

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

DATE OF ORDER: 30/3/2001

OA No. 656/94

1. Pradeep Kumar Jain son of Shri J.P. Jain aged around 30 resident of Railway Quarter No. RE, III, 3-A TED Railway Colony, Ramganj Mandi District Kota.
2. Shiv Ram Jangid son of Shri Jalluram Jangid aged about 29 years resident of New Railway Colony, Quarter No. 4B, Hindaun City, Distt. Sawaimadhopur.
3. Abdul Rasim son of Shri Gafoorji, aged about 30 years resident of Chuligate, Near Masjid, Gangapur City, District: Sawaimadhopur.
4. Padam Chand Jain son of Shri Halyan Prasad Jain aged about 28 years, resident of New Railway Colony, Hindaun City District: Sawaimadhopur.

All the applicants are presently posted as Electric Fitter (ELF) Grade I in the Western Railway, Kota.

..... Applicants.

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Kota.

..... Respondents.

Mr. P.P. Mathur, Proxy counsel for
Mr. R.N. Mathur, Counsel for the applicant.
Mr. Manish Bhandari, Counsel for the respondents.

CORAM

Hon'ble Mr. S.H. Agarwal, Member (Judicial)
Hon'ble Mr. A.P. Nagrath, Member (Administrative)

ORDER

PER HON'BLE MR. A.P. NAGRATH, MEMBER (ADMINISTRATIVE)

The applicants have filed this OA challenging the letter dated 5.8.1994 (Annexure A-1) canceling the letter dated 8.11.1993. By the impugned order seniority assigned to the applicants vide the letter dated 8.11.1993 has been withdrawn restoring ~~their~~ position in the seniority list dated 17.6.1993. They claim to have represented against the impugned letter on 16.8.94 and stated that before deciding ~~their~~ representation, the respondents have ordered their reversion by letter dated 9.12.94. Prayer of the applicants is that the impugned order dated 5.8.1994 be quashed and set aside and that the respondents be directed not to revert the applicants till the issue of seniority is finally decided.

2. When this application was presented for admission on 21.12.1997, ^{by} an interim order, the respondents were directed not to revert the applicant: in the meanwhile only on the ground of change of seniority. This interim stay has been continuing since.

3. Case of the applicants is that they were appointed on the post of Apprentice Electrical Fitters in July, 1986. Training period during their apprenticeship was one and half year. After completion of training, they were appointed as Electrical Fitters Grade III on 30.11.1987. They were further promoted on ELF Grade II vide order dated 17/18.11.1992. They submit that their seniority list was revised on 8.11.93 and as per positions assigned to them, they appeared for the suitability test for promotion to Grade I and were promoted to the post of ELF Grade I vide order dated 1.12.1994. Respondents have issued to them a show cause notice dated 9.12.94 informing them that in view of their seniority having been restored as on 17.6.93 they are junior to others who are still in Grade II. So consequently they are sought to be reverted. A copy of such a notice to the applicant, Shiv Ram Jangid, is at Exhibit A-4. The applicants have challenged the impugned letter at Annexure A-1. The show cause notice Annexure A-4 on the ground that the seniority cannot be revised as adverse to the applicant without following the principles of natural justice, as no

opportunity has been given to hear them before changing their seniority. Their plea is that the seniority has to count from the day they completed their training, which as per their appointment letter was one and half year. It has been stated that certain other persons were appointed as Apprentice Electric Fitters by Railway Electrification (Re) Organisation and for those persons the training period was three years. Their plea is that such persons recruited by RE will count their seniority after completion of three years of training and cannot rank senior to the applicants, who have to be given seniority after 18 months of training. They have also made a reference to the interim directions given by this Tribunal in OA 573/93 directing the respondents to allow the applicants in the OA to appear in the trade test for promotion to Grade II as they were not being permitted by the respondents on the ground that they had not completed two yedars qualifying service. This order of the Tribunal, they claim was based on the view that other persons recruited by RE transferred to TED were being permitted though there were not senior as they were posted to Grade III after these applicants, through recruited by RE before the applicants, the applicants appeared in the trade test and some of them were found suitable hence promoted.

In the grounds for relief, they have stated a suitability test for promotion to Grade II was conducted in December, 1990. At that time the applicants were treated as juniors to those recruited by RE and their names had been kept in the 'B' list of eligible candidates for that suitability test. They submit that even though some of the candidates in the 'A' list were not successful, the applicant though eligible and entitled were not called within six months. Though they were called to appear later (after six months) and were successful. They were entitled to be given seniority on the basis as if they had passed the suitability test within six months. It was later that respondents were convinced and that's how the applicants came to be assigned proper seniority by letter dated 8.11.93, which they contend has been wrongfully again cancelled by the respondents.

4. Respondents in their written reply have rebutted the main argument of the applicant in respect of the period of training. It has been submitted that period of training is uniform and is of three years duration. The seniority is reckoned after completion of this period of three years, even

where the period of training is curtailed in the exigency of service. Contention of the respondents is that any interim direction of the Tribunal as in OA 573/93 does not confer any right to claim seniority, which has necessarily to be determined under the relevant rules. Respondents admit that they had revised the seniority by letter dated 8.11.93 but submit that was based on a wrong assessment on their part. Realising their mistake, they have sought to correct the same by cancelling the letter of 8.11.93 and restoring the position as on 17.6.93 which, they maintain, reflects the correct position of seniority. On the applicants' plea of denial of principle of natural justice, the respondents' stand is that when the letter dated 8.11.93 was issued, no show cause notice was given to those affected and similar method has been followed while cancelling the same. Rights of those affected by order of 8.11.93 cannot be any inferior to the rights of the applicants and in any case giving a show cause notice in the instant case would only become a mere technicality and end result would remain the same. Thus, the respondents contend, no adversity is caused to the applicants. The letter dated 9.12.94 is only a show cause notice which the applicants have challenged in this OA instead of replying to the same by making a representation to the department. It is the stand of the respondents that seniority list issued by them on 17.6.93 is the only correct and final seniority list and that the applicants have no case.

5. Heard the learned counsel for the parties and perused the written submissions and Annexures attached thereto.

6. The basic issue which arises in this case is as to how the seniority of Electrical Fitter Grade III will be determined in the case of those who are recruited as Apprentice Fitter. The learned counsel for the applicants contended that training period was one and half year as per their appointment letter. The seniority is to count from the date of completion of training and in case of applicants, they had completed their

training period in 18 months. Apprentice Fitter, appointed by Railway Electrification, though they were appointed earlier but in their case, the training period was three years. Seniority in their case was to reckon from the date they had completed three years. With that view (it is stated that the applicants were senior as Fitter Grade III. His further argument was that even prior to issue of letter dated 8.11.93, when the applicants were considered junior in Grade III, they were entitled to be called for the suitability test for promotion to Grade II, which was held in 1990. Their names had been kept in 'B' List and candidates from the 'B' list are required to be called for suitability test in case some of the senior employees in the eligibility list failed in 'A' list. It was not the fault of the applicants that they were not called for the suitability test even though entitled, within a period of six months. On representations by the applicants, the Department has stated to have realised their mistake and revised seniority which resulted into issue of letter dated 8.11.93.

7. In that view, he stated that revision of seniority list as per letter dated 8.11.93 was in order and respondents' action of cancelling that order by the impugned order dated 5.8.94 and that too without giving any show cause notice to the affected parties is illegal.

8. The learned counsel for the respondents countered the view of the opposite party on the ground that statutory rules provide for consideration of the seniors for the trade test, once the period of six months has passed. The fact that the applicants were not called for the trade test within six months cannot confer any right in their favour in view of the express provisions in the Rules. It was for this reason that Department had realised its mistake of revising the seniority by letter dated 8.11.93 and this mistake was rectified by issue of letter dated 5.8.94. On the ground of natural justice, the learned counsel drew out attention to the letter dated 8.11.93 drawing a parallel with letter dated 5.8.94. Letter dated 8.11.93 also affected the rights of some employees in respect of their seniority. They were not given any show-cause notice right prior to issue of that letter. He maintained that in any case giving show cause notice would have served no purpose as the end result would be the same. He stated that consequent to letter dated 5.8.94, the seniority as existed on 17.6.93, has been restored. Thus it became necessary to revert the applicants from Grade I to Grade II as to make way for the

seniors. For this reason, the respondents have issued a show cause notice (Exhibit A-4). He submitted that applicants should have availed of this opportunity to represent against this notice to the Department instead of filing this application.

9. On the point of seniority in Grade III, the learned counsel for the respondents stated that the period of training for same category of employees recruited through same procedure, cannot be different and that the Department has provided for uniform period of training. The fact that applicants had undergone one and half year's training cannot give them seniority merely on this ground. He relied on provisions in the Note under Para 302 of Indian Railway Establishment Manual ((IPEM) wherein it is stated as below:-

"In case the training period of 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 prescribed period of training."

In case of applicants, they underwent a curtailed period of training but their seniority will ~~could~~ after completion of prescribed period of training which was three years. His contention was that applicants were recruited in 1986 much after the Apprentice Fitter recruited by Railway Electrification which was in 1934. It was natural that applicants cannot claim seniority over them. Since the applicants were junior from the very beginning, their case has no merit.

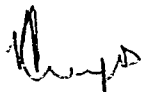
10. We find from the documents placed on record that some functionaries in the respondent department have acted in a casual manner while disturbing the seniority list. The seniority list dated 17.6.93 (Annexure P-1) was a provisional seniority wherein representations have been invited from those who have any objection. It has been mentioned that this provisional seniority will be made final in case no representation is received within a period of one month. There is nothing to show that any final list was issued. Letter dated

8.11.93 and 5.9.94 which both affected the seniority list have been issued without giving notice to the affected parties. We are constrained to observe that the dealing offices have not shown adequate concern towards their responsibilities. Letter of appointment given to the applicants (one such letter being at Annexure A-5) indicates the period of training of one and a half year. This naturally gives hope to the candidate that after completing this period of training, he will be eligible for seniority. Unfortunately, this lapses on the part of some officials in the Department cannot create a right so long as rules on the subject are available. We find Para 159 (3) of IPER provides that for the period of training for directly recruited skilled Artisans (iv) the period of training prescribed is three years for direct recruits with Matriculation as qualification. There is no period of training provided as one and a half year. Applicants have filed Annexure A-8 in support of their claim. The training period is 60 weeks as shown in Para 2(c) of Chapter 19. This appears to be an extract from Railway Traction Manual. Service rules are provided only in the Establishment Manual. As we have stated above, IPER stipulates the training period of three years. In view of this rule and Note under Para 302, the skilled artisans will count seniority only after completion of training period of three years. As a consequence, it is obvious that the applicants' claim of seniority in grade III as above those recruited by Railway Electrification Organisation has no basis.

11. On the ground that applicants should have been called for suitability test within six months in 1990 against failure of senior candidates and they are not called and thus cannot take away their right, has to be considered vic-a-vic the rights conferred on the railway servants under the rules. The rules. The rules provide that after six months of the declaration of the result of the trade test, only the seniors in the zone of eligibility (Those seniors who had failed on the last occasion) will have to be called again for the trade test to fill up vacancy. With this rule position, if the juniors in the 'B' list have not been called, they cannot claim any seniority. They could have agitated the matter in the department within the period of six months, which apparently they have not done.

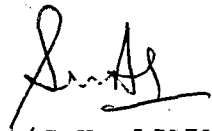
12. In view of the facts and circumstances of this case, we find that this application has no merit and deserves to be dismissed. However, we find that the applicants have been continuing in Grade I because of the stay granted in the matter. The respondents are directed to examine the position whether in view of latest vacancy position, the applicants can be allowed to continue even after accommodating the senior suitable candidates to the extent the vacancies remain after promoting such senior suitable candidates, the applicant should be allowed to continue.

13. With these observations, we dismiss this OA and vacate the stay order issued on 21.12.94. Parties to bear their own costs.



(A.P. NAGRATH)

MEMBER (A)



(S.K. AGARWAL)

MEMBER (J)