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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

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Regn. No. OA 659 of 1986

Date of decision: 5.9.1990

M.N. Kakkar and others

Applicants

Vs.

Union of India & Others

Respondents

PRESENT

Shri B.S. Mainee, counsel for the applicants.

Shri O.N. Moolri, counsel for Respondent 1 and 2.

Shri KNR Pillai, counsel for respondents 3. and 23.

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Hon'ble Shri Justice Amitav Banerji, Chairman.

Hon'ble Shri B.C. Mathur, Vice-Chairman.

(Judgment of the Bench delivered by Hon'ble
Shri B.C. Mathur, Vice-Chairman.)

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985, by Shri M.N. Kakkar and 7 others working as Senior Research and Development Inspectors at various places in the Northern Railways and

Shri R.K. Aggarwal, Chief Rates Inspector, Northern Railway, Baroda House, New Delhi, against the impugned orders No. 757E/39-XVII (Eic) dated 12.2.86 passed by the General Manager, Northern Railway, Baroda House, regarding their seniority.

2. Brief facts, as stated by the applicants, are that the applicants 'A' to 'H' (hereinafter referred to as 1 to 8) and applicant No. 'I' (hereinafter referred to as No.9) have been working as Senior Research & Development Inspectors and Chief Rate Inspector respectively in the grade of Rs. 700-900 against non-fortuitous posts since 1978. Applicant No. 8, Shri Gendu Ram, was, however, appointed in the grade of Rs. 700-900 w.e.f. 21.6.79. These are selection posts and selection for the post of Senior Research & Development Inspectors was initiated by the respondents in 1978, but due to administrative delay, the

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selection could not be finalised before December, 1979. For the post of Chief Rates Inspector, the selection proceedings were delayed and initiated sometime in 1980 and the panel was finalised and declared on 16.8.82. The first seven applicants were declared successful and were empanelled on 20.12.79 and applicant No. 9 was empanelled as Chief Rates Inspector on 16.8.82. It has been stated that in the seniority list of the staff of the Commercial Department for promotion to Class II service issued on 12.2.86 (Annexure A-5), 18 persons (Respondents 3 to 20) have been wrongfully shown senior to the applicants though these 18 respondents have always been junior to the applicants in the grade of Rs. 700-900 and also in the lower grades so much so that at the time the applicants had been appointed in the grade of Rs. 700-900 against non-fortuitous posts in the year 1978, the aforesaid 18 respondents had not come up even in the grade of Rs. 550-750. Besides, the applicants also claim that another 31 persons (Respondents No. 21 to 51) have been wrongfully shown senior to Shri R.K. Aggarwal, applicant No. 9, although these 31 respondents were always junior to him and were promoted in the grade of Rs. 700-900 years after Shri R.K. Aggarwal had been appointed in the said grade against the non-fortuitous vacancies. While the applicants were appointed to officiate in the grade of Rs. 700-900 from the year 1978 except applicant No.8, Shri Gendu Ram, who was appointed on 21.6.79 against non-fortuitous vacancies, the respondents 3 to 51 had been appointed in grade Rs. 700-900 in 1980, 1981 and 1982. The panel of grade Rs. 700-900 in respect of the applicants 1 to 8 was declared on 20.12.79 and in respect of applicant No. 9 on 16.8.82, while the panel in respect of the aforesaid 49 respondents was announced much later in 1980, 1981 and 1982. As far as applicant No. 9 is concerned, he was appointed to work in the grade of Rs. 700-900 in 1978 against non-fortuitous vacancy, but the selection for the post of Chief Rate Inspector was delayed till 16.8.82.

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3. The combined seniority list of all commercial staff for promotion to Class II service was circulated immediately after declaring the panel in 1979 and the applicants were shown senior to the respondents. In a subsequent seniority list for ad hoc promotion to Class II service for the commercial staff prepared upto 31.12.1983, the position of the applicants has also been shown correctly based on the length of service put by them in the grade of Rs. 700-900. All of a sudden, the seniority list was revised on 12.2.86 and as many as 18 persons (respondents 3 to 20) have been shown senior to the applicants although they have always been junior to the applicants in the grade of Rs. 700-900 and in the lower grade of Rs. 550-750. It has been stated that when the applicants had been appointed to officiate in the grade of Rs. 700-900 against non-fortuitous posts, these 18 respondents had not yet come up even in the grade of Rs. 550-750. Another 31 persons (respondents 21 to 51) have also been shown senior to Shri R.K. Aggarwal, applicant No. 9, although they were always junior to him. The applicants have been told that some of the cadres of the Commercial Department have been restructured and have been upgraded retrospectively from 1.1.79 and, therefore, they have been given the benefit of higher grade with retrospective effect and have become senior to the applicants.

4. The applicants have claimed that interpolation of the junior persons in the seniority list is against the decision of the Supreme Court in Writ Petition No. 1595/79 in Narendar Chadha's case decided on 11.2.86 and have prayed that seniority list dated 12.2.86 (Annexure A-5 to the application) should be quashed and the Railway Administration directed that the seniority of the persons should be recast in accordance with the extant rules, law and Railway Board's instructions declaring the applicants senior to the aforesaid 49 persons who have now been shown senior to them.

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5. In the counter reply filed by Respondent Nos. 1 and 2, it has not been denied that the applicants were working in the grade of Rs. 700-900 duly selected, but prior to their selection they were officiating only on ad hoc basis. They have denied that the selection process was initiated in the year 1978 and that selection was delayed by the Railway Administration. The selection for Senior Research and Development Inspectors' grade Rs. 700-900 was initiated on 10.8.79 and finalised on 20.12.79. Similarly, selection for the post of Rates Inspector was initiated in March 1982 and finalised in August 1982. The respondents have claimed that the seniority of the applicants was prepared on the basis of the length of non-fortuitous service in the Grade Rs. 700-900, but respondents 3 to 51 were given the benefit of upgrading/restructuring from the dates from which the upgrading was allowed by the Ministry of Railways. As the restructuring was allowed with retrospective effect, the position of respondents 3 to 51 for Class-II selection became higher than that of the applicants. The applicant No. 9 was working against the vacancy caused by promotion of ^a senior person officiating in class-II post on an ad hoc basis. It has been denied that the applicants were promoted against permanent/regular vacancies and were promoted temporarily purely on ad hoc basis pending selection. The applicant Shri R.K. Aggarwal was also promoted to officiate vice Shri Darshan Singh who was promoted to class-II post on ad hoc basis. It is, however, admitted that the applicants before they were empanelled were officiating on ad hoc basis. It has also been clarified that previously the seniority list was prepared combined for commercial and transportation staff for promotion to class-II services, but recently it was decided to promote for class-II service separately for commercial and transportation and as such the revised seniority lists for promotion to class-II posts were prepared for commercial and transportation staff separately. These seniority lists were

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prepared on the basis of non-fortuitous service in the grade Rs. 700-900 as on 31.12.85. As the persons against whom the applicants have filed the present application were given the benefit of upgradation from the different dates from which the upgrading was received in their cadres and they became senior as per benefit of upgradation became due to them. The respondents have also claimed that since the applicants had not filed any objection against the provisional seniority list dated 12.2.86, the last date for filing objections being 15.3.86, they cannot now challenge the seniority list dated 12.2.86 (Annex.A-5).

6. In their reply respondent Nos. 3 and 23 have submitted that the application has become infructuous because the seniority list prepared in terms of Railway Board's letter No. E(GP) 81/2/87 dated 5.3.83 has become infructuous because the Tribunal has modified that letter to the extent it applies to the Transportation and Commercial Department of the Northern Railway vide their judgment dated 9.10.86 in T-431/85 - O.P. Malik and Ors. Vs. UOI and Others. In this judgment, a direction was given that the integrated seniority list of Group 'C' (Class III employees) in the grade of Rs. 700-900 and above, namely, Rs. 840-1040/1200 should be determined on the basis of total length of non-fortuitous continuous service rendered in all these grades including the length of such service which the officers may have rendered in the pre-revised scale of Rs. 370-475. It has been further clarified that the seniority list of eligible staff for selection to class II in the Transportation and Commercial Department of the Northern Railway shall be framed on the basis of date of induction into the revised scale of Rs. 550-750 adding any earlier service which might have been rendered in the pre-revised scale of Rs. 370-475. This judgment having been accepted by all cannot be disputed now. This judgment applies squarely to the present applicants..

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7. Respondent No. 25 has also quoted the same judgment of the Tribunal in the case of O.P. Malik. In the written statement filed on behalf of respondent No. 16, it has been brought out that in the result declared by the Zonal Training School, Chandausi, the applicant Shri R.K. Agarwal was placed at S. No. 6, whereas the respondent No. 16 was placed 3rd at the time of selection for the post of Commercial Apprentices. It has also been stated that the applicants were working on purely ad hoc basis and no benefit can be given to them in the matter of seniority on future promotion vide the General Manager, Northern Railway's letter dated 31.5.78 (Annexure A-2 to the application).

8. The learned counsel for the applicants, Shri B.S. Mainee cited the Supreme Court decision in the case of Y.V. Rangaiah & Others Vs. J. Sreenivasa Rao & Others - 1983 (III) S.C.C. 284 - where it has been held that vacancies have to be filled up according to rules and as vacancies arose in 1978, the applicants cannot lose the 1978 seniority because the selection was not completed till December 1979. He also quoted para 321 of the Indian Railway Establishment Manual dealing with the relative seniority of the employees. It was stated by the learned counsel for the respondents, Shri KNR Pillai and Shri O.N. Moolri, that 13 different seniority groups are involved and the Anomalies Committee had recommended higher grades which was approved by the Cabinet Committee. Some of the posts were upgraded with effect from 1.1.79 and senior persons were treated having been promoted with effect from 1.1.79. Arrears of pay were also allowed from 1.1.79 and 1.6.79 and seniority allowed accordingly. The Northern Railway in their order dated 6.9.85 allowed payment of these arrears. They said that there was nothing wrong in giving promotion retrospectively. This has also been upheld by the Punjab High Court in the case of V.K. Bhalla Vs. State of Punjab SLR 1983 (1)636. It was, however, agreed by the counsel on both sides that the principle of seniority has

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been finally settled by the Supreme Court in the case of the Direct Recruit Class II Engineer Officers' Association and others vs. State of Maharashtra and others - SLJ 1990 (2) 40 - and that the present application should also be decided in the light of the Supreme Court's judgement in the above case.

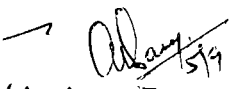
9. While Shri Mainee stressed para 44 (B) of the judgement which lays down that "if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted", Shri Moolri based his claim that para 44(A) applies in this case which reads as "once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority."

10. We have, therefore, to examine whether the ad hoc appointment was not according to rules and made as a stop-gap arrangement or whether this is a case where appointment was made according to the procedure laid down by the rules, but the appointed persons continued in the post uninterruptedly till the regularisation of their services according to rules and hence the period of officiating service would be counted towards seniority.

11. It is not disputed that the applicants had been appointed to the grade Rs. 700-900 in 1978. It is also admitted that these appointments were not fortuitous. They were ad hoc, but none of the applicants ever reverted from this grade and continued as such till they were regularised in the above grade. Without going into the question whether the selection

process in the case of the applicants was delayed or not, it is clear that they have been working continuously in that grade since 1978. It is not the case of the respondents that the initial appointment of the applicants in 1978, though ad hoc, was not according to rules and made as a stop gap arrangement only. In view of the above, the principle laid down in Narender Chadha's case (supra) and confirmed in the case of Direct Recruit Class II E.O. Association Vs. State of Maharashtra (supra) by the Supreme Court has to be followed and inter se seniority has to be determined on the basis of the uninterrupted service in the grade till regularisation in accordance with the rules. In the circumstances, the application is allowed and the respondents 1 and 2 are directed to refix the seniority of the staff of Commercial Department for promotion to Class II service on the lines indicated above. Parties to bear their own cost.


(B.C. Mathur) 5.9.90
Vice-Chairman


(Amitav Banerji)
Chairman