

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Lucknow this the 4 day of <sup>oct</sup>~~Sept.~~, 94.

O.A. No. 332/91

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. V.K. SETH, MEMBER(A)

Kewal Krishna, son of Shri Roop Lal,  
resident of 7-C, Adarsh Nagar, c/o V.K. Rajput,  
Lucknow.

Applicant

By Advocate Shri C.A. Basir.

versus

1. General Manager, N. Railway, New Delhi.
2. F. A. & C.A.O. N. Railway, Baroda House, New Delhi.
3. Sr. Divisional Accounts Officer, N. Railway, Hazratganj, Lucknow.
4. Sr. Accounts officer, C&W Workshop, Alambagh, Lucknow.

Respondents.

By Advocate Shri A.K. Chaturvedi.

O R D E R

(HON. MR. V.K. SETH, MEMBER(A))

In this O.A. the applicant has prayed the following reliefs:

"That the applicant prays that the Hon'ble Court be pleased to order the opposite party No.2 to fix the correct seniority of the applicant with effect from the date it became due in respective grades and selection grade typist including difference of pay with effect from the date of promotion of Shri Bhadauria with back wages

with effect from the earlier date from which the applicant's juniors were promoted."

2. The brief facts of the case as mentioned in the O.A. are as follows. The applicant was appointed as Junior typist on 24.12.1956 in the office of Senior Divisional Accounts Officer, Northern Railway, Lucknow and was promoted as Senior typist on 2.8.1976 and confirmed as such on 1.10.79. He states that on learning about promotion of Shri H.C. Mathur and Shri Bhadauria as Selection Grade typist in Head Quarter Officer New Delhi, who were much junior to him, he represented and sent reminders on 10.12.1990, 21.2.91 and 26.3.91. Ultimately the applicant received replies vide letters of April, 91, and 29.7.91 (Annexures 1 and 2) to the effect that he was promoted from time to time on the basis of his position in the gradation list where he stood junior to Shri Bhadauria and that he failed to represent against the wrong placement in the gradation list within one year of its circulation, and therefore, his appeal for proforma fixation was time barred, as per para 321 of I.R.E.M.

3. The main contention of the applicant is that the seniority lists were neither published nor circulated to the applicant, nor to the office of Senior D.A.O. under whom the applicant worked. In support of his claim that the respondents cannot raise the plea of limitation he cites the ruling of the Hon'ble Supreme Court in 'State of M.P. VS. Qamar Ali (1967, SLR, SC, 228). He also claims that he is senior to the following persons as he

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was appointed as Junior Typist on 24.12.1956 while they were appointed subsequently from the dates noted against each:

i)	Shiv Pal Singh Bhadauria	7.2.57
ii)	Jai Perakash Jain	3.1.57
iii)	Ashok Kumar Dey	1.11.58
iv)	H.C. Mathur	2.12.58
v)	Daulat Ram Tandon	5.10.58
vi)	Dhani Ram	30.6.60
vii)	Shanker	2.2.61
viii)	S.P. Abhichandani	9.6.69
ix)	Maha Singh	22.3.63
x)	Parkash	1.9.62
xi)	Gurmukh Dass	3.12.62.

4. While contesting the claim of the applicant **the respondents** /cite para 321 of the Indian Railway Establishment Manual Volume I (1989) and **contend** that the applicant could have claimed seniority before 1976, as he was promoted as Senior Typist on 2.8.1976, whereas his alleged junior had been promoted earlier to him. It is also stated in the Counter Affidavit that the applicant has made **no** representation during his entire service of more than **34** years in regard to seniority. They therefore, contend that the ~~xxx xxx xxx~~ ~~representations~~ of the applicant have been rightly rejected by the authorities and the same were hopelessly time barred.

5. In his rejoinder, the applicant has again mentioned about his representations dated 9.10.90, 10.12.90 and 1.2.91 and reiterated his contention regarding the non-circulation of the Seniority list.

6. The case cited by the applicant viz. 1967, SLR 228, State of Madhya Pradesh vs. Syed Qamar Ali relates to dismissal of a sub Inspector of Police as a result of departmental enquiry on the charge of

concealment of facts as to the case of death of one Mauji Kalar of Sampur, a suspect of a house breaking case and it was held that there was sufficient evidence to prove the departmental charge against the Sub Inspector and order his dismissal from service. The Hon'ble Supreme Court held that the order of dismissal having made in breach of mandatory provisions of rules, subject to which only power of punishment could be exercised was totally invalid. The order of dismissal had therefore, no legal existence and it was therefore held that the defence of limitation which was based only on the contention that the order had to be set aside by Court before it became invalid, therefore, deserves to be rejected.

7. Annexure 4 (page 21 of the O.A.) which is a copy of the representation of the applicant dated 9.10.90, to the F.A.&C.A.O. shows that while the applicant was promoted as Senior Typist on 2.8.1976, Shri Shiv Pal Singh Bhadauriya over whom he is claiming seniority, was promoted as Senior Typist from earlier date. The representation also mentions that Shri Bhadauriya was promoted as Head Typist with effect from 1.8.1982. Cause for grievance of the applicant, therefore, already arose in 1976 and in 1982. The relevant para 321 of the I.R.E.M. reads as under:

"321. Permission to Railway Servants to peruse Seniority list:

(a) Railway servants may be permitted to see the seniority lists in which their names are placed, or if this cannot conveniently be arranged, they may be informed, on request, of their place on the seniority list.

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(b) staff concerned may be allowed to represent about the assignment of their seniority position within a period of one year after the publishing of the seniority list. No cases for revision in seniority lists should be entertained beyond this period.

7. As far as the ruling of the Hon'ble Supreme Court in State of Madhya Pradesh vs. Syed Qamar Ali is concerned, the apex court rejected the defence of limitation on the ground that mandatory provisions of the rules had not been observed. A perusal of para 321 of the I.R.E.M. quoted above, however, does not place any mandatory requirement on the respondents, but on the contrary places restriction only on the applicant that he was permitted to represent his case relating to his seniority position within a period of one year after publishing of the seniority list. The ruling cited by the applicant, therefore, does not lend any support to his case.

8. It is mentioned in the C.A. that the seniority list of the employees was circulated on 1.5.1982. The applicant, however, denies any knowledge of the existence or circulation of the seniority list. We do not however, find any merit in this contention of the applicant and hold the view that he could have and should have exercised sufficient vigilance in regard to seniority at various levels during his service career and if necessary he could have even asked for being informed of his seniority position at the levels of senior typists and Head Typists.

9. In the <sup>light</sup> / of the above discussion, we are of considered view that the respondents were fully justified in rejecting the representations of the applicant by impugned orders of April, 91 and July,

1991.

10. We also incidentally ~~know~~<sup>note</sup> that while cause of action for the applicant arose as far back as in August, 1976 and August, 1982, and Administrative Tribunals Act was notified and the notification published in the Gazette of India on 27th of February, 1985, the applicant approached this Tribunal only in September, 1991. The O.A. also is therefore, barred by limitation as per section 21 of the Administrative Tribunals Act.

11. In the above view of the matter this O.A. lacks merit and is dismissed. There will be no order as to costs.

*W K*  
ADMN. MEMBER.

*B. Saksu*  
VICE CHAIRMAN.

Lucknow: Dated: 4.10.94