CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Applications Nos. 559 of 97, 732 of 2001 and 145 of 2003

Jabalpur, this the 11th day of August, 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

(i) Original Application No. 559 of 97

1. Shankarlal Vishwakarma son of Shri Randhir Vishwkarma aged about 36 years working as Skilled Artison, grade-III-Coach repairs Workshop, Central Railway, Bhopal (M.P.) resident of RB-I III-I CRWS Colony, Bhopal (MP).

2. Ashok Kumar Sarkar son of Shri Santha Sarkar aged about 37 years working as Skilled Artisan, Grade-III, CRWS, Central Rly, Bhopal, resident of RB-I,III/12 CRWS Colony, Bhopal (M.P.)

3. Mahesh Kumar son of Durga Prasad aged about 38 years working as Skilled Artisan, grade-III,CRWS, Central Railway, Bhopal, resident of RB-I III/7, CRWS Colony, Bhopal (MP)

4. Deleted.

5. Dashrath Prasad sonof Ramavtar aged about 37 years working as Skilled Artisan Grade-III, CRWS, Central Railway, Bhopal M.R. Resident of RB-II, 204/6, CRWS Colony, Bhopal (MP.)

6. Rameshwar Patel son of Jhamu Prasad Patel aged about 45 years Working as Skilled Artisan grade-III, CRWS, Bhopal Central Rly, resident of RBI-113/5, CRWS Colony, Bhopal (M.P.)

7. Arvind Rao, son of Anand Rao Aged about 38 years working as Skilled Artisan, grade-III, CRWS Central Railway, Bhopal resident of 102/12 CRWS Colony, Bhopal.

8. Maniram Kanahia son of Kanahia aged about 36 years working as skilled Artisan CRWS, resident of 101/7, Khajanchi Bagh, Bhopal (MP)

9. Hublal Kushwaha son of Ram Kishan aged about 35 years working as Skilled Artisan CRWS, Central Railway, Bhopal resident of 101/15 Khajanchi Bagh, Bhopal (MP)

10. Deleted

11. Rajendra Parsai son of Pritam Prasad aged about 43 years working as Skilled Artisan grade-III, CRWS, Central Railway, Bhopal, resident of, 114/1, CRWS colony, Bhopal (M.P.)

12. Deleted

13. Ramanandan Prasad son of Pritas Chouhan aged about 37 years working as skilled Artisan grade-III, CRWS, Central Railway, Bhopal resident of RBI-115/6, CRWS Colony, Bhopal (M.P.)

14. Deleted APPLICANT

VERSUS

1. The Union of India through General Manager, Central Railway, Mumbai.

2. The Chief Personnel Officer, Central Railway, GMS Office, Mumbai, CST.

3. The Chief Workshop Manager Coach Repairs workshop, Central Railway Nishantpura, Bhopal (M.P.) RESPONDENTS

(ii) Original Application No. 732 of 2001

Sabhajit Yadav, son of Shri Narayan Yadav, aged about 42 years, resident of RB-II, House No. 213/5, Coach Repair Workshop Colony, Central Railway Colony, Bhopal APPLICANT

VERSUS

1. Union of India through Chairman, Railway Board, New Delhi

2. General Manager, Central Railways, Chhatrapati Shivaji Terminal, Mumbai

3. Chief Workshop Manager, Coach Repair Workshop, Nishadpura, Bhopal RESPONDENTS

(iii) Original Application No. 145 of 2003

1. Vijay Kumar Bajpai, S/o Shri Bhagwan Das Bajpai, aged about 45 years, R/o Q.No. 106/6, Coach Repair Workshop Colony Nishatpura, Bhopal

2. Jagdish Prasad Sarathe, S/o Shri R.K. Sarathe, aged about 45 years, R/o House No. 63, Dwarka Nagar, Coach Repair Workshop Colony, Bhopal APPLICANT

(By Advocate - Shri M.K. Verma appearing in all the three OAs for applicant)

VERSUS

1. Union of India
   Through Chairman, Railway Board,
   Rail Bhawan, New Delhi.

2. General Manager, Central Railways
   Chhatrapati Shivaji Terminus, Mumbai

3. Chief Workshop Manager,
   Coach Repair Workshop, Bhopal

4. Gafar Khan, T.No. 06244154,
   Welder, Office of Chief
   Workshop Manager, CRWS, Bhopal

5. Baijnath, T.No. 06317157, Welder,
   Officer of Chief, Workshop Manager,
   CRWS, Bhopal

(By Advocate - Shri M.N. Banerjee appearing in all the three OAs for respondents)

COMMON ORDER

By J.K.Kaushik, Judicial Member -

Shankerlal Vishwakarma & 13 others, Sabhajit Yadav, and Vijay Kumar Bajpai & anr have filed Original Applications Nos.559/1997, 732/2001 and 145/2003 respectively. These cases involved common question of law and facts, hence are being decided by this common order.

2. Skipping the superfluity the indubitable facts of the case necessary for adjudication of the controversy involved are that the applicants have primarily impugned the order dated 6.12.1994 (Annexure-A-1 to OA 559/1997) whereby it has been directed that the seniority of the staff transferred from different Central Railway units on or before 21.6.1994, shall be based on rules applicable to inter se seniority depending upon the length of substantive post held by those staff in their parent cadre as on 21.6.1994. They have also sought a direction to place persons junior to the applicants who have come on their own request in Group-D cadre and also to promote the applicants in Grade-II in pursuance with the trade test which they have passed on 9.9.1994 against the available vacancies.

3. We have heard the learned counsel for the parties at a considerable length and have anxiously considered the

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pleadings and the records of this case. The main facts are being taken from OA No.559/1997.

4. The basic issue started from issuance of order dated 19.6.1987 (Document-E to written notes of arguments of the applicantsfiled on 4.3.2002). A new Coach Repair Workshop at Nishatpura (Bhopal)(hereinafter referred to as 'the Workshop') was ordered to be opened. As per the scheme, options were called and the following facilities were required to be given as per the aforesaid order dated 19.6.1987 -

(1) Nearly 800 staff quarters are being built for the staff of Coach Repair Workshop,Bhopal and it is quite likely that the staff who, initially opt for the Coach Repair Workshop, Bhopal will be provided with quarters. However, preference will be given to those staff who fall in essential categories.

(2) Staff who will be transferred to Coach Repair workshop, Bhopal will maintain their seniority and also maintain lien in the parent department/unit till such time he is permanently absorbed in Bhopal Workshop. Options will be open to staff to choose to remain in Coach Repair Workshop, Bhopal or go back to his parent department/unit within a period of two years from the date of transfer or permanently absorbed in Coach Repair Workshop,Bhopal,whichever is earlier.

(3) Coach Repair Workshop will form a new cadre and once the cadre is closed, seniority of staff will be regulated independently strictly according to entry in the Workshop Cadre.

(4) There will be chances of staff getting accelerated promotion within the cadre itself as per the existing rules.

(5) Similarly, qualified staff will be considered for promotion in the higher grade than working at the time of transfer. However, this will depend upon the availability of vacancies.

(6) The technical staff who choose to opt for absorption in Bhopal Cadre must give their willingness to undergo prescribed training,if necessary, to orient them in the technical methods and process to be followed in the W/shop. The period of training may range from 6 months to 12 months at a suitably nominated place.

(7) After completion of training the staff will have to pass the trade test/departmental test and their retention in the workshop cadre will be subject to their passing in the test.

(8) The staff who do not come out successfully in the test may be returned back to their parent unit/ cadre or may be considered for absorption against a suitable vacancy in another category in their own line, in the workshop."

5. The applicants in the aforesaid OAs gave their option. Some of them were working in Bhopal Division and

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others were working at various divisions and they gave the required options. They were accordingly absorbed/appointed on various posts. As per the scheme the last date of the option was 31st August,1989 and they were to get their own seniority up to the period of two year by treating their absorption/appointment/transfer to the Workshop in the interest of administration as per Para 311 of the Indian Railway Establishment Manual,Vol.I. As per this paragraph the seniority of the Railway servant on transfer from one cadre to another in the interest of administration is regulated by the date of promotion/date of appointment to the grade as the case may be. Even though the respondents did not issue a final seniority but all of these were treated senior and even they were subjected to trade test for further promotion.

6. Subsequently, an order dated 16.11.1992 (Annexure-A-9) (page-29) came to be issued whereby a proposal was made for filling up60 vacancies of various posts in the Workshop. The main term for the same was as under:-

> "2.1 It is proposed to take only those interested employee who are prepared to come to the workshop on bottom seniority as per their own request transfer on the terms & conditions applicable for bottom seniority request transfer, for which necessary undertaking has to be given in prescribed format".

In pursuance to this, number of persons again applied and they were allowed to be appointed/transfer to the said Workshop. Prior to this date also similar position has taken place and applications were invited in the year 1991 also with similar terms as indicated vide Annexure-A-9 (page-33). They were accordingly allowed to come to the Workshop on the terms of their appointment on bottom seniority. The applicants enjoyed their position and were treated as senior to the persons who came to the Workshop after 31st August,1989 i.e. two years of the last date of the option as per the basic scheme dated 19.6.1987 (supra).

7. Thereafter, the impugned order dated 6.12.1994 came to be issued wherein the principle of seniority was

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totally changed by the Chief Personnel Officer, to the disadvantage of the applicants, in particular, and number of other persons who have been appointed in the Workshop as per the scheme of 1987 i.e. up to 31st August, 1989. As per the impugned order para 3(A) is relevant and the same is reproduced as under :-

> "Seniority of staff transferred from different Central Railway units on or before 21.6.94 shall be based on rules applicable to Inter-se seniority depending upon the length of substantive post held by these staff in their parent cadre as on 21.6.94".

With this change, the complete seniority was revised and a fresh seniority list has been issued vide letter dated (Annexure-A-16) 27.5.1998. This seniority has been prepared in accordance with the aforesaid rule.

8. The action of the respondents has been challenged on the ground that the Chief Personnel Officer had no power to frame any rule, least to say a rule which is inconsistent with the rules framed by the Railway Board or any other authority and since the CPO had no competence to frame the rules, the very impugned order dated 6.12.1994 (Annexure-A-1) is without jurisdiction and is void ab initio and, therefore, all the subsequent action cannot be sustained.

9. Now, grappling the crux of the matter, the complete controversy in the present case boils down on Annexure-A-1 and the result of this case would be dependent on the validity of this order.

10. In appreciating the controversy in its true spirit it would be expedient to examine the rule making power of the various authorities in the Railways. As per Indian Railway Establishment Code.Vol.1 the rule making power in respect of non-gazetted Railway servant has been delegated to the Railway Board and to the General Manager as per Rules 123 and 124 of the said Code respectively. The same are reproduced below:-

> "123. The Railway Board have full powers to make rules of general application to Group C & Group D railway servants under their control.
>
> 124. The General Managers of Indian Railways have full powers to make rules with regard to Railway servant in Group C & D under their

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control provided they are not inconsistent with any rules made by the President or the Ministry of Railways."

11. It has been brought to our notice by the learned counsel for the applicants that there is no other provision in the rules where any other authority has been delegated with such power of rule making. Thus, the point for determination would be as to whether the authority who has issued Annexure-A-1 had the rule making power or not. We heard the matter at an earlier date and the learned counsel of the official-respondents had sought a time to make available the relevant file from where the notings have been given in respect of the issuance of Annexure-A-1. They have fairly and frankly submitted and also shown the notings to us wherein circular Annexure-A-1 has in fact been originated by the Chief Personnel Officer and the same has been approved by the Chief Engineer. It has been submitted that the Chief Engineer is the Head of the Engineering Department and he carried out all the functions of Head of the Department. Thus, it is admitted that the said rule has not been framed by the General Manager and since this is a factual aspect of the matter, we extend our appreciation to the learned counsel of the respondents for disclosing the correct picture of this case.

12. Yet another ancillary question arises as to whether the Chief Personnel Officer or the Chief Engineer have any power to frame the rules on behalf of the General Manager. There seems to be hardly any quarrel on this issue. Since the General Manager himself has been delegated the powers to frame the rules as per Rule 124 ibid, the authority who has been delegated the power of legislation has no power to further delegate. Thus, the power which have been delegated to the General Manager cannot be exercised by any authority subordinate to him by any stretch of imagination and if any delegation at all has been made for such purpose, such delegation itself would be without

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jurisdiction. In this view of the matter, we reach to a firm conclusion which is irresistible and inescapable that the CPO or the Chief Engineer was not competent to issue the rules regarding seniority vide impugned order dated 6.12.1994. Thus, the same is void without jurisdiction and all subsequent proceedings thereof cannot stand in the eye of law and on this point the submission of the learned counsel of the applicants has our concurrence. The Original Applications in fact deserve to be allowed on this count alone.

13. Looking the controversy yet from another angle as to whether at all any such rule could be framed even by the competent authority, specially having the retrospective effect and changing the irreversible position. All the applicants, keeping in view the conditions and facilities laid down in the basic order dated 19.6.1987, submitted their options. They correctly knew that they would get their seniority as per the entry into the grade and any one who comes after two years from the expiry of the option date would not be senior to them and with this premises they have changed their position and came to the Workshop and started enjoying their position as per the promise which was made to them in the year 1987 and after 7 years the position is sought to be changed without any reason and which so adversely affects the applicants, in particular, and other similarly situated in general. And that, even the persons who admittedly came on own request are being given the seniority above the applicants treating their transfer to the Workshop as in the interest of administration. The impugned circular indirectly results in throwing all the letters, notifications and orders of transfer of the persons who came to the Workshop after the cut off date i.e. 31st August, 1989, without any reason. Once all of those persons accepted the condition of bottom seniority and opted to come to the Workshop, there was no occasion for taking a decision to upset the settled position specially for which the subsequent optees could not even think of making a complaint. The matter smacks certain extraneous material being taken into

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account and which necessarily leads to give an unfair treatment to the persons who have acted on the premises of the authorities in power. We are constrained to observe that the rule of law has been thrown over board and probably an authority who is not even competent has moved on the premises of rule of thumb. After all, the employees expect certain predictability in the action of the authorities in power and such predictability is a must in the fair functioning of the administration. The significance of the predictability has been examined by the Hon'ble Supreme Court in the case of S.G.Jaisinghani Vs.Union of India and others, AIR 1967 SC 1427 and their Lordships have held as under-

> "14. ...the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and,in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law...."

14. The learned counsel of the applicant has submitted a list of number of judgments in support of his contention but since the very action of the respondents is against the statutory rules we are refraining from mentioning all of them just to avoid bulkiness of this order. On behalf of the respondents also certain judgments have been relied upon wherein the seniority list has been said to be in order but we find that in those orders the validity of the impugned circular dated 6.12.1994 was not under challenge and the Tribunal in those cases only held that as per that circular the seniority was in order. In this view of the matter, those decisions are of no help to the respondents.

15. Keeping in view the facts and circumstances of these cases and taking all events together, we are of the firm opinion that the respondents-authorities have crossed all limits of arbitrariness and,therefore, the applicants

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have been badly wronged for none of their fault. We can only assert that the less said is better in such cases.

16. In the premises, the Original Applications are allowed in the following terms :

(i) The impugned order dated 6.12.1994(Annexure-A-1) passed by the CPO/Chief Engineer is struck down being unconstitutional and violative of Article 14 of the Constitution.

(ii) The official-respondents are directed to assign seniority to the applicants and other similarly situated persons as per their date of entry into the grade in terms of circular dated 19.6.1987 and in respect of the persons who have come after 31st August,1989 to the Workshop the seniority shall be assigned on the basis of Para 312 ibid i.e. they will be given bottom seniority.

(iii) The applicants shall also be entitled to all consequential benefits as a result of this order.

(iv) This order shall be complied with within a period of four months from the date of receipt of a copy of this order.

(v) In the facts and circumstances of the cases, there shall be no order as to costs.

Sd/-
(Anand Kumar Bhatt)
Administrative Member

Sd/-
(J.K.Kaushik)
Judicial Member

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