IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
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O.A.No. 936/89
O.A.No. 360/88.

Date of decision: 8-6-95

Hon'ble Shri S.R. Adige, Member (A)

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

K.N. Saxena,
S/o late Shri I.N. Saxena,
Sr. Commercial Officer (Rates),
Northern Railway Headquarters,
New Delhi. ... Applicant

(By Advocate Shri KNR Pillai)

versus:

1. Union of India, through
The General Manager,
Northern Railway, New Delhi.

2. Shri DP Khanna,
Sr. Transportation Officer,
Northern Railway Headquarters,
New Delhi.

3. Shri SC Seth,
Divisional Operating Supdt.
Northern Railway, Ambala.

4. Shri BP Singh,
Divisional Operating Supdt.
Northern Railway, Moradabad.

5. Shri HS Sandhu,
Asstt. Commercial Supdt.,
Delhi Division, Northern Railway,
New Delhi.

6. Shri Amarjeet Singh,
Divisional Transportation Supdt.,
Northern Railway, Jammu.

7. Shri NN Srivastava,
Divisional Operating Supdt.,
Northern Railway, Allahabad.

8. Shri RC Srivastava,
Divisional Commercial Supdt.(Catering),
Northern Railway, Lucknow.

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9. Shri AC Chadha,
Asstt. Transportation Officer,
Northern Railway, Baroda House,
New Delhi.

(By Advocate Shri P.S. Mahendru)

O.A.No. 360/88.

A.P. Chaudhary & another,
S/o Late Dr. J.R. Chaudhary,
Statistical Officer,
Northern Railway Hqrs.,
New Delhi.
B-19, Satyavati Colony,
Ashok Vihar Phase III,
Delhi-110 052.

B.N. Singh,
late Shri Balram Singh,
Divisional Commercial Superintendent,
Northern Railway, Moradabad.
B-19, Satyavati Colony,
Ashok Vihar Phase III,
Delhi-110 052.
.. Applicants

(By Advocate Shri KNR Pillai)

versus:

Union of India
through the
General Manager,
Northern Railway. .. Respondent

(By Advocate Shri PS Mahendru)

O R D E R

/ Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial) /

In this Order two O.As. are being dealt with together as the issues raised in both the cases are similar in nature. In these O.As. three applicants are involved, namely, S/Shri K.N. Saxena, A.P. Chaudhary and B.N. Singh. The applicant in O.A. 936/89 was recruited as a commercial apprentice in Commercial Department whereas

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in O.A. No. 360/88, applicant No. 1 is an officer belonging to the Transportation (Traffic Department) and applicant No. 2 is an officer in the Commercial Department of the Northern Railway.

2. The Supreme Court, while disposing of Special Writ Petition, in Virendar Kumar, General Manager, Northern Railways v. Avinash Chandra Chadha & Ors. (Civil Appeal No. 2013/90 dated 25.4.1990 (copy enclosed)) stated that the directions given by them would be subject to the petitions which are already pending before the Central Administrative Tribunal, New Delhi. The OAs pending at the time of the judgment of the Hon'ble Supreme Court have been referred to in their judgment which include the present O.As. Another case which was pending at that time has been subsequently decided by the Tribunal in B.R. Sharma v. UOI & Ors. on 3.12.1991 (OA No. 397/88) together with two other connected OAs 563/88 and 677/89 (Annexure 6).

3. The learned counsel appearing on behalf of the applicants in the two OAs before us stated that the applicant had sought a number of reliefs but at the time of hearing he pressed only one relief given in para 8(b) in OA No. 936/89 which reads as follows :-

> " direct that the seniority in Group B Service of the applicant and respondents 2 to 8 shall be based on the position in the Group B panel of 13.3.1987 which incorporates the result of the first Group B selection after revision of seniority in 1983 in pursuance of the judgment of the Delhi High Court in LPA 220/72 and if Traffic Apprentices are to be given higher seniority in Group B by interpolation in earlier Group B panels, officers from commercial categories like the applicant who were not parties to the litigation, should not be allowed to suffer but should be considered for similar interpolation so that the relative seniority position established by the panel of 13.3.87 is not varied to their disadvantage."

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The applicants have also filed MA No. 3633/94 in OA No. 936/89 and MA No. 3659/94 in OA No. 360/88 for carrying out certain amendments in the OAs but these have also not been pressed at the time of hearing. For the sake of convenience, the arguments of Sh.KNR Pillai, in OA 936/89 are being referred to here which has been adopted by Sh. Bali.

4. After hearing both the learned counsel and perusing the judgment of the Supreme Court in Virendar Kumar, General Manager, Northern Railways v. Avinash Chandra Chadha & Ors.(Supra) and the relevant judgments mentioned therein, the grievance of the applicants is that the respondents have not given them the benefit of the judgment of the Allahabad High Court in Harish Chandra Srivastawav. General Manager, Northern Railway dated 3.12.1991 as other persons belonging to the Commercial Department or the Transportation Department who were similarly situated. Shri KNR Pillai, learned counsel for the applicant, has, therefore, submitted that a similar order as passed by the Tribunal in D.R. Sharma's case may also be given in this case.

5. In order to appreciate the facts relating to the present applications, reference may be made to the relevant portions of the judgment of the Hon'ble Supreme Court in Virendar Kumar's case wherein it has been stated that Class III service in the Traffic and Transportation Department consists not only of Traffic Apprentices but also of other categories. However, the promotion to Class II post is not made exclusively from Class III

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service of Traffic and Transportation Department. The incumbents of Class II service in Commercial Department are also entitled to be considered for promotion to Class II posts. Hence, a combined seniority list of Class III service both in the Traffic and Transportation Department as well as the Commercial Department, is prepared. The promotion to further posts viz., to Class I posts and to the posts of Junior Administrative Grade are thereafter made from the incumbents of the Class II posts. The respondents had filed a Writ Petition in the Delhi High Court being aggrieved that their seniority in the cadre of Relieving Transportation Assistants was not correctly fixed according to the quota rule of 25 : 75. The learned Single Judge rejected the petition against which appeal was filed. The Division Bench in Letters Patent Appeal No.220 of 1972 did not agree with the learned Single Judge and decided the matter on merits condoning the delay in the circumstances of the case. The Division Bench stated as follows:-

> " By issuing the writ of mandamus in this case, we are only setting at rest the uncertainty and disparity which is prevailing in the various divisions of the Northern Railway in the matter of

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fixation of inter-se-seniority of Traffic Apprentices and Rankers. The Railway Administration have themselves admitted that in Allahabad division of Northern Railway, Seniority has been granted to Traffic Apprentices according to their quota against the vacancies which occurred from 1.4.54 onwards. In case of commercial apprentices who are similarly situated seniority has been assigned vis-a-vis remain according to their quota on the basis of their roster positions 1,5,9 etc. There is no reason why the appellants should be deprived of what is legally due to them even if they have approached this court after some delay.

For the reasons stated above, the Letters Patent Appeal is accepted, the judgment of the learned single Judge on question No.1 is set aside and reversed and we hold that the writ petition was not belated and was not liable to dismissal on the ground of latches. The find on question no.2, having been upheld by us, the appellants are entitled to the grant of writ of Mandamus directing respondents 1 to 3 to fix the seniority of Traffic Apprenstices, in the light of the observations made by thelearned single Judge and as upheld by us. The seniority list, Annexure E attached to the writ petition is quashed. The respondent Railway Administration shall draw the seniority list within 3 months from today and proceed to make confirmations and/or further promotions in the higher grade in accordance with law, rules and orders in force from time to time."

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This decision of the Division Bench is of July 30, 1975. Against this decision the Railways preferred a special leave petition which was dismissed. Thereafter, the Railwsys prepared a fresh seniority list in 1976. It appears that this seniority list took care of the grievances only of the employees who were parties to the petition. Against the said seniority list, therefore, some of the Traffic Apprentices filed a writ petition being Writ Petition No.948 of 1976 challenging the seniority. That writ petition was transferred to the Tribunal and numbered as T.A. No.246 of 1985. It appears that in the meanwhile in 1983, the Railways, in compliance with the Judments delivered by the High Courts of Allahabad and Punjab & Haryana prepared a fresh seniority list, and the Tribunal disposed of the transfer petition (TA No.246 of 1985) by order dated June 25, 1986. By this order, the Tribunal observed that the application before the Tribunal was to direct the respondent-Railways (the appellant herein) to quash the impugned seniority list, i.e. the seniority list of 1976 and to prepare a fresh seniority list and to make the confirmations and promotions in accordance with the fresh seniority list. The Tribunal observed that relief had already been granted by the Delhi High Court in LPA No. 220 of 1972 by its decision which is already referred to above. Hence, no fresh directions were necessary. The Tribunal also found that a

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fresh seniority list had been prepared in 1983 in pursuance of the directions given by the High Court. .... The Tribunal also made it clear that unless otherwise ordered by the competent authority or the High Court, as the case may be, the seniority list prepared in pursuance of the directions of the High Court shall be acted upon and :

> " the confirmations and promotions made on the basis of that list within a period of four months from the date of the receipt of this order. Further, promotions shall be made strictly in accordance with the list prepared in 1983 in pursuance of the directions of the High Court in LPA No.220 of 1972."

It appears, therefore, that the Railways had prepared a seniority list of 1983 in pursuance of the directions of the Delhi High Court in LPA No.220 of 1972 decided on July 30, 1975. The grievance of the petitioners in TA No.246 of 1985 (Writ Petition No.948 of 1976) was against the seniority list of 1976 and since that seniority list was superseded by 1983 list which the Tribunal observed was in pursuance of the High Court's directions, nothing survived in the grievance of the applicants there (viz., Chadha and others in that application). However, the applicants A.C. Chadha & Ors. in T.A.No. 246/95 filed contempt petition (CCP 17/87) in the Tribunal for non-implementation of the Tribunal's order, which the Tribunal passed the impugned order dated September 14, 1988, which was the subject matter of the Special Leave Petition in Virendra Kumar's case.

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6. Paragraphs 8 to 10 of the Supreme Court Judgment in Virender Kumar's case are quoted below:-

> " 8. Two additional facts need be stated. The combined seniority list which was prepared in 1983 of Class-III posts for promotion to Class-II posts was finalised in March 1987 and was made the basis of the postponed selection to Class-II service as per orders of the Tribunal on 9.12.1987, the Traffic Apprentices who became eligible for promotion in the first batch after revision of seniority were considered by a Review Departmental Promotion Committee and interpolated in the Class-II panels of 1972-73 and 1975-76. As a result, the seniority of the personnel from the Commercial Department was affected since direct recruit-Traffic Apprentices from the Traffic and Transportation Department were given seniority according to the quota and rota rule from 1954 onwards. Hence, M/s A.P. Chowdhary and K.N.Saxena, officers belonging to the Commercial Department approached the Tribunal by their applications Nos. 360 of 1988 and 936 of 1989 respectively, challenging the new seniority list, and also on the ground that they were not parties to the earlier proceedings.
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> 9. It further appears that three of the respondents, Chadha, Sandhu and Malik' filed an application before the Tribunal making a grievance that they were not given their due promotion. That application is also pending before the Tribunal.
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> 10. It also appears that the Departmental Promotion Committee prepared fresh panels-the first panel was for promotions to the posts which were vacant between 1972-73 and 1975-76 and the second for the vacant posts for the year 1978-79. In the second panel, KN Saxena stands selected ."

7. The Supreme Court finally came to the conclusion that the respondents had worked out the promotion of the applicants upto Class II Service on the basis of the new seniority list of the Class II Service upto 1983. It was also stated that the promotion to Class II and above were not the subject matter of the writ petition before the High Court and it was held that the Tribunal had gone

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beyond the scope of the original petition in giving relief to the applicants in the contempt petitions. The Supreme Court, therefore, held that the respondents (original applicants) were not entitled to claim in these proceedings as a matter of right promotions to any higher posts. The court also held that the respondents will not be entitled to the higher salary on the principle of " no work - no pay". In paragraph 13 of the judgment, the Supreme Court has also made the following observations :-

> " It is true that the appellant-Railways had failed to give correct effect to the decision dated July 30, 1975 of the High Court in LPA No. 220 of 1972 and had kept the matter hanging till this day for no fault of the respondents."

8. After referring to the judgment of the Supreme Court in the aforesaid case, the Tribunal in B.R. Sharma & Ors. v. UOI & Ors. (Supra) has given the following directions:-

> " In the conspectus of the aforesaid facts and especially keeping in view the position that S/Shri Narula, Gupta and Chadha had qualified in the test of 1978-79 we would direct that these three applicants should be considered for interpolation in 1972-73 panel if they are eligible according to their revised seniority and if they are also suitable according to their ACRs, provided the vacancies existed. In determining the vacancies it has also to be kept in view that if a junior has been included in the panel whose grading was not higher than that of any of the three applicants or if any junior who would not have come in the zone but was included even with a higher grading than that ofany of the applicants, he would have no claim over the three applicants. So far as Shri Ved Prakash is concerned, if he had failed in viva voce in 1979, then his case for interpolation has to be considered only in a later panel according to the rules and principles of the Railway Board after he qualifies in the selection. If as a result of consideration as above, if any existing incumbent in the panel is adversely affected, he should be given a chance of hearing

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or representation in accordance with the basis principle of natural justice (1986 (3) SLR 416 - Jhaman Singh & Ors. Vs. Union of India). The consideration as proposed in this para should be finalised within a period of six months from the date of receipt of a copy of this order."

9. The Supreme Court has itself referred to the fact that the applicant, Shri K.N. Saxena, stands selected in the second panel for the year 1978-79. From the judgment of the Supreme Court in Virender Kumar's case, it is seen that the respondents were directed to prepare a seniority list in the manner directed by the Delhi High Court in LPA No. 220/85. This they have done only in respect of the applicants before the Court in that case and not to persons who are similarly situated as the applicants in the two O.As before us. In the light of the judgment of this Tribunal in B.R. Sharma's case, the respondents are directed to consider the claim of the applicants in O.A. No. 936/89 and O.A. No. 360/88 for interpolation in the 1972 and 1973 panel provided they have qualified in the test as prescribed under the rules and they are otherwise eligible according to the revised seniority list in accordance with the rules, provided also that the vacancies existed at that time. It is also clarified that in accordance with the judgment of the Supreme Court in Virender Kumar's case, even if the applicants are so found eligible for seniority from an earlier date, they will not be entitled to any arrears of pay in the higher posts. However, they will be entitled to proforma promotion and fixation of

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pay from the date of promotion after inclusion of their name in the earlier panel.

10. In the result, the two OAs are allowed and disposed of with the above directions. No costs.

(Smt.Lakshmi Swaminathan)
Member (J)

(S.R. Adige)
Member (A)