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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2976/97

New Delhi, this the 2nd day of June, 2000.

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. H.O. GUPTA, MEMBER (A)

1. Sh. Arun Kumar Sood, S/O Sh. K.K.Sood, Loco Foreman (Maintenance), Northern Railway Headquarters Office, Baroda House, New Delhi.
2. Sh. B.C.Dhawan, S/O Sh. V.P.Dhawan, Loco Foreman (Maintenance), Northern Railway Headquarters Office, Baroda House, New Delhi.
3. Sh. D.K.Mittal, S/O Sh. B.K.Mittal, Loco Foreman (Maintenance), Northern Railway Headquarters Office, Baroda House, New Delhi.
4. Sh. B.K.Sareen, S/O Sh. Dharam Pal, Loco Foreman (Maintenance), Northern Railway Headquarters Office, Baroda House, New Delhi.

.....Applicants.

(By Advocate: Sh. B.S.Mainee)

VERSUS

1. Union of India : Through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, State Entry Road, New Delhi. New Delhi.
3. The Divisional Railway Manager, Northern Railway, Ambala Cantt.

...Respondents.

(By Advocate: Sh. M.K.Gaur, learned proxy counsel
for Sh. R.P.Aggarwal, learned counsel.

O R D E R

Hon'ble Mr. H.O.Gupta, M (A):

In this OA, the applicants are aggrieved by the impugned order dated 6.9.97 (Annexure A-1) passed by General Manager, Northern Railway wherein their seniority has been brought down and also their date of promotion as

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Section Engineers (Maintenance) in the pay scale of Rs.2000-3200/- has been changed from 1.1.84 to Feb.86/May,87.

2.0 The case of the applicants is that:

2.1 They joined Northern Railway as Chargemen Grade 'B' in the scale of Rs.425-700/1400-2300. They were further promoted as Chargemen Grade 'A' in the scale of Rs.550-750/1600-2660, sometimes in 1980-81.

2.2 To remove heavy stagnation in Group 'C' staff on the Railways, the Railway Board issued orders for upgradation of posts in respect of Loco staff vide their letter dated 16.10.84 (Annexure-2). In terms of the aforesaid order, 14 posts were allotted to Delhi Division in the scale of Rs.700-900/ 2000-3200. Thereafter the applicants were promoted against the said 14 posts vide letter dated 17.11.87 (Annexure A-3) w.e.f. 1.1.84. In the said letter, the name of Applicant No.2, Sh. B.C.Dhawan, does not appear, because the bifurcation of Delhi Division was done in July, 1987 wherein Ambala Division was carved out & Sh. Dhawan was assigned Ambala Division. However, Sh. Dhawan was also promoted w.e.f. 1.1.84 but the said letter is not available with the applicants.

2.3 Thereafter, based on the letter dated 17.11.87 (Annexure A-3), wherein they were promoted, salaries of the applicants were fixed in scale of Rs.700-900 giving them proforma fixation from 1.1.84, which could be seen

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from the letter of 17.11.87. The applicants continued to get their pay and allowances on the basis of the pay as fixed by the respondents in the letter dated 17.11.87 (Annexure A-3).

2.4 The respondents issued a seniority list on 21.9.87 (Annexure A-4) and also another seniority list on 3.3.89 (Annexure A-5) in the grade of Chargemen Grade 'A' / Chargemen Grade 'B'. In both the seniority lists, the name of the applicants appeared. However, in the second seniority list, the name of Sh.B.K.Sareen was wrongly omitted. In both these seniority lists, the position of applicants was correctly reflected.

2.5 Thereafter, another seniority list was issued on 26.9.90 (Annexure A-6) in respect of Locoforemen (Maintenance) in the scale of Rs.700-900 / 2000-3200 for the purpose of promotion to the post of Locoforemen in the scale of Rs.2375-3500. While the seniority in the scale of Rs.2000-3200 is Division-wise, further promotions in the scale of Rs.2375-3500 is done by the respondent No.1 based on the combined integrated seniority of all the Divisions. Another integrated seniority list was issued by the Headquarters Office of Northern Railway on 22.11.92 (Annexure A-7) in respect of Locoforemen (Maintenance) in the scale of Rs.2000-3200 in connection with promotion to the next higher scale of Rs.2375-3500. Yet another combined seniority list was issued by the Headquarters on 2.9.93 (Annexure A-8). Further, another seniority list was issued on 27.10.94 (Annexure A-9) for similar purpose. In this list, the



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names of the applicants had been shown at Sl.Nos. 26, 27, 31 & 33 respectively.

2.6 In all the seniority lists issued by the Headquarters Office of Northern Railway annexed as Annexures A-6 to A-9, the date of promotion of the applicants in the scale of Rs.700-900 / 2000-3200 was shown as 1.1.84.

2.7 All of a sudden, the respondents issued another impugned seniority list vide order dated 6.9.97 (Annexure A-1) down-grading the positions of the applicants and simultaneously altering the date of the promotion of the applicants in the grade of Rs.2000-3200 from 1.1.84 to Feb, 86/May, 87. Aggrieved of this order, the applicants have failed this O.A.

3.0 In relief, the applicants have sought quashing of impugned order and also directions to the respondents to restore their seniority position on the basis of their promotion in the scale of Rs.700-900 / 2000-3200 w.e.f. 1.1.84, on various grounds stated in the application/s.

4.0 In reply, the respondents have stated that:

4.1 The cadre of Loco staff was reviewed and percentage of posts in different pay scales was revised vide order dated 16.10.84 (Annexure R-2). The sanctioned strength of Loco staff in the scale of Rs.700-900 was 14 in regard to Delhi Division.

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4.2 The matter was reconsidered and vide General manager's letter dated 22.7.87 (Annexure R-1) and letter dated 27.1.90 (Annexure R-2), the restructuring of Loco staff was implemented, seperately for running staff and Maintenance staff and the posts of TFR of RSO cadre were required to be included in the running staff. The sanctioned strength of Loco foremen (Maintenance) cadre was revised as on 1.10.84 with the concurrence of finance vide letter dated 9.10.90 (Annexure R-3). On bifurcation of Delhi Division, only seven posts in the scale of Rs.700-900/- were upgraded in Delhi Division w.e.f. 1.1.84 and six employees, who were senior to the applicants, were given the benefit of cadre restructuring in the scale of Rs.700-900 w.e.f. 1.1.84 vide letter dated 12.11.90 (Annexure R-4). One post went to a S.C. candidate and another post was kept reserved for S.T. candidate. Since no ST was available, the said ST post was not filled.

4.3 The respondents have also taken a plea of limitation on the ground that cause of action arose on issue of order dated 12.11.90 when their date of promotion was changed and this application was filed in 1997 after a period of seven years without any application of condonation of delay and, therefore, application is barred by limitation.

4.4 The benefit of cadre restructuring given to the three applicants was withdrawn vide letter dated 12.11.90 (Annexure R-4). However, they were given the benefit of promotion in the scale of Rs.700-900/- against the

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vacancies arose subsequently i.e. 27.2.86 and 15.7.87, based on the panel prepared. With regard to the benefit of restructuring to Sh. B.C.Dhawan, the 4th applicant's position is being ascertained from Ambala Division.

4.5 Since the benefits to the applicants ^{was} ~~were~~ ^D incorrectly given, the same was withdrawn vide letter dated 12.11.90 (Annexure R-4). Accordingly the order dated 6.9.97 refixing the seniority was issued.

4.6 The benefit of cadre restructuring granted to these staff vide letter dated 17.11.87, (Annexure A-3) was withdrawn vide letter dated 12.11.90 (Annexure R-4). The above order was withdrawn as the name of the applicants did not fall within the zone of consideration for the seven posts of Locoforemen (Maintenance) in the scale of Rs.700-900/- .

4.7 Earlier 14 posts in the scale of Rs.700-900 were allotted to Delhi Division vide letter dated 16.10.84 but it was subsequently revised to 8 only vide order dated 9.10.93 (Annexure R-3). Out of 8 posts, 7 remained with Delhi Division after creation of Ambala Division.

5.0 In rejoinder, the applicants have stated :

5.1 The respondents have not supplied Annexure A-5 and Annexure A-3 is quite different to what has been referred by the respondents in their counter affidavit. Annexure R-3, in terms of which sanctioned strength of Locoforeman was revised as on 1.10.84, has not been annexed.

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5.2 As per the judgement of Jodhpur Bench of this Tribunal, the cadre of Locofoemen was to be separated in two parts, i.e. Maintenance and running for cadre restructuring. The posts of TFR/RSO cadre was also required to be taken into account alongwith Locofoemen running. Cadre restructuring percentage for Technical Supervisory & running staff is different. For Technical Supervisors, the percentage is fixed as 33%, 30%, 27% & 10% in respect of scales of Rs.425-700, 550-750, 700-900 & 840-1040/- respectively, as can be seen from the Railway Board's Circular dated 1.5.84 (Annexure ~~R~~R-1). It is not clear as to why the orders of seven posts were only implemented as against 14 posts allocated vide Headquarters letter dated 16.10.84. The promotions given to the applicants in the scale of Rs.700-900/- w.e.f 1.1.84 in accordance with the restructuring of the cadre, was correct and subsequent action of the respondents to withdraw is without any tenable reason.

6.0 Heard the learned counsel for the parties and perused the records.

6.1 The letter dated 9.10.90 where in the sanctioned strength for Delhi Division was reduced from 14 to 8, said to have been annexed as Annexure R-3 is not available in records. The letter dated 12.11.90 (Annexure R-4) through which the benefit of restructuring was withdrawn from the applicants is not addressed to applicant. No show cause notice was given to the ~~P~~

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applicants before withdrawing the benefit of restructuring scheme from 1.1.84. We do not find any letter/communication of the respondents to the applicants from where it could be seen that they have changed their date of promotion to a subsequent date. From the records, we find that the action of the respondents in altering the date of their promotion is without the knowledge of the applicants and without giving any show cause notice.

6.2 We also find from the letter of the General Manager dated 22.7.87 (Annexure R-1), that the decision for bifurcation of cadre was taken subsequently in consultation with the Unions. Having promoted the applicants by their own order w.e.f. 1.1.84, based on the vacancies then fixed and reducing the vacancies thereafter based on a subsequent decision of bifurcation of the cadre of Maintenance and running staff, cannot be said to be a mistake or error committed dehors to any rules, or incorrect application of their earlier orders. This action of the respondents has jeopardise the interests of the applicants.

6.3 It is also seen that in the four seniority lists published between 1990 to 1994 (Annexure A-6 to A-9), the applicants were shown to have been promoted in the scale of Rs.700-900/2000-3200 w.e.f. 1.1.84. It is only in the seniority list published in 1997, the date of promotion in the said grade was shown as Feb 86 / July 87 and their position in this seniority list was brought down.

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6.4 There is nothing on record to show that applicants were informed about the change on the date of their promotion. The applicants came to know of this change only after the issue of seniority list dated 6.9.97 and they filed this OA in December, 1997. Therefore, this application is not barred by limitation.

7.0 Based on the aforesaid discussions, the OA is allowed with the following directions to the respondents.

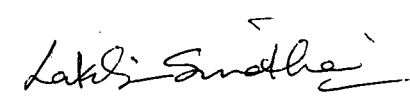
7.1 The seniority of the applicants in the grade of Rs. ^{700-900/} 2000-3200 shall be revised based on their earlier date of notional promotion w.e.f. 1.1.84 as per rules within a period of three months from the date of receipt of this order.

7.2 Till such time the seniority list is revised, promotions to the next higher grade shall not be made to the prejudice of the applicants .

8.0 No order as to costs.


(H.O. GUPTA)
MEMBER (A)

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(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)