

Central Administrative Tribunal
Principal Bench: New Delhi

1017, 1021 & 1643/92
OA No^s.....of.....decided on 4.11.1997

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Name of Applicant:.....
Shri Mehar Singh

By advocate:
Shri S.K. Sawhney

Versus

Name of Respondents:.....
Union of India through GM Northern Railway
& Ors

By advocate
Shri R.R. Rai for private respondents

Coram

Hon'ble Mr. Justice K.M. Agarwal - Chairman
Hon'ble Mr. N. Sahu, Member (A)

1. To be referred to the Reporter or not?

no

2. Whether to be circulated to other
Benches of the Tribunal?

no



(N. Sahu)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. Nos. 1017, 1021 and 1643 of 1992

New Delhi, this the 4th day of November, 1997

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Hon'ble Mr. Justice K.M. Agarwal, Chairman
Hon'ble Mr. N. Sahu, Member (Admnv)

(1) O.A. No. 1017 of 1992

Shri Mehar Singh S/o Shri Kishan Singh, working
as Cook Northern Railway, Central Hospital,
New Delhi. -APPLICANT

(By Advocate - Shri S.K. Sawhney)

Versus

Union of India through

1. General Manager, Northern Railway, Baroda House, New Delhi.
2. Chief Hospital Supdt., Central Hospital, Northern Railway, New Delhi.
3. Shri Prem Ballabh working as Senior Masalchi/Cook, Northern Railway, Central Hospital New Delhi.
4. Shri Kalaish working as Masalchi/Cook, Northern Railway, Central Hospital, New Delhi.
5. Shri Ashok Kumar working as Masalchi, Northern Railway Central Hospital, New Delhi. -RESPONDENTS

(Private respondents by Advocate - Shri R.R. Rai)

(2) O.A. No. 1021 of 1992

Shri Bhagwan Das S/o Shri Ganga Ram, working
as Bearer / Cook, Northern Railway, Central
Hospital, New Delhi R/o 324, Sonlight Colony
No. 2, Hari Nagar Ashram, New Delhi. -APPLICANT

(By Advocate - Shri S.K. Sawhney)

Versus

Union of India through

1. General Manager, Northern Railway, Baroda House, New Delhi.
2. Chief Hospital Supdt., Central Hospital, Northern Railway, New Delhi.
3. Shri Prem Ballabh, working as Senior Masalchi/Cook, Northern Railway Central Hospital New Delhi.
4. Shri Kalaish, working as Masalchi/Cook, Northern Railway, Central Hospital, New Delhi.
5. Shri Ashok Kumar, working as Masalchi, Northern Railway Central Hospital, New Delhi. -RESPONDENTS

(Private respondents by Advocate - Shri R.R. Rai)



(3)O.A.No.1643 of 1992

1. Shri Ramesh Chand S/o Shri Gaya Prasad working as Bearer/Northern Railway Central Hospital, R/o 303/12, Railway Colony, Rani Bag, Shakurbasti, New Delhi.
2. Shri Kailash Negi S/o Shri Rattan Singh, R/o Bearer, A-1B/112B, Janakpuri, New Delhi, working as Bearer, Northern Railway Central Hospital, New Delhi.
3. Shri Mahesh Prasad S/o Shri Deen Dayal working as Bearer Northern Railway Central Hospital R/o 150/6, Minto Bridge Colony, New Delhi.
4. Shri Vishram S/o Shri Pratap Meena Working as Bearer Northern Railway Central Hospital, New Delhi. R/o 303/12, Railway Colony, Rani Bagh, Shakurbasti, Delhi.
5. Shri Dev Dutt S/o Shri Ram Sumjhan Working as Bearer Northern Railway Central Hospital, New Delhi. R/o 12 Chalmers Road, New Delhi.
6. Shri Moolchand S/o Sh. K. P. Gupta, Working as Bearer, Northern Railway Central Hospital, New Delhi. R/o C-1/25, Janakpuri, New Delhi.
7. Shri Vikram S/o Sh. Mehar Singh, working as Bearer Northern Railway Central Hospital, New Delhi, R/o S-44, School Block, Shakarpur, Delhi - 110 092.
8. Shri Omender Singh, S/o Shri Hakku Singh, Working as Bearer, Northern Railway Central Hospital, New Delhi. R/o 120, Old Vijay Nagar, Gaziabad, U.P.
9. Shri Charan Dass S/o Shri Bhagwan Dass working as Bearer Northern Railway Central Hospital, New Delhi.

-APPLICANTS

(By Advocate - Shri S.K. Sawhney)

Versus

1. Union of India through General Manager
Northern Railway, New Delhi.

- | | |
|-------------------------|---------------------------------|
| 2. Shri Prem Ballabh | : All working as Masalchies in |
| 3. Shri Ashok Kumar | : Northern Railway Central |
| 4. Shri Kailash | : Hospital, New Delhi. (Service |
| 5. Shri Ram Chander | : to be affected through |
| 6. Shri Bileshwar | : Chief Medical Supdts. |
| 7. Shri Surjit | : Northern Railway Hospital, |
| 8. Shri Raj Kumar Patel | : Basant Road, New Delhi. |

-RESPONDENTS

(Private respondents by Advocate Shri R.R. Rai)

J U D G M E N T

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By Mr.N. Sahu, Member (Admnv)-

Inter-connected issues and common background facts are involved in the three O.As. of the same group of persons from only one organisation and, therefore, they are consolidated together for disposal in a common order.

O.A.1643/92 -

2. The reliefs claimed in O.A.1643/92 are as under:

"8(i) Direct the Respondent No.1 to make further promotions to the post of Cook from the combined seniority list of Masalchies/Bearers.

(ii)Direct Respondent No.1 to accommodate Respondents Nos.2 to 8 in Catering Department in case they seek their further advancement as per channel of 1976"

3. In order to understand the background history leading to these reliefs, it is necessary to recapitulate the facts and the dispute in the case of Prem Ballabh & others Vs. Secretary, Ministry of Railways & others, O.A.No.656 of 1986 decided on 27.5.1991 by this Tribunal. Prem Ballabh was appointed as a Masalchi on 30.1.1971 and a Senior Masalchi w.e.f.28.12.1973 in the scale of Rs.200-240. Two other applicants were also appointed as Masalchies in 1973. They were aggrieved by the combined seniority list of Masalchies and Bearers of the Northern Railway Central Hospital. This combined list worked to their disadvantage for promotion to the post of a Cook. They

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wanted to be disassociated from Bearers and therefore they wanted separate seniority as Masalchies and inter se promotion. The Tribunal noticed that according to revised channel of promotion of 1976 (which is Annexure-3 to the present O.A.) the lowest post is Khalasi/Cleaner/Masalchi in the grade of Rs.196-232/-(RS) and the highest post in the hierarchy is shown to be the Chief Catering Inspector in the scale of Rs.700-900/-(RS). Further from the lowest post as aforesaid, one can go to the higher post of Waiter/ Pantryman/ Bearer in the scale of Rs.200-240/-(RS) or to the post of Asst. Cook by option and promotion to either of the post is to be on the basis of seniority - cum - suitability. After that, Waiter/Pantryman/Bearer can move to the higher post of Distributor/Head Waiter, Sale Incharge/Junior Clerk, and Store-cum-Accounts Clerk in the grades of Rs.210-270/-(RS), Rs.225-308(RS) and Rs.260-400/-(RS) respectively. Similarly, Assistant Cook can go up to the post of Cook/Halwai, Cook, Head Cook/Halwai in the grades of Rs.210-270/-(RS), Rs.225-308/-(RS) and Rs.260-400/-(RS) respectively. In the O.A. decided it is contended that the Bearer cannot be appointed as a Cook directly unless he has opted to the post of an Assistant Cook from the post of Masalchi. Unfortunately, respondents wrongly equated Bearers (scale Rs.200-240) with Masalchies (scale Rs.196-232) and invented a status of "Senior Masalchi" which post was not provided for in the relevant channel of promotion. The Tribunal noticed that a combined seniority of Waiter, Pantryman and Bearer along with

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the other stream of Assistant Cook is not conceived of in the revised channel of promotion. The direction of the Tribunal was as under:-

"8..... that for purposes of promotion to the post of Cook/Halwai, Waiter/Pantryman/Bearer cannot and should not be considered in accordance with the revised channel of promotion chart of the catering staff issued vide Northern Railway Headquarter office letter No.220E/568-Dup(Eic) dated 29.5.1976. This direction should be valid for all promotions in future. In respect of the promotions already made on the basis of combined seniority of Waiter/Pantryman/Bearer on the one hand and of Assistant Cooks on the other, the applicants shall be entitled to all consequential benefits of deemed promotion with arrears on account of difference of pay, if on screening on the basis of seniority-cum-suitability they are found fit for promotion to the post of Cook/Halwai against the promotion quota posts. These will, however, be limited to the number of posts which were available from time to time and also limited to a period of three years preceding the date of filing of this application which is 29.5.1986".

4. In C.C.P.No.1/92 in this very case, the Tribunal again interpreted the directions of O.A.656/86 as restricting the ascertaining of vacancies that were filled up in the promotion quota within a period of three years before 29.5.1986. As two vacancies were available, they reverted the two incumbent Cooks to the posts of Bearers. Of the two vacancies, one belongs to scheduled caste as per roster point. The first applicant in that OA, therefore, got full benefit of that decision.

5. In this O.A. the old dispute is again resurrected claiming that the respondents unjustly denied the applicants their normal channel of promotion

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to the post of Cook as per combined seniority. The applicant's claim is on the ground that the posts in Medical and Catering Departments were distinct and separate. Secondly the only channel of promotion to Masalchi and Bearer was the post of Cook. If this promotion is denied to a Bearer, he would otherwise be left with no channel of promotion. The CAT judgment in OA 656/86 was obtained without impleading the applicants who were necessary parties.

6. Let us first dispose of this claim of non-impleadment of parties. In the case of **V.P. Shrivastava & Ors. Vs. The State of M.P. & Ors.**, JT 1996 (2) S.C. 374 their Lordships had considered the plea of non-impleadment of certain other respondents and whether the said non-inclusion was fatal to the case of the respondents. Their Lordships observed that the appellants did not challenge the so-called adhoc appointments but they challenged the position of the said appointees over the appellants in the seniority list. Since a principle of seniority was under challenge the State is the necessary party to be impleaded. In this case also it is the failure of the State to implement the 1976 Rules defining the channel of promotion that was questioned. The second point questioned was the combined seniority list of Masalchi and Bearers. Therefore, it was not necessary to implead all the affected persons.

7. It is correct there are small number of staff with a limited strength in catering department of Medical Branch. A very few isolated posts exist. It

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is admitted by the respondents that Masalchies and Bearers were in the same scale of Rs.196-232 before 1.1.1986. It is only after recording their willingness the category from Masalchi to Bearer is changed. It is also admitted that the promotion of Cook in the scale of Rs.800-1150 (revised) is done on the basis of the combined seniority of Masalchies and Bearers. But, in O.A.656/86 the applicants' prayer for separate seniority and inter se promotion was in principle allowed. The impugned order passed by the respondents was in pursuance of this Court's judgment. As promotions are based on the directions of this Tribunal in OA 656/86 any consideration or revision would amount to a review of the decision. Without modifying the principle laid down in the decision which has become final the first prayer in the present O.A. cannot be considered. With regard to the second prayer, it is for the official-respondents to consider this prayer. The applicants cannot hope to become Cooks as admittedly the posts are limited. It is not in the interest of administration to keep a group of staff dissatisfied without any avenue of promotion. We leave it to the respondents to consider this matter. Being a policy matter they have to examine all aspects of the problem. Abolition, creation and transfer of posts from one wing to another are exclusively within the administrative domain and a court cannot issue any specific direction in this regard. With the above observations, this O.A. is disposed of.

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O.As.1017 & 1021/92 -

8. On 6.2.1992, the Chief Hospital Superintendent issued a notice to the present applicants Mehar Singh and Bhagwan Das in O.As.1017 and 1021/1992 respectively to show cause as to why they should not be reverted back as Bearers following the Tribunal's judgment which held that normal channel of promotion as Cook should be as Masalchi and not Bearer or Waiter. Shri Mehar Singh was promoted as a Cook on 12.7.1984 and Shri Bhagwan Das on 25.4.1991. By an impugned order dated 14.2.1992 they were reverted. They claimed that the reversion is bad in law because of the long service they rendered. Shri Mehar Singh worked on the post of Cook for more than 7 years after being regularly promoted. According to the applicants, they could not be reverted without following the Railway Servants (Discipline and Appeal) Rules, 1968 and the impugned orders dated 14.2.1992 were in breach of Article 311 of the Constitution of India. The next ground raised was that the CAT's judgment in OA 656/86 did not direct the respondents 1 and 2 to revert the applicants retrospectively. The direction that Bearers were not entitled for promotion to the post of Cooks is valid only for promotions in future and not to promotions which had already been made. The channel of 1976 applied to the Catering Department in Commercial Branch where number of higher grade posts were available but in the Medical Department the Catering staff posts were very few.

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9. In reply in Mehar Singh's case the respondents stated that though the promotions were made since 12.7.1984 as a Cook the said promotion was given to him by considering the joint seniority of Bearers and Masalchies. This post was withdrawn because the Tribunal said that Waiter, Pantryman and Bearer cannot be considered for the post of Cook. As the respondents have got a very limited number of posts of Cook and as Mehar Singh and Bhagwan Dass are from Bearers stream and not from the Masalchies stream, they had to be reverted. The respondents, therefore, contend that the orders reverting these two persons are in accordance with law because it was in compliance with the orders of this Tribunal. As the initial promotion of the applicant to the post of Cook was dehors the rules, the said promotion was ab initio void and, therefore, Mehar Singh had to suffer the consequences of implementing the judgment.

10. The learned counsel for the applicant stated that the applicants in O.A..656/86 were granted consequential benefits of promotion against the future vacancies for three years earlier to the passing of the judgment. As the applicant held the post for 7 long years, he could not be deprived of his post. It is contended that the promotion was not ab initio void because the applicant was validly promoted as per the extant rules as applicable at the time of promotion and the directions of the Tribunal cannot be applied retrospectively.

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11. An order of reversion from an officiating post may attract Article 311(2) of the Constitution of India only if it visits the Government servant with any penal consequences. If the applicant has no right to hold the higher post his reversion to his original post on the ground of wrong selection would not amount to reduction in rank to attract Article 311(2). **State of Mysore Vs. M.K.Gadgoli, AIR 1977 SC 1617.** The only question we have to look into is whether the aggrieved person has the right to hold the higher post and whether that right has been infringed by his reversion. In the case of V.P.Shrivastava (supra) it has been held that if the initial appointment of the respondents on promotion was not made following the procedure laid down by the recruitment rules; even though they are continuing in the post uninterruptedly their service seniority in such a capacity will be of no consequence. What was assailed in OA 656/86 was the promotion to Cook's post from the Bearer's post on the basis of a combined seniority of Bearers and Masalchies. The Tribunal held that such a promotion from the Bearers, Waiter, Pantryman stream "cannot and should not be considered" in view of the revised channel of promotion chart of catering staff issued vide the Northern Railway Headquarter Office letter no.220E/568-Dup(Eic) dated 29.5.1976. Thus as the promotion was declared to be bad in law the subsequent reversion also in implementation of the Tribunal's orders which has been accepted cannot be considered a stigma or an order with a penal consequence. There is no grievance that money paid has been recovered. If the law laid down in OA 656/86 as interpreted further

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by another Division Bench in CCP 1/92 is correct, then the reversion of the applicant from the Cooks post regardless of the number of years he served as Cook cannot be considered to be violative of Article 311. However, the respondents may consider the grievance of the applicants and administratively think of devising a channel in the catering department and upgrade their position.

12. It is also to be noted that the promotion order of the applicants Bhagwan Das and Mehar Singh does not show that their appointment was adhoc or temporary or until further orders but yet in order to consider the relief in favour of Prem Ballabh and others in OA 656/86 the respondents had to ascertain the vacancies within a period of three years before 29.5.1986. There were two vacancies and these were occupied by the applicants Mehar Singh and Bhagwan Dass. Therefore, they had to be reverted. Thus, the impugned order does not call for any interference.

13. In view of the above discussions all the three O.As. are dismissed. No costs.

K.M. Agarwal

(K.M. Agarwal)

Chairman

N. Sahu

(N. Sahu)

Member (Admnv)