

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00871/2017

DATED THIS THE 21st DAY OF MARCH, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

R.Suresh
S/o S.Rajendiran
Aged 28 years
Residing at: C/o B.S.Dalwai
No.50, KHB Colony
Subhash Nagar, Keshwapur, Hubli
Dharwad District
Karnataka-580 023.
Presently working as:
Junior Engineer (Drawing)
Civil Engineering Department
Head Office, South Western Railways
Hubli, Dharwad District.

....Applicant

(By Advocate M/s.SRA Law Assts.)

Vs.

1. The Union of India
Ministry of Railways
South Western Railways
Third Floor, East Wing, Gadag Road
Hubli-580020.
Represented by its
General Manager.
2. The Chief Personnel Officer
South Western Railway
Zonal Head Quarters Office
Hubli-580 020.
Dharwad District.

...Respondents

(By Advocate Sri J.Bhaskar Reddy)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The facts leading to the case are as follows:

Applicant appeared the examination conducted by RRB/Bangalore on 9.9.2012 for the post of Junior Engineer/Drawing in Railways and he came out successful in the written examination and stood at Sl.No.5 in the standby list (Annexure-A2). However, he was not considered for a long period and thereafter by order dtd.6.5.2014(Annexure-A3), he was appointed as Junior Engineer/Drawing in South Western Railways at its Head Quarters in Hubli. After completion of document verification and suitable medial fitness test, 2nd respondent issued office order dtd.31.7.2014(Annexure-A4). The applicant reported for duty w.e.f. 1.8.2014(Annexure-A5). He continued to work as Junior Engineer in Railways for almost 18 months as a Trainee. On successful completion of training as Junior Engineer, the services of the applicant were regularised and he was absorbed in the post of Junior Engineer by order dtd.18.3.2016(Annexure-A7) issued by the 2nd respondent wherein he stood at Sl.No.3 scoring 81% of marks. Thereafter on 13.2.2017(Annexure-A8), a Provisional Seniority List of Junior Engineer/Drawing cadre was published based on the marks obtained in the final examination by the candidates in which the applicant had scored the highest marks and his name figured at Sl.No.20 in the list of eligible candidates for being promoted to the rank of SSE/Drawing in the Railways. Even in the list announced on 6.3.2017(Annexure-A9), the applicant was found eligible for the post of SSE at Sl.No.20. On 12.7.2017(Annexure-A10), another list was issued regarding provisional seniority list wherein the applicant's position rescinded from Sl.No.20 to 38 without any justification and it was done to favour certain other candidates ignoring his merit and seniority. Aggrieved by the same, he has given a representation dtd.25.7.2017(Annexure-A11) to the respondents questioning the second list but there was no response from the authorities. The applicant submits that by order

dtd.3.8.2017(Annexure-A12), the 2nd respondent has sent a reply justifying their stand which is not proper. Then he made another representation on 12.9.2017(Annexure-A13) for which no reply was given by the respondents. Till now there is no effective action on the representations given by him. Meanwhile, another list was announced on 14.9.2017(Annexure-A14) by the respondent authorities wherein one Sri Migeesh K.M. was shown as successful eligible candidate for the post of SSE though he is unsuccessful and ineligible candidate for the said post and he does not possess the merit required for the post of SSE even though the applicant has been selected on merit having scored high percentage of marks meeting all the essential requirements for the promotion to the rank of SSE. He submits that his name was not shown intentionally and deliberately in the said list though he is senior in the department. A memorandum dtd.6.12.2017 (Annexure-A15) was issued releasing the final list of successful candidates for the post of SSE/Drawing in SW Rlys. wherein his name was deliberately ignored by the respondents. He submits that he has been discharging his duties in the department as Junior Engineer/Drawing for nearly 40 months and he is considered to be the senior most having scored high percentage of marks i.e. 81/100 whereas the candidates who were promoted had scored less marks and joined in the same RRB panel and they were juniors to the applicant by seniority. The applicant's seniority showing 38 instead of 20 all of a sudden in the list is not fair, proper and justified and on account of which his seniority had gradually come down and great injustice is caused to him. The applicant ought to have been given an opportunity of being heard before releasing the final list as he is being the senior most and fully eligible for being promoted to the rank of SSE having undergone successful training for 18 months. Hence, he filed the present OA praying for quashing the impugned

notification dtd.6.12.2017 issued by the 2nd respondent with direction to the respondents to consider his representations dtd.25.7.2017 & 12.9.2017 forthwith.

2. The respondents, on the other hand, submitted in their reply statement that the applicant is a direct recruit as Junior Engineer/Drawing through RRB, Bangalore who was in standby list against the RRB CEN dtd.10.3.2012. The applicant was offered appointment as Junior Engineer/Drawing from standby list since some of the candidates from main list did not turn up/refused to take appointment on the South Western Railway, Hqrs. at Hubballi. After following the due procedure like document verification, medical fitness test, he was appointed as Junior Engineer on 1.8.2014. Subsequently the applicant was directed to undergo training for a period of 18 months and the applicant has come out successfully and he was absorbed as Junior Engineer by order dtd.18.3.2016. The provisional seniority list of Junior Engineer/Drawing dtd.13.2.2017 was only a provisional one and was subject to change in the event of discrepancies if any noticed later and subject to outcome of writ petition pending if any in CAT/High Court/Supreme Court etc. The said seniority list was revised vide impugned order dtd.12.7.2017 by the office where the applicant's name was placed at Sl.No.38 instead of 20 since the candidates those who are subsequently appointed from the standby list will always rank junior to those candidates who are appointed as per the main list. As per the instructions contained in IREM Vol.1 Chapter III, para 303(Annexure-A1) those who join the subsequent courses and those who pass the examination in subsequent chances will rank junior to those who had passed the examination earlier. In case, however, persons belonging to the same RRB panel are sent for initial training in batches due to administrative reasons and not because of reasons attributable to the candidates, the inter-se seniority will be regulated batch wise provided persons higher up in the

panel of RRB not sent for training in the appropriate batch due to administrative reasons shall be clubbed along with the candidates who took the training in the appropriate batch for the purpose of regulating the inter-se seniority provided such persons pass the examination at the end of the training in the first attempt. The training for Junior Engineer/Drawing is pre induction. Further a decision has been taken during 2010 that the marks in the examination conducted at the end of the training by the department only will be taken for declaring the candidates successful and for seniority. Sri Migeesh K.M., JE/DRG/PCE/O/UBL is senior to the applicant as per the first merit list of RRB notification No.01/2012 dtd.10.3.2012 and he was promoted to SSE/Drawing against the vacancies. It is submitted that the applicant was offered appointment as Junior Engineer/Drawing out of the waiting list who were supposed to be appointed as a replacement in case the candidates who were selected as per merit order published by RRB had not turned up/refused to take appointment. Hence, it is evident that those who are subsequently appointed from the waiting list will always rank junior to those candidates who are appointed as per the original list. Hence, the percentage of marks scored by the applicant in the training of subsequent waiting list will be assigned seniority amongst the candidates of waiting list only. The applicant was given the opportunity to represent against the discrepancies if any noticed in the seniority list dtd.13.2.2017. Thereby he had represented and the reply was already given vide office letter dtd.3.8.2017 and the final list is issued as per the extant procedure and rules. And hence, the averments of the applicant is far from truth and the OA is liable to be dismissed.

3. The applicant has filed rejoinder reiterating the submission already made in the OA and submitted that he is called for employment by delay due to administrative reasons and not by reasons attributable to the applicant. From the Employment

Notification No.1/2012, total 23 candidates were appointed in different units of South Western Railway. Based on the joining date of candidates and completion of the 18 months training period, the administration divided the three batches for appearing final examination. Among all the three batches, the applicant scored highest marks in the final examination i.e. 81 marks and accordingly he stood at Sl.No.20 in the provisional seniority list dtd.13.2.2017 and he was also selected for the promotion to the post of Senior Section Engineer/Drawing as per the respondent letter dtd.6.3.2017(Annexure-A9). Both the provisional seniority list and promotion list were issued based on his marks and by adopting the rules prescribed in the IREM, Chapter III, para 303 of Vol.I. As per Annexure-R2, seniority should be fixed after completion of successful training period and considering the marks secured by the candidates in the final examination and candidates joining date, batches and main list/standby list are not the criteria.

4. The applicant further submits that Sl.No.3 & 4 namely Sri Kanda Krishnan S and Sri Kunjbihari Prasad are also from the standby list of Employment Notification No.1/2005 and joined the department one year later when compared to Sl.No.5,6 & 7 and they have been placed ahead to the candidates at Sl.No.5,6 & 7 in the seniority list based on their marks secured by them and not based on the date of joining or standby list. Similarly the applicant should also have been placed in the seniority list based on the marks secured by him and not based on the joining date or batches. One Sri Chetana K.G. who was actually the bottom most candidate in RRB Panel as standby list candidate and secured 34th place in seniority list, was placed in main list owing to administrative reasons and called for appointment along with other candidates superseding the applicant. The applicant who is higher up in the RRB panel compared to Sri Chetana K.G should have been clubbed with the

main list candidates while making the seniority where the bottom most candidate from the standby list was also clubbed with the main list and considered as single batch. It is very clear that two sets of procedures were followed in seniority list published on 12.7.2017, one procedure was followed for the Employment Notice No.1/2005 & No.5/2010 and a different procedure was followed for the Employment Notice No.1/2012. Hence, it is fact that the respondents just to do favour to the few candidates, have not followed the IREM rules in preparing the seniority list. Therefore, the impugned order dtd.6.12.2017 should be quashed and his representation dtd.25.7.2017 should be considered.

5. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The matter involves drawing up of seniority list for batches belonging to the same year of selection by the Railway Recruitment Board. Two lists of seniority were prepared. The first one as per Annexure-A8 is stated to be provisional and the seniority list as at Annexure-A10 giving the final position. The applicant apparently has come down from the rank of 20 to the rank of 38 in the final list. As per 303 of IREM, when several batches of candidates have come from the same employment notice and selection by RRB, in the case of the persons who are high in the RRB list if they are sent for training later due to no fault of the persons, they are assigned the seniority along with the appropriate batch trained before them and seniority is based on the marks obtained in the final examination relating to the concerned batch. In this case, the applicant apparently had scored the highest marks in the examination after training before joining the working post. His contention is that the respondents are treating the selection made under the Employment Notification No. 1/2005 and the list of the year 2010 on a separate footing as compared to the Employment Notification No.1/2012 under

which the applicant has been selected. He claims that the persons at Sl.No.3 & 4 in the seniority list at Annexure-A10 have joined one year later to the other candidates in the same selected list based on Employment Notification No.1/2005 but have been placed higher compared to Sl.Nos.5,6 & 7 due to their securing higher marks in the final examination at the end of the training, whereas in the case of list of persons joined based on the Employment Notification No.1/2012, the respondents are bringing in a new classification calling standby list and are not placing the applicant in the seniority due to him based on his marks. If, as contended by the applicant, the persons who were in the standby list against Employment Notification No.1/2005 have been given seniority based on their marks in the final examination, the same procedure should be followed with respect to the seniority list based on the Employment Notification No.1/2012 also. Therefore, we direct the respondents to reconsider the seniority list at Annexure-A10 and rework the seniority of the candidates based on adopting the same standards as they have adopted earlier. The respondents' contention that persons in the standby list will always rank junior to the persons in the main list is not supported by any specific provision or rule quoted by them. Therefore, they may rework the seniority list accordingly and take further appropriate action within a period of three(3) months.

6. The OA is allowed to this extent. No costs.

(C.V.SANKAR)
MEMBER (A)

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

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Annexures referred to by the applicant in OA.No.170/00871/2017

Annexure-A1: Copy of Employment Notice

Annexure-A2: Copy of Standby List

Annexure-A3: Copy of appointment order dtd.6.5.2014

Annexure-A4: Copy of office order dtd.31.7.2014

Annexure-A5: Copy of letter reporting for duties 01.08.2014

Annexure-A6: Copy of the Exam result dtd.17.3.2016

Annexure-A7: Copy of order of service of petitioner regularisation dtd.18.3.2016

Annexure-A8: Copy of seniority list dtd.13.2.2017

Annexure-A9: Copy of Eligibility list dtd.6.3.2017

Annexure-A10: Copy of another Seniority List dtd.12.7.2017

Annexure-A11: Copy of representation of the applicant questioning the seniority dtd.25.7.2017

Annexure-A12: Copy of the respondent's evasive reply dtd.3.8.2017

Annexure-A13: Copy of another representation of the applicant dtd.12.09.2017

Annexure-A14: Copy of another seniority list dtd.14.9.2017

Annexure-A15: Copy of Memorandum dtd.6.12.2017

Annexures with reply statement:

Annexure-R1: IREM Vol.1 Chapter III, para 303

Annexure-R2: Decision for taking qualifying marks at the end of training by the department for the purpose of seniority

Annexures with rejoinder:

-NIL-
