

Open Court.

Central Administrative Tribunal, Allahabad Bench, Allahabad.

O.A No 654 of 1995.

This the 23rd day of August' 2002.

HON'BLE MR. Justice R.R.K. Trivedi, V.C.

1. Smt. Kamlesh Srivastava, aged about 55 Yrs. Wife of Late A.N.L. Srivastava Resident of 569-Cha/06 Premnagar, Alambagh, Lucknow.
 2. Smt. Asha Rani Srivastava, Wife of Sri Sushil Kumar Srivastava, Resident of Madhaban Nagar, Alambagh, Lucknow.
 3. Smt. Rekha Rani Srivastava, Wife of Nirmal Kumar Srivastava Resident of Ramnagar, Alambagh, Lucknow.
 4. Smt. Sudha Rani Srivastava, wife of Sri Vinay Kumar Srivastava, Resident of Ompurwa Chakeri Road, Kanpur.
 5. Shiv Kumar Srivastava Son of Late A.N.L. Srivastava.
 6. Sanjay Srivastava, aged about 22 Yrs. Son of Late A.N.L. Srivastava.
 7. Km. Sweta Srivastava D/o Late A.N.L. Srivastava.
 8. Rashmi Srivastava D/o Late A.N.L. Srivastava.
 9. Sandip Srivastava Son of Late A.N.L. Srivastava.
- Applicants Nos 5 to 9 are Resident of 559-Cha/06 Premnagar, Alambagh, Lucknow.

.....Applicants.


By Advocate: Sri Sudhir Agrawal.

Versus.

1. The Union of India through the Secretary Ministry of Railways, New Delhi.
2. The Railway Board, Railway Bhawan, New Delhi through its Chairman.
3. The General Manager, Northern Railway Baroda House, New Delhi.
4. The Divisional Railway Manager, Northern Railway, Allahabad.

....Respondents.

By Advocate: Sri D.C. Saxena.



O R D E R

By **This** original application under section 19 of Administrative Tribunals Act, 1985, the applicants ^{have} prayed for direction to the respondents to give benefit of up-gradation on the post of Material Clerk in the grade of Rs.110-180 to the applicants in terms of Railway Board Circulars dated 27.9.63, 24.10.1972 and 16.8.1978 issued by the Board as interpreted by this Tribunal vide its judgement dated 28.8.1992 in O.A. No.133 of 1991. It is also stated that the order of the Tribunal has been ~~affirmed~~ ^{confirmed} by the Hon'ble Supreme Court while dismissing the SLP on 16.8.1994.

2. The facts of the case are that the applicant initially joined as Khalasi on 1.4.1980. He was promoted to the post of Material Checking Clerk in the grade of Rs.105-135/- w.e.f. 1.9.1962. The scale payable to Material Checking Clerk was further enhanced by the Railway Board vide order dated 27.9.1963 and it was raised to Rs. 110-180/-.. This scale was subsequently enhanced by subsequent orders. The applicant was not paid the scale of Rs.110-180/- on the ground that the selection was required. The applicant continued to agitate the matter that the benefit is automatic and he is entitled for the higher scale.

3. The respondents by order dated 22.7.1980 gave temporary promotion to the applicant and posted him as Clerk in grade of Rs. 260-400(RS), however, the dispute as to whether the benefit of the scale of Rs.110-180/- under the circular dated 27.9.63 was automatic or was based on the selection, came for consideration before this Tribunal in O.A. No.133 of 1991, Hardutt Sharma and others Vs Union of India and others. The Tribunal, after, considering the whole matter in detail, passed order dated 28.8.92 and gave following direction.

"Applying the said principle as laid down in this case the applicants are entitled to count their seniority from the date they were so upgraded and placed in the same pay scale and their seniority will be counted from that date, those who are Material Clerks before that date, obviously will rank

senior to them but those who became Material Checkers subsequent to their gradation and placement in the same scale, will rank junior to them and accordingly this application is allowed to the extent that the order dated 19.4.91 is quashed and the respondents are directed to prepare a fresh seniority list in accordance with law and in the light of the observations made above, within a period of three months from the date of receipt of a copy of this judgement and give promotions to the applicants in accordance with their seniority and placement without requiring them to undergo written test or viva-voce for the post of Material Clerks. No order as to cost.

4. The aforesaid order of this Tribunal was challenged before Hon'ble Supreme Court in S.L.P No 15120 of 1993. SLP was dismissed on 16th August 1994 and the order of this Tribunal ^{has} become final. This Tribunal gave direction to prepare a fresh seniority list in accordance with law and also directed that all shall be given promotion in accordance with their seniority and placement without requiring him to undergo any selection by Written Test and Viva-Voce. Thus stand taken by the respondents that Scale of Rs.110-180 can not be granted except by a selection was not accepted by this Tribunal and the Hon'ble Supreme Court. The applicant thus become entitled for that scale.

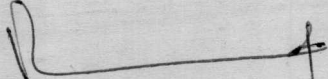
5. Learned counsel for the respondents, however, submitted that the claim of the applicant is highly time barred as this O.A. was filed on 6.7.1995 and the cause of action for the claims raised by the applicant, had arisen on 27.9.63, 24.10.1972 and 16.8.1978 when the circulars were issued by the Railway Board enhancing the pay scale. The learned counsel for the respondents has placed reliance on the judgement of the Hon'ble Supreme Court in case of Ram Chandra Samant and others Vs Union of India and others, 1994 (26) A.T.C.228 and Ramesh Chandra Sharma and others Vs Udham Singh Kamal and others, 2000 SSC, ^(RCS) 53.

6. Sri Sudhir Agrawal, learned counsel for the applicant, on the other hand submitted that the applicant continued to agitate the matter before authorities and consequently by

order dated 22.07.1980 applicant was granted temporary promotion and was posted as Clerk in the grade of Rs.260-400. When the matter came for adjudication before the Tribunal, direction was given vide order dated 28.8.1992 to the respondents to prepare the seniority list afresh after correcting the seniority according to the pay scale fixed by the circular dated 27.9.63, which was confirmed by Hon'ble Supreme Court by dismissing the S.L.P. on 16.8.1994. Thus the delay upto 1994 stands explained and the O.A. was filed within period of one year after the order of the Hon'ble Supreme Court.

7. I have carefully considered the submission of counsel for the parties. It is true that there was delay on the part of the applicant but he cannot be denied the benefit of the order of this Tribunal by which the seniority list was directed to be corrected and it was specifically stated that for this purpose the Material Checking Clerk will not be required to under go for any written test and viva-voce. It gave a fresh cause of action, to raise claim for payment of the higher pay scale, which was denied to him on the basis of wrong stand taken by the respondents. The matter was under consideration before the Hon'ble Supreme Court in S.L.P. upto 16th August 1994, thus in the special facts and circumstances of the present case, it cannot be said that there was delay in raising the claim.

8. In my opinion, the applicant is entitled for relief. The O.A. is accordingly allowed. The respondents are directed to carry out the pay fixation of the applicant according to the direction given by this Tribunal on the basis of circulars of the Railway Board issued on 27.9.1963, 24.10.72 and 16.8.78 to the monetary benefit to which the applicant is found entitled, shall be paid to his heirs. The order shall be complied with within 6 months from the date of communication of this order.


VICE-CHAIRMAN.

/Anand/