

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No.825 of 2001

Jabalpur, this the 18th day of December, 2006.

Hon'ble Dr.G.C.Srivastava,Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member

1. Shri Abdul Israr, S/o Shri Abdul Bashir, Aged 40 years, R/o RB-1, 101/11, East Railway Colony, Khajanjibagh, Bhopal.
2. Shri Dilip Kumar, S/o Shri Babu Lal, aged 46 years.
3. Shri Shailendra Kumar Joshi, S/o Shri Ram Krishna Joshi, Aged 41 years.
4. Shri Baboolal Vishwakarma, S/o Shri Motilal Vishwakarma, aged 47 years.
5. Shri Ram Saran Pal, S/o Shri Brijlal Pal, Aged 41 years.
6. Shri Raj Dhar, S/o Shri Dhanni aged about 47 years.

Applicants 2 to 6 C/o Coach Repair Workshop,
Nishadpura, Bhopal

-Applicants

(By Advocate – Smt.S.Menon)

VERSUS

1. Union of India, Through: Secretary, Ministry of Railway, Railway Bhawan, New Delhi.
2. General Manager, Central Railway, Chhatrapati Shivaji Terminus, Mumbai.
3. Chief Works Manager, Coach Repair Workshop, Bhopal.



4. Shri Hashmat Ali, S/o Shri Mohammad Sharif, aged about 35 years, R/o RB-1, 101/7, Khajanjibagh, Bhopal.

-Respondents

(By Advocate – Shri M.N.Banerji)

ORDER

By Dr.G.C.Srivastava,VC.-

This case has travelled back to us on being remitted by the Hon'ble High Court through its order dated 16.8.2004 in Writ Petition No.2808/2002. The operative portion of the order is reproduced below:

“14...we intend to say, in the absence of reasons to distinguish the conferral of benefit on Hasmat Ali with retrospective effect the Railways should put forth the stand clearly before the Tribunal which, being a fact finding authority, should dwell upon the same and record a finding whether the petitioners were similarly situated to be conferred the benefit of regularization from the date of their appointment on adhoc basis. If the Tribunal comes to such a conclusion, needless to emphasise the date of regularization would be the governing factor for determination of seniority”.

This OA was filed by the applicants aggrieved by the order dated 21.6.2001 (annexure A-5) whereby the respondent-railways regularized the services of respondent no.4 in grade-III with effect from 27.2.1991 and accordingly fixed his seniority above the applicants. Consequently, the applicants have prayed for the following relief:

“8(i) ..to set aside the order dated 21.6.2001/Annexure A-5 and/or be pleased to direct the respondent Railways to regularize the services of the applicants in Grade-III with effect from 27.2.1991.

(ii)...to direct the respondent Railways to reckon the seniority of the applicants by placing their name above the name of respondent No.4”.

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2. The facts of the case are that respondent no.4 Hashmat Ali was initially appointed as Khalasi Gr.IV vide order dated 26.8.1983 at Parel Workshop, Mumbai in the pay scale of Rs.750-940 (RPS). He was given the higher pay scale of Rs.800-1150 in 1986. Subsequently, vide order dated 15.7.1989, he was transferred to Coach Repair Workshop (for short 'CRWS'), Bhopal. Thereafter, on clearing the required departmental examination, he was promoted to the post of Skilled Artisan Grade-III in the pay scale of Rs.950-1500 vide order dated 27.2.1991 (annexure A-3). His services were regularized on the post of Skilled Artisan Grade-III with effect from 16.6.1993 through order dated 20.9.1993. Thereafter, he was promoted to the post of Coach Repairer Grade-II in the pay scale of Rs.1200-1800 through order dated 11.10.1993 after he passed another departmental examination. Thereafter, he was again promoted to the post of Coach Repairer Grade-I in the pay scale of Rs.1320-2040 through order dated 19.7.1996 after he cleared another departmental examination. All of a sudden, he was reverted from the post of Coach Repairer Grade-I to Coach Repairer Grade-II through order dated 23.2.1999. Aggrieved by this order, he filed an Original Application bearing No.195/1999 before this Tribunal which was disposed of on 6.10.2000 with the following order:

"7. Based on the contention of the rival parties and facts and circumstances of the case, we are of the view that the applicant shall be deemed to have been promoted to Grade-III on regular basis at Coach Repair Workshop w.e.f. 27.2.91. His seniority vis-à-vis direct recruits is required to be determined afresh by the respondents as per law. If in the seniority of Grade-III so determined, the applicant's position is higher than the direct recruits, the applicant shall be continued in the post of Grade-I and he shall also be entitled to pay and allowances of this post from the date of reversion till the stay order was effected. His seniority in Grade-II and Grade-III shall also be redetermined keeping in view his

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seniority in Grade-III. In case, on redetermination of the seniority of the applicant, it is found that the applicant's position shall be below direct recruits, the respondents shall give him a show cause notice giving reasons and after receipt of representation, if any, within the specified time and after due consideration of representation and after having passed a reasoned order, they shall be at liberty to revert him to the Grade-II. Let all actions be completed within four months from today. The stay order shall continue till passing of the reasoned order on his representation".

3. Complying with the above order, the respondent-railway passed an order dated 21.6.2001 (annexure A-5) whereby the services of respondent no.4 were regularised with effect from 27.2.1991 and his position in the seniority list was also revised in accordance with this date of regularization.

4. The claim of the applicants is that they were also appointed as Khalasi Helper but from a date prior to that of respondent no.4 and accordingly in the seniority list of Khalasi Helper (annexure-A-1) their names appear at serial nos.1,6,8,9 & 11, ⁶and while the name of respondent no.4 is at 12. Even as skilled artisan grade-III the applicants were senior to respondent no.4 (annexure A-3). In view of these facts, the applicants claim that their seniority should also be revised and they should be placed above respondent no.4 in the seniority list of Coach Repairer Grade II (annexure A-10).

5. Opposing the contention of the applicants, the respondents have submitted that the cases of respondent no.4 and the applicants are not comparable, as respondent no.4 and the applicants were working in different seniority units before they came to Bhopal. While maintaining their lien and seniority in their parent unit, the promotion to artisan grade-III was made on local and temporary adhoc basis based on the length of service as Khalasi Helper and the list at annexure A-3 was not the seniority list. Further,

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respondent no.4 was promoted as artisan/technician grade-III on regular basis with effect from 16.6.1993 as somebody junior to him was promoted as technician Gr.III in his parent Parel workshop with effect from 16.6.1993. Subsequently, he was also promoted to Gr.II and Gr.I with effect from 21.6.1994 and 19.7.1996 respectively. On the other hand, the applicants were regularized in Gr.III on 21.6.1994 on their absorption in CRWS, Bhopal and were further promoted to Gr.II with effect from 5.1.1995. They were not promoted ^{as Gr.III} earlier than 21.6.1994, ^{Gr} as ~~as~~ no junior employee working in the parent unit/workshop of the applicant was promoted to Gr.III prior to 21.6.1994. In view of these facts, it is averred by the respondents, that since the applicants were never senior to respondent no.4 at any stage, they can not claim any relief based on the decision in OA No.195/1999.

6. It has also been contended by the respondents that the applicants never challenged the seniority list published on 16.11.1996 wherein the name of respondent no.4 appears in the list of Gr.I whereas of the applicants in the list of Gr.II. Subsequently, based on the directions of this Tribunal in OA No.195/1999, whereby respondent no.4 was assigned seniority in Gr.III with effect from 27.2.1991, the seniority of respondent no.4 was further changed. The respondents have asserted that the placement of the applicants in the seniority list is correct and needs no change.

7. We have heard the arguments advanced by the learned counsel of both the parties and have also gone through carefully the order of the Hon'ble High Court in Writ Petition no.2808/2002 dated 16.8.2004. In the said order dated 16.8.2004, the Hon'ble High Court has held that since Hashmat Ali has been given the benefit of retrospective promotion by holding that he was entitled to regularization with effect from 27.2.1991, when ^{Gr} ~~the~~ was

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promoted as Gr.III on adhoc basis, this Tribunal has to determine whether the applicants in the present OA are similarly situated to be conferred the benefit of regularization from the date of their appointment on adhoc basis. This Tribunal had observed in OA No.195/99 that since Hashmat Ali was appointed in February, 1991 and direct recruitment in Gr.III took place in July 1991, Hashmat Ali has to be treated as senior to the direct recruits in Gr.III. Accordingly, the Tribunal held that Hashmat Ali "shall be deemed to have been promoted to Grade-III on regular basis at Coach Repair Workshop w.e.f. 27.2.91" and that "[H]is seniority vis-à-vis direct recruits is required to be determined afresh by the respondents as per law".

8. The case of Hashmat Ali arose because of his reversion from the post of Coach Repairer Grade-I to Coach Repairer Grade-II with a view to accommodate direct recruits. These direct recruits were appointed through Railway Recruitment Board as Technician Grade-III in July, 1991 and were regularized in January, 1992 as per their terms of appointment. In 1996, Hashmat Ali was promoted as Gr.I on adhoc basis before these direct recruits, as initially the direct recruits were placed below Hashmat Ali in the seniority list. Subsequently, since Hashmat Ali was regularised in 1993, and these direct recruits in 1992, the respondents placed direct recruits above Hashmat Ali but subsequently reverted the latter from Grade-I to Grade-II to accommodate the direct recruits. This prompted Hashmat Ali to file OA 195/1999.

9. In OA 195/1999, the Tribunal arrived at the finding that Hashmat Ali shall be deemed to have been promoted to Grade III on regular basis at CRWS with effect from 27.2.1991 on the basis of four fold arguments advanced by the learned counsel for

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Hashmat Ali. The relevant portion from the Tribunal's judgment in the aforesaid OA 195/99 is reproduced below:

"6.3 The main contentions of the learned counsel for the applicant were four folds. Firstly that as per Railway Board letter 1.4.81, there can be no adhoc promotion for the posts filled on the basis of trade test and therefore all the promotions of the applicants were on regular basis. Secondly, as per established law, even adhoc promotions based on due selection and on regular vacancies would entitle the applicant the benefit of seniority on the basis of continuous officiation and subsequent regularization. Thirdly the respondents have not been able to show any rules with regard to fixation of seniority in open cadre. To his ^(sic) knowledge there are no separate rules for fixation of seniority in open or closed cadre. In fact open and closed cadre words do not find place in any of the Railway's statutory rules. Thirdly, if it was an open cadre till 20.6.94 as per the reply of the respondents, how could direct recruitment take place in any open cadre. The respondents certainly had regular posts against which the applicant and the direct recruits were appointed and therefore the applicant was appointed against regular posts in Grade-III and in subsequent grades. Fourthly, since there were no rules for filling up the posts including the percentage of the post through direct recruit and promotees, and in the absence of rota quota, the date of appointment to a post should be the crucial date for fixing the seniority in Grade-III and since the applicant was appointed in FEB'1991 and the direct recruits in July, 1991, the applicant shall be senior in Grade-III and consequently the order of reversion from Grade-I to Grade-II is required to be quashed".

The aforesaid order of the Tribunal was upheld by the Hon'ble High Court vide order dated 5.2.2001 in writ petition no.447/2001.

10. From the above it is clear that Hashmat Ali was given the benefit of adhoc promotion to Grade-III for regularisation basically on the premise that adhoc promotions based on due selections and on regular vacancies would entitle an adhoc appointee benefit of seniority on the basis of continuous officiation and subsequent regularization. The applicants in the present OA were also

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promoted to Grade-III along with Hashmat Ali with effect from 27.2.1991 after passing the departmental examination vide order of even date placed as annexure A-3. In that order, the applicants were shown as senior to Hashmat Ali. Subsequently, Hashmat Ali was regularized with effect from 16.6.1993 when his juniors in his parent department were promoted as Gr.III, while the applicants were regularized in the said grade with effect from 21.6.1994 after their absorption in CRWS. But, the fact remains that the applicants continuously officiated in Grade-III and were subsequently regularized and vacancies were available when they were appointed on adhoc basis after passing the departmental examination. Thus, the basic principle which was accepted by the Tribunal in OA No.195/1999 while directing regularization of Hashmat Ali with effect from the date he was appointed on adhoc basis in Gr.III is equally applicable in the case of the applicants. Thus, following the directions given by the Hon'ble High Court in Writ Petition No.2808/2002, since the case of the applicants is comparable with that of Hashmat Ali, they are also entitled to regularization in Gr.III with effect from 27.2.1991. Further, since they were senior to Hashmat Ali as Gr.III as per annexure A-3, their names as Gr.III will continue to remain above Hashmat Ali.

11. We further notice that the applicants were promoted to Grade-II on 5.1.1995 while Hashmat Ali was promoted to this grade on 21.6.1994. Subsequently, Hashmat Ali got further promotion to Grade I on 19.7.1996, while the applicants continued to stagnate in Grade-II. Consequently, in the seniority lists published on 16.11.1996 (annexure A-9) the names of the applicants appear in Grade-II list while the name of Hashmat Ali appears in the seniority list of Grade-I. Rightly so, because even though the applicants were senior to Hashmat Ali as Grade-III, the

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position got reversed in the seniority lists of Grade II and Grade-I by virtue of the promotion of Hashmat Ali to these grades before the applicants, on passing prescribed departmental examinations. ^{CL} There is, therefore, no doubt that the seniority of the applicants vis-à-vis Hashmat Ali as Grade-II has been shown ^{correctly} in annexure A-10 ^{CL} ~~correctly~~ which was published on 6.1.2000 after Hashmat Ali was reverted to Grade-II from Grade-I.

11. In the result, the OA is allowed to the extent that the respondents are directed to regularize the applicants in Grade-III with effect from 27.2.1991 on the analogy of Hashmat Ali, who will rank below the applicants in the seniority list of Grade-III. Order to this effect may be issued within three months of the date of receipt of this order. The seniority of the applicants vis-a-vis Hashmat Ali as Grade-II undergoes no change and it remains as shown in annexure A-9 which is in accordance with the date of their promotion to the Grade concerned as per the relevant rules/guidelines. No costs.


(A.K. Gaur)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

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पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
 प्रतिलिपि अवधि धितः--

प्रलिलिपि अग्रे दितः--

- (1) सचिव, एनए जवाहरलाल नेहरू एकेडमी, जवाहरपुर
(2) अध्यक्ष श्री. श्रीराम शर्मा के काउंसल
(3) प्रत्यक्षी श्री/श्रीमती के वगउंसल
(4) जयपाल, को. प्र. नं. १, जवाहरपुर नं. १, धरौड़
सूचना एवं आवाजपक कार्यवाही हेतु

उप रजिस्ट्रार

22/12/06