

(21)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
— JAIPUR BENCH, JAIPUR**

O.A. No. 226/93
T.A. No.

199

DATE OF DECISION 16.11.2000

Manjit Singh Bagga and Ors. **Petitioner**

Mr. P.P.Mathur, counsel for the **Advocate for the Petitioner (s)**

Versus

Union of India and ors. **Respondent**

Mr. Manish Bhandari, for resp.No.1 to 5 **Advocate for the Respondent (s)**
Mr. Hemant Gupta, counsel for resp.No.6

CORAM :

The Hon'ble Mr. S.K.AGARWAL, Judicial Member

The Hon'ble Mr. N.P.NAWANI, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(N.P.NAWANI)
Adm. Member


(S.K.AGARWAL)
Judl. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: (1.11.2000)

OA No.226/1993

1. Manjit Singh Bagga S/o Shri R.S.Bagga, working as Line Man Gr.II, Kota.
2. Mukesh Galav S/o Hans Raj Galav, Line Man Gr.II, TRD, Kota
3. Dinesh Khan S/o A.B.Khan, ELF-II, TRD, Kota.
4. Vikash Thamankar S/o P.D.Thamankar, Line Man Gr.II, TRD, Kota.
5. Virender Mishra S/o R.K.Mishra, ELF-II, TRD Kota.
6. Raju Bhai S/o Mohan Bhai, Line Man Gr.II, TRD, Kota.
7. D.K.Verma S/o G.R.Verma, Line Man Gr.II, TRD Kota.
8. Arun Mittal S/o Shri B.D.Gupta, ELF Gr.II, TRD Kota.
9. Irshad Khan S/o Inamulla Khan, Line Man Gr.II, TRD, Shamgarh.
10. Janardhan Dubey S/o Dineshwar Dubey, Line Man Gr.II, TRD Vikram Garh.
11. Virendra Kumar Sharma S/o Shri S.R.Sharma, Line Man Gr.II, TRD, Bindon.

.. Applicants

Versus

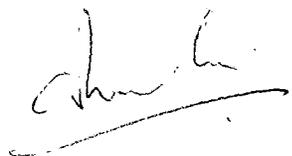
1. Union of India through Secretary, Rail Bhawan, New Delhi.
2. General Manager, Western Railway Churchgate, Mumbai.
3. Divisional Railway Manager, Kota Division, Western Railway Kota Junction, Kota.
4. Chief Electric Engineer, Church Gate, Wester Railway, Mumbai.
5. Senior Divisional Electrical Engineer (TRD), Western Railway, Kota Junction, Kota.
6. Divisional Personnel Officer, Western Railway, Kota Junction, Kota.

.. Respondents

Mr. P.P.Mathur, counsel for the applicants

Mr. Manish Bhandari, counsel for respondents 1 to 5

Mr. Hemant Gupta, proxy to Mr. M.Rafiq, counsel for respon.No.6



CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

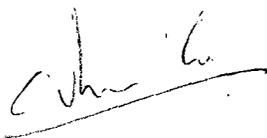
Order

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this Original Application, filed by eleven applicants, following prayers have been made:-

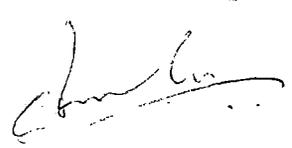
- (i) "Direct the respondents to assign seniority to the applicants with effect from 30.11.87 and consequential benefits.
- (ii) Declare the impugned orders Annexures A-1, A-2, A-3 and A-4 as null and void.
- (iii) Direct the respondents to consider the applicants for promotion from Gr.II to Gr.I as they have already completed the mandatory period of two years in Gr.III
- (iv) Direct the respondents to confirm the applicants as Gr.II from 1.12.89.
- (v) Direct the respondents not to interpolate the seniority and put the name of those persons who have failed in the test for Gr.II examination.
- (vi) Direct the respondents to formulate and implement the promotion policy as applicable in Ratlam and other division of the Western Railway."

2. After hearing the learned counsel for the parties and the material on record, we feel that the controversy to be resolved is whether the applicants who were appointed on the post of skilled artisans (TRD) in TRD Organisation, Kota Division are entitled to seniority from the date they joined the posts as claimed by the applicants or from the date they complete three years prescribed training period as contended by the respondents and implemented vide the impugned order dated 21.5.1990 (Ann.A1).



3. The learned counsel for the applicants, Shri P.P. Mathur contends that from the Agreement signed by the applicants (sample signed by Manjit Singh at Ann.A6) with the respondents on behalf of the President of India, it is, inter-alia, apparent that the apprentice training would be 1½ years (para 1) and that "on successful completion of the apprenticeship the apprentice shall, if not informed by the Government in writing to the contrary, be deemed to be in service of the Railways as a TRD ELF Fitter on a scale of Pay of Rs. 240-400 (R) for a minimum period of 5 years on the general service condition applicable to Class-III on the Railway" (para 18). In view of this, Shri Mathur claims, the seniority of the applicants should be fixed from the date of joining the railway service after successful completion of training since the seniority is always assigned from the day a person joins a post after a regular process of selection and training period undergone, which in the case of applicants, was agreed between the parties to be only 1½ years. Shri Mathur has relied on Para 1905 of the AC Traction Manual and Para 302 of the Indian Railway Establishment Manual in support of his contentions.

4. The learned counsel for the respondents, Shri Manish Bhandari, has denied the contentions made on behalf of the applicants. It has been forcefully argued that Ann.A5 is just an agreement to safeguard the interests of the Railways and whereas it did call the applicants for training of 1½ years and it was also mentioned that on successful completion of training, the applicants would be eligible for getting service in the Railways, it was also made clear that there was no gurantee for appointment. He contended that an Agreement cannot replace a rule and seniority of the directly recruited employees is determined under para 302 of the Indian Railway Establishment Manual (for short, IREM). He invited



our attention specially to the Note under the said Para 302 which stipulates that in case the training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post would be the date he would have completed the prescribed period of training. Shri Mathur, on the other hand, seeking support from the same para 302 of the IREM argued that the criterion of determination of seniority should be the date of joining the working post.

5. We have carefully considered the rival contentions. To begin with, we have carefully weighed in our minds the rival contentions regarding primacy of an Agreement and a rule on the same issue and come to a considered conclusion that the rule incorporated in the IREM regarding determination of seniority in initial recruitment grades has to be followed notwithstanding anything written anywhere else, including an Agreement signed by a subordinate office. It, therefore, follows that just because it is written in the Agreement that after completion of 1½ years training the applicant will be deemed to be in service unless apprentices are informed otherwise, it will automatically result in assignment of seniority from the date of joining service will not be in terms of the specific rule which is quoted hereunder:

"302. Seniority in initial recruitment grades: Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance

[Handwritten signature]

of inter-se-seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se-seniority of each group.

Note: In case the training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training."

A plain reading of the above rule will make it clear that there is no ambiguity and it clearly covers the "exigencies" when the railways are required to reduce the prescribed period of training to tide over any special situation. In order to safeguard against "indiscriminate" use of powers to reduce the duration of training even in circumstances where genuine exigency is not present the Railway Board has, vide their letter dated 27.11.90 (Ann.A2) delegated the power to reduce the period of initial training only to General Managers of the Railways. In the same letter it has also been mentioned that -

"On such curtailment of training, the trainee shall be posted against the posts for which they have been recruited as trainees/apprentices, they shall on such posted be entitled to benefits as applicable to incumbents of such posts except seniority (emphasis supplied)....."

6. In view of the statutory provisions as discussed above, we have no hesitation in holding that whenever the competent authority in the railways decides to reduce the period of initial training, the trainees/apprentices on being posted against the posts, will



get benefits as available to incumbents of that post but not the benefit of seniority. We further hold that the seniority in initial recruitment grades will be determined as per provisions incorporated in para 302 of the IREM including the Note appended thereunder. This being so, the applicants cannot be given benefit of seniority with effect from the date they joined the posts for which they were recruited after completion of their curtailed period of training but instead, their seniority will be determined in terms of Para 302 of IREM and as it is not disputed that the prescribed training period was three years, the respondents cannot be faulted for having given the applicants seniority from the date on which they would have completed the prescribed training of 3 years.

7. We also feel that if the prayer of the applicants is granted, it could create serious administrative problems and piquant situations. As an illustration, suppose a batch recruited in January, 1997 is deputed for training for the prescribed period of three years and after successful completion of training, they join the railway service in January, 2000. However, due to exigencies created in 1998, it is decided by the competent authority to reduce the training period of 1½ years and a batch of persons for the same post is recruited in April, 1998 and after completion of 1½ years training is allowed to join the posts on successful completion of 1½ years training in October, 1999. If the prayer of the applicants is accepted the batch recruited much earlier in January, 1997 will become junior to those recruited in April, 1998 ! This will not only create an absurd situation administratively but will violate another provision of the IREM in that Para 306 stipulates that "candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of dates of posting...."

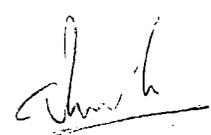
Signature

: 7 :

8. In the relief clause, one of the prayers made by the applicants is that respondents be directed "to formulate and implement the promotion policy as applicable in Ratlam and other divisions of the Western Railway." Having upheld the determination of seniority as per provisions of Para 302 of the IREM, it is inconceivable for us to accept any policy which is not in consonance with the said para 302. If Ratlam or any other Division of the Western Railway is following a policy of determination of seniority in cases like this, which is in contravention of the provisions of Para 302 of the IREM, it is for the respondents to correct the mistake. We, however, direct the respondent No.2, the General Manager, Western Railway, to look into the matter and ensure that the seniority of the category of employees, as are involved in this OA, is determined strictly in accordance with the statutory provisions and circulars of the Railway Board.

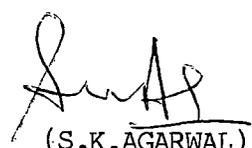
9. In view of the discussions recorded upto paragraph No.8 above, we find no merit in the OA and it is accordingly dismissed.

10. In the circumstances, there will be no order as to costs.



(N.P.NAWANI)

Adm. Member



(S.K.AGARWAL)

Judl.Member