

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

23-8-07.

order pronounce in the open
Court today.

23/8/07.

10.03.2007

11.04.2007

Mr. S. S. Sharma, Proxy counsel for
Mr. V. P. Mishra, Counsel for applicant.
Mr. Dilip Kumar, Proxy counsel for
Mr. S. S. Sharma, Counsel for official respondents.
Mr. S. S. Sharma, Proxy counsel for
Mr. Rajesh Sharma, Counsel for private respondents.
The proxy counsel appearing on behalf of the
applicant submitted that Mr. V. P. Mishra comes from Kota
and due to some problem, he has not come today. He
therefore seeks adjournment of the case.

List 1 on 21.08.2007

(KULDEEP SINGH)
VICE CHAIRMAN

(S. S. SHARMA)
MEMBER (A)

AHO

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 23rd day of August, 2007

ORIGINAL APPLICATION No.60/2005

CORAM:

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR. R.R.BHANDARI, ADMINISTRATIVE MEMBER

1. G.K.Jain s/o Shri Jineshwar Chandra Jain, Sr. Cashier, r/o H.No.545, Shanti Nagar, Dadwara, Kota Jn.
2. Chatar Singh s/o Shri Devi Singh, Sr. Cashier r/o 731/A Old Rly. Colony, Kota Jn.
3. Manoj Sharma s/o Shri Ramji Lal Sharma, Sr. Cashier, r/o 933/A, New Rly. Colony, Kota Jn.
4. S.D.Sakorikar s/o Shri Divakar Vishnu Pant Sakorikar, Sr. Cashier, r/o 473/B, New Rly. Colony, Kota Jn.
5. U.C.Sharma s/o Shri Om Prakash Sharma, Sr. Cashier r/o Qr. No. 50, Rly. Housing Society, Mala Road, Kota Jn.

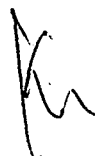
All the applicants are working in W.C.Rly. Kota

.. Applicants

(By Advocate: Shri V.P.Mishra)

Versus

1. Union of India through the General Manager, West Central Railway, Jabalpur.
2. FA&CAO (Cash and Pay Department) West Central Railway, 8-Civic Centre, JDA Complex, Marhatal, Jabalpur.
3. FA & CAO, Western Railway, Churchgate, Mumbai
4. Sr. Divisional Finance Manager (Sr. DRM), West Central Railway, Kota



5. S.K.Saxena, Sr. Cashier, Pay and Cash Office, W.C.Railway, Itarsi Jn.
6. R.K.Jain, Sr. Cashier, Pay and Cash Office, W.C.Railway, Katni Jn.
7. M.L.Swami, Sr. Cashier, Pay and Cash Office, W.C.Rly., Bhopal.
8. George Menezes, Sr. Cashier, Pay and Cash Office, W.C.Rly., Jabalpur.

... Respondents

(By Advocate: Shri S.S.Hasan for Resp. 1 to 4)

O R D E R

Per KULDIP SINGH, VC

The applicants have challenged the seniority list issued by the West Central Railway, Jabalpur on 30th December, 2004. The representations made by the applicants against the said seniority list was turned down by the respondents.

2. The case of the applicants is that they were appointed as Junior Cashier from where they were promoted to the post of Senior Cashier on different dates in between the period from 18th September, 1990 to 29th September, 1996. All of them were promoted on different dates on ad-hoc basis as Senior Cashier and thereafter they were regularized w.e.f. 11th August, 1997. It is further stated that promotion to the post of Senior Cashier were made in the Western Railway on



ad-hoc basis in accordance with the rules and as per the seniority subject to passing of the suitability test. However, the suitability tests were not held for years together and the incumbents continued to work on ad-hoc basis until their regularization on passing of the suitability test.

It is further stated that on 1st April, 2003 a new zone namely, West Central Railway was created with Headquarter at Jabalpur. In newly created zone, Kota Division of the Western Railway was combined with Jabalpur and Bhopal Divisions of the Central Railway under the West Central Railway as aforesaid.

It is further stated that unlike Western Railway where promotion to the post of Senior Cashier were made against the clear vacancies on ad-hoc basis in accordance with the rules as per the seniority and suitability and thereafter regularized on passing of a formal suitability test, however, in Central Railway the promotions were made on regular basis as and when vacancies arose and ad-hoc promotions were not made.

It is also stated that as long as Kota Division remained under the Western Railway, the applicants had no grievance as all the incumbents were first promoted to the post of Senior Cashier on ad-hoc basis and then regularized enblock after passing the suitability test.

However, grievance of the applicants arose when after merger of Kota Division with the Central



Railway, in the newly created zone of West Central Railway, when the combined seniority list dated 30th December, 2004 was issued by respondent No.2 as in the said seniority list the applicants were placed at Sl.No.20, 21, and 23 to 25 from the date of regularization from 11th August, 1997 whereas Senior Cashiers from Central Railway were placed above the applicants including respondent Nos. 5 to 8 at Sl.No.4, 6, 12 and 15. Though these senior persons could not have been promoted as Junior Cashiers on the dates the applicants were already promoted and were working on the post of Senior Cashier. As for promotion to the post of Junior Cashier, the condition precedent for eligibility for Clerks and Shrofs is minimum 3 and 2 years respectively and after appointment to the post of Junior Cashier, a minimum service of two years is required for being considered for further promotion to the post of Senior Cashier. Owing to the wrong practice prevalent in Western Railway of resorting to ad-hoc promotion and not holding the suitability test in time, a anomalous position has arisen putting the ex-Western Railway Cashiers in disadvantageous position vis-à-vis the Central Railway's Cashier.

It is further stated the applicants have been promoted to the post of Senior Cashier though on ad-hoc basis, but were posted against clear vacancies and were promoted as per rules, so their ad-hoc period



should be counted towards determination of seniority on amalgamation of Bhopal and Jabalpur Division, when the new zone of West Central railway was created.

3. The respondents have contested the OA. The official respondents have submitted that West Central Railway was established on 1st April, 2003 through amalgamation of Jabalpur and Bhopal divisions of the erstwhile Central Railway and Kota Division of the erstwhile Western Railway. It is further stated that inter-se seniority of the Senior Cashiers of the Jabalpur and Bhopal Divisions remained unchanged upon their becoming part of West Central Railway because they were all earlier part of the Central Railway. Thus, it became necessary to undertake an exercise of interpolating names of persons of Kota Division who had been part of the Western Railway. The Railway Board had issued a letter dated 16th March, 2004 which ~~clarifies~~ ^{prescribes} about determination of seniority of the employees of both the railways (copy of which is annexed as Ann.R1). According to which, seniority is to be determined on the basis of position and grade held by the employee in the parent railway on regular basis of non-fortuitous length of service in the grade as on the date of closure of cadres on 31st October, 2003 subject to the condition that inter-se seniority of staff belonging to the same parent unit is not disturbed. So it is pleaded that according to this

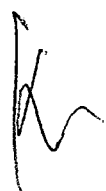


letter seniority of employees has to be determined from the date of their regular promotion to the grade of Senior Cashier on regular basis and against non-fortuitous posts. It is also submitted that the same is also in accordance with Para 320 of the Indian Railway Establishment Manual.

It is further stated that regular promotion of Junior Cashiers to the post of Senior Cashiers is to be made after conducting a suitability test, whereas ad-hoc promotion may be ordered based on the confidential reports and seniority alone without conducting the suitability test. Ad-hoc promotions are resorted to either when there is a legal or procedural impediment in conducting the suitability test or even when it is necessary to immediately fill vacancies that have arisen and it does not mean that an employee who has been given promotion on ad-hoc basis will automatically and necessarily get regular promotion as the ad-hoc promotees have to pass the suitability test. So it is stated that the seniority of the applicants have been rightly fixed and the OA deserves to be dismissed.

4. Private respondents have also filed their reply in the same manner.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

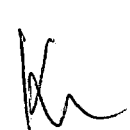


6. The short question involved in this case is whether length of ad-hoc service of the applicants as Senior Cashier is to be taken into consideration for determination of seniority at the time of creation of new zone.

The learned counsel appearing for the applicants submitted that as per the law laid down by various Courts particularly in case of T.Vijayan and others vs. Divisional Railway Manager and others decided by on 5th April, 2000, reported in 2000 (2) SLJ 17 the Hon'ble Supreme Court observed that where ad-hoc promotion is made in accordance with rules, at the time of regular promotion period of ad-hoc service would be counted for seniority.

The learned counsel for the applicants also referred to the case of Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and others, reported in (1990) 13 ATC 348 in support of his contention.


The learned counsel further submitted that suitability test was not conducted by the respondents, so there was a lapse on the part of the respondents themselves. Had they conducted the suitability test in time then the applicants would have been regularised earlier and then probably they would have no grievance in this regard. Thus, the learned counsel for the applicants submits that since the applicants were appointed in a regular manner though on ad-hoc basis



and they have continued without any break, so they are entitled to count their ad-hoc services.


In reply to this, the learned counsel for the respondents submitted that these judgments are not applicable to the facts of this case because when the applicants were initially promoted on ad-hoc basis and thereafter they were regularized on 11th August, 1997 and when the seniority list was issued by the Western Railway, they had no grievance. The applicants themselves stated in the OA that so long they continued under Western Railway, there was no dispute with the practice and procedure followed by the Western Railway first promoting the Junior Cashiers to Senior Cashiers on ad-hoc basis and then regularize their service after holding the suitability test. So there was no grievance in this regard. The grievance have arisen only at the time of merger of the Kota Division with Jabalpur and Bhopal Divisions, when new West Central Railway zone was created and the Railway Board had issued letter dated 16th March, 2004 which provided procedure for determination of seniority on transfer of staff to the new zonal railway and seniority has been determined in accordance with the said rule of the Railway Board.

In our view also the contentions raised by the learned counsel for the applicants have no merit because determination of seniority upon amalgamation of divisional railways into a new zone are governed by



the principles as enshrined in the Railway Board letter dated 16th March, 2004 and not on the principles of the judgment cited by the learned counsel for the applicants because the judgments are not based on the Railway Board letter which prescribes rules for determination of seniority on creation of new zone. By now, it is well established law that letter issued by the Railway Board in service matters are rules issued under Article 311 of the Constitution of India. Even Indian Railway Establishment Manual is nothing but compilation of the instructions issued by the Railway Board from time to time.

As regards the case of T.Vijayan (supra) cited by the learned counsel for the applicants is concerned, in that case there was a dispute between promotee employees and direct recruits. The promotee employees were given ad-hoc promotion and the direct recruit employees who joined later were given seniority over and above the promotee employees in the post of First Fireman, but the Court observed that as far as recruitment rules for the post of Fireman are concerned, 50% of the posts were to be filled up by promotion from amongst those employees who have sufficient period of service in the feeder cadre and had studied upto Class VIII and 50% were to be filled up by giving promotion to those who were Matriculate having three years of railway service and in case the 50% quota of Matriculate employees is not filled up



then appointment through direct recruitment can be resorted to, but the entire posts of First Fireman were meant under promotion quota. So the Court came to the conclusion that since the promotees are always appointed against the available vacancies, so the direct recruits are to be placed below. In the judgment, the Court also observed as under:-

"24. The Tribunal has also found that according to the mode of recruitment, the shortfall, if any, in the post of First Fireman, which could not be filled up by promotion, would not be filled up by direct recruitment, and, therefore, direct recruits have to be placed below the promotees in the matter of seniority. This also appears to be reasonable. But since we have already held above the promotion of respondents 4 to 13 was made in accordance with the Rules and they are entitled to reckon the period of ad hoc service on the post of First Fireman towards their seniority, we need not delve into that question any further."

In the instant case, this question is not in issue whether the applicants have been appointed against available vacancies or not or in regular manner or not, but the question rather is focused on different issue as to how seniority is to be determined on transfer of employees to the new railway zone.


Even otherwise, we may mention that promotion order of these applicants clearly mentions that promotion will be on ad-hoc basis and their continuance in the post will be subject to passing of the suitability test. Thus, they have to be regularized only after passing of the suitability test

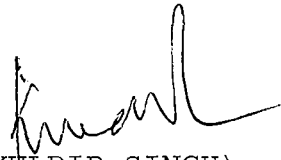
and since they were regularized after passing of the suitability test from 11th August, 1997, so they have been rightly assigned seniority w.e.f. 11th August, 1997, which fact was not challenged at all by the applicants because at that time the applicants were working in Western Railway itself, ^{The dispute has arisen only} ~~and probably~~ on creation of new zone ^{when} they came to know about this fact and since the Railway Board vide letter dated 16th March, 2004 (Ann.R1) has categorically issued instructions regarding transfer of staff to serve in the Headquarter office of the new zonal railway and determination of their seniority, which provides that seniority is to be determined on the basis of the position and grade held by the employee in the parent railway on regular basis and on the basis of non-fortuitous length of service in the grade as on the date of closure of cadres on 31st October, 2002, so we find that seniority of the applicants has been rightly fixed.

We may also mention that the applicants have also not challenged the letter dated 16th March, 2004 as they have not asked for quashing of the same. So, for the purpose of determination of seniority the letter dated 16th March, 2004 still holds the field and unless this letter is ^{to} ~~not~~ challenged and quashed, the applicants cannot ask for counting of their ad-hoc services.



7. Therefore, we find no merit in this OA and the same is dismissed accordingly. No costs.


(R.R.BHANDARI)
Administrative Member


(KULDIP SINGH)
Vice Chairman

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