

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) Nos.21923-25/2005**

% **Date of Decision: 06.04.2011**

Union of India & Ors. Petitioners

Through Mr.Kumar Rajesh Singh, Advocate.

Versus

Sh.Nand Bihari Mall & Ors. Respondents

Through Mr.G.D.Bhandari, Advocate for
respondent Nos.1 & 2.

CORAM:

HON'BLE MR.JUSTICE ANIL KUMAR

HON'BLE MS.JUSTICE VEENA BIRBAL

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

*

1. The petitioners, Union of India & Ors. have challenged the order dated 31st May, 2005 passed by Central Administrative Tribunal, Principal Bench passed in O.A No.3114/2003 titled as “Nand Bihari Mall & Anr. v. Union of India & Ors.” quashing the seniority list dated 16th July, 2003 and order dated 27th November, 2003 rejecting the representations made by respondent Nos.1 & 2 against the seniority list dated 16th July, 2003.

2. Brief facts to comprehend the disputes are that the respondent Nos.1 & 2 were recruited as apprentice electric charge man vide letters dated 11th August, 1983 and 17th August, 1983. After resumption as Apprentice (Elect.) charge man they were appointed to various divisions/workshops for two years apprenticeship. After completion of apprenticeship 44 candidates were called for suitability test by letter dated 13th June, 1985 at Headquarter, Baroda House.

3. After suitability test at Headquarter, Baroda House, the candidates were posted to various Divisions/Workshop and according to the list prepared by the petitioners, respondent Nos.1 & 2 were placed at serial No.1 & 3 and the candidates who were posted in Delhi division were placed below them.

4. The respondent no.1 contended that they never failed any departmental examination nor had ever been chargesheeted or punished during the entire service and they were posted at Bikaner division by letter dated 9th August, 1985.

5. The options were called for transfer and the respondent Nos.1 & 2 opted to remain at Bikaner division, however, they were transferred to Delhi division from Bikaner division on administrative grounds with effect from 1st April, 2003.

6. The petitioners had issued a seniority list dated 16th July, 2003. According to respondents No.1 & 2, in the seniority list Sh.Arvind Kumar Jain, Sh.Harpal Singh and Sh.Sukhpal who were juniors to them in the merit list issued after completion of a training period of two years in the seniority list dated 9th August, 1985 who were at the serial Nos.4, 5 & 6, were shown seniors to respondent Nos.1 & 2 though in the seniority list of 9th August, 1985 respondent Nos. 1 & 2 were at serial Nos.1 & 3.

7. Relying on PS No.1843 it was contended by respondent Nos.1 & 2 that their inter-se seniority as direct recruits had to be maintained irrespective of the divisions to which they belong by rearranging their position in the combined seniority list formed for posts in order of merit in the original panel or as obtained in final examination, where training is provided and in terms of Rule 320 of I.R.E.M, Vol.I.

8. The respondent Nos.1 & 2 asserted that their placement under the administrative control of DRM, Delhi Division Northern Railway, with effect from 1st April, 2003 has adversely affected their seniority resulting that their juniors in Bikaner division have been promoted and the respondent Nos.1 & 2 have been bypassed. The respondent Nos.1 & 2 also asserted that respondent No.6 Sh. Kasi Ram, onwards were appointed much later than respondent Nos.1 & 2 in 1980s and 1990s.

9. The respondent Nos.1 & 2 had made a representation against the seniority list of Section Engineers GRD in the grade of Rs.6500-10500/- (RSRP) working in Electrical General fixing their seniority on the post of GM (P) letter No.220E/1132-21A (Rectt.) dated 9th August, 1985 and as per serial No.1843 circular No.831-E/202-III (EVI) dated 22nd November, 1962 which was however, declined by the petitioners by their communication reference No.940-E/160/Elect.Misc./EIIA dated 27th November, 2003 contending that the seniority assigned taking into account length of service in grade of Rs.6500-10500/- of respondent Nos.1 & 2 is correct.

10. Aggrieved by the seniority list dated 16th July, 2003 and rejection of their representation by order dated 27th November, 2003, respondent Nos.1 & 2 filed an original application being O.A No.3114/2003 titled “Nand Bihari Mall & Anr. v. Union of India & Ors.” under Section 19 of the Administrative Tribunals Act, 1985 praying inter-alia to quash order dated 27th November, 2003 and to set aside the seniority list dated 16th July, 2003 wherein the seniority of respondent Nos.1 & 2 had been lowered by about 15 persons and their juniors in terms of merit list prepared on completion of departmental training have been placed above them.

11. Before the Tribunal the petition of the respondent nos.1 & 2 was contested by the petitioners contending inter-alia that the respondent Nos.1 & 2 have represented on the basis of instructions contained in PS No.1843 to allow them seniority over Delhi division keeping their inter-se seniority vis-à-vis their contemporaries who have been appointed along with them. According to the respondents the representation was referred to the headquarter office, New Delhi which has rejected the representation by letter dated 27th November, 2003 on the ground that the seniority assigned to respondent nos.1 & 2 taking into account their length of service in grade of Rs.6500-10500/- is correct. It was further asserted that due to formation of new zone with effect from 1st April, 2003 they were transferred to Delhi division on administrative grounds. According to the petitioners PS No.1843 is not applicable to the respondents.

12. The Tribunal after considering the pleas and contentions of the petitioners and the respondent nos.1 & 2 allowed the original applications of respondent Nos.1 & 2 and quashed the order dated 27th November, 2003 and the seniority list dated 16th July, 2003 and directed the petitioners to consider the claim of the respondents Nos.1 & 2 in regard to their seniority in terms of PS No.1843 and also to take into consideration the fact that they have been transferred to Delhi

division on administrative grounds against their options to continue at the Bikaner division.

13. The petitioners have challenged the order of the Tribunal contending inter-alia that the PS No.1843 Circular No.831-E/202-III (EVI) dated 22nd November, 1962 is not applicable to the respondents Nos.1 & 2. It was contended that the Railway Board by letter dated 9th July, 2002 had intimated all the Divisional General Managers for calling of options from staff to serve in Headquarters of new Railway zones for determination of seniority of staff on transfer to the new zones so that in future there may not be any problem. It was also admitted by the petitioners that any transfer to new zones after 1st October, 2002 was to be treated as transfer on own request on acceptance of bottom seniority. According to the petitioners the Tribunal has failed to incorporate the PS No.1843 which categorically stipulated that inter-se seniority of direct recruits irrespective of the division to which they belong has to be maintained by rearranging their position in the combined seniority list formed for posts controlled by Headquarters office in order of merit in the original panel or as obtained in the final examination where training is provided, before posting to working post.

14. This Court has heard the learned counsel for the parties in detail and has perused the record of the Central Administrative Tribunal

produced along with the writ petition. The plea of the learned counsel for the petitioners is that the case of respondent Nos.1 & 2 is not to be governed by PS No.1843 but by paragraph No.140 IREM. PS No.1843 dated 22nd November, 1962 is as under:-

Serial No.1843 Circular No.831-E/202-III (EVI) dated 22.11.1962

Sub: Principle for considering seniority of staff of one or more than one categories holding posts controlled by Division for the purpose of holding selection.

A question as to how the seniority of staff holding posts controlled by the Division should be determined when they come up for selection for posts.

Controlled by Headquarter office, has been under consideration, the following instructions in this respect are issued for guidance.

- (i) The seniority of staff coming up for a selection post from different units of seniority or different categories should be on the basis of length of service in the lower grade.
- (ii) The length of service should be non-fortuitous and should include any period of such service whether over or under three months.
- (iii) For combining the seniority list Interse seniority be kept intact and the bigger unit will form as the base for preparation of such a seniority list. The bigger unit for this purpose would be the unit from which the larger number of people in the grade are by virtue of seniority due to appear for selection.

Note:- (i) The subordinate offices while taking into account the length of service and giving that information to Headquarters office should indicate the reasons for a longer period of service held by a junior as a regular measure in a non-fortuitous vacancy or vacancies. That the length of service of the seniors. In the absence of any valid reasons. The portion of service of a junior can be held to be fortuitous and eliminated i.e Brought down to that of the senior particularly in the case of staff with long period of

service already rendered having accepted transfers on request with loss in seniority. But where the senior having been promoted after his junior had been promoted and was allowed his original seniority under the then existing rules or otherwise the service of the senior may have to be leveled up to that of the junior. Therefore, such cases would have to be decided on merits keeping in view the reasons under which the junior had put in a longer spell of service than his senior.

(ii) where the lower post is a selection post the interse seniority will be on the basis of the panel and the length of service would likewise be on the basis of service put in as a result of the selection from the date of accrument of the panel taking into account that the service of the junior. If appointed earlier, is brought down to that he would have obtained had he been appointed in his regular turn.

(iii) In case in which the lower post is one to which direct recruitment is also made. The interse seniority of the direct recruits. Irrespective of the Division to which they belong will be maintained by re-arranging their position in the combined seniority list formed for posts controlled by headquarters office in order of merit on the original panel or as obtained in the final examination where training is provided, before posting to working posts, this would mean giving the senior most the longest service if he has lesser service and the junior the service rendered by the senior and so on. This reshuffle would, be done in the headquarters office.

The above instructions will take effect from the date of issue. Cases dealt with differently need not be re-opened except that where selections have yet to be finalized, the seniority should be determined on the lines of these instructions.”

15. The learned counsel for the petitioners, Mr.Singh has not been able to controvert that respondent nos.1 & 2 were not juniors to other respondents on the basis of merit list dated 9th August, 1985. Note (iii) of PS No.1843 categorically stipulates that for combining seniority list

inter-se seniority has to be kept intact and the bigger unit will form as the base for preparation of such a seniority list. Note (iii) of PS 1843 also reveals about inter-se seniority of direct recruits. It states that irrespective of the division to which the direct recruits belong their seniority will be maintained by rearranging their position in the combined seniority list formed for posts controlled by headquarters office in order of merit on the original panel or as obtained in the final examination where training is provided. Note (iii) is as follows:-

“(iii) In cases in which the lower post is one to which direct recruitment is also made, the interse seniority of the direct recruits, irrespective of the Division to which they belong will be maintained by re-arranging their position in the combined seniority list formed for posts controlled by Headquarters Office in order of merit on the original panel or as obtained in the final examination where training is provided, before posting to working posts. This would mean giving the senior most the longest service if he has less service and the junior the service rendered by the senior and so on. This reshuffle would be done in the headquarters office.”

16. This is not disputed that by communication dated 15th July, 2002 options were called from the employees to serve in headquarters of new Railway zones. The respondent Nos.1 & 2 had exercised their option for Bikaner division. This fact that the respondent nos.1 & 2 had exercised their option for Bikaner division has not been denied by the learned counsel for the petitioners, Mr.Singh. The options of the respondent nos.1 & 2 was however, not accepted and against their option they were transferred to Delhi division on administrative grounds and as such

their transfer to Delhi division could not be construed adversely against them so as to affect their seniority in the Bikaner division. In the circumstances, the inevitable inference is that the PS No.1843 has to be made applicable in case of respondent Nos.1 & 2 and not any other paragraph as has been contended by the learned counsel for the petitioners. The learned counsel for the petitioners is unable to show any reason as to how PS No. 1843 is not applicable to the respondents. Consequently the seniority of respondent Nos.1 & 2 has to be reckoned on the basis of the total length of their service and since they were not transferred pursuant to their option for Delhi division but on account of administrative grounds they could not be allocated bottom seniority in Delhi division on their transfer in April, 2003. In the circumstances, the respondent Nos.1 & 2 could not be denied the benefit of their service in Bikaner division nor could their seniority be denied to them in the combined seniority list for rearranging their position on the basis of original panel as was formulated by the Railway Service Commission after successful completion of apprenticeship training.

17. In the circumstances, the learned counsel for the petitioners is unable to show any cogent grounds on the basis of which it can be held that the respondent nos.1 & 2 shall not be entitled for their seniority at Bikaner division as they were transferred from Bikaner division not on account of the option exercised by them but on account of

administrative grounds and consequently the terms of PS No.1843 would be applicable to them.

18. In the circumstances petitioners are unable to show any such illegality or such perversity in the order of the Tribunal which shall require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition in the facts and circumstances is without any merit and it is, therefore, dismissed. Parties are left to bear their own costs.

ANIL KUMAR, J.

April 06, 2011
'k'

VEENA BIRBAL, J.