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**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

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Original Application No. 650 of 2007

Allahabad this the 13 day of Feb., 2013

**Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./H.O.D.
Hon'ble Ms. Jayati Chandra, Member-A**

Uttam Chandra Dubey aged about 55 years son of Shri Daya Shanker Dubey, presently working as Coaching Supervisor, N.C. Railway, Firozabad r/o 3/3G/3/1 Shashi Nagar, Khandari Firozabad, District-Firozabad.

Applicant

By Advocate: Mr. Sudama Ram

Vs.

1. Union of India through General Manager, North Central Railway, Headquarters Office, Allahabad.
2. General Manager, North Central Railway, Headquarter, Allahabad.
3. Divisional Railway Manager, North Central Railway, Allahabad.
4. Senior Divisional Personnel Officer, North Central Railway, Allahabad.
5. Shri Mohan Singh, Chief Parcel Superintendent, N.C. Railway, Firozabad Station, District-Firozabad.

Respondents

By Advocate: Mr. Bashist Tiwari


ORDER

Delivered by Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./H.O.D.

The applicant has filed this O.A. for the following relief(s): -

(i) The Hon'ble Tribunal may graciously be pleased to partly quash the seniority position of the applicant shown in the eligibility list for selection for the post of Chief Coaching Supervisors Grade Rs.6500-10,500/- vide letter dated 8.2.2006 (Annexure A-1) at serial no. 38 and direct the respondent No. 1 to 4 to re-cast the seniority position of the applicant placing his name at appropriate place i.e. below the name of Shri Prem Kumar Arora and above the name of Shri Mohan Singh (respondent no. 5) (Serial No. 11) who is junior to the applicant.

(ii) The Hon'ble Tribunal may further be pleased to direct the respondents to give proforma promotion and fixation of pay in respect of his junior person Shri Mohan Singh (respondent no. 5) with all other consequential benefits including arrears of pay etc. from the date



respondent no. 5 was promoted in higher grades earlier to the applicant.

(iii) The Hon'ble Tribunal may further be pleased to issue any other direction, writ or order which is deemed essential and necessary in the interest of justice.

(iv) Cost of the application may also be allowed."

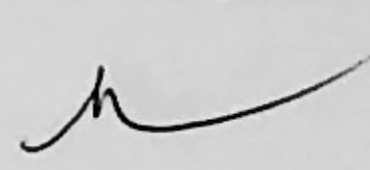
2. The facts of the case, in brief, are as follows: -

That the applicant was appointed by Railway Recruitment Board (for short RRB) as Coaching Clerk and subsequently sent for training to Zonal Training School, Chandausi along with respondent No. 5. After completion of training period, applicant and respondent No. 5 were posted in Delhi Division vide letter dated 30.04.1977 and accordingly they joined under CPS/Delhi Division. The applicant on his request was transferred to Allahabad Division along with one Shri Prem Kumar Arora on 19.07.1977. Later on, respondent No. 5 was also transferred to Allahabad Division on his request in terms of letter dated 27.09.1977. As respondent No. 5 joined later to the applicant, he became junior to the applicant and Shri Prem Kumar Arora. In the seniority list of Coaching Clerk in the grade of ₹260-400/-, prepared in 1979-80, name of the applicant was shown at serial No. 395 and the name of Mohan Singh - respondent No. 5, was shown at serial No. 408. In the month of November, 1983, the respondent No. 3 and 4 promoted Mohan Singh-respondent No. 5 on the post of Senior Booking Clerk on the basis of seniority in November, 1983. The applicant represented against it and he was also promoted in February, 1984 on the above post. The above respondents again promoted Mohan Singh in the month of February, 1988 on the basis of his incorrect seniority, and on the representation made by applicant against it, he was also promoted in the month of July, 1989. But, proforma benefits of fixation of pay were not given to him. Aforesaid Mohan Singh was again promoted on

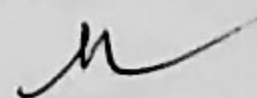
the basis of wrong seniority position as Coaching Supervisor in the grade of ₹5500-9000/-. The applicant made several representations but his representations were not considered. However, applicant was also promoted as Coaching Supervisor under restructuring scheme w.e.f. 01.11.2003. But, his grievance of becoming senior to Mohan Singh was not considered. Subsequently, respondents published an eligibility list for the post of Coaching Supervisor in the pay scale of ₹6500-10,500/- vide letter dated 08.02.2006 in which the name of applicant was shown at serial No. 38 whereas the name of Mohan Singh was placed at serial No. 11. Due to lower seniority position, applicant could not be placed on the panel against '17' general vacancies which was drawn on the basis of seniority. Shri Mohan Singh was promoted on the strength of his incorrect seniority position. The applicant again represented against it on 25.04.2006 and 12.06.2007 but since no response was made, he filed the present O.A. for the relief(s), mentioned above.

3. Notice was issued to respondent No. 5-Mohan Singh against whom seniority has been claimed by the applicant on 30.07.2007 but the notice was not returned served or un-served, and none has appeared on behalf of respondent No. 5 to contest the case. Hence, the case proceeded exparte against him.

4. The respondents Nos. 1 to 4 have filed the Counter-Reply partly denying the allegations made in the O.A., alleging that initially the applicant was selected on the post of Coaching Clerk in the year 1977 in the pay scale of ₹260-400/- per month by RRB and sent for training course (T-7) at Zonal Training School, (for short ZTS) Chandausi. After completion of training, he was appointed as Coaching Clerk in the pay scale of ₹260-430/- per month along with several other successful candidates at Firozabad in Allahabad Division as Assistant Booking Clerk. The seniority of Coaching Clerk is assigned as per merit of ZTS,



Chandausi. The seniority is determined as per the merit list prepared at the time of ZTS in which name of the applicant was placed at serial No. 84. The name of one Shri Prem Kumar Arora was at serial No. 80 and the name of respondent No. 5 was at serial No. 62. The applicant along with several others was promoted to the post of Senior Booking Clerk in the year 1983 on the basis of seniority list prepared at the time of ZTS, Chandausi. The seniority list of Coaching Clerk was finally published on 13.11.1987. In the year 1988 again promotions were made on the basis of above seniority on the post of Head Booking/Coaching Clerk. The posts of Senior Booking/Coaching Clerk and Head Booking Clerk were promotional posts. The seniority for the post of Booking/Coaching Clerk was fixed long back in the year of 1977 at the time of recruitment of Coaching Clerk at ZTS, Chandausi vide merit list prepared by it and seniority list of Coaching Clerk was published in the year 1987. The applicant never raised any objection and the same has now become final. The applicant cannot be permitted to question that seniority list after a lapse of more than 21 years and only making of representations will not entitle the applicant to raise this question at this belated stage. As per relevant Rule 303 of Indian Railway Establishment Manual, the seniority of candidates of non-gazetted railway servant recruited through the Railway Recruitment Board shall be determined in the order of merit, obtained in the examination held at the end of training period before being posted against working post. The post of Coaching Supervisor is a selection post and promotion to the post of Coaching Supervisor is made on the basis of marks secured by the candidates in the written examination. No such promotion was made only on the basis of seniority. Similarly the post of Chief Coaching Supervisor is a selection post and the selection is made on the basis of marks secured by the eligible candidates in the written examination held for selection and not on the basis of seniority. The representation made by the

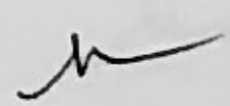


applicant was suitably replied by the official respondents. The seniority of the post of Coaching Clerk is assigned as per merit prepared at ZTS, Chandausi and not on the basis of date of joining. The applicant was also called upon for selection held for the post of Coaching Supervisor and for the selection of Chief Coaching Supervisor. The applicant appeared in the examination held for the post of Chief Coaching Supervisor but could not succeed in it. Lastly, it is prayed by the respondents that the applicant has got no case and the O.A. should be dismissed.

5. The applicant has also filed Rejoinder Affidavit mainly reiterating the grounds taken in the O.A. Reliance has also been placed on para-312 of the Indian Railway Establishment Manual Vol. I, for claiming seniority over Mohan Singh (respondent No. 5).

6. The applicant has filed some documentary evidence on record by way of annexure Nos. A-1 to A-9 including the notice issued on 08.02.2006 from the office of Divisional Railway Manager, Northern Railway, Allahabad for sparing the employees to enable them to appear in the written examination and supplementary examination for the post of Chief Coaching Supervisor, the representations alleged to have been made by the applicant for determining his seniority vis-à-vis Mohan Singh-respondent No. 5. He has also filed annexure RA-1 and annexure RA-2 along with his Rejoinder Affidavit, relating to the letter of ZTS, Chandausi dated 30.04.1977 and letter dated 15.07.1977 alleged to have been issued by the CPC, Delhi sparing the applicant to join at Allahabad Division on transfer.

7. The respondents Nos. 1 to 4 have placed reliance on annexure CA-1, showing the seniority list of Coaching Clerk published by the department on 13.11.1987 and a copy of the Rule 303 regulating seniority of non-gazetted railway servants.



8. Heard, the learned counsel for the parties and perused the papers on record.

9. After hearing the learned counsel for the parties and after perusal of pleadings and documents on record, the following points are formulated for just adjudication of the dispute before us: -

"(i) Whether the applicant and respondent No. 5 were transferred and posted in Delhi Division after completion of their training at ZTS, Chaudasi vide letter dated 30.04.1977 as alleged by the applicant?

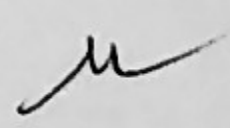
(ii) Who was the competent authority to transfer and post the applicant and respondent No. 5 from ZTS, Chaudasi to the place of posting?

(iii) Whether any seniority list of Coaching Clerk in the grade of Rs.260-400/- was prepared in 1979-80 showing the applicant at serial No. 395 and respondent No. 5 at serial No. 408, as alleged by the applicant?

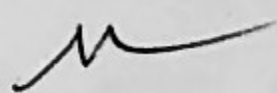
(iv) Whether the applicant was deprived of his promotion as Chief Coaching Supervisor in the grade of Rs.6500-10,500/- on account of his wrong seniority shown in the seniority list at serial No. 38 as alleged in the O.A.?

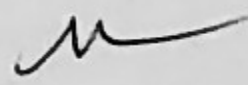
(v) Whether the seniority list prepared by the department in the year 1987 can be challenged by the applicant in the year 2007?"

10. As regards point No. (i), the case of the applicant is that after completion of training at ZTS, Chaudasi, he along with respondent No. 5 was posted in Delhi Division vide letter dated 30.04.1977. In the O.A., this fact has specifically been pleaded by the applicant. In support of his contention, the applicant has placed reliance on annexure RA-1 which appears to be a Photostat copy of letter/direction issued by the In-charge of ZTS, Chaudasi dated 30.04.1977 through which applicant, respondent No. 5 and others were sent to Delhi Division. A perusal of this letter simply shows that after completion of training the applicant and others were sent to different Divisions. It does not show that they were finally transferred and posted to Delhi Division or to the Divisions mentioned against their names. Initially burden to prove this



fact that actually after completion of aforesaid training the applicant and Mohan Singh were transferred and posted in Delhi Division lies on the applicant. No such transfer/posting order has been filed on record nor is it mentioned in the O.A. as to under whose order they had been transferred to Delhi Division. Normally, the In-charge of a training centre has got no power to transfer and post the candidates to different places. He only executes the directions given to him by the competent superior authority. The other paper relied upon by the applicant in this regard is annexure RA-2 which shows that the applicant was spared on transfer to join Allahabad Division on 15.07.1977. This letter again is only a direction to the applicant to carry out the transfer order. In this letter, it is not mentioned as to who had transferred him or the grounds of transfer. The reference is mentioned in this letter as DPO's NDLS L. No. 644E/77-X P-2 dated 14.07.1977. So, this paper also does not help the applicant to prove the above fact. On the other hand it is contended by the official respondents that due to summer rush the applicant and others including Mohan Singh (respondent No. 5) were sent to Delhi Division to work at Delhi junction station. Initially they were posted at Allahabad Division only and never posted in Delhi Division. Annexure A-6 is a representation moved by the applicant to D.R.M. Office, Allahabad in which it is mentioned that after completion of training at Chandausi as a trainee he was posted at IRCA/NDLS to clear summer rush. The applicant has failed to file any such paper on record that after completing his training at Chandausi, he was posted in Delhi Division. His oral contention cannot be accepted as it has already been rebutted by the respondents. The best evidence to prove his case would have been the transfer order through which he was sent to Delhi Division from ZTS, Chandausi, which has not been filed by him. This fact goes against the applicant.




11. As regards second point, it is clear that till last this fact has not been proved by any documentary evidence that the In-charge of ZTS, Chandausi was the competent authority to transfer and post the applicant in Delhi Division. In the absence of any such documentary evidence, oral contention of the applicant cannot be accepted. He should have filed the actual posting order, passed by the competent authority. Thus, this point also goes against the applicant.
12. As regards third point, it is contended by the applicant that in the seniority list of Coaching Clerk (grade Rs.260-400), his name was correctly assigned at serial No. 395 and that of Mohan Singh (respondent No. 5) was placed at serial No. 408. It is worth to mention that no such seniority list has been filed by the applicant on record. Had there been any such seniority list, it should have been filed by the applicant to show that after joining in Allahabad Division, another fresh seniority list was prepared in which he was made senior to Mohan Singh (respondent No. 5). In absence of any documentary evidence, this contention can also not be accepted.
13. As regards fourth point, it is contended by the applicant in his O.A. that due to wrong seniority, shown in the seniority list, the applicant was placed at serial No. 38 whereas the respondent No. 5 was placed at serial No. 11. Hence, he could not get selection on the post of Chief Coaching Supervisor grade Rs.6,500-10,500/-. This contention has been rebutted by the respondents alleging that the post of Chief Coaching Supervisor was a selection post for which a written examination was conducted in which applicant had also appeared but could not succeed. It is further stated that the selection to that post was made only on the basis of marks obtained in the written examination and not on the basis of seniority. The applicant has filed annexure A-1 along with his O.A. which shows that a general
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direction/notice was given by the Divisional Railway Manager, N.C. Railway, Allahabad to spare 58 persons whose names have been mentioned in that letter to enable them to appear in the examination of Chief Coaching Supervisor in which 22 candidates were to be selected. The name of applicant also finds place in this letter at serial No. 38. It is nowhere stated by the applicant that he had not appeared in that selection. This fact has also not been specifically stated either in the O.A. or in the Rejoinder Affidavit that the post of Chief Coaching Supervisor was to be filled only on the basis of seniority. Thus, this contention of the applicant has also got no force and this point is also decided against the applicant.

14. It has been argued by learned counsel for the respondents that the seniority list was finally settled in the year 1987. It was published by the department and objections were invited by the aggrieved persons and it was finally settled seniority list as no objections were raised by the applicant. This O.A. has been filed in the year 2007 i.e. after about a lapse of 20 years and now it is not open to the applicant to challenge the validity of the above seniority list. In this connection it has been argued that between the name of applicant and Mohan Singh (respondent No. 5) several other persons have got their places in the seniority list and they have not been arrayed as party in this case and if it is unsettled, their settled seniority will be disturbed without any opportunity of hearing to them which should not be done. Reliance has been placed by the respondents on the case of '**G.C. Gupta and others Vs. N.K. Pandey and others AIR 1988 Supreme Court 268**' in which the Hon'ble Apex Court has observed as follows: -

"In this case the challenge to the seniority of the appellants which was determined by order dt. 20th July, 1956 was made in 197 i.e. after nearly 17 years and they have sought relief for redetermination of the seniority in accordance with the provisions of the aforesaid Service Rules. This cannot be permitted as it would amount to unjust



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deprivation of the rights of the appellants which had accrued to them in the meantime. The observation that "Every person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years' as made in the above case (Rabindra Nath Bose v. Union of India [AIR 1970 SC 470]) will be applicable to this case. Considering all these aspects it would be just and proper not to give any relief to the respondents on the ground of inordinate laches and delay in challenging the seniority list made in July, 1956."

In the above case, the Hon'ble Apex Court has specifically observed that after a long gap, the settled seniority should not be unsettled to the detriment of other intervening persons.

Reliance has also been placed by the respondents' counsel on the observation made by the Hon'ble Apex Court in the case of '**H.S. Vankani v. State of Gujarat (2010) 4 SCC 301**' wherein the Hon'ble Apex Court has held as under: -

"38. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority, etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instills confidence spreads harmony and commands respects among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume a lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and government, driving the parties to acute penury. It is well known that the salary that earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money-making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further, it also consumes a lot of judicial time from the lowest court to the highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest.

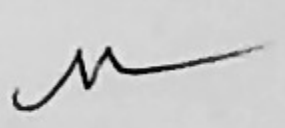
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39. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action. Legal principles have been reiterated by this Court in *Union of India v. S.K. Goel* (2007) 14 SCC 641, *T.R. Kapoor v. State of Haryana* (1989) 4 SCC 71 and *Bimlesh Tanwar v. State of Haryana* (2003) 5 SCC 604."

In the case of '*Union of India and others v. A. Durairaj J.T. 2011 (3) SC 254*', the Hon'ble Apex Court has expressed the same view which is as follows: -

"It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly, grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches."

15. On the other hand, learned counsel for the applicant has placed reliance on the observation made by the Central Administrative Tribunal, Principal Bench, New Delhi in '*Sanyukta Arjuna vs. Union of India and others* (O.A. No. 1180 of 2002) decided on 01.01.2003 2003 (1) Administrative Total Judgments page 558. In the aforesaid case, the Tribunal observed that where counting of seniority is in breach of Article 14 and 16 of the Constitution of India, it is a continuing wrong and law of limitation does not apply to it. This observation does not apply to the present case as the facts and circumstances of the present case are different and only point of limitation is not involved in this case. Reliance has also been placed by the applicant on the case of '*J.P. Shukla vs. Union of India and*



others (1990) 12 Administrative Tribunals Cases 475'. The facts of above case are also different and the applicant cannot get any benefit of the observations made by the Hon'ble Bench in the above case. The applicant further placed reliance on the case of '**K.P. Sudhakaran and another v. State of Kerala and others 2006 Supreme Court Cases (L&S) 1105'** in which the Hon'ble Apex Court has observed that 'when an employee is transferred to another department/ unit on his own request, his seniority has to be reckoned only from the date of his joining duty in the new department/unit. He has then to forego the past service.

16. In the present case, it has already been observed that the applicant could not prove that after completion of training, he was transferred and posted at Delhi Division and later on to Allahabad division. The case laws referred by the applicant's Counsel do not help the applicant as they are not applicable in the present case. The applicant has totally failed to file documentary evidence which was the best evidence to prove his case.

17. In the light of above observations made by the Hon'ble Apex Court when we examine the present case, we find that the seniority of respondent No. 5 and several other persons was already fixed since beginning and in any case in 1987 and the applicant never challenged that seniority and now after a lapse of 21 years, he cannot be permitted to challenge the same.

18. In view of the above discussions, we are of the view that the applicant could not make out a case in his favour. The O.A. is devoid of merits. Accordingly, the O.A. is dismissed. No order as to costs.

J. Chandra

[Ms. Jayati Chandra]
Member - A

S.S. Tiwari
{Justice S.S. Tiwari}
Sr. Member-J/HOD