

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 835/1998

Date of Decision: 10.11.2002

S.P. Mishra. & Ors.

Applicant(s)

Shri G.S. Walia.

Advocate for Applicants

Versus

Union of India & Others

Respondents

Shri V.S. Masurkar & S.P. Saxena Advocate for Respondents

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

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO.835/1998

THIS THE 10th DAY OF NOVEMBER, 2002

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

1. S.P. Mishra,
working as Chargeman Grade A
(Junior engineer Grade I)
Central Railway Workshop,
Matunga, Mumbai-400 019.
2. Sitaram Singh,
working as Chargeman Grade A
(Junior Engineer Grade I),
Central Railway Workshop,
Matunga, Mumbai-400 019.
3. P.S. Dube
working as Chargeman Grade A
(Junior Engineer Grade I),
Central Railway Workshop,
Matunga, Mumbai-400 019.
4. Jatashankar Shukla,
working as Chargeman Grade A
(Junior Engineer Grade I),
Central Railway Workshop,
Matunga, Mumbai-400 019.
5. H.S. Khushwaha,
working as Chargeman Grade B
(Junior Engineer Grade I),
Central Railway Workshop,
Matunga, Mumbai-400 019.
6. D.U. Maniyar,
working as Chargeman Grade B
(Junior Engineer Grade I),
Central Railway Workshop,
Matunga, Mumbai-400 019. . . Applicants

By Advocate Shri G.S. Walia.

Versus

1. Union of India, through
General Manager,
Central Railway,
Headquarters Office,
Mumbai CST, Mumbai-400 001.
2. Chief Workshop Manager,
Central Railway,
Matunga, Mumbai-400 019.

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3. R.K. Sawant,
working as Section Engineer,
Paint Shop, C & W Workshop,
Central Railway,
Matunga, Mumbai-19.

4. K.S. Doke,
working as Section Engineer,
Paint Shop, C & W Workshop,
Central Railway,
Matunga, Mumbai-19. Respondents

By Advocate Shri V.S. Masurkar for R1 & R2
Shri S.P. Saxena for R3 & R4.

O R D E R
Hon'ble Smt. Shanta Shastry. Member (A)

This application has been filed for a direction to the respondents to assign correct seniority to the applicant in the grade of Chargeman Grade-B (Junior Engineer Grade II). The applicants impugned the order dated 30.11.98 by which representation of Applicants No.1 and 2 was rejected.

2. The applicants were working as skilled artisans at the relevant time. According to the rule, they were entitled to appear for the selection as Intermediate Apprentices to be absorbed and posted as Chargeman Grade-B (redesignated as Junior Engineer Grade II). According to the recruitment rules, the post of Chargeman Grade-B is filled in 50% by direct recruitment, 25% by Intermediate Apprentices by holding selection from amongst skilled artisans of the Mechanical department and 25% by the rankers.

3. The applicants applied for the post and

appeared for the written test and the interview and they were selected by order dated 18.4.1992.

4. As per procedure and rule, the Intermediate Apprentices have to undergo a training of two years before they are actually absorbed as Chargeman Grade-B. The applicants, after selection, were sent for training in the Systems Training School at Jhansi. On completion of the training, they appeared in the final examination at Jhansi and they were awarded certificate for having passed the final examination as per the version of the applicants. The applicants have enclosed copy of the certificate dated 25.6.1994 awarded to applicant No.2. Similar certificates were issued to other applicants also.

5. The applicants submit further that the seniority of the candidates who are recruited through the Railway Recruitment Board or by any other recruiting authority is determined in terms of para 303 of the IREM Volume I, which reads as under:

"303. The seniority of candidates recruited through the Railway Recruitment Board or by any other recruitment authority should be determined as under:

(a) Candidates who are sent for initial training to the training schools will rank senior in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts. Those who join the subsequent courses for any reason whatsoever and those who pass the examination in the subsequent chances, will rank junior to those who had passed the examination in earlier courses.

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In the case of candidate who do not have to undergo any training in training school, the seniority should be determined on the basis of the merit order assigned by the Railway Recruitment Board or other recruiting authority."

6. It is the contention of the applicants that the seniority has to be determined on the basis of the rank and merit obtained by the candidates either in the Railway Recruitment Board examination or in the examination held in the training school, whenever such training is necessary. The applicants, after selection, were deputed to undergo training of two years in the Systems Training School in Jhansi. Without passing the examination conducted in the Systems Training School, no person can be absorbed as Chargeman Grade-B. However, after the said training in the Systems Training School, the applicants submit that they were illegally and unauthorisedly subjected to a test at local level at Matunga Workshop. This test is not provided for under the statutory rules. According to the applicants, seniority cannot be based on the result in the local test held in the workshop at Matunga. In this connection, a request was made by the Chief Workshop Manager, Matunga by letter dated 16.7.1994 addressed to the Headquarters office, Central Railway to clarify the position in respect of assignment of seniority to Intermediate Apprentices selected from the artisans staff against 25% quota. It was stressed by the Chief Workshop Manager that the marks obtained in the Systems Training School by the applicant should invariably taken into consideration for preparing the merit order and

seniority. This letter was particularly in respect of the seniority in the case of batch of 35 Apprentices Mechanic, to which the applicants belong.

7. Thereafter, by letter dated 21.4.1998 the respondents issued a seniority list taking into consideration the marks secured by the applicants in the final examination held at Systems Training School, Jhansi. However, by subsequent letter i.e. the impugned letter, the respondents assigned seniority on the basis of the written test and interview conducted at the local level totally ignoring the result in the Systems Training School. According to the applicants, the respondents were proposing to revise and/or cancel the said seniority list dated 21.4.1998 on the basis of the impugned order.

8. It is the contention of the applicants that the Systems Training School conducts the examination in a more Systematic comprehensive and equitable manner. Reading of para 303 of IREM Volume I makes it clear that what is contemplated under the rule on the basis of which the seniority has to be assigned is the examination conducted and held by such training school. It does not contemplate any other test or examination thereafter on the basis of which the interse seniority can be assigned. Otherwise there would be no nexus between the training schools and examinations conducted

there. The words 'training schools' and 'examinations' are co-related and have to be understood in the context in which they have been used. In fact by letter dated 24.5.1996 the Chief Personnel Officer of the Central Railway himself had doubt about correctness of the assignment of the seniority on the basis of such local examination. The applicants submit that benefit of seniority or promotion cannot be given arbitrarily by twisting the rules to the advantage or disadvantage of a few. According to the applicants the impugned action of the respondents in not considering the merit obtained by the applicants in the Systems Training School final examination is illegal, arbitrary unconstitutional. The applicants are entitled to have their seniority fixed on the basis of the merit obtained by them in the final examination conducted by the Systems Training School, Jhansi. The respondents are bound to follow the IREM and the code of rules by which service conditions including the seniority is governed. The impugned order has been passed by completely ignoring the statutory provisions in this behalf. The progress and performance of the applicant in the Systems Training School which had been of higher order is now sought to be nullified by the action of the respondents in assigning the seniority on the basis of local examination conducted by them in Matunga Workshop, this is wrong.

9. The respondents have filed their reply and have raised preliminary objection. According to the

respondents, the applicants are praying for seniority on the basis of merit obtained in the Systems Training School, Jhansi in the final examination. If such a ^{persons h} prayer is granted many ~~parties~~ will be affected and those persons will have to be heard in the matter. Therefore, the present application is bad in law in non-joinder of necessary parties and on this ground alone, the application deserves to be dismissed. Further, the seniority is assigned trade wise. The applicants in the OA belong to different trade, for example Applicant No.1 belongs to WM trade, Applicant No.2 painter trade, Applicant No.3 Smithy trade, Applicant No.4 painter trade, Applicants No.5 and 6 Fitter trade. Since they belong to different trade, their seniority is assigned in respective trade. Therefore, they should have made necessary party or affected party as private respondents. On this ground also the OA deserves to be dismissed apart from the joint application being filed by differently situated persons, which is not maintainable in law.

10. The respondents submit that the applicants were recruited under the recruitment notification dated 31.10.1990 i.e. recruitment of Apprentices Mechanic drawn from skilled artisan category against 25% quota Mechanic Apprentices. Under this notification, specific conditions were laid down that the training period will be of two years including 12 months practical training

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including the training at Systems Training School, Jhansi. This notification was issued under para 140 of the IREM Volume I 1989. The applicants were sent for training at the Systems Training School, Jhansi as per para 1904 of IREM Volume II Chapter 19. The said para provides that apprentices are required to undergo prescribed course of training and to pass such examination as may be laid down in their respective syllabus. They do not become eligible for appointment to working post until they have successfully completed their training. Accordingly programme was fixed. On completion of training at the Systems Training School, Jhansi for one year, they appear for theoretical examination conducted by such training school. The training school awarded Apprentice Engineers Certificate for successful completion of a prescribed course of Mechanical Apprentice in the year 1993. The duration of the course was from 23.11.1992 to 27.12.1993. This cannot be treated to be complete proficiency in the designated trade. The applicants were also sent for training to the basic training centre at Matunga vide letter dated 25.4.1992. The respondents have denied that the certificate dated 25.6.1994 awarded by the Systems Training School, Jhansi to applicant No.2 was for completion of training of two years but only for the one year at the Systems Training School, Jhansi. Theoretical training is common to all Mechanic Apprentices though they are allotted different trades.

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According to para 1904 of IREM volume II it is provided that Apprentices should be absorbed in the working post on the working day following the day of completion of apprenticeship/ training period. The suitability of the apprentices for absorption against working post should be judged well in advance on the training period. It is thus established that the examination held at the end of training period before being posted against the working post is the criterion for judging the suitability for a post. The respondents are relying on a letter dated 19.8.1977 from the Headquarters in support of the pleading that the mechanic apprentices will be required to give a final test to assess their fitness for working post before they complete training. According to this letter it was decided that Deputy Chief Mechanical Engineer incharge of workshop will arrange to have the final test conducted in advance and on being declared fit based on such result will be absorbed as Mechanical Apprentice against the working post. The certificate annexed by the applicants to the OA does not show that it is awarded for applicants' respective training trade. Similarly marks published by the Systems Training School, Jhansi against Applicant No.2 are not awarded against his trade. The respondents also submit that there is no specific instructions that Systems Training School, Jhansi should conduct the examination before the date of posting of apprentices as Chargeman-B. Clarification was received in this respect under

Headquarters letter dated 27.01.1997 leaving no scope for any dispute as to who could conduct the examination.

11. The respondents submit further that the office letter dated 21.4.1998 has already been cancelled vide letter dated 07.11.1998. It was done on various reasoning stated in the letters dated 09.8.1977, 07.6.1985, 09.7.1979, 13.11.1979 and 21.9.1998. The respondents have no quarrel with the quality of the examination conducted by the Systems Training School, Jhansi. However, according to them, it is only theoretical training. The seniority of the Mechanical Apprentices is determined as per correction slip 9 of IREM volume I para 303. The examination is to be held at the end of training period before being posted against the working posts. According to the respondents, since the completion of training means theoretical training as well as practical training and the examination at the end of training is the final examination based on the result of which the seniority should be assigned. According to them there is no substance in the statement of the applicants that the intention of the rule making authority is that the merit order obtained in the examination conducted by the Systems Training School should be the basis for assigning the seniority. There is no mention of final examination conducted at Systems Training School, Jhansi, but only the order of merit obtained in the exam held at the end of training period.

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12. The learned counsel for the respondents also points out that Shri P.S. Dube i.e. Applicant No.3 has already filed OA 789/98 separately and the same is pending for admission and he has prayed for the same relief that his seniority should be fixed on the basis of the merit obtained in the Systems Training School, Jhansi wherein he stood first. On account of this reason, the respondents have opposed the admission of the OA. The proper course for the applicants was to intervene in OA 789/98 as essential parties.

13. We have heard the learned counsel for the applicants as well as the respondents and have perused various rules and letters referred to. Coming to the preliminary objection raised by the respondents regarding non joinder of parties, it is seen that the OA has been amended to add the names of two private respondents and therefore, the application cannot suffer from non joinder of parties. In regard to the separate OA filed by the applicant No.3 we agree that the applicants ought to have intervened in the OA filed by applicant No.3. However, the case of Shri Dube being on a slightly different footing the applicants agreed to delete the name of Shri Dube in this OA. His OA is to be decided separately. The point of dispute raised by the applicant, the marks obtained at the end of the theoretical examination in the Systems Training School, Jhansi should be taken into account for deciding the

the final merit at the end of training along with the marks obtained in the practical training and there cannot be any other final examination the result of which should become the basis for assigning seniority in Chargeman-B. The respondents' contention on the other hand is that the marks obtained in theoretical training at the Systems Training School, Jhansi are not the criterion for deciding the merit for purpose of seniority. According to them, there is an independent final examination held at the end of the training. The marks obtained in that exam has to be the basis for determining the seniority. The applicants have referred to para 303 of IREM and have emphasised on the word Systems Training School and the examination therein. According to them, one has to pass the examination to be held at the end of the training period at the training school. We have perused para 303 which clearly says that those who are sent for initial training to training school will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working post. There is no mention here that the examination has to be held by the Systems Training School, Jhansi. It only refers to an examination to be held at the end of the training period. Therefore, the contention that the marks obtained in the examination held at the end of theoretical training in the Systems Training School should be included is not acceptable.

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More over, the training period as rightly pointed out by the respondents is of two years. Further, the intention behind the policy is clearly brought out in the letter dated 19.8.1977 which refers to arranging of the final test of the apprentices mechanic undergoing training in the division well in advance. Powers were given to the Deputy Chief Works Manager incharge of the workshop to arrange the final test. This decision was taken because the posts in the grade of Rs.425-700 are controlled by Division Superintendents and Deputy Chief Mechanical Engineers themselves. However, it was also directed in the letter that the copies of the result should be sent to the Headquarters office, Personnel Branch. This makes it clear that there has to be a final examination at the end of the training. It does not talk about marks obtained in written test held by the Systems Training School at the end of the theoretical training. We cannot therefore, find any fault with the action of the respondents and rightly since the private respondents No.3 and 4 had secured higher marks in the final written examination, they are being shown senior to the applicants. The application is devoid of merit and we accordingly dismiss the same.

14. We also note that in this application, the applicants have failed to mention about the separate OA filed by Shri Dube thus suppressing the fact. Therefore, on the ground of suppressing of fact also the

application deserves to be dismissed and cost of Rs.500/- is imposed on the applicants for suppressing the facts of the OA having been filed by Shri Dube. The said amount shall be paid to CAT, Mumbai Bench.

15. In the result, the OA stands dismissed.

Shanta S

(SMT. SHANTA SHAstry)
MEMBER (A)

S.L. Jain

(S.L. JAIN)
MEMBER (J)

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