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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH.

Dated: this the 29th day of September, 1995.

Hon'ble Mr. Justice B.C. Saksena, V.C.

Hon'ble Mr. S. Dayal, A.M.

Original Application no. 967 of 1987

Gopi Behari Sahai, son of Shri Brijmohan Sahai,
resident of 338, Nanak Ganj, Sipri Bazar, Jhansi,
working as C & W Fitter, IBAD.

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Applicant.

By Advocate Shri R.K. Nigam.

Versus

Divisional Railway Manager, Central Railway, Jhansi.

..... Respondent.

By Advocate Shri A.K. Gaur.

O R D E R.

By, Hon'ble Mr. S. Dayal, A.M.

This is an application under Section 19 of the Administrative Tribunal Act, 1985. The relief prayed in the application is a direction to the respondent to interpolate the seniority of the applicant over his junior counter-parts, who have superceded him due to administrative failure. The applicant also seeks a relief of keeping up of pay as per rules in comparison to his juniors.

2. The grounds on which the reliefs have been asked for are that the promotion of the applicant as Wheel Attendant was delayed by 13 years after he had cleared the test. The applicant was entitled to be promoted with effect from 1.1.65/ 5.5.1965 as Wheel Attendant, because that was the date from which vacancies were available; that the promotions to skilled and highly-skilled Grade II and I were also delayed because

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of delay in his promotion as Wheel Attendant and that delay in promotion was due to no fault of the applicant.

3. The facts as given in the application are that the applicant started his career as C & W Khalasi with effect from 31.12.1962. He passed trade test on 5.2.65 and was promoted as Wheel Attendant on 5.1.1970. He was reverted from the post of Wheel Attendant to the post of C & W Khalasi without any reason from 19.1.1972. He was repromoted as Wheel Attendant on the basis of the trade test held on 5.2.1965, with effect from 14.3.1978. Due to delay of the promotion the following persons, who were junior to him became his seniors:-

- (1) Ramesh Chandra Salig Ram
- (2) Uma Shanker
- (3) Narain Dass
- (4) Munshi Lal Ram Pd.
- (5) Keshav Dass Jagannath
- (6) Kalicharan
- (7) Ram Swarup Ram Charan
- (8) Gurdeon Santa
- (9) Pooran Ganesh
- (10) Lakhon Lal Buddha
- (11) Dariyao Singh
- (12) Kashi Ram Nathoo
- (13) Mohan Lal Shyamal.

4. It is stated that the first two persons in the list do not fall in original cadre of C & W Khalasi of Jhansi Division and had no legal right to be considered for the post of Wheel Attendant. The others in the list

passed the trade test later than the applicant and were, thus, junior to him. It is also stated that Sri Ramesh Chandra Salig Ram was given seniority over the applicant, because he was stated to have passed the trade test on 16.10.64, but that was not the correct reason, because three other persons had passed the trade test on 12.09.63 and yet they were not promoted. He stated that vacancies arose on 1.1.65, 12.10.65 05.01.70, 07.03.70 and 28.03.74 and yet the applicant was not considered for promotion.

5. The respondents in his reply has stated that the application is barred by time and should be dismissed. It is also mentioned that the applicant has not preferred any appeal on 26.12.86, but has merely given a representation without any date addressed to Chief Personnal Officer, Bombay V.T. It is also stated that the applicant had passed trade test of Wheel Tapper/Wheel Attendant on 19.05.66 and not on 05.02.65 and was given local officiation on 05.01.70 on purely temporary basis. The applicant was reverted because a person, senior to him, had to be promoted. The applicant was again promoted to officiate locally as semi-skilled Fitter in the grade of Rs. 210-290 on 14.03.78. It is stated that all the employees alleged to be junior by the applicant were promoted in accordance with the prevailing Railway rules. They said that Sri Ramesh Chandra Salig Ram was appointed as Carriage & Wagon Khalasi on 26.09.1957 in Nagpur Division and sought transfer to Jhansi Region, which he joined on 12.06.63 and was given seniority in that Division from that date. Since he had passed the trade test of Wheel Tapper on 05.09.64, he was promoted on 01.01.65. It is stated that the policy before

22.10.1970 was to invite applications of Khalasis who were willing for promotion to the post of Wheel Tapper/Wheel Attendant and call them and trade test them and promote them on the basis of the date of their passing the trade test. This policy changed after 22.10.1970 and the Khalasis were tested strictly in accordance with the seniority and the promotions were also made according to the seniority. They said that Sri Uma Shanker Ram Ratan was originally appointed as Gangman, but was transferred to C & W Department as Khalasi on 31.12.1962. He has been given seniority in the ^{Marriage and} Wagon Department from 11.8.1959. Although there is nothing on record to show that he was transferred to C & W Department ^{rendered} on being ~~excess~~ surplus in the Engineering Department, he had passed trade test of Wheel Tapper/Wheel Attendant on 3.1.1970 and put to officiate locally as Wheel Attendant on 19.1.1972 ~~19.1.1972~~ vice the applicant. It is stated that even if Sri Uma Shanker had been given seniority from 31.12.1962, it is the date on which the applicant also joined service, Sri Uma Shanker would have been considered senior to the applicant, because his date of birth being 1937 while the date of birth of the applicant is 1940. It is stated that persons mentioned at serial 4, 7, 9 and 14 in the Annexure 1, had joined service earlier than the applicant and were promoted to Wheel Attendants on 21.1.1970, ^{Posts} 19.11.1970 and 1.6.77 on account of their seniority. They passed trade test later than the applicant did. The employees at serials 5, 6 and 8 were trade tested prior to the applicant and had been promoted on 30.6.1964, 30.6.1964 and 3.6.1969 respectively, but they refused their promotion and subsequently they were promoted on 12.2.1970, 21.2.1970 and 11.8.1970 respectively. They stated that the dates

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mentioned in Annexure - 1 to the petition were wrong and have given a correct version of the statement in paragraph 14 of the written reply. It is mentioned that all the employees were senior to the applicant and were getting correct pay. It has been denied that Sri Chanshyam Ram be was and Sri Sunder Lal Bansi Lal were junior to the applicant. It has been stated that these two persons moved in Carriage and Wagon Department on 14.12.1963 against 10 % quota of vacancies of Carriage and Wagon Department Khalasis and they were entitled to the benefit of 50 percent service of the gangmen towards seniority and were given duties on 17.07.61 and 21.06.61 respectively in the cadre of Carriage and Wagon Department Khalas is. Thus, these two persons were senior to the applicants. It is stated that the position was also explained to PNM members and the case of the applicant before that forum was finally closed after the members were convinced of the propriety of the case of administration. It is stated that the applicant did not file any appeal. These dates of P.N.M proceedings and appeal have been mentioned to bring the applicant within a period of limitation. They have stated that the application is time barred. He could not be promoted on 01.01.65 as he had not passed trade test and he could not be promoted on subsequent occasions because his seniors were available for promotion. Thus the respondent stated that all the 13 employees mentioned in Annexure - 1 were senior to the applicant and that the applicant did not exhaust departmental remedy by filling representation/ appeal and as such the application is liable to be rejected.

6. The applicant in his rejoinder has mentioned that he had sent a representation dated 27.12.86 by registered post under official receipt. It is stated that the case was finally decided by the respondent on 10.07.86 and in view of

representation dated 26.12.1986, the case was not time-barred, in view of AIR 1987(1) CAT P.B. Page 967. ~~He~~ We contends that the application has already been admitted. He has disputed the claim of the respondent that the applicant was trade-tested on 19.5.1966 and has re-iterated that he was trade tested on 5.2.1965. He has stated that there was no question of temporary or officiating post, because promotions were made on occurrence of vacancies and after passing the trade test. Besides, he has claimed that he stood confirmed by Railway Board's letter No.E(NG)169095/31 dated 12.8.1971. He has cited the provision of paragraph 316 and 317 of Railway Establishment Manual in support of his case. The applicant stated that Sri Uma Shanker Ram Ratan joined on 10.1.1963 and not on 31.12.1962. He has stated that no senior person was left out for promotion when he was promoted in 1970. He has stated that the statement by the respondent that all employees junior to the applicant were promoted in accordance with the prevailing Railway rules and practice in vogue is vague and irresponsible. He has stated that he cannot be considered junior to Sri Ram Chandra Salig Ram, because he was not asked to appear in the trade test in 1963 or 5.9.1964. He cited the judgment No.TA 952/87 Union of India Vs. Shyam Mohan in support of his claim. He has claimed that he should have been given seniority over Ramesh Chandra Salig Ram and Uma Shankar. He has stated that seniority cannot be adjusted retrospectively on the basis of change in policy of promotion in accordance with the seniority. He stated that the respondent did not place any policy prior to 22.2.1970 or from 22.2.1972 onwards. He has stated that if seniority were the sole criteria, Sri Paras Muni Ganesh who was appointed on 2.11.73 should ^{not} have

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been senior to Sri Narain Dass appointed on 26.5.56. He has stated that if they were made senior to the applicant because of their seniority in the lower grade, the applicant should have been considered senior to Sri Ramesh Chandra Salig Ram and Sri Uma Shankar. He has stated that since the persons at serials 4, 7 and 9 to 14 passed the trade test much after the applicant, they should not have been stated to be senior to him. He has also stated that persons at serials 5, 6 and 8 were promoted after the promotion of the applicant in 1970 and should, therefore, rank junior to him. He says that the dates of trade tests of Sri Munshi Lal, Sri Keshav Das and Sri Ram Swarup at serials 5, 6 and 8 in Annexure - 1, are different from the dates shown in paragraph 11 of the written statement and it is not known as to which date is correct. Hence the dates shown by the applicant should be accepted. He has claimed stepping up of his pay over his juniors Uma Shanker and Sri Ramesh Chandra Salig Ram. He has stated that there were more than 13 vacancies available on 5.1.1970 onwards and there was no question of reverting the applicant and if reversion had to be done, it should have been Sri Ramesh Chandra who should have been reverted. He stated that weightage of 50 % of seniority came into effect from 8.1.1981 onwards. He has given names of Sri Bodri Prasad, Onkar Nath and Sri Jony Khudabux as persons who were senior to Salig Ram and were trade tested earlier to him on 12.9.1963 and promoted on 15.9.1966 and 5-7-1967.

7. The arguments of Sri R.A.Nigam, counsel for the applicant and Sri A.K. Gaur, learned counsel for the respondent were heard.

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8. The question of limitation raised by the respondents is the first and foremost of the issues requiring consideration in this case. Ostensibly since the applicant claims promotion from 01.01.65 or 12.10.65, or 05.01.70 or 07.03.70 or 28.03.74, the limitation should run after one year of these dates and the application filed on 14.10.87 is more than 12 years beyond the period of limitation. However, it is clear from the proceedings of P.N.M dated 10.07.86 (Annexure A-II) that the case of seniority of the applicant was still in dispute upto that date and the ~~concessus~~ arrived at in the P.N.M. was communicated to the applicant on 10.07.86. The first two annexures of the rejoinder affidavit of the applicant show that a representation was filed on 27.12.86. Therefore, the application of the applicant filed before this Tribunal is within the period of limitation.

9. The second issue raised by the respondents is that the applicant should have availed of the departmental remedy first. This has also been answered by the applicant in his rejoinder application in the first two annexures regarding despatch of his representation on 26.12.86 and service of a copy of it in the office of carriage and wagon Supdt. on 27.12.86. Thus the applicant had approached the department at that time although the respondents do not appear to have performed their responsibility ^{of} considering it.

10. The respondents have mentioned that employee were trade tested at their option upto 22.10.70 and thereafter, they were trade tested according to their

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seniority. Thus it is quite possible that trade tested employees of various seniorities were available prior to 22.10.70 and their promotion depended on their date of passing of trade test at the time of considering promotion on regular basis. If this criterion as mentioned by the respondents in their counter affidavit is true, it is not understood how Sri Narain Dass could be promoted before the applicant as Sri Narain Dass passed the trade test on 20.01.70 and the applicant did so on 05.02.65 according to his own averment, and 19.05.66 according to the averment of the respondents. This could only have been done if the applicant was taken as promoted on 01.05.70 and was not taken into consideration at the time of promotion of Sri Narain Dass. Even if the applicant was promoted on purely officiating basis locally, he was entitled to be considered for regular promotion at this time.

11. The applicant has contended that he should be considered senior to thirteen other wheel attendants mentioned in his application and given seniority as well as fixation of pay from the date of his junior Sri Ramesh Chandra Salig Ram's promotion as wheel attendant. His application is based on the premise that date of passing of the trade test is the sole criterion for promotion. The applicant has mentioned the provisions in paragraphs 316 and 317 of Indian Railway Establishment Manual as the basis of his claim. However, the date of trade test cannot be the sole criterion as the date of declaration of result, the existence of vacancies,

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the availability of trade test passed employees at the time of consideration of regular promotion to fill up the vacancies and promotion through formal proceedings are other equally important criteria. The applicant has shown existence of vacancies from time to time but ~~has~~ not shown how many trade tested colleagues were available at the time the vacancies were filled up on regular basis.

12. As regards the applicant's contention regarding the existence of vacancies on 01.01.65 it appears from Annexure A-II that five vacancies existed from a date earlier than 17.12.64 which were filled up on 17.12.64 by promotion of five trade tested candidates including Sri Ramesh Chandra Salig Ram. However, in the counter affidavit which was prepared subsequently the date of promotion of Sri Ramesh Chandra Salig Ram as wheel attendant is mentioned to be 01.01.65. Be that as it may, since both the dates are earlier than applicant's claim of having passed the Trade Test on 05.02.65 he does not establish his claim to promotion with effect from 01.01.65. The respondents have stated in CA that the applicant could not be promoted against 5 vacancies of wheel taper and basic fitter on 15.10.65 as he had passed the trade test of wheel attendant and not of wheel taper and basic fitter and that too on 19.05.66. Regarding the vacancies on which the applicant was promoted on 05.01.70 and seven vacancies which were filled on 07.03.70, the respondents admit in annexure A-ii that no record was available as to why the applicant could not be promoted against these

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vacancies on a regular basis. As regards the vacancies available on 28.03.74 is concerned, none of the person over whom the applicant claims seniority were promoted on 28.03.74 and hence consideration of this date for promotion on the basis of facts on record is considered by the respondents to be not warranted.

13. The applicant has annexed judgement of the Tribunal in O.A. no. 952 of 1987 as Annexure A VII in which the Tribunal has held that seniority of an employee cannot be given from the date of Trade Test but from the date of announcement of Trade Test. The Tribunal had also considered the averment of the Union of India, who was the applicant in that case, to the effect that the policy prior to 22.10.70 was that an employee who passed the trade test earlier became senior. The Tribunal found that this averment was not supported by any circular of the Railway Board. It found that the circular of Railway Board no. E(NG)55 SR-6-7 dated 13.08.59 laid down " that all vacancies which arose on or before 12.08.59 were to be filled in accordance with the provisions: procedure of promoting staff on the basis of date of passing the trade test or the date being declared suitable for the higher post while all vacancies occurring thereafter are to be filled in accordance with the seniority from amongst qualified staff available on date of occurrence of vacancies." However, since the respondents in this case have themselves averred that they followed the policy of promoting those who passed the trade tests earlier were to be considered senior as per practice adopted

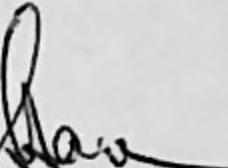
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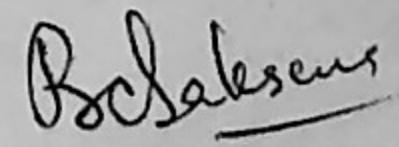
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by the respondents for promotions before 22.10.70, the claim of the applicant for being considered with effect from 05.01.70 and 05.03.70 can not be overlooked.

14. The applicant's claim for continuation of promotion from 05.01.70 cannot be accepted because he was promoted only on temporary basis locally at that time. His claim on the basis of the letter of Railway Board no. E(NG)/169 CN 5/31 dated 24/27-12-70 annexed to his rejoinder is not tenable as the letter provides for confirmation after regular promotion and the applicant has not been able to establish that he was promoted on a regular basis on 05.01.70 after due selection or sustainability test. In the light of the above discussion, However, the claim of the applicant for being considered for any promotion made on the regular basis after this date is established. The interest of justice would be served if a direction is issued to the respondents to reconsider his case for promotion along with those of other eligible candidates by means of a review D.P.C. such a process should start as soon as a copy of this judgement along with his representation is submitted by the applicant and completed within three months of its receipt. In case the applicant is found eligible for promotion, he shall be given promotion and all the consequential benefits.

15. There shall be no order as to costs.


Member-A


Vice-Chairman