

Central Administrative Tribunal  
Mumbai Bench

OA No.802/1998

Mumbai this the 21<sup>st</sup> day of June, 2002.

Hon'ble Mrs. Shanta Shastri, Member (Admnv)  
Hon'ble Mr. Shanker Raju, Member (Judl.)

Mohd. Dawood Peer Ahmed,  
Motor Driver, COM's Office,  
Central Railway, CST, Mumbai-400001  
and residing at Railway Colony,  
Quarter No.92, Flat No.160,  
Kurla (East), Mumbai-400 072. -Applicant

1 (By Advocate Shri C.M. Jha)

-Versus-

1. Union of India through its  
General Manager,  
Central Railway,  
Chhatrapati Shivaji Terminus,  
Mumbai-400 001.
2. The Chief Operative Manager,  
Central Railway, C.S.T.,  
Mumbai-400 001.
3. Sr. Personnel Officer,  
GM's Office, C.S.T.,  
Mumbai-400 001.
4. Sh. P.Maharajan
5. Sh. Anil Chandra,  
Motor Drivers, under  
Respondent No.2, COM's  
office, C.S.T.,  
Mumbai-400 001.

-Respondents

(By Advocate Shri ~~Sun~~<sup>Sur</sup>esh Kumar)

ORDER

Mr. Shanker Raju, Member (J):

Applicant impugns the upgradation order dated 29.7.88 as well as seniority list of Motor Drivers dated 4.9.97, wherein respondents No.4 and 5 have been placed above him and has sought preparation of revised seniority list and issuance of a revised upgradation order with all consequential benefits.

2. Applicant joined as a daily rated casual Motor Driver on 3.3.86 against a clear vacancy of Shri Ahmed Pashi, Motor Driver who left the Railway services. He was subjected to

medical examination and had undergone a trade test for the post of Motor Driver in the grade of 950-1500 on 7.12.89. He was declared successful on 16.12.89 in the trade test. A seniority list was published wherein respondents No.4 and 5 have been shown above him despite being juniors and appointed later than applicant. On making representation nothing fruitful has been done. In pursuance of restructuring of Group 'C' and 'D' staff w.e.f. 1.3.93 the cadre of Motor Drivers after delay has been ordered to be restructured in pursuance of which by an order dated 29.7.98 respondents 4 and 5 have been promoted as Motor Driver Grade-I in the scale of Rs.1320-2040 against the upgraded post. Representation made against the ~~pro~~<sup>1</sup>motion order has not been responded to.

3. Learned counsel for the applicant Shri Jha stated that the respondents have delayed upgradation of the post of Motor Driver for five years and this has been done without rectification of the seniority list. As the applicant is the seniormost Motor Driver he should have been placed above respondents 4 and 5 in the seniority list and was to be promoted earlier than them.

4. Seniority list has not been published yearwise and the list of 4.9.97 was published for the first time. Applicant was not aware of ad hoc promotion of respondents 4 and 5. This ad hoc promotion cannot be reckoned for the purpose of seniority for further promotion on upgraded post of Driver Grade-I. A junior who gets ad hoc promotion ~~than~~ earlier cannot be bestowed with a legal right to gain seniority over his senior. The main criteria for the seniority is the length of service and as the applicant was appointed earlier to the

respondents in the next below grade<sup>an</sup> 3.3.86 whereas respondents 4 and 5 were appointed in 1988 were his juniors, as such the applicant has a preferential right to be promoted.

5. It is contended that applicant had cleared the trade test in the year 1989 for the post of Motor Driver and at that point of time the juniors have not even been appointed. Placing reliance on Rule 306 of IREM Vol.-I it is stated that the candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of date of posting and further taking resort to para 314 of the IREM ibid it is contended that when the date of appointment to the grade is the same the date of entry into the grade next below shall determine the seniority. It is also stated that as per paragraph 320 when a post, selection as well as non-selection is filled up by considering staff of different seniority units the total length of service in the grade or equal grade shall be the determining factor for determining seniority. Further taking resort to the Full bench judgement of the Tribunal in U.S. Meena v. Union of India OA No.121/91 decided on 16.07.1996, 1997 (1) ATJ 4 it is contended that in the matter of promotion and seniority a person who passed the eligibility examination is entitled to higher seniority on the date of passing the examination over the person who had passed the examination on a subsequent date. In this backdrop it is stated that the applicant who had undisputedly cleared the trade test in 1989, much earlier to the respondents 4&5 he has a right to be promoted earlier than them.

6. Private respondents despite being served have not filed any reply and as such it is legally presumed that they have conceded the claim of the applicant and they have nothing to state in <sup>h</sup>defence. Official respondents filed their reply and

Shri Suresh Kumar appearing for the respondents contended that the trade test has nothing to do with the appointment as Driver which was held only to ascertain whether the person knows driving before utilising him as a casual driver. It is stated that the applicant was appointed on post facto sanction of General manager on 29.6.90 as a Sub Hamal w.e.f. 3.3.96<sup>1</sup> which has not been challenged by him and the duty performed by him as a casual driver prior to 26.9.90 is of no consequence. Applicant was promoted as ad hoc Motor Driver on 2.11.92 whereas respondents 4 and 5 were appointed on 20.9.90 and 15.11.90. These respondents have been regularly promoted as Motor Driver w.e.f. 30.10.96 and accordingly in the seniority list have been shown senior as they have been promoted on ad hoc basis earlier than the applicant and drawing higher pay scale are senior to the applicant. As the applicant has not challenged their ad hoc promotion the claim is not well founded. The re-structuring order has been complied with by antedating the date of promotion of respondents 4 and 5. These respondents were further promoted to the grade of Rs.1200-1800 as well as 1320-2040 w.e.f. 1.3.94.

7. It is stated that a panel was drawn on 30.10.96, showing the position of seniority which has not been assailed by the applicant. Now he is precluded from challenging the same and further once he has availed the benefit of the order dated 29.7.88 he is not precluded from challenging the same. In this manner the issue of limitation is raised by the learned counsel stating that the settled position cannot be unsettled at this point of time. As the seniority of the applicant has been fixed as per the panel position there is no discrimination as alleged under Articles 14 and 16 of the Constitution of India.

8. We have carefully considered the rival contentions of the parties and perused the material on record. It is not disputed that the applicant as well as respondents 4 and 5 have been regularised in the Motor Driver grade Rs.950-1500 on 30.10.96. The issue regarding assignment of seniority to respondents 4 and 5 by the respondents over and above the applicant is concerned, the same has not been satisfactorily explained by the respondents in their reply. In case the date of appointment to the grade is same as per para 314 of the IREM the determining factor would be the date of entry into the grade next below. In this view of the matter the applicant was appointed in the grade next below as a substitute hamal on 3.3.86 as well as respondents 4 and 5 have been appointed on 12.12.88 and 28.11.88, as the date of entry into the grade next below is anterior in case of applicant the seniority is to be reckoned from that date and the applicant is undisputedly senior to the respondents.

9. Furthermore, as per para 315 of IREM where passing of departmental trade test has been a condition precedent to a non-selection post the relevant seniority of Railway servant passing the test in their due turn shall determine the basic seniority. It is not rebutted by the respondents that the applicant has not passed the trade test meant for the post of Driver in the year 1989<sup>u</sup> successfully whereas the respondents have not passed it by that date<sup>or</sup> earlier to him. The contention of the respondents that the trade test is to satisfy whether the person knows driving before utilising him as a casual labour is of no consequence to them as nothing has been brought on record to indicate that after the applicant as well as respondents 4 and 5 have been appointed<sup>u</sup> as ad hoc Drivers and before regularisation they have undergone any trade test. It is only on the basis of the earlier trade test they have

been regularised w.e.f. 30.10.96. In that event as the applicant has passed the trade test earlier than the private respondents 4 and 5 he has a right for reckoning his seniority accordingly and in that event he is to be placed above the private respondents. This view is fortified by the decision of the Full Bench in Meena's case (supra) where the person who has passed the examination earlier has been entitled to higher seniority.

10. In so far as the stand of the respondents regarding limitation is concerned, the same would not be applicable as applicant has challenged the seniority list issued on 4.9.97 against which he preferred a representation which has not been responded to and he has come within the stipulated period of one year as envisaged under Section 21 of the Administrative Tribunals Act, 1985.

11. As regards the contention that the applicant has not challenged the panel of 1986 we are of the considered view that seniority has not been correctly worked out by the respondents. They have wrongly given effect to the upgradation ~~and~~<sup>by</sup> ignoring the claim of the senior promoted private respondents 4 and 5 and assigned them seniority above the senior, i.e., applicant.

12. As the private respondents despite service have not filed their reply, the contentions of the applicant and his claim are deemed to have been admitted by them.

13. The only ground on which the seniority has been assigned to respondents 4 and 5 is that they have been promoted earlier on ad hoc basis in the pay scale of RS.950-1500 as Motor Drivers, cannot be countenanced, as ad hoc service cannot

be reckoned for the purpose of assigning seniority and the principle to be applied should be in consonance with paragraphs 314 and 315 of the IREM.

14. In the result and having regard to the reasons recorded above, we partly allow this OA by directing the respondents to revise the seniority of the applicant over and above respondents 4 and 5 and to ante date it. In that event the applicant shall also be entitled to all consequential benefits. The aforesaid directions shall be complied with within a period of four months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)  
Member (J)

Shanti

(Smt. Shanta Shastry)  
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

C.P.No.111/2002 in OA.No.802/98

Friday this the 28th day of March, 2003.

CORAM : Hon'ble Shri A.V.Haridasan, Vice Chairman

Hon'ble Shri S.K.Hajra, Member (A)

Mohd.Dawood Peer Ahmed

...Applicant

By Advocate Shri C.M.Jha

vs.

Union of India & Ors.

...Respondents

By Advocate Shri V.S.Masurkar

TRIBUNAL'S ORDER

{Per : Shri A.V.Haridasan, Vice Chairman}

This Contempt Petition arises out of order of the Tribunal in OA.No.802/98 dated 21.6.2002 wherein the respondents were directed to revise the seniority of the applicant over and above Respondents No. 4 and 5 and to ante date it. In that event the applicant shall also be entitled to all consequential benefits. Alleging that the direction contained in the order has not been complied with and therefore action has to be taken against the respondents under the Contempt Proceedings Act. An Affidavit has been filed by Smt. Rita P. Hemrajani, Dy. Chief Personnel Officer (HQ). In the Affidavit, it has been shown that the order of the Tribunal has since been implemented by order dated 4.10.2002 whereby the applicant has been promoted as Motor

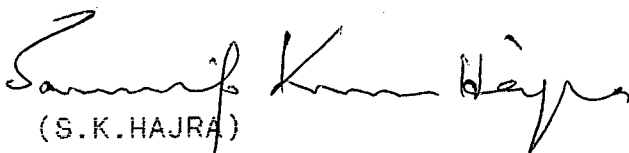
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Driver Gr.Rs.950-1500 (RPS) on par with Shri P.Maharajan and Shri Arul Chandra. However, the consequential monetary benefits have not been given to him. The learned counsel of the petitioner states that direction contained in order that has been complied with now in only part and payment of monetary benefit arising from ante dated promotion only would complete the compliance.

2. We find substance in the averment of the counsel. The Tribunal has in the order stated that in the event of ante dated promotion, the petitioner would be entitled to "all consequential benefits". It is evident therefore all consequential benefits of antedated promotion including arrears of higher pay and allowances should be given to the petitioner. Now noting that the petitioner has been promoted with effect from the due date, we dispose of this Contempt Petition directing the respondents to pay to the applicant arrears of pay and allowances from the date of promotion and not only proforma fixation. This should be done within two months.

  
(S.K.HAJRA)  
MEMBER (A)

  
(A.V.HARIDASAN)  
VICE CHAIRMAN

mrj.