

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of Order: 17-09-04

OA No.448/2001

Govind Ram s/o Mehaduram, Asstt. Technician (RAC), TL Depot, Railway Station, Ajmer under DEE, Ajmer r/o Gandhi Nagar, Opposite Lohar Colony, Roopangarh Road, Madanganj, Kishangarh, Distt. Ajmer.

.. Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai- now General Manager, North-West Railway, Near Railway Hospital, Jaipur.
2. The Divisional Rail Manager, North-West Railway, Ajmer Division, Ajmer.
3. The Senior Elec. Foreman (TL), Trains Lighting Depot, Railway Station, Ajmer.
4. Shri Hariram P. Asstt. Technician (RAC) under SEF (TL) Railway Station, Gandhidham.

.. Respondents

Mr.S.R.Chowrasia, counsel for the applicant.

Mr. R.G.Gupta, counsel for respondent Nos. 1 to 3

Mr. R.P.Sharma, counsel for respondent No.4

CORAM:

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

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

ORDER

Per Hon'ble Mr. M.L.Chauhan

The applicant who is working as Assistant Technician (RAC) filed this OA against the order dated 22.5.2001 (Ann.A3)

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whereby eligibility list for promotion to the post of Skilled Technician Grade-III was notified in which the name of the applicant was not included. Against this order the applicant has made representation dated 15.9.2001 (Ann.A4) in which it was specifically stated that Shri Hari Ram P Assistant Technician (RAC) who is junior to him on the basis of the seniority list dated 24.7.95 (Ann.A2) in which the name of the applicant figures at Sl.No.6 whereas name of said Shri Hari Ram P, respondent No.4, figures at Sl.No.8, has been included in the eligibility list Ann.A3 for the purpose of promotion to the post of Skilled Technician Grade-III whereas name of the applicant has not been included and as such it was requested that the applicant be also called for written test to be conducted for the purpose of selection to the post of Skilled Technician Grade-III. The said representation was rejected vide order dated 25.9.2001 (Ann.A1) whereby it was intimated that respondent No.4 has been made senior on the basis of decision taken in the meeting held between the union and administration vide PNM item No.51/99 and accordingly letter dated 10.11.99 was issued. Thus, according to the respondents the eligibility for the purpose of selection to the post of Skilled Technician Grade-III vide letter dated 22.5.2001 (Ann.A3) is in order. It was on the basis of these averments that the prayer was made for quashing the impugned order Ann.A1 or any other letter or seniority list which declares the applicant junior to respondent No.4 (letter No.E/EL/840/7 dated 10.11.99. In the OA it was further averred by the applicant that the applicant was not aware about any such letter dated 10.11.99 as such he could not file any representation against this letter to the higher authorities. It is further averred that for the first time vide letter dated 25.9.2001 (Ann.A1), the applicant came to know that

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respondent No.4 has been made senior to him ignoring the fact that respondent No.4 was transferred on his own request to RAC unit, as can be seen from the remarks column appended to the seniority list dated 24.7.95 (Ann.A2).

2. Notice of this application was given to the respondents. The respondents No.1 to 3 and respondent No. 4 have filed separate replies thereby justifying their action. In the reply, it has been stated that the applicant is not senior to respondent No.4 after assigning correct seniority to respondent No.4. The fact that the order dated 10.11.99 whereby the seniority of the applicant was changed on the basis of decision taken when the matter was raised by the trade union in the meeting vide PNM item No.51/99 has been admitted. The reason given for such change is that vide letter dated 12.4.91 employees of Train lighting and power group were called for the options for absorption on newly created posts in RAC group. Since the copy of this letter dated 12.4.91 has not reached at Gandhidham, hence the employees including respondent No.4 could not submit their options for the same. Accordingly, the respondent No.4 was assigned higher seniority than the applicant. Regarding the fact that the letter dated 10.11.99 was never served upon the applicant, as such the same could not be challenged at the relevant time, the respondents have themselves admitted that there is no acknowledgement to the effect whether the said order was served upon the applicant. However, in order to defeat the claim of the applicant, an affidavit has been filed by one Shri R.K.Sandliya, Section Engineering which is dated 6.2.03/10.2.2003 to the effect that copy of the letter dated 10.11.99 was displayed on notice board and the same was also served to the affected persons including the applicant without their acknowledgement. But for this affidavit there is no

*and another letter enclosure R-5*

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contemporaneous record to show that the applicant was served with this impugned letter dated 10.11.99 whereby the seniority of the applicant was lowered down.

3. When the matter was listed for hearing, objection was raised on behalf of the respondents that the revised seniority list dated 10.11.99 (Ann.R4) has not been challenged by the applicant. The applicant moved an application for amendment in which it was stated that the applicant was not aware about the letter dated 10.11.99, as can be seen from the averments made in paras 4(11), 4(12), 5(C), 5(e), 5(f), 5(h), 5(j), 5(k) and 5(1) of the OA and it was only on receipt of the letter dated 25.9.2001 (Ann.A1) the applicant for the first time learnt that his seniority has been malafidely and illegally lowered at the pressure of the union and without any notice of opportunity. Prayer was made for amendment in the OA by inserting para 4(14) and 5(n) and also making suitable amendment in the relief clause. This Tribunal subsequently allowed this application and the amended application was taken on record. In the amended OA, the applicant has prayed that respondent No.4 ~~who~~ is junior to the applicant as per seniority list dated 24.7.95 (Ann.A2) <sup>which</sup> is only effective and valid seniority list and consequently Ann.A1 or any other letter or seniority list which declared the applicant junior (letter No. E/EL/840/7 dated 10.11.99 issued by respondent No.2) be quashed. The applicant has also prays for quashing the seniority list dated 17.7.03 (Ann.A7) and 25.7.03 (Ann.A8) as non-est and inoperative so far as the applicant is concerned.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

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4.1 There cannot be any dispute to the fact that the applicant is senior to respondent No.4 as per the combined seniority list of Khallasi- RAC etc. pay scale Rs. 750-940 of Electric Department of Ajmer Division <sup>by dated 24.7.95 (Annex A-2)</sup> whereby the name of the applicant is shown at Sl.No.6 and name of respondent No.4 has been shown at Sl.No.8. From perusal of this seniority list Ann.A2, it is also evident that against the name of respondent No.4 in remarks column, it has been mentioned that he has joined the post of Khallasi (RAC) on his own request on lower seniority as per his own request made vide letter No. E/EL/840/7 dated 27.6.95. Thus, from the document Ann.A2, it is evident that the applicant was senior to the respondent No.4. The respondent No.4 was transferred to Ajmer Division on his own request and thus was assigned bottom seniority when he joined the post of Khallasi (RAC) on 17.7.95. It is also not disputed and has come on record that the respondents made interpolation in the seniority list Ann.A2 vide letter dated 10.11.99 (Ann.R4) which letter was admittedly issued pursuant to decision taken in the meeting dated 16/17.9.99 (Ann.R3) when the matter was raised by the trade union vide PNM item No.51/99. Admittedly, no opportunity was given to the applicant before taking such decision. The submission made by the learned counsel for the applicant that the said decision was taken at the instance of the union and the applicant was not given any opportunity while making interpolation in the seniority list dated 24.7.95, is well founded and has to be accepted. It was not legally permissible for the respondents to pass any adverse order thereby affecting the rights of the applicant and changing the seniority position to his detriment without issuing a show-cause notice to the applicant before passing the final order.

4.2 From the facts as stated above, it is clear that the

respondents have made up their mind to change the seniority list unilaterally and at the instance of the union, the affect of which was that name of the applicant was not included in the eligibility list dated 22.5.01 (Ann.A3) prepared for the purpose of promotion of Technician Grade-III and person junior to him namely respondent No.4 was included in the said eligibility list. Such action at the instance of the respondents taken unilaterally has adversely affected the rights of the applicant and as such the conduct of the official respondents while making interpolation in the seniority list dated 24.7.95 (Ann.A2) vide letter dated 10.11.99 (Ann.R4) is wholly arbitrary and bad in law. In case a show-cause notice would have been issued to the applicant the applicant would have been pleaded before the appropriate authority that respondent No.4 was transferred to Ajmer Division as per his own request made vide letter dated 27.6.95 and he was assigned bottom seniority. Thus, he cannot be placed above the applicant which fact has also been recorded and accepted by the respondents, as can be seen from the seniority list dated 24.7.95 (Ann.A2).

4.3 Further, from the material placed on record, it is evident that this aspect was not taken into consideration by the official respondents while revising seniority list vide letter dated 10.11.99 (Ann.R4). Rather the material placed on record shows that the seniority list was changed solely on the basis of decision taken when the matter was raised by the union vide its item No.51/99. At this stage, it will be sufficient to observe that right of the parties is not to be decided at the instance of the union and the same has to be decided in accordance with law. Further, we do not want to comment on this aspect any more but suffice it to say that if the official respondents want to pass appropriate orders.

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changing the seniority list dated 24.7.95 (Ann.A2) it could have been passed only after giving the affected person an opportunity to show cause why the earlier seniority list of the applicant should not be changed as respondent No.4 could not submit his application for his absorption in the newly created post in RAC group pursuant to letter dated 12.4.91 as the said letter was not reached at Gandhidham. Accordingly, we are of the view that action of the respondents in making interpolation in the seniority list dated 24.5.95 vide letter dated 10.11.99 (Ann.R4) on the basis of the decision taken and incorporated in the minutes dated 16/17.9.99 pursuant to the matter raised by the trade union vide item No.51/99, is without any authority of law and the same is quashed. The respondents are directed to consider the case of the applicant for selection to the post of Technician Grade-III pursuant to seniority list dated 24.7.95 (Ann.A2) and in case the applicant qualifies the said selection, he shall be given promotion to the said post notionally from the date when person junior to him has been promoted and consequential monetary benefits from the date the applicant joins the said post. Further, the seniority list dated 17.7.03 (Ann.A7) and 25.7.03 (Ann.A8) which have been prepared on the basis of the quashed letter dated 10.11.99 are hereby quashed.

The view which we have taken is in conformity with the case of Vijay Kumar and Ors. vs. Director General, AIR and anr, 11/99 Swamynews 84 In that case also the seniority of the applicant was revised pursuant to the order passed by the Calcutta Bench in OA No.1078/89 without issuing show cause notice to the applicant. The Principal Bench held that action of the respondents is arbitrary and not sustainable and that the promotion of the applicant was not at all the subject matter of the OA before the Calcutta Bench as they were promoted earlier than the subject matter of promotion order in

the said OA. It was further held that the respondents shall pass appropriate order only after giving such persons opportunity to show cause why the earlier seniority should not be restored.

4.4 Before parting with the matter, we wish to observe that action of the railway authority in this case is highly diplorable inasmuch as all out efforts have been made by the railway authorities to defeat the legitimate claim of the applicant. This, we say so, because firstly, the respondents tried to justify their action whereby the seniority was changed at the instance of the union unilaterally without giving show-cause notice to the applicant and when the applicant has taken specific stand in the OA that the said order dated 10.11.99 whereby the seniority of the applicant was changed was not made known to him, as such it could not be challenged at the relevant time, the respondents have placed on record letter dated 20.11.2001 (Ann.R5) and affidavit dated 6.2.03/10.2.2003 (Ann.R11) signed by one Shri R.K.Sandliya, Section Engineer working under Divisional Railway Manager, North Western Railway, Ajmer to controvert the assertion made by the applicant. From perusal of these documents, it is clear that this documentary evident was created after filing of this OA by the respondents. The document Ann.R5 is letter signed by Shri R.K.Sandliya. In this letter, he has given the information on the basis of letter written by the DRM (Estt.), Ajmer vide his letter dated 8.11.2001 which is to the effect that copy of the seniority list was displayed on the notice board and the same was handed over to the 3 affected persons. To the same effect is affidavit dated 6.2./10.2.03 which additionally clarifies that copy of the seniority list was handed over to the affected persons without their acknowledgement. The affidavit dated 6/10th February, 03

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(Ann.R11) was filed when this Tribunal has specifically directed the respondents to produce the contemporaneous record which show that copy of the so called seniority list was given to the applicant. These two documents cannot be accepted and deserve outright rejection in view of the fact that if one has regard to the letter dated 10.11.99 whereby interpolation was made to the earlier seniority list, it was specifically recorded in the last para that "उक्त कर्मचारियों को नोट करवा कर प्रवि.दे." Thus, it was incumbent upon the respondents to give copy of this letter and take signature in proof of having served the copy of the letter to the affected persons. Thus, ipsi dixit of the respondents that copy of the letter dated 10.11.99 was served to the applicant and other persons without their acknowledgement by creating record subsequent to filing of this OA cannot be accepted. We wish to observe that it will be open for the competent authority to take notice of this fact as to why these documents were created subsequently as we are prima-facie satisfied that this type of evidence was created only to defeat the legitimate claim of the applicant. However, we leave the matter here and hope that respondent No.2 would look into the matter so that in future such type of documents should not be created just to defeat legitimate claim of the applicant(s). We may also take note of the fact that respondents were also in hurry to issue revised seniority list dated 17.7.03 and 25.7.03 (Ann.A7 and A8) when the matter was already subjudice before this Tribunal. This fact also speaks volumes about the conduct of the respondents and leaves much to be desired.

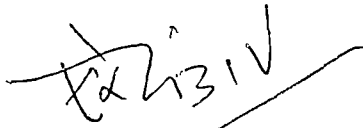
5. Accordingly the OA is allowed. The respondents are directed to take follow up action for implementing this

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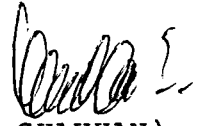
judgment as per direction contained in para 4.3 (supra) within  
three months from the date of receipt of a copy of this order.

No costs.



(A.K.BHANDARI)

Member (A)



(M.L.CHAUHAN)

Member (J)