

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 730 of 1998

Jabalpur, this the 14th day of August, 2003

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

1. Vivek Kumar Dabi

S/o Shri SL Dabi

Aged about 32 years

R/o 322 LIC Ashok Palace

Near Apsara Cinema

Raisen Road

Bhopal.

2. Trishon Kumar Gautam

S/o Shri MC Gautam

Aged about 33 years

R/o MAI-87 G-D

West Railway Colony

Bhopal.

3. AK Gupta

S/o Shri Harilal Gupta

Aged about 33 years

R/o - In front of Janatha School

Malviyaganj

Itarsi.

4. D Dayal

S/o Bageshwar

Aged about 32 years

R/o RB-II, 393 'C'

New Yard, Itarsi.

5. RK Soni


S/o Shri Bajnath Soni

Aged about 32 years

R/o - Infront of Janatha School

Malviyaganj, Itarsi.



6. Vinod Kumar Soni
S/o Shri SP Soni
Aged about 33 years
R/o C/o Senior Section Engineer
CHE Depot, Vidisha.
 7. Govind Madhav Sharma
S/o Shri Raghbir Singh Sharma
Aged about 33 years
R/o L39-A Railway Colony
Guna.
 8. SP Verma
S/o Shri Rampal Verma
Aged about 34 years
R/o D-340, 18 Block
Itarsi.
 9. AK Singh
S/o Shri Rampal Singh
Aged about 33 years
R/o RB-III - 462A
New Yard, Itarsi.
 10. Kedar Nath Gupta
S/o Shri SP Gupta
Aged about 33 years
R/o J54-B East Railway Colony
Bhopal.
 11. Prabhat Kumar Upadhyay
S/o Shri SK Upadhyay
Aged about 31 years
R/o D-38, East Rly Colony
Beena.
 12. Om Prakash Sharma
S/o Shambhoo Prasad Sharma
Aged about 32 years
R/o 19-B Railway Colony
Guna.
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13. G Dastagiri

S/o Shekhadri

Aged about 33 years

HB-II 262-A

New Yard

Itarsi.

14. DK Jha

S/o Ganga Prasad Jha

Aged about 32 years

RB-II 383 'C'

New Yard

Itarsi.

15. Prathvi Raj Singh

S/o VR Singh

Aged about 33 years

C/o LOCO Foreman

Beena.

16. Rammohan Sharma

S/o Shri Ramjilal Sharma

Aged about 33 years

R/o 24-A Railway Colony

Guna.

17. Manjul Kumar Sirodhiya

S/o Yeshoda Nandan Sharma

Aged about 32 years

R/o 25-A Railway Colony

Guna.

18. Hemant Kumar Bajpai

S/o Shri RC Bajpai

Aged about 32 years

R/o C/o SC Choudhary

Near Vishwakarma Mandir

Malviyaganj,


Itarsi.




19. Surendra Srivastav
S/o Shri R Srivastav
Aged about 31 years
A-360 LIG
Aishbag Colony
Barkhedi
Bhopal.
20. Moolchand
S/o Makhan Singh
Aged about 33 years
R/o RB.II, 171 FFC
East Railway Colony
Bhopal.
21. HK Vishwakarma
S/o Shyam Bihari Vishwakarma
Aged about 33 years
R/o RB-II, 387-D
New Yard, Itarsi.
22. Atul Joshi
S/o Shri R Joshi
Aged about 32 years
R/o C/o Senior Section Engineer
CHE Depot,
Harda.
23. Kapil Dev Yadav
Aged about 33 years
S/o Shri Shivmoorat Yadav
Aged about 33 years
3-A Railway Colony,
Guna.
24. Mohd Mubharik Khan
S/o Shri Ibrahim Khan
Aged about 31 years
R/o RB-II, 170 FFC
East Rly Colony, Bhopal.
- 2

25. RK Jatav
S/o Shri Sajalal Jatav
Aged about 33 years
RB-III, 192-B 3 Block
Itarsi.
26. Anil Kumar
S/o Pardeshi Ram
Aged about 33 years
R/o RB-II, MS-170, IFC
East Railway Colony
Bhopal.
27. Sanjay Kumar Sinha
S/o Shri M Sinha
Aged about 32 years
R/o 340, N-3 'C' Sector
Piplani,
BHEL, Bhopal.
28. Suresh Chandra Agarwal
S/o Late Shri AL Agarwal
Aged about 33 years
R/o 167 SFB
East Railway Colony
Bhopal.
29. Subhash Pandey
S/o RC Pandey
Aged about 32 years
R/o 29 Shivnivas
Budhwara
Bhopal.
30. Anil Kumar Singh Sikarwar
S/o Shri MKS Sikarwar
Aged about 33 years
R/o Chhabra Colony,
Guna.

... Applicants

 (By Advocate - Shri M.K. Verma)

V e r s u s

1. Union of India
Through Secretary
Department of Railways
New Delhi.
 2. General Manager
Central Railways
CSTM, Bombay.
 3. DRM(P),
Central Railways
Bhopal.
 4. Hasi Shankar Syamlal
C/o LOCO Foreman
Beena.
 5. Mohd Shamin Md Amin
C/o LOCO Foreman
Beena
 6. Dashrath Syamlal
C/o LOCO Foreman
Beena.
 7. Hardas Suraj Bali
C/o LOCO Foreman
Bina.
 8. Munna Kunji
C/o LOCO Foreman
Bina.
 9. Deokinandan Tikaram
C/o LOCO Foreman
Bina
 10. On Prakash Gutilal Sharma
C/o LOCO Foreman
Bina.
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11. Mahesh Prasad Badri Prasad
C/o LOCO Foreman
Bina.

12. Shiv Narayan Parmanand
C/o LOCO Foreman
Bina.

13. Shami Ullah Shok Ullaha
C/o LOCO Foreman
Bina.

14. Ratan Singh Babulal
C/o LOCO Foreman
Bina.

15. Khem Chand Ramlal
C/o LOCO Foreman
Bina.

16. Hasiram Mantu
C/o LOCO Foreman
Itarsi.

17. Madan Mohan Ayodhya Pal
C/o LOCO Foreman
Bina.

18. Dilip Kumar Jaiswal
C/o LOCO Foreman
Bhopal

19. Ram Prasad Babulal
C/o LOCO Foreman
Bina.

20. Pannalal Bhagwan das
C/o LOCO Foreman
Bina.

21. Natur Ram Guljarilal
C/o LOCO Foreman
Bina.



22. Govind Prasad Bhawani Prasad
C/o LOCO Foreman
Bina

23. Kalu Ram Pannalal
C/o LOCO Foreman
Guna.

... Respondents

(By Advocate - Shri R.S. Baronia, official representative
for respondents Nos. 1 to 3.

Ku. Sonali Shrivastava holding brief of Mrs.
J. Choudhary for respondents Nos. 4 to 23
except No. 18.

Shri A.K. Tiwari holding brief of Shri
S. Yadav for respondent No. 18)


O R D E R

By J.K. Kaushik, Judicial Member -

Shri Vivek Kumar Dabi and 29 others have filed this original Application primarily for challenging the impugned seniority list dated 24.12.1994 (Annexure A-11) and has sought for a further direction to the respondents to revise the seniority of the applicants above the private respondents by re-drawing a seniority list accordingly.

2. We have heard the learned counsel for the parties and have very carefully perused the records of this case.

3. Skipping the superfluities, the material facts as culled from the pleadings of the parties, depicted that all the applicants were initially appointed to the post of Diesel Assistants in the grade of Rs. 950-1500/- in the respondent Department. They have undergone the requisite training of six months after their appointment. The applicant No. 1 to 3 were given the regular appointment in the year 1988 and the other applicants were given the said appointment on regular basis in the year 1989. Their positions are reflected in the gradation list dated 19.04.1991 (Annexure A-1).



4. A notification came to be issued for promotion to the post of Driver Goods in the pay scale of Rs. 1350-2200/-. The eligibility condition for the said post is as under issued vide letter dated 01.04.1987 (Annexure A-2) :

- "(i) Six years service (combined as Second Fireman and first Fireman/Diesel Assistant.
- (ii) two years service as First Fireman/Diesel Assistant/Electric Assistant.
- (iii) Sixty thousand KMs of foot-plate as First Fireman/Diesel Assistant/Electric Assistant."

5. A clarification also was issued vide letter dated 19.02.1987, as to how the period of 2 years minimum service in the lower grade shall be counted. All the applicants fulfilled the eligibility conditions and were subjected to a selection for the said post of Goods Driver. They were empanelled vide selection panel dated 04.06.1991. All the applicants were granted promotion to the post of Goods Driver vide order dated 09.12.1991. They were also assigned their due seniority vide seniority list dated 15.09.1993 and their names are placed at serial Nos. 196 to 260 on the post of Goods Driver.

6. On the other hand the private respondents were also called for the said selection by mistake and since they did not fulfilled the eligibility conditions they were not selected for the said post. The Private respondents were promoted on adhoc basis from the post of Second Fireman to Diesel Assistant vide letter dated 10.06.1988 (Annexure A-6) and thus were not placed on the panel. They got aggrieved from the aforesaid order dated 09.12.1991 by which the applicants were promoted and submitted a representation to

the Department. The representation came to be rejected for the reason that they were promoted to the post of Diesel Assistant on adhoc basis and had no right for regularisation on the post of Diesel Assistant.

7. The private respondents filed two original Applications before this Tribunal and the same came to be disposed of vide Annexure A-9 with ^{the following} /directions to the official respondents :

"The applicants who were departmental candidates have to be considered for empanelment and the panel should accordingly be prepared on the basis of five years experience. If any applicant with five years experience has been left out, though he had taken the test, he should be duly considered for inclusion in the panel subject to fulfilment of other condition and his promotion should take effect from the date from which his juniors have been promoted. Such promotion may be treated as deemed promotion with notional benefits from the date his juniors have been promoted."

Thereafter the private respondents were promoted vide order dated 31.12.1992 (Annexure A-10) to the post of Driver. The private respondents have been promoted despite the fact that they were not fulfilling the eligibility criteria for promotion to the next higher post.

8. Subsequently the respondents have issued another seniority list dated 24.12.1994, wherein the respondents Nos. 4 to 23 have been shown senior to the applicants despite the fact that all the applicants were shown senior to these respondents in the seniority list issued in the year 1993 in respect of the post of Goods Driver. The seniority list of 1993 was issued after giving the promotion to the private respondents. The matter was protested by the applicants and a representation was filed and assurances were given that a revised gradation list would be published. But their

claims came to be rejected. There has been certain subsequent developments in as much as that the Goods Driver has been upgraded and certain percentage has been fixed in the pay scale of Rs. 5500-9000/- with the designation of Senior Goods Driver. Further selection have been arranged and so on.

9. The Original Application has been filed on number of grounds and we shall deal with the grounds pressed by the learned counsel for the applicants at appropriate place in the later part of this order.

10. An application for condonation of the delay has been filed and the delay was condoned by the Tribunal ^{order in the} vide/ order sheet dated 18.01.2000. Certain subsequent amendments were also carried out in the Original Application.

11. A detailed reply has been filed on behalf of the respondents No. 1 to 3 and another reply has been filed on behalf of the respondent No. 18 which has been adopted by the private respondents. A preliminary objection regarding delay has been taken. It has also been submitted that certain further promotion has also taken place in respect of the private respondents. The representation of the applicants were duly considered and decided. As regards the reply on behalf of the respondent No. 18 it has been submitted that the seniority is governed under Para 302 of the Indian Railway Establishment Manual. A discussion has been made regarding the determination of seniority as per Para 303 (a) and it is submitted that vide order dated 31.12.1992 the services of the private respondents have been regularised on the post of Diesel Assistant on their regular select-

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ion to the post of Goods Driver and the applicants were promoted/appointed in the said grade much after the private respondents and having been promoted on 09.05.1991 as Goods Driver the private respondents has rightly been assigned the seniority over and above the applicants. The question of limitation has been rejected.

12. During the course of argument on 04.08.2003 the respondents were asked to make available a copy of the order by which the private respondents have been promoted to the post of Goods Driver. The same has already been taken on record as letter dated 05.01.1993. As far as rules of the seniority are concerned, the seniority on a particular post is required to be governed by para 302 of the Indian Railway Establishment Manual Volume-I read with para 314 of Indian Railway Establishment Manual Volume-I. The contents of the same are reproduced 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."

"314. Seniority when date of appointment to a grade is the same -

Subject to what has been stated in paragraphs 302, 303, 304, 305 & 306, when the dates of appointment to the grade are the same, the dates

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of entry into the grade next below it shall determine seniority. If those dates also coincide, then the dates of entry into each of the lower grades in order down to the lowest grade in the channel of promotion shall determine seniority. If these dates are also identical, then the relative date of birth shall determine seniority, the older person being the senior."

13. From the perusal of the aforesaid rules it is clear that seniority among the incumbents of a post is governed by the date of appointment to the grade and if the grade is the same then the date of entry into the grade next below shall be determined for seniority and it shall follow as per the Rule 314 (supra).

14. Now adverting to the facts of this case, heavy reliance has been placed by the learned counsel for the respondents that the private respondents were promoted to the post of Goods Driver from the year 1991 and for this they have referred to the letter dated 31.12.1992 which is placed at Annexure A-10 and Annexure R-18(2) to the reply filed on behalf of the respondent No. 18. We have very carefully gone through this letter. This letter indicates that the private respondents have been empanelled by the panel dated 15.12.1991 on the post of Goods Driver. By the same order they have been regularised on the post of Diesel Assistant. This letter does not indicate regarding the promotion of the private respondents to the post of Goods Driver. It also does not indicate as to whether the private respondents have been placed in the panel of Goods Driver above the applicants or below the applicants. We strived hard to get the correct position from the respondents. But no clear cut answer were forth-coming and on the basis of precarious assertions^{we}/were diverted to get persuaded that

the private respondents were promoted with effect from 15.12.1991 by placing all of them emblock senior to the applicants in the instant case. But we find that this is far from the truth and the respondents have not been able to countenance their version by any ~~reliable~~ ^{reliable} evidence or material in support of their contention. They insisted us to take the dates of their promotion as indicated in the revised seniority list and base our findings on the dates given therein. We have tri-ed to go to the heart of the problem, since the seniority list is based on certain other material i.e. the promotion or appointment orders and the same could be aptly called as the shadow of the orders of appointment or promotions.

15. Nextly the matter became very curious as the learned counsel for the respondents were consistently trying us to read certain things from the documents which were not there. When it was enquired as to by which order the private respondents were promoted we were taken to Annexure R-X order dated 05.01.1993 and it does not make any mention as regards from which date they have been promoted. It has only been indicated that they have been empanelled on the post of Goods Driver vide letter dated 31.12.1992 and there is absolutely no indication as to from which date they have been promoted. In such cases the safest course would be to take the date of the letter as the date of promotion and this date would be 05.01.1993. We also find from the records that this letter of 05.01.1993 has not been challenged anywhere and the private respondents seems to have absolutely no complaint about this. They have also no complaint about the Annexure R-18(2), whereby they have been regularised on

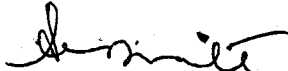
the post of Diesel Assistant simultaneously placed on the panel dated 15.12.1991 which does not indicate their position in the panel. The matter would not end up here, since the private respondents have been promoted with effect 05.01.1993 and there is no objection to the same. It could be well understood that all these private respondents must have found place in the panel below the applicants.

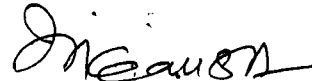
16. We also find now examining the matter from other angle that whatever promotion was given to the respondents in the year 1993 a seniority list came to be issued on dated 15.09.1993, wherein the position of the applicants have been correctly shown. Had there been any promotion of the private respondents from a retrospective date the position would have not been such. It clearly comes to show that some extreneous material has been taken into consideration and the position was completely changed in the year 1994 when the revised seniority list was issued which is the impugned list in the present case. As far as the interpretation and construction of the documents are concerned we are very clear in the mind that Annexure R-18(2) and Annexure R-X very much clearly indicates that the private respondents have been empanelled on the post of Goods Driver in the panel dated 15.12.1991, they were regularised on the post of Diesel Assistant with effect from 31.12.1992 and they also have been promoted with effect from 05.01.1993. Before proceeding further one more thing comes to our notice that once the private respondents were admittedly regularised on the post of Diesel Assistant from 31.12.1992 how it could be possible that they could be promoted on the post of Goods Driver from prior date to their regularisation on the feeder post i.e. from a date somewhere in 1991. The natural

inference would be that they could be promoted to the post of Diesel Goods Driver only from the date subsequent to the date from which they are regularised on the post of Diesel Assistant i.e. 31.12.1992 and therefore there would be nothing wrong if their promotion date to the post of Goods Driver is taken as 05.01.1993. Now coming again to the interpretation of the orders, the law on this point is very clear and has been settled by the Hon'ble Supreme Court in the case of Mohinder Singh Gill Versus Chief Election Commissioner reported in AIR 1978 SC 851, wherein their lordships has held and laid down that an order passed by the Executive Authority is to be read as it is and nothing is to be added and nothing is to be substracted and the same cannot be supplemented by explanation or by additional affidavits. Thus the clear interpretation of these two letters comes to show that all the private respondents were promoted to the post of Goods Driver only from 05.01.1993 and if that be true this date is much later than that of the date of promotion of the applicants to the post of Goods Driver since the applicants were promoted to the post of Goods Driver with effect from 09.12.1991. Therefore the contention of the applicants that they are senior to the private respondents are wellfounded keeping in view and in accordance with para 302 read with para 314 of the Indian Railway Establishment Manual (supra) and the action of the respondents in issuing the revised seniority list dated 24.12.1994 is exfacie illegal, arbitrary and is not in consonance with the rules in force.

17. The upshot of the aforesaid discussion is that the Original Application merits acceptance and the same is

hereby allowed. The impugned seniority list dated 24.12.1994 (Annexure A-11) stands quashed. The seniority list dated 15.09.1993 gets revived and the applicant shall be entitled to all the consequential benefits. However in the peculiar facts and circumstances of the case there shall be no order as to costs.


(Anand Kumar Bhatt)
Administrative Member


(J.K. Kaushik)
Judicial Member

"SA"

पृष्ठान्न सं अ/न्या.....जबलपुर, दि.....
पतिलिपि अद्यो धित:-

(1) सचिव, उच्च न्यायालय बार एसोसिएशन, जबलपुर

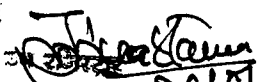
(2) आवेदक श्री/श्रीमती/कु.....के कांस्टेबल

(3) प्रत्यक्षी श्री/श्रीमती/कु.....के कांस्टेबल

(4) कांस्टेबल, जबलपुर न्यायालय

सूचना एवं आदेशक कार्यालय, देहू

m. K. Varma.
R. S. Baronia, Smt. J. Chandel
S. Yadav.


26/8/03

Issued
On 26.8.03
BS