

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. No.1568 OF 2004

This the 25th day of October, 2005

**HON'BLE SHRI JUSTICE M.A. KHAN, VICE CHAIRMAN (J)
HON'BLE SHRI M.K. MISRA, MEMBER (A)**

Bachan Singh,
S/o Shri Bulaki Ram
Lab Khalasi
Diesel Shed Laboratory, Tughlakabad,
New Delhi- 44.

R/o 58, D III Railway Colony,
Tughlakabad, New Delhi-44.

(By Advocate : Shri K.N.R. Pillai)

versus

1. Union of India, through :
The General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Delhi Division, Northern Railway,
State Entry Road, New Delhi-1.
3. Shri Jagdish Prasad
Lab Assistant,
Office of Sr. Section Engineer,
Diesel Shed, Tughlakabad,
New Delhi.
4. Shri Imtiaz Ali
Lab Assistant
N. Railway, Diesel Shed, Shakurbasti,
New Delhi-110034.

.....Respondents.

(By Advocate : Shri A.K. Sukhla)

O R D E R

Shri M.K. Misra, Member (A) :

The applicant Shri Bachan Singh, a Railway employee, filed this OA with a prayer for quashing the order dated 28.11.2003 (Annexure A/6) by which he was denied promotion/seniority to the grade of Laboratory



Assistant and also to issue a direction for holding a Review DPC with all consequential benefits.

2. The briefly the facts of the case are that the seniority of the applicant was revised without giving any notice to him and was placed below Shri Jagdish Prasad and Shri Imtiaz Ali, respondent nos.3 and 4 respectively, as per the provisional seniority list. The applicant joined as Laboratory Khallasi. In that existing seniority list of Laboratory Khallasi, the applicant was shown senior to respondents no.3 and 4 but later on in provisionally seniority list of Laboratory Assistant, the respondent nos.3 and 4 were shown above the applicant. The impugned order dated 28.11.2003 was passed on the basis of the representation of the applicant as per the directions of the Tribunal in OA No.595/2002 vide order dated 9.4.2003. The representation of the applicant was rejected by the official respondents on the ground that as per the Screening Panel which is the basis for assignment of the seniority the applicant stood below the respondents no.3 and 4 in the year 1981. Till then no representation was made against the seniority position till 1997. However, the seniority of the Laboratory Khallasi was determined in the year 1987 vide order dated 28.10.1987. The selection for the post of Laboratory Assistant in the year 1997 was held on the basis of the above seniority list in which the respondents no.3 and 4 stood senior to the applicant. The instructions issued by the Chemist & Metallurgist, Charbagh, Lucknow, as quoted by the applicant, did not have any impact in the case of the applicant. The Laboratory Khallasies whose seniority position was challenged by the applicant were regularised in the same Screening Panel in which the applicant was empanelled. No other persons either by appointment or by promotion was placed above the applicant in the seniority list. Thus revision of seniority of the applicant was not done by the respondents for the above reasons.

3. The applicant was appointed as Laboratory Khallasi in Northern Railway Diesel Shed at Tughlakabad, the Head Office is situated at Lucknow. The minimum qualification for Laboratory Khallasi was Matriculation/10+2 with science. The seniority of the Laboratory Khallasi was counted from the date of appointment in the Laboratory as per the instructions issued by the Head Office at Lucknow vide letter dated 23.6.1979. The respondents no.3 and 4 were the casual labourers working in the Project in Delhi Division, who were brought in as Laboratory Khallasi in Diesel Shed in violation of the standing orders to the effect that the casual labourers will not be allowed to work in the workshop, loco shed etc. Respondent no.3 - Shri Gagdish Prasad and respondent no.4 - Shri Imtiaz Ali were appointed in the Diesel Shed on 12.10.1979 and 11.10.1979 respectively. Later on, on screening of casual labourers in Delhi Division in different departments was carried out and their names appeared in the provisional Screening Panel of Laboratory Khallasies along with regular Laboratory Khallasies appointed before 1997. This provisional Screening Panel of Laboratory Khallasi was not challenged due to lack of information. Subsequently respondents no.3 and 4 were promoted to the next higher post of Laboratory Assistant by way of overlooking the claim of the applicant. Later on a written test and viva voce was held for the posts of Laboratory Assistant in the written examination, the applicant was shown at Sl No.3 whereas respondents no.3 and 4 were shown at Sl. No. 5 and 6 vide order dated 2.9.1997 (Annexure A/8). When the viva voce test was held, the result was not declared. Later on, in the provisional seniority list (Annexure A/1) the private respondents no.3 and 4 were shown senior to the applicant. The main ground of the applicant is that the seniority list should be prepared as per the rules then prevailing in 1979. The rule governing seniority is prescribed in Para 302 of the Indian Railway

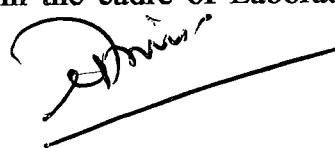
Establishment Manual, which clearly indicates that seniority among the incumbents of a post is governed by the date of appointment to the grade and as per the factual position, the applicant was appointed on 10.4.1978 whereas the respondents no.3 and 4 were appointed on 22.10.1979 and 11.10.1979 respectively. Thus the applicant is senior to the respondents no.3 and 4. Further the Screening Panel is not competent to fix the seniority. Moreover, respondents no.3 and 4 were given appointment on casual basis and they cannot be put equal to the regular Laboratory Khallasies. Further, the casual laborers are not entitled to work at workshop and loco shed etc.

4. The learned counsel for the respondents submitted that the applicant had first approached this Tribunal through OA No.595/2001, which was disposed of vide order dated 9.4.2003 with a direction that the claim of the applicant be decided by way of passing a speaking order. Accordingly, in compliance of direction of the Tribunal, the claim of the applicant was decided but rejected and a speaking order was accordingly passed by the respondents. In another OA 2745/2002, the applicant claimed for financial upgradation under ACP Scheme and as per the direction of the Tribunal vide order dated 28.6.2004, the financial upgradation was given to the applicant under ACP Scheme vide order dated 2.9.2004 in the scale of Rs.3050-4590/- . Now the applicant had come before this Tribunal in the present OA for claiming seniority over two persons i.e. private respondents no.3 and 4. In fact the seniority was assigned on the basis of merit determined by the Screening Panel based on total number of casual labourers working days in the Railways irrespective of departments. The applicant was shown at Sl. No.15 whereas private respondents no.3 and 4 were shown at Sl No.1 and 2 respectively on the basis of recommendations of the Screening Panel. In earlier OA 595/2001, the applicant had claimed

seniority on the basis of date of appointment in the Laboratory without mentioning the rules and regulations of the Railway department. Although the applicant was appointed as substitute Laboratory Khallasi on 10.4.1978 but for the purpose of seniority, the same was decided on the basis of actual number of working days as casual labourer/ substitute. It was further submitted by the learned counsel for the respondents that the seniority in respect of Laboratory Khallasies are not separately maintained. The private respondents no.3 and 4 were also Laboratory Khallasies whose screening was also done along with the applicant and the screening list was prepared vide letter dated 25.3.1981 on provisional basis. The applicant never objected in respect of seniority. Therefore, provisional Screening Panel of Laboratory Khallasies become subsequently final. It was further averred that promotion to the higher post is a selection post. Therefore, against one post, three candidates are considered for the purpose of promotion on the basis of merit. In that selection process, the applicant was although qualified but the actual promotion was granted on the basis of eligibility. List of selection dated 11.2.1999 was in respect of Laboratory Khallasies in the grade of Rs.2650-4000. The cardinal principle, which was followed for the preparation of seniority list, was that the persons who had joined later than the applicant but had completed more number of days as casual labourers shall occupy better footing in comparison to the persons who had joined earlier with lesser number of working days. In the case of the applicant, the number of days he served as Laboratory Khallasies was less than the number of days served by the private respondents no.3 and 4.

5. We have considered the submissions made by the learned counsel for the parties and also perused the records.

6. The main issue is whether the date of appointment is the key factor for deciding the seniority in the cadre of Laboratory Khallasi or it is the

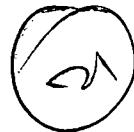


number of days served as casual labourer/substitute. According to the applicant, the date of appointment should be the criteria for determining the seniority which is as per Rule 302 of Indian Railway Establishment Manual and since the applicant joined before the private respondents no.3 and 4 (22.10.1979 and 11.10.1979 respectively). Therefore, he should be given seniority over them. The Rule 302 of I.R.E.M. is as under :-

“302. Seniority in initial recruitment grades – Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-se-seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se-seniority of each group.”

7. The above rule is meant for the permanent employees which are not applicable in the case of casual labourer/substitute. The applicant was given appointment on casual basis and he has worked for lesser number of days than the number of days served by the private respondents no.3 and 4. This clearly indicates that the applicant although joined before them but there has been some break in service that is why number of days served as casual labourer stands less. Thus once the Screening Panel has decided to finalise the seniority on the basis of number of days as casual / substitute labourer and this is undisputed fact that the applicant served lesser number of days in the Railway department as casual labourer/substitute and there may be many dates of fresh appointment from time to time as per requirement of the respondents in the case of the applicant. Therefore, the





date of initial appointment cannot be made the basis for determining the seniority.

8. In view of this, there is no scope for any interference by this Tribunal in the order passed by the respondents in compliance of the Tribunal's direction.

9. In the result, OA is devoid of merits and hence, it is dismissed. No order as to costs.


(M.K. MISRA)
MEMBER (A)


(M.A. KHAN)
VICE CHAIRMAN (J)

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