

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 5TH DAY OF MARCH, 2002

Original Application No.1174 of 1995

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

1. Charan Singh, a/a 44 years
Son of Sri Jaisee Ram
2. Mohd.Nasdeem, son of
Shri Basir Khan.
3. Mathura Prasad, son of
Shri Sarman lal
4. Abrar Ahmad, son of
Shri Anwar Ahmad.
5. Tejendra Singh, son of
Shri Kuldeep Singh
6. Swayamveer Pachori, Son of
Sonpal pachauri
7. Ram Bharosey Jhan, son of
Shri Har Das
8. Trilok Singh, son of
Shri Kamta Prasad
9. Mahesh Chandra Nigam, Son of
Shri Sunder Lal Nigam
10. Bhupendra Singh, son of
Shri Mool Singh

11. Mohan Lal, son of
Shri narayan Dass
12. Daya ram, son of
Shri Ram nath
13. Mahendra Pal Singh, son
of Shri Har Pal singh
14. Ganesh K.Mishra, son of
Shri Mathura Prasad
15. Surya Narain pandey, son
of Shri Rama Kant Pandey.
16. Bhagwan Pandey, son of
Shri Ramadhar Pandey
17. Bhupendra Sharma, son of
Shri R.B.Sharma
18. Ranjit Prasad, son of
Shri Shital Prasad.

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19. Shiv Sewak, son of
Shri Gopi
20. Gauri Shanker, son of
Shri Narayan das
21. Sita Ram, son of
Shri Shiv Dayal
22. Shanker Singh, son of
Shri S.J.Singh
23. Chhotey Lal, son of
Shri Shyam lal
24. Uma Shanker, son of
Sri Ghan Shyam
25. Amrit Lal, son of
Shri Chhotey Lal
26. Hari Shanker, son of
Shri Laxman Prasad
27. Ramesh prasad Mishra,
Son of Sri Narayan Mishra
28. Rajendra Prasad, son of
Shri Ganesh prasad
29. Ram prakash, son of
Shri Goti Ram
30. Shiv Saran Singh, son of
Shri Bhagwan Singh
31. Jugal Kishore, son of
Shri Roop Lal
32. P.K.Sharma, son of
Shri D.C.Sharma
33. Ganesh prasad Sharma, son
of Sri Nathoo Ram Sharma
34. Dinesh Khaer, son of
Shri N.S.Khaer
35. Inamuddin, son of
Shri Moinuddin
36. Chandra Mohan, son of
Shri Ram Sewak
37. Sarju Prasad, son of
Sri Chhotey Lal
38. Sita Ram, son of
Shri Lachkoo

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39. Dharam Dass, son of
Shri Bhonpoo
40. Halim Ahmad, son of
Shri Karim Bux
41. Rajendra Kumar, son of
Shri Ram kishore
42. Suresh Chandra, son of
Shri G.L.Srivastava
43. Riyaz Ahmad, son of
Shri Ishstiaq Ahmad
44. Jagdish Prasad, son of
Shri Munna Lal
45. Santosh Chojley, son of
Shri Paras Ram
46. Surendra Kumar, son of
Shri K.B.Sharma
47. Shyam lal, son of
Shri Shiv Lal
48. Kashi ram, son of
Shri Sukh Ram
49. Jagdish prasad, son of
Shri Bhagirath
50. Shakil Mohd., son of
Shri Mohd. Hadi
51. Bal Kishan, son of
Shri Halloo Ram
52. Satya Narain tewari,
son of Shri Amrit Lal
53. Dal Chandra, son of
Shri Sharman
54. Rama Shanker Sachan, son of
Shri Mahaveer
55. Brij Mohan Jha, son of
Shri Prem Narayan
56. Laxman, son of
Shri Kalloo
57. Narayan Das, son of
Shri Baboo Lal
58. Pradip Kumar, son of
Sri Harry Ephrain
59. Sharif Khan, son of
Shri A.R.Khan
60. Shyam Kishore Sharma,
Son of Shri B.L.Sharma

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61. Kailash Narayan, son of Shri Durga Prasad
62. Shanker Lal, son of Shri Magan Lal
63. Om Prakash Sharma, son of Shri Ram Kishore
64. Sita Ram, son of Shri Ram rajpoot
65. Bhagwan Das, son of Sri Faran Singh
66. Arun Kumar, son of Shri B.L.Malviya
67. Ram Sewak, son of Shri Ram Chandra
68. Smt. Uma Devi, wife of Shri Sukhwasi Singh Yadav

All the applicants are posted as Wagon Repairers, in Central Railway Workshop, Jhansi.

... Applicants

(By Adv: Shri Sudhir Agrawal)

Versus

1. Union of India through The Secretary, Ministry of Railways Rail Bhawan, New Delhi.
2. The Railway Board, Rail Bhawan Baroda House, New Delhi through its Chairman
3. The General manager, Central Railway, Bombay V.T.
4. The Chief Workshop Manager Central Rasilway Workshop Jhansi.

... Respondents

(By Adv: shri J.N.Singh)

O R D E R (Reserved)

JUSTICE R.R.K.TRIVEDI,V.C.

Applicants No.1 to 67 and husband of applicant No.68 Late Sukhwasi Singh yadav were selected as Trade Apprentices in Mechanical Work shop, Central Railway, Jhansi. They underwent three years training in Railway Training School

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and also passed Trade Test and were appointed as Skilled Men in the trade of Wagon Repairers in the scale of Rs260-400(RSD-Rs950-1500). The another channel for appointment as skilled workmen was by way of promotion from Khalasi Helpers after they passed trade test. The Railway Board on 13.11.1982 took a decision for restructuring Class IV Staff including Khalasi-Helpers w.e.f. 1.8.1978. As a result of this restructuring, Khalasi-Helpers working in the pay scale of Rs825-1150/- were upgraded in the pay scale of Rs950-1500. There was a confusion about the date from which Khalasi-Helpers may be given seniority in upgraded scale of Rs950-1500. Additional Chief Mechanical Engineer, Central Railway, Mumbai by his letter dated 28.11.1983 gave direction that they will be entitled for seniority from the date of Railway Board's order dated 13.11.1982. This decision was however reversed by the Head Quarter Office Central Railway, Mumbai by order dated 20.12.1985 and they took a stand that upgraded incumbents should be assigned seniority w.e.f. 1.8.1978. Aggrieved by the aforesaid decision applicants filed OA No.684 of 1986 and 773 of 1986 before this Tribunal. A Division Bench of this Tribunal however dismissed the OAs by order dated 23.7.1987. The order of this Tribunal was challenged before Hon'ble Supreme Court in Civil Appeal No. 642 to 642 A of 1988. While the matter was pending before the Hon'ble Supreme Court, Chief Personnel Officer Central Railway, Headquarter office Mumbai by order dated 3.3.1988 clarified that the seniority of such upgraded staff namely Khalasi-Helpers by way of restructuring shall be reckoned for the purposes of seniority from the date they passed Trade test ⁱⁿcognate skilled category. This order was also brought before Hon'ble Supreme Court. Thereafter Ministry of Railway(Railway Board) by letter

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dated 26.3.1990 resolved the dispute by stating that the seniority of upgraded staff shall be reckoned only from the date they passed trade test. Hon'ble Supreme Court disposed of all the appeals and petitions vide order dated 12.2.1992 in terms of the Railway Board's letter dated 26.3.1990.

In pursuance of the judgement of Hon'ble Supreme Court and the Railway Board's circular dated 26.3.1990 the seniority of the applicants-qua those Khalasi-Helpers who were upgraded as a result of Railway Board's letter dated 13.11.1982 was revised. As a result of revision of seniority of skilled Grade III Wagon Repairers the applicants were given promotion as skilled Wagon Repairers Grade II in the pay scale of Rs1200-1800 vide order dated 30.11.1992. The applicants were however, given Proforma promotion and seniority. They were not given the arrears of pay etc. The copy of the order has been filed as (Annexure 10 to this OA). The applicants then filed a representation claiming arrears of pay which was rejected by order dated 4.10.1993(Annexure 11). Aggrieved by which the applicants have approached this Tribunal by filing this OA u/s 19 of A.T.Act 1985. It has also been stated in the OA that the applicants also filed a representation before the Higher Authorities but the same had not been decided. A copy of such representation filed by Charan Singh, applicant no.1 has been filed as (Annexure 12). The applicants have prayed for a direction to the respondents to grant arrears of salary to the applicants on account of their promotion to the post of Skilled Wagon Repairers Grade II w.e.f.the date they have been given notional retrospective promotion vide order dated 30.11.1992. They have also prayed for a direction to pay interest on the arrears of salary at such rate as may be deemed fit by this Tribunal.

Resisting the claim of the applicants, respondents have filed counter reply. It has been stated that the application has been filed long after the expiry of prescribed period of limitation and it is liable to be dismissed as time barred. It is also stated that the alleged representation dated 19.7.1994 is not available on record. It has also been said that Late Sukhwasi Singh Yadav-deceased (husband of applicant no.68) never claimed any such relief during his life time and his widow is not legally ~~entitled~~ entitled to maintain this application. It has been further stated that the circular order issued by Railway Board on 26.3.1990 ~~had~~ been implemented in its right spirit. The payment of arrears on account of Proforma fixation of seniority and promotion cannot be granted. It is also stated that the applicants were not granted any such relief by Hon'ble Supreme Court, they cannot raise such a claim before this Tribunal and the claim is barred by principles of resjudicata.

We have heard Shri Sudhir Agrawal learned counsel for the applicant and Shri J.N.Singh learned counsel appearing for the respondents.

The submission of the learned counsel for the applicant is that on account of the mistake and arbitrary action of the respondents applicants have been illegally denied the benefit of promotion, while the juniors were promoted long back. On the basis of the incorrect seniority list the applicants cannot be allowed to suffer for no fault of their own and they are entitled for arrears of the salary with interest. Learned counsel has placed reliance on the following judgements:

- 1) Maimoona Khatoon & Anr. Vs. State of U.P.
A.I.R 1980 Supreme Court- 1773
- 2) Un-reported judgement dated 16.4.1991 of

this Tribunal in Khwaja Raziul Hasan Vs. Union of India & Ors, T.A. No.335 of 1985(O.S.No.53/85)

- 3) R.M.Ramaul Vs. The State of Himachal Pradesh & Ors, AIR 1991 Supreme Court-1171
- 4) P.Narayanan Nair & Others Vs. Chief General Manager, Telecom, kerala Circle, Thiruvananantapuram & Ors, (1994) 26 Administrative Tribunal Cases 883
- 5) Vasant Rao Roman Vs. Union of India through the Central Railway, Bombay & Others, (1993) 24 A.T.C 363
- 6) Nand Kishore Nayak Vs. State of Orissa & Anr AIR 1991 Supreme Court-1724
- 7) Smt.Sudha Srivastava Vs Comptroller & Auditor General of India, AIR 1996 Supreme Court-571
- 8) Syndicate Bank & Anr Vs. Shri K.Umesh Nayak JT 1994(5) S.C. 647
- 9) Karam Chand Vs. State Transport Controller, Chandigarh and another 1994(5)SLR-473
- 10) S.P.Singh and Others Vs. State of Bihar and Others (1997 (2) E.S.C 1370(Patna High Court)(D.B)

Shri J.N.Singh, learned counsel for the respondents on the other hand, has submitted that the remedy available to the applicants could be only before the Hon'ble Supreme Court as the appeals were disposed of in terms of the Railway Board's circular dated 26.3.1990 and this Tribunal cannot grant ~~any~~ relief. It has also been submitted that the claim of the applicants is highly time barred and is liable to be rejected. The orders implementing the circular dated 26.3.1990 have rightly been passed granting Proforma



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fixation of seniority and promotion, no injustice has been done to the applicants.

We have carefully considered the submissions of the counsel for the parties. The question for determination before us, is, as to whether the applicants are entitled for the relief claimed in this OA directing the respondents to pay arrears of pay to the applicants from the date of the proforma promotion on the basis of the order dated 30.11.1992. The learned counsel for the respondents has challenged the maintainability of the OA on the ground of limitation, this question has to be decided first. The limitation provided for filing OA u/s 21 of A.T.Act 1985 is one year. In the present case the impugned order was passed on 30.11.1992 against which applicants immediately represented before the Senior Personnel Officer(Workshop), Jhansi which was rejected by order dated 4.10.1993. If the limitation is calculated from 4.10.1993 this application could be filed before the Tribunal upto 4.10.1994. This OA however has been filed on 8.11.1995 i.e. after more than a year. The learned counsel for the applicants however, tried to explain the delay on the ground that after the order dated 4.10.1993 was passed, the applicants filed representations before the Higher Authorities like General Managers, Central Railway, V.T.Mumbai. A copy of the representation made by applicant no.1 has been filed as (Annexure 12). The date of this representation is 19.7.1994. The alleged representation was filed long after the order dated 4.10.1993 was passed. The averments made in para 17 are vague and uncertain. Respondents in their counter reply have made categorical denial that any such representation was filed before any authority and no such representation is available on record. There is no material on record on which basis the contention of applicants may be accepted. In the circumstances, the delay

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after 4.10.1994 remains unexplained (after expiry of limitation) and the applicants are not entitled for relief.

Even on merits we do not find that the claim of the applicants is justified. In the order dated 26.3.1990 there was clear contemplation for fixing the pay on proforma basis. Paragraph 2 & 3 of the order is being reproduced below:

"2. It is clarified that the semi-skilled artisans reclassified as skilled under Board's letter No.E(P&A) 1/82/JC/1 dated 13.11.1982 are to get seniority in Skilled Grade-II only from the date of passing a trade test for Skilled Grade-III in a cognate trade and not from 1.8.1978 i.e. the date which was taken into consideration for fixing their pay on proforma basis. This was made clear to the Railways under Board's letter No.E(P&A)1/82/JC/1 Vol II(Part dated 31.7.1987.

3. In view of this the point raised by the petitioners in CA No.642/88 would be adequately met."

The Hon'ble Supreme Court disposed of the appeals in terms of the order dated 26.3.1990. The order of Hon'ble Supreme Court is being reproduced below:

O R D E R

Leave granted in both the Special Leave petitions.

In view of the decision taken by the Ministry of Railways(Railway Board) by order dated 26th March, 1990, (which is placed on record) all the above appeals are disposed of in terms of the said decision.

There will be no order as to costs."

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Thus, the terms provided in the order dated 26.3.1990 became part of the order passed by the Hon'ble Supreme Court. The respondents have given proforma seniority and promotions to the applicants strictly in terms of the order dated 26.3.1990. The order dated 4.10.1993 is also very relevant in this respect. It would be appropriate to reproduce the letter which is in Hindi.

"उपरोक्त संदर्भ में उनेको कर्मचारियों नेब्र अलग-अलग ढंग से अपने प्रतिवेदन इस कायालिय में भेजे हैं जिसमें वेतन नियतन में कमी तथा दी गयी प्रोफार्मा पदोन्नति तिथि से एरियर भुगतान सम्बन्धित माँग की गयी है।

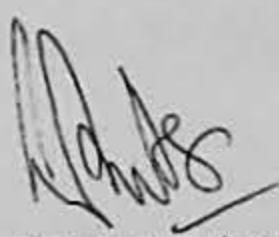
कृपया अपने अधीन ऐसे सभी कर्मचारियों को सूचित करें कि इस प्रकार से प्रभावित कर्मचारियों को उपरोक्त उल्लेखित सुप्रीम कोर्ट निर्णय एवं मुख्यालय के निर्देशानुसार कुशल ग्रेड-111 में की गयी वरीयता संशीधन के आधार पर उच्च ग्रेडों में प्रोफार्मा पदोन्नति एवं वरीयता का लाभ स्वीकृत कैडर स्थिति को ध्यान में रख कर दिया गया है जिससे वरिष्ठ कर्मचारियों को प्रोफार्मा पदोन्नति से लाभान्वित किया है तथा कनिष्ठ कर्मचारियों को पदावनत किया गया है। तदनुसार इन कर्मचारियों का वेतन नियतन का निर्धारण किया गया है जो कि नियम संगत है।"

From the aforesaid, it is clear that after revision of the seniority list the persons who subsequently became juniors were reverted to lower posts and applicants were promoted. The cadre strength has also been kept under consideration while implementing the order. In these circumstances, the applicants could not be paid arrears of salary as the salary was actually paid who had worked on the post though subsequently they have been reverted. The salary could not be paid twice for the same post. The grievance of the applicant in the peculiar facts and circumstances

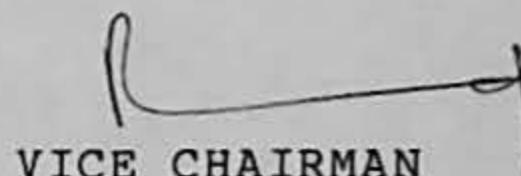
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of the case is not justified. There was no direction by Hon'ble Supreme Court to realise the salary paid to the juniors while they worked on the higher post. The order dated 26.3.1990 in fact merged in the order of Hon'ble Supreme Court. It has not been pointed out by the applicants that there is any illegality in implementing the order dated 26.3.1990. They have come with the case that as they have been promoted from back date they should be paid arrears of salary but in the facts and circumstances narrated above, it does not appear justified. The various judgements relied on by learned counsel for the applicant do not help the applicants in the present facts and circumstances of the case and are clearly distinguishable.

For the reasons stated above, the OA is devoid of merits and is dismissed. There will be no order as to costs.



MEMBER (A)



VICE CHAIRMAN

Dated: March 5th, 2002

UV/