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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 212 oof 1988

Allahabad this the 29th day of Feb. 1996

Hon'ble Dr. R.K. Saxena, Member (Judicial)
Hon'ble Mr. D.S. Baweja, Member (Administrative)

Laxami Kant S/o S. Thakur R/o 1256-B, Manas Nagar Colony,
P.O. Moghal Sarai, Distt. Varanasi.

APPLICANT.

By Advocate Sri S.K. Dey.

Versus

1. Union of India through the General Manager, E.Rly.
17, Netajee Subhash Road, Calcutta-1.
2. The Divisional Personnel Officer(I/C) E. Rly., Moghal sarai, Distt. Varanasi.
3. Sri J.N. Sah, Ad-hoc Tool Checker, U/S r.D.E.E. (THS),
E.Rly. Moghal sarai.

By Advocate Sri A.V. Srivastava RESPONDENTS.

O R D E R

By Hon'ble Dr. R.K. Saxena, Member (J)

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 for seeking the relief that the respondents be directed to restore the pay of the applicant in the scale of Rs.330-560 of Tool Checker. The other reliefs claimed ^{are} ~~is~~ about directions to the respondents for assigning seniority to the applicant over respondent no.3 and to make promotions accordingly. The earlier Seniority List dated 30.6.87 is prayed to be declared as illegal.

2. Briefly stated the facts of the case are that the applicant was initially appointed on 12.1.76 as Motor Vehicle Driver(herein after referred as M.V. Driver) in the scale of Rs.260-400. He was subsequently promoted as M.V. Driver Grade II and was placed in the grade of Rs.330-480/- and subsequently thereto, he was promoted as M.V. Driver Grade II in the scale of Rs.380-560/-. His salary was fixed at Rs.380/- on 01.8.1978 and he reached at the stage of Rs.452/- on 01.8.1984.

3. It is said that the applicant was declared medically declassified and he was given alternative job of Tool Checker in the scale of Rs.260-400/-. His pay was fixed at Rs.400/- vide order dated 20.3.1987(annexure-1). The contention of the applicant is that when he was already drawing Rs.452/- in the grade of Rs.380-560/- before his declassification, by giving alternative job his salary cannot be reduced to Rs.400/- and he cannot be given lower scale of Rs.260-400/-. This illegality in determining the pay scale in the alternative job is required to be rectified by relief no.7(1).

4. It is also the case of the applicant that when he was offered and absorbed as Tool Checker in the grade of Rs.260-400/-, he was assigned seniority below the respondent no.3 although he(the applicant) was working in substantive capacity while the respondent no.3 was working on ad-hoc basis. Thus, the correction in the seniority list is claimed by the relief 7(2). The applicant had moved representations but with no result and therefore, he approached

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the Tribunal through this O.A.

5. The respondents no.1 and 2 contested the O.A., on the grounds that it was filed beyond the period of limitation and thus, it was not maintainable. It is admitted that the applicant was appointed as Van Driver in the grade of Rs.260-400/- on 12.1.1976 but only as a substitute. He was, however, promoted on ad-hoc basis to the grade of Rs.330-480/- and subsequently to Rs.380-560/-. The respondents claimed that the applicant was declared unfit in A-3, B-1 and B-2 categories but was declared fit for C-1 categories and he was therefore, offered alternative job of Tool Checker in the grade of Rs.260-400/- and that offer was accepted by the applicant. It is further pleaded that no post of Tool Checker in the grade of Rs330-480/- was vacant at that time and thus, it was not possible for the applicant being absorbed in any higher grade of Tool Checker. It is also the case of the respondents that the seniority of the applicant vis-a-vis respondent no.3 Sri J.N. Sah was fixed according to rules. Sri J.N. Sah, according to the respondents, was working on ad-hoc basis since 01.6.75 and after he was found fit in suitability test, he was given seniority w.e.f. 01.6.1975 and he was placed at serial no.4 in the seniority list. The claim of the applicant that the applicant was senior to the respondent no.3 has been denied. The applicant filed rejoinder reiterating the facts which were mentioned in the O.A.

6. We have heard the learned counsel for the applicant Sri S.K. Dey and Sri A.V. Srivastava, counsel for the respondents. Sri S.K. Dey made a statement at bar that he was not pressing the relief 7(1) and he, therefore, argued about the relief 7(2). We have also gone through the record.

7. The respondents have raised the objection of limitation. The applicant was decategorised some times in the year 1987 because according to his own version, he was offered the job of Tool Checker in the scale of Rs.260-400/- vide order dated 20.3.1987 annexure-1. The seniority has been challenged on the basis of annexure-3 which is dated 30.6.1987. The O.A. was filed on 24.2.1988 and was admitted by the order of Bench on 25.2.1988. In this way, the O.A. ^{it} whether relates to the grade of Tool Checker or to the seniority, was filed within a year. Thus, we do not find that it was in any manner barred by limitation.

8. As is already pointed out that Sri S.K. Dey learned counsel for the applicant did not press for the relief 7(1) about fixation of pay, we, therefore, do not opt to go in details of the applicant's said relief. We may, however, point out that when the offer of the post of Tool Checker in the grade of Rs.260-400/- was unconditionally accepted by the applicant, there is no point of resiling from the same.

9. So far as the seniority of the applicant

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vis-a-vis respondent no.3 is concerned, the ground of attack on behalf of the applicant is that respondent no.3 was ad-hoc appointee and thus, he could not be made senior to the applicant. This fact has been explained by the respondents in the counter-reply by saying that no doubt, the respondent no.3 was appointed on ad-hoc basis as Tool Checker on 01.6.1975 but on being found fit in the Suitability Test, he was made regular w.e.f. 01.6.1975 and the seniority was determined from the said date. In view of this averment on behalf of the respondents and there being no valid opposition thereto, we do not find that the claim of the applicant is substantiated. We find from the perusal of Annexure -3 that Sri J.N. Sah (respondent no.3) entered in the service on 17.6.69 whereas the applicant entered in service on 12.1.1976. Besidesit, he was given the job of Tool Checker on 01.3.1975 whereas the applicant was made Tool Checker w.e.f. 12.1.1976. In this way, there is no point in challenging the seniority of respondent no.3. A perusal of the seniority list(annexure-3)indicated that the date of entry in the said grade of Tool Checker was strictly observed. We have not been informed about any other ground on the basis of which the said seniority may be challenged. The result therefore, is that we do not find any merit in the O.A. It is, therefore, dismissed. No order as to costs.

S. B. Mehta
Member (A)

D. D. Dandekar
Member (J)

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