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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 14.03.2012

OA No. 183/2007 with MA No. 55/2012

Mr. C.B. Sharma, counsel for applicants.
Mr. Anupam Agarwal, counsel for respondent nos. 1 to 3.
Mr. Ashok Joshi, counsel for respondent nos. 4 to 14.

MA No. 55/2012

Heard on the Misc. Application bearing No. 55/2012 filed on behalf of the official respondents praying therein for taking the documents on record of the OA No. 183/2007. Having heard the learned counsels appearing for the respective parties, the Misc. Application stands allowed. The documents annexed along with the MA are taken on record of the OA.

OA No. 183/2007

Heard learned counsels for the parties.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

MA 55/12 taken
on record.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 14th day of March, 2012

Original Application No.183/2007

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDICIAL)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMINISTRATIVE)

1. Ashok Kumar Joshi s/o Shri Mahesh Chand Joshi r/o Mahu Kalan, Gangapur City, and presently working as Goods Loco Pilot, under CTTC West Central Railway, Gangapur City (Rajasthan).
2. Ramavtar Sharma s/o Late Shri Battu Lal Sharma, r/o House No. 354, Nasiya Colony, Gangapur City and presently working as Goods Loco Pilot, under CTTC, West Central Railway, Gangapur City (Rajasthan).
3. Shashi Pal Singh s/o Shri Saadan Singh r/o 674/A, New Railway Colony, Kota and presently working as Goods Loco Pilot, West Central Railway, Kota (Rajasthan).
4. Kailash Chaturvedi s/o Shri Amiri Lal Chaturvedi r/o Mahu Kalan, Gangapur City, and presently working as Goods Loco Pilot, West Central Railway, Kota (Rajasthan).
5. Mukesh Kumar K s/o Late Shri Kehari Singh r/o Mahu Kalan, Gangapur City, and presently working as Goods Loco Pilot, Gangapur City, West Central Railway, Kota (Rajasthan).
6. Avdesh Kumar Singh s/o Shri Raghuveer Singh r/o Bunglow No.158/L, Near Railway Hospital, Gangapur City and presently working as Goods Loco Pilot, Gangapur City, West Central Railway, Kota (Rajasthan).
7. Ghamandi Lal B s/o Shri Baij Nath r/o Gali No.4, Chopra Farm Dadwara, Kota and presently working as Goods Loco Pilot, West Central Railway, Kota (Rajasthan).

8. Bachchu Singh s/o Babu Lal r/o Gali No.6, Chopra Farm Dadwara, Kota and presently working as Goods Loco Pilot, West Central Railway, Kota (Rajasthan).
9. Ram Singh B s/o Shri Balu Ji, r/o Plot No. 41, Behind Radha Krishna Mandir Dadwara, Kota and presently working as Goods Loco Pilot, West Central Railway, Kota (Rajasthan).
10. Gulshan Kumar s/o Shri Bhag Chand Bhola r/o House No. 227, Rangpur Road No.5, Bhim Mandi, Dadwara Kota and presently working as Goods Loco Pilot, West Central Railway, Kota (Rajasthan).

.. Applicants

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through General Manager,
West Central Zone,
West Central Railway,
Jabalpur (M.P.).
2. Divisional Railway Manager,
West Central Railway,
Kota Division,
Kota.
3. Senior Divisional Electrical Engineer (TRO),
West Central Railway,
Kota Division,
Kota.
4. Vinod Kumar Sharma,
Goods Loco Pilot
now Senior Goods Loco Pilot under C.T.C.C.,
West Central Railway, Kota
5. Sneh Shish Ghose,
Goods Loco Pilot
now Senior Goods Loco Pilot under C.T.C.C.,
West Central Railway, Kota

6. Leela Singh Meena,
Goods Loco Pilot
now Senior Goods Loco Pilot
under C.T.C.C.,
West Central Railway, Kota
7. Suresh Kumar Sharma
Goods Loco Pilot
now Senior Goods Loco Pilot
under C.T.C.C.,
West Central Railway, Kota
8. Harnam Singh
Goods Loco Pilot
now Senior Goods Loco Pilot
under C.T.C.C.,
West Central Railway, Kota
9. Mukesh Kumar P,
Goods Loco Pilot
now Senior Goods Loco Pilot
under C.T.C.C.,
West Central Railway, Kota
10. Vipin Singh,
Goods Loco Pilot
now Senior Goods Loco Pilot
under C.T.C.C.,
West Central Railway, Kota
11. Pawan Kumar Mittal,
Goods Loco Pilot
now Senior Goods Loco Pilot
under C.T.C.C.,
West Central Railway, Kota
12. Abhinand Trigunayat,
Goods Loco Pilot
now Senior Goods Loco Pilot
under C.T.C.C.,
West Central Railway, Kota
13. Jai Singh
Goods Loco Pilot
now Senior Goods Loco Pilot
under C.T.C.C.,
West Central Railway, Kota

14. Azaz Ahammad,
Goods Loco Pilot
now Senior Goods Loco Pilot
under C.T.C.C.,
West Central Railway, Kota

.. Respondents

(By Advocate: Shri Anupam Agarwal for resp. 1 to 3 and Shri Ashok Joshi for resp. 4 to 14)

O R D E R (ORAL)

Brief facts of the case are that the applicants are substantive employees of the respondent railway and holding the post of Goods Loco Pilot in the scale of Rs. 5000-8000 and working in West Central Railway, Gangapur City and Kota.

2. In the year 1995, the respondents conducted selection to the post of Diesel Assistant scale Rs. 950-1500 and placed all the applicants on the panel vide order dated 16.3.1995 and after going through medical examination and prescribed training, the applicants were appointed to the post Diesel Assistant in the year 1996 vide order dated 4.1.1996. The applicants undergone transportation training from 17.5.1995 to 20.6.1995 and declared pass vide letter dated 21.6.1995 (Ann.A/5). The respondents allowed posting to candidates selected through Railway Recruitment Board in the scale of Rs. 950-1500 as Electric Assistant Driver vide order dated 27.10.1995.



3. The controversy arose when the private respondents were placed above the applicants as the private respondents were selected through Railway Recruitment Board vide order dated 3.11.1995 and in the order itself it is mentioned that the seniority will be decided after completion of 52 weeks prescribed training and applicants were posted after training on 4.1.1996 as per panel dated 16.3.1995.

4. The case of the applicants is that the respondents have wrongly assigned seniority to the private respondents over and above the applicants. It is also contended that the applicants are rankers and already on the rolls of the respondent railway and they were selected to the post of Assistant in the scale of Rs. 950-1500 at the relevant time in the year 1995, whereas private respondents belonging to selected candidates through Railway Recruitment Board and while allowing them to go under prescribed training vide order dated 27.10.1995 it has been mentioned in Para (b) of order dated 27.10.1995 that their seniority will be decided after completion of 52 weeks prescribed training period. In spite of these facts, the respondents allowed seniority to these officials over and above the applicants which is not at all justified and private respondents are enjoying higher posts due to wrong action of the respondents and the respondents till date not communicated any reason for allowing seniority over and above the applicants to the private respondents.



5. It is also contended on behalf of the applicants that they are pursuing the matter right since 1998 after declaration of the panel dated 8.9.1998 (Ann.A/10), but the respondents are not considering the matter and till date not communicated any reason for lowering down the applicants in the seniority and by this action, applicants are being deprived from further promotion to higher posts and the officials like private respondents who joined in the cadre after the applicants are enjoying higher posts, which is not at all justified and such action of the respondents is liable to be quashed and set aside.

6. The applicants, therefore, prayed that the respondents be directed to assign seniority to the applicants over and above private respondents by modifying seniority of 2006 (Ann.A/14) with all consequential benefits and the respondents be further directed to allow the applicants promotion to the post of Senior Goods Loco Pilot scale Rs. 5500-9000 prior to private respondents by modifying panel dated 17.4.2007 (Ann.A/2) and by quashing promotion order dated 18.4.2007 (Ann.A/1) with all consequential benefits.

7. In response to the submissions made on behalf of the applicants, the official respondents as well as private respondents raised preliminary objections that this OA is not maintainable as the applicants are utterly failed to implead the necessary parties against whom the relief has been claimed.



8. During the course of arguments on 27.2.2012, this Tribunal directed the respondents to place on record the posting orders of private respondents on the post of Assistant Loco Pilot. Pursuant to the direction, the official respondents have filed MA No.55/2012 annexing letter dated 13.6.1994 (Ann.MA/1) and photocopies of service book of private respondents. The said MA has been allowed and the documents filed alongwith the MA have been taken on record.

9. The learned counsel appearing for the official respondents referred the appointment order of the applicants (Ann.A/4) and submitted that bare perusal of Ann.A/4 would clarify that it was neither appointment nor posting of the applicants, inasmuch as, it provides for issuing regular posting order and in fact vide Ann.R/1 posting orders of the applicants were issued by the respondents. The learned counsel given much emphasis on letter dated 13.6.1994 (Ann,MA/1) and more particularly referred to para-3, which provides that the staff will count their seniority from the notional date of completion of full initial training of 52 weeks and accordingly seniority has been assigned to the private respondents and after referring the aforesaid letter as well as service books of the private respondents, he is able to demonstrate that private respondents started their training prior to the applicants and in view of the letter dated 13.6.1994, the private respondents have rightly been shown over and above the applicants.



10. The private respondents also adopted the same argument as raised on behalf of the official respondents, and further added that both the applicants and private respondents were appointed against direct recruitment posts and for both of them the rule of seniority is common. The question for consideration before this tribunal is that 'seniority to direct recruits from RRB is determined after completion of the 52 weeks training period then how this rule can be deviated in respect of the working railway employees who came from various departments non related with the present grade.'

11. It is also submitted by the learned counsel appearing for the private respondents that the seniority list for the post of Goods Driver scale Rs. 5000-8000 though issued on 2/10.6.2003 and 22.4.2005 but the reference of the above seniority lists has not been given, only with a view that the original application will be treated within time. In both the seniority lists, the applicants were shown junior to the private respondents along with other similarly situated employees. In this view of the matter, the contention raised by the applicants that they were through out senior to the private respondents is false. The learned counsel further referred to the rules regarding seniority stating that 'in case the training period of direct recruits is curtailed in the exigency of service, the date of joining the working posts in the case such direct recruits shall be the date he



would have normally given to the working post after completion of prescribed period of training'

12. Admittedly, the representation so preferred by some of the applicants was rejected vide letter dated 2.9.2005 but the same has not been challenged and even now in the present OA the letter dated 2.9.2005 is not under challenge. Thus, both the learned counsel appearing for official as well as private respondents submitted that this OA is not only deserves to be dismissed on the ground of maintainability but also on the ground that cause of action, if any, has arisen on 2.9.2005 when the representation so preferred with regard to same cause of action was rejected but the applicants failed to prefer any OA within limitation. Further, the applicants failed to challenge the earlier seniority list without which any challenge to the seniority list of 2006 is without any substance. Further the panel and the promotion order (Ann.A/2 and Ann.A/1) is of next higher post i.e. the post of Senior Goods Loco Pilot scale Rs. 5500-9000. It is being based upon settled seniority position cannot be a ground to challenge the seniority list of 2006.

13. Having heard the rival submissions of the respective parties and upon careful perusal of the material available on record as well as the Misc. Application preferred by the official respondents and the documents annexed therewith, the short controversy remains whether the seniority list which has been drawn pursuant to letter




dated 13.6.1994 is correct or not, as it is evident that clause-3 of the aforesaid letter is a part and parcel of the order which has been passed and referred hereinabove.

14. We have carefully perused the documents placed at Ann.MA/1 dated 13.6.1994 which has been issued by the General Manager, Western Railway in supercession of all earlier instructions and the initial training of Apprentice Diesel Assistants and Electric Assistant recruited through RRBs and those selected from Matriculate Cleaners, VIII Passed Cleaners, Skilled artisans of Diesel/Electric Shed is prescribed 52 weeks training. It is further made clear in this letter that however in exigencies of service, on account of shortage of the crew on the Divisions, the competent authority i.e. GM has approved to curtail this training to 37 weeks in phase I for all categories. Therefore, the staff will be posted against working posts at the end of this curtailed training and the balance training will be imparted to upgrade their skills whenever feasible.

15. To determine the seniority, relevant clause-3 of this letter dated 13.6.1994 reads as under:-

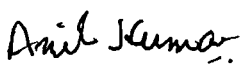
"3. As provided in the Board's letter No. E(NG) I-78-SR6-4 dt 7.4.82 (ACD No.132) circulated under No. G 376/161/1 Vol.V dt 14.5.92, staff will count their seniority from the notional date of completion of full initial training of 52 weeks."



After perusing clause-3, It is not disputed that the applicants have undergone the transportation training from 17.5.1995 to 20.6.1995 whereas the private respondents undergone training from 10.1.1995 to 14.1.1995. Admittedly, in view of clause-3 of letter dated 13.6.1994 (Ann.MA/1), private respondents are senior and rightly placed over and above the applicants.

16. We have carefully perused the photocopies of service book of private respondents, which have been placed on record, also verify the fact that private respondents have started their initial training prior to the applicants. Thus, we find no illegality in the order impugned dated 17.4.2007 (Ann.A/2), 18.4.2007 (Ann.A/1) and Ann.A/14, and no interference whatsoever is called for by this Tribunal.

17. Consequently, the OA fails being devoid of merit and the same is hereby dismissed with no order as to costs.


(ANIL KUMAR)
Admv. Member


(JUSTICE K.S.RATHORE)
Judl. Member

R/