

20 - 25

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

Dated: Allahabad, the 24th day of May, 2001.

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

Hon'ble Mr. S.K.I. Naqvi, J.M.

ORIGINAL APPLICATION NO. 720 OF 1993

1. Badri Prasad son of Shri Manik Chand,
Head Trains Clerk in DPM Section of
Divisional Railway Manager Office,
Eastern Railway, Moghalsarai.
 2. Bishwanath Ram son of late Shri Chulhai Ram,
Senior Trains Clerk in DPM Section of
Divisional Railway Manager Office,
Eastern Railway, Moghalsarai.
 3. Jai Shanker Ram, son of Gajjan Ram,
Head Trains Clerk in DPM Section of
Divisional Railway Manager Office,
Eastern Railway, Moghalsarai.
- Applicants

(By Advocate: Sri Sajnu Ram)

Versus

1. Union of India through General Manager,
Eastern Railway, Fairlie Place,
Calcutta.
2. Senior Divisional Personnel Officer,
Eastern Railway, Moghalsarai.
3. Divisional Personnel Officer,
Eastern Railway, Moghalsarai.
4. Sri Munni Lal Ram,
Head Trains Clerk under SS/Eastern Railway,
Mughalsarai.

Contd..2

5. Sri Ganesh Shukla, Head Trains Clerk,
under SS/Eastern Railway,
Mughalsarai.

6. Ramakant Misra - do -

7. Kanhaiya Ram - do -

8. Mohd. Illias - do -

9. Bhonu Ram - do -

10. Bharat Kewat, Head Trains Clerk in
D.P.M. Section of D.R.M.
office Eastern Railway,
Mughalsarai.

11. Baboo Lal - do -

. . . . Respondents

(Now retired).

Respondent no.11 Sri Baboo Lal
now retired from service and has
shifted to his village Ashayan,
P.O. Idilpur, Distt. Pratapgarh, UP.

(By Advocate: Sri D.C. Saxena)

_O_R_D_E_R_ (ORAL)

(By Hon'ble Mr. S. Dayal, AM)

This application has been filed for a direction to the Respondents to regularise the ad hoc promotions of the applicants in the category of Trains Clerk from the dates of their ad hoc promotions and not from the date of their regular promotion on 5.9.83. The seniority on this basis is also sought for the purpose of promotion in the higher grade. A prayer has also been sought to set aside the order dated 16.3.1992.

2. The arguments of Sri Sajnu Ram for the applicant and Sri D.C. Saxena for the respondents have been heard.

3. The learned counsel for the Respondents raised the plea of limitation and prayed dismissal of the OA on that count. We find that this OA has been filed against the order of Respondent dated 16.3.1992 (Annexure No. A-1 to the O.A.), which was in response to the representation of the applicant dated 5.12.1991. The learned counsel for the applicant has cited before us the judgment of Hon'ble Supreme Court Lt. Governor of Delhi Vs. Dharampal and others. (1990) 14 A.T.C. 831. It has been held in the said judgment that when the same relief is demanded, which was granted to others, the applicants who are similarly situated with the identical claim will not have their relief barred on account of limitation. We, therefore, entertain the application and pass order on merit, rejecting the plea that the OA be dismissed on the ground of limitation.

4. The learned counsel for the applicant has relied upon the judgment of this Tribunal in Registration No.61 of 1986 (T) delivered on 14.8.86. In the said case, the order of the learned Munsif was challenged by the Union of India. The learned Munsif had decreed the promotion of the applicant as Trains Clerk from the date of his promotion on ad hoc basis. The Division Bench rejected the prayer of Union of India in the said Transfer Application, seeking the reversal of the order of the learned Munsif. This order of the Tribunal was followed in the Transfer Application No.486

of 1986, decided on 27th February, 1987. The learned counsel for the applicant has relied on the judgment of the Hon'ble Supreme Court in Direct Recruitment Class II Engineering Officers' Association Versus State of Maharashtra and others (1990) 2 SCC 715.

The Hon'ble Supreme Court has laid down as follows:-

"When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in Patwardhan case was unsound and fit to be overruled, but no attempt was made to substantiate the plea. We were taken through the judgment by the learned counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that the period of continuous official by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16. If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the

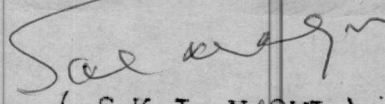
h

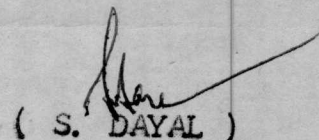
appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority."

The learned counsel for the applicant has also relied upon the Full Bench judgment of Hon'ble Supreme Court in the case of Jethanand and others Versus Union of India and others (1990) 13 ATC 212. However, this judgment is applicable to only those Railway employees, who had officiated on the promotional post for more than 18 months and have been selected after the test and empanelled for appointment to the promotional post. Hence, this judgment is not strictly applicable to the facts of this case. The learned counsel for the applicant has further relied upon the judgment of the Principal Bench in the case of L.R. Goyal and others Vs. Union of India and others (1991) 16 ATC, 302. This judgment of the Principal Bench has been followed in Direct Recruitment Class II Engineering Officers' Association Vs. State of Maharashtra Supreme Court (Supra). It has been laid down by the Division Bench following the judgment in the case of Direct Recruitment Class II Engineering Officers' Association Vs. State of Maharashtra and others that if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

5. In the light of the judgment of the Hon'ble Supreme Court followed by the Principal Bench and the Allahabad Bench of Central Administrative Tribunal, we find that the claim of the applicants is on similar line and deserves to be allowed. We, therefore, direct the respondents to treat the cases of the applicants on the same line as was adopted in the Office Order No.254 of 1991 in the case of Munni Lal Ram and others, which have been filed as Annexure No.A-3 to the O.A. The Respondents shall consider the cases of the applicants and pass orders on the same within a period of three months from the date a copy of this order is served on them.

There shall be no order as to costs.


(S.K.I. NAQVI)
JUDICIAL MEMBER


(S. DAYAL)
MEMBER (A)

Nath/