

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 20th day of November, 2009

ORIGINAL APPLICATION NO. 399/2005

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

1. Manoj Mishra son of Shri Shyam Sunder Mishra aged about 45 years, resident of House NO. 98, Ward No. 11, Shaligram Bhawan, Brahmputri, Kachari Road, Ajmer. Presently working as Station Master, Mangaliawas, North Western Railway, Ajmer Division, Ajmer.
2. Kirti Bhargava son of Shri Uma Shankar Bhargava aged about 46 years, resident of D H Building, Hathi Bhata, Ajmer and presently working as Station Master, Ajmer, North Western Railway, Ajmer Division, Ajmer.

.....APPLICANTS

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Union of India through General Manager, North Western Zone, North Western Railway, Jaipur.
2. Union of India through General Manager, Western Railway, Church Gate, Mumbai.
3. Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.
4. Shri Balram Das Baidgel, Station Superintendent (Planning), Office of Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.
5. Shri Attu Khatri, Instructor, Area Training School, North Western Railway, Kutchari Road, Ajmer.

.....RESPONDENT

(By Advocate : Mr. V.S. Gurjar)

ORDER

PER HON'BLE MR. M.L. CHAUHAN

The applicants have filed this OA thereby praying for the following reliefs:-

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"(i) That respondents may be directed to assign seniority to the applicants below the last candidate selected in the year 1985 i.e. Shri Bal Krishan Agarwal of General Category in the scale Rs.455-700 and above the officials in the scale Rs.425-640/330-560 like respondent no. 4 and 5 in the seniority list dated 22.3.1988 (Annexure A/9) with consequential benefits including seniority/promotion in the higher scales from the date junior so allowed.

(ii) That the respondents be further directed to promote the applicants in the scale of Rs.6500-10500 and 7450-11500 after assigning seniority claim by the applicants without going through selection process, as the applicants already cleared selection for the higher scales and to allow difference of pay and allowances from the date juniors so promoted.

(iii) Any other order/ directions of relief may be granted in favour of the applicants, which may be deemed just and proper under the facts and circumstances of this case.

(iv) That the costs of this application may be awarded."

2. Facts of the case are that the applicants have applied for selection to the post of Traffic Apprentice in the pay scale of Rs.455-700/- as per Employment Notice No. 01/85 and after facing the selection test, a panel was prepared and the applicants were allotted to Ajmer Division vide letter dated 17.10.1986. Thereafter, the applicants were ordered to undergo the prescribed training. According to the applicants, they have completed / passed the training, result of which was declared vide Memorandum dated 09.01.1989 (Annexure A/3) in which the names of the applicant find mentioned at sl. No. 30 and 28 respectively. Pursuant to such selection, the applicants were appointed on the post of Assistant Station Master in the revised pay scale of Rs.1400-2300 vide order dated 30.08.1989 (Annexure A/4). It may be relevant to state here that the Railway Board vide circular dated 15.05.1987 (Annexure A/5) prescribed two scales for Traffic/Commercial Apprentices viz., Apprentice who were selected prior to 15.05.1987 were allowed scale of pay of Rs.455-700 (Revised scale Rs.1400-2300) whereas the persons who were selected as

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Traffic/Commercial Apprentice after 15.05.1987 were granted the pay scale of Rs.550-750 (Revised scale Rs.1600-2660). From the material placed on record, it is evident that one Shri Ashutosh Sharma & Others, who were appointed as ASM in the pay scale of Rs.1400-2300 have filed OA No. 537/1992 in CAT Jaipur Bench, which was decided on 13.05.1992 thereby claiming the pay scale of Rs.1600-~~2660~~ w.e.f. 15.05.1987 pursuant to Annexure A/5. The said OA was allowed and the benefits of Rs.1600-2600 and further promotion in the scale of Rs.2000-3200 and 2375-3500 were provisionally given subject to the SLP pending in the Hon'ble Supreme court. Accordingly, the applicants also get the benefit of the said pay scale. However, the Apex Court set aside the judgment rendered by the Tribunal vide its judgment dated 06.05.1996 in the case of **Union of India & Others vs. M. Bhasker & Others**, 1996 (4) SCC 416. The Hon'ble Supreme Court had also upheld the decision taken by the Railway Board vide its Circular dated 15.05.1987 (Annexure A/5) and it was held that two different pay scales can be granted to Traffic Apprentice who were selected prior to cut-off date i.e. 15.05.1987 and those who were appointed after 15.05.1987. As can be seen from Para No. 10 of the judgment of the Apex court, the Apex Court has categorically held that person who were selected as Apprentice prior to 15.05.1987 were to man the posts of Assistant Station Masters and Assistant Yard Masters. The persons who were selected after the aforesaid cut off date were to man the higher posts of Station Master and Yard Master and also standard of examination for these two categories of Apprentice were different. Thus the Apex Court has justified the grant of two different scales to the Apprentices prior to 15.05.1987 and post 15.05.1987 Apprentices. Accordingly, pay scale of Rs.1660-2660, which was

granted to the applicants, was withdrawn and the applicants' pay was fixed in the pay scale of Rs.1400-2300.

3. The grievance of the applicants in this OA is regarding assigning of higher seniority than respondents nos. 4 & 5. The case of the applicant is that prior to revision of pay scale in the category of ASM w.e.f. 01.01.1986, the cadre of ASM consists of three categories i.e. in the cadre of ASM, three different pay scales were provided (i) Rs.330-560 (ii)425-640 and (iii) Rs.455-700. Accordingly to the learned counsel for the applicant, the feeder grade of Rs.330-560 formed basis for promotion to the grade of Rs.425-640. Similarly feeder grade of Rs.425-640 formed basis for the grant of higher scale of Rs.455-700. According to the learned counsel for the applicant, respondents nos. 4 & 5 were granted promotion in the pay scale of Rs.425-640 in the pre-revised scale in the year 1984-85 whereas the post of ASM/Traffic Apprentice which was notified pursuant to Employment Notice No. 01/85 was in the higher scale of Rs.455-700/-. As such, the applicant should be placed enblock senior to respondents nos. 4 & 5 who were in the scale of pay of Rs.425-640. It may also be relevant to mention that earlier the applicants have also filed OA No. 333/2003 before this Tribunal regarding assigning of higher seniority on the post of ASM. However, the said OA was disposed vide order dated 18.11.2004 by giving direction to the respondents to pass appropriate order on the representation of the applicants dated 05.11.2002 and April, 2003. In compliance of the order passed by this Tribunal, the respondents have disposed of the representation of the applicants vide order dated 27.01.2005 (Annexure A/1) thereby holding that seniority notified vide letter dated 19.04.2001, 12/21.03.2003 and 23.09.2003, which has

been prepared on the basis of joining duty in the scale of Rs.1400-2300 hold 'good' and the applicants cannot be granted seniority of the scale of Rs.455-700/- as this scale has also been revised to Rs.1400-2300 prior to their recruitment. It is on these facts the applicants have filed this OA thereby praying for the aforesaid reliefs.

4. Notice of this application was given to the respondents. The respondents have filed their reply. In the reply, the respondents have categorically stated that the order dated 27.01.2005 (Annexure A/1) has been correctly issued and the representations of the applicants have been decided by respondent no. 3 on the ground that the applicants were appointed as ASM in the pay scale of Rs.1400-2300 and were not borne in the Railways or appointed as ASM in the old pay scale of Rs.455-700. Thus, the seniority was assigned on the basis of their pay scale of Rs.1400-2300. The fact that the applicants were recruited by the Railway under Employment Notice No. 1/85 pursuant to the RRB Ajmer letter dated 17.10.1986 is not disputed. It is also stated that after facing the prescribed training vide order dated 09.01.1989 (Annexure A/3), the applicant were appointed as ASM in the pay scale of Rs.1400-2300 vide order dated 30.08.1989 (Annexure A/4). It is further stated that respondents nos. 4 & 5 were promoted as ASM in the pay scale of Rs.425-640/ 455-700 w.e.f. 01.01.1984 and 23.04.1984 respectively i.e. prior to recruitment of the applicant. Thus those employees who had already been promoted as ASM in the scale of Rs.425-640/ 455-700 in 1984 prior recruitment of the applicants, the applicants cannot claim their seniority over & above those employees. Thus according to the respondents, the applicants cannot equate their case with respondents nos. 4 & 5 or those

employees who had been promoted as ASM in that scale prior to recruitment of Traffic Apprentice. The respondents have stated that in the seniority list dated 22.03.1988 and 19.04.2001 (Annexure A/9 and Annexure A/10 respectively), the position of the applicants has been correctly assigned at their proper place. Further the respondents have also justified the seniority position of the applicants in the higher grade of Station Master in the scale of Rs.5500-9000/- vide order dated 23.09.2003. The respondents have also stated that the pay scale of Rs.455-700/- was not existing when the applicants were recruited by the Railway Board vide their letter dated 17.10.1986 because the old pay scale of Rs.425-640/ 455-700 had been revised to one pay scale of Rs.1400-2300/- w.e.f. 01.01.1986 whereas the applicants were appointed in Railways on 30.08.1989.

5. The applicants have also filed rejoinder thereby reiterating the stand taken by them in the OA.

6. We have heard the learned counsel for the parties and have perused the record of the case. We are of the view that the applicants are not entitled to any relief. Further we see no infirmity in the action of the respondents whereby the representations of the applicants for higher seniority in the ASM category was rejected vide order dated 27.01.2005. At this stage, it will be useful to reproduce the decision taken by the authorities, which thus reads as under:-

"You had applied for Traffic Apprentice under employment notice No. 01/85 through RRB/Ajmer. RRB/Ajmer issued a letter dated 17.10.1986 by which you were recruited as Traffic Apprentice in scale Rs.455-700 but before issuing the said letter, the said Pay Scale Rs.455-700 was revised in revised Pay Scale Rs.1400-2300 under IV Pay Commission. In terms of recruitment

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process, you were sent for initial & practical training in March, 1987 as prescribed for Traffic Apprentice. After completion of said prescribed training, you were given offer of appointment for the post of ASM grade 1400-2300. In terms of offer of appointment, you had given acceptance for the appointment of ASM in scale of Rs.1400-2300. After acceptance, you were appointed as ASM in scale Rs.1400-2300 vide this office letter No. ET/121/1 Vol. 5 dated 30.8.89 and joined duties as ASM in scale 1400-2300. Thus, it is clear that you were not appointed as ASM in scale 455-700. As per the extent rules, the seniority is to be assigned to the employees on the basis of appointment. You were appointed as ASM scale Rs.1400-2300, hence you were assigned proper seniority on the said post of ASM scale Rs.1400-2300.

After appointment of ASM in scale Rs.1400-2300, Shri Ashutosh Sharma & others filed an OA No. 537/92 in CAT/JP, which was decided on 13.05.92 granting the benefit of revision of Pay & fitment from 15.05.1987 with consequential monitory benefits. According to the said decision, you were granted revision of pay & fitment from pay scale 1400-2300 to 1600-2600. The benefit in scale Rs.1600-2660 and further promotion in scale Rs.2000-3200 & 2375-3500 were given provisionally i.e. out come of SLP pending in Supreme court. Subsequently the said SLP of Railway Adm. has been allowed. According to decision in SLP on 06.05.96, you were redrafted on the post of ASM scale s.1400-2300 vide letter No. ET/839/5 Vol. 10 dated 28.01.97. Regarding letter dated 9.4.97, detailed position of the case has been given to HQ/CCG vide DO letter dated 16.5.97, wherein it has been mentioned that Traffic App. were not appointed in scale 455-700 i.e. they were not borne in that scale, hence they cannot be considered for seniority.

As per the Hon'ble Supreme Court's judgment dated 06.05.96, your seniority alongwith other Traffic Apprentices is to be reckoned based on your joining in pay scale 1400-2300. Thus, your seniority has correctly been reckoned on the basis of your joining in pay scale 1400-2300.

From the above facts, it is clear that prior your recruitment the pay scale Rs.455-700 has been revised as pay scale Rs.1400-2300 and were appointed in scale 1400-2300, hence the question of seniority of scale Rs.455-700 does not arise at this stage however, your seniority position as indicated in earlier seniority list notified vide letter No. ET/1030/5 Vol. I dated 19.04.2001 & 12/21.03.2003 and 23.09.2003 had been maintained on the basis of joining their duty in scale Rs.1400-2300.

7. Thus in view of the reasoning given by the competent authority, as reproduced above, to which we entirely agree, the applicants have

not made out any case for the grant of relief. As can be seen from the facts, as stated above, respondents nos. 4 & 5 were appointed as ASM in the pay scale of Rs.425-640 w.e.f. 01.01.1984 and 23.04.1984 when even the recruitment process was not initiated by the respondents on the basis of which the applicants were appointed as ASM. It is also an admitted fact that the pay scale of Rs.425-640/ 455-700 was revised to one pay scale of Rs.1400-2300 w.e.f. 01.01.1986. Admittedly, the applicants have been given seniority from the date of their joining to the post of ASM w.e.f. 30.08.1989. Thus the applicants cannot claim seniority with effect from the date of promotion of respondents nos. 4 & 5 on 01.01.1984 and 23.04.1984 when they were not even borne in the cadre and even the recruitment process for appointment of the applicants was also not initiated. Further the applicants have not made any grievance in this OA that old pay scale of Rs.425-640 which constitute the feeder cadre for promotion/entitlement of higher scale of Rs.455- 700/- could not have been revised to one pay scale of Rs.1400-2300/- in this OA by challenging the validity of the order whereby these aforesaid scales were revised to one pay scale.. Further fact remains that w.e.f. 01.01.1986, the pay scales of the post of ASM was revised to 1400-2300 and there exists no pay scale of Rs.455-700. In fact the applicants have also accepted the revised pay scale of Rs.1400-2300 when they were appointed on 30.08.1989 without any protest. Thus, the applicants cannot claim their seniority over and above the respondent no. 4 & 5 when they were promoted on 01.01.1984 and 23.04.1984 which scale has been revised to that of 1400-2300 w.e.f. 01.01.1986.

8. That part the applicants are not entitled to any relief in terms of the provisions contained in Para No. 302 of IREM. The aforesaid Para deals with the seniority in initial recruitment of the ^{grade} group. This Para specifically provides that date of regular promotion after due process of selection would be the date from which seniority of promotee has to be reckoned whereas in the case of direct recruit, this would be the date of joining the working post after due process i.e. after completion of training. The said provision was also considered by the Apex Court in the case of **Swapan Kumar Pal and others vs. Samitabhar Chakravorty and others**, 2001 SCC (L&S) 880 wherein the Apex Court has held that ad hoc service cannot be counted for the purpose of seniority and the seniority has to be assigned from the date of regular appointment. It was further held that grant of financial benefit from earlier date could not have the effect of changing the seniority governed by the provisions of IREM. The respondents have fixed the seniority of the applicants strictly in terms of the provisions contained in Para No. 302 of IREM i.e. from the date of joining the working post after completion of training. Even on this ground, the applicants are not entitled for any relief.

9. For the foregoing reasons, the OA is bereft of merit and is accordingly dismissed with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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