obtained position no.1 in the panel declared on 19/2/1994, as such he has to be adjudged as senior to all those persons who were sent for training in that batch. The action of the respondents therefore is illegal and erroneous. Even the fact that his training period was extended for three months cannot come in the way of his being assigned the correct seniority on the basis of merit as per order dated 19/2/1994. The applicant instead has been assigned seniority at the bottom of the panel dated 19/2/1994, whereas he should have been placed at Sr.No.1.

6. The respondents submit at the outset that the applicant has approached the Tribunal belatedly. The cause of action has arisen in 1994. Also he has not made the persons likely to be effected in case he succeeds in the OA as party respondents to the OA. Therefore, on these two grounds the application deserves to be dismissed at the admission stage itself. Further, the application suffers from delay and laches. The applicant requested for a change of trade vide letter dated 22/2/1994 and the respondents by their letter dated 13/3/1994 informed the applicant that he would need further training and that his period of training was extended by three months beyond the normal apprenticeship period.

7. Coming to the merits of the case, the respondents submit that the applicant was selected in the panel dated 18/4/1992 in terms of Rule-140 of Indian Railway Establishment Manual, Volume-I. The period of training for intermediate apprenticeship is two years. According to the rules, the apprentices are required to undergo training of prescribed course as laid down in the syllabus and after completion of their training successfully

they are absorbed as Chargeman grade 'B' in the working post on the working day following the date of completion of apprentice training. Nobody can be absorbed against any working post till the successful completion of the training period. The requisite training for normal course came to an end on 27/4/1994. Since the applicant's training period was extended by three months at his request for change in trade, unless he completed that training he could not have been given any appointment and rightly therefore the applicant has been placed at the bottom of the list of seniority of the panel of 1992. The respondents submit further that, when the applicant asked for a change in trade during the course of training period, he was informed by letter dated 13/3/1994 that since the change of trade was at his own request, he would have no claim for determining the seniority alongwith the others who would be completing their apprenticeship training on 27/4/1994.

8. The respondents submit ^{fr} further that there are nine trades in the Mechanical Department and each trade has its own separate seniority and panel of promotions, for Chargeman B, Chargeman 'A', A.S.S. and S.S. It is no doubt that seniority is determined on the basis of merit, but it is based on the basis merit in the final examination and not on the merit obtained in the examination held at the end of the theoretical training at Zonal Training School, Bhusawal because after the training at Zonal Training School, Bhusawal practical training of one year in a Workshop is given. The final examination is held thereafter and thus all those who are successful in the examination at the end of the training are posted against the working post in which

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trade they have been selected. The contention of the applicant therefore that he stood first among the 59 candidates is misleading. This is not the stand at the end of the final examination. The applicant was not awarded any position in the final examination as he had changed his trade at his own request and his training period was extended and he was declared successful at the end of the extended period of training which was not a common examination for all the persons. Therefore the question of applicant standing first or otherwise does not arise.

9. Accordingly, the applicant was accorded his seniority from the date of his joining the post. Shri Jaffarulla Khan, Shri Prabhakar Magar, Shri Rajendra Hire and Shri Vijya Korgaonkar completed their training in the Smith trade and were posted on 22/7/1994 as Chargeman Grade 'B' vide letter dated 30/6/1994. Therefore, they were rightly shown above the applicant in the seniority list.

10. We have heard the learned counsel for both the parties. At the outset, as pointed out by the respondents, the application is definitely hit by limitation, delay and laches also by non joinder of parties. Therefore on this ground alone the OA deserves to be dismissed.

11. Coming to the merits of the case, it is seen that the applicant had sought a change in trade in the middle of the training course for which he was deputed. It is also a fact that his training period was extended by three months beyond the normal period of training of two years. He was therefore declared successful in the trade which he opted for at the end of the training period. We agree with the respondents that

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seniority is to be counted from the date of appointment on the basis of the merit acquired in the final examination held at the end of the two years training period and not on the basis of merit obtained at the end of the theoretical training taken in the Zonal Training School, Bhusawal. The respondents have produced the relevant para - 1912 of the Indian Railway Establishment Manual as well as para/rule 303(a) as amended vide Advance Correction Slip No.9 in the Railway Establishment Volume No.I. It is seen from that that the apprentice should be absorbed in the working post following the date of successful completion of apprenticeship training period. In no case the apprentice should be absorbed against the working post with retrospective effect.

Para 303(a) reads as follows:-

"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 the RRB not sent for training in the appropriate 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 inter se seniority provided such persons pass the examination at the end of the training in the first attempt."

13. It is seen thus that the emphasis is on merit to be obtained in the examination to be held at the end of the training

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and not at the end of the initial training in the zonal training schools. The training period comprises of two ^{by} years ⁽²⁾ therefore any examination held in the training schools at the end of one year's training cannot be the criteria for deciding the merit and seniority. And also because the applicant's training was extended by three months at his own request, he had to undergo a different test. He could not take the common test along with his batchmates, therefore also the applicant will be entitled to the seniority based on the result of his final examination which was held later.

14. In our considered view therefore, we do not find any merit in the OA or any reason to interfere with the orders of the respondents. Accordingly the OA is dismissed. No costs.

Shanta J-
(SMT. SHANTA SHASTRY)
MEMBER(A)

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

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