

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 1121 of 2000

Jabalpur, this the 16th day of October, 2003
Hon'ble Shri J.K. Kaushik, Judicial Member
Hon'ble Shri Anand Kumar Bhatt, Administrative Member

1. Ashok Agarwal,

aged about 36 years,

S/o Shri Shiv Saran Das Agarwal,

J.E.II, Furnishing Section,

Coach Rehabilitation Workshop,

Central Railway, Bhopal (MP)

R/o Qr. No.3/112, Ranthambore

Complex, M.P. Nagar,

Bhopal-11 (MP)

2. Ajay Pusalkar,

aged about 33 years,

S/o Shri Sadashiv N. Pusalkar,

J.E.II, Furnishing Section,

Coach Rehabilitation Workshop,

Central Railway, Bhopal (MP)

R/o Qr. No.219/8, Railway Colony,

Bhopal-10 (MP)

3. Pramod Kumar Deshmukh,

aged about 36 years,

S/o Shri Panjab Rao Deshmukh,

J.E.II, Furnishing Section,

Coach Rehabilitation Workshop,

Central Railway, Bhopal (MP)

R/o R.B. II, 215/7, CRWS Colony,

Bhopal-10 (MP)





4. Vivek Anand,
aged about 30 years,
S/o Shri S.C. Anand,
J.E.II, Bogie Section,
Coach Rehabilitation Workshop,
Central Railway, Bhopal (MP)
R/o Qr. No.768-A, Ashoka Garden,
Bhopal (MP)
5. Ajay Pendke,
aged about 37 years,
S/o Shri M.V. Pendke,
J.E.II, Bogie Section,
Coach Rehabilitation Workshop,
Central Railway, Bhopal (MP)
R/o 2/7, Shalimar Enclave,
E-3, Arera Colony,
Bhopal (MP)
6. Sanjay Suryavanshi
aged about 35 years,
S/o Shri R.P. Suryavanshi,
J.E.II, Carpentry Section,
Coach Rehabilitation Workshop,
Central Railway, Bhopal (MP)
R/o R.B. II, 229/8, CRWS Colony,
Bhopal (MP)


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7. Karan Kumar,
aged about 35 years,
S/o Shri Ram Das,
J.E.II, PCO Section,
Coach Rehabilitation Workshop,
Central Railway, Bhopal (MP)
R/o 218/9, R.B. II,
CRWS Colony,
Bhopal (MP)
8. Rajendra Khare,
aged about 33 years,
S/o Shri K.L. Khare,
J.E.II, Carpentry Section,
Coach Rehabilitation Workshop,
Central Railway, Bhopal (MP)
R/o 218/10, R.B. II,
CRWS Colony,
Bhopal (MP)
9. Virendra Badgiyan,
aged about 35 years,
S/o Shri Mohan Lal Badgiyan,
J.E.II, Carpentry Section,
Coach Rehabilitation Workshop,
Central Railway, Bhopal (MP)
R/o 208/7, R.B. II,
CRWS Colony,
Bhopal (MP)



10. Viresh Tiwari,
aged about 34 years,
S/o Shri Kailash Tiwari,
J.E.II, Yard Section,
Coach Rehabilitation Workshop,
Central Railway, Bhopal (MP)
R/o 95-N 2, D Sector,
Barkhera, B.H.E.L.
Bhopal (MP)
11. Nirmal Kumar Kanate,
aged about 34 years,
S/o Shri R.R. Kanate,
J.E.II, Furnishing Section,
Coach Rehabilitation Workshop,
Central Railway, Bhopal (MP)
R/o Qr. No.219/1, R.B. II,
Bhopal (MP)
12. Balu Wade Kisan,
aged about 37 years,
S/o late Shri Kisan Keshav Wade,
J.E.II, Carpentry Section,
Coach Rehabilitation Workshop,
Central Railway, Bhopal (MP)
R/o R.B. II, 213/9, CRWS Colony,
Bhopal (MP)
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13. Hansraj Kannoje
aged about 35 years,
S/o Shri T.R. Kannoje,
J.E.II, Body Repair Section,
Coach Rehabilitation Workshop,
Central Railway, Bhopal (MP)
R/o R.B: I, 106/4. CRWS Colony,
Bhopal (MP)
14. Uma Shankar Bajpai,
aged about 34 years,
S/o Shri Sitaram Bajpai,
J.E.II, Body Repair Section,
Coach Rehabilitation Workshop,
Central Railway, Bhopal (MP)
R/o 365, A Sector Gopal Nagar,
Khajuri Road,
Bhopal (MP)
15. Mohammad Yusuf,
aged about 35 years,
S/o Shri Mohammad Yunus,
J.E.II, B.T.C. Section,
Coach Rehabilitation Workshop,
Central Railway, Bhopal (MP)
R/o R.B. II, 227/7, CRWS Colony,
Bhopal (MP)
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16. Devendra Kumar,
aged about 34 years,
S/o Shri Govind Das,
J.E.II, Bogie Section,
Coach Rehabilitation Workshop,
Central Railway, Bhopal (MP)
R/o 213/11, R.B. II,
CRWS Colony,
Bhopal (MP)
17. Jacob Abraham,
aged about 35 years,
S/o Shri M.C. Abraham,
J.E.II, Shell Compound Section,
Coach Rehabilitation Workshop,
Central Railway, Bhopal (MP)
R/o 222/1, R.B. II,
CRWS Colony,
Bhopal (MP)
18. Ashok D. Sharma,
aged about 40 years,
S/o late Shri D.P. Sharma,
J.E.II, Body Repair Section,
Coach Rehabilitation Workshop,
Central Railway, Bhopal (MP)
R/o 215/1, R.B. II,
CRWS Colony,
Bhopal (MP)
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19. Rajendra Mishra,
aged about 33 years,
S/o late Shri V.S. Mishra,
J.E.II, Paint Shop,
Coach Rehabilitation Workshop,
Central Railway, Bhopal (MP)
R/o 57, Ghora Nakkas,
Bhopal (MP)

... Applicants

(By Advocate - Shri S. Nagu)

Versus

1. Union of India,
through Secretary,
Ministry of Railways,
Government of India,
Rail Bhawan,
New Delhi.
2. General Manager,
Central Railway,
Chatrapati Shivaji Terminal,
Mumbai.
3. Chief Works Manager,
Coach Rehabilitation Workshop,
Central Railway,
Nishadpura,
Bhopal (MP)

... Respondents

2
/ (By Advocate - Shri S.P. Sinha)

O R D E R

By J.K. Kaushik, Judicial Member -

Shri Ashok Agarwal and 18 others have filed this Original Application under Section 19 of the Administrative Tribunals Act and has prayed for the following reliefs :

"(i) The Honourable Tribunal be pleased to quash order dated 18.10.2000 (A-21) to the extent it rejects the claim of the applicants for grant of increments for the year 1998 and 1999 and for counting their seniority as Chargeman Grade 'B' w.e.f. 4.8.1995.

(ii) The Honourable Tribunal be pleased to declare that the action of the respondents in issuing the impugned order is void, illegal and arbitrary.

(iii) The Honourable Tribunal be pleased to direct the respondents to release the increments to the applicants for the year 1998 and 1999 and accordingly fix the salary of the applicants in the scale of 5000-150-8000.

(iv) The Honourable Tribunal be pleased to direct the respondents to refix the seniority of the applicants on the post of Chargeman Grade 'B' by treating them to be appointed as Chargeman Grade 'B' w.e.f. 4.8.1995.

(v) The Honourable Tribunal be pleased to grant all consequential service benefits pursuant to the aforesaid reliefs including arrears of pay etc."

2. Skipping the unnecessary details, the un-disputed facts of the case are that the applicants were employed in Coach Rehabilitation Workshop at Bhopal as Skilled Artisans in different trades. A notification was issued on 11.01.1995 for filling up the posts of Chargeman Grade 'B' in the 25% quota reserved for intermediate apprentices. The number of vacancies were 38. After due selection the applicants and others were sent for training to the Principal Supervisor Training Centre, Jhansi, where they reported on 05.08.1995. They completed the training successfully and were relieved vide letter dated 17.07.1997.

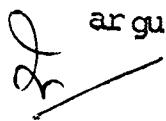
3. The further case of the applicants are that the result of the 4th Semester of the training was with-held and the panel dated 04.08.1995 was cancelled vide letter dated



13.09.1997 without assigning any reason. The cancellation order was challenged vide OA No. 677/1997 before this Bench of the Tribunal, who was pleased to pass certain interim orders which was subsequently modified. All the applicants in the mean time were posted back to their original posts. On the other hand the respondents were allowed to proceed with the fresh selection for the same post. The said case came to be finalised vide order dated 22.06.1998 with a direction to the respondents to re-evaluate the answer sheets of the applicants and others for preparing the selection panel. The said judgment was further challenged by the Railways before the Hon'ble High Court and Hon'ble Supreme Court and finally they lost the battle vide order dated 05.02.1999.

4. The judgment of the Tribunal was implemented and vide order dated 27.05.1999 the result of the selection was declared. There was further litigation in the matter in K.K. Tripathi and others and after the final order was passed a final selection panel was prepared as per the merit order on 24.06.1999 and consequently posting orders were issued in respect of the applicants on 30.06.1999 and 06.10.1999. They were also been given the fixation by adding two increments which became due to the applicants for the training period. However the applicants were not granted any increment for the year 1998-99, despite the representations made by them. The said period also has not been counted for the seniority of the applicants on the post of Chargeman Grade 'B' and their representations have been rejected on irrelevant grounds.

5. The Original Application has been filed on number of grounds mentioned in paragraph 5 of the petition and we shall be examining the grounds which are stressed during the arguments led on behalf of the applicant in the later part of



this order.

6. The respondents have contested the case and have filed a detailed reply to the original application. It has been averred in the reply that the applicants have completed two years prescribed training and they have been granted the two increments as per the rules in force. They are not entitled for any additional increments since they were actually working on their original posts of Artisan. They have been assigned the seniority as per Para 302 of IREM (Annexure R-II) from the date they were appointed on the promotional posts. The seniority has also been assigned to them correctly.

7. A short rejoinder has been filed to the reply on behalf of the applicants, where it has been submitted that the delay caused in conducting the vigilance enquiry cannot be attributable to the applicants. Further certain judgments have been referred in the rejoinder i.e. 1989 (2) SLR 31 - State of Maharashtra Versus Jagannath Achyut Karandikar and (1997) 1 SCC 156 - State of Madhya Pradesh and others Versus M.V. Vyavsaya & Co.

8. We have heard the elaborate arguments advanced by the learned counsel appearing on behalf of both the parties. We have anxiously considered the submissions, pleadings and the records of this case.

9. The learned counsel for the applicant endeavoured to support his contentions with an emphasis on the point that that there was no fault on the part of the applicants and the respondents went into un-necessary litigations and caused the delay in appointment of the applicants. For the fault of the Department the applicants cannot be made to suffer. In support of his contention he has placed reliance to para 228 of the

IREM, Volume-I. He has submitted that since the matter was pending before the Court and litigation was going on the applicant should not be made to suffer. It is also submitted that number of persons have been directly recruited/promoted against other quota on the posts in question. Certain persons have also been ~~induc~~-ted by transfer from other divisions and the applicants have been placed below them without any wrong attributable to them. The applicants ought to have been given the due position regarding the seniority as well as the grant of increments as per the prayer made in the Original Application.

10. On the contrary the learned counsel for the respondents has vehemently opposed the contentions raised on behalf of the learned counsel for the applicants. It has been submitted that as per the rules in force especially ⁱⁿ para 302 of the IREM, Volume-I a promotee can be given seniority only from the date he has been given regular promotion after due process and in the present case the due process was completed only on 30.06.1999. Thus they have been rightly given the due seniority as well as the increments. He has also countered the arguments of the learned counsel for the applicants that the applicants cannot be given increment on the posts in which they have never worked. The increments are earned by working on a post for certain period i.e. one increment for one year and the same cannot be given in vacuum. Similar is the position regarding the seniority. Thus no infirmity can be pointed out in the action of the respondents. He has further contended that it is not the respondents alone who have gone into litigation, but certain other persons who were affected including that of the applicants had also gone into the litigation. The respondents have only filed the appeal and SLP as per the legal advice given to them from their


higher authorities/legal cell and nothing intentionally was done to cause any damage to the applicants in particular and others in general.

11. We have considered the rival contentions raised on behalf of the parties. To appreciate the controversy involved in the present case it would be expedient to extract the relevant provisions relating to assignment of seniority. The relevant para 302 and para 306 are as under :

"302. Seniority in initial recruitment grades - Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-se-seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se-seniority of each group."

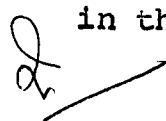
"306. Candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by paragraph 305 above."

12. From the perusal of the aforesaid rule it is clear that a promotee would get the seniority from the date he has been promoted on regular basis after due process. In the present case ~~the~~ selection process could be completed only on 27.05.1999 and thereafter the promotion order was given on 30.06.1999. So the applicants could be given seniority only from the date they have been promoted on regular basis. The aforesaid rule has only one exception and that exception is of Para 306 which envisages that persons selected for appointment at an earlier selection shall be senior to those selected later. In the instant case there was nobody who were placed




above the applicants and was selected subsequently. To be very clear there was no panel drawn between 27.05.1999 to 30.06.1999. The plain reading of the aforesaid rules also indicates that there could be no rider in assignment of the seniority and it has to be assigned only from the date one has been promoted on regular basis as indicated above. Thus the contention of the learned counsel for the applicants are not well-founded and the applicant has not been able to countenance his submission with convincing basis. As regards the contention of the learned counsel for the applicant that as per Para 228 the applicants ought to have been given their due seniority and the promotion from the due date. We have also gone through Para 228 which relates to the delay in promotions on account of administrative errors. But admittedly this is not a case where it can be said that the delay is due to administrative error. Thus the said Para has no relevance.

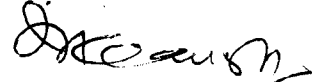
13. As regards the judgments relied upon by the learned counsel for the applicant in the case of State of Maharashtra (supra), it was a case where the departmental examination was required to be conducted for promotion to the next higher post. One could pass the examination within a period of 9 years, examination was to be held every year, but the Government instead of promoting such persons in their turn made them to wait till they passed the examination. It was held that relaxation of the rules to remove the hardship and restoring seniority was not improper or illegal. In another case of State of Madhya Pradesh (supra) their lordships has held that no one should be allowed to suffer on account of acts of the court. None of the decisions have any relevance to the controversy involved in the instant case in as much as in the instant case there were certain irregularities in the



examination which was firstly cancelled by the respondents themselves and on challenge the cancellation was set-aside but the revaluation was ordered and after revaluation the appointments have been given. We also find that the respondents have very fairly adopted the training which was imparted to the applicant earlier to the said selection. In fact passing of the training is a condition subsequent. The applicants could be promoted only after the selection was concluded. It would also be relevant to mention here that while deciding the controversy in the earlier OAs at no occasion this Bench of the Tribunal or any of the appellate court gave any protection regarding the seniority. However as we have discussed above the relevant rule for grant of seniority does not admit of any exception even that of administrative error or of any court order except the relevant rules which we have indicated in the above said paras. Thus we do not find any wrong has been committed by the respondents.

14. In view of what has been said and discussed above, we do not find any merit in this Original Application and the same stands dismissed, but without any order as to costs.


(Anand Kumar Bhatt)
Administrative Member


(J.K. Kaushik)
Judicial Member