

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

O.A. No. 42/95  
T.A. No.

199

DATE OF DECISION

9-4-2001

Sayed Mohd. Zuned and ors. Petitioner

Mr. J.K.Kaushik

Advocate for the Petitioner (s)

Versus

Union of India and ors.

Respondent

Mr. Manish Bhandari

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 ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

(N.P.NAWANI)  
Adm. Member

(B.S.RAIKOTE)  
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 9.4.200

OA No.42/95

1. Sayed Mohd.Zuned, Sr.Clerk, O/o ASTE, W.Rly, Sawai Madhopur
2. Brij Nandan Sharda, Sr.Clerk, Works Branch, DRM Office, Kota.
3. Megh Raj Singh, Sr.Clerk, Works Branch, DRM Office, Kota.
4. Arun Kumar Sharma, Sr.Clerk, Works Branch, DRM Office, Kota.
5. Dilip Kumar Sharma, Sr.Clerk, Works Branch, DRM Office, Kota.
6. Shielay Vinita Torney, Sr.Clerk Works Branch, DRM Office, Kota
7. Sunita Bayer, Sr.Clerk, Works Branch, DRM Office, Kota.
8. Ram Phool Meena, Sr.Clerk, CTCI Office, Sawai Madhopur.
9. Surendra Swaroop Sharma, Sr.Clerk, O/o CTFD(IRO), Gangapur city

.. Applicants

Versus

1. Union of India through General Manager, W.Rly, Churchgate, Bombay.
2. Chairman, Railway Board, Rail Bhawan, New Delhi.
3. Divisional Rly.Manager, W.Rly, Kota Division, Kota.
4. Km.Lalita Sharma, Sr.Clerk, Works Branch, DRM Office, Kota.
5. Km.Anuja Tyagi, Sr.Clerk, Budget Branch, DRM Office, Kota.
6. Sh.K.C.Joshi, Sr.Clerk, Works Branch-5, DRM Office, Kota.
7. Sh.Kailash Nath Shukla, Sr.Clerk, CTCI, Gangapur, W.Rly.

.. Respondents

Mr. J.K.Kaushik, counsel for the applicants

Mr. Manish Bhandari, counsel for the respondents

CORAM:

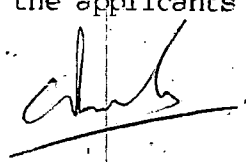
Hon'ble Mr.Justice B.S.Raikote, Vice Chairman

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

Order

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

In this O.A filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicants make the following prayers:

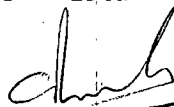


"i) That the impugned order dt.8.4.94 (Annx.A/2) may be declared illegal and the same may be quashed. The respondents may be directed to assign proforma seniority to the applicants above those who are empanelled after the empanellment against Employment News No.1/82 as has been done by the Central Railway vide Annx.A/6 and the impugned order Annx.A1 dt. 28.8.88 may be modified accordingly and the applicants be allowed all consequential benefits.

ii) Any other order/directions, relief may be passed in favour of the applicants which may be deemed fit just and proper under the facts and circumstances of this case."

2. We have heard the learned counsel for the parties and have examined all the material on record.

3. On consideration of the rival contentions, we are of the considered view that essentially the question begging our decision in this O.A. is whether the applicants have been discriminated against - firstly, by not extending to them in the Western Railway the benefit of "proforma promotion" as has been given to the candidates appointed in respect of both the Employment Notices 2/1980-81 and 1/1982 serving in the Central Railway in terms of their letter dated 5.1.1990 (Ann.A6) issued as a follow up of the Railway Board's policy letter of 22.4.87 (Ann.A5) addressed to both the Central and Western Railway and secondly, by not allowing the applicants a "retrospective" seniority even with a later date of appointment as has been given in the Kota Division of Western Railway itself, exemplified by the placement of one Hari Narain Choudhari at Sl.No.33 of the seniority list of Clerks dated 23.3.1983 (Ann.A1) who belonged to the panel in respect of Employment Notice of 2/1980-81, was appointed on 28.11.87 and yet placed in the seniority list (Annx.A1) between those appointed in 1982 and 1983. We may mention straightaway that in the peculiar facts and circumstances of this case, we find it necessary to examine the matter from all angles, including equity



considerations.

4. To trace the background of the case, it will be necessary to state certain facts. A select list was prepared by the Railway Recruitment Board, Bombay (for short, RRB) after selection in respect of their Employment Notice No.2 of 1980-81 (for short panel of 81). While this select list or panel was implemented partly by giving appointments to certain candidates on the post of Clerk in both the Central and Western Railways, certain irregularities were alleged in the process of selection, as a result of which a ban was imposed on further operation of that panel vide order dated 15.10.85 (Ann.A3). The said ban was lifted later on vide order dated 22.4.87 (Ann.A4) and further appointment made. It is contended on behalf of the applicants that since the appointments on the basis of the earlier panel 1/81 were put under ban, appointments from panel No.1 of 1982 (for short Panel of 82) were also frozen but this fact has not been admitted by the respondents in the manner stated by the applicants. However, a plain reading of the letter of the Railway Board (RB for short) dated 22.4.87 enclosed with Ann.A5 will indicate that lifting of the freeze orders was not only in respect of Panel 1/81 but also Panels relating to later Employment Notices which might have also been frozen like the Panel 1/82 in this case. We extract the contents of paragraph 2 of the said letter dated 22.4.87 of the R.B as under:

"2. The matter has been considered carefully by the Railway Board who have decided that the freeze orders imposed vide Board's confidential letter of 15.10.1985 referred to above lifted with immediate effect, subject to the following:

i) Necessary arrangements will be made by the Central and Western Railways to absorb the number of candidates that RRB/Bombay would be able to provide from panels (issued and to be issued) against category-25 of Employment Notice No.2/80-81.

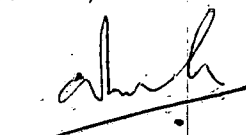
ii) Proper provision will be included by both the Central and Western Railways in the appointment orders to the candidates belonging to the panels from later Employment Notices so that the seniority question of candidates does not pose a problem later on."



The applicants have also enclosed a copy of the Central Railway letter dated 5.1.1990 (Ann A6) to contend that the applicants should have also been given "proforma seniority" and further that applicants should also be ranked senior to those Class IV employees promoted against direct recruitment quota during 1982-83. We also extract relevant portions of Ann.A6 hereunder:

"3. In view of the foregoing facts, it has been decided as under:

- 1) The candidates recruited from category No.25 of Employment Notice No.2/80-81, will rank senior to those empanelled and appointed from those mentioned at Sr. No.2,3 and 4 below irrespective of their date of appointment. They will however maintain their inter-se-seniority.
  - 2) The candidates selected and empanelled against Employment Notice No.1/82 will rank senior to those empanelled and appointed from items mentioned at Sr.No.3 & 4 below. However, they will maintain their inter-se-seniority.
  - 3) The candidates selected and empanelled against notification of Office Clerk issued by the Administration for filling up vacancies from existing Class IV staff against direct recruitment quota will rank senior to those empanelled and appointed against item No.4 below. However, they will maintain inter-se-seniority.
  - 4) The candidates selected for the posts of Tracer and who have been screened are appointed against alternative posts, as directed by the Railway Board will rank junior to those of item mentioned from 1 to 3 above. They will, however, maintain inter-se-seniority.
  - 5) In case of candidates recruited against the categories of posts for which a period of training has been prescribed, such of the candidates be given normal seniority subject to their passing in the first attempt which they would have got but for their late appointment.
  - 6) Where no training is prescribed they will be assigned seniority based on the merit order in the panel for which they have been recommended, but for their late appointments that is to say that candidates from the panel of earlier employment notice will rank senior to those empanelled from subsequent panel, even though they are appointed at a later date.
4. It is, therefore be, obvious that while assigning the seniority, comparison can only be made with the candidates (some category of posts i.e. Clerks etc.) appointed from the above panels in the same seniority group/ Office/Division/Unit and not with the candidates appointed by

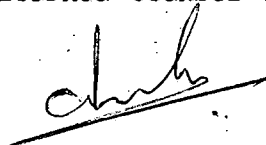


the Railway Administration against departmental quota or direct recruitment made by the Administration under the powers vested in the General Manager such as filling up of quota of physically handicapped, compassionate appointment, cultural quota, etc. in the same seniority group/office/Division/Unit.

5. It is, therefore, clarified that the candidates appointed against Category No.25 and that of employment notice No.1/82 are eligible for proforma seniority only and not for any other benefits.

5. The learned counsel for the applicants argued that not only the Western Railway (to which applicants belong) is discriminating against the applicants by not giving them proforma seniority as has been given by the Central Railway on the basis of the very same circular of the R.B of 22.4.87 but also discriminating the applicants vis-a-vis the employees appointed within the Western Railways, having given those belonging to panel of 81 seniority retrospectively but denying such retrospective seniority to the applicants who belong to Panel of 82, even though the Panel of 82 was also frozen because of freezing of the Panel of 1981. In support of the latter contention, he draw our attention to seniority given to one Hari Narayan Choudhury at Sl.No.33 of the seniority list of Clerks of Kota Division dated 28.8.88 at Annx.A1, who is clearly shown in remarks column to have belonged to Employment Notice 2/80-81 even though appointed on 28.11.87 (column 5), has been given seniority immediately after employees appointed in 1982. It is also pointed out by him that by not giving 'proforma' seniority to applicants, as given to Sh.Hari Narayan Choudhury, the applicants have been made junior to respondent No.4 at Sl.No.24 appointed under Sports quota, respondent No.5 at Sl.No.24 appointed on compassionate grounds on 5.3.83, respondent No.6 at Sl.No.52 selected from Class IV to III (promotion) in 1984 and respondent No.7 at Sl.No.83 appointed on 11.4.85 on compassionate grounds while the seniority of the applicants on the other hand, starts only from Sl.No.106.

6. The learned counsel for the respondents opposed the case of



the applicants essentially on the ground that RB's circular dated 22.4.87 was specifically for Panel of 81 and did not cover the Panel of 82 and therefore, the Western Railway did not and correctly so, issue any letter giving proforma seniority to employees of Panel of 82. He also mentioned that the Panel of 81 had already been operated to some extent before the ban and it would have been discriminatory if others appointed after lifting the ban were not given seniority alongwith their colleagues of the Panel of 1981 as has been given to Shri Hari Narayan Coudhary but such was not the case with employees of 1982 panel. He further contended that if another Railway have issued wrong orders, the Western Railway cannot be directed to follow suit and perpetuate the illegality. He asserted that R.B's circular dated 22.4.87 was only in respect of Panel of 81 and those in the Panel of 82 were to be absorbed and as per relevant rules contained in Indian Railway Establishment Mannual, they were correctly given seniority from the date of joining the working post.

7. We have given our serious consideration to the pleadings and arguments advanced by the learned counsel Shri J.K.Kaushik for the applicants and Sh.Manish Bhandari for the official respondents. We have also carefully examined the circular dated 22.4.87 of the R.B, relevant portions of which have been extracted earlier. A reading of these extracts will show that freeze orders dated 15.10.85 were lifted with immediate effect with two conditions. First, both Central & Western Rlys will make necessary arrangements to absorb the number of candidates that RRB/Bombay would be able to provide from Panels (issued and to be issued) against Category-25 of Employment Notice No.2/80-81. Secondly, both these Railways were asked to include proper provisions in the appointment orders to the candidates belonging to the panels from later Employment Notices so that the seniority question of candidates does not pose a problem later on. (emphasis supplied). Now one of the two Railways

*Amul*

addressed by the R.B i.e. Central Railway interpreted the R.B's circular of 22.4.87 in a manner which resulted in issuance of their letter dated 5.1.90 (Annx.A6), the existence of which is not disputed by the learned counsel for the respondents, which does provide for grant of proforma seniority even to those candidates who were in the Panel of 82. The General Manager, Central Railway is not arrayed as a respondent and we also do not have in front of us any seniority list which only could have revealed whether proforma on retrospective seniority has been given by the Central Railway to the candidates similarly placed as the applicants but serving in the Central Railway. But the very existence of the H.O, Central Railway letter of 5.1.1990 (Ann.A6) and its para 5 which, inter alia, stipulates that "the candidates appointed against ... No.1/82 are eligible for proforma seniority only and not for any other benefit", indicates that similarly placed persons in the Central Railway have been given the benefit of proforma seniority. Of course, the learned counsel for the respondents did argue that an "illegality" committed by somebody (meaning the Central Railway) does not mean that the Western Railway should also follow suit. However, a reading of the letter dated 5.1.90 of the Central Railway (Ann.A6), issued as a follow up of the R.B's letter of 22.4.87 which also talks of later Panels, apart from that in respect of Employment Notice No.2/80-81, does not lead us to a conclusion that issuance of such a letter could have been illegal. Further, such illegality if there was one, was allowed to be continued to exist all these years since Jan. 1990. In any case, while this peculiar situation of two Railways reading the same letter No.E.(NG)II/85/RRB/115 dt. 22.4.87 in two different manner is a matter to be sorted out by the respondent No.2 (Chairman, Railway Board). However, the absence of adequate material on record does not permit us to specifically hold that the applicants have been discriminated against on this count.

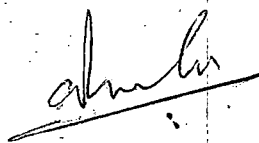
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8. As discussed earlier, Sl.No.33 has been accorded to one Shri Hari Narain Choudhary of Panel of 81 in the seniority list at Ann.A1 between those appointed between 11.11.82 and 26.2.83 even when his date of appointment is 20.11.87. There are some other private respondents, placed at Sl.No.24, Sl.No.35, Sl.No.52, etc, over the applicants whereas the applicants belonging to Panel of 82 start from S.118 (Shri Saiyyad Mohd Zuned, applicant No.1) whose date of appointment is shown as 22.9.87 which is even earlier than Shri Hari Narayan Choudhary at Sl.No.33. Normally, in view of para 362 of the IREM, there would have been nothing exceptionable about candidates of Panel of 1981 being shown senior to Panel of 1982. However, for the reasons already discussed while mentioning the background, especially the fact that the candidates of Panel of 82 were forced into "freezing" because of stay on operation of Panel of 81 due to complaints and investigations, a case of discrimination against the applicants does emerge. Further, the letter of R.B dated 22.4.87 enclosed with Annx.A5 clearly talks of Panel of 81 and later panels (emphasis added). In spite of the policy enunciated in the said letter of R.B and in spite of the fact that Central Railway apparently treated the Panels of 81 and 82 similarly, it does not seem just and proper to deny the applicants the benefit of proforma or retrospective seniority as has ~~been~~ apparently been given to candidates of Panel of 81 to those in the Panel of 82. It is accepted that being in a panel itself does not confer any right for appointment but in the special facts and circumstances of this case, it has to be noted that the applicants were denied appointments immediately after their names were included in the Panel of 1982 for no fault of theirs and there was even no complaints/irregularities with regard to their Panel. Their Panel was 'frozen' because the Panel of the immediate earlier year i.e. 1980-81 was stayed after partial operation and it was only on account of complaints/investigation regarding that Panel that the



Panel of 92, in which the names of the applicants figured, was frozen. It is perhaps precisely for this 'forced' action that the letter dated 22.4.87 of the R.B (Ann.A5) mentioned in that policy letter about later panel also. The applicants had to wait for around 5 years after declaration of the Panel of 82 before they got appointed. The result of Panel of 82 in respect of Employment Notice of 1/82 was not complained against and was not heldup or stayed, because of investigations regarding that particular selection undertaken by the RRB but purely on account of its immediate previous Panel of 1981 having been stayed due to complaints/investigations. The applicants must have waited, and also those of that Panel who joined the posts in 1987, for months and years hoping that their appointments will come any day. It must have been a cruel wait for those forced into this unfortunate situation for no fault of theirs that resulted in such a long wait. And if, as it appears from the seniority given to Shri Hari Narayan Choudhary, the remaining candidates of Panel 91 were given retrospective seniority immediately after 1982 inspite of joining the post in 1987, there appears no justification for not granting similar retrospective seniority to candidates from Panel of 92, especially when their Panel was frozen only on account of candidates from Panel of 91, and the R.B letter of 22.4.87 (Ann.A5) which also mentions 'later panels'. We, therefore, feel that there appears to be some discrimination against the candidates of Panel of 82 vis-a-vis those in the Panel of 81 within the Kota Division of Western Railway and we answer the second issue accordingly. However, we are unable to give a clear and specific finding in view of the RB's policy letter of 22.4.87 being rather non-specific about how to treat the candidates (like the applicants herein) belonging to the Panels from later Employment Notices with the letter only asking the Central and Western Railway to ensure that the seniority question of (such) candidates does not pose a problem



later on (emphasis supplied) as can be seen from the extracts of R.B's letter of 22.4.87 extracted earlier.

9. The learned counsel for the applicants has sought support from the judgment of Hon'ble Supreme Court in AIR 1983 SC 769, A.Janardhna Vs Union of India & Ors; AIR 1987 SC 830, N.Gopal Reddy Vs. Bonale Krishnamurthy & Ors and 1996(1) SLJ 113, Kuldeep Chand Vs. Union of India. We, however find that AIR 1987 SC 830 is not applicable and 1996(1) SLJ 113 would have been applicable if we were to dismiss this O.A on the ground that the seniority list had become final and could not be challenged now. As far as AIR 1983 SC 769 is concerned, it is specific to the facts and circumstances of that case and cannot be applied directly to the case in hand.

10. In the circumstances, we direct respondent No.2, the Chairman of the Railway Board, to examine if the two Railways, the Central and the Western Railway, have implemented the policy laid down in the letter No.E(NG)II/85/RRB/115 dated 22.4.1987 of the Railway Board in different manners and if that be so, issue necessary policy instructions to the Central and Western Railway. This direction may be implemented within 4 months of receipt of a copy of this order.

11. No order as to costs.



(N.P.Nawani)

Member (A).



(B.S.Raikote)

Vice Chairman.