

(2022) 08 DEL CK 0142

In the Delhi High Court

Case No : Civil Writ Petition No. 7452 Of 2016, Civil Miscellaneous Application
No. 30644 Of 2016

Durgesh Nandini

APPELLANT

Vs

Delhi Transport Corporation & Ors

RESPONDENT

Date of Decision : 24-08-2022

Acts Referred:

Delhi Road Transport Authority Act, 1950 — Section 17

Citation : (2022) 08 DEL CK 0142

Hon'ble Judges : Satish Chandra Sharma, CJ; Subramonium Prasad, J

Bench : Division Bench

Advocate : Sanjoy Ghose, Urvi Mohan, U. N. Tiwari, Manish Jain, Sougata Ganguly

Final Decision : Allowed

Judgement

Satish Chandra Sharma, CJ

1. The Petitioner, before this Court, serving on the post of Deputy Chief General Manager (Traffic) in the service of Delhi Transport Corporation (DTC) being aggrieved by the order passed in O.A. No. 1841/2012, Ravindra Kumar Jain and One Other v. Delhi Transport Corporation and Others have filed the present petition praying for quashment of the Order passed by the Tribunal by which draft seniority list dated 05.08.2011 and the final seniority list dated 24.01.2012 have been quashed and the DTC has been directed to prepare a fresh seniority list.

2. The facts of the case reveal that on 29.11.1985, an advertisement was issued by DTC inviting applications for the post of Management Trainees for Repairs and Maintenance/ Material Management/ Traffic Operations/ Audit & Accounts/ General Administration.

3. The DTC conducted a selection process and after interviewing about 400 candidates selected candidates were to be engaged as Management Trainees and

22 candidates were found suitable in the discipline of Traffic and Personnel Management and Administration.

4. The DTC pursuant to the process of selection issued a letter dated 13.06.1986 appointing Management Trainee on a consolidated stipend of Rs.1000/- per month.

5. In the appointment letter appointing management trainees, it was made clear that the management trainee will receive fixed emoluments to the tune of Rs.1,000/- and no guarantee was given to them regarding employment.

6. The DTC, after the training was over, took a test of all the candidates and it is not the case where all the candidates were able to qualify the exam for appointment to the post of Manager (Traffic). An appointment letter was issued for the post of Traffic Superintendent on 01.10.1987. The appointment order appointed the petitioner and other identical persons on probation in a regular pay scale for the first time. The DTC did not prepare any gradation list/ seniority list in the matter.

7. The candidates appointed by the DTC on the post of Traffic Superintendent/ Manager (Traffic) successfully completed their probationary period on 04.10.1988 and all of them were confirmed with effect from 05.10.1988 vide letter dated 06.10.1988. The DTC again did not issue any seniority list while issuing the order of confirmation.

8. The facts of the case further reveal that all the Management Trainees were not at all appointed as Traffic Superintendents as the selection for the post of Traffic Superintendents was based upon examination and, for the first time, the candidates became member of the cadre only when they were issued appointment order on the post of Traffic Superintendent on 01.10.1987.

9. That in the year 1992, as the issue of seniority was to be looked into, the General Manager (HQ) vide his minutes dated 22.12.1992 pointed out the issue of seniority of Traffic Superintendents who had joined on the post from 1987 to 1989 and the matter was referred for legal advice.

10. That in the year, 1997, a seniority list was prepared based upon the merit list and keeping in view the test conducted for appointment to the post of Traffic Superintendent by the respondents. However, certain persons being aggrieved by the seniority list prepared in the matter came up before this Court by filing a writ petition and the same was transferred to the CAT and the CAT has dismissed the writ petition.

11. That a writ petition was preferred against the order passed by the Tribunal and the High Court against the order passed by the Tribunal vide order dated 09.11.2010 has issued directions to prepare gradation list keeping in view the applicable guidelines issued by the Government of India on the subject.

12. That the DTC, keeping in view the order passed by the High Court dated

09.11.2010 issued a draft seniority list on 05.08.2011 keeping in view the marks obtained after completion of Management Trainees' training, meaning thereby, at the time of induction on the post of Traffic Superintendent and again an O.A. was preferred before the Tribunal i.e. O.A. No. 1841/2012 by one Ravinder Kumar Jain and Anuj Kumar, and the same has been allowed by the CAT. The CAT has quashed the draft seniority list dated 05.08.2011 and the final seniority list dated 24.01.2012 and has directed the DTC to prepare a fresh gradation list taking into account the merit of the candidates at the time of their selection as Management Trainees. The petitioner has filed this present petition being aggrieved by the order passed by the CAT and has prayed for the following reliefs:

"(i) Issue an appropriate writ in the nature of mandamus or any other appropriate writ and to quash and set aside judgment dated 27.04.2016 in O.A. No. 1841/2012 and to further restore the seniority list dated 05.08.2011 and final seniority list dated 24.01.2012 with all consequential benefits including seniority & promotion and pay & allowances.

Or/ and

(ii) Pass any other order(s), which this Hon'ble High Court may deem just & equitable in the facts & circumstances of the case"

13. Learned Senior Counsel for the petitioner has vehemently argued before this Court that the D.R.T.A (Conditions of Appointment & Service) Regulations, 1952 does not provide for a post in the name and style of Management Trainees and the post which finds place under the recruitment rules is the post of Traffic Superintendent/ Manager (Traffic).

14. It has been vehemently argued before this Court that the question of taking into account the select list, if any, at the time the candidates were appointed as Management Trainees is of no consequence as fresh selection process took place for the post of Traffic Superintendent/ Manager (Traffic) and appointment orders were issued on 01.10.1987. It has been argued that the Tribunal has erred in law and in facts in setting aside the provisional and final gradation list which was based upon the performance of a candidate in the test which took place for Traffic Superintendent/ Manager (Traffic).

15. Learned Senior Counsel has also vehemently argued before this Court that the Office Memorandum issued by the Department of Personnel and Training dated 11.11.2010 and 03.07.1986 provides for preparation of gradation list and, therefore, keeping in view the aforesaid Office Memorandums the merit list prepared at the time of selection for the post of Traffic Superintendent/ Manager (Traffic) has to be looked into and the question of taking into account the so-called select list for the Management Trainee does not arise. Learned Senior Counsel has vehemently argued before this Court that there is no record maintained by the DTC in respect of the marks obtained by the candidates for appointment as Management Trainees and the DTC also took a specific stand before the Tribunal and before this Court that in the absence of marks obtained

by the candidates for the post of Management Trainees, it is not possible for the DTC to frame gradation list by taking into account their performance in the exam which took place for the post of management trainee and, therefore, the safest course of action in the present case is to take into account the merit list prepared for the post of Traffic Superintendent/ Manager (Traffic) in order to resolve the controversy once and for all.

16. Learned Senior Counsel has also argued before this Court that in respect of preparation of gradation list in similar circumstances, the Indian Railways also followed the same procedure and the marks obtained by a candidate for selection as apprentice/ trainee are not taken into account. On the contrary, marks obtained in the process of selection to a cadre post are taken into account and, therefore, it has been vehemently argued before this Court that the judgment delivered by the Tribunal is contrary to the settled legal proposition of law and deserves to be set aside.

17. Learned Senior Counsel has also argued before this Court that the seniority cannot be given to a person who was not borne in service and who was not a member of a cadre.

18. Learned Senior Counsel has placed heavy reliance on the judgment delivered by the Supreme Court in *K. Meghchandra Singh & Ors. v. Ningam Siro & Ors.*, (2020) 5 SCC 689. Reliance has also been placed on the judgment in the case of *Sapan Kumar Pal & Ors. v. Samitabhar Chakraborty and Ors.*, (2001) 5 SCC 581.

19. Learned Senior Counsel has lastly argued before this Court that in respect of other batches of Traffic Superintendent i.e. 1987 Batch, seniority list has been framed based upon the examination which took place for the post of Traffic Superintendent/ Manager (Traffic) and, therefore, in the present case also, the same procedure should have been made applicable. He has also argued before this Court that in respect of 1989 batch, for the post of Traffic Superintendent/ Manager (Traffic), marks obtained in the written examination which was conducted after the training have been taken into account and an gradation list has been prepared. It has been vehemently argued before this Court that the judgment delivered by the Tribunal is bad in law and deserves to be set aside.

20. Learned counsel appearing for the DTC has vehemently argued before this Court that the Corporation does not have any record in respect of marks obtained by candidates at the time of their initial selection as Management Trainee and the Corporation has rightly prepared an gradation list based upon the performance of the candidates in the examination which took place for the post of Traffic Superintendent/ Manager (Traffic). He has also brought to the notice of this Court that a large number of candidates though were initially appointed as Management Trainees, after completion of training, could not qualify the exam for the post of Traffic Superintendent/ Manager (Traffic) and, therefore, the DTC was justified in preparing the gradation list based upon the performance of the candidates in the examination which took place for the post

of Traffic Superintendent/ Manager (Traffic). He has also argued that the post of Traffic Superintendent/ Manager (Traffic) is a cadre post and the Recruitment Rules does not provide for appointment as Management Trainee and, therefore, the order passed by the Tribunal deserves to be set aside.

21. Learned counsel for the DTC has argued before this Court that the Recruitment Rules governing the field provides for a prescribed procedure for appointment for appointment to the post of Traffic Superintendent/ Manager (Traffic) and the judgment delivered by the Tribunal ignoring the statutory provisions as contained under the D.R.T.A (Conditions of Appointment & Service) Regulations, 1952 deserves to be set aside.

22. Learned counsel appearing for the respondent Nos. 2 and 3 has supported the judgment delivered by the CAT and he has vehemently argued before this Court that the respondents, pursuant to the advertisement dated 04.12.1985 submitted their applications for Management Trainees which was for a period of 66 weeks. It has been stated that on completion of 66 weeks training, the respondents were to be absorbed in the pay scale of 650-1260 in various departments.

23. Learned Counsel has further contended that after completion of 66 weeks of training, a test certainly took place and those persons who qualified the test were appointed as Traffic Superintendents (later on designated as Manager (Traffic)). The respondents have vehemently argued before this Court that at the time of induction as Management Trainees, a merit list was prepared and, therefore, the merit list which was prepared at the time of initial inception in service should be made the basis of preparing gradation list and the Tribunal is justified in holding that the official respondents have erred in law and on facts in preparing the seniority list based on the examination and the training period alone and the official respondents should have relied upon the marks obtained at the time of initial induction of preparation of seniority list. It has been vehemently argued before this Court that the question of interference by this Court in the peculiar facts and circumstances of the case does not arise.

24. Learned counsel for the respondents has vehemently argued before this Court that the judgment delivered by the Tribunal is based upon the Office Memorandum issued by the Department of Personnel and Training dated 03.07.1986 and 04.11.1992 and the question of interference by this Court in the matter of seniority does not arise.

25. Learned counsel for the respondents has vehemently argued before this Court that they were placed above the petitioner in the examination which took place for the post of Management Trainee and their merit could not have been ignored by the DTC while preparing gradation list and the DTC has certainly erred in law and on facts and preparing the gradation list by only taking into account the examination which was conducted at the end of the training period for entitling a candidate to the post of Traffic Superintendent/ Manager (Traffic) and,

therefore, the Tribunal was justified in setting aside the provisional gradation list and final gradation list and has rightly directed issuance of a fresh gradation list. A prayer has been made for the dismissal of the writ petition.

26. Learned counsel for Respondents has placed reliance on the judgments delivered in the case of Taraka Nath Sharma v. The State of Bihar and Ors., Civil Writ Jurisdiction Case No. 3648 of 1979, MANU/BH/0417/1985, Rajeev Kumar Mishra v. Food Corporation of India and Ors., W.P.(C.) No. 9681/2009, decided on 11.03.2011 and Jagdish Kumar and Ors. v. State of H.P. and Ors., Civil Appeal Nos. 2708 and 2709 of 2002, MANU/SC/1972/2005, decided on 11.11.2005 and has prayed for dismissal of the writ petition.

27. Heard learned counsel for the parties at length and perused the record.

28. The basic issue which requires adjudication in the present case relates to fixation of seniority of direct recruits in the DTC on the post of Manager Traffic/Traffic Superintendent and can be summarized as under:

“The seniority should be fixed based upon the performance at the time of initial selection as Management Trainee or the seniority should be fixed on the basis of merit list prepared at the time of recruitment as Traffic Superintendent/ Manager (Traffic)”

29. The undisputed facts of the case reveal that on 29.11.1985 an advertisement was issued by the DTC inviting applications for the post of Management Trainees on consolidated stipend of Rs.1,000/-. The advertisement dated 29.11.1985 reads as under:

“PUBLIC APPOINTMENTS

DELHI TRANSPORT CORPORATION

(A GOVT OF INDIA UNDERTAKING)

I.P. ESTATE : NEW DELHI-2

No. PR/ADVT/85/29 DATED : 29.11.85

APPLICATIONS are invited for Management trainees for repairs and Maintenance/ Material Management/ Traffic Operations/ Audit & Accounts/ General Administration.

No. of post: 20

Qualifications: First class degree in Mechanical/ Auto Electrical or Civil engineering or Chartered/ Cost and Works Accountancy or 1st class post graduate in Arts/ Science/ Management. The qualifications can be relaxed to a 2nd class in those disciplines for Scheduled castes/ Scheduled Tribes candidates, other things remaining the same.

Period of training: 66 weeks

Age Limit: 21 to 25 years.

Programme of training: After satisfactory completion of training, they will be absorbed in pay-scale of Rs. 680-1260 in various departments and designated accordingly.

Stipend: Rs.1000/- per month consolidated during the training period.

Applications complete in all respects on the prescribed form obtainable from Administrative Officer (PLD) should reach him within one month from date of publication. Forms can also be had on request by sending self addressed envelope (size 26CM x 12 CMS) with stamps of 70 paise fixed thereon. Attach attested copies of certificates testimonials.

Candidates employed in Government/ Public Sector Undertakings must apply through proper channel.

109628"

30. The petitioner who was holding the qualification for the post of Management Trainee was selected and a letter dated 13.06.1986 was issued appointing the petitioner as Management Trainee.

31. It is pertinent to note that as many as 400 candidates were interviewed and about 22 candidates were selected to be appointed as Management Trainees in the discipline of Traffic and Personnel Management and Administration. The appointment order dated 13.06.1986 appointing the petitioner as Management Trainee is reproduced as under:

"DELHI TRANSPORT CORPORATION

(A GOVT OF INDIA UNDERTAKING)

I.P. ESTATE : NEW DELHI-2

No. PLD-1(722)/86/6212 DATED : 13.6.86

Miss Durgesh Nandini D/o Shri Sukhbir Saha is hereby offered temporary appointment to the post of Trainee Officer on a stipend of Rs.1000/- (consolidated) per month subject to the terms and conditions enumerated hereunder:-

She will have to undergo training both theoretical and practical in Traffic Department for a period of 66 weeks approximately. On completion of training he will have to appear for test and in case he fails to obtain the qualifying marks as fixed by the Corporation the training would be either extended for an indefinite period or in the alternative the Corporation may terminate the appointment without assigning any reason whatsoever. In case his performance is not upto the required standard, she can be absorbed in the next lower post.

2. An agreement will have to be executed by him to serve the Corporation for a

period of five years at least after the successful completion of the training. In case he fails to complete this period of service, he shall be liable to reimburse to this Corporation the total amount of stipend received by him during the period of training.

3. He will also be liable to reimburse the stipend drawn by him in the event of his failure to complete the training.

4. He will not be entitled to any leave except casual leave for 15 days in a calendar year during the period of training. For unauthorized absence or absence not covered by casual leave, a proportionate deduction in the stipend will be made.

5. He shall be covered by the rules and regulations of this Corporation in all the matters of conduct, discipline and working hour's etc.etc.

6. He will be entitled for all festival holidays as are observed in this Corporation.

7. He will have to contribute towards ESIC as and when made applicable to Trainee Officers.

8. He will have to undergo medical examination conducted by the Medical Board of this Corporation and produce a certificate of fitness thereafter only he would be eligible for commencing the training.

9. During the period of training, he will be entitled to journey pass for free journey in the DTC buses operated in the city.

10. He will have to produce two character certificates from Gazetted officers or Ist Class Magistrate or MPs or MLAs or Municipal Councilors in the attached form No.16.

11. He will have to furnish the information and sign the declaration given in the attached form NO.17.

12. He will be entitled to Ist Class train fare from & to Delhi and the Station concerned and also daily allowances admissible in addition to stipend during the period of the training with any other Corporation in India as may be decided by this Corporation in this behalf.

13. On the successful completion of training, he will be appointed as Traffic Supdt. subject to the condition that a post is vacant on the date on which he completes the training. However no guarantee regarding employment or in other aspect can be given. In case he is appointed as Traffic Supdt. he will be put on probation for one year. The probationary period can be extended upto two years at any time without assigning any reason therefor. He will be deemed to have completed the period of probation satisfactorily only when a notification to this effect is issued by this office. During the period of probation his services can be terminated at any time without assigning any reason. In respect of other matters, he will be governed by the DRTA (Conditions of Appointment and

Services) Regulations 1952 as amended upto date and as may be amended hereafter by DTC. He will also be governed and bound by all other rules and regulations framed by DTC.

14. No TA etc. will be paid for joining appointment. If he accepts the offer on the above conditions, he would report for duty in this Corporation and hand over the required forms duly completed to the undersigned immediately and in any case before 1.7.86 failing which the offer will be treated as cancelled. He should bring the originals of all certificates and testimonials that he may be having in support of his educational qualifications along with the attested copies of the same. He should complete all the formalities in connection with his training including medical examination etc. immediately and latest by 23.6.86. His acceptance however should reach to the undersigned by 20.6.86.

(AK SHARMA)

ADMINISTRATIVE OFFICER (PLD)

Miss Durgesh Nandini

C/o Basheshwar Nath & Sons Jewellers,

96, Dariba Kalan, Delhi – 110006 "

32. The aforesaid appointment order on the post of Management Trainee makes it very clear that no assurance was given for appointment to the post of Traffic Superintendent. On the contrary, it was made categorically clear to all the candidates that there shall be no guarantee regarding employment or any other aspect in respect of appointment to a regular post. The petitioner successfully completed the training and thereafter a test took place for appointment to the post of Traffic Superintendent/ Manager (Traffic) and finally based upon the performance in the examination, the petitioner and other persons were offered temporary appointment to the post of Traffic Superintendent in the pay scale of Rs.650-1500/- on probation for a period of 1 year. The order dated 23.09.1987 is reproduced as under:

DELHI TRANSPORT CORPORATION

(A GOVT OF INDIA UNDERTAKING)

I.P. ESTATE : NEW DELHI-2

No. PLD-1(722)/87/7264 DATED : 23.09.87

The following persons are hereby offered the temporary appointment to the post of Traffic Supdt. on a basic pay of Rs.650/- in the pay scale of Rs.650-30-750-35-810-880-40-1000-EB-40-1200 plus usual allowances on the terms and conditions enumerated hereunder:-

S.No.

Name

Father's/Husband's

Name

1.

Sh. G.K. Sharma

Sh. M.M. Sharma

2.

Sh. Mohammad Irfan

Sh. Syedullah

3.

Sh. R.S. Minhas

Sh. S.S. Minhas

4.

Sh. Rajiv Vadhera

Sh. H.L. Vadhera

5.

Mrs. Archana Punn

Sh.

6.

Sh. Biswajit Das

Sh. Sachidananda Das

7.

Sh. R.B.L. Shrivastava

Sh. A.P. Shrivastava

8.

Miss Sujata Hajela

Sh. N.N. Hajela

9.

Sh. Chander Prakash

Sh. H.C. Dewan

10.

Miss Durgesh Nandini

Sh. Sukhbir Sahai

11.

Sh. R.K. Jain

Late Sh. J.L. Jain

12.

Sh. Sanjay Saxena

Sh. K.C. Saxena

13

Sh. Anuj Kumar

Sh. U.K. Sinha

Their appointment is purely temporary. They will be on probation for a period of one year. The period of probation can be extended upto one year by this corporation if considered necessary. During the probationary period, their services shall be liable to be terminated at any time without notice and without assigning any reason the refer. They would be considered as having completed the period of probation satisfactory only when a notification to this effect is issued from this office.

2. They will be eligible for free travel in DTC buses in the Union Territory of Delhi only.

3. They will have to produce two character certificates from Gazetted Officers or Ist Class Magistrates, M.Ps, M.L.As I the attached form No.16.

4. This corporation reserves the right to withhold any application for appointment in or transfer to any other establishment.

5. They will have to furnish the information and sign the declaration given in the attached form No.17.

6. They will be liable to be removed from the services of this Corporation in case they are found to be having directly or indirectly by themselves or by a partner or any other person or agent any interest in any contract or work connected with this Corporation.

7. They will have to give a nomination and declaration in duplicate in the attached form No.13 as to whether he is already a member of the Employees Provident Fund Scheme, 1952.

8. They will prefer the claim if any, against the Corporation for their dues etc.

within three years of leaving the Corporation otherwise the Corporation will not be bound to entertain the same.

9. On their appointment as Traffic Supdt. they will have to serve the Corporation as per terms of agreement entered upon between him and the Corporation. In the event of leaving the service in violation of the agreement, they will be liable to reimburse to this Corporation the amount of stipend received by them during the raining period.

10. The other conditions of their appointment and service shall be those as embodied in the D.R.T.A. (Conditions of Appointment & Service) Regulations, 1952 as amended upto date and as may be amended hereafter by the Delhi Transport Corporation. They will also be governed and bound by all other rules and regulations framed by Delhi Transport Corporation hereafter.

11. No. T.A. will be paid for joining appointment.

If they accept the offer on the above conditions, they should confirm such acceptance immediately and report for duty in this Corporation to the undersigned immediately thereafter and in any case before 30.9.1987. If they fail to comply with any one of the above conditions, the offer will stand cancelled automatically without any further reference to them.

They are also requested to bring originals and copies of all the certificates and testimonials in support of educational qualifications and experience.

Sd/-

(A.K. Sharma)

Sr. ADMINISTRATIVE OFFICER (PLD)

FOR Chairman-cum-M.D.

33. The respondent DTC issued another order dated 1.10.1987 clarifying that the appointment to the post of Traffic Superintendent shall be with effect from 05.10.1987. Copy of the order dated 01.10.1987 is reproduced as under:

" DELHI TRANSPORT CORPORATION

(A GOVT OF INDIA UNDERTAKING)

I.P. ESTATE : NEW DELHI-2

No. PLD-1(722)/87/405 DATED : 1.10.-1987

Further to this office memo No. No. PLd-1(722)/87/7264 dated 23.09-87, the following persons are hereby appointed to the post of Traffic Supdt. with effect from 05-10-1987 on a basic pay of Rs.650/- per month in the pay scale of Rs.650-30-750-35-810-880-40-1000-EB-40-1200 plus usual allowances. They will continue to hold pay token number as mentioned against each:-

S.No.

Name

Father's/ Husband's

Name

Token No.

1.

Sh. G.K. Sharma

Sh. M.M. Sharma

53255

2.

Sh. Mohammad Irfan

Sh. Syedullah

53259

3.

Sh. R.S. Minhas

Sh. S.S. Minhas

53253

4.

Sh. Rajiv Vadhera

Sh. H.L. Vadhera

53265

5.

Mrs. Archana Punn

Sh.

53261

6.

Sh. Biswajit Das

Sh. Sachidananda

Das

53262

7.

Sh. R.B.L. Shrivastava

Sh. A.P. Shrivastava

53256

8.

Miss Sujata Hajela

Sh. N.N. Hajela

53253

9.

Sh. Chander Prakash

Sh. H.C. Dewan

53264

10.

Miss Durgesh Nandini

Sh. Sukhbir Sahai

53267

11.

Sh. R.K. Jain

Late Sh. J.L. Jain

53254

12.

Sh. Sanjay Saxena

Sh. K.C. Saxena

53260

13

Sh. Anuj Kumar

Sh. U.K. Sinha

53258

The other terms and conditions of their appointment shall be those as contained in this office letter referred to above.

They are requested to report to General Manager (Hq.) for duties.

Sd/-

(A.K. Sharma)

Sr. ADMINISTRATIVE OFFICER (PLD)

FOR Chairman-cum-M.D.”

34. The petitioner and others successfully completed the probationary period on 04.10.1988 and they were confirmed with effect from 05.10.1988 vide letter dated 06.10.1988. No gradation list was prepared at the relevant point of time.

35. The statutory provisions governing the field in respect of appointment to the post of Traffic Superintendent/ Manager (Traffic) are contained under the D.R.T.A (Conditions of Appointment & Service) Regulations, 1952. These Regulations provides for process of recruitment to various posts and Regulations 4, 5, 6 and 7 of the Regulations are reproduced as under:

“4. Classification of employee:- (1) For the purpose of these regulation, unless otherwise specified all employees under the Authority shall be classified as follows:-

(a) Class I – Civil Engineer.

(b) Class II – Assistant General Manager (Administration), Assistant Engineers, Publicity officer, Assistant General Manager (Traffic), Assistant Store officer, Medical officer, secretary to General Manager, work Manger and Technical Adviser, Traffic superintendent (Head quarters & operation), stores officer, personal officer, statistical officer, Accounts officer, Labour officer, Assistant personal officer, Assistant works Manager, Labour Welfare officer.

(c) Class III (i) Ministerial:- office Superintendent, Accountant, Cost Accountant, Assistant Incharge, Clerks, Stenographers, typists, Compounder, Cashiers, Assistant Cashiers, store keeper, Watch and ward inspector, Head Draft man, Translator, Motor Cycle Messenger, Draftsman, section officer.

(ii) Operation – Traffic controller, Traffic, staff, institution, Inspector, Depot supervisor, Chief Traffic Inspector, Traffic Inspector, Traffic Ticket Examiner, Time Keepers, Job Keepers, conductors, Box Makers, Driver.

(iii) Workshop – Foreman, Assistant Foreman, Workshop Supervisor, Chief Store keeper, works Assistant, Assistant store keeper, skilled labour.

Note:- Without prejudice to the classification laid down above, a separate internal classification may be adopted so far as the workshop staff is concerned in accordance with the provision of industrial Employment standing orders Act, 1947.

(d) Class IV- Daftry, peon, Chowkidar, Waterman, sweeper, Mazdoor, Semi-skilled

and un-skilled Labour.

Note:- The conditions of service of employees on deputation will be such as may be laid down in their terms of deputation as approved by the Delhi Road Transport Authority.

5. Recruitment: subject to the condition that neither a person disqualified under section 17 of the Delhi Road Transport Authority Act, 1950 nor an employee of the Authority dismissed from service for misconduct by the Authority, nor an employee of the Central & State Government who has been debarred from employment in any Government Department, shall be taken into employment and further subject to such standing order as may be framed by the General Manager, with the approval of the Delhi Road Transport Authority regarding age, academic and technical qualification, physical fitness, trade tests, procedure for invitation of applications (namely by advertisement in any other way), appointments against sanctioned posts whether by promotion or by direct recruitment shall be made strictly on merits. In determining the merits of candidates for purpose of promotions, consideration shall be given to service records and seniority in addition to his qualifications, when appointments are proposed to be filled by direct recruitment employees of the Delhi Road Transport Authority shall be eligible to compete for them.

2. (a) selection to class III and IV posts will be made by a department Committee consisting of the General Manager and/or the Assistant General Manager (Administration), the Chief Accounts officers and the respective Departmental heads. When any of them is not available or otherwise engaged, he will nominate the senior most available officer of his department to represent him on the committee.

(b) Selection to class II posts will be made by a committee consisting of :-

(i) Deputy Secretary, Ministry of Finance and Member, Delhi Road Transport Authority.

(ii) The representative of the Ministry of Transport (Member, Delhi Road Transport Authority)

(iii) A non-official member of the Authority nominated by Chairman.

(iv) General Manager.

Note 1. The Chairman of the Authority may attend any meeting if he considers necessary.

(2) The Selection Committee may with the permission of the Chairman, associate with itself and person whose assistance or advice it may consider necessary in the selection of technical personnel.

(3) Temporary vacancies may be filled by the General Manager in accordance with the powers delegated to him in this respect in the regulation governing such

delegation.

6. The appointment Authority for the different classes of employees is indicated below:-

Class I and II- Delhi Road Transport Authority.

Class III & IV - General Manager.

7. (1) Probation: All appointment shall be made on probation for a period of one year. The period of probation may be extended by the Appointing Authority in the case of a particular individual if the Appointing Authority considers it necessary for reason which should be recoded provided that in no case shall the period of probation exceed two years.

(2) Confirmation: after the satisfactory completion of the period of probation in a post, an employee who is found fit for confirmation may be confirmed in that post.

Provided that post is including in the sanctioned permanent establishment of the Delhi Road Transport Authority.

All confirmations will be made by the Appointing Authority."

36. The aforesaid Regulations makes it very clear that Traffic Superintendent/ Manager (Traffic) is a cadre post and as it is Class-II post, the appointing authority is Delhi Road Transport Authority. The Regulations also provide for probationary period under Regulation 7 and the petitioner was appointed keeping in view the Regulations of 1952 on the post of Traffic Superintendent/ Manager (Traffic).

37. The Recruitment Rules does not include the so-called post of Management Trainee. Otherwise also no assurance of any kind was given at the time when the appointment order was issued in respect of Management Trainee that they will be automatically appointed on the post of Traffic Superintendent/ Manager (Traffic). Therefore, for all purposes, so far as Recruitment Rules are concerned, all the appointment were done on the post of Traffic Superintendent/ Manager (Traffic) based upon the examination which took place for selecting Traffic Superintendents. The issue of seniority arose in the year 1997 in respect of the direct recruits appointed to the post of Traffic Superintendent/ Manager (Traffic) and a seniority list was prepared based upon the merit list and keeping in view the test conducted by the respondents for the post of Traffic Superintendent/ Manager (Traffic).

38. The seniority list prepared in the year 1997 was subjected to judicial scrutiny by filing a writ petition and the writ petition was transferred to the CAT. The Original Application was dismissed by the CAT and a writ petition was preferred before this Court and this Court has disposed of the Writ Petition vide order dated 09.11.2010 passed in W.P.(C.) No. 13177/2009, titled Mr. Ravinder Kumar Jain & Anr. v. DTC, W.P.(C.) No. 13615/2009, titled Smt. Durgesh Nandini v. DTC

& Ors. The relevant extract of the order passed by this Court reads as under:

"1. The writ petitioners secured appointment as Traffic Superintendents (re-designated as Manager Traffic) in the year 1987 and are aggrieved by the fact that seniority assigned to the 13 persons appointed as Traffic Superintendents is predicated on the date of birth with the eldest being the senior most and the youngest being the junior most. However, inter-se the petitioners, they have a conflict of interest inasmuch as the writ petitioners of W.P.(C) No.13177/2009 pray that inter-se seniority be determined with reference to the marks obtained by the candidates at the time of initial appointment and the writ petitioners of W.P.(C) No.13615/2009 pray that inter-se seniority be determined with reference to the marks obtained by them at a test conducted after all persons successfully completed the training period.

2. It is not in dispute that no tentative seniority list was ever circulated and none was given an opportunity to file a representation against the seniority list. In fact, strictly speaking there exists no seniority list. None has been shown to this Court. The dispute has emanated on account of a communication addressed to the writ petitioners in response to a query regarding their seniority position, informing them, that all those who were appointed as Traffic Superintendents before them would naturally be senior to them and inter-se the batch of 13 persons recruited in the year 1987, the seniority would be as per age.

14. Since the undisputed position is that no draft seniority list was prepared and none was given an opportunity to file representation against the draft seniority list; noting that assignment of seniority position affects the promotional prospects of an employee, law requires an opportunity to be granted to an employee to make a representation against a draft seniority list, we dispose of the two writ petitions issuing a mandamus to DTC to draw up a draft seniority list of Traffic Superintendents (re-designated as Manager Traffic) and after hearing all those who filed objections against the draft seniority list to finalize the same within a period of 6 months from today. Needless to state DTC would take into account the fact that appointments in question are by way of direct recruitment and since DTC has been adopting guidelines issued by the Government of India and neither has DTC framed rules nor guidelines on basis whereof inter-se seniority has to be determined, guidelines issued by the Government of India on the subject would be followed."

39. The High Court thus directed preparation of fresh seniority list based upon the Office Memorandum issued by the Government of India from time to time on the subject and the DTC in compliance to the order passed by the High Court issued a draft seniority list on 05.08.2011 keeping in view the marks obtained by individuals at the time of selection to the post of Traffic Superintendent/ Manager (Traffic). The draft seniority list was again subjected to scrutiny before the Tribunal and an original application was preferred i.e. O.A. No. 1841/2012 by Mr. Ravinder Kumar Jain and Anuj Kumar and the same has been allowed by the CAT.

40. Paragraphs 6 to 8 of the order passed by the CAT in O. A. No. 1841/2012 are reproduced as under:

"6. We have heard the parties and have perused the material on record. We have also gone through the department file made available by the official respondents. In our opinion, while there may be some doubt as to whether para 2.3 of the O.M. dated 03.07.1986 can be applied or not to the instant case for determination of seniority, there is no doubt that para 2.1 was definitely applicable. Even if the contention of the respondents that para 2.3 will apply because it was deleted only by O.M. dated 04.11.1992 is accepted, a conjoint reading of para 2.1 and para 2.3 of the aforesaid O.M. does not lead to the conclusion that the merit of the initial selection be ignored all together. Para 2.3 says that if there is any alteration in the merit pursuant to confirmation, the same may be taken into account while determining the seniority. At best this could mean that the marks obtained at the time of initial induction be added to the marks obtained at the end of training course to determine the final merit. This, however, has not been possible in the present case because of two reasons. One is that the marks obtained at the time of initial induction are not available. Secondly, there is no method of determining as to what should be relative weightage attached to the marks obtained at the initial induction as well as marks obtained at the time of conclusion of training to determine the final total marks. Under these circumstances, in our opinion, the official respondents should have gone by the merit as it obtained at the time of initial induction as Management Trainees. This is because this induction was done by High Level Committee comprising of CMD himself and consisting of other senior officers, such as, Addl. G.M.(Admn.), Chief Accounts Officer and Addl. G.M. (Traffic). In this selection marks were given on the basis of interview as well as educational qualifications and experience.

6.1 In many departments of the Government, the initial induction is done through independent Selecting Bodies like UPSC or the SSC. The merit list prepared by these independent agencies cannot be ignored. Even in the instant case, the initial induction done by a High Level Committee definitely stood at a higher pedestal as compared to the test conducted by the training school and must be respected.

6.2 Further, we find from the records of the department that the candidates were never told that the examination conducted at the conclusion of the training would be used to determine their seniority. All that they were informed was that it was a qualifying exam and should they fail to obtain qualifying marks, they may be absorbed in a lower post or may not be offered appointment at all. However, when the final results were declared neither any candidate was offered a lower post nor was anyone denied appointment. Moreover, the parameters of this examination were also changed under the orders of CMD and qualifying marks lowered from 60 to 55%. Thus, this test cannot be given higher priority than the initial selection.

6.3 Argument of the respondents that determining seniority on the basis of marks obtained after training is a system followed in Railways cannot be of much help to them. This is because as far as Railways were concerned, this has been provided for in their Statutory Rules, whereas as far as the DTC is concerned, it is an admitted position that their own Rules are silent on this issue and that they are guided by only DoP&T Instructions. The DoP&T Instructions relied upon by both sides have been mentioned above in which it has nowhere been provided that seniority be determined only on the basis of marks obtained at the conclusion of the training period.

6.4 The private respondents have also argued that the initial induction as Management Trainee was not really an appointment to the cadre of Superintendent (Traffic) since only stipend of Rs.1000/- per month was awarded at that stage. As such, para 2.1 of the O.M. dated 03.07.1986 of DoP&T cannot be applied since that clause has an application only when marks are awarded for actual appointment to the post. In this case, at the time of initial induction regular appointment was not promised and the availability of the post was also uncertain. However, in our opinion, in all recruitments, the selected candidates are told that they would be denied regular appointment in case they fail to successfully complete the period of training/probation. The present case was no different in this regard. It also does not matter whether full salary is paid at the time of initial induction or whether only a stipend is given. It cannot be denied that those selected were a handful of candidates out of about 400 applications that had been received. Thus, in our opinion, this selection was no different from selection held through UPSC or SSC or other selecting bodies. Hence, para 2.1 needs to be applied to honour the merit of the selection.

7. Thus, we are of the opinion that the official respondents have erred in preparing the seniority list based on the merit of the examination at the end of training period alone. Since in the present case, it was not possible to add marks obtained at the time of initial selection to the marks obtained at the time of training, the respondents should have relied on the marks obtained at the time of initial induction for preparation of the seniority list. The action of the official respondents is thus against DoP&T Instructions.

8. We, therefore, allow this O.A. The impugned draft seniority list dated 05.08.2011 and final seniority list dated 24.01.2012 are quashed and set aside. We further direct the respondents to prepare fresh seniority list within a period of eight weeks from the date of receipt of a certified copy of this order based on the observations made above. No costs."

41. The Tribunal, while allowing the Original Application has held that the action of the respondent DTC in preparing the gradation list based upon the merit of the examination which took place for induction to the post of Management Trainee/ Traffic Superintendent is bad in law and the DTC has been directed to prepare a fresh gradation list. Meaning thereby, the DTC has been directed to prepare an gradation list based upon the performance of the candidates at the time of

induction as Management Trainees.

42. The DTC, while defending the matter before the Tribunal has categorically stated that the DTC does not have the marks obtained by the candidates at the time of their induction as Management Trainees and it was by no stretch of imagination a recruitment to a cadre post and, therefore, the DTC took a stand that they have rightly prepared an gradation list based upon the marks obtained by the candidates at the time of recruitment to the post of Manager (Traffic) after completion of training as Management Trainees.

43. The DTC, on affidavit, has made the following statement before the Tribunal which is reproduced as under:

"The O.M. of Govt. of India clearly stipulates that the relative seniority of all direct recruits is determined by the order of merit in which they are selected. The selection to send the individuals name for training is not a final selection of the candidates. In this case, the selection minutes does not refer to any marks given to the candidates while selecting them for sending their names for training nor any such list is available with DIC, therefore, the competent authority has rightly adopted the criteria of merits of the candidates i.e. the marks obtained in written test for granting seniority."

44. The Office Memorandum issued by the Department of Personnel and Training dated 03.07.1986 and 11.11.2010 do provide for a method for preparation of gradation list and the Office Memorandum deals with the merit list prepared at the time of selection to a cadre post. The Office Memorandums issued by Government of India does not cater to a contingency involved in the present case.

45. In the present case, while issuing an appointment order to the post of Management Trainee, it was made clear that the DTC does not offer any guarantee in respect of appointment as Traffic Superintendent/ Manager (Traffic) after completion of the training and after completion of the training, an examination took place based upon which persons were appointed to the post of Traffic Superintendent/ Manager (Traffic). It is an undisputed fact that all the management trainees were not appointed as Traffic Superintendent/ Manager (Traffic) and, therefore, in the considered opinion of this Court once an examination took place for appointment to a cadre post under the Regulations of 1952, the performance in the examination for appointment to a cadre post has to be the sole basis for preparing a merit list and, therefore, the Tribunal has erred in law and on facts in allowing the Original Application.

46. The Office Memorandum dated 11.11.2010 issued by the Department of Personnel and Training as contained in Clause 2.3 is reproduced as under:

"2.3 where persons recruited or promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit."

47. The Office Memorandum dated 11.11.2010 issued by the Department of Personnel and Training as contained in Clause 2.1 reads as under:

"2.1 SENIORITY OF DIRECT RECRUITS

The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of subsequent selection. The relative seniority that used to be determined according to the date of confirmation had not the original order of merit, (in case where confirmation was in an order different from the order of merit indicated at the time of their appointment), in accordance with the general principles of seniority, has been discontinued w.e.f. 04.11.1992 (OM No. 20011/5/90-Estt. 20011/5/90-Estt. (D) dated 04.11.1992). The general principle of seniority therefore, stands modified to that extent."

48. In the light of the aforesaid Office Memorandums, the relative seniority of direct recruits has to be determined by order of merit in which they were selected for the post of Traffic Superintendent/ Manager Trainees and, therefore, by no stretch of imagination the so-called seniority of the post of Management Trainee can be looked into specially when no such post of Management Trainee finds place under the Recruitment Rules.

49. The Hon'ble Supreme Court in the case of K. Meghchandra Singh(supra) has held that a person is not entitled to claim seniority from the date he was not borne in service and under service jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. The Hon'ble Supreme Court in the aforesaid case, in paragraph 39 has held as under:

"39. The judgment in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] relating to the Central Government employees cannot in our opinion, automatically apply to the Manipur State Police Officers, governed by the MPS Rules, 1965. We also feel that N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] had incorrectly distinguished the long-standing seniority determination principles propounded in, inter alia, Jagdish Ch. Patnaik [Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156] , Suraj Parkash Gupta v. State of J&K [Suraj Parkash Gupta v. State of J&K, (2000) 7 SCC 561 : 2000 SCC (L&S) 977] and Pawan Pratap Singh v. Reevan Singh [Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] . These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under service jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in Jagdish Ch. Patnaik [Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156] and consequently we disapprove the norms on assessment of inter

se seniority, suggested in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] . Accordingly, the decision in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] is overruled. However, it is made clear that this decision will not affect the inter se seniority already based on N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] and the same is protected. This decision will apply prospectively except where seniority is to be fixed under the relevant rules from the date of vacancy/the date of advertisement.”

50. Similarly, the Hon’ble Supreme Court in Sapan Kumar Pal & Ors. (supra) has held that an appointee is entitled for seniority from the date on which he is actually selected and appointed in accordance with the rules and the seniority would take place from the date of selection after due completion of the process. In the present case, the post under the Recruitment Rules is of Traffic Superintendent/ Manager (Traffic) and, therefore, the seniority has to be taken into account based upon the merit list prepared for the post of Traffic Superintendent/ Manager (Traffic).

51. Learned counsel for the respondent has placed reliance upon the judgment delivered in the case of Jagdish Kumar and Ors. (supra). He has placed heavy reliance on paragraph 16 and 17 of the judgment which reads as under:

“16. The only other question which needs to be adjudicated is the stand of the respondents that the appointment had become really effective on the date of passing the departmental examination. This plea is equally untenable on account of the fact that the appointment itself takes effect from the date of appointment and in the event of not passing the examination, the consequences follow. But that cannot be a ground to hold that there was no appointment in the eye of the law till the examination is passed. The Government also recognised this position as is evident from declaration of the seniority list on 14-10-1977 wherein the appellants were included in the seniority list though they had not cleared the examination by that time as no examinations were held. In the eye of the law the appointment of the appellants was from the date of their initial appointment, which of course was conditioned with the requirement of passing the departmental examination. Undergoing any training with ITI was subsequently substituted by the requirement of passing the departmental examination. A feeble attempt was made to show that at no point of time the authorities have adduced any material to show that ITI had declined to impart training and, therefore, the substitution of ITI training by the requirement of passing the departmental examination is illegal. The stand is untenable. This plea is only to be noted to be rejected because of the High Court's finding in clear terms which is as follows:

“It is not in dispute that on the authorities concerned of ITIs expressing their inability to provide three months' training to the petitioners and other similarly situated persons, the Chief Engineer decided to hold departmental examination by prescribing syllabus for the said examination vide his office order dated

19-2-1980 (Annexure P-3), which the petitioners qualified as per the notification dated 24-5-1980 and in December 1980.

17 Above being the position, the appellants are entitled to be placed in the seniority list from the date of their initial appointment and not from the date on which they passed the departmental examination. The appeals are allowed but with no order as to costs."

52. In the present case, there is no such contingency involved in respect of passing of departmental examination. In fact, the examination for recruitment to the cadre post took place after the candidates have completed their training as Management Trainee and the post of Management Trainee is certainly not a cadre post and it was not the case of automatic absorption on the post of Traffic Superintendent/ Manager (Traffic) and, therefore, the judgment relied upon is distinguishable on facts.

53. Learned counsel for Respondents has placed reliance on Taraka Nath Sharma (*supra*).

The aforesaid case was also a case where the seniority was in dispute and the seniority was assigned based upon qualifying the departmental examination. In the present case, no such contingency of passing the departmental examination is involved and the merit list has to be prepared based upon the examination which took place at the time of induction to the post of Traffic Superintendent/ Manager (Traffic) and, therefore, the judgment is once again distinguishable on facts.

54. Learned counsel for the respondents has placed reliance upon the judgment delivered in the case of Rajeev Kumar Mishra (*supra*). This Court has carefully gone through the aforesaid judgment and in the aforesaid case, advertisement was issued in 1998 for appointing 100 Management Trainees required for different cadres. An option was given to the candidates to opt for 1 of the 5 zones for their absorption after completion of their training. The candidates were allotted to different 5 zones and the petitioner before this Court who opted for east zone was allotted north-east zone by the Food Corporation of India. In respect of two candidates Shri. Yogendra Singh and Shri Anuj Tyagi, a request for change of zone was considered and the petitioner came up before this Court stating that respondent Nos. 3 to 11 therein have been shown senior to the petitioner. In the aforesaid case, the controversy involved altogether different. The FCI Staff Regulations, 1971 provided for a detailed mechanism for preparation of seniority list in respect of direct recruits and also zone wise recruitment as well as All India basis recruitment. In the present case, the controversy involved is altogether different and the petitioner is praying for preparation of an gradation list keeping in view the D.R.T.A (Conditions of Appointment & Service) Regulations, 1952 by taking into account the recruitment to the cadre post i.e. Traffic Superintendent/ Manager (Traffic) which has been done based upon an examination. Hence the judgment relied upon again is of no

help to the Respondents.

55. The respondent DTC has also taken a categoric stand that they do not have the record relating to the marks obtained by the Management Trainees and, therefore, keeping in view the totality of the circumstances of the case, this Court is of the opinion that gradation list has to be prepared based upon the marks obtained by the candidates in the examination which took place for appointment to the post of Traffic Superintendent/ Manager (Traffic) alone.

56. Resultantly, the order passed by the CAT is hereby set aside. The respondents are directed to issue a fresh gradation list based upon the performance of the candidates in the examination which took place for appointment to the post of Traffic Superintendent/ Manager (Traffic) within a period of 60 days from the date of receipt of certified copy of this order. The petitioner shall be entitled for all consequential benefits, if any, accruing to her based upon the revised seniority.

57. With the aforesaid, the writ petition stands allowed.