

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

Original Application No. 239 of 2009

Reserved on 24.3.2014

Pronounced on 7th April, 2014

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

1. Mahendra Kumar Mishra, aged about 50 years, S/o Sri Ram Nath Mishra, R/o 105 Railway Colony, Gonda.
2. Moin Khan, S/o Sri Maqbul Khan, R/o Diesel Shed, NER, Gonda.
3. Ram Pratap Choudhary, S/o Lallu Prasad, Diesel Shed, NER, Gonda.
4. Praveen Kumar Srivastava, S/o Sri T.P. Srivastava, R/o Diesel Shed, NER, Gonda.
5. Wasi Ahmad Khan, S/o Sri Tara Khan, R/o Diesel Shed, NER, Gonda.
6. Chandra Bhan Prasad, S/o Sri Thakur Prasad, Diesel Shed, NER, Gonda.
7. Chandrika Prasad, S/o Sri Shiv Ram, Diesel Shed, NER, Gonda.
8. Ishitiyaq Hussain, S/o late Faiaz Hussain, R/o Kumbh Nagar, Khaira Mandir, Bargaoon, Gonda.
9. Jagdish Singh Bisht, S/o Sri Pratap Singh Bishit, Diesel Shed, NER, Gonda.
10. Sunil Mehrotra, S/o Sri B.N. Mehrotra, R/o 414 J Semra Colony, Gonda.
11. Ram Pravesh Upadhyay, S/o Sri Ram Chandra Upadhyay, R/o 396-F Girija Railway Colony, Gonda.
12. Deepak Kumar Maulik, S/o late N.B. Maulik, R/o 26 Asha Ram Ram Lane, Gonda.
13. Suresh Prasad Singh, S/o late Harbansh Singh, R/o House no. 112 B Khaira Railway Colony, Gonda.

By Advocate : Sri M. Singh

Versus.

1. Union of India through its Secretary, Department of Railway, New Delhi.
 2. General Manager, N.E. Railway, Gorakhpur
 3. DRM, NER, Lucknow.
 4. Chief Personnel Officer, NER, Gorakhpur.
 5. Sr. Divisional Mechanical Engineer, NER, Gonda.
 6. Parash Nath Malviya, aged about 41 years, S/o Sri Trijugi Narain.
 7. Murlidhar, aged about 43 years, S/o Sri Ori Ram.
 8. Gaya Prasad, aged about 41 years, S/o Sri Abhay Rai.
- O.P. nos. 6 to 8 are working as Diesel Mechanic, Gr. I in the Diesel Shed, NER, Gonda.

.....Respondents.

By Advocate : Sri B.B. Tripathi for Sri Ashok Kumar for R-1 to R-5 and Sri Surendran P. for R-6 to 8.

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) *This Hon’ble Tribunal may be pleased to direct the O.P. No. 3 to re-fix the seniority of the applicants vis-a-vis the Opposite party nos. 6 to 8 keeping in view the initial date of appointment.*
- (b) *that the Hon’ble Tribunal may kindly be pleased to issue an order or direction thereby directing the Opposite parties to promote the applicants w.e.f. the date the juniors i.e. the opposite party nos. 6 to 8 were provided promotion for the post of Diesel Mechanic Gr. III with all consequential benefits.*
- (c) *that the Hon’ble Tribunal may kindly be pleased to issue an order or direction thereby directing the Opposite parties to re-fix the pay of the applicants after treating them to be promoted w.e.f. the date their juniors were promoted and the arrears of difference, on account of re-fixation, may also be paid to the applicant.*
- (d)
- (e)”

2. The facts of the case, as averred by the applicants are that they were initially appointed on the post of Diesel Khalasi on 4.5.1984, whereas the private respondent nos. 6 to 8 were appointed on the post of Diesel Khalasi on 29.8.1984. A provisional seniority list was published on 27.1.1986 (Annexure-1) in which the names of the applicants find place at sl. Nos. 75, 76, 78 etc. with correct date of appointment being 4.5.1984, whereas the name of respondent nos. 6 to 8 find place at higher than theirs with date of appointment shown as 29.8.1984. The applicants submitted a detailed representation against the seniority list. Notwithstanding the same acting on the defective seniority list of Diesel (Khalasi), the respondent nos. 6 to 8 were promoted on 5.5.1987 as Diesel Mechanic Gr.III in the pay scale of Rs. 950-1500. They were again promoted to the post of Diesel Mechanic Gr.II in the pay scale of Rs. 1200-1800/- vide order dated 20.7.1993. Subsequently by order dated 5.8.1994 the seniority

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position of the applicants vis-à-vis respondent nos. 6 to 8 was corrected and the applicants were assigned the correct seniority placing them above the respondent nos. 6 to 8. Consequently, the respondent nos. 6 to 8 were reverted to the post of Diesel Mechanic Gr. III as they had been wrongly promoted on the basis of wrong assignment of seniority.

3. Being aggrieved, the respondent nos. 6 to 8 filed Original Application no. 341 of 1995, which was allowed vide judgment and order dated 3.1.2005. In compliance of judgment and order of this Tribunal, the position of respondent nos. 6 to 8 were restored to their earlier position in the seniority list dated 27.1.1986 and the respondent nos. 6 to 8 were placed over and above the applicants and by re-fixing their pay scales. Although, the order of the Tribunal dated 13.1.2005 had set-aside the revised (correct) seniority list and the revision orders, liberty was given to the respondents to finally determine the seniority after giving notice to the respondents and all other affected parties and disposing of the objections raised. The respondent no.3 had issued a show cause notice on 25.8.2005 to respondent nos. 6 to 8 for showing cause as to why the seniority position of respondent nos. 6 to 8 be not changed as per initial date of appointment, but no reply was submitted by from the respondent nos. 6 to 8. A second set of show cause notice was issued on 25.10.2005 to the respondent nos. 6 to 8, but again no reply was forthcoming, with the result the applicants continued to be junior to respondent nos. 6 to 8 vide an interim seniority list, although their date of initial appointment was 4.5.1984 whereas the initial date of appointment of respondent nos. 6 to 8 was 29.8.1984. Hence, this O.A.

4. The respondents have raised preliminary objection regarding maintainability of the O.A. on the ground that the case of the seniority of the present applicants and the respondent nos. 6 to 8 were based as per the directions of this Tribunal dated 13.1.2005. A show cause notice was issued to private respondent nos. 6 to 8 alongwith 8 others on 25.10.2005. The present Original Application has been filed after more than four years after such a notice. Thus, the present O.A. is clearly barred by limitation. Section 21 of the Administrative Tribunals Act, 1985 stipulates

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that a case is barred by limitation where a final order has been made in connection with the grievance and the application is made, beyond one year from the date on which such final order has been made. In addition of six months is available in a case where an appeal or representation has been made and a period of six months had expired. Thus, the applicants should have filed the O.A within one and half years of show cause notice issued to respondent nos. 6 to 8 on 25.10.2005.

5. On the facts of the case, the official respondents have stated that the seniority list of 27.1.1986 was defective as some persons who were appointed on 29.8.1984 were placed above those who were appointed on 4.5.1984. The same was rectified by placing respondent nos. 6 to 8 junior to the applicants in seniority list of 1994. The second set of seniority list were challenged by respondent nos. 6 to 8 through O.A. no. 341 of 1995 in which four applicants of the instant O.A. had been impleaded as respondents. By judgment and order dated 13.1.2005 passed in O.A. no. 341 of 1995 the seniority of respondent nos. 6 to 8 had been directed to be restored and reversion orders were quashed. The respondents had issued show cause notice to the private respondents on 25.8.2005 and 25.10.2005, but before any decision could be taken, the respondent nos. 6 to 8 filed a Contempt petition. Further, the Hon'ble Supreme in the case of B.S. Bajwa Vs. State of Punjab reported in 1998 (2) SCC 523 it has been held that the question of seniority should not be reopened after lapse of considerable period of time.

6. Counter Reply has also been filed by respondent nos. 6 to 8 stating that the applicants were initially appointed on the post of Diesel Khalasi on 4.5.1984. On the other hand, they were working as casual labourers in different branches of North Eastern Railway and had attained regular status before their absorption as Substitute Diesel Khalasies in Diesel Shed N.E.R., Gonda in the year 1982-83. They were having adequate qualification for the post of Khalasi and were screened and tested by the departmental committee constituted for the purpose of deciding their suitability as Diesel Khalasi. There was an inordinate delay in publishing the result of the screening as a consequence thereof, their

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appointment as Diesel Khalasi was subsequent to the applicants. The seniority list of Diesel Khalasi published on 27.1.1986 in which they have been shown above the names of the applicants, was not provisional, but a final seniority list. They were promoted to Diesel Mechanic Gr.III and subsequently Diesel Mechanic Gr.II as per their turn after having fulfilled the eligibility criteria. Further, the respondents had been confirmed as Diesel Mechanic Gr.II. Therefore, at this stage the seniority list of Diesel Khalasi cannot be changed. The O.A. no. 341 of 1995 was decided on 13.1.2005. The four applicants of the instant O.A. were impleaded as respondents in the earlier O.A. no. 341 of 1995. It is also averred that no Writ petition against the order of this Tribunal has been filed either by the respondents or by the applicants and as such the order has become final. Lastly, they have stated that against show cause notice of 2005 and subsequent reminder dated 25.1.2009 an administrative appeal has been filed on 14.1.2010, which is said to be pending.

7. Rejoinder Reply has also been filed by the applicants refuting the contentions made by the respondents and reiterating the averments made in the Original Application. Through the Rejoinder Reply to the Counter Reply filed by the respondent nos. 1 to 5, the applicants stated that they have been denied that no final decision could be passed on the show cause notice to respondent nos. 6 to 8 by letter dated 25.10.2005 on account of pendency of CCP filed in this case. The CCP was dismissed in the year 2009 after which the respondents issued 2nd set of show cause notice dated 25.1.2009. The respondents issued notice dated 25.10.2005 proposing to re-fix the seniority as per the seniority list of 1994 assigning the seniority to the applicants as per their date of appointment as Diesel Khalasi above the respondent nos. 6 to 8 and by order dated 25.1.2009 the same was confirmed and respondent nos. 6 and 10 others were reverted with consequential pay fixation. Yet the applicants have not been given the consequential benefits of re-fixation of their salary.

8. We have heard the learned counsel for the parties and have perused the pleadings on record.

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9. The applicants have sought a direction for the fixation of their seniority in the cadre of Diesel Khalasi as per the date of their initial appointment on the same post. The date of initial appointment of the applicants is 4.5.1984. The respondent nos. 6 to 8 were appointed on the post of Diesel Khalasi on 29.8.1984. In the seniority list of 27.1.1986 the respondent nos. 6 to 8 were placed above the applicants and were given the benefit of earlier promotion to the grade of Diesel Mechanic Gr. III and Diesel Mechanic Gr. II. The applicants continued to represent their case till the respondents issued seniority list of 1994 in which the applicants were given seniority above those of the respondent nos. 6 to 8. Consequent to the change in the seniority, the respondent nos. 6 to 8 and certain others were reverted to the grade of Diesel Mechanic Gr. III. This action was challenged by the respondent nos. 6 to 8 in O.A. no. 341 of 1995, which was allowed vide order dated 13.1.2005 quashing the seniority list of 1994 and consequential reversion orders. The operative portion of the order reads as follows:-

"In the result for the forgoing reasons, O.A. is partly allowed. Impugned orders are quashed and set-aside. Respondents are directed to restore applicant to the grade II with all consequential benefits. However, this shall not preclude them to act in accordance with law as per observation made above. This shall be done within a period of three months from the date of receipt of copy of this order."

Consequently, the seniority list dated 27.1.1986 was revived and the reversion order of the respondent nos. 6 to 8 was withdrawn. At the same time, a show cause notice dated 25.8.2005 was issued to the respondent nos. 6 to 8 and others as to why they should not be assigned their correct seniority vis-à-vis the applicants on the basis of their respective dates of appointments to the post of Diesel Khalasi.

10. According to the Counter Reply filed by the respondent nos. 1 to 5, this notice dated 25.8.2005 could not be acted upon as a contempt petition filed by the respondent nos. 6 to 8 was pending. It is noted that the respondents have neither given any details of the Contempt Petition, nor it is known whether the same is still pending or not. But, they have consistently held in their notice dated 25.8.2005 and in para 19 of their Counter Reply that the applicants must be given higher seniority based on the date of Ist

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appointment. This stand is at variance with their contention that this O.A. deserves to be dismissed on the ground of limitation. We do not see how to on one hand a plea of pendency of a CCP can justify inaction in finalizing the matter of re-fixation of seniority and at the same time the same ground cannot explain the 'delay' in filing of the O.A. by the applicants. Infact, they have also made a very positive averment in para no.9 of the Counter Reply in which they have stated the following:-

"para 19.it is submitted that the private respondents are getting the pay fixation and promotion on the basis of the order dated 13.1.2005 passed by this Hon'ble Tribunal in the O.A. Further, it is submitted that although the private respondents are juniors to the applicants they are getting higher pay. It is submitted in this regard that the answering respondents had taken necessary action on this matter in accordance with the order passed by this Hon'ble Tribunal on 11.12.2008 and this matter had been put up before the competent authorities for taking suitable and proper action and after reversal of the private respondents, the applicants would be getting the legal benefits as per their entitlement."

11. The respondent nos. 6 to 8 have affirmed that they were in receipt of notice dated 25.8.2005, they have not produced any evidence that they have legally challenged the proceeding or that there is debarment to the finalization of the issue i.e. the assignment of seniority as Diesel Khalasi to applicants vis-à-vis the respondent nos. 6 to 8 and certain others based on the respective dates of appointments.

12. The respondent nos. 1 to 5 have sought the dismissal of the O.A. on the ground of pronouncement of Hon'ble Supreme Court in the case of B.S. Bajwa (supra) to the effect that "the settled seniority should not be unsettled". This is precisely the issue. Where is the settled seniority list? The respondents have not shown where and how the question raised in their own show cause notice ~~which~~ were settled and which are reproduced below:

उक्त तथ्यों के परीक्षण में पुनः यह स्पष्ट किया जाता है कि आपकी नियुक्ति तिथि 29-08-84 है अतः किसी भी दशा में दिनांक 4-5-84 की नियुक्ति हुये कर्मचारियों से ऊपर आपकी वरीयता निर्धारित नहीं की जा सकती है जो कि पहले भी मंडल तथा मुख्यालय स्तर से स्पष्ट निर्णित हो चुका है।

अतएव संशोधित वरीयता पत्रांक ई/11/२१०/डीजल/गोण्डा दिनांक 5-8-94 के अन्तर्गत निर्धारित वरीयता क्रमांक के आधार पर दिनांक 5-8-94 से डी तक-111

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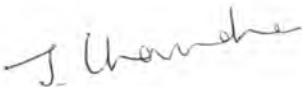
(यां०) वेतनमान 950-1500 के पद पर उक्त कर्मचारियों की पदावधि किया जाना है।


13. They have further passed an order dated 15.10.2009 by which the seniority list notification dated 5.8.1994 is held to be the correct list and the pay scale of respondent nos. 6 to 8 and 08 others have been re-fixed.

14. Although, the respondent nos. 6 to 8 have preferred a representation against the same by their letter dated 14.1.2010, the receipt and its disposal have not been disclosed by the respondent nos. 1 to 5.

15. If we are to go by records and the chronology of events, this O.A, after passing and implementation order dated 15.10.2009 (passed after filing of the O.A.) should have become infructuous. But, from the fact that the authors of the order i.e. respondent nos. 1 to 5 have failed to bring this order on record and by contesting the claim of the applicants, really have not implemented their own order dated 15.10.2009.

16. In view of the above, the O.A. partly succeeds. The respondents are directed to implement their own order dated 15.10.2009 with all accompanying consequences by which the seniority list of 4.8.1994 has been held to be the correct list. The said exercise shall be completed within a period of three months from the date of receipt of copy of this order. No. costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

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