

(15) RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD  
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D.A.No. 791 of 1997

Dated : This the 30<sup>th</sup> day of April, 2004

HON'BLE MAJ GEN K.K. SRIVASTAVA, B.M.  
HON'BLE MRS. MEERA CHHIBBER, J.M.

Virendra Kumar A/a 54 years,  
s/o Sri Kalika Ram posted as  
Asstt. Personnel Officer, Northern  
Railway, Divisional Railway Manager's  
Office, Allahabad.

.....Applicant.

By Advocate :- Shri Sudhir Agarwal

Versus

1. Union of India through the Secretary  
Ministry of Railways, New Delhi.
2. The General Manager/General Manager (P)  
Northern Railway, Headquarter Office  
Baroda House, New Delhi.
3. The divisional Railway Manager, Northern  
Railway, Ambala.
4. Sri Dalip Vyas
5. Sri Masood Ahmad
6. Sri Sudama Ram
7. Sri Siya Ram
8. Sri Z.A. Farooqui
9. Sri Satya Prakash
10. Sri R.C. Malhotra
11. Sri Santokh Singh
12. Sri Lalji Mishra
13. Sri Kailash Pawar
14. Sri Chhotey Lal

.....Respondents.

By Advocate : Shri P. Mathur

....pg 2/-

ORDER

By Hon'ble Mrs. Meera Chhibber, J.M.

By this O.A. applicant has sought the following relief(s) :-

- "1. to issue a direction in the nature of certiorari quashing the order dated 12/17th March 1997 (Annexure-A 1 to Comp. 'I')
2. to issue a mandamus directing the respondents no.1,2,3 to place the applicant above the respondents no.4 to 14 in the panel placement for group-B service as published on 11.10.1990 and revised panel published on 1.4.1992(Annexure-A2 and A3 to Comp 'I') and to that extent the said panels Annexure-A2 and Annexure-A3 to Comp 'I' be set aside and be directed to be published afresh.
3. to set aside the seniority list dated 17.11.1993, Annexure-A4 in so far as it shows the applicant junior to respondents no.4 to 14.
4. to issue a mandamus directing respondents no. 1,2,3 to treat the applicant senior to respondents no.4 to 14 in Group-B service in the Personnel Department and to publish a revised seniority list accordingly.
5. to issue a mandamus directing the respondents to treat the applicant's promotion in Group-B service from the date any of his junior has been promoted with all consequential benefits
6. to issue any other order or direction as this Tribunal may deem fit and proper in the circumstances of the case,
7. to award costs throughout to the applicant."

2. It is submitted by applicant that he was promoted as Head Clerk w.e.f. 1.1.1984 due to restructuring and was promoted as Office Superintendent w.e.f. 1.11.1984

in the grade of Rs.700-900/- . In the year 1990 department advertised post of APO Gr.'B' since applicant was eligible he appeared in the selection but even though he was Sr. Most he was placed at Sl. No.16 while respondent No.7 to 15 who were junior to him were placed above him in the panel dated 11.10.1990 (Pg.18 & 19).

3. Grievance of applicant is that as per para 204.9 IREM Vol.I interse seniority had to be maintained and he could not have been placed below ~~put~~ respondent simply because he belonged to reserved category.

4. He has further submitted that posting orders were issued on 11.10.1990(Pg.35) and 09.10.1990(Pg.40) wherein applicant was at Sl. No.4 but thereafter 2 more persons viz one Shri Sudama Ram and Parikh were included in the panel vide order dated 01.04.1992 (Pg.21 at 22) even though they were not even in the list of eligible candidates or in the panel declared. Thereafter seniority list of Gr.'B' was issued on 17.11.1993 (Pg.24 at 27) wherein applicant was shown at Sl. No.44 while respondent No.7 to 15 were shown above him at Sl. No.33 to 43. Being aggrieved he gave representation followed by reminder on 23.03.1994 (Pg.42), which was rejected vide order dated 12.08.1997(Pg.16).

5. Counsel for the applicant submitted that para 319.A was amended only on 28.02.1997 (Annexure RA-II) therefore, his seniority could not have been changed prior to 1997 in 1990 as the judgment of Veerpal Singh was with regard to guards only and not of APOs. Moreover, Veerpal Singh's case was also finally decided by Hon'ble Supreme Court in 1995 and that too was to be given effect to prospectively. He, therefore, submitted that respondents' action in placing the applicant below ~~put~~ respondents is absolutely wrong as such liable to be quashed.

...A/-

6. Respondents on the other hand have opposed this O.A. on the ground that applicant was given accelerated promotion being S.C. in the grade of Rs.2000-3200/- w.e.f. 01.11.1984. Accordingly his case was considered as per direction given by this Tribunal in O.A. No.649 of 1986 in the case of Shri Veerpal Singh Chauhan wherein it was held that persons who are promoted by virtue of application of roster would be given accelerated promotion but not the seniority. Accordingly at the time of viva-voce for selection to the post of APO held on 09.10.1990 <sup>he</sup> was assigned his original seniority in the grade of Rs.1400-2300/- and placed below Shri Chote Lal Assistant Superintendent/Mechanical of Dy.CME(Workshop's) office Jodhpur.

7. They have also submitted that this O.A. is barred by limitation as relief claimed is to quash and interpolating the name by revising seniority of 1990 while O.A. has been filed in 1997 and lot of water has flown on the basis of panel of 1990 therefore, simply because he has been given reply in 1997 it would extend the <sup>period of</sup> limitation. As far as Shri Parekh and Shri Sudama Ram are concerned, they have explained that both these officers could not be interviewed earlier along-with their eligible candidates as their panel of WLI was quashed by CAT Allahabad vide judgment dated 09.07.1989 but subsequently the panel of WLI in grade of Rs.425-640/- was restored to its original forum, therefore, both these officers were interviewed on 10.03.1992 and placed on prov panel dated 01.04.1992 (Annexure A-3), therefore, there is nothing wrong in bringing these two persons in the panel.

8. They have also explained that the post of APO is a general post for which the ministerial staff working in a particular grade in different sections of the Railway can apply for the same. At the time of viva-voce their interse

seniority is prepared for the purpose. Applicant's seniority position had to be seen keeping in view the direction given by Tribunal in the case of Veerpal Singh Chauhan therefore, O.A. may be dismissed.

9. We have heard both the counsel and perused the pleadings as well. Though in counter, respondents have stated that applicant was given the marks on seniority as per the judgment of Veerpal Singh Chauhan's judgment because he had gained accelerated promotion but at the time <sup>of</sup> arguments they produced a judgment given by Hon'ble Supreme Court in the case of M.Ram Jayaram Vs. General Manager, South Central Railway & Ors. reported in AIR1996 SC 3136 wherein it was held that weightage of 15 marks for seniority is illegal because contestants for the post of ACA are from different units and not from the same unit and for that reason the weightage of 15 marks for seniority was held to be illegal. It was further held that Rule 320 of IREM Vol I would have no application.

10. Counsel for the respondents thus, submitted that the role of seniority is not at all relevant now. He also submitted that all the persons applicant as well as respondents had ~~gained~~ gained further promotions also and applicant as well as others have retired also now therefore it would not be in the interest of organisation to upset a settled position. He therefore, submitted that the O.A. may be dismissed due to laches and limitations itself. It is seen that provisional final panel for APO was notified on 11.10.1990(Pg.18) wherein applicant was shown at Sl. No.16 while private respondents were shown above him. Perusal of result shows that it is prepared in order of merit. If this panel was prepared in order of merit applicant cannot insist that he should be placed above private respondents simply because he alleged to be senior to others in lower grade specially when Hon'ble Supreme Court has already held in the



case of M. Ram Jayaram Vs. General Manager South Central Railway & Ors. that weightage of 15 marks for seniority is illegal as selection is to be done from various categories, department and streams so rule 320 would have no application and selection has to be done as per rule 215 only. In the instant case also, admittedly applicant as well as respondents were in different posts and different categories <sup>for</sup> example private respondents were Chief Welfare Inspector in the grade of Rs. 2000-3200/-, Sr. Welfare Inspector in the grade of Rs. 1600-2650/- Confidential Assistant etc. while applicant was office Superintendent in the grade of Rs. 2000-3200/- as per his own showing in para 4.1 and 4.3 of the O.A. Naturally as per Supreme Court's Judgment as referred to above applicant cannot claim to be placed above private respondents simply on the ground that he was Sr. to the other respondents. Since Hon'ble Supreme Court has declared a point of law which is directly applicable in the present set of facts, it would have application even though the case is not pleaded in this fashion in the counter affidavit because applicant's whole case is based on seniority.

11. Even otherwise at the time when selections were made, Allahabad bench of Tribunal had already given a judgment in the case of Veerpal Singh Chauhan reported in 1987(4) ATC 685 wherein it was decided in Principle <sup>12</sup> that where a Jr. belonging to reserved category gets promotion by jumping over his seniors due to reservation for SC/ST such junior does not enjoy benefit of higher seniority in the promotion for ever and when juniors are also promoted, they regain their original seniority vis-a-vis their junior in the higher post. It was thus held that Rule 320 of IREM Vol.II would have no application.

12. The main contention raised by the counsel for the

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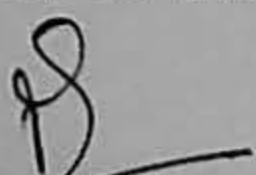
applicant was that Tribunal cannot lay law and since this was a case of guards. It would have no application in the selections of APO.

13. It is seen that the case of Veerpal Singh Chauhan was decided by the Tribunal on 21.01.1987 wherein a principle of law was decided after discussing various judgments of Hon'ble Supreme Court as well as other courts. It was held that promotion on the basis of roster can only be termed as fortuitous and not in normal course and a person who was junior got promoted to the next grade on the basis of queue breaking by virtue of the special provisions made in this regard, he cannot claim protection of seniority against his erstwhile senior who was waiting for his chance but could not be promoted because of the reservation. He should get back his seniority and be fixed in the proper place in the grade to which both of them now belong. Ultimately it was directed that seniority list be prepared and existing ones recast in the light of the principles enunciated by court.

14. It is correct that the case was filed by guards but since a principle of law was decided which would have larger implication in all the posts, it cannot be said that this judgment would apply in the case of guards only, once a principle of law is decided by the Tribunal, naturally departments are bound by it. The contention that Tribunal cannot lay down law cannot be accepted because that would be contrary to the judgments of Hon'ble Supreme Court.

15. In fact <sup>in</sup> 1987 Tribunal was held to be a substitute for H.C. by Hon'ble Supreme Court in the case of S.P. Sampat Kr. Vs. U.O.I. & Ors reported in 1987(1)SCC 124. It would be relevant to quote the relevant portion from the said judgment which for ready reference reads as under:-

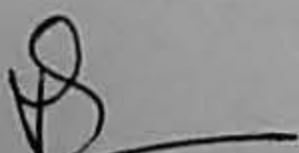
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"What however, has to be kept in view is that the Tribunal should be a real substitute for the High Court-not only in form and de-jure but in content and de facto. As was pointed out in Minerva Mills, the alternative arrangement has to be effective and efficient as also capable of upholding the constitutional limitations. Article 16 of the Constitution guarantees equality of opportunity in matters of public employment. Article 15 bars discrimination on grounds of religion, race, caste, sex or place of birth. The touchstone of equality enshrined in Article 14 is the greatest of guarantees for the citizen. Centring around these articles in the Constitution a service juris-prudence has already grown in this counter. Under Sections 14 and 15 of the Act all the powers of the courts except those of this Court in regard to matters specified therein vest in the Tribunal-either- Central or State. Thus, the Tribunal is the substitute of the High Court and is entitled to exercise the powers thereof.

16. Therefore, in 1987 the status of Tribunal was well defined by none-else than Hon'ble Supreme Court itself as substitute of Hon'ble High Court therefore, in these circumstances if department acted on the basis of decision rendered by Tribunal, it cannot be said department was wrong in implementing the directions of Tribunal. It was only subsequent development that in the case of L. Chandra Kumar reported in 1997 SCC(L&S) 577 that Hon'ble Supreme Court held that Tribunal cannot be a substitute for High Court but still held Tribunal to be validly constituted as supplement to the High Court. In fact even in the case of L. Chandra Kumar it was held that Tribunals are competent to hear matters where the vires of statutory provisions are challenged.

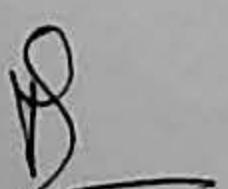
17. In this background if the contention of applicant's counsel is tested it cannot stand scrutiny of law because counsel for the applicant submitted Tribunal cannot lay down law whereas Hon'ble Supreme Court has held in 9 judges judgment that Tribunal can decide the vires of statutory rules as well. If in a given case a particular rule is quashed by the Tribunal it is quashed for all purposes unless the judgment is set aside



by the higher court and in such circumstances it cannot be said  
~~that~~  
~~the~~ rule was quashed ~~in~~ qua one individual. This would be a  
 judgment in ~~rem~~ and benefit would be available to all  
 those who are similarly situated therefore, we cannot accept  
 the contention of applicant's counsel, the same is accordingly  
 rejected.

18. Last but not the least Hon'ble Supreme Court has  
 repeatedly held that in matters of seniority & promotions  
 laches must be seen because after 3-4 years things must be  
 allowed to settle down and if a matter is raised after a  
 considerable delay, courts should not entertain such matters as  
 it unsettles a settled position. In the instant case though  
 it is correct that respondents gave reply to the applicant in  
 1997 but the fact remains that applicant is aggrieved of  
 assigning him seniority in the panel of 1990. If he was  
 aggrieved of it, he ought to have challenged the same  
 immediately thereafter but no such effort was made by him. He  
 has filed the O.A. only in the year 1998 i.e. after 8 years.  
 At this juncture it would be relevant to quote the views  
 expressed by Hon'ble Supreme Court in such situations. In  
<sup>Mandal</sup>  
 K.R. ~~Mandal~~ & ors. Vs. R.P. Singh & Ors. reported in 1991(2)  
 SCC 183 where Writ Petition was filed 8 years after the  
 impugned orders were passed, it was held Hon'ble High Court  
 was not justified in rejecting the preliminary objection of  
 delay & laches. Similarly in 1998(6)SCC 720 B in the case of  
 Siraib Vs. K. Addanki Baba the petition was rejected as it was  
 filed after 4 years for seeking restoration of interse seniority.  
 In 1998(2)SCC 523 it was held by Hon'ble Supreme Court in the  
 and another  
 case of B.S. Bajwa Vs. State of Punjab as under:-

" Seniority dispute raised after more than a decade  
 after joining service when in the meantime  
 promotions had also taken-place- Held, "the  
 question of seniority should not be reopened in  
 such situations after a lapse of reasonable



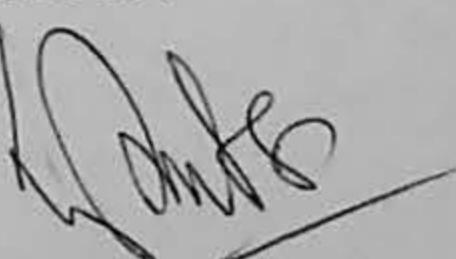
period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case in making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ Petition." constitution of India, Article 226- Delay/laches."

19. Perusal of above judgments makes it abundantly clear that belated claims in matters of seniority and promotion should not be interfered with, as it unsettles a settled position. In the instant case admittedly not only applicant as well as respondents were given further promotions but they have mostly retired also including the applicant, therefore, at this stage we do not think this case calls for any interference even on this ground as well. As far as Shri Sudama Ram and Shri Parikh are concerned, respondents have explained that they had to be interpolated later on due to their panel of WLZ having been restored back, therefore, applicant cannot have any valid grievance against them.

20. It is seen applicant's whole claim is based on seniority in the lower grade but since that <sup>has not been held</sup> ~~already held~~ by Hon'ble Supreme Court to be not a valid point, we cannot give any relief to the applicant as claimed by him. The O.A. is accordingly dismissed with no order as to costs.



Member (J)



Member (A)

shukla/-