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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD  
BENCH ALLAHABAD**

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(THIS THE 25 DAY OF 3 2010)

*Hon'ble Mr. A.K. Gaur, Member (J)  
Hon'ble Mrs. Manjulika Gautam Member (A)*

**Original Application No.1252 of 2002**

(U/S 19, Administrative Tribunal Act, 1985)

Mahesh Chandra Hasija S/o Sri Puran Chand Hasija, Assistant Divisional Engineer (Line) N.E. Railway Resident of Banglow No.81, Road No.4, N.E. Izatnagar District Bareilly.

..... *Applicant*

*Present for Applicant :* **Shri Bhaskar Bhadra  
Shri N.K. Singh**

***Versus***

1. Union of India through the General Manager (P) N.E. Rly. Headquarters Office, Gorakhpur.
2. The Divisional Railway Manager N.E. Rly. Izatnagar District Bareilly.
3. The Divisional Railway Manager, N.E. Rly. Sonepur Division Sonepur.

..... *Respondents*

*Present for Respondents :* **Shri K.P. Singh**

**O R D E R**

**(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)**

By means of this Original Application the applicant has claimed following main relief/s:-

- (i) *That the Hon'ble Tribunal may be pleased to quash the impugned orders dated 10.06.2002 and 10.11.1993/12.04.1994 (Annexure No.A-1 & A-5) passed by Respondent No.1.*
- (ii) *That this Hon'ble Tribunal may be pleased to direct the respondents in regards to promotion date of the applicant as 6.6.1989 and 22.08.1990 on the post of I.O.W. grade I at*

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*Sonepur Division under Respondent No.3 as per record of this application.*

2. The case of the applicant is that he was appointed on 20.06.1977 as an apprentice Inspector of works under the respondents through Railway Service Commission. The applicant was promoted as I.O.W. Grade-I (Rs.2000-3200/-) vide order dated 05.06.1989. The applicant joins the said post on 06.06.1989. In the seniority list published on 16.07.1993, the name of the Applicant figured at Sl. No.37. A final seniority list was also published vide letter dated 01.04.1992 in which the name of the Applicant has shown at Sl. No.4. In this seniority list also the date of promotion of the Applicant has been shown as 06.06.1989. A combined seniority list of Engineering Branch Grade-I Staff was published on 10.11.1993/12.04.1994 wherein the name of the Applicant has been shown at Sl. No.174 and the date of joining has been indicated as 22.08.1990. Being aggrieved by his position in the seniority list the applicant made several representations clearly pointing out the incorrect mention of the date of his joining but neither the mistake was rectified nor the representation was considered by the Competent Authority in accordance with the provisions of Rule.

3. Being aggrieved applicant filed O.A. No.1596 of 2001 (Mahesh Chandra Hasija Vs. Union of India & Ors.) before this Tribunal on 21.12.2001. Vide order dated 06.03.2002 this Tribunal has disposed of the O.A. with following directions, which reads:-

*".....In view of the above, we direct the respondents to decide the pending representation of the applicant dated 01.08.2001, annexed as part of the Annexure-13 to the O.A.*

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*within a period of 12 weeks from the date of communication of this order. For facilitating the consideration of the representation dated 01.08.2001, the applicant shall furnish a copy of the same to the respondents along with a copy of this order..... No costs”*

4. In compliance of the order dated 06.03.2002, the applicant submitted his representation dated 25.02.2002 with request that he was initially promoted on 06.06.1989 to the post of I.O.W. grade I at Sonepur Division and his date of promotion may be corrected as 06.06.1989 instead of 22.08.1990.

5. On notice, respondents have filed Counter Affidavit and submitted that the integrated Seniority list of IOW/PWI/BRI/CDM/SDA in pay scale of Rs.2000-3200/- and 2375-3500/- of Civil Engineering Department, was published vide letter dated 10.11.1993/12.04.1994, in which the name of the applicant was at Sl. No.174 as per Principle of “one in the place of another basis”. The applicant has also given representation for revision of seniority i.e. 06.06.1989. Since his seniority i.e. 22.08.1990 has correctly been assigned as per above principle, hence there is no dispute in the seniority list.

6. Learned counsel for the Respondents submitted that the main contention of the applicant is that his date of regular promotion in the IOW Grade-I dated 06.06.1989 was changed as 22.08.1990, resulting in incorrect assignment of seniority in the integrated seniority list issued for Group 'B' .w.e.f 11.11.1994 in place of 11.07.1994. The applicant had filed suit regarding entry of his date of promotion as 06.06.1989, in

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integrated seniority list. As per Railway Board order, under restructuring, w.e.f. 01.01.1984 revised percentage in different grades on regular posts, was to be implemented, but G.M.N.E., Railway had decided that while implementation of restructuring orders in case of technical supervisors, work charge post may also be taken into account w.e.f. 01.01.1984 for revised percentage. The cadre restructuring, in PWI/IOW cadre w.e.f. 01.01.1984 was implemented but as per Railway Boards order regarding counting of work charged posts for cadre restructuring w.e.f. 01.01.1984, was cancelled. In continuation of above, promotion orders issued, was cancelled vide order dated 06.07.1994. Due to cancellation of Restructuring order regarding counting Work charge Posts, it was mentioned that the promotion made under restructuring on Workcharge Post, treated as Ad hoc from the date of joining and their date of promotion will be regularized from the date of Junior on the Principle 'one in place of another. The Post of PWI/IOW/(2000-3200)/6500-10500 is a selection post. The incumbent promoted against workcharge post, was not called in selection, as they were promoted on modified selection procedure. While juniors were called in the selection and after being declared suitable in selection promoted as IOW (2000-3200). In the modified selection procedure, it is provided that the staffs are promoted as per seniority and fitness as per CRS.

7. Respondents have filed Rejoinder Reply and submitted that Applicant was promoted on 05.06.1989 along with Sri Virendra Singh

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and Sri N.R. Dutta w.e.f. 06.06.1989 in Sonepur Division. After obtaining the promotion from 06.06.1989 Sri N.R. Dutta Junior to the applicant was retired from service on 31.07.1992. As such the respondent no.1 intentionally with malafide intention added the name of Sri R.K. Lal and deleted the name of Sri N.R. Dutta, in the list issued on the Principle "One in place of another". The new seniority list was published on 16.07.1993 by the respondent no.1 in which the applicant promotion date has been shown as 06.06.1989 at Sl. No.37 on the Principle of 'One in place of another'. The details of the employees awarded promotions w.e.f. 06.06.1989 is as under:-

		DOB	DOA	DOP
1.	R.K. Lall	03.07.1940	25.09.1962	01.01.1984
2	Virendra Singh	10.07.1936	01.10.1964	06.06.1989
3	M.C. Hasija	26.01.1951	29.07.1978	06.06.1989
4	N.R. Dutta	14.07.1934	27.01.1960	06.06.1989
5	H.S. Ansari	10.01.1956	21.01.1982	20.08.1990
6	Ram Shirit	12.10.1962	31.01.1985	22.08.1990

**Changed as Revised by Respondent No.1**

1.	R.K. Lall	03.04.1940	25.09.1962	06.06.1989
2	Virendra Singh	10.07.1936	01.10.1964	06.06.1989
3	M.C. Hasija	26.01.1951	29.07.1978	22.08.1990
4	H.S. Ansari	10.01.1956	21.01.1982	22.08.1990
5	Ram Shirit	12.10.1962	31.12.1985	01.03.1993

8. We have heard Sri Bhaskar Bharda, learned counsel for the applicant and Shri K.P. Singh, learned counsel for official respondents and perused the written arguments filed by the parties counsel.

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9. The applicant has approached this Tribunal by challenging the seniority list issued several years ago. The claim of the applicant has already become old and stale and on the strength of the order passed on the direction of the Tribunal to decide the representation of the applicant. The aforesaid O.A. has been filed, on flimsy grounds. It is seen from the record that the Railway Board's letter dated 01.05.1984 for restructuring in the category of technical Supervisors of Engineering Department were also made applicable to work charge posts of IOW which were lying vacant on 01.01.1984 in terms of GM (P)s letter dated 25.09.1984 and 19.10.1984. We have carefully noticed that the Work Charge Posts were also filled up by eligible employees by modified selection procedure i.e. without going through the positive act of selection as one time exception. Though, the post of IOW 2000-3200 was a selection post but due to implementation of restructuring on work charge posts, several persons including the applicant were promoted to work charge post of IOW 2000-3200 from 01.01.1984 by modified selection procedure vide office order dated 7/8.01.1988. The applicant was promoted as IOW from 06.06.1989 in the year, 1989. Objection was raised by Associate Finance and as such the matter was referred to Railway Board vide office letter dated 20.07.1992 but the Railway Board vide their letter dated 24.03.1993 turned down implementation of restructuring on work charge post lying vacant since 01.01.1984. Accordingly, in compliance with Railway Board's aforesaid letter of the General Manager (P)'s letter dated 19.10.1984 was cancelled and promotions made on work charge posts under

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restructuring w.e.f. 01.01.1984 were also cancelled. The promotions granted to the persons were treated as on ad hoc basis. In order to resolve the dispute of seniority and avoid further complications of the promotions of such employees in all the Divisions seniority were revised and regularized.

**10.** Learned counsel for the respondents raised an objection that seniority list issued on 14.06.1994 has been challenged after inordinate delay. The Applicant has failed to give any explanation for approaching the Tribunal after such an inordinate delay. The proper course for the applicant was to challenge the seniority list issued on 14.06.1994 at an appropriate time.

**11.** Learned counsel for the respondents has placed reliance on the decision of Hon'ble Supreme Court reported in **2009 (7) Supreme Today 424** in order to buttress the contention that ***any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested right of others regarding seniority, rank and promotion, which have occurred to them considering intervening period.***

**12.** We have also carefully seen from the record that in pursuance of the order and direction passed by this Tribunal dated 06.03.2002, the representation of the applicant dated 01.08.2001 has been decided by the Competent Authority. Vide order dated 7/8.01.1988, the applicant

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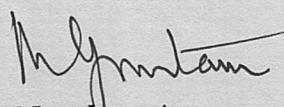
was promoted as IOW from 06.06.1989. In compliance of the Boards Directives, GM(P)'s letter dated 19.10.1984 was cancelled and promotions made on work charge posts under restructuring w.e.f. 01.01.1984 were also cancelled. Our attention has also been drawn to the decision of Hon'ble Supreme Court reported in **2008 (10) SCC 115 C. Jacob Vs. Director of Geology and Mining and another** in which the Hon'ble Supreme Court has clearly observed that **Court's direction to the department to "consider" stale claim- held, court should be circumspect in issuing such direction as it ultimately leads to consideration of case on merits at subsequent stages of litigation as if the cause of action stood revived due to fresh consideration.** It is also seen from the decision of the Hon'ble Supreme Court that **Reply given to an individual does not give rise to fresh cause of action or acknowledgement of jural relationship.**"

13. In view of the aforesaid observations, we are satisfied that Revision in Promotion/Seniority was effected in all the Division and integrated seniority list was prepared on the basis of revised date of promotion in grade 2000-3200/. As indicated above, the applicant has rightly been assigned seniority in the integrated seniority list issued on 14.06.1994. The seniority list already settled in the year, 1994 cannot be permitted to be unsettled after a long lapse of time. In view of the decision reported in **2006 SCC (L&S) 11056 HKP Sudhakaran Vs. State of Kerla**, the applicant whose seniority was wrongly fixed long ago, the matter

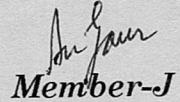
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cannot be unsettled after such a long time, therefore the applicant is not entitled to claim the benefit of seniority after such an inordinate delay. We have also gone through the decision rendered by Hon'ble **Supreme Court reported in 1976 SCC (L&S) – 115 Malcom Lawrence D'Souza Vs. Union of India and Ors. and 2001 SCC (L&S) – 955 K.A. Abdul Majeed Vs. State of Kerala.** In the aforesaid cases Hon'ble Supreme Court clearly held that seniority list cannot be changed and/or reopened after a long lapse of more than 14 and 15 years and that too after attaining finality. We have also carefully seen the latest decision reported in **2007 All Indian Services Law Journal – 73 Andra Pradesh Book Service Commission Vs. K. Sudarshan Reddy.** The Hon'ble Supreme Court has clearly held that settled seniority may not be upset after the long lapse of several years.

**14.** Having given our anxious thought to the pleas advanced by the parties counsel and after perusal of the aforesaid decisions of Hon'ble Supreme Court, we are firmly of the view that the applicant has failed to make out any case warranting interference. The OA is accordingly dismissed. No cost.



Member-A



Member-J

Sushil