

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 157 of 1999

Original Application No. 158 of 1999

Jabalpur, this the 26th day of February, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

1. Original Application No. 157 of 1999 -

Javed Masood Siddiqui, aged
about 36 years, son of Shri Masood
Ahmad Siddiqui, Assistant Loco
Foreman (now reverted), Central
Railways, Itarsi, District
Hoshangabad M.P.

... Applicant

(By Advocate - Shri A.Adhikari)

2. Original Application No. 158 of 1999 -

Mansoor Ahmed Khan, Asstt. Loco
Foreman, Central Railway, Itarsi,
aged 35 years, S/o. Shri Gauri
Khan, resident of Qtr. No. RE-III
142/A, 3, Bungalow Railway Quarters,
Itarsi (M.P.).

... Applicant

(By Advocate - Shri S. Paul)

V e r s u s

1. Union of India, through the
General Manager, Central
Railway, Chatrapati Shivaji
Terminus, Mumbai (Maharashtra)
2. Divisional Railway Manager,
Central Railway, Bhopal (M.P.).
3. Shri Tilak Raj Arora,
Assistant Loco Foreman, C/o.
Loco Foreman, Central Railway,
Itarsi, Distt. Hoshangabad (M.P.).
4. Shri Sanjay Kumar Gupta,
Assistant Loco Foreman, C/o.
Senior DME (Diesel), Central
Railway, Itarsi, Distt. Hoshangabad (M.P.).
5. Shri Prithwiraj Singh, Assistant
Loco Foreman, C/o. Loco
Foreman, Bina, District
Sagar (M.P.).

... Respondents in
both the OAs

(By Advocate - Shri H.B. Shrivastava on behalf of Shri
S.P. Sinha in both the OAs and Shri A.K.
Tiwari on behalf of Shri S. Yadav for the
private respondents in both the OAs)

Common O R D E R (Oral)

By G. Shanthappa, Judicial Member -

Since the issue involved in both the cases is common and the facts and the grounds raised are identical, for the sake of convenience these Original Applications are being disposed of by this common order.

2. By filing ~~these~~ Original Applications the applicants ^{and set aside} have claimed the reliefs to quash ^{the} the orders dated 15.12.98 and 13.11.1998, to direct the respondents Nos. 1 and 2 to create supernumerary posts if necessary to protect the interest of the applicants and to accommodate the applicants on the post of Assistant Loco Foreman. The applicants ^{issuing an} have further prayed to declare, by ^{an} appropriate writ or order that the action of the respondents Nos. 1 and 2 in reverting the applicants are illegal as no such direction was given by the Tribunal in OA No. 693/1996 vide order dated 25.06.1998 and to direct the respondents Nos. 1 and 2 to promote the applicant as Assistant Loco Foreman with effect from 28.10.1996 with all benefits of pay etc.

3. The brief facts of the case as stated by the applicants are that the applicants were working as Driver of Goods Train. They were promoted to the post of Assistant Loco Foreman vide order dated 28.10.1996 issued by the respondents. ^{In the said list} the name of the applicant in OA No. 157/1999 is at serial No. 10 and the name of the applicant in OA No. 158/1999 is at serial No. 33. The said promotion was made after the applicants have qualified the departmental examination and after clearance by the promotional committee. The respondents Nos. 3 and 4 were also Goods Train Driver and filed OA No. 693/1996 before this Tribunal for grant of promotion as Assistant Loco Foreman. Vide order

dated 25.06.1998 the Tribunal was pleased to dispose of the OA No. 693/1996 with a direction that the respondent authorities therein shall consider the matter of the applicants ~~ap.~~ within two months. Further, the promotion of the present applicants were made subject to the decision in the OA by interim order dated 15.10.1996. Under the said order the respondents Nos. 3 and 4 were promoted. The applicants submitted that there were 30 posts of Assistant Loco Foreman in the general category. The applicants and the respondents Nos. 3 to 5 also belong to general category. Initially there were 34 posts ^{of those} ~~out~~ ³³ official of which were filled up by the respondents which included the applicants also. At the initial stage one post was vacant. ^{28.10.1996 certain persons} Vide order ~~and~~ ¹⁹⁹⁶ were promoted as Assistant Loco Foreman. At serial No. 19, Shri Anand Kishore Gupta joined the post of Assistant Loco Foreman but for some reason he got himself reverted at his own request. Thus two posts were vacant. Subsequently the applicants were reverted, purportedly in compliance of the order of the Tribunal dated 25.06.1998, raising the number of vacancies to 4. One Devendra Kumar Jha and Hemant Bajpai could not be promoted as they had failed in the departmental examination. On 15.12.1998 the respondents have issued an order by which the applicants were reverted with immediate effect. It is further mentioned that there is nothing in the order that this order was being issued subject to decision of the Apex Court. The applicants submit that no case is pending before the Hon'ble Supreme Court. In the selection for the post of Assistant Loco Foreman conducted in the year 1994, a similar dispute arose between Shri S.K. Saxena and Shri Rajesh Pandey. Shri Rajesh Pandey contended that Shri Saxena was junior to him and he could not have been promoted. Shri Pandey approached

the Tribunal for redressal of his grievances, and he was succeeded in the case. Shri Saxena is continuing on the post till now and he has not been reverted. Shri Saxena has not been reverted because of Railway circular dated 1.2.1975. Para 10(iii)(b) ^{of the said circular} provides that such of the staff who have been confirmed against posts on the basis of the seniority previously determined should not be deconfirmed but those who become senior according to readjusted seniority should be confirmed against the next available vacancy. The said circular is squarely applicable to the applicants. Hence the reliefs as claimed in the OAs shall be granted under the said circular, from the date from which Shri S.K. Saxena has got the benefit of adhoc promotion.

4. Per contra the respondents have filed the reply denying the averments made in the OA. The respondents have admitted that in pursuance to the ^{decision in} OA No. 693/1996, they have recasted the seniority. The present applicants were also the respondents in the said OA. The entire seniority list was published on 04.09.1998 as per Annexure R-II. In the said list the names of the applicants were below the respondents Nos. 3 and 4. Hence to provide them promotional post in which they had qualified but could not be empanelled on account of their lower seniority in the seniority list, which has been recasted as per order of the Tribunal, they have been placed above the applicants. The respondents have submitted that originally 33 posts were filled, but after the revision of the seniority list ^{3 persons} namely Shri Tilakraj Arora, Sanjay Kumar Gupta and Prithvi Raj became seniors on account of the revision of seniority list, the applicants who were at serial No. 32 and 33 respectively, were reverted and the above three persons

promoted and as such all 34 posts have been filled. The vacancy due to refusal of Shri Anand Kumar Gupta may not be filled up by extending the panel in question as the panel has already operated, for which a fresh notification is required. The respondents have admitted that no SLP has been filed in the Apex Court. After the said selection, post was available and Shri S.K. Saxena was continued to be on that post. The ruling cited by the applicants are not applicable to the present case. The promotion order itself states that the promotion is on adhoc basis and subject to the decision of the court. Since the applicants did not challenge the fresh seniority list dated 4.9.1998, they are estopped from challenging the reversion on the basis of revised seniority and on which basis the applicants are not entitled for promotion.

5. The respondents have filed amendment application for incorporating some facts to the reply. In pursuance to the direction of the Tribunal in OA No. 693/1996, the seniority of the applicants were prepared. The respondent No. 3 has been transferred to Delhi and hence there cannot be any comparison with the present case. The respondent No. 4 and 5 have been working as Goods Drivers from 9.12.1991. Since the private respondents are qualified for the post of Driver, they were considered for promotion.

6. Heard the learned counsel for the applicants and the respondents and perused the records carefully.

7. The admitted facts are that the applicants are Drivers of the Goods Train. The respondents Nos. 3 and 4 had earlier filed an OA No. 693/1996. On the basis of the

direction of the Tribunal the seniority list was prepared. In the said OA the present applicants were respondents. It is further admitted by either sides that 34 posts of Loco Foreman in the general category were vacant and 33 were filled up by the official respondents including the applicants, by placing the applicants below the private respondents. Among 34 posts, 33 posts were filled up and one post was vacant. But after the revision of the seniority list the three persons i.e. from respondent No. 3 to 5 in these OAs, became senior to the applicants. The applicants were placed at serial No. 32 and 33 respectively. The vacancy due to refusal of Shri Anand Kumar Gupta may not be filled up by extending the panel in question as the panel has already operated, for which a fresh notification is required. This contention of the official respondents is not proper. Admittedly Mr. S.K. Saxena and the applicants are similarly situated persons. His case has been considered as per the Para 10(iii)(b) of the circular dated 1.2.1975. The said provision speaks about relaxation of seniority. Shri S.K. Saxena has been given adhoc promotion under the said Para 10(iii)(b). The staff who have been confirmed against posts on the basis of the seniority previously determined should not be de-confirmed but those who become senior according to readjusted seniority should be confirmed against the next available vacancy. Shri S.K. Saxena has been selected under the said rules. The respondents have not considered the case of the applicants on par with the rule applicable to Shri S.K. Saxena. Thus the respondents are showing discrimination to the applicants. The respondents wrongly mentioned in the order dated 15.12.1998 that the said order is subject to the outcome of the decision of the SLP filed before the Hon'ble Supreme Court. In the re-

they have stated that no SLP has been filed in the Apex Court. The respondents are mis-leading this Tribunal by giving wrong information vide order dated 15.12.1998. The respondents are also submitting that the circular which is applicable to Shri S.K. Saxena is not applicable to the case of the applicants. Hence the stand taken by the respondents is also not acceptable and the same is rejected. Since the service of the applicants and Shri S.K. Saxena are similar, the applicants are entitled for the benefits which have been given to Shri S.K. Saxena.

8. Accordingly, after taking the overall considerations on the issues raised by the either parties, we are of the considered view that the applicants are entitled for the benefit of adhoc promotion given to Shri S.K. Saxena from the date on which the applicants are entitled. Hence the said OAs are disposed of with a direction to the official respondents to consider the cases of the applicants on par with the adhoc promotion given to Shri S.K. Saxena from the date on which the applicants are entitled. If there are no vacancies, to provide adhoc promotions to the applicants, then as per Para 10(iii)(b) of the circular dated 1.2.1975, the applicants shall be considered as and when the future vacancies arises. No costs.

9. The Registry is directed to place a copy of this order with the records/files of the other ^{connected} Original Application.

-Sd-

(G. Shanthappa)
Judicial Member

-Sd-

(M.P. Singh)
Vice Chairman