

**Central Administrative Tribunal  
Principal Bench, New Delhi.**

**OA-1298/2012**

**Reserved on : 10.12.2015.**

**Pronounced on : 22.12.2015.**

**Hon'ble Mr. Shekhar Agarwal, Member (A)**  
**Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

1. Sh. R.S. Minhas (RM) East,  
N.N. Depot Complex, Delhi.
2. G.K. Sharma (Sr. Manager),  
(Tr.) SC House.
3. Archana Punni (Sr. Manager)  
(Tr. PG).
4. Chander Prakash (Sr. Manager)  
(Tr. PGD)
5. Rajiv Vadehra (Sr. Manager)  
(Tr. Hqrs).

.... Applicants

(through Sh. S.N. Sharma, Advocate)

Versus

1. DTC Chairman,  
IP Estate Hqrs., ITO, New Delhi.
2. Mrs. Durgesh Nandini (Sr. Manager)  
(Tr. Spl.)
3. Sanjay Saxena (Sr. Manager)  
(Tr.) Trevnd.
4. RBL Srivastava (Sr. Manager) RHD-III  
(Tr. Hqrs.)
5. R.K. Jain (Sr. Manager)  
(MD-1).
6. Anuj Kumar (Sr. Manager)

(Tr.) on deputation with DIMTS.

.... Respondents

(through Sh. N.K. Singh for Mrs. Avnish Ahlawat, Sh. M.K. Bhardwaj and Ms. Anuja Saxena, Advocates)

## **O R D E R**

### **Mr. Shekhar Agarwal, Member (A)**

While reserving this O.A. for orders, we had directed the official respondents to produce the original record pertaining to conduct of examination of the applicants after training. The same has so far not been produced though the original file containing the marks obtained by the candidates has been produced. However, after studying the case file, we are of the opinion that this case can be disposed of without waiting for the aforesaid record. Accordingly, we have proceeded to do so.

2. The applicants as well as private respondents herein initially joined DTC as Management Trainees. After one year of training they were appointed on the post of Traffic (Suptd.) (now designated as Manager (Traffic)) on 01.10.1987. They were put on probation for a year, which they completed on 06.10.1988. On 29.01.2003, one of the private respondents made a representation to the official respondents but the official respondents did not make any change in the seniority list. This was then challenged before this Tribunal by means of TA Nos. 806/2009 and 821/2009. The Tribunal vide its order dated 12.08.2009, however, refused to interfere in the matter and dismissed the TAs. The applicants of TAs then approached Hon'le High Court of Delhi by filing Writ Petitions No. 13177/2009 and 13615/2009. The aforesaid Writ Petitions were decided by Hon'ble High Court of Delhi by means of a common order dated 09.11.2010. The relevant part of the order of Hon'ble High Court reads as follows:-

“11. Suffice would it be to state that the Tribunal has over-simplified the facts. The Tribunal has ignored that though loosely called Management

Trainees, recruitment effected was multi-disciplinary and 13 persons were recruited as Management Trainees to be finally absorbed as Traffic Superintendents. Petitioners are a part of said 13 persons. The remaining persons appointed as Management Trainees, were absorbed in other Departments and were designated as Manager Accounts, Manager Personnel, Manager Engineering etc. The distinction in the Divisions was at the time of recruitment and thus a factually common recruitment was conceptually separate and different recruitment pertaining to different disciplines. Thus, the reasoning of the Tribunal that there was a method in the madness; the madness being a common recruitment for multi-disciplinary posts and the method out of the madness being the inability to standardize the recruitment with reference to the merit; requiring age to be the determinative factor is obviously premised on a wrong foundation. The Tribunal has proceeded on the assumption that inter-se seniority of all persons recruited as Management Trainees in the year 1987 was in issue. The Tribunal lost sight W.P.(C) Nos.13177 & 13615/09 Page 7 of 8 of the fact that of the 24 persons recruited, 13 were appointed as Traffic Superintendents and the remaining against different posts and the issue of seniority was concerning only the Traffic Superintendents.

12. We do not know the marks assigned to the 13 persons appointed as Traffic Superintendents in the year 1987; in fact, we do not even know whether the select panel was drawn up with reference to the marks obtained. But, commonsense tells us that being appointed as a result of direct selection, marks had to be assigned to the various persons who had applied in response to the advertisements inviting applications and we are given to understand that there were 400 applicants in the various disciplines. How many of them pertained to Traffic Superintendents is not known. But since 13 were appointed, it is apparent that the said 13 obtained more marks than the others. This guides us that the department would have the relative merit of the 13 persons appointed as Traffic Superintendents.

13. But, in the absence of any statutory rule and noting that the past precedents and the future precedents adopted by DTC, as noted hereinabove, show no consistent pattern; we repeat that for the Assistant Traffic Superintendents recruited in the year 1978 seniority assigned was on the merit position as per the select list and for the appointments made as Traffic Superintendents in the year 1989, seniority assigned was on the merit position after training period was over and a departmental exam was conducted, it may be difficult for us to issue any specific direction, save and except at least one: DTC being obliged to follow one uniform criteria to determine the inter-se seniority of directly recruited candidates at the same selection process. Further, while identifying the uniform criteria, since DTC has been adopting the guideline issued by W.P.(C) Nos.13177 & 13615/09 Page 8 of 8 the Government of India, to follow the applicable guideline issued by the Government of India.

14. Since the undisputed position is that no draft seniority list was prepared and none was given an opportunity to file representation against the draft seniority list; noting that assignment of seniority position affects the promotional prospects of an employee, law requires an opportunity to be granted to an employee to make a representation against a draft

seniority list, we dispose of the two writ petitions issuing a mandamus to DTC to draw up a draft seniority list of Traffic Superintendents (re-designated as Manager Traffic) and after hearing all those who filed objections against the draft seniority list to finalize the same within a period of 6 months from today. Needless to state DTC would take into account the fact that appointments in question are by way of direct recruitment and since DTC has been adopting guidelines issued by the Government of India and neither has DTC framed rules nor guidelines on basis whereof inter-se seniority has to be determined, guidelines issued by the Government of India on the subject would be followed.

15. No costs."

In compliance thereof, the official respondents first issued a draft seniority list on 05.08.2011 (page-11 of the paper-book) and then confirmed it vide their order dated 24.01.2012 (page-10 of the paper-book). Aggrieved by the aforesaid seniority list, the applicants have filed the present O.A. seeking the following relief:-

"(a) Quash the impugned draft seniority and confirm seniority list dated 5.8.2011 and 24.1.2012.

(b) Pass any other such order which may be deemed fit and proper under the facts and circumstances of the case."

3. The contention of the applicants is that at the time of their initial selection in 1986 as well as at the time of their appointment on 01.10.1987 and at the time of confirmation on 06.10.1988, the respondents have consistently followed a seniority list drawn on the basis of age of the candidates since all of them were selected and appointed on the same date. The communication dated 30.03.1992 at page-16 of the paper-book clearly shows that the applicant No.1 herein was senior to the private respondents. On 02.09.1993 when the matter of inter-se seniority of the applicants as well as private respondents was under consideration of the official respondents, the CMD minuted as follows:-

"I agree with the Dy. CGM(IR) that the seniority already decided on the basis of age as all the Managers (Traffic) were appointed on the same day is in order and requires no change."

The same position continued when the representation of private respondent was dealt with and rejected by the official respondents on 29.01.2003 (page-27 of the paper-book). However, now after a long gap of 25 years, the official respondents have altered the seniority, which is against various judgments of the Apex Court, such as, **H.S. Vankani Vs. State of Gujarat**, AIR 2010 SC 1714. The applicants have also contended that the seniority list now drawn by the official respondents was against the DoP&T O.M. dated 03.07.1986 as well as contrary to the directions of Hon'ble High Court in Writ Petition Nos. 13177/2009 and 13615/2009.

4. In their reply, the official respondents have stated that pursuant to directions of Hon'ble High Court of Delhi in Writ Petition No. 13615/2009 in which the applicants herein were also impleaded as affected parties, a draft seniority list was drawn on 05.08.2011. This was confirmed on 24.01.2012. They have stated that initially 24 Management Trainees were inducted in the DTC in the year 1986 on a stipend of Rs.1,000/- per month. After completion of training, they appeared in the written test and having passed the same were offered appointment on regular basis in the scale of Rs.650-1200+usual allowances. They were put on probation for one year. The seniority in respect of the entire batch was reflected in the records on the basis of age. However, this seniority was challenged by some of the officers before Hon'ble High Court of Delhi vide Writ Petition Nos. 13177/2009 and 13615/2009. Hon'ble High Court of Delhi had then directed the DTC to draw the seniority list based on the guidelines issued by Government of India. Thereafter, a draft seniority list was circulated on 05.08.2011 based on the merit as determined on the basis of marks obtained in the test conducted after completion of the training as Management Trainees. The official respondents then constituted an internal Committee to scrutinise the

objections received and grant hearing to the affected parties and submit a report thereafter. The Committee deliberated on the above issue and after considering their views the official respondents came to the conclusion that it was more reasonable to determine the seniority on the basis of marks obtained in the test conducted after successful completion of training as opposed to the principle of determining seniority on the basis of marks obtained in the interview conducted at the time of recruitment as Management Trainee. The official respondents drew strength from the fact that similar policy was being followed in Indian Railways. The respondents also came to the conclusion that this would be in accordance with DoP&T Instructions on fixation of seniority, as Para-2.1 of O.M. dated 03.07.1986 reads as follows:-

“The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.”

Para-2.3 of the same O.M. reads as follows:-

“Where persons recruited or promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority [would be determined by the order of merit indicated at the time of initial appointment and not according to the date of confirmation]. “

The conclusion drawn by the respondents was that fixing seniority on the basis of marks obtained in the test conducted after successful completion of training would also be covered under Clause-2.3 of the DoP&T Instructions quoted above.

5. The private respondents No. 2 to 4 have also filed their reply as well as given their written submissions. Their contention is that the impugned seniority list has been fixed as per the directions given by Hon'ble High Court in accordance with the DoP&T Instructions on the subject. The applicants herein had also been

impleaded as affected parties in the Writ Petitions decided by Hon'ble High Court of Delhi. Whatever grievances they had, they should have raised before Hon'ble High Court during the hearing of the aforesaid Writ Petitions. The private respondents have also disputed that the test conducted after completion of training was qualifying in nature. They have drawn our attention to the offer of appointment dated 13.06.1986 given to all these candidates when they were recruited as Management Trainees on a stipend of Rs. 1000/- per month. In that letter, it was clearly mentioned that at the end of training, the trainees will have to appear for a test and if they failed to qualify in the same, their training period may be extended or their appointment terminated. It was also mentioned that in case their performance in the test was not upto the required standard, it will be open to the official respondents to absorb them in lower posts. The private respondents on the basis of the above have contended that the offer letter never mentioned that the test to be conducted after training would be qualifying in nature. In fact, what was intended was that the candidates appearing in this test must obtain qualifying marks to get appointment. According to them, there was a difference in examination being qualifying in nature and the requirement to obtain qualifying marks. Each candidate was expected to perform to his best as he faced the danger of being absorbed in a lower post in case his performance was not upto the mark. The private respondents have further contended that in the case of 1989 batch of Traffic Superintendents also the same criteria was adopted and their seniority was fixed on the basis of a test conducted at the end of the training.

6. We have heard the parties and have perused the material on record. The first argument of the applicants was that by issuing he impugned seniority list, the respondents have upset the long standing seniority position after a gap of almost 25 years. We find this argument to be baseless in view of the

observations of Hon'ble High Court of Delhi in the above mentioned Writ Petitions. Thus, in Para-2 of the aforesaid judgment, the Hon'ble High Court has observed as follows:-

"2. It is not in dispute that no tentative seniority list was ever circulated and none was given an opportunity to file a representation against the seniority list. In fact, strictly speaking there exists no seniority list. None has been shown to this Court. The dispute has emanated on account of a communication addressed to the writ petitioners in response to a query regarding their seniority position, informing them, that all those who were appointed as Traffic Superintendents before them would naturally be senior to them and inter-se the batch of 13 persons recruited in the year 1987, the seniority would be as per age."

Thus, it is clear that Hon'ble High Court of Delhi had come to the conclusion that no seniority list existed nor was any shown to the Court. It was in this context only that directions were issued to the official respondents to prepare a seniority list after following the prescribed procedure. As such, the question of upsetting a long standing seniority list does not arise.

6.1 Next, the applicants contended that the seniority list prepared by the respondents was neither in accordance with the judgment of Hon'ble High Court of Delhi nor in accordance with the Instructions of DoP&T on the subject. The applicants have, however, failed to substantiate this point. We find from DoP&T O.M. quoted above that it has been prescribed that seniority list of direct recruits be prepared in accordance with their merit at the time of recruitment, whereas the applicants herein have been pleading for restoration of the seniority, which was based on the age of the candidates. The applicants have failed to show any Instructions of DoP&T, which prescribe determination of seniority on the basis of age for direct recruits. Also Hon'ble High Court of Delhi has not accepted fixation of seniority on the basis of age in the above mentioned Writ Petitions and has given directions for preparation of seniority list after following the prescribed procedure in accordance with DoP&T Instructions. Hence, there is no merit in the contention of the applicants that the original



seniority be restored as the impugned seniority list was not in accordance with DoP&T Instructions or the Hon'ble High Court's orders.

6.2 Learned counsel for the applicants also argued that the test conducted at the end of the training was only a qualifying exam and the marks awarded in the same cannot be used for determination of seniority.

6.3 The private respondents have disputed this assertion. They have stated that in the aforesaid exam it was necessary for the candidates to get at least minimum qualifying marks to secure appointment in DTC but it was not an exam of qualifying nature only as the official respondents had also prescribed that if the candidates failed to secure the prescribed marks then their appointment could be terminated or they could be absorbed in lower posts. Hence, each candidate was required to perform to the best of his ability.

6.4 In our opinion even if the contention of the applicants is accepted that this exam was qualifying in nature then the seniority of the applicants and the private respondents herein would have to be drawn on the basis of marks obtained at the time of recruitment as Management Trainees. Even then the submission of the applicants that the seniority list be drawn on the basis of age cannot be accepted.

7. Thus, we are of the opinion that there is no merit in this O.A. and the same is dismissed. No costs.

**(Dr. Brahm Avtar Agrawal)**  
**Member(J)**

**(Shekhar Agarwal)**  
**Member (A)**

/Vinita/