

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A. No. 866/92

Dt. of order: 27.10.1994

Jitendra Kumar Sharma

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr. J. K. Kaushik

: Counsel for applicant

Mr. Manish Bhandari

: Counsel for respondents

CORAM:

Hon'ble Mr. Copal Krishna, Member (Judl.)

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

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

Applicant Jitendra Kumar Sharma has in this application under Sec. 19 of the Administrative Tribunals Act, 1985, prayed that the orders Annex.A2 dated 17.10.89 and Annex.A5 issued by the Sr.DME and the DRM, Kota, changing the applicant's seniority vis-a-vis respondents Nos.5 to 8 may be declared illegal and quashed with all consequential benefits <sup>and</sup> the orders Annex.A3 dated 27.12.89 and Annex.A4, issued by the DRM and the Sr.DME, Kota, empanelling respondent No.5 and promoting him to the post of CTXP may be declared illegal and be quashed. Finally he has prayed that with regard to Annex.A1 in so far as it relates to Kota Division, the respondents may be directed to consider the case of the applicant for empanelment as a result of grant of the two reliefs sought, as mentioned above.

2. The applicant's case is that on being selected as apprentice Train Examiner by the Railway Service Commission, Bombay, he was sent for training for a period of 2 years by the Divisional Mechanical Engineer (Estt), Rajkot vide memorandum dated 2.10.1982 and he joined training on 20.10.82. During the course of training, the applicant applied for change of Division from Rajkot to Kota. His request was accepted. On completion of training he passed the final retention test and he was ordered to report for Kota Division for regular appointment vide letter dated 22/23.11.84 (Annex.A6). He joined Kota Division on 7.12.84.

: 2 :

3. Further according to the applicant, respondents Nos.5 to 8 were selected by the Railway Service Commission, Bombay for the same post and were to be absorbed on Kota Division. They joined training on 21.12.82, 8.12.82, 16.12.82 and some time during 1983 respectively. They completed their training and joined Kota Division on 22.12.84, 17.12.84, 22.12.84 and 9.10.85 respectively. The applicant was confirmed as TXR scale 425-700(R)/Rs.1400-2300(RP) w.e.f. 1.7.86 and thereafter he was promoted as Head Train Examiner scale Rs.1600-2600(RP) w.e.f. 13.2.'87. In the seniority list of TXR i.e. Train Examiner's scale Rs.1400-2300 the name of the applicant appears at Sl.No.9 and the names of the respondents Nos.5 to 8 appeared at Sl.No. 12, 10, 11, & 13 respectively. Respondents Nos.5 to 7 were promoted as Head Train Examiner alongwith the applicant in Feb. 1987 and the respondent No.8 was promoted to the said post in November 87. Thereafter, promotions were to be considered for the posts of Chief Train Examiner scale Rs.2000-3200(RP) for which the applicant as well as respondents No.5 to 7 fell in the zone of consideration. The applicant appeared in the written test for the said post and was declared successful. His name is at Sl.No.6 of the list meant for Kota Division. The respondent No.5 was qualified in the written test. After viva voce was conducted a panel for the posts of Chief Train Examiner was issued vide letter dated 6.2.89. The seniority of the applicant was abruptly changed and respondent No.5 was made senior to the applicant vide letter dated 17.10.87(Annex.A2). Subsequently, respondents Nos.6 to 8 were also made senior to the applicant vide Annex.A-5.

4. The applicant's case is that he joined training earlier than respondents Nos.5 to 8 and had completed training earlier and further joined the working post in Kota Division earlier. Therefore, in terms of para (a) of para 303 Chapter III of the Indian Railway Establishment Manual Vol.I revised Edition 1989, he would rank senior to respondents No.5 to 8. Therefore, the respondents are not justified in treating the respondents Nos.

5 to 8 as senior to the applicant.

5. The respondents in their reply have not disputed the factual position given by the applicant regarding the dates of joining the training, completing the training and joining the working post in the case of the applicant and respondents Nos.5 to 8. Their case is that since the applicant was initially allotted Rajkot Division and the allottees of that Division had training earlier than the allottees of Kota Division, on account of transfer of the applicant to Kota Division he joined Kota Division earlier on 7.12.84, whereas persons who were allotted Kota Division could not complete the training and the retention test before December 1984. The respondents have also relied upon para (a) of Rule 303 IREM for determining the seniority of the applicant vis-a-vis respondents Nos.5 to 8. They have added that the seniority list dated 14.12.87 (Annex.A7) was a provisional seniority list and on receipt of representation, the matter was examined and accordingly order Annex.A2 dated 7.10.89 lowering the seniority of the applicant vis-a-vis respondents Nos.5 to 7 was issued. They have claimed that the respondents have rightly shown private respondents Nos.5 to 8 as senior to the applicant, who were earlier wrongly placed junior to him while finalising the tentative seniority list.

6. The learned counsel for the applicant stated during the arguments that sub-para (a) of Para 303 admits of no exception and it provides that those who joined the subsequent courses for training for any reason and those who passed the examination on subsequent chances will rank junior to those who had passed the examination in earlier courses. Thus, since the applicant had joined the training earlier, completed it earlier and had joined the functional post earlier than respondents Nos.5 to 8, would rank senior to these respondents in view of the provisions of sub-para (a) of Para 303 of IREM Vol.I Chapter III. Further according to him, his transfer from Rajkot Division would not affect his seniority vis-a-vis respondents Nos.5 to 8 because at most he should be treated as junior to all Train Examiners already working in Kota Division on the date on which he joined

(4)

the functional post on 7.12.84. However, since respondents Nos.5 to 8 had joined the functional post after that date they would rank junior to the applicant. The learned counsel for the respondents stated during the arguments that the provisions of sub-para (a) of Rule 303 as aforesaid cannot be interpreted so rigidly. If for no fault of a trainee recruit, he is sent for training later, his seniority cannot be lowered merely on the ground that he had joined the training later and had completed it later. Otherwise, in the merit list of trainee apprentices respondents Nos.5 to 8 rank senior to the applicant. It was after considering all these facts and representations that Annx.A-5 dated 24.1.90 being the final seniority list of Train Examiner was issued in which the applicant was shown as junior to respondents Nos.5 to 8.

7. We have heard the learned counsel for the parties and have gone through the records. Sub-para (a) of Para 303 of IREM Vol.I Chapter III reads as under:

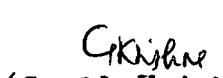
"(a) Candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts. Those who join the subsequent courses for any reason whatsoever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

The first part of this sub-para states that candidates 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. The second part of this sub-para states that who join the subsequent courses and pass examination later will rank junior to those who had passed the examination in earlier courses. It is the latter part of this sub-para which will now prevail over the first part thereof. ~~in~~ This latter part admits of no exception. Regardless of whether an employee was sent for training later due to administrative reasons or due to his own failure to report for training earlier, the dates of joining the course for training and the dates of passing the examination at the end of the training would be material for determining seniority of apprentice ..5

trainees after ~~BB~~ their joining the working post. It is undisputed that the applicant joined the training earlier and also completed it earlier and further he joined the working post earlier to respondents Nos. 5 to 8. Even if it is assumed that transfer from Rajkot Division to Kota Division at his own request/would have effect ~~on~~ his seniority, The applicant's seniority cannot be lower than that of respondents Nos. 5 to 8 because on joining Kota Division he would at most rank junior to all the existing Train Examiners in Kota Division but would not become junior to those Train Examiners who completed the training later and joined their working post later. In the above view of the matter, we hold that the applicant is entitled to higher seniority vis-a-vis respondents Nos. 5 to 8. The respondents are accordingly directed to assign seniority to the applicant above respondents Nos. 5 to 8 with all consequential benefits including consideration for promotion, if any, due.

2. The O.A. is allowed accordingly with no order as to costs.

  
(O.P. Sharma)  
Member (A).

  
Gopal Krishna  
(Gopal Krishna)  
Member (J).