
(2008) 01 MP CK 0111
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3001 of 2003

S.C. Mehta and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Citation : (2008) ILR (MP) 761 : (2008) 3 MPLJ 254

Hon'ble Judges : Prakash Shrivastava, J;A.K. Mishra, J

Bench : Division Bench

Advocate : Sujoy Paul with Akash Choudhary, for the Appellant; Rajneesh Gupta, and Gaurav Sharma, for Respondents No. 10, 13, 17 and 19, for the Respondent

Final Decision : Dismissed

Judgement

The petitioners have assailed order dated 11th April, 2002 passed by Central Administrative Tribunal, Jabalpur in O.A. No. 479/94.

The facts briefly stated indicate that the petitioners prayed before the tribunal to quash the seniority list (A.1) dated 11-4-1994/4-7-1994 and for quashment of promotion order (A.2) dated 26-7-1994 relating to respondents No. 4 to 12 and 16 to 20. The petitioners submitted that they were directly recruited to the post of Assistant Driver/Diesel Assistant in the pay scale of Rs. 950-1500/- on different dates in the year 1988, 1989 and 1990. Subsequently they were transferred to Bhopal Division on the basis of their own request/mutual basis. Petitioners submitted that respondents No. 4 to 55 were also working as Assistant Driver/Diesel Assistant/Firemen-II in the pay scale of Rs. 950-1500/- in Bhopal Division but they were shown junior to them in the seniority list (A.4). In the seniority list (A.3) dated 1-3-1993 the petitioners were assigned correct seniority and they were shown senior to respondents No. 4 to 55 as their recruitment to the post of Diesel Assistant was subsequent in point of time. They were selected pursuant to the notice (A.6) circulated on 29-4-1992. They were empanelled on 7-10-1992 as per (A. 8). Later on they were given seniority as

Diesel Assistant w.e.f. 13-2-1990 in the seniority list (A.1) dated 4-7-1994. The petitioners were transferred to Bhopal Division on different dates in the year 1990, 1991 and 1992. It is submitted that post of Diesel Assistant/Assistant Driver was selection post and selection was on the basis of written test, interview conducted by duly constituted committee as per the Recruitment rules, as such seniority could not have been given to respondents No. 4 to 55 before 4-12-1992. It was not known to the petitioners on what basis proforma seniority was given from 13-2-1990. Respondents No. 4 to 55 never participated in the selection held prior to 1992. If some of them participated, they had not fared well.

In the return/additional return filed by respondents No. 1 to 3 before the tribunal it was contended that respondents No. 4 to 55 were eligible for consideration for selection to the post of Diesel Assistant as per notification dated 28-7-1989 (A.1 = R.1); as they were not considered, however, they were regularized as Diesel Assistant in a subsequent selection, they were given proforma seniority with effect from their due date. Settlement was reached in joint meeting of the recognized unions, as per that impugned seniority list was prepared. Six of the respondents had applied for the selection, however, remaining respondents did not apply nor the Railway Administration called them to appear in the selection. The employees reaching on transfer at own request from other division will also become junior to the staff already promoted in the relevant grade or post. It was further submitted that respondents No. 4 to 55 were promoted on ad hoc basis prior to posting on request of applicants in Bhopal Division. Due to administrative lapse the cases were not considered of the respondents No. 4 to 55, as such they were given the retrospective seniority. The post of Diesel Assistant being selection post the regular promotion could only be made by positive act of selection, hence these senior firemen "B" who were left out by Administrative error were called for selection in 1992 for regular promotion. They qualified in the selection conducted in October, 1992 as per para 302 Indian Railway Establishment Manual, hereinafter referred to as "IREM". The respondents No. 4 to 55 were left out from being called for selection in the year 1990, on their passing selection test, they were assigned original seniority by correcting the administrative mistake. Powers given to General Manager under para 114 of IREM have been withdrawn.

The tribunal has dismissed the application holding that the petitioners were not in Bhopal Division in the feeder cadre to the post of Diesel Assistant. The respondents No. 4 to 55 could not be called by the administration for selection in the year 1989. As soon as this error was discovered by the respondents No. 1 to 3, they were considered and promoted in the year 1992, thereafter they consulted with recognized unions of the applicants also. The petitioners were junior in the feeder cadre in the Bhopal Division, thus, no injustice was caused to them. Aggrieved by the order the petitioners have preferred the writ petition.

Shri Sujoy Paul, learned counsel with Shri Akash Choudhary appearing on behalf

of petitioners, has submitted that the criteria evolved in the joint meeting of the unions was not proper and legal. The post of the Diesel Assistant being selection post, the seniority could not have been assigned w.e.f. 13-2-1990. The respondents in their return have submitted that respondents No. 38, 48, 50 to 53 had applied for their selection, consequently their cases were not covered in the joint decision (R.1) taken on 4-3-1994, thus, the change made in the seniority list on 4-7-1994 was illegal and the position of the seniority list of the year 1993 deserves to be restored.

Shri Rajneesh Gupta, learned counsel for respondents No. 1 to 3 and Shri Gaurav Sharma for respondents No. 10, 13, 17 and 19, have supported the order and submitted that the cases of petitioners were not considered due to administrative lapse, in Bhopal Division their cases were considered as pointed out in the additional return for the year 1992, thereafter orders were issued, joint decision was taken in the meeting of both the unions and it was decided that those who were working on ad hoc basis as Diesel Assistant/Firemen (A) prior to 28-7-1989 and were not called to appear in the selection and got regularized as Diesel Assistant, on subsequent selection to be given proforma seniority position interpolating, their names in the Diesel Assistant panel published on 13-2-1990, thus, the injustice done to respondents No. 4 to 55 due to administrative lapse was undone, the petitioners came on subsequent dates to Bhopal, the respondents No. 4 to 55 were already officiating on ad hoc basis as Diesel Assistant; they were working prior to 28-7-1989, thus, had been rightly assigned the seniority from 13-2-1990 the date on which the panel was published in the Bhopal Division. The petitioners have not assailed the joint decision taken on 4-3-1994. Consequently, there is no merit in the writ petition, writ petition deserves to be dismissed.

It is clear that petitioners came on mutual basis or on request basis to Bhopal Division and they were promoted as Diesel Assistant on different dates in the year 1990, 1991 and 1992. It is not in dispute that they were rightly assigned the seniority at the bottom of the employees who were holding the post of Diesel Assistant, however, in the instant case, there were certain incumbents in Bhopal Division whose cases were required to be considered for the post of Diesel Assistant, however, due to administrative lapse their cases were not considered as admitted in para-2 of the additional return dated 12-4-2001 filed by respondents No. 1 to 3. Following averment has been made:

2. That the post of Diesel Asstt. being selection post the regular promotion could only be made by positive act of selection, hence these senior firemen "B" who were left out by Administrative error were called for selection in 1992, for regular promotion. These seniors qualified in the selection conducted in October, 1992. The contention of the applicants that since these persons were promoted after them, they should be given seniority below them as per para 302 of the I.R.E.M. Since the respondents 4 to 55 were left out from being called for selection in the year 1990, on their passing selection test, they were assigned original seniority

by correcting the administrative mistake.

Para 228 of the I.R.E.M. clearly provides that where person has not been promoted at all because of administrative error and where person has been promoted but not on the date from which he should have been promoted and assigned correct seniority vis-a-vis their junior already promoted, irrespective of the date of promotion, they have to be assigned correct seniority. Relevant portion of Para 228(1) is quoted below:

228. Erroneous Promotions. -- (1) Sometimes due to administrative errors, staff are over-looked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types:

(i) Where a person has not been promoted at all because of administrative error, and

(ii) Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma in the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts.

It is clear that the respondents were officiating as Diesel Assistant/Firemen Grade-A; their cases were required to be considered but due to administrative lapse the cases were not considered, consequently their cases were considered in the year 1992, thereafter with effect from the date of entitlement, when they were ignored the seniority was assigned to them w.e.f. 13-2-1990. The petitioners came to Bhopal subsequently on different dates, they were entitled to seniority w.e.f. that date, placing them at the bottom, as the entitlement of the respondents No. 4 to 55 was from the aforesaid earlier date, thus, the action of the respondents No. 1 to 3 was proper.

There is yet another serious flaw in the petition preferred by the petitioners, they have not assailed the decision taken in the joint meeting of both the unions, on the other hand they submitted that they were not aware on what basis the decision was taken, when the unions have represented them and joint decision was taken, in all fairness it should have been disclosed and assailed as per the legal requirement, that has not been done, that also precludes the petitioners from obtaining any relief beside we do not find any merit in the submission on merits of the case raised on behalf of the petitioners.

Resultantly, writ petition sans merit, is hereby dismissed. However, we leave the parties to bear their own costs as incurred of the petition.