

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 58/2014Dated 15.10.2019

CORAM:- R. VIJAYKUMAR, MEMBER (A).

RAVINDER KAUR, MEMBER (J)

Shri Vinod Kumar Chauhan
 Aged 33 years, Indian Inhabitant
 Occupation Service as Junior Engineer
 Signal, R/o - RB-II, Block - C/13
 Railway Colony, Tadiwala Road, Pune.

..Applicant

(By Advocate Shri P. R. Suryawanshi)

Versus

- 1 Divisional Railway Manager,
 Office of DRM, Pune Railway Station
 Central Railways, Pune 411001.
- 2 Asst Divisional Railway Manager
 Office of DRM, Pune Railway Station
 Central Railways, Pune 411001.
- 3 Sr. Division Personal Officer,
 Office of DRM, Pune Railway Station
 Central Railways, Pune 411001.
- 4 Prakash Kondiba
- 5 G M Bramhapurkar
- 6 Santosh Kumar

Respondent nos. 4 to 6 Office Address:

Office of DRM, Pune Railway Station
 Central Railways, Pune 411001.

...Respondent

(By Advocate Shri V. D. Vadhavkar)

Reserved on: 13.03.2019

Pronounced on: 15.10.2019

ORDER

PER: RAVINDER KAUR, MEMBER (J)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"1. That the Respondents No. 1 to 3 may kindly be directed to quash and set aside the seniority list dated 21.12.2012 and to prepare the revised seniority list showing the Applicant's name above the Respondent No. 4, 5 and 6.

2. To pass such other orders or directions which the Hon'ble Tribunal may deem fit and proper in nature and circumstances of the case"

2. Vide present OA the applicant has sought quashing of the seniority list dated 21.12.2012 and directions to respondent nos. 1 and 2 to prepare a revised seniority list showing the name of the applicant above the private respondent nos. 4, 5 and 6 respectively. The applicant has claimed that he was appointed on the post of Junior Engineer-II(Signal) in the month of June 2005. After completion of training for a period of one and a half years, he was given regular appointment as JE-II(Sig) on 08.02.2007 vide order annexed as Annex A-2. Respondents published the seniority list dated 21.09.2012 (Annex A-3) whereby the private respondents were shown above the applicant

though they had undergone training subsequent to the applicant. Applicant has referred to letter dated 29.11.2012 written by one Shri Vinod Kumar Gupta to the respondent no. 3 pointing out that as per the Railway Board's letter no. E(MPP)/1999/19/1/53 dated 25.02.2002 (Annex A-4), the private respondents had not completed the mandatory training prior to the applicant and despite that they are shown as seniors to him in the seniority list. The respondents issued another seniority list dated 21.12.2012 (Annex A-1) wherein again the private respondents are shown as seniors to the applicant. The applicant made representation dated 14.01.2013 (Annex A-5) to respondent no. 3 to revise said seniority list followed by reminder dated 06.05.2013 (Annex A-6) and another letter dated 27.05.2013 (Annex A-7) which were all duly received in the office of the respondents. It is stated by the applicant that the respondents have faulted the directions and guidelines issued by the Railway Board's circular dated 25.02.2002 resulting in injustice to the applicant and is likely to suffer loss of future service benefits.

3. The respondents have filed detailed Affidavit in reply and have categorically denied the averments made by the applicant. It is stated that the applicant was appointed as Apprentice Junior Engineer-II(Signal) in the month of June 2005 after being recruited to Railway Recruitment Board. He was regularly posted as Junior Engineer-II(Signal) after successful completion of training on 08.02.2007. The private respondents were promoted departmentally from the post of Signal Maintainers whereas the applicant was recruited as Apprentice Junior Engineer(Signal) through Railway Recruitment Board directly and was allotted seniority after training and regular posting as Junior Engineer(Signal). Further the seniority list was prepared as per rules 302, 303, 306 and 309, Indian Railway Estt Manual Chapter III - Rules regarding seniority of Railway Servants, section A-None Gazetted. It is stated that nothing is mentioned in the Letter dated 25.02.2002 in regard to assignment of seniority. Further the respondents claim that the seniority of applicant is determined as per rules on the subject referred above.

4. It is further stated that the applicant was assigned seniority as per para 302 and 303 whereas the respondent nos. 4,5 and 6 who were promoted departmentally were assigned seniority as per para 309. Copy of the relevant rules is annexed as Exhibit R-1. It is submitted that the respondent nos. 4, 5 and 6 have been promoted regularly as Junior Engineer(Signal) on departmental quota. Their respective dates of regular posting are much earlier than that of the applicant as apprentice. Copies of O.O. No 613/205 dated 31.10.2005, letter No. PA/P/Cpm/Sel/S&T/JE-II(Sig) dated 25.10.2005, Notification No. PA/P/S&T/Selection(JE II/Sig) dated 09.09.2005 regarding selection of departmental candidates are annexed as Exhibit R-2 colly. It is stated that in this case seniority and training are different issues. Seniority issue has not been mentioned in the Letter dated 25.02.2002.

5. In his rejoinder the applicant has reiterated his arguments and assertions as per the OA. It is stated that the letter dated 09.09.2005, part of Annex R-2, placed on record by the Respondents only speaks of the selection

of the private respondents to the post of JE-II(Sig). Further that after they passed the departmental examination, Respondent nos. 1 to 3 ought to have sent them for training as per Railway Board Letter dated 25.02.2002 (Annex A-10). That as per the same, it was recommended that safety category post promotion will be given after mandatory training and successful completion of training course should be linked to promotion and increment. He claimed that Annex 1 to the said Letter has given list of categories to whom the same is applicable. The respondent nos. 4 to 6 are holding the post which is at Sr. No. 14 and 15 in Annex 1 and therefore after clearing the departmental examination in terms of Sr. No. 13 of the Letter, the training is mandatory for them to hold the promotional post. It is further stated that the order dated 31.10.2005 whereby the Respondent nos. 4 to 6 were given regular postings on the post of JE, is issued without following due process of law and without completion of mandatory training as per the Letter dated 25.02.2002. Further that the respondent nos. 4 to 6 had completed training in

the month of June 2007 and therefore they ought have been given regular posting thereafter and as such the applicant who was regularly posted w.e.f. 08.02.2007, prior to the completion of mandatory training of the Respondent nos. 4, 5 and 6 is senior to them.

6. We have heard Shri Prashant R. Suryawanshi, arguing counsel for the applicant and Shri V. D. Vadhavkar, learned counsel for the respondents.

7. Learned counsel for the applicant has argued that since the applicant/direct recruit was provided regular posting w.e.f. 08.02.2007 as JE-II(Sig) after completion of mandatory training of one and a half years, therefore, he is senior to Respondent nos. 4, 5 and 6 who had completed their training in the month of June 2007. It is stated that they cannot be given seniority w.e.f. date of the regular promotion given to them vide order dated 31.10.2005 and ought have been given the regular promotion w.e.f. June 2007 after completion of mandatory training. The applicant has placed reliance on the Railway Board Letter dated 25.02.2002 (Annex A-10) to this effect. On the other hand, learned

counsel for the respondents has submitted that the said Letter is not applicable in the present case as this does not deal with the aspect of seniority among the direct recruits and promotees. It is submitted that the Indian Railway Estt Manual Chapter III specifies the rules regulating seniority of Railway Servants and has made reference to its relevant paragraphs 302, 303, 306 and 309. It is submitted that both the seniority lists dated 21.12.2012 and 21.09.2012 are in conformity with these rules and therefore the applicant has no case and thus OA is liable to be dismissed.

8. After hearing the submission of both the parties, We have carefully gone through the Indian Railway Estt Manual Chapter III, Railway Board Circular dated 25.02.2002, facts and circumstances of the case, law points and contentions by parties in the case.

9. Admittedly the applicant, a direct recruit is appointed as Apprentice JE-II(Sig) in the month of June 2005 but was given regular appointment on 08.02.2007 after completion of training for a period of one and a half years whereas the respondent nos. 4 to 6 were granted

regular promotion and posting as JE-II(Sig) vide order dated 31.10.2005 with immediate effect against departmental quota. Therefore the respondents were promoted as JE-II(Sig) much prior to the applicant who was given regular appointment w.e.f. 08.02.2007. The Indian Railway Estt Manual Chapter III prescribes rules regulating seniority of Railway Servants, the relevant rules are Rule No. 302, 303, 306 and 309 which are reproduced as below:

“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.

Note—(i) In case the training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training.

(No. E (NG) I-78-SR-6-42 dt. 7-4-1982 ACS. 132).

Note (ii) The Provision contained in Note (i) above will also apply to the Inter Apprentices and departmentally selected candidates against the quotas prescribed in certain categories to be filled by Limited Departmental Competitive Examination

(such as 10% in the case of Traffic and Commercial Apprentices).

(Authority Board's letter NO. E(NG)I-89/SR6/35 dated 23-8-1991)

303. The seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority should be determined as under :—

(a) Candidates who are sent for initial training to Training Schools will rank in Seniority in the relevant Grade in the order of merit obtained in the examination held at the end of the training period before being posted against working post. 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. 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 batchwise provided persons higher up in the panel of RRB not sent for training in the appropriate batch (as per seniority) 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.

(Authority Board's letter NO. E(NG)I-89/SR6/32(PNM) dated 19-3-93)

(b) In the case of candidate who do not have to undergo any training in training school, the seniority should be determined on the basis of the merit order assigned by the Railway Recruitment Board or other recruiting authority.

306. Candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by paragraph 305 above.

309. SENIORITY ON PROMOTION.—Paragraph 306 above applies equally to seniority in promotion vacancies in one and the same category due allowance being made for delay, if any, in joining the new posts in the exigencies of service

We have perused the above referred rules carefully. Rule 302 deals with the aspect of seniority in initial recruitment grades. As per

this rule the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. In certain categories of posts which are partially filled by direct recruitment and partially by promotion, the criteria for determination of seniority should be the date of regular promotion after due process in the case of promotee. In the case of direct recruit, the date of joining the working post after due process is the relevant date to be taken into consideration for the purpose of seniority. Both are subject to maintenance of inter-se-seniority of promotees and direct recruits among themselves. It further clarifies that when the dates of entry into a grade of promoted Railways Servant and direct recruits are the same, they should be put in the alternate positions, the promotees being senior to the direct recruits, maintaining inter-se-seniority of each group. As referred above, in the present case, applicant, a direct recruit was regularly appointed as JE-II(Sig) w.e.f. 08.02.2007 whereas the Respondent nos. 4 to 6 were promoted as JE-II(Sig) regularly w.e.f. 31.10.2005.

10. Note (i) to Rule 302 only talks of training in the case of direct recruits before the date of joining the working post and not for the promotees. Its bare reading further shows that if for any reason the training of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training. It is the claim of the applicants that after passing the departmental examination, the official respondents ought have sent the respondent no. 4 to 6 for training as per Railway Board Letter dated 25.02.2002 (Annex A-10) as it is recommended that for the safety category post promotion will be given mandatory training as the successful completion of training course should be linked to the promotion and increment. Learned counsel for the applicant has made reference to Annex A-1 to the Letter that the same provides the list of category to which the same is applicable. He argued that respondent nos. 4 to 6 were holding the posts which are mentioned at Sr No. 14 and

15 and through departmental examination are promoted to the post of JE which finds mention at Sr. No. 13 for whom the training was mandatory.

11. We have gone through the said Letter. The applicant has laid stress on para 3(c) of the circular which reads as under:

“GOVERNMENT OF INDIA
MINISTRY of RAILWAYS
(RAILWAY BOARD)

No. E(MPP)99/19/1/5.3

RBE No. 25/2002
Training Manual
Correction Slip No. 01/2002
New Delhi, Dated 25.02.2002

The General manager
All Indian Railways Including Protection Units
CORE/Allahabad
Metro Railway/Kolkatta
COFMOW/New Delhi
The Director General
RDSO/Lucknow

Sub:Report of the Railway Safety Review Committee (Part-1)1998 -
Successful completion of training course should be linked to promotion -
Recommendation No.5.3

The Railway Safety Review Committee vide Recommendation No.5.3 have recommended as under:

"Successful completion of training course should be linked to promotion/increment".

2.

3. In this context, Board has decided that:

(a)
(b)

(c) Pre-promotional/promotional course should be made mandatory while promotion Junior Engineer(JE) to Section Engineer (SE) but not for promotion within JE(Gr.II to Gr.I) and SE(SE to SSE) except in case of Signal Supervisors where the promotional course is mandatory while promoting JE(Gr.II) to JE (Gr.I).

(d)
(e)
(f)
(g)

4.

5."

No doubt the above circular does speak of pre-promotional/promotional course being mandatory in promotion of the Junior Engineer(JE) -II to Section Engineer(SE), it finds mention that it is not applicable for promotion within JE Gr-II to Gr-I and SE to SSE except in case of signal supervisors where the promotional course is mandatory while promoting JE Gr-II to JE Gr-I. This para 3(c) is not applicable to the case of respondent nos. 4 to 6 who were promoted from the post of Signal Maintenance(MCM) to the post of JE-II(Sig) as their case does not find mention in this clause. Moreover, this circular is not dealing with the aspect of seniority of direct recruits/promotees. Rule 302 of Indian Railway Estt Manual categorically finds mention that the seniority in the case of direct recruits shall be fixed from the date of joining the working post after due process whereas in the case of promotees the seniority should be fixed from the date of regular promotion after due process. These rules do not talk of any training to be

undergone by the promotees though to the contrary Note (i) Rule 302 speaks of training to direct recruits. In these circumstances, we do not find any infirmity in the impugned seniority list as the Respondent nos. 4 to 6 were regularly promoted w.e.f 31.10.2005 whereas the present applicant was regularly appointed w.e.f. 08.02.2007 after completion of mandatory training.

12. In view of the above discussion, the OA is devoid of merits, hence dismissed, no order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

gm.

10/01/09
21/01/09

