
(2023) 07 CAT CK 0032

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00780 Of 2018

Arunkumar S.R

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 17-07-2023

Acts Referred:

Citation : (2023) 07 CAT CK 0032

Hon'ble Judges : Sunil Thomas, Member (J);K.V.Eapen, Member A

Bench : Division Bench

Advocate : T.C. Govindaswamy, S. Ramesh

Final Decision : Partly Allowed

Judgement

Sunil Thomas, Member J

1. The applicant was appointed as a Track Maintainer Grade-IV in Southern Railway, Trivandrum Division with effect from 14.3.2012, under SSE, Quilon. Later he was transferred on request to SSE, Trivandrum on loss of seniority and has been working there since then. While so, Southern Railway invited applications from Group-D employees in the pay matrix of Level-1 for filling up of 4 vacancies of Motor Vehicles Drivers. The break up was 2 for unreserved category and one for Scheduled Castes and Scheduled Tribes. Applicant responded to the notification and he was included in the eligible list of candidates. He was called for the trade test, in which he participated. Annexure A1 final list was later published, by which the 4th and 5th respondents were ranked as 1 and 3 and one Santosh who belonged to the SC category was ranked second, against the SC vacancy. Annexure A2 posting order was issued to them. Thereupon, contending that applicant has been wrongly denied the selection and that he was senior to the respondents Nos. 4 and 5 submitted Annexure A9 representation. His grievance was that his juniors were promoted. Since it was not favourably responded, OA was filed challenging Annexures A1 and A2. The reliefs sought were to quash Annexures A1 and A2 to the extent they excluded

the applicant and included respondents Nos. 4 & 5 and to declare that the applicant was entitled to be placed in the panel of Annexures A1 and A2 in preference to respondents Nos. 4 and 5 and to be promoted as Motor Vehicle Driver in preference to the said respondents and direct the respondents accordingly.

2. The premise on which the OA was laid was that applicant was senior to respondents Nos. 4 and 5 with reference to the applicant's date of initial appointment, vis-à-vis that of the respondents Nos. 4 and 5. The inter se seniority for appointment to a divisional post should be with reference to the length of service in that particular division and not with reference to seniority in any particular unit. The applicant therefore, claimed that he was entitled to be placed in Annexure A1 in preference to respondents Nos. 4 and 5 and to be promoted on that basis in preference to the said respondents.

3. Pursuant to the filing of OA, notices were issued to respondents Nos. 4 and 5 who have not responded. By an interim order of this Tribunal dated 24.9.2018 it was directed that any action taken pursuant to Annexures A1 and A2 will be subject to the final outcome of the OA.

4. The contesting respondents Railway appeared and on behalf of respondents Nos. 1 to 3 the reply statement was filed. It was contended that after short-listing of the candidates for screening and trade test, the screening committee met on 8.8.2018 and conducted the screening test. 8 employees attended the trade test for selection. The date of entry of the 5th respondent into the cadre of Track Maintainer Grade-IV was 5.11.2014 whereas the applicant's date of entry into Track Maintainer Grade-IV on reversion was 4.10.2016. It was in tune with paragraph 312 of IREM Volume-I, wherein it was stipulated that the seniority of Railway servants transferred at their own request from one Railway to another should be allowed below that of the existing confirmed, temporary and officiating Railway servants in the relevant grade. It was claimed that the applicant came to unit of Permanent Way, Thiruvananthapuram from Kollam, on 4.10.2016 on loss of seniority as Track Maintainer Grade-IV. As such his seniority would be determined from the date of reporting at Permanent Way, Thiruvananthapuram. It was stated that a committee of three officers conducted the trade test and four employees including the applicant herein was selected. Since the vacancies were 3 and distribution of posts was 2 for unreserved and 1 for SC, the 4th and 5th respondents were selected under the UR category and another person was selected under SC quota. Both 5th respondent and the applicant had scored 65 marks. Since the 5th respondent was senior to him in the Track Maintainer Grade-IV in the concerned seniority unit, he was selected. On the above premise the respondents sought for rejection of the OA.

5. Heard the learned counsel for the applicant and the learned ACGSC on behalf of the Railways.

6. The short point that arises for consideration is while considering the

recruitment in a division, whether the inter se seniority as far as the unit is to be reckoned or the original seniority as maintained in the division is to be considered.

7. It is an admitted fact that applicant joined the Southern Railway, Trivandrum Division on 14.3.2012. He was transferred to Trivandrum unit on his request and was placed in the bottom of seniority in that unit list. The applicant herein as well as the 5th respondent had scored equal marks. However, holding that the 5th respondent was senior to the applicant in Track Maintainer grade in respect of seniority unit and that the applicant had joined the SSE, P.Way, Trivandrum on loss of seniority with effect from 4.10.2016 and that the 5th respondent had joined the service on 5.11.2014, the claim of the applicant was rejected. It is clearly evident that the date of entry of the applicant was considered as 4.10.2016. Accordingly, holding that the applicant herein was junior to the 5th respondent, the 5th respondent was selected. The specific contention of the applicant was that when a selection is made division-wise, the seniority in the unit pales into insignificance. It is true that the applicant joined Trivandrum on transfer on 4.10.2016. However, Annexure A3 notification clearly shows that the selection process was initiated from the divisional office. Volunteers from among Group-D employees of Trivandrum Division were called upon to respond to the notification.

8. Essentially the selection was on division basis. The question whether in such a selection the unit-wise seniority pales into complete insignificance was considered by this Tribunal in OA No. 593 of 2012 on an exactly similar factual situation. This Tribunal after reference to the legal position held at paragraph 4 of the order in the above OA, a copy of which was produced as Annexure A10 as follows:

"4. The issue under consideration is whether seniority should be determined with reference to date of entry into service in the grade or seniority as fixed on transfer to Varkala Division. Rule 320 of the Indian Railway Establishment Manual Vol.I deals with relative seniority of employees in an intermediate grade belonging to different seniority units appearing for a selection/non-selection post in higher grade. The rule states that "when a post (selection/non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter-seniority". Thus the length of service in unit of transfer or loss of seniority on transfer is not the criteria determining seniority but total length of continuous service in the same or equivalent grade is the determining factor for assigning inter-seniority as in the case of Motor Vehicle Driver. Hence the inter-se seniority is not determined by the date on which the employees joined in the unit of transfer."

9. This order was challenged by the Railways before the Hon'ble High Court in OP (CAT) No. 127 of 2016. After an evaluation of the question, the Hon'ble High Court confirmed the order. The Hon'ble High Court referred to Rule 320 of the

Rules regulating seniority of the Railway servants which is as follows:

"320. RELATIVE SENIORITY OF EMPLOYEES IN AN INTERMEDIATE GRADE BELONGING TO DIFFERENT SENIORITY UNITS APPEARING FOR A SELECTION/ NON-SELECTION POST IN HIGHER GRADE.

When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter-seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to the proviso that only non-fortuitous service should be taken into account for this purpose.

Note:-Non-fortuitous service means the service rendered after the date of regular promotion after due process."

The Hon'ble High Court held that the seniority list was prepared at the Trivandrum Division. It also noted that Rule 320 emphasized that the total length of continuous service in the same or equivalent grade shall be the determining factor for assigning the inter se seniority irrespective of the date of confirmation of an employee with a lesser length of continuous service as compared to another unconfirmed employee with a longer length of continuous service. Accordingly, the OP (CAT) was dismissed confirming the order of the Tribunal in OA No. 593 of 2012.

10. The facts involved in the above case are exactly similar as that of the facts involved herein. The selection was division-wise. Hence, the unit-wise seniority pales into insignificance. Consequently, the conclusion arrived at by the Railway for preferring the 5th respondent as against the applicant herein for selection on equal marks on a premise that 5th respondent was senior to the applicant is not sustainable and is liable to be set aside.

11. Though the learned counsel for the applicant has sought relief as against respondents Nos. 4 and 5, in the light of the fact that respondent No. 5 and applicant, got equal marks the issue narrows down to selection of either of two and in the light of our finding that the choice made of the 5th respondent was wrong, the relief is liable to be confined to quashing the selection of the 5th respondent.

12. Accordingly, the OA is liable to be allowed in part. OA is allowed by quashing Annexures A1 and A2 to the extent of selecting the 5th respondent to the post of Motor Vehicle Driver, Technician Grade-III in PB-1 plus GP of Rs. 1,900/-. The respondents shall forthwith issue appointment and posting orders to the applicant herein notionally reckoning his date of seniority with effect from date of Annexures A1 and A2. However, the applicant will not be entitled for any financial benefit during the interregnum. Appropriate orders shall be passed within a period of two months from the date of receipt of a copy of this order.

13. OA is allowed in part as above. No costs.