

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR.

O.A. Nos. 459/01 & 460/01

Date of decision: 25/11/03

Ramesh Chandra Mathur, S/o Amarnath Mathur, aged about 51 years r/o 85/151, Sec. 8 Housing Board, Pratapnagar, Jaipur.

Applicant in O.A. No. 459/2001

V.K. Gupta, S/o C.M. Gupta, aged about 57 years r/o 1993, Marina Mansion, Johri Bazar, Jaipur 302 003

Applicant in O.A. No. 460/2001

versus

1. Union of India through the Secretary to the Government of India, Department of Railways, Ministry of Railways, New Delhi. 110 001
2. The General Manager (E), Western Railway, Church Gate, Mumbai 400 020
3. The Divisional Railway Manager, Western Railway Jaipur. 302 006.

Respondents in both the O.As.

Mr. R. N. Mathur : Counsel for the applicants in both the O.As.

Mr. S.S. Hassan : Counsel for the respondents in both the O.As.

CORAM:

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

O R D E R

Per Mr. J.K. Kaushik, Judicial Member.

R.C. Mathur and V.K. Gupta have filed O.A. No. 459/01 and 460/01 respectively for assigning seniority on the post of ATNL from the date of their initial appointment on adhoc basis with all consequential benefits. As the issue involved and the relief claimed in both the O.As are similar, they were heard together and are being disposed of by this common order.

2. O.A. No. 459/2001.

The brief facts of the case are that the applicant was appointed as Assistant Station Master in Western Railway on 29.4.72. After passing the selection, he was promoted to the post of ATNL on adhoc basis with effect from 20.10.84. A regular selection was made and the applicant was placed on the panel for the post of ATNL on 26.6.92. He was also imparted training for Senior Transportation promotion course at Udaipur. He was promoted to the next higher grade vide letter dated 2.3.93. However, his name was not included in the seniority list of ATNL of the year 1984 at the appropriate place and hence he made representation on 27.8.99 for fixing his seniority by taking into account his adhoc service as ATNL from 20.10.84. As there was no response from the respondents he filed O.A. No. 55/01, which was finally disposed of with a direction to the respondents to pass a speaking order on his representation. Thereafter an order was passed on 30.5.2001, rejecting his claim. This O.A has been filed on a number of grounds and the same shall be dealt with in subsequent paras.

O.A. No. 460/2001:

The applicant in this case also is similarly situated as that of the applicant in O.A. No. 459/01 and he was promoted to officiate on the post of ATNL with effect from 31.9.85 and he was further promoted to the post of Dy. CTNL in the scale of pay of Rs.2000-3200 vide order dated 2.7.91. He also filed O.A. No. 57/2001 for fixing his seniority on the post of ATNL from the date of his initial appointment on adhoc basis. The respondents were directed to pass a speaking order on his representation. Thereafter his claim was also rejected. Hence this O.A.

4. The respondents have contested the case and have filed separate replies to respective O.As. It has been averred that the applicants were initially posted on adhoc basis and it is only after they passed the regular selection they were given regular promotion as ATNL with effect from 24.3.92

and 26.4.91 respectively. It is also stated that the post of ATNL is a selection post and until one passes the regular selection he cannot be promoted on regular basis. It is further averred that in the promotion order giving them promotion on adhoc basis, it has been clearly mentioned that the service rendered by them on adhoc basis would not confer on them any right for regular appointment and the said service would not count for seniority. The D.R.M. has passed a reasoned speaking order. The learned counsel for the respondents submitted that the OAs deserves to be dismissed.

5. Rejoinders to the reply have also been filed by the applicants almost reiterating the stand taken in the O.A.

Q 6. We have heard the learned counsel for the parties at great length and have carefully perused the pleadings, records of the case.

7. The learned counsel for the applicants has reiterated the pleadings and argued with reference to rules relating to the adhoc appointment and the selection to the post of ATNL. He has vehemently contended that the applicants had been continued on the selection post for a very long time and the same is against the very spirit of the rules framed by the Railways. He also submitted that at the first instance the suitability of the applicants were adjudged by three senior officials and in fact the very promotion was on a substantive basis and the using of the word adhoc should not have been there. He has illustrated his arguments and endeavoured to show that the words 'ad hoc' 'temporary' and 'officiating' have been defined and explained by the Apex Court in a recent Judgement in the case of Rudra Kumar Sain & others vs. Union of India and others [JT 2000 (9) SC 299] and had taken us through para 15 and 16 of the Judgement. His main stress has been that the period of adhoc service ought to have been counted for the purpose of seniority.

8. The learned counsel has next contended that the period of adhoc service was counted for experience purpose in respect of one of the applicants who was promoted to the next higher grade by taking into consideration of his adhoc service of two years in the ATNL post. The learned counsel therefore contended that the entire period of adhoc service should be reckoned for the purpose of seniority. When he was confronted with a query as to whether any of the junior to the applicants have superseded them the learned counsel expressed his inability to give facts regarding this. However, he submitted that this particular post is to be filled by 100% by promotion.

9. On the contrary, the learned counsel for the respondents has reiterated the defence set out in the reply and has submitted that one can get seniority only after one is promoted after following the due process of selection and in the present case, the post was a selection post, which consists of written test and viva voce. Both the applicants had appeared in the selection for regular appointment which was held subsequently and they have passed in the selection. It is submitted by him that both the applicants never objected for appearing in the regular selection and the present claim that their adhoc service should be taken into account for fixation of seniority is an after thought exercise. He also submitted that it is not the claim of the applicants that any of their junior has been placed above them. It is also contended by them that the applicants have enjoyed the monetary benefits, and their pay has been fixed after their regular promotion by taking into account their adhoc service. He further submitted that the applicants were initially appointed on adhoc basis only after scrutiny by a committee which adjudged their suitability and hence they were continued on adhoc basis. It is submitted by him that scrutiny cannot substitute the positive act of selection. In this way of the matter both the original applications deserves to be dismissed.

10. We have considered the rival contentions. The arguments led on behalf of the applicants have been laudable and quite attractive but deceptive in substance. In the first instance it has not been made clear to us as to what the applicants would gain if the period of adhoc service is counted for the purpose of fixation of seniority in as much as no junior of the applicants have been given seniority over them. Admittedly, the applicants have got their due fixation of pay on promotion on a regular basis. Even if the contention of the applicants is accepted, it is not going to yield any fruitful result. In any case the assigning of seniority is by now well settled and in one of the latest decision of the Supreme Court in Md Ismails and ors vs. State of West Bengal and others [2002 (3) SLJ 81] it has been held that the seniority will only start from the date one has been appointed or promoted after following the regular process of selection meant for the particular post. In that case their Lordships were dealing with the matter relating to counting of seniority of the service rendered on adhoc basis wherein the adhoc promotion was given against the rules and the promotion was subject to Public Service Commission's approval. It was held that the service rendered on adhoc basis prior to the approval of the Public Service Commission cannot count for seniority.

11. As to the case of Rudra Kumar Jain (*supra*) relied on by the learned counsel for the applicants, the same is distinguishable on the facts from the present case in as much as in that case, promotions were given after due consultation with the High Court and having satisfied with the requirement of relevant rules, whereas in the instant cases adhoc promotions were given against the rules and the post in question was a selection post. Further the adhoc promotions were given without subjecting them to the selection test. Thus the applicants have been rightly given seniority from the date they passed the selection test. Therefore, this decision is not of any help to the applicants.

12. Applying the above ratio, the applicants have admittedly passed the regular selection in the year 1991 & 1992 and thereafter they have been given regular promotion and earlier to that they were only subjected to scrutiny test which cannot substitute the positive act of selection. Besides, the fact that the applicants have never objected to appear in the regular selection at any time. Therefore they cannot get the benefit of working on adhoc basis for the purpose of seniority which was obviously subject to passing the selection test.

13. In conspectus of the aforesaid discussion, we do not find any substance or merit in these applications. The same fail and stand dismissed with no order as to costs.

(A.K. Bhandari)
Administrative Member.

(J.K. Kaushik)
Judicial Member.

jsv.