

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.631/2012

Date of decision: 15.10.2019

**CORAM:- R. VIJAYKUMAR, MEMBER (A) .
R.N. SINGH, MEMBER (J) .**

1. Shri Bhagvant Baliram Wakode,
S/o Balira, Sakharam Wakode,
Age 38 (D.O.B. 04.10.1974)
Working as: Senior Clerk,
Under-IG-Cum-CSE/RPF,
Head Quarters Office,
Western Railway,
Churchgate, Mumbai-400 020.

Residing at:

Vrindavan Garden D-501,
Near Agarwal College,
Gandhari, Kalyan (West),
District: Thane,
Pin code: 421301.

2. Shri Murarji Vasudev Jadhav,
S/o Vasudev Bhagwat Jadhav,
Age 34 9D.O.B. 02.06.1977)
Working as: Senior Clerk,
Under-Sr. DSC Office, RPF,
Mumbai Central,
Western Railway,
Mumbai- 400 008,

Residing at:

Heena Garden, Bldg. No.10,
Room No.6, Vavle Nagar,
Gandhari, Kalyan (West),
Dist. Thane: 421 301.

3. Shri Ramdas Kacharu Thombare,
S/o Kacharu Kisan Thombare,

D.O.B. 21.09.1975,
Age 37 years,
Working as: Senior Clerk,
under-Sr. DSC Office,
RPF Mumbai Central,
Western Railway,
Mumbai-400 008.

Residing at:

303, Saideep CHS Ltd.,
Near Devkinandan Bus Stop,
Kharigaon, Dist. Thane,
Pin Code: 400 605.

...Applicants.

(By Advocate Shri R. G. Walia)

VERSUS.

1. Union of India
Through: Secretary,
Railway Board,
Rail Bhavan,
New Delhi-110 001.
2. The General Manager
Western Railway,
Headquarters' Office,
Churchgate,
Mumbai-400 020.
3. Chief Personnel Officer,
Western Railway,
Headquarters' Office,
Churchgate,
Mumbai-400 020.
4. Chief Security Commissioner-RPF,
Western Railway,
Headquarters' Office,
Churchgate,
Mumbai-400 020.
5. Abdul Rail Shaikh,
Working as: Sr. Clerk,
under DSC Office-RPF,
Western Railway, Vadodara,

State of Gujarat-390002.

...Respondents.

(By Advocate Shri V. S. Masurkar)

O R D E R

Per: R.N. Singh, Member (Judicial)

1. When the case is called out, Shri R. G. Walia, learned counsel appeared for the applicants.
2. Shri V. S. Masurkar, learned counsel appeared for the respondents.
3. This OA has been filed by the applicant on 10.12.2012 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a. This Hon'ble Tribunal may be pleased to call for h erecords and proceedings which led to the passing of the impugned orders dated 19.10.2012, 23.10.2012 and 23.11.2012 and after going through their legality and constitutional validity be pleased to quashed and set aside the same.

b. This Hon'ble Tribunal be pleased to hold and declare that the Applicants are senior to Respondent No.5 in the Ministerial Cadre and direct the Respondents to place the Applicants above Respondent No.5 in the Seniority List of the Ministerial Cadre (Sr. Clerk or any other relevant post).

c. This Hon'ble Tribunal will be pleased to order and direct the Respondents to grant all the consequential benefits of seniority, promotion , back-wages, fixation of pay etc etc to the

Applicants on the declaration that Respondent No.5 is junior to the applicants.

d. Cost of this original Application is provided for;

e. Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case."

4. Service was effected twice to the respondent no.5 but he has chosen not to file reply and therefore, pleadings were treated as complete at the time of final hearing and the matter is proceeded ex-parte in his respect.

5. The learned counsel for the applicants submits that in relation to the list of Constables (Executive) dated 16.06.2004 issued by the respondents (Annexure A-4), the applicant no.1 finds place at serial no.1728 above the respondents no.5 who is at serial no.1743. The other applicant no.2 at serial no.1708 and the applicant no.3 at serial no.1701 are also senior to the respondent no.5 in this gradation list of 2004. Subsequently, the three applicants and respondent no.5 were medically decategorised and after such decategorisation, in orders of the respondents no.SFE 95/3/5 Vol.-III dated 24.11.2010 (Annexure A-16), applicant no.1 was placed above the respondent no.5 in the seniority

list of senior clerk. However, the respondents later issued a letter no.SFE 95/3/5 Vol.III dated 19.10.2012 (Annexure A1) fresh seniority list cancelling the memorandum dated 24.11.2010 and then declared altered seniority in respect of the applicant and others which is contrary to the previous seniority list declared by the respondents. This amendment is stated to have been issued without giving opportunity to the applicants to express their views in the matter and any grievances if they may have. The respondents have stated in their reply that they had adopted the date of absorption after the medical decategorisation. The matter has been considered that it is a basic principle of natural justice by which, when an order specifically related to seniority is likely to be affected, the parties concerned in regard to the seniority of the affected parties should be heard and after hearing their representations, final orders are to be passed. This has not been done in the present case and therefore, it is appropriate that the respondents provide such opportunity to the applicant and other affected parties before issuing any final orders in this matter. The impugned order/letter dated 23.10.2012 and 23.11.2012 are also stated to be based on the

letter dated 19.10.2012.

6. In view of the above, the impugned order/letter dated 19.10.2012 (Annexure A-1) and of 23.12.2012 and 23.11.2012 (Annexure A-2), to the extent it relates to the applicants and the private respondents are quashed and set aside. The applicants shall also be entitled for consequential benefits arising out of the above.

7. The OA is allowed in the aforesaid terms. However, it is made clear that the respondents no.1 to 4 are always at liberty to pass appropriate office orders in the matter of seniority of the applicant but only after issue of a proper show cause notice and after considering the representation of the applicant.

8. No order as to costs.

(R. N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

V.

JD
22/10/19