

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD**

ALLAHABAD this the 7<sup>th</sup> day of July, 2006.

**HON'BLE MR. JUSTICE KHEM KARAN, V.C.  
HON'BLE MR. A.K. SINGH, MEMBER- A.**

**Original Application No. 1024 OF 1996**

Prem Kumar, S/o Sri Misri Singh,  
Khalasi Paint Shop, Ticket No. 6761,  
N.E.R Workshop, Izatnagar, Bareilly.  
R/o 34, Mohalla- India Nagar, Izatnagar, Bareilly.

.....Applicant.

**VERSUS**

1. Union of India through its Secretary,,  
M/o Railways, New Delhi.
2. The General Manager (P),  
North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager,  
North Eastern Railway, Izatnagar, Bareilly.
3. Chief Workshop Manager (P),  
North Eastern Railway, Izatnagar, Bareilly.

.....Respondents

Present for the Applicant:                      Sri Vinod Kumar  
Present for the Respondents :                Sri D.C. Saxena

**ORDER**

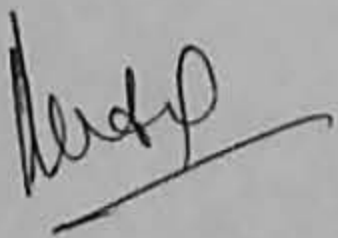
**BY HON'BLE MR. A.K. SINGH, A.M.**

The present O.A has been filed against the order dated 21/22.08.1991 passed by Chief Workshop Manager (P), North Eastern Railway, Gorakhpur reverting the applicant alongwith six others to the lower post of Khalasi from the post of Helper Khalasi and subsequent rejection of his representation claiming benefit of

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promotion to the post of Skilled Painter on par with similarly placed employees, who were allowed promotion as Skilled Painter without appearing in the screening test.

2. Brief facts of the case are that the applicant was initially appointed as Khalasi under the Workshop Superintendent, Paint Shop, North East Railway, Izatnagar, Bareilly on 30.01.1997. He was promoted to the post of Helper Khalasi w.e.f. 01.01.1984 and had been functioning as such on the post in the pay scale of Rs. 800-1150. In the meantime he was called to appear for trade test for next promotion in the grade of Skilled Painter in the pay scale Rs. 950-1500/-. However, the permission granted to the applicant for appearing in the aforesaid test was subsequently cancelled by the Chief Workshop Manager (P), North East Railway, Bareilly on the ground that the applicant had not appeared in the screening test at the initial stage for promotion to the post of Helper Khalasi. He was also reverted to the next lower post of Khalasi alongwith six other employees vide order dated 21/22.08.1991. The other six employees filed an O.A No. 819/91 before this Tribunal, which was allowed by this Tribunal vide order dated 15.11.1992 and all the six applicants, who had filed that O.A, were promoted on the aforesaid post by the respondents vide order dated 19.07.1993. When the applicant, who was similarly placed, submitted a representation to the respondent No. 4 claiming similar benefit of promotion to the post of Skilled Painter, his request was turned down by the respondent No. 4 vide order dated 1/2.11.1995. Applicant submits that a hostile discrimination has been meted out to him vis-à-vis six other similarly placed employees by the respondents. He further submits that while

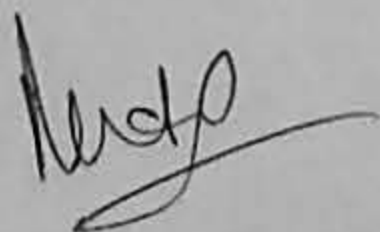




these six employees are still continuing on the higher post of Helper Khalasi, the applicant has been reverted from the aforesaid post to the lower post of Khalasi.

3. The applicant being aggrieved by the aforesaid decision of respondent No. 4, has filed the present O.A before us on the following grounds: -

- (a) That even though he was similarly placed alongwith six other employees in the grade, he has been singled out for reversion to the post of Khalasi from the post of Helper Khalasi while the remaining six have been allowed to continue on the aforesaid post of Helper Khalasi and have also been promoted to the post of Skilled Painter without undergoing any trade test. Thus a hostile discrimination has been meted out to him vis-a- vis other six employees by the respondents;
- (b) That the sole ground for rejection of his claim by the respondents is that he has not been a party in the O.A No. 819/91. This cannot be a ground for rejection of his claim for promotion. Since the case of the applicant is exactly similar to that six other applicants in O. A No. 819/91, he was entitled for the same relief from the respondents, which was allowed to these six employees as per direction of this Tribunal in O.A No. 819/91;
- (c) That there is no justification whatsoever for reverting the applicant by impugned order dated 21/22.08.1991 specially when the applicant had already been regularly



promoted to the post of Helper Khalasi on 01.01.1984 in the pay scale Rs. 800-1150 through proper selection procedure and on passing the required tests conducted by the Departmental Promotion Committee;

- (d) That the decision of the respondents to revert him on the post of Khalasi, from the post of Helper Khalasi, was not at all justified in view of the fact that the applicant had continuously worked on the aforesaid post for a long duration of more than 7 years;
- (e) That the applicant had been reverted for no fault on his part and he should not be made to suffer for the fault of respondents;
- (f) That he had not obtained promotion to the post of Helper Khalasi by playing any fraud or manipulation and was selected for promotion to the aforesaid post as per normal selection procedure and on passing the requisite trade test prescribed by the Departmental Promotion Committee. His reversion to the post of Khalasi from the post of Helper Khalasi was consequently illegal;
- (g) That the impugned order of reversion dated 21/22.08.1991 has been passed in contravention of the principle of natural justice and hence deserves to be quashed.

4. On the basis of the above, the applicant has sought the following relief(s): -





(i). to issue suitable order or direction quashing the order dated 08.08.1990, 21/22.08.1991 and 1/2.11.1995 passed by the Chief Workshop Manager (P), N.E. Railway, Izatnagar, Bareilly;

(ii) to issue suitable direction to respondents to promote him to the post of Helper Khalasi in the pay scale Rs. 800-1150 w.e.f. 21/22/08.1991 and to permit him to appear in the trade test for promotion on the next higher promotional post of Skilled Painter in the pay scale Rs. 950-1500;

(iii) to issue direction for payment of differential arrears of salary of the post of Helper Khalasi w.e.f. 21/22.08.1991 and to determine his seniority on that basis.

5. The respondents on the other hand have opposed the O.A on the following grounds: -

(a) That the applicant was initially engaged as substitute Khalasi and was never appointed to the post of regular Khalasi in the pay scale Rs. 196-232 (unrevised)/ Rs. 750-940 (Revised); as per prescribed selection procedure. He also did not pass the necessary screening test for his substitute engagement to the post of Khalasi in scale of pay Rs. 750-940.

(b). That in view of the above, he was erroneously promoted to the post of Helper Khalasi.

(c). That he was erroneously called to appear in the trade test for promotion to the post of Skilled Painter.

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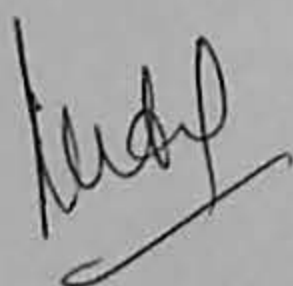
(d). That the applicant passed the Screening test required for regular appointment to the post of Khalasi (Rs. 750-940) only on 04.07.1988 and hence he was not eligible for promotion to the post of Helper Khalasi w.e.f. 01.01.1984, which was erroneously bestowed on him.

(e). that the applicant was not a party in O.A No. 819/91. Hence the question of allowing him the benefit of the orders of Tribunal as per aforesaid O.A does not arise.

(f). That the O.A in question is highly belated . Repeated representations, as contended by the applicant, does not extend the period of limitation. The applicant was reverted on 21/22.08.1991. Hence cause of action arose at this material point of time, while the O. A in question has been filed only on 20.09.1996 and hence merits dismissal on the ground of limitation. Respondents rely on Apex Court decision in the case of Ramesh Chandra Sharma Vs. Udham Singh Kamal 2000 (SCC) (L&S) page 53, M.I. Malhar Vs. UOI 1987 (2) ATC 667, M.K. Balchandran Pillai Vs. Central Administrative Tribunal, Delhi 1995 (29) ATC Ern Page 450.

6. On the basis of the above, respondents submit that the O.A in question besides being time barred as per provisions of section 21 of the Administrative Tribunals Act, 1985, is also devoid of merits and accordingly pray for its dismissal.

7. Applicant duly represented by Sri Vinod Kumar, counsel and respondents represented by Sri D.C. Saxena, Advocate appeared for



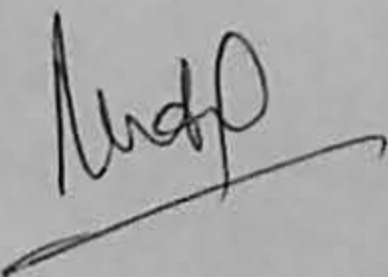


oral submissions before the court on 04.05.2006. In their oral submissions, they only reiterated their submissions as above.

8. We have given our anxious consideration to the submissions made across the Bar on behalf of the applicant as well as the respondents and have also perused the record. We find that the case of the applicant is exactly similar to that of six other Helper Khalasis, who had challenged their order of reversion to the post of Khalasi as per O.A No. 819/91, which was decided by this Tribunal on 15.11.1992. The relevant extracts of the aforesaid decision reads as under: -

"..... Admittedly the applicants entered in the employment of the respondents as Khalasi. They after having completed 4 months continuous service acquired the temporary status. Their services were not regularized nor they were absorbed as class-IV employee. The applicants, without having gone under Screening process were called to appear in the test for promotion to Class III posts. The applicants were promoted on different dates to the post of Class III employee and are working on the promoted posts continuously and they are getting the pay scales of the promoted posts Rs. 950-1500. The applicants were promoted to Class -III through regular selection process after passing the test conducted by the Departmental Promotion Committee. The applicants are working on the post since 1984, 1985 and 1989 respectively. .... The impugned order by which the applicants are being reverted is dated 28.08.1991. Thus the applicants have worked on the promoted post for a considerable period. This is not the case of the respondents that the applicants manipulated to obtain promotion by furnishing incorrect facts but on the contrary, the respondents admit that the applicants were called to appear on the test for promotion to the post of class -III. The applicants appeared in the Selection test and after having cleared the same, have appointed to work on the promotional post as Class III employees.

The main contention of the respondents is that the applicants were considered for screening test in





the year 1987 after they were promoted to the post of Class III. In our opinion, when the applicants were called to appear in the test for the promotional posts and were declared successful, the Screening process have no significance. The applicants were to go under the Screening test for regularization of their service as Class- IV employee but when they cleared the higher test, their suitability for the lower post stood adjudged. The applicants had worked on the promotional posts for a considerable period and it would not be just and proper to revert them to the lower rank for their no fault. ...."

9. It is our considered view that the principle enunciated by this Tribunal in the aforesaid judgment, will also apply to the facts of the present case as the applicant in this O.A is similarly placed with the employees in the previous O.A. He was also promoted to the post of Helper Khalasi on passing the suitability test and had worked on the post w.e.f. 01.01.1984 till he was reverted vide order dated 21/22.08.1991. In other words he had already completed over seven and half years of service on the aforesaid post. Being similarly placed, he was entitled to all the benefits extended to similarly placed employees as per order of the Tribunal dated 15.11.1992. Denial of the abovementioned benefit to the applicant, even when he is similarly placed with the employees in the abovementioned O.A, will be violative of Article 14 and 16 (2) of the Constitution of India. IN the case of Amrit Lal Berry Vs. CCE [(1975) SCC(L&S) 714], the Apex Court held "when a citizen aggrieved by the action of the Government, has approached the Court and obtained a declaration of law in his favour, others in like circumstances should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievance to the Court."

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10. In the case of K.I Shepherd Vs. U.O.I AIR 1988 (SC) 686, the Apex Court reiterated the same principle as under : -

“ ..... Some of the excluded employees have not come to the court. There is no justification to penalize them for not having litigated. They, too, shall be entitled to the same benefit as the petitioner.”

In the case of A.K. Khanna Vs. UOI & Ors. AIR 1988(2) (AT) 518, the Tribunal held that benefit granted to earlier litigants should also be granted to similarly placed litigants.

11. On the basis of the principles enunciated by the Apex Court as well as the Allahabad Bench of Central Administrative Tribunal, the applicant in this case is also entitled to the same benefits, which were extended to similarly placed employees as per order of this Tribunal dated 15.11.1992. The above mentioned principles were also incorporated by 5<sup>th</sup> Central Pay Commission in para 126.5 of their report, the relevant extracts of which reads as under: -

“..... We have observed that frequently in case of service litigants involving many similarly placed employees, the benefit of judgment is only extended to those employees, who have agitated the matter before Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of the Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmad and others Vs. U.O.I & Ors wherein it was held that entire class of employees who are similarly placed should be given the benefit of the decision.....”

12. On the basis of the above, the arguments of the respondents that since the applicant was not a party in O.A No. 819/1991 decided on 15.11.1992, he was not entitled to the benefits extended to similarly placed employees, does not hold water.



13. Moreover, since it was the responsibility of the respondents to have suo motto extended all the benefits to all similarly placed employees including the applicant in terms of the above mentioned order of the Tribunal. The bar of limitation in this case will not arise as the cause of action in the present O.A is recurring and continuous. The applicant has been reverted from the post of Helper Khalasi [in the pay scale Rs. 800-1150] to the post of Khalasi [in pay scale Rs. 750-940] in an unjust and illegal manner and he has been forcibly brought in to a lower pay scale as a result of which the applicant is getting a lower pay and allowances every months. Hence the cause of action is recurring and continuous on a month to month basis. As per principle enunciated by the Apex Court in Basic Shiksha Parishad and another Vs. Saguna Devi (Smt.) and others [2004 SCC(L&S) 654] where the employee has been treated as continuing in service and salary was accruing every month, question of limitation will not arise. The relevant extracts of the aforesaid judgment runs as under: -

“ .....Once no order of termination or dismissal is produced, her service has to be treated as stood transferred to the Basic Education Board by operation of law. In that event, she has to be treated as continuing in service and salary was accruing every month that accorded her a continuing cause of action. Therefore, the question of limitation also would not arise in this case. In this context, the view adopted by the High Court is perfectly justified.”

14. The respondents have been repeatedly and relentlessly laying emphasis on the point that the applicant was erroneously promoted to the post of Helper Khalsi and that he was erroneously called to appear in the trade test for the post of Skilled Painter. As can be seen from the record the applicant had not resorted to any fraud or

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manipulation in securing promotion to the post of Helper Khalasi. His promotion to the aforesaid post was through a regular selection procedure and had successfully cleared the trade tests prescribed by the Departmental Promotion Committee. It is a trite Law that no one should be permitted to encash his own mistake or lapse and no one should be made to suffer for no fault on his part.

15. In the case of Nirmal Chandra Bhattacharya Vs. UOI 1991 Supp (2) SCC 363, the Apex court held that the mistake or delay on the part of the department should not be permitted to recoil on the applicant. Further, in the case of Bhoop Vs. Matadin Bhardwaj 1991(2) SCC 128, the Apex Court reiterated the same principle that a party cannot be made to suffer for no fault of his own. In another case of Rekha Mukherjee Vs. Ashish Kumar Das 2005 (3) (SCC) 427, the Apex Court further held that 'a party cannot take advantage of one's order mistake'. If we apply the above principle, the case of the respondents falls like a rope of quicksands.

16. Last of all, it was not only illegal and highly unfair on the part of the respondents to have reverted the applicant from the post of Helper Khalasi to Khalasi after a lapse of over seven and half years and that too after he was selected for promotion through a regular selection process and on passing a higher trade test as prescribed by the Departmental Promotion Committee. Hon'ble Supreme Court of India in case of Nayagarh Co-Operative Central Bank Limited and others Vs. Narayan Rath and another 1977 (3) SCC 576 held that it was not permissible to terminate the appointment of an employee after a lapse of several years on the ground that the approval of

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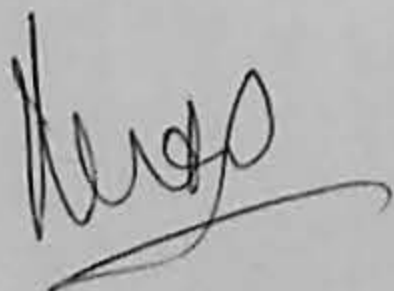
Registrar had not been taken. The doctrine of acquiescence was put into service. To quote the relevant extract of judgment: -

" The joint petition filed by respondent No. 1 could succeed in our opinion on the narrow ground that he had been permitted to function for over thirteen years as Secretary of the Bank and that his appointment as Secretary was decided upon in a meeting over which the Registrar of the Co-operative Society had himself presided. The Writ Petition, in substance, is directed not against any order passed by Co-operative Bank but against the order passed by the Registrar disapproving the appointment of the respondent No. 1 as Secretary of the Bank. It was not open to the Registrar, in our opinion, to set aside the respondent 1's appointment as a Secretary after having acquiesced in it and after having for all practical purposes, accepted the appointment as valid. It is undesirable that the appointment should be invalidated in this manner after a lapse of seven years.

17 It is clear on the basis of the abovementioned principle enunciated by the Apex Court that the impugned order dated 21/22.08.1991 passed by the respondent No. 4 reverting the applicant from the post of Helper Khalasi to the post of Khalasi after a lapse of over seven and half years, is not sustainable in law and accordingly deserves to be quashed as set aside. In consequence thereof, the applicant will be reinstated on the post of Helper Khalasi w.e.f. 21/22.08.1991 and will be entitled for all consequential benefits like arrears of salary, restoration of seniority in the grade of Helper Khalasi as existing prior to 21/22.08.1991 i.e. the date of his reversion.

18. On the basis of the above, we pass the following orders/direction: -

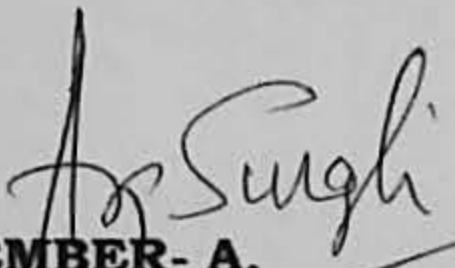
- (A) The impugned order dated 21/22.08.1991 passed by the respondent No. 4 reverting the applicant from the post of Helper Khalasi to Khalasi is quashed with direction to the





respondents to reinstate the applicant immediately on the post of Helper Khalasi with effect from the date of his reversion to the post of Khalasi.

- (B) In consequence thereof, we direct restoration of seniority to the applicant as existing prior to 21/22.08.1991 i.e. the date of his reversion. The applicant will also be entitled to other consequential benefits such as arrears of salary etc to him under the rules.
- (C) There is no plausible reason or justification to quash the orders dated 08.08.1990 or 01/02.11.1995 and hence the prayer of the applicant for the same merits rejection and is accordingly rejected.
- (D) Parties will bear their own costs.

  
**MEMBER- A.**

  
**VICE-CHAIRMAN.**

/ANAND/