

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 406 of 2006

Reserved on 22.4.2014

Pronounced on 21st May, 2014

**Hon'ble Mr. Navneet Kumar, Member -J
Hon'ble Ms. Jayati Chandra, Member-A**

1. S.M.R.H. Jafari, aged about 47 years, S/o Sri Syed Faiyyaz Hussein Jafari, R/o 77, Ghausganj, Wazirganj, Lucknow.
2. Suresh Kumar Srivastava, aged about 47 years, S/o late Sri Ram Sukh, R/o 5/Chha/40, Naya Sardari Kheda, Alambagh, Lucknow.

.....Applicants

By Advocate : Sri B.N. Shukla

Versus.

1. Union of India through General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. DRM, NR, Lucknow Division, Hazratganj, Lucknow.
- 2-A Sr. DPO, N.R., Lucknow Division, Hazratganj, Lucknow.
3. C.P. Srivastava, S/o late Daya Shanker Lal.
4. R.P. Shukla, S/o Sri Alakh Narayan Shukla.
5. R.S. Sharma, S/o Sri Ram Chaitra Sharma.
6. R.C. Kuril, S/o Sri Bhajan Lal.
7. S.N. Khan, S/o Sri Mumtaj Hussain.
8. V.K. Valani, S/o Dr. S.D. Valani.
9. Prabhakar Trivedi, S/o Sri G.K. Trivedi.
10. V.B. Srivastava, S/o Sri Rama Shanker Singh.
11. R.M. Pandey, S/o late B.K. Pandey.
12. S.Z.U. Hasmi, S/o Sri Asad Ullah.
13. Q.M. Arif, S/o Sri Qazi Anis Ullah.

.....Respondents.

By Advocate : Sri S. Verma for R-1 to R-2A and Sri Amit Verma for Sri A. Moin for R-7, 8, 10 to 13.

ORDER

Per Ms. Jayati Chandra, Member-A

The applicants have filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 seeking following relief(s):-

"(a) issue appropriate order or direction directing the Opposite party no.1 1 & 2 and 2-A to place the applicants in the seniority list dated 1.1.2005/ 5.7.2005 pertaining to the post of Chief Welfare Inspector/Chief personnel Inspector over and above the Opposite party no.3 and to modify the

J. Chandra

seniority lists pertaining to the post of Chief Welfare Inspector/Chief Personnel Inspector and senior Welfare Inspector/ Senior Personnel Officer accordingly.

- (b) issue appropriate order or direction directing the Opposite party nos. 1& 2 and 2-A to provide consequential benefit of promotion to the higher posts of Senior Welfare Inspector and Chief Welfare Inspector w.e.f. from the date it was provided to their juniors.
- (c) pass any other order or direction which may be deemed just and proper in the circumstances of the case.
- (d) allow the Original Application with costs."

2. The facts of the case are that the applicant no.1 was initially appointed on the post of Clerk w.e.f. 25.5.1982 and applicant no.2 was appointed on the same post w.e.f. 22.7.1982. They were promoted to the post of Senior Clerk w.e.f. 26.11.1983 and 25.11.1983 respectively. There is a post of Welfare Inspector in the Organization, which is an ex-cadre post and it is to be filled up by selection from amongst Group 'C' Ministerial staff namely Senior Clerk and Artisan staff both in the grade of Rs. 1200-2040/-.. However, in the event of non-selection of post and in the exigencies of work under para 216.8 (i) of Chapter II of IREM adhoc arrangement can be made for short periods by promoting senior most of the suitable staff. As the post of Welfare Inspector in Lucknow Division was lying vacant and no regular selection had been held, the applicants were promoted on adhoc basis to the post of Welfare Inspector (In short W.I.) by order dated 6.12.1990 (Annexure no.3). Although the selection is made after written test followed by viva voce, but the railway administration is competent to regularize any person or group of persons without completing such formalities on the basis of their long officiating in adhoc capacity on selection posts. They have placed reliance on the following orders by which adhoc employees were regularized i) order of Hon'ble High Court of Allahabad in the case of D.C. Trivedi Vs. Union of India & Others, order of Headquarters office, Northern Railway, New Delhi contained at page 30 of the O.A. order dated 6.7.1983 of Railway Board, at page no. 31 of the O.A. and order dated 4.8.1993 of Divisional Office, Lucknow at page 32 of the O.A. There are many instances of such regularization of the services of officiating persons on the post of Junior Clerks in the

J. Chander

selection grade, Enquiry-cum-Reservation Clerks in selection grades, Head Ticket Collector, Senior Ticket Examiner and Conductor in selection grade. One Sri G.N. Tiwari was regularized on the post of Welfare Inspector without facing the selection. The services one class IV employee namely Raghunath Prasad was regularized on the selection post of Typist in view of judgment and order passed by Hon'ble High Court at Allahabad in Writ petition No. 10239 of 1989 (Annexure-4).

3. The respondents in stead of regularizing the services of the applicants on the post of Welfare Inspector issued notice dated 3.11.1993 promoting the applicants on the post of Head Clerk in the Ministerial cadre in the same Grade as that of the Welfare Inspector. The applicants did not avail of the promotion in view of their earlier request for regularization on the post of Welfare Inspector from the date of their officiating on such post. The applicants had filed O.A. no. 996 of 1993 assailing their promotion to the post of Head Clerk and by interim order dated 24.12.1993 their promotion to the post of Head Clerk was stayed and the applicants were allowed to work as W.I. By an order dated 17.1.1994 (Annexure-6) they were allowed to continue as W.I. till further orders. The applicants were not permitted to appear in the selection test for the post of W.I. scheduled to be held in the year 1995. They filed O.A. No. 602 of 1995 in which vide interim order dated 17.11.1995 the respondents were directed to allow the applicants to appear in the selection provisionally. Subsequently, the O.A. was allowed by order dated 2.12.1996. The services of the applicants were regularized on the post of W.I. vide letter dated 5.12.1996 (Annexure-7). The applicants were, subsequently promoted on the higher post of Chief Welfare Inspector (in short CWI) in the pay scale of Rs. 6500-10500/- on 13.12.1996 and they are continuing on the said posts.

4. The applicants are aggrieved by the fact that the respondent nos. 3 to 5 were empanelled on the post of W.I. vide order dated 25.8.1994. They were promoted on the post of SWI on 24.1.1995 and on the post of CWI in the grade of Rs. 6500-10500/- w.e.f. 31.1.1997, 29.4.1998 and 30.1.1997 respectively; whereas they were posted on adhoc basis as W.I. from 6.12.1990.

J. Chaudhary.

5. The respondent nos. 7 to 13 were Head Clerks in the Personnel Department and were appointed on the post of Personnel Inspector (In short P.I.) in the grade of Rs. 5000-8000/- without facing any selection on 28.4.1993 to 29.4.1993 by way of re-deployment. Subsequently, they were promoted to the Grade of Rs. 5500-9000/- w.e.f. September, 1993 on different dates even without completing two years minimum service in the grade of Rs. 5000-8000/-. This is a clear cut violation of provision of P.S. no. 8517 issued by the Railway Board (Annexure-8). It is further submitted that the respondent nos.7 to 13 were Head Clerks of Personnel Branch. In terms of Railway Board's letter dated 17.9.1985 Head Clerks are not eligible for appointment as P.I. Their appointment as W.I. by way of re-deployment were also not permissible because re-deployment is done only in the circumstances when a particular cadre is to be abolished or the said cadre is declared surplus. Since the appointment of respondent nos. 7 to 13 on the post of P.I. was wrong, therefore, they are not entitled to seniority over and above that of the applicants as shown in the impugned seniority list. As per instructions contained in the letter dated 26.5.2004 issued consequent upon the judgment of Hon'ble Supreme Court in the case of South Eastern Railway & Others Vs. Ram Narayan Singh & others and Rama Kant Chaturvedi Vs. Divisional Superintendent, Moradabad and others (Annexure no. 10), such persons coming as a result of merger are to be maintained separately in a block and given seniority separately from regularly appointed persons in the original cadre.

6. The applicants are aggrieved the combined seniority list was issued for the post of W.I./P.I./SWI/ CWI and SCWI circulated for the first time on 1.1.2005/5.7.2005. The applicants have basically assailed the first list of W.I./P.I. in the grade of Rs. 5000-8000/- on the basis of wrongful fixation of their seniority. Although, in the said list, it has been shown that the capacity date is 10.12.1990 and that of the respondents is much later, they have been given lower seniority.

7. The official respondents have denied the averments of the applicants by filing a detailed Counter Reply. They have stated

T.Chandre

that the applicants were promoted as Clerks w.e.f. 26.5.1984 and 31.7.1984 respectively and not from the dates as alleged by the applicant in their O.A. The post of W.I. is an ex-cadre selection post to be filled up from the two feeder cadres i.e. ministerial staff and artisan staff working under the Divisional Headquarters. As the post of W.I. in Lucknow Division were lying vacant in the year 1990, the applicants, who belonged to one stream were allowed to officiate on the post of W.I. purely on adhoc basis vide order dated 6.12.1990. It is to be noted that this posting was done neither on the basis of selection, nor on the basis of combined seniority of the two feeder streams. . It was made clear in the posting order that the arrangement was purely adhoc and temporary and it would be discontinued on availability of regularly selected candidates and that no claim for regular absorption of such post would be made. Further, the applicants earlier filed O.A. no. 269 of 1992 (K.C. Saxena & Others Vs. Union of India & others), which was clubbed with O.A. no. 281 of 1991 (Bhagwan Sahai & Others Vs. Union of India & Others) and was decided by a common judgment and order dated 16.4.1993 wherein it was observed that all the adhoc appointments so made are time gap arrangement and cannot confer any right on the so called appointees or entitle them to any other benefits except as to salary (Annexure CR-2). It is also seen that the applicants had filed another O.A. no. 996 of 1993 with the same prayer as made in this O.A. that they may be regularized on the post of W.I. w.e.f. date of posting on adhoc basis. The said O.A. was dismissed as not pressed by order dated 25.9.1996 and as such the present application which arises from the claim of regularization from the date of adhoc posting is barred by the principles of res-judicata. Infact, as a result of O.A. no. 602 of 1995 filed by the applicants, they were allowed to appear in the selection for the post of W.I. in the year 1995 and consequently their services were regularized vide order dated 5.12.1996. The applicants have based their claim of seniority on the basis of their capacity date as being 10.12.1990. This date has been inadvertently typed in the seniority list. Notice for correction of the said list has also been issued by letter dated 21.3.1997 (Annexure CR-1).

J. Chawla

6. Coming to the merits of the case, the respondent nos. 3 to 5 were promoted to the post of W.I. in pursuance of the notice issued in the year 2007 and therefore, there were subsequently promoted to the post of S.W.I. and C.W.I. The respondent nos. 7 to 13 were substantively appointed as Clerk in the Personnel Branch and were senior to the applicants even in the substantive capacity of Clerk. They were promoted to the post of Senior Clerk earlier than the applicants and they were further promoted to the post of Head Clerk in the grade of Rs. 5000-8000/- prior to order dated 3.11.1993 by which the applicants were promoted to the posts of Head Clerk. It is a different matter that the applicants had refused to join on the post of Head Clerk and had obtained favourable judicial order from the Tribunal to continue as W.I. in the same Grade of Rs. 5000-8000/-. Subsequently, respondent nos. 7 to 13 had been absorbed as P.I. in the Pay scale of Rs. 5000-8000/- on 28.3.1993; whereas the services of the applicants were regularized on the post of W.I. on 5.12.1996. It is further clarified that the cadre of W.I and P.I. were separate, but were merged under restructuring as per Railway Board's letter dated 9.10.2003 (Annexure CR-3). By virtue of such merger, the respondent nos. 7 to 13 who were substantively in the pay scale of Rs. 5000-8000/- earlier to the applicants remained senior in the merged cadre.

7. The respondent nos. 3, 4 and 5 through their Counter Reply have stated that the process of selection for the post of W.I. was started in the year 1987 and written examination was held on 2.7.1989 and oral test was held on 30.6.1994 and 14.6.1994. Finally, all seven candidates, who were appeared in the test, were declared as successful. It is pertinent to mention here that the applicant no.1 also appeared in the written test in pursuance of notification published in 1987, but was declared unsuccessful. The list of successful and unsuccessful candidates have annexed as Annexure no. CR-1 and CR-2. The list of successful candidates in order of their seniority was notified by memorandum dated 25.8.1994 in which name of the respondent no. 3 appears at sl. No. 1, while the names of respondent nos. 4 and 5 appear at sl. Nos. 2 and 3. The applicant no.1 appeared in the examination and was not successful, while the applicant no.2 never participated in the said competitive examination. The applicant

J. Chander

nos. 1 and 2 appeared in the selection test held in 1996 in pursuance of the directions of this Tribunal in O.A. nos. 601 and 602 of 1995. The list of successful candidates, included the applicant nos. 1 and 2 was notified by notice dated 5.12.1996. In so far as the claim of the applicants as having seniority over and above that of the respondent nos. 3 to 5 is based is concerned, the same is due to typing mistake in the seniority list dated 1.1.2005/5.7.2005. It is to be noted here that this list is provisional and not final. In terms of para 216 (A) of IREM no person who is holding a post on adhoc basis can claim benefit of regularization from the date of such adhoc service without going through the selection procedure.

8. The respondent nos. 7, 10, 11 to 13 through their Counter Reply have also controverted the averments of the applicants. They have raised preliminary objections being barred by time under Section 21 of Administrative Tribunals Act, 1985. They have stated that the applicants tried to offset the seniority and seek promotion as per promotion already granted to them. These promotions to the Grade of Rs. 5500-9000/- have been granted to them as per following chorology:-

Name	Applicant/ respondent no.1	Date of promotion in grade of Rs. 5000- 9000
SMRH Jafri	1	13.12.1996
Suresh Kr. Srivastava	2	13.12.1996
S.N. Khan	7	28.9.1993
V.K. Balani	8	28.9.1993
Prabhar Trivedi	9	28.9.1993
SZU Hashami	13	5.5.1996

In any case, the applicants should have challenged the promotion order dated 28.9.1993 if they were aggrieved by the alleged supersession. This O.A. has been filed in the year 2006 i.e. after 14 years after the alleged supersession. Hence, it is barred by limitation as laid down in Section 21 of Administrative Tribunals. They have also taken the other grounds which have already been taken by the other respondents including official respondents and as such the same need not be repeated.

J. Chaudhary

9. The applicant has also Rejoinder Reply separately to the Counter Replies by the respondents and denying the contentions made therein while reiterating the stand taken in the Original Application.

10. We have heard the learned counsel for the parties and have perused the material available on record.

11. It is seen that lists at Annexure nos. 1 & 2 are separate and distinct and involve two different posts and pay scales. The 1st list is a list of Chief Personnel Inspector in the pay scale of 6500-10500/- the second list is that Divisional Personnel Inspector in the grade of Rs.5500-9000/-, both are as on 1.1.2005. The applicants are not shown in the first list; whereas the respondent nos. 3 to 9 are in that pay scale. These persons were promoted to this scale by separate promotion orders dated 31.1.1997, 29.4.1998 and 30.1.1997 as admitted in para 4.14 of the O.A. These promotion orders have not been challenged by the applicants before any competent forum. The applicants have continuously averred that the fact of their placement below respondent nos. 3 to 9 came to their knowledge for the first time only with the publication of the impugned provisional seniority list which is based on position as on 1.1.2005, whereas the promotions to the higher grade had been given to the respondent nos. 3 to 9 7-8 years before. Thus, the cause of action i.e. alleged supersession of the applicants are liable to be barred under the provision of Limitation as provided under Section 21 of Administrative Tribunals Act, 1985 in which a maximum period of one year is provided for agitating the matter unless there are adequate justification of delay.

12. In this case, the applicants have shown no such ground rather have maintained that the question of their seniority does not involve any delay even when they are seeking seniority above persons who have been drawing a higher and (promotional) scale for the last 7/8 years.

13. Coming to the merits of the case, the applicants by their own admission were regularized on the post of W.I. in the pay scale of Rs. 1400-2300 (RPS) by order dated 5.12.1996. This order

J. Chandrasekhar

was issued under directions given by this Tribunal in O.A. no. 601 and 602 of 1995. It is seen from the detailed order dated 2.12.1996 that the prayer for regularization as W.I. in the pay-scale of Rs. 1400-2300/- (RPS), which had also been agitated by the applicants in O.A. no. 996 of 1993) was disposed of and the following observation was made:-

"13. They have further sought a direction to be issued to respondents to treat them as Senior Clerks throughout and consider them for promotion for the posts of Welfare Inspector/ Personnel Inspector and allow them to appear in the selection without prejudice to their rights for regularization as already prayed for in O.A. no. 915 and 996 of 1993.

14. At the final hearing of O.A. no. 601 and 602 of 1995 we pointedly asked the learned counsel for the applicants whether they wish to press these applications for making the earlier two O.As as part of the subsequent two O.As. The learned counsel stated before us that the said applications are not pressed. The result, therefore, is that prayer for their regularization on the post of W.L.I. stands given up and does not require to be considered in the present O.As."

Finally the case was disposed of vide judgment and order dated 2.12.1996. The operative portion of the order reads as under:-

"32. In view of the discussion hereinabove, the O.As no. 601/95 and 602/95 are allowed. The impugned order dated 31.7.1995 in respect of the applicants are quashed and we hold that the applicants were entitled to have been considered for the post of PI/ WLI Gr. Rs. 1400-2300/- in view of the fact that at the relevant the applicants' status was that of Senior Clerks and not Head Clerks. The respondents are directed to declare the applicants' result of the selection for the post of WLI/PI. We further direct that upon such declaration of the results of the applicants, if found successful, their names shall be interpolated in the panel for the post of WLI/PI selection for which were held during the pendency of the O.As and necessary consequential orders of appointment as WLI/PI are directed to be passed maintaining the order of seniority amongst the candidates placed on the revised panel according to their merit at the selection. The order of provisional promotion of others, who come to be placed below in the revised panel for the aforesaid two selections shall, if necessary, also be modified and necessary orders for reversion may be passed by the respondents within one month from the date of this order."

O.A. no. 996/93 was unconditionally withdrawn by the applicants.

T. Chandra

14. The applicants have not challenged the order by way of review/writ/appeal and the same has now become final. They have also not challenged the implementation/execution of the order by the way of either contempt petition nor by the way of filing an execution application under Section 27 of the Act.

15. Hence, the order dated 5.12.1996 passed under the above directions of O.A. no. 601 and 602 of 1995 and order passed in O.A. no. 996 of 1993 has become final. This order was never challenged. At this stage, the applicants are seeking to have the benefit of the adhoc period of their service as W.I.s for the purpose of seniority, with not having drawn the same pay scale (Rs. 6500-10500) with respondent nos. 3 to 9 on the basis of ruling of Hon'ble Supreme Court in the case of **Direct Recruit Class II Engineering Officers' Association and others Vs. State of Maharashtra & Others reported in AIR 1990 SCC 1670 (1)** It is seen that apart from the facts and circumstances of the case cited being different from the present one, Para 44 (b) of the judgment *in (1)* has been relied upon by the learned counsel for the applicant while ignoring the para 44(a) the same which reads as follows:-

"44(a) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only adhoc and not according to rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority."

16. With regard to seeking seniority above, respondent nos. 10 - 13 is concerned, the learned counsel for the applicant has challenged the same on the basis of the G.M's order dated 8.7.2004 (Annexure-10) on the subject of assignment of seniority to redeployed surplus staff. In the order under reference which an amended has been incorporated in the IREM (1989) in para 3.1. Para 3.2 also provides that past cases decided otherwise will not be reopened.

17. In this case, seniority is sought on the basis of counting of past adhoc services. However, the applicant has not been able to establish that they are to be given the benefit of such service,

J. Chande

especially on in the of order dated 2.12.1996 passed in O.A. nos. 601 and 602 of 1995 by which despite their prayer no relief by the way of counting of adhoc services was given.

18. In view of the above, the O.A. fails and is liable to be dismissed and is accordingly dismissed. No costs.

J Chandra
(Ms. Jayati Chandra)

Member (A)

VR. Aboawal

(Navneet Kumar)

Member (J)

Girish/-