

8

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.1501/87

Date of decision:-22.03.93.

Shri Gurdial Suri ... Petitioner
versus

Union of India through
Chairman,
Railway Board,
Ministry of Railways &
Ors. .. Respondents

CORAM:-THE HON'BLE MR.JUSTICE V.S.MALIMATH,CHAIRMAN
THE HON'BLE MR.B.N.DHOUNDIYAL,MEMBER(A)

For the Petitioner .. Sh.R.P.Singha,Counsel.

For the Respondents .. Sh.R.P.Singh,Senior
Railway Counsel and
Sh.K.N.R.Pillay,Counsel.

JUDGEMENT(ORAL)

(DELIVERED BY HON'BLE MR.JUSTICE V.S.MALIMATH,CHAIRMAN)

The petitioner has come to this Tribunal by way
of this OA praying for the following reliefs:-

- "(a) to allow this application of the applicant with costs.
- (b) to issue appropriate order or orders, direction or directions:
 - (i) quashing of the seniority lists which have been prepared on the basis of rota and quota.
 - (ii) directing the respondents Nos.1 to 3 to prepare the seniority list of Grade IV(Assistants) right from the beginning on the basis of continuous length of service as quota rule had broken down and on the principles laid in the judgements of the Hon'ble Supreme Court mentioned above.
 - (iii) directing the respondents Nos.1 to 3 to review all the promotions to the higher posts made on the basis of the impugned seniority in the light of the new seniority to be determined according to law with all consequential reliefs;
- (c) to issue other and further order or orders direction or directions as this Hon'ble Tribunal deems fit and proper to meet the ends of justice.2

2. At the outset, it is necessary to point out that

the prayers are not clear and specific and that the petitioner has not specifically prayed for the date from which his seniority should count in the cadre of Assistants nor is he specific about the seniority list which he impugnes. From the arguments placed at the bar by Shri R.P.Singha, learned counsel for the petitioner, we gather that he claims seniority from 16.3.65 in the cadre of Assistants and seeks quashing of the seniority lists made in the years 1972, 1982 and later on in the year 1986. We shall proceed to discuss the contentions, understanding the scope of the prayers of the petitioner in that way.

3. The petitioner came to be promoted on ad hoc basis as Assistant in the cadre of Assistants with effect from 16.3.1965. He continued as ^{an} ad hoc Assistant until he was confirmed in that position by an order dated 28.12.79 with effect from 23.8.79. For the first time on 20.3.86, he made a representation claiming that he should be accorded seniority as Assistant with effect from 16.3.65 with all consequential benefits. The said representation was examined and the petitioner was informed that his claim cannot be accepted and that the determination of the seniority has been done in accordance with law and in a proper and satisfactory manner. It is in this background that the petitioner has approached this Tribunal for appropriate reliefs in the petition filed on 19.10.87.

4. The principal contention of Shri R.P.Singha, the learned counsel for the petitioner, is that having regard to the principle laid down by the Hon'ble Supreme Court in the case of **NARENDER CHADHA VS.U.O.I.(AIR 1986 SC 638)**; the petitioner should be accorded seniority in the cadre of Assistants with effect from 16.3.65. It was urged that in accordance with the Railway Board Secretariat Service Rules, 1969 which came into effect

10

from 11.10.1969, 50% of the posts of Assistant were to be filled by promotion and 50% of the posts were required to be filled up by direct recruitment. It was submitted that earlier so far as the promotion quota is concerned, it was only 25% and another 25% was required to be filled by the other mode. It was submitted that there has been a break down in the quota-rota rule and in these circumstances, the petitioner should not be deprived of the long period of service he has rendered as Assistant on ad hoc basis from 16.3.1965 to 23.8.1979. He submitted that on the strength of the service rendered by him, he should be given seniority from 16.3.1965 till he was confirmed as laid down in Narender Chadha's case. The respondents, on the other hand, maintained that firstly the Tribunal has no jurisdiction to entertain the grievance of the petitioner because the cause of action had arisen three years prior to the coming into existence of the Tribunal on 1.11.1985. We shall first examine this contention.

5. It is clear from the petitioner's case that it is by order dated 28.12.1979 that he came to be confirmed as Assistant with effect from 23.8.1979. That was the date on which the department had made clear to the petitioner that they would give him regular footing in the department as regular Assistant only from 23.8.1979 and not from 16.3.1965, the date on which he was promoted on ad hoc basis. Hence it is clear that the cause of action accrued to the petitioner on 28.12.1979. The cause of action having accrued to the petitioner long before three years of the coming into existence of the Tribunal, it is obvious that we have no jurisdiction to entertain this application. It is also necessary to point out that the provisional seniority list of the Assistants was prepared on 11.10.1969 and the same was finalised on 11.8.1972 (Annexure R-1). The petitioner had adequate opportunity for filing a representation. But he did not think it necessary to

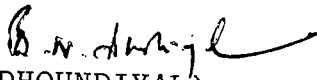
make any grievance about the seniority list. Even though an opportunity was given, he did not avail of the opportunity to secure his name entered when the final list was issued on 11.8.1972. Again another provisional seniority list as on 1.3.1976 was circulated on 18.4.1981 in which the name of the petitioner was included in the said list as a person holding an officiating appointment. That list was finalised on 15.9.1982 (Annexure R III). The petitioner did not make any grievance about it. It is, therefore, clear that not only the petitioner did not make any grievance when he was confirmed in 1979 but he did not avail of the successive opportunities which were available to him. As the cause of action accrued to the petitioner in the year 1979, we have no hesitation in holding that we have no jurisdiction to entertain this petition filed in the year 1987.

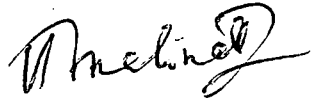
6. There is another ground which does not justify grant of seniority from 16.3.1965. The aforesaid Rules of 1969 came to be amended with effect from 9.4.1981 to meet the situation flowing from the direct recruits not being available to satisfy the quota reserved for them. Rule 6 was added by the said amendment which provides that all such vacancies which were required to be filled up by direct recruitment should be filled by promotion after the commencement of the amendment Rules of 1981 with effect from 9.4.1981. The clear effect of this statutory provision made under Article 309 of the Constitution is to make appropriate provision to meet the situation flowing from the breaking down of quota rule. When there is an express statutory provision as to how the situation should be met we would not be justified in invoking the general principles of equity applied by the Supreme Court in the Narender Chadha's case. Granting of relief as prayed for by the petitioner would clearly be opposed for the rules as amended with effect from 9.4.1981.

12

The amendment clearly directs that the promotees who are occupying posts meant for the direct recruitment should be appointed in the promotion posts on the dates subsequent to 9.4.1981. The petitioner cannot call upon the Tribunal to grant him relief in violation of the statutory provisions. Hence on this ground also the petition fails.

7. For the reasons stated ^{above} this petition is dismissed. No costs.


(B.N. DHOUNDIYAL)
MEMBER(A)


(V.S. MALIMATH)
CHAIRMAN

SNS

22.3.93

23.3.93