

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 27.10.2004

OA No.583/2002

1. Pooran Mal Yadav s/o Shri Chiranji Lal Yadav, aged about 30 years r/o Badyalpur Khurd, Bandikui, at present employed on the post of Diesel Mechanic in North Western Railway, Jaipur Division, Phulera.
2. Ashok Kumar s/o Sh. Sunder Singh, aged about 36 years r/o 447 A, Railway Colony, Phulera, at present employed on the post of Diesel Mechanic in North-Western Railway, Jaipur Division, Jaipur.

.. Applicants

Versus

1. Union of India through General Manager, North Western Railway, Jaipur
2. Divisional Railway Manager, North Western Railway, Power House Road, Jaipur

.. Respondents

Mr. Nand Kishore, counsel for the applicants

Mr. R.G.Gupta, counsel for respondents.

CORAM:

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

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

O R D E R (ORAL)

The grievance of the applicants in this OA is regarding recasting of seniority list of Diesel Mechanic Grade-III scale Rs. 3050-4590 on the ground that the same has not been prepared in accordance with para 315 of the Indian Railway Establishment Manual (IREM) and prayed that after recasting of the seniority, the respondents may be directed to consider the applicants for the post of Diesel Mechanic Grade-

II, scale Rs. 4000-6000 based on their substantive seniority.

2. Facts of the case are that both the applicants were working as Senior Artisan Khalasi before their upgradation in the skilled grade pay scale Rs. 3050-4590 by treating the post as Diesel Mechanic Grade-III. Further promotional avenues from the post of Diesel Mechanic Grade-III was to that of Diesel Mechanic Grade-II in the pay scale of Rs. 4000-6000. Accordingly, the respondents issued an eligibility list for the purpose of appearing in the trade test to the category of Diesel Mechanic Grade-II in accordance with seniority of Diesel Mechanic Grade-III. The name of both the applicants did not find mention in the said eligibility list as they were not members of the Diesel Mechanic Grade-III prior to 1.10.2001, when the eligibility list was prepared. Both the applicants were promoted to Diesel Mechanic Grade-III only vide order dated 1.10.2001. Feeling aggrieved by their non-inclusion in the eligibility list for promotion for the post of Diesel Mechanic Grade-II both the applicants filed OA No.541/2001 before this Tribunal and this Tribunal vide order dated 27.11.2002 uphold the action of the respondents. Now the applicants by way of this OA want to seek the same relief of promotion to the post of Diesel Mechanic Grade-II, scale Rs. 4000-6000 on the ground that the seniority list of Diesel Mechanic Grade-III which is feeder category for promotion to the post of Diesel Mechanic Grade-II and on the basis of which the eligibility list has to be prepared for the purpose of promotion has not been correctly prepared in terms of para 315 of the IREM, though the applicants have not pleaded this fact in the earlier OA.

3. When the matter was listed for hearing on 7.10.2004,

the learned counsel for the respondents while drawing our attention to the pleadings made in the earlier OA and the findings recorded by this Tribunal in the earlier judgment whereby this Tribunal has categorically held that the eligibility list for promotion to the post of Diesel Mechanic Grade-II has been correctly prepared as the so called junior persons were promoted to the post of Diesel Mechanic Grade-III vide order dated 19.10.2000 whereas the applicants were promoted vide order dated 1.10.2001 almost one year prior to the promotion of the applicants and as such the applicants cannot gain seniority over the so called junior persons simply because the applicants were senior to the so called junior persons in the entry grade of Senior Artisan Khalasi, argued that the present OA is not maintainable. On the basis of the arguments advanced by the parties this Tribunal vide order dated 7.10.2004 passed the following order:-

"Heard the learned counsel for the parties. Learned counsel for the respondents has shown us the pleadings made in the OA No.541/01, whereby the applicant had prayed for the following reliefs:-

(i) That the impugned order dt. 1.9/10.2001 Annexure-A1 eligibility list for promotion to the post of Diesel Mechanic Grade-II pay scale Rs. 4000-6000 may please be declared illegal, arbitrary and the same may be modified by interpolating the name of the applicants at appropriate place in accordance with their seniority position. Further, the respondents may be directed to consider the case of the applicants for promotion to the post of Diesel Mechanic Grade-II pay scale Rs. 4000-6000 with all consequential benefits.

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

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

The said OA was disposed of by this Tribunal vide order dated 27.11.2002. In operative para of the said order, at page 10, the Tribunal made the following observations:-

"Admittedly the eligibility list for the purpose of appearing in the trade test to the category of Mechanic Grade II, scale Rs. 4000-6000 (Annexure A/1) has been prepared strictly according to the seniority list of Diesel Mechanic Grade-III (Annexure-R5). The eligibility list was prepared on 1.9/10.2001 whereas the applicants were not the member of Diesel Mechanic grade III prior to 1.10.2001. They were promoted as Diesel Mechanic Grade III only vide order dated 1.10.2001. It is not disputed that Diesel Mechanic Grade III is a promotional post from the post of Sr. Artisan Khalasi. It is also not disputed that eligibility list for the purpose of conducting the trade test to the higher post Diesel Mechanic Grade II has to be prepared on the basis of seniority in the cadre of Diesel Mechanic Grade III. In that view of the matter, until and unless it is established that the applicants were promoted to Diesel Mechanic Grade III earlier to that of so called persons who were junior to the applicants in the cadre of Sr. Artisan Khalasi or that so called junior persons were erroneously promoted to the post of Diesel Mechanic Grade III, the question of applicants gaining seniority over so called junior persons does not arise. In the absence of any specific rule holding that the continuous length of service would be the basis for seniority in a particular grade, entry into the grade is a normal rule. Applying that rule, the persons who were junior to the applicants in the lower grade of Sr. Artisan Khalasi were promoted vide order dated 19.10.2000 (Annexure R-2) whereas the applicants were promoted vide order dated 1.10.2001. Similarly, the seniority list as circulated vide letter dated 16.1.2001 pertaining to category of Diesel Mechanic cannot examine the validity of said seniority list since the eligibility list (Annexure A/1) dated 1.9/10.2001 has been prepared based on the seniority list Annexure R-5. As such the applicants cannot have any grievance that

their names have not been included in the eligibility list (Annexure A/1)."

Accordingly, the O.A. was disposed of. Now by way of the present O.A. the applicant in the garb of challenging the seniority list Annexure-R5 has also sought the same relief which he has prayed in, the earlier O.A. as can be seen from the relief clause, which is not legally permissible, and thus reads as under:-

(i) the respondents may be directed to produce the entire record concerning to the case and after examination of the same, they may be directed to place the names of the applicants taking into consideration of rule 315 of the IREM which is statutory in nature and binding to them.

(ii) They may be further directed to recast the seniority list of Diesel Mechanic grade III scale Rs. 3050-4590 interpolating the names of the applicants at appropriate place.

(iii) they may be further directed to consider the applicants for the post of Diesel Mechanic Gr.II scale Rs. 4000-6000 based on their substantive seniority.

Thus in view of the decision rendered by this Tribunal in earlier O.A. decided on 27.11.2002, the relief portion of which has been reproduced herein above, the present application is wholly misconceived and the same cannot be entertained. Further on the request of the learned counsel for the applicant, matter is adjourned to 14.10.04 in order to satisfy this Tribunal as to how the present application is maintainable."

However, the matter was further adjourned in the interest of justice on the request of the learned counsel for the applicants as to how the present application is maintainable and the matter was adjourned to 14.10.2004. Again on 14.10.2004, the matter was adjourned to 27.10.2004.

4. We have heard the learned counsel for the applicants.

The learned counsel for the applicants insisted that since the issue of seniority list was not raised in the earlier OA and the seniority list in the grade of Rs. 3050-4590 has been prepared in violation of para 315 of IREM, as such the present OA is maintainable and consequently the applicants are also entitled for promotion to the post of Diesel Mechanic Grade-II, scale Rs. 4000-6000. We have given thoughtful consideration to the submissions made by the learned counsel for the applicants. We are of the firm view that the present application is totally misconceived. In case the applicants were aggrieved of the seniority list of Diesel Mechanic Grade-III scale Rs. 3050-4590, which formed the basis for preparing the eligibility list which was challenged in the earlier OA, they could have pleaded this fact in the earlier OA. Having not done so, the principle of constructive res-judicata is clearly attracted in this case and as such the present OA is not maintainable. That apart, as can be seen from the portion of the judgment rendered by this Tribunal in earlier OA, the relevant portion of which has been reproduced hereinabove, this Tribunal has categorically held that the so called junior persons were promoted to the post of Diesel Mechanic Grade-III scale Rs. 3050-4590 vide order dated 19.10.2000 whereas the applicants were promoted vide order dated 1.10.2001. Thus, the so called junior persons to the applicants were senior in the feeder grade of Diesel Mechanic Grade-III. As such the question of applicants gaining seniority over the so called junior persons does not arise. Thus, in view of the clear cut findings given in the earlier OA, the applicants cannot file subsequent OA simply on the ground that this Tribunal in earlier OA has additionally observed that "seniority list as circulated vide letter dated 16.1.2001 pertaining to category of Diesel Mechanic Grade III has not been challenged and as

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such we cannot examine the validity of said seniority list since the eligibility list (Annexure-A/1) dated 1.9/10.2001 has been prepared based on the seniority list Annexure R-5". Thus, in the ~~gad~~ of this additional observation made by the Tribunal in the earlier OA it cannot be said that the applicants can file subsequent OA. In fact vide order dated 7.10.2004 the relevant portion of which has been extracted hereinabove, this Tribunal has given categorical finding that the present OA is wholly misconceived in view of the decision rendered by this Tribunal in earlier OA decided on 27.11.2002 by reproducing the relief clause made by the applicants in the earlier OA as well in this OA and the matter was adjourned in order to give further opportunity to the learned counsel for the applicants to make further submissions, if any, otherwise the matter could have been disposed of on the same date. Thus, we are of the firm view that the present OA is totally misconceived and the same is not maintainable in view of the decision rendered in the earlier OA decided on 27.11.2002.

5. Even on merits, the applicants have not made out any case. The grievance of the applicants is that the seniority list in the grade of Rs. 3050-4590 has been prepared in violation of statutory rules in para 315 of the IREM which is in the following terms:

"315. DEPARTMENTAL EXAMINATION/TRADE TEST

Subject to what is stated in paragraphs 316, 317 and 320 below, where the passing of a departmental examination or trade test has been prescribed as a condition precedent to the promotion to a particular non-selection post, the relative seniority of the railway servants passing the examination/test in their due turn and on the same date or different dates which are treated as one continuous examination, as the case may be, shall be determined with reference to their substantive or basic seniority."

Based on this para, the learned counsel for the applicants argued that seniority has to be determined with reference to the substantive or basic seniority i.e. the seniority of artisan khalasi scale Rs. 2660-4000 which has not been followed in true sense. The respondents in their reply have categorically stated that the provision of para 315 of the IREM is not attracted in the instant case and in para 4.12 of the reply affidavit, the following averments have been made:-

That the contents of para 4.12 of the O.A. are relating to para 315 of IREM under which promotion on continuation is provided. For example if for promotion to a particular post under the same notification if two trade tests are taken in continuation on the same date or on different dates; the main trade test and trade test precedent thereto and under both cases promotion is granted, then seniority will be counted from the substantive post. In the instant case this provision cited by the applicants is not applicable since the applicants are claiming seniority over those who had already passed the trade test and had been promoted much earlier. Therefore, the reply vide Annexure A/7 has been rightly given and the same is maintained here."

6. The applicants have filed rejoinder. The submissions made by the respondents in the reply has not been controverted at all. Against para 4.12 in the rejoinder the applicants have stated that "the averments made in this para of O.A. are maintained." Thus, there is no specific denial of the stand taken by the respondents that the provision of para 315 of the IREM is not attracted and the same is attracted if promotion to a particular post is made pursuant to one notification and if two trade tests are taken in continuation on the same date or on different dates, the main trade test and the trade test precedent thereto and under both cases promotion is granted,

it is only than the seniority is counted from the substantive post. The respondents have categorically stated that in the instant case this provision is not attracted since the applicants are claiming seniority over those who had already passed the trade test and had been promoted much earlier. We ~~are~~ entirely agree with the stand taken by the respondents as the applicants failed to satisfy this Tribunal even on merits as to how para 315 of the IREM is attracted.

7. Before parting with the matter, we would like to observe that the applicants have suppressed the material fact from this Tribunal. As per provision contained in CAT (Procedure) Rules, 1987 the application has to be presented in the prescribed proforma i.e. Form-I. According to Form-I against item No.7 it has been mentioned "matter not previously filed or pending with other court." Against this heading the applicant has made the following averments in the OA:-

"The applicant further declares that he has not previously filed any application, writ petition or suit regarding the matter in respect of which this Application has been made before any court or any other Bench of the petition or suit is pending before any of them."

We do not agree with the submission made by the learned counsel for the applicants that though the fact regarding filing of the previous OA has not been mentioned in para 7 of the OA but in fact under the heading Facts of the Case in para 4.15 the fact of filing of the earlier OA has been mentioned. Against para 4.15 the applicants have made the following averments:-

"That the applicants have assailed the said notification by filing O.A. No.541/2001 and interim

relief was allowed to the applicants to appear in the trade test of scale Rs. 4000-6000 for the post of Diesel Mechanic Gr.II and applicants have accordingly appeared in trade test. The O.A. was decided on 27.11.2002."

From the portion quoted above, the only fact which can be gathered from reading of this para is that the applicants have challenged the notification (eligibility list) in the earlier OA and they appeared in the trade test for the post of Diesel Mechanic Grade-II pursuant to interim directions given by this Tribunal and the OA was decided on 27.11.2002. This para nowhere states that the matter in controversy in earlier OA was the same which is involved in this OA. The applicants have deliberately suppressed this material fact regarding filing of the earlier OA in respect of the matter which is also involved in this OA by making a misleading statement against para 7 which para specifically deals with the fact whether "matter not previously filed or pending with any other court" and the applicants were required to give declaration specifically in that behalf. Indeed the applicants have specifically stated in this para that they have not previously filed any application in respect of the matter which is involved in the present OA. Rather the stand taken by the applicants in this OA is that the issue involved in this OA is entirely different than the issue involved in the earlier OA which contention has been rejected by us.

Q. According to us, the applicants have filed a false declaration by stating that they have not filed any application in any other bench in respect of the matter which is involved in this OA. We have already reproduced the relief clause and findings given by this Tribunal in earlier OA as

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well as the relief claimed by the applicants in this OA. In the earlier OA, the grievance of the applicants was regarding promotion to the post of Diesel Mechanic Grade-II in the scale of Rs. 4000-6000 on the ground that their names have been wrongly excluded in the eligibility list prepared for the purpose though the name of the junior person were included in the eligibility list. In the instant case also the issue is regarding promotion to the post of Diesel Mechanic Grade-II in the scale of Rs. 4000-6000 and for that purpose the applicants have prayed that the seniority list of Diesel Mechanic Grade-III scale Rs. 3050-4590 be recasted by interpolating name of the applicants at appropriate place and thereafter they be given promotion to the post of Diesel Mechanic Grade-II scale Rs. 4000-6000. Thus, we are of the view that the applicants have filed wrong declaration regarding the fact that they have not previously filed any application in respect of which this application has been made before any court or any other bench. This OA was liable to be rejected solely on this ground besides the applicants were also liable for filing false affidavit and perjury in view of the provisions contain under Section 30 of the Administrative Tribunal Act, 1985 whereby it has been specifically stipulated that 'all proceedings before a Tribunal shall be deemed to be judicial proceedings within the meaning of Section 193, 219 and 228 of the Indian Penal Code'. However, we are of the view that instead of taking any action for filing wrong affidavit, ends of justice will be served if a cost is imposed on the applicants. Accordingly, the applicants will be liable to pay a cost of Rs. 1000/- to the respondents and respondent No.2 is at liberty to recover the same proportionately from both the applicants from their salary, in case the same is not paid within two months from today.

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g. With these observations, the OA is dismissed.

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(A.K.BHANDARI)

Member (A)

~~MLC~~

(M.L.CHAUHAN)

Member (J)