

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 02-7-2002

O.A. No. 380/1998.

1. Pawan Kumar S/o Shri Man Mohan aged about 33 years, resident of 107, Ashokpura Road No. 4, Sodala, presently posted as Diesel Assistant Loco Foreman Jaipur Jn.
2. Ghisalal S/o Shri Lachcha Ram aged about 36 years, resident of near Railway Station, Sikar, presently posted as Diesel Assistant, Sikar.
3. Bajrang Singh S/o Shri Surja Ram aged about 33 years, resident of Near Railway Station, Jaipur, presently posted as Diesel Assistant Loco Foreman, Jaipur Jn.

... APPLICANTS.

versus

1. Union of India through General Manager, Western Railway, Churchgate Mumbai.
2. Divisional Railway Manager, Western Railway, Jaipur.
3. Shri Gopal Lal S/o Shri Bhanwarlal Diesel Assistant Loco Foreman Phulera.
4. Shri Laxminarain S/o Shri Kajodmal Diesel Assistant Loco Foreman, Jaipur.
5. Shri Vijay Kumar S/o Shri Chotu Ram, Diesel Assistant, Loco Foreman, Jaipur.

... RESPONDENTS.

Shri C. B. Sharma counsel for the applicants.
Shri R. G. Gupta, counsel for the respondents.

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Hon'ble Mr. H. O. Gupta, Administrative Member.
Hon'ble Mr. J. K. Kaushik, Judicial Member.



: O R D E R :
(per Hon'ble Mr. J. K. Kaushik)

Pawan Kumar, Ghisalal and Bajrang Singh have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, praying therein for the following reliefs :-

"(i) That the respondents may be directed to interpolate the names of the applicants at proper place at S. No. 352, 336 and 349 in place of private respondents by deleting their names instead of S. No. 382, 379 and 380 in Annexure-1, or above the officials of Penal dated 14.2.95.

(ii) That the respondents be further directed to treat the applicants senior to the private respondents for the purpose of further promotions on the post of Driver and be promoted prior to the private respondents on the post of Driver even they have allowed earlier than the applicants for Training for the post of Driver.

(iii) That the respondents be further directed to order in respect of applicants for the Training for the post of Driver, prior to junior persons on the basis of basic grade seniority.



(iv) Any other order/direction of relief may be granted in favour of the applicants which may be deemed just and proper and the facts and circumstances of this case.

(v) That the cost of this application may be awarded."

2. The factual matrix of the case as narrated by the applicants in the Original Application is that the applicants were initially appointed to the post of Khallasi Cleaner on 29.10.1987, 08.10.1987 and 09.10.1987 respectively. All of them got their promotions to the post of Fireman Grade-II and Diesel Assistant w.e.f. 08.07.1993 and 24.08.1995, respectively. A seniority list was issued in the cadre of Cleaner, wherein the names of the applicants No. 2 and 3 were shown at S. No. 85 and 103 respectively and that of Respondent No. 2 and 3 at S. No. 86 and 105. The names of the applicant No. 1 and Respondent No. 1 have not been shown in the seniority list dated 21.04.1989 (Annexure A-2).

3. However, all the applicants were considered to be senior to the respondents inasmuch as a

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eligibility as list was prepared on the basis of seniority vide letter dated 12.01.1994 and the names of the applicants were placed at S. No. 64, 44 and 58 respectively, the names of the private respondents No. 4,5 and 6 were placed at S. No. 65, 45 and 60 respectively. However, a selection was conducted and the applicants did not find place on the Penal prepared for the post of Fireman Grade-I vide letter dated 14.02.1995. However, the names of the Private Respondent No. 4 to 6 were shown at S. No. 39,24 and 37 respectively.

4. There was closure of the Steam side in the year 1995 and the post of Fireman Grade-I was abolished and a decision was taken for conducting the selection for the post of Diesel Assistant, wherein the applicants had passed in the selection and their names were placed in the Penal of Diesel Assistant at S. No. 10,7 and 8 respectively. The selection was finalised vide penal dated 31.05.1995. Thereafter, all the applicants were promoted and regularised on the post of Diesel Assistant vide letter dated 24.08.1995 (Annexure A-7). The names of the applicants are placed at S. No. 4, 6 and 33 of the promotion order. The private respondents were also promoted to the post of Diesel Assistant but without passing selection for the same.

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5. On the other hand, the private respondents were continued on the provisional penal of Fireman grade-I i.e. dated 14.02.1995 and they did not pass the selection to the post of Diesel Assistant. In fact the penal prepared on 14.02.1995 for the post of Fireman Grade-I was never give effect to. However, the official respondents seems to have exhausted both the penals simultaneously and while issuing the seniority list placed the applicants below the private respondents who never passed any selection. Thereafter a seniority list has been issued vide order dated 31.07.1995. Applicants have been shown as junior i.e. S. No. 382, 279 and 380 to the private respondents.

6. The official respondents further imparted the training to the post of Driver to their juniors without any selection on the post of Diesel Assistant. Applicants have submitted a representation in the matter, but nothing has been communicated to them. The seniority list dated 31.07.1997 was also not circulated and the moment it came to the notice that the matter was ~~represented~~.

7. It is further case of the applicants that the official respondents promoted certain junior persons of the penal 14 to 95 i.e. the penal of Fireman Grade-I in the year 1996 but they have been shown



senior to the applicants in the seniority list dated 31.07.1997 and in this way the applicants ought to have been shown at S. No. 352, 336 and 349 at the place of private respondents in Annexure A-1 or prior to the officials of penal dated 14.02.1995. The applicants have been shown as juniors to the number of other persons who have been promoted as Diesel Assistant vide order dated 21.11.1996. The names of such junior persons were mentioned at S. No. 362 to 371 of the letter dated 31.07.1997 (Annexure A-1). The Original Application has been filed on a number of grounds mentioned in the OA.

8. A counter reply has been filed on behalf of the Railway respondents and they have contraverted the facts and grounds raised in the OA. It has been submitted that the private respondents had passed the selection to the post of Fireman Grade-I on 14.02.1995. On the other hand, the applicants have passed the selection for the post of Diesel Assistant only on 31.05.1995 and those persons who have passed the earlier selection shall remain senior as per Para 306 of IREM, which provides (candidates selected for appointment at an earlier selection shall be senior to those selected later in respect of date of passing). Similarly it has been said that Shri Duli Chand, Suresh Chand, Hanuman Prasad and Sudarshan Lal are persons of

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panel of 1993 and the matter regarding the currency of the panel was referred to the General Manager who has been pleased to grant the relaxation. The grounds raised in the OA are not sustainable and the OA deserves to be dismissed with costs.

9. A detailed rejoinder has been filed on behalf of the applicants contraverting the contentions raised in the reply to the OA. It has been stated that the selection to the post of Fireman Grade-I is different selection and the same became immaterial the moment decision was taken to abolish the post of Fireman and create a post of Diesel Assistant. The selection of Fireman Grade-I cannot be equated with the selection of Diesel Assistant. In this way Para 306 of IREM has no application to the present case. Further it has been submitted that the private respondents never faced the selection to the post of Diesel Assistant and they can never be made senior to the applicants. Further they have never worked on the post of Fireman-I even for a single day subsequent to the selection inasmuch as the selection panel 14.02.95 was never gave effect to and could not have been given effect to, since the post of Fireman Grade-I is not at all available.

10. We have heard the learned counsel for the parties and carefully perused the record of the

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case.

11. The factual aspect of the case is ~~in~~ indeputable. It is not in dispute that the applicants have passed the selection to the post of Diesel Assistant vide Panel dated 31.05.1988 and the private respondents have not passed the selection to the post of Diesel Assistant. It is also not in dispute that post of Fireman Grade-I was abolished due to closure of the steam side and the panel, for which the private respondents i.e. Respondent No. 4,5 and 6 were empanelled vide panel dated 14.02.1995, were never promoted to the post of Fireman Grade-I from the said panel, remain inoperative and became redundant. We are of the considered view that the Para 306 of IREM has no application in the facts and circumstances of the case inasmuch as selection to the post of Fireman Grade-I cannot be compared to the selection for the post of Diesel Assistant and the Para 306 of IREM Vol. I applies to the cases where one has passed a selection for the same post at an early date and the other have passed the selection for same post at a subsequent date and in that case only, the person who is selected earlier will be treated as senior, but in the present case since the so called previous selection was for different post as well as became redundant and non-existence. The higher seniority

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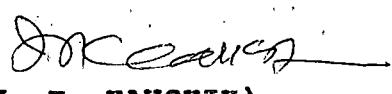
cannot be assigned to the private respondents on the pretext that they have passed the selection to the post of Fireman Grade-I at an early date. Had it been a case of promotion to the post of Fireman Grade-I, the position would have been different.

12. It is not the case of the government respondents that the private respondents passed the selection to the post of Diesel Assistant earlier to the applicants. As a matter of fact, they have never passed the selection to the post of Diesel Assistant. Since the post of Diesel Assistant is a selection post the very promotions ~~comes~~ of private respondents in particular and other persons who did not pass selection for the post of Diesel Assistant seems to be in general dehors of the rules. In any case it is for the respondents to take care of the matter as to whether one could be promoted to a selection post without passing the requisite selection. Here we are concerned with the case of the applicants ~~comes~~ who ~~comes~~ were promoted after due selection to the post of Diesel Assistant w.e.f. 24.08.1995 and they are entitled to get the seniority from the said date. Incidentally the private respondents wrongly or rightly were also promoted from the same date (even without passing test for Diesel Assistant). Once all of them have been appointed to the post of Diesel Assistant from the same date their seniority

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on the feeder post will govern the issue. On the feeder post i.e. Fireman Grade-II as well as on the post of Clearner, the applicants are admittedly senior to the private respondents on the feeder posts. In this view of the matter, the placing of the applicants and assigning the seniority on the post of Diesel Assistant below the private respondents is not in order and the applicants are entitled to get their due seniority on the said post above the places where private respondents have been placed and the consequences would follow. In this view of the matter, argument of the learned counsel for the applicants are sustainable and deserves to be accepted.

13. In view of the foregoing discussions, the Original Application merits acceptance and the same is allowed. Respondent No. 1 and 2 are directed to assign the seniority to the applicants on the post of Diesel Assistant above the private respondents i.e. above Sl. No. 352, 336 and 349 respectively and the impugned order Annexure A-1 dated 31-6/7-1997 is ordered to be modified accordingly. The applicants shall also be entitled for consideration of their further promotion to the post of Driver with all consequential benefits at par with their next juniors. This exercise shall be done within a period of three months from the receipt of a copy of this order. No costs.


(J. K. KAUSHIK)

MEMBER (J)


(H. O. GUPTA)

MEMBER (A)