

**Central Administrative Tribunal
Principal Bench**

OA No.1711/1992

New Delhi this the 25th day of July, 2011.

Hon'ble Mr. Justice V.K. Bali, Chairman

Hon'ble Mr. M.L. Chauhan, Member (J)

Hon'ble Dr. Ramesh Chandra Panda, Member (A)

1. Sumer Singh S/o Shri Nirmal Singh
Working as HTC at Northern Railway,
Delhi Sarai Rohilla.
2. Ladli Parshad S/o Shri Meva Lal
TTE at Northern Railway, Delhi (HQ).
3. Jaswant Singh S/o Shir Jeet Singh
TTE at Northern Railway, Delhi
4. Kishan Lal S/o Shri Sahi Ram
TTE at Northern Railway, Delhi
5. Rameshwar Das s/o Shri Indraz Singh
TTE at Northern Railway, Rewari.
6. Shiv Kumar S/o Shri Mata Din
TTE at Northern Railway, Rewari.
7. H.C. Vasisth S/o Sh. UR Vasisth
TTE at Northern Railway, Rewari.
8. Raja Ram S/o Shri Maiku Lal
TTE at Northern Railway, Rewari.
9. B.D. Sharma S/o Shri Mahipal Sharma
TTE at Northern Railway, Rewari.
10. Hari Om S/o Shri Bhagwan Singh
TTE at Northern Railway, Rewari.
11. Jag Ram S/o Sh. Gugan Ram
TTE at Northern Railway, Rewari.
12. S.P. Sapra S/o Shri Kundan Lal
TTE at Northern Railway, Rewari.
13. M.K. Sharma S/o Shri R.K. Sharma
TTE at Northern Railway, Rewari.

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14. Mahabir Parshad S/o Shri Nand Lal
TTE at Northern Railway, Rewari.

(By Advocate Mrs. Meenu Mainee)

-Applicants

-Versus-

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Secretary, Railway Board, Rail Bhawan,
New Delhi.
3. The Chief Personnel Officer,
Northern Railway, Baroda House,
New Delhi.
4. The Divisional Railway Manager,
Northern Railway, Bikaner (Raj.).

(By Advocate Shri R.L. Dhawan)

ORDER

Mr. M.L. Chauhan, Member (J):

This case has a chequered history. Earlier a Division Bench of this Tribunal dismissed the OA filed by the applicants. Thereafter the matter was carried to the High Court and the High Court has remitted the same to the Tribunal. The reasoning given by the Division Bench of this Tribunal to dismiss the OA and on what point the matter has been remitted by the High Court, we will advert to this aspect at the later stage. However, in sum and substance the case set up by the applicants in this OA is that there were three channels of promotion in the grade of Rs.425-640 and the feeder category for promotion in the said grade was from the category of Ticket Collector/Travelling Ticket Examiner. It may be stated that in the cadre of Ticket Collector there were

two grades, i.e., Rs.260-400 and Rs.330-560 and further promotion from the cadre of Ticket Collector was to that of Travelling Ticket Examiner in the same grade of Rs.330-560. Further, the case set up by the applicants is that guidelines for the purpose of promotion to the grade of Rs.425-640 is provided in the Circular dated 07.06.1975 and three channels of promotion were available in the said grade, namely (i) Head Ticket Collector, (ii) Conductor and (iii) Supervisor/STE. Since there were three channels of promotion from feeder category, the said circular provides that the employees falling in the feeder category have to exercise option for promotion to these categories. Admittedly, applicants opted for Supervisor/STE category. Consequently, some of the persons who were juniors to the applicants in the feeder category opted for Head TCR and got further promotion earlier to the applicants. It may also be relevant to mention here that although the applicants have exercised their option for the post of Supervisor/STE category but keeping in view the limited number of posts senior persons to the applicants were promoted and applicants could not be promoted for want of vacancies. It may be relevant to state here that promotion to the category of Head TCR and Supervisor/STE was by way of selection, whereas promotion to the post of Conductor was on the basis of seniority-cum-suitability. It is also not in dispute that at the relevant time the post of Supervisor/STE carried some additional allowance which was not available to Head

TCR. On the other hand, in the category of Head TCR chances of further promotion were better. Subsequently, respondents vide letter dated 31.5.1988 changed the criteria for promotion which was in vogue pursuant to the instructions/circular of the year 1975 and the option system was done away with and the posts in the grade of Rs.425-640/1400-2300 were to be filled by way of positive act of selection and by forming a common cadre of three categories of Head TCR, Head TTE and Conductor. Further in terms of the new policy decision, promotional avenue was available in one category only, as against three categories of post which procedure was in vogue in terms of earlier Circular of the year 1975 up to the new Policy introduced in the letter dated 31.05.1988. Thus, promotion as per new policy was to be made at the first instance to the post of Head Ticket Collector. Promotion to the post of Head TTE was to be made from Head Ticket Collector in the same very grade and further promotion to the post of Junior Inspector of Ticket in the higher grade of Rs.550-750/1600-2300 was to be made from the feeder category of Head TTEs.

2. In view of this changed criteria for promotion and also that avenues of channel of promotion was only limited to one category of post and not to the three categories of posts as was permissible under the instructions/circular of 1975, the

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system of option was done away with and rightly so, as there was only one channel of promotion.

3. As already stated above, since the applicants had exercised their option for promotion to the running post of TTEs and they could not be promoted as such because their seniors who had also exercised their option for promotion as Head TTEs occupied the available vacancies admittedly some junior persons to the applicants who had exercised their option for promotion as Head Ticket Collectors were promoted because the number of staff with the option for travelling posts was much higher as compared to the stationary posts of Head Ticket Collectors. Feeling aggrieved with the instructions dated 31.5.1988 whereby ticket checking staff to which category applicants belong had to undergo selection for promotion as Head TCR before seeking further promotion to the category of Supervisor TTE, to which applicant had exercised option in terms of the earlier circular of 1975, applicants challenged the validity of these instructions by filing the aforesaid OA. The challenge made in the said OA was that they are entitled to the benefit of the judgment rendered by this Tribunal on 12.1.1996 in OA-878/1991 – **V.K. Malik v. Union of India & Anr.**, as the said decision was rendered in the identical circumstances. This Tribunal, however, did not accept the contention of the applicant by holding that in the judgment dated 28.02.1992 passed by this

Tribunal in **Dharam Bir Singh Yadav & Others v. Union of India & Others** (OA No.610/1988), such relief was denied and the judgement in **Dharam Bir Singh Yadav** (supra) was not taken note of by the Bench while deciding **V.K. Malik's** case, therefore *per incuriam*. At this stage it will be useful to quote paras 3-5 of the order dated 8.10.1997 where this finding has been recorded, which thus read:

"3. Applicants having freely exercised their option for promotion as Sr. Ticket Examiners and not being promoted owing to paucity of vacancies, cannot legitimately complain of others also exercised their option for promotion as Head TCRs and were duly promoted after selection as per rules/instructions. Applicants also cannot complain if the option system has been given a go by and posts in Rs.425-640 grade are to be filled by a positive acts of selection as per impugned letter dated 31.5.88 as the rules framed by GM are statutory in character as has been held by CAT Full Bench in Wazir Chand Vs. UOI CAT FB Vol. II 287, and there is nothing illegal, arbitrary or violative of Articles 14 and 16 of the Constitution in such selection process.

4. In this connection, we note that in OA No.610/88 DBS Yadav V. UOI Ors. similar reliefs had been sought for. That OA was dismissed after hearing on merits on 28.2.92. Nothing has been shown to us to suggest that the said judgment has not become final. We as a co-ordinate Bench are bound by that judgment.

5. Applicants have relied upon the Tribunal's judgment dated 12.1.96 in OA No.878/91 Shri V.K. Malik Vs. UOI & Ors. The aforesaid judgment does not discuss the judgment in DBS Yadav's case (Supra) and is therefore 'per incuriam'.

4. The matter was carried to the High Court by filing a Writ Petition, which was registered as Writ Petition (Civil) No.576 of 1998. It may be relevant to state here that the Writ Petition was filed by only three applicants, out of 14, whereas

other applicants did not choose to challenge the aforesaid judgment. As can be seen from the order of the High Court dated 3.3.2009 the only contention raised by the learned counsel of applicants/petitioners was that the issue in the case of **Dharam Bir Singh Yadav** (supra) was totally different than what was raised in **V.K. Malik** (supra) and that in **V.K. Malik's** case the fact and situation was identical to the case in hand. On the other hand, the stand taken by the respondents was that even if it be so, the judgement in **V.K. Malik's** case (supra) does not lay down a good law and in the facts and circumstances of the case applicants are not entitled to any relief. It was further submitted by the respondents before the High Court that the applicants had exercised their option with open eyes knowing fully very well that if they are given Supervisor/STE cadre, they may not get promotion as fast as those who may opt for Head TCR cadre. The High Court, after noticing the aforesaid contention remitted the matter back to this Tribunal for re-consideration on merits on the aforesaid issue. At this stage, it will be useful to quote operative portion of the High Court order dated 3.3.2009, which thus reads:

“In the peculiar circumstances of this case, we agree with this submission of counsel for both the parties. The judgment of the Tribunal is accordingly set aside and matter is remitted back to the Tribunal for fresh consideration on merits. Needless to mention, even if the Tribunal comes to the conclusion that the case of the petitioners is at par with that of V.K. Mali's case, it would be open to the respondent to argue that matter

needs consideration by full Bench. The parties shall appear before the Tribunal on 8th April, 2009.”

5. Thus, as can be seen from the portion as quoted above, the matter has been remitted back to this Tribunal for fresh consideration as to whether the applicants are entitled to the benefit of the judgment as rendered in **V.K. Malik's** case (supra) and if so, whether the judgment in **V.K. Malik's** case (supra) had laid down a good law, in the light of the earlier judgment rendered by the Tribunal in **Dharam Bir Singh Yadav's** case (supra) and in that eventuality it would be open to the respondents to argue that the matter needs consideration by Full Bench. Pursuant to the aforesaid order passed by the High Court, this Tribunal vide order dated 16.11.2010 was of the view that there is a conflict of decisions inasmuch as **Dharam Bir Singh Yadav's** case (supra) the challenge on the same ground was denied, whereas in **V.K. Malik's** case (supra), which judgment is squarely applicable in the case of applicants relief has been granted, the matter was referred, on administrative side, to be placed before the Hon'ble Chairman, obviously for the purpose of constitution of a Full Bench. That is how the Full Bench has been constituted and the matter has been listed for hearing.

6. At the outset, it may be stated that in view of the fact that the grievance relates to the period after 1.1.1984 when

promotions were given to the juniors of applicants after restructuring of the cadre on 1.1.1984 we are of the view that the grievance so raised by the applicants does not survive at this belated stage and has thus become a stale issue, more particularly when all the applicants except one have already retired. It was also brought to our notice that out of the three petitioners before the High Court two had already died and one of the petitioners is at the verge of retirement and at present he is in the entitled highest scale of pay. Still at the instance of the learned counsel of applicants the matter is being considered on merits.

7. We have perused the judgment of this Tribunal rendered in the case of **Dharam Bir Singh Yadav's** case (supra). As can be seen from paras 6-9 of the judgment the contention raised on behalf of the applicants in the said case was that (i) respondents in violation of the provisions of restructuring order dated 23.12.1983 promoted junior persons from two grades below, (ii) 21 persons juniors to them have been promoted without holding proper selection, most of them were two grades lower in the grade of Rs.260-400 working as Ticket Collectors and have not worked as TTE in the grade of Rs.330-560 before their promotion as HTC in the grade of Rs.425-640 and (iii) that the restructuring order did not stipulate any system of option from ticket checking staff. The Bench also noticed the stand taken by the

respondents in the counter reply to the effect that options from the applicants and other senior employees working in the grade of Rs.330-560 were called for, but they did not exercise option for promotion to the post of HTCR grade Rs.425-640, accordingly, the staff working in the grade Rs.330-560 who had exercised their option to the post of HTCR were promoted along with junior staff of grade of Rs.260-400, who had also exercised option to the post of HTCR. Thereafter, in para-7 of the judgement Bench formulated the question for its consideration viz.:

“Having chosen and exercised to remain on the travelling ticket examiner stream, can one claim promotion in the other stream, is the issue arising for consideration”.

8. Ultimately, this Tribunal after noticing the aforesaid contentions and stand taken by the respondents and also noticing the Railway Board's earlier instructions, as referred to in paragraphs 18 and 19 of the judgment, where an employee even two lower grades can be considered for promotion when adequate number of employees in the higher grades are not available, in para 20 had giving the following finding:

“In view of the aforesaid instructions issued by the Railway Board, we are of the opinion that the procedure followed by the respondents in promoting persons in the grade of Rs.260-400 as HTCRs in the grade of Rs.425-640, does not suffer from any legal infirmity. We are also of the opinion that as the applicants had opted for promotion only to the post of HTTE in the grade of

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Rs.425-640 and not to the post of HTCR in the same grade, they cannot challenge the promotions made on the basis of the options exercised by the staff. The impugned written test was also held in accordance with the rules, as already mentioned." (Emphasis of underline supplied)

9. Thus, this Tribunal in **Dharam Bir Singh Yadav's** case (supra) has given a categorical finding that the applicants who had opted for promotion only to the post of HTTE in the grade of Rs.425-640 and not opted to the post of HTCR in the same grade, cannot challenge promotion of such employees who have been promoted as HTCR on the basis of the option exercised by them.

10. The grievance raised in the case of **V.K. Malik** (supra) was also regarding promotion of the junior persons on the post of Head Ticket Collector in the grade of Rs.425-640 vis-à-vis applicants who were admittedly seniors but have not exercised option to the said category but had exercised option to the category of Supervisor TTE in terms of the Rules/instructions of 1975, which grievance of the applicants was considered in the light of Rule of 1988, which does not provide for exercise of option and prescribes for separate procedure for the purpose of promotion/selection, in para-7 has made the following observations:

"7. We accordingly direct that the respondents will, in case, the applicants have been promoted to the post of HTC in accordance with 1988 rules, determine their seniority in a manner that they are placed senior to

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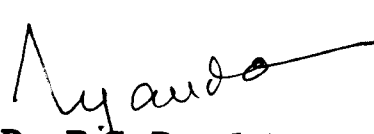
those who were juniors to them as TTE but were promoted earlier because of the exercise of the option. Their further movement to the post of Supervisor TTE and thereafter will also be determined accordingly and they will be given consequential benefits of seniority in the succeeding grade to which they might be promoted. Application is thus partially allowed with the above directions."


11. According to us, such a direction in **V.K. Malik's** case (supra) given by the Tribunal was not legally permissible inasmuch as the so called junior persons were promoted in the cadre of HTC in terms of 1975 instructions/rules, as senior persons like applicants had not opted for promotion to that category but had exercised option for the category of TTE and thus could not be promoted. The fact remains that junior persons were promoted in the cadre of HTC as per the procedure/rule in vogue after qualifying the written test thus had become members of that cadre from earlier date as against the senior persons/applicants who had not exercised option to be promoted to the post of HTC and also had not qualified the written test for the said post (rather exercised option for promotion in another cadre of TTE) and have admittedly been promoted after 1988 in accordance with the 1988 rules/instructions thus become member of the cadre at a later stage.

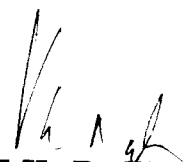
12. Thus, according to us, applicants could not have been assigned seniority over and above junior persons appointed in the cadre of TTE from an earlier date. It is settled law that

seniority cannot be assigned retrospectively when a person has not even borne on the cadre. The matter can also be looked from another angle. The seniority in a particular cadre is a consequential relief, which is dependent on the promotion/appointment of an employee in that cadre. We fail to understand how the persons who were promoted subsequently in the cadre of HTC in accordance with the subsequent rules of 1988 could have been assigned higher seniority over and above persons who were promoted earlier to the applicants in terms of 1975 Scheme/Rules. Thus, we are of the view that the judgment rendered by this Tribunal in the case of **V.K. Malik** (supra) has not laid down a good law. We agree with the finding given by this Tribunal in **Dharam Bir Singh Yadav's** case (supra) which is also applicable in the instant case.

13. In view of what has been stated above the reference is answered accordingly and the OA shall stand dismissed. No costs.


(Dr. R.C. Panda)
Member (A)


(M.L. Chauhan)
Member (J)


(V.K. Bali)
Chairman

'San.'