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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 273 of 1987

Madan Mohan Lal Sobti Petitioner.

Versus

The Railway Board, Rail Bhawan,
New Delhi and others. Respondents.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

In this writ petition, received on transfer from the High Court of Judicature at Allahabad, under Section 29 of the Administrative Tribunals Act XIII of 1985, the petitioner, who was working as a Deputy Chief Controller, has prayed for correction of his seniority and for grant of consequential reliefs which have been denied to him due to administrative errors. The petitioner has since retired on 31.8.1981.

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2. The petitioner was appointed in the East Indian Railway as Assistant Station Master on 10.8.42. The future promotion for him was either to the post of Station Master for which he had to qualify in an examination called Traffic Account (Lower) (TA(L)) or for promotion to the post of Station Master higher grade, Transportation Assistants, Traffic Inspectors, etc. for which he had to qualify in an examination, viz. Traffic Account (Higher) (TA(H)). According to the petitioner he qualified in TA(L) examination in 1948 and in May, 1955 he passed the other examination, i.e. TA(H). In the

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year 1956 these examinations were abolished and a new course of P-16 was introduced for the Traffic group and P-17 course for the Control group. The P-17 course was later on changed to P-15 course. In the year 1959, according to the petitioner, the Railway Administration took a decision that those, who had qualified in TA(H) examination, were exempted from P-16 course. In March, 1959 the petitioner was promoted as Assistant Station Master 'C' which was a post two grades lower than the post of Transportation Assistant and thus the petitioner was qualified for promotion to the post of Relieving Transportation Assistant (RTA). This was a selection post. According to the petitioner the procedure for selection as laid down in the various Railway circulars and the Indian Railway Establishment Manual was not followed by the administration and unqualified staff were ~~also~~ promoted to fill up the vacancies, though qualified hands were available and though the petitioner was qualified to appear, due to mischief he was not called in the 1961 selection and he continued to be ignored in various selections held later on in 1962, 1963 and 1964. In 1964 he was called for selection along with certain other candidates, who did not possess the required qualification. He qualified in the selection and was given independent charge of the post of RTA. He was also asked at that time to give his option for going into the Control group or the Traffic group. The petitioner opted for the Control group. He was promoted as Section Controller in December, 1965. According to him this promotion was given to him as he was already possessing a qualification of having passed TA(H) examination and was not required to qualify in the P-15 course.

In the seniority list published in the year 1969 he was placed at Sl.No.33, below some of the candidates who did not possess the TA(H) qualification or who had not passed the P-16 or P-15 course. According to him his seniority should have been at Sl.No.3. He, therefore, in November, 1970 submitted an ^{representation} ~~application~~ for the correction of his seniority and for promotion to the higher grade on the basis of that seniority and on the basis that he possessed the requisite qualifications. In March, 1971 the administration at Moradabad sought clarification from the Headquarter Office (HQO) and requested for exemption of the petitioner from qualifying in the P-15 course for working on the post of Section Controller. According to the petitioner the administration concealed the fact that he had already qualified in TA(H) examination and, therefore, it was not necessary for him to qualify in the P-16 or P-15 courses. In September, 1971 the General Manager exempted the petitioner from qualifying in the P-16 course since he had already qualified in TA(H) examination. His promotion was also ordered subject to his seniority. The administration at Moradabad again informed the HQO that the petitioner could not be promoted on account of his low seniority and for want of exemption from the examination. In a similar case in May, 1973 the seniority of two persons, viz. B.P. Singh and R.K. Sharma was corrected with effect from 1959 on the basis of their having ^{the} required qualifications which fact was omitted by the administration due to oversight and both of them were given proforma fixation with effect from 1966 and 1968 respectively. On this analogy the petitioner also submitted a representation that his seniority may also be corrected. In July, 1975

certain posts of Deputy Chief Controllers were created. According to the petitioner his juniors were promoted though they did not possess the required qualifications, whereas he was ignored though he had been exempted from the P-16A course. The petitioner, however, was made to work from June, 1973 to May, 1975 as Deputy Chief Controller against a working post, yet he was not given his due promotion. The petitioner, therefore, felt aggrieved that inspite of his having been exempted from qualifying in the P-16A course he was not promoted, while others, who were not qualified, had been promoted and Special Refresher Courses were arranged for those who had not passed the P-16A course till then and had already been promoted without possessing the qualification. In February, 1976 the petitioner was ~~exempted~~ exempted from qualifying in the P-16A course as a special case and he was promoted as Deputy Chief Controller in March, 1976. However, his seniority was corrected with effect from September, 1971, but his name was not incorporated at the correct place in the seniority list of Section Controllers in the grade of Rs.470-750. In November, 1976 the local administration had informed the HQO that the petitioner would be given proforma fixation from 1.10.1972 in the grade of Rs.335-425 but nothing was done on the basis of this letter. A ~~vacancy~~ post of Chief Controller was also created in May, 1978 and on a representation by the petitioner that he was qualified and should be considered for promotion, nothing was done and one B.P. Singh was promoted to the post, who did not possess the requisite qualification and who was also junior to the petitioner. The petitioner further claims that the case of his seniority is sub-judice for the last about 10 years and

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on one pretext or the other the correction of his seniority was being avoided, as a result of which he is suffering recurring losses. The respondents are acting illegally and mala fide and without jurisdiction in not implementing the order dated 24.8.1976 passed in his favour correcting his seniority with effect from 3.9.71 and were deliberately avoiding payment of arrears on the basis of the aforesaid order. He has, therefore, claimed for ^{the} reliefs, viz. for issue of a writ of certiorari calling for record of the case and quashing the order dated 15.5.1978 promoting B.P. Singh as Chief Controller and for the issue of a writ of mandamus directing the respondents to promote him as Chief Controller on the basis of seniority and pre-requisite qualifications, and for the issue of a mandamus directing the respondents to correct his seniority in RTA and Section Controllers cadre with effect from 1960 and place him at Sl.No.3 instead of his present seniority at Sl.No.83 (33) in the combined seniority list of Section Controllers, and for issue of a writ of mandamus directing the respondents to make proforma fixation with all consequential benefits and for payment of arrears due to the petitioner against the post of Deputy Chief Controller for the periods during which he worked. He also prayed for issue of a writ of mandamus directing the respondents to pay leave on average pay earned by the petitioner during the time he worked as Deputy Chief Controller from June, 1973 to May, 1975 and for implementing the order dated 24.6.1976 correcting his seniority with effect from 3.9.1971 and for taking action against the staff responsible for deliberately delaying grant of relief. He further pray^s for issue of a writ of

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certiorari calling for record of the case and quashing the order dated 4.8.1978 passed by respondent no.2.

3. In the reply filed on behalf of respondents 1 to 4, i.e. Government respondents it has been said that the petitioner's seniority has been correctly fixed in the substantive grade and that he has not been deprived of his seniority and there has been no administrative error or mala fide action. The T.A.(L) examination was meant for promotion to the post of Assistant Goods Clerk to Goods Clerk and from Assistant Station Master to Station Master (Ordinary grade). While TA(H) examination was meant for promotion from Goods Clerk to Chief Goods Clerk and Station Master (OG) to Station Master (IG) and also for the post of Traffic Inspector. It was not meant for promotion to the post of RTA. These examinations were abolished in 1955 and the new courses P-16, 17 and 18 were introduced. Different courses were prescribed for promotion from ASM to SM and for promotion as Section Controllers as well as for promotion as Assistant Commercial Inspector. TA(H) examination was never made equivalent to P-15 course which was a pre-requisite condition for promotion as Section Controller. The petitioner was appointed to officiate as Assistant Station Master and though persons two grades below the post for which a selection is conducted can be called in the selection provided they are in the field of eligibility in accordance with their seniority, ²⁴ the petitioner was not qualified for the post of RTA for which passing of P-16 and P-15 examination was a pre-requisite. Secondly, his name did not come within the field of eligibility on account of his seniority. The staff, who

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were not qualified in the P-16, P-16A or P-17 examination, were promoted due to shortage of qualified hands and the promotions were made according to seniority in order to fill up existing vacancies. Such staff had to qualify in these examinations ~~as~~ at the first opportunity when they were to be nominated. Simply because the petitioner was qualified in TA(H) examination, he could not claim promotion to a post in preference to those who had yet to pass. ^{3/ & were senior to} He was placed in the panel in the selection finalised in 1965. He was also asked to give an option and he gave the option for the control group and not the Traffic group. He was temporarily promoted to officiate in December, 1965 in local arrangements. The passing of TA(H) examination was not necessary for the post of Section Controller and it was not equivalent to P-17/P-15 course which are a requisite qualification for promotion as Section Controller. He requested for exemption from passing P-15 examination and his case was recommended to the HQO after the Divisional Superintendent was satisfied that he could work as Section Controller without undergoing this course. TA(H) examination not being equivalent to P-15 course, the exemption that was actually given to him was from passing P-16~~A~~ examination. He was granted exemption from passing P-16 course on 9.4.1973. He was promoted to officiate as Section Controller in the higher grade when he was granted exemption from the P-15 course on 9.4.1973. He was not entitled for any promotion with effect from 1960 because he was junior. He could also not be promoted from 1969 because he had not been exempted from the P-15 course and the TA(H)

examination was not considered equivalent to P-15 course. R.K. Sharma and B.P. Singh were directly recruited Apprentices and they were working as Section Controllers right from the very beginning of their career. They were granted exemption from passing P-16A course for promotion to the next higher grade on 3.4.1972. The petitioner is not entitled to any benefit of seniority on the analogy of B.P. Singh and R.K. Sharma, who were promoted against the vacancies reserved for them. The petitioner was assigned seniority with effect from 1.10.1972, i.e. the date from which the post was upgraded but as the Accounts Department did not agree to grant proforma fixation the petitioner was not granted the same and the matter was under consideration. Having been selected as a RTA in 1964 according to his eligibility, the petitioner has no claim for entitlement to seniority as RTA from 1960.

3/✓ 4. At the Bar the learned counsel for the applicant contended that though the applicant was qualified he was denied promotions and the Railway Board's orders exempting him from appearing in the P-16 examination were not implemented neither his seniority ^{3/} after recasting seniority of all those who had been promoted upto ^{3/} was revised ~~with effect from~~ [✓] 31.12.1972. The passing of the applicant of TA(H) examination, according to the contentions made by the learned counsel, had exempted him from appearing in the P-16 examination but this exemption was not granted and his juniors were promoted though they were not qualified. Therefore, the applicant is entitled to the reliefs vis-a-vis his juniors. He has also not been paid the salary for the period during which he was put to officiate as a Deputy Chief Controller. These contentions were repelled by the learned

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counsel for the respondents on the grounds that the petitioner has since retired and so have others whose orders have sought to be quashed in the relief prayed for and this will not be possible at this stage. The petitioner has also not made any specific mention about the post to which he is seeking to be promoted and he has claimed reliefs pertaining to the year 1960 which are time barred. The petitioner was only given an exemption as a special case and there was no order to say that he should also be promoted and though passing of TA(H) examination did not make him qualified for RTAs post he is claiming promotion in that group. When the petitioner was placed on the panel in 1965 he did not raise any objection and when he was asked to opt he opted ~~at~~ ⁴ for the Control group. For the Control group TA(H) examination was not needed. What he had to qualify in was the P-15 examination which he had not. He was also junior and, therefore, was not within the eligibility list. The learned counsel for the petitioner reiterated his earlier pleadings that the petitioner was denied promotion due to administrative error and thus he was unnecessarily victimised and he should be given the promotion due to him. We have also seen the papers filed along with the writ petition and the replies received from the Government-respondents and the private-respondents.

5. At Annexure 'B' is a circular No. OPE 456 Lower, dated 26.7.1946 in respect of TA examinations. This circular had clarified the confusion that existed in respect of these examinations. The examination known as TA(H) was required to be passed for promotion to the posts of Inspectors and certain senior Commercial posts

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like Transportation Inspector, Research Inspector, Assistant Goods Inspector, Station Master, Goods Supervisor, Head Goods Clerk, etc. In this circular there is no mention that this examination was also an eligibility examination for posting in the control group. This examination was made compulsory for these posts and for those who are not already 45 years of age. The circular also laid down that no permanent promotions will be made to the posts of Station Master and Goods Clerk until the men have been ~~selected~~ ^{3/ certif'd} passed in goods duties. Similarly at Annexure 'D' is placed the syllabus for the P-16 course which was meant for ASMs and SMs and Guards to qualify for higher grades and for the post of Yard Master and Transportation Inspector. Thus even P-16 course was not meant for the Control group. As a matter of fact in Annexure 'C' the P-7 course was meant for qualification for promotion as Section Controllers. The nomenclature of P-7 was later on changed to P-17 and then it became P-15. Thus even if TA(H) examination may be considered equivalent to P-16 examination meant for the Transportation group it was in no way a replacement of the P-17/P-15 course.

6. For the Relieving Traffic Apprentices (RTA) post as per channel of promotion persons eligible were to be called for selection irrespective of whether they were qualified in the promotional course or not but they were not to be promoted as RTAs till they qualified in the promotional courses P-16 and P-15. A circular letter of the Headquarter of Northern Railway dated 14.2.1968 Annexure 'F' of the affidavit filed by the private respondents further lays down that the staff had to be

booked for the requisite promotional course immediately after their empanelment and they should be appointed as RTAs thereafter and then made to work in the three different categories to which they were to be allotted i.e. either as ASMs or as AYMs or as Section Controllers. After having worked for sometime in different categories they were required to exercise an option for absorption either in the Traffic group or in the Control group.

7. In regard to exemption from passing P-16 and P-17/P-15 courses exemptions were granted for those who had crossed the age limit of 45 years after recommendations were received from the Divisions consequent to DSS personally satisfying themselves that such employees are fit to do the work ~~without~~ special training as provided by these courses. Thus a provision existed to give exemptions ^{if} ~~where~~ the Divisional Superintendents were personally satisfied about the capability of a particular person. In another paper which is placed as Annexure 'Q' to the affidavit filed by the private respondent and which is a representation against certain recommendations sent by the Division to the HQO the ~~representant~~ ^{representant} had mentioned that TA(H) examination was not a qualifying examination nor a pre-requisite qualification for promotion to any grade whatsoever and any person ^{if} ~~who~~ junior could voluntarily pass these examinations and these would have given help to him in future promotions but on his proper ^{if} ~~turn~~ ^{turn}. Passing of the examination did not confer any seniority or preferential treatment for those who qualified in the examination. This appears to have been based on the fact that the staff was not booked for these examinations strictly according to seniority. It has also been said in this

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representation that TA(H) examination was only for the Traffic group and did not give any benefit for promotion to the Control cadre. For the Control cadre persons, ^{31 - who} opted ~~attracted~~ for the same had to qualify in the P-17/P-15 ~~course~~ course, even though they were qualified in the T.A. examinations.

8. In his petition the main stress that has been laid by the petitioner is that since he was qualified in TA(H) examination, he had a claim to be declared senior to those who had not qualified in either P-16 or P-17/P-15 courses (para 21 of the petition) and since he had qualified in TA(H) examination it was not necessary for him to qualify either in P-16 or in P-17/P-15 courses. We have already seen ^{and} the documents produced by the petitioner also corroborate that he was only given exemption from passing P-16 course which was ^{31 - In the earlier stages 31} meant for the Traffic group. He had not been exempted from the P-17/P-15 course which was meant for the Control group. He opted for the Control group when he was regularised as a RTA in 1964. Once he opted for the Control group it was essential that he passed the P-15 examination before he could be considered for further promotion. So far as this aspect is concerned we do not agree with the contentions made at the Bar or the pleadings made in the petition that the petitioner ³¹ possessed the requisite qualification for further promotion in the Control group.

9. As far as his seniority is concerned it is not under dispute that the General Manager took a decision on 24.8.1976 for correction of the seniority of the petitioner with effect from 3.9.1971 in the grade of

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Rs.335-425. The letter of HQO reads that since the petitioner had been given exemption from passing P-16A course by the Railway Board the same should be given effect to from 3.9.1971 for the purpose of seniority and he should not lose his seniority vis-a-vis the Section Controllers of the Moradabad Division who were junior to him and were promoted to this grade prior to 1.1.1973 on account of qualifying P-16A course. This letter, therefore, asked the Division to revise his seniority and for preparation of a revised seniority list of Section Controllers promoted to the grade of Rs.335-425 upto 31.12.1972.

10. The petitioner in his relief has asked for correction of his seniority as a RTA and then as Section Controller with effect from 1960. The basis on which he has asked for this relief is the order dated 20.10.1971 and the Railway Board's letter dated 23.2.1976 which according to him were not implemented. The letter of 20.10.1971 only desired that trained staff being available on the Division untrained staff should not be utilised in higher grades in preference to the trained one and wanted necessary action to be taken to promote the petitioner to this grade if otherwise due by virtue of his seniority and qualifications. Thus his seniority has to be determined first before he could be considered for promotion. The Railway Board's letter of 23.2.1976 conveyed the decision exempting the petitioner from appearing in the P-16A course which was essential for his promotion to the higher grades. Even in his representations which were replied by Annexure 27 to the petition the question about seniority which was

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raised by the petitioner was that he wanted to claim seniority over non-qualified persons whose names were borne on the panel of RTA formed in 1964 on the ground that they were not considered for RTA's ~~selection~~^{as ~~others~~ they had not qualified} and he was qualified and, therefore, he ^{should} rank senior. He further claims seniority on the basis that he was not called for the earlier selection though he was qualified and unqualified persons were kept on the panel. He was replied that mere possession of the qualification would not entitle him to be placed higher in the panel and that after a lapse of about a decade it was not possible to trace out the reasons for his not having been called for selection as RTA prior to 1964. The two persons, viz. B.P. Singh and R.K. Sharma against whom he is seeking relief were appointed as Traffic Apprentices in 1963 and were promoted to the grade of Rs.335-425 on 10.3.1966. They were also qualified in the requisite courses and were later on given exemption from passing P-16A course for the purpose of reselection in the grade of Rs.335-425. However this letter advised the petitioner that the question of his proforma fixation in the grade of Rs.335-425 with effect from 1.10.1972 was under consideration of HQO. This was the position on 13.4.1976.

11. It is thus clear that the petitioner did not have any merit in his claim that since he was qualified in TA(H) examination which was equated to P-16, he should have been given seniority over those who had already been empanelled earlier to him. P-16 course in any case was not a pre-requisite qualification for promotion in the Control group. Thus His claim for revision of his seniority from 1960 ~~in any case~~ has no

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merit.

12. The respondents have said in para 60 of their reply that the petitioner's seniority with effect from 3.9.1971 was revised but he became entitled to the grade of Rs.335-425 only from 1.10.1972 and has been correctly given the same. His request for giving seniority above all those who had been selected as RTA's prior to his empanelment in 1964 was also considered and rejected. He has produced no papers to show that his juniors were selected and he was ignored. The respondents have been maintaining that he was not senior and within eligibility zone. Thus the claim appears to be vague and cannot be sustained.

13. The petitioner has also claimed for payment of certain arrears for the period he was posted to work as Deputy Chief Controller during 1973, 1974 and 1975. We find a letter dated 28.9.1978 (Annexure 'H' to the supplementary affidavit) where the petitioner has been paid for all the periods during which vacancies were certified. Against all other periods when he officiated when actually no vacancy existed, he has not been paid any allowance. If the petitioner officiated continuously the fact of the vacancy existing gets into the background. He should have been paid if he continued to officiate without having been reverted. There could be no officiation if there was no vacancy. The arguments of respondents are, therefore, not logically correct. This claim should be reexamined by the respondents. If the petitioner worked continuously he should be paid the officiating allowance for the entire period.

14. In another supplementary affidavit filed on

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24.11.1981 the petitioner has further referred to a circular letter for promotion to the post of RTA issued by the Railway Board claiming that since he had the requisite qualification he should have been promoted as a RTA but the circular letter was not followed in his case and, therefore, he suffered in his seniority. It has already been brought out in paras above that the petitioner was selected as RTA in 1964 and was promoted in the Control group in 1965. On his empanelment in 1964 the petitioner did not raise the question of his seniority and accepted his empanelment as correct. He cannot be allowed to raise this question again after such a long time. Seniority should not be altered after a long lapse of time and promotions already made cannot be taken away. It is also clear that earlier passing of a suitability test of a junior cannot lower the seniority of a person who is otherwise senior from the point of view of date of appointment and length of service and date of confirmation. We, therefore, reject this contention raised by the petitioner.

15. The petitioner has further said that he had made a representation to the Railway Board and the Railway Board had been repeatedly asking for correct factual position from the Northern Railway, who had been avoiding to submit a reply. Ultimately the petitioner retired on 31.8.1981. Thus he was victimised by the local Railway authorities at Moradabad.

16. In his representation dated 14.1.1981 (Annexure '3' to the supplementary affidavit III) addressed to the Railway Minister the petitioner had pointed out that for the panels of RTA formed in 1959,

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1960, 1962, 1963 and 1964 some unqualified persons were promoted to the post of RTA. Thus the Northern Railway Headquarters' instruction that no unqualified person should be placed in higher grade had been violated. Had this not been done the petitioner, who was qualified in TA(H), which was equivalent to P-16, could have been placed on the panel because he was within the zone of consideration. The explanation of the respondents on this point has already been given in their reply. They have said that due to paucity of qualified staff a decision was taken to empanel and promote staff who were not passed the qualifying course subject to the condition that they will pass at the first opportunity. Even in the petitioner's case relaxations have been granted subsequently from his passing P-15 and P-16A examinations. Therefore, it cannot be said that the administration could not promote ^{3/} the staff on conditional basis. The employer would be in the best position to manage their work and as long as the basic concepts are not violated we do not find there would be anything wrong in temporarily promoting senior people even though they had not qualified in the promotional course. The petitioner was evidently very junior and, therefore, he was not considered in these panels and the first panel in which he was considered was the 1964 panel. We have already deliberated on this issue and have rejected it. We, however, leave it to respondent no.1, if they wish to go through the representation which is supposed to be still pending, to decide on the various issues raised by the petitioner. This order will be without prejudice to the action that the respondent no.1 may take in respect of this representation which is pending with them, as

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alleged by the petitioner.

17. In conclusion, therefore, we do not find any merit in this petition. We, however, direct respondent no.1 to decide the representation made by the petitioner which is pending with them and the payment of the officiating allowance for the periods from 1973 to 1975 which has not been paid on the pretext that the post on which he continued to officiate was not vacant. With these remarks we dismiss the petition without any order as to costs.

BEN SIK

Member (A).

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Vice-Chairman.

Dated: March 25th, 1988.

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