

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

DATE OF DECISION: 3-4-1992.

(1) Reg. No. O.A. 1680/87.

Shri Ved Parkash Sharma Applicant.
V/s.

Union of India & Ors. Respondents.

(2) Regn. No. O.A. 1681/87.

Shri S.D. Khanna Applicant.
V/s.

Union of India & Ors. Respondents.

CORAM: Hon'ble Shri T.S. Oberoi, Member (J).
Hon'ble Shri P. C. Jain, Member (A).

Shri B.S. Mainee, counsel for the Applicants.
Shri N.K. Aggarwal, counsel for the Respondents.

JUDGMENT

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

The applicant in O.A. 1680/87 and also the applicant in O.A. 1681/87 are holding the post of Chief Law Assistant (Law Branch), Northern Railway Headquarters Office, New Delhi, and both of them have assailed Orders dated 16.10.1987 and 19.6.1987 passed by the Senior Personnel Officer (Headquarters), Northern Railway, New Delhi, by which they were denied the benefits extended to one Shri N.K. Khandelwal in O.A. No.1/1986 titled "Shri N.K. Khandelwal Vs. Union of India and Others" by Jodhpur Bench of this Tribunal in their order dated 29th

May, 1986. Since both these cases stand on equal footing, these can be conveniently disposed of by a common judgment

2. In O.A. 1680/87, the applicant has, inter-alia, prayed for quashing the impugned orders and directing the respondent No.1 to assign him seniority with effect from 12.4.1971, the date from which he had been continuously officiating against a regular/substantive post and also all consequential benefits. He has also prayed for the

benefit of fixation in Selection Gr. and further promotion as has been given to one Shri N.K. Khandelwal on the basis of 'deemed officiation' and also for fixation of his pay as well as arrears in the grades of Rs.550-800 and Rs.700-900 on the basis of revised seniority as claimed by him. In O.A. 1681/87 also, the applicant has prayed for the same reliefs as are claimed by the applicant in O.A. 1680/87, except that he claims seniority from 13th July, 1972, the date from which he had been continuously officiating against a regular/substantive post, with all other consequential benefits.

3. Briefly stated, the facts in each of the two cases are as under: -

O.A. 1680/87: The applicant herein was appointed as a Clerk on Northern Railway with effect from 18.1.54.

In the year 1968, he appeared at the selection to the general post of Law Assistant for departmental candidates, but could not get selected and empanelled in the panel of 14 persons declared in 1969. The applicant, who is a Law Graduate, was, however, promoted as a Law Assistant in an ad-hoc capacity with effect from 12.4.71, after the entire panel of 1969 was exhausted. Another selection was initiated in 1971, which could be finalised only on 15.5.75. The applicant's name appeared at Sl.No.5 of this panel and he was treated as regularly promoted from the date of the panel, i.e., 15.5.75. One Shri N.K. Khandelwal, who was otherwise senior to the applicant, had not been given promotion to the post of Law Assistant even on ad-hoc basis. In the panel finalised on 15.5.75, the name of Shri Khandelwal appeared at Sl. No.4 as against the name of the applicant which appeared at Sl. No.5. The applicant has been/seniority from 15.5.75, i.e., the date from which he has been promoted as Law Assistant on a regular basis. Shri Khandelwal, who had not been appointed to the post of Law Assistant even

on ad-hoc basis, although he was senior to the applicant, after his regular promotion from 15.5.75, finally filed O.A. No.1/1986, which was decided by the Jodhpur Bench of this Tribunal and accepted to the extent that he will be given seniority as Law Assistant with effect from 12th April, 1971, that is the date of the promotion of his junior, Shri V.P. Sharma (applicant herein) and he will be entitled to all the financial and other consequential benefits. In compliance with the judgment of the Central Administrative Tribunal, the respondents have given to Shri Khandelwal seniority as Law Assistant from 12.4.71. As stated above, the applicant herein has been given seniority with effect from 15.5.1975, i.e., the date from which he was empanelled for regular promotion. He made some representations and has annexed copies of his three representations dated 3.11.81, 22.8.84 and 4.7.85 at Annexure A-6 collectively. His representation dated 4.7.85 was rejected vide Northern Railway Headquarters Office communication dated 6.9.85 (Annexure A-7). When the case of the aforesaid Shri Khandelwal was decided by the Jodhpur Bench of this Tribunal in his favour and he was given not only seniority from 12.4.1971 but also all other benefits of increments as well as promotions, the applicant made another appeal on 29.8.1986 (Annexure A-9), followed by another representation dated 14.5.1987 (Annexure A-10) praying for the seniority and other benefits as given to Shri Khandelwal. His representation has been rejected by the impugned orders on the ground that Shri Khandelwal has been assigned seniority as per the court's judgment and the benefits in accordance with the judgment dated 29.5.86 in O.A. 1/86 cannot be extended to him. Aggrieved by the final reply dated 16.10.1987 of the Northern Railway Headquarters Office, New Delhi, the applicant filed the instant O.A.



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O.A. 1681/87: The applicant herein was appointed as a Clerk on Northern Railway with effect from 8.4.1948. The details of this O.A. are almost the same as of O.A. 1680/87 except that he was promoted as a Law Assistant in an ad-hoc capacity with effect from 13.7.1972. In the panel finalised on 15.5.75, his name was at Sl.No.8, and like the applicant in O.A. 1680/87, he was also treated as regularly promoted from the date of panel, i.e., 15.5.75. He claims seniority from 13.7.1972, the date from which he was appointed on an ad-hoc promotion to the post of Law Assistant. He has also cited the case of Shri Khandelwal, who has been given seniority and other benefits with effect from 12.4.71, although he also qualified in the same examination in which the applicant qualified; on the other hand, Shri Khandelwal was not given promotion even on ad-hoc basis and, as such, he never officiated as Law Assistant prior to his empanelment on 15.5.1975. The last representation of the applicant dated 7.7.1987 is at Annexure XI. Aggrieved by the reply dated 16.10.87 of the Northern Railway Headquarters, New Delhi, the applicant filed the instant O.A. in November, 1987.

4. Respondent No.1 has contested the O.A.s by filing his reply in both the cases, to which rejoinder has also been filed in both the cases. We have gone through the record of the cases and have heard the learned counsel for the parties.

5. The main grounds taken in both the O.A.s are that the applicants' continuous officiation was followed by their regularisation when they were empanelled in 1975 and that the vacancies against which they had been officiating were not short-term or stop-gap vacancies and, as such they are entitled to seniority from the date of continuous officiation. They have also stated that the impugned orders are mala-fide, arbitrary and discriminatory. They have also alleged that after having allowed seniority as well as consequential benefits to Shri N.K. Khandelwal with

effect from 12.4.1971, i.e., the date from which the applicant in O.A. 1680/87 was allowed to officiate on ad-hoc basis in the post of Law Assistant, although Shri Khandelwal had not even officiated on ad-hoc basis during the period from 12.4.1971 to the date of his empanelment, i.e., 15.5.1975, it would be illegal and discriminatory to deny the same benefits to the applicants herein.

6. The main ground taken by the respondent is that Shri Khandelwal has been given the seniority and other benefits from 12.4.71 in compliance with the judgment in O.A. 1/86 delivered on 29.5.1986 by the Jodhpur Bench of this Tribunal and under pressure of Contempt of Court proceedings. According to them, the applicants have no valid grounds for questioning the seniority allotted to them as the rules provide that seniority in selection posts is to be based on the date of the panel and the merit position in that panel. It is alleged that the date of promotion means regular promotion after due selection and ad-hoc promotion does not count for seniority and that the ad-hoc promotion of the applicants prior to their inclusion in the panel was de hors the rules. According to the respondent, the applicants are not covered by the judgments of the Supreme Court which were to the effect that in the absence of specific rule for seniority, length of officiating service would be an appropriate criterion for seniority because, firstly, on the Railways there is a specific seniority rule covering such cases, secondly, the officiating promotion was without any selection and was purely ad-hoc arrangement and, thirdly, the applicants were not members of the Law Assistant's cadre/service and their ad-hoc promotion was de hors the rules. The plea of limitation has also been raised as the applicants' seniority was settled in 1975 and they accepted the situation and kept quiet for all those years and began agitating for extra seniority only from 1985.

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7. A number of citations have been quoted in support of the plea that where adhoc officiation is followed by regularisation, the entire ad-hoc and continuous service should be counted for purpose of seniority, e.g., NARENDRA CHADHA Vs. UNION OF INDIA (ATR 1986 SC 49), KUNJAL LAXMINARAYAN NAYAK Vs. UNION OF INDIA & OTHERS (A.T.R. 1987 (1) C.A.T. 458), S.C. JAIN Vs. UNION OF INDIA (A.T.R. 1986 (2) C.A.T. 346) etc. All these rulings are not applicable to the present O.As as the applicants in both the cases were not appointed initially to the post of Law Assistant in accordance with the rules. The services of the applicants in the post of Law Assistant cannot be treated as regular from the date of their ad-hoc appointment. It is not a case where the Quota-Rota system of seniority had failed. Shri N.K.Khandelwal, as per the judgment of the Jodhpur Bench, was directed to be assigned seniority at par with Shri V.P. Sharma as Law Assistant with effect from 12th April, 1971 because Shri Khandelwal was senior to Shri Sharma at all stages. In the panel of 1971, Shri V.P. Sharma was at Sl. No.11, Shri S.D. Khanna at Sl.No.17 and Shri N.K. Khandelwal at Sl. No.7 of the merit list. In the panel declared in 1975, Shri Khandelwal figured at Sl.No.4 while the name of Shri V.P. Sharma was at Sl. No.5 and the name of Shri S.D. Khanna was at Sl.No.8. Thus, the seniority of Shri Khandelwal above the two applicants cannot be challenged. If he has been paid the consequential benefits, it is because of the fact that his juniors had been promoted, even though on ad-hoc basis, earlier and such a promotional benefit had not been extended to him prior to his promotion on regular basis on account of his inclusion in the panel of 1975. Also, we find that Shri Khandelwal has not been included as a party respondent. As any relief granted to the applicants might affect the claim of Shri Khandelwal, he was a necessary party to be included in the list of respondents.

8. An analysis of the foregoing facts reveals that the applicants herein preferred their O.A.s after Shri N.K. Khandelwal had been given seniority as Law Assistant with effect from 12.4.1971 and he was declared entitled to all the financial and other consequential benefits by the Jodhpur Bench of this Tribunal in their judgment order dated 29.5.1986 (supra). A careful reading of the judgment, however, brings out that the Jodhpur Bench accepted the O.A. of Shri Khandelwal only on the basis that his junior Shri V.P. Sharma (applicant in O.A. 1680/87) had admittedly been granted seniority and fixation of pay from 12.4.1971. In para 7 of the judgment, it is stated "The respondents have conceded that the case of the applicant was recommended for grant of seniority and fixation of pay from the same date as for Shri V.P. Sharma i.e. 12th April, 1971 but it was not agreed to by the F.A. and C.A.O." It was held in the said judgment that "An ad-hoc promotion does not vest the beneficiary with any right towards higher seniority. So Shri V.P. Sharma had no right and could not be held senior to the applicant and the seniority of the applicant cannot be allowed to be depressed merely because of conferment of an ad-hoc promotion on his junior S/Shri V.P. Sharma and S.D. Khanna." The present O.A.s, however, reveal that the applicant in O.A. 1680/87 himself has not been granted seniority from the date of his initial promotion as Law Assistant on ad-hoc basis with effect from 12.4.1971, and in fact he has preferred this O.A. for grant of this relief plus consequential benefits thereof. All these facts go to show that either there was misrepresentation of facts before the Jodhpur Bench or full facts of the case were not disclosed by the respondents in the case of Shri N.K. Khandelwal.

9. As stated above, admittedly, Shri N.K. Khandel-

wal is senior to both the applicants in the instant O.A.s because of his higher rank in the panel of 15.5.1975 vis-a-vis the ranks of the applicants herein. But the seniority date from which Shri N.K. Khandelwal has been assigned the/ is because the Tribunal was not enlightened with the true picture and it arrived at a decision based on the facts presented before it. In such a situation, the benefits of the judgment delivered in the case of Shri N.K. Khandelwal which itself was based on the facts as are denied by the respondents in the present O.A.s, cannot be extended to the applicants by treating them as similarly placed persons.

10. Against the plea of the respondent that the applications are barred by limitation, the applicants have stated that they have been continuously representing for their seniority and their case was finally decided on 16.10.87 when they were informed that their case of seniority had been examined and the judgment in the case of Shri Khandelwal does not apply in their case (Annexure A-1). According to the respondent, the applicants' seniority as Law Assistant was settled in 1975 and they had accepted the situation and kept quiet all these years and that they began agitating for extra seniority only from 1985. The applicants annexed copies of their three representations dated 3.11.81, 22.8.84 and 4.7.85. They were informed by the Northern Railway Headquarters Office communication dated 6.9.85 (Annexure A-7) that:

"The point raised in your representations dated 4.7.85 for assigning the seniority from the date from which you were put to officiate as LA Grade Rs.550-750 (AS) on ad-hoc basis has been examined with the consultation of L.O. HQ and it has been decided that since you were officiated in fortuitous vacancies as such no protection for seniority from the date of ad-hoc promotion can be given in terms of para 320 of E. Manual."

11. The claim of the applicants based on the judgment in the case of Shri N.K. Khandelwal has already been discussed above. As regards the claim for seniority and promotions etc. on the basis of ad-hoc officiation, the cause of action had accrued to the applicants when their promotion was regularised with effect from 15.5.1975 in 1975 itself. Even their representations without reference to the judgment in the case of Shri N.K. Khandelwal (supra) were rejected by office communication dated 6.9.85, as already indicated above. Thus, the cause of action having arisen three years prior to the date on which the Central Administrative Tribunal came to be constituted, the same is barred under provisions of Section 21 of the Administrative Tribunals Act, 1985. It has been held in a number of cases that in such matters, the Tribunal has no jurisdiction. Further, their representations in this regard having been rejected on 6.9.85, the O.A.s should have been filed within one year of that date. These O.A.s were, however, filed in November, 1987. Even on this ground, these are barred by limitation in accordance with the provisions of Section 21(1) of the Act *ibid*. Repeated representations do not have the effect of extending limitation (S.S. RATHORE Vs. STATE OF MADHYA PRADESH - AIR 1990 S.C. 10).

12. In the light of the foregoing discussion, we do not find any merit in these O.A.s and the same are accordingly dismissed, with no order as to costs. A copy of this order shall be placed on the files of each of these two O.As.

(P.C. JAIN)
MEMBER(A)

(T.S. OBEROI)
MEMBER(J)