

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 656/1986

DATE OF DECISION: May 27, 1991

PREM BALLABH & ORS.

... APPLICANTS

VS.

SECRETARY, MINISTRY OF
RAILWAYS & ORS

... RESPONDENTS

SHRI UMESH MISRA

... COUNSEL FOR APPLICANTS

SHRI G. N. MOOLRI

... COUNSEL FOR RESPONDENTS

CORAM : HON'BLE MR. JUSTICE RAM PAL SINGH, V.C.(J)

HON'BLE MR. P. C. JAIN, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgment ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgment ? *No*
4. To be circulated to all the Benches of the Tribunal ? *No*

Clean
(P. C. JAIN)
MEMBER (A)

Lambini
(RAM PAL SINGH)
VICE CHAIRMAN (J)

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J U D G M E N T

Hon'ble Shri P. C. Jain, Member (A) :

In this application under Section 19 of the Administrative Tribunals Act, 1985 there are three applicants. Applicant No.1, Shri Prem Ballabh, was first appointed on 19.1.1970 and after screening was appointed as Masalchi on 30.1.1971. He was promoted as Senior Masalchi w.e.f. 28.12.1973 in scale of Rs.200-240/-. Applicant No. 2, Shri Kailash and Applicant No. 3, Shri Ashok Kumar, were both appointed as Masalchi on 21.12.1973. They are stated to be working in the Northern Railway Central Hospital, New Delhi. They are aggrieved by their non-consideration for promotion to the post of Cook and preparation by the respondents of a combined seniority of Masalchies and Bearers working in the aforesaid Hospital for purposes of promotion to the post of Cook. They have prayed for being given separate seniority from the date of entering the service in the cadre of Masalchi and also inter-se promotion retrospectively, increments, seniority, other benefits etc.

Clerk

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2. The respondents have contested the application by filing a counter reply and the applicants have also filed a rejoinder thereto. We have also perused the material on record and heard the learned counsel for the parties.

3. The respondents have raised a preliminary objection in regard to limitation. This objection is no more tenable because the petition of the applicants for condonation of delay was allowed by a Bench of this Tribunal vide orders dated 15.12.1986.

4. The basic grievance of the applicants in the OA is about changing the channel of promotion in 1976 and to the preparation of a combined seniority list of Masalchies and Bearers for purposes of promotion to the post of Cook. However, at the time of oral hearing the learned counsel for the applicants pressed the grievance in regard to the preparation of combined seniority. Admittedly the revised channel of promotion of catering staff in consultation with the recognised union was issued by the Headquarters Office of the Northern Railway with letter dated 29.5.1976 (Annexure 2 to the OA). According to the revised channel given in the form of a chart at page 10 of the paper book, the lowest post is Khalasi/Cleaner/Masalchi in the grade of Rs.196-232/- (RS) and the highest post in the hierarchy is shown to be the Chief Catering Inspector in the scale of Rs.700-900/- (RS). Further, from the lowest post as aforesaid, one can go to the higher post of Waiter/Pantryman/Bearer in the scale of Rs.200-240/- (RS), or to the post of Assistant Cook in the scale of Rs.200-240/- (RS), by option and promotion to either ^{the} post ^{is} to be on the basis of seniority-cum-suitability. After that, Waiter/Pantryman/Bearer can move to the higher post of Distributor/Head Waiter, Sales Incharge/Junior Clerk, and Store-cum-Accounts Clerk in the grades of Rs.210-270/- (RS),

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Rs.225-308/-(RS) and Rs.260-400/-(RS) respectively.

Similarly, Assistant Cook can go up to the post of Cook/Halwai, Cook, Head Cook/Halwai in the grades of Rs.210-270/-(RS), Rs.225-308/-(RS) and Rs.260-400/-(RS) respectively. The higher posts are not relevant for our purposes and are, therefore, not being mentioned.

5. The case of the applicants is that a Bearer cannot be appointed as a Cook unless from the lowest post of Khalasi/Cleaner/Masalchi he has opted for the line of posts of Assistant Cook, Cook/Halwai and so on. As per the chart this contention is substantiated as already discussed above. It is pertinent to mention here two developments. First is the notice dated 28.7.1980 (Annexure 4 to the OA) according to which designation of one Shri Kailash Singh Negi, Masalchi in the scale of Rs.196-232/-(RS) was changed from Masalchi to Bearer in the same grade with immediate effect and on his own request. It is also stated therein that he will be assigned bottom seniority in the category of Bearers. This order has been passed after the revised channel of promotion came into effect. The post of Masalchi was in the scale of Rs.196-232/-(RS) and the post of Bearer was in the scale of Rs.200-240/-. However, in the above order the scale of post of Masalchi and the post of Bearer is shown to be the same, eg., Rs.196-232/-. The other is the statement of the respondents in para 6 of their counter reply that applicant No.1 was promoted as Senior Masalchi w.e.f. 28.12.1973 in the scale of Rs.200-240/-(RS). In the revised channel of promotion no post of Senior Masalchi is shown.

6. Be that as it may, as discussed above, the revised channel of promotion of catering staff does not provide for any occasion for a combined seniority of Waiter/Pantryman/Bearer on the one hand and of Assistant Cook on the other,

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though both the posts are in the same scale of pay. In view of this, the reply dated 9.4.1984 (Annexure 5 to the OA) with reference to the representation of applicant No.1 to the effect that for the promotion of Cook in the scale of Rs.210-270/- (RS) a combined seniority of senior scale of Rs.200-240/- (RS), Masalchi and Bearer is taken and after adjudging the suitability of the senior one he is promoted as Cook in the scale Rs.210-270/- (RS), cannot be sustained. The respondents have not filed either any document or they shown any order to us under which, according to the revised channel of promotion, the Bearers were made eligible for promotion to the post of Cook.

7. The contention of the applicants that their channel of promotion has been changed with retrospective effect is not substantiated by the documents on record. The relevant order dated 29.5.1976 on this subject clearly states that the revised channel of promotion comes into effect immediately; it does not say that it comes into effect retrospectively. Moreover, we cannot uphold the contention of the applicants that the earlier channel of promotion could not be revised without their consent. As already stated, the revised channel of promotion was finalised in consultation with the recognised union and approved by the competent authority. Moreover, it was held by a Constitution Bench of the Supreme Court of India in Roshan Lal Tandon vs. Union of India & Ors. (AIR 1967 SC 1989) that terms of service can be altered unilaterally by a government and a government servant has no vested contractual right.

8. In the light of the foregoing discussion, the OA is partly allowed in terms of the directions to the respondents that for purposes of promotion to the post of Cook/Halwai,

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Waiter/Pantryman/Bearer cannot and should not be considered in accordance with the revised channel of promotion chart of the catering staff issued vide Northern Railway Headquarter office letter No.220E/568-Dup(Eic) dated 29.5.1976. This direction should be valid for all promotions in future. In respect of the promotions already made on the basis of combined seniority of Waiter/Pantryman/Bearer on the one hand and of Assistant Cooks on the other, the applicants shall be entitled to all consequential benefits of deemed promotion with arrears on account of difference of pay, if on screening on the basis of seniority-cum-suitability they are found fit for promotion to the post of Cook/Halwai against the promotion quota posts. These will, however, be limited to the number of posts which were available from time to time and also limited to a period of three years preceding the date of filing of this application which is 29.5.1986. The OA is disposed of in terms of the above directions leaving the parties to bear their own costs.

27/5/91
(P. C. JAIN)
MEMBER (A)

27/5/91
(RAM PAL SINGH)
VICE CHAIRMAN (J)