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CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH, LUCKNOW.

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Registration O.A. No. 79 of 1989

Jai Narain Saxena Applicant.

Versus

Union of India and others Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

By means of this application, the applicant challenges the validity of the order dated 11.4.1988 and the letter dated 9.12.1987 altering the seniority position of the applicant on the post of M.S.M. Grade III to M.S.M. Grade-I. The applicant was initially appointed as Signal Khalasi on 10th July 1959 in the Northern Railway, Division. The applicant was thereafter sent for training vide order dated 4.3.1968 for the post of M.S.M. Out of 27 persons only Sri Chunni Lal, Sri Jata Shanker Bhatt and Sri Zamil Ahmad along with the applicant ~~pass~~ passed the test while rest of 23 persons including Sarvasri Hazari Lal, Jagdish Prasad Bhargava, Sant Ram and Ganga Bishun failed in the test. The applicant successfully passed the training course on 11.7.1968. Sri Hazari Lal, Jagdish Prasad Bhargava, Sant Ram and Ganga Bishun could pass the trade test for M.S.M. Grade III on 29.4.1968, 28.3.1968, 29.4.1968 and 18.7.1970 respectively. It appears that vide order dated 13.3.1970 was passed reverting the applicant from the post of M.S.M. III to the post of relieving Khalasi for M.S.M. retaining the juniors to the applicant namely Hazari Lal, Jagdish Prasad Bhargava, Sant Ram, Ganga Bishun who had not only ~~pass~~ passed the test much after the applicant but were also promoted to the post of M.S.M. III.

after the applicant. The applicant being aggrieved of the aforesaid order of reversion, filed a Writ Petition before the Hon'ble High Court, Lucknow Bench, Lucknow, which came up for consideration along with other petitions. It appears that the applicant's application was dismissed and other petitions are allowed. All the aforesaid junior persons were however retained and allowed to work on the post of M.S.M.III which the applicant was reverted from the post of M.S.M. III to relieving Khalasi for M.S.M. unreasonably. The court held in the judgment dated 24.11.1960 that the applicant can succeed only against Hazari Lal on the basis of applicability of paragraph 320(b) of the ~~the~~ Railway Establishment Manual. As only one post was available, the senior most among the applicants can alone succeed. Dwarika Prasad is senior most among the applicant inter-se. The applicant was assigned seniority on the post of M.S.M. Grade-I w.e.f. 26.9.1979 on which date the ~~said~~ seniority was due to the applicant. Before fixing the seniority of the applicant, appropriate opportunity was afforded to all concerned and thereafter, the seniority list was circulated vide letter dated 23.2.1987 placing the name of the applicant at serial No. 26 which was later on confirmed as such. The applicant was shocked to receive a show cause notice dated 9.12.1987 after about 4 years issued by the respondent no.4 whereby the applicant was apprised that the seniority of the applicant on the post of M.S.M. Grade-III was proposed to be revised and as such the applicant was asked the ^{to apply for} proposed change. Indeed the respondent no.4 was incompetent to issue such a notice dated 9.12.1987. Opening the settled question of seniority fixation on the post of M.S.M. Grade-III, when the applicant is functioning on

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the post of M.S.M. Grade-I was wholly without jurisdiction, yet the applicant filed a representation before the respondent no. 4. The aforesaid representation of the applicant was rejected by the respondents on 11.4.1988 without assigning any reason.

2. It is stated by the respondents in their written statement that the applicant was assigned seniority from the date of passing of trade test dated 22.4.1986. In terms of para-136 of the Indian Railway Establishment Manual, actually the applicant's seniority should have been fixed keeping in view of the substantive seniority of Khallasi and he was advised accordingly vide letter dt. 9.12.1989.

3. In view of the facts stated above, the applicant's seniority has been reverted which has been admitted by the respondents themselves in their counter affidavit and his representation has also been rejected by the respondents on 11.4.1988 by which the seniority of the applicant was altered. By staying the operation of the impugned order dt. 11.4.1988, the respondents ~~were~~ restrained not to take away any benefit from the applicant in pursuance of this impugned order, and respondents ~~were~~ also directed not to disturb the seniority of the applicant. It is open to the respondents, if some modification has taken place regarding the seniority, it should be done in accordance with law and the respondents will hear all these persons and decide the matter within 3 months taking into consideration the legal position and ~~over~~ observations made in this judgment. The application is disposed of with the above terms. Parties to bear their own costs.

Amulya S
Member (A)
Dt: 9.12.1991
(n.u.)

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Vice-Chairman