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Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 728 of 1987

V.K. Singh and Ors. Applicants
Versus
Union of India and Others Respondents

CORAM:

Hon. Mr. Justice U.C. Srivastava, V.C
Hon. Mr. K. Chayya, Member(A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicants 23 in numbers who after certain promotions have worked as Driver Grade 'C' i.e. Goods Train for one year and they have passed the course of driver and approached this Tribunal praying that the respondents be directed to consider the case of the applicants for promotion to Driver Grade 'A' and to promote them to that post and to pay them salary for that post after granting them exemption as has been done in the case of Daya Shanker Pandey and others.

2. Their grievance is that the persons who have been junior to them have been promoted to higher grade but the applicants were neither promoted nor any exemption has been granted to them which would have enabled them to get the post

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and their due seniority which should have been given to them to a particular extent in view of the judgment and order passed by the High Court which is followed in breach by rejecting to grant the relief for which they have approached this Tribunal.

3. The approximate reason for them for approaching this Tribunal was vide order dated 16.7.76 passed by the D.R.M, Varanasi in accordance to which they were holding selection for promotion to the post of driver grade 'A' excluding the claim of the opposite party. Their claim is that they are entitled to the promotion to the said post as if their selection to the post of fireman grade 'A' which has not been cancelled vide order dated 24.10.79 which was subsequently quashed by the High Court and was maintained by the Hon'ble Supreme Court in as much as S.L.P against the same was dismissed.

4. The applicants who were working in Railway in the category Fireman grade 'B' and Fireman II grade in response to the notification which was issued in 1975 for 35 vacancies for the post of Trainees against the quota for Fireman grade 'A' to be filled up by promotion amongst fireman 'B' grade and Fireman II grade also applied for the

A-2
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same. The applicants were selected and the selection was notified. There after they were appointed on 26.10.76 to the post of Fireman Grade 'A'. The applicants in the meantime like those who were working in other divisions acquired the requisite training and were appointed to the post of Fireman grade 'A' except two of them who were promoted to the post of Shunter and one of them have further passed the driver course and became entitled to be appointed as driver grade 'C'. The others continued to work in the post Fireman grade 'A' and in this post they were also confirmed with retrospective effect from 1.1.77, though some of them were confirmed from 1.11.77. After one year and 3 months vide order dated 13.1.78 the selection in which the applicants also succeeded and were appointed as Fireman grade 'A' was cancelled. The applicants filed a writ petition before the High Court after approaching the department. In pursuance of the direction given by the High Court which was allowed (W.P. No.7186/86) decided on 19.1.84) With the result that the subsequent order was cancelled and the selection was held to be void. The court also took notice of the observations made by Hon'ble Supreme Court in another case in which attempt to bring out the compromise is that employees who had earlier been

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appointed to the post of Fireman grade 'A' will continue in their post till the matter of filling up the post of Fireman 'A' was decided and if those persons were selected once again and their continuity will not be disturbed. In pursuance of the judgment given by the High Court referred to above an order was passed in the month of June 1984 implementing the High Court direction and the position of the applicant as it was in pursuance of their original selection in 1975-76 with full continuity was restored and a seniority list of those who were working on the post of Fireman 'A' was prepared. In the meantime the promotion and seniority was granted even to some of the employees who although were similarly placed and but did not join in the writ petition. During this period when the matter was still pending before the High Court some of the employees were promoted to Fireman grade 'A' were placed below the applicants in the seniority list which was so prepared.

5. The applicants were thereafter granted promotion to the post of Shunter and they were promoted to the post of driver grade 'C' on 2.12.86 while they were promoted as Shunter on 9.11.84. While granting the post of Shunter

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the applicants who were earlier promoted to Fireman grade 'A' in 1978 and because of the cancellation of the applicants selection were preferred instead of the applicants as they were called for appearing in the examination for promotion to the post of driver grade 'A'. The applicants have contended that out of one Daya Shanker Pandey Shunter who had only worked for a period of only one year although the period of working for higher promotional grade is 2 years. Thereafter the promotion was granted and was promoted to the post of driver grade 'C' though he had worked as Shunter as exemption was granted to him on the ground that juniors to him have been promoted. The averment made by the applicants that this was on this ground that promotion was granted has not been disputed or denied by the respondents in their counter affidavit. The applicants thus claimed their case as identical to that of Daya Shanker Pandey, who had been granted exemption, the applicants could have also been granted exemption because the applicants have suffered because of laches and illegal action of the respondents who have cancelled the selection and in case the selection would not have been cancelled, the applicants would have occupied the same position and in any event they would have been promoted earlier than the respondents or to any other

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person because of their earlier selection which ultimately was maintained. The examination against which a complaint has been made by the applicant was held in some of the divisions.

6. Respondents have opposed the application made by the applicants and have pleaded that in order to meet the case of the applicants that after implementation of the IVth Pay Commission the channel of promotion of Loco Running staff was changed and modified AVC from Fireman II to Fireman 1 is the single selection and likewise the driver grade 'C' and 'B' were merged in the grade of Rs.1350-2200 and similarly the grades of driver 'A' and driver 'A' (Special) was merged in the grade of Rs.1600-2660 was introduced as Passenger driver and all these posts are of safety category of operation of public safety. The notification which is under challenge for selection to the post of Passenger Driver and Driver 'A' alleged and the candidates who were called to appear for selection of Goods driver prior to the applicants i.e. during the period the applicants earlier cancellation was invoked and was under challenge. The applicants who were similarly Shunters have been called to appear for selection of driver in which except applicants no.1 and 6 and all of them appeared and the result was still awaited. After the result of the High Court's decision the said applicants were

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promoted to the post of Shunters and their seniority were restored to the same scale of the juniors, but however, in order to come at par with their junior the applicants have to appear for selection as per AVC for different intermediary grades and in the selection and as a result of the selection which was held on 17.6.86 a panel was prepared and the successful candidates were promoted and posted and they are continued to work on the promoted post. The applicants are not entitled to the said post as the benefit of the court's order has been made to the post Fireman 'A' was done and the seniority of the juniors were restored. The exemption of Daya Shanker Pandey and his further promotion to higher post has not been denied. The applicants have pointed out yet another example in rejoinder regarding the exemption granted by the Railway Administration and they have given the instance of one Behari posted as driver at Varanasi division who was in the same panel as the applicants. After giving relaxation he was granted promotion though he has not completed 2 years minimum service in the feeder grade.

7. It is in the case "State of Maharashtra Vs Jagannath Achyut Karaundikar", (A.I.R 1989 S.C., page 1133) was held that no one is not to suffer because of the delay and laches on the part of the Government

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In the said case there was lapse on the part of the Government to hold departmental examination every year in compliance with the rule and seniority of the persons in the category of passing was affected thereby and they were penalised for the said lapse and those who could not get all permissible chances to appear in the examination and right to be considered for promotion and those should not have been promoted subject to the examination on the ground of relaxation rules and relaxation rules should have been granted in their favour. The position in this case is not quite different because the applicant is suffering because of the delay and laches caused on the part of the government for which there is no justification and accordingly there is no satisfactory explanation. The power of relaxation has always been granted to Central Government employees though in case of a person who has worked one year or less, there was no reason that relaxation could not have been granted in the case of the applicant who has gained experience on working on the said post and non exercise of the power of relaxation in a case for which government itself is responsible will tantamount to refusal to exercise the powers validly given and such actions is arbitrary resulting in arbitrary denial of benefit.

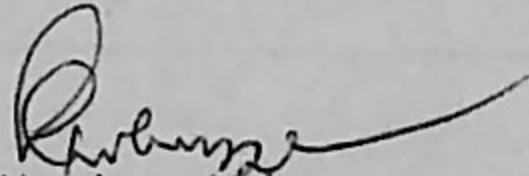
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8. Accordingly, the respondents are directed to consider the case of the applicants for relaxation in view of the delay and laches on the part of Govt. taking into consideration the experience which would have been gained by the applicants. The order of the High court which has been implemented in respect of one part will also be implemented in second part and the due seniority will be restored by proforma fixation on the promoted post and due seniority will also be given to them. Let it be done within a period of 3 months from the date of communication of this order. No order as to the costs.


Member (A)


Vice Chairman

~~Dated:~~ ~~Nov 1992~~
Dated: 12th January, 1993

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