

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH
JAIPUR

O.A. No. 592/90

Dt. of order: 25-11-1993

Anil Srivastava

: Applicant

Vs.

Union of India & Ors. : Respondents

Mr. R. N. Mathur

: Counsel for Applicant

Mr. Manish Bhandari

: Counsel for resp. No. 1 & 2

Mr. P. V. Calla

: Counsel for resp. No. 3 to 11

CORAM:

Hon'ble Mr. Gopal Krishna, Member (Jud1.)

Hon'ble Mr. O. P. Sharma, Member (Adm.)

PER HON'BLE MR. O. P. SHARMA, MEMBER (ADM.).

Applicant Anil Srivastava, has filed this application under Sec. 19 of the A.Ts Act, 1985, praying that the applicant's date of appointment on the post Junior Chemical and Metallurgical Assistant (JCMA) may be declared as 19.6.80 and that he may be declared senior to respondents No. 3 to 11. He has further prayed that the respondents No. 1 & 2 may be directed to place the name of the applicant at Sl. No. 1 of the seniority list Annex.A-1, at Sl. No. 3 of seniority list Annex.A-9 and at Sl. No. 1 of selection panel for the post of Welfare Inspector. He has further sought quashing of order dated 15.1.91 (Annex.A-10), whereby he was placed at Sl. No. 12.

2. After filing the O.A, the applicant filed an amended application. The respondents No. 1 & 2 are the Union of India and Divisional Railway Manager, Ajmer, respectively, while respondents No. 3 to 11 are Welfare Inspectors over whom the applicant has sought seniority.

3. The case of the applicant is that the second respondent invited applications for the post of Welfare Inspector scale Rs. 1400-2300 vide notification dated 17.9.86 (Annex.A-4). The applicant was working as JCMA scale Rs. 380-560/1320-2040 at the time when the applications were invited. The applicant appeared in the

test, was selected and appointed as Welfare Inspector on 4.5.88. The selection list of the Welfare Inspectors is at Annx.A-1, dated 18.4.88, in which the applicant's name appeared at Sl.No.6. From time to time, the seniority of the applicant was changed by the respondents.

- Vide ~~xx~~ order dated 25.4.88 (Annx.A-2), his name was placed at Sl.No.6. Vide order dated 17.9.90, his seniority was changed and he was placed at Sl.No.8. Before that his seniority had been changed to Sl.No.12. Vide representations dated 19.6.90 and 13.8.90, he protested the down gradation of his seniority and sought his seniority to be fixed at Sl.No.1 of the selection list for Welfare Inspectors. However, his representations in this behalf were rejected.

4. According to the applicant, he initially joined as JCMA in grade Rs.380-560/1320-2040 on 19.6.80. The applicant joined as JCMA as a direct recruit and joined ~~xx~~ his working post on 19.6.80. According to him this is the date of his appointment as JCMA. This date of appointment has been illegally changed to 15.9.81. This change has resulted in fixation of wrong seniority in his case in the post of JCMA and consequently it has resulted in his seniority in the panel of Welfare Inspectors being down graded. According to him, employees working in a lower grade could not be made senior to him. The applicant is senior to the respondent No.3 since the applicant joined in a higher grade Rs.380-560/1320-2040 on 19.6.80 when the respondent No.3 was working in a lower grade Rs.330-560. An individual in a higher grade will rank senior to a person in lower grade. His seniority has been fixed at Sl.12 at Annx.A-1 on the basis of his date of appointment which has been taken wrongly as 15.9.81. According to him, he is entitled to be placed at Sl.3 of the seniority list dated 12.8.88 and at Sl.

No.1 in the selection panel of Welfare Inspectors.

5. The government respondents in their reply to the application have stated that the applicant was selected for the post of JCMA by Railway Service Commission and was appointed temporarily as apprentice JCMA vide letter dated 18.6.80 issued by SPO(Workshop) Ajmer, vide Annx. R-2. As per the conditions of service, he was to undergo training for one year. The applicant joined duty on 19.6.80 and the Chemical & Metallurgical Officer, Ajmer issued letter dated 19.6.80 (Annx.A-4) in which it was mentioned that the applicant had taken charge of the post of apprentice JCMA. As per para 178, Sec.8, Chapter I of the Indian Railway Establishment Manual (IREM) Vol.I, a JCMA has to undergo training for one year. The applicant could not pass the prescribed test in one year of training and therefore his training period was extended by two months vide letter dated 16.7.81 (Annx.R-3). The applicant joined duty on the working post on 15.9.81 (Annx.R-4). When the applicant's name was shown at Sl.No.6 vide letter dated 25.4.88 (Annx.A-2), respondents at Sl.No.7,8,9 and 10 submitted representations stating that the date of appointment of the applicant was in fact 15.9.81 and therefore, he had wrongly been assigned higher seniority. These representations were examined by the respondents and as a result the applicant's seniority position has been revised and notified vide letter dated 21.7.89 (Annx.A-6) and objections were invited.

6. The respondents have further stated that the post of Welfare Inspector Grade-III scale Rs.425-640(R)/ Rs.1400-2300(RP) is an ex-cadre post and filled-up from amongst the eligible employees of various seniority units. The grade Rs.380-560 in which the applicant was placed before he was appointed as Welfare Inspector is the grade one grade below Rs.425-640 in the cadre of Chemical and

Metalurgical Assistant and grade Rs.330-560(R)/1200-2040 (RP) is also one grade below the grade Rs.425-640 in the clerical grade. The private respondents were placed in the latter grade when they were appointed as Welfare Inspectors. According to the respondents, since both the grades Rs.380-560 and Rs.330-560 are one grade below the grade Rs.425-640 in different units, the seniority of the appointees to the post of Welfare Inspector is to be determined in terms of the Railway Board's letter dated 18.9.69 (Annex.R-10). Therefore, the applicant can not be considered to be senior to the respondent No.3 and other respondents at Sl.No.4 to 11. According to Annex.R-10, both these grades are equivalent for the purpose of determining seniority of an appointee to a higher post from different seniority units. Further, as per para 321 of the IREM Vol.I, only continuous service is to be taken into consideration for the purpose of determining seniority. The applicant's continuous service commenced from 15.9.81, the date on which he joined on the working post. The applicant was appointed on 15.9.81 on which date his probationary period commenced. Attention has been invited by the respondents to Annex.R-18, which is para 307 of the IREM according to which the date of appointment to a grade is reckoned from the date of commencement of the probationary period.

7. During the arguments, the learned counsel for the applicant stated that only the applicant was in the higher pay scale of Rs.380-560 on the date of his appointment as welfare Inspector. Annex.A-9, which is the seniority list for JCMA shows his date of appointment as on 19.6.80. According to him his date of appointment can only be on 19.6.80 as shown in Annex.A-1 dated 18.4.88. Further, Annex.A-4 dated 19.6.80 also mentions the date of taking over charge of the post of JCMA by

the applicant as on 19.6.80. Annx.A-9, dated 12.8.88, which is the provisional seniority list also mentions the date of applicant's appointment as JCMA on 19.6.80. He has referred to the provisions of para 306, 309, 314 and 320 of IREM Vol.I, which are the relevant paras for determining seniority in his case. In particular, he has referred to para 314, which determines seniority when the date of appointment to a grade is the same. According to this para when the dates of an appointment to a grade are the same the dates of entry into the grade next below it shall determine seniority. According to para 320, when a post (selection as well as non-selection) is filled-up considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter-seniority. For this purpose only non-fotuitous service is taken into account. Non-fotuitous service has been defined as the service rendered after the date of regular promotion after due process. Therefore, according to the applicant, first of all his date of appointment to the post of JCMA should be declared as 19.6.80 and since the other private respondents were placed in a scale lower than the one in which the applicant was placed on the date of his appointment as JCMA, he should be declared as senior to the private respondents in the post of Welfare Inspector.

8. During the arguments, the learned counsel for the government respondents and the private respondents stated that none of the rules cited by the learned counsel for the applicant were relevant for the purpose of determining the seniority of the applicant. The post of Welfare Inspector is an ex-cadre post and there are separate rules for determining seniority in ex-cadre post.

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determines seniority in ex-cadre posts. They claim that Annx.R-4 is in fact the order of appointment of the applicant in the post of JCMA. In this annexure which is dated 1.10.81, it is stated that the applicant, an apprentice JCMA, has been appointed to the post of JCMA w.e.f. 15.9.81 in the scale of Rs.380-560. Thus, the date of appointment of the applicant is 15.9.81 and not 19.6.80, the date on which he joined as an apprentice JCMA, who had yet to undergo training. They have claimed that paras 303 and 321 are relevant in determining seniority of the applicant in the post of Welfare Inspector. They have added that since the applicant did not complete his training during the period of training of one year, he did not get stipend for two months. Therefore, there was a break even in his training period. The learned counsel for the respondents have further stated that by Annexure:R-19, dated 11.1.91, an opportunity was given to the applicant to explain why his seniority should not be revised and down graded. He however, did not avail himself of this opportunity, However he filed the present O.A. on 20.12.90.

9. The learned counsel for the applicant was given another opportunity to offer his comments on the arguments of the counsel for the respondents. He stated that the post of Welfare Inspector is not a cadre post. The notification for recruitment thereof does not say so. He has claimed that the order of the applicant's appointment as JCMA is not Annx.A-4 but Annx.R-2 dated 18.6.80, in which it was stated that the applicant had been appointed to the post of apprentice JCMA and it was further mentioned in the said order that he had also signed a bond for service. He has further claimed that Annx.R-10 has no application to this case because it is for determining marks for the purpose of determining seniority, and not for

determining seniority as such. He has invited our attention to Item 16 of Chapter 1 of the Indian Railway Establishment Code Vol.1 Vth Edition 85 wherein "duty" has been defined. According to this definition "duty" includes service as a probationer or apprentice provided that such service is followed by confirmation. According to him, therefore, the applicant had joined duty on 19.6.80 as JCMA even though he has described as an apprentice. He has also drawn our attention to the definition of "apprentice", in Osborn's Concise Law Dictionary Seventh Edition, wherein "apprentice" has been defined as a person who binds himself to serve and learn for a definite time from an employer, who on his part covenants to teach his trade or calling. Therefore, according to him as an apprentice the applicant was in the regular employment of the Railways. He has reiterated that the rules applicable for determining seniority of the applicant as JCMA are contained in paras 305, 309, 314 and 320 of the Indian Railway Establishment Manual Vol.I.

10. We have heard the learned counsel for the parties, have examined the records and have gone through the rules and other documents cited before us.

11. Undoubtedly, what is to be determined is the correct seniority of the applicant in the post of Welfare Inspector. However, for this purpose, it is necessary to determine the date of appointment of the applicant to the post of JCMA and also to determine how the seniority of the applicant to be determined in the post of Welfare Inspector when the appointments to the post are from different grades or seniority units. While deciding this issue, it would also necessary to find out whether the post of

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Welfare Inspector is a cadre post or ex-cadre post.

12. It is true that in Annex.A-1, dated 18.4.88, which is the select list for the post of Welfare Inspector the date of appointment of the applicant as JCMA is mentioned as 19.6.80. It is also true that in Annex.A-4 dated 19.6.80, it is mentioned that the date of taking over charge of the post of JCMA by the applicant is 19.6.80. Annex.A-9, dated 12.8.88, which is the provisional seniority list also mentions the date of appointment of the applicant as JCMA as 19.6.80. However, we cannot ignore the fact that Annex.A-4 mentions the applicant as an apprentice JCMA. Now in the light of the fact that the applicant is an apprentice JCMA, we come to Annex.R-4 dated 10.1.81 which states that the applicant was appointed on 15.9.81. This Annexure R-4 in fact appears to be the appointment order of the applicant and not Annex.A-4, which is an intimation regarding taking-over charge of the post by the applicant. The letter forwarding the service sheet of the applicant at Annex.R-13 dated 2.9.88, mentions that the applicant was appointed as apprentice JCMA on 19.6.80 and was appointed as JCMA on 15.9.81. This annexure almost entirely resolves the controversy about the date of appointment of the applicant as JCMA.

13. Rule 104 of the Indian Railway Establishment Manual Vol.I, provides that for trainees or apprentices appointed to a working post on conclusion of training probationary period commences on the date of such appointment. It is from the commencement of the probationary period that the regular service of an official commences. The learned counsel for the applicant has laid stress on the definition of 'duty' in the Indian Railway Establishment Code Vol.I, according to which 'duty' includes service as a probationer or apprentice. However, this definition is hardly of any help in this

case because it is not denied that even while working as an apprentice the applicant was on the duty, although as an apprentice. Being on duty, does not necessarily mean being on duty as a regularly appointed employee. The learned counsel for the applicant also laid stress on the meaning assigned to the expression 'apprentice', in Osborn's Concise Law Dictionary. We can take the help of dictionary only if an expression has not been defined in the relevant rules applicable to the government servant. 'Apprentice' has been defined in Rule 103 of the Indian Railway Establishment Manual Vol. I and the definition reads as under:

"An 'apprentice' or a 'trainee' means person undergoing training with a view to employment in railway service, who draws pay, leave salary subsistence allowance or stipend during such training but is not employed in or against a substantive vacancy in the cadre of a branch of deptt. On satisfactory completion of his training he is eligible for appointment of probation in a substantive vacancy but no guarantee of such appointment is given."

The above definition makes it clear beyond any doubt that an apprentice cannot be treated as a regular employee. On a careful consideration of the entire matter, we hold that the applicant was appointed to the regular post of JCMA only from 15.9.81 and not from the earlier date 19.6.80 on which date he was appointed as an apprentice JCMA.

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14. The next question to be decided/whether the post of Welfare Inspector is a cadre post or an ex-cadre post. It appears necessary to decide this issue for the purpose of finding out whether the applicant got promotion as Welfare Inspector in his normal channel of promotion and therefore was entitled to seniority over those who were placed in scale of pay which started with a lower amount than one which was held by the applicant at the time of his promotion as Welfare Inspector. On making a reference to the notice inviting applications for the

post of JCMA (Annex.A-5) dated 17.5.86, we find that persons holding posts one grade below the grade of Welfare Inspector (Rs.425-640) and those holding two grades below the said grade of Rs.425-640 were eligible for being considered for appointment as Welfare Inspectors. In this notice, it was not specified that the persons holding posts one grade below or two grade below should be from any particular discipline or line of posting. Further, the post of Welfare Inspector has not been prescribed as a promotional post for JCMA. The next promotional post for JCMA is Chemical & Metallurgical Assistant (CMA). Thus, it appears that the post of Welfare Inspector is an ex-cadre post as far as the applicant is concerned.

14. Now, we have to consider the question whether the applicant would be entitled to seniority as Welfare Inspector over those who were in a grade with a lower start than the applicant at the time of appointment to the post of Welfare Inspector. In this connection, the notice inviting applications for Welfare Inspector (Annex.A-5) shows that candidates from different disciplines could compete for the post of Welfare Inspector. Even if the candidates were from posts with one grade below Rs.425-640, they could be from different seniority units. Therefore, the seniority of the applicant in the post of Welfare Inspector cannot be determined by taking the view that any body who was placed in a grade lower than the one in which the applicant was placed at the time of appointment as Welfare Inspector would automatically rank junior to the applicant. The notice Annex.A-5, does not even suggest that when there are employees who are two grades below while competing for the post of Welfare Inspector grade Rs.425-640 would be automatically junior to the candidates who were from one grade below the grade Rs.425-640. The claim of the respondents is

that grade Rs.380-560 in which the applicant was placed at the time of his promotion as Welfare Inspector is one grade below the grade of Rs.425-640 in the cadre of Chemical & Metallurgical Assistant and that grade Rs.330-560 is also one grade below in the grade of Rs.425-640 in clerical grade. The grade starting from Rs.330-560 is not necessarily below the grade starting ^{appointment} from Rs.380-560 in so far as ^{are} to the post of Welfare Inspector is concerned. We ^{are} therefore, unable to agree with the learned counsel for the applicant that since the private respondents were in a grade lower than the grade in which the applicant was placed at the time of promotion to the post of Welfare Inspector, the applicant shall rank senior to those respondents.

15. To sum up, the date of appointment of the applicant to the post of JCMA is 15.9.81 it is while holding this post that he was appointed to the post of Welfare Inspector, an ex-cadre post. Since the appointment to the post of Welfare Inspector was from different seniority units the seniority of the applicant had to be regulated with reference to the date of appointment in the grade Rs.380-560 in the post of JCMA, and the seniority of the private respondents had to be regulated with reference to their appointment in the grade in which they were placed namely Rs.330-560. Since all the private respondents were appointed to the grade in which they were placed on the date of promotion as Welfare Inspector on dates earlier than 15.9.81, they would rank senior to the applicant.

16. In the circumstances, we hold that there is no merit in this application. It is accordingly dismissed with no order as to costs.

(O.P.Sharma)
Member (A)

G.Krishna
(Gopal Krishna)
Member (J).