

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

Date of order 12-2-2001

O.A. No.323 of 1995

Aravind Kumar Singh, son of Shri Ram Jatan Singh, II Fireman under Senior Loco Foreman, Katihar, N.E.Railway, residing at Railway Qr.No.676/L, Emergency Colony, Katihar.

.. Applicant

-versus-

1. Union of India through the General Manager, N.F.Railway, Maligaon, Guwahati.
2. Chief Mechanical Engineer (P), N.F.Railway, Maligaon, Guwahati.
3. Divisional Railway Manager (P), N.F.Railway, Katihar.
4. Majoranjan Maity, Sr.II Fireman/DAD, C/o Sr.Loco Fireman, NEW Jalpaiguri, N.F.Railway, District Siliguri.
5. Anant Lal Biswas, Sr.II Fireman/DAD, C/o Sr.Loco Fireman, N.F.Rly, Katihar.
6. Md. Sahid Khan, II Fireman/DAD, C/o Sr.Loco Fireman, N.F. Railway, Katihar.

.. Respondents

O.A. 9 of 1996

Indrajit Mohan, son of Ramavtar Prasad, working as Diesel Assistant Driver under Senior Loco Foreman, N.F.Railway, Katihar, residing at Railway Quarter No.676/1, Emergency Colony, Katihar.

.. Applicant

-versus-

1. Union of India through the General Manager, N.F. Railway, Maligaon, Guwahati.
2. Chief Mechanical Engineer (P), N.F.Railway, Maligaon, Guwahati.

3. Divisional Railway Manager (P), N.F.Railway, Katihar.
4. Ugra Nand Paswan, Diesel Assistant driver, under Loco Foreman, N.F.Railway, Katihar.
5. Manoranjan Maity, Diesel Assistant driver, c/o Senior Loco Foreman, New Jalpaiguri, N.F.Railway.
6. Anant Lal Biswan, Diesel Assistant driver, c/o Sr. Loco Foreman, N.F.Railway, Katihar.
7. Md. Shahid Khan, Diesel Assistant driver, c/o Sr. Loco Foreman, N.F.Railway, Katihar.

.. Respondents

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|-----------------------------|------------------------|
| Counsel for the applicants  | .. Shri C.S.P.Sinha.   |
|                             | Shri Jagannath prasad. |
| Counsel for the respondents | .. Shri Gautam Bose    |

C O R A M : Hon'ble Mr. Justice S.Narayan, Vice-Chairman  
Hon'ble Mr. L.R.K.Prasad, Member (A)

O R D E R

L.R.K.Prasad, Member (A):-

As there is substantial similarity and the issues are common with common respondents, the above JAS were heard together and we propose to dispose them of by common order.

O.A.323 of 1995

2. This application has been filed seeking following reliefs:-

(a) The respondents be directed to assign correct position of the applicant in the seniority list of Engine Cleaner/ II Fireman on the basis of earlier empanelment and his appointment with effect from 1.5.1976 above the respondent nos.4 to 6 who were empanelled subsequently as per details given in para 4.4 and 4.8.

(b) The respondents be further directed to give proforma seniority/promotion to the extent of his next junior as per recast seniority in accordance with prayer in (a) above and to pay all consequential benefits with interest on the arrears.

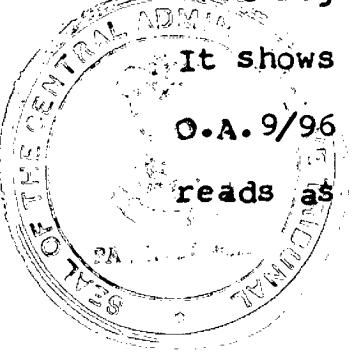
(c) Cost of the litigation.

3. We have heard the learned counsel for the parties and perused the materials on record.

4. The background of the case is that the applicant was appointed as Engine Cleaner in the scale of Rs.196-232 (AS) as a direct recruit with effect from 1.5.1976. In due course, he was promoted to the post of II Fireman with effect from 12.1.1987 under the Senior Loco Foreman, Katihar. It is stated by the applicant that in Katihar Division of N.F. Railway, the principle of regular appointment/assigning seniority of Class IV staff have not been correctly observed which has adversely affected the substantive seniority of the applicant in the category of Engine Cleaner. The concerned authorities have not followed the prescribed rules in this regard. He has pointed out that private respondents, namely, Manoranjan Maity, Anant Lal Biswas and Md. Shahid Khan have been wrongly shown above the applicant in the seniority list of Engine Cleaner even though they were absorbed in regular Group 'D' service as Engine Cleaner with effect from 12.1.1978, 10.9.1976 and 10.9.1976 respectively, whereas the applicant was appointed as Engine Cleaner from the direct quota with effect from 1.5.1976. It is further stated by the applicant that mistake has occurred because the date of engagement of private respondents as casual labour/substitute has been taken as the date of appointment as regular Engine Cleaner which needs to be correct, as per prescribed rules. In support of his claim that he is senior to the private respondents, the applicant has relied on Rules 303 to 306 and 1515 of Indian Railway Establishment Manual, volume I. Therefore, the contention of the applicant is that private respondents have been wrongly shown senior to the applicant in the seniority list of Engine

Cleaner as on 1.4.1981, which is at Annexure-A/7. In the said seniority list while the private respondents are at Serial nos; 638, 640 and 641, the applicant has been placed at Serial no.756. Against the wrong placement in the aforesaid seniority list, the applicant is stated to have made a representation on 19.9.1981 (Annexure-A/8). While the benefit has been extended to one Dinesh Paswan by refixing his seniority in the seniority list of Engine Cleaner as on 1.4.1981, the same benefit has not been extended to the applicant. The applicant had also submitted representations on 14.10.1991 and 28.9.1992 but the same were rejected by letter dated 12.2.1993 (Annexure-A/3).

It shows that the representation of the applicant of O.A. 9/96 was also rejected through the said letter, which reads as follows:-

  
"It is not possible to review seniority cases at this distant date, in the absence of selected records without which facts cannot be analysed".

It is the contention of the applicant that inspite of the fact that all the relevant records are available, the respondents have chosen to give evasive reply, as at Annexure/A.3.

#### O.A. 9 of 1996

5. The applicant was initially appointed as Engine Cleaner in the scale of Rs.196-232 (AS) as a direct recruit with effect from 14.4.1976. He was promoted as II Fireman with effect from 22.6.1984 and Diesel Assistant with effect from 21.7.1994 under the senior Loco Foreman, N.F. Railway, Katihar. He has challenged the seniority list of Engine Cleaner of Mechanical Department of Katihar Division of N.F. Railway as on 1.4.1981 (Annexure-A/4). He has stated

that respondent nos.4 to 6 have been shown above him in the said seniority list inspite of the fact that the applicant was appointed as Engine Cleaner under direct quota before the said private respondents. He has challenged the seniority list on more or less the same grounds, as has been done by applicant of O.A.323/95. In support of his claim that he is senior to the private respondents in the category of Engine Cleaner, he has relied on Rule 303 to 306 of IREM, volume I. It is his allegation that while determining the seniority of Engine Cleaner, correct principles and rules have not been followed, as a result of which, he has been shown junior to the private respondents which has adversely affected the applicant as Engine Cleaner as well as in his subsequent promotions. It is further stated that while he was a direct entrant as Engine Cleaner with effect from 14.4.1976, whereas, the respondent nos.5,6 and 7 were absorbed in Group 'D' service as Engine Cleaner with effect from 12.1.1978, 10.9.1976 and 10.9.1976 respectively and as such, they should have been shown junior to the applicant. Against the seniority list of Engine Cleaner as on 1.4.1981, the applicant has been making repeated representations but without any positive result. In fact, his prayer for refixation of seniority at the level of Engine Cleaner has been rejected vide letter dated 18.1.1995 (Annexure-A/1). Being aggrieved by the alleged inactive response of the respondents, the applicant has filed the instant O.A. with the prayer for refixing his seniority above the private respondents in accordance with law.

5. Both the above OAs have been opposed by the official respondents on legal ground as well as on merit. It is stated that <sup>for</sup> recruitment to the post of Engine Cleaner under direct quota, names were sponsored by the Employment

Exchange. In this regard, a test was held from 21.11.1975 to 23.11.1975 and 2.12.1975 to 4.12.1975. The panel for this recruitment test was approved by the competent authority on 17.2.1976. The date of joining as Engine Cleaner was fixed as criteria for determining seniority for this class of Engine Cleaners under direct quota. The other class of Engine Cleaners were recruited from amongst the casual labourers/substitutes through selection process. For the said purpose, screening test was held on 25.9.1975, 26.9.1975 and 22.11.1975 and in continuation, a supplementary screening test was held on 20.8.1977 at Katihar for substitute Engine Cleaner. The panel made out of supplementary screening test held on 20.8.1977 was approved by the competent authority on 4.1.1978, whereas, the panel made out of screening test held under this category earlier in 1975 was approved on 13.2.1976. Therefore, it is the stand of the respondents that the applicants formed one class of Engine Cleaners, the private respondents in both the OAs formed a separate class of Engine Cleaners, excepting that respondent no.4 in O.A.9/96 was a directly recruited Engine Cleaner sponsored by the Employment Exchange. In both the OAs, the applicants have challenged the seniority of the private respondents, namely, Manoranjan Maity, Anant Lal Biswas and Md. Shahid Khan, who belonged to the second category of Engine Cleaners. It is the stand of the respondents that the seniority list in question has been drawn up in accordance with the prescribed rules and there was nothing wrong to alter the same with regard to seniority of the applicants vis-a-vis private respondents. So far as direct Engine Cleaners are concerned, their seniority has been determined on the basis of date of joining

which was applicable for Engine Cleaner recruited in 1976. Rule 303 of IREM does not apply to direct recruit Engine Cleaner. It is further stated by the respondents that Rules 302 to 306 of IREM, volume I, on which the applicants have placed reliance, are not relevant in the instant case, for the purpose of fixing seniority of direct recruit Engine Cleaners. So far as departmentally screened Engine Cleaners are concerned (private respondents), the date of approval of screening test has been made the criteria for fixing the seniority. As the departmentally screened Engine Cleaners were found suitable and their panel approved on 13.2.1976, the same has been taken for the purpose of determining the seniority in the category of Engine Cleaners. Regarding private respondent, namely, Manoranjan Maity, Diesel Assistant Driver, it is pointed out that he was screened on 20.8.1977 in supplementary continuation test and was declared passed. The result was communicated on 10.1.1978. His seniority has been assigned from the date of approval of the earlier panel of departmentally screened Engine Cleaners on 13.2.1976, when the panel relating to other private respondents, namely, Anant Lal. Biswas and Md. Shahid Khan was approved. Since the departmental screening test held on 20.8.1977 was treated in continuation of the earlier test held on 25.9.1975, 26.9.1975 and 22.11.1975. In view of the aforesaid position, the seniority of the private respondents have been determined in the category of Engine Cleaner. In nutshell, it is the stand of the official respondents that while the applicants have been assigned seniority from the date of their joining, the private respondents (departmentally screened Engine Cleaners

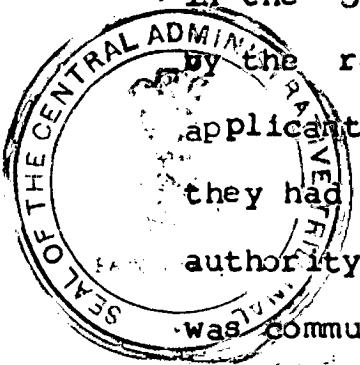
quota) have been assigned seniority from the date of approval of the screening test on 13.2.1976. It is clarified by the respondents that so far as private respondent (Manoranjan Maity) is concerned, his name had been left out by mistake to be included in the earlier screening test which was held 25.9.1975, 26.9.1975 and 22.11.1975. Therefore, supplementary screening test for departmental candidates which was held on 20.8.1977, in which Shri Manoranjan Maity <sup>appeared</sup> was treated as supplementary continuation test. Even though result of the said supplementary screening test was approved on 4.1.1978, he was given benefit of earlier screening test in the matter of seniority because his name had been earlier left out. The respondents have stated that the applicant of O.A.9/96 was redesignated as Diesel Assistant Driver on 25.7.1994, the private respondents were promoted on 7.8.1992, 26.7.1994, 23.7.1994 and 25.7.1994 respectively. So far as applicant of O.A.323/95 is concerned, he was promoted to the post of II Fireman with effect from 12.1.1987 under the Senior Loco Foreman.

7. With reference to sub-para(c) of para 4.4. of O.A.323/95, the respondents have stated that the dates as shown in sub-para for Engine Cleaner are not the appointment dates, but simply approval dates. As far as dates relating to 1.4.1988 (II Fireman) are concerned, these dates are actually the dates of initial engagement of the respondent nos.4 to 6. Last date as shown under the heading under sub-para(c) of para 4.4. actually relates to publication date of the memorandum giving result of the screening test of the private respondents, who have never been assigned seniority from these dates, as has been shown by the applicant. Annexure-R-1 is a note dated 9.11.1978 relating to the decision for fixing seniority.

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while referring to para 4.9 of O.A.323/95, the respondents have pointed out that one Dinesh Paswan, who appears at Serial No.1 of Group 'A' (S.C.candidate) of Annexure-A/5 joined on 13.4.1976 as Engine Cleaner, wheraas, the applicant of that O.A. joined on 1.5.1976, which is earlier than the date of joining of the applicant as Engine Cleanner. As such, Dinesh Paswan is declared senior to the applicant. Regarding para 4.11 of the said O.A. it is pointed out that the applicant's case could not be considered as it was a very old and time-barred case in view of Rule 321 of I.R.E.M., volume I.

8. while highlighting the points made by them in the OAS, the applicants have challenged the stand taken by the respondents in their W.S. According to the applicants, the law of limitation will not apply as they had been making representations before the competent authority from time to time and the final rejection letter was communicated to them vide letter No.E/255/14 (M) dated 18.1.1995 (Annexure-A/1 in O.A.9/96) and they have filed the case in 1995 and 1996. The applicants have further stated that their seniority is required to be determined in the category of Engine Cleaner as per Rules 302 to 306 of IREM, volume I. It is pointed out that the confirmation of temporary status on the substitute cannot entitle them to automatic absorption/appointment in Railway service. Therefore, the claim of the applicants is that their seniority vis-a-vis private respondents should be determined on the basis of approval of the panel of Engine Cleaner by the competent authority which in the case of the applicants is earlier than the private respondents. On the other hand, the respondents have categorically stated that the seniority was determined on the



basis of the then policy decision, whereby, in case of direct recruit, the seniority has been counted from the date of their joining and in case of departmentally selected candidates, it is from the date of their panel of Engine Cleaner was approved which is earlier than the date of joining by the applicants as Engine Cleaner. The case is also barred by limitation as the matter relates to the period prior to 1981. There is some substance in the argument advanced on behalf of the respondents.

9. We have considered the entire matter in the light of submissions made by the parties and materials on record. There appears to be no dispute between the parties with regard to the dates on which the screening test/selection test for recruitment to the post of Engine Cleaner were held. There is also no dispute with regard to the date on which the panel of successful candidates was approved by the competent authority. The basic dispute is with regard to determination of seniority of the direct recruits vis-a-vis departmentally screened and selected candidates in the category of Engine Cleaner and the resultant seniority in the category of II Fireman and Diesel Assistant Driver. The other issue which requires adjudication is whether these cases are hit by law of limitation or not which issue has to be decided first before going into the merit of the case.

10. The applicants have basically challenged the seniority list of Engine Cleaner which was published in 1981 with consequential changes in the seniority list of Fireman II and Diesel Assistant driver. So far as seniority in II Fireman and Diesel Assistant driver is concerned, it is

dependent upon decision on the seniority list of Engine Cleaner which was published in 1981. The instant OAS have been filed only in 1995 and 1996 after almost about 15 years by which time many things have got settled. As the seniority list of Engine Cleaner relates to 1981, the applicants should have moved appropriate legal forum at the relevant time instead of filing repeated representations before the respondents in course of so many years. On the question of limitation, the learned counsel for the applicants placed reliance on the orders of CAT, Bangalore reported in (1991) 15 ATC 609, in which it was held that delay in deciding representation would not render an application filed within time from the date such decision time-barred. On the other hand, our attention was drawn by the learned counsel for the respondents to an order of CAT, Patna, dated 26.5.1995 passed in O.A.191/93 (reported in 1996 (1) SLJ /page 252). The placitum portion of the judgment in the aforesaid case is reproduced below. The order in the said case is based on certain judgments of the Hon'ble Supreme Court as referred to therein.

"Delay, Acquiescence-A.T. Act, 1985-Section 21-Cause arose in 1987/1989-Had appeared in test in 1989, failed, joined lower post as per the test result-Challenged in 1993-Held he had already acquiesced, further case was hopelessly barred under section 21."

*re-ecf*  
There is no evidence to show whether the applicants had filed any representation immediately after publication of seniority list of Engine Cleaner in 1981. Rule 321 of IREM, volume I specifically provides that

the railway servants may be permitted to see the seniority list in which their names are placed. The staff concerned may be allowed to represent about the assessment of their seniority position within a period of one year after publication of seniority list. No cases for revision in seniority list should be entertained beyond this period. In the instant case, the seniority list of Engine Cleaners was drawn up in 1981. There is no evidence to show whether the applicants had filed a representation before the competent authority against the seniority list of Engine Cleaner within the prescribed time. In view of the above position, we are inclined to hold that the instant OAs are hit by limitation as envisaged under section 21 of the A.T. Act, 1985.

11. It is well settled principle of law that service seniority, which has been settled long ago, should not be disturbed as far as possible because any such change after a long time is likely to lead to administrative complications. Therefore, if anybody has some grievance against a particular seniority list, he should approach the appropriate forum, including the legal forum well in time so that the matter can be sorted out on merit without any delay.

12. Rule 302 of IREM, 1989, prescribes that in categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determining seniority should be date of regular promotion after due process in the case of promotee and and the date of joining the working post after due process in the case of direct recruit subject to maintenance of inter se seniority of promotees and direct recruits among themselves. In the instant case, we

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find that due process of selection in case of departmentally selected candidates was completed on 13.2.1976 when the panel of the said selection was approved by the competent authority. However, in case of private respondent, namely, Manoranjan Maity, his selection was approved on 10.1.1978, but why he is being given seniority from earlier date has been adequately explained in the W.S. filed by the respondents. In case of direct recruits (applicants) as Engine Cleaner, while the panel was approved under direct quota on 17.2.1976, the applicant of O.A.323/95 was appointed as Engine Cleaner on 1.5.1976 and applicant of O.A.9/96 was appointed as Engine Cleaner on 14.4.1976. As has been stated by the respondents, the seniority has been fixed as per the policy decision applicable at the relevant time. In any view of the matter, if the applicants were aggrieved with the determination of seniority as Engine Cleaner, they should have raised the issue before appropriate forum, including legal forum at the relevant time for redressal of their grievances instead of waiting for such a long time to raise the issue.

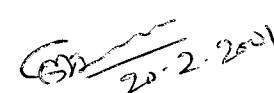
13. In the facts and circumstances of the case, as noticed above, we have reached conclusion that these OAs have no force and they are dismissed, accordingly.

14. There shall be no order as to the costs.

  
12.2.81  
(L.R.K. Prasad)  
Member (A)

  
12.2.81  
(S. Narayan)  
Vice-Chairman

Certified that this is a true and correct copy of the  
document on file in my office at the date of 20.2.2001/CP/  
MA/IT No 323/95 in respect of the matter  
preceding the same and I do hereby declare and faithfully  
certify that the same is true and correct as per my knowledge and faithfulness  
to my office.  
20/2/2001

  
20.2.2001  
G.C. Singh  
Section Officer  
C.P. & M.A.  
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Patna - 800 001