

* IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

(13)

O.A. No. 452/94 and 470/94 ¹⁹⁹ with
T.A. No. MA No. 507/94

DATE OF DECISION 8/8/2000

Ashok Kumar and Girish Kumar Jha Petitioner
and Ors.

Mr. D.P.Garg and Mr. Shiv Kumar Advocate for the Petitioner (s)

Versus

Union of India and ors. Respondent

Mr. M.Rafiq and Mr. Rajesh Kapoor Advocate for the Respondent (s)

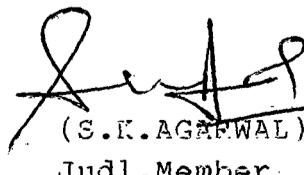
CORAM :

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

The Hon'ble Mr. N.P.Nawani, Administrative 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, JAIFUR BENCH, JAIFUR

(14)

Date of order: 08.08.2000

OA No.452/94, OA No.470/94

with MA No. 507/94.

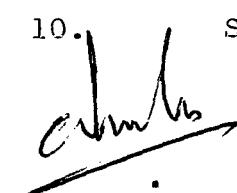
1. Ashok Kumar S/o Shri Bhanwar Lal Sharma (applicant in OA No.452/94), at present employed as Head Clerk in the office of Chief Works Manager, Western Railway, Ajmer.
2. Girish Kumar S/o Shri G.L.Jha
3. Vikaram Singh S/o Shri Heera Lal
4. Anil Panwar S/o Shri Durga
5. Kaushal Kumar Chaudhary S/o Shri Nand Lal
6. Tej Singh S/o Shri Chhotey Lal

Applicant Nos. 2 to 6, in OA No. 470/94, are at present employed in the Office of Chief Works Manager, Western Railway, Ajmer.

.. Applicants

V e r s u s

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Chief Works Manager (E), Workshop, Western Railway, Ajmer.
3. Sr. Personal Officer (Loco Workshop), Western Railway, Ajmer.
4. Shri Samual Advin
5. Shri Suresh Chand Jain
6. Shri Mitha Lal Jain
7. Smt. Madhavi Joshi
8. Shri Pavan Kumar Joshi
9. Shri Mukesh Balyadani
10. Shri Jiwaraj Kothari



11. Shri Mukesh Takkar
12. Shri Suresh Kumar
13. Kumari Rajni Yadav
14. Smt. Deepa Motavani
15. Shri Rajendra Kumar
16. Shri Vijay Kumar
17. Shri Sunder Lal
18. Shri Rakesh Raman

Respondents Nos. 4 to 18, arrayed in both the OAs, are working as Head Clerks in Western Railway, Ajmer Division, Ajmer

.. Respondents

Mr. S.R.Chaurasia, proxy counsel to Mr. D.P.Garg, counsel for the applicant in OA No.452/94.

Mr. Shiv Kumar, counsel for the applicant in OA No.470/94

Mr. Hemant Gupta, proxy counsel to Mr. M.Rafiq, counsel for official respondents

Mr. Rajesh Kapoor, counsel for private respondent Nos.4 to 18.

CORAM:

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

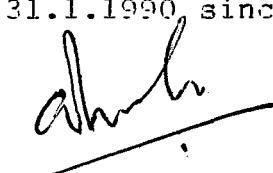
Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

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

These two Original Applications are being disposed of by a common order in view of similar facts and circumstances and the substantial questions for decision raised being also practically the same.

2. The applicants in these OAs are basically aggrieved by the seniority list of the Senior Clerks published on 31.1.1990 since while preparing it, seniority has been wrongly



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assigned on the basis of the result of the suitability test and not from the date of actual officiation/promotion against the non-fortuitous vacancies. They represented against such assignment of seniority and not getting any relief, came before us with these OAs. They, therefore, seek a direction to the respondents to assign them the seniority from the dates they were promoted, albeit on ad-hoc basis, on the posts of Senior Clerks and to accordingly modify the seniority list of 31.1.1990 with grant of consequential benefits.

3. We have heard the learned counsel for the parties and have carefully gone through the material on record.

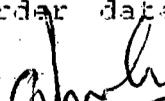
4. The case of the applicants is that the respondents did not conduct any suitability test against the promotee quota between 1982 to 1988 as they were labouring under a misconception that the Civil Court, Ajmer had issued a temporary injunction restraining them from holding the test. They were, however, promoted on ad-hoc basis, during the said period on dates given in the OAs. They contend that their seniority should count from such dates since promotions were against non-fortuitous vacancies. They also contend that it was wrong to give seniority over them to the respondents, who were appointed against the direct recruits quota on the ground that they were recruited earlier on regular basis. It is stressed on behalf of the applicants that the promotion against promotee quota was delayed for no fault of theirs and they cannot be disadvantaged on account of such delay.

5. The respondents have emphatically denied the case of the applicants. It has been stated on their behalf that required suitability tests were carried out by them as and



when required and a notification for such a test was issued on 12.4.1983 but due to the injunction issued by the Civil Court, the selection process had to be deferred (Anns.R1 and R2 refer). As soon as it was possible to conduct the test, these were held on 15.2.1989, 1.3.1989 and 18.3.1989. They have, therefore, contended that their inability to hold the test earlier was not due to any fault, laxity or deliberate design on their part. The applicants appeared in the tests willingly with no objection and were also successful. Their seniority has correctly been assigned from the date of their passing the test as it cannot be assigned from the date of their ad-hoc appointment, without passing the selection test, even if the vacancies were non-fortuitous. The respondents have also denied the allegation of the applicants that they could come to know of the seniority list dated 31.1.1990 only in 1993 or 1994 as seniority lists are sent to different sections/units immediately after their publication and are got noted by the concerned employees. They have annexed a copy of such noting as an example at Ann.R3. It has, therefore, been strongly contended by the respondents that the allegation made by the applicants is only a futile attempt in covering up the delay and MA No.507/94 is only an extension of such attempt and deserves to be dismissed and consequently the OAs are also liable to be dismissed on the ground of delay and latches on the part of the applicants and the legal position that well settled things in administration should not be unsettled.

6. We have carefully considered the rival contentions. We feel that the applicants were not only well aware of the seniority list dated 31.1.1990 but also failed to raise any objection against it within one month as stipulated in the order dated 31.1.1990. It is not possible for officials in

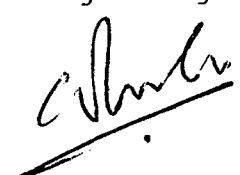


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small units and sections to be not aware of an important and personal matter like seniority for such long period as 3 or 4 years. We, therefore, reject their contention about being unaware of the seniority list dated 31.1.1990 made before us as also in MA No.507/1994, which is also liable to be dismissed. We are of the considered view that the applicants are now prevented from challenging the seniority list of January, 1990 and seek major unsettling of things well settled over years together and seek to jump over a large number of their seniors. The law as it has developed by now cautions the Courts/Tribunals rather strongly in this regard. Suffice it to refer to the case of B.S.Bajwa and Anr. v. State of Punjab and ors, reported in JT 1998 (1) SC 57 in which Hon'ble the Supreme Court has held that, "It is well settled that in service matters, question of seniority should not be opened after a lapse of reasonable period because that results in disturbing the settled position which is not justifiable". We feel that 3 to 4 years of delay in these OAs is material enough to prevent us from interfering with the seniority list of 30.1.1990 and the OAs are, therefore, liable to be dismissed on this count alone.

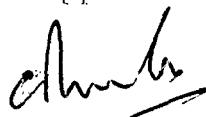
7. Having arrived at the decision as mentioned in the preceding paragraph, it was not necessary for us to go into the merits of the case. However, in the overall interest of justice, we have decided to do so. On careful consideration of rival contentions, we are of the view that the delay in holding the selection test to fill "promotee quota" was not on account of any carelessness, lapse, fault or deliberate design on the part of the respondents. This prevents us from considering any special dispensation for the applicants regarding seniority to be assigned to the applicants from the



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date of their ad-hoc promotion to the higher post. There are many exigencies and imponderables that administration has to face, when they are not able to strictly follow the schedules of direct recruitment or promotions. When the recruitment to a post is based on three modes viz. promotions, direct recruitment of graduates from the FBE and direct recruitment based on limited departmental examination from serving officials, as the case is here, one or other of the three group may feel disadvantaged at one point of time or other. In these OAs, the applicants who were to be appointed through promotee quota are feeling so disadvantaged. At some other time, there may be delay in filling up the vacancies in respect of the other two groups and they will similarly feel disadvantaged. This situation can at best be described as an unavoidable exigency of service. Of course, the delay should not be due to deliberate fault of the administration. Having come to the conclusion that there was no deliberate delay on the part of the respondents in this case, we cannot persuade ourselves to direct the respondents to consider assigning the seniority to the applicants from the date of their ad-hoc promotion, even if it was against non-fortuitous vacancies. Most importantly, the ad-hoc promotions were given to the applicants without going through the selection process and ad-hoc promotion debars the rules cannot be counted towards the seniority as per well established principles of administrative jurisprudence. In view of this, the case law cited by the learned counsel for the applicants is of no help to the cause of the applicants.

8. In view of the legal position and facts and circumstances of this case as discussed above, the Original Applications do not succeed and are accordingly dismissed with

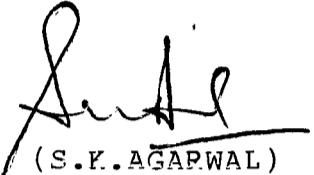


no order as to costs.

As already mentioned, MA No. 507/1994 also stands dismissed.


(N.P. NAWANI)

Adm. Member


(S.K. AGARWAL)

Judl. Member