

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 475 of 1998

Jabalpur, this the 28th day of March 2003

Hon'ble Shri Shaker Raju -- Member (Judicial)
Hon'ble Shri R.K. Upadhyaya -- Member (Administrative)

1. Nasim Hussain Khan, aged about
32 years, S/o. late Rafique Hussain
Khan, Post Technician Grade-I,
T.R.D/RC/DRM, Habibganj, Bhopal.

2. Niranjay Verma, S/o. Babulal Verma,
aged 32 years, Post Technical
Grade-I, T.R.D/RC/DRM, Habibganj,
Bhopal.

... Applicants

(By Advocate - Shri S.K. Nagpal)

Versus

1. Divisional Railway Manager, Bhopal.

2. Senior Divisional Personnel
Officer, Bhopal.

3. Senior Divisional Electrical
Engineer, Bhopal.

4. Sunil Pandit Kurkure.

5. Ganesh Khshwaha.

6. Narendra Solanki.

7. Premnarrain Soni.

8. Ajay Krishen Shrivastava.

9. Shriram Mangilal Tiroli.

10. Nirbed Kumar Kakariya.

No. 4 to 10, Post Technician Grade-I,
T.R.D./DRM Bhopal.

11. Union of India,
Secretary of Railway,
New Delhi.

... Respondents

(By Advocate - Shri S.K. Mukherjee for official respondent s,
Shri L.S. Rajput for respondents No.8 & 10.
Shri Ashutosh for respondents No.5,7 & 9.

ORDER

Mr. Shanker Raju, Member (J):

Applicants impugn respondents' circular dated 20.5.98 pertaining to the selection of candidates for the posts of Junior Engineer (JE) wherein respondents 4-10 have been called to appear but due to wrong fixation of seniority below private respondents applicants have been denied the right to participate in the selection.

2. Applicants have been selected for the posts of Grade III in Project after screening and having qualification of ITI certificate. Aforesaid selection was made on 27.10.86 and they joined on 13.2.87. They were sent for training by the department and completed the same on 21.12.88. Thereafter they have been regularised and posted on 28.2.1990 and were posted.

3. Divisional Railway Manager 25% quota was utilized to select respondents 4-10 for the post of grade III after the test and were appointed temporarily thereafter they have been sent for training which was completed on 28.3.89 and were regularised.

4. A seniority list was published on 5.2.96 pertaining to grade III whereas private respondents have been placed above applicants for which a representation has been made, which was not responded to and ultimately the selection process for JE was initiated where applicants have not been called, giving rise to the present OA.

5. Learned counsel for applicants assails this seniority list pertaining to grade III, grade II as

as well as Grade I on the ground that if the same is not acted upon it can be challenged and the OA is within limitation. Moreover, it is stated that applicants who have completed training on 21.12.88 whereas respondents 4-10 on 19.9.89 as per the applicants should have been ranked senior and could have been called for selection for the post of JE.

6. Applicants' counsel further stated that applicants have been called through employment exchange and on introduction of TRD on open lines screening was held by the open line division. Applicants were amongst the staff screened were sent to Zonal Training School whereas respondents 4-10 were appointed temporarily on 5.1.89 much after applicants have completed the training and waiting for the posting. The assignment of seniority from the date of regularisation is against the rules.

7. Moreover, taking resort to the decision of Apex Court in SLP No.7158/98 and CA No.642/98 Charan Singh and Others v. General Manager, it is contended that Railway Board's order dated 25.3.1990 has been upheld, which, inter alia, provides that semi skilled artisans reclassified as skilled are to get seniority in skilled grade III only from the date of passing trade test for skilled grade III. In this conspectus it is stated that once juniors are called for selection mere failure of applicants in grade-I would not deprive them of the benefit of seniority and by resorting to letter dated 29.12.94 of the Headquarters' office it is contended that the cadre

was closed at TRD and the promotions have been ordered on ad hoc basis, as such applicants are still ineligible to apply for the selection to the posts of JE.

8. On the other hand, official respondents strongly rebutted the contentions and stated that applicants cannot compare themselves with private respondents who pertain to 25% quota in electrical fitter grade III and after completion of training were regularised and were assigned seniority over applicants. Two unequals cannot be treated equally,

9. In their reply respondents No. 8 and 10 took a preliminary objection of two different groups involved in the present OA cannot be clubbed together as well as of limitation. It is contended that though seniority list was circulated on 5.2.96 applicants having failed to raise any objection now at this belated stage cannot agitate the issue and settled seniority cannot be unsettled. As respondents were directly recruited in open lines on regular basis their seniority is to be reckoned earlier to applicants who were in casual capacity and later on taken in open lines.

10. It is stated that after Grade III seniority has already been assigned in grade II and grade I which cannot be unsettled at this belated stage. Further stating that applicants have failed in the trade test of grade I and cannot claim seniority over private respondents. For this the decision of the Tribunal of Jaipur Bench in Abdul Rahim v. Union of India, 2002 (3) ATJ 297 is relied upon to contend that when the material fact of failure in the trade test is suppressed OA is liable to be dismissed. Further it is contended that as per Rule 159 IREM Vol I private respondents were appointed against the cadre posts as Fitter Grade III/Wireman on 19.9.89 whereas applicants have been

rightly shown juniors because they were appointed on a cadre post on 28.2.90. As such there is no infirmity in the assignment of seniority and as being seniors they have been rightly called for selection.

11. On similar lines a reply has been filed by respondents No.5,7 and 9.

12. We have carefully considered the rival contentions of the parties and perused the material on record. Applicants by a letter dated 20.9.88 have been called for screening where one of the conditions was that they would be treated as artisans and this is not a regular appointment on being sent to training which was completed on 21.12.88. applicants have been posted against a cadre post and appointed on 28.2.90 whereas private respondents who have been directly recruited on open lines against cadre posts on regular basis by a letter dated 20.12.88 cannot be ranked senior in the light of provisions of para 159 IREM-¹ seniority is to be counted from the date of substantive appointment against a post which is admittedly anterior in date in case of applicants in comparision to the respondents. Merely because applicants have qualified in the training earlier to private respondents would not bestow upon them any right to claim seniority over them. Contention of applicants taking resort to Railway Board's letter dated 22.5.90 could not be helpful to them as seniority is to be reckoned in skilled grade III from the date of passing trade test only in case of semi skilled artisans re-classified as

skilled. In the present case the same does not apply, as such the seniority of applicants is to be reckoned from their substantive appointments against a cadre post on 28.2.90.

13. Although after grade III further seniority has been issued in grade II and grade I, yet applicants have not assailed the same and despite opportunity to prefer objections to the seniority assigned circulated on 5.2.96, applicants have not preferred any representation and the present OA has been filed after two years when the selection for the posts of JE is initiated. The Apex Court in the matter of seniority has clearly laid down that challenge to the seniority after a long time and re-opening of the same to unsettle the settled position cannot be sustained as held in K.R. Mudgal v. R.P. Shah, 1987 SCC (L&S) 6 and B.S. Bajwa v. State of Punjab, (1998) 2 SCC 523.

14. In the result, for the foregoing reasons we do not find any merit in the present OA, which is accordingly dismissed. No costs.

R.K. Upadhyaya
(R.K. Upadhyaya)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

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प्रकाशन सं. ओ/ल्या..... जवलपुर, दि.....
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S. K. Nagpal, Ady
S. K. Mukherji, L.S. Rajput
P. S. Bhatosh, Ady

Shankar Raju
9/10/83

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