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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No.528 of 1993 decided on 15.2.1999.

Name of Applicant : Shri Malkhan Singh & ors

By Advocate : Shri **G.D.Gupta**

Versus

Name of respondent/s Union of India & others

By Advocate : **None**

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

Hon'ble Dr. A. Vedavalli, Member (J)

1. To be referred to the reporter - Yes
2. Whether to be circulated to the other Benches of the Tribunal.

N. Sahu
(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.528 of 1993

New Delhi, this the 15th day of February, 1999

Hon'ble Mr. N. Sahu, Member(Admnv)
Hon'ble Dr.A.Vedavalli, Member(J)

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1. Shri Malkhan Singh, S/o Shri Arjun Singh, R/s H-131, Sector-4, Pushp Vihar, Saket, New Delhi-110017.
2. Shri N.K.sharma, S/o Shri R.L.Sharma, R/o S-V/825, R.K.Puram, New Delhi.
3. Shri D.D.Sharma, S/o Shri Surat Singh, R/o S-9/411, R.K.Puram, New Delhi.
4. Shri Rakesh Gupta, S/o Shri Murari Lal, R/o 3199, Gali Sani Ram, Charkhewalan, Delhi-110006.
5. Shri C.P.Singh, S/o late Shri Ghasita Singh, R/o 276-B, Munirkā Village, New Delhi-110067.
6. Shri Chattarsal Sehrawat, S/o late Shri Pyare Lal, R/o Village Pochan Pur, New Delhi.
7. Shri Satpal Singh, S/o Late Shri Mehar Singh, R/o S-V/1093, R.K.Puram, New Delhi-110022.

-APPLICANTS

(By Advocate Shri **G.D.Gupta**)

Versus

1. Union of India through Secretary to the Government of India, Ministry of Science & Technology, Technology Bhavan, New Mehrauli Road, New Delhi.
2. The Surveyor General of India, Post Box No.37, Hathi Barkhala Estate, Dehra Dun (U.P.).
3. The Director of Survey of India, West Block No.4, Wing No.4, 2nd Floor, R.K.Puram, New Delhi.

-RESPONDENTS

(By Advocate **-None**)

ORDER

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

The prayer in this Original Application is for a direction to quash the seniority list as on

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1.1.1991 and to declare that the seniority of the applicants was liable to be counted from the date they were appointed as Trainee Type 'B' (in short TTB). The other relief prayed for is to declare that the relevant provisions for not counting the services rendered by the applicant during their training period for purposes of seniority as ultra vires and violative of Articles 14 and 16 of the Constitution. There is also a prayer that the provision to the extent it does not require any training to be provided to Group 'D' employees for purposes of promotion to Group 'C' is ultra vires. Thus, the grievance of the applicants is directed against not treating the services rendered by them as TTB (Reproduction) (Group 'C') in Grade-IV for purposes of seniority. This is contrasted with the treatment given to the departmental candidates who are promoted to Grade-IV in 30% quota from the date they are classified in Grade-IV without making them to undergo a training of two years similar to the Type 'B' Group 'C' Training. It is submitted that the applicants' services start from the date of their appointment and they performed the same duties during training which they performed after absorption as Grade-IV. The classification into various grades is nothing but sort of a permanent allotment to a particular trade after ascertaining aptitude of the trainee. No doubt after classification and absorption as Grade-IV the earlier scale of Rs.260-350 is extended to Rs.260-430. That does not mean that the service rendered during training in the former scale cannot have any relevance or

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✓ significance. The service rendered on classification is only a continuation of the service rendered as a trainee. Their grievance is that Group 'D' employees promoted directly cannot be treated as senior to the applicants. The offer of appointment given to the directly recruited officers is given as an offer of appointment to Group 'C' service and it is in pursuance of the said offer that these employees are given training. They are placed on a regular scale. It is also submitted that the Group 'D' employees get a lesser pay scale of Rs.210-290 (pre-revised), whereas a directly recruited TTB is given the scale of Rs.260-430. The grievance can be best illustrated by an example. Applicant Shri Malkhan Singh was initially appointed as a TTB in Group C on 20.12.1980; on the other hand promotee Shri Mehar Singh was promoted to Group 'C' on 29.3.1982. The grievance of the applicant is that Shri Mehar Singh was shown senior in the gradation list and promoted as Technical Assistant on 23.6.1992 whereas applicant no. 1 ^{has} ~~is~~ still waiting to be promoted.

2. After notice, the respondents submit that under the rules 30% vacancies in Group 'C' Map Reproduction Establishment (in short 'MRE') are reserved for Group 'D' employees and such vacancies are filled from the qualified technical labourers as per their seniority. Initially these Group 'D' people are unskilled technical labourers who are upgraded to Semi-skilled in the scale of Rs.800-1150 after rendering long years of service. The Semi-skilled's grade is filled from those technical labourers who

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have acquired the requisite proficiency and passed the prescribed trade test. According to the respondents they have rendered long service in MRE in different sections. Whenever any vacancy occurs for promotion of Group 'D' labourers to Group 'C' Division-II, Grade-IV trade against 30% departmental quota, an in-house trained ^{ing} in the respective trade is provided to them. The items of syllabus of trade test for initial classification of these TTB as Grade IV and those promotees from Group 'D' to Group 'C' against 30% quota remains the same. In view of their long years of service and vast experience they are appointed against 30% reserved quota. The direct recruits are given two years training to acquire the technical know-how in the field of map reproduction. After two years initial training the Diploma Holders are classified directly in higher Grade III instead of lowest Grade-IV in Group 'C' Division II posts. A prescribed trade test on completion of three years' regular service in Grade-IV post is required for promotion as Grade-III.

3. We notice that the gradation list of reproduction personnel grade II as on 1.1.1991 is Annexure-A-10 to the O.A. The applicants have given their objections to this seniority list on 4.7.1991 and those objections were forwarded to the Surveyor General of India (in short SGI) on 3.9.1991. After those objections were seen, the SGI's office informed that the objectors should state as to with whom their seniority should be compared as shown in the seniority list. In response to the same, applicant

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✓ no.1 Malkhan Singh has referred to the list of employees with whom his seniority has to be compared. He states that these employees have been appointed on Group 'C' after his appointment on 20.12.1980 and, therefore, he should be considered senior to them. As it is employees from the gradation list seniority no. 500-543 are shown senior to the applicants. Shri Malkhan Singh's claim is that they should be shown junior to him. Similar are the claims of other employees. The pleadings do not show any decision on the part of the SGI.

4. One important submission of the applicants' counsel is that the Khalasis are never employed in technical sections and the technical labourers are never given a chance to work on the machine. The nature of duties of a technical labourer is quite different from the duties of a TTB. A TTB is a Group-C post holder and is asked to give production on the machine and, therefore, his date of initial appointment as Group 'C' should be considered for the purpose of seniority also. It is wrong on the part of the respondents to count seniority of the TTBs from the date they were classified and absorbed. The respondents themselves admit that the service of TTB is always counted from the date of their joining the Government service for the purpose of all benefits like pension, LTC and Government accommodation. There is, therefore, no justification in not counting their seniority from the date of training. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of Direct Recruit Class II

Engineering Officers Association Vs. State of Maharashtra. (1990) 13 ATC 348 = (1990) 2 SCC 715

wherein it is laid down that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. It is next submitted that the training period of a TTB is similar to the probation period of a probationer and, therefore, on the same analogy the training period should be considered for the purposes of seniority.

5. We have carefully considered the rival submissions. We, however, are unable to agree with the second limb of the argument that Group 'D' people should also be given a similar training as Group 'C' direct recruits. It is not for the applicants to say as to what and how the training should be given. These Group 'D' employees have had varied experience over a large number of years and it is for the respondents to decide how much in-house training and in what form be given to them. Whether it should be 2 months, or 3 months or no training, is a matter left to the discretion of the competent authority. Simply because they are promotees their entire experience cannot be written off as inconsequential. The respondents have considered the background of these promotees at length and decided to earmark 30% posts for them on promotion with or without training. We do not think it proper to interfere with the instructions on this aspect.



6. We are satisfied that the respondents are not justified in not counting the training period for purposes of seniority. In all other services of direct recruitment the moment the order of appointment is given after selection in accordance with rules, seniority gets counted. It is another matter if the appointee does not complete the probation successfully. If the appointee completes the probation or training successfully, the seniority is counted from the date of appointment. If the appointee fails to complete the training and fails to pass the test, then his services are terminated and the question of counting seniority does not arise. We have perused Annexure-A-3. We notice that a formal offer of appointment is given with a prescribed scale. It is stated that "on successful completion of training and passing the trade test, you will be classified in the Reproduction trade concerned in the revised scale of Rs....". This classification is done in every training. After the foundational course given to all Class-I officers, directly recruited to Central Services by the UPSC, they are allotted to different services according to their options and given training in those services but the seniority is counted from the date of order of appointment. In fact the seniority is counted from the placement of the officer in the approved merit panel. Para 2 of the offer of appointment at Annexure-A-3 states as under -

"You will be borne on the purely temporary Group 'C' Estt. in the first instance with reasonable prospects of permanency. Your

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services can be terminated at any time with one month's notice without assigning any reasons."

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7. This may be valid in its own context but the moment he completes the training and gets permanency, as he is recruited in accordance with the rules, his seniority is to be counted from the date of his appointment. It is inconsistent to say that the applicants will be drawing pensionary benefits and other privileges like leave, eligibility of accommodation etc. from the date of their appointment whereas for the purposes of seniority, it will be reckoned from the date of classification which is two years later than the date of appointment.

8. We have not been shown any rule by which the respondents have tried to fix the seniority between direct recruits and promotees. By an order dated 4.11.1992 the Department of Personnel & Training have given effect to the decision in the Direct Recruit's case (supra). Their Lordships have held in the Direct Recruit's case (supra) that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment. Thus, seniority of a person regularly appointed to a post according to rules would be determined on the basis of the order of merit indicated at the time of initial appointment and not according to confirmation. In the absence of any contrary statutory rule or executive memorandum or order laying down a rule for determining seniority in a grade, the rule applicable to determine seniority

would be the length of continuous officiation in the grade. The general principle is that seniority is reckoned from the date of initial entry into service. We repeat that the counter affidavit has not spelt out any rule or executive instruction for defining or determining inter se seniority. We notice that the applicants have been doing regular job from the date they are appointed to undergo training and eventually confirmed or classified. The classification is another type of confirmation. The training given to the applicants is like the training given to all other direct recruits. No justification has been shown or no principle has been cited to ignore the period of training for seniority.

9. We, therefore, hold that the respondents shall consider the period of training also in reckoning seniority. We further direct the respondents to apply such of the principles as would be suitable to the respondents-department from the orders of the Ministry of Personnel & Training in OM No. 22011/ 7/86-Estt (D) dated 3.7.1986, to be found in Swamy's Complete Manual on "Establishment and Administration" for Central Government Offices, Fifth Edition-1996 at page 494 onwards. The Ministry of Personnel had spelt out with illustrations as to how to work out the seniority of direct recruits and promotees. The respondents shall carefully consider and redefine the principle on which seniority be based between the applicants and the promotees. After laying down the principle, a draft seniority list be circulated giving three weeks' time to the

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contending groups to state their objections and thereafter finalise the seniority list. The whole exercise should be completed within a period of six months from the date of receipt of a copy of this order. The O.A. is disposed of with the above directions. No costs.

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A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

N. Sahu
(N. Sahu)
Member (Admnv)

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