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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA NO. 1443/2001.

New Delhi: this 5th day of February, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN.
HON'BLE SHRI S.K. MALHOTRA, MEMBER (A).

1. Chander Bhan
2. Raj Kumar
3. Vinod Kumar
4. Darshan Lal Grover
5. Ram Krishan
6. Ram Avtar Pandey
7. Chaman Lal
8. Lal Chand Saini
9. Surinder Kumar
10. Madan Mohan
11. Surinder Prasad Verma
12. Mohd. Islam
13. Rama Chandra Murty
14. M.K. Shukla
15. Yamleshwar Singh

(all working as Material Checking Clerks
as per details given in the Memo. of parties
to the OA).

.....Applicants.

(Mrs. Meenu Mainee, Advocate)

Versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi.
2. Chief Bridge Engineer
Northern Railway
Baroda House, New Delhi.

.....Respondents.

(By: Shri R.L. Dhawan, Advocate)

O R D E R (ORAL)

(Hon'ble Shri S.K. Malhotra, Member (A))

The present OA has been filed by the applicants (fifteen in number) praying that their services should be regularised as Material Checking Clerks (MCCs, for short) from the date they have been initially promoted as Material Checkers (MCs, for short). They have also prayed that they should be given similar treatment as has been given to the applicants in OA 133/1991, as their case is similar to

those in the said OA.

2. The facts of the case, in brief, are that 13 out of the 15 applicants were appointed as Khallasis in the year 1973-1977. The remaining two applicants (Sl. No. 2 and 6 of the OA) were directly appointed as Storemen in the year 1973. The other applicants were also promoted as Storemen in the year 1977-1982 and MCs in the year 1976-1988, and were regularised as such in the year 1986-1987. In the year 1992, they were all promoted as MCCs in the grade of Rs. 260-400/950-1500. According to the applicants, in terms of Railway Board's letter dated 16.8.1978, the post of MC was upgraded to that of Material Clerks/MCCs. This direction of the Railway Board, however, has not been implemented in the Bridge Department of Northern Railway where the applicants are working. The present OA has accordingly been filed by the applicants to regularise their services as MCC from the date they were initially promoted as MCs.

3. It has been stated by the applicants that some of their colleagues who were working as MCs in Bridge Department of Northern Railway filed OA 133/1991 (Har Datt Sharma & Others) before the Lucknow Bench of the Tribunal seeking directions to the respondents to implement Railway Board's letter dated 16.8.1978 with all consequential benefits of payment as well as common seniority of MCs and MCCs w.e.f. 1.1.1978. This OA was allowed by the Tribunal vide its judgment dated 28.8.1992 holding that the applicants were entitled to count their seniority from the date of upgradation and placing them in the same scale of Rs. 260-400 and their seniority will be counted from the same date. The Tribunal also directed the respondents to prepare a fresh common seniority in accordance with law within three months and that further promotion should be given in accordance with the revised seniority without

requiring them to go for the written test and viva voce for the post of Material Clerks.

4. Respondents filed an SLP against the aforesaid judgment of the Tribunal and the same was dismissed by the Hon'ble Supreme Court.

5. After the SLP was dismissed, respondents implemented the judgment in respect of the applicants only in the said OA. The present applicants submitted a representation to the respondents to extend the benefit of Lucknow Bench judgment to them, as according to them, they are also placed in a similar situation. However, respondents expressed their helplessness to extend the benefit to them. According to the applicants, this was not in accordance with law.

6. Respondents, in their written statement, have taken preliminary objection that this application is barred by limitation and not maintainable under Section 21 of Administrative Tribunals Act, 1985. It has been stated by them that applicants are seeking relief for regularisation as MCCs from the year 1986-87 from the date they have been regularised as MCs. This is against the law laid down by the Supreme Court in P.K. Ramachandran Vs. State of Kerala, JT 1997(8) SC 189, according to which it is stated that the "Law of Limitation may harshly affect a particular party but it has to be applied with its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds." It has further been pleaded that the decision of a court of law in another case does not give a cause of action as per law laid down by the Supreme Court in the case of Bhoop Singh Vs. UOI, AIR 1992(2) SC 278.

7. In so far as merits of the case are concerned, it has been mentioned by the respondents that the Railway

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Board's instructions vide their letter dated 6.8.1978 do not provide for upgradation of MCs as MCCs. The said circular in question is only regarding refixation of pay under FR 22(c) and is applicable only in case of those employees who were upgraded to the post of MCCs in terms of Railway Board instructions dated 27.9.1963 and 26.10.1972. The applicants in the present OA do not fall within the purview of these instructions. It is mentioned by them that the Railway Board vide its circular/instructions dated 27.9.1963 had decided that the Material Checkers shall be in the scale of Rs. 105-135 (AS) and Material Clerks shall be in the scale of Rs. 110-180 (AS). It was further desired at that time that a review be conducted of the duties of all the staff dealing with stores and such of them as are performing duties of Material Clerks may be authorised the scale of Rs. 110-180 (AS) w.e.f. 1.1.1964. Again vide order dated 26.10.1972, Railway Board decided that Material Checkers performing any 2 of the 7 items of duties listed in the letter dated 27.9.1963 should be placed in the grade of Rs. 110-180 w.e.f. 1.10.1972. In 1976, a decision was taken that for filling up the posts in the category of Material Clerks against the promotion quota of 33.1/3% (which was earlier fixed at 20%) should be worked out first. Against this quota, Material Checkers with 5 years of service should be considered first. The respondents complied with these instructions. In terms of Railway Board instructions dated 6.8.1978, the pay of the incumbents of the posts of MCs, Tool Checkers etc. who were upgraded as MCCs as per orders dated 27.9.1963 and 26.10.1972 was required to be refixed proforma under FR 22-C without payment of any arrears on this account for the period prior to 1.8.1978.

8. Respondents have contended that the applicants in the present OA were not upgraded as MCCs in terms of the

instructions dated 27.9.1963 and 26.10.1972 and as such they were not eligible for refixation of their pay as MCC, in terms of Railway Board instructions dated 6.8.1978.

9. In so far as the decision of the Lucknow Bench in Har Datt Sharma (supra) is concerned, the Hon'ble Supreme Court summarily dismissed the SLP vide its order dated 16.8.1994. It has been contended by the respondents that the Hon'ble Supreme Court in the case of Supreme Court Employees Welfare Association Vs. UOI (1989(4) SCC 187) has held that summarily dismissal of a SLP does not lay down any law as envisaged by Article 141 of the Constitution.

10. We have heard learned counsel for the parties and perused the documents on record.

11. During the course of hearing, learned counsel for the applicants vehemently argued that the case of present applicants is clearly covered by the judgment of Lucknow Bench in the case of Har Datt Sharma (supra) and as such the benefit extended to the applicants in that OA should also be extended to the applicants in the present OA. She has also drawn our attention to the judgement dated 23.10.2001 in OA 2315/1997 (Kulwant Singh & Ors. Vs. UOI) in which reference has been made to the judgement of Lucknow Bench in Har Datt Sharma (supra). It has further been argued that the judgement of Lucknow Bench of the Tribunal has attained finality and has also been subsequently implemented by the respondents in respect of the applicants therein. Accordingly, respondents should treat all the persons alike who are similarly situated.

12. Learned counsel for the respondents has argued that as per the Recruitment Rules, applicants are eligible for promotion as MCC against promotion quota after they qualify in the selection for promotion from Group 'D' to Group 'C'. In this connection, he has referred to Para 189

of Indian Railway Establishment Manual - Vol. I (IREM, for short) which relates to promotion from Group 'D' to Group 'C'. According to this para, promotions are required to be made from Group 'D' to Group 'C' categories, which includes the post of MCC, on the basis of selection for which there should be written test and oral test and those qualify in both, the qualifying percentage of marks being prescribed by the GM, should be arranged in the order of their seniority for promotion against the yearly vacancies available for them in Group 'C' categories. It has been stated by the respondents that selection to the post of MCC was initiated in the year 1991 against promotion quota and the applicants had appeared in the selection. But since the selection process itself was later on cancelled due to technical reasons, applicants could not get their promotion to the post of MCC. The learned counsel further pleaded that Railway Board instructions dated 6.8.78 relied upon by the applicants seeking regularisation as MCCs from the date they were working as MC (Group 'D') are not applicable to the applicant's case. He has also drawn our attention to the judgment of this Tribunal dated 2.7.2001 in OA 648/99 (Sukhdev Singh Vs. UOI) in which it has been held that "respondent's letter dated 6.8.78 only states that the pay of the incumbents of the posts of MCs, Tool Checkers already upgraded as MCs should be refixed proforma." It has been further held therein that "the question of directing respondents to upgrade the posts of Storemen/MCs to that of MCCs does not arise."

13. However, the learned counsel for the applicants has heavily relied upon the judgment of Lucknow Bench in the case of Har Datt Sharma (supra). On the other hand, respondents' counsel contended that this judgement is not applicable in their case. They have already been promoted

as MCC on ad hoc basis in the year 1992. However, they are required to appear in the selection process for their regular appointment against the promotion quota in terms of para 188 of IREM (supra).

14. We have carefully considered the pleadings made by both the parties and the various judgments cited by them. The material facts are that applicants were initially recruited as Khallasis (Group D) in the year 1973-77; they were promoted as MCs in the grade of Rs. 225-308/950-1500 and they had also appeared in the selection process for promotion to the post of MCC in the year 1991. The important question to be considered is whether the instructions contained in Railway Board letter dated 6.8.78 on which the applicants have heavily relied are applicable in their case or not. It would be useful to extract the contents of this letter to fully appreciate the case, which are as under:-

"As a result of discussions in the PNM meeting between the Railway Board and the AIRF held on 10/11.4.1978, the Railway Ministry have reviewed the question of fixation of pay of the incumbents of the posts of Material Checkers upgraded as Material Clerks, in terms of the orders contained in Board's letters No. PC-62/PS-5/SS-1, dated 27.9.1963 and PC-6/FE-4/1, dated 26.10.1972. It has been decided in supersession of all the previous clarifications on the subject that the pay of the incumbents of the posts of Material Checkers, Tool Checkers etc. upgraded as Material Clerks, scale Rs. 110-180 (AS) Rs. 260-400 (RS), as per the orders aforescribed, should be refixed proforma under Rule 2018-B (FR 22-C); no arrears on this accounts, however, being paid for the period prior to 1st August, 1978.

2. Cases where overpayments had occurred in terms of instructions on the subject in vogue earlier will not be re-opened irrespective of whether such over payments were waived or they were recovered in full or in part or they are still to be regularised."

15. A careful reading of the above letter will show that this letter is not for upgradation of all Material Checkers as Material Clerks. It relates to refixation of

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pay under FR 22-C. Even refixation of pay is limited to only those Material Clerks who were upgraded from the post of Material Checkers in terms of orders contained in Railway Board's letters dated 27.9.1963 and 26.10.1972. There is no dispute that the applicants in the present OA were not upgraded as Material Clerks in terms of the above two letters of the Railway Board and as such the instructions contained in the Railway Board's letter dated 6.8.1978 are not applicable in their case. Apart from the above, promotions from Group 'D' to Group 'C' posts, including that of MCC are to be made in terms of para 189 of IREM (supra). According to these instructions, applicants are required to go through the selection process in accordance with the Rules and they will be regularised against the promotion quota earmarked for them. No exception can be made in their case. The decision of a Bench of this Tribunal dated 2.7.2001 (OA No. 648/99) - Sukhdev Singh & Ors. Vs. Union of India, in a similar situation, is very relevant (Annexure R/7). The Tribunal has categorically stated that the Railway Board's letter dated 16.8.78 nowhere lays down a principle that all Material Checkers are required to be upgraded as Material Checking Clerks. This benefit is limited to only those who were upgraded as Material Clerks in terms of earlier orders dated 27.9.1963 and 26.10.1972. Applicants were never given the benefit of such upgradation to Material Clerks.

16. As regards judgement of the Lucknow Bench of this Tribunal in the case of Har Datt Sharma (supra) and also the case of Kulwant Singh and others in OA No. 2315/1997, we find that certain important conditions in the Railway Board's letter dated 6.8.1978, relied upon by the applicant were ignored, namely, the fixation of pay of the incumbents of the posts of MCs upgraded as MCCs is to be done in terms

of earlier orders issued by the Railway Board dated 27.9.1963 and 26.10.1972. No help can be taken by the applicant from the judgement in case of Hari Datt Sharma and others (supra) as the grievance of Material Checkers in that case was for the placement in a common seniority list with the Material Clerks, on the basis of the facts of that case. The Tribunal had merely ordered that they are entitled to count their seniority as Material Checkers from the date they were so upgraded under 1978 instructions. It was held that those who were Material Clerks before that date, obviously were to rank senior to the applicants in that case. It was an order regarding their seniority which was quashed. This judgement did not lay down any principle of law for grant of seniority to all Material Checkers as Material Checking Clerks with effect from the date of their initial appointment as Material Checkers.

17. Another important point to be noted is that the applicants had accepted the mode of selection to the post of MCC inasmuch as they had appeared in the selection process in the year 1991 and having done so, they cannot now take the plea that they should be promoted without going through the selection process as laid down under the Rules. In this connection, it is relevant to cite the judgment of Hon'ble Supreme Court in the case of Suneeta Aggarwal Vs. Union of India, 2000(2) SC 168. In this case, the Hon'ble Supreme Court had held that once a candidate has participated in the selection process without any kind of protest and having taken the chance, he cannot later turn back and challenge the process of selection.

18. As Material Clerks, applicants were regularised between 1986-87. Finding that their category was the feeder category for promotion to Material Checking Clerks, they were allowed to participate in the process of selection

for promotion to the post of Material Checking Clerk on 18.5.1991 (Annexure A/5). They were all promoted as Material Checking Clerks in 1992 as given in Annexure A/1. This promotion was, however, on adhoc basis. They have filed the present OA on 31.5.2001 through which they are seeking change in the order of their promotion after a lapse of 9 years. Considering the provision of Section 21 of Administrative Tribunals Act, 1985, this Application is clearly time barred.

19. There is another angle from which we have examined the case. The applicants are claiming seniority from the date of their initial appointment as Material Checkers to the posts of Material Checking Clerks. This would naturally mean that they would, if successful, steal march over hundreds of Material Checking Clerks. In the absence of such Material Checking Clerks likely to be adversely affected, being impleaded as parties, the present OA would not be maintainable and in fact no effective relief can be granted under the law.

20. Taking into consideration all the relevant facts and the various judgments referred to above, we are of the considered opinion that the present Application is devoid of merit and substance. The same is accordingly dismissed without any order as to costs.

Malhotra

(S.K. MALHOTRA)

MEMBER (A)

Aggarwal

(V.S. AGGARWAL)

CHAIRMAN