

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1566 of 2005

Allahabad this the 08th day of Aug, 2014

**Hon'ble Mr. Justice S.S. Tiwari, Member-J
Hon'ble Mr. U.K. Bansal, Member-A**

1. K.P. Pandey, Son of Late B.D. Pandey, Retired as Deputy Station Superintendent (Commercial), 740, Rajrooppur, Allahabad.
2. Sehati Ram, Son of Late Mahadev Ram, Retired as Chief Parcel Supervisor, 83/11-A, Kala Danda, Himmatganj, Allahabad.

Applicants

By Advocate: Mr. A.K. Srivastava

Vs.

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad Division, Allahabad.
3. Senior Divisional Personnel Officer, North Central Railway, Allahabad Division, Allahabad.

Respondents

By Advocate: Shri A.K. Sinha

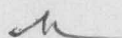
(Reserved on 17th July, 2014)

ORDER

Delivered by Hon'ble Mr. Justice S.S. Tiwari, Member-J

This O.A. has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 for the following relief(s): -

"8.1 This Hon'ble Tribunal may graciously be pleased to direct the respondents to place the applicants in their seniority and grade of ₹6500-10500 w.e.f. 1.1.1993 above to their juniors, so



that the applicants may be placed at grades in due course of time for which they were entitled. By which they shall be getting the monetary benefits by way of their proper seniority of posts and grades;

8.2. To issue a writ, order or direction in the nature of mandamus commanding the respondents to provide the seniority right from 16.6.1983 for grade ₹1400-2300/- and onwards grades as was given to the above mentioned candidates;

8.3. Issue any other and further order which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case;

8.4. Award the cost of this application to the applicant."

2. The brief facts of the O.A. are as follows: -

That the applicants were working as Deputy Station Superintendent (Commercial) Chief Parcel Supervisor under the respondents. There was provision for promotion through selection in the grade of ₹1400-2300/- in the year 1983 in which 10% quota was fixed for departmental graduates, 15% from open market and rest 75% from the promotees. The respondents made a panel for promotion to 10% departmental graduates only and, 15% from open market and 75% from promotees were not considered for the aforesaid grade. The provisional panel for the grade of ₹1400-2300/-, which was the outcome of merger of grades of ₹425-640/- and ₹455-700/- on 13.05.1983 was made available only to 10% departmental graduates. The promotional examination was held on 13.10.1985 just after 2 ½ years late and the applicants were called for interview

on 28.07.1986. Subsequently, applicants came to know that the examination, conducted for the grade of ₹1400-2300/- was withheld and its result was not declared. The reasons disclosed by the respondents for withholding the result of aforesaid examination was the Fourth Pay Commission which was made effective since 01.01.1986 in which the grade of ₹1400-2300/- was made non-selection grade. The respondents have subsequently issued the seniority list of Chief Coaching Supervisor which was issued on 14.05.1996 in which within 06 months and 1½ years those candidates were given three grades of promotion whereas as per rules one has to complete two years in one grade before promotion to next higher grade. The applicants should also have been given this grade w.e.f. the same date on which their seniority was fixed and they were given promotion. The applicant No. 1 retired on 31.01.2002 and applicant No. 2 retired on 31.07.2001. Since the grievances of applicants were not redressed by the respondents, present O.A. has been filed by them for the aforesaid relief(s).

3. The respondents have filed the Written Statement denying the allegations made in the O.A. admitting the facts stated in the O.A. to the extent that the vacancies in Coaching cadre in the grades of ₹425-640/- and ₹455-700/- were merged in the new grade of ₹1400-2300/- and these vacancies were to be filled by three channels i.e. 10% from



amongst departmental graduates, 15% from direct recruitment through Railway Recruitment Board and 75% from promotee quota filled by promotion of eligible staff in lower grade by way of selection. The cadre of Commercial Apprentices is combined with cadre of Coaching Clerks and a combined seniority was assigned as per extant rules. In the year 1985-1986, selection of 84 staff was to be made and accordingly it was to be called for written test following 3X formula. Since sufficient number of ST staff was not available and as such 64 eligible persons were called for the same. The written test as well as viva-voce was held but the panel was not declared due to merger of both the grades i.e. ₹425-640/- and ₹455-700/- into the single grade of ₹1400-2300/- which was introduced w.e.f. 01.01.1986 and under the Fourth Pay Commission report, this grade of ₹1400-2300/- was declared as non-selection grade. Accordingly, a notification for postponement of selection was issued on 05.02.1986. It is true that due to above circumstances, grade was allowed in the departmental quota but the same could not be allowed in promotee quota as the selection itself was postponed for the reasons mentioned above but, the applicants were allowed the correct seniority under the extant rules at the relevant time and were also allowed the grade which was available to them at that time. The applicants are seeking assignment of seniority which cannot be given to them at this belated stage. They have no merits


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in their case. Necessary parties have not been impleaded. The applicants have got no case and the O.A. deserves to be dismissed.

4. Rejoinder Reply has been filed by the applicants mainly reiterating the earlier stands taken in the O.A. stating that the delay condonation application of applicants was allowed by the Bench on 17th July, 2006. Now, the point of delay cannot be raised by the respondents.

5. The respondents have filed an affidavit under orders of the Tribunal annexing the seniority list of candidates including the applicants prepared on 23.11.1987 and the promotion order dated 08.11.1993. In the affidavit, they have stated that when the seniority list was published on 23.11.1987 and objection was invited against it, the applicants did not file any objection against the same. Not only this, when the promotions were made on the basis of that seniority list on 08.11.1993, name of the applicants were also included in the promotion order. They enjoyed the promotion and it is only after their retirement, they have challenged it which they cannot legally do.

6. The applicants in addition to pleadings have placed reliance on documentary evidence which is annexure-1 to annexure-6 along with O.A. and annexure-1 to annexure-8 along with Rejoinder Reply.

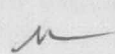


7. On the other hand, the respondents have also filed the documentary evidence in support of their contention which is filed along with the Affidavit, mentioned above, as annexure-1 and annexure-2.

8. We have heard the learned counsel for the parties and perused the documents on record.

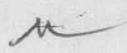
9. The main argument advanced by learned counsel for the applicants is that the respondents promoted the departmental graduates by allowing them the grade of ₹1400-2300/- and the same benefit was not given to the applicants. It is also submitted that the respondents have given three promotions to departmental graduates within a period of two years whereas under the extant rules, no such promotion could be given within a period of two years. It is also submitted by the applicants' counsel that the applicants deserve the same benefit as were given to the departmental graduates.

10. On the other hand, learned counsel for the respondents has raised objections regarding maintainability of this O.A. stating that the applicants have been given all the benefits which were due to them. They have not opposed the seniority list prepared on 23.11.1987 though sufficient opportunity was given to them to file Objection against it, if any. Hence, the seniority list became final. Subsequently,



restructuring was done and promotions were made on 08.11.1993 based on the aforesaid seniority list. Again objections were invited but the applicants did not file any objection rather on promotion they enjoyed the promotion till their retirement and did not raise any objection against the same. After more than four years of their retirement, it is not open to them to challenge the same. It is also submitted by the respondents' counsel that a perusal of the relief clause of the O.A. shows that the applicants have claimed the first relief regarding their placement in the seniority and the grade of ₹6500-10500/- w.e.f. 01.01.1993 above to their juniors but, surprisingly enough the respondents have not disclosed the promotion of any such junior nor impleaded any such person as opposite party in the O.A. The O.A. is bad for non-joinder of necessary parties also.

11. As regards the contention of applicants that the promotions were given to some persons within two years which was not permissible under the extant rules, it is submitted by learned counsel for the respondents that the rules of minimum two years service in the lower grade for promotion in next higher grade was not in force in the year 1986 and it came into force vide N.R.P.S. 9186 on 03.03.1987 onwards. Reference has been made to the relevant portion of the Rules, which reads as under: -



"2 (i) The minimum period of services for eligibility for promotion within group 'C' shall be two years in the immediate lower grade irrespective of whether the employees belong to reserved community or not."

The applicants could not show that the aforesaid Rule was in force even prior to 03.03.1987.

12. It has been contended by learned counsel for the respondents that since the applicants have not impleaded the so called juniors as respondents in the O.A., this O.A. is bad for non-joinder and no relief can be granted to them on this point alone. In the case of '**Rashmi Mishra vs. M.P. Public Service Commission and others (2007) 2 Supreme Court Cases (L&S) 345**', the Hon'ble Supreme Court has observed regarding Order 1 Rule 8, which is as under: -

"All selected 17 candidates not impleaded as parties in the writ petition but only Respondents 3 and 4 against whom allegations of irregularities made impleaded, purportedly in their representative capacity. However, no steps taken in terms of Order 1 Rule 8. Hence, all the seventeen selected candidates were necessary parties/proper parties in the writ petition as the result could have affected them."

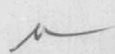
In the present case, as already discussed above, the applicants have claimed the relief No. (i) against the juniors but in the entire O.A., neither their names have been disclosed nor they have been impleaded as opposite party.



13. It has also been submitted by the respondents' counsel that the applicants are challenging the seniority list of 1987 in the year 2005 which is not open for them to challenge. The settled seniority cannot be disturbed after such a long time. In the case of '**G.C. Gupta and others vs. N.K. Pandey and others A.I.R. 1988 S.C. page 268**, the Hon'ble Supreme Court has observed as follows: -

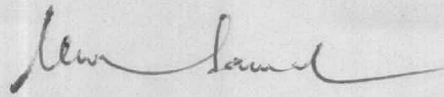
"In this case, the challenge to the seniority of the appellants which was determined by order dt. 20th July, 1956 was made in 1973 i.e. after nearly 17 years and they have sought relief for redetermination of the seniority in accordance with the provisions of the aforesaid Service Rules. This cannot be permitted as it would amount to unjust deprivation of the rights of the appellants which had accrued to them in the meantime. The observation that 'Every person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years as made in the above case (Rabindra Nath Bose v. Union of India (AIR 1970 SC 470) will be applicable to this case. Considering all these aspects it would be just and proper not to give any relief to the respondents on the ground of inordinate laches and delay in challenging the seniority list made in July, 1956."

14. In the present case, as already discussed above, the seniority list was published on 30.11.1987. No objection was filed against it and in pursuance of their seniority, promotions were made subsequently and the applicants also got the promotion. They enjoyed the post of promotion in accordance with the seniority list of 30.11.1987 and it is only after 4 ½ years of their retirement that they have come to

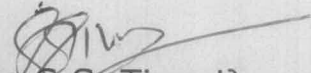


challenge that seniority list. The observation of the Hon'ble Apex Court is fully applicable in the present case.

15. In view of the above facts, circumstances and discussions, we are of the view that the O.A. is devoid of merits and it deserves to be dismissed. O.A. is accordingly dismissed. No order as to costs.



(Mr. U.K. Bansal)
Member-A



{Justice S.S. Tiwari}
Member-J

/M.M/