

## CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

R.A. 218/1991 in O.A.184/1988Date of Decision: 6.2.92

Makhan Lal &amp; two others

Review Applicants  
(Applicants in  
O.A.184/1988)

vs

Union of India and others

Respondents

O R D E R(by the Hon'ble Shri R. Venkatesan,  
Administrative Member)

The Review Applicants herein have come up with this Review Application, seeking a review of the order of this Tribunal dated 23-9-1991 passed in O.A. 184/1988. The R.A. is being disposed of by circulation as per Rule 17(iii) of the C.A.T. (Procedure) Rules, 1987.

The above Review Application pertains to two parts of the Order of this Tribunal in O.A.184/1988 viz., Paragraphs 8(i) & (ii) which reads as follows:

- "(i) The applicant no.1, Shri Makhan Lal, who has continuously held the post of Class III Parcel Clerk for more than 15 years except for a short break of 20 days in 1977, shall be deemed to have become eligible for promotion on a regular basis to a

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Class III post, even though he may not have passed the necessary selection test. As such, he shall be placed in the panel for regular promotion as Class III, after the last person in the panel that is current. If there is no panel that is current, he shall be promoted against the next available vacancy in Class III in the relevant cadre;

(ii) Applicants no.2 and 3 will have to pass the selection test for being regularly promoted to Group 'C' posts. The respondents are, however, directed to all them to appear repeatedly in the selection test held from time to time and give them the chance to pass in the same. Any relaxation of age limits, which may be necessary in their case, shall be done."

In regard to para 8(i) which deals with the 1st Review Applicant viz., Shri Makhan Lal, the contention is that the law laid down by the Supreme Court in the case of Narendra Chadha and others vs. Union of India ATR 1986(1)-51) and that the denial of the benefit of seniority to this review applicant from the date of his adhoc promotion only because the respondents had reverted this review applicant by an order which is stated to be illegal, is unjust and erroneous. Therefore, this part of the judgement is sought to be reviewed and the benefit of seniority assigned to this review applicant.

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In fact, as seen from para 7 of the order in O.A. 184/1988, the decision of the Supreme Court in Narendra Chadha's case has been strictly taken into account, while affording the relief to this review applicant. We have also taken into account a subsequent decision of the Supreme Court in the case of Direct Recruit Class II Engineering Officers Association vs. State of Maharashtra (1990(13) ATC 359) which has further been refined in the judgement of the Supreme Court in the case of Keshav Chandra Joshi vs. Union of India. We afforded the relief in the case of Makhan Lal only after taking into account the decisions of the apex Court referred to above. Hence there is no mistake in law or error on facts on the face of the record, which calls for a review of the relief afforded by us in the case of Makhan Lal.

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In regard to para 8(ii) of our order relating to the remaining two review applicants herein, the contention in the Review Application is that the Full Bench Judgement in the case of Jetha Nand and others vs. Union of India and others (Full Bench Judgements of CAT - page 353) has not been followed. This has resulted in the reversion of the review applicants no.2 and 3 not being set aside. Even though the order refers to the said judgement the implications of the decision in Jetha Nand's case have been further amplified by another Full Bench of this Tribunal in the case of Suresh Chand Gautam and others vs. Union of India and others (Full Bench Judgements - CAT - 487. It has been held therein that when fully qualified candidates or persons regularly selected by the Railway Service Commission are waiting to be appointed to the regular vacancies, the Class IV employees officiating in those posts even though

for a period exceeding 18 months have no right to hold these posts. They have to be reverted if necessary for the appointment of the qualified candidates. It is further held therein as follows:

'In Jetha Nand's case the Full Bench has not stated that even when regularly selected and fully qualified candidates are available, those who have failed to qualify in the selection test should be allowed to officiate in the Class III posts blocking the entry of the regularly selected candidates. Such a view would be putting premium on inefficiency which has never been intended in the judgement in Jetha Nand's case. Therefore, we hold that the Railway servant who is allowed to officiate in higher post on temporary basis need not always be allowed at least three or more opportunities to appear and qualify in the selection for higher post before he can be reverted without following the procedure prescribed under the Railway Servants (Discipline and Appeal) Rules, 1968 and that he can be reverted if such reversion is warranted for administrative reasons, such as for appointment of regularly selected qualified candidates.'

Therefore, we hold that the railway servant who is allowed to officiate in higher post on temporary basis need not always be allowed at least three or more opportunities to appear and qualify in the selection for higher post before he can be reverted without following the procedure prescribed under the Railway Servants

(Discipline and Appeal) Rules.

We also find that a decision of the Supreme Court in a Civil Appeal arising out of SLP(C) No.3282 of 1987 (Bhikari Singh and others vs. Union of India) against the order of this Tribunal, which has been appended to the Review Application, has been relied upon by the Review Applicants. We however note that this order which is dated 27-9-1991 repeatedly refers to the peculiar circumstances of the case and it does not express any view as to the nature of the relevant statutory orders relating to promotion since they have not been produced notwithstanding several adjournments granted in the past. Therefore, this decision cannot be taken as laying down the law and therefore it has no applicability to the present case and that ~~the~~ decision is based on the

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peculiar circumstances of the case which have been made clear in the judgement.

In view of the above, we hold that the contentions raised in the Review Application regarding para 8(ii) of our order relating to review applicants no.2 and 3 are also not sustainable.

In the result, the Review Application fails and it is accordingly dismissed.

*R. Venkatesan*  
(R. VENKATESAN)  
ADMV. MEMBER

*I agree.*

*Laundh 6.2.92*  
(RAM PAL SINGH)  
VICE CHAIRMAN

S.V.