

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.168/2000

New Delhi this the 13<sup>th</sup> day of July, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)  
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

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1. Narender Singh, Cook,  
S/o Shri Jeet Singh,  
Catering Deptt,  
NDLS Division,  
New Delhi-110001.
2. M. Subhash, Cook,  
S/o Shri S. Murti,  
Catering Deptt,  
NDLS Division,  
New Delhi-110001.
3. M. Gopalakrishnan, Cook,  
S/o Shri Krishnan Nair,  
Catering Deptt.,  
NDLS Division,  
New Delhi-110001.

...Applicant

(By Advocate Mrs. Prasanthi Prasad)

-Versus-

1. Union of India through  
represented by Secretary,  
Ministry of Railways,  
Rail Bhawan,  
New Delhi.
2. General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.
3. Chief Commercial Manager,  
Catering Department,  
Headquarters, Baroda House,  
Northern Railway,  
New Delhi.
4. Divisional Railway Manager,  
D.R.M. Office,  
Chelmsford Road,  
New Delhi-110001.
5. Senior Divisional  
Personnel Officer,  
Northern Railway,  
D.R.M. Office,  
New Delhi.
6. Shri Ram Prasad,  
S/o Sh. Bal Bahadur,  
C-I-C, Northern Railway,  
Base Kitchen,  
New Delhi.

7. Shri Shyam Lal,  
S/o Shri Kishan Chand,  
C-I-C, Northern Railway,  
Base Kitchen,  
New Delhi.

...Respondents

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(Respondents 1-5 through Advocate Shri R.P. Aggarwal)

(Respondents 6&7 through Advocate Shri H.D. Pandey)

O R D E R

By Mr. Shanker Raju, Member (J):

The present application is contested by applicants No.1&3, as applicant No.2 died during the pendency of the OA.

2. The applicants have sought quashing of the seniority list of Senior Cooks/Cooks whereby they have been shown junior to respondents No.6&7 viz. Shri Ram Prasad and Shri Shyam Lal respectively and also sought quashing of the transfer order of respondent No.6 to Delhi Division and also sought accord of seniority and further promotion with all consequential benefits.

3. The applicants were appointed as casual labours and regularised as Catering Khalasis after screening on 28.9.91. The applicant No.1 was promoted as Waiter on 1.3.93 and as an Assistant Cook on 4.10.95 and as a Cook w.e.f. 16.6.98. Prior to 1996 according to the prevalent policy employees could have been transferred between different divisions and headquarters. On 22.5.96 the order of decentralisation of class II catering post was issued by the respondents, which, inter alia, included Senior Cook and Cook and this has been made effective w.e.f. 1.4.96. As regards vacancies in the categories upto 31.3.96 action was to be taken to fill up the same by the headquarters. The above said posts in consultation

with the recognised unions have been decentralised and have been put under the administrative control of the respective DRMs. It is the grievance of the applicants that one Ram Prasad, Respondent No.6 (hereinafter referred to as R-6) who had been working in the Base Kitchen Division Headquarters was transferred to Delhi Division after the decentralisation order. The objection against the transfer order has not been replied to by the respondents. On issuance of seniority list of Senior Cook and Cook the applicant has taken the objection relating to inclusion of R-6 as well as R-7 Sh. Shyam Lal, who have been brought after decentralisation to Delhi and it is contended that they were juniors to the applicants. The applicants have challenged the action of the respondents and preparation of the seniority list for the purposes of filling up the vacancies of Cook on the ground that they have not been accorded the right seniority and R-6 and R-7 have been arbitrarily brought in the seniority list by putting them at Delhi Division despite decentralisation order being effected from 1.4.96. It is also contended that R-6 was appointed at Base Kitchen Headquarter contrary to the policy and illegally transferred to catering section and was placed above the applicants in the seniority list violating his fundamental rights. The applicants have also questioned the seniority of R-6 by contending that he was appointed in 1986 whereas the applicants have been appointed prior to him but he has been placed senior to them. The learned counsel of the applicant by drawing our attention to letter regarding decentralisation contended that even if the decentralisation has to take effect from the letters of 17.5.95 and 25.5.95, R-6 and R-7 not of Delhi Division could not have been placed above them in the

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seniority list maintained at Delhi Division in violation of the decentralisation orders. The transfer had taken effect, admittedly after the decentralisation. By referring to a letter written by the Divisional Secretary of the Union it is stated that irregular posting of Ram Prasad, Cook and Shyam Lal, Master Cook Delhi Division has been established to have affected the promotion of the applicants and is contrary to the decentralisation scheme of the respondents. Also placing reliance on the meeting of the union with the respondents and by referring to one of the items, which has been discussed therein, it is contended that R-6 was screened on 1.8.69 and was promoted on 2.8.91 and as a Senior Cook on 11.1.2000 whereas applicant No.1 who was appointed in 1977 could only be screened in 1991 resulting in substantial loss of seniority. As regards R-7 it is stated that he was transferred as a Master Cook and the post of Master Cook was controlled by Headquarters office and the transfer was against the vacancies which arose after 1997 and as such after decentralisation he could not have been accommodated as such. It is contended that R-6 was promoted as Cook on 21.2.97 and posted on 27.3.97 as per CA-5 letter of the respondents dated 27.3.97 and contended that he could not have been accommodated as Cook as decentralisation has become effective on 1.4.96. On existing vacancy on 31.3.96 R-6 was not competent to be appointed as he was transferred to Delhi Division on 10.3.98 after decentralisation and transferred on division basis after 21.5.96 is not legally tenable as any vacancy arisen therein is to be under the administrative control of the respective division. In this background it is stated that had R-6 and R-7 would not been illegally accommodated in Delhi Division against the

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decentralisation scheme the applicants would have certainly ranked senior and would have earned promotion to the next post of Senior Cook.

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4. Rebutting the contentions of the applicants the official respondents in their reply stated that R-6 and R-7 are admittedly senior to the applicants and R-6 was posted to Delhi Division before decentralisation and Shri Shyam Lal, Master Cook was transferred to Delhi Division against the existing vacancy as the post of Master Cook is controlled by the Headquarter. Regarding seniority of Ram Prasad vis-a-vis applicants it is contended that he was promoted as Cook on 21.2.97 whereas applicant No.1 was promoted as Cook on 18.8.98. The respondents have also taken an objection regarding limitation by stating that the cause of action had arisen on account of the alleged transfer of R-6 on 31.6.96 and 21.12.97 when he was promoted. The OA being filed in January, 2000 is beyond the statutory period of limitation envisaged under Section 21 of the Administrative Tribunals Act, 1985. As regards the decentralisation effected by letter dated 25.2.96 it is stated that therein it is specifically provided that vacancies in categories upto 31.3.96 were to be filled by Headquarter office as such by referring to letter dated 27.3.97 at CA-5 it is contended that there were 10 vacancies on 31.3.96 in the category of Cook and on account of three vacancies in Headquarter office Sh. Ram Prasad was posted in Delhi Division as a Cook and the decentralisation would not have any effect as this has been done against the vacancies available before 1.4.96. As regards the objection to seniority of Senior Cook and Cook issued on 31.5.99 it is stated that no objection against

the same have been received by the respondents regarding assignment of seniority to R-6 and R-7. As the applicants were below in the seniority list they have not been called for selection for the post of Cook/Head Cook. As the posts lying vacant on 31.3.96 in different divisions of the Northern Railway were to be filled by Headquarter as such the orders passed with regard to R-6 and R-7 are perfectly legal. As admittedly, the applicants are juniors to R-6 and R-7 they have been rightly accorded the seniority. (21)

5. R-6 has also defended the contentions of the applicants and stated that applicants 1-3 are juniors to him and as R-6 was promoted as Cook vide order dated 21.9.97 against the vacancy available upto 31.3.96 and there is no challenge to the order passed by the respondents on 23.3.97 the applicants are estopped from challenging the same and their OA is hit by limitation. It is also stated that the applicants have already been promoted as Senior Cook vide order dated 10.1.2000. Against the available vacancies upto 31.3.96 the Headquarter office promoted the respondents in Delhi Division which is perfectly legal in accordance with the scheme of decentralisation. The vacancies arisen only after 1.4.96 were to be placed under the administrative control of the respective DRMs.

6. R-7 has also objected to the contentions taken by the applicants and stated that he was posted as a Master Cook at Allahabad Division and was transferred vide letter dated 11.9.97 and this change was effected on 20.2.98. This has been done on an existing vacancy at Delhi Main Station and as the letter dated 22.5.96 does

not, *inter alia*, include the post of Master Cook, against which there is no decentralisation order and only the post of Cook and Senior Cook were covered, his transfer is perfectly legal and is not against the decentralisation scheme.

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7. In the rejoinder to the replies of the respondents the applicants have reiterated their pleas taken in the OA.

8. We have carefully considered the rival contentions of the parties and also perused the material on record.

9. As regards the issue of seniority of R-6 and R-7 are concerned, we find that R-6 was promoted as a Cook earlier to the applicants and as such was admittedly senior to applicants. As such in absence of any challenge to the seniority of R-6 as Cook the applicants now belatedly cannot challenge the same and it would amount to unsettling the settled position in the matter of seniority which has been held illegal in view of the ratio of the Apex Court in K.R. Mudgal v. R.P. Shah, 1996 SCC (L&S) 115. Apart from it the contention of the applicants that R-6 was placed at Base Kitchen and his seniority was maintained separately would be of no avail to the applicants. R-6 being senior altogether to applicants, we are of the confirmed view that R-6 is senior to the applicants and as such the grievance of the applicants as to the seniority of R-6 is not legally tenable at this belated stage.

10. As regards the posting of R-6 at Delhi Division, as contended by the applicants, affecting their seniority in the post of Cook is concerned, the same is also not legally tenable on the ground that the decentralisation scheme was introduced by their letters issued on 17.5.95 and 25.5.95 wherein the cut off date is 1.4.96, from when the decentralisation would come into effect. It is also mentioned in the said scheme that vacancies in the above categories upto 31.3.96 would not be affected by decentralisation and the same would be filled up by the HQ office. We have also perused the letter dated 27.3.97 issued by the respondents wherein we find that 10 vacancies were available to the respondents in the category of Cook on 31.3.96 on all the Divisions. A selection was held and as three vacancies in the HQ were available R-6 was posted at Delhi Division where a vacancy of Cook was available. As such R-6 has been accommodated in Delhi Division as a Cook against the vacancy available on 31.3.96. The applicants have failed to establish that the vacancy on which R-6 has been posted at Delhi Division does pertain to vacancies arisen after 31/3/96. In this view of the matter and as the record produced by the respondents do indicate the vacancy position and the vacancy is of 31.3.96 as per the scheme of decentralisation the same could not have been affected by the letters issued as referred to ibid and the action of the respondents by posting R-6 as Cook to Delhi Division cannot be found fault with.

11. As regards the contention of the applicants that in the meeting of the union illegality has been highlighted and the Divisional Secretary has written regarding irregular posting of R-6 and R-7 are concerned,

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we find that the decision has not been taken at the official level and what has been written is by way of a letter to the senior DPO by the Divisional Secretary of the Union which cannot be taken cognizance, in view of the record maintained by the respondents and their valid decision for posting R-6 at Delhi Division against the vacancies arisen before 31.3.96. As such we are of the confirmed view that the respondents have not committed any illegality and have not gone against the decentralisation scheme. As the posting of the R-6 is not found fault with and is perfectly legal as per the decentralising scheme being the senior he has been rightly accorded seniority over the applicants in Delhi in the post of Cook for the purposes of further promotion as Senior Cook.

12. As regards the contention of the applicants regarding transfer of R-7 from Allahabad Division to Delhi Division is concerned, we find that the same is not against the rules or the decentralising scheme. In fact the contention of R-7 is correct as to the fact that the post of Master Cook has not at all been included in the decentralised scheme circulated by the respondents vide letter dated 25.5.95. From the perusal of this decentralising scheme we find that what has been included are Senior Cook and Cook and there is no mention of the post of Master Cook in the said letter. As the post of Master Cook is not included in the said decentralising scheme, the embargo of placing them under the administrative control of respective DRMs would not have any application on R-7. Furthermore, transfer from one Division to another Division, which is not against the decentralising scheme is within the jurisdiction of

Northern Railway and discharged by HQ. The transfer of R-7 has been affected against an existing vacancy at Delhi Main Station at his own request and this is apparent from the letter issued by the respondents on 11.9.97, where he has been transferred to Delhi on an existing vacancy as Master Cook. The stand of the official respondents with regard to R-7 is that he has been transferred <sup>to</sup> by HQ office to Delhi Division against the existing vacancy as the post of Master Cook was controlled by the HQ office is correct and is not established to be contrary by the applicants. As such we find no fault in transfer of R-7 against existing vacancy and being senior he has been rightly accorded seniority over the applicants. In this view of the matter and having regard to the discussion made and reasons recorded, we find the present OA as bereft of merit and the same is dismissed, but without any order as to costs.

S. Raju  
 (Shanker Raju)  
 Member (J)

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V.K. Majotra,  
 (V.K. Majotra)  
 Member (A)

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