

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 442/2012

Reserved on: 19.08.2019
Pronounced on: 27.08.2012

Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhyaya, Member (A)

Jaswant Sharma S/o Shri Jagdish Chander Sharma, aged about 54 years, working as Diesel Electric Fitter Grade-I Diesel Shed, N.W.R. Phulera, Resident of House No.1435/28/A Shiv Nagar, Bihariganj, Ajmer.

...Applicant.

(By Advocate: Shri S.K.Bhargava for Shri Nand Kishore)

Versus

1. Union of India, through General Manager, North Western Railway, Jawahar Circle, Jagatpura, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Power House Road, Jaipur.
3. Shri Om Prakash Sharma S/o Shri Radhey Shyam Sharma, Diesel Shed N.W.R. Phulera.
4. Shri Mohan Kishan Bassi S/o Shri Vas Deo Bassi, Technician-I, Diesel Shed N.W.R. Phulera.
5. Shri Kuldeep Singh Choudhary, Technician, Diesel Shed N.W.R. Phulera.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

(2)

ORDER**Per: A.Mukhopadhaya, Member (A):**

By way of this Original Application, (OA), the applicant has approached this Tribunal being aggrieved by the final seniority list of Electric Fitter Grade-III, (ELF Grade-III); (Annexure A/2 dated 18.04.2007 and Annexure A/3 dated 28.02.2007). The applicant states that he has been placed at Sl. No. 12 of this list whereas the private respondents numbers 3, 4 and 5 have been placed at Sl.No.2, (Mohan Kishan Bassi), Sl.No.4, (Om Prakash Sharma) and Sl.No.7; (Kuldeep Singh). He further states that the impugned seniority list at Annexure A/3 dated 28.02.2007 was challenged in CAT, Jaipur Bench vide OA No.177/2007 which was disposed of vide order dated 24.05.2011. The operative portion of this order, (para-9), is reproduced below:-

9.....As such, we deem it proper to direct the respondents to reconsider representations filed by the applicants on its merit in accordance with provisions of law and in accordance with various judgments passed by the Tribunal relating to the present controversy and as per the policy laid down by the respondents and pass a reasoned and speaking order expeditiously and in any case not later than three months from the date of receipt of copy of this order.

2. He states that the respondents, in compliance of aforementioned order in OA No.177/2007, passed the impugned

(3)

order dated 19.01.2012, (Annexure A/1), in which the contentions of the applicant with regard to his seniority were rejected by the respondents who held that the seniority list issued vide their order dated 28.02.2007, (Annexure A/3), may be treated as final; (impugned order dated 18.04.2007 - Annexure A/2). Aggrieved by this, the applicant has approached this Tribunal seeking the following relief:-

The respondents be directed by an appropriate order or directions to produce entire records, concerning to this case and be examined and the order dated 18.1.2012 communicated on 19.1.2012 (Annex.1), letter dated 18.4.2007 and letter dated 28.2.2007 (Annexure A/2 and A/3) be declared unconstitutional, arbitrary, bad in law be quashed and set aside. Cost be awarded to applicant.

Any other directions and orders, which are deemed proper in the facts and circumstances of the case be allowed to the applicant.

3. In reply, the respondents have pleaded that the entire matter arises from an order dated 08/12.02.1989 vide which applications were invited for the post of Electrical Fitter, (ELF), from serving employees. After selection a list was published vide order dated 25.05.1989 whereby 25 persons were declared qualified in the written test. Vide subsequent order dated 27.06.1989, 34 persons were declared as qualified for the post in order of seniority. This list became the subject matter of challenge in OA No.864/1992 – Jaswant Sharma, (the present applicant), & others vs. Union of India & Others and was decided

(4)

as follows vide the CAT Jaipur Bench's order of 22.09.1994;

(Annexure A/5):-

6. Looking to the hardship, we direct that the appointments so made may be continued for a period of three months only from the date of the receipt of the copy of this order. The respondents will be at liberty to give the provisional appointments afresh on the basis merit list/marks secured till the fresh selections are made according to the rules and the persons who are eligible are allowed to appear. Thus, the provisional appointments so given shall not be continued beyond one year. However, the respondents will be at liberty to prepare the fresh panel according to the rules and in case the panel is prepared earlier, then that panel can be enforced.

4. The respondents aver that in compliance of the directions of the Tribunal as aforementioned, they initiated the process of preparing a fresh panel by declaring all the candidates who had appeared in the selection test in the year 1989 as being eligible to appear for another selection test. Those declared successful in this test were placed in a fresh panel dated 14.06.1996; (Annexure R/2 - typed copy at Annexure R/3). This panel *in turn* was the subject matter of challenge before the Jodhpur Bench of this Tribunal in OA No.368/1996 and OA No.111/1997 which were decided vide the Tribunal's common order of 27.09.2000; (Annexure A/6). The operative portion of this order relevant for the purposes of this OA is reproduced below:-

The Original Applications are allowed. The applicants would be deemed to have been

(5)

promoted to the post of Electric Fitter w.e.f.14.6.1996 (date of the panel). This promotion will relate back to year 1989 for the purpose of seniority. The period from their initial appointment as Electric Fitter on the basis of 1989 panel till 22.9.95 will count for the purpose of increment for fixation of their pay in the scale of Rs.950-1500 on 14.06.96. We allow four months time to the respondents to comply with these orders.

5. The respondents contend that this order of the Jodhpur Bench of this Tribunal dated 27.09.2000 has attained finality and therefore the panel of 14.06.1996 has also attained finality in 1994 itself; (this has also been referred to in the CAT Jaipur Bench order of 24.05.2011 in OA No.177/2007). As per this final judicial order on the subject, the present applicant, on promotion as ELF Grade III, was placed below the ELFs who featured in the 14.06.1996 panel in seniority as their promotion related back to the year 1989 for the purpose of seniority. Thus, the respondents contend that the private respondents featuring on this panel of 14.06.1996, (Sl. Nos. 2, 4 and 7), have inter se seniority as shown in the panel amongst themselves in the year 1989 and in any case, are all senior to the applicant who was promoted as ELF Grade III only in 1994 by his own account.

6. The order of CAT Jaipur Bench dated 24.05.2011 in OA No.177/2007 also details that the General Manager, Western Railway framed a policy in the year 1998 under which the staff of the diesel sheds at Abu Road, Phulera, Chitorgarh, Udaipur,

(6)

Ajmer and Jaipur were given the option to maintain their lien, seniority and promotion, (in their respective divisional cadres), on the basis of their final option exercised upto 31.8.1998. This policy was circulated vide DRM, Ajmer letter dated 25.8.98. Under this scheme, the employees who were working in the Ajmer Division's diesel sheds at Phulera and Abu Road got bifurcated with those working at Phulera coming under Jaipur Division while those at Abu Road remained with Ajmer Division. Thus, the ELF Grade III panel of 14.06.1996 was also bifurcated with some of the panel members at Abu Road featuring in the seniority list of ELFs in Ajmer Division while the others working at Phulera featured in the seniority list of ELFs in Jaipur Division. It was in furtherance of this reorganisation that the impugned seniority list dated 28.02.2007, (Annexure A/3), relating to Jaipur Division was issued. Here, in keeping with the position that the private respondents No.3, 4 and 5 were given 1989 seniority as detailed in the preceding paras, they were placed at Sl. Nos.4, 2 and 7 respectively above the applicant who features at Sl No.11 of the impugned seniority list. This seniority list in turn was challenged by the present applicant along with others in OA No.177/2007; (he appears as Applicant No.2 in the OA). In its judgment dated 24.05.2011 on this OA, as detailed in the foregoing paras, this Tribunal directed the respondents to reconsider the representations of the applicants in that OA, (including that from the present applicant), on its merits and pass

(7)

a reasoned and speaking order on the same. Compliance of this order has resulted in the issue of the impugned order dated 19.01.2012, (Annexure A/1) which confirms the impugned seniority list of 28.02.2007, (Annexure A/3), as communicated by letter dated 18.04.2007, (Annexure A/2), as the final seniority list of ELF's vis-a-vis both the applicant and the private respondents in this OA.

7. Learned counsels for the applicant and the respondents were heard and the entire material available on record was perused. While the factual matrix of the case, as detailed in the preceding paras, is not disputed by either side, learned counsel for the applicant argued that the applicant is senior to the private respondents No.3, 4 and 5 by virtue of the fact that he passed the required trade test and was regularly promoted as ELF Grade III in 1994 itself whereas the private respondents No.3, 4 and 5 came to the panel of ELF Grade III only in 1996. He contended that there is no provision under the rules vide which these respondents can be assigned the seniority of 1989 even if there is a court order to that effect; (this Tribunal's order in OA No.368/1996 and OA No.111/1997 dated 27.09.2000 – Annexure A/6). He argued that since the present applicant was not a party to OA No.368/1996 and OA No.111/1997 decided on 27.09.2000 by the Jodhpur Bench of this Tribunal, the panel of 14.06.1996 referred to in that judgment, (Annexure A/6), giving the respondents who are members of that panel, the seniority of the

(8)

year 1989, cannot be made binding on the applicant. He further argued that the seniority in the concerned initial recruitment grade of ELF Grade III, where recruitment was made pursuant to a trade test, is governed by para 302 of the Indian Railway Establishment Manual, (IREM), according to which, with 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 promotees and the date of joining the post after due process in the case of direct recruits. Since the applicant was regularly promoted to the post of ELF in the year 1994, he should therefore get higher seniority than the private respondents No.3, 4 and 5, who undisputedly were promoted to the same post much later in terms of the panel of 14.06.1996.

8. Per contra, learned counsel for the respondents argued that the impugned speaking order dated 19.01.2012, (Annexure A/1), issued in compliance of the CAT Jaipur Bench order dated 24.05.2011 in OA 177/2007, (Annexure A/11), is a detailed document which has addressed the question relating to the applicant not being a party to OA No.368/1996 and OA No.111/1997 filed before the Jodhpur Bench of this Tribunal, (Item No.4 of the impugned order dated 19.01.2012 refers). Learned counsel for the respondents also reiterated that the order of the Jodhpur Bench of this Tribunal in OA No.368/1996 and OA

(9)

No.111/1997 dated 27.09.2000, (Annexure A/6), has attained finality and this means that the panel of 14.06.1996 referred to therein, (Annexure R/2), has also attained finality as observed by this Tribunal itself in its 24th May 2011 order in OA No.177/2007. He pointed out that the private respondents Nos.3, 4 and 5, who featured on that panel, will therefore get the seniority of the year 1989 as per this Tribunal's aforementioned order. He argued that since the applicant himself states that his seniority is from the year 1994, therefore, there should be no doubt that the private respondents Nos.3, 4 and 5 should correctly be given seniority above the applicant in the impugned seniority list at Annexure A/3. This has been confirmed in the impugned speaking order dated 19.01.2012 at Annexure A/1 which is correct in terms of law. The present OA should therefore be dismissed.

9. The factual matrix in this case is not disputed. In particular, the applicant acknowledges that his seniority as ELF Grade III lies from the year 1994 and he has not been able to contradict the contention of the respondents that the panel of 14.06.1996, (Annexure R/2), read with the order of CAT Jodhpur Bench of this Tribunal in OA No.368/1996 and OA No.111/1997 dated 27.09.2000, (Annexure A/6), granted private respondents Nos.3, 4 and 5 the seniority of 1989. The applicant's contention that the grant of such backdated seniority is not sustainable in terms of

Para 302 of the IREM was examined. Para 302 of the IREM reads as follows:

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.

10. A plain reading of this para makes it clear that the general provisions detailed in the same are all subject to the initial proviso that they will apply **“Unless specifically stated otherwise”**..... In this case, it is undisputed that the order of CAT Jodhpur Bench of this Tribunal in OA No.368/1996 and OA No.111/1997 dated 22.09.2000, (Annexure A/6), specifically states that, (as far as the present controversy is concerned), the private respondents Nos.3, 4 and 5, being part of the panel of

(11)

14.06.1996, will be deemed to have seniority from 1989 as ELF Grade III. Thus, when read in harmonious conjunction, there is no discrepancy or anomaly in the impugned seniority list of 28.02.2007, (Annexure A/3), vis-a-vis the relative seniority given to the private respondents Nos.3, 4 and 5 over and above that granted to the applicant.

11. In the result, we find no force in the applicant's claim of seniority over and above that granted to private respondents Nos.3, 4 and 5 and no reason therefore to interfere with the respondents' orders/letters of 28.02.2007, (Annexure A/3), 18.04.2007, (Annexure A/2), or 19.01.2012, (Annexure A/1), on this account. The OA is accordingly dismissed.

12. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

/kdr/