

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 1513 of 2000@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

T. Thangavelu & Ors. ...Appellant (s)

Versus

Union of India & Ors. ...Respondent(s)

O R D E R~@@
CCCCCCCC

This appeal is directed against the judgment of the Central Administrative Tribunal (for short "the Tribunal") dealing with the inter se seniority of the appellants and the private respondents. The appellants were appointed as casual labourers in Steam Loco Shed, in the year 1978 and after continuing there for four months, they acquired a temporary status as provided in the Railway Establishment Manual. In the year 1979 they were absorbed on permanent basis after being screened and selected regularly as Group-D Khallasis. In the year 1982, the Steam Loco Shed got abolished and the appellants were absorbed in Diesel Loco Shed w.e.f. different dates in March, 1982. One of the terms and conditions of the absorption was that their seniority would be reckoned from the date of their absorption in Diesel Loco Shed. Necessarily, therefore, the appellants would have their seniority w.e.f. March, 1982. The private respondents were appointed as ...2

Substitutes in Diesel Loco Shed right from the inception in the year 1981 and they got their temporary status on expiry of four months. Their regular absorption, however, was only in the year 1985 after they were screened and selected. In accordance with the provisions of Railway Establishment Manual, a provisional seniority list was drawn up on 15.6.1986 and in that seniority list the appellants' seniority had been shown as junior to the private respondents. The appellants had filed their objections before the Authority concerned and ultimately the seniority inter se was re-determined by the Railway Administration on 09.05.1988. In the said seniority list while appellants' services were reckoned from different dates in March, 1982, the date of their absorption in the Diesel Loco Shed, the private respondents' seniority was reckoned from 1985, the date of their absorption on regular basis. Against this seniority list, a representation appears to have been filed before the Authority which was dismissed on 08.08.1988. Five years thereafter, another representation appears to have been filed on 21.04.1993 by one of the private respondents and that stood rejected on 21 June, 1993. The

private respondents then filed an application before the Tribunal, which disposed of the matter by order dated 19.09.1994 directing that a fresh representation be filed and, on such representation being filed, the appropriate authority
..3

3

was directed to consider and dispose of the same.

Pursuant to the aforesaid direction of the Tribunal a representation was filed by the private respondents on 04.10.1994 and the same stood rejected by the concerned Authority on 01.12.1994. Against the said order of rejection, the private respondents filed the O.A. which was registered as OA No. 609/95. That O.A. having been allowed on the basis of an earlier judgment of the Tribunal relating to the Mechanical Department of Railway, the present appeal has been preferred.

Be it stated that the Tribunal has taken the view following the earlier judgment of the Tribunal that the seniority of the private respondents would be reckoned from the date they acquired the temporary status in the Diesel Loco Shed and this conclusion is re-enforced by a letter of the Railway Board dated 19.09.1979.

Mr. C.S. Rajan, the learned senior counsel appearing for the appellants, and Mr. P.P. Malhotra, appearing for the Railway Administration supporting Mr. Rajan, contends that in view of the specific provisions contained in paragraph 302 of the Railway Establishment Manual and the same if read with paragraphs 1512 and 1515 thereof, the question of reckoning the services rendered by a substitute on acquiring temporary status prior to his absorption does not arise. According to
...4

4

them, Board had no authority to issue any administrative instructions contrary to the provisions of the Railway Establishment Manual. It is further contended that, it is true that the earlier decision of the Tribunal relating to the Mechanical Department has not been assailed but that would not stand as a bar in construing the relevant provisions of the Railway Establishment Manual dealing with the inter se seniority of the employees and judged from this stand-point, the impugned order of the Tribunal cannot be sustained.

Mr. R. Jawahar Lal, learned counsel appearing for the private respondents, on the other hand, submitted that it will be anomalous if the decision of the Tribunal relating to one wing of the Railway is allowed to operate and the same is annulled so far as Diesel Loco Shed is concerned. It was further contended that the expression "the date of appointment" in paragraph 302 of the Railway Establishment Manual is wide enough to include the period when a Substitute acquired the temporary status and there is no reason why a restricted construction to the aforesaid expression should be given by the Court.

Having regard to the rival submissions, the question that arises for consideration is, that for the purpose of seniority what would be the relevant date from which the same would be reckoned ?
...5

5

Paragraph 302 of the Railway Establishment Manual is reproduced herein below:

.....L.....T.....T.....T.....T.....T.....T.....J
.SP1

"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 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-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."

.....L.....I.....T.....T.....T.....T.....T.....T.....T....J
 .SP2

The afore-quoted Paragraph unequivocally indicates that the seniority of the incumbents of a post in a grade is governed by the date of appointment to the grade. If there would have been no other provision dealing with the class of Substitute, it may have been possible for us to accept the contention of the learned counsel appearing for the private respondents. But, we have before us, the provisions of Paragraph 1512, which deal with the Substitute and Paragraph 1515 which indicate the rights of a Substitute. The said ...6

paragraphs of the Railway Establishment Manual are reproduced herein below:

.....L.....T.....T.....T.....T.....T.....T.....J
 .SP1

"1512. Definition:- Substitutes are persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant".

"1515 Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of four months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection"

Note:- The conferment of temporary status on the substitutes on completion of four months continuous service will not entitle them to automatic absorption/appointment to railway service unless they are in turn for such

appointment on the basis of their position in the select lists and or they are selected in the approved manner for appointment to railway posts."

.....L.....I.....T.....T.....T.....T.....T.....T.....T....J
.SP2

A plain reading of the aforesaid three provisions of the Railway Establishment Manual unequivocally indicate that the substitute has no right of absorption until he is screened and absorbed by the appropriate authority. It also further ...7

7

indicates that for the purpose of seniority the period from the date of permanent absorption should be counted and not the period when a substitute acquire a temporary status on expiry of four months of recruitment as Substitute, since the only purpose of conferring a temporary status is to confer certain rights and privileges which may be admissible to a temporary Railway servant. The Note appended to paragraph 1515 quoted above casts an embargo that the conferring of temporary status on the substitute will not entitle them to automatic absorption/appointment to a Railway service, unless they are in turn for such appointment on the basis of their position in the select list and / or they are selected in the approved manner for appointment to Railway posts.

Paragraph 1515 while conferring the rights and privileges of a temporary Railway servant to a substitute on his acquiring a temporary status, had prohibited that the period should not be counted for seniority because of the expression "...their services should be treated as continuous for all purposes except seniority on their eventual absorption@
CCCCCCCCCCCCCCCC

against regular post after selection". In this view of the matter, we have no hesitation to come to the conclusion that the Tribunal committed error in granting seniority to the private respondents by reckoning their service with effect from the date they acquired temporary status on the basis of ...8

8

the Railway Board's letter dt. 19.09.1979, referred to earlier. Since the appellants were absorbed on regular basis in the Diesel Loco Shed w.e.f. different dates in March, 1982, earlier than the private respondents who were regularly absorbed only in 1985, appellants would be held senior to the private respondents and the seniority list that had been made final on 09.05.1988 reflected the correct position. We, therefore, set aside the impugned order of the Tribunal and allow this appeal.

.SP1

.....J@@
BBBBBBBBBBBBBBBBBBBBBBBB
(G.B. PATTANAIAK)@@
BBBBBBBBBBBBBBBBBBBB

New Delhi;
February 28, 2002

.....J@@
BBBBBBBBBBBBBBBBBBBBBBBB
(S.N. PHUKAN)@@
BBBBBBBBBBBBBBBBBBBB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 1513 of 2000@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

T. Thangavelu & Ors. ...Appellant (s)

Versus

Union of India & Ors. ...Respondent(s)

(With office report)

Date :28/02/2002 The appeal(s)/matter(s) was/were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK
HON'BLE MR. JUSTICE S.N. PHUKAN

For Appellant (s) Mr. C.S. Rajan, Sr. Adv.
Mr. EMS Anam, Adv.
Mr. Fazlin Anam, Adv.

For Respondent (s) Mr. P.P. Malhotra, Sr. Adv.
Mrs. Rekha Pandey, Adv.
Mrs. Anil Katiyar, Adv.

Mr. R. Jawahar Lal, Adv.
Mr. S.P. Jha, Adv.

UPON hearing counsel, the Court passed the following
O R D E R

.....L.....I.....J

.SP2

Heard the learned counsel for the parties for about half an hour.
Appeal allowed in terms of the signed order.

.SP1

(J.S. Rawat)
Court Master

(Suneet Bala Sharma)
Court Master

(Signed order is placed on the file)