

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

***.

Date of decision: 13-9-2001

OA 179/95 with MA 196/95

Dulichand Meena, Udai Singh Meena, Ramesh Chand Meena, Satya Narain Meena, Shyam Lal Meena, Rasal Singh Meena and O.P. Nayak, all Junior Accounts Assistant and applicants No.1 to 5 are working in the O/o Sr.Accounts Officer (W&S), Western Railway Kota, and applicants No.6 & 7 are working under Sr.DAO, Kota.

... Applicants

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. FA & CAO, Western Railway, Churchgate, Mumbai.
3. Sr.Dvl.Accounts Officer, Western Railway, Kota.
4. Shri O.P.Bhatt, Accounts Asstt. O/o Sr.DAO, W/Rly, Kota.
5. Shri Rajesh Upadhyay, Accounts Asstt. O/o Sr.DAO, Kota.
6. Shri Avinash Kumar Gupta, Accounts Asstt. O/o Sr.DAO, Kota.
7. Shri S.N.Vaishnav, Accounts Asstt. O/o Sr.DAO, Kota.
8. Shri Bhupendra Sharma, Accounts Asstt. O/o Sr.DAO, Western Railway, Kota.
9. Shri Suresh Chand Mahajan, Accounts Asstt. O/o Sr.DAO, W/Rly., Kota.
10. Ms.Jyotsna Mathur, Accounts Asstt. O/o Sr.DAO, W/Rly., Kota.
11. Shri K.P.Sharma, Accounts Asstt. O/o Sr.DOA, W/Rly., Kota.
12. Shri Vishram Singh Meena, Accounts Asstt. O/o Sr.AO, Workshop, Kota.
13. Kum.Sunita Sharma, JAA O/o Sr.DAO, W/Rly., Kota.

d/

14. Shri H.K.Sharma, JAA, SAO Workshop, Western Railway, Kota.
15. Smt.Bhavna Kale, JAA, Sr.DAO, W/Rly, Kota.
16. Shri Shanker Lal Meena, JAA, Sr.AO (W&S), W/Rly, Kota.
17. Shri Arjun Singh, Sr.DAO, Kota.
18. Shri T.V.Agarwal, JAA, Sr.AO (W&S), W/Rly, Kota.
19. Shri Motilal Verma, JAA, Sr.DAO, W/Rly., Kota.
20. Shri Murari Lal Premi, JAA, Sr.DAO, Kota.
21. Shri D.K.Gautam, Accounts ASstt., Sr.DAO, W/Rly., Kota.
22. Shri Malkhan Meena, Sr.AO, W&S, Kota.
23. Shri Santosh Arya, Accounts Asstt., SAO, W&S, Kota.
24. Shri Prahlad Meena, AA O/o Sr.AO, S&C, Kota.
25. Shri B.K.Meena, AA O/o Sr.AO, W&S, Kota.
26. Shri Modu Lal Meena, JAA, Sr.AO, W&S, Kota.
27. Shri S.B.Meena, JAA O/o Sr.DAO, W/Rly, Kota.
28. Shri Babu Lal Meena, JAA, Sr.AO, W&S, Kota.
29. Shri Kedar Lal Meena, JAA, Sr.DAO, Kota.
30. Shri S.K.Kaushal, JAA, Sr.DAO, Kota.
31. Shri Prem Raj Meena, JAA, Sr.AO, W&S, Kota.
32. Shri Kumud Chand Sheel, JAA, Sr.AO, W&S, Kota.
33. Shri Harkesh Meena, JAA, Sr.AO, W&S, Kota.
34. Shri Ram Lotan Singh, JAA, Sr.AO, W&S, Kota.
35. Shri Ajeet Kumar Nagar, JAA, SAO, W&S, Kota.
36. Shri Pradeep Kumar Panchal, JAA O/o Sr.DAO, W&S Kota.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.S.A.T.RIZVI, ADMINISTRATIVE MEMBER

For the Applicants ... Mr.P.P.Mathur, proxy counsel for
Mr.R.N.Mathur

For Respdts.No.1to3 ... Mr.Manish Bhandari

For Respd.No.22to26 ... Mr.Vinod Goyal, proxy counsel for
28&29 Mr.Virendra Lodha

For Other Respondents ... None

2

O R D E R

PER HON'BLE MR.S.A.T.RIZVI, ADMINISTRATIVE MEMBER

Applicants, all Junior Accounts Assistants (JAA, for short), 7 in number, have filed this OA on being aggrieved by their seniority position disclosed in the provisional seniority list dated 5.8.94 (Ann.A/1) , circulated by the respondents. They are also aggrieved by the respondents' letter dated 10.3.95 (Ann.A/3), by which the representation made by the applicants has been disposed of by an interim reply to the effect that the aforesaid provisional seniority list was going to be finalised on the basis of clarifications sought from the headquarters. The present OA also challenges the respondents' letter dated 26.2.92 (Ann.A/4), by which ~~the decision of diverting~~ one-third of the vacancies in the post of JAA, falling in the direct recruitment quota, have been diverted for being filled up by Accounts Clerks who had cleared the Appendix-II IREM Examination, further stating that for the said purpose only those Accounts Clerks would be considered as had become available upto 31.3.91.

2. Heard the learned counsel on either side at length and have perused the material placed on record.

3. The learned counsel appearing on behalf of the official respondents No.1 to 3 has submitted that the present OA, to the extent it challenges the respondents' letter dated 26.2.92 (Ann.A/4), is evidently time barred. In regard to the other two letters impugned in this OA (Anns.A/1 and A/3), the learned counsel has pointed out that the aforesaid seniority list circulated by the respondents is only provisional and is yet to be finalised. The official respondents have in terms made it clear that they were seeking certain clarifications from the headquarters and the aforesaid seniority list would be finalised soon

2

thereafter. In view of this provision, the present OA, according to him, has been filed prematurely just about a month after the respondents' letter dated 10.3.95 (Ann.A/3) was issued. The applicants should ^{have} had the necessary patience to await the outcome of the efforts which were then being made by the respondents to finalise the aforesaid list. On this ground alone, according to him, the present OA should be dismissed as not maintainable.

4. Record placed on file reveals that one of the applicants namely Shri U.S.Meena had first represented on 6.7.93 (Ann.A/10) against another provisional seniority list earlier circulated by the respondents by their letter of 26.6.93 (Ann.A/9). In the said representation only one ground was taken, which referred to the promotion given to the Accounts Clerk against the direct recruitment quota, one-third of which was transferred to the promotion quota to be filled by Accounts Clerks who had cleared the Appendix-II IREM Examination. Seniority accorded to such Accounts Clerks on their promotion to the post of JAA was challenged in the aforesaid representation. These, we find, have been placed at the top of the provisional seniority list placed on record on behalf of the applicants as part of Ann.A/1. No other challenge was made in the said representation. Subsequently, the same applicant namely Shri U.S.Meena has filed another representation, This time, in August, 1994 (Ann.A/2), which seeks to challenge the aforesaid latest provisional seniority list dated 5.8.94. In this representation the same applicant has sought to challenge the seniority accorded to the other categories of JAAs as well. These other categories include those Accounts Clerks also who had been promoted against 20% quota ear-marked for them under the relevant recruitment rules. This representation also challenges the seniority position given

2

to one Shri Shyam Lal Meena, who has been inducted on the basis of mutual transfer in place of one Shri Gheesa Lal Meena. It would thus seem that the applicants have modified their stand by pleading fresh grounds in the aforesaid latter representation although the facts and circumstances have remained unchanged during the period in question.

5. After a careful perusal of the facts and circumstances of this case, we find that, in 1991, 25 vacancies in the post of JAA existed and these were to be filled up by direct recruitment (80%) and by way of promotion (20%) in accordance with the relevant recruitment rules. ~~And~~ ^{of} the aforesaid vacancies, 20 in number, meant for direct recruits, one-third were diverted for being filled up in accordance with the respondents decision contained in their letter of 26.2.92 (Ann.A/4). The remaining 13 were to be directly recruited. The remaining 5, out of the total of 25 posts, were to be filled by promoting the Appendix-II Examination passed Accounts Clerks (80% of 5 = 4) and one Accounts Clerk was to be promoted on the basis of seniority-cum-suitability. We have already mentioned that those promoted against the diverted quota have been placed on top in the aforesaid impugned provisional seniority list. The other Accounts Clerks who have been promoted to fill up the balance 5 posts, as above, have been placed after promotion in the aforesaid provisional seniority list in a bunch from S.No.14 to 21. The respondents have in their pleadings pointed out that instead of promoting only four Appendix-II Examination cleared Accounts Clerks, as above, the respondents proceeded to promote four more similarly placed Accounts Clerks against the vacancies relating to 1992. Thus, instead of four, relating to 1991 vacancies, eight Accounts Clerks have been promoted taking into account the vacancies of 1992 as well. All these 8 Accounts Clerks since promoted to the post of JAA, ^{have been} placed in the aforesaid provisional seniority list, above the applicants.

Thus, they constitute the second category of promotees who have been placed above the applicants in the aforesaid seniority list.

6. The pleadings placed on record also show that in 1989 a number of JAAs were directly recruited for appointment in the Kota Division. However, due to severe shortage of JAAs in Bombay Division, the aforesaid selectees of 1989 were diverted to Bombay on a clear understanding given to them that as and when they are brought back to the Kota Division, they will regain their seniority. The said recruits have since come back to Kota and have been given their due place in the aforesaid seniority list by placing them above the applicants. A perusal of the aforesaid seniority list reveals that these JAAs find place from S.No.2 to 11 and thereafter from S.No.22 to 27 with the aforesaid 8 promotee JAAS sandwiched between them. The aforesaid returnees constitute ^{the} a third category of JAAs, whose placement in the seniority list has been challenged by the applicants, who happened to find place at the bottom of the impugned seniority list from S.No.28 to 34.

7. In order to make sure that the 1989 batch direct recruits, who had been diverted to Bombay, ~~though~~^{do} actually succeeded in regaining their seniority, as promised, a specific condition was put in the letters of appointment issued to the 1991 direct recruits, namely, applicants in the present OA. At Ann.A/5 is placed one such letter of appointment issued on 11/12.4.91 to Shri U.S. Meena, who is one of the applicants. The relevant condition stipulated in the aforesaid letter of appointment reads as under :-

"2. (XXI) The above offer of appointment is subject to the conditions that those JAAs who stand

registered for own request transfer to KTT as on 31.10.90 would take seniority above you, upon their transfer to KTT, notwithstanding your joining service at KTT before such transfers."

Similar letters of appointment have admittedly been issued to all the other applicants. They have, admittedly, accepted all the conditions stipulated in the said letters of appointment including the condition reproduced above. The learned counsel appearing for the respondents has submitted that having accepted the aforesaid condition it is no longer upon to the applicants to dispute the placement of the 1989 batch direct recruits above them in the impugned seniority list on the return of the aforesaid 1989 recruits to Kota Division. The learned counsel appearing on behalf of the applicants has, however, placed reliance on Para 312 of the IREM, Vol.I, which, in-so-far as is relevant for our purpose, is reproduced below :-

"312. TRANSFER ON REQUEST - The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation of length of officiating or temporary service of the transferred railway servants.

NOTE:-(i) This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway."


The learned counsel for the applicants has argued that there could be no estoppel ^{against} statute and, therefore, the aforesaid

1989 batch officers transferred from Bombay Division should necessarily be placed at the bottom of the seniority list on their transfer to the Kota Division, and thus they should find place below the applicants in the impugned seniority list. The aforesaid argument is sought to be met by the respondents by relying on the provisions of Para 114 of the IREM, Vol.I. The same reads as under :-

"114. Power to relax or modify rules - -The General Manager or the Chief Administrative Officer, may, in special circumstances and for reasons to be recorded in writing, relax or modify these rules in specific individual cases. They can also issue orders for deviations from these rules in respect of certain categories or on certain occasions provided such relaxations are purely on a temporary basis. Railway Board's prior approval is however, required to long term or permanent alteration of the rules.

This power should be exercised by the General Manager or his Chief Personnel Officer, or the Chief Administrative Officer personally; but it shall not be otherwise redelegated."

We have perused the aforesaid rule and find ourselves wholly in agreement with the learned counsel for the respondents that the respondents, acting at the appropriate level, are indeed competent to lay down a rule modifying the provision made in Para 312, as a one time measure, and in the exigencies of service. The 1989 batch directly recruited JAAs are, in the circumstances, fully entitled to be placed on their return to the Kota Division above the applicants who are 1991 batch direct recruits. Thus, the plea of estoppel, advanced by the learned counsel for the applicant, is found to have no force and is rejected.



8. From the record of this case we also find that the aforesaid 1989 batch recruits have been transferred to Kota Division in two instalments. In the first instance, some of them were transferred by respondents' letter dated 13.12.91 (Ann.A/6). These transferees find place on the top of the impugned seniority list. After a lapse of about two years, some of the other 1989 batch recruits were transferred to Kota Division by the respondents' letter of 13.9.93 (Ann.A/7). These others have been placed in the impugned seniority list after the promotee JAAs. They find place in the impugned provisional seniority list from S.No.22 to 27. A perusal of the aforesaid letters, by which the 1989 batch JAAs have been transferred to Kota Division, shows that each of them contained the following clause stipulated therein as one of the conditions of transfer :-

"The JAAs under orders of transfer to KTT.A/cs. seniority unit will rank senior to those JAAs appointed directly out of the panel received from RRB-AII under letter No.RRB/AII/R-co/3/89/11/90 dated 6.9.90."

The aforesaid condition clearly brings out that the applicants, who had been appointed by way of direct recruitment by RRB's letter dated 6.9.90, were to be treated as junior to the JAAs transferred by the respondents by the aforesaid letters. Thus, in the ultimate analysis, the applicants have no case at all for the grant of seniority above the aforesaid transferee JAAs.

9. In-so-far as the status of the Accounts Clerks promoted against the diverted quota is concerned, it has been stated on behalf of the respondents that Accounts

Dr

Clerks in question, who had already cleared the Appendix-II IREM Examination, had been promoted as JAA on ad-hoc basis in 1990-91, and their ad-hoc promotion has only been regularised by appointing them against the diverted quota vacancies. All of them, 7 in number, have been promoted by way of regularisation from dates prior to 1.4.94. The impugned seniority list shows the names of two others namely Smt. Jyotsna Mathur and Shri K.P. Sharma, placed immediately below the aforesaid ^{& diverted quota} promotee JAAs. The actual status of these two JAAs, who are deemed to have been promoted w.e.f. 1.4.91 (Ann.A/8), does not seem to have been established in clear terms. However, prima-facie it would appear that they might be the ^{ones} ~~one~~ promoted on the basis of seniority-cum-suitability against the regular promotion quota posts for 1991 and 1992. Though, from the pleadings placed on record, we find that it has been stated that the aforesaid two persons have been promoted in excess of the promotion quota. However, having been promoted w.e.f. 1.4.91, we find nothing wrong in their names being placed immediately below the aforesaid 7 promotee JAAs.

10. We have already stated that the applicants have challenged the seniority of even those JAAs who have been brought in position by way of promotion from the post of Accounts Clerks against the normal promotion quota for 1991 and 1992. The names of these promotees figure, as already mentioned, in the impugned seniority list from S.No.14 to 21, sandwiched between the 1989 batch transferees. We are not quite sure as to the rules relied upon in placing the aforesaid promotee JAAs above the applicants in the impugned seniority list. Four of them have been promoted, as already noted by us, against the 1991 promotion quota. The applicants themselves belong to the 1991 direct recruitment

quota. In the circumstances, therefore, the respondents are expected to have relied upon the provisions of Para 302 of the IREM, Vol.I, for determining the interse seniority of the promotees and the direct recruits. In the absence of relevant details pertaining to the promotion of the aforesaid promotee JAAs, We are unable to come to any conclusion in regard to the manner ^{in which} the respondents have proceeded to determine the interse seniority of the said two groups of JAAs.

11. We have carefully perused the impugned (provisional) seniority list and find that the names of all the persons, other than the applicants, have been arranged therein in order of the dates from which these persons have been promoted (diverted quota promotees) and the dates from which they have resumed duty in the Kota Division. Thus, Shri D.K.Gautam, who is at S.No.2 in the impugned seniority list, appears to have resumed duties in Kota Division on 3.1.92 on his transfer from Bombay Division. ^{By} the respondents' letter dated 13.12.91 (Ann.A/6). The others, transferred by the same letter (Ann.A/6) appear to have joined in Kota Division thereafter respectively on 10.1.92, 14.1.92 and so on. The last person so transferred from Bombay Division seems to have joined in Kota Division on 17.2.92 (S.No.11 of the impugned seniority list). The next batch of transferee JAAs, who were transferred by respondents' letter of 13.9.93 (Ann.A/7), appear to have started resuming their duties in Kota Division from 29.10.93 onwards. Thus, Shri P.R.Meena appears to have joined Kota Division on 29.10.93 followed by the others in that order, the last, namely, Shri P.K.Panchal having joined on 10.11.93. Those promoted from the rank of Accounts Clerk against the normal promotion quota for 1991-92 similarly appear to have joined as JAAs from 8.6.92 onwards; the last of this category, namely, Shri M.L.Premi having joined on 17.8.92. We thus find that the

names of JAAs, starting from S.No.2 in the impugned seniority list, have been arranged in the said list in the order of the dates from which they had joined Kota Division as JAA whether on transfer from Bombay Division or else on promotion against the normal quota. From S.No.2 to 27 in the impugned seniority list all the names have been arranged in the ^{said} order barring S/Shri S.K.Kaushal and A.Garg, who seems to have been inducted on the basis of mutual transfer and have accordingly been made to occupy seniority positions in accordance with Para 310 of the IREM, Vol.I. No specific dispute has been raised about the latter (Shri A.Garg). In-
so far as the former, namely Shri S.K.Kaushal is concerned, we find from the pleadings placed on record that having come in place of Shri Shyam Lal, Shri Kaushal's seniority is to take effect from 19.1.90. We are not quite sure whether, on this basis, the said Shri Kaushal could be placed at S.No.12 in the impugned seniority list having regard to the scheme followed by the respondents in listing the JAAs in the order of the dates from which they resumed charge of the post in Kota Division. The same is true of Shri A.Garg also.

12. The impugned seniority list contains names of four different categories of JAAs. There are 1989 batch direct recruits, who have been brought back to Kota Division on transfer from the Bombay Division. Then, there are the applicants, who were directly recruited for Kota Division in 1991. The third category consists of those who have been promoted against the one-third quota diverted from the direct recruitment quota. The last and the fourth category consists of those who have been promoted against the normal promotion quota for 1991 and 1992. Of course, there are two more persons namely Smt. Jyotsna Mathur and Shri K.P.Sharma, who are likely to have been promoted from amongst the

Appendix-II Examination cleared Accounts Clerks in excess of the quota, ^{diverted/2} ear-marked for such promotees.

13. We have perused the provisions of Para 302 to 312 in order to find out for ourselves what method and what rule has been followed by the respondents in preparing the impugned seniority list. We have no hesitation in admitting that in the absence of proper pleadings by the parties we are unable to satisfy ourselves about the correctness of the impugned seniority list. To give just one instance, we would like to point out that Para 303 of the IREM, Vol.I, clearly provides for the interse promotion of direct recruits. According to the said paragraph, the direct recruits who are sent for initial training are supposed to rank in seniority in the order of merit obtained at the examination held at the end of the training period. Similarly, those direct recruits who do not have to undergo any training are supposed to have their interse seniority determined on the basis of merit order assigned by the RRB. In-so-far as 1989 batch and the 1991 batch direct recruits are concerned, we have nowhere been told that they were required to undergo initial training in a training school or else they were simply not required to undergo any training. The order in which their names have been arranged in the impugned seniority list does not disclose whether their interse seniority has been fixed in the order assigned to them in the merit list or in the order of merit obtained at the examination held at the end of the training period. As already stated, their names have been arranged simply in order of the dates from which they joined the Kota Division. Such listing might not be consistent with the aforesaid provisions made in the IREM, Vol.I. Para 302 is meant for fixation of interse seniority whenever the same cadre involves filling up of posts by promotion as well as by

dr

direct recruitment. The basic rule stipulated therein is ~~that~~;

"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 interse seniority of promotees and direct recruits among themselves."

We are at a ^{loss} ~~loss~~ to find, on a perusal of the impugned seniority list, that the aforesaid rule does not appear to have been followed. Then there are sundry provisions contained in Paragraphs 304 to 310. We do not quite see as to how and in what manner the respondents have attempted to apply these provisions in the circumstances of this case. The provision made in Para 311 prima-facie appears to have some relevance in the present case as it provides that the seniority of railway servants on transfer from one cadre to another in the interest of the administration is regulated by the date of promotion/date of appointment to the grade as the case may be. We have seen that the 1989 batch direct recruits had been transferred to Kota Division in the interest of railway administration. Accordingly, on the aforesaid provision being applied, their seniority will have to be regulated by the date of their appointment to the JAA grade. They belong to the 1989 batch and are most likely to have ^{been} appointed in Bombay Division, on being diverted from Kota, sometime in 1989 and 1990. That being so, the seniority of these recruits should take effect from the dates of their appointment in the post of JAA in the Bombay Division. The impugned seniority list does not disclose a

picture consistent with the aforesaid provision. In a nutshell, therefore, we conclude that the respondents might well have to review the impugned seniority list so as to ensure that the same consistently and meticulously reflects the rule position laid down in Paragraphs 302 to 311.

14. Having discussed the overall position, which emerges after a perusal of the pleadings of the parties in the aforementioned paragraph, we conclude this order by holding that, as argued by the learned counsel for the respondents, the OA is badly hit by the law of limitation and also on the ground that it has been filed rather prematurely. The applicants were recruited as early as in April, 1991 and were, therefore, aware of the adverse condition put in their letters of appointment clearly stating that the transferee JAAs would acquire seniority over them as and when they were transferred to the Kota Division. They did not protest against the aforesaid adverse condition in good time and instead proceeded to accept the same without demur. As already seen, the railway administration had the requisite powers to alter the seniority rules so as to accommodate the transferee JAAs at the expense of the applicants. The respondents' letter dated 26.2.92 (Ann.A/4) was circulated throughout India and, therefore, the applicants cannot be allowed to take the plea that they were not aware of the diversion of direct recruitment quota in favour of the Accounts Clerks. In the circumstances, the applicants are prevented from challenging the aforesaid letter at this belated stage. However, the respondents admittedly have not been able to finalise the seniority list so far. They deserve to be given time to do so.


15. In the background of discussion contained in the preceeding paragraphs, we are constrained to dismiss the present OA on the twin ground of the same being barred by

dw

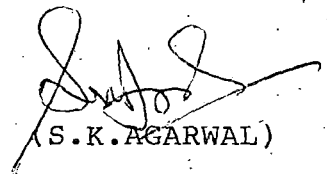
limitation and having been filed prematurely. The present OA has, for a variety of reasons, remained pending for more than six years, thus, affecting the interests of the applicants as also of the others adversely ^{to all} ~~of~~ these years. In view of this, we will like to part with this OA with a direction to the respondents to finalise the impugned provisional seniority list in the most expeditious manner and in any event within four months from the date of receipt of a copy of this order. They are also directed to have due regard, while finalising the aforesaid list, to the observations made by us in the body of this order.

16. The OA is disposed of in the aforestated terms. No order as to costs.

17. As the OA has been disposed of, ~~as above~~, MA 196/95 does not survive for consideration and the same also stands disposed of accordingly.


(S.A.T. RIZVI)

MEMBER (A)


(S.K. AGARWAL)

MEMBER (J)