

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

11.9.2008


OA 15/2007

Mr.C.B.Sharma, counsel for applicant.

Mr.Anupam Agarwal, counsel for respondents.

At the request of learned counsel for the applicant, let the matter be listed on 19.11.2008.


(B.L.KHATRI)
MEMBER (A)


(M.L.CHAUHAN)
MEMBER (J)


vk

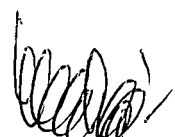
19-11-2008

Mr. C.B. Sharma, Counsel for applicant

Mr. Anupam Agarwal, Counsel for respondents

Heard learned Counsel for the parties
For the reasons dictated separately,
the OA is dismissed.


(B.L. Khatri)
M (A)


(M.L. Chauhan)
M (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 19th day of November, 2008

ORIGINAL APPLICATION No.15/2007

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR.B.L.KHATRI, MEMBER (ADMINISTRATIVE)

1. L.S.Shirra s/o Mohar Pal Singh r/o 26, Durgepura Railway Colony, Jaipur and presently working as Office Superintendent, Grade-I (Mechanical) O/o General Manager, North-Western Railway, Jaipur
2. Badri Lal Meena s/o Shri Bridhi Lal Meena r/o C/o Shri O.P.Meena, Brij Vihar, Jagatpura, Jaipur and presently working as Office Superintendent, Grade-I (Mechanical) Office of General Manager, North Western Railway, Jaipur
3. Ram Prasad Jatav s/o Shri Chokha Singh r/o F-1-A, Kiran Vihar, Triveni Nagar, Sanskrit College, Jaipur and presently working as Office Superintendent, Grade-I (Mechanical) Office of General Manager, North Western Zone (Headquarter Office) North Western Railway, Jaipur.
4. Shiv Ram Meena s/o Shri B.L.Meena r/o 31, Meena Paladi, Jaipur and presently working as Office Superintendent, Grade-II (Mechanical), O/o General Manager, North Western Zone (Headquarter Office) North-Western Railway, Jaipur
5. Ramu Lal Meena s/o Shri Jeewan Ram Meena r/o 25, Durgapura Raiwlay Colony, Jaipur and presently working as Office Superintendent, Grade-II (Mechanical) Office of General Manager, North Western Railway, Jaipur
6. Kana Ram Meena s/o Shri Mahadev Meena r/o Dadu Colony, Near Railway Crossing, Jagatpura, Jaipur and presently working as Office Superintendent, Grade-II (Mechanical), O/o General Manager, North Western Zone

46/

(Headquarter Office), North Western Railway,
Jaipur.

.. Applicants

(By Advocate: Shri C.B.Sharma)

Versus

1. Railway Board
Through its Chairman,
Rail Bhawan, New Delhi.
2. Union of India through
General Manager,
North Western Zone,
North Western Railway,
Jaipur.
3. Chief Personnel Officer,
O/o General Manager,
Office of General Manager,
North Western Zone,
North Western Railway,
Jaipur.

... Respondents

(By Advocate: Shri Anupam Agarwal)

O R D E R (ORAL)

The applicants have filed this OA thereby praying
for the following reliefs:-

- (i) That the entire record relating to the case be called for and after perusing the same the respondents be directed to maintain combined seniority list of Mechanical, Operating, Commercial and General departments working in Head-quarter office by quashing letter dated 19/4/2006 (Annexure A/1) with the letter dated 10/2/2004 (Annexure A/7) and seniority list of each department dated 20/5/2004 (Annexure A/9) with all consequential benefits.

- (ii) That the respondents be further directed to give promotion to the post of Chief Office Superintendent (Scale Rs. 7450-11500) and Office Superintendent Grade-I (Scale Rs. 6500-10500) on the basis of combined seniority to the eligible officials by modifying promotion orders at Annexure A/13 to A/17 with all consequential benefits.
- (iii) Any other order, direction of relief may be passed in favour of the applicants which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iii) That the costs of this application may be awarded.

2. Briefly stated, facts of the case are that the applicants are working as Superintendent Grade-I/Superintendent Grade-II (Mechanical) in the office of General Manager, North Western Zone (Headquarter Office), North Western Railway, Jaipur. The grievance of the applicant in this OA is regarding impugned order dated 10.2.2004 whereby the respondents have decided to prepare seniority list of the staff working in Mechanical, Operation, Commercial and General (for short MOCG) unitwise which has affected promotional avenues of the applicants and other similarly situated persons. The case of the applicants is that prior to formation of the North Western Railway, the seniority of the staff working in MOCG group was combined at divisional level, as such, the said practice followed by the respondents, should have been followed in future also. It may be stated here that the applicants have earlier also filed OA No.552/2004 for the aforesaid grievance and it was pleaded in that OA that in Western Central Railway combined seniority list of

the aforesaid group is being maintained and it was not permissible for the North Western Railway, Jaipur to resort to unitwise seniority and it is a case where two zonal railways working under the Railway Board are following two different policies in respect of preparing seniority for the MOCG group. Taking note of the averment so made by the applicants in the earlier OA, this Tribunal disposed of the earlier OA vide order dated 30.1.2006 with direction to the Chairman, Railway Board to decide the aforesaid issue within a period of three months from the date of receipt of the said order. It was further made clear that in case the applicants are still aggrieved with the decision to be taken by the Railway Board, it will be open for them to file separate OA. Vide the impugned order dated 19.4.2006, the Railway Board has taken the decision thereby upholding the decision taken by the North Western Railway regarding maintenance of unitwise seniority list of the aforesaid group. It is the validity of this order alongwith earlier order dated 10.2.2004 which is under challenge before this Tribunal.

3. Notice of this application was given to the respondents. The respondents have filed reply. According to the respondents, whether the seniority of the aforesaid group should be maintained unitwise or combined is a policy decision which cannot be

interfered with. The fact that chances of promotion have been affected is not a ground to challenge the policy decision. For that purpose, it has been pleaded that the matter is covered by the decision of the Hon'ble Apex Court in the case of Mohammad Sujat Ali vs. Union of India, AIR, 1974 SCC (L&S) 454 whereby the Constitutional Bench of the Supreme Court held that while it is true that a rule which confers right of actual promotion or a right to be considered for promotion is a rule prescribing condition of service, mere chance of promotion is not a condition of service and therefore a rule which affects chances of promotion can not be regarded as varying conditions of service. According to the respondents Para 124 Chapter 1 of Indian Railway Establishment Code Vol.I, the General Manager have full powers to make rules. Accordingly, the Railway Board rejected representation vide Ann.A1.

4. We have heard the learned counsel for the parties and gone through the material placed on record. At this stage, it will be useful to quota para 123 and 124 of Chapter 1 of Indian Railway Establishment Manual Vol.I, whereby the General Manager has been given full powers to make rules, which thus reads:-

"123 The Railway Board have full powers to make rules of a general application to non-gazetted railway servants under their control.

69

124. The General Managers of Indian Railways have full powers to make rules with regard to non-gazetted railway servants under their control, provided they are not inconsistent with any rules made by the President or the Railway Board."


There is no controversy that the Indian Railway Establishment Code has been issued by the President in exercise of the powers vested in him by the proviso to Article 309 of the Constitution. At this stage, it will also be useful to quote the decision of the Railway Board taken pursuant to the direction issued by this Tribunal in the earlier OA, which thus reads:-


"I have gone through the papers. Since the GMs are fully empowered to make rules in respect of Group 'C' and 'D' staff under their control provided the same are not inconsistent with the rules framed by the Ministry of Railways and the latter not having laid down any rules in regard to formation of Seniority Groups, the decision taken by North Western Railway in consultation with the recognized unions does not call for any interference. Further, since conditions like size cadres in different Departments may vary from Railway to Railway, the Ministry of Railways have not found it necessary to lay down uniform procedure for formation of Seniority Groups."

5. In the light of aforesaid statutory provisions and also the decision taken by the Railway Board as reproduced above, we are of the view that it is not permissible for us to quash the impugned order dated 10.2.2004 (Ann.A7) whereby the respondents have taken decision to maintain separate seniority units of all the departments except Medical, Electrical, S&T and Civil Engineering departments for better promotional

avenues to the clerical staff, simply, on the ground that there will be loss of promotional avenues for the categories of the applicants (i.e. Mechanical category). It is not a case of such nature where the General Manager has no power to make rules prescribing condition of service. We agree with the submissions made by the learned counsel for the respondents that policy decision affecting chance of promotion cannot be challenged on the ground that there will be less chances of promotion to the category of the applicants in case unit-wise seniority is prepared. Consequently, further prayer of the applicants for further promotion based on combined seniority list is of no consequence.

6. For the foregoing reasons, the present OA is bereft of merit, which is accordingly dismissed with no order as to costs.


(B.L. KHATRI)
Admv. Member


(M.L. CHAUHAN)
Judl. Member

R/