

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, J A I P U R

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Date of Order : 1.6.2001.

Original Application No. 149/1994

1. Vijendra Kumar S/o Shri Ram Singh aged about 29 years, H.No. 206, Near Church, Bheem Mandi, Kota Junction.
2. Lila Ram S/o Shri Banshi Lal C/o Anokhoj Lal Sharma, aged 29 years, presently posted as Assistant Driver (W.R.), Kota, R/o Street No. 3, Dadawara Kota, Junction.
3. Umesh Chand Gupta S/o Shri R.N.Gupta C/o Adal Singh Sengar, aged about 29 years, presently posted as Asstt. Driver at Kota Junction R/o Street No. 4, Dadawara Kota Junction.
4. Daya Ram Parihar S/o Shri Sahab Singh C/o S.S.Solanki, aged 28 years, Near House of Mohanlal, Guard, Dadwara Kota Junction.
5. Jai Prakash Singh S/o Shri Sulhan Singh, C/o L.M.Vijay, aged 28 years, presently posted as Assistant Driver at Kota (W.R.), R/o Behind Machis Factory, Dadawara, Kota Junction.
6. Ajay Kumar S/o Shri Fadam Chand C/o Om Prakash Agarwal, aged 29 years, presently working as Assistant Driver, Kota Junction, R/o Near Yusuf Cycle, Rangpur Road, Kota Junction.
7. Anil Kumar S/o Shri Arjun Singh C/o Adal Singh Senger, Street No. 4, Chopra Farm, Dadwara, Kota aged 26 years, posted as Assistant Driver at Kota.
8. Rajesh Bhatijiwaley S/o Late Shri D.R.Bhatijiwaley, C/o P.N.Thakkar, Street No. 4, Chopra Farm, Dadwara, Kota, aged about 27 years, posted as Assistant Driver at Kota (W.R.).
9. Shiv Kant Mishra S/o Shri R.N.Mishra, C/o Kishan Lal Singh, aged about 27 years, posted as Assistant Driver, Kota R/o Street No. 4, Chopra Farm, Dadwara, Kota Junction.

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10. Veer Singh S/o Shri Ram Singh C/o Shri S.S.Solanki, Near House of Mohan Lal, Guard, aged 28 years, posted as Assistant Driver at Kota (WR), Dadwara, Kota Junction.
11. Sushil Kumar Jaiswal S/o Shri Hira Lal, Flct No. 52, Road No. 5, Chopra Farm, Dadwara, Kota Junction, aged 29 years, posted as Asstt. Driver at Kota.
12. Omkar Yadav S/o Shri Kripal Singh, House No. 286, Kailashpuri, Kota Junction, aged 29 years, posted as Assistant Driver, Kota

.....Applicants.

VERSUS

1. Union of India through General Manager, Western Railway, Church Gate, Bombay.
2. Divisional Railway Manager, Western Railway, Kota.
3. Senior Divisional Electrical Engineer (TRU), Western Railway, Kota.

.....Respondents.

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Mr. P.P.Mathur, proxy counsel for Mr. R.N.Mathur, Counsel for the applicants.

Mr. Manish Bhandari, Counsel for the respondents.

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Honourable Mr.Justice B.S.Raihote, Vice Chairman
Honourable Mr.Gopal Singh, Administrative Member

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ORDER

PER MR.GOPAL SINGH :

In this application, under Section 19 of the Administrative Tribunals Act, 1985, applicants have prayed for a direction to the

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respondents to include the names of the applicants in the seniority list of Diesel Assistants and consideration of their names for further promotion to the post of Goods Driver.

2. Applicants' case is that they were directly appointed as Diesel Assistants during the year 1988-1989 through the Railway Recruitment Board. Some of the Rankers were also promoted as such, during the year 1989 subsequently. It is the contention of the applicants that in the Notification dated 1.3.1994 (Annex.A/1), for selection to the post of Goods Driver, names of the Diesel Assistants appointed later than the applicants, have been included in the eligibility list and the names of the applicants have not been included and, therefore, they have been deprived of a chance to appear in the selection for the post of Goods Driver. Hence, this application.

3. The Tribunal, vide its interim order dated 5.4.1994, directed that any final appointments to the post of Goods Driver, shall be subject to the outcome of this application and this fact shall be mentioned in the orders of promotion that may be passed as a result of selection now proposed to be held.

4. It is the contention of the respondents that the seniority list of the applicants' as also of the Rankers promoted as Diesel Assistants, has since been revised as per the directions of this Tribunal in Subodh Narain's Case (O.A. No. 736 of 1988, decided on 20.4.1994) and, therefore, the applicants should not have any grievance. It was, however, being argued before us by the learned counsel for the respondents that the seniority of Diesel Assistants have now been revised again on the basis of the judgement rendered by the Jodhpur Bench of the Central Administrative Tribunal, wherein, the Rankers have been given higher seniority than the direct recruits. It has also been pointed out by the respondents that the principle laid

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down in the Tribunal's judgement dated 20.4.1994 in O.A.No. 736/1988, has separately been challenged in Hon'ble the Rajasthan High Court. The respondents have also cited the judgement of Hon'ble the Supreme Court reported in 2000 SCC (L&S) 444 - T. Vijayan and Others Vs. Divisional Railway Manager and Others, in support of their action in revising the seniority list of the Diesel Assistants. It has now been averred by the respondents that the application is devoid of any merit and is liable to be dismissed in the light of the law laid down by Hon'ble the Supreme Court in the cited judgement.

5. We have heard the learned counsel for the parties and perused the records of the case carefully.

6. The question of seniority of direct recruits and promoted (Rankers) Diesel Assistants, had come up earlier before the Jodhpur Bench of the Tribunal, wherein, one of us (Hon'ble Mr. Gopal Singh, AM), was also a Member and wherein, it was held that as per the Rules, of direct recruitment, Diesel Assistants should only be resorted to when the posts of Diesel Assistants cannot be filled-up by promotion of feeder category employees and in the light of Para 137 of the Indian Railway Establishment Manual, the appointment of Diesel Assistants by direct recruitment, has/held bad in law. It was further held that the promotion to the Rankers would rank senior to the direct recruits and the direct recruits could be treated as ad hoc appointees till they are regularised against a regular post. In Subodh Narain's case, this Tribunal has held the appointment of direct recruits as valid. Thus, there appears to be difference of opinion in the orders of the two Benches in this regard. This controversy had also come up before Hon'ble the Supreme Court in T. Vijayan's case (supra). In that case, the directly recruited Diesel Assistants had prayed for seniority over the promoted who were the respondents in that case.. The

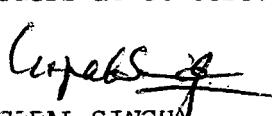
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respondents were, in the exigencies of service, promoted as first Firemen on ad hoc basis between 1987-90 in accordance with the provisions of the Indian Railway Establishment Manual by a regular selection. Regular Selection for promotion quota although started in 1987, was completed in 1992 and culminated in selection of all the respondents who were consequently regularised w.e.f. 16.12.1991, - pursuant to advertisement in 1985, appellants selected in direct recruitment quota in 1988 and after two years' training appointed as First Firemen in the year 1990. It was made clear to the appellants in their appointment letter that their seniority was subject to finalisation of selection for the promotion quota which was already in progress. In these circumstances, it was held by Hon'ble the Apex Court that the respondents (Rankers), were entitled to count their ad hoc service towards seniority. It was also held that appellants although appointed prior to the respondents' regularisation, could not claim seniority over respondents. This judgement of Hon'ble the Supreme Court upholds the view taken by Jodhpur Bench of the Central Administrative Tribunal in the case of Madan Lal and Others Vs. UOI & Others, reported in 1999 (3) (CAT) 181.

7. In the light of the above discussions, the claim of the applicants' in the present C.A., is not tenable and as such, they cannot claim seniority over the promotee Diesel Assistants for further promotion in the higher grades. Thus, the application is devoid of any merit and is liable to be dismissed.

8. The Original Application is accordingly dismissed with no orders as to cost.


(GOPAL SINGH)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman

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