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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.653/2000
M.A.No.870/2000

Hon'ble Shri V.K.Majotra, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 4th day of May, 2001

1. Atma Ram (T.No.503)
2. Chhote Lal (T.No.526)
3. Bharat Singh (T.No.508)
4. Ashok Kumar (T.No.497)
5. Anil Sharma (T.No.501)
6. Nandan Singh (T.No.515)
7. Kapil Dev (T.No.499)
8. Satyapal (K) (T.No.517)
9. Sahji Kurian (T.No.530)
10. Som Dutt Bhardwaj (T.No.537)
11. Megh Shyam Gupta (T.No.519)
12. Mohd. Furkan (T.No.546)
13. Gurpreet Singh Sokhi (T.No.392)
14. Vivek Sharma (T.No.397)
15. Rohtash Singh Yadav (T.No.542)
16. Bhand Prakash Bhatt (T.No.512)
17. Prakash Chandra (T.No.548)
18. Ram Pratap (T.No.394)
19. Inder Pal (T.No.399)
20. Raj Pal Bajaj (T.No.509)
21. Jai Prakash (T.No.511)

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22. Om Prakash Tripathi (T.No.386)
23. Kanwar Lal (T.No.510)
24. Bhagwant Singh (T.No.518)
25. Rajesh Kumar Gupta (T.No.528)
26. Puran Mal (T.No.387)
27. Ajit Singh Jangra (T.No.544)
28. Dushyant Kumar (T.No.398)
29. Styx Pal (T.No.507)
30. Ramesh Chandra (T.No.513)
31. Deen Dayal (T.No.520)
32. Jagdev Singh (T.No.547)
33. Mohinder Singh (T.No.498)
34. Ram Awadh Ram (T.No.550)
35. Sukh Beer Singh Dhul (T.No.538)
36. Iswar Singh (T.No.384)
37. Angad Singh (T.No.549)
38. Sukh Beer Singh Godara (T.No.523)
39. Om Dutt (T.No.527)
40. Ashok Kumar 'I' (T.No.521)
41. D.B. Gupta (T.No.536)

(All the applicants working as Grade-II
Technicians under Sr. Divisional Electrical
Engineer, TRS, Tughlakabad, New Delhi)
(None present for the applicants)

Versus

Union of India through
1. General Manager
Western Railway, Church Gate
Mumbai

2. Divisional Railway Manager
Western Railway, Kota.

3. Sr. Divisional Electrical Engineer
TRS, Tughlakabad
New Delhi. Respondents
(None)

O R D E R(Oral)

By Mr. Shanker Raju, Member (J):

MA 870/2000 for joining together is allowed.

2. None for the parties even on second call. Since this matter pertains to the year 2000 and it has been listed for regular hearing, we proceed to dispose of the matter on the basis of the available pleadings on record under Rule 15 and 16 of the Central Administrative Tribunal (Procedure) Rules, 1987 even though the concerned parties are not present today, when the case was called twice.

3. In this OA the applicants seek the following reliefs:

- (a)
- (b) Set aside and quash the impugned orders dated 12.8.1999 and 2.12.1999 annexed to the present application at Annexure-1 and 2 respectively.
- (c) Direct the respondents to assign proper seniority to the direct recruits, who were posted in the regular service vide order dated NIL, August, 1990 (Annexure-3) and are senior from other employees, who had joined Tughlakabad after submitting options.
- (d) Direct the respondents to consider all the present applicants for the post of Grade-I Fitter in the scale of Rs.4500-7000 as per Railway Board's instructions dated 13.8.1999 and from the date the juniors have been promoted in higher grades along with consequential benefits."

4. The brief facts of the case are as under:

4.1. The applicants, after being sponsored by Employment Exchange for the selection as Electric Fitter Grade-III in the scale of Rs.950-1500 in the Tughlakabad Locoshed, were selected after qualifying the written test as well as interview vide order dated 28.11.1989 and the applicants have been sent for training for six months at Tughlakabad Locoshed. Thereafter, the applicants were trade tested and were posted as Grade-III Fitter in August, 1990. Against the applicants names, in the seniority list of August, 1990, their date of posting have been shown as 4.9.1990. The contention of the applicants is that they were posted at Tughlakabad under the same Scheme of 1988. In the said Scheme, options were asked from various departments of Western Railway to other employees who were interested to join at Tughlakabad. Some employees working as Khallasis (Class-IV) in the scale of Rs.750-940 and Sr. Khallasi in the scale of Rs.810-1150 joined at Tughlakabad in the same grade which they were previously holding. The provisional seniority lists, which were circulated vide orders dated 20.11.1989 and 8.2.1990 and inviting objections for which time limit was given for one month, but the administration started conducting trade test for Fitter Grade-III before completion of one month given for objections and further without giving one month's training to SC/ST candidates before conducting trade test started holding test of these SC/ST employees also. The results of trade test for the post of

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Fitter Grade-III was declared after four days of completion of trade test. The applicants contention is that the respondents have not followed the rules and regulations pertaining to the screening and trade test. The further grievance of the applicants is that, in the seniority list dated 3.11.1992, whereas those employees who had joined Tughlakabad on option basis were posted as Grade-III Fitter on ad hoc basis vide order dated 2.3.1990. The respondents have not confirmed regular posting with regard to those group of employees till the direct recruit joined in the regular posting. It is contended that in the seniority list of 8.2.1990 certain persons have been chosen as Khallasis and have been placed senior to the applicants who were directly promoted to Class-III Fitter whereas in the channel of promotion, the next promotion for Khallasies are Sr. Khallasi in the pay scale of Rs.810-1150(RP). This action of the respondents is clearly in violation of the Rules and Instructions on the subject. It is further alleged that the respondents had accorded promoted to all these Class-IV employees when the cadre of Tughlakabad Shed was open. The cadre was closed on 31.12.1990 and during this period, the promotion could not have been effected as the seniority of the incumbents was not fixed. It is an admitted fact that these group of employees were working on ad hoc basis as Fitter Grade-III, in the provisional seniority list issued on 9.12.1991, as they were shown as Khallasis and Sr. Khallasis. The grievance of the applicants is that though it has been shown junior to other group of

employees but it was not within their knowledge and this has been done in violation of Rules and Instructions on the subject. Subsequently, in the month of January, 1994 a combined test was held for promotion to Grade-II post in the scale of Rs.1200-1800 and the result was declared on 10.5.1994 and subsequently the process for next higher promotion, i.e., Grade-I Fitter in the scale of Rs.1320-2040 was started in the year 1996 and the applicants were not called as they were shown junior to the other group of employees. According to the applicants, they are direct recruits and were also eligible for the test but were not called on the ground that they were shown juniors from other group of employees. It is further contended that one Shri Dori Singh and Shri Brahm Shankar were juniors to the applicants, and were accorded promotion as Grade-I Fitter. The applicants challenged the impugned orders as well as sought to assign seniority from August, 1990 on the ground that they had been regularised and posted on regular post earlier than the other group of employees, who joined Tughlakabad after giving options but they were shown to be promoted in Grade-III Fitter on ad hoc basis. It is further contended that whereas in the seniority list dated 9.12.1991, the other group of employees who were shown as Khallasi and Senior Khallasi whereas the present applicants were regularised in Fitter Grade-III. The contention of the applicants is that the channel of promotion is Khallasi, Sr. Khallasi and Fitter Grade-III and this has been violated by the respondents by promoting the employees working as Khallasis directly in Fitter

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Grade-III. It is further contended that the provisional seniority list was issued on 20.11.1989 and 8.2.1990 inviting objections within a period of one month but trade tested for Fitter Grade-III was conducted before expiry of one month and without/when participating to the SC/ST employees, the selection was finalised.

5. The respondents in their reply took a preliminary objection by contending that the applicants firstly have not assailed the seniority list issued in August, 1990 and by referring a letter dated 15.1.1999, Annexure-R2 issued by DRM, Western Railway states that once the seniority is finalised, it cannot be reopened to unsettle the settled position. The respondents further contended that the OA is barred by limitation as without according proper place in the seniority of August, 1990 the applicants claim for promotion to Fitter Grade to the next higher post cannot be considered. It is contended by the respondents that Shri Dori Singh and Shri Brahm Shanker had challenged their promotion orders before the applicants have been accorded their seniority in accordance with law. The Tribunal had given directions in OA No.84/94 dated 30.4.1998 and further promotion was rightly accorded to them. By referring to Para 302 of the Indian Railway Establishment Manual, it is contended that the seniority of Direct Recruits has to be maintained only after the regular absorption after completion of the training and due

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process and as for the post of ELF Gr.-III direct and imparted training for six months, their seniority has to be reckoned from the date of their regular absorption. It is also contended that the employees working in Tughlakabad Shed who were not fulfilling two years service in lower grade the post of ELF Gr.I downgraded temporarily to the post of ELF Gr.III as per the orders of competent authority as well as they had been shown as Gr.III in the seniority list rightly. It is also the contention of the respondents that since the employees promoted against the ranker quota have passed the trade test and were working continuously without any break as such the promotion cannot be treated as on ad hoc basis and the seniority is to be reckoned as per the rules. Lastly, it is contended that the applicants had never made any representation about their seniority and they have also not made the affected employees as a party as such this application is not maintainable as time barred.

6. We have carefully considered the pleadings of the case and perused the material on record. In our considered view the applicants have not entitled for any relief firstly on the ground that the present OA is hopelessly time barred by limitation as the applicants are seeking revision of the seniority list issued in the year August, 1990 which he never agitated before the authorities and secondly as per the circular issued by Railways on 15.1.1999 the

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seniority cannot be unsettled after the long lapse of time in this view of the decision of the Hon'ble Apex Court in B.S.Bajuwa Vs. State of Punjab, (1998) 2 SCC 523 wherein it has been held that seniority once settled cannot be reopened after long lapse of time as to unsettle the settled position. The claim of the applicants cannot be accorded to them unless their seniority is revised w.e.f. August, 1990. The applicants have moved this Tribunal claiming this regarding revision of seniority pertaining to 1990 only in the year 2000 without any explanation for delay and without filing any application for condonation of delay. In view of the ratio laid down by the Hon'ble Apex Court, Constitutional Bench, S.S.Rathore Vs. State of M.P. & Others, (1989) 4 SCC 582 this application is hopelessly time barred. Further more, we cannot interfere in the seniority list which had been issued in August, 1990. Further promotion accorded to the incumbents which amounts to unsettle the settled position. Further he has also not impleaded the necessary parties who are likely to be affected from the decision of the Tribunal, in case the present OA is allowed. Therefore, the OA suffers from the non-joinder of necessary parties. In this view of ours we are fortified by the ratio of Hon'ble Apex Court in Gopabandhu Biswal Vs. Krishna Chandra Mohanty, (1998) 4 SCC 478.

7. Apart from the limitation, on merits the contention of the applicants is that their juniors,

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Shri Dori Singh & Shri Brahm Shanker, have been accorded promotion, we find from the record that the Tribunal vide order dated 27.4.1998 in OA No.84/94 has accorded seniority to the above two persons with all benefits and as such in view of the directions of the Tribunal these two incumbents have been assigned seniority and were accorded the promotion. The contention of the applicants that they had been discriminated and their juniors have been accorded seniority earlier to them, is not legally sustainable.

3. The contention of the applicants on merits is also liable to be rejected on the ground that after being selected for the post of ELF Grade-III and after completion of the six months training and passing the final retention test of ELF Grade-III, they have been posted at Tughlakabad in September, 1990. The seniority of the applicants has been correctly assigned from the date of their regular absorption as per due process as envisaged in Chapter 302 of IREM-1989. As no SC/ST candidate applied for the pre-trade test screening and thereafter no objection has been raised to the action of the respondents, the contention of the applicants that the pre-requisite of training to SC/ST prior to trade-test has not been followed is of no avail to them. The contention of the respondents is correct as in the post where trade test is involved the same cannot be filled up on the ad hoc basis for more than 42 days without passing the trade test. As the employees promoted against the

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ranker quota have passed the trade test and had worked continuously without break their promotions were rightly not treated as ad hoc basis. As regards the consideration of Khallasis and Sr. Khallasis for promotion as ELF Gr.III, the same is permissible under the procedure laid down by the respondents and as per the fundamental rules. The applicants representation dated, 25.6.1999 was duly replied with reasons vide letter dated 20.9.1999. As the seniority had already been settled, it cannot be reopened after 1.4.1998 as per the instructions by the respondents.

9. In this view of the matter, having regard to the discussions made above and our reasons recorded, we find no merit in the present OA and the same is dismissed but without ~~no~~ ^{any} order as to costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/

V.K. Majotra

(V.K. MAJOTRA)
MEMBER(A)