

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No .241/2005

This the th16 day of February, 2012

Hon'ble Shri Justice Alok Kumar Singh, Member (J)

Hon'ble Sri S.P.Singh, Member (A)

Amar Singh Chauhan aged about 50 years son of late RADheybar Singh working as Technician Grade I at Loco Bogie Repair Shop, Locomotive Workshop, Northern Railway, Charbagh, Lucknow resident of 95,Pawanpuri , Lane No.10, Alambagh, Lucknow.

Applicant

By Advocate: Sri Surendran P

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Works Manager, Locomotive Workshop, Northern Railway, Charbagh, Lucknow.
3. Sri S. Bhattacharya (T.No. FEB 08/EL-49) son of late M.M. Bhattacharya, aged about 55 years working at Loco Bogie Repair Shop, Locomotive Workshop, Northern Railway, Charbagh, Lucknow.
Sri Krishna Shiormani (T.No. FEB 11/EL-52) son of late Joginder Prasad aged about 55 , working at Loco Bogie Repair Shop, Locomotive workshop, Northern Railway, Charbagh, Lucknow.
(c/o Chief Works Manager, Locomotive Workshop, Northern Railway, Charbagh, Lucknow.)

Respondents

By Advocate: Sri B.B. Tripathi for respondents No. 1 and 2

Sri A.Moin for respondents No. 3 and 4

(Reserved on 14.2.2012)

ORDER

By Hon'ble Shri Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for the following reliefs:-

- A. The Hon'ble Tribunal may graciously be pleased to quash the order dated 20.8.2004 and 19.2.2005 filed at Annexure No. A-1 and A-2 and also quash the letter dated 15.10.79 enclosed with Annexure No.A-2. Issue directions to the respondent No.2 to draw the seniority list right from 1984 and onwards in terms of P.S. No. 6000 showing the date of birth , date of appointment and the date of promotion in the skilled fitter Grade III and onwards of FLB Shop. No seniority list had been issued in August, 1984. As such the seniority list issued in the Month of September, 1984 may be quashed and fresh correct

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seniority list may be issued. The inter-se-seniority issued on 9.4.1998 may also be quashed.

2. The case of the applicant is that he was appointed as Trainee for Fitter Trade under Apprentice Act, 1961 in January, 1974. Thereafter, on completion of training, the applicant passed the written and practical test. Under the Apprentice Act, 1961, 50% post in the skilled grade were being filled from the qualified trade apprentices. Accordingly, the applicant was called for the trade test in May, 1977 for the post of Skilled Fitter Grade III. He appeared in that test and was declared successful. Then he was appointed as Skilled Fitter Grade III vide appointment letter dated 27.6.77 (Annexure A-4) in the grade Rs. 260-400. On the other hand, O.P Nos. 3 and 4 were initially appointed as Casual labour and after 120 days of continuous service, they were appointed as Khalasis in scale of Rs. 196-232 on 9.7.70 and 2.11.73 respectively. As per avenue of promotion, the Khalasis get promotion in semi Skilled Grade after qualifying the trade test on completion of 3 years of service. The applicant was declared confirmed as Skilled Fitter Grade III on 24.6.80 in scale of Rs. 260-400. On the other hand, Opposite Party Nos. 3 and 4 did not qualify for trade test for promotion to the post of Semi Skilled Fitter Grade in the scale of Rs. 210-290 (R.S.). They were declared unsuitable for promotion as Diesel Mechanic and Electric Mechanic fitter in scale of Rs. 260-400 in 1978. O.P. No. 3 ultimately qualified the trade test for promotion to the post of Skilled Fitter Grade III in the scale of Rs. 260-400 for promotion on 26.6.78 while O.P. No. 4 was promoted on 28.8.78. Thus, both were promoted on the said grade after the applicant who was promoted vide order dated 27.6.77. Therefore, he is senior than the opposite parties No. 3 and 4. The applicant as well as both the opposite Party No.s 3 and 4, were called to appear in the trade test for promotion to the next post of Fitter Grade II and they were declared suitable for

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the post as such they were promoted in that grade vide order dated 18.12.79. The respondent No.2 issued the seniority list of Skilled Fitter Grade III , Grade II and Grade I in September, 1984. In that list, opposite party No.s 3 and 4 find place at Sl.No.6 and 8 i.e. senior to the applicant. The seniority list was not prepared in accordance with the instructions and the date of promotion to the post of Skilled Fitter Grade III was not mentioned. Therefore, the applicant could not make any representation against the said seniority list. The opposite party No.2 issued a seniority list in the year 1988 in which the date of promotion of opposite party Nos. 3 and 4 in the above grade were shown as 26.6.78 and 28.8.78, whereas the applicant was directly recruited as Skilled Fitter Grade III on 22.6.77. It was noticed that opposite party Nos. 3 and 4 were promoted as Skilled Fitter Grade I on 6.2.84 and 1.4.85 respectively but without any notification of the trade test. In other words, they were promoted without qualifying any trade test for promotion to the above grade. The applicant moved a representation on 20.4.98 against the said seniority list followed by reminders dated 5.4.99, 1.12.2002, 6.1.2003 and 17.3.2004. The respondent No. 2 ultimately gave his reply vide order dated 20.8.2004 which was not satisfactory. Therefore, the applicant again made a representation in detail on 23.8.2004 with reference to Annexure A-1. It was replied by the respondent No. 2 vide letter dated 19.2.2005 (A-2). The applicant was not promoted as Highly Skilled Fitter Grade I due to wrong assessment of seniority. As a result of this, he could not get promotion in next higher grade in the category of Master Crafts Man/ Senior Technician prior to opposite party Nos. 3 and 4. In violation of Article 14 and 16 of Constitution of India, the service of the applicant was disturbed and he was deprived from being promoted prior to his juniors.

3. The claim of the applicant has been contested by official respondents saying that the applicant has no cause of action at this

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belated stage to claim the seniority against opposite party Nos. 3 and 4 which has already been settled in 1979. Opposite Party Nos. 3 and 4 were appointed as Khalasi on 9.7.70 and their casual labour services were regularized on 2.11.73. They were sent for Diesel Conversion Training on 4.5.77 and they were allowed pay scale of Rs. 260-400. However, they could not qualify the conversion training and as such they were posted in ELB Shop after passing trade test in Fitter Grade on 24.6.78 and 26.8.78. From those dates, they were drawing Rs. 260-400/-. On the other hand the applicant was confirmed in Fitter Grade III in the pay scale of Rs. 260-400 on 24.6.80. Therefore, he cannot be allowed seniority over opposite party Nos.3 and 4, who were given said scale in 1977 itself. This position has already been clarified through letter dated 20.8.2004 (Annexure 1). It has been denied that opposite party Nos. 3 and 4 did not qualify the trade test. In fact, both were given regular promotion in Fitter Grade III after passing the trade test in the year 1977. However, they were given scale of Rs. 260-400 w.e.f. 3rd and 4th May, 1977 when they were sent for training on 4th May, 1977. During 1976-1977, new Diesel Shop was carved out from the existing Steam Shop. It was decided as a policy matter that existing employees who are willing to work in the skilled category will be given seniority from the date of joining and necessary training needed will be given, though it will not affect the seniority. The Opposite Party Nos. 3 and 4 opted for skilled category. Accordingly, they were sent for training on 4.5.77 and became entitled for seniority from the date of their joining i.e. 4.5.77. The applicant as well as opposite party Nos.3 and 4 were promoted as HSK Grade II in scale Rs. 330-480 simultaneously on 18.12.79. As the opposite party Nos. 3 and 4 were declared senior to the applicant, they were further considered for promotion in HSK Grade I prior to the applicant on 1.4.85 and 6.2.86 in the scale of Rs. 380-560/- This promotion was never challenged by the applicant. Accordingly, the

opposite party Nos. 3 and 4 were further promoted in the next higher grade of MCM in the scale of Rs. 425-700 on 1.3.93 and 8.8.94. As such, the seniority in Skilled Grade III in the scale of Rs. 260-400 of the applicant vis-à-vis opposite party Nos. 3 and 4 was settled on 15.10.79 which was never objected by the applicant. Therefore, he cannot challenge and unsettle the seniority at this juncture. It was not possible to consider the representation regarding seniority of Skilled Fitter Grade III in the scale of Rs. 260-400 after a lapse of more than 20 years, since the matter has already been decided on 15.10.79. The settled seniority cannot be unsettled. Besides, the old record of about 28 years are not available at this belated stage. The seniority cannot be unsettled after a long period of time also in view of the various judgments of the Hon'ble Supreme Court which have been followed by this Tribunal in O.A. No.206/99 decided on 11.4.2005. When the applicant himself approached the representatives of Union and tried to represent through them, then it cannot be said that he was not aware of the decision taken on 15.10.79.

4. Private respondents No. 3 and 4 have also filed separate Counter Affidavits containing almost the same pleadings as contained in the Counter Affidavit filed by the official respondents.

5. The applicant also filed Rejoinder Reply, reiterating the pleadings contained in the O.A. and also saying that respondent No. 2 is the controlling officer of the workshop and he has manipulated his record to remove the allegations made in the O.A. He might have weeded out the record pertaining to the seniority of the applicant and issued the illegal order on 15.10.79 in favour of the respondents No. 3 and 4 to establish as authentic.

6. A Supplementary Counter Affidavit has also been filed on behalf of the respondents No. 1 and 2 after amendment was incorporated in the O.A., wherein the claim of the applicant has been refuted.

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7. Written arguments have been filed in this case from both the sides. Besides, oral arguments were also heard at length.

8. The claim of the applicant is that he was appointed as Skilled Fitter Grade III vide appointment letter dated 27.6.77 (Annexure A-4) in the grade of Rs. 260-400. Similarly it is claimed that he was declared confirmed as Skilled Fitter Grade III on 26.4.80 in the scale of Rs. 260-400/-. On the other hand, according to the applicant, opposite parties No. 3 and 3 did not qualify for trade test for promotion and they were declared un-suitable for promotion as Diesel Mechanic and Electric Mechanic Fitter in the scale of Rs. 260-400/- in 1979. Ultimately, the O.P. No. 3 was promoted in the Skilled Fitter Grade III in the scale of Rs. 260 on 260-400/- on 26.6.78 while opposite party N. 4 was promoted on 28.7.78. Therefore, the contention is that the applicant having been promoted in the said scale on 27.6.77 is senior. Thereafter, the applicant as well as respondents No. 3 and 4 were found suitable for promotion to the next post of Fitter Grade II and they were promoted in that grade vide order dated 18.12.79. It is said that the respondent No. 2 issued seniority list of skilled Fitter Grade III, II and I in September, 1984. But it was not prepared in accordance with the instructions and the date of promotion to the post of Skilled Fitter Grade III was not mentioned. Therefore, the applicant could not represent against the seniority list. Ultimately, a complete seniority list was issued in the year 1988 showing the date of promotion of opposite party Nos. 3 and 4 as 26.6.78 and 28.8.78 in the above grade, whereas the applicant was directly recruited in Grade III on 24.6.77. It is further said that opposite party Nos 3 and 4 were promoted as Skilled Fitter Grade I on 6.2.84 and 1.4.85 respectively but without any notification or the trade test. Therefore, the applicant moved initial representation on 20.4.98 against the said seniority list followed by several reminders mentioned in the OA. Respondent No. 2 ultimately gave reply vide

order dated 20.8.2004 which according to the applicant was not satisfactory. Therefore, he moved another representation on 23.8.2004 which was replied by the respondent No. 2 vide letter dated 19.2.2005 (Annexure A-2).

9. The claim of the applicant has been contested specifically firstly on the ground that the applicant has no cause of action at this belated stage to claim seniority over O.P. Nos. 3 and 4 which has already been settled in the year 1979. This fact has been clearly mentioned even in the aforesaid letter of the respondent (Annexure A-2). Even if the version of the applicant is taken to be correct that the date of promotion to the post of Skilled Fitter Grade III was not mentioned in that list and it was in the September, 1984 that another seniority list of Skilled Fitter Grade III, II and I was issued in which Opposite Parties No. 3 and 4 were shown to be senior than the applicant, then also this O.A. is highly belated because of its being filed after about more than 20 years, in the year 2005. It is needless to say that repeated representations do not bring a matter within the ambit of limitation. Apparently, the applicant has filed this O.A. claiming himself to be aggrieved with an order dated 20.8.2004 passed on one such representation of the applicant dated 12.7.2004 (Annexure A-1) and another order dated 19.2.2005 of the respondents (Annexure A-2). In Annexure A-2, it has been clearly mentioned that the issue of seniority has already been decided in the year 1979 and in this regard, the applicant has already been informed vide letter No. L/50-E/E.L. dated 15.10.79. Therefore, this O.A. is highly barred by limitation in view of provisions of Section 21 of the AT Act. Hence, it cannot be entertained. The applicant has not even moved a formal application for condonation of delay in filling the O.A. This O.A. is therefore, liable to be dismissed on the ground of limitation itself. The official respondents have also taken a plea that the applicant has assailed the order dated 15.10.79 pertaining to fixation of seniority

and also claiming relief that the seniority list may be drawn right from 1979 onwards. But this Tribunal itself was established in the year 1985. Therefore, on this ground, this Tribunal has no jurisdiction to decide this controversy. We find substance in this point also.

10. As far as the merits of the case is concerned, at the outset, it may be mentioned that the applicant could not substantiate his claim as contained in his pleadings. On the contrary, from the pleadings of the official respondents as well as private respondents, it comes out that the applicant was having some misconception regarding his seniority over opposite party Nos.3 and 4 on the ground that he was posted in the grade of Rs. 260-400/- w.e.f. 22.6.77 while opposite parties No.3 and 4 were given the above grade on 26.6.78 and 28.8.78. But the fact of the matter is that opposite parties No. 3 and 4 were initially appointed as Khalasi on 9.7.79 and their casual labour services were regularized on 2.11.73 itself. Thereafter, they were sent for Diesel Conversion Training on 3/4-5-77 and from that date itself, they were also allowed pay scale of Rs. 260-400. This fact was also clearly mentioned in the letter dated 20.8.2004 of the official respondents (Annexure A-1). On the other hand, the opposite parties No.3 and 4 could not qualify the conversion training. Therefore, they were posted in ELB shop after passing trade test in Fitter Grade on 24.6.78 and 26.8.78. Thereafter, the applicant as well as opposite Parties No. 3 and 4 were promoted as HSK Grade II in the scale of Rs. 330-200. Opposite Parties No. 3 and 4 being senior to the applicant, they were further considered for promotion in HSK I much prior to the applicant on 1.4.85 and 6.2.86 and this promotion was never challenged by the applicant. Accordingly, opposite parties No. 3 and 4 were further promoted to the next higher grade of MCM in the scale of Rs. 425-700 on 1.3.93 and 8.8.94 respectively. These specific averments contained in the C.A. of the official respondents could not be satisfactorily and specifically controverted in the R.A.

The above factual matrix does not appear to have been even challenged in the R.A. About letter dated 15.10.79 nothing substantial could be said except that it is a fabricated letter. But this contention of fabrication could not be substantiated by the applicant by any supporting evidence. Similarly, in respect of seniority list issued in the year 1984, it has been contented in the R.A. that it was not prepared according to rules. But the applicant failed to show and prove as to how this seniority list is against the rules and even if it was so, then why he did not challenge it within the stipulated time. Thus, once the seniority between the applicant and opposite parties No. 3 and 4 continued to be remain unchanged from the year 1977 to the year 2005 i.e. for the last about 28 years, the same cannot be altered and challenged now. The settled seniority list cannot be unsettled in this manner. In this regard, the official respondents have placed reliance on the case of **B.S. Bajwa Vs. State of Punjab and others 1998, SCC (L&S) 611** (decided on 11.12.1977 by the Hon'ble Apex Court (C.A. No. 7605-7610/96). In this case, it was observed that in service matter, the question of seniority should not be re-opened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable.

11. Finally, therefore, in view of the above, the O.A. deserves to be and is accordingly dismissed. No order as to costs.

S.P.Singh
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(S.P.Singh)
Member (A)

Alok Kumar Singh
16.2.12
(Justice Alok Kumar Singh)
Member (J)

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