
(2006) 03 DEL CK 0199

In the Delhi High Court

Case No : Civil Writ No"s. 9428-29 of 2005

Union of India (UOI) and Another

APPELLANT

Vs

Afroz Ahmed and Others

RESPONDENT

Date of Decision : 07-03-2006

Acts Referred:

Citation : (2006) 88 DRJ 478 : (2007) 1 SLJ 455

Hon'ble Judges : Sanjiv Khanna, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Irshad Ahmad, for the Appellant; Jyoti Singh, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—Union of India, Northern Railway, New Delhi has challenged by way of present Writ Petition two orders passed by the Central Administrative Tribunal dated 3rd February, 2005 and 7th April, 2005. By the first Order dated 3rd February, 2005 learned Tribunal allowed Original Application No. 1990/2004 filed by the respondent and by the second Order dated 7th April, 2005 the review application filed by the petitioner was dismissed. By the impugned Order dated 3rd February, 2005 learned Tribunal has held that the respondents were wrongly denied benefit of the Assured Career Programme Scheme (hereinafter referred to as ACP Scheme, for short) and their seniority was to be reckoned from the date when they were appointed as Apprentice and not from the date they were appointed after completing 24 months of training. It was held that training was part of the process after appointment and the training period should be counted for the purpose of seniority as well as ACP Scheme. Learned Tribunal relied upon the judgment of the Supreme Court in Kuttiyappan Vs. Union of India (UOI) and Others,

2. The stand of the petitioner before us and before the learned Tribunal was that seniority of the respondents has/had to be determined under para 302 of Indian Railway Establishment Manual Vol-I Chapter-III (hereinafter referred to as IREM,

for short). Ld. Counsel for the respondents argued that that the petitioner was wrong in denying seniority and benefit of ACP scheme to the respondents. It was submitted that training was after appointment was made.

3. The respondents are direct recruits and were appointed as Diesel Assistants. Under para 137(1) of the Indian Railway Establishment Manual, 50% of the vacancies in the grade of Diesel Assistants were/are to be filled up by lateral induction from First Firemen grade that are at-least VIIIth Class pass and are below 45 years of age. In case of shortfall the said vacancies could/are be filled up by promotion from Second Firemen having the same qualification and who were/are below 45 years of age. The balance 50% vacancies were/are to be filled up by lateral induction of metriculate First Firemen with minimum three years of continuous service and in case of shortfall by promotion from metriculate Second Firemen through departmental examination. Para 137 (1) further provides that if inspire of promotions their were/are shortfalls, that could be made good by direct recruitment through Railway Recruitment Boards.

4. The Railway Recruitment Board, Allahabad vide their notice no. 2/89-90 had invited applications for appointment to the post of Diesel Assistants under direct recruitment. The educational qualification prescribed were metriculation with diploma in mechanical/electrical engineering, etc. The respondents were selected and were required to undergo 24 months of training. During this training period, they were paid normal pay scales applicable to the post of Diesel Assistants in the grade of Rs. 950/- - 1100/- including allowances and increments.

5. It appears that the issue of inter se seniority between the promotee and direct recruits to the post of Diesel Assistants remained undecided for nearly 30 years. The General Manager, Northern Railway by an Order dated 10th February, 2004 decided that the training period of 24 months shall not be counted for the purpose of seniority and for the purpose of benefit under the ACP Scheme. Representations made against this Order dated 10th February, 2004 were rejected by Order dated 14th September, 2004.

6. It is the case of the petitioner-Union of India that during this period of 24 months, the respondents had worked as Apprentices and only on satisfactory completion of training they were appointed on regular basis. Accordingly, this training period of 24 months cannot be counted for seniority or benefit of the ACP scheme.

7. We find that upon selection, an agreement was entered into between the direct recruits/respondents and the petitioner-Union of India, Northern Railway. Clauses 12 and 18 of the said Agreement are relevant for the purpose of adjudicating and deciding the controversy in question and read as under :

12. The apprentice will not during the period of apprenticeship be allowed and to authorise to the state Rly. Provident fund. The period of apprentice will not count for pensionary benefit.

18. On the successful completion of the apprentice (?) the apprentice shall if not informed by the Govt. Writing to the contrary (?) be deemed to be in service of the railway Fireman-I on a scale of pay Rs. 950/- - 1500/- for a period of five years on the general service conditions available to Cl. III staff on their railways.

8. The question whether the training period should be counted for the purpose of seniority and should be regarded as the period in service depends upon the rules or in the absence of rules upon decision taken by the authorities. Reference in this regard may be made to the judgment of the Supreme Court in the case of State of H.P. Vs. J.L. Sharma and Another, . In this case it was held that where recruitment rules provide that training period should be treated as period in service, the same would be counted for the purpose of seniority. Where, however, rule or regulations were/are to the contrary, training period cannot be counted for the purpose of seniority. Seniority in such cases depends upon the rules or regulations or the decision taken by the authorities. The Supreme Court in this case referred to its earlier decision in the case of Prafulla Kumar Swain Vs. Prakash Chandra Misra and Others, , where on interpretation of the relevant regulation, it was held that the training period was not to be counted as in service and seniority was to be counted only from the appointment to the service after successful completion of the training course. This decision was distinguished in J.L. Sharma's case (supra), relying upon the case of R.S. Ajara and Others Vs. State of Gujarat and Others, , as the statutory recruitment rules were silent and the government had passed a resolution declaring that the training period would be taken into account for the purpose of seniority. In the case of J.L. Sharma (supra) the relevant recruitment rules specifically provided that the training period would be treated and regarded as in service.

9. In the present matter Para 302 of IREM deals with seniority and reads as under:

302. Seniority in initial recruitment grade-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 partially by promotion, the criterion for determination after the process in the case of promotee and the date of joining the workman 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 :

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.

10. The said provision provides that seniority amongst incumbents of a post in a grade was/is determined by the date of appointment in that grade. In cases, where appointment was/is partially by promotion and partially by direct recruitment, inter se seniority in case of promotees shall be date of regular promotion after due process and in case of direct recruits seniority inter se depends upon the date of joining the work after due process. Note to para 302 states that in case training period of a direct recruit was/is curtailed due to exigencies of service, the date of joining the working post by a direct recruit would nevertheless be the date on which the direct recruit would have/had joined the working post after completion of prescribed period of training.

11. Para 302 and the note clearly states that seniority in the case of a direct recruit is/was to be counted from his date of joining and his date of joining is/was the date when a direct recruit joins/joined a working post after successful completion of the prescribed period of training. If we read the said rule along with the Apprenticeship Agreement, the relevant clauses of which have been reproduced above, in our opinion the ratio of the decision of the Supreme Court in the case of Prafulla Kumar Swain (supra) would be applicable in the present case. The respondents were deemed to be inducted in service w.e.f. successful completion of the 24 months apprenticeship period and not from the date of initial selection or appointment as apprentice. Therefore, we feel that Id. tribunal has erred in its decision. Kuttiyappan's case (supra) relied upon by Id. tribunal does not support the stand of the respondents. In the said case, Supreme Court had examined both paras 302 and 306 and pointed out that they operated in different situations. However, while interpreting para 302 it was held that if training was one of the conditions of the selection process, then unless training was complete, the appointment did not take place on regular basis. This is in consonance with the view taken by us.

12. Learned counsel for the petitioner had also pointed out that the view taken by the learned Tribunal was contrary to its earlier decision in Original Application No. 1264/1998 decided on 24th August, 1999. In the said case question of inter se seniority between the direct recruits and the promotees to the post of Diesel Assistants had come up for consideration. Learned Tribunal held that the training period was not to be counted for the purpose of seniority and seniority was to be counted from the notional date of completion of training or the date the direct recruits were appointed on regular basis, whichever was later. While doing so, learned Tribunal had referred to another decision of the Jodhpur Bench of the Central Administrative Tribunal in Original Application No. 404/1992 titled Madanlal and Ors. v. Union of India and Ors. decided on 22nd September, 1998. Reference was also made to the Note appended to para 302 of IREM.

13. Learned counsel for the respondent in the written submission filed after the arguments were heard, has submitted that the Apprenticeship Act, 1961 was/is

not applicable to the respondents and the respondents were wrongly designated and regarded as Apprentice. This submission of the learned Counsel for the respondent has to be rejected. We are, in the present matter, not concerned with the question whether the Apprenticeship Act, 1961 was applicable or not at the time when recruitment was made. It is clear from the recruitment process itself and the Agreement that was entered into between the respondents and the petitioner that after selection, the respondents were to undergo training for a period of 24 months as apprentices. The short question is whether this period of training of 24 months should be counted as the period spent in service and Therefore counted for the purpose of seniority and ACP Scheme.

14. In view of our findings given above, we allow the present Writ Petitions and set aside the impugned Orders dated 3rd February, 2005 and 7th April, 2005 and hold that the training period of 24 months is not to be reckoned and counted for the purpose of seniority and the ACP Scheme. The seniority of the respondents will be counted from the date they successfully completed their training and in terms of Clause 18 of the Agreement as quoted above and in terms of note to para 302 of IREM. The respondents will be in service from the date they successfully completed their training period for the purpose of ACP Scheme and seniority. Accordingly, the writ petitions are allowed and the impugned orders are modified to the extent indicated above. In the facts and circumstances of the case, there will be no order as to costs.