

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/977/2010

Jabalpur, this Tuesday, the 09th day of October, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Akil Uddin Jamali, S/o Late Khaleel Uddin Jamali, aged 50 years, Senior Loco Pilot (Goods), R/o Railway Quarter No. 160-A, Railway Colony, Guna, Distt. Guna (MP) – 473001.
2. Toran Singh, S/o Shri B. Lakshman, aged 53 years, Senior Loco Pilot (Goods), R/o Railway Quarter No. 150-A, Railway Colony, Guna, Distt. Guna (MP) – 473001.
3. Raj Kishore Sahu, S/o Late Vishnu Dayal Sahu, aged 51 years, Senior Loco Pilot (Goods), R/o Railway Qtr. No. 6-A RB II, Railway Colony, Guna Distt. Guna (MP) – 473001.
4. Pooran Singh Yadav, S/o Late Hukum Chand, aged 54 years, Senior Loco Pilot (Goods), C/o Rajkumar Yadav, H. No.260, Murli Nagar Colony, Berasiya Road, Bhopal – 462038.
5. Manmohan Yadav, S/o Shri Ramlal Yadav, aged 47 years, Senior Loco Pilot (Goods), H.No. 4/57, Ghaval Toli, Bina, Distt. Sagar (MP) – 470113.
6. Ghanshyam H, S/o Late Halke aged 54 years, Senior Loco Pilot (Goods), R/o Railway Qtr. No. 142/A RB II, Railway Colony, Guna Distt. Guna (MP) – 473001.
7. Naresh Kumar, S/o Late Lalaram Kushwaha, aged 51 years, Senior Loco Pilot (Goods), R/o Jashpura, Guna, Distt. Guna – 473001.
8. Babu Lal T, S/o Toran Singh, aged 51 years, Senior Loco Pilot (Goods), R/o Railway Qtr. No. 26/8 RB II Railway Colony, Guna, Distt. Guna (MP) – 473001.

9. Kishore Singh Rajput, S/o Late Bhagwan Singh Rajput, Senior Loco Pilot (Goods), R/o House No. 33, Ujjwal Ward, Shankarji Mandir Ke Pass, Bina, Distt. Sagar – 470113.

10. Jaidev Singh Bundela, S/o Late Bundela, aged 47 years, Senior Loco Pilot (Goods), R/o Railway Qtr. No. 7/A RB I, Railway Colony, Guna, Distt. Guna (MP) - 473001 **-Applicants**

(By Advocate – Smt. Shobha Menon, Sr. Advocate, assisted by Ms. Palak Nema)

V e r s u s

1. Union of India through the Secretary, Railway Board, New Delhi – 110011.

2. General Manager, West Central Railway, Jabalpur (MP) – 482001.

3. Divisional Railway Manager (P), West Central Railway, Bhopal (MP) – 462038.

4. Lakshmi Narayan Taylor, Adult, C/o Divisional Railway Manager, West Central Railway, Bhopal (MP) – 462038.

5. Mahesh Chandra Tomar, Adult, C/o Divisional Railway Manager, West Central Railway, Bhopal (MP) – 462038.

6. Mohd. Iqbal, Adult, C/o Divisional Railway Manager, West Central Railway, Bhopal (MP) – 462038.

7. Vivek H Varma, Adult,
Respondent No.4 to 7 Passenger Loco Pilot, C/o Divisional Railway Manager, West Central Railway, Bhopal (MP) – 462038
- Respondents

(By Advocate – Shri A.S. Raizada for official respondents)

(Date of reserving order : 13.08.2018)

ORDER

By Navin Tandon, AM.

The applicants, through this Original Application, are questioning their placement in the seniority list.

2. This is the sixth round of litigation by the applicants, earlier ones being OA 135/1996, 690/2003, 825/2005, 803/2006 and 77/2010.

3. The brief facts are that the applicants were recruited as Group D employee with the respondent department and were promoted as Fireman-II and then to Diesel Assistant.

3.1 It is the case of the applicants that they have been assigned the seniority below the private respondents, who have come to Bhopal Division on “Own Request Transfer” (hereinafter referred to as ‘ORT’), whereas they should have been placed above them.

4. The applicants have made following submissions:

4.1 The applicants were promoted from Fireman-II to Diesel Assistant on ad-hoc basis through office orders dated 13.12.1991 (five numbers of applicants) and 18.02.1992 (Annexure A-1) (four numbers of applicants). The date of promotion of Shri Manmohan Yadav (applicant No.5), has not been stated in Para 4.2 of the O.A.

4.2 The selection for the post of Diesel Assistant was held and the applicants were successful in the written test followed by viva-voce. They were empanelled on the post of Diesel Assistant vide order dated 07.10.1992 (Annexure A-2).

4.3 Subsequently, the respondents issued a seniority list of Diesel Assistants and First Firemen. However, due to some discrepancy, this list was modified on a few occasion. As per provisions of India Railway Establishment Manual (IREM) as well as arrangement with the recognised Unions, those Diesel Assistants, who joined Bhopal Division on ORT, should be given seniority position from the date at joining at Bhopal Division.

5. The applicants have prayed for the following relief:

“8. **Reliefs sought:**

It is, therefore, humbly prayed that this Hon’ble Tribunal be pleased:

- (i) To annul order dated 30.06.2010 (Annexure A-16) passed by respondent no.3 and hold it as malafide and arbitrary.
- (ii) To direct the respondent railways to confer the benefits to the applicants as was extended to the incumbents, whose names appeared in the order dated 25.04.1994 and accordingly, place the applicants above the respondents no. 4 to 7 by granting the consequential benefits.

- (iii) To direct respondents Railways after determining their proper placement in the seniority list published from time to time, to grant the applicants proforma promotion as Passenger Loco Pilot with proforma fixation by placing them above the respondents and those similarly circumstances;
- (iv) To grant any other relief which this Hon'ble Tribunal deems fit and proper, in the facts and circumstances of the case;
- (v) To award cost of the application.”

6. The respondents have filed their reply and have made the following submissions:

6.1 The applicants were Second Fireman and promoted to Diesel Assistant purely on ad-hoc basis vide order dated 13.12.1991/18.02.1992 without following the due process of selection. Subsequently, they were selected and promoted on regular basis vide order dated 04.12.1992. Thus, they have been assigned the seniority in the grade of Diesel Assistant from 04.12.1992 i.e. from the date of their regular promotion. Ad-hoc promotion earlier granted to them is not counted for seniority as it was purely on ad-hoc basis without due process of selection. This is an admitted fact as contained in the order dated 16.10.2008 passed by this Tribunal in OA No.803/2006 (Annexure R/4).

6.2 The applicants now seeking for correction of seniority of Diesel Assistant which has been published about 16 years ago, which was under dispute in earlier litigations before this Tribunal. It is the settled law that a settled position in seniority cannot be unsettled after a lapse of number of years. The said seniority was operated several times to give promotions to Shunter, Goods Driver, Senior Goods Driver, Passenger Driver and Mail Driver, for which seniority was one of the main criteria. Therefore, the basic seniority of Diesel Assistant now under challenge in this OA cannot also be re-opened after several years, as applicants have never challenged the promotions affected on number of occasions from this seniority. Therefore, on the ground of delay and laches also, the O.A is liable to be dismissed.

6.3 The seniority of the applicants in the grade of Diesel Assistant was determined under Para 302 of IREM (Annexure R/5), in which the criteria for determination of seniority is the date of regular promotion after due process of selection for promotees. This rule position has been strictly followed while fixing the seniority of applicants. The seniority of private respondents in this OA was fixed based on the date of their joining in Bhopal Division from other

Divisions at their own request under Para 312 of IREM. Thus, the comparison of applicants with these respondents are not sustainable and without any merit.

6.4 The applicants are claiming seniority assigned to some of the employees on 4.07.1994 (Annexure A-5), i.e. after 16 years without any justification as to why they kept quiet for all these years if they are aggrieved. The incumbents in this seniority from Sl No.149 to 167 were assigned seniority from 1990 based on the aforesaid agreement as they were entitled for promotion in the year 1990 but they were not called for selection in 1989 because of administrative reason. Applicants in this O.A are not similarly situated and they cannot claim the said benefits unless they are covered under the said agreement. Private respondents in this O.A reported and joined in Bhopal Division much prior to the regular promotion of applicants. Therefore, they were rightly placed in the appropriate place in the seniority, i.e. a higher position to the applicants as per the rules on the subject.

7. Heard learned counsel of both the parties and perused the pleadings available on record.

8. Learned counsel for the applicants submits that the impugned order dated 30.06.2010 (Annexure A-16), in not granting the applicants seniority from the date when they were promoted on ad-hoc basis, is bad in law. She places reliance on **Direct Recruit Class II Engg. Officers' Assn. vs. State of Maharashtra**, (1990) 2 SCC 715.

9. Learned counsel for the respondents submits that in the previous round of litigation, i.e. OA No.803/2006, this Tribunal vide its order dated 16.10.2008 (Annexure R-4) has established that applicant's date of promotion to Diesel Assistant remains 04.12.1992. This order has not been challenged in any superior forum, and therefore, has attained finality.

10. In the case of **Direct Recruit Class II Engg. Officer's Assn.** (supra), which has been relied upon by learned counsel for the applicants, the Hon'ble Supreme Court has concluded as under:

“47. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

(F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of

years, the inference is that the executive instruction has ceased to remain operative.

(I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position.

With respect to Writ Petition No. 1327 of 1982, we further hold:

(K) That a dispute raised by an application under Article 32 of the Constitution must be held to be barred by principles of res judicata including the rule of constructive res judicata if the same has been earlier decided by a competent court by a judgment which became final.”

10.1 The corollary, as mentioned in Para 47 (A), as well as Para 47 (K) in above mentioned judgment of Hon’ble Apex Court, clearly establishes that the applicants cannot challenge their date of promotion as Diesel Assistant now. The date 04.12.1992 has been decided in OA 803/2006, which has attained finality.

11. The respondents have stated in their reply in Para 4 that the said seniority list has been operated several times to give promotions to Shunter, Goods Driver, Senior Goods Driver, Passenger Driver and Mail Driver for which the seniority was one

of the main criteria. Therefore, the basic seniority of Diesel Assistant, now under challenge in this O.A, cannot also be reopened after several years as the applicants have never challenged promotions affected on number of occasions from this seniority.

12. We also find that in the impugned order dated 30.06.2010 (Annexure A-16) passed by the respondents in compliance with the directions of this Tribunal passed in OA No.77/2010 filed by the applicants, the official respondents have specifically mentioned that the private-respondents 4 to 7 were regular Diesel Assistants and joined Bhopal Division during the period between 27.09.1991 and 21.02.1992 on their own requests and therefore they have been given seniority from the date they have joined on the bottom of seniority of existing regular diesel assistants as per rules. Whereas the applicants were subsequently selected and posted as Diesel Assistant vide order dated 4.12.1992, therefore, the applicants were given benefit of seniority from the date of their regular promotion after due process of selection, and they were rightly not given the benefit of ad-hoc service for the purposes of seniority.

13. The respondents have also submitted that fixing of seniority of those Diesel Assistants, who have come on own request transfer,

have been correctly fixed as per Para 302 and 312 of IREM, the fact, which has not been controverted by the applicants in their rejoinder. Para 302 and 312 of IREM read thus:

“302. Seniority in initial recruitment grades—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 of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working 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.

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xxx

xxx

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312. TRANSFER ON REQUEST.—The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servants”.

14. After having gone through the above provisions of Para 302 and 312 of IREM and the admitted facts of the present case, we are of the considered view that the applicants as well as the private-respondents have rightly been assigned seniority from the date of

their regular appointments/ date of their own request transfer respectively. Thus, the applicants have totally failed to make out their claim for grant of seniority over and above the private-respondents.

15. Accordingly, the Original Application is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-