

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION NO. 1921 of 2003**  
**With**  
**SPECIAL CIVIL APPLICATION NO. 1919 of 2003**  
**With**  
**SPECIAL CIVIL APPLICATION NO. 12108 of 2003**  
**With**  
**SPECIAL CIVIL APPLICATION NO. 12111 of 2003**  
**And**  
**SPECIAL CIVIL APPLICATION NO. 8020 of 2004**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**  
**and**  
**HONOURABLE MR.JUSTICE R.P.DHOLARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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UNION OF INDIA & 1....Petitioners  
 Versus  
 PRATAPSINGH CHAGANSINGH RAJPUT & 10....Respondents

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Appearance:

MR MUKESH A PATEL, ADVOCATE for the Petitioners No. 1 - 2  
 MR AK CHITNIS, ADVOCATE for the Respondent No. 1  
 MR PH PATHAK, ADVOCATE for the Respondents No. 2 , 5 , 7 ,  
 11  
 MR VM DHOTRE, ADVOCATE for the Respondent No. 1  
 RULE SERVED for the Respondents No. 3 , 6 , 9  
 RULE SERVED BY DS for the Respondent No. 8  
 SERVED BY RPAD - (R) for the Respondents No. 4 , 10

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CORAM: **HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**  
and  
**HONOURABLE MR.JUSTICE R.P.DHOLARIA**

**Date : 30/09/2015**

**COMMON ORAL JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT)**

1. In this group of petitions, the petitioners have challenged the judgment and order dated 19.07.2002 passed by the Central Administrative Tribunal, Ahmedabad Bench in O.A No.223/97, O.A No. 224/97, O.A No. 225/97 & O.A No. 226/97, whereunder the Tribunal while allowing the Original Applications quashed and set aside the impugned order and seniority list dated 21.02.1997 for the reasons stated thereunder and declared that the seniority list of the applicants therein be treated as it was declared in the seniority list dated 16.10.1996.

2. The first four petitions have been preferred by Union of India and another, original respondents-employer in the applications, whereas the 5<sup>th</sup> petition is preferred by some of the respondents who were direct recruits and aggrieved on account of quashment of the seniority list dated 21.02.1997.

3. Facts in brief, as could be gathered from the memo of petitions and the documents appended thereto would indicate that the petitioners issued provisional seniority list on 16.10.1996 i.e N.G. Staff-Mech. (AC/DC-Traction) Deptt.- Mumbai Division-

Combined seniority list of DSL/Elect. Asst. Driver scale Rs.950-1500 (RP). In that seniority list, the original applicants, who had moved C.A.T., Ahmedabad were figuring at serial nos.196, 197, 198 and 199 and the date of their joining the post were shown to be 19.07.1991.

4. On account of the representations, the administration was constrained to issue corrigendum on 21.02.1997, whereunder the joining date assigned to the original applicants, which was 19.07.1991, came to be altered and it was said to be 03.12.1991 on the basis that the 52 weeks training would have been completed only on 03.12.1991 and, therefore, the date of joining which was said to be 19.07.1991 would be of no consequence, as the date of completion of 52 weeks training is the date on which there could have been regular posting and appointment on the post in question.

5. Being aggrieved and dissatisfied on account of this alteration in the date of appointment, the original applicants moved the applications, as stated hereinabove, challenging the corrigendum dated 21.02.1997 on various grounds *inter alia* contending that the said seniority list was wrongly revised, as there could not have been any question of altering their date of joining and they were joined. The regular tickets were issued indicating that they were appointed with effect from 09.07.1991 and, therefore, the factum of actual training or notional completion

of training would be of no consequence and, therefore, the order was assailed in the proceedings.

6. The C.A.T, Ahmedabad allowed those applications and quashed and set aside the corrigendum seniority list dated 21.02.1997 and declared that the applicants' seniority be retained as it was shown from the date of their joining in the seniority list dated 16.10.1996.

7. Being aggrieved and dissatisfied, as it is stated hereinabove, the employer and those private respondents who were direct recruitees have approached this Court by way of these petitions.

8. Learned counsel appearing for the Union of India invited Court's attention to the judgment rendered by C.A.T. Mumbai in two sets of Original Applications and submitted that there was complete misreading of the relevant provision which would govern the reckoning of the seniority *inter se* between direct recruits and promotees and therefore, the said adoption by the Ahmedabad Bench was unfortunate and that has resulted into overlooking the real rule and note appended thereunder, which would govern the *inter se* seniority and placement of direct recruits vis-a-vis promotees or rankers for that matter.

9. Learned counsel appearing for the petitioners – Union of India invited Court's

attention to the regulation 302 and submitted that the said regulation has two notes. However, the note no.2 appears to have been overlooked by all the concerned which has resulted into Tribunal going on holding that in absence of any specific requirement for the promotees undergoing training they cannot be equated with direct recruits for insisting upon completion of 52 weeks training before being regularly promoted or for reckoning the seniority from the date of their regular promotion.

10. Learned counsel appearing for the petitioners – Union of India, invited this Court's attention to the communication dated 30.07.1991/01.08.1991, in which it is unequivocally prescribed that how the post of Diesel Assistant is to be filled in. It refers to the Railway Board's letter dated 03.11.1987 and it talks about how the vacancies are to be filled in. It has been extensively adverted to in the reply filed before the C.A.T, Ahmedabad, in paragraph no.3, which would indicate that the respondents-employees were not in the regular channel and promotion, and therefore, after exhausting earlier four modes, when the vacancies remained to be filled up, in that case only by way of lateral induction, the artisans category were to be given opportunity to change the cadre and, therefore, despite they being in the same pay scale, they were given an opportunity to be appointed in Diesel Assistant, as even Diesel Assistant post also carried the scale of Rs.950 – 1500 and the artisans,

who were said to be eligible to compete for the post, were also the artisans who were working in that very scale in other department i.e. Electrical Assistant. Therefore, the petitioners and similarly situated employees who sought lateral induction were required to be subjected to 52 weeks training and in case of any exigency on account of any shortfall that training period was shorten or curtailed, then on account of the operation of the note below, Rule 302, the reckoning of the seniority would only be from the date as if they continued in the training and after completion of 52 weeks only the date of regular appointment shall be reckoned.

11. Learned counsel appearing for the petitioners-Union of India, thereafter contended that unfortunately the Tribunal has not appreciated this aspect and, therefore, the judgment impugned is rendered without adverting to the note no.2 below regulation no.302 and, therefore, the same is required to be quashed and set aside.

12. Learned counsel appearing for the respondents-original applicants in Original Applications placed written submission on record which could be verbatim taken as under;

*"1. Seniority list dated 16.10.1996 has been prepared by the Railway authorities on the basis of the decision dated 01.03.1996 rendered in O.A. No.123 of*

1993 and O.A. No.510 of 1994 by the CAT (Bombay Bench) and the promotees-present respondent no.1 and two others are placed at Serial No.196 to 200. The aforesaid decision has reached finality as there was no further challenge to the same. Therefore, now by bringing revised seniority list dated 21.02.1997 under the garb of letter dated 22.01.1997 of General Manager, Railway, the petitioner-Railway cannot dilute and or nullify the ratio laid down in the aforesaid decision of CAT, Bombay Bench and disturb the settled seniority of 16.10.1996.

2. Criteria for determining Seniority is provided in Rule 302 of IREM which is a guiding principle and it says that seniority in case of promotees be reckoned from their regular promotion and in case of direct recruits on they joining the actual duty. Further assuming for the sake of argument that the training period is curtailed in the exigency of service in the case of Rankers also nonetheless the principle laid down in Rule 302 as aforesaid holds the filed good as far as the determination of seniority of promotees and direct recruits are concerned.

3. The training of 52 weeks is provided to direct recruits by virtue of Railway Board Letter No. E(NG)1-78-GR-6-42 dated 07.04.1982 ACS 132 whereas the promotees who by their nature of duties at the Loco Sheds and by virtue of their experience as the Artisan are not required to undergo training which is required to be undergone by the direct recruits they being totally new without any kind of experience of diesel and electrical engine. Therefore, there is no question of comparing the training period of direct recruits with that of promotees.

4. The prescribed training has been completed by the promotees and they have qualified for final absorption test vide letter dated 26.07.1991 of DRM Office, Bombay Central and that they have further been finally absorbed w.e.f. 19.07.1991 vide letter dated 26.08.1991 and that new ticket numbers have been given to them and therefore, the promotees are rightly placed in the seniority list dated 16.10.1996 in terms of Rule 302 of IREM.

5. Annexure-R1-Letter dated 22.01.1997



*of General Manager, Railway is contrary to Rule 302 of IREM in as much as Note below Rule 302 of IREM grants relaxation qua direct recruits only and no such relaxation is provided for the Rankers. By virtue of the letter dated 22.01.1997 an attempt is being made to bring the rankers at par with the direct recruits so far as the period of training of 52 weeks and curtailment of the training period is concerned.*

*6. The letters dated 13/14.06.1994 and 22.01.1997 which are the basis of revised seniority list dated 21.02.1997 are inapplicable to the promotees in as much as these letters though have been issued by the General Manager, cannot have retrospective effect and can have only prospective effect. The promotees herein have been regularly absorbed on 19.07.1991 and the letters in question are of 1994 and 1997 and therefore, once the promotees have been absorbed finally way back in 1991, the railway authorities cannot disturb the settled position. The railway authorities have failed to produce on record any letter or order by which it can be said that the training period of the respondent-promotees was curtailed at the relevant*

*point of time on the ground of exigency in service. The requirement of undergoing training period of 52 weeks by the rankers was not prevailing at the time when the promotees herein were finally absorbed.*

*7. Paragraph 1 of letter dated 22.01.1997 clearly indicates that the rankers will get seniority from the date of taking a promotion on regular basis after empanelment. Therefore, paragraph-4 of the said letter which says that the same principle will apply to the rankers whose training was curtailed i.e. their seniority will be regulated on the basis of the notional date of completion of training i.e. 52 weeks cannot be read in isolation but has to be read in conjunction with paragraph-1 of the said letter."*

In addition to the aforesaid submissions, it was also contended on behalf of the respondents hereinabove that the note, as could be seen from the facts on record, was incorporated only in August, 1991 and the original applicants were promoted though on 28<sup>th</sup> August, but with effect from 19.07.1991 and, therefore, the said note which explains the requirement of reckoning the seniority only after completion of 52 weeks training could not be made

operational from retrospective effect so as to deprive the applicants of their right to reckon the seniority from the date of posting, as it is mentioned in the substantive body of the rule itself.

13. Learned counsel for the respondents-original applicants relied upon the following judgments;

(i) in case of **Anil Chandra And Others Vs. Radha Krishna Gaur And Others**, reported in (2009) 9 Supreme Court Cases 454;

(ii) in case of **National Textile Corporation Limited Vs. Nareshkumar Badrikumar Jagad And Others**, reported in (2011) 12 Supreme Court Cases 695;

14. Learned counsel Shri Pathak adopted the submission canvassed on behalf of the Union of India and submitted that the seniority list and the corrigendum dated 21.02.1997 ought not to have been disturbed by the Tribunal.

15. This Court has heard learned counsel appearing for the parties and perused the annexures and the documents tendered. The most important aspect, which needs to be borne in mind, is that the posting of the original applicants-respondents hereinabove is required to be viewed in its proper perspective. The source of recruitment to the post in question cannot be strictly construed as from the

regular promotion channel. The mode of recruitment and the preferences to be given for the earlier and other regular channel is to be resorted to first and in case if there is still vacancies available, then the selection is prescribed so far as the present respondents' categories are concerned. We have no doubt in the fact that there appears to be only an opportunity to change the cadre so as to seek better promotional avenue only, or else the artisans in the scale of Rs. 950-1500/-(RP), would not be treated as promoted to the post of Diesel Assistant in the same scale i.e. Rs.950-1500 (RP). The employment of word "lateral induction" also unequivocally denotes that the appointment of the respondents – original applicants to the post in question cannot be said to be a promotion in ordinary parlance. Therefore, the requirement of training of 52 weeks minimum is required to be viewed in that perspective and background.

16. The Court is unable to accept the submission of Shri Dhotre, learned counsel appearing for the original applicants that as the C.A.T. has observed that the promotees and rankers are in the department since years and therefore, they cannot be equated with direct recruits, so far as, the training period is concerned, as the seniority list which Shri Dhotre and his clients would like to support is also the seniority list, in which, in unequivocal terms the factum of 52 weeks' training is everywhere. If one looks at the seniority list dated 16.10.1996, the column nos.7 and 8 indicate the date of appointment

and the date of regular posting after completion of 52 weeks' training. Shri Dhotre, could not explain the requirement of such mentioning. Had he been correct in his submission, then this would not have been there in the list which they propound to be correct and wants to support. In other words, the requirement of 52 weeks' training even for the staffs, who have been appointed by way of lateral induction, cannot be said to be not established. When the Railway has established their requirement of 52 weeks' training for the staffs, who have been benefited by lateral induction, then in a way, they are also equivalent and similar to the direct recruits, so far as, the training aspect is concerned, as their earlier experience in the respective cadre is said to be not adequate, so far as new assignment is concerned, after they being laterally inducted in the new cadre. Therefore, it would not be out of place to mention here that the requirement of lien is also discussed and it would not be found that after the complete absorption, the lien in their original parent cadre is said to have been terminated. In other words, it can well be said that the Railway has clearly established that the lateral induction cannot be said to be promotion so as to nullify the plea of requirement of 52 weeks' training.

17. The Tribunal, in our view, therefore, clearly erred when it has gone on the footing as if the direct recruits were not equivalent to the

lateral inductees and, therefore, the Tribunal has erred in treating them to be promotees as if they were being promoted in the regular channel of promotion. This error has persuaded the Tribunal to hold that there exists no requirement of curtailment or no requirement of reckoning their seniority from the regular appointment after completion of 52 weeks' training.

18. We are of the considered view that the judgment of C.A.T, Mumbai, first rendered in the first set of applications being O.A. No.123/93 and O.A. No.510/94, also would clearly indicate that the curtailment of training, even if, when it was admitted by the Railway to show that it is the revision of the training period, was not accepted by the Tribunal and, therefore, in that view of the matter, one can say that there existed no justification in treating the original applicants-respondents hereinabove to be a regular promotees in the regular channel of promotion. If one looks at that angle, one will have no reason to hold differently. The Court is unable to accept the submission of Shri Dhotre, relying upon the authorities cited hereinabove, as there cannot be any dispute of the proposition of law laid down thereunder. But when the entire premise, based upon the judgment, rendered by the Tribunal, is erroneous, then the result was bound to be erroneous and therefore, we hold that the said judgment cannot be sustained.

19. It is also required to be noted that the original applicants have not indicated anywhere as to why and in what manner there is no requirement of completion of training of 52 weeks'. The prescription of training for 52 weeks, reiterated hereinabove, is writ large and when 52 weeks' training is curtailed for the same exigency of service, then the lateral inductees cannot take shelter of the main bodies of the rule to say that their appointment is also required to be treated as they were regular promotees. But fine distinction on account of the regular appointment of the lateral inductees is required to be borne in mind and when such differences established, then there exists no error, on the face of it, so far as corrigendum dated 21.02.1997, is concerned. Therefore, we have to quash and set aside the judgment of the Tribunal and restore the corrigendum dated 21.02.1997.

20. For the reasons stated hereinabove, the petitions are, therefore, allowed to the aforesaid extent. Rule made absolute to the aforesaid extent.

**(S.R.BRAHMBHATT, J.)**

**(R.P.DHOLARIA, J.)**

Pankaj