

WESTERN RAILWAY

P.S.No.51/2011

Headquarter Office,
Churchgate, Mumbai-20

No. E/Court/649/2/CAT(Judgement) Vol. VI

Date: 9.5.2011


All DRMs / CWMs & Units Incharge,
C/- Genl. Secy., WREU-GTR / WRMS-BCT.
C/- GS-All India SC/ST Rly Employees. Assn, 'W' Zone, Mumbai
C/- GS-All India OBC Rly Empl. Assn, Mumbai.

Sub: CAT/ADI's Judgement dt 8.3.2011 in OA No. 419/09 with MA
No. 541/09 filed by Shri Dharmendra Kumar Solanki & 22 others
v/s UOI.

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A copy of CAT/Ahmedabad's order dr. 8.3.2011 in OA No. 419/2009
with MA No. 541/2009 filed by Shri Dharmendra Kumar Solanki & others V/s
Union of India is sent herewith for information. It is requested that effective e
use of the judgement may please be made while contesting similar cases on
your divisions/units.

Encl: as above


(S. M. Meena)
For General Manager(E)

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

OA No. 419/2009 with M.A.No. 541/2009

Date of Decision: 08-03-2011.

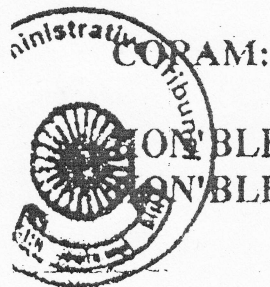
Dharmendra Kumar Solanki & 22 Ors.: Applicant (s)

Mr. M.S. Rao : Advocate for the Applicant(s)

VERSUS

Union of India & Ors. : Respondents

Ms. Roopal R. Patel for R-1 & 2 : Advocate for the Respondent (s)
Mr. M.J. Patel for R-3



HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)
HON'BLE DR. K.S. SUGATHAN, MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.

O.A.No. 419/2009 with MA 541/09.

Ahmedabad, Dated: this the 8th day of March, 2011.

CORAM:

HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (D)

HON'BLE DR. K.S. SUGATHAN, MEMBER (A)

1. Dharmendra Kumar Solanki,
2. Sandip Jayantilal Chauhan,
3. Dharmesh Jayantilal Parmar,
4. Rajeshbhai Mansukhbhai Chauhan,
5. Amitkumar Sumantbhai Nayak,
6. Siddesh Subhash Patil,
7. Vipul Jagdish Desai,
8. Sachin Suresh Kamble,
9. Surjet S. Singh,
10. Jayram Dada Kamble,
11. Harishchandra N. Parab,
12. Ratnakar Atmaram Bhagat,
13. Sarjuprasad Z. Pasi,
14. Dhanesh Krishna Dhangde,
15. Abhishek Gajanan More,
16. Swapnil Jayawant Samje,
17. Jayesh Prakash Shinde,
18. Akhilesh Baijnath Yadav,
19. Shailesh Bhikaji Nikhalje,
20. Saminbhai G. Rana,
21. Rohit S. Tiwari,
22. Sanjay H. Parmar,
23. Ajay A Parmar,



All are working as TMO Khallasi
under SSE, TMC, Ahmedabad, Vadodara
and Valsad

..... Applicants

(By Advocate: Mr. M.S. Rao)

VERSUS

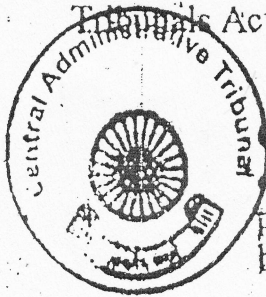
1. Union of India, through General Manager,
Western Railway, Churchgate, Mumbai – 400 020.
2. The Deputy Chief Engineer (T.M.C),
Z.M.C, Western Railway, Valsad – 396 001.
3. The Divisional Railway Manager (Estt.)
Vadodara Division, Western Railway,
Pratapnagar, Vadodara – 390 002.
4. The Divisional Railway Manager (Estt.)
Ahmedabad Division, Western Railway,
Saraspur, Ahmedabad – 380 002. Respondents

(By Advocate: Ms. Roopal R. Patel for R- 1 & 2,
Mr. M.J. Patel for R-3.)

ORDER

Hon'ble Mr. Mukesh Kumar Gupta, Member (J)

23 applicants, in this OA filed under Section 19 of the Administrative
Tribunals Act, 1985, seek following reliefs:



"A. quash and set aside the impugned seniority list of Group D staff of TMO, circulated by the R.No. 1's Memorandum dated 9.5.2008 (at Annexure – A/1 hereto) in so far as it seeks to place the applicants herein below all those RRB recruitee Khallasis between Serial No. 11 and Serial Number 161;

B. issue appropriate directions to the respondents herein to issue a fresh draft seniority list of Group D staff of TMO of Western Railway in accordance with law by placing the applicants herein appropriately in the said draft seniority list above all those RRB Recruitee Khallasis and to issue final seniority list after duly circulating the said fresh draft seniority list to all concerned and after considering their representations/objections, if any, against the said fresh draft seniority list;

C. quash and set aside the impugned memorandum dated 20.10.2009 at Annexure - A/2 hereto declaring the same to be violative of the Articles 14 and 16 of the Constitution of India."

2. Bare facts which are required to be noticed are; applicants were initially engaged as Apprentices under Apprentices Act 1961. After successful completion of course, under abovenoted Act, they were engaged as Substitutes Track Machine Organization Khallasis (hereinafter referred to as Substitutes TMO Khallasis) vide memorandum during June 2006 to December 2006. On completion of 120 days of continuous service they were granted temporary status they were screened for absorption by Screening Committee on 17 & 22nd August, 2007. Vide order dated 30th August, 2007 they were found suitable for regular absorption and ultimately vide order dated 6.11.2007 they were regularised.

3. Their grievance is that seniority list of said cadre, Group D scale Rs. 2550-3200 was issued on 9th May, 2008, wherein they figure at Sr. No. 161 onwards. They have been assigned seniority from 6.11.2007. They ought to have been granted seniority from the date they were granted temporary status i.e., in between June 2006 to December 2006. In January 2006, Western Railway, Headquarter office, Mumbai issued Public Employment Notification No. 1/2005 for direct recruitment to Group D post, including 150 vacancies in the post of Khallasi (Workshop) (151 for General, 45 for SC, 23 for ST, 81 for OBC). Pursuant thereto, written test was held in May 2006 and result was declared on 28.7.2006. Thereafter 166 persons were appointed as Khallasi (workshop) during 16th April & 29th May, 2007. Said officials ought to have been shown below them (applicants) in said seniority



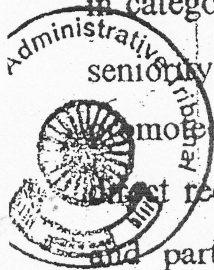
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list. Because of this illegality, they were not called for trade test held for 61 vacancies in Group C post. Only applicant No. 21 had submitted representation dated 28th May, 2008, against impugned seniority list dated 9th May, 2008. Said representation has not been attended to. Further contention raised is that said draft seniority list dated 9.5.2008 had never been circulated, and therefore they had no occasion to offer their objections. Shri M.S. Rao, learned counsel appearing for applicants contended that vide communication dated 20.7.2009 (Ann. A/12), 61 Khallasis, senior to them in said seniority list were required to appear in trade test for filling up post of Technician Gr. III, overlooking their claim. As per settled practice the respondents were required to adopt practice and procedure in vogue in Railway. Ratio of total number of vacancies viz-a-viz total number of candidates to be called for participating said selection ought to have been 1:3. Reference was made in this connection to Western Railway Headquarter's Memorandum dated 14.2.2005, 16.6.2005, 22.11.2006 & 5.3.2008. Placed strong reliance on Railway Board circular dated 25.7.2006 which modified Master Circular dated 29.1.1991, particularly para 6, it was contended that the date of appointment of a substitute to be recorded in the service book against the column "Date of appointment" should be the date which he/she attains temporary status after a continuous service of four months if the same is followed by his/her regular absorption. It was further contended that this date of appointment should be taken as the date for determining seniority. Making reference to averment made in rejoinder, learned counsel stated that applicant no. 21 had no knowledge about representation submitted by them, serving in Valsad & Vadodara division, and therefore a mistake crept in OA, for which unconditional



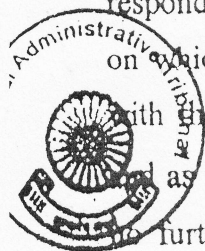
apology has been tendered. In the above background learned counsel contended that applicants seniority has not been determined properly which has resulted in grave injustice inasmuch as denial of appearing in trade test for next higher post of Technician Gr. III.

By filing reply, it was stated that substitutes are entitled for seniority from the date of absorption in regular grade. They were posted on regular basis as Khallasi (TNC) vide order dated 6.11.2007 and they have been granted seniority from the date of their absorption vide impugned seniority circular dated 9.5.2008. As per rules, on availability of regular selected candidates, services of substitutes are required to be terminated (para 2 of Note below para 3.1 of MC No. 20/1991). Since applicants working as substitutes were granted temporary status, they were screened and absorbed. No irregularity has been committed by the respondents. Impugned circular dated 9.5.2008 was circulated to all concerned and some of applicants made their representation. If they have not received seniority list dated 9.5.2008, how and on what basis they represented, remains unexplained. On examination it was found that no correction was required in position allotted to applicants and therefore no reply was given. As per Para 302 of IREM, in categories of post, partially by promotion, criterion for determination of seniority should be date of regular promotion, after due process in case of promotion and date of joining on working post after due process in case of direct recruits. Post of Khallasi were filled up partially by direct recruits and partially by substitutes Khallasi. Applicants have been assigned seniority from the date of their regular posting i.e., 6.11.2007, whereas direct recruits have been allotted seniority from the date of joining their



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place of posting. As per circular dated 20.7.2009, 61 persons were found eligible for trade test (16 – existing + 45 anticipated vacancies) based on 1:1 basis. Trade test was conducted on 21.8.2009 & 22.8.2009. In the meantime, Western Railway Employees Union submitted a representation dated 31.7.2009 addressed to General Manager, Chief Engineer, Western Railway as well as Assistant Labour Commissioner (Central) Ahmdabad and other concerned authorities, which had been considered and replied vide communication dated 14.9.2009. Union has also issued a notice for strike on the above aspect. Said claim had been espoused on behalf of applicants herein. Our attention was drawn to said claim. Persons were called for trade test as per seniority list dated 9.5.2008 and no injustice have been done to applicants. They can be considered for promotion/trade test as and when further vacancies arise. There is no violation of any Rule. Conferment of temporary status does not entitle substitutes to automatic absorption/appointment to Railway service unless they are selected in approved manner. Ms. Roopal R. Patel, learned counsel appearing for respondent no. 1 & 2 contended that Railway Board letter dated 25.7.2006 on which excessive reliance has been placed by applicants does not deal with the issue i.e., determining seniority. Trade test was conducted justly as per instructions laid down by Railway Board and therefore there is no further scope left for judicial intervention. Shri M.J. Patel, learned counsel appearing for respondent no. 3 contended that no relief is sought against said respondent and therefore they have not preferred any reply. However, contention raised by other respondents were adopted by him.



5. We have heard learned counsel for the parties at length, perused

pleadings and other material placed on record. At the outset we may note that while issuing notice in OA this Tribunal vide order dated 19.11.2009, as ad-interim measure the respondents were directed to permit these applicants to participate in trade test on provisional basis, and later, they have required to produce their result sheet. Said directions had been complied with and on perusal of result sheet it was noticed that applicants No. 1,4,6,7,10 to 15, 17 & 21 passed trade test held on 17/18.2.2010. Rest of applicants were declared unsuccessful. Thus it would be seen that only 12 applicants passed out of 23, who preferred present OA.

We have bestowed our careful and thoughtful consideration to all aspects of case. The first and foremost question which arises for consideration is what is the basis for determining seniority. As far as question of their appearing in trade test for next higher post of Technician Gr. III is concerned, said question will arise only if they are allowed better seniority than the placement indicated in impugned seniority list dated 9.5.2008. Furthermore, they can be called for trade test only when they fall within zone of consideration. Thus seniority is basic element which would decide their fate.



Despite repeated query raised to applicants to establish their claim of seniority, as prayed by them that seniority is determined from the date of their temporary status as well as the date indicated vide Railway Board circular dated 25.7.2006, no other material, rule or regulations has been brought to our notice. We, at this stage, also note that said circular dated 25.7.2006 deals with subject "Substitutes" and amended Master Circular

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dated 29.1.1991. Sub para 4.1, 4.2, 4.3, 4.4 & para 6 of Master Circular dated 29.1.1991 alone were amended and substituted. Reliance was placed on para 6. For sake of convenience and appreciation of issue raised herein, complete text of said para 6 reads as under:-

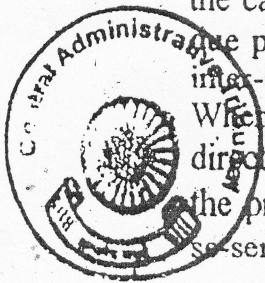
“Para 6 – The date of appointment of a substitute to be recorded in the service book against the column “Date of appointment” should be the date on which he/she attains temporary status after a continuous service of four months, if the same is followed by his/her regular absorption. Otherwise, it should be the date on which he/she is regularly appointed/absorbed. This applies to substitute teachers also who attain the temporary status after a continuous service of three months only.”

On the other hand, the respondents have placed strong reliance on Para 302 of IRM, Vol.I, which reads thus:-

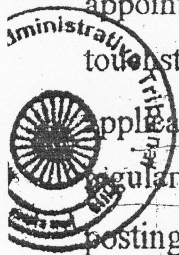
“302. *Seniority in initial recruitment grades* - Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working 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 date 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.”

(emphasis supplied)



7. Said para 302, appears under Chapter III dealing with "Rules regulating seniority of non-gazetted Railway servants". Thus basic question which arise for consideration is whether Railway Board Circular dated 25.7.2006 has application, relevance while determining seniority or issue is governed by principles contained vide para 302 of IREM. At the cost of repetition we may note that it is not in dispute that post of Khallasi is required to be filled by two modes namely; (i) direct recruitment & (ii) partially by substitute Khallasi. It is further not in dispute that officials who appear upto Sr.No. 161 in impugned seniority list dated 9.5.2008 were appointed based on direct recruitment, while officials from Sr.No. 162 onwards belong to category of substitute khallasi regularised vide order dated 6.11.2007. On examination of facts with reference to para 302 of IREM as well as law laid down by Hon'ble Supreme Court in Direct Recruits case (1990) 2 SCC 751 has clarified in State of West Bengal & Ors., V/s. Aghore Nath Dey & Ors., (1993) 3 SCC 371, a person who is initially appointed on adhoc temporary and later regularised becomes entitled to seniority from the date of adhoc appointment unless he is appointed in "accordance to rules". When examined present case on touchstone of abovenoted judgment, we have no hesitation to conclude that applicants who were screened only in 2007 and found suitable for regularization vide order dated 30.7.2007 and ultimately granted regular posting vide order dated 6.11.2007 would not have been entitled to seniority prior to said date. At this stage we may also observe that all the officials who appeared in seniority list upto Sr.No. 161, entered service in said grade in April or May 2007, the date on which applicants were not even found eligible for regularization. They were merely "Substitute". Circular dated



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25.7.2006 does not deal with the subject of, determination of seniority. It only deals with their engagement as "Substitutes" and also lays down benefits which accrue to them. No part of said circular deals with seniority. Therefore, said circular is inapplicable in so far as for determination of seniority of substitutes on regularization is concerned.

8. We may also note that applicants preferred M.A. No. 541/2009 seeking condonation of delay stating that delay was neither intentional nor deliberate but for the reason that said seniority list had not been circulated. Prayer made therein had been contested by filing reply, it was pointed out that some of them have made representation. On examination of matter as we have already dealt with the matter on merit, delay is condoned. MA is allowed.

In view of discussion made hereinabove and finding no illegality in impugned circular dated 9.5.2009. OA is dismissed. Therefore, question of considering other part of relief namely; trade test and consequential promotion did not arise particularly when such relief depended upon seniority list. No costs.

(K.S. Sugathan)
Member (A)

(Mukesh Kumar Gupta)
Member (A)

etc.

तैयार करनेवाला
Prepared by / *K. S. Sugathan*
मिलानेवाला
Compared by / *14/10/03*
सहि. प्रमाणित
TRUE COPY

अनायास अधिकारी (न्या.)
Secretary (J)
केन्द्रित प्रमाणित अधिकरण
Central Administrative Tribunal