

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 10th Sept 2001

OA 555/95

Chandra Veer Singh, Khalasi in Refrigeration & Air Conditioning Unit, Western Railway, Kota.

... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Rly. Manager, Western Railway, Kota.
3. Sh. Madhukar Sharma, Khalasi O/o JEE, RAC, Western Railway, Kota.
4. Bansi Lal, Khalasi O/o JEE, RAC, Western Railway, Kota.
5. Shahjad Ali, Senior Khalasi O/o JEE, RAC, Western Railway, Kota.
6. Shyam Lal, Senior Khalasi O/o JEE, RAC, Western Railway, Kota.

... Respondents

CORAM:

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

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

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

For Respondents No.1&2 ... Mr.Hemant Gupta, proxy counsel
for Mr.M.Rafiq

For Respds. No.3 to 6 ... Mr.P.V. Calla

O R D E R

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

Applicant, in this OA, is aggrieved by respondents' letter dated 21.4.95 (Ann.A/1), by which his seniority position has been adversely affected vis-a-vis the private respondents No.3 to 6. Hence this OA.

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2. Briefly stated the facts of the case are that the applicant was appointed as casual labour in the Indian Railways on 31.5.82, and granted temporary status on 7.6.83. In due course, a screening test was conducted by the respondents in 1987, the result of which was declared on 31.12.87 (Ann.A/3). The aforesaid office order dated 31.12.87 contains a list of screened candidates found suitable for regularisation in Class-IV in the Electrical Department. The applicant figures at S.No.90 in RAC in the said list. Separately, the respondents proceeded to invite applications for appointment on the post of Khalasi in the R.A.C. Unit of the Electrical Department in the pay scale of Rs.750-940. This, they have done by their notice dated 15.1.90 (Ann.A/4). The applicant, being eligible for posting in the RAC Unit, also applied. In the event, however, the respondents filled up all the 8 vacancies in the RAC Unit by inducting, on the basis of applications made, in response to the notice dated 15.1.90, persons who were working in the higher pay scale of Rs.800-1150. In-so-far as the applicant is concerned, though he did apply for posting in the RAC Unit, as above, the fact remains that he had already been screened in for regularisation in the said RAC Unit, as would be cleared from the office order dated 31.12.87 (Ann.A/3). His name has been shown therein at S.No.90 against RAC. The aforesaid panel, contained in the aforesaid office order of 31.12.87, was stated to be purely provisional, however. Based on the aforesaid position, reflected in the respondents' office order of 31.12.87, the applicant, amongst others, was posted as Khalasi in the pay scale of Rs.750-940 on provisional basis by respondents' office order of 28.11.88. In the aforesaid order dated 28.11.88 (Ann.A/5) again the applicant has been shown against the RAC Unit with the place of his working

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shown as SET (RAC) KTT. The applicant thus became a part of the RAC Unit formally also.

3. After issuing the letter dated 15.1.90 (Ann.A/4), already referred to, inviting applications for the post of Khalasi in the RAC Unit, the respondents proceeded to issue another letter dated 20.3.90 (Ann.A/6), in which a stipulation has been made to the effect that those working in the higher scale of Rs.800-1150 and wanting to be inducted against the posts of Khalasi in the RAC Unit in the lower pay scale of Rs.750-940 should submit in writing their willingness to accept bottom seniority on being so inducted. Despite this position, in the provisional seniority list issued by the respondents on 9.11.90 (Ann.A/2), the applicant has been shown to occupy a lower position (S.No.11 of the list) than the private respondents who occupy, in the same list, seniority position at S.Nos.1,2,5&7. The specific grievance raised on behalf of the applicant, in the aforesaid circumstances, is that even though he was a temporary status Khalasi, formally appointed in the RAC Unit by respondents order of 28.11.88 and those working in the higher pay scale of Rs.800-1150, inducted in the RAC Unit, were required to accept bottom seniority, the seniority position given to him in the aforesaid provisional seniority of 9.11.90 is lower than the position given to the aforesaid private respondents.

4. In order to seek remedy in the matter, the applicant had not only filed representations before the respondents but had also approached the recognised trade unions. However, ultimately, his representation has been rejected by respondent No.2 by his communication dated 21.4.95 (Ann.A/1), by which the respondent has sanctified the aforesaid provisional seniority list of 9.11.90.

5. We have heard the learned counsel on either side and have perused the material placed on record.

6. The learned counsel appearing on behalf of the respondents has not disputed the facts mentioned above but has sought to place reliance on the provisions of Paragraph 320 of the IREM, Vol.I, which is, for the sake of convenience, reproduced below :-

"320. RELATIVE SENIORITY OF EMPLOYEES IN AN INTERMEDIATE GRADE BELONGING TO DIFFERENT SENIORITY UNITS APPEARING FOR A SELECTION/NON-SELECTION POST IN HIGHER GRADE.

When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter-seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to the proviso that only non-fortuitous service should be taken into account for this purpose."

The learned counsel has also submitted that notwithstanding the submissions made on behalf of the applicant, Paragraph 312 of the IREM, Vol.I, will not find application in the present case inasmuch as those earlier working in the higher scale of Rs.800-1150 and later inducted in the lower scale of Rs.750-940 in the RAC Unit cannot be said to have made any request for their transfer from their earlier place of posting to the RAC Unit. They had, as brought out in the OA, approached the respondents for consideration for appointment/posting in the RAC Unit on being invited to do so by the respondents' notice dated 15.1.90 (Ann./4). *2*

7. We have considered the matter in the light of the pleadings of the parties and the arguments advanced by either counsel and find that although the applicant had been formally appointed as Khalasi in the RAC Unit by respondents' order dated 28.11.88, yet the appointment so made was entirely provisional and the applicant cannot be said to have been regularised as a Khalasi in the RAC Unit in consequence thereof. We have noted that in the notice dated 15.1.90, by which applications were invited for posting as Khalasi in the RAC Unit, no stipulation whatsoever was made indicating that those who would apply would be placed at the bottom of the seniority list. Such a provision, according to the learned counsel appearing on behalf of the respondents, can be made only where a specific request is made by the employee seeking transfer to another unit. That being the rule position, we take it that there could be no question of placing the aforesaid inductees earlier working in the higher grade of Rs.800-1150 at the bottom of the seniority list, irrespective of the provision made in the respondents' letter dated 20.3.90 (Ann.A/6) which make a stipulation contrary to the aforesaid rule (Para 312 of IREM, Vol.I). The applicant cannot, in the circumstances, rely on the stipulation regarding grant of bottom seniority made therein. Furthermore, according to the learned counsel for the respondents, the seniormost person empanelled alongwith the applicant by notification dated 31.12.87 was provisionally regularised on 25.4.90. The aforesaid seniormost person was regularly appointed or finally regularised w.e.f. 19.9.90. The aforesaid inductees, 8 in number, had been regularly appointed in accordance with the option exercised by them much earlier than the date of provisional regularisation of the aforesaid seniormost person on 25.4.90. Thus, the aforesaid inductees/optees earlier working in the higher pay scale of Rs.800-1150 had joined the RAC Unit much earlier than

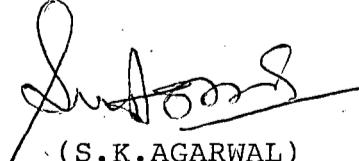
September, 1990. In the circumstances, according to the learned counsel, the respondents have correctly proceeded to draw up the seniority list dated 9.11.90 by placing reliance of Paragraph 320 of the IREM, Vol.I, which clearly lays down that in the event of a post being filled up by the staff working in different seniority units, the total length of continuous service in the same or equivalent grade held by the employees will be the determining factor for assigning inter-se seniority.

8. On consideration of the facts and circumstances brought forth in the present case, we find that the real issue in this case is not who came in first in the RAC Unit, the applicant or the optees. The issue is also not whether the applicant, having stepped into the RAC Unit on 25.11.88, i.e., long before the optees were even invited on 15.1.90, could have been finally regularised as Khalasi in that unit before the optees came on the scene. The real issue, as seen by us, is how the inter-se seniority of the applicant and the others like him on the one hand and the optees on the other will be determined without relating to the date or dates on which either party joined the RAC Unit or was regularised therein. The provisions made in para 320 of the IREM, Vol.I, would provide the answer, in our view, to the above mentioned real question raised in this OA. In conclusion, we find ourselves in agreement with the contentions raised on behalf of the respondents and, therefore, do not consider it necessary to interfere with the respondents' letter dated 21.4.95 (Ann.A/1), impugned by the applicant.

9. In the background of the above discussion, the present OA is found to have no merit and is dismissed. No order as to costs.


(S.A.T.RIZVI)

MEMBER (A)


(S.K.AGARWAL)

MEMBER (J)