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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

D.A.NO.2899/91

New Delhi, this the 3rd day of January, 1996

Hon'ble Shri N.V. Krishnan, Acting Chairman

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

1. Shri C.N. Sehai,
s/o late Shri B.K. Lal,
Signal Inspector, Grade I,
D.R.M. Office, Lucknow.
2. Shri S.P. Johri,
s/o late Shri Sia Ram Johri,
Signal Inspector, Gr.II
DRM Office, Lucknow.
3. Shri Shanti Kumar,
s/o Shri G.S. Shivaram
r/o 328, Mohalla Doosigar,
Farash Bazar, Shahdra, Delhi.
4. Shri Parma Nand Sharma,
s/o Shri Amar Singh Sharma,
r/o Railway Colony, Jodhpur.
5. Shri Brijesh Narain Misra,
s/o Laxmi Narain Misra
r/o Q.No.E-60, Opp. Power House,
Moradabad.
6. Shri Trilok Nath,
s/o Mulkh Raj
R/o :-36A, Railway Colony,
Rajpura.
7. Shri Bir Bal Arora,
s/o Shri Ram Narain Arora,
r/o 594, Sector-14, Sonipat.
8. Shri Kianti Kumar Marwaha
s/o Kundan Lal Marwaha
r/o L 40A, Railway Colony, Ludhiana ... Applicants

By Advocate: Shri B.S. Mainee

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(7)

Versus

The General Manager,
Northern Railway,
Baroda House,
New Delhi.

... Respondents

By Advocate: Shri P.S. Mahendru

ORDER (ORAL)

Hon'ble Shri N.V. Krishnan, Acting Chairman

The applicants have sought the following
reliefs:

- i) That this Hon'ble Tribunal may be pleased to direct the respondents to assign seniority to the applicants from the date of their continuous officiation as Assistant Block Inspectors as has been done in cases of Shri S.C. Kulshrestha and ors. V. UOI, K.D. Bhardwaj Vs. UOI & Ors. and R.C. Nigam Vs. UOI & Ors.
- ii) That this Hon'ble Tribunal may be pleased to direct the respondents to give all consequential benefits including further promotion, fixation of pay and arrears.
- iii) That this Hon'ble Tribunal may be further pleased to direct the respondents to give promotion to the applicants in grade Rs.700-900 from 1.1.1984 with arrears on the basis of modified procedure of selection as has been done in case of others.
- iv) That this Hon'ble Tribunal may be further pleased to direct the respondents to give the entire benefit of the judgement of Shri S.C. Kulshrestha's case to the applicants also.

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The grievance on the basis of which these reliefs are sought has arisen in the following manner. The applicants were promoted as Assistant Block/Signal Inspectors on ad hoc basis in the year 1966 to 1968. Subsequently, suitability test was held in 1971 and 1973. The applicants were selected and regularised as Assistant Block/Signal Inspectors.

2. Thereafter, the respondents initiated selection to the post of Signal Inspector in the next higher grade and issued a list of candidates who were to appear in the selection (Annexure A-3). That list did not include the names of certain Assistant Block Inspectors, though they had been working ~~under~~ ^{on} ad hoc basis from ~~an~~ earlier dates than some of the direct recruits appointed on later dates, but called for selection.

3. Aggrieved by this omission, Shri Sudershan Kumar and Hira Lal Sharma filed a writ petition in the High Court of Delhi which, on the establishment of this Tribunal, was transferred and registered as T-98/1985. That writ petition was decided on 6.2.1987 (ATR 1987 538). The petition was allowed and a direction was given to assign seniority to the applicants vis-a-vis the direct recruits in the cadre of Assistant Signal Inspectors on the basis

of their continuous officiation. S.L.P. filed by the Government was dismissed.

4. Thereafter, similarly situated persons filed O.A.No. 1226/88, O.A.No.1362/88 and 1656/88 claiming the similar benefits as given to the applicants. These O.As. were allowed by the order dated 22.8.89 (Annexure A-4). It was directed that the decision of the Tribunal in TA-98/85 would apply to the 3 applications and the seniority of the applicants shall be fixed vis-a-vis the direct recruits on the basis of continuous officiation and further promotions from the due dates.

5. This order of the Tribunal was implemented by Annexure A-1 order dated 12.9.90. The seniority of all the applicants in those 3 O.As. were revised by this order.

6. The applicants, who are senior to some of those persons who were parties to the 3 O.As. and who were benefited by the Annexure A-1 order, filed representations. (Annexure A-5). One of the applicants Tarlok Nath refers to A-1 order dated 12.9.90 and claims proper seniority vis-a-vis R.C. Nigam, his junior who has been given higher seniority by the Annexure A-1 order. The prayer in the representation is that the benefits given to the junior R.C. Nigam be given to him. Similar representations have been made by the others also.

7. As no reply was received, this O.A. has been filed seeking the above directions.

8. The respondents have filed a reply contesting these ~~claims~~ ^{have}. They, however, admitted that the applicants are senior to some of those persons who were parties to the O.As. disposed of by Annexure A-4 order and who have been benefited by the consequential Annexure A-1 order issued by the respondents.

9. We have heard the learned counsel for the parties. The learned counsel for the applicants submits that in view of the clear decision of the Supreme Court in Amrit Lal's case, (1975 SLR (1) 153) the respondents ought to have, on their own, given the benefit to all similarly situated persons in the light of the judgement in Sudershan Kumar's case. As respondents have admitted that the applicants are senior to some of the beneficiaries of the Annexure A-4 judgement and the consequential implementation ^{order of} (Annexure A-1 order), the applicants are entitled to the reliefs claimed.

10. The learned counsel for the respondents submits that the O.A. is barred by limitation. Sudershan Kumar's case was decided on 6.2.87. Some applicants who have similar

grievance filed the 3 O.As. which were disposed of by Annexure A-4 order. If the applicants had similar grievance they too should have approached the Tribunal like the others, who filed the O.As. in 1988. They did not file any such OA then even after the A-4 within a reasonable time. They slept over the matter/judgement for more than a year and filed representations only in October 1990. Therefore, the O.A suffers from laches and it is also barred by limitation ad hence it should be dismissed.

11. He further points out that in para 1 of the O.A. which requires specification of the orders against which the O.A. is made, the applicants have referred to the ~~the~~ impugned Annexure A-1 order as the impugned order. However, they have not impleaded the persons to whom the benefit has been conferred by the revision of seniority by that order. For this reason also, the O.A. is liable to be dismissed.

12. He also contends that while mention has been made in para 1 of the ~~the~~ Annexure A-1 order ~~as~~ being the impugned order, the prayers made in para 8 are totally different. In the circumstances, he contends that the O.A. now placed before the Tribunal is liable to be dismissed.

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13. The learned counsel for the applicants contests these arguments.

14. We have heard the rival contentions.

15. The first question is whether the O.A. is barred by limitation. The learned counsel for the applicants contends that his grievance starts when by the Annexure A-1 order dated 12.9.90, seniority of certain persons have been revised upwards and some of the persons whose seniority been has also revised are admittedly juniors to the applicants.

Therefore, the cause of action in their cases has arisen only on 12.9.90. They made the representations within a reasonable time and hence the question of limitation does not arise. The learned counsel for the respondents, however, points out that even representations were taken into account only 3 out of the 8 applicants have filed the representation.

16. We have considered the matter. We are of the view that the contention of the applicants' counsel has to be accepted.

We notice that in Annexure A-4 judgement itself, disposing of the 3 O.A.s filed in 1988, the Tribunal has referred to the judgement of this Tribunal in Dharam Pal & Ors. Vs. UOI & Ors. (1988 (6) ATC 396 at 402) and A.K. Khanna Vs. UOI & ors. (ATR 1988 (2) CAT 518) wherein the Tribunal observed that the cases of the employees similarly situated should be examined by the Government suo-motu without driving them to seek redress in a court of law. The judgement also refers to the observations of the Supreme Court to the same effect.

17. Therefore, when that judgement was to be implemented one ~~should~~ expect the respondents to give benefit of the higher seniority to all the persons similarly situated i.e. all Assistant Block Inspectors/Signal Inspectors who rendered ad hoc services and were then regularised after holding suitability test. Therefore, the applicants did not sleep during the period after Annexure A-4 judgement was delivered on 22.8.89. They were only watching whether the Govt. ~~on~~ would ~~on~~ their own, extend benefit to them, even though they were not parties to the O.A.s. It is only when Annexure A-1 order was issued that the applicants came to realise that, despite the Tribunal's reference to the need for the respondents to implement the decision in similar cases, the respondents have not done so. What is more, the benefit has been given, admittedly, to some persons who are all there is junior to the applicants. In the circumstances, ~~no~~ doubt cause of action in this case arose only when the order issuing the revised seniority was issued on 12.9.90. So reckoned this O.A. is not barred by limitation.

18. Admittedly, the applicants are senior to some of the persons who have been given higher seniority.

19. The question is whether the O.A. suffers from the other defects pointed out by the learned counsel for the respondents. In so far as not impleading the persons who are beneficiaries of Annexure A-1 order is concerned, we are of the view that to raise what the applicants seek is not a personal issue between the

applicants and those other persons mentioned in the Annexure
A-1 order. They seek the implementation of the ~~order~~ which
has been ~~received~~ in the judgement of the Tribunal, namely,
that the petitioners' ^{ad hoc} services should have been recognised
for the purpose of fixation of inter se seniority as between
persons like the applicants and the direct recruits. There-
fore, there is no need for impleading any of these persons
whose names are mentioned in the A-1 order.

19. We do not see any inconsistency between the particulars
given in para 1 of the OA. and the reliefs sought. It is
clear from the averments made in the O.A. that what is
sought by the applicants is the benefit of the Annexure
A-4 judgement which has been given to the applicants by
Annexure A-1 order. In other words, they are aggrieved by
the Annexure A-1 order inasmuch as that benefit is not given
to them. In the circumstances, we dispose of
this O.A. with a direction to the respondents to assign
seniority to the applicants from the dates of their continuous
officiation as Assistant Block Inspector/Signal Inspectors,
as has been done in the Annexure A-1 order in respect of
persons to whom such directions have been given by Annexure
A-4 order of the Tribunal.

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20. The applicants have prayed for promotion to the higher scale etc. We are of the view that only a direction can be issued that consequent upon giving them higher seniority in terms of the aforesaid direction, the applicants are entitled to all benefits, including consideration of the cases for further promotion as and when due, in terms of the revised seniority. The O.A. is allowed accordingly. The respondents shall comply with the above directions within three months from the date of receipt of a copy of this order. The parties to bear their own costs.

Lakshmi Smedha

(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)

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(N.V. KRISHNAN)
ACTING CHAIRMAN

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