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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO. 223/2002

New Delhi this the 4<sup>th</sup> day of November, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Shri R.S. Shakhawat,  
Working as Senior Clerk (ad hoc)  
In the Office of Deputy Chief Engineer(Const.)  
Northern Railway, Tilak Bridge,  
New Delhi  
... Applicant

(By Shri D.S. Mahendru, Advocate)

-versus-

Union of India through:

1. The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi
2. The Chief Bridge Engineer  
Northern Railway,  
Baroda House,  
New Delhi
3. Chief Administrative Officer(Const.)  
Northern Railway,  
Kashmere Gate,  
Delhi-6  
.... Respondents

(By Shri R.L. Dhawan, Advocate)

O R D E R

JUSTICE V.S. AGGARWAL:-

By virtue of the present application, Shri R.S. Shakhawat, applicant, seeks setting aside the seniority list of 7.11.2001 and further a direction to the respondents to fix his seniority as Material Checking Clerk (MCC) with effect from the date of his initial appointment as MCC i.e. 18.10.1978. He seeks further direction that he should be promoted as Senior



Clerk in the grade of Rs.4500-7000 upon his passing the suitability test.

2. The applicant had initially been appointed as Khallasi with effect from 4.11.1973. He asserts that he was promoted as Storeman with effect from 12.3.1975 and was appointed to officiate as MCC with effect from 18.10.1978. Upon upgradation of the said post, the applicant was appointed to officiate as MCC in the grade of Rs.260-400 with effect from 28.4.1980 on ad hoc basis. The Senior Civil Engineer (Bridge), L-II, Headquarter Office, Baroda House, New Delhi regularised the applicant in the post of MCC in the grade of Rs.260-400 with effect from 10.2.1986.

3. The applicant asserts that some persons similarly situated as the applicant had filed OA No.1331/1991 before the Lucknow Bench of this Tribunal in the case of Hardutt Sharma v. Union of India to direct the respondents to upgrade all the posts of MCC to the higher grade of that post. The said application was allowed by the Lucknow Bench. Certain other persons who were similarly placed represented to the respondents to extend the benefit of the decision of the Lucknow Bench to them also. A reference was made to a Full Bench of this Tribunal and it was held that they were entitled to have their pay refixed in the grade of MCC from the date they were working as such. When this judgement of the Full Bench of this

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Tribunal had been pronounced, the applicant also claimed its benefit and for refixation of his seniority over and above his juniors, namely Shri Prem Pal Singh, Shri Asgar Ali and Shri Vishram Maurya etc. The request of the applicant had been rejected. Thus, on these broad facts, the applicant seeks that he is entitled to the same benefit that had been awarded to other similarly situated persons.

4. In the reply filed, it has been pleaded that the application has been filed after 23 years of the cause of action having arisen because according to the applicant, he is entitled to regularisation from 18.10.1978. The applicant had been working in the Construction Division for the past 24 years but never represented for his seniority. He has no right at this stage to claim the same.

5. On facts, the respondents plea was that applicant was initially appointed as daily rated casual labour on 7.7.1973 in Bridge Department of the Northern Railway, Lucknow. He was given the benefit of temporary status on completion of 120 days of continuous service. He was promoted as Storeman and thereafter transferred to the Construction Organisation. In the said organisation, he officiated as MCC in the grade of Rs. 225-308. It was a temporary appointment conferring on him no right for similar

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promotion/seniority over his seniors in future. It has not been denied that the applicant had been regularised with effect from 10.2.1986 and it is reiterated that the ad hoc promotion given to him in the Construction Organisation has no relevance to his seniority. The Full Bench decision referred to by the applicant is alleged to be not applicable.

6. A perusal of the facts, brief resume of which has been given above, clearly indicated that the applicant is seeking that his seniority should be fixed with effect from the date of his initial appointment as MCC i.e. 18.10.1978. In support of his contention, the learned counsel for relied upon the Full Bench decision of this Tribunal in OA No. 2315/1997 in the case of **Kulwant Singh & Ors. v. Union of India & Ors.** rendered on 23.10.2001. On a perusal of the same, it becomes obvious that the cited case so much relied upon by the learned counsel does not help him. The question before the Full Bench was:-

"Whether applicants who were material checkers at the relevant time would be entitled to have their pay refixed in the grade of material checking clerks from the date they were working as material checkers with all consequential benefits, including payment of difference of salary, seniority etc."

The answer given in this regard was that the applicants who were material checkers at the relevant



time would be entitled to have their pay refixed in the grade of MCC from the relevant date and the consequential benefits prayed for would be subject to the law of limitation. The aforesaid facts would indicate that it has nothing to do with the seniority as claimed by the applicant.

7. In that event, our attention was drawn towards a decision of the Lucknow Bench of this Tribunal in OA No. 133/1991 (Har Dutt Sharma & Ors. v. Union of India & Ors.) dated 28.8.1992. The relevant extract of the said decision reads:-

"Applying the said principle.....the applicants are entitled to count their seniority from the date they were so upgraded and placed in the same pay scale and their seniority will be counted from that date. Those who are Material Clerks before that date, obviously will rank senior to them but those who become Material Checkers subsequent to their gradation and placement in the same scale, will rank junior to them and accordingly this application is allowed to the extent that the order dated 19.4.91 is quashed and the respondents are directed to prepare a fresh seniority list in accordance with law and in the light of the observations made above within a period of three months from the date of receipt of a copy of this judgement and give promotions to the applicants in accordance with their seniority and placement without requiring them to undergo written test or viva-voce for the post of Material Clerks."

However, in the present case before us, the decision on facts once again differs. The applicant was on the cadre of Bridge Department of Northern Railway and he was on deputation with the Construction Division. It



has not been disputed before us that the Construction Division does not have its own cadre. In the absence of any such cadre, if the applicant earned any promotion in the Construction Division even as MCC, he cannot take the benefit of the same for the purpose of seniority. That was not the position before the Lucknow Bench. The cited case, therefore, will not come to the rescue of the applicant. Another decision of this Tribunal which the applicant referred to was of a Division Bench in OA No. 741/1996 (Prem Pal Singh v. Union of India & Ors.) rendered on 8.2.2000. We deem it unnecessary to delve into the controversy therein for the simple reason that in the case of Ram Lubhaya and Ors.etc.etc. v. Union of India and Ors. in OA No. 103/97 and batch of cases, a Full Bench of this Tribunal considered the said controversy on 4.12.2000. Since it is the decision of a Larger Bench and subsequent to that is the decision of the Division Bench of this Tribunal in the case of Prem Pal Singh (supra) dated 8.2.2000, the said decision of the Division Bench is of little avail.

8. Before the Full Bench in the case of Ram Lubhaya (supra), the two questions posed for answer were:-

"(a) Whether a person who is holding lien in parent cadre under a Division of the Railways and on being deputed to a Construction Organisation and there having been promoted on a higher post on adhoc basis, continue to function on that post on adhoc basis, for a very long time, will be entitled to regularisation on that post in this parent cadre of the Division, and also from the date he is continuously working on that post on ad hoc basis.



(b) Whether such person should be regularised in construction Division from the date of continuously working on adhoc basis, treating the post on which he is working as a regular post since the post continues to exist for about 15 years, notwithstanding the contention of the respondent that the Construction Organisation is a temporary organisation and persons are appointed against work charged posts."

The answer given was:-

"(a) Railway servants hold lien in their parent cadre under a division of the Railways and on being deputed to Construction Organisation, and there having promoted on a higher post on ad hoc basis and continue to function on that post on ad hoc basis for a very long time would not be entitled to regularisation on that post in their parent division/office. They are entitled to regularisation in their turn, in the parent division/office strictly in accordance with the rules and instructions on the subject.

(b) This is answered in the Negative."

This squarely answers the question in controversy because as already pointed above, the applicant was not a permanent employee of the Construction Division of the Railways. He had been working in the Construction Division and was retaining his lien in the parent cadre of Bridge Department. Therefore, he necessarily had been considered and promoted by the parent department because his lien was maintained there. He had been considered and promoted as MCC along with other eligible persons. Any promotion earned whether on ad hoc basis or otherwise while he was on deputation in the other department is of little consequence. On merits of the matter, therefore, the said plea must fail and necessarily has to be

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rejected.

9. There is another way of looking at the matter. The applicant, as referred to above, claims his seniority from the date of his initial appointment as MCC i.e. 18.10.1978. He has not impleaded any of those persons against whom he claims the said seniority. In the absence of those persons whose rights are likely to be affected, no effective relief could be granted. In the normal circumstances, we would have asked to array them as parties but when as already discussed above, the application is without merit, the said exercise is not necessary.

10. There is still another aspect of the same, namely the question of limitation which becomes alive in the peculiar facts of the case. Section 21 of the Administrative Tribunals Act, 1985 has put fetters on the powers of the Tribunal in entertaining the applications. It prescribes that one years is the period of limitation from the date on which the final order had been made. The relevant provision reads:-

"21. Limitation- (1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made."

In the present case before us, the order regularising



18

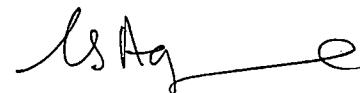
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the services of the applicant had been passed from 10.2.1986. He did not care to challenge the said order at the relevant time. He allowed the period of limitation to lapse subsequently contending that his seniority is affected and is only incidental. Once the period of limitation has expired, it is too late in the day to claim the said relief.

10. Resultantly the present application must be held to be without merit. Accordingly, it fails and is dismissed. No costs.



(S. A. T. RIZVI)  
MEMBER (A)



(V. S. AGGARWAL)  
CHAIRMAN

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