

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE ~~14~~ DAY OF MARCH, 2004

Review Petition No.90 of 2003

Original Application No.669 of 1992

CORAM:

HON.MR.JUSTICE S.R.SINGH,V.C.

HON.MR.D.R.TIWARI, MEMBER(A)

1. A.K.Kothari, son of Shri K.N. Kothari, R/o 549 D Ghanshyam Nagar Railway Colony, Allahabad.
2. R.K.Verma, son of Sri J.Prasad Head Clerk.
3. Rakesh Kumar Singh, son of Late B.R.Singh, Head Clerk.
4. H.S.Dubey, Head Clerk
5. Kare Din Prasad, Head Clerk
6. K.P.Nandi O.S.II
7. P.N.Pandey, O.S.II

All 1 to 7 are employees in Personnel Branch, D.R.M. Office, Northern Railway, Allahabad.

.. Petitioners

Versus

1. Mohd.Harun Ansari, son of Shri Abdul Raoof, aged about 34 years, Resident of 100/154 B Shahganj, Allahabad.
2. Sheo Chandra Prasad Sinha Son of Shri D.N.Sinha, aged about 35 years, Resident of 551 E Ghanshyam Nagar Colony, Allahabad.
3. Subhash Chandra, aged about 39 years, son of Shri N.L. Gupta, Resident of Bhusauli Toal Khuldaabad, Allahabad.

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4. Union of India, through  
The General Manager, Northern  
Railway, Head Quarter Office  
Baroda House, New Delhi.
5. General Manager(Personnel)  
Northern Railway, Head Quarter  
Office, Baroda House,  
New Delhi.
6. Chief Personnel Officer,  
Northern Railway, Head Quarter Office,  
Baroda House, New Delhi.
7. Divisional Railway Manager,  
Northern Railway, D.R.M.Office  
Nawab Yusuf Road,  
Allahabad.
8. Senior Divisional Personnel Officer  
Northern Railway, D.R.M.Office  
Nawab Yusuf Road,  
Allahabad.
9. Anand Prakash Sharma  
Senior Clerk working  
under Senior Divisional Electrical  
Engineer, Rolling Staff, Electric  
Shed, Fazalganj, Kanpur.
10. Smt. Sushila Verma,  
Senior Clerk, working  
under Senior Divisional  
Commercial Superintendent,  
D.R.M.Office, Northern  
Railway, Allahabad.
11. Smt. Shashi Kiran Gupta  
Senior Clerk, working  
in Works Branch, D.R.M. Office  
Northern Railway, Nawab Yusuf  
Road, Allahabad.

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O R D E R (Reserved)

JUSTICE S.R.SINGH, V.C.

This review petition has been instituted in view of the order dated 15.9.03 passed by Hon'ble High court while dismissing writ petition No.47892/02 preferred against the Tribunal's order dated 9.1.02 allowing the Original Application. The order dated 15.9.03 passed by Hon'ble High court reads as under:-

"This writ petition has been filed against the judgment and order dated 9.1.2002.

The only grievance raised in the petition is that by the judgment and order of the Hon'ble Central Administrative Tribunal, petitioners are adversely affected and they were not impleaded as parties before the learned Tribunal.

Petitioners still have an efficacious remedy by moving an application before the learned Tribunal itself to recall that judgment and order, as it has adversely affected the petitioners though they were not impleaded by the respondent nos.5 to 7. As such, the petitioners can maintain a review application before the Hon'ble Tribunal, we are not inclined to interfere with the matter at this stage.

Petition is dismissed with the liberty to the petitioners to approach the learned Tribunal by filing a review application.

As this court has earlier stayed the operation of the judgment and order of the learned Tribunal, the same shall remain stayed for a further period of 4 weeks.

Petitioners may approach the learned Tribunal for interim relief for further time, if so advised."



The original application was instituted by Hohd. Harun Ansari, Sheo Chandra Prasad Sinha and Subhash Chandra, Junior Clerks for redressal of their grievances regarding promotion to the cadre of Senior Clerks. The original applicants had passed the necessary test for promotion to the cadre of Senior Clerk and were ordered to be posted in Moradabad division while as Junior clerks they were working in the Allahabad Division. The Tribunal vide its order dated 9.1.2002 held that even though the vacancies existed in the promotion quota at Allahabad itself, the original applicants were not adjusted against the said vacancies. Accordingly, the Tribunal issued the following direction:-

" Looking to the facts and circumstances mentioned above and relying the judgment of this Tribunal in the aforementioned OA which was not challenged by the Railways in a higher court, we direct respondents that the three applicants of this OA shall be promoted w.e.f. the date when such benefits were also given to others, who passed the same examination together with the applicants, and they shall be retained at Allahabad where they have been working since about 16 years at a stretch even after their selection as Senior Clerks. This benefit will be available with retrospective effect and arrears of salary and the benefit of revised pay fixation and consequential benefits shall be available from the date of promotion which was due to them, i.e. 31.10.1985."

The review petitioners were promoted to the post of Senior Clerk on 17.7.1987, 29.7.1987, 28.7.1989, 27.7.1989, 1.11.1984 and 26.6.1986 respectively. They were not arrayed as party respondents to the

original application. They however filed the writ petition against the order passed by the Tribunal with the allegation that they were 'adversely affected'. Since the grievance of the review petitioners before the Hon'ble High court was that they were adversely affected by the order passed by the Tribunal, the Hon'ble High court while dismissing the writ petition gave liberty to the petitioners to approach the Tribunal by filing a review petition seeking recall of the judgment and order passed by the Tribunal which, according to the review petitions, adversely affected them.

We have heard learned counsel for the parties and perused the orders passed by the Tribunal and the Hon'ble High court. A perusal of the order passed by Hon'ble High court would indicate that the question as to whether the review petitioners are adversely affected by the order passed by the Tribunal has not been conclusively decided by the Hon'ble High court. The observation that the petitioners still have an efficacious remedy by moving an application before the Tribunal itself to recall its judgment and order was, <sup>perhaps</sup> made in view of the grievance raised by the review petitioners that they were adversely affected by the judgment and order of the Tribunal. The learned counsel appearing for the review petitioners has submitted that the direction issued by the Tribunal to give benefit of promotion to the original applicants with retrospective effect i.e. "with effect from the dates when such benefits were also given to

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others" would make the review petitioners junior to the original applicants who came to be appointed later in point of time than the petitioners. The learned counsel appearing for the original applicants has submitted that the review petitioners 1 to 5 were appointed on the post of Senior Clerk much after the applicants and they were not at all necessary parties to the OA nor were they adversely affected by the judgment and order passed by the Tribunal.

The original applicants, it is not disputed, were selected and empanelled for promotion to the post of Senior Clerks in 13  $\frac{1}{3}$  % quota reserved for serving graduates in the cadre of Junior Clerk and by order dated 31.10.1985 they were ordered to be posted in Moradabad Division. The review petitioners 1,2,& 7 were selected for appointment to the post of Senior Clerk in the quota fixed for Direct Recruitment and the review petitioners 3,4, & 6 were not in service in the year 1984 when the original applicants participated in the selection against the quota reserved for graduate Junior Clerks pursuant to notification dated 29.9.1984 in respect of vacancies as on 31.10.1983. The argument for the original applicants is that the order passed by the Tribunal, cannot be said to have adversely affected the review petitioners 3,4 & 6. As regards review petitioners 1,2,5 and 7 submission for the original applicants is that they did not appear in the selection pursuant to notification dated 29.9.1984 in respect of vacancies as on 31.10.1983 and since seniority is to be

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determined according to rules, there is no likelihood of the review petitioners being affected by the order passed by the Tribunal.

Para 302 of the Indian Railway Establishment Manual Vol-1 provides that in initial recruitment grades unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of higher pay than the initial pay should not as a rule confer on a railway servant seniority above those who are already appointed against regular posts. Para 303 of the IREM provides the manner of determination of seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority. Para 305 of IREM provides that if a candidate whose seniority is to be determined under para 303 and 304 cannot join duty within a reasonable time after the order of appointment, the appointing authority may determine his seniority by placing him below all the candidates selected at the same examination/selection who had joined within the period allowed for reporting the duty or even below candidates who have joined before him. Para 306 of IREM provides that the candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by para 305. Para 309 of IREM provides that para 306 applies equally to seniority in promotion vacancies in one and the same category due allowance being made for delay, if any, in joining the new posts in the exigencies of service. The order sought to be reviewed is conspicuously silent on the question of interse seniority. We would, however, like to observe that if and when any dispute in re-interse

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seniority is raised or it arises otherwise, the competent authority shall decide the same in accordance with law without being influenced by any finding or observation of the Tribunal recorded/made in its order under review.

The learned counsel appearing for the original applicants has also submitted that the review petition was instituted beyond the prescribed period of limitation. The OA was decided on 9.1.02 and the writ petition was dismissed on 18.9.2003, but the review petition came to be filed on 8.10.2003. The period from 18.9.03 to 8.10.03 has not been explained and no application has been filed seeking condonation of delay in filing the review petition. The period prescribed for filing review petition is 30 days from the date of order. Even if the period spent in prosecuting the case in High court is excluded in computing the period of limitation, the review petition is barred by time for the reason that there is no explanation for the period between 18.9.03 to 8.10.03.

However, the review petition is dismissed subject to above observations.

  
MEMBER(A)

  
VICE CHAIRMAN

Dated: 19 March, 2004

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