

Prem Kumar Verma and Another

Vs

Union of India and Others

Civil Appeal No. 2250 of 1997

(S. P. Kurdukar, G. B. Pattanaik JJ)

15.04.1998

JUDGMENT

G. B. PATTANAİK, J. –

1. This appeal is directed against the order of the Central Administrative Tribunal, Chandigarh Bench dated 20-10-1995, in OA No. 470 of 1994. The question for consideration is whether the inter se seniority of the appellants had been rightly determined by the Railway authorities as per para 303(a) of the Railway Establishment Manual (hereinafter referred to as "the Manual") and was illegally interfered with by the Tribunal on the basis of a provision which came into existence subsequently.

2. Admittedly, vacancy arose in the post of Depot Storekeeper Grade III in Rail Coach Factory, Kapurthala, in July 1989, and advertisement inviting applications for the said posts had been issued by the competent authority. The Railway Recruitment Board Jammu-Tawi selected 29 candidates on 11-7-1989. Under the rules the candidates are required to undergo training. The 29 candidates thus selected were sent for training in four different batches and after completion of their training started discharging their duties as Depot Storekeeper. The Railway authorities drew up the seniority list of the said 20 Depot Storekeepers in accordance with para 303(a) of the Manual, as it stood prior to its amendment on the basis of the merit obtained at the examination held at the end of the training period. Respondents 5 to 9 filed a representation on 3-8-1992 challenging the seniority list. That representation having been rejected by the Government they approached the Central Administrative Tribunal contending inter alia that since they were sent for training in the first batch itself and completed the training much earlier than the other batch of personnel they are entitled to be declared senior to others. The appellants contested before the Tribunal both on the ground that the application is grossly barred by time and also on the ground that the seniority inter se has been rightly determined in accordance with para 303(a) of the Manual and consequently the respective merit after the end of the training is the determining factor and earlier in point of time for getting the training is immaterial. The Tribunal, however, came to hold that Respondents 5 to 9 having successfully completed the training before the present appellants and other respondents, said 5 to 9 who were applicants before the Tribunal, would rank senior.

3. Mrs. Shyamla Pappu, learned Senior Counsel appearing for the appellants, contended that when recruitment to a cadre under the Railways is made through the Railway Service Commission then the seniority of such recruits has to be determined in accordance with para 303. She further contended that vacancy having arisen in July 1989, process of selection for the same having started and completed on 11-7-1989, the relevant provision, as it stood then, would govern the inter se seniority and not the amended provision. Under the pre-amended provision it is the order of merit

obtained at the examination held at the end of the training period which determines the inter se seniority and the appellants having obtained higher merit at the examination held at the end of the training has rightly been shown senior in the Gradation List and the Tribunal erroneously interfered with the same. Mrs. Shyamla Pappu, learned Senior Counsel further submitted that the proviso to para 303(a) of the Manual which has been quoted and considered by the Tribunal was not there on the Statute-Book either when the vacancy arose or at the time when the selection was completed and, therefore, the said proviso cannot be attracted. In that view of the matter the Tribunal has committed error by deciding the seniority on the basis as to which batch joined the training course earlier. Mr. Singh, learned counsel appearing for Respondents 5 to 9 on the other hand contended that at the relevant point of time the proviso of para 303(a) stood, as indicated in paragraph 8 of the order of the Tribunal and in that view of the matter the Tribunal rightly decided the criteria for determination of seniority and the said order, therefore, does not require any interference. The Railway authorities though entered appearance did not file any counter-affidavit.

4. In view of the rival submissions at the Bar the first question that would arise for consideration is which Rule would govern the inter se seniority. It is undisputed that vacancies arose prior to July 1989 and advertisement for the said post had been issued earlier to July 1989 and finally the Railway Recruitment Board concluded its selection process and selected 29 candidates on 11-7-1989. Therefore, the relevant Rules, as existed then, would govern the inter se seniority. The next question that arises for consideration is which is the relevant Rule that was in force in July 1989. From the materials produced before us it appears that para 303 of the Manual, as it stood in July 1989 is to the following effect :

"303. The seniority of candidates recruited through the Railway Service Commission 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 at the examination held at the end of the training period before being posted against working posts.

(b) Candidates who do not have to undergo any training, the seniority should be determined on the basis of the merit order assigned by the Railway Service Commission or other recruiting authority."

Later on sometime in the year 1990 Rule 303(a) was amended by inserting the following expression :

"Those who joined the subsequent course for any reasons whatsoever and those who passed the examination in the subsequent chance will rank junior to those who had passed the examination in earlier courses."

The aforesaid Rule stood further amended in 1993 which reads thus :

"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 regularising the inter se seniority provided such persons pass the examination at the end of the training in the first attempt."

5. In view of our conclusion that the posts fell vacant prior to July 1989 and the process of selection was completed and the Recruitment Board selected the candidates on 11-7-1989 the amendment that was introduced on 5-5-1990 and the further amendment of 1993 will have no application and it is the unamended Rule 303(a), as it stood on 11-7-1989, that would govern the case of inter se seniority. The analysis of the provisions of para 303 indicates that where candidates are required to undergo some training after being selected through Railway Service Commission or any other recruiting authority, their seniority is determined on the basis of their respective merit in the examination held at the end of the training period and where candidates do not have to undergo any training, the seniority is determined on the basis of the merit assigned by the Railway Service Commission or other recruiting authority. In the present case the candidates had to undergo training and in fact they had undergone training in batches, as already stated. In that view of the matter their seniority had rightly been determined by the Railway authority on the basis of their respective merit obtained in the examination held at the end of the training period. The Tribunal committed error by altering the said seniority on the basis of a rule which was not in existence on the date the vacancy arose and on the date when the selection was completed.

6. In the aforesaid premises, we set aside the impugned order of the Tribunal and dismiss the OA filed by Respondents 5 to 9. The seniority list as issued by the Railway authorities on 24-9-1993 is restored.

7. The appeal is allowed. But in the circumstances there will be no order as to costs.