

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH
CIRCUIT BENCH, RANCHI
OA/051/00088/16**

Reserved on: 21.12.2018
Pronounced on: 02.01.2019

C O R A M

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. PRADEEP KUMAR, ADMINISTRATIVE MEMBER**

1. Rajendra Biswal, Son of Sri Trinath Biswal, now posted as Sr. TM, Gr. III in the office of ADEN/BMDM, CKP Division, S.E. Railway, Chakradharpur, PO& PS- Chakradharpur, District- Singhbhum.
2. Rabindra Bhanja, Son of Sri Narayan Bhanja aged about 40 years, now posted as Track Man III at Dumera/BNDM CKP Division, SE Railway, Chakradharpur, PO & PS- Chakradharpur, District- Singhbhum (West).
3. Kaushik Chakraborty, Son of K.D. Chakraborty aged about 42 years, now posted as Track Man Gr. II in the office of ADEN/BNDM CKP Division, S.E. Railway, Chakradharpur, PO & PS- Chakradharpur, District- Singhbhum (West).

..... Applicants.

- By Advocate(s): - Mrs. M.M. Pal, Sr. counsel with Mrs. Rubey Pandey

-Versus-

1. The Union of India through the G.M., South Eastern Railway, Garden Reach, Kolkata-43.
2. Senior Divisional Railway Manager, South Eastern Railway, CKP Division, Chakradharpur, PO & PS- Chakradharpur, PO & PS- Chakradhar, District- Singhbhum (West).
3. Divisional Railway Manager, South Eastern Railway, CKP Division, Chakradharpur, PO & PS- Chakradharpur, District- Singhbhum (West).
4. Senior DPO, CKP Division, Chakradharpur, PO & PS- Chakradharpur, District- Singhbhum (West).
5. Sr. DEM, South Eastern Railway, CKP Division, Chakradharpur, PO & PS- Chakradharpur, District- Singhbhum (West).
6. ADEM/BMDM, South Eastern Railway, CKP Division, Chakradharpur, PO & PS- Chakradharpur, District- Singhbhum (West).
7. Mr. B.R. Banerjee, Son of C.R. Banerjee.
8. Mr. M. Mohanty, Son of S.L. Mohanty.
9. Mr. A. Khandual, son of D. Dhandual

Respondents No. 7 to 9 all are now posted as T.M. Gr. II in the office of the ADEN/BMDM South Eastern Railway, CKP Division, Chakradharpur, PO & PS- Chakradharpur, District- Singhbhum (West).

..... Respondents.

By Advocate: - Mr. P.D. Singh

ORDER

Per Mr. Pradeep Kumar, A.M.:-The applicants were appointed as Junior Trackman vide orders dated 17.09.1999. They were actually posted under Permanent Way Inspector (PWI), Dumeha on 27.08.1999 which falls under the Chakradharpur Division of the respondent Railway. Subsequently, they were promoted as Senior Trackman in the year 2002. Subsequent promotion was to a post known as Head Trackman. However, sometimes in the year 2012 the post of Junior Trackman, Senior Trackman and Head Trackman were all merged and they were re-designated as Track Maintainer Grade-IV (PB-1 Scale Rs. 5200-20200 + GP 1800). Subsequent to that the channel of promotion lied to Track Maintainer Grade-III (PB-1+ GP 1900), Track Maintainer Grade-II (PB-1+ GP 2400) and Track Maintainer Grade-I (PB-1 GP 2800). The actual date of these promotions, in respect of the three petitioners, are as under:-

| Post | Applicant No. 1 | Applicant No. 2 | Applicant No. 3 |
|--------------------------|-----------------|-----------------|-----------------|
| Senior Trackman | 06.03.2002 | 16.03.2002 | 06.03.2002 |
| Track Maintainer Gr. IV | 17.08.2012 | 17.08.2012 | 17.08.2012 |
| Track Maintainer Gr. III | 01.04.2014 | 01.04.2014 | 01.04.2014 |

2. The applicants pleaded that seniority list of various level of posts, i.e. Sr. Trackman, Head Trackman and Track Maintainer Gr. IV etc., is required to be published from time to time for information of all concerned and to submit objections, if any. However, many times the same is not published and as such the employees are not aware about their position in the seniority list and as such they remain in dark and are unable to raise objections if any.

In the instant case, the applicants pleaded that the seniority list was published, for the first time and came to their notice for Track Maintainer Grade-III only and that also in the year 2012 only. From this list, the applicants came to know that their seniority has been wrongly fixed with respect to their juniors and they made representations to the controlling officers namely ADEN/Bondamunda, Senior DPO/ Chakradharpur and Senior DEN(Coord), Chakradharpur, vide representations dated 18.11.2013, 16.12.2013, 10.02.2014, 08.10.2014, 11.04.2015, 15.04.2015 and 10.08.2015.

It was brought out in these representations that many other junior employees were shown senior to the applicants while applicants were shown at junior positions. Specifically names of following 7 other employees were brought in these representations. These names and their seniority position in Trackman Grade-III seniority list is as under:-

| Names | Seniority position |
|--------------------|--------------------|
| Shri P.K. Swain | 29 |
| Shri M. Singh | 36 |
| Shri B. Gouda | 37 |
| Shri Mohan Pradhan | 41 |
| Shri B.R. Banerjee | 43 |
| Shri M. Mohanty | 45 |
| Shri A. Khandua | 55 |

In this seniority list of Track Maintainer Grade- III, the petitioners were shown at Sl. No. 94, 93 and 91 respectively.

3. Thus, the three applicants herein were shown as very much junior to these other employees, whereas the applicants claim to have been their senior. Out of these seven names, three employees namely Shri B.R.

Banerjee, Shri M. Mohanty and Shri A. Khandua have been specifically arraigned as respondents no. 7, 8 and 9 in the instant OA. The applicants pleaded that even while their representations quoted in para 2 above were yet to be decided, the respondents went ahead and promotion order for Track Maintainer Grade-II were issued on 08.09.2015 and four of their juniors were promoted to this post.

The applicants again gave representations dated 16.09.2015, 28.09.2015 and 12.01.2016. All these representations were still not replied to and hence the applicants had preferred the instant OA.

4. Following reliefs were sought:-

- “ (i) The Respondents be directed to correct the seniority position of those petitioners in the provisional seniority list of Track Maintainer Gr. IV under SSE/PWAY/DMF dated 30.09.2014 and to publish a fresh and final seniority list after due correction.
- (ii) The Respondents be directed to consider the objection so far their seniority positions are concerned and to pass final order there on within a stipulated period.
- (iii) The Respondents be directed to consider the case of the petitioners for their promotions before their junior counter parts on the basis of their correct seniority position.
- (iv) The Respondents be directed to prepare final seniority list considering the objections raised by the petitioners including others of any and to issue promotion order on that basis.
- (v) The respondents be directed to consider the case of these petitioners for promotion on restructuring cadre retrospectively with all consequential benefits w.e.f. 17.08.2014, before the junior counter posts namely Respondents no. 7, 8 and 9.

- (vi) The promotion order dated 08.09.2015 including the order dated 01.04.2015 so far the promotion of Respondents No. 7, 8 and 9 be quashed and the case of these petitioners be considered for their promotion to the post of T.M. Gr. II in their place.
- (vii) Any other relief or reliefs for which these petitioners are entitled to.”

4.1 The applicants had sought interim relief also as under:-

“During pendency of the OA the respondents be directed to correct the seniority position of the petitioners vis-à-vis the Respondents and to issue final correct seniority list.”

5. Even though the three employees who are being claimed to be junior to the applicants, have been arraigned as respondents no. 7, 8 and 9, they had neither presented themselves before the Tribunal nor were represented through their counsel. The Tribunal vide orders dated 13.09.2017 have given a last chance to these three private respondents to appear. It is noted that despite this even though many opportunities were granted but these three respondents had not presented themselves.

6. The respondents have submitted their counter on 10.01.2017 and pleaded that they had been issuing provisional seniority list from time to time and seeking objections from the employees, if there were any. No representation was ever received from the applicants and as such they have finalized the seniority list and effected the promotions. Hence, plea of applicants at this stage is not maintainable.

7. In respect of specific averments relating to submission of various representations against wrong fixation of seniority dated

18.11.2013 to 10.08.2015, contended in para 4.7 of the OA, the following was pleaded by the respondents in their counter Dt. 10.01.2017:-

“ That in reply to paragraphs 4.7 to 4.8 of the original application it is stated that the fact finding enquiry against the grievance of alleged wrong fixation of seniority list being conducted by ADEN/BNDM. The grievance will be disposed after submission of the report by the authority concerned.”

Thus the existence of representations was admitted and it was sought to be ascertained by a fact finding enquiry.

8. In respect of averment by the applicants that even while the representations were still pending, promotion orders for Trackman Grade-II were issued on 08.09.2015, the applicants pleaded as under in their counter:-

“ As regard the promotion of the petitioners with their contemporary is concerned it has already been stated in forgoing para that the fact finding enquiry is being conducted ADEN/BNDM and their position in the seniority list will be reckoned/correct if found genuine as per their grievance.”

Thus, issuing promotion orders to the post of Track Maintainer Grade II, even while representations against wrong fixation of seniority were pending and which were not decided, was admitted and sought to be addressed as per fact finding enquiry.

9. In keeping with the subsequent developments and orders by the Tribunal, additional written statements were submitted by the respondents on 09.08.2018 as well as on 18.12.2018. Following specific averments have been made in the additional written statement dated 09.08.2018:-

“ As per the fact finding report dtd. 15.03.2008 conducted by ADEN/Bondamunda, initially the applicants namely Sri Kaushik Chakraborty, Shri Rajendra Biswal and Sri Rabindra Bhanja as well as the respondents, namely Sri B.R. Banerjee, Shri M. Mohanty and Shri A. Khandual have been appointed as Trackman on 28.08.1999, 17.07.1999, 24.09.1999, 24.09.1999 & 24.09.1999 respectively and all the above named have been promoted to the post of Senior Trackman on same date w.e.f. 27.02.2002, as such as per date of appointment the applicants were found senior than the respondents no. 7, 8 & 9.

Further, in the year 2004 a provisional seniority list was published wherein the name of the respondents have been shown in Sr. No. 68, 70 & 72 respectively whereas the name of the applicants was shown in Srl. No. 114, 123 and 125 respectively. In the said seniority list it was also requested to submit representation against the discrepancies noticed if any within a period of one month of publication of the seniority list but no one including the applicants had submitted any representation against the said seniority list.

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Further, in the year of 2009 separate provisional seniority list of Head Trackman and Senior Trackman was published wherein the name of the respondents have been shown in the category of Head Trackman at Srl. No. 62, 63 & 75 respectively whereas the name of the applicant was shown in the category of Sr. Trackman at Sr. No. 18, 23 & 25 respectively but the applicants have not submitted any representation against the said seniority list.”

10. Seniority list issued on various dates for various posts in the year 2004, 2009 and 2014, have also been annexed as per additional written statement submitted on 18.12.2018. The respondents pleaded

that the applicants have never objected to their seniority and as such it is taken to be finalized and the instant OA is required to be dismissed being devoid of merit.

11. Matter was heard at length. The applicants were represented by Mrs. M.M. Pal, Sr. counsel while the respondents were represented by Mr. P.D. Singh.

12. In this OA, it is the seniority list that is under question. And it is also pleaded that these lists were not published and hence applicants had no occasion to submit their objections. And when objection was submitted, they were not decided and yet further promotions were issued, thus perpetuating the wrong.

Once the OA was filed, the respondents had undertaken to conduct a fact-finding enquiry by ADEN, Bondamunda. This enquiry established that the applicants were senior as Junior Trackman as well as when they were promoted as Senior Trackman on 27.02.2002 with respect to the respondent no. 7, 8 and 9 (Para 9 supra). This enquiry had also brought out that a provisional seniority list was issued in the year 2004 wherein the applicants were shown at sl. No. 114, 123 and 125 whereas the respondents no. 7, 8 and 9 were shown at sl. No. 68, 70 and 72. Thus, it appears that it was in the year 2004 when the applicants lost their seniority and were made junior to the respondents no. 7, 8 and 9.

Tribunal notes that it is very strange that the OA is about the question of fixation of seniority and for which a fact finding enquiry was

conducted, however, still the respondents have nowhere brought out as to what was the reason for the senior applicants to have lost seniority.

It is the view of the Tribunal that when the question of seniority has been raised as a prime question and applicants were initially senior, this question was very relevant and especially so when a fact-finding enquiry was being conducted for this very reason. Not examining this aspect, specifically the reason as to why the applicants lost seniority, appears to be an effort to hide something and perpetuate a wrong. This effort is not acceptable.

13. The respondents have also brought out as under in their additional affidavit dated 09.08.2018:--

“However, it is pertinent to mention herein that, earlier for promotion to the post of Junior Clerk in scale Rs. 3050-4590/- against 33.1/3% of departmental promotion quota, the employees in Group ‘D’ categories up to the post of Sr. Trackman were eligible to appear in the said test whereas Head Trackman were not entitled to appear for the same. As such the applicants may have been submitted unwillingness for promotion to the post of Head Trackman with a view to get the higher benefit of promotion to the post of Junior Clerk.”

The Tribunal notes that this averment, at best, is indicative of a possibility of why applicants may have lost seniority. This reasoning is not acceptable even *prima facie*. Once a fact-finding enquiry has been held on the very question of seniority, the factum of somebody refusing promotion, ought to have been established based on some documentary evidence of refusal and without leaving anything in the realm of

possibility. This question was required to have been answered in the realm of certainty. In the instant case, this has not been done and as such this reasoning for loosing seniority is not acceptable.

14. The respondents have further brought out that the post of Junior Trackman, Senior Trackman and Head Trackman were all merged in the single category of Track Maintainer Grade-IV in the year 2012. In view of this merger, the averment by respondents in para 13 above is all the more untenable. This reasoning is therefore, rejected.

15. The averment by respondents that applicants never objected to their seniority in past is not acceptable and especially so as no evidence has been brought out to the effect that seniority lists were actually brought to the notice of all concerned. The fact finding enquiry, even though conducted after OA was filed, is deficient on crucial aspects as brought out in para 12 above and reasoning given in para 13 above is evasive. The reliance on “no objections were ever raised” is not acceptable in view of this and especially when objections were raised as per para 7 & 8 above, they were not addressed but promotion orders were issued on 08.09.2015. This contention by respondents is rejected.

The tribunal is of the opinion that the seniority lists may have been published but not brought out in the open for seeking objections at relevant point of time prior to the year 2012.

16. In view of the foregoing, the contentions put forth by the respondents are not accepted. The very act of issuing promotion orders

on 08.09.2015, when representations against seniority were still pending, tantamount to ignoring the original claim of the applicants and perpetuating a wrong. Such a situation cannot be permitted. In view of this, the respondents are given the following directions: -

- (i) The seniority position of the applicants shall be re-fixed from the position which obtained in the year 2002 when they were promoted as Senior Trackman and were senior to Respondents 7, 8 and 9.
- (ii) The subsequent promotion/fixation as Track Maintainer Grade-IV, Track Maintainer Grade-III and Track Maintainer Grade -II shall be re-worked with reference to the immediate junior to the three applicants as per the seniority list so revised, as per Item (i) above.
- (iii) The applicants shall be given notional fixation from the dates when their juniors, as per revised seniority list, were promoted to the higher posts/scales. The arrears shall also be worked out for this entire period and paid.
- (iv) The respondents shall also pay a cost of Rs. 25,000/- each, to the three applicants.
- (v) The above exercise shall be completed within a period of three months from the date of receipt of certified copy of this order.
- (vi) The respondent no. 1 and 3 are also directed to take necessary action and set a system in place to ensure that the seniority lists are published in time and brought to the notice of all concerned and objections received are decided before ordering promotions.

[Pradeep Kumar]/M[A]

[Jayesh V. Bhairavia]/M[J]

Srk.

