

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH.

O.A.NO.358 OF 2003

April 19, 2005.

**CORAM : HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR.A.K.BHANDARI, MEMBER (A).**

1. Ram Babu S/o Shri Bhanwar Singh, aged about 50 years, at present working L.R.T.T.E. Under CTI, Ajmer.
2. Kailash Chand S/o Late Shri Hardev, aged about 46 years, Plot No.112, Rana Pratap Nagar, Jhotwara, Jaipur, at present L.R.T.T.E./T.C. C.T.I. (Sleeper), Jaipur.
3. Mahendra Sharma S/o Late Shri Bhonri Lal Sharma, aged about 43 years, R/o 108, Mahatma Gandhi Nagar, Ajmer D.C.M., Ajmer Road, Jaipur, at present working as L.R.T.T.E/T.C.C.T.I. (Slee[per]), Jaipur.
4. Hardev Singh S/o Shri Hazari, aged about 46 years, working as LRTTE under CTI (SL), Jaipur.
5. Murari Lal Sharma S/o Shri Kishnhan Lal, aged about 53 years, at present working as LRTTE, under CTI, Ajmer.
6. Deva Ram S/o Shri Hanuman Prasad, aged about 48 years, at present working as L.R.T.T.E./ T.C.C.T.I. (Sleeper), Jaipur.
7. Gauri Shankar Sharma S/o Late shri Rameshwar Prasad Sharma, aged about 44 years, at present working as T.C. Under HTC, Jaipur, R/o Rinwa Ki Dhani, Gudha Bairsal, Tehsil Dudu, District Jaipur (Raj).
8. Bhagwan Sahai Meena S/o Shri Peetha Ram Meena, aged about 43 years, at present working as TTE under DCTI, Jaipur R/o Deva Ka Bas (Meenon Ka Bera), Via Badhal, District Jaipur (Raj).
9. Sanwar Mal Saini S/o Shri Laxman Dayal Saini, aged about 46 years, R/o Dundlod, Via Mukandgarh, District Sikar, presently posted as L.R.T.T.E/T.C. C.T.I. (Sleeper), Jaipur.
10. Kailash Prasad Sharma S/o Shri Kanhiya Lal Sharma aged about 50 years, R/o Karnawar, Tehsil Baswa, District Dausa.

Applicants

By : Mr.P.V.Calla, Advocate.

Versus

1. Union of India through General Manager, North-West Railway, Headquarters Office, Jaipur.
2. The Divisional Railway manager, Jaipur Division, North-West Railway, Jaipur.
3. Senior Divisional Personnel Officer, Jaipur Division, North-West Railway, Jaipur.
4. Mali Ram S/o Shri Surja ram, at present working as HTC under Station Manager, Jaipur.
5. Ashok Kumar Jain S/o Shri Guman Lal Jain, at present working as TTE under CTI (Jaipur) at Ajmer.
6. Mahendra Kumar S/o Shri Suda Ram, at present working as TTE under CTI Sikar.
7. Kamlesh Kumar Sharma S/o Shri Dwarka Prasad Sharma, at present working as TTE under CTI, (Jaipur) at Ajmer.
8. Raghuveer Singh Shekhawat S/o Shri Bhagirath Singh, at present working as TTE under DCTI, Jaipur (NWR).
9. Sita Ram Jat S/o Shri Ladu Ram, at present working as TTE under CTI, (Jaipur) at Ajmer.

10. Mangi Lal Gupta S/o Shri Roop Narain Gupta, at present working as TTE under CTI Bandikui.
11. Ghamandi Ram Meena S/o Shri Lalu Ram Meena, at present working as TTE under CTI Bandikui.
12. Mahesh Kumar Sethi S/o Shri Nathu Ram, at present working as TTE under DCTI Jaipur.
13. Girraj Prasad S/o Shri Tulsi Ram, at present working as TTE under DCTI, Jaipur.
14. Vijay Chawala S/o Shri Jai Kishan, at present working as TTE under DCTI, Jaipur (NWR).
15. Girish Singh S/o Shri Shambu Singh, at present working as TTE under DCTI, Jaipur (NWR).
16. Kamlesh Pareek, at present working as TTE under CTI-Sleeper, Jaipur.
17. Devesh Kumar S/o Shri Bhiga Ram, at present working as TTE under CTI Bandikui.
18. Radhey Shyam Bairwa S/o Shri Badri Prasad, at present working as TTE under CTI (Jaipur) at Ajmer.
19. Mahendra Kumar S/o Shri Jagdish Prasad, at present working as TTE under CTI Sleeper, Jaipur.
20. Ajay Solanki S/o Shri C.R. Solanki, at present working as TTE under CTI (Jaipur) at Ajmer.
21. Man Singh S/o Shri Samat Singh, working as TTE under CTI, Sikar.
22. Lekhan Lal S/o Shri Hardev, presently working as TTE under CTI, Bandikui.
23. Vipin Yadav S/o Shri Shiv Lal, at present working as TTE under CTI, Rewari.
24. Nand Kishore S/o Shri Bal Krishan, at present working as TTE under CTI Bandikui.
25. Ashok Kumar Badsar S/o Shri hari Krishan Sharma, working as TTE under CTI (Jaipur), at Ajmer.
26. Naresh Mukhija, at present working as TTE under CTI, Bandikui.
27. Deepak Mukhija, at present working as TTE under CTI, Bandikui.

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Respondents.

By : Mr. Anupam Aggarwal, Advocate for Respdts. No. 1 to 3.
 Mr. Nand Kishore, for Respondents 4, 6, 7, 9, 13, 18, 19, 22, 24 & 30.
 None for other respondents.

ORDER (oral)

KULDIP SINGH, VC.

The facts as narrated by the applicants are that private respondents were recruited directly through Railway Recruitment Board, Ajmer, as per panel formed in July, 1993. They were allotted Jaipur Division. They underwent training at ZTS, Udaipur and the final panel based on the merit position obtained by them in the training was issued on 7.1.1994. However, due to non-availability of vacancies, they were ordered to be posted at Ratlam and Baroda Division. They filed O.A. No. 170/94, 198/94 and 247/94 with a prayer

that they be allotted to Jaipur Division. These O.As. Were decided by order dated 12.9.1994, with a direction to the respondents that after considering the cases of persons rendered surplus, the appointments should be offered to the persons nominated for appointment as Ticket Collectors in the Jaipur Division in the order of their seniority to the extent of availability of vacancies. It was also ordered that those who cannot be absorbed in Jaipur Division may be offered appointments in the nearby division and also elsewhere in the Western Railway. It was also made clear that those who are keen to come back to Jaipur Division be brought back to Jaipur in order of their seniority. In compliance to orders of the Tribunal, the private respondents were brought to Jaipur Division as per orders at Annexures A-7 to A-10 issued in 1998.

The applicants were empanelled for promotion to the post of Ticket Collector (Group -C) against Rankers' quota after going through positive act of selection consisting of written test and interview by letter dated 9.5.1995 (Annexure A-3 / Annexure A-4). Except one applicant, others underwent training at ZTS Udaipur from 13.5.1995 to 7.7.1995 at Zonal Training Centre, Udaipur. They completed their training successfully as per result dated 7.7.1995 (Annexure A-5). They were issued posting orders on 24.7.1995 and they joined on 25.7.1995, except applicant no.9 who joined later on (Annexure A-6).

They submit that since the private respondents came to be posted in Jaipur Division only in 1998, whereas they are continuing here since 1995, so they are senior. The seniority list of Ticket Checking Staff was issued on 23.5.1997 (Annexure A-11) in which the applicants find a mention whereas names of private respondents are missing. The respondents issued a provisional seniority list on 30.10.1998 (Annexure A-12) in which the applicants were shown below the private respondents.



On the basis of the seniority list, annexure A-12, a suitability test was conducted for the post of TTE and the private respondents were promoted as such in the pay scale of Rs.4000-6000. S./Shri Prem Chand Saini, Deepak Bhardwaj and Mool Chand Jat who were shown above the private respondents in the seniority list dated 30.10.1998 (Annexure A-12), were brought down by a subsequent seniority list dated 18.3.1999, below the private respondents and they filed different O.As. Before this Tribunal on the grounds that since they were appointees of 1994 and the private respondents were appointed in 1998, so they cannot be assigned seniority below the private respondents/direct recruits. The O.As. Filed by those three persons were allowed by orders at annexures A-15 and A-16 dated 24.4.2002 and 25.4.2003 respectively. The impugned orders dated 18.3.1999, 16.7.1999 and 25.1.2000 were quashed. Direction was issued to recast the seniority of Ticket Collectors strictly as per date of joining in Jaipur Division in respect of those applicants as well as persons recruited through Railway Recruitment Board, maintaining the inter-se seniority as per para 302 of IREM Vol. I, 1989. The promotions already made as TTE were also ordered to be reviewed.

The applicants plead that in view of the dictum of this Tribunal in Annexures A-15 and A-16, they were required to be shown above the private respondents. Applicant No.7 made a representation to the respondents, supported by recommendation of Union copies of which are Annexures A-17 and A-18. In compliance to the order Annexure A-15, the respondent Railways promoted Shri Deepak Bhardwaj as TTE, by order dated 28.2.2003 (Annexure A-13). However, the claim of the applicants has been rejected by orders dated 17.4.2003 (Annexures A-1 & A-2) on the grounds that seniority to S/Shri Deepaki Bhardwaj was given as per orders of Tribunal and thus, the applicants are not entitled to seniority etc.

By way of the present O.A the applicants have prayed for

declaring the orders dated 17.4.2003 (Annexures A-1 and A-2), as illegal and for direction to the respondents to recast the seniority afresh assigning the seniority to the applicants above the private respondents as per their date of joining in Jaipur Division. And for review of the promotions made on such alleged illegal seniority lists.

The O.A has been resisted by the respondents by filing a detailed reply. It is submitted that seniority list issued in 1998 and 1999 cannot be challenged now being barred by time. The judgments relied upon by applicants are not applicable to them as applicants in those cases were either direct recruits or compassionate appointees against direct recruitment quota whereas applicants are promotee category. They submit that while putting an indent for direct recruit quota as assessment is done in accordance with Rule No.127 (1) (i) & (ii) of IREM Vol. I under which 66-2/3% is for direct recruits and 33-1/3% is for promotees i.e. 2 for direct recruits and one for promotee. Notification for recruitment of Ticket Collectors scale Rs.950-1500 were issued in Employment Notice No.3/91 and they applied for the same and appeared in written examination on 23.2.1992 at different places. They were found fit for appointment as T.C. In April, 1993. They passed and found successful in the examination at ZTC Udaipur on 21.12.1993. Their names were recommended for posting on Jaipur Division. However, on account of surplus staff, they were denied posting at Jaipur on which O.As which were allowed in their favour. Under the orders of this Tribunal issued on 12.9.1994, it was made clear that the private respondents will be brought back to the Jaipur Division and they will not lose seniority as per the original panel position. Thus, the private respondents have rightly been granted seniority as the period spent by them at other places cannot be wiped off for the purpose of seniority in view of protection granted by this Tribunal. The promotion orders of private respondents in the pay scale of Rs.4000-6000, have not been challenged by the

applicants. The promotion of the applicants as T.C. in Jaipur Division was beyond the quota meant for them and as such they were not entitled to seniority from the initial date of their joining as T.C. at the time of posting of private respondents to other Divisions, their lien was maintained.

The private respondents 4,76,18 & 22 have filed a separate reply. Their stand is that O.A. is hopelessly barred by time as the seniority list issued in 1998 and 1999 is being challenged now. In the order dated 12.9.1994, the seniority of the private respondents was protected even for the service rendered by them in the other divisions and their lien was maintained at Jaipur Division. In pursuance of the said decision, the respondents Divisional Office, Jaipur, passed an order dated 19.2.1998 (Annexure R-3/2), clarifying that seniority of the private respondents shall be determined in accordance with their merit position in the Jaipur Division. The order of this Tribunal in the case of Shri Deepak Bhardwaj dated 14.4.2002, on being challenged in High Court of Jaipur in CWP No.5492/2003 has been stayed by order dated 25.9.2003 (Annexure R-3/4). Even in the order dated 7.4.1998 (Annexure R-3/6), the Divisional Office, Jaipur, has indicated that the seniority of the private respondents is to be determined on the basis of their merit obtained in Jaipur division. We have heard learned counsel for the parties at length and perused the material on the file.

First of all, we take up the preliminary objection of raised on behalf of the respondents that the O.A. is barred by time. It is submitted that the applicants have indirectly sought a direction for assignment of seniority over private respondents which event took place in 1998. At this stage, learned counsel for the applicant submitted that the seniority list has been changing from time to time and ultimately the request of the applicants has been rejected by impugned orders, Annexures A-1 and A-2 and as such the O.A. is

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well within the period of limitation. We are unable to digest the argument advanced on behalf of the applicants. One thing is certain that in the seniority list dated 30.10.1998, the place of the private respondents on the basis of their initial selection and appointment, even though they stood posted to other Division, remained above the applicants. This position has remained intact from 30.10.1998 even till date, even after the seniority lists have been revised from time to time. Thus, the cause of action for the applicants arose in 1998 itself. It is well settled that limitation starts from the cause of action and repeated representations do not extend the period of limitation. It was so held in the case of Union of India & Others Vs. Nand Lal Raigar, AIR 1996 SC, Page 2206. In this case also the cause of action arose to the applicants in 1998. The representations filed by them have been rejected in 2003 and that will not extend the period of limitation occurred to the applicant in 1998. The Apex Court in the case of High Court of A.P. Vs. Mahesh Parkash & Others, 1995 SCC (L&S), Page 278, has crystallized the law holding that if delayed representation is considered and rejected, such rejection cannot extend the period of limitation. In Bhoop Singh Vs. Union of India & Others, 1992(2) SLJ (SC), Page 103, the Apex Court went to the extent of holding that relief, howsoever well deserved, should not be granted if the claimant is guilty of laches and delay. On account of delay and laches of applicants, the private respondents have been granted further promotions and even if the claim of the applicants is allowed, that will result in administrative chaos. The things which stands settled cannot be unsettled after long lapse of time. Moreover, the condonation of delay is not automatic. One has to file an application seeking condonation of delay with cogent reasons and with full justification for each and every day's delay. There is a specific period of limitation provided under A.T.Act, 1985, which is quite less as compared to general law of limitation. One can pose a

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challenge to a final order within a period of one year only. Obviously this has been done with a view to secure that settled things are not unsettled. Further, learned counsel for the private respondents referred to a decision of the Apex Court in Ramesh Chand Sharma etc. Vs. Udhamp Singh Kamal & Others, in C.A.No.3119 of 1997 decided on 12.10.1999. In that case the Tribunal had allowed the O.A. despite the fact that the order of non-promotion was time barred. The applicant had not made any application for condonation of delay. The Apex Court held that the Tribunal was not right in deciding the O.A. on merits overlooking the statutory provisions contained in Section 21(1)& (3). Reliance was also placed on the decision in the case of Secretary to Government of India & Others Vs. Shivram Mahadu Gaikwad, 1995 Supp(3) SCC, 231. In view of these facts we find that the O.A. is barred by time and is liable to be rejected.

The next contention raised by the learned counsel for the applicants is that since there is a decision by this Tribunal in the case of similarly situated persons who have been assigned seniority over the direct recruits selected through the Railway Recruitment Board, so the applicants are also entitled to benefit of said judgement. We find that in those cases, the applicants were appointed on compassionate grounds etc. and there was dispute of seniority amongst appointees recruited against direct recruitment quota whereas the dispute in this case is determination of seniority of promotees vis-a-vis direct recruits. Moreover, the decision in the case of Deepak Bhardwaj (supra) is under challenge before the Hon'ble High Court of Rajasthan, and interim orders have been issued staying the operation of the said decision dated 24.4.2002. In any case, it is well settled proposition of law that decision in some other case cannot extend the period of limitation for another litigant. Moreover, the facts are distinguishable as the applicants belong to promotee



category, they cannot take benefit of decisions cited by them at annexures A-15 and A-16.

Learned counsel for the applicant submitted that the issue that date of joining is the determining factor ^{for a} counting of seniority is the law as declared by this Tribunal and on the basis of the same the applicants are entitled to seniority over and above the private respondents. It is undisputed that direct recruits had filed O.A.No.170/94 before this Bench of the Tribunal which was allowed on 12.9.1994. Some of the observations being relevant are reproduced as under :

"This is a case in which justice has to be rendered to all the concerned parties. As far as the applicants are concerned, they have been recruited by the railway Recruitment Board after being put through the process of written examination and interviews and they have also undergone training at the Zonal Training School, Udaipur..... The learned counsel for the Government respondents has not been able to ascertain the exact number of vacancies available for appointment/absorption of the applicants in Jaipur Division or in the other Division. However, he has stated that the Government respondents shall make all efforts to absorb as many of the applicants as possible within the Jaipur Division and the rest of them at the earliest in the neighbouring and other Divisions of the Western Railway. Three to four of the applicants have since expressed their willingness to be appointed / absorbed in the Bombay Division for the present and they can be offered appointments in the Bombay Division at this stage. So the immediate action of the Government respondents would be to offer appointments to the applicants as Ticket Collectors either in Jaipur Division or in the neighbouring or other Divisions of the Western Railway, for the present, wherever vacancies are available and the offer of appointment would be made in the order of their merit position in the select panel, the senior persons being offered appointments in the Jaipur Division, in the neighbouring Division and the other Divisions in that order. Once all the applicants have been given appointments/ are absorbed in the manner mentioned above, the respondents shall make efforts to bring all those back to the Jaipur Division, who have not been appointed in the Jaipur Division, as and when vacancies arise in the Jaipur Division. Thereby, according to the learned counsel for the Government respondents, all the applicants would be offered appointments immediately as Ticket Collectors without displacing the persons rendered surplus in the Jaipur Division. Those of the applicants who have now expressed their willingness to be appointed/absorbed in the Bombay Division may be appointed/absorbed therein at present. As soon as vacancies start becoming available in the Jaipur Division, those of the applicants who are keen to come back to the Jaipur Division, may be brought back to Jaipur Division in the order of their seniority. We make it clear that **th persons brought back to the Jaipur Division in accordance with directions given above shall not lose seniority as per their original merit position.** The directions given in this paragraph shall be applicable to all the persons whose names were forwarded for appointment/absorption as Ticket Collectors in the Jaipur Division, regardless of whether they have filed applications before the Tribunal or not. This is intended to ensure that no injustice is done to persons who may otherwise be senior to the applicants as per their merit position. We expect that the respondents shall appoint/absorb these persons in accordance with the above directions without any undue delay, as they have been awaiting appointments for over a year now. We make it clear that the right of the private respondents otherwise eligible for the

post of Ticket Collectors shall not be affected".

A perusal of the above order makes it clear that the direct recruits have been given a protection in regard to their seniority by this Tribunal in the fashion that persons brought back to the Jaipur Division in accordance with the directions of the Tribunal shall not lose seniority as per their original merit position. It appears that this specific finding recorded by the Tribunal was not brought before the Tribunal while disposing of O.A. filed by Deepak Mukhija etc. In any case, the findings recorded by this Tribunal in the case of Deepak Mukhija etc. were in regard to determination of seniority amongst direct recruits itself and not between direct recruit and promotees.

We find that the direct recruits were selected and were awaiting their posting but due to administrative reasons i.e. Absence of vacancies, they were not allowed to join their respective posts and were adjusted in other Divisions. Obviously, it was not the fault of the direct recruits. They were willing to work in Jaipur Division but it was the respondent Railways which did not allow them to join in Jaipur Division. This lead the direct recruits to file O.A. before this Bench which was allowed on 12.9.1994 with specific finding that they shall not lose their seniority as per their original merit position. In other words, the seniority is to be determined on the basis of original merit position and not the date of joining. This view also finds support from the decision of the apex Court in the case of G. Deendayal Ambedkar Vs. Union of India & Others, 1996(6)SLR, Page 612 and Prem Kumar Verma Vs. Union of India & Others, 1998(8) SLR, page 240 wherein a view has been taken that the seniority under IREM provisions, is to be determined as per merit and not on the basis of training or joining, if an employee has joined his duty within a reasonable time. Thus, no fault can be found with the action for the respondent Railways in granting the seniority to the direct recruits on the basis of merit position obtained by them in the Jaipur

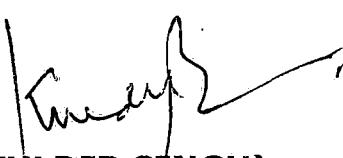
Division. The applicants under went training from 13.5.995 to 7.7.1995 whereas the private respondents completed such training as per order issued on 7.1.1994 which is much prior to the applicants. In this case para 303 (a) would apply which provides that "candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts. Those who join the subsequent courses for any reason whatsoever and those who pass the examination in subsequent batches, will rank junior to those who had passed the examination in earlier courses". The perusal of this provision makes it clear that the applicants having passed the course subsequent to the private respondents, cannot claim a place above the private respondents.

It is argued that the applicants were given place in the seniority list dated 23.5.1997 whereas the private respondents were not there and now they cannot be placed above in the subsequent seniority list.

Obviously if for administrative reasons the private respondents were adjusted in some other Divisions, they could not be placed in the seniority list issued in 1997. *but their does not favour them in coming back to Super Kr*

In view of the above discussion, this O.A. turns out to be barred by time as well as devoid of any merit and is rejected, leaving the parties to bear their own costs.


(A.K.BHANDARI)
MEMBER(A)


(KULDIP SINGH)
VICE CHAIRMAN

April 19, 2005.

HC*