

19-52

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 9th DAY OF APRIL, 1999

Original Application No. 84 of 1993

CORAM:

HON.MR.JUSTICE NEELAM SANJIVA REDDY,V.C

HON'BLE MR.G.RAMAKRISHNAN, MEMBER(A)

1. S.K.Chatterjee, HSW-I
S/o Late B.Chatterjee
R/o NT/III/80, Armapur
Estate, Kanpur.
2. N.R.Chaudhary, HSW-I
S/o Late M.C.Rai Chaudhary
R/o NT/III/141, Armapur
Estate, Kanpur.
3. B.H.Chaudhary HSW-I
S/o Late S.H.Chaudhary
R/o NT/III/200, Armapur
Estate, Kanpur
4. U.N.Mandal, HSW-I
S/o Late B.B.Mandal
R/o NT/III/58, Armapur
Estate, Kanpur.
5. S.S.Sodhi HSW-I
S/o Sri Sujit Singh Sodhi
R/o 311/3 Lal Colony
Juhi, Kanpur
6. Devendra Pal, HSW-I
S/o Shri Dharam Pal
R/o 1356-A, Ratan Lal
Nagar, Kanpur.
7. A.S. Reshi, HSW-I
S/o Sri Thakur Singh
R/o 325/2 Lal Colony
Juhi, Kanpur.
8. O.N.Shukla, HSW-I
S/o Sri Har Charan Shukla
R/o 12/11, Halwa Kherda
Colony, Juhi, Kanpur.
9. Brij Mohan, HSW-I
S/o Sri Baldev Prasad
R/o House No.123/487
Fazalganj, Kanpur

:: 2 ::

10. S.N.Singh, HSW-I
S/o Late Chhedi Singh
R/o G-I/401, Armapur
Estate, Kanpur.
11. S.Banerjee, HSW-I
S/o Late A.K.Banerjee
R/o NT/III/208, Armapur
Estate, Kanpur.
12. S.K.Srivastava, HSW-I
S/o Late Parmeshwari prasad Srivastava
R/o 124/B/32, Govind Nagar
Kanpur.
13. K.N.Rai C/M-II(T)
S/o Late Narmuni Rai
R/o M.I.G-61, Port-II Panki
Gangaganj, Kanpur.
14. T.H.Zafri HSW-I
S/o Sri Tasadduque Hussain
R/o Near Jamia Masjid
Damoh, M.P.
15. D.K.Singh C/M-II(T)
S/o Sri Gaya Prasad Singh
R/o 75/12, Vijay nagar, Kanpur.
16. C.M.Sharma C/M-II(T)
S/o Late I.D. Sharma
R/o LIG-1360, Avas Vikas Scheme
Kalyanpur, Kanpur.
17. Arjun Das C/M-II(T)
S/o Late Bijal Mal
R/o 13/199 Govind Nagar
Kanpur.

..... Applicants

(By Advocate Shri H.S. Srivastava)

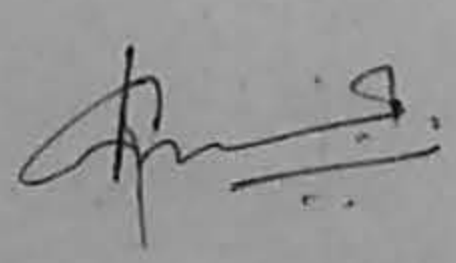
Versus

1. Union of India, through the Secretary
Ministry of Defence, New Delhi..
2. Chairman, Ordinance Factories Board
10-A, Auckland Road, Calcutta
3. General Manager,
Small Arms Factory, Kanpur.

..... Respondents

(By Advocate Shri Ashok Mohiley)

..p3



:: 3 ::

O R D E R (Reserved)

BY HON.MR.G.RAMAKRISHNAN, MEMBER(A)

This is a joint application under section 19 of the Administrative Tribunals Act 1985, against the order No.571/A/I(Ex-Journeymanship) dated 6.7.1978 and No.571/A/I(Ex-Journeymanship) dated 7.9.1992.

2. The facts which are undisputed are that there was a scheme for training of skilled Craftsmen in Ordnance Factories in the past. The individuals who successfully complete the training were graded as either A grade or B grade depending on their performance. In order to mitigate the grievances of those who were graded as B grade after completion of the training period the Joint Consultative Machinery III level of the then Director General of Ordnance Factories appointed a sub-Committee under Sri R.K. Chellam, General manager and two representatives of the staff side drawn from two recognised federation of the employees of Ordnance Factories who were given representation in the JCM III level council. The recommendation made by the Chellam Committee were discussed in the JCM III level Council of the DGOF and based on the decision taken therein the order No.571/A/I(Ex-Journeymanship) dated 6.7.78 was issued by the DGOF. This order is reproduced below:

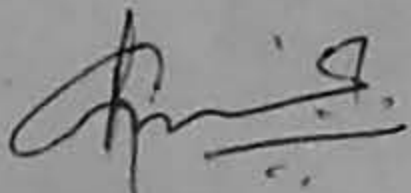
MOST IMMEDIATE
JCM QUESTION

No.571/A/I(Genl)(Ex-
Journemanship)

Govt. of India,

Ministry of Defence,

Directorate General Ordnance Factories,



:: 4 ::

6, Esplanade East,

Calcutta-69, the 6 July, 1978

To

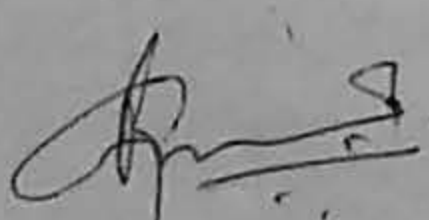
All Ordnance & Clothing Factories (30)

Sub: Promotion of individuals who were graded 'B' in various Trades of I Es (on their successful completion of journeymanship) in the years prior to 1976 who have still been working in that capacity without any promotion.

To examine the problems concerning the above mentioned individuals and to furnish recommendations as to how to eliminate their grievances, a sub-committee with Shri R.K.Chellam, G.M.R.F.I. as Chairman and two staff side representatives as members was formed vide page 4 of the minutes of the tenth ordinary meeting of the DGOF's III level JCM held at O.F.Dunn on 20th and 21st May, 1977. Recommendations of this sub-committee, as partially amended by a resolution passed in the progress meeting of the 3rd term of JCM. third level held on 30.6.78/1.7.78 having been submitted, Addl.D.G.O.F/P(Acting Head of the Deptt) has examined and accepted the same. Accordingly he has directed that the following actions should be taken by the concerned Factories immediately:-

- i) The concerned I.Es may now be promoted to 'A' grade by surrendering posts in 'B' Grade of that Trade to the extent required subject to the condition that they are otherwise fit.
- ii) These promotions will take effect from prospective but notional seniority may be allowed to them w.e.f the date six months later than the date of gradation by D.G.O.F. This notional seniority will only be for promotion to Supervisor 'B' and equivalent posts.
- iii) Such individuals should be considered for promotion to Supervisor 'B' and equivalent posts only on condition that they will go to other factories on transfer. A written undertaking must be taken from them on this point before granting them notional seniority and promoting them to 'A' grade.
- iv) This will not be quoted as precedent by future batches of I.Es to cover any similar cases of I.Es graded later than 1976.

..p5



:: 5 ::

- V) The 'A' grade posts to be created by upgradation of 'B' grade posts as per above orders will be downgraded to 'B' grade on vacation of such posts by the concerned individuals by promotion to Supervisor 'B' / equivalent or otherwise. The above is communicated to you for information and necessary action immediately.

Sd-

(S.DAS GUPTA)
Sr.D.A.D.G./ADM
For Director General, Ordnance Factories

Copy to:-

- 1) Addl.D.G.O.F/OEF Hqrs
E.S.I.C Bhawan, Sarvodaya Nagar,
Kanpur-5 (10 copies)
- 2) All Regional Directors
- 3) All staff side Members of DGOF's III level JCM
- 4) Section A/JCM (5 copies)
- 5) Section 'C'
- 6) Section A/TG

3. As no factory was willing to take these individuals graded as 'B' grade on transfer none of them were granted notional seniority as envisaged in the order dated 6.7.1978 and promoted to Supervisor B(Tech). However, some of the individuals graded as 'B' grade filed cases in the court of Law/Tribunal one of which went upto Hon'ble Supreme Court(Civil Appeal No.2585 of 1988). Apex court gave ~~the following~~ ruling in its judgment on 5.8.88. according to which in respect of the appellants in that case, who expressed willingness to work in any factory to which they may be transferred after considering whether they are entitled for promotion to Supervisor 'B' posts. Based on this judgment of the Hon'ble Supreme Court some of the employees graded as 'B' grade approached the Jabalpur Bench of this Tribunal for grant of notional seniority and consequent promotion to Supervisor 'B'(T) in terms of DGOF



:: 6 ::

letter dated 6.7.78, which was allowed on 11.1.91. Ordnance Factory Board implemented the judgment of CAT/Jabalpur. Respondents gave notional seniority to the petitioners in that O.A and promoted them to Supervisor, 'B'(T) from a date on which their junior in a revised seniority list were promoted to Supervisor 'B' (T) in their parent factory and then transferred them to factories. When these individuals reported to the factories to which they were transferred, such transferred individuals were superseding large scale unrest took place. / the individuals of subsequent batches who were graded as 'B' grade in their and further gradation examination/ these individuals were also going to occupy the posts which were meant for promotion of the same factory industrial employees. Their transfer was opposed by the receiving factory employees and agitation against their posting started.

4. The matter was examined in the JCM-III level Council of the Ordnance Factories Board. Taking all factors into consideration the JCM-III level of the Ordnance Factories Board in its meeting held on 3.7.92 decided that 'on transfer' clause should be deleted. Accordingly DGOF issued orders vide No.571/A/I(Genl)(Ex-Journeymanship) dated 7.9.1992 which is as follows:-

No.571/A/I/(General)(Ex-Journeymanship)

Government of India
Ministry of Defence
Ordnance Factory Board
10-A, Auckland Road
CALCUTTA- 700 001

Dated the 7th Sept., 1992

To

The General Manager,

(All Ordnance & Clothing Factories excluding HVF, Avadi)

:: 7 ::

Sub: Promotion of individuals who were graded 'B' in various Trades of I.Es (on their successful completion of Journemanship) in the years prior to 1976 who have still been working in that capacity without any promotion.

Ref: This Office Circular of even No. dtd. 6th July, 1978.

Reference is invited to Para (iii) of the above cited Circular. The matter regarding grant of notional seniority to the individuals graded 'B' and subsequently given 'A' Grade in 1978 based on the recommendations of the Chellam Sub-Committee, was considered in the JCM 3rd level O.F. Board Meeting held on 3rd July, 1992. It has been decided in JCM 3rd Level Council that these individuals can be granted notional seniority from a date six months later than their date of actual gradation by D.G.O.F. Without their proceeding on transfer. After grant of notional seniority, if it is found that their juniors have been promoted to Supervisor 'B' (Tech) they can be promoted to Supervisor 'B' (Tech) from the same date as their juniors have been promoted. The promotions to Supervisor 'B' (Tech) will however be subject to their being declared fit by a review DPC to be held in the factories. The condition of their transfer to other factories on promotion is deleted.

However, before effecting the actual promotion to Supervisor 'B' (Tech), a factory order showing the revised seniority may be published and objections from the affected individuals invited and disposed off.

The grant of notional seniority and subsequent promotion will however be on notional basis only and no arrears on account of pay fixation etc would be granted.

These orders will not be effective for those who have been transferred to other factories based on CAT, Jabalpur in OA No. 217/92 dtd 15/5/92. For these individuals a separate communication follows.

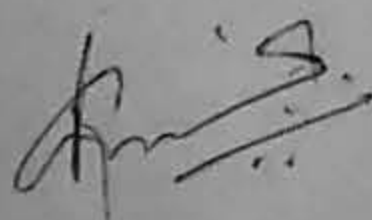
Sd-
(P.K.Mishra)
D.G.O.F/IR

For Director General, Ordnance Factories

Copy to:-

- i) All Members
- ii) P.S. to Chairman
- iii) All JCM III level Council Members.

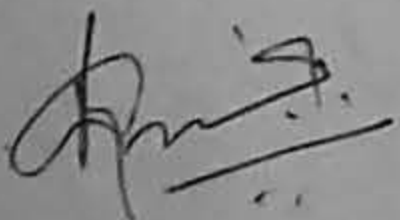
5. Applicants were appointed as skilled craftsman grade 'A' in the pay scale of Rs.140-180 and Rs150-180 in the office of Respondent no.3. Applicants no.1,3,4,7,13,14,15,16 and 17 were posted in the pay scale of Rs.150-180 and the rest in



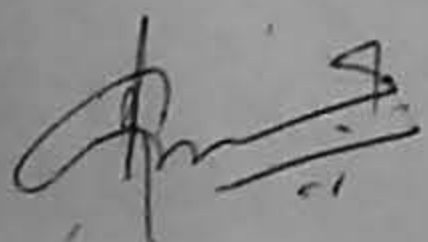
that
the pay scale of Rs.140-180. Applicants stated in the OA^A on 20.7.1978 respondent no.3 issued an order promoting from B grade Ex-Journeymen to A grade in different trades in pursuance to the policy order dated 6.7.1978 and another order dated 29.8.78 fixing notional seniority to each of the individuals promoted as Grade 'A' (Annexure A 4 & A5). The applicants further quoting from the letter dated 6.7.78 stated that contrary to what was stated in the said letter respondent no.3 issued order dated 14.11.81 promoting these individuals who were graded in Grade 'B' as Supervisor Gr.'B'/Highly skilled posts even though they had not opted for going on transfer. The applicants stated that the cause of action had arisen as early as 1978 when promotion order was issued on 20.7.78 and again on 14.11.81 when they were further promoted even without their refusing to go on transfer but since all the applicants had been promoted latest in 1980, their seniority was not affected and hence was not agitated. Further the applicants claimed that the letter dated 14.11.81 was issued by only respondent no.3 whereas such letters were not issued by other factories. In support of the same applicants referred^{to the} dismissal of a writ petition no. 56 of 1981 filed by some employees who were graded as 'B' of Ordnance Factory, Kalpi Road, Kanpur by the High court of Allahabad. The applicants also referred to the rejection of the original application filed by some employees who were graded as 'B' in the Jabalpur Bench of this Tribunal on 11.1.1991 (Annexure A-8) wherein it had been held that the applicants in that case can get the benefit of promotion to Supervisor Grade 'B' only if they were willing to go on transfer to other factories. Applicants stated that some employees of Jabalpur factory had also been transferred to

[Handwritten signature]

Small Arms factory, Kanpur specifically under respondent no.3 and they were promoted to Supervisor Grade 'B' by factory order dated 3.1.92. Applicants claimed that this type of posting on transfer according to the report of Chellam Committee was to be restricted to only some factories and not all factories. Moreover by this granting of notional seniority, these employees who came from Jabalpur superseded the applicants for further promotion against which they represented. One such representation was enclosed as Annexure A-10 by the applicants. Further the applicants claimed that amongst all the factories under respondent no.2 only respondent no.3 had accepted personnel who came on transfer from other factories as per letter dated 6.7.78. Applicants further referred to the circumstances leading to the issue of letter dated 7.9.92 deleting the condition of transfer to other factories. Applicants stated that a tentative seniority list dated 30.9.92 had been published in pursuance of this letter dated 7.9.92 by respondent no.3 and the applicant no 1&others had filed objection for the same. According to applicants, applicant no.1 was graded as 'A' and was given Millwright 'A' on 1.1.1971 and the person at sl.no.1 of the seniority list Sri K.D. Nigam was granted the Trade of Fitter-B on 2.1.1967 and therefore giving Sri Nigam seniority as Grade 'A' from 2.7.67 without passing the prescribed Trade test and in the absence of vacancies which was pre-requisite for promotion, in accordance with the letter dated 6.7.78 and 7.9.92 had not only permitted juniors to supersede seniors but also entitle the juniors for further promotion. Applicants stated that with the issue of letter dated 7.9.92, persons who were promoted as Supervisor 'B'/HSW I in 1981 had been given notional seniority above the applicants who had been promoted as Supervisor 'B'/HSW-I prior to August, 1980. They referred to the promotion orders issued



on 23.10.92 (Annexure A-14) and 2.11.92(Annexure A-14A) and another order dated 2.11.92(Annexure A-14B). The applicants claimed that the order dated 6.7.78 had been issued keeping in view the administrative exigency as the department was not getting hands for their new factories which had been established at the remote corners of the country like Bolangir etc and in order to have trained hands the said incentives ^{were} ~~was~~ given to those persons who will join the new factories at such far off place, they would be given a benefit of promotion to grade-A after six months from the date when they actually were given grade 'B'. The applicants stated that they did not challenge the order at that time because (i) it was not in their knowledge and (ii) they were not adversely affected. They asserted that the order dated 6.7.78 itself was illegal as by this order junior grade 'B' persons were allowed to be given Grade 'A' without passing Trade test, whereas trade test was prescribed for promotion to Grade 'A'. They further stated that the order dated 6.7.78 was dependent upon the clause that those persons will undertake transfer but even with the transfer clause the order was illegal. In addition the applicants stated that the order dated 6.7.78 makes a distinction between those who are Grade 'B' prior to 1976 and after 1976 and makes a provision for only promotion to Supervisor 'B' and not further. According to the applicants in pursuance to the letters dated 6.7.78 and 20.7.78 employees who were graded as 'B' were given promotion as Supervisor Grade 'B' which is illegal and discriminatory. Further the applicants stated that the Hon'ble High court of Allahabad or the CAT/Jabalpur has not decided on the validity of the order dated 6.7.78. The applicants argued that even if some employees were moving on transfer to help the administration they should not be

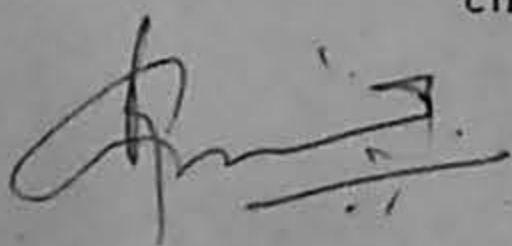


::11 ::

allowed to supersede the seniors as the seniors were there by virtue of their rights and not by virtue of any concession. They averred that it was a settled principle of law that seniority once established cannot be changed without giving any opportunity to have a say and that by the order dated 6.7.78 even if some concession was sought to be given, the same cannot be allowed to supersede the seniors. The applicants stated by the order dated 7.9.92 the said transfer clause which has the assent of even the Apex court had been maliciously and arbitrarily deleted and a provision had been made that persons who had already gone on transfer they may also apply for their coming back and further they would be given promotion to A grade and further promotion also treating them to be a member of 'A' grade immediately after expiry of six months from the date when they acquire the status of 'B' grade'. Further it was stated that the order dated 7.9.92 was against the decision of Hon'ble Calcutta Bench of the Tribunal confirmed by the Hon'ble Supreme Court of India. They further stated that by the order dated 23.10.92 promotion and notional seniority had been given to chargeman grade II and also the Chargeman grade I with retrospective effect on the basis of the order dated 7.9.92. They stated that the action of the respondents was arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution of India.

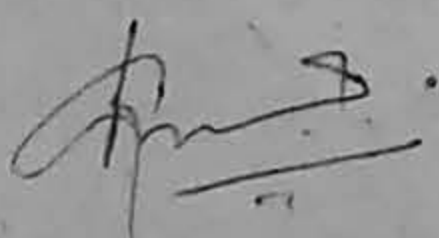
6. In view of the foregoing the applicants sought the following reliefs:-

- (a) A direction may be issued quashing the orders dated 6.7.78 as modified on 7.9.92 (Annexure A-3 and A-11 to the petition)



:: 12 ::

- b) A direction may be issued declaring illegal the orders passed on the basis of letter dated 6.7.1978, i.e. 20.7.78, 14.11.91(Annexure A4 & A-6 to the petition)
- c) A direction may be issued through which the seniority list dated 30.9.92 may be declared illegal and bad in the eye of law;
- d) A direction may be issued setting aside the further promotion and fixing notional seniority by virtue of letters dated 23.10.92, 22.11.92 and 2.11.92(Annexure A-14 & A-14-B to the petition)
- e) A direction may be issued to respondents to act for giving promotion as well as maintaining seniority according to grading given immediately after completion of training and after passing the trade test.
- f) A direction may be issued giving promotion to petitioners, what is due to them according to length of service, meaning thereby when they acquire the status of Grade-A after completion of training and passing the trade test.
- g) A direction may be issued so that petitioners may be given further promotion according to A Grade, B grade and further promotion according to the prospectus as the persons who have also passed the training alongwith the petitioners and joined other factories, have been given promotion but in the factory of respondent no.3 all promotions are not given
- h) Any other direction as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case, be issued.
- i) Award cost of the petition.



7. Respondents resisted the claim of the applicants by filing counter affidavit. They stated that as per the executive instruction issued by the Government of India for the conduct of business by Joint consultative Machinery the decision taken in the council unanimously are binding on both the employees and the Government. they stated that the orders dated 6.7.78 and 7.9.92 were issued after discussion in the JCM III level council of the DGOF. They stated that notional seniority was given only afterwards. They averred that the concerned individuals were promoted on 14.11.81 as Supervisor-B(Tech) on the basis of normal seniority. They stated that both the judgments of High court of Allahabad and Central Administrative Tribunal, Jabalpur Bench have in their judgments held that promotion to Supervisor B(T) grade on notional seniority basis can be given only if the concerned employees go on transfer to other factories. They stated that for the employees who came from Jabalpur factory in compliance with the judgment of CAT/Jabalpur Ordnance factory Board ordered grant of notional seniority and promotion to Supervisor 'B' from a date on which their juniors in a revised seniority list were promoted as Supervisor 'B'(T)(Annexure A-9). They denied the applicants contention that the transfer clause should have been limited to those factories where there was need of trained hands as on date of issue of policy letter dated 6.7.78, ^{and stated that} as in 1978 the order would have been issued keeping in view the requirement of the factories at that time ~~and~~ after 13 years the same would not be valid. Respondents stated that when the individuals reported to the factories to which they were transferred, large scale unrest took place because such transferred individuals were superseding the individuals of subsequent batches who were graded as 'B'grade in their gradation



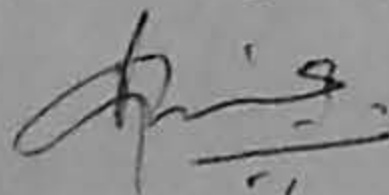
:: 14 ::

examination and further these individuals were also to occupy the posts which were meant for promotion of the same factory industrial employees. The respondents further stated that the matter was examined in the JCM III level Council of Ordnance Factory Board and it felt that it was a matter of time before the other similarly placed individuals who were originally graded as 'B' grade would obtain the same judgment as had been obtained by individuals of Ordnance factory Khamaria and Gun carriage Factory, Jabalpur from CAT/Jabalpur since the Supreme Court had already arbitrated on this issue and given its judgment on 5.8.88. They added that it was felt that if such judgments were delivered, the concerned individuals would have to be transferred to other factories which would lead to serious implications and would also have not been either in the interest of the Government or the individuals-such individuals transferred would be displaced from their place of abode-their experience and expertise would also be lost to the parent factory in which they had till then worked- and in any case the supercession of the individuals graded as 'A' grade in subsequent batches would take place albeit in another factory. Further they stated that there was a change in the situation since earlier this transfer was not compulsory and had depended on the acceptance of the services of the individuals by the other factories but in view of the Supreme Court judgement and CAT/Jabalpur judgment it had become binding on Ordnance factory Board to transfer the individuals even if they were not acceptable to other factories. Respondents stated that taking all the factors into consideration the JCM III level of Ordnance Factory Board in its meeting held on 3.7.92 decided that 'on transfer clause should be deleted'. Further it was stated that the decision of the JCM III level council



of the OFB was subsequently challenged in the Jabalpur Bench of CAT in OA No.217 of 1992 and was held valid by the Hon'ble CAT as per its order dated 23.10.92(Annexure CA-3). Respondents further averred that the seniority list giving notional seniority in grade 'A' six months later than their date of actual gradation had been published in conformity with the letter dated 7.9.92 and objections were called for and that in the letter dated 7.9.92 there was no mention of trade test. Respondents filed annexures CA-6 and CA-7 which were Factory Orders Part II No 66 and 67 dated 14.1.92 and stated that these have been issued as per instruction contained in OFB's letter No.57/A/I/Genl/Ex-Journeymanship dated 6.12.91(Annexure CA-8) regarding the employees transferred from Jabalpur as per CAT/Jabalpur bench judgement. According to the respondents the promotion of the three Gun Carriage factory transferees to higher grades was in compliance with the CAT/Jabalpur judgment dated 11.1.91 and OFB instruction dated 6.12.91. respondents stated that the DGOF policy letter dated 6.7.78 was absolutely legal and binding on the employees as well as Government as it was an outcome of decision arrived at JCM III level. Respondents pleaded that this OA was devoid of merits and was liable to be rejected.

8. Applicants filed Rejoinder affidavit in which they reiterated the points made in this OA. Further they stated that the JCM III level had acted beyond their jurisdiction in opening promotional avenue to a particular batch giving benefit over similarly placed other employees affecting their interests and that the agreements reached between the two sides of a council would become operative subject to final authority of the Cabinet; as such the Director General



:: 16 ::

Ordnance Factories, Calcutta's letter dated 6.7.78 was issued illegally, which was discriminatory, against rules and principles of natural justice and in contravention of Articles 14 and 16 of the Constitution of India. Further they stated that the Jabalpur bench of this Tribunal had nowhere ordered grant of notional seniority and promotion to Supervisor 'B' to the petitioners from a date on which their juniors in a revised seniority list were promoted to Supervisor 'B' and this was a creation of the respondents own mind. Applicants asserted that whereas as per para (ii) of letter dated 6.7.78 notional seniority was only for promotion to Supervisor 'B' vide order no 1675-A dated 23.10.92 and No.1735 and no.1736 dated 2.11.92(Annexures 14,14A&14B) notional seniority in the post of Supervisor grade 'B' also been given. Further they said that in the letter dated 7.9.92 not only the condition of transfer was deleted, but also given benefit of seniority of those who were promoted earlier which was not stipulated under letter dated 6.7.78 and not allowed by the judgment of CAT/Jabalpur vide judgment dated 23.10.92. Further the applicants claimed that deletion of Trade test for promotion to Grade 'A' was against the recommendations of Chellam Committee and the rules. Transfer clause was the crux of the letter dated 6.7.78 according to the applicants and deletion of the same by means of the letter dated 7.9.92 was illegal and an attempt to overcome the decisions of the CAT/Jabalpur and Supreme court. They prayed for quashing of letters dated 6.7.78 and 7.9.92.

9. Heard the learned counsel for the parties. Learned counsel for the applicant took us through various stages of the development/events of the case and reiterated the various grounds taken in the OA, and prayed for the reliefs sought in the OA. Relying on the various judgments of the Hon'ble



Supreme court in support of these pleas. Learned counsel for the respondents opposed the claim of the learned counsel for the applicant and relied on different authorities of Hon'ble Supreme court in support of his arguments.

10. We have given careful consideration to the rival pleadings and oral submissions made by the learned counsel for the parties and have perused the complete record. We propose to examine the question of limitation and non-impleadment of the interested/affected parties first and then the validity of the two letters dated 6.7.78 and 7.9.92.^{ted}

11. The learned counsel for the respondents submit^{ted} that the cause of action arose for the applicants on 6.7.78 and again on 14.11.81 but the applicants acquiesced in to the above orders and as such they cannot challenge the said order after a lapse of 15 years and 12 years respectively. He relied on the following judgments of the Hon'ble Supreme Court.

(i) State of Punjab Vs. Gurdev Singh reported in 1991(17) ATC 287. It was held that the party aggrieved by the order has to approach the court for relief on the declaration that the order against him is in operation and not binding upon him within the prescribed period of limitation

(ii) Ratan Chand Samant Vs. Union of India and Ors reported in 1994 SCC(L&S) 182. It was held that delay deprives a person of a remedy available in law. A person who has lost his remedy by lapse of time loses his rights as well.

(iii) Phoop Singh Vs. Union of India and Ors reported in 1992(21) ATC 675.



(iv) Rathore Vs. State of Madhya Pradesh reported in 1990
SCC 10

(V) Badri Dutt Vs. Union of India and Ors in OA No. 901 of
1990 decided by the Principal Bench, New Delhi
of this Tribunal.

12. Learned counsel for the respondents also submitted that persons whose seniority have been challenged are necessary parties and as the affected persons were not parties in the OA is liable to be rejected. He relied on the judgment of the Apex court in Rajveer Singh Vs. State of Haryana reported in 1996 SCC(L&S) 396

13. Learned counsel for the applicants argued that the applicants were not aware of the letter dated 6.7.78 and in any case it did not affect the applicants as they were promoted as Supervisor 'B'(T) by August 1980 and those who were initially graded as grade 'B' were promoted as Supervisor 'B' in November 1981. Further when notional seniority in Grade 'A' was given to the persons who were initially graded as 'B' it did not have any effect on the applicant's seniority, as by the respondents own admission, inter factory transfers did not take place. When inter factory transfers took place in 1991-92 as a result of the judgment of the Jabalpur Bench of this Tribunal and employees who were graded as 'B' initially were transferred to Small Arms Factory, Kanpur cause of action arose to the applicants in the first instance again, when the letter dated 7.9.92 was issued by the respondent no.2 and a combined seniority list with notional seniority of the employees who were initially graded as grade 'B' was issued by respondent no.3, cause of action again arose to the applicants. In our view the ratio of the judgments cited by the learned counsel



for the respondents will not have any application in this OA as here, the applicants have approached this Tribunal as soon after the above two events have taken place. Therefore we hold that the arguments of the learned counsel for the respondent of delay and limitation fails.

14. As regards not impleading the person whose interest was likely to suffer as parties in the OA, the applicant's counsel earlier in January '97 had submitted this Tribunal that as he was challenging the policy decisions of the respondents, he was not impleading any persons. The learned counsel for the applicants cited the following judgments in support of his action of non-impleadment.


- i) Sri V.P. Srivastava & Ors Vs. State of M.P. and Others reported in 1996 SCC(L&S) 670
- ii) The General Manager, South Central railway Secunderabad and another Vs. A.V.R. Siddhanti and Ors reported in 1974 SCC(L&S) 290

14.1 In the case under (i) above Hon'ble Supreme court held quoting from the case under (ii) above as follow" 14. The conclusion of the Tribunal that non inclusion of the affected parties is fatal to the appellant's case is also unsustainable in law. It is to be stated that the appellants do not challenge the so-called adhoc appointments of the promotee respondents but they do challenge the position of the said adhoc promotee respondents over the appellants" in the seniority list. In other words the very principle of "determination of seniority" made by the State Government is under challenge and for such a case state is the necessary party who had been impleaded. It has been held by this court in the case of G.M South Central Railway Vs. A.V.R Siddhanti.



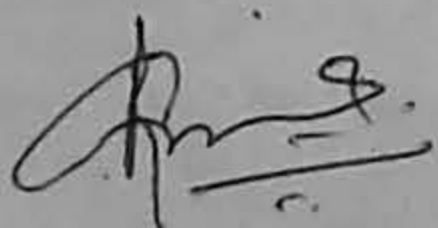
'As regards the second objection, it is to be noted that the decision of the Railway Board impugned in the writ petition contain administrative rules of general application, regulating absorption in permanent departments, fixation of seniority, pay etc; of the employees of the erstwhile Grain shop Departments. The respondents-petitioners are impeaching the validity of those policy decision on the ground of their being violative of articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the Constitutionality of a statutory rule regulating seniority of government servant is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Govt. In the present case, the relief is claimed only against the Railway which has been impleaded through its representative. No list or order fixing seniority of the petitioners vis-a-vis particular individuals, pursuant to the impugned decision, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioners' seniority' in accordance with the principles laid down in Board's decision of 16.10.1952, were at the most, proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition."

14.2 Learned counsel for the respondent relied on the judgment of Hon'ble Supreme court in Rajbir Singh HFS II Vs. State of Haryana and another reported in 1996 SCC(L&S) 396. It would appear that in this case the dispute was about seniority between two individuals. In the absence of the second individual being impleaded as a party. Hon'ble Supreme court did not like to intervene and express



an opinion and dismissed the petition with liberty to the petitioner in that case to approach the High court impleading the affected parties. The second case relied upon by the learned counsel for the respondents was the judgment delivered by the Apex court in Arun Tewari and Ors Vs. Zilla Mansair Shikalak Sangh and others reported in J.T 1997(9) SC 593. We have perused this judgment. The facts and circumstances of the present OA are distinguishable from those in the above case. Therefore we hold that the ratio of the above judgment has no applicability. In the present OA, the main relief claimed is quashing the impugned orders dated 6.7.78 as modified by 7.9.92. Therefore we are of the view that non-joinder of parties is not fatal in this case. unless we give some adverse decision against the parties not before the Tribunal.

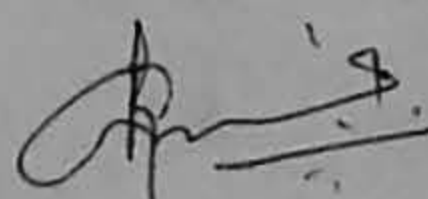
15. Learned counsel for the respondents opposed the prayer for quashing the letters dated 6.7.78 and 7.9.92 on the ground that they were policy decisions and policy decisions are in the domain of the executive and courts/Tribunals should not interfere in the same. According to him the letters dated 6.7.78 and 7.9.92 were policy decisions for the mitigation of the grievances of the employees who were graded as grade 'B' on completion of the training and to meet the situations arising out of the implementation of the judgments of the Hon'ble Supreme court and subsequent judgments of CAT/Jabalpur and the widespread agitation which resulted in the different Ordnance factories and hence the Tribunal should not interfere in the same. In support of his argument he relied on the following judgments of the Hon'ble Supreme court of India.



:: 22 ::

- i) The Commissioner Corporation of Madras Vs. Madras Corporation Teachers Mandaram & Ors reported in 1997 SC 2131
- ii) J.Rangaswamy Vs. Government of Andhra Pradesh reported in 1991(16)ATC 525
- iii) Bishen Swaroop Gupta Vs. Union of India and Ors reported in 1974 SCC(L&S) 506
- iv) S.S.Moghe & Ors Vs. Union of India and Ors reported in 1981 SCC(L&S) 490
- VO State of Andhra Pradesh vs. V. Sadanandam and Ors reported in 1989 SCC(L&S) 511
- vi) A.S. Iyer Vs. Bala Subramaniam reported in 1980 SCC(L&S) 145
- vii) S.S. Dhanoa Vs. union of India and Ors reported in 1991 S.C. 1745
- viii) State of Haryana Vs. Desh Raj Sengar and another reported in 1976 SC 1199
- ix) All India Ex.Emergency Commissioned Officers and Short commissioned officers, Welfare Association and another Vs. Union of India and another reported in 1995 SCC(L&S) 258

16. Learned counsel for the applicants submitted that while the executive can frame policy decision and issue executive instructions the same have to be in consonance with the rules made under article 309 of the Constitution of India. Learned counsel referred to the Recruitment rules issued on 6.7.89 and stated that passing of a trade test is a prerequisite for a Grade 'B' employee before promotion to Grade 'A' and any executive instruction in violation of the recruitment rules is illegal. He relied on supreme court's judgment in the case of Palaru Ramakrishnaiah and others Vs.



Union of India and another and 6 other cases decided on 28.3.89(Reported in 1989 SCC(L&S) 375) which held "Administrative instruction-cannot override the rules under Article 309-where instructions are not in conflict with and are supplemental to the rules, the same may be given effect to in consonance with the rules"

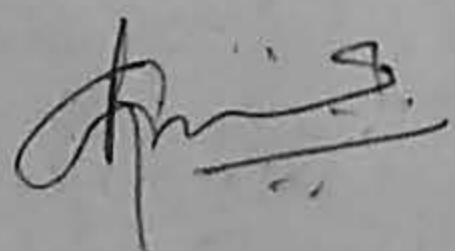
17. Further the learned counsel for the applicant relied on the judgment of the Hon'ble Supreme Court in State of Bihar and Others Vs Akhourri Sachindra Nath and Others with another case reported in 1991 SCC(L&S) 1070 in which it was held:

"No person can be promoted with retrospective effect from a date when he was not born in the cadre so as to adversely affect others. In the instant case, the promotee respondents 6 to 23 were not born in the cadre of Assistant Engineer in the Bihar Engineering service, class II at the time when respondents 1 to 5 were directly recruited to the post of Assistant Engineer and as such they cannot be given seniority in the service of Assistant Engineers over respondents 1 to 5. Seniority interse amongst the Assistant Engineers in Bihar Engineering Service Class II will be considered from the date of the length of service rendered as Assistant Engineers as amongst members of the same grade seniority is reckoned from the date of their initial entry into the service. The promotees cannot be made senior to respondents 1 to 5 by the impugned government orders as they entered into the said service by promotion after respondents no.1 to 5 were directly recruited in the quota of direct recruits. Therefore the High court rightly quashed the government orders."

18. Learned counsel for the respondents opposed the argument of the learned counsel for the applicant of raising the question of the promotion of the employees graded as Grade 'B' to Grade 'A' without trade test against the Recruitment Rules at the stage of hearing on the ground that such a ground was not taken in the pleadings. He relied on the ruling of Hon'ble Supreme Court in Moti Lal Padampat Sagar Mills Co. Ltd Vs State of Uttar Pradesh and Others reported in AIR 1979 Supreme court 621. Learned counsel for the applicant in his rebuttal stated that this ground had been taken in this rejoinder affidavit in para 20.

19. It is obvious from the letter dated 6.7.78 itself that the same was issued after the sub-committee's report was considered by the JCM III level and passing a resolution incorporating some amendments and the acting Head of the department(Addl. DGOF) accepting the same. The action to be taken were as following as stated in the above letter dated 6.7.78 pertaining to promotion of individuals who were graded 'B' in various Trades of IEs(on their successful completion of Journeymanship) in the years prior to 1976 who had still been working in that capacity without any promotion.

- "(i) The concerned I.Es were to be promoted to 'A' grade by surrendering posts in 'B' grade of that trade to the extent required subject to the condition that they are otherwise fit."
- (ii) These promotion will take effect from prospective date, but notional seniority may be allowed to them w.e.f the date six months later than the date of gradation by the DGOF. This notional seniority will only be for promotion to Supervisor 'B'



and equivalent posts..

(iii) Such individuals should be considered for promotion to SUPERVISOR 'B' and equivalent posts only on condition that they will go to other factories on transfer. A written undertaking must be taken from them on this point, before granting them notional seniority and promoting them to 'A' grade.

(iv) This will not be quoted as precedent by future batches of IEs to cover any similar cases of IEs graded later than 1976.

(v) The 'A' grade posts to be created by upgradation of 'B' grade posts as per above orders will be downgraded to 'B' grade on vacation of such posts by the concerned individuals by promotion to Supervisor 'B' equivalent or otherwise. The above is communicated to you for information and necessary action immediately."

20. The above order had been in the courts/tribunals in the past on a number of occasions of course at the instance of the beneficiaries of the order viz: those who were graded as Grade 'B' and who were given Grade 'A' by the above order seeking promotion to higher grades in the same factory etc. The earliest court case appears to be the writ petition No.56/1981 in the High court of Allahabad. The Hon'ble High court while dismissing the writ petition held "These directions make it amply clear that the petitioners were granted notional seniority in skilled craftsman 'A' Grade; but, that was not to affect the seniority of all those persons who had been appointed in that grade prior to petitioners. It is significant to note that the petitioners



:: 26 ::

are granted notional seniority. The expression notional means purely speculative not based upon fact or demonstration, imaginery. The petitioners were granted notional seniority for the specific purpose of granting them promotion to the higher post of grade 'B' or equivalent posts on the condition that they will go to other factories on transfer. But that by itself does not mean that the petitioners are entitled to promotion in preference to their seniors who were already in 'A' grade"

21. It is very clear from the above that the intention of the order dated 6.7.78 was ^{not} anything other than what is stated above. No where in the letter it is stated that the concerned IEs will, on promotion as Supervisor 'B' get seniority from the date of notional seniority. The date of notional seniority is only in grade 'A'. It is not in the grade of Supervisor 'B'. Moreover when the promotion to such IEs to grade 'A' itself is on prospective basis subject to they being otherwise fit, they cannot get seniority as Supervisor 'B'(T) on any date earlier than this date. We are of the view that as per order dated 6.7.78 the concerned IEs who express their willingness and who are transferred to other factories and promoted as Supervisor 'B'(T) on the basis of their notional seniority in Grade 'A' will get seniority as Supervisor 'B' only from the date they are promoted as such. There is nothing in the letter dated 6.7.78 to give any notional seniority in Supervisor 'B'.

22. The extract of the judgment dated 5.8.88 of the Hon'ble Supreme court in civil Appeal No.2585 of 1988 given in the CA also does not say of giving notional seniority in Supervisor 'B'. The ruling of the Apex court as given in the CA is as follows:

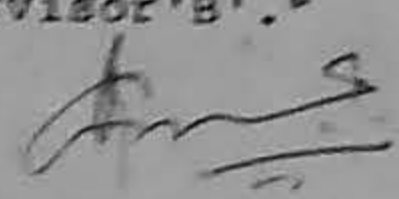


" The learned counsel for the appellants submit that the applicants are willing to work in any factory to which they may be transferred by the Management. In view of the above statements, we feel that in the facts and circumstances of the case, we should direct the management to issue orders of transfer in respect of the appellants indicating the posts and factories to which they are to be transferred. The management shall before transferring them consider whether they are entitled for promotion to Supervisor 'B' posts and if they are entitled to that post on transfer they shall be posted to Supervisor 'B'."

23. We have gone through the judgment dated 11.1.91 of CAT/Jabalpur. This judgment has followed the ratio laid down by the Apex court directed the respondents as following:

"Only those petitioners/applicants who are Craftsman Gr. 'B' prior to 1976 and continued as such upto 78 can get the benefit of the Scheme dated 6.7.78 subject to other conditions of the scheme, if they give their willingness in writing if not already given, to go to another factory on transfer within 3 months of the communication of this judgment."

24. Again in OA 217/1992/CAT/Jabalpur had observed " The Tribunal had taken a decision that promotion be given after transferring the individuals to other factories on the basis of the deliberation of the Joint Consultative Machinery and the recommendations as made by the Chellam's Committee and the orders passed by the Ordnance factories Board dated 6.7.78. Here again there is no mention of notional seniority as Supervisor 'B'."



25. Thus we are of the view that there is nothing illegal in the order dated 6.7.78 as it does not take away anyone's right in any way and does not propose any retrospective promotion. The reason for giving notional seniority as Grade 'A' will be obvious if one goes through the Chellam Committees report. Therefore the ratio of the judgment of the apex court quoted by the appellant's counsel will not apply. More over it had been taken after all the pros and cons of the problem is analysed and deliberated upon. As far as the applicant's contention that the JCM III level decision is illegal because the decision of the JCM will become operative subject to final authority of the cabinet nothing had been produced before us by the applicants that in this particular matter cabinet's approval is required. Moreover respondents have averred that as per the instruction issued by the Government of India for the conduct of business by the JCM that the decisions taken in the council unanimously are binding on both the employees and the Government. In any case the prospectus for recruitment and training of apprentices in the Ordnance factories would have been approved only by the DG, OFB and he would be competent to change the same, as has been done in this case after deliberation and decision by the JCM III level of OFB. As regards violation of the provisions of the Recruitment Rules putforth by the applicants, in the instruction dated 6.7.78, we find firstly that the promotion of the concerned IEs were to be effected subject they being otherwise fit. ^{Moreover} Nothing had been brought on record that they were unfit. Secondly the Recruitment rules referred to was issued in 1989, whereas the orders were dated 6.7.78, 11 years prior to the Recruitment Rules in question. In view



:: 29 ::

of the foregoing we reject the relief sought for quashing the order dated 6.7.78.

26. The next relief sought is for quashing the order dated 7.9.92 issued by respondent no.2 in pursuance to the JCM level III deliberation held on 3.7.92. Respondents have resisted the claim for relief on the following grounds.

- i) Respondents had given detailed reason as to why a fresh decision had to be taken.
- (ii) It is a policy decision which is in Executive Domain and no interference by courts/Tribunals. Respondents arguments and authorities have been mentioned in the earlier part of this judgment.
- iii) The letter dated 7.9.92 had the approval of the Jabalpur Bench of this Tribunal.

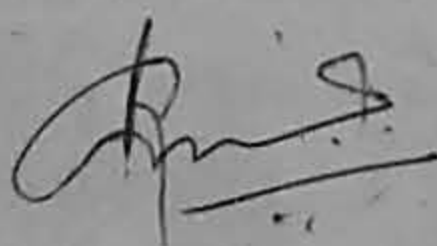
27. We accept the detailed reason given by the department which necessitated to have a fresh look at the order dated 6.7.78. While we accept that the JCM level III of OFB has the power to deliberate and come to conclusions and the Government have full powers to issue orders, at the same time these orders will have to stand the test of Judicial Review. We do not accept the plea of the respondent that the order dated 7.9.92 has undergone such a Judicial Review by the Jabalpur bench of this Tribunal in OA No.217 of 1992. The bench held:

"Therefore the Joint Consultative Machinery has again taken a decision as late as 3.7.92 to the effect that the condition of transfer to other factories for the purpose of promotion be deleted. In pursuance of the deliberation of the Joint Consultative Machinery, the Ordnancee Factories Board is considering the promotion of individuals in their respective factories. However the Ordnance Factories Board is awaiting a



clarification by the Tribunal as is evident from the letter dated 22.10.92 addressed to Sri A. Chaudhary, Addl Standing counsel and shown to us. The Tribunal had taken a decision that promotion be given after transferring the individuals to other factories on the basis of the deliberation of the JCM and the recommendation as made out by the Chellam Committee and orders passed by the Ordnance Factories Board dated 6.7.78. If the JCM itself has taken a fresh decision that promotion can be given to individuals even without transferring them, the Tribunal cannot stand in the way of such promotion. The Ordnance Factories Board is free to take a decision on the basis of the deliberation of the JCM regarding promotion of individuals in their parent factory itself in view of the changed circumstances. As regards the pay and salary of the applicants for the period when they were transferred but having not been allowed to join there they were made to return to their parent factory, the Competent Authority may take a decision in accordance with the rules to regularise their period of absence."

28. A reading of the above will indicate that the Jabalpur Bench of this Tribunal had not gone into vires of the instructions. It had only stated that the OFB is free to delete transfer clause on the basis of the JCM deliberations. But the letter dated 7.9.92 does more than mere deletion of the transfer clause. We reproduce the letter below:



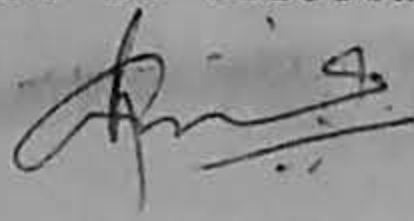
"Sub: Promotion of individuals who were graded 'B' in various Trades of the IEs (on their successful completion of Journeyman'ship) in the years prior to 1976 who have still working in that capacity without any promotion."

Ref:- This Office Circular of even no. dtd 6.7.78

Reference is invited to para (iii) of the above cited circular. The matter regarding grant of notional seniority to the individuals graded 'B' and subsequently given 'A' grade in 1978 based on the recommendations of the Chellam Sub-Committee was considered in the JCM III level of Board Meeting held on 3.7.1992. It has been decided in JCM III level Council that these individuals can be granted notional seniority from a date six months later than their date of actual gradation by DGOF without their proceeding on transfer. After grant of notional seniority, if it is found that their juniors have been promoted to Supervisor 'B' (T) they can be promoted to Supervisor 'B' (T) from the same date as their juniors have been promoted. The promotion to Supervisor 'B' (T) will however be subject to their being declared fit by a review DPC to be held in the factories. The condition of their transfer to other factories on promotion is deleted.

However, before effecting the actual promotion to Supervisor 'B' (T) a factory order showing the revised seniority may be published and objections from the affected individuals invited and disposed off.

The grant of notional seniority and subsequent promotion will however be on notional basis only and no arrears on account of pay fixation etc would be granted. These orders will not be effective for those who have been transferred



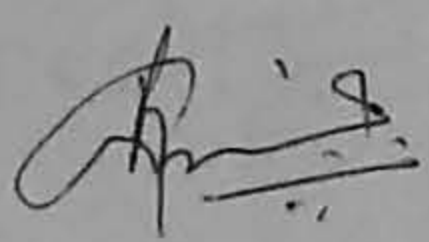
50

:: 32 ::

to other factories based on CAT/Jabalpur decision in OA no.217/92 dated 15.5.92. For these individuals a separate communication follows:

Sd-
DGOF/IR
For DGOF


29. The applicants are apprehending that the above letter seeks to provide for supersession of the later batches of IEs who were originally graded as Grade 'A'. A plain reading of the above letter would indicate that what is proposed in the above letter is to give notional promotion as Supervisor 'B'(T) from a date when their immediate junior had been promoted as Supervisor 'B'(T) on the basis of the notional seniority given to the IEs who were initially graded as Grade 'B' in Grade 'A' six months later than the date of gradation. Thus it would appear that this letter seeks to introduce more than simple deletion of the 'transfer clause' from the letter dated 6.7.78. The result of this letter could be that an IE who became Grade 'A' actually on 6.7.78 could notionally get promoted as Supervisor 'B'(T) on a date earlier than 6.7.78, if a junior to him on the basis of his notional seniority as Grade 'A' (6 months later than his date of gradation as Grade B) had become Supervisor 'B'(T). Surely this will affect the other IEs who have been graded as Grade 'A' initially itself based on their performance. They will become junior as Supervisor B(T) to the notionally promoted person. This is against the law laid down by the Hon'ble Supreme Court of India in the case State of Bihar and Others Vs. Akhourri Sachindra Nath and Others and another case reported in 1991 SCC(L&S) 1070, relied upon by the applicants and referred to earlier



In Union of India and others Vs. Virpal Singh Chauhan and others reported in 1996 SCC(L&S) 1 when the Hon'ble Supreme court itself had laid down a new principle regarding the seniority of SC/ST Railway employees vis-a-vis others held that the new principles of seniority will be valid from 10.2.95(prospectively) the date on which the Apex court laid down the law in the matter of Reservation for SC/ST. The court did not upset the seniority pertains already acquired by the individuals by virtue of the rules existing at that time and directed that the new principle of seniority be enforced from a prospective date. In view of the above reasons, we set aside that portion of the letter dated 7.9.92 which provide for notional promotion to the post of Supervisor B(T) from the same date as their juniors have been promoted. However there may be a need to ascertain the notional dates of promotion as Supervisor B(T) for determining the interse seniority amongst the erstwhile IEs initially graded as Grade 'B'. There is no objection to utilise the notional date of promotion for the purpose.

30. It had been repeatedly affirmed by the respondents that the letter dated 14.11.81 gives promotion to IEs on the basis of their normal seniority and not on the basis of their notional seniority. Therefore we do not find any reason to interfere in the same.

31. Seniority list circulated under letter gives the notional seniority position of the IEs who were initially graded as Grade 'B' vis-a-vis those who were initially graded as Grade 'A'. This is prepared as per the letter dated 6.7.78 with the transfer clause deleted and therefore no case had been made out to declare the same illegal.



32. The relief sought under para 8(d) is refused for not impleading the persons concerned as parties.

33. In view of our finding about the letter dated 6.7.92 if the applicants become entitled for promotion to higher grades because their juniors have been promoted during the pendency of this OA, we direct the respondents to consider the applicants for the same benefit in accordance with the law and to make payment of monetary arrears arising thereof within 3 months from the date of receipt of the copy of this order.

34. Thus we allow this OA partially with the above directions.

35. No order as to costs.


MEMBER(A)


VICE CHAIRMAN

Dated: April 9, 1999

Uv/

DR (J)

Correction

The date

"6.7.92"
in First line of
in para 33

at page 34

of the Judgment

dt. 09.4.99

should be

read as 7.9.92

04/6/99