

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 945/94

New Delhi, this the 19th day of August, 1999

Hon'ble Shri S.R.Adige, Vice-Chairman (A)
Hon'ble Shri Kuldeep Singh, Member (J)

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Shri R.Khosla,
Deputy Chief Mechanical Engineer (I),
Central Organisation for Modernisation
of Workshop (COFMOW),
Railway Offices Complex, Tilak Bridge,
New Delhi. Applicant

(By Advocate: Shri B.S.Mainee)

vs

Union of India through:

The Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi. Respondents

(By Advocate: Shri P.S.Mahendru)

O R D E R

by Hon'ble Shri Kuldeep Singh, Member (J):
1. In this application applicant Shri R.Khosla
has challenged the order No. 93/E(GR)/I/5/7 dated 1.9.1993
passed by the Deputy Director Establishment (GR), Railway
Board, Ministry of Railways, New Delhi, whereby his
representation regarding fixation of seniority of officers
recruited as SCRA in ISME has been rejected.

2. Facts in brief are that the applicant was
selected as Special Class Apprentice by the Union Public
Service Commission in the year 1969 and thereafter he
joined the Indian Railway Institute of Mechanical and
Electrical Engineers at Jamalpur on 13.1.1970. The
applicant was to undergo 4 years training and within the
stipulated period of 4 years plus one year of extended

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period, he was supposed to qualify either part-I and II of the A.M.IME (London) or Section A and B of the A.M.I.E.(India) examination.

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As the applicant failed to complete either Part I and II of the AMIME (London) or Section A and B of the AMIE (India) examination within 4 years he was allowed extended period of one more year to complete two parts/sections of the examination.

4. Apprentices could be appointed as probationers only from the date when they pass both the parts/sections of the examination. The Railway Board also decided that this condition should also be intimated in writing to all the Special Class Apprentices who are undergoing the training. The applicant in this case could not qualify both the parts/sections within the stipulated period of four years or even in the extended period of one year. He was able to qualify all the papers only in August, 1975 i.e. in 5 years and 2 months.

5. The applicant now alleges that in accordance with the practice prevailing on Railways the respondents ought to have assigned seniority to him from the date from which he successfully completed his four years apprentice and had passed the internal departmental examination. As such his seniority ought to have been assigned along with his batch-mates irrespective of the fact that the applicant was given an extension of one year for completing two parts/sections of the examination. He further alleges that passing of the examination was not germane to the question of seniority. Applicant further pleaded that respondents, however, assigned seniority to

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him w.e.f. 10.3.1975 the date when the result of Section B of AMIE was declared with the result the applicant's seniority was depressed despite the fact that he had passed part-I and more than 50% of the papers of CEI (London) Part-II examination before completing 4 years training at Jamalpur and had completed AMIE (India) examination well within six years. He pleads that he ought to have been assigned seniority along with other batch-mates of 1969 batch and the date of appointment of the applicant should have been fixed as 13/14.1.1974 i.e. the date when the applicant had completed 4 years apprenticeship at Jamalpur.

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6. Applicant further submits that the aforesaid action of the respondents in reckoning the seniority of the applicant from 10.3.1975 is illegal and discriminatory because in several other similar cases the respondents had fixed the seniority of the incumbents from the date of completion of four years' apprenticeship at Jamalpur. Though those candidates had also been given further extension for clearing Part-I and Part-II of CEI examination or section A and B of the AMIE examination. He particularly quoted the case of Shri P. Bahadur who belongs to 1966 batch and had joined the Jamalpur Institute in the year 1967 and completed his four years training in 1971 but passed his examination in the year 1974 still he was given seniority from 1971 i.e. the date of his completion of four years. He has also cited the cases of certain other candidates which are given below:

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Sl. No.	Name of Apprentice	Class	Batch	Month of appearing	Date of appt.	Remarks
				CEI/Part II	by Railway (final attempt)	AMIE/AMIMEfixed

1.	S.P. Singh	1966	May '71	30.3.71	No loss of seniority
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2.	M.L. Gill	1966	Nov. '71	23.2.71	-do-
3.	A. Mishra	1966	Nov. '71	8.8.71	-do-
4.	R. Chandra	1966	May '72	7.9.71	-do-
5.	P. Bahadur	1966	May '74	31.7.71	-do-
6.	A. Bhatnagar	1967	Nov. '74	2.2.73	-do-
7.	A. Bhagre	1967	May '72	15.2.72	-do-
8.	B. Maji	1968	Nov. '73	9.2.74	-do-
9.	A.K. Verma	1971	Dec. '76	21.2.76	-do-

7. Comparing with these candidates he pleads that he has been subjected to hostile discrimination though he had made several representations but all in vain.

8. He further pleaded that one of his colleagues who belong to 1971 batch was also denied seniority on the ground of having cleared AMI in extended period who filed a civil suit at Jhansi which was

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subsequently transferred to Allahabad Bench of the C.A.T. and the Tribunal vide order dated 14.2.1990 allowed his O.A. and his seniority was restored.

9. It is also alleged that the circular of 1970 has not been followed strictly in all the cases and the applicant has been subjected to hostile discrimination.

10. After the said judgement applicant again made a representation requesting the respondents to undo the injustice done to him but no reply was received. He again made another representation which was rejected vide order dated 1.9.1993 which is under challenge in this O.A.

11. Applicant prays for a direction to respondents to assign him seniority alongwith his batch-mates of 1969 batch.

12. Respondents filed their counter in which it is stated that direct recruitment to the Indian Railway Service of Mechanical Engineers is made by dual method i.e. 50% of the vacancies arising in a year are filled through combined Engineering Services Examination for graduate Engineers and the balance 50% through the Special Class Railway Apprentice Examination and both the examinations are conducted by the Union Public Service Commission. It is also submitted that a candidate selected as special class Railway Apprentice has to undergo practical and theoretical training for a period of 4 years at Indian Railway Institute of Mechanical and Electrical Engineering, Jamalpur and it is mandatory for these apprentices to pass either part I and II of

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CEI(London) or section A and B of AMIE (India) examination within the said period of four years. In addition the apprentices are also required to pass semester examinations conducted by the Indian Railway Institute of Mechanical and Electrical Engineering, Jamalpur. It is further stated that a comprehensive instructions were issued by the Ministry of Railways (Railway Board) in 1962 as to what action is to be taken in case of failure to pass various examinations and in case of an Apprentice who fails to complete Part I and II of CEI(London) or Section A & B of AMI (India) examination within four years of apprenticeship; it was prescribed that he will be allowed one more year to clear these examinations within a total period of five years from the date of joining and those who fail to complete the said examination within the extended period of apprenticeship, their apprenticeship will be terminated. In this context, learned counsel for respondents referred to the instructions (Annexure R-1 to the Counter reply). Respondents have also submitted that those who fail to pass the first two parts of CEI (London) or AMIE (India) examinations within a period of 4 years of their apprenticeship, can be appointed as probationers but from the date when they pass those examinations. As far as the judgement of Allahabad Bench of CAT (Sh. A.K.Verma vs. UOI & Ors) is concerned, the respondents have stated that the applicant is not placed in similar circumstances as that of Shri A.K. Verma. The distinguishing features of the service records of the applicant and Shri A.K. Verma, given by the respondents are as follows:-

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R. K. Khosla A. K. Verma

(i) Year of SCRA Examination	1969	1971
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(ii) Date of appointment as SCRA	13.1.70	21.2.72
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(iii) Date on which each should have completed apprenticeship	12.1.74	20.2.76
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(iv) Date of clearing External examination (AMIE)	10.3.75	7.2.77
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(v) Date of appointment as IRSME Probationers	10.3.75	21.2.76
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(vi) Total time taken in clearing Apprenticeship	5 years 2 months	4 years 11 months"
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13. Therefore, respondents have denied that the representation of the applicant has been rejected arbitrarily as alleged rather it is stated that the seniority of the applicant has been depressed in accordance with instructions issued in the year 1970.

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14. Besides that respondents have also pleaded that the application of the applicant is hopelessly barred by time and the same is liable to be dismissed on this score alone. (5)

15. We have heard Shri B.S. Maine, counsel for applicant and Shri P.S. Mahendru, counsel for respondents and have perused the material on record. We have also carefully considered the rival contentions and have gone through the records.

16. There is no dispute to the facts that the applicant has not been able to qualify both the parts within the period of 4 years or even within the extended period of one year, i.e., within a total period of 5 years. However, applicant cleared the said examination in a total period of 5 years and 2 months.

17. Shri B.S. Maine, counsel for applicant relying upon the judgement of the Allahabad Bench of CAT in the case of A.K. Verma (supra), stated that the same is fully applicable to the case of the applicant and the applicant is entitled to get the benefits on the ratio of the aforesaid judgement. Learned counsel further emphasised that the applicant is being met with hostile treatment and discrimination while other candidates are being given the benefits and their seniority is being reckoned from the date when they have completed their apprenticeship of 4 years. To further support his case he also relied upon the judgement of Hon'ble Supreme Court in

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Amrit Lal Berry vs. Collector of Central Excise New Delhi & Ors. (1975(1)SLR (SC) 153. The relevant portion is as under:-

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"Constitution of India, Article 141 - Judgement of Supreme Court - Effect of Supreme Court declares law and the department is duty bound to give effect to the law declared by Supreme Court - Not to be confined to the parties before the court".

18. Relying upon the aforesaid judgement, learned counsel for applicant submitted that once a judgement is given by the competent court of law the department cannot deny the benefit of that judgement to the persons who are similarly placed in similar situation. He further submitted that in this case the only bone of contention is letter dated 10.4.1970 issued by the Ministry of Railways (Railway Board) on the basis of which the respondents have stated that the applicant cannot be assigned seniority from the date he has completed his 4 years apprenticeship or has passed examinations. It is an admitted case of respondents themselves that in certain cases this particular letter had not been strictly adhered to and it has been so observed even in the judgement of the Allahabad Bench in A.K.Verma's case (supra) in para 7 as under:-

" From the perusal of the counter affidavit of the Railway Administration it is clear that the Railway Administration has claimed that in

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almost all the cases, the aforesaid circular has not been followed. Therefore, the contention of the learned counsel for the petitioner is not without force that the said averment is deliberately vague".

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19. From the perusal of the counter affidavit filed by the respondents in this case, we also find that the respondents in this case also admits that this letter dated 10.4.1970 has not been strictly adhered to and seniority of some of the candidates such as S/shri S.P. Singh, M.L.Gill, A.Mishra, R.Chandra and P.Bahadur was not depressed. In this context para no. 4.12 of the counter clearly shows that the competent authority had exercised his discretion towards those candidates and had not depressed their seniority. When the counsel appearing on behalf of respondents was confronted with the situation he tried to make a distinction between batches i.e. batches prior to 1967, 1967 and afterwards and submitted that since prior to 1967 batch they were not covered under the instructions dated 10.4.1970. It was only 1969 batch and afterwards who were covered under the said instructions Learned counsel for respondents further submitted that keeping in view the same the department could have terminated the apprenticeship of the candidates who failed to pass examinations like applicant but the department had taken a lenient view granting relaxation to applicant to appear again instead of terminating apprenticeship giving a warning that in case he fails to qualify the same, his apprenticeship would be terminated.

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20. However, we are unable to agree with this contention raised by the respondents because as far as the batches prior to 1967 are concerned the department itself had exercised its discretion in favour of those candidates and in the case of A.K.Verma (Supra) the said instructions dated 10.4.1970 were held to be not applicable and the seniority of Shri Verma was restored. Since the applicant is of 1969 batch and ~~in~~ case we strictly apply the instructions, as contained in the letter dated 10.4.1970, that would amount to discrimination because the department is unable to show any reasonable classification between the batches 1969 and 1971 as to why these instructions should be applied particularly in the present case.

21. Besides that we may mention here that the instructions dated 10.4.1970 are meaningless because the department has not terminated any of the Apprentices who failed to qualify the concerned examinations even within the extended period of one year. In this context we ~~may~~ also quote the observations made by the Allahabad Bench of CAT in the case of A.K.Verma (Supra) in para no. 11:

"Applying this rule the petitioner can be placed next to those who passed 4 years examination earlier to him but it cannot be interpreted to mean that the petitioner's appointment would be deferred or he would be made junior to all those who were selected during the period of one year for which his training was extended. Therefore, deferment of petitioner's appointment by a year was contrary to law and if he

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is made junior on that account to all those who were selected during the period of one year by which his training was extended then that would tantamount to subjecting him to double jeopardy, that is first delaying his appointment by an year and then making him junior to all those who were selected during the extended period."

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22. Therefore, from whatever angle we may examine the instructions as contained in letter dated 10.4.1970 that cannot stand in the interest of natural justice and applicant's seniority cannot be depressed just because he has failed to pass the examination to be conducted by external bodies.

23. Learned counsel for the respondents has also stated that the OA is hopelessly time barred and it should be rejected summarily on the ground of limitation. In reply to this, learned counsel for applicant referred to the judgement delivered by 5 Judges Bench of Hon'ble Supreme Court in the case of K.C. Sharma & Ors. vs. Union of India & Ors (AISLJ 1998 (I) page 54 wherein the Hon'ble Supreme Court has held as under:-

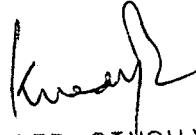
"OM of 5.12.1988 running allowance, limitation, delay, Rule 2544 R-II - Earlier validity of retrospective amendment of rule 2544 by OM 5.12.1988 was examined by CAT and was quashed - Appellants also filed application seeking similar benefit but rejected due to delay and bar of

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limitation.- Supreme Court held that CAT should have considered application on merits - Condoned delay and allowed this application".

24. Relying upon the aforesaid judgement we are of the considered view that the bar of limitation will not apply in the present case.

25. In the result the O.A. succeeds and is allowed. Applicant is entitled to get the relief of seniority in accordance with the rules and instructions on the subject. No costs.


(KULDEEP SINGH)
MEMBER (J)

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(S.R. ADIGE)
VICE CHAIRMAN (A)