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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

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Date of Decision: 18.12.1992

OA 1373/92

KHYALI RAM TIWARI

... APPLICANT.

Vs.

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

HON'BLE SHRI P.C. JAIN, MEMBER (A).

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

For the Applicant

... SHRI S.K. SAHNEY.

For the Respondents

... SHRI SHAUKAT MATTO.

J U D G E M E N T

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

The applicant is Ex. Senior Clerk, Northern Railway, who has been absorbed in IRCON w.e.f. 30.1.90, has filed this application under Section 19 of the Administrative Tribunals Act, 1985. The applicant is aggrieved by the order dated 22.1.91 (Annexure A-1), by which the seniority of the applicants of the Civil Appeal No.5317/90 Rajbir Singh & Ors. Vs. UOI, decided by the Hon'ble Supreme Court on 12.11.90 was determined. The applicant wants that the benefit of that judgement be also given to him.

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2. The applicant has prayed for the following reliefs :

▪(i) Direct the respondents to grant the Applicant his seniority position in scale Rs.260-400 after granting him the benefit of ad-hoc officiation followed by regularisation without break by extending the benefit of Hon'ble Supreme Court judgement in SLP No.7055/89.

(ii) Direct the respondents to grant the applicant all consequential benefits in higher post of Senior Clerk scale Rs.330-560(RS) on revision of seniority in the scale Rs.260-400.

(iii) Grant any other relief that this Hon'ble court may deem fit.▪

3. The case of the applicant is that he was appointed as Store Khallasi on 23.5.73 and subsequently he was promoted in Diesel Shed, Tughlakabad. He was promoted on ad-hoc basis locally in Diesel Shed, Tughlakabad on 26.10.77 as Store Issuer and Clerk in the grade of Rs.260-400. Subsequently a selection on the divisional basis was made and a panel was declared on 26.9.86. as a result of that examination for the post of Diesel Store Issuer, Fuel Issuer, Power Recorder, Tool Checker in the grade of Rs.260-400 and applicant's name is at Sl.No.24. He has been ^{regularly appointed} from that date. The applicant ^{was} posted as Senior Clerk on the basis of suitability by the panel declared on 19.12.89. The applicant has since been absorbed in IRCON. The applicant claims seniority ^{as has been granted} to Sh. Rajbir Singh, who joined as Khallasi in Class-IV and was

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promoted as Power Recorder/Store Issuer. ^{He} filed OA 372/88
Rajbir Singh & Ors. Vs. UOI, decided by the Principal Bench,
in which they had prayed that they should be assigned proper
seniority from the date they were promoted and should be given
promotion to the higher grade from the date from which their
juniors have been promoted and they should be ^{further} considered for
promotion to the post of Senior Clerks. The Tribunal dismissed
this application. The SLP was filed before the Supreme Court,
SLP No.7055/89 Rajbir Singh & Ors. Vs. UOI, and the Hon'ble
Supreme Court directed the respondents to consider the case
of the appellants Rajbir Singh & Ors. to determine their seniority
after taking into account the period of ad-hoc service, since the
initial date of their promotion to grade-III service, till the
date of regularisation in 1986.

4. The respondents in their reply have stated that the case
of these appellants in the above SLP, decided by the Hon'ble
Supreme Court by the order dated 12.11.90 is totally different
from the facts of the present case. The impugned order (Annexure
dt.22.1.1991
A-1) ^{which has} been challenged by the applicant

only determines the seniority of those six applicants and the
applicant has nothing to do with that order. ^{it is contended that} Thus, ^{the present}
application is not maintainable, at all and, moreover, the applicant
has gone to IRCON, where he has been permanently absorbed on
30.1.90. The present application is, therefore, liable to be
dismissed.

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5. We have heard the learned counsel for both the parties and have gone through the records of the case. The present application is hopelessly barred by limitation. The applicant desires that since he was given ad-hoc local promotion on 26.10.78 in Tughlakabad Division and has taken the selection at the divisional level sometimes in July, 1986, thereafter he has been brought on the panel declared on 26.2.86, so his seniority be reckoned from 26.10.1978 and not from 26.2.1986. The applicant could have challenged that orders at the relevant time. The judgement given in the case of Rajbir Singh (supra) only lays down a ratio for determination of seniority allowing the counting of ad-hoc service if the appointment has been earlier to a post which is not purely temporary or fortuitous. In the present case, the stand taken by the respondents is that the applicant was promoted to the post which was not substantive in nature and further he was promoted in the Diesel Shed Tughlakabad. The applicant ^{has} taken the selection for the post of Diesel Store Issuer and appeared in the selection in July, 1986. The applicant joined only as a Khallasi in 1973 and he was officiating locally in a vacancy existing in Tughlakabad Shed.

6. The respondents have filed, alongwith the counter, statement (Annexure A8) the service record of the applicant. The applicant was appointed to officiate on ad-hoc ^{basis} on different occasions. In the representation made by the applicant, Divisional Office informed by the letter dated 13.6.85 to one Shri Sunil Misra about the transfer of the applicant when he was working as Store Issuer ^(ad-hoc) An

Tughlakabad Shed. The applicant has not at that proper time come for the adjustment of the seniority if at all he had ^{any} grievance on the basis of the non-counting of ad-hoc service, even though he was not working on a substantive post. The mere contention of the learned counsel for the applicant that the benefit of the judgement of Rajbir Singh's case has been granted to other colleagues cannot be extended to the applicant as the judgement cannot be applied to the applicant in the facts and circumstances of the case.

7. In the present application, the applicant has prayed only after his absorption in IRCON that his seniority be granted to him from the back date. The matters which are once settled cannot be unsettled again after a long time. The applicant had already been promoted as Senior Clerk in 1989 and at that time also he did not agitate this matter.

8. In view of the above facts and circumstances, the present application is hopelessly barred by limitation and the relief prayed for cannot be granted to him. The present application, therefore, is devoid of merit and is dismissed leaving the parties to bear their own costs.

J.P. Sharma
 (J.P. SHARMA) 18-12-92
 MEMBER (J)

(Sd/-)
 (P.C. JAIN) 18/12/92
 MEMBER (A)