

(7/18)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 172 of 2006.

May 23rd, 2008.

CORAM :

Hon'ble Mr. B.V. Rao, Member [J]

Hon'ble Mr. R.R. Bhandari, Member [A]

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- 1- Bhushan Lal Taneja s/o Late Shri L.D. Taneja aged about 51 years, at present working as Junior Inspector of Tickets (JIT) in Grade of Rs. 5000-9000 North Western Railway, Bikaner, resident of II Damni Quarters, Rani Bazar, Bikaner - 334001 (Raj).
- 2- Poonam Chand Bhati S/o Shri Ram Lal Bhati, aged about 58 years, at present working as Junior Inspector of Tickets (JIT) in Grade of Rs. 5000-9000, North Western Railway, Bikaner, resident of Near Jell Well Tank, Bikaner 334001 (Raj).
- 3- Ashok Kuamr Bhatnagar S/o Shri b.N. Bhatnagar, aged about 56 years, at present working as Junior Inspector of Tickets (J.I.T.) in Grade of Rs. 5000-9000, North Western Railway, Bikaner, resident of 5-Kha-20 Duplex Colony, Bikaner, 334001 (Raj).

.....Applicants.

By Mr. Y.K.Sharma, Advocate, for applicants.

VERSUS

- 1- Union of India through General Manager, North Western Railway, Jaipur.
 - 2- Divisional Personnel Manager, North Western Railway Bikaner
 - 3- Shri Tara Singh, Junior Inspector of Tickets (J.I.T.), in Grade Rs. 5000-9000, Hanuman Junction, North Western Railway, Hanuman Junction.
- Shri Shokat Beg, Junior Inspector of Tickets (J.I.T.), in Grade Rs. 5000-9000 North Western Railway.
- Bhagirath Bhatt S/o Shri Niku Ram at present working as Junior Inspector of Tickets (J.I.T.), in Grade Rs. 5000-9000, North Western Railway.

.....Respondents.

By Mr. Salil Trivedi, Advocate, for Respondents No. 1 and 2.

By Mr. Ravindra Paliwal, Advocate, for Respondent No. 3.

None present for Respondents No. 4 & 5.

ORDER

[PER B.V.RAO, MEMBER(J)]

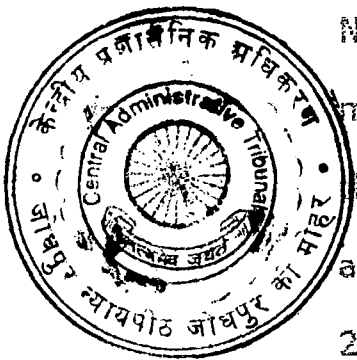
The applicants, have filed this Application under Section 19 of the Administrative Tribunals Act, 1985, mainly with the prayer to quash

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the impugned orders dated 16th November, 2005 (Annex.A/1) and 24th July, 2006 (Annex.A/2) and further the private respondents No. 3 and 4 (Serv Shri Tara Singh and Shokat Beg), be declared junior vis-a-vis the applicants, in view of several Judgements/Orders filed along with the O.A. as Annexs. A/4 to A/7.

2- The brief matrix of the case, according to the applicants, are that the respondent No. 2 has issued the impugned letter dated 24th July, 2006 (Annex. A/2) by which a selection for the post of Chief Inspector of Tickets Grade Rs. 6500-10500 is scheduled to be held on 27th August, 2006, wherein, the names of the employees who are likely to be appeared in the selection, have been shown according to the seniority list. They further states that the private respondents i.e. 3 and 4, have been senior to them. The private respondents have been re-deployed in the ticket-checking category after they were declared surplus in category of Signalers and they have been given benefits of their past service rendered as Signalers and have been assigned seniority over and above the applicants. They further states that applicant No. 1 has challenged the seniority of respondents No. 3 and 4 vide Representation dated 20th October, 2005, for which the respondent No. 2 has given reply vide impugned order dated 16th November, 2005 (Annex.A/1). They further states that it has been mentioned in the impugned letter dated 24th July, 2006 that any of them, who has got any objection, may file a representation and accordingly, the applicants filed a Representation dated 3rd August, 2006 (Annex.A/3), to which no reply has given by the authorities so far. It is further stated that before issue of the impugned letter dated 24th July, 2006, no seniority list was circulated and it is the first time that the applicants have come to know that respondents No. 3 and 4 have been assigned seniority over and above them. They further



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states that the respondent authorities issued impugned letter against the rules and law and also contrary to the law laid down by the Apex Court, High Court of Rajasthan and various Benches of this Tribunal, hence, the applicants approached this Tribunal to ventilate their grievances.

3- The respondents No. 1 and 2 contested the matter by filing a counter-affidavit stating that the Original Application is not within the prescribed period of Limitation inasmuch as the cause of action, if at all arose to the applicants, was in the year 1992 and 1994. They further contends with regard to assignment of seniority to the respondents No. 3 and 4, only in the year 1992 and 1994. The applicants, if at all, had any grievance against these two, they ought to have agitated the same well in time and hence, this Application deserves to be dismissed without going into the merits. They further contends that the post of Chief Ticket Inspector Grade Rs. 6500-10500 is a selection post and is required to be filled-in by a positive act of selection which contains written test and other formalities. Accordingly, respondents issued a Notification vide Annexure A/2 wherein, the eligible Junior Inspector of Tickets (JIT) / Dy.Chief Ticket Inspector (CTI) Grade Rs. 5500-9000 (RP) were called-upon to appear in the written test in accordance with their seniority and the seniority list dated 16th January, 2006, is marked as Annexure R/1 and it is the case of the respondents that the applicants have not raised any grievance against this seniority list and all the eligible candidates were called-upon to appear in the written test in accordance with the Seniority List Annex. R/1/1, therefore, no fault can be found so far as the Annex. A/2 is concerned. It is



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further contended by the respondents that respondents No. 3 and 4 have not only been shown as senior to the applicants in the seniority list issued on 16th January, 2006 but, they have been all-along senior to the applicants for years together and the fact that respondents No. 3 and 4 are seniors to the applicants and it is well within the knowledge of the applicants right from the year 1992 and 1994 respectively. Even during this period, the respondents issued seniority list(s) vide letter dated 29th March, 1995 and 10th September, 1998 (Annexs. R/1/2 and R/2/3) respectively. Therefore, the applicants cannot claim seniority over and above private respondents No. 3 and 4 at such a belated stage as there is a gross delay and laches and this Tribunal would not like to go into the merits of the case. They further contends that the respondents No. 3 and 4 were promoted as J.I.T. / Dy. C.T.I. In Grade Rs. 5500-9000 on 5th September, 1997 and 28th June, 1997 respectively, whereas, the applicant No. 1, 2 and 3 were promoted in Grade of Rs. 5500-9000 as J.I.T. / Dy. C.T.I. on 12th December, 1999, 14th July, 2001 and 14th July, 2001 respectively. They further contends that the applicants cannot take shelter of any judgement passed in respect of other employees in other OAs or the judgement of the Hon'ble High Court inasmuch as the applicants slept-over for their rights for years together and thus, waited for favourable decision in some other cases, which is not permissible under law. Moreover, the Railway Board Circular No. 93/2004 (Annex. A/8 does not have any application to the present case inasmuch as no circular or any rule can be applied retrospectively until and unless, it is so specifically provided. In view of the facts and circumstances of the case, the O.A. is liable to be dismissed for the lack of

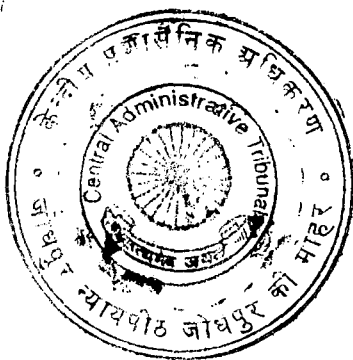


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merits.

4. Heard both the learned counsel for the parties.

5. The learned counsel for applicant Mr. Y.K. Sharma, reiterated the facts of the case and he mainly stated that the impugned letter dated 24th July, 2006 (Annex.A/2) is bad in law and is liable to be quashed since it was issued against the principles of law settled by the Apex Court and various other Benches of the Tribunal. He further stated that the Issue under challenge in this case with regard to counting of seniority for the employees who declared surplus and later on re-deployed in other department / cadre settled by the Apex Court as well as C.A.T. Benches and he further argued that the Issue was already settled by various judgements stating that the cadre of surplus who re-deployed in other cadre or departments, have been assigned the seniority from the date of absorption in the new department or cadre. He further status that the respondent - authorities without considering the various judgements have given the seniority to the respondent Nos. 3 and 4 taking into consideration of their previous cadre or unit which is against law and the principles of natural justice and he prayed to allow the O.A. by granting the reliefs as prayed in the O.A. and he relied-upon the following decisions.



ATJ 2005 (2) 229 - Ram Prabesh Mandal & Ors.
Vs.UOI & Ors.

ATJ 2001 (3) 303 - Ajit Kumar Chatterjee &
Ors.Vs.UOI & Ors.

ATJ 2004 (3) 276 - Naveen Kumar & Ors. Vs.UOI &
Ors.OA No. 67/2007 - Phusa Ram Bhadu Vs.
UIO & Ors. Decided on 2.4.2008.

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Civil Appeal Nos. 2530 / 81 & 1730 / 86.

- South Eastern Railway
Vs. R.N. Singh

OA No. 46/2004 - Ravindra Kuamr Pareek & Ors.
V.UOI. Decided on 14.7.2005.

6. Per contra, Mr. Salil Trivedi,, Advocate, learned counsel for the respondents vehemently argued and opposed the submissions raised by the learned counsel appearing for the applicant and he mainly contends that the application is liable to be dismissed on the ground of limitation. He further contends that the seniority with regard to the private respondents i.e. Respondents No. 3 and 4 were given in the year 1992-1994 and it is well within the knowledge of the applicants and thereafter also in the year 1995, 1998, the respondents issued seniority lists but, the applicants without raising any objection and without challenging the seniority list which was issued in the year 1995 and 1998 now they cannot claim seniority over and above the private respondents No. 3 and 4 after a long delay. And he further contends that the Railway Board issued a Circular No. 93/2004 (Annex.A/8) does not have any application to the present case since no Circular or any rule can be applied retrospectively until and unless it is so specifically provided. In view of the abnormal delay and the facts and circumstances of the case which are narrated in the reply, he prays to dismiss the O.A. with cost and he relied upon the following decisions :-

(i)2007 (2) SCC 725-

(ii)2006 (11)SCC 464 -

(iii)1977 SLR (2) 289 -



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7. We have gone through the complete records of the case as well as the decisions cited by both the parties. After a careful reading of the pleadings of the parties, the only issue before us is, whether the judgements and decisions which are cited by the learned counsel for the applicants, are applicable to the present case on hand ? The relief sought by the applicant in the O.A. is to quash and set aside the impugned order dated 16.11.2005 vide Annex. A/1 and order dated 24.7.2006 vide Annex.A/2 and to assign the seniority to the respondents No.3 and 4 according to the judgement vide Annex. A/4 and A/7. As per the order dated 16th November, 2005 (Annex.A/1), the applicants' representation was rejected with regard to seniority over and above the private respondents No. 3 and 4. In view of the Circular No. 93/2004 duly issued by the Railway Board and since their prayer was rejected they were shown at Sl. Nos. 11, 14 and 13 in the Panel dated 24th July, 2005 (Annex.A/2) in respect of selection for the post of C.I.T. Grade Rs. 6500-10500 (RP) in Commercial Department; whereas, the private respondents No. 3 and 4 were shown at Sl. No. 8 and 9 respectively which is the main challenge in the O.A. The main contention of the learned counsel for the applicants that the respondent - authorities ought not to have issued the order dated 24th July, 2005 (Annex.A/2) by giving the seniority to the respondents No. 3 and 4 over and above the applicants since the issue was already settled by an order and judgement dated 5th January, 2000 in the case of *Indian Railway Ticket Checking Staff Association and Another Vs. UOI & Others* [OA No. 489/1994] decided by this very Bench and also by an order and judgement of the Hon'ble High Court of Rajasthan at Jodhpur in



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D.B.C.Writ Petition No. 3435/2000 decided on 13th October, 2000.

8. We have gone through the judgements cited by the learned counsel for applicants wherein, in the case of **Ram Prabesh Mondal and Ors. Vs. UOI & Others**, our co-ordinate Bench at Kolkata held as follows :

"7. At the very outset, we may point out that some misconceptions are prevailing regarding applicability of the order of the judgment. A judgment is always retrospective unless the same is said to be prospective and the legislation is always prospective unless it is said to be retrospective. (M.A. Murthy - vs. State of Karnataka and others 2003 SCC (L&S) 1076 refers). The Hon'ble Apex Court has settled this issue in a catena of judgments. Now as far as assignment of seniority to the surplus staff is concerned the issue has been adjudicated upon on a number of occasions. We notice that the case came before the CAT of Allahabad Bench which is relied upon by the Ld. Counsel for the applicants. The same is also relied upon by the Jodhpur Bench of the Tribunal passed on O.A. 165 of 1997 vide order dated 24.2.99 wherein it has been stated in equitable term that the surplus staff cannot be entitled to the seniority list which they are enjoying on the earlier post. We have also gone through the various judgments which have been placed before us along with the judgments of this bench of the Tribunal. We find that the controversy has been elaborately dealt with. At this juncture we have no hesitation in following the ratio of the said decision and applying the same in this case.

8. In view of what has been stated and discussed above, the impugned seniority list dated 3.9.96 is hereby quashed. The applicants shall be entitled to all consequential benefits. We make it clear in the interest of both the parties that the surplus staff, some of them being private respondents here and some of them may be otherwise included in the seniority list dated 3.9.96 shall be granted their seniority only from the date of their absorption. The applicants are also entitled to their due promotion as per their original seniority in the feeder grade. With the above observation the O.A. is disposed of with no order as to costs."



In the case of **Ajit Kuamr Chatterjee & Ors. Vs. UOI & Ors.**, same 'Kolkata Bench has given the finding as follows :-

"8. The seniority of the surplus personnel when they are absorbed in the new department cannot take effect from the date of their original appointment but it shall

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necessarily take effect from the date of their absorption in the new department. In the case of **B.M. Nayar & Ors. -vs- Union of India & Ors.** Reported in (1991) 15 ATC 634 it has been held that a surplus person who has been absorbed has no legal right to claim benefits of past services of service conditions applicable prior to redeployment. In the case of **Chiranjiv Singh Jat & Ors. -vs- Union of India & Ors.** Reported in (1988) 6 ATC 402 also it was observed that benefit of past service for the purposes of promotion in new department cannot be claimed by the persons who had been declared surplus and were absorbed in the new department. The Hon'ble Supreme Court in the case of **Union of India & Ors. -vs- K. Savitri & Ors.** Reported in 1998 SCC (L&S) 1134 held that benefit of service rendered by a surplus employee in previous organization is not permissible for fixation of seniority in the organisation where surplus staff is redeployed. The legal position as it stands today is that a surplus employee cannot claim benefit of past service for the purpose of determination of his seniority in the new establishment where he is absorbed."

Similarly, our co-ordinate Bench at Lucknow, has held in **Naveen Kumar and Others Vs. U.O.I. & Ors.** as under :-



"6. Policy decision does not fall within the scope of judicial review unless decision is contrary to any statutory provision or the constitution. Court cannot examine relative merits of different economic policies and cannot strike down a policy merely on ground that another policy would have been fairer and better. In the present case it is alleged that an illegality has been committed in execution of the policy decision of the Railway Board, having the statutory forces. The court, therefore, is not debarred to have a judicial review of such decision.

7. It would be clear from the order of 17.11.2000 that the staff of mechanical side was redeployed and not transferred to electrical side. Had there been a conscious decision for transferring the staff of the mechanical side to that of electrical side, there was no question of maintaining the seniority and getting the promotion in original trade i.e. cadre. It appears that thereafter, a decision to absorb the mechanical staff completing 2-1/2 years in the electrical side and accord them the seniority on the basis of length of service in the grade was taken. The order 31.7.03 specifically states that integrated seniority list of the Technician (TL-1, TL-II, WTL, Single Trade, AC and Power) Grade III is being issued on the basis of length of service rendered by each Technician Grade III including redeployed surplus mechanical grade III already working in the electrical wing keeping their inter-se (seniority) intact. The grievance of the applicants is that in case such an integrated seniority list is prepared, the promotion / upgradation under the restructuring would deprive the electrical wing wireman Technician Grade III from such promotions because of the lowering down of their seniority.

8. The Railway Board circular dated 25.5.04 (Annexure -1 to the Supplementary RA) which amends the Indian Railway Establishment Manual, 1989 by Advance Correction Slip No. 159, provides that "It has been decided that the service rendered by the surplus staff prior to redeployment will not count for seniority and promotion in the absorbing unit." The other stipulations in the existing instructions when a large number of staff is being rendered surplus and they are absorbed in new units, they should be given their full seniority but kept in a separate block against special supernumerary posts in consultation with the Unions so that they seek promotion separately as per percentage applicable to them in their original cadre and the existing staff in the absorbing unit are also not adversely affected, remained unchanged.

9. The seniority list enclosed by the respondents has no relation to the present application. It appears that some other seniority list has been filed as Annexure No. CR-1. The seniority list which has been challenged by this O.A. is given as enclosure to Annexure No. A-1 to the O.A. On perusal of the said enclosure, it is clear that the applicants have been placed below the mechanical wing Technician Grade III and there is a minimum seniority loss of 9 serials. This would necessarily effect the Wireman adversely.

10. The respondents cannot go against the instructions issued by the Railway Board on 25.5.2004 discussed above. The present O.A. is fully covered by the full bench judgement of CAT in P.K. Dubey's case. It also gets support of V.K. Debey and Rama Kant Chaturvedi's case.

11. In view of the above discussion, we are of the considered opinion that the respondents have not passed the order rejecting the representation of the applicant and issued the seniority list as provided for in the Railway Board Circular dated 25.5.2004. On this ground alone, the seniority list dated 31.7.03 (Annexure No.A-1) and rejected order dated 24.3.04 (Annexure No.A-2) are liable to be quashed. Respondents have to follow the instructions issued by the Railway Board.

12. In the result, O.A. succeeds. The seniority list dated 31.7.2003 (Annexure A-1) and rejection order dated 24.3.2004 (Annexure A-2) are quashed. Respondents are directed to act in accordance with the instructions issued by the Railway Board vide letter No. E(NG) 1-2000/SR-6/23 dated 25.5.2004. No orders as to costs."



In a similar case i.e. **Phusa Ram Bhadu Vs.UOI &**

Ors. this Bench observed as follows :-

"4. The sole question which requires our consideration is whether the service rendered by the applicant in the Claims Branch in the grade of Rs. 5500-9000 as Office Superintendent - II with effect from 05.05.1998 should be counted for the purpose of seniority in the cadre of E.R.S. According to us, the matter on this point is no longer res integra. The Apex court as far back as in the year 1980 in the case of Rama Kant Chaturvedi and Ors. vs. The Divisional Superintendent, Northern Railway, Moradabad and Ors., 1981 SCC (L&S) 423 has categorically held that the seniority in the old unit (in this case Loco Department) is of no relevance in determining

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seniority in new Unit (in this case C&W Department) when they are appointed in new unit on different dates. The facts of the case were that the diesel unit of railway was constituted for the first time apart from the steam unit already existing. The two units were treated as separate and distinct having different avenues of promotion. Some of the persons belonging to Fireman category were drafted from steam unit to diesel unit, possessing a minimum qualification of matriculation to the diesel side as Drivers' Assistant after giving them requisite training. This resulted in absorption of junior persons as Drivers Assistant on the diesel side as against senior persons who could not be drafted on the diesel side as they did not fulfill the requisite qualification. Subsequently, relaxation was granted to the category of those Fireman and they were also granted promotion as Drivers Assistant. The issue before the Apex Court was whether persons who were senior as Fireman in steam side and were absorbed in the diesel side after the absorption of some of junior persons as Driver Assistant after granting them relaxation in educational qualification should be placed senior in that category on the basis of their seniority in steam side. The Apex court categorically held that the seniority on the steam side is of no relevance in determining seniority in diesel side when they are appointed on diesel side on different dates. The judgement in the case of Rama Kant Chaturvedi (supra) was further followed by the Apex Court in the case of V.K. Dubey and Ors. vs. Union of India and Ors., 1997 (4) SLR 251. This was a case where the appellants before the Apex Court were drafted on diesel side of the locomotive operation. Subsequently on introduction of electrical engines, they were given training and were absorbed in electrical locomotive side. The controversy before the Tribunal was regarding inter-se seniority. The Tribunal held that since they were deployed to the electrical side for the first time, their seniority was required to be counted from the date of deployment in the electrical locomotive operation and the previous service cannot be counted for the purpose of determination of inter-se seniority. For that purpose, reliance was placed on the judgement of the Supreme Court in the case of Rama Kant Chaturvedi (supra). The Apex Court while upholding the judgement of the learned Tribunal dismissed the appeal of the appellants and in Para 5 of the judgement, has made the following observations :



"5. Shri Vijay Bahuguna, learned senior counsel appearing for the appellants, contends that since they had been working on the diesel side for a long number of years, merely because they were sent to training for three months to be absorbed in the electrical locomotive operations, their entire previous length of service cannot be wiped out causing detriment to their length of service and promotional avenues on account of the change in the policy. Therefore, the view taken by this Court requires reconsideration. We find no force in the contention. It is seen that the diesel engine drivers and the staff working with them operates in one sector, namely, diesel locomotive sector, while electrical engine drivers and the staff operating on the electrical engines operate on a different sector. Consequent upon the gradual displacement of diesel engines, instead of retrenching them from service they were sought to be absorbed by giving necessary training in the trains operating on electrical energy. As a consequence, they were shifted to a new cadre. Under these circumstances, they cannot have a lien on the posts on electrical side nor they be entitled to seniority over the staff regularly

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working in the electrical locomotive detriment. Under those circumstances, this Court has held that they cannot have a seniority over them..... "

Thus, in view of the law laid down by the Apex Court as stated above, we are of the view that the present O.A. is squarely covered by the ratio laid down by the Apex Court in the case of Rama Kant Chaturvedi (supra) more particularly in the case of V.K. Dubey (supra) where the issue as involved in this case was directed involved.

..... Calcutta ench in the case of Ram Prabesh Mondal and ors. Vs. Union of India and Ors. Reported in 2005 (2) ATJ 229 whereby it was held that surplus staff on their absorption to other units will count their seniority from the date of absorption and the impugned seniority list assigning seniority to surplus staff on the basis of length of service in the earlier panel was quashed.

313A: Assignment of seniority to redeployed staff :
The surplus employees are not entitled for benefit of the past service rendered in the previous unit / department for the purpose of their seniority in the new unit / department. Such employees are to be treated as fresh entrants in the matter of seniority, promotion etc.

"2.CAT/Jodhpur in their recent judgement dated 24.12.1999 in OA No. 165/98 - Shri Surinder Prakash and others vs. Union of India and others and another dated 05.01.2000 in OA No. 489/94 - Indian Railway Ticket Checking Staff Association and another Vs. Union of India and Ors. have allowed the applications filed by the Railway employees against the procedure of allowing full seniority to surplus staff on their absorption to another cadre. These judgements were based upon the judgement dated 29.07.1988 of Hon'ble Supreme Court in C.A. No. 2530/81 and 1730/87 in the case of South Eastern Railway and Ors. vs. Ram Narain Singh and Ors. And also the judgement dated 18.11.1980 in the case of Ramakant Chaturvedi and Ors. Vs. Divisional Supdt., Northern Railway, Moradabad and Ors. - 1980 (Supp) SCC 621. A copy of Apex Court's judgement dated 18.11.1980 was circulated to the Railways vide this Ministry's letter No. E(NG)I - 80 / PM1/292 dated 16.03.1981 for information and guidance.

Thus, from reading of Para 2 of the letter dated 25.05.2004 as reproduced above, it is clear that the judgement of the Apex Court was circulated for information and guidance vide Ministry letter dated 16.03.1981 and also that the Supreme Court has given directions that surplus staff absorbed in other cadres / departments will not count their service rendered by them in the parent cadre / department for the purpose of seniority and promotion. Thus, viewing the matter on the basis of law laid down by the Apex Court as early as in the year 1980 and followed subsequently and also that now the railway authorities have also inserted specific provision i.e. Para 313A in the IREM, the only conclusion which can be drawn is that the respondent No. 4 belongs to the E.R.S. Cadre, whereas the applicant prior to his absorption in the E.R.S. cadre belongs to the Claims Branch which is a different cadre. Consequent upon the displacement of the applicant from Claims Branch along with other persons, instead of retrenching him from service, he was sought to be absorbed in another unit / cadre by giving necessary training so that he can be



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adjusted to a new cadre. Under these circumstances, the applicant is not entitled to the seniority over the staff already working in the E.R.S. Cadre. Thus, the claim of the applicant that he be assigned seniority in the grade of Rs. 5500-9000 with effect from 05th May, 1998 i.e. by counting past service cannot be accepted.

5. Further, the applicant cannot draw any assistance from the instructions dated 21.04.1989 which provides that the seniority of redeployed staff is required to be assigned on the basis of length of service in their respective grade being contrary to the law laid down by the Apex Court as noticed above in view of the reasoning given herein above. Thus, we see no infirmity in the action of the respondents whereby the respondents vide order dated 26.05.2005 (Annexure A/1) has stated that the applicant will get seniority in terms of Railway Board's letter dated 25.05.2004.

6. The grievance of the applicant is regarding tentative seniority list and not regarding the final seniority list, as such, we are of the view that no finding on this aspect is required to be given in the absence of necessary parties as well as in the absence of challenging the validity of the final seniority list and this question is left open.

7. With these above observations, the Original Application is disposed of with no order as to costs."

9. Thus, we are of the opinion that the issue involved in the present case is already decided by various coordinate Benches of C.A.T. on the basis of the findings given by the Hon'ble Supreme Court in Civil Appeal No. 2530/1981 and 1730/1986 in the case of **Southern Eastern Railway and Ors. vs. Ram Narain Singh and Ors.**

And very recently a similarly case in the case of **Ravindra Kumar and Ors. Vs. UOI & Others** [OA No. 46/2004] decided on 14.7.2005, it was held as follows :-



"We have considered the rival submissions including the various judgements cited on behalf of the applicants. On wading through the same, we find that in the decision in **Ram Prabesh Mondal and Ors. (supra)**, the issue involved in the instant case had been exhaustively and extensively dealt with. The said decision is based on a specific judgement of the Apex Court in the case of **V.K. Dubey and Ors. Vs. Union of India and Ors. [1997 SCC (L&S) 1123]**. It has also been held therein that judgements always will have retrospective effect until the same is said to be prospective and the legislation is always prospective until the same is said to be retrospective. In this view of the matter, we find it safe to conclude that the issue involved in the instant case is fully covered by the ratio of

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the said decision and we have no hesitation in applying the same and decide the case on similar lines. We also do not find it necessary to repeat the discussion made in *Ram Prabesh Mondal and Ors. (supra)* afresh. In any case the discussions made in the said decision shall be read as a part of this case."

10. We have also gone through the judgements cited by the learned counsel for respondents :

2007 (2) SCC P. 725 - A.P. Steel Re-Rolling Mills Ltd. Vs. State of Kerala and Ors. And Victory Papers and Boards India Ltd. Vs. State of Kerala & Ors.

2006 (11) SCC P. 464 -U.P. Jal Nigam and Another Vs. Jaswant Singh and Another.

In the case of A.P. Steel's, it was held by Hon'ble the Supreme Court in para 40 as under :-

"40. The benefit of a judgement is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this Court. If it is found that the appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief."

The Apex Court in *U.P. Jal Nigam and Another Vs. Jaswant Singh and Another* held as follows :

"8. Our attention was also invited to a decision of this Court in *State of Karnataka v. Kotrayya*. In that case the respondents woke up to claim the relief which was granted to their colleagues by the Tribunal with an application to condone the delay. The Tribunal condoned the delay. Therefore, the State approached this Court and this Court after considering the matter observed s under : (SCC p.268)



"Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-sections (1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper

explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay."

9. Similarly in Jagdish Lal Vs. State of Haryana this Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the court, then such person cannot stand to benefit. In that case it was observed as follows : (SCC p.542).

"The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Virpal Singh Chauhan case. The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage."

On considering the cases cited above, by learned counsel for respondents, we are of the opinion that the facts and circumstances in the cited case are entirely different to the present case and hence, the ratio of above said judgements are not applicable to the instant case.

11. The only and the main contention raised by Mr. learned counsel for respondents is that applicants approached this Tribunal with abnormal delay and also the benefit of a judgement is not extended to a case automatically and they cannot take shelter of a judgement passed long-back and the applicants are thus dis-entitled to get the relief as prayed by them in this O.A. after traversing the case. However, we are not inclined to agree with the contentions and stand taken by the respondents. The main relief of the applicants' herein, are that the private respondents No. 3 and 4 should be assigned seniority in accordance with the judgement of the Hon'ble Supreme Court in Civil Appeals No. 2530/1981 and 1730/1986 and other judgements delivered by various Benches of this



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Tribunal after following the Apex Court judgement wherein, the issue with regard to the assignment of seniority for the employees who were declared as surplus and re-deployed in other departments / units should reckoned from the date when they are re-deployed in the other departments / units. Since the issue has already been settled by the Hon'ble Supreme Court and the other Benches of Central Administrative Tribunal long back, now, there is no need to go into the merits and demerits of the case with regard to assignment of seniority for the surplus employees who re-deployed in other departments / units.

12. In view of the above facts and circumstances of the case, the panel for selection to the post of C.I.T. Grade Rs. 6500-10500 (RP) in Commercial Department dated 24th July, 2005, is in utter violation of the Rules and against the judgement of Hon'ble Supreme Court as well as various Benches of this Tribunal and similarly the impugned order dated 16th November, 2005 rejecting the representation of the applicants dated 20th October, 2005, is wholly bad in law and against the principles of natural justice and the same is liable to be quashed.





13. For the foregoing reasons and discussions made above and in view of the findings and observations given by the Hon'ble Supreme Court and various Benches of this Tribunal, we have no hesitation to quash and set aside the impugned orders dated 16th November, 2005 (Annex.A/1) and 24th July, 2006 (Annex./2) and accordingly, the same are quashed and set aside and we direct the respondents to assign the seniority to respondents No. 3 and 4 in accordance with the

judgement vide Annexs. A/4 to A/7 and prepare a Seniority List accordingly. The Interim Order which was granted by this Tribunal on 18th August, 2006 and modified on 19th September, 2007 is made absolute. It is made clear that the applicants are also entitled to their due promotion as per the seniority list to be prepared by the respondents and they are entitled to all consequential benefits accordingly.



14. We made it clear that the respondents shall conclude the entire exercise within a period of three months from the date of receipt of a copy of this order. The Original Application is allowed but, with no order as to costs.


[R.R. Bhandari]
Member (A)


[B.V. Rao]
Member (J)

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