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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO.843/90

DATE OF DECISION: 04.02.1993

Shri D.K. Malhotra & Others

...Applicants

Versus

Union of India & Others

...Respondents

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

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicants

...Shri B.S. Mainee

For the Respondents

...Shri R.P. Singh

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

Shri D.K. Malhotra and 6 others, who are working as Tele Communications Inspector Grade-II have filed the present application under Section 19 of the Administrative Tribunals Act, 1985 assailing the impugned order dt.12.4.1990 issued by the Head Office, Baroda House (Annexure A1) for selection of Tele Communications Inspector Grade-I in the pay scale of Rs.2000-3200 and notifying the date of examination for the same annexing a list of eligible 74 candidates in which the names of applicants appear at Serial Nos.50-52, 56, 60 and 61. The name of Shri Iqbal Ahmed, applicant No.6 does not appear in the list. The grievance of the applicants is that the selection proceedings initiated by respondent No.1 to fill up nearly 29 posts of TCI Grade-I calling 74 candidates is not based on the actual seniority for appearing in the written examination. Further, the grievance of the applicants is that their position

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in the seniority list has not been properly shown in TCI Grade-II, while the seniority of a candidate plays a very important role in forming the final panel because out of the candidates who secure more than 60% marks and less than 80% marks, the candidates are picked up in accordance with the seniority irrespective of the marks they obtain and the final panel is prepared in accordance with the seniority. Thus a senior candidate securing 60% marks will be preferred to a junior candidate who might have secured less than 80% marks. The grievance of the applicants is that since they have been placed at Serial No.50 and below, they will have lesser chances of being selected because some of the juniors have been placed senior to them as they were appointed much after the appointment of the applicants.

2. The applicants have prayed for the grant of the following reliefs :-

- (a) That this Hon'ble Tribunal may be pleased to quash the impugned seniority list issued on 12.4.1990 (Annexure A-1).
- (b) That this Hon'ble Tribunal may be further pleased to direct the respondents to hold the post of TCI Gr.I after revising the seniority list as per law as declared by the Hon'ble Supreme Court in Y.V.Rangia's case.
- (c) That this Hon'ble Tribunal may be further pleased to direct the respondents to give the benefit of promotions to the applicants in the post of TCI Gr.II from the date from which their juniors have been promoted with consequential benefits.

3. The facts of the case are that there are three grades of Tele Communications Inspectors (TCI), which are as follows :-

- (i) TCI Grade III (Rs.425-700/1400-2300)
- (ii) TCI Grade II (Rs.550-750/1600-2660)
- (iii) TCI Grade I (Rs.700-900/2000-3200).

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Besides there is another post of Chief TCI in the pay scale of Rs.840-1040/2375-3500. The authority of all these grades was controlled till 1984 by the Head Quarters of the Northern Railway. By the order dt.1.5.1984 (Annexure A2), the Railway Board has passed an order for restructuring of Group 'C' cadre including that of TCI, the benefit of restructuring was to be given w.e.f. 1.1.1984 against all vacancies which arose from restructuring. It was also laid down that a Railway servant becomes due for promotion only one grade above the grade of the post held by him at present, on a regular basis, and if such higher grade post is classified as a selection post, the existing selection procedure will stand modified in such a case to the extent that selection will be based only on scrutiny of service records without holding any written and/or viva-voce test. The averment of the applicants is that about first 40 posts of TCI Grade-III Rs.425-700 were upgraded to TCI Grade II Rs.550-750. The Northern Railway Head Quarters issued another circular dt.1.9.1984 on the subject of decentralising of the two lowest cadres in Signal and Telecom Department and it was laid down that these posts will be controlled by the respective divisions of the Railways with immediate effect for all purposes of promotion/confirmation and transfer etc. The staff working on the respective divisions will continue to work there and maintain their lien/seniority on those divisions. In the case of TCI working in the construction organisations or who are on deputation ^{elsewhere} will continue

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to hold their lien on the division from where they were last transferred to the construction organisation or placed on deputation elsewhere. It was also provided that necessary action with regard to the filling up the post of TCI in the above grades against the vacancies caused as a result of restructuring of the cadre and existing vacancies as on 1.1.1984 in terms of the instructions contained in the Board's letter dt.1.5.1984 (Annexure A2) may be taken by Divisional Railway Managers by opening fresh roster registers. The applicants have filed a combined seniority list of Telecom Inspectors Grade 425-700 as in June, 1982 and the seniority list as on 5.7.1984 (Annexures A4 and A4A). The case of the applicants is that they are senior to some of the TCIs who are shown much above Sl.No.50 of the eligibility list attached to the circular dt.12.4.1990 (Annexure A1). It is also stated by the applicants that after decentralisation, no seniority list was issued by headquarter's office. Thus it is averred that the staff mentioned at Sl.Nos.29 to 49 in the eligibility list (Annexure A1) are much junior to the applicants when the seniority list of 1982 and 1984 are taken into account (and an illustrative chart has been furnished in para-4.24 of the application. Thus it is averred that the lower seniority of the applicants vis-a-vis their juniors is on account of illegal and arbitrary action on the part of respondent No.1 to decentralise the post without filling up the posts which were already existing prior to decentralisation. It is further stated that the vacancies ought to be filled up in

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accordance with the rules which have been in force at the time when the vacancies had actually arisen. It is further stated that by virtue of these unjust and illegal seniority lists, the service career of the applicants will be jeopardised in as much as nearly 21 persons who have been placed senior to them in the eligibility list are actually much junior to them.

4. The applicants have also stated that the field of eligibility was issued by respondent No.1 on 12.4.1990 for holding selection for the post of TCI Grade I and they have only been informed about this written test on 1.5.1990 while at least three weeks notice prior to the said examination had to be given to the candidates whenever a selection is to be held and in any case two weeks' clear notice has to be given and as such, holding of an examination without giving proper notice is arbitrary and illegal.

5. The respondents contested this application and stated that certain posts fell vacant because of the upgradation of the position of the cadre in the divisions of the Northern Railway which were to be filled up after decentralisation of the cadre by respective divisions of the Railways. If the applicants had any grievance against decentralisation of posts of TCI Grade III and Grade II, they should have represented at that time. Now after a period of over 6 years they cannot raise such

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aggravance when already in 1984, 1985, a panel of 77 TCI Grade I and again in 1988, a panel of 19 TCI Grade I was prepared, but the applicants never represented against the decision of decentralisation. The applicants are, therefore, estopped from challenging the same. The eligibility list which has also been referred to in the counter as combined seniority list of TCI Grade II (Annexure A1) has been prepared on the basis of seniority list of TCI Grade II received from the Divisional and extra divisional offices for the purpose of holding selection for the post of TCI Grade I which is a headquarter controlled category. It has no relevancy with the seniority list of TCI Grade III issued in 1982 and 1984. when it was a headquarter's controlled category prior to 1984. It is further stated in the reply that eligibility list/seniority list was also received previously when selection to the post of TCI Grade I was held in 1988 and at that time the applicants were not covered in the field of eligibility of the candidates who were called for selection.

6. As regards the short notice for written test, the said test was postponed to 26.5.1990 and the applicants should not have any grudge on that account. Thus it is stated that the applicants have no case.

7. During the pendency of the OA, Sukhdev Kaushim, H.C.Saxena, Prem Lal Bhasin and Sunder Lal also applied through MP 273/91 to be impleaded as intervenors. All these petitioners were

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impleaded as respondents Nos.3-6 in the OA. The private respondents also opposed the grant of relief to the applicants. They have taken the plea that the application is barred by time as the applicants are seeking the relief of filling up of vacancies which have occurred in 1984 and revision of the seniority list in the grade of TCI Gr.III and promotion to TCI Gr.II. In fact the private respondents also reiterated the same facts as averred by the official respondents.

8. By the interim order dt.21.5.1990, applicant Shri Iqbal Ahmed who was not in the eligibility list for appearing in the written examination was allowed to appear provisionally by an interim order granted on that date. It was also ordered on that day that the selection process may continue, but the result shall not be announced. As a result of this interim order, the result of the selection has not been announced. During the course of the arguments, it has been revealed by the learned counsel for the respondents that out of the present applicants, Shri K.K.Mahajan did not appear in the selection and only S/Shri V.G.Nigam and M.G.Sachdeva have cleared the selection and the remaining four applicants have failed in the said selection.

9. We have heard the learned counsel for the applicants as well as the learned counsel for the official respondents. None

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appeared on behalf of the private respondents at the time of final hearing. The learned counsel for the applicants stated that the restructuring has taken place w.e.f. 1.1.1984 by the circular of the Railway Board dt.1.5.1984 and relying on the decision of Y.V.Rangaiya & Ors. Vs. J.Srinivas Rao & Ors., reported in 1983(3) SCC p-284, argued that the vacancy in any cadre has to be filled up according to the rules in force when the vacancies arise. The learned counsel for the applicants referred to the relevant observation of the Lordships of the Hon'ble Supreme Court in the aforesaid case :-

"We have not the slightest doubt that the posts which fell vacant prior to the amended rules could be governed by the old rules and not by the new rules." The learned counsel argued that on 1.5.1984, the Railway Board issued instructions (Annexure A2) on cadre review and restructuring of Group 'C' cadres as a result of which the number of posts in TCI Grade II has been increased. According to the circular, the promotions in pursuance of restructuring were to be given effect from 1.1.1984. At that relevant time, the posts in Grade II and III of TCI were controlled by the headquarters office of Northern Railway and the promotions from Grade III to Grade II were made on the basis of inter-divisional seniority of Northern Railway on the basis of criteria prescribed for selection. Thus the applicants in this case have the grievance that after decentralisation of the cadre after the circular dt.1.9.1984, the staff working in the respective divisions, the posts in the respective division

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will be filled by the Divisional Railway Manager by opening fresh roster registers. The grievance, therefore, is that the posts in Grade II as existed on 1.1.1984 and also which were created in the above grade as a result of restructuring of the cadre should have been filled on the basis of inter-divisional seniority rather on the basis of divisional seniority. This contention of the learned counsel suffers from two flaws.

Firstly, the circular of decentralisation was issued on 1.9.1984 (Annexure A3). The applicants have not challenged the above circular of decentralisation even in the present OA. The concept of senior and junior has been stressed by the learned counsel on the point of entry in TCI Grade III arguing that they were appointed as apprentices Telecommunication Inspectors on the Northern Railway through Railway Recruitment Board in the year 1974 and 1975 and having successfully completed their apprenticeship for two years, they joined their working post in 1976 and 1977. In the memo of parties attached to the application, the applicants Nos. 1, 2, 3 and 7 joined in 1977, applicant No. 5 joined in 1978, applicant No. 4 joined in 1980 and applicant No. 6 joined in August, 1976 under Senior DSTE, Moradabad Division. The seniority lists have been issued in 1982 and 1984. The staff mentioned in the seniority list from Sl.No. 29 to 49 (Annexure A) are those who entered in TCI Grade III in 1977, 1978, 1980, and 1982 and their ranking in the seniority list of 1984 commences from Sl.No. 132 and goes up to 247 while the names of the applicants in the seniority list appear much earlier

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to them at Sl.No.158, 172, 174, 175, 180, 184 and 209. On the face of it, appears that in the seniority list which was maintained by the headquarter's office by virtue of having entered in TCI Grade III, some of the applicants are shown senior to those who are shown from Sl.No.29 to 48 in the eligibility list. But the applicants have not assailed either that seniority list which was issued in 1987 by the respondents nor they have challenged the decentralisation scheme. The learned counsel for the respondents has placed reliance on the authority of Director, Lift Irrigation Vs. R.K. Mohanty, reported in 1991 (2) SCC 295 where it has been held by the Hon'ble Supreme Court that policy decision taken for the re-organisation of the cadre cannot be challenged except when it is mala fide. There is no challenge in the present case by the applicants and as such, the contention of the learned counsel that the policy of decentralisation having not been challenged now cannot be reviewed judicially for granting the relief, claimed by the applicants.

10. The main contention of the learned counsel is based on the seniority lists which have been issued earlier by the Head Quarter's office in 1982 and 1984 which materially differed from the eligibility list circulated with the circular for selection which was to be held in May, 1990. One of the applicants,

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Shri D.K. Malhotra filed an additional affidavit in which the seniority list issued on 8.6.1990 has also been filed as Annexure III. The names of six of the applicants are shown at Sl.No.15-17, 21-23. All these applicants have been placed in accordance with their original proper seniority according to the date of appointment. The contention of the learned counsel is that only two applicants, S/Shri Ram Kumar and Rajiv Burman have been shown senior to the applicants at Sl.No.13 and 14 because these two persons were directly appointed by the Railway Recruitment Board in the intermediate grade II on account of their being graduate engineers otherwise all the staff working in the micro wave division have been shown in the seniority list in accordance with their date of appointment. In this connection it has to be taken into account that decentralisation was done before the upgraded posts were sanctioned and the applicants have never represented against decentralisation. During the course of the arguments, the learned counsel for the respondents has pointed out that in the year 1984-85, a selection was held for TCI Grade I and 74 persons were empanelled and again in 1988, a selection was held and a panel of 19 TCI Grade I was prepared. If the applicants had any grievance on the basis of the seniority list of 1982 and 1984, then they should have represented at that time. But they have not done so. It is a fact that the posts of TCI Grade III and II were

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previously centrally controlled by headquarter's office, but after decentralisation were ordered to be controlled by respective DRM w.e.f. 1.9.1984 (Annexure A3) and only the posts of TCI Grade I continued to be centrally controlled. The learned counsel for the respondents has referred to the Constitution Bench judgement of the Hon'ble Supreme Court in the case of Malcon Lawrence Cecil D'Souza Vs. U.O.I. & Ors., reported in 1975 Supplement SCR 409 where it has been held that raking up old matter like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time. The same view has been taken by the Hon'ble Supreme Court in the case of Rana Randhir Singh & Anr. Vs. State of U.P., reported in AIR 1989 SC 218. In view of the above facts as the seniority has not been claimed by the applicants at the opportune time as well as the decentralisation of the cadre of Grade II and III of the TCI has not been challenged even in the present OA, the contention of the learned counsel for the applicants cannot be accepted with regard to the fact that some of the persons who joined as TCI Grade III have been given earlier promotion to the post of TCI Grade II than the applicants.

11. Now coming to the effect of upgradation by the circular of the Railway Board dt.1.5.1984, it is stated that only 4 posts

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were added to the grade of TCI Gr.II and this fact is admitted in the additional affidavit filed by Shri D.K. Malhotra in May, 1991 (p-125 of the paper book). In para-1 of the affidavit, it is stated that only 4 additional posts of Tele Communication Inspector(TCI) Grade II were sanctioned as a result of restructuring w.e.f. 1.1.1984. Out of 4 additional posts, 2 were allowed in the micro division in which 6 of the applicants were working. The remaining 2 were allowed in other divisions of the Northern Railway. The benefit of these 2 posts in the micro wave division was given to the 2 senior most employees as is evident from the memo dt.30.7.1985 annexed to the affidavit (Annexure II). The official seniority list of 3.6.1990 also goes to show that Shri Anil Sharma, Shri K.K.Mahajan, Shri D.K.Malhotra and Shri K.B. Ram have been given officiating promotion w.e.f. 30.7.1985. S/Shri M.G.Sachdeva and V.G.Nigam have been given the benefit w.e.f. 7.2.1986. None of these applicants has challenged at the proper time the grievance of their promotion of their alleged junior on the basis of restructuring or on the vacancy then existing from 1.1.1984. The learned counsel for the applicants has placed reliance on the judgement in the case of S.K.Sharma (CA 2063/88), but in that case the respondents did not put their appearance. That case related to Signal Inspectors Grade III. The circular of the Railway Board dt.1.5.1984 as well as

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1.9.1984 equally apply to the Signal Inspectors. The Principal Bench in that case has taken the view that the promotion to the post of Signal Inspector Grade II in the pay scale of Rs.550-750 w.e.f.1.1.1984 shall be considered by the respondents on the basis of inter-divisional seniority for the entire Northern Railway for the post of Signal Inspector Gr.III in the pay scale of Rs.450-700 and if he is found fit on the basis of the criteria of selection as per the Railway Board's letter dt.1.5.1984, the applicant shall be given promotion to the post of Signal Inspector Grade II in the then prevailing scale of Rs.550-750 with effect from that date. On the basis of this observation, the learned counsel for the applicants argued that the applicants are in pari-materia with the Signal Inspectors who were the applicants in that OA-2063/88 and so they also be granted the same relief. However, there is a material difference between the two. Firstly, the present OA has been filed in April, 1990 and secondly, there is no mention in the aforesaid judgement of S.K.Sharma that there has been earlier selection also to Grade I. Thus the facts of this case cannot be applied to the present case. The learned counsel for the applicants has also referred to another decision in the case of K.P.Seth & Anr. Vs. Union of India & Ors. (OA 989/89) decided by the Principal Bench on 27.11.1991 of the Permanent Way Inspector in various divisions. That case related to for filling up the PWI posts in the pay scale of Rs.700-900/2000-3200. In that case also, the

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respondents did not file the counter and the matter was decided without any assistance from the respondents. In both the above decisions of the Principal Bench, i.e., in the case of S.K. Sharma as well as K.P. Seth & Anr., the Principal Bench has relied on the ratio of the judgement in V.V.Rangaiya & Anr. (supra) that vacancies in any cadre have to be filled up in accordance with the rules in force when the vacancies arose. By this, it is evident that the vacancies which were created by virtue of restructuring as well as the vacancies existing on 1.1.1984 had to be filled up in accordance with the various circulars at that time. But the applicants are themselves to be blamed not to assail the decentralisation affected in the cadre of Grade II and III by the circular of 1.9.1984 (Annexure A3). The matters which have since been settled cannot be unsettled after a long time and in this connection, reliance can be placed on the authority of the Hon'ble Supreme Court in the case of Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra, reported in 1990 (2) SCC 175 wherein the last para, the Hon'ble Supreme Court while concluding the judgement observed that the matters which have been settled once should not be allowed to be unsettled after a long period. The same view has been expressed earlier in the case of Maloon Lawrence Cecil D'Souza (supra).

12. The learned counsel for the respondents also argued that when there is promotion by selection, seniority does not

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play material role because the promotion is affected on the basis of merit and not by virtue of seniority alone and reliance has been placed on the authority of State Bank of India Vs. Mohammed Vasiyuddin & Ors., reported in AIR 1987 SC p-1889. The learned counsel for the respondents has also, during the course of the arguments, referred to the fact that the names of the applicants in the memo of parties have not also been correctly shown and even the date of appointment of the applicant, Shri K.V.Ram is of 1980 and that of applicant, Shri Nigam is of October, 1978. The learned counsel for the respondents has also disputed the correctness of para 4.24 of the application and stated that the persons who have been referred to at Sl.Nos.30-33 are senior to the applicant^{No.1} who is at Sl.No.56. Thus the statement of fact also has not been correctly drawn by the applicants.

13. In view of the above discussion, the only conclusion that can be drawn is that though the Railway Board issued the orders regarding restructuring of Group 'C' cadres vide its letter dt.1.5.1984 (Annexure A2), but the posts of TCI Grade III and II which were previously centrally controlled by headquarter's office were decentralised and were ordered to be controlled by the respective DRM ^{circular dt.} vide / 1.9.1984 (Annexure A3), and decentralisation was done before the upgraded posts were sanctioned and the applicants did not represent against decentralisation at any time nor in the present OA. It has also come on record that a panel was

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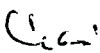
drawn for the selection post of TCI Grade I in 1984 and 1985 as well as in 1988 and the applicants at any of these occasions did not represent and so they are estopped from raising such an objection now. Lastly, the applicants had already undergone the process of selection and only 2 of the applicants, S/Shri Sachdeva and Nigam have passed the test. On this account also, they should not have any grudge.

14. In view of the above facts and circumstances, the present application is devoid of merit and is dismissed leaving the parties to bear their own costs.

(J.P. SHARMA)
MEMBER (J)

4.2.93

(P.C. JAIN)
MEMBER (A)

Office Report	Orders
	<p>OA-848/90</p> <p>4.2.1993</p> <p>After the arguments of both sides in the matter were heard and the hearing was concluded, learned counsel for the respondents filed some additional affidavit on behalf of the respondents which was received in the Registry on 25.1.1993 but which was sent to the Court Officer by the Registry on 1.2.1993 to which the learned counsel for the applicant also filed a rejoinder affidavit which was received in the Registry on 27.1.1993.</p> <p>Since both the affidavits were received in the Court after the conclusion of the hearing of the case and no permission had been sought by the parties to file the same after conclusion of oral hearing, and as the judgment had been prepared before filing of these affidavits were brought to our notice, no cognizance can be taken of the documents referred to above. The judgment in this case pronounced today, 4.2.1993, is on the basis of the material available on record and without perusing the two documents referred to above.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="text-align: center;">  (J. P. Sharma) Member (J) </div> <div style="text-align: center;">  (P. C. Jain) Member (A) </div> </div>