

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00876-00877/2015

DATED THIS THE 06TH DAY OF DECEMBER, 2017

HON'BLE DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

1. M. Mudassir Imran
S/o. Sri. Muneer Ahmed,
Aged about 40 years,
Presently working as Technician Gr.II/Mech,
Residing at No. 218/D, West Colony,
Rail Wheel Factory, Yelahanka,
Bangalore – 560 064.

2. Mr. Udhaya Shankar Rao K.R
S/o Sri Rama Rao Y,
Aged about 44 years
Presently working as Technician Gr.II/Mech,
Residing at No. 289, Srinivasa Nilaya,
15th Cross, Muneshwara Layout,
Attur, Yelahanka, Bangalore – 560 064.

.....Applicants

(By Advocate Shri A.J. Srinivasan)

Vs.

1. The General Manager
Rail Wheel Factory Yelahanka,
Bangalore – 560 064.

2. The Deputy CME
Rail Wheel Factory Yelahanka,
Bangalore – 560 064.

3. The Deputy CME Mfg,
Rail Wheel Factory Yelahanka,
Bangalore – 560 064.

4. The Chief Personal Officer
Rail Wheel Factory Yelahanka,
Bangalore – 560 064.

5. Sri. B. Rajagopal
Presently working as Technician Gr.II/AUO/MECH,
Rail Wheel Factory Yelahanka,
Bangalore – 560 064.Respondents

(By Shri N. Amaresh, Railway Standing Counsel for R1 to 4)

ORDER

HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A):

The present OA has been filed by the applicants aggrieved by their position in the seniority list and promotion of the 5th respondent much before the promotion of the applicants and they have sought the following reliefs:

- a. *Quash the order of the respondents 1 to 3 approving the request made by the fifth respondent who was working in the cadre of Machinist and having his seniority maintained in the said cadre to join the cadre of the applicants, i.e. Axle Unit operators Annexure-A30 and quash the reassigning of the seniority and placing the fifth respondent above the applicants, as per the seniority list as on 01.01.2004, Annexure-A31 and consequently also quash the order of promotion of the fifth respondent to the post of Technician II dt 11.07.2012, Annexure-A32, much before the promotion of the applicants.*
- b. *Quash the reply dt. 13.06.2014 and 17.10.2014 rejecting the appeals/representations of the applicants to properly fix the seniority above the fifth respondent, as the same is arbitrary illegal and unjustified as per Annexure-A11 & 15.*
- c. *Declare the action of the respondents in placing the fifth respondent higher in seniority list to that of the applicants as arbitrary, illegal and unjustified and*
- d. *Direct the respondents to fix the seniority of the applicants above the fifth respondent and grant promotion and all other consequential benefits to the applicants in order when the vacancy arose and the fifth respondent was promoted i.e. 11.07.2012 and thereafter, to the second applicant in the interest of justice and equity.*

2. From the details furnished in the OA and the reply statement, the facts of the case emerges as follows. The applicants were recruited by the Railway Recruitment Board for the Wheel & Axle Plant (Rail Wheel Factory), Bangalore and appointed as Technician Grade III in September and October, 1997. After completion of the orientation training of six months, both the

applicants were absorbed in March, 1998 and April, 1998 as Technician Grade III and posted to work in the Axle Machine Shop. Each of the trade group is separate cadre and had a separate seniority list. In the seniority list published in 2000, the 1st applicant was in Sl. No. 119 and the 2nd applicant was in Sl. No. 121. The 5th respondent did not figure in the list because he was borne in a different cadre. The 5th respondent was appointed as Technician Grade III at Hubli workshop which form a separate division with separate seniority list. He came to Rail Wheel Factory on 01.04.1999 by way of mutual transfer with one Shri Vinay D. Yalgi who was working as Technician Grade III in the Machinist cadre. Following the transfer, the 5th respondent earned the seniority position of Shri Vinay D. Yalgi in the Machinist cadre. Subsequently the respondent no. 5 was shifted to the cadre of applicants, i.e., Axle Unit operator. He was placed above the applicants in the seniority list as on 01.01.2004. He was promoted to Technician Grade II on 11.07.2012 whereas the applicants were promoted subsequently vide order dated 02.08.2014 and 05.11.2014 (Annexure-A32, 33, 34).

3. According to the applicants, it was revealed to them under RTI that the 5th respondent who was working as Machinist in the Axle Unit was interested to work as Axle Unit operator and proposed for change of his cadre and the respondent organization thereafter arbitrarily approved the request of the 5th respondent and absorbed him in the cadre of the applicants and also reassigned the seniority by placing him above the applicants. According to them, placing the 5th respondent in their cadre above them in the seniority list and granting promotion earlier to the applicants is grossly unjustified. It is not

left to choice of any employee to take up any cadre he feels like just to increase the chance of promotion. Therefore they contended that the action taken by the respondents is grossly irregular and they should be granted relief as sought for.

4. The respondents in their reply statement have informed that in the Rail Wheel Factory, based on the functions, five seniority units of Technicians have been formulated in the Mechanical Department, as under:

- i. Technicians/Wheel Unit
- ii. Technicians/Axle Unit
- iii. Technicians/Fitter Maintenance
- iv. Technicians/Machinists
- v. Technicians/Mechanic Motor Vehicle.

The seniority lists are published periodically, i.e., normally once in three years and accordingly, seniority lists were published in the year 2000, and the first and second applicants were shown at sl.no. 119 and 121 respectively based on the seniority position assigned to them according to rules in force (Annexure-A1). The fifth respondent was shown in the seniority list of the cadre of Machinists. On his mutual transfer to Rail Wheel Factory, the 5th respondent being senior to the two was posted in the cadre of Machinists duly assigning him the seniority position held by Shri Vinay D. Yalgi in terms of Para 310 of the Indian Railway Establishment Manual Vol. I. Further, para 311 of the IREM Vol. I stipulate that the seniority of railway servants on transfer from one cadre to another in the interest of the administration is regulated by the date of promotion/date of appointment to the grade as the case may be. The service of the 5th respondent based on his aptitude and proficiency was utilized in the cadre of Axle Unit and he was posted in the cadre with the

approval of competent authority. He was also assigned the seniority position in the cadre giving full credit to the service. He was also senior in merit to the applicants in RRB Panel.

5. The respondents further submits that along with 5th respondent another Technician Shri G. Venkatesh was given change of seniority from Machinists to Axle Unit. Reciprocally, Shri Venugopal B at Sl. No. 112 and Shri Eshwara J at Sl. No. 113 who were senior to the applicants at Sl. No. 119 & 121 as indicated in the seniority list of Axle Unit Operators (Annexure-R1) were shifted to Machinists Unit as indicated at Sl. No. 37 and 38 in the seniority list of Machinists published in the year 2004 (Annexure-R2). Therefore, the action of administration in transferring two Technicians from Machinists Unit to Axle Unit and two Technicians from Axle Unit to Machinists, i.e., two employees who were seniors to the applicants were posted out and two employees posted to take positions higher than that of applicants, has not affected the promotional prospects of the applicants in any way.

6. The respondents further mentions that change of cadre of 5th respondent was given effect to more than 10 years back duly notifying the same in the seniority list in the year 2004. The seniority list was also published in the year 2005 and 2009 giving opportunity to the employees borne in the seniority list including the applicants to represent against any anomaly. However there is no representation either from the applicants or the other employees. Therefore the applicants cannot raise the same issue now. The same is barred by time limit stipulated in IREM and the issue is also attracted

by principles of estoppel. Therefore there is no merit in the contention made by the applicants.

7. The applicants have filed a rejoinder in which they have practically reiterated the position already said in the OA and only said that if the transfer from one cadre to another is for administrative reason there have to be a written order stating that it is for administrative reason otherwise it will lead to arbitrary and discriminatory exercise of power to favor individuals for backdoor entry to cadre which they want whenever it is convenient for them and to increase their promotional chances. Therefore the placing of 5th respondent in seniority above the applicants is not as per rules.

8. We have heard the learned counsel for the parties who have practically argued in the line of the submission made by them in the OA and rejoinder and the reply statement. When a query was made to the learned counsel for the applicants as to why the applicants did not challenge the seniority list for so long, he had no satisfactory explanation.

9. We have carefully considered the facts of the case and submission made by either side. The only issue in this OA pertain to placing of the respondent no. 5 above the applicants in the seniority list in the cadre of Axle Unit and his promotion to the Technician Grade II earlier than the applicants. From the records it is evident that the respondent no. 5 who was borne originally in the Machinist cadre came on mutual transfer to Rail Wheel Factory. Being senior he took seniority position held by Shri Vinay D. Yalgi in terms of para 310 of the Indian Railway Establishment Manual Vol. I which

reads as follows:

'Railway servants transferred on mutual exchange from one cadre of a division, office or railway to the corresponding cadre in another division, office or railway shall retain their seniority on the basis of the date of promotion to the grade or take the seniority of the railway servants with whom they have exchanged, whichever of the two may be lower'.

As contended by the respondents, para 311 of the IREM Vol. I also permits transfer of person from one cadre to another in the interest of administrative reason. The said provision is as follows:

'Seniority of railway servants on transfer from one cadre to another in the interest of the administration is regulated by the date of promotion/date of appointment to the grade as the case may be.'

10. We also note that two persons, namely respondent no. 5 and also Shri G. Venkatesh were shifted from Machinist to Axle Unit by the administration. Similarly one Shri Venugopal B and one Shri Eshwara J were shifted from Axle Unit to Machinists Unit. We also note that all the four persons were senior to the applicants. If such a transfer would not have been taken place, then also the persons who were shifted from Axle Unit to Machinist Cadre would have got promotion earlier than the applicants. Therefore there is nothing malafide in the action taken by the respondents for change of cadre of four persons (two from Machinists Unit to Axle Unit and vice versa). We also note that following the change of cadre respondent no. 5 name was in the seniority list all along since 2004 and it has not been challenged by the applicants. Therefore the promotion given to the respondent no. 5 in 2012 is based on his seniority and performance and the same cannot be faulted.

11. Therefore on detailed consideration of facts and circumstances of the case we are of the view that the contention made by the applicants in the

present OA is clearly devoid of any merit and hence the OA does not merit any consideration. Hence the OA being devoid of merit stands dismissed. No order as to costs.

(PRASANNA KUMAR PRADHAN)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicants in OA No. 170/00876-00877/2015

Annexure A1: True copy of Wheel and Axle Plant, Ministry of Railways Office Order No. WAP/ESTT/83 dated 28.04.1998

Annexure A2: True copy of representation of first applicant dated 09.08.2012

Annexure A3: True copy of representation of second applicant dated 12.09.2012

Annexure A4: True copy of representation of first applicant dated 16.07.2013

Annexure A5: True copy of representation of second applicant dated 03.09.2013

Annexure A6: True copy of representation of first applicant dated 12.09.2013

Annexure A7: True copy of representation of first applicant dated 27.10.2013

Annexure A8: True copy of the letter No. RWF/NG-36/860 dated 05.11.2013 issued by the General Manager, Rail Wheel Factory

Annexure A9: True copy of representation of first applicant dated 20.12.2013

Annexure A10: True copy of representation of first applicant dated 30.05.2014

Annexure A11: True copy of the letter No. RWF/NG-36/860 dated 13.06.2014 issued by the General Manager, Rail Wheel Factory

Annexure A12: True copy of representation of first applicant dated 03.09.2014

Annexure A13: True copy of representation of the applicants dated 03.09.2014

Annexure A14: True copy of representation of first applicant dated 23.09.2014

Annexure A15: True copy of the letter No. RWF/NG-36/860 dated 17.10.2014 issued by the General Manager, Rail Wheel Factory

Annexure A16: True copy of the letter No. RWF/AT-33/230/III dated 03.02.2014 issued by the General Manager, Rail Wheel Factory

Annexure A17: True copy of the application of the first applicant seeking information under RTI dated 12.07.2014

Annexure A18: True copy of the application of the second applicant seeking information under RTI dated 17.07.2014

Annexure A19: True copy of the letter No. RWF/AT-33/230/IV dated 18.08.2014 issued by the General Manager, Rail Wheel Factory

Annexure A20: True copy of the application of the second applicant seeking information under RTI dated 07.10.2014

Annexure A21: True copy of the letter No. RWF/AT-33/230/IV dated 05.11.2014 issued by the General Manager, Rail Wheel Factory

Annexure A22: True copy of the application of the first applicant seeking information under RTI dated 27.01.2015

Annexure A23: True copy of the application of the second applicant seeking information under RTI dated 02.02.2015

Annexure A24: True copy of the letter No. RWF/AT-33/230 dated 18.03.2015 issued by the General Manager, Rail Wheel Factory

Annexure A25: True copy of the application of the first applicant seeking information under RTI dated 30.03.2015

Annexure A26: True copy of the reply letter No. RWF/AT-33/230 dated 30.04.2015

Annexure A27: True copy of the appeal of the second applicant dated 31.03.2015 made to the Appellate Authority

Annexure A28: True copy of the reply letter No. RWF/M/RTI/2005/TQM dated 08.05.2015 issued by the Appellate Authority

Annexure A29: True copy of the document dated 10.05.2003 issued by the RTI

Annexure A30: True copy of the document dated 12.01.2004 issued by the RTI

Annexure A31: True copy of the seniority list issued under the RTI

Annexure A32: True copy of the promotion order dated 11.07.2012 issued to the fifth respondent

Annexure A33: True copy of the promotion order dated 02.08.2014 issued to

the first applicant

Annexure A34: True copy of the promotion order dated 05.11.2014 issued to the second applicant.

Annexures with reply statement:

Annexure-R1: True copy of Wheel & Axle Plant, Ministry of Railways letter No. WAP/PC-45/845 dated 28.11.2000

Annexure-R2: True copy of Rail Wheel Factory Circular No. RWF/PC-44/844 dated 25.02.2004

Annexure-R3: True copy of Rail Wheel Factory Circular No. RWF/PC-44/844 dated 31.12.2005

Annexure-R4: True copy of Rail Wheel Factory Circular No. RWF/PC-45/845 dated 17.04.2009
