

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 03.01.2005

OA No.378/2003

S.C.Bhardwaj s/o late Shri Om Prakash, at present working on the post of Junior Engineer-I, Overhead Equipment (OHE), O/o the Senior Section Engineer, T.R.D., Western Central Railway, Bharatpur r/o R.E.Quarter No. Type-III, 777EA T.R.D. Railway Colony, Bharatpur.

.. Applicant

Versus

1. Union of india through the General Manager, Western Railway, Jabalpur (M.P.)
2. The Divisional Railway Manager, Western Central Railway, Kota Division, Kota.
3. The Senior Divisional Electrical Engineer, T.R.D., Western Railway, Kota.
4. Shri Om Prakash Paliwal, Section Engineer, Office of Senior Divisional Electrical Engineer, T.R.D., Western Central Railway, Kota.
5. Naresh Kumar s/o Shri Phool Singh, Section Engineer, Kota r/o Q.N. RE/3/28, Railway Colony, Kota Junction.
6. O.P.Paliwal s/o Shri Madan Lal Paliwal, Section Engineer r/o Q.No. 339-B, Railway Colony, Shyamgarh.
7. R.P.Pathak s/o Shri Biri Singh Section Engineer, r/o Q.No. 233-A, Railway Colony, Bayana.
8. T.P.Singh s/o Shri Vishwanath singh, Junior Engineer, r/o Q.No.314-B, Railway Colony, Shyamgarh.
9. V.K.Singh s/o Shri Rajpal, Junior Engineer-I, T.K.D. r/o Q.No.302/C-3/III, West Central Railway Colony, Tughalkabad (New Delhi).
10. Hansraj Sharma s/o Shri Hardayal Sharma, JE-I/BTE, r/o Q.No.227 E/F, Railway TRD Colony, Bharatpur.
11. P.C.Gupta s/o Shri Mahesh Chand Gupta, Junior Engineer-Ist, Kota Q.No. RE/III/RD/4B, Railway Colony, Kota Junction.
12. Raghu Nandan Singh s/o Shri Jai Sukh, JE First, Sawai Madhopur, Q.No.RE/II/28, Railway Colony, Sawai Madhopur.

.. Respondents

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V

OA No.379/2003

M.P.Sharma s/o Shri C.L. Sharma, working on the post of Junior Engineer-I, Office of T.R.D., Western Central Railway, Kota r/o R.E.Type III, 13-B, Railway Colony, Kota Junction.

.. Applicant

Versus

1. Union of india through the General Manager, Western Railway, Jabalpur (M.P.)
2. The Divisional Railway Manager, Western Central Railway, Kota Division, Kota.
3. The Senior Divisional Electrical Engineer, T.R.D., Western Railway, Kota.
4. Shri S.K.Tyagi, Section Engineer, Office of Chief Traction Power Controller, Western Central Railway, Kota Division, Kota.
5. Naresh Kumar s/o Shri Phool Singh, Section Engineer, Kota r/o Q.N. RE/3/28, Railway Colony, Kota Junction.
6. O.P.Paliwal, Section Engineer r/o Q.No. 339-B, Railway Colony, Shyamgarh.
7. R.P.Pathak s/o Shri Biri Singh, Section Engineer, r/o Q.No. 233-A, Railway Colony, Bayana.
8. T.P.Singh s/o Shri Vishwanath singh, Junior Engineer, r/o Q.No.314-B, Railway Colony, Shyamgarh.
9. V.K.Singh s/o Shri Rajpal, Junior Engineer-I, T.K.D. r/o Q.No.302/C-3/III, West central Railway Colony, Tughalkabad (New Delhi).
10. Hansraj Sharma s/o Shri Hardayal Sharma, JE-I/BTE, r/o Q.No.227 E/F, Railway Third Colony, Bharatpur.
11. P.C.Gupta s/o Shri Mahesh Chand Gupta, Junior Engineer-Ist, Kota Q.No. RE/III/RD/4B, Railway Colony, Kota Junction.
12. Raghu Nandan Singh s/o Shri Jai Sukh, JE First, Sawai Madhopur, Q.No.RE/II/28, Railway Colony, Sawai Madhopur.

.. Respondents

Mr. P.V.Calla, counsel for applicants

Mr. V.S.Gurjar, counsel for respondent Nos. 1 to 3
None present for the other respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

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O R D E R (ORAL)

By this common order, we propose to dispose of both these OAs as identical question of law and facts are involved in these cases.

2. Briefly stated, applicant in OA No.379/03, Shri M.P.Sharma and applicant in OA No.378/03, Shri S.C.Bhardwaj were initially recruited as Apprentice Electrical Chargeman, grade Rs. 1400-2300 and was allotted to Bombay Division. For this post, the recruits have to undergo a training of two years before joining on the working post. Both these applicants reported for training on 5.7.85 and 22.7.85 respectively and in their cases training period was curtailed to 52 weeks. They were put on the working post on 22.7.87. Thereafter they were transferred to Kota Division on administrative grounds. It is further stated that they were promoted from the post of Chargeman which was redesignated as Junior Engineer-II to the post of Junior Engineer-I vide order dated 30.1.90. It is further case of the applicants that after their transfer from one division to another in administrative exigency, the Headquarter vide office letter dated 25.7.94 circulated the terms and conditions as fixed by the General Manager (E) for the purpose of determination of seniority (Ann.A3). As per these instructions candidates who have been transferred from other divisions with seniority in the administrative interest will get their seniority according to the date of entry in the grade of Rs. 1400-2300 on absorption after completion of prescribed training of two years. Accordingly, the applicants were assigned seniority showing their date of initial appointment after completion of training as on 22.7.87 as per seniority list dated 7.8.95 (Ann.A6 in OA

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No.379/03 which is at page 33 of the paper book). In the seniority list, name of one Shri R.P.Morya find mention at Sl.No.1 whereas the name of applicant S/Shri M.P.Sharma and S.C.Bhardwaj find mention at Sl.No.2 and 3. This seniority list was declared as provisional seniority list and subsequently vide order dated 7.5.96 the seniority list issued on 7.8.95 was proposed to be revised on the ground that the proposed revision is a result of examination of the representations received against the said seniority list and while issuing the proposed revised list again affected employee were given opportunity to represent against this list, in case they feel aggrieved with the same. The said seniority list came to be challenged in OA No.649/96 filed by Shri R.P.Morya whose name find mention at Sl.No.1 of the provisional seniority list dated 7.8.95. The said OA was disposed of vide order dated 17.4.02 by holding that the seniority list issued vide letter dated 26.12.90 was prepared after the final result of the training and the relative seniority of the applicant vis-a-vis recruitee of his batch as determined under provisions of para 303 of the Indian Railway Establishment Manual and the seniority has to be determined on the basis of merit position of the recruitees in the examination held on completion of their training. Once the seniority has been determined on the basis of marks obtained in the examination after training, there can be no reason for making any change in the seniority list especially when the applicants were transferred from Bombay to Kota on administrative grounds. Thus, resultantly, the impugned order dated 9.5.96 (Ann.A1) was quashed and the seniority of the applicant therein in the grade of Rs.1400-2300 was restored as was obtaining in terms of the orders dated 26.12.90 and 7.8.95. However, while disposing of the OA, the impugned order

dated 9.5.96 (Ann.A1) was quashed and set-aside qua the applicant therein. Pursuant to the order passed by this Tribunal dated 17.4.02 in earlier OA No. 649/96, the respondents vide order dated 11.6.02 issued afresh seniority list restoring the position as per seniority list dated 7.8.95. The said seniority list has been placed on record as Ann.A8. In the said seniority list the name of Shri R.P.Morya, applicant in OA No.649/96 find mention at Sl.No.1 whereas names of applicants in the present OAs find mention at Sl.No.2 and 3. The said seniority list was again revised by the respondents vide impugned order dated 25.11.2002 (Ann.A1) whereby the seniority list dated 11.6.2002 was cancelled in so far as the applicants in both these OAs are concerned. However, name of Shri R.P.Morya was shown at appropriate place treating his initial date of appointment for the purpose of determining seniority and subsequently the respondents also issued another seniority list dated 4.7.03 (Ann.A2) whereby name of Shri R.P.Morya has been shown at Sl.No.3 in the seniority list of Junior Engineer-I scale Rs. 5500-9000 whereas names of present applicants have been shown at Sl.No.12 and 13. It is this order which is under challenge in these OAs. The grievance of the applicants is that in view of the decision rendered by this Tribunal in the case of Shri R.P.Morya (supra), it was not permissible for the respondents to again revise the seniority list thereby ignoring initial date of appointment for the purpose of seniority contrary to the decision rendered by this Tribunal in the case of Shri R.P.Morya which has attained finality. It is on this basis, the applicants have prayed for quashing the impugned order dated 25.11.2002 (Ann.A1) and seniority list dated 4.7.2003 (Ann.A12).

3. The respondents in their reply have not disputed the facts as stated by the applicants. The only stand taken by them in the reply is that the seniority list dated 4.7.2003 has been issued correctly and the action of the respondents is perfectly legal and in consonance with the service law jurisprudence. It is stated that the seniority list dated 7.8.95 was a provisional seniority list and against this seniority list representations were received from the affected persons and accordingly the amended seniority list was issued vide communication dated 9.5.96 thereby calling upon objections if any within a period of one month. It is stated that the seniority list dated 11.6.02 was amended vide order dated 25.11.2002 in compliance to the order dated 17.4.02. The benefit was given to Shri R.P.Morya, the applicant therein and therefore the judgment dated 17.4.2002 was applicable in the case of Shri R.P.Morya only. The private respondents have also filed separate reply. Additionally, it has been stated that the judgment of this Tribunal in the case of R.P.Morya is under challenge before the Hon'ble Rajasthan High Court which is still pending.

4. We have heard the learned counsel for the applicants as well as the learned counsel for the official respondents and gone through the material placed on record.

4.1 It is not in dispute that the case of present applicants is squarely covered by the decision rendered by this Tribunal in OA No.649/96 decided on 17.4.02. Admittedly, the applicant therein and the applicants in the present OAs were transferred from Bombay Division to Kota Division in the exigencies of administration. Further, as can be seen from Headquarter office letter dated 25.7.94 which stipulated the guidelines for preparing the seniority list, at item No.5 the

following observations has been made:-

"With reference to your above quoted letter it is advised that the seniority of ELC, scale Rs. 1400-2300 (RP) may be prepared on the following lines and finalize the same by issuing notification etc.:-

- 1)....
- 2).....
- 3).....
- 4).....

5) Candidates who have been transferred from other divisions with seniority in the administrative interest will get their seniority according to date of entry in the grade 1400-2300 (RP) on absorption after completion of prescribed training of two years."

Keeping in view the aforesaid criteria, the respondents issued a provisional seniority list dated 7.8.95 whereby name of the applicant in OA No.649/96 find mention at Sl.No.1 whereas names of the applicants in these OAs find mention at Sl.No.2 and 3. It was not legally permissible for the respondents to again issue a provisional seniority list dated 9.5.96 contrary to the headquarter office letter dated 25.7.94 and also contrary to the provisions contained in Para 303 of the IREM which stipulates that the seniority has to be determined from the date of entry in the grade on absorption after completion of the prescribed period of training of two years. Thus, this Tribunal in earlier OA has rightly came to the conclusion that the seniority of the applicant therein namely Shri R.P.Morya in the grade Rs. 1400-2300 shall stand restored in terms of order dated 7.8.95. Once the seniority qua Shri R.P.Morya in terms of order dated 7.8.95 has been restored by this Tribunal in earlier OA, it is not legally

permissible for the respondents to adopt entirely different procedure for determining the seniority of the applicants in these OAs, who are similarly situated and whose names find mention at Sl.No.2 and 3 immediately after the name of Shri R.P.Morya as reflected in the seniority list dated 7.8.95. Indeed, the respondents while implementing the earlier judgment dated 17.4.02 vide order dated 11.6.02 (Ann.A8) has rightly assigned seniority to these two applicants immediately after the name of Shri R.P.Morya at Sl.No. 2 and 3. According to us, the respondents committed mistake in issuing order dated 25.11.2002 thereby extending the benefit only to the applicant in OA No.649/96 and depriving the present applicants the benefit of seniority as granted to them vide order dated 11.6.2002 and order dated 7.8.95 solely on the ground that the judgment in earlier case was confined only to Shri R.P.Morya (applicant therein) especially when this Tribunal in the earlier OA has categorically held that candidates who were transferred from other divisions in administrative interest were to be given their seniority according to the date of entry in the grade Rs. 1400-2300 on absorption after completion of prescribed training of two years.

4.2 Accordingly, both these OAs are allowed. The impugned order dated 25.11.2002 and consequential seniority list dated 4.7.2003 are hereby quashed. The seniority of the applicants in the grade of Rs. 1400-2300 as earlier issued vide order dated 7.8.95 and seniority list dated 11.6.2002 issued pursuant to the decision rendered by this Tribunal vide order dated 17.4.2002 in OA No.649/96 shall stand restored. The applicants shall also be entitled to all benefits which has been granted to the applicant in OA No.649/96. The respondents shall comply with these orders within two months from the date

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of receipt of this order by communicating the revised position to the applicant. Parties are left to bear their own costs.

(A.K.BHANDARI)

Member (A)

W W W /
(M.L.CHAUHAN)

Member (J)