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RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 7th day of November 1997

Original Application No. 193 of 1988

District : Varanasi

CORAM :-

Hon'ble Dr. R.K. Saxena, J.M.

Hon'ble Mr. D.S. Baweja, A.M.

1. Ujai Prakash Lal  
son of Sri (Late) Ram Bharoselal  
Hd. Tool Checker, Tool Room,  
DLW, Varanasi.
2. Vijay Kumar Mehra  
son of Sri T.N. Mehra Hd. Tool Checker,  
DLW Varanasi.

(By Sri VK Barman, Advocate)

.....Applicant

Versus

1. Union of India,  
Through General Manager,  
DLW Varanasi.
  2. The Secretary(E) Rly Board, New Delhi.
  3. Chief Mechanical Engineer(P)  
DLW, Varanasi.
  4. Sri Gopeswar Charrwejee, Chief Tool Checker,  
Tool Room, DLW, Varanasi.
  5. Sri Murli Dhar, Hd. Tool Checker Pipe Shop,  
DLW, Varanasi.
  6. Sri Kashi Nath Singh, Hd. Tool Checker Engine Shop,  
D.L.W., Varanasi.
  7. Sri MK Agarwal, Hd. Tool Checker, Light Machine Shop,  
DLW, Varanasi.
  8. Shri C. Basu, Sr. Tool Checker, Light Machine Shops  
DLW/Varanasi.
- (Sri Amit Sthalekar, Advocate) :...Respondents

ORDER

By Hon'ble Mr. D.S. Baweja, A.M.

This application has been jointly filed by  
two applicants under Section 19 of the Administrative  
Tribunals Act, 1985.

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2. The applicants are working as Tool Checkers in Diesel Locomotive Works, Indian Railways, Varanasi. Diesel Locomotive Works (DLW) Varanasi was set up on 1-8-1961. The seniority of the non-gazetted staff working in the DLW remained under dispute as manning of the cadre was done from diverse sources viz. open line railways, production units and direct recruitment, from the open market. The Railway Board in exercise of their statutory powers under Rule 157 of Indian Railways Establishment Code, Vol. I, amended Rule 301 of the Indian Railways Establishment Manual and inserted Rule 324 to 328 under Chapter III. **for** the purposes of determining seniority and promotion of non-gazetted employees of DLW vide Advanced Correction Slip No. 70 (hereinafter referred to as ACS-70), These Rules were notified on 11-3-1973. Rule 328(2) of ACS-70 invalidated all selections and promotions made in DLW from 1-8-1961 till the date of notification of the Special Rules i.e. upto 11-3-1973. Rule 328(3) and (4) of ACS-70 deals with as to how promotion of staff will be made and seniority determined against the non-selection and selection posts respectively during the period 1-8-1961 to 1-4-1965 <sup>1-8-61 to</sup> in the case of ministerial staff and <sup>1-1-1969</sup> in the case of technical and non-ministerial staff. Rule 328(1) of ACS-70 deals with the seniority of the staff whose categories have already been changed with the approval of the competent authority prior to <sup>the</sup> receipt of ACS-70 and seniority of such staff is to be <sup>the</sup> determined with reference to the changed category/trade. The grievance of the applicants arises with reference to the provision in Rule 328(1), The applicants as well as the respondent nos. 4 to 8 were all working as Tool Checkers. Though the applicants continued as Tool Checkers, respondent

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nos. 4, 5, 6 and 8 were promoted as Clerk while respondent no. 7 was promoted as Material Checking Clerk, before the notification of the Special Rules i.e. 11-3-1997. The relevant dates of promotion as clerk of respondent nos. 4 to 8 have been furnished by the applicant as under:-

<u>S.N.</u>	<u>Names</u>	<u>Respondent Nos.</u>	<u>Date of Promotion</u>
(i)	Gopeshwar Chatterjee	4	19-6-65
(ii)	Murlidhar	5	07-9-67
(iii)	Kashi Nath Singh	6	19-6-65
(iv)	MK Agarwal	7	19-9-65
(v)	A.C. Basu	8	26-3-69

3. The applicant's case is that since respondent nos. 4 to 8 had already been allowed change of category to ministerial cadre, therefore, in view of Rule 328(1), their seniority was to be fixed in the changed category/trade. Instead of this, the official respondents have allowed respondent nos. 4 to 8 seniority in the Tool Checker Cadre when the bifurcation of the cadre of Tool Checker was done in total violation of the provisions of Rule 328(1). As a result, respondent nos. 4 to 8 have become senior to the applicants.

4. The applicants have been representing against the incorrect allowing of the seniority to the respondent nos. 4 to 7 in violation of Rule 328(1) since 1976. This application has been filed on 12-2-1988 at the time when the promotion to the post of Chief Tool Checker in the Grade of Rs. 550-750 was notified by letter dated 20-1-1986. Selection has been held on 20-8-1987 followed by supplementary selection on 15-2-1988, in which the applicants were also called for selection. This application has been filed challenging the selection for the post of Chief Tool Checkers with the following reliefs:-

- (a) quashing the appointment and seniority of respondent nos. 4 to 8 as Tool Checker and further promotions in category of Tool Checker being illegal and void.
- (b) to direct respondents to fix the seniority of respondent nos. 4 to 8 in the ministerial general seniority group as Clerk.



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- (c) to issue a direction to hold the selection only after finalisation of the <sup>seniority of the</sup> respondent nos. 4 to 8.
- (d) to quash the selection to the post of Chief Tool Checker in the grade of Rs. 550-750 held on 20-8-1997 and the supplementary selection in pursuance of the notification dated 3.2.1988 to be held on 15-2-1988.

5. Subsequent to the filing of the OA, an amendment application was filed by the applicants to bring on record a copy of the letter dated 19-2-1988 through which the Railway Board have rejected the representation of the applicants with regard to their seniority. This application was allowed and this letter was impugned with a prayer to quash the same.

6. The official respondent nos. 1, 2, and 3 have opposed the application by filing a counter reply. The respondents have given the background leading to issue of ACS-70 and the insertion of Rules 324 to 328 in Chapter III of Indian Railway Establishment Manual and the provisions of these Rules for determining the seniority and promotion of non-gazetted staff. The respondents submit that the posts of Tool Checkers in the grade of Rs. 105-135 were created in Mechanical and Electrical Departments of DLW and were filled by transfer/absorption of casual labour and by direct recruitment. The Tool Checkers ~~xxx~~ <sup>an</sup> had an avenue of promotion to the post of Clerks in the grade of Rs. 110-180 against the element of promotional quota along with other Class IV staff. The post of Tool Checkers ~~was~~ upgraded to the grade of Rs. 110-180 in the year 1969. In 1975, the Railway Board vide order dated 10-7-1975 ordered to segregate <sup>to</sup> the cadre of Tool Checkers from the ministerial cadre and <sup>to</sup> provide cadre of Tool checkers with higher grade posts on percentage basis. Prior to the issue of ACS-70, the respondent nos. 4, 5, 6 and 8 got promoted



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to the post of Clerk in the grade of Rs.110-180, after passing the selection. With the issue of ACS-70, selection and promotion of the Tool Checkers as Clerk stood invalidated in terms of Rule 328(1). <sup>a result</sup> As ~~such~~, all the Tool Checkers who were promoted as Clerk in the grade of Rs.110-180 and posted in the departments other than Mechanical and Electrical Departments, after invalidation of their promotion as Clerk in the scale of Rs.110-180 were assigned seniority in identical time scale of pay of Rs.105-135 in the departments <sup>where</sup> they were promoted as Clerk in the grade of Rs.110.180 treating their absorption in the indential time scale of pay in the grade of Rs.105-135 in terms of Rule 328(1) of ACS-70. In respect of Tool Checkers of Mechanical and Electrical Departments, the cadre of Tool Checkers got separated from the ministerial category in terms of the Railway Board dated 10-7-1975 as stated earlier <sup>and</sup> as a result, the Tool Checkers who were working in the ministerial side under the Mechanical and Electrical Departments on the crucial date, had the option for going to the ministerial side or as Tool Checkers, **that is the** category to which they initially belonged. Keeping this in view, ~~that~~ the respondent nos.4, 5, 6 and 8 who were working in the ministerial category were assigned seniority in the Tool Checkers grade on bifurcation of the cadre of Tool Checkers. The respondents, therefore, contend that <sup>the</sup> action to assign ~~the~~ seniority to respondent nos.4, 5, 6 and 8 as Tool Checkers has been <sup>taken</sup> ~~done~~ as per the extant rules laid down. In respect of respondent no.7, the respondents have explained that he had been empanelled from 19-6-1965 as Material Checking Clerk in the grade of Rs.105-135. Subsequently, he was promoted <sup>on ad hoc basis</sup> as Tool Checker in the grade of Rs.110-180 from 12-10-1969 and thereafter continued as such. He has been assigned seniority as Tool Checker from 19-5-1965 treating him as direct recruitment ~~in~~ Tool Checker in the grade



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of Rs. 105-135 on the basis of his empanelment as Material Checking Clerk in the grade of Rs. 105-135. The respondents have further submitted that the seniority list of Tool Checkers in the grade of Rs. 105-135 pertaining to the period from 1-8-1961 to 31-12-1968 was prepared in terms of ACS-70 and was issued on 29-12-1975. In this seniority list, the respondents nos. 4 to 8 were assigned seniority as Tool Checkers in the grade of Rs. 105-135 with retrospective dates. The seniority list of Tool Checkers in the grade of Rs. 110-180 as on 30-9-1975 was also issued vide letter dated 24-3-1976. In this seniority list also, <sup>the</sup> respondents nos. 4 to 8 were assigned seniority position from retrospective dates. The applicants made a representation on 12-4-1976 against the seniority allocated <sup>to</sup> respondent nos. 4 to 8. This representation was considered by the competent authority and the reply was given vide letter dated 23-7-1976. Subsequently, the applicants took up the issue of seniority through Staff Council <sup>in 1979 and</sup> <sup>a</sup> reference was made to the <sup>the</sup> Railway Board. Railway Board vide letter dated 31-10-1979 confirmed the correctness of the action taken by the DLW and rejected the claim of the applicants. However, the applicants again took up the issue through the Staff Council stating that the decision conveyed by the Railway Board vide letter dated 3-10-1979 had been taken without discussion with the Members of Staff Council. <sup>With</sup> <sup>dt. 7-12-79, the matter was</sup> reference to their representation, further referred to the Railway Board and the Railway Board vide letters dated 27-2-1982 and 18-9-1982 directed to recast the seniority list of Tool Checkers on the basis of marks obtained in the written test and treat the panel as direct recruitment. The seniority list was revised and the revised seniority list was issued vide letter dated

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10-11-1982. Thereafter, the applicant again took up the issue of seniority, ~~list~~ both at DLW level as well as through National Union when the notification dated 20-1-1986 was issued for the selection to the post of Chief Tool Checker in the grade of Rs.550-750. After correspondence between DLW and the Railway Board, the Railway Board finally directed by the order dated 20-1-1988 to finalise the selection as per the existing seniority list with the stipulation that those who did not appear in the selection which included the applicants may be allowed chance through the supplementary selection to appear in the written test. Accordingly, the date was fixed <sup>as</sup> for 15-2-1988, but the applicants did not appear in the same. This selection was finalised and the panel for the post of Head Tool Checker had been issued by the letter dated 17-2-1988. Keeping these facts in view, the respondents plead that the action has been taken to allow the seniority to respondent nos.4 to 8 as in Tool Checkers' Cadre as per extant rules and the applicants have no case and are not entitled for the reliefs prayed for. The respondents have also strongly opposed the application <sup>being</sup> as barred by limitation under Section 21 of the Central Administrative Tribunals Act, 1985.

7. The respondent nos.4 to 8 were issued notices. Shri Lalji Sinha, filed power on behalf of these respondents but no counter reply had been filed. <sup>either</sup> Nor <sup>have</sup> the applicants appeared in person, nor through the counsel at any time. Accordingly, we <sup>have</sup> proceeded exparte against the respondent nos.4 to 8.

8. The applicants have filed main rejoinder reply to the counter reply. Subsequently, <sup>Supplementary</sup> rejoinder reply

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has been filed stating that some of the points raised in the counter reply could not be answered at the time of filing of the main rejoinder reply. The applicants have controverted the <sup>averments</sup> statement of the respondents with regard to the allocation of seniority to the respondents no.4 to 8 as Tool Checkers. The applicants have maintained their stand that the respondents no.4 to 8 were required to be allocated seniority in the changed category in the ministerial cadre as per Rule 328(1) and this was done so in respect of the other Departments. However, discriminatory and arbitrary action has been by the respondents in respect of Tool Checkers of Electrical and Mechanical Departments by allowing the seniority as Tool Checkers <sup>Grade</sup> to the respondents no.4 to 8 who had gone to the ministerial cadre. In the supplementary rejoinder reply, the applicants have mainly made averments to counter the plea of limitation taken by the respondents by filing documentary evidence to show that the applicants have been diligently pursuing the matter both, with the DLW as well as <sup>with</sup> the Railway Board and, therefore, in view of this, the applicants consider that the application is not barred by limitation.

9. As per the order dated 1-3-1988, the respondents were directed that the promotions made and arrears, if any, paid to the respondents no.4 to 8 will be subject to the decision in the OA.

10. We have heard Shri V.K. Barman, <sup>and</sup> along with Sri Amit Sthalekar, counsel for the applicants and the respondents respectively. The arguments have been carefully analysed and the material on record has been <sup>also</sup> gone through.

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11. In view of the facts of the case and the reliefs prayed for, we will first take up the question of limitation, pressed by the respondents. Both the sides vehemently argued on this aspect during the hearing. The applicants have taken the plea that they have been vigorously pursuing the matter with regard to seniority of respondent nos. 4 to 8 right from 1976 onwards when the seniority list was published both at the local level with DLW as well as at the Railway Board's level through the Staff Council and the National Federation. The Railway Board has finally rejected their representation after considering the matter on merit, vide letter dated 16/19-2-1988. The OA was filed on 12-2-1988 and the Railway Board letter has been issued subsequent to the same. However, the Railway Board's letter dated 16/19-2-1988 has been brought on record through an amendment application and with a prayer to quash this letter. Since the claim of the applicants has been dismissed after considering the issue on merit as per letter dated 16/19-2-1988, the limitation period is to be reckoned from the date of last reply i.e. 16/19-2-1988. On this basis the OA is filed within the period of limitation. The applicants in <sup>support</sup> respect of their contention have relied upon the judgement of the Principal Bench in the case of B. Kumar Vs. UOI & Ors. (AIR 1988 (1) CAT 1. On the other hand, the respondents have strongly contested the claim of the respondents stating that repeated representations will not extend the limitation period and the application is highly time barred as the seniority list issued in 1976 is sought to be got modified. The respondents have cited the following judgements to strengthen their arguments:-

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- (i) State of Orissa Vs. Shri Pyari Mohan Samantaray and Ors., AIR 1976 SC 261.
- (ii) RS Makshi & Ors Vs. IM Menon & Ors, 1992 S.C.<sup>c</sup> (L&S) 77.
- (iii) SS Rathore Vs. State of M.P. AIR 1990 SC 109
- (iv) Administrator of Union Territory of Daman & Diu & Ors. Vs. RD Valand (1996) 32 ATC 148.

12. Before we review the judgements cited by either <sup>the</sup> side, it would be profitable to detail the crucial facts which have bearing on the issue of limitation. The facts have been briefly detailed in Para 5 above. The first seniority list of Tool Checkers in the grade of Rs.105-135 of the Mechanical and Electrical Departments for the period from 1-8-1961 to 31-12-1968 with reference to ACS-70 was notified on 21-12-75 (SRA-1). The seniority list of Tool Checkers in the grade of Rs.110-180 as on 30-9-1975 was circulated on 24-3-1976. The representation dated 2-4-1976 was made by the applicants with reference to the seniority list dated 24-3-1976. This had been replied by the respondents by letter dated 23-7-1976. Subsequently, the matter had been taken up through the Staff Council and the reference had been made by DLW to the Railway Board. The Railway Board rejected the claim of the applicants and upheld the action taken by the DLW as advised in the letter dated 31-7-1979. This decision was conveyed to the applicants. However, the applicants again took up the issue on the plea that the decision taken by the Railway Board was not taken after discussion of the matter with the Members of the Staff Council.

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The matter was referred by DLW again to Railway Board. Thereafter, the Railway Board issued instructions in 1982 directing recasting of the seniority list based on the guidelines given. Accordingly, the revised seniority list was issued on 10-11-1982. Thereafter, the matter was again raised only in 1986 when notification dated 20-1-1986 for selection for promotion to the post of Chief Tool Checkers in the grade of Rs.550-750 was issued. This representation was also replied by letter dated 25-2-1986. The applicants took up the matter at the Railway Board level through their National Union. However, the Railway Board vide letter dated 20-1-1988 directed the DLW to complete the selection and thereafter the panel has been finally notified on 17-2-1988. In addition to these relevant details, the particulars of respondent nos. 4 to 8 with regard to promotion in the cadre of Tool Checkers are also necessary to be detailed as under :-

S.N.	Date of Promotion		
	Senior Tool Checkers	Head Tool Checkers	Chief Tool Checkers
4	7-7-78	20-6-79 (Ad hoc) 27-8-81(Regular)	27-8-81 (Regular)
5.	7-9-78	1-8-84	17-2-88
6.	"	"	"
7.	8-9-78	1-1-84	17-2-88
8.	20-3-86	still working in the same grade.	

13. The applicants have taken the plea that the matter was pending with the Railway Board since 1980 and the Railway Board finally have rejected the claim of the applicants considering on merit vide letter dated 16/19-2-1988 and, therefore, the limitation is to

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be reckoned from this date. On perusal of the record, it is noted that the applicants had filed a MA No.3061/95 on 18-12-1995 with the prayer to keep the copy of this letter on record and also to permit to amend the relief impugning this order with a prayer to quash the same. This application was allowed by order dated 22-1-1996. The original application was filed on 12-2-1988 and the letter of the Railway Board under reference had been issued after<sup>a</sup> few days thereafter. However, the applicants remained quiet about this letter for almost 8 years. The Affidavit filed with the Misc.Application does not bring out that the applicants were not aware of this letter, for all these years after filing the original application. There is no whisper on the reasons with regard to delay in bringing this letter on record. The original application had been filed mainly challenging the selection of the Chief Tool Checker in the grade of Rs.550-750 with a prayer to quash the selection and the fresh selection to be done again after correction of the seniority list by deleting the names of respondent nos.4 to 8 who have been wrongly allowed seniority in the cadre of Tool Checkers. If the letter dated 16/19-2-1988 had been brought on record, promptly or within one year of the issue of this letter, then the applicants could argue that the cause of action arose with the issue of this letter. However, for almost 8 years, the applicants slept over this and they cannot turn around and make a plea that the date of this letter brought on record in 1995 should form the basis of reckoning limitation provisions. We are of the view that the plea of the applicants that the cause of action arose with the letter dated 16/19-2-1988 is filed after almost 8 years is not tenable.

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14. The applicants during the hearing strongly advocated that the OA has been filed within the period of limitation considering the disposal of their ~~mxg~~ representation on merits as per the Railway Board letter dated 16/19-2-1988, seeking support of the judgement in B. Kumar Vs. UOI of Principal Bench as referred to above. We have carefully gone through this judgement. In this judgement, it is held that if the department chooses to entertain a further representation and considers the same on merit before disposing of the same, it would be inequitable and unfair to dismiss an application filed challenging such an order, on the ground of limitation with reference to the date of earlier rejection. From the facts of this case, <sup>it</sup> is noticed that the first representation was rejected in 1979 by the competent authority at the local level. However, on making repeated representations by the applicant subsequently, the matter was referred to the Department of Personnel and Administrative Reforms. This representation was also rejected in October, 1985. Thereafter, the OA was filed and it is held in this judgement that the limitation will reckon from October, 1985 onwards. In the present case, the facts are distinguishable. Here the representation was first considered and rejected at DLW level in 1976. Thereafter it was referred to the Railway Board in 1979 and the Railway Board also rejected the claim of the applicants and they were also advised of the same. Thus, in the case in hand, even higher authorities had rejected the claim. However, the Railway Board considered the matter again in 1988 on persistent representations made by the applicants.

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The benefit of this letter is being claimed to overcome the hurdle of limitation in filing the present application. As already brought out in Para 13 above, the Railway Board's letter dated 16/19-2-1988 is of no help <sup>to</sup> the applicants in respect of limitation, as this letter has been impugned only in 1995. Therefore, in view <sup>of</sup> these facts, the present case is distinguishable from that of B Kumar Vs. UOI & Ors, and the cited judgement does not come to the rescue of the applicants.

15. Apart from what is delebrated in Para 14 above, what is held in the judgement of B Kumar Vs UOI & Ors, is not supported by the view held by the Hon'ble Supreme Court in the several judgements relied upon by the respondents as detailed in para 11. In the judgement in the case of R.S. Makshi and Others Vs. IM Menon & Ors, their Lordships of the Hon'ble Supreme Court have held that belated petition filed challenging the principle of seniority after 8 years of arising of the cause of action <sup>and</sup> deserves to be dismissed on the ground of delay <sup>and</sup> laches as it seeks to disturb the vested rights regarding the seniority, rank and promotion accrued to a large number of incumbents during the period of 8 years. In the case of the State of Orissa Vs. Pyari Mohan Samantaray and Ors, the petition was filed after 11 years on rejection of his representation against the supersession by his juniors in the select list. It is held in this judgement that such belated petition is liable to be dismissed on the ground of inordinate delay. It is further held that making of repeated representations after the rejection of one representation could not be held to be satisfactory explanation for the delay.

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16. The next judgement relied upon by the respondents is in the case of Administrator of Union Territory of Daman Diu & Ors Vs. R.D. Valand. This is the recent judgement where the Apex Court <sup>has</sup> endorsed the view held above in the other two judgements referred to above. In this case, the petitioner submitted a representation in 1985 requesting the administration to consider him for promotion with effect from August, 1977 when some juniors to him were promoted. This representation was rejected on 8-10-1986. Thereafter, the petitioner made several representations, which were also rejected. Finally, the application was filed before the Tribunal in March, 1990. The Tribunal allowed the application against which the appeal was filed before the Hon'ble Supreme Court. The Hon'ble Supreme Court while setting aside the judgement of the Tribunal has held in para 4 as under :-

"4. We are of the view that the Tribunal was not justified in interfering with the stale claim of the respondent. He was promoted to the post of Junior Engineer in the year 1979 with effect from 28-9-1972. A cause of action, if any, had arisen to him at that time. He slept over the matter till 1985 when he made representation to the Administration. The said representation was rejected on 8-10-1986. Thereafter, for four years the respondent did not approach any court and finally he filed the present application before the Tribunal in March, 1990. In the facts and circumstances of this case, the Tribunal was not justified in putting the clock back by more than 15 years. The Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way."

The crucial details with regard to the issue of limitation have been brought out in para 12 above. The first representation was rejected in 1976. Subsequently, the representation was considered at the Railway Board's level and that was also rejected in 1979. The respondent nos. 4 to 8 were also promoted to the next grade as

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Senior Tool Checkers in 1978, and next higher grade of Head Tool Checkers in 1984 based on the seniority list issued in 1976. Thus, several occasions arose when the applicants were aggrieved due to seniority and promotion of respondent nos. 4 to 8 but they did not seek legal remedy and instead chose to continue to pursue the matter at the departmental level. During the intervening period of 12 years, respondent nos. 4 to 8 got two promotions and the present application has been filed only in 1988 when the third promotion as Chief Tool Checker became due for which selection was ordered. Through this application, the applicants have sought recasting of the seniority list issued in 1976 and to get the position unsettled which has settled through successive promotions during the intervening period of 12 years. The applicants have pleaded that they have been repeatedly making representations and taken up the issue at the Railway Board level also. This contention is not tenable as the applicants have to be diligent in the matter of seeking relief in the court/Tribunal. They cannot go on making repeated representations after the rejection of the first representation. It is not that they can decide to seek legal remedy at any time which involves unsettling the settled position for several years in respect of large number of incumbents. The Hon'ble Supreme Court in the judgements referred to above <sup>has</sup> held that repeated representations cannot be the basis for explaining delay in seeking legal remedy and further vested rights regarding seniority and promotion accrued to large number of incumbents during the intervening period, cannot be disrupted. In view of

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what is held by the Hon'ble Supreme Court in the above referred judgements, we have no hesitation to conclude that the present application is highly time barred and deserves to be dismissed on this count alone.

17. Looking from another angle, the present OA is also not maintainable before the Tribunal as it is beyond the jurisdiction of the Tribunal keeping in view the provisions in Section 21(2)(a). The OA has been filed on 12-2-1988. The main reliefs prayed ~~are for~~ quashing of the seniority allotted to respondent nos. 4 to 8 as Tool Checkers. The other reliefs with regard to quashing of the selection for the post of Chief Tool Checkers and to ~~had~~ fresh selection for this post after correcting the seniority list flow from the main relief of the seniority. Although the seniority as Tool Checkers to respondent nos. 4 to 8 has been allowed retrospectively, but the seniority list was published on 24-3-1976. Therefore, on the facts of the case, the cause of action arose on 24-3-1976 when the seniority list of Tool Checkers was issued including the respondent nos. 4 to 8 in the cadre of Tool Checkers. The relief of quashing of this seniority list issued in 1976 is required to be adjudicated keeping in view the provisions of Section 21(2)(a) of <sup>central</sup> Administrative Tribunals Act, 1985 as detailed below:-

"Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes



exercisable under this Act in respect of the matter to which such order relates; and"

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The above provision makes it clear that the matters with cause of action arising three years before the constitution of the Tribunal, the jurisdiction will lie before the Tribunal. The Act came into force from 1-11-1985 and, therefore, it means that the matter arising on or after 1-11-1982 could only be entertained by the Tribunal and any cause of action which arose before 1-11-1982 will not come within the jurisdiction of the Tribunal. For such cause of action <sup>beyond</sup> ~~by~~ three years, the Tribunal cannot assume jurisdiction. In the present case, the seniority list issued in 1976 has been challenged with the prayer to quash the same. In view of the provisions of Section 2(2)(a), the claim in the present application is barred by limitation on account of lack of jurisdiction. However, in cases, which involve recurring cause of action, then jurisdiction limit under Section 21(2)(a) may not hold good. However, the present case does not involve recurring cause of action. In this connection we refer to the judgements of the principal Bench in the case of R. Sangeetha Rao Vs. UOI, 1992 (ii) ATC 516 and Zile Singh Vs. Delhi Administration and Others (1989) 11 ATC 424 wherein this aspect of limitation has been examined. It is held in these judgements that matters arising before 1-11-1982 cannot be entertained by the Tribunal as the Act does not vest any power or authority <sup>with</sup> ~~on~~ the Tribunal to take cognizance of a grievance arising out <sup>an</sup> ~~in~~ the order passed <sup>before</sup> ~~up to~~ 1-11-1982. If the Tribunal finds any application, which is beyond its jurisdiction,

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such <sup>an</sup> application will have to be rejected on this count without going into the merits. The Tribunal is legally barred in exercising jurisdiction in such cases. Hence, the present application, keeping this aspect in view, is not maintainable.

18. The applicants have prayed for one of the reliefs to quash selection to the post of Chief Tool Checkers held on 28-9-1997 and the supplementary selection held on 15-2-1988. These dates refer to the conduct of written examination of the selection. On 15-2-1988 Supplementary Written test was to be conducted in which applicants were allowed to appear. The panel has been finally issued on 17-2-1988 as brought out by the respondents in para 22 and the copy of the panel <sup>has been</sup> brought on record at Annexure-3 to the counter reply. The panel consists of five persons and on perusal of the same, it is noted that only two out of the respondents no.4 to 8 are on the panel. Rest of the persons have not been impleaded as respondents. In the rejoinder reply the applicants have avoided giving any reply to the averment made with regard to the panel in para 22 of the counter reply. The applicants have not taken any action to amend the original application to impugn the panel dated 17-2-1988. They have also not taken any action to implead three person other than the respondents in the present case, who have been placed on the panel as a party. In view of the fact that final panel based on the written examinations which have been challenged, has been issued, the present application with the relief of quashing the written examinations held for the

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selection without impugning the panel is not maintainable. Further, the three persons placed on the panel are necessary parties, but they have not been impleaded. No adverse order can be passed against them. On these considerations also, the present application is not maintainable.

19. The matter was heard on merits at length but since we have recorded our findings that the application, is barred by limitation as well as not being maintainable before the Tribunal for want of jurisdiction, we are not going into the merits of the case.

20. In view of the deliberations above, the application is barred by limitation and is not maintainable before the Tribunal and is accordingly dismissed. No order as to costs.

21. The stay order dated 1-3-1988 is also vacated.

Dube/

*S. B. Khare*  
Member (A)

*[Signature]*  
Member (A)