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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.1556/91

Date of decision: 30.04.1993.

Shri K.R. Mehra

...Petitioner

Versus

Union of India through the
Secretary, Ministry of Railways
(Railway Board) and Others

...Respondents

Coram: The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. J.P. Sharma, Member (J)

For the petitioner

Shri B.S. Maine, Counsel.

For the respondents

Shri P.H. Ramchandani,
Senior Counsel and Shri O.P.
Kshatriya, Counsel.

Judgement(Oral)
(Hon'ble Mr. I.K. Rasgotra, Member (A))

Heard the learned counsel for both the parties. The case of the petitioner is that he joined the Indian Railways as Temporary Assistant Engineer vide order dated 20.11.1962 after he had appeared in the Engineering Service Examination of 1961. He appeared again in the said examination in 1962 and on being selected was appointed to Indian Railway Service of Engineers (IRSE for short) on 14.8.1963 referred to as 1962 batch. Thereafter the respondents issued seniority list of senior scale/junior scale officers of the service on 21.7.1978. The name of the petitioner is at page 59 and one Shri S.P. Singh is shown as junior to him. The next seniority list was issued on 1.2.1983 of the senior/junior scale officers of the IRSE. Shri S.P. Singh is again shown junior to him. The last seniority list relied upon by him was issued on 21.7.1987. Shri S.P. Singh is again shown below to him. These seniority lists are prepared batchwise, i.e., 1961 batch, 1962 batch and so on. In 1990 the petitioner came across the Classified List of Gazetted Establishment

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of Indian Railways (hereinafter referred to as the List). In the list of Chief Engineers given in the said List he found that Shri S.P. Singh was shown above him. This set him to probe as to how he has lost his seniority. He made a representation to the Railway Board which was turned down by them vide their letter dated 7.2.1991. The contents of the said letter are reproduced below:-

"With reference to your representation dated 9.7.90 claiming refixation of seniority in IRSE after giving you weightage at the rate of 50% of the service rendered by you as a Temporary (unclassified) Officer, you are hereby informed that your seniority has been correctly fixed as a Direct Recruit w.e.f. 14.8.1963 in accordance with the relevant principle of seniority and that it does not call for any revision."

2. Not satisfied with this, the petitioner filed this Original Application on 27.5.1991 under Section 19 of the Administrative Tribunals Act, 1985. The petitioner has claimed the following reliefs:-

"That he may be given 50% weightage in seniority for the period he worked as Ty. Asstt. Engineer before getting appointed to Class I (IRSE) in terms of principles laid down by Ministry of Railways (Rly Board) vide their letter No.E(O)I-72SR6/29 dated 30.11.1976 and accordingly his seniority be refixed amongst IRSE officers in Senior Admn. Grade and placed above Shri S. Suryanarayanan.

(ii) That due to correct refixation of seniority, his date of promotion to SAG be deemed before that of Shri S. Suryanarayanan and he be paid arrears in payment as due to him on this account."

3. The learned counsel for the petitioner referred us to Railway Board's letter dated 30.11.1976 according to which the petitioner's services as Temporary Engineer should have been reckoned to the extent of 50% of the service rendered while fixing the seniority in the IRSE in accordance with paragraph-5 of the seniority of the principles for determining seniority enclosed with the Railway Board's order dated 30.11.1976. If this was done

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the petitioner would be placed above Shri Suryanarayanan. The learned counsel further submitted that the petition is not barred by limitation as the respondents decided his representation on merits vide their letter dated 7.6.1991 and the cause of action accrued to him from that date.

4. Shri P.H. Ramchandani, Senior Counsel appeared for the respondents and submitted that the petitioner is claiming seniority above Shri Suryanarayanan. A reference to seniority list notified on 21.7.1978 indicates that the name of Shri Suryanarayanan appears on the top of the 1962 batch. The same position is reflected in the seniority list notified on 1.2.1983 and on 21.7.1987. The cause of action for the petitioner, therefore, arose in 1978, as he is claiming seniority over Shri Suryanarayanan who is No.1 in 1962 batch of IRSE. He, however, did not raise any objection. He did not make any protest in 1978 or in 1983 or in 1987. His first representation was received only in 1990. That too, on the ground that the Classified List shows him as junior to Shri S.P. Singh. As far as the case of Shri S.P. Singh is concerned, he was placed above the petitioner, as in the selection to SAG he had secured higher merit grade than the petitioner. The basic question, therefore, which arises is whether the petitioner can, at this point of time, claim relief based on the principles of seniority notified in 1976, when the seniority lists have been notified in 1978, 1983 and 1987 and the petitioner had not demurred at any stage. The learned Senior Counsel also drew our attention to the MP No.1550/91, filed by the petitioner, praying for condonation of delay. Relying on the judgement of the Tribunal in B.K. Behra vs. Secretary, Ministry of I&B, New Delhi reported in ATR 1986 (1) CAT 203, the learned Senior Counsel submitted that the delay

in such a case cannot be condoned. The limited power to condone the delay in filing the application available under Section 21 of the Administrative Tribunals Act, 1985 is in respect of the grievance, arising from orders made within three years of the constitution of the Tribunal. The petition is, therefore, barred by jurisdiction and the question of condonation of delay would not arise.

5. The next point raised by the learned Senior Counsel for the respondents was that none of the persons who would get affected, if the relief prayed for by the petitioner is granted, has been impleaded in the O.A. The petitioner has specifically claimed relief against Shri Suryanaryanan even he has not been impleaded. Further, as would be seen from the seniority list, adverted to earlier Shri Suryanarayanan was at No.1 of 1962 batch. A claim of seniority over him by virtue of having rendered service as a Temporary Assistant Engineer without impleading him cannot be legally sustained. At this stage, the learned counsel for the petitioner submitted that he may be permitted to amend the O.A.

6. We have considered the respective contentions and perused the record carefully. The seniority lists relied upon by the petitioner viz. 1978, 1983 and 1987 are indicative of their position in senior/junior scale. Shri S.P. Singh was indeed junior to the petitioner in senior/junior scale. But thereafter appointments are made by positive act of selection at least at two stages before reaching the rank of the Chief Engineer. The seniority list in senior/ junior scale does not bestow an entitlement to the maintenance of the same seniority in the junior/senior Administrative Grade or above. There is a positive act of selection at the Junior Administrative Grade and thereafter at the Senior Administrative Grade. If the petitioner was to be believed a person who is junior in senior/junior scale has always to remain at the same level of

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seniority till he retires from service. This unfortunately is not so. The seniority tends to change as the selection goes on becoming more and more rigorous depending upon the number of posts in the cadre at the higher levels. That Shri S.P. Singh was junior to the petitioner in senior scale does not necessarily mean that he would be junior to him in the Senior Administrative Grade or in the next higher grade. The seniority here would be regulated by the order of merit assigned to the respective persons by the DPC. The inter-se seniority after selection may be or may not be disturbed. This depends on the position of merit assigned by the DPC. The respondents have clearly stated that the petitioner was superseded. It cannot be his case that his supersession came to his knowledge only in 1990, particularly when he had been working at a very senior level in the Railways. As far as the benefit of service rendered as Temporary Assistant Engineer is concerned, he should have raised this issue after the circular dated of 1976 bestowing such benefit on Temporary Assistant Engineers was issued. He had this opportunity after 1983 and 1987 seniority lists were issued. But he did not raise any objection. This relief is, therefore, clearly barred by limitation. We also see merit in the argument of the respondents that the benefit of service rendered as Temporary Assistant Engineer is available to Temporary Assistant Engineers on their permanent absorption in the junior scale (Class-I cadre) and not to those who come through open competition. The petitioner Shri Mehra came through open competitive examination in 1962. He was correctly assigned seniority in accordance with the ranking given by the UPSC. Principle-5 of the seniority principles referred to in Railway Board's letter dated 30.11.1976 is not accordingly applicable to him. He cannot also be granted the benefit claimed, as the person who would be affected by the reliefs claimed by him has

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not been impleaded by him. It is well established principle of law that relief cannot be granted behind the back of a person who is not in the Court. Shri Suryanaryanan against whom specific relief is claimed is not before us. Further, we are not impressed by the argument that he became aware of the changed seniority only in 1990. This is only an ingenious submission which lacks conviction.

7. In view of the above discussion we are of the view that the O.A. is barred by limitation. It is also bad in law for non-joinder of proper and necessary parties. The submission of the learned counsel for the petitioner that he would like to amend the O.A. at this late stage has been vehemently resisted by the learned counsel for the respondents. We also see no merit in the prayer at this belated stage.

8. In the above view of the matter the O.A. is dismissed as barred by limitation besides being bad in law for non-joinder of necessary and proper parties. No costs.

J. P. Sharma

(J.P. SHARMA)
MEMBER(J)

I. K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

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