

(Open Court)

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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Original Application No. 1302 of 2000.

Allahabad this the 09th day of April, 2002.

Hon'ble Maj. Gen. K.K. Srivastava, Member- A.
Hon'ble Mr. A.K. Bhatnagar, Member- J.

S.K. Sinha S/o Sri Keshava Prasad,
R/o Railway Quarter No. R.B.II-33A, T.R.D,
Railway Colony, Lalitpur.

.....Applicant

Counsel for the applicant :- Sri S.K. Om

V E R S U S

1. Union of India through the General Manager,
Central Railway, Mumbai.
2. General Manager, Central Railway,
C.S.T, Mumbai.
3. Chief Personnel Officer, Central Railway,
C.S.T, Mumbai.
4. Senior Divisional Personnel Officer,
Central Railway, Jhansi.

.....Respondents

Counsel for the respondents :- Sri A.K. Gaur

O R D E R (Oral)

(By Hon'ble Maj. Gen. K.K. Srivastava, A.M.)

In this O.A under section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order dated 22.06.2000 (annexure A-9) rejecting the claim of seniority of the applicant and has prayed for direction to the respondents to fix the seniority of the applicant treating the post of Chargeman Gr.'B' as

a selection post since 1977. The applicant has further prayed that the respondents be directed to treat him senior to the persons who were officiating as Chargemen 'B' at the time of his appointment. He has also prayed for all consequential benefits.

2. The facts, in short, giving rise to this O.A are that the applicant was appointed as Apprentice Chargeman 'B' (Electrical Cadre) on 25.09.1978 and after completion of training he was posted on 22.11.1979. The selection for the post of Chargeman 'B' was done on ~~centralised~~ basis and the selected candidates after training were posted in various divisions and sister units of Electrical Divisions. As per the applicant, the III Pay Commission ~~was~~ recommended that the post of Chargeman 'B' in scale of Rs. 425-700/- be classified as a selection post and also 50% of the cadre strength should be filled by direct recruitment from open selection, 25% on the basis of limited departmental competitive examination and 25% to be filled by way of promotion on selection basis. The recommendation of the III Pay Commission was accepted by the respondents vide their letter dt. 12.04.1977 and the Railway Board introduced the selection grade w.e.f 01.08.1976. It has been alleged that although the post of Chargeman 'B' was classified as selection post even then the respondents promoted several persons on the said post on officiating basis w.e.f 15.03.1977 and their services were regularised on 25.11.1983 though these persons did not qualify any selection for the post of Chargeman 'B'. The Chargemen recruited alongwith the applicant filed the petition before the Principal Bench of this Tribunal under O.A No.877 of 1986 V.K. Shukla and other Vs. U.O.I and others. The Principal Bench disposed of the

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O.A vide order dated 05.05.1992 directing the respondents to fix the seniority of the applicant. After the decision of the Principal Bench dated 05.05.1992, the applicant made a representation for correction of seniority list of the applicant vis-a-vis other ~~promotees~~ without appearing in the selection. Subsequent reminders were also sent which remain undecided. However, by letter dated 09.08.1995, the respondents assigned the seniority to the applicant from the date of actual posting i.e. 22.11.1979. Aggrieved by this, the recognized union i.e. National Railway Mazdoor Union was approached to take up the issue with the respondents. The respondent No.3 vide his letter dated 26.11.1999 informed the union that the matter of seniority of the applicant was under-consideration and the decision will be duly intimated as and when taken. Thereafter, the respondent No.3 vide impugned letter dt. 22.06.2000 rejected the claim of the applicant on the ground that the post of Chargeman 'B' (Rs. 425-700) was classified as a selection post w.e.f 29.09.1981 and before that it was a promotional post. Hence this OA which has been contested by the respondents by filing counter reply.

3. Sri S.K. Om, the learned counsel for the applicant submitted that the action of the respondents is wholly arbitrary and illegal as no promotion can be granted against selection post without undergoing any selection thereof. It has been submitted that the Railway Board vide letter dated 30.10.1974 addressed to all the General Managers and others, the/chargeman 'B' in scale of Rs. 425-700/-, ~~earlier a non-~~ earlier a non-selection post ~~was~~ a selection post. By this

letter, only the post of Chargeman 'A', Assistant Foreman and Foreman-II have ^{been} shown as non-selection post. The learned counsel for the applicant submitted that/did not produce these documents before the Principal Bench of this Tribunal and contended that the post of Chargeman 'B' became a selection post w.e.f 29.09.1981. The learned counsel for the applicant has further submitted that the Railway Board vide letter dated 12.04.1977 had accepted the recommendation of III Pay Commission and as such the post of Chargeman 'B' was a selection post till it was declared as non-selection post w.e.f 29.09.1981. The post of Chargeman 'B' was a selection post at the time he was appointed and posted on regular basis whereas those who were working on officiating basis could not be treated as regularly appointed till they qualified in the selection. Secondly, in other division of the Central Railway, the post of Chargeman 'B' was being treated as selection post whereas in Jhansi Division, it has not been treated as a selection post which on the face of itself is irregular. In the averments made in para- 19 and 23 of the counter, the respondents have not specifically denied this fact. The learned counsel also invited our attention to para-22 of the OA and submitted that the other colleagues appointed alongwith the applicant were posted to different divisions of the same Central Railway and were treated as having been appointed against selection post. Therefore, two yard sticks cannot be applied for a ^{particular} post in the same Railways.

4. The learned counsel for the applicant finally submitted that the case is not barred by limitation because this OA is against the order dated 22.06.2000. In support of his argument, the learned counsel for the applicant submitted that it has been held by the Principal Bench

of this Tribunal that if the circumstances demand making of further representation it would extend the limitation. The learned counsel also argued that in the light of the judgment of Hon'ble Supreme Court in General Manager, South Central Railway, Secundearbad and another vs. A.V.R Siddhanti and Ors. 1974 SC (L&S) 290 it is not necessary to implead the persons who are liable to be affected by fixation of the applicant's seniority.

5. The learned counsel for the respondents resisting the claim of the applicant submitted that the claim of the applicant is barred by principle of resjudicata as the entire controversy has already been settled by the Principal Bench of this Tribunal in O.A No. 887/1986 by order dated 05.05.1992 holding that the promotions made prior to 29.09.1981 will not be examined as the Administrative Tribunals Act came in to force on 01.11.1985 and only cases preceding upto three years could be examined. Secondly, since the affected parties have not been made as necessary party, the OA is not maintainable. Thirdly, the learned counsel submitted that the OA is grossly time barred as the judgment of the Principal Bench was delivered on 05.05.1992, the seniority was recasted on 09.08.1995 and, therefore, the cause of action arose on 09.08.1995 whereas this O.A has been filed on 10.10.2000. The learned counsel for the respondents submitted that the post of Chareman 'B' has been classified as selection post as per the Railway Board letter dated 29.09.1981 and, therefore, argument of the learned counsel for the applicant that it was a selection post at the time the applicant joined has no force.

6. On the point of principles of resjudicata, the learned counsel for the respondents has placed reliance on the decision of Hon'ble Supreme Court in Commissioner,

Income Tax, Bombay Vs. T.P. Kumaran, 1997 (SCC) L&S) 135. In regard to point of limitation, the learned counsel for the respondents cited the decision of this Tribunal Madras Bench in All India Postal Employees Union Class III, Tamilnadu Vs. U.O.I and others (1994) 28 ATC, 810 holding that the implementation of judgment in rem, the person who was not party to the case, can also apply for implementation of the such judgment in his favour. Therefore, the proper course for the applicant was to file CCA for not implementation of the judgment rather than filing OA under section 19 of the AT. Act.

7. We have heard Sri S.K. Om, the learned counsel for the applicant and Sri A.K. Gaur, the learned counsel for the respondents and have carefully considered their submissions. We have also perused the records and have gone through the pleadings of the parties.

8. The first question before us to decide is whether the preliminary objections raised by the learned counsel for the respondents are tenable or not. The first objection raised by the learned counsel for the respondents is that the OA is barred by principles of resjudicata as the controversy has already been settled by the Principal Bench vide its order dated 05.05.1992. We are of the view that the present OA is not barred by the principles of resjudicata at all. It was the responsibility of the respondents to have brought to the notice of the Principal Bench of their own letter dated 30.10.1974 by which the post of Chargeman 'B' was declared as selection post and in absence of this document as not filed before the P.B, the Principal Bench had no means to know that the post of Chargeman 'B' was a selection post even earlier to 29.09.1981. The P.B has, therefore, relied their observation on the letter of the Railway Board

dated 29.09.1981 which was placed before the P.B. The Principal Bench in its judgment dated 05.05.1992 in para- 2 has held as under :-

"As regards promotions prior to 29.09.1981, we cannot at this belated stage take up the question of validity or otherwise of such promotions. The Administrative Tribunals Act came in to force on 01.11. 1985 and, therefore, only cases preceding up to three years can be examined. In other words, any promotion from 01.11.1982 onwards can at best be examined. There seems to be no dispute on the point that after 29.09.1981, the post has been treated as a selection post and is still being so treated. Therefore, the legality or illegality of promotions made prior to 1981 is not being considered here. "

It appears from the perusal of the aforesaid quoted para of the judgment dt. 05.05.1992, that due to mis-presentation of the letter dated 30.10.1974, the P.B has held that there has been no dispute on the point that after 29.09.1981, the post has been treated as a selection post and that is why the Principal Bench has very correctly held that the legality or illegality of the promotions made prior to 1981 were not being considered. Had the correct position been placed before the Principal Bench, we have no doubt that the observation of the Principal Bench would have been different. Therefore, ^{In the decision of Hon'ble Supreme Court} the case of T.P. Kumaran (Supra) is not helpful to the respondents.

9. The second objection raised by the learned counsel for the respondents is that affected parties have not been made parties and, therefore, the present O.A is not maintainable. In this connection, we would like to produce the relevant ^{para} portion of the judgment of Hon'ble Supreme Court in Siddhanti's case (Supra) :-



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".....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 impugned decisions, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision of October 16, 1952, were at the most, proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition."

In the present case, this principle laid down by the Hon'ble Supreme Court is squarely applicable and the objection raised by the respondents has no force.

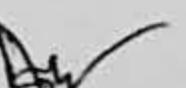
10. The third objection raised by the learned counsel for the respondents is that the OA is barred by limitation as the cause of action arose on 09.08.1995 when the seniority was recasted. The applicant made representations directly as well as through the recognised Staff Union and since the respondents conveyed the final decision through impugned order dated 22.06.2000, the period of limitation would start from this date. The point is well covered by the decision of Principal Bench in this regard in B. Kumar's case (Supra). The decision of this Tribunal Madras Bench in All India Postal Employees Union Class III, Tamilnadu vs. U.O.I and Others (Supra) is not helpful to the respondents.

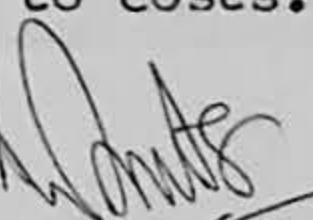
11. We have no doubt in our mind that the post of Chargeman 'B' is a selection post since 30.10.1974 and, therefore, no one could be given the seniority unless one qualified in the selection. The post of Chargeman 'B' is being treated a selection post in other Central Railway Divisions, therefore, Jhansi Division cannot treat the post

differently and the post has to be treated as a selection post. The respondent's action in promoting several persons on the basis of their officiating period w.e.f 15.03.1977, ignoring the applicant suffers from error of law. The applicant's case merits consideration and he is entitled for relief.

12. In view of the facts and circumstances and our aforesaid discussion ⁱⁿ the OA is allowed. The order dated 22.06.2000 passed by the respondent No.3 is quashed. The respondents are directed to fix the seniority of the applicant treating the post of Chargeman 'B' as a selection post since 30.10.1974 and fix the seniority of the applicant over those who did not pass the selection at all and have been shown senior to the applicant. The applicant is entitled for all consequential benefits in regard to wages, seniority and promotion. The pay of the applicant will be fixed on notional basis after fixing his seniority and he will not be entitled for arrears thereof.

13. There shall be no order as to costs.


Member- J.


Member- A.

/Anand/