

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA 861/2015

Reserved on: 10.05.2016  
Pronounced on: 20.05.2016

**Hon'ble Mr. P.K. Basu, Member (A)**  
**Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

1. Jasvinder Singh, age 45 years  
S/o Shri Pyare Lal,  
R/o 7/11, Railway Colony,  
Kishan Ganj, Delhi-110007
2. Kedar Nath Tiwari, Age 41 years  
S/o Shri S.P. Tiwari,  
R/o F-454, Sector-9,  
Vijay Nagar, Ghaziabad
3. Saroj Kumar Poddar, Age 44 years  
S/o Shri Kamleshwari Poddar,  
R/o 3618-A, Raja Park, Shakur Basti,  
Delhi-110034
4. Sanjeev Kumar, Age 42 years  
S/o Shri Chandra Bhan,  
R/o 2515, Hakikat Nagar,  
IInd Tn., Near Arya Samaj Mandir  
Jind, Haryana
5. Navneet Kumar, Age 36 years  
S/o Shri Raj Pal Singh,  
R/o House No.47, Sangam Vihar,  
Near Bhatia Maur, Ghaziabad
6. Anand Singh Bisht, Age 45 years  
S/o Shri Joga Singh Bisht,  
R/o 131/4, DCM Railway Colony,  
Delhi-110007
7. Dharmendra Sah, Age 33 years  
S/o Shri Raghav Sah,  
R/o B-38, Gali No.11, Mandawali,  
Fazalpur, Delhi-110092
8. Sanju Dutt, Age 36 years  
S/o Shri Devi Dutt,  
R/o 61/3, Railway Colony,  
Subzi Mandi, Delhi-110007

9. Ashok Kumar, Age 38 years  
S/o Shri Tika Ram,  
447, Rami Villa,  
Railway Board, Palwal, Haryana
10. Manoj Pandey, Age 38 years  
S/o Late Shri C.P. Pandey,  
R/o 41/7, Railway Colony  
Kishan Ganj, Delhi-110007
11. Neetu Sudha, Age 35 years  
D/o Shri Shyam Lal,  
R/o 43/7, Railway Colony,  
Kishan Ganj, Delhi-110007
12. Pawan Kumar, Age 35 years  
S/o Shri Dharampal,  
R/o 52/1, Dev Nagar,  
Sampla, Rohtak, Haryana-124001
13. Virender Prasad Bhatt, Age 38 years  
S/o Shri Jhari Ram,  
R/o B-308, Street No.3,  
West Vinod Nagar, Delhi-110092
14. Mohan Lal, Age 45 years  
S/o Shri Narain Das,  
R/o House No.107, Gali No.8  
Behind Arya Samaj Mandir  
Harthala Railway Colony,  
Moradabad

... Applicants

(Through Shri Shankar Kr. Jha, Advocate)

Versus

Union of India, through

1. The General Manager  
Northern Railway,  
Baroda House, New Delhi
2. The Divisional Railway Manager  
Northern Railway,  
State Entry Road, New Delhi
3. The Senior Divisional Personnel Officer,  
Northern Railway,  
State Entry Road, New Delhi
4. Radhey Shyam  
S/o Shri Jyoti Swaroop

5. Ram Singh Meena  
S/o Shri M.R. Meena
  6. Gopal Lal Meena  
S/o Shri Mool Chander
  7. S.P. Gupta  
S/o Shri P.N. Gupta
  8. Shri Niwas Singh  
S/o Shri Lal Manohar Singh
  9. Mohd. Javed,  
S/o Shri Abdul Saluman
  10. Pancham Singh  
S/o Shri Ganga Ram
  11. Vijay Kumar  
S/o Shri Faquir Chand
  12. Dharmender Kumar  
S/o Shri J. Raj
  13. Brij Bihari Singh  
S/o Shri Jag Mohan Singh
- ... Respondents  
(All respondents Nos.4 to 13 be served through official respondents)

(Through Shri Kripa Shankar Prasad, Advocate)

### ORDER

Mr. P.K. Basu, Member (A)

On 9.06.2006, the respondents published a notification seeking to make selection against 10% departmental promotion quote to fill 16 posts of Commercial Apprentice in grade Rs.5500-9000 and called for applications from non-ministerial commercial staff in grade Rs.4000-6000. The test for this purpose was fixed on 1.04.2007.

2. On 2.03.2007, respondent authorities sent indent to Railway Recruitment Board (RRB) for filling up the posts of

Commercial Apprentice through direct selection. On 9.05.2007, the result for promotee quota was published and it was notified that DPC would be held on 25.05.2007. However, the DPC was not held. On 24.07.2007, the respondents cancelled the result of the promotion quota test on the advice of the vigilance department which found complaints of irregularities. This cancellation of results was challenged in OA 1288/2007, which was disposed of vide order dated 4.01.2008, directing the respondents to pass a reasoned order. On 5.02.2008, the respondents passed the order confirming the cancellation of results. This was again challenged by the applicants by filing OA 509/2008. Vide order dated 10.09.2008, this OA was disposed of as follows:

"10. In the result, the order dated 5.02.2008 is quashed and set aside. The Respondents are directed to have the answer books re-evaluated as observed by us in the preceding paragraph and then take further action as prescribed under law/rules. The aforesaid directions should be complied with as expeditiously as possible preferably within 4 months of receipt of a copy of this order..... "

3. Contempt Petition (CP) No.165/2009 in OA 509/2008 was filed. However, the CP was closed on assurance of the respondent-authorities that compliance will be done. Again the DPC could not be held on 5.06.2009, the date fixed. The DPC was held on 20.12.2009. Post conclusion of DPC, the applicants were placed on provisional panel of Commercial Apprentice grade Rs.5500-9000 (Revised pay grade Rs.9300-34800+4200 Grade Pay) against 10% departmental quota through two letters dated 22.01.2010 and 16.02.2010. The direct appointees joined

their regular post on 29.10.2010. The applicants/ promotees joined the regular post on 23.03.2011 after completion of their training. Thereafter, from March 2011 to August 2011, the applicants made several representations seeking fixation of seniority from 25.05.2007, the date DPC was fixed originally. Getting no response, applicants filed OA 4223/2011, where relief sought was, *inter alia*, to issue a seniority list. In their reply, *inter alia*, the respondents stated that a provisional comprehensive seniority list was prepared on 2.01.2012. Applicants found that their seniority was improperly fixed and in view thereof, an amended OA was filed where the applicants, *inter alia*, prayed that the impugned seniority list be quashed and set aside with direction to make a fresh seniority list in terms of the prayer made. The Tribunal held as follows:

"7. The respondents have admitted that representations from the applicants have been received by them, which are still under examination. In our opinion, this OA can be disposed of with a direction to the respondents to take a decision on the representations of the applicants within a period of three months from the date of receipt of certified copy of this order. Needless to say that in case the applicants are still aggrieved they shall be at liberty to approach this Tribunal, if so advised, by means of fresh judicial proceedings. There will be no order as to costs."

4. Vide order dated 7.10.2014 (Annexure P-1), impugned in the present OA, the representation was rejected. Being aggrieved by this order, the applicants have filed the instant OA seeking the following reliefs:

- "a) this Hon'ble Tribunal may quash/ set aside the letter dated 7.10.2014 and the alleged seniority list dated 2.01.2012;
- b) this Hon'ble Court may hold Applicants promoted from the date when the vacancy actually arose, i.e., from 9.06.2006; or in the worst case from 25.05.2007 when DPC was originally scheduled to be held."

5. The grounds on which the reliefs have been sought are as follows:

- (i) That the delay caused by the respondents in holding DPC was the fault of the respondents for which the applicants should not be made to suffer. In this regard, the applicants along with their rejoinder, have filed copy of the reply filed by the respondents in OA 4223/2011 and drew our attention to the following specific content of the reply:

"Their promotion was delayed on administrative error for want of DPC till 15.02.2010 and before decision on the said issue by the department they had filed the said OA for seeking the same relief for which he had been replied through this office letter of even No. dated 20.1.2012."

It is argued that delay in holding DPC was, thus, admitted by the respondents as due to administrative errors;

- (ii) The learned counsel relied on order of the Tribunal in OA 280/2008 in which, in para 31 and 32, the Tribunal held that, in case the delay is attributable to administrative laxity and lapses, it would not be permissible to deprive an individual or a group/ class

of individuals, the benefit of promotion, which would accrue to them in normal course had their cases been dealt with promptly. Since the delay has caused prejudice to the applicants and the delay has occurred for no fault of the applicants, there is considerable justification for considering positively the request of the applicants to antedate their promotion. In fact, it is stated that the OA was partly allowed and the respondents directed to consider the request of the applicants by convening a review DPC to consider the promotion of the applicants from the date when the vacancies arose;

- (iii) The learned counsel also relied on the judgment of the Hon'ble High Court of Delhi in **Union of India and another Vs. Afroz Ahmed and others**, Civil Writ Nos.9428-29/2005 and specifically to para 9 and 10 wherein the Hon'ble High Court has discussed same para 302 of Indian Railway Establishment Manual (IREM), which is quoted as a ground in the impugned order dated 7.10.2014 for rejection of the claim of the applicants. We quote below these paras or ready reference:

"9. In the present matter Para 302 of IREM deals with seniority and reads as under:-

302. Seniority in initial recruitment grade- 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 partially by promotion, the criterion for determination after the process in the case of promotee and the date of joining the workman 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.

NOTE :

"In case the training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training."

10. The said provision provides that seniority amongst incumbents of a post in a grade was/is determined by the date of appointment in that grade. In cases, where appointment was/is partially by promotion and partially by direct recruitment, inter se seniority in case of promotees shall be date of regular promotion after due process and in case of direct recruits seniority inter se depends upon the date of joining the work after due process. Note to para 302 states that in case training period of a direct recruit was/is curtailed due to exigencies of service, the date of joining the working post by a direct recruit would nevertheless be the date on which the direct recruit would have/had joined the working post after completion of prescribed period of training."

It is argued by the learned counsel that the note to the rule makes it clear that it pertains to direct recruits alone and not to promotees such as the applicants and hence date of joining only after joining the working post **after completion of training** will not apply to the applicants.



6. Learned counsel for the applicants also drew our attention to Department of Personnel and Training (DoP&T) OM dated 24.06.1978 on the subject of procedure regarding starting point in the recruitment roster for the purpose of seniority. He drew our attention to the following chart in para 2:

<u>Direct Recruitment</u>	<u>Date of completion of selection process</u>
(a) Through examination conducted by UPSC or any other authorities	Date of publication/announcement of results
(b) Through Interviews conducted by UPSC or any other authorities	Date of Commission's letter containing their recommendations

Promotion

(a) Where UPSC is associated	Date of UPSC's letter containing their recommendations ratifying the promotion
(b) Where UPSC is not associated or its formal concurrence is not required	Last date of DPC meeting
(c) Limited Departmental Examination	Date of announcement of results

It is pointed out that in promotion category, sub-para (c) *namely* Limited Departmental Examination, the date of completion of selection process is shown as to be determined as the date of announcement of results. It is, therefore, argued that since the results were declared initially on 9.05.2007, the date of declaration of results should be treated as 9.05.2007 and the applicants date of completion of selection process be treated at least from that date. Alternatively, the date with effect from which the applicants should be promoted should be the date when the vacancies actually arose or in the worst case from

25.05.2007, when DPC was originally scheduled to be held but could not be held due to administrative lapses on the part of the respondents.

7. The learned counsel for the respondents, Shri Kripa Shankar Prasad stated that after the written test was held on 1.02.2007 and the results were declared on 9.05.2007, certain complaints of irregularities in the examination were received by the Vigilance Department. The Vigilance Department made a thorough investigation and after considering their recommendations, the selection was cancelled on 24.07.2007. This was challenged by the applicants in OA 509/2008 and the Tribunal vide its judgment dated 10.09.2008 directed that since all the regularities which have been pointed out by the Vigilance Department related to evaluation, the same could be remedied by re-evaluation of the answer books. Thereafter the matter was considered by the respondents at length on the basis of various court rulings on the subject as well as legal opinion obtained. It was decided to continue the selection process from the stage of conducting the written test as the irregularities had crept in only from the stage of evaluation of the answer sheets. Accordingly, the answer sheets were re-evaluated and result thereof notified on 21.05.2009 and the final panel was ultimately notified on 22.01.2010.

8. The learned counsel for the respondents argued that it is wrong to say that delay from February 2007 till 2010, when the panel was finally declared, as also delay in holding DPC, was due

to administrative lapses and, therefore, in the light of the order of the Tribunal in OA 509/2008 (supra), the applicants should be granted promotion from the date when the DPC was first scheduled to be held when the vacancy arose. In fact, the orders dated 22.01.2010 and 16.02.2010 were issued immediately after re-evaluation of answer sheets and the applicants joined on 23.03.2011 after undergoing training.

9. Learned counsel for the respondents also drew our attention to para 3 of the grounds in the rejoinder filed by the applicants on 22.01.2016 in which the applicants have made the following statement:

“(iii).....the respondents had cancelled the result of the applicants on a **flimsy** ground .....”

The respondents point out that this statement by the applicants is an attempt to mislead this Tribunal as, when there were complaints which were found to be correct on vigilance inquiry, the applicants cannot state that the grounds for cancellation of results were flimsy.

10. It was further pointed out by the learned counsel for the respondents that in para 4 of the order dated 7.10.2014 where para 302 of IREM has been quoted, it clearly states “from date of training independent duty of post and not from the date of DPC”. Therefore, the applicants would be eligible for their promotion only from the date when they held independent duty of post, which was only on 23.03.2011 after completing training. Learned counsel referred to the judgment in Afroz Ahmed

(supra) cited by the applicant and specifically to para 11 of the order relevant portion of which we quote below:

"11. Para 302 and the note clearly states that seniority in the case of a direct recruit is/was to be counted from his date of joining and his date of joining is/was the date when a direct recruit joins/joined a working post after successful completion of the prescribed period of training..... However, while interpreting para 302 it was held that if training was one of the conditions of the selection process, then unless training was complete, the appointment did not take place on regular basis. This is in consonance with the view taken by us."

He also referred to the following observations of the Hon'ble High Court in para 13:

"13.....The short question is whether this period of training of 24 months should be counted as the period spent 'in service' and therefore counted for the purpose of seniority and ACP Scheme."

Learned counsel for the respondents argued that in fact the judgment of the Hon'ble High Court in Afroz Ahmed (supra) supports the contention of the respondents that completion of training is essential also for promotees. Learned counsel, therefore, argued that it would be clear that the applicants are aggrieved by the provisions of Para 302 of IREM and, therefore, it was required of them to challenge this Rule. It is stated that the applicants have failed to challenge this rule and, therefore, now has to abide by this Rule.

11. Learned counsel for the respondents also argued that in OA 280/2008 (supra) cited by the applicant, in para 31, the expression used is unreasonable and unexplained delay. It is his

contention that there is no 'unexplained' delay. The delay has been clearly explained by the fact that there were complaints; there was an enquiry and, therefore, re-evaluation had to be done as per the order of the Tribunal and this cannot be held to be an 'unexplained' delay. There are cogent reasons for delay which the respondents have explained in their reply.

12. In reply, learned counsel for the applicants raises first the question whether training was a necessary pre-requisite for creation of panel. In other words, his argument is that the final panel issued on 22.01.2010 does not state that training will be a pre-condition for the panel. In fact, he stated that even during the course of arguments, the respondents have not been able to show a single order wherein it is provided that training is necessary for implementation of the panel.

13. Learned counsel for the applicants further drew our attention to Chapter II Section 'A' of the "Rules governing promotion of Subordinate Staff" in IREM and specifically drew our attention to Rules 204.9, 204.10 and 205, which we quote below for ready reference:

- |        |  |
|--------|--|
| "204.9 | The panel should consist of employees who had qualified in the selection, corresponding to the number of vacancies for which the selection was held. Employees securing the gradation 'Outstanding' will be placed on top followed by those securing the gradation, 'good' interse seniority within each group being maintained. |
| 204.10 | The recommendations of the Selection Committee should be put up to the General Manager for approval. If he   |

does not approve of the recommendations he will record his reasons in writing there for and order a fresh selection. Once a panel is approved by the General Manager no amendment or alteration in the panel should be made except with the prior approval of the Railway Board.

205. Currency of panel. The panel will be current for a period of 2 years from the date of approval of the competent authority or till a fresh panel on the basis of next selection becomes available whichever is earlier. Where provisional panels are drawn the currency will count from the date of approval of the provisional panel. If the operation of an approved panel has been held in abeyance either wholly or partly as a result of injunction from the Court of Law the currency of the panel should be reckoned after excluding the period covered by the Court's directive. Before operating the panel after the vacation of the junction/ after disposal of the case by the Court of Law, the personal approval of the General Manager should be taken."

14. It is stated that Rule 204.10 provides that once a panel is approved by the General Manager no amendment or alteration in the panel should be made except with the prior approval of the Railway Board; the panel will be current for a period of two years and the currency will count from the date of approval of the provisional panel. The learned counsel also relied on Rule 207.3, which provides as follows:

- "207.3 Refusal of promotion. An employee empanelled for promotion to Group 'B' refusing promotion, when his turn arises should be debarred for promotion for one year and if after one year, he refuse promotion again, his name should be deleted from the panel, when promoted, after the period for which he is debarred,

seniority will be as from the date of effect of promotion and he will be junior to all employees promoted earlier than him on regular basis from the same panel but will be senior to employees from the subsequent panel, if any formed."

It is argued that these Rules also nowhere refer to training as a pre-requisite and, therefore, they should be promoted as they are empanelled in the final panel of 22.01.2010.

15. Regarding objection of learned counsel for the respondents that the applicants have failed to challenge Para 302 of IREM, learned counsel for the applicants argued that since he is only interpreting that Para 302 does not require training for LDCE, there is no question of challenging the same.

16. Learned counsel for the applicants finally pleaded that even if the applicants prayer is not allowed by the Tribunal in its entirety, since there has been no fault on the part of the applicants in delay in declaration of results, holding of the DPC and finalization of the panel, at least the applicants should be given benefit of notional fixation from the date the DPC was originally fixed.

17. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited by either side.

18. Learned counsel for the applicants basically has two arguments. One that the DPC was delayed by the respondents and, therefore, the applicants should not be prejudiced and

denied the benefit. In this regard, he relied on the order of the Tribunal in OA 280/2008 (supra). Further that there is no provision for training in LDCE and, therefore, para 302 of IREM is not at all applicable to them and it is only applicable for direct recruits. In this regard, he also relies on OM dated 24.06.1978 where the date of completion of selection process for LDCE has been stated to be the date of announcement of results.

19. As regards the first argument, we have seen that though the examination was held in 2007, there were complaints of serious irregularities and on inquiry by the Vigilance Department, these were found to be true and, therefore, the respondents cancelled the whole process. However, the Tribunal modified this and directed the respondents to continue from the stage of written test and re-evaluation of answer sheets. The matter had been examined in the light of various court decisions and legal opinion was also obtained and the respondents decided to re-evaluate the answer sheets. The re-evaluation of answer sheets was done and the results declared. Thereafter, final panel was issued on 22.01.2010 and 16.02.2010. Clearly, the DPC could not have been held when the inquiry was going on and re-evaluation being done. So we reject the contention of the applicants that delay was because of administrative lapses on the part of the respondents and for that reason, order in OA 280/2008 (supra) clearly is not applicable here.

20. As regards the second argument, we agree with the contention of the learned counsel for the respondents that the



judgment in Afroz Ahmed (supra) actually supports the contention of the respondents i.e. correct interpretation of Para 302 is that if training was one of the conditions of the selection process, unless training was complete, appointment cannot take place on regular basis and the period of training cannot be counted as period spent in service. Finally, the seniority will be counted from the date the employee successfully completes his training.

21. We find from the order dated 16.02.2010, which is in continuation of letter dated 22.01.2010 (para `B'), that Shri Jasvinder Singh S/o Shri Pyare Lal, one of the applicants is mentioned and it is stated that they are provisionally placed on the panel of Commercial Apprentice and are directed for initial training first phase, CP-5 Course with immediate effect upto 27.04.2010. It is further directed in that letter that the subordinate incharges may spare the staff immediately to attend the CP-5 course, which has already commenced on 15.02.2010. In view of this, the contention of the learned counsel for the applicants that training is not meant for promotees under LDCE quota does not hold good and as we have already discussed, Afroz Ahmed (supra) states that seniority would be counted from the day the employee completes training and joins the post.

22. In view of above, the OA does not succeed and is dismissed. No costs.

( Dr. Brahm Avtar Agrawal )  
Member (J)

( P.K. Basu )  
Member (A)

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