

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2387/97

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T.A.No.

DATE OF DECISION 16-8-2000

Sh. Raj Kumar Katira and
Ors.

....Petitioner

Sh. B.S. Mainee

....Advocate for the
Petitioner(s)

VERSUS

UOI & Ors.

....Respondent

Sh. R.L. Dhawan

....Advocate for the
Respondents

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri S.A.T. Rizvi, Member (A)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 2387/97

New Delhi this the 16 th day of August, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri S.A.T. Rizvi, Member(A).

1. Shri Raj Kumar Katira,
S/o late Shri Mohan Lal Katira,
Inspector of Works Gr. II,
Northern Railway,
Chandausi.
2. Shri Prakash Chandra Sharma,
S/o Shri Raghubir Prasad Sharma,
Inspector of Works (Spl.),
Northern Railway,
Moradabad.
3. Shri Mohd. Ahmed Siddiqui,
S/o late Shri Z.A. Siddiqui,
JET (W) Ballast,
Northern Railway,
Moradabad Division,
Haridwar.

Applicants.

(By Advocate Shri B.S. Mainee)

Versus

Union of India through

1. The Secretary,
Ministry of Railways,
(Railway Board),
Rail Bhawan, Raisina Road,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway,
Moradabad.
4. Shri Mohd. Kamil Siddiqui,
Inspector of Works,
Northern Railway,
Moradabad Division,
Gajraula.
5. Shri Rajender Prasad,
Inspector of Works,
Northern Railway,
Moradabad Division,
Roza.

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6. Shri Miraj Ahmed,
Inspector of Works (Constn. & Orgn.),
Northern Railway,
Moradabad Division.

7. Shri G.C. Khare,
Inspector of Works,
Sectional Engineer Works,
Railway Station Balamau,
Distt. Hardoi.

8. Shri Mohd. Iqbal Idrsi,
Inspector of Works,
Junior Engineer I (Works),
Railway Station,
Chandpur - Siau,
Distt. Bijnour.

... Respondents.

(By Advocate Shri R.L. Dhawan)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicants are aggrieved by the decision of the respondents rejecting their claim for seniority as Inspector of Works (IOW) from the date their juniors had been so appointed (Annexure A-1/A).

2. The relevant facts of the case in brief are that the applicants had applied for the post of Apprentice (IOW/PWI) against 73 vacancies advertised by the respondents through the Railway Service Commission, Allahabad, for the Northern Railway, in the year 1978-79. According to them, though their names were included in the panel for the post of Apprentice (IOW), but they did not receive any offer of appointment as such from the respondents on the ground of no vacancies being available at that time to accommodate them. The respondents nevertheless offered to the applicants the lower post of Sub-Overseas Mistry (SOM) in the grade of Rs.380-560, whereas the pay scale for the post of Apprentice (IOW) then

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was Rs.425-700. The respondents have stated that the applicants accepted this option given to them and accordingly they were duly considered and selected as SOMs and given appointment in that post in 1980. Shri Mainee, learned counsel has pointedly mentioned that after the appointment of the applicants as SOMs, the official respondents discovered a large number of vacancies of IOWs and thus a number of persons, who were placed lower in the merit list prepared by the Railway Service Commission, Allahabad, were given appointments as Apprentice IOWs. His contention is that this action of the respondents is illegal and invalid as juniors to the applicants and persons of lesser merit had been given appointment in higher posts, ignoring the claim of the applicants. He has submitted that there were 33 such Apprentice IOWs, who were junior to the applicants and were given appointments directly in the higher post in August, 1980.

3. The applicants have submitted that when they came to know that some of their juniors have been appointed as Apprentice (IOW) without considering their rightful claim, they made representations and the matter was taken up by the National Federation of Indian Railway (NFIR) for discussion with the Railway Board in the PNM meeting. As a result of this, the Railway Board issued a letter dated 6.6.1984, conveying a decision that 10 SOMs, including the applicants, who had been assigned positions in the original panel of the Apprentice (IOWs) prepared by the Railway Service Commission, Allahabad higher than the 33 Apprentice (IOWs) subsequently appointed from the same panel would be appointed as Apprentice (IOWs), subject to the completion of usual formalities. Shri B.S. Mainee, learned counsel

has taken pains to point out that in terms of the Railway Board's letter dated 6.6.1984 and the provisions of para 306 of the IREM (Vol.I), the applicants, who had been placed higher in merit in the original panel should get seniority over the others who have been appointed later from the same panel. He has submitted that since this has not been done, the action of the official respondents is illegal and arbitrary. He has, therefore, maintained that the official respondents have not given correct seniority to the applicants in accordance with the Rules, and giving of seniority only from the date when they took over charge as Apprentice (IOWs) is bad. Learned counsel has also contended that as the juniors to the applicants, 33 in number, who had been appointed in August, 1980, were posted in other Divisions, the applicants could not come to know about their seniority at any earlier date. He has most strenuously argued that it was only after the issuance of the impugned letter dated 6.3.1997 promoting three persons, lower in merit than the applicants in the original panel, that they became aware that they had been given wrong seniority. He has also relied on Rule 309 of the IREM (Vol.I) and has submitted that in the circumstances of this case, the official respondents are bound to assign seniority to the applicants over the Respondents 4-8 as Apprentice (IOWs) in terms of the panel formed by the Railway Service Commission in 1979-80. He has submitted that Respondents 4-8 occupied lower ranks in the original panel of Apprentice (IOWs) but were appointed during the period 1981-84 before the applicants were given appointments as Apprentice (IOWs). He has also emphatically submitted that since the Tribunal have admitted this case by their order dated 27.4.1998, having

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regard to the judgement of the Supreme Court dated 28.1.1993 in **Rameshwar Prasad Sinha Vs. Union of India & Ors.** (Civil Appeal No. 354/93) (copy placed on record), the question of bar of limitation raised by the respondents will not arise. He has also relied on **A.B. Muranjan and Ors. Vs. Union of India** (1998(2) SLJ (CAT 191)).

4. We have perused the reply filed on behalf of the respondents and have also heard their learned counsel Shri R.L. Dhawan.

5. The respondents have taken a preliminary objection that the application is barred by limitation and is not maintainable under Section 21 of the Administrative Tribunals Act, 1985. They have stated that the applicants were appointed as IOWs in the grade of Rs.425-700 (RS) by order dated 13.11.1985 and have been assigned seniority correctly in accordance with the Rules. They have submitted that after a lapse of 12 years, the applicants are barred from challenging the seniority assigned to them by means of this OA. They have also submitted that the respondents have not come up in this OA against any specific order of the official respondents and the order dated 6.3.1997 referred to by the applicants actually relates to the promotion of three other persons senior to the applicants, to the next higher post of IOW Grade-I in the scale of Rs.2000-3200. They have stated that this particular order cannot give any cause of action to the applicants. Shri R.L. Dhawan, learned counsel has submitted that since at the time of finalisation of the selection conducted by the Railway Service Commission, Allahabad, for the post of IOW, in 1978-79, enough

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vacancies were not available in the cadre of IOW, the respondents after obtaining the consent of the candidates, including the applicants, posted some of them as SOMs in the grade of Rs. 380-560. Subsequently, 33 candidates who had figured in the same panel were appointed as IOWs in the grade of Rs.425-700 and this happened after the applicants had already been accommodated as per their option and consent as SOMs in the lower grade. Shri Dhawan, learned counsel has submitted that as the appointment of the applicants as SOMs had been made after obtaining their option, they cannot complain of discrimination at this late stage. He has also submitted that when they made representations through the recognised Unions, the Railway Board had considered their request in the PNM meeting held in September, 1983 resulting in the issuance of letter dated 6.6.1984. He has also submitted that from the letter dated 27.9.1984 (Annexure A-3), annexed by the applicants themselves, it would be seen that the applicants, included in the list of 10 persons, later appointed as IOWs were sent for a one year long training for the post of IOW Grade Rs.425-700. He has stressed that it is only after their own appointment as IOW grade Rs.425-700 that the applicants can effectively argue about their seniority in the cadre of IOWs in accordance with the Rules. He has relied in particular on Rule 303 of IREM Vol.I and has submitted that in terms of all the relevant Rules, the action taken by the respondents is legal and valid.

6. We have further heard Shri Mainee, the learned counsel for the applicants. He has reiterated his submissions made in the O.A. and has emphasised that, in

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the present case, the question of limitation for filing the O.A. is not relevant at all nor will it come in the way of the applicants.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

8. The first question to be dealt with in the present case is whether the preliminary objection of bar of limitation taken by the respondents will lie or not. When the applicants filed the O.A. on 1.10.1997, it is seen that alongside they have also filed MA 2338/97 praying for the condonation of delay. In this MA, the applicants have recounted the facts and circumstances leading to their appointment as IOWs in 1984, although they were placed by the Railway Recruitment Board in the original panel of Apprentice (IOWs) in the year 1980 itself. They have alleged, as already stated in this order, that the action of the official respondents at that time was absolutely unjustified and illegal. They have also stated that they made a number of representations to the respondents to which they have not received any reply. Ultimately, when they came to know that their juniors had been promoted in the scale of Rs.2000-3200 without considering their case, they acquired a fresh cause of action. They have filed the OA which is according to them well within limitation. However, they have also submitted that they have filed the MA praying for the condonation of delay, if any.

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9. By this Tribunal's order dated 27.4.1998 passed after hearing the learned counsel for both the parties, the case was admitted "subject to limitation and other preliminary objections". By that time, MA 2338/97 had not been considered or disposed of. Accordingly, at the time of hearing of this OA, the learned counsel for the parties have made their submissions on the question of condonation of delay, as prayed for in MA 2338/97. However, Shri B.S. Mainee, learned counsel relying on the judgement of the Supreme Court in **Rameshwar Prasad Sinha's case** (supra) has submitted that as the Tribunal has entertained the matter, it could not now consider or rake up the question of limitation. Paras 3 and 4 of the judgement of the Hon'ble Supreme Court in **Rameshwar Prasad Sinha's case** (supra) read as follows:

"3. The appeal is directed against the judgement of the Central Administrative Tribunal, Patna Bench rejecting the appellant's application for certain additional benefits on the ground that he had refused to join the general railway strike of 1974 and was a loyal worker during the strike period. Reliance has been placed on certain government circulars. The prayer of the appellant is for an additional increment for his being a loyal worker and in the alternative appointment of his son in the department. The Tribunal has dismissed the application by holding that the same was barred by limitation. A review petition also failed.

4. We have examined the circumstances of the case and find that in view of the appellant's application having been entertained and disposed of later, the view of the Tribunal on the question of limitation is not correct. The claim of the appellant, therefore, should have been considered and decided on merits which has not been done. The matter is fit for remand to the Tribunal for decision on merits".

10. From the above, it is seen that the observations of the Hon'ble Supreme Court are with regard to the circumstances of that particular case in which the Apex Court has stated that "in view of the appellant's

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application having been entertained and disposed of later", (presumably by the respondents), the view of the Tribunal on the question of limitation was not correct. In the present case, however, as has already been mentioned above, while admitting the O.A., the Tribunal by their order dated 27.4.1998 had clearly stated that it was subject to limitation and other preliminary objections. The applicants have themselves filed MA 2338/97 (which is yet to be disposed of) praying for the condonation of delay. Further, in the instant case, the claim of the applicants is one of seniority over the Respondents 4-8 qua IOWs, in terms of their position in order of merit in the original panel prepared by the Railway Service Commission, Allahabad in 1980. In **Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra** (JT 1990(2) SC 264), the Hon'ble Supreme Court has held that in such service matters, it is not in the interest of service to unsettle the settled position.

11. Taking into account the above mentioned facts and circumstances of this case, we are unable to agree with the contention of the learned counsel for the applicants that the Supreme Court order dated 28.1.1993 in **Rameshwar Prasad Sinha's case** (supra) given in the circumstances of a case in which the respondents had entertained the appellant's application and disposed it of later would be applicable here. On the contrary, in this case, it is not only that the MA 2338/97 is still pending and has not yet been considered by the Tribunal, the question of limitation too has been left open in the Tribunal's order dated 27.4.1998. Accordingly, having regard to the facts and circumstances of this case, we are unable to agree with the

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contentions of the learned counsel for the applicants that the judgement of the Hon'ble Supreme Court in **Rameshwar Prasad Sinha's case** (supra) would find application in the facts and circumstances of the present case. We are fortified in our view that limitation will be applicable in the circumstances, like those obtaining in the present case, by the decisions of the Hon'ble Supreme Court in **K.R. Mudgal & Ors. Vs. R.P. Singh & Ors.** (1986(4) SCC 531); **State of Punjab Vs. Gurdev Singh** (1991(4) SCC 1), **Ex.Capt. Harish Uppal Vs. Union of India & Ors.** (JT 1994(3) SC 126), where it was held that parties should pursue their rights and remedies promptly instead of sleeping over their rights; and **State of Karnataka & Ors. Vs. S.M. Kotrayya & Ors.** (1996 SCC (L&S) 1488). Having regard to the judgements of the Supreme Court in these cases, which in our view are applicable to the facts and circumstances of the present case, this case is liable to be dismissed on the ground of limitation.

12. Quite apart from the aspect of limitation, we have also considered the case on its merits. The Railway Board had discussed the issue raised by the applicants through the NFIR in the PNM meeting held on 17.9.1983. By their letter dated 6.6.1984, the official respondents had decided that the 10 SOMs, including the applicants, who were assigned positions in the Railway Service Commission, Allahabad's original panel of IOWs, higher than the 33 IOWs appointed subsequently from the same panel, should be appointed as IOWs, subject to the completion of the usual formalities. It was further stated that they could reckon their seniority as IOWs only from the date of their appointment as such as per the normal rule. From the

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subsequent letter dated 27.9.1984 issued by the respondents, it would be seen that the applicants along with the rest of the 10 similarly situated persons earlier appointed on their own requests as SOMs were consequently appointed as IOWs in the grade of Rs.425-700 in various Railway Divisions. They were also required to be trained for the post of IOW grade Rs.425-700. They were accordingly to be sent for school training at ZTS/CH as and when it could be arranged. Rule 303 of the IREM (Vol.I) provides that the seniority of the candidates recruited through the Railway Recruitment Board or by any other recruiting authority is to be determined as under:

✓ (a) Candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts. Those who join the subsequent courses for any reason whatsoever and those who pass the examination in subsequent chances, will rank junior to those who had passed the examination in earlier courses.

(b) In the case of candidate who do not have to undergo any training in training school, the seniority should be determined on the basis of the merit order assigned by the Railway Recruitment Board or other recruiting authority".


(Emphasis added)

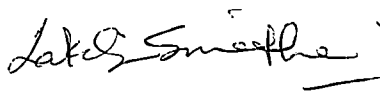
A perusal of the above Rule would reveal that in the circumstances of this case, the action taken by the respondents by assigning seniority to the applicants after they had completed their training as required under the said Rule cannot be faulted. Shri B.S. Mainee, learned counsel has placed reliance on Rule 306 which provides that candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting, except in cases covered by paragraph 305.

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This will not assist the applicants. In terms of Rule 303 quoted above, the applicants who were sent for training in subsequent courses as per the letter dated 27.9.1984, will rank junior to those who had passed the examination in earlier courses. The contention of the applicants that since the official respondents did not act properly way back in 1980 or thereabouts, will not in our view help them in re-gaining their seniority. The aforesaid Rule makes it amply clear that "those who join the subsequent courses for any reason whatsoever and those who pass the examination in subsequent chances, will rank junior to those who had passed the examination in earlier courses". Thus having regard to the provisions of the said Rule 303 of IREM (Vol.I), which is undoubtedly applicable to the facts of the present case, the decision of the Tribunal in **A.B. Muranjan's case** (supra) will be of no avail to the applicants. In the ultimate analysis, therefore, in the peculiar circumstances of this case, there is no merit in the contention of Shri B.S. Mainee, learned counsel that the applicants should be reckoned senior to the Respondents 4-8 because of their higher position in the original panel without any consideration for the fact of their training having been arranged and having taken place much later as brought out above. We, therefore, find no merit in this application to justify any interference in the action taken by the respondents.

13. In the result, the O.A. fails and is dismissed both on merits as well as limitation. No order as to costs.


(S.A.T. Rizvi)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'