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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Registration (T.A.) No. 1650 of 1987.

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| Khem Singh Arya         | ....   | Petitioner.  |
|                         | Versus |              |
| Union of India & others | ....   | Respondents. |

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Hon'ble Justice K. Nath, V.C.  
Hon'ble K.J. Raman, A.M.

(Delivered by Hon. K.J. Raman, A.M.)

This is a Writ Petition No. 601 of 1985 filed before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, on 4.2.1985 and has since been transferred to this Tribunal for disposal under the provisions of Section 29 of the Administrative Tribunals Act, 1985. The petitioner, Sri Khem Singh Arya, was an Electrical Chageman Grade 'A' (EC 'A') working with the North-Eastern Railway, Gorakhpur. The respondents are the (i) Union of India, (ii) General Manager, N.E. Rly., Gorakhpur, (iii) Chief Electrical Engineer, N.E.Rly., Gorakhpur, & (iv) Chief Personnel Officer, N.E. Rly., Gorakhpur. The petitioner has prayed for quashing of the impugned order dated 27.10.1984 (Annexure '3') under which his seniority was indicated and his various representations were disposed of by the respondents. He has also sought the benefit of seniority, wages and back wages on the post of EC 'B' from 12.7.1972 and sought promotion as Electrical Foreman (EF) from 1.1.1984.

2. The petitioner was originally appointed as Electrical Fitter in the N.E. Railway with effect from 1.9.1954. He became eligible for the post of EC 'B' in 1972. He appeared for the test and selection for the said post. His name was, however, not included in the panel drawn in that year. The panel was published in July, 1972. On the representation of the petitioner his name was included in the panel of July, 1972 for the post of EC 'B', by issue of an order dated 1.12.1975 (Annexure '1'). The petitioner was, however, given

ad hoc promotion to the said post of EC 'B' in the year 1974 and it became a regular promotion in 1975 in pursuance of the order referred to above. In the year 1983 the entire batch of the EC 'B', who were empanelled as such from 1972 to 1976, including the petitioner, were promoted to the post of EC 'A'. The petitioner states that persons empanelled in the EC 'B' grade later than the petitioner upto the year 1976 were also promoted and that he had not raised any objection. It is alleged by the petitioner that by an order dated 23.6.1984 a large number of persons, who were empanelled in the cadre of EC 'B' in 1973 upto 1976, were promoted to the post of EF, as a result of restructuring in the Department. These promotions were given retrospective effect from 1.1.1984. But the petitioner was not one of those so promoted. According to the petitioner, those who were junior to the petitioner in the empanelment of 1972 and who were empanelled thereafter, were promoted. In this connection he specifically mentions the names of S/Sri A.K. Guha, Janardan Tiwari, G.C. Srivastava, P.K. Awasthi, K.K. Dhawan, B.N. Lal and Habibul Haq. According to the petitioner, he made representations in November, 1984 and January, 1985 against such supersession. His main contention is that his seniority has not been fixed in the grade of EC 'B' on the basis of his empanelment with effect from July, 1972. The petitioner states that by a letter dated 27.10.1984 he was informed by the respondents that his seniority in the cadre of EC 'B' would be after Sri K.N. Kar, who would be below Sri Habibul Haq (Annexure '3'), which is the impugned order. Being aggrieved with the impugned order, the petitioner allegedly made further representations.

3. In the written reply filed on behalf of the respondents it is admitted that the petitioner was empanelled at Sl.No.7 in the panel framed in the year 1972, by the issue of the order of 1975.

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The promotion of the petitioner on an ad hoc basis with effect from 4.12.1974 and on a regular basis by order dated 1.10.1975 is admitted. It is stated that in the year 1983, 34 EC 'B' were promoted as EC 'A', on the basis of ~~the~~ seniority, when the petitioner was also promoted, under an order dated 30.8.1983. It is contended that if the petitioner had any grouse regarding his seniority position in the grade of Chargeiman 'A' at the time of promotion, as mentioned above, he should have raised the dispute regarding his seniority at that stage. The petitioner did not raise any objection at that time and the dispute raised at this stage is highly barred by time, according to the respondents. The respondents aver that in the year 1984, there was restructuring of the Technical Supervisor (TS) cadre and in all 42 posts of Electrical Foreman (EF) became available in the grade of Rs.700-900, which were filled by promotion from EC 'A' on the basis of seniority, under an order dated 26.6.1984. These posts were filled only on the basis of seniority. In para 5 of the written reply, the respondents have stated that the panel of direct recruits for posting as Chargeiman 'B' was received in 1973. Their seniority was fixed on the basis of the judgment and order dated 14.12.1976 passed in Writ Petition No.5902 of 1974 by the High Court of Judicature at Allahabad. In the said judgment, certain specific directions were given, which have been reproduced in para 5 of the written statement of the respondents. It was directed that the seniority of promotees vis-a-vis direct recruits shall be determined in accordance with the quota fixed for the particular years and in doing that, if it is found, that in a particular year requisite number of persons were not available for absorption in the category of promotees then those vacancies cannot be given to the direct recruits; similarly, if direct recruits were not available in a particular year the quota fixed for the direct recruits cannot be given to the promotees. In another direction it was stated that if in a particular

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year any vacancy falling within a particular quota remained unfilled, the same should be carried forward to the subsequent years. If on the application of this principle it is found that the promotees or the direct recruits are absorbed in excess of their quota then adjustment should be made and those absorbed in excess of the quota, would be pushed down and adjusted in subsequent years on their turn. The respondents aver that Sri K.N. Kar and the applicant, Sri Khem Singh Arya, were in excess of their quota of promotees, whereas the quota of direct recruits was deficient and accordingly, following the directions of the Hon'ble High Court, the seniority list was re-cast~~ed~~ in the year 1981 and the persons, who were direct recruits and were empanelled in 1973, along with S/Sri Habibullah and B.N. Lal, who were from the quota of 25% "inter apprentice," were brought above Sri K.N. Kar and the petitioner, Sri Khem Singh Arya. It was thus that the petitioner was pushed down in the seniority in accordance with the decision of the Hon'ble High Court and he could not be given promotion as EF. The petitioner was not granted promotion as EF as he was not entitled to such promotion. The respondents aver further in para 7 of the written reply that on the basis of recast seniority list as aforesaid, the position of S/Sri A.K. Guha, Janardhan Tewari, G.C. Srivastava, K.K. Dhawan, B.N. Lal, Hahibul Haque, K.N. Kar and K.S. Arya became as follows :-

| <u>Name</u>         | <u>Date of apptt/promotion<br/>in scale of Rs.425-700.</u> |
|---------------------|--|
| 1. S/Sri A.K. Guha  | 28.2.73  |
| 2. Janardhan Tewari | 28.7.73  |
| 3. G.C. Srivastava  | 30.4.73  |
| 4. K.K. Dhawan      | 24.9.73  |
| 5. B.N. Lal         | 20.5.74  |
| 6. Habibul Haq      | 2.9.72   |
| 7. K.N. Kar         | 14.9.74  |
| 8. K.S. Arya        | 4.12.74 (ad hoc).  |

The respondents have further submitted that the seniority matter of the aforesaid persons including that of the petitioner is already

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sub judge at Allahabad High Court in, Writ Petition No. 13896 of 1981 (N.D. Sharma v. Union of India & others). One of the contentions made by the respondents is that although the petitioner, by means of the writ petition, has claimed that he is senior to Sri A.K. Guha and 7 others as aforesaid, he has not impleaded them and, therefore, the application is liable to be dismissed on account of non-joinder of necessary parties.

4. In the rejoinder affidavit filed, the petitioner has merely reiterated his earlier arguments. The rejoinder affidavit does not contain any material to controvert the submissions made in paras 5 and 7 of the written statement of the respondents, as indicated above. In the parawise comments given in the rejoinder affidavit a number of extraneous matters are referred to, but no ground has been shown as to why the conclusion of the High Court could not be accepted. There is no comment regarding the allegation of non-joinder of necessary parties.

5. The case was heard on 19.1.1990 when the petitioner personally argued his case. Sri V.K. Goel, learned counsel, argued the case of the respondents. We have very carefully considered the pleadings and the submissions made during the hearing of the case.

6. The corner-stone in the edifice of the petitioner's arguments is his inclusion in the panel of July, 1972 by the issue of an order to that effect in 1975. He, therefore, claims that he should be treated as having been promoted as EC 'B' with effect from July, 1972, or at any rate with the other six persons in the panel who were all promoted during 1972 or so. It is on this basis that he also claims back wages with effect from 12.7.1972. The issue regarding back wages from that date can very well be disposed of straight away here. The order of his retrospective empanelment was issued in 1975 and if the petitioner was serious about getting back wages with effect from 12.7.1972, he ought to have raised the issue at that time or at any rate reasonably soon thereafter.

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The claim of back wages in the year 1985 is certainly hit by laches and delay. The petitioner is certainly not entitled to any back wages under this petition. This part of the relief claimed is, therefore, rejected.

7. The remaining question is the claim for seniority, about which, however, the petitioner had represented. The impugned order dated 27.10.1984 (Annexure '3') was issued on the basis of such representation. In the impugned order, it is stated that in seniority, the petitioner would figure below Sri K.N. Kar, who in turn would figure below Sri Habibul Haque. The order further states that he was not entitled to promotion as EF in the grade of Rs.700-900, because he was too junior in the feeding cadre of EC 'A'. The sole contention of the petitioner in this regard is that persons who were empanelled after 1972, i.e. later than him, have been shown as senior to him in the seniority list of Chargeman 'B' and Chargeman 'A'. In particular, in para 7 of the writ petition, the petitioner has named seven persons including Sri A.K. Guha. It is the contention and prayer of the petitioner that he should rank senior to these seven persons. It is rightly contended by the respondents that in such a situation, these seven persons are necessary parties to these proceedings and the present petition suffers from the vice of non-joinder of necessary parties. The petitioner has not given any reply or explanation in this regard. It is well established that when seniority is challenged and persons who are claimed to be juniors are not impleaded as parties, no relief can be given without giving an opportunity to such persons claimed to be juniors ( Ranga Reddy v. State of A.P. (1987 SCC (L&S) 272) and J.S. Dhillon v. Union of India (1989 (11) ATC 499) ). In this case, accordingly, the seven persons having not been impleaded as parties by the petitioner, the relief based on seniority, as claimed by the petitioner, cannot be given to him, as a matter of law.

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8. As has been indicated in detail above, in paras 5 to 7 of the written statement of the respondents, the reason for the petitioner being shown below the seven persons, mentioned above, has been clearly given. According to the directions of the High Court, which could not but be obeyed by the respondents, the seniority was redrawn and in view of the imbalances in filling up the quota of direct recruits, adjustment had to be made. It is clearly stated there that the position of Sri K.N. Kar and the petitioner had to be brought down as they were in excess of the promotion quota. Similarly the position of Sri A.K. Guha and six others, mentioned earlier, had to be raised following the directions of the High Court. There is nothing in the rejoinder affidavit of the petitioner or in the oral submissions made by him which can overcome or counter the above argument of the respondents. It is further stated by the respondents that the matter is again subjudice. In these circumstances there is hardly any scope for us to interfere in the matter of seniority which has been settled on the basis of the High Court's directions.

9. In the circumstances, the writ petition fails and is dismissed with no order as to costs.

*K. Narayan*

MEMBER (A).

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VICE-CHAIRMAN.

Dated: February 16, 1990.

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