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

O.A. No. RA No. 7/97
T.A. No. (OA No. 188/1991)

199

DATE OF DECISION 21, 11.2000

Union of India and ors.

Petitioner

Mr. Manish Bhandari

Advocate for the Petitioner (s)

Versus

Milan Kant Verma

Respondent

Mr. S.D.Sharma

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

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? Yes


(N.P.NAWANI)
Adm. Member


(B.S.RAIKOTE)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 21.11.2000

RA No.7/97 (OA No.188/1991)

1. The Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. The Divisional Railway Manager, Kota Division, Western Railway, Kota.
3. The Traction Foreman (TRO), Gangapurcity, Kota Division, Western Railway, District Sawai Madhopur.

.. Petitioners/applicants

Verus

Milan Kant Verma S/o Shri Shrikishan Verma, resident of 35, Nasiya Colony, Gangapurcity, District Sawai Madhopur.

.. Respondent

Mr. Manish Bhandari, counsel for the applicants

Mr. S.D.Sharma, counsel for the respondent

CORAM:

Hon'ble Mr. Justice B.S.Raikote, Vice Chairman

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

ORDER

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

This Review Application has been filed by the official respondents in the OA seeking review/modification in the order dated 18.12.1996 of this Bench of the Tribunal rendered in OA No. 188 of 1991, Shri Milan Kant Verma v. Union of India and ors. We extract hereunder the relevant portions of the said judgment/order:-

"3. The short point for determination is that the applicant was a Trainee, then a Paid Apprentice and then a Diesel Assistant with the Railways and that the date from which his entry in seniority into service should be counted. The

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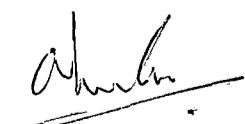
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question is no longer at large and it has already been decided by the Hon'ble Supreme Court in the case of M.P.Pradhan vs. Union of India AIR 1990 SC 891. The Apex Court held at page 892 that "joining as Paid Apprentice on a permanent basis cannot be anything-else but entering Government service on permanent basis..."

4. In these circumstances, the application is allowed and a direction is issued to the respondents that entry into Government service and the seniority of the applicant will be counted from 1.3.1989 with all consequential benefits such as eligibility for training etc. No order as to costs."

2. The learned counsel for the respondent in the Review Application and applicant in OA argued that the order of this Tribunal dated 18.12.1996 in OA No.188 of 1991 does not require any review or modification because there is no error apparent on the face of it. He contended that the respondents themselves had initially appointed the applicant in OA as Paid Apprentice Diesel Assistant in scale Rs. 900-20-920 and then given regular appointment in the scale of Rs. 950-1500 after successful training. It is, therefore, contended that the Hon'ble Tribunal has rightly passed the order dated 18.12.96 after considering all the pleadings and facts and circumstances of the case.

3. The learned counsel for the applicants in Review Application and respondents in the OA contended that Milan Kant Verma (the applicant in OA), after selection by Railway Recruitment Board (for short, RRB) was initially given the posting of "Apprentice" in the pay scale of Rs. 900-20-920 during the training period and only on successful completion of training he was to be given the post of "Apprentice Diesel Assistant" in the scale of Rs. 950-1500. He



added that actually the applicant was appointed on the post of Diesel Assistant/Electrical Assistant only by order dated 16.3.1990 (Ann.A2). He drew our attention to para 4 of the order dated 1.3.89 (Ann.A1 in OA) which clearly states that "On completion on successful Training, they will be appointed in scale Rs. 950-1500 (RP) on pay Rs. 950/- p.m. and will be posted on the division to be allotted by competent authority". He further drew our attention to Paras 302 and 303 of the Indian Railway Establishment Manual (for short, IREM) which clearly provide that the criteria for determination of seniority shall be the date of joining the working post after due process in case of direct recruit, subject to maintenance of inter-se-seniority of promotees and direct recruits among themselve. It is further contended that the judgment in question was rendered by the Hon'ble Tribunal without the relevant rules in Paras 302 and 303 of IREM having been brought to its notice and, therefore, an error apparent has crept into the judgement and the Hon'ble Tribunal gave a direction which is contrary to the rules. As regards the judgment of the Apex Court mentioned in the order of the Tribunal dated 18.12.1996, it has been contended that the issue before the Apex Court in that case was concerning with different rules and was not regarding determination of seniority but only to seek continuity of service. It is, therefore, contended that the judgment under challenge in review is patently without jurisdiction and had been rendered with a patent illegality of facts and law/rules both.

4. We have perused the pleadings and have also heard the learned counsel for the parties.

5. A perusal of the judgment under challenge in review reveals that not only the case was heard and decided in the absence of the learned counsel for the respondents in OA but the specific statutory provisions incorporated in IREM with regard to the

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subject matter of the OA were not brought to the notice of the Bench. In the result, the OA was allowed and directions, as given in paragraph 1 of this order, were given. Before we proceed ahead, it may be convenient to extract the relevant rules from the IREM.

"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 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.

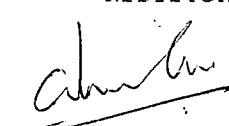
303. the seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority should be determined as under :-

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(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.

(b) In the case of candidates who do not have to undergo any training in training school, the seniority should be determined on the basis of the merit order assigned by the Railway Recruitment Board or other recruiting authority."

6. It is undisputed that the provisions of the IREM enjoy statutory force. These rules have stood the test of the times for a long period, at least since 1989 when the present edition of the IREM was brought out. It is nobody's case that Rule 302 and 303 have been struck down by any Court or Tribunal. Having said that, we can now examine the provisions contained in para 302 and 303 of the IREM and their application to the controversy raised in OA No.188/1991. A plain reading of para 302 will indicate that it specifically lays down the rule for determination of seniority in categories of posts partially filled by direct recruitment and partially by promotion. The criteria for determination of seniority should be the date of regular promotion after due process in the case of promotee and date of joining the working post after due process in the case of direct recruit. Reading this provision alongwith crdrs dated 1.3.1989 (Ann.A1 in OA) and dated 16.3.1990 (Ann.A2 in OA) make it quite clear that the seniority to the applicant could not have been given w.e.f. 1.3.1989 as vide that order the applicant was only appointed as Apprentice Diesel Assistant during the duration of training in a lower pay scale of



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Rs. 900-20-920 with the said order also stipulating in the fourth para as under:

"On completion on successful Training they will be appointed in scale Rs. 950-1500 (RP) on pay Rs. 950/- p.m. and will be posted on the division to be allotted by competent authority."

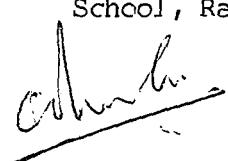
7. Insertion of this para in the earlier appointment letter of 1.3.1989 makes it further clear that the appointment of the applicant, alongwith a large number of candidates who would have been selected by the RRB was an appointment in a lower scale than the post for which they were recruited and only for the duration during which they were undergoing training. It was only on completion of such training successfully that these candidates were to be appointed on the working post i.e. the post for which they were selected. It is, in fact, only by order dated 16.3.1990 (Ann.A2 in OA) that the candidate alongwith 25 other candidates were appointed on the post of Diesel Assistant/Electrical Assistant in the pay scale of Rs. 950-1500 (RP) on pay of Rs. 950/- p.m. as stipulated in para 4 of the earlier order of 1.3.1989 (Ann.A1 in OA).

8. We can now turn to the rule incorporated in Para 303 of the IREM as extracted under paragraph No.5 of this order. It stipulates two classes of candidates recruited through the RRB or by any other recruiting agency. These two are categorised as (a) and (b). Against the category (a) it lays down that the seniority of candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in order of merit obtained in the examination held at the end of the training period before being posted against the working posts. (emphasis supplied).



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The other class/category at (b) is regarding the candidates who do not have to undergo any training and we are not concerned with this class since it is undisputed that the applicant was deputed for training. A plain reading of this rule incorporated in Para 303 of IREM reveals that in case of such candidates who are sent for training to training schools (emphasis supplied) instead of being ordered to join the concerned post straightaway, the ranking obtained in RRB examination is not material and the seniority has to be determined on the basis of order of merit obtained at the examination held at the end of training period. If this be so, the time spent on the training is not the service rendered on the working post and such time spent on training, whether as prescribed or additional time spent on account of a candidate not passing the said examination at the first chance cannot reckon for seniority on the working post. This being the case, the seniority will have to be determined on the basis of merit obtained at the examination held at the end of the training period at the training school. The use of phrases like "before being posted against the working post" and "training school" express the intention of the rule makers that in the case of candidates recruited through Railway Recruitment Board or any other recruiting authority, training given at training school is not service rendered on the post for which recruitment was made and such training is given before the candidates are appointed against such posts i.e. posts for which recruitment has been made, also called the working posts. It appears that without the benefit of the rules contained in Paras 302 and 303 of the IREM, the judgment under challenge in the OA had overlooked this position and directed the respondents to count seniority of the applicant w.e.f. 1.3.1989. The said date of 1.3.1989 was the date of order at Ann. Al in the OA and it clearly directed the applicant to report for training to the Chief Instructor, DSL Training School, Ratlam from 1.3.1989. The applicant and others were finally



appointed as Diesel Assistant/Electrical Assistant, for which recruitment was made and which are considered as working posts, vide order dated 16.3.1990 (Ann.A2 in the OA) after completion of their training at the training school. The order of this Tribunal dated 18.12.1996 in the OA by which the applicant was allowed seniority w.e.f. 1.3.1989, therefore, patently suffered from an error apparent both on the facts as well as law.

9. The applicant was undisputedly one of the many candidates selected for the post of Diesel Assistant/Electrical Assistant. Even in the list of candidates appointed to the said post vide order dated 16.3.1990 (Ann.A2 in OA), the applicant is placed at Sl.No.11 out of the total of 26 in the list. The names of the candidates do not appear in an alphabetical order and if it is presumed that the list is in order of merit, based on the final examination after training, the applicant is at Sl.No.10. Thus there would be many candidates senior to him and if the names in this order are placed on merit basis, there were 10 candidates senior to him. By the order of this Tribunal dated 18.12.1996 in the OA granting him seniority w.e.f. 1.3.1989, the applicant would have become senior to his other colleagues who ranked senior to him in the merit list prepared after the final examination in the training school. If that be so, he should have impleaded those who were senior to him in the merit list. The OA did, therefore, suffer from non-joinder of necessary parties and could have been dismissed on that count alone.

10. We have also gone through the judgment in the case of M.P.Pradhan v. Union of India and ors., 1990 SCC (L&S) 332 referred to in the challenged judgment in the OA. The controversy in that case was actually regarding the question whether the appellant therein was governed by Fundamental Rule 56(c)(i) and whether he

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was entitled to superannuation at the age of 60 years. The applicant therein joined service as a Paid Apprentice in the Collectorate of Etawah on 1.7.1937, then asked to officiate in the post of Arranger on the same day and finally promoted and appointed to a permanent post of Copyist on 1.8.1941. On the other hand, in the OA No. 188 of 1991, the case related to Railways and was governed by specific statutory provisions as contained in Paras 302 and 303 of the IREM. Thus, the said judgment of the Supreme Court was completely distinguishable both in facts and law and the order dated 18.12.1996 in OA No. 188 of 1991 based on this judgment could not have drawn sustenance from the judgment of the Supreme Court in the case of M.P.Pradhan (supra).

11. In view of above discussions, we hold that the judgment dated 18.12.1996 of this Tribunal challenged in this Review Application did suffer from an error apparent both on facts and law and is required to be modified. We, therefore, pass the following modified order in OA No.188 of 1991 in place of the order dated 18.12.1996 rendered in the said OA:-

"The Original Application No.188 of 1991 is dismissed with no order as to costs."


(N.P.NAWANI)

Adm. Member


(B.S.RAIKOTE)

Vice Chairman