

## CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHR. A. No.: 22 of 2003[OA 361 of 1996]

w i t h

M. A. No. 328 of 2003

w i t h

O. A. No.: 12 of 2003

w i t h

O. A. No.: 111 of 2003[Patna, this *Tuesday*, the *28<sup>th</sup>* Day of September, 2010]

C O R A M

HON'BLE MRS. JUSTICE REKHA KUMARI, MEMBER [JUDICIAL]  
HON'BLE MR. SUDHIR KUMAR, MEMBER [ADMINISTRATIVE]1. R. A. No. 22 of 2003[Arising out of OA 361 of 1996]

w i t h

M. A. No. 328 of 2003

1. C.R.P.Singh, son of Sri R.D.P.Singh, resident of Railway quarter No.390-A, Road No.5, Hospital Colony, Samastipur, District – Samastipur.
2. Tej Bahadur Singh, son of Late R.N.Singh, presently posted as Travelling Ticket Examiner, Grade-'A' at Narkatiaganj, within Samastipur Division under East Central Railway.
3. Kesho Mahato, son of Late Baleshwar Mahato, presently posted as Travelling Ticket Examiner Grade-'A' at Samastipur within Samastipur Division under East Central Railway.
4. Raj Kishore Singh, son of Late P.N.Singh, presently posted as Travelling Ticket Examiner Grade-'A' at Narkatiaganj, within Samastipur Division, under East Central Railway.
5. Ranjeet Singh, son of Late D.C.Singh, presently posted as Travelling Ticket Examiner, Grade 'A' at Narkatiaganj, within Samastipur Division, under East Central Railway.
6. Bibhash Chandra Dutta, son of Late Rabindra Chandra Dutta, resident of Quarter No.T/L 51-B, Laxmi Sagar Railway Colony, Darbhanga, presently posted as TTE Grade 'A' at Darbhanga within Samastipur Division under E.C.Railway.
7. Ganesh Jha, son of Late Deokant Jha, at and P.O. Hariharpur, District-Darbhangha, presently posted as TTE Grade 'A' at Darbhanga within Samastipur Division under E.C.Railway.
8. Ashish Sankar, son of Sri Jimir Baran Sankar, Bahadurpur, Ward No.21, Samastipur, presently posted as TTE Grade 'A' at Samastipur under Samastipur Division, E.C.Railway.
9. Sachchidanand Chaudhary, son of Late Kishori Mohan Choudhary, resident of Bahadurpur, Ward No.21, Samastipur, presently posted as TTE

Grade 'A' at Samastipur under Samastipur Division, E.C.Railway.

10. Sukhdeo Linda, son of Late Shibu Linda, resident of Kanke Road, Dahutoli, P.S. - Bariyatu, Ranchi, Jharkhand, presently posted as TTE Grade 'A' at Samastipur under Samastipur Division, E.C.Railway.

11. Md. Ali Ikram Ansari, son of Late Md. Abu Jaffer resident of village and P.O.: Sara Mohanpur, P.S.: Darbhanga Sadar, District - Darbhanga, presently posted as TTE Grade 'A' at Darbhanga under Samastipur Division, E.C.Railway. ....APPLICANTS.

**By Advocate :-** Shri S.R.Sharan.

Vs.

1. The Union of India through the General Manager, East Central Railway, Hajipur, District - Vaishali, Bihar.

2. The General Manager, North Eastern Railway, Gorakhpur, Uttar Pradesh.

3. The Divisional Railway Manager, Samastipur Division, Samastipur, E.C.Railway.

4. The Divisional Railway Manager [Personnel], Samastipur Division, Samastipur, E.C.Railway.

5. Ganesh Kumar Biswas, son of Late R.M.Biswas at present posted as TTE Grade 'A' at Muzaffarpur [North], through CTTI Muzaffarpur, within Samastipur Division, Samastipur, E.C.Railway.

6. Ram Sanjeevan Rai, son of Late Jang Bahadur Rai, at present posted as Senior T.C. At Samastipur, through CIT, SPJ within Samastipur Division, through Senior D.P.O. Samastipur, E.C.Railway.


7. Gulab Singh, son of Late Nanak Singh, presently posted as TTE Grade 'A' at Darbhanga through CTTI Darbhanga within Samastipur Division under E.C.Railway.

8. Om Prakash Narain Gupta, son of Sri Charitar Prasad, presently posted as TTE Grade 'A' at Muzaffarpur through CTTI, Muzaffarpur within Samastipur Division, under E.C.Railway.

9. Uma Shankar Upadhyay, son of Late Sadanand Upadhyay, presently posted as TTE Grade 'A' at Muzaffarpur through CTTI, Muzaffarpur within Samastipur Division under E.C.Railway.

10. Gulab Thakur, son of Late Nand Lal Thakur, at present posted as Senior T.C. at Jhanjharpur through CTTI SPJ within the Samastipur Division, under E.C.Railway.

11. Kailash Bihari Razak, son of Sri Ramraji Rajak, presently posted as TTE Grade 'A' at Muzaffarpur through CTTI Muzaffarpur within Samastipur Division, within E.C.Railway.

12. Gulam Rabbani, son of Late Md. Yunush, at present posted as TTE Grade 'A' at Muzaffarpur through CTTI, Muzaffarpur within Samastipur .

Division under E.C.Railway.

13. Ashutosh Kumar Singh, son of Late Rameshwar Singh, at present posted as TTE Grade 'A' at Muzaffarpur through CTTI, Muzaffarpur within Samastipur Division under E.C.Railway.

14. Laxmi Narain Paswan, son of Mathura Paswan, at present posted as TTE Grade 'A' at Saharsa. through CTTI, Saharsa within Samastipur Division under E.C.Railway.

15. Vinod Kumar Gupta, son of Late Premlal, at present posted as Senior T.C. At Raxaul through CIT, Raxaul within Samastipur Division under E.C.Railway. ....RESPONDENTS.

**By Advocate :-** Shri N.K.Sinha, ASC [Official respondents].

Shri Gautam Bose, Sr. Adv. [Private respondents].

## **2. O. A. No. 12 of 2003**

1. Awadesh Kumar Singh, son of Late Gauri Shankar Singh, resident of Sector-B, Khush Lal Nagar Colony, Sindhora Road, Varanasi, Uttar Pradesh.

2. Rizwanul Haque Khand, son of Late Noorul Haque Khan, resident of Ward No.15, Samastipur.

3. Gopi Chand, son of Late Kishoun Ram, resident of vill. Pundag, P.O.: Pundag, District – Ranchi, Jharkhand.

4. Ram Chandra Sharma Azad, son of Late Kamal Sharma, resident of village – Karbadha, P.O.: Samastipur, District – Samastipur.

5. Ram Chandra 1<sup>st</sup>, son of Ram Autar Paswan, resident of village and P.O.: Manjhaul, District-Begusarai.

6. Md. Syed Ali Azad, son of Late Syad Ali Nazir, resident of Railway Quarter No. T.IIC, Samastipur.

7. Ram Chandra Sah, son of Sri Iswar Sah, resident of village- Harpur Pusa, P.O.: Pusa, District – Samastipur.

8. Ishwar Pd. Singh, son of Late Dhananjay Singh, resident of village & P.O.: Jengore, P.S.: Azam Nagar, via. Mahadeopur, District-Katihar.

9. Shambhoo Rai, son of late Badri Rai, resident of Railway Quarter No. 454-B, Gandhipark, Samastipur.

10. Sanjay Kumar Sinha, son of Sri Satyanarain Sinha, presently posted as TTE, East Central Railway, Darbhanga. ....APPLICANTS.

**By Advocate :-** Shri S.R.Sharan.

Vs.

1. The Union of India through the General Manager, East Central Railway, Hazipur.

2. The Chairman, Railway Board, New Delhi.




3. The General Manager, North Eastern Railway, Gorakhpur.
4. The Chief Personnel Officer, East Central Railway, Hazipur.
5. The Divisional Railway Manager, East Central Railway, Samastipur.
6. The Divisional Railway Manager [Personnel], East Central Railway, Samastipur.
7. Shri G.K.Biswas, son of Late R.M.Biswas at present posted as Sr. T.C., Samastipur [one of the applicants of OA No.361 of 1996].

.....RESPONDENTS.

**By Advocate** :- Shri S.K.Singh, ASC [Official respondents].

Shri Gautam Bose, Sr. Adv. [Private respondents].

### 3. O. A. No. 111 of 2003

1. Pramod Kumar Sharma, son of Late Jagdish Prasad, resident of Barah Pathar, Ward No.24, Samastipur.
2. Anjani Kumar 'Mukul', son of Late Avinash Chandra Verma, resident of Railway Quarter No. 545-B, Gandhi Park, Samastipur.
3. Paritosh Narain Pathak, son of Late Ganesh Pathak, presently posted as Travelling Ticket Examiner, Grade 'A' at Darbhanga, East Central Railway.
4. Raghubir Choudhary, son of Late Mathura Choudhary, presently posted as Travelling Ticket Examiner, Grade 'A' at Darbhanga, East Central Railway.
5. Kailash Chandra Mishra, son of Late Muneshwar Mishra, presently posted as Travelling Ticket Examiner, Grade 'A' at Samastipur, East Central Railway.
6. Ambar Prasad Yadav, son of Late Dinaya Prasad Yadav, presently posted as Travelling Ticket Examiner, Grade 'A' at Darbhanga, East Central Railway.
7. Kailash Prasad, son of Late Ramapati Roy, presently posted as Travelling Ticket Examiner, Grade 'A' at Samastipur, East Central Railway.
8. Vijay Kumar Sinha, son of Late Radhika Raman Prasad Sinha, presently posted as Travelling Ticket Examiner, Grade 'A' at Samastipur, East Central Railway.
9. Sanjay Kumar Chakraborty, son of Chitranjan Chakraborty, presently posted as Travelling Ticket Examiner, Grade 'A' at Darbhanga, East Central Railway.
10. Ranjit Kumar Sinha, son of Rajeev Prasad Sinha, presently posted as Travelling Ticket Examiner, Samastipur, East Central Railway.
11. Md. Salijan Mansoori, son of Md. Ismail Mansoori, presently posted as Travelling Ticket Examiner, Grade 'A' at Muzaffarpur [North], East Central Railway. 

12. Vijoy Kumar Sinha, son of Narsingh Prasad Sinha, presently posted as Travelling Ticket Examiner, Grade 'A' at Samastipur, East Central Railway.

13. Md. Mustafa Ansari, son of Md. Islam, presently posted as Travelling Ticket Examiner, Grade 'A' at Narkatiaganj, East Central Railway.

14. Sanjay Kumar Pandey, son of Late Devendra Pandey, presently posted as Travelling Ticket Examiner, Grade 'A' at Muzaffarpur [North], East Central Railway.

15. Dilip Kumar Sah, son of Late Butena Sah, presently posted as Travelling Ticket Examiner at Muzaffarpur [North], East Central Railway.

16. Jawahar Prasad Rajak, son of Late Banni Prasad Rajak, presently posted as Travelling Ticket Examiner at Saharsa, East Central Railway.

.....APPLICANTS.

**By Advocate :-** Shri S.R.Sharan.

Vs.

1. The Union of India through the General Manager, East Central Railway, Hajipur, District – Vaishali.

2. The General Manager, North Eastern Railway, Gorakhpur, Uttar Pradesh.

3. The Divisional Railway Manager, East Central Railway, Samastipur Division, Samastipur.

4. The Divisional Rail Manager [Personnel], East Central Railway, Samastipur Division, Samastipur.


5. Ganesh Kumar Biswas, S/o Late R.M.Biswas, presently TTE 'A' within Samastipur Division through DRM[P], E.C.Railway, Samastipur.

6. Ashutosh Kumar Singh, S/o Rameshwar Singh, presently TTE 'A' within Samastipur Division through DRM[P], E.C.Railway, Samastipur.

.....RESPONDENTS.

**By Advocate :-** Shri R.N.Choudhary, ASC [Official respondents].  
Shri Gautam Bose, Sr. Adv. [Private respondents].

### **O R D E R**

**Sudhir Kumar, Member [Administrative] :-** In these combined cases we are confronted with the vexed problem of review having been sought of the order dated 10.12.2001 passed by a concurrent Division Bench of this Tribunal in OA 361 of 1996, filed by 12 applicants, by the orders of which 11 applicants of the RA are among the persons affected, even though they had not been named as private respondents by the 12 applicants of that OA .

361 of 1996, and the consequences likely to fall on these 11 applicants and perhaps many others were not considered by the Bench while passing the impugned order dated 10.12.2001. The two OAs clubbed together with the Review Application for the purposes of hearing and orders have also been filed by persons who were not parties before this Tribunal in OA 361 of 1996, but are affected by and aggrieved with the orders dated 10.12.2001 passed in that OA.

2. Under the Code of Civil Procedure, a review under Section 114 is provided for as follows :-


*"114. Review – Subject as aforesaid, any person considering himself aggrieved -*

*[a] by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,*

*[b] by a decree or order from which no appeal is allowed by this Code, or*

*[c] by a decision on a reference from a Court of Small Causes,*

*may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."*

3. Therefore, any person who considers himself aggrieved by a decree or order may apply for a review of the judgment to the Court which passed the decree or made the order. The 11 applicants of this RA were not parties in the OA 361 of 1996, but consider themselves to be aggrieved by the order dated 10.12.2001, passed in OA 361 of 1996 filed by the private respondents R-5 to R-15 of this RA. Shri Gautam Bose, learned Senior Counsel appearing on behalf of the private respondents had, however, tooth and nail opposed the maintainability of the R.A. and filed the following judgments in support of his contentions, which would be discussed in detail later :- 

[1] AIR 2002 SC 2537 :2002(1) ATJ 551[SC] [Subhash Vs. State of Maharashtra].

[2] 2000(2) AISLJ 108 [SC][Ajit Kr. Rath Vs. State of Orissa & Ors.]

[3] AIR 2007 SC 1878 [Gopal Singh Vs. State Cadre Forest Officers Association & Ors.]

[4] RA No. 99 of 2005 dated 27.01.2006 [Union of India & Ors. Vs. Ramdeo Singh]

4. Nine applicants of OA 12 of 2003 had, on the other hand, chosen the first applicant of OA 361 of 1996 as private respondent no.7 while filing their application, and had assailed in their OA the benefit derived by all the 12 applicants and many others out of the order dated 10.12.2001 of this Tribunal in OA 361 of 1996. Sixteen applicants of OA 111 of 2003 also chose to make the applicants no.1 & 10 of the 12 applicants of OA 361 of 1996 decided on 10.12.2001 as Private respondent nos.5 and 6 of their OA.

5. While considering the voluminous submissions and counter submissions made on behalf of the applicants of the RA and the applicants of the two OAs in their written pleadings as well as the submissions of their learned counsels, we have failed to find even a bare mention of the most relevant word for deciding these three cases, which has also not been found mentioned even in the order under review, or in the related orders cited by both the sides, namely, "Lien". We, therefore, propose to examine the three cases on merits after examining the background of the numerous judgments of various Benches of this Tribunal on this subject, in all of which, unfortunately, the word "Lien" has never been found mentioned anywhere, and the aspect and implication of lien has not been considered in any of the judgments cited, or in the order under review, assailed in these

he.

three cases.

**Background of the cases :-**

6. The whole story of these cases revolves around the restructuring of the cadres of the ticket checking staff of the Railways. Prior to this present series of cases, the Railways, particularly, the then undivided N. E. Railway, to which these <sup>three cases</sup> ~~categories~~ relate, used to have a single cadre of direct recruitment of Ticket Collectors [for short, TCs] in the pay scale of Rs.260-400/-. Since the word 'Ticket Collector' as such envisaged the job of stationary position and collection of tickets at platforms, while the job of examination of tickets of travelling passengers when the train is moving is equally, rather more important function of the Railways, below <sup>on</sup> separate from the cadre of "Conductors," there was another cadre of Travelling Ticket Checkers, which was named as Travelling Ticket Examiners [for short, TTEs]. Somehow the Railways had only one single cadre of direct recruitment for both the channels of promotion of the stationary TCs and the travelling TTEs. Their promotional prospects were defined in the following manner :-

**"Ticket Collector [T.C.]**

**[Rs.260-400/950-1500/3050-4590]**

**[Initial Recruitment Grade]**

|    |   |  |
|----|---|--|
| 1. | Promotion in the T.C.Channel  | Promotion in the TTE channel [traveling Ticket Examiner] on the basis of written options optees were called LRTC [Leave Reserve TC]. |
| 2. | Senior TC [Divl.] [330-560/1200-2040 4000-6000]   | TTE [Divl.] Rs.330-56-/1200-2040-4000-6000].   |
| 3. | Head T.C.[ Platform Inspector] [Rs.425-640/1400-2300/5000-8000] Selection.                            | TTE'A' [Conductor]/Divl. [Rs.425-640/1400-2300/5000-8000] Selection.   |
| 4. | Divisional Ticket Inspector [Divl.] [Rs.560-750/1600-2600] Non-selection [seniority-cum-suitability]. | Divisional Travelling Ticket Inspector [560-750/1600-2600] Non-selection [seniority-cum-suitability].                                |



|    |  |   |
|----|--|---|
|    | Both cadres merged at this stage for promotion through selection in the grade of Rs.700-900/2000-3200. |   |
| 5. | Chief Inspector of Tickets [DP] [Selection].   | Chief Travelling Ticket Inspector [D.P.] [Selection]. |

7. Since there was no separate recruitment for the TTE cadre, eligible persons were promoted to be included in the TTE group by asking for the options of volunteers for that group, after which the selected TCs were notified as Leave Reserve Ticket Collectors [LRTCs] initially, before being promoted to the cadre of TTE in the pay scale of Rs.330-560/-. They then ceased to possess a lien in the cadre of TCs, and used to acquire a lien in the cadre of TTEs, and such cadre migration was final and irreversible, su. because of the automatic extinguishment of their original lien in the cadre of TCs, in which they had all been recruited to begin with. A proforma for such option circular has been produced by the review applicants at Annexure-A/2 of their R.A, below which the form of application for option prescribed was as follows :-

"Form of Application"

To

*The Divl. Rly. Manager [P],  
N.E.Railway/Samastipur*

*Sub.:- Option for the post of LR.TC/LR. TTE.*

*Ref.:- Your notification No. E/210/C/TTE/Option [II] dt. 08.07.1983.*

*I like to opt for promotion in TTE group and my option is final.*

*Yours faithfully,*

*Signature.....*

*[In block letters*

*Designation.....*


*Station.....*

*Date.....*

*Forwarded to DRM [P]/SPJ  
for necessary action.  
SS/SM/Batch I/c"*

8. In the year 1984 a suggestion was made to the Railway su.

Ministry that the cadres of TCs and the TTEs, and their avenues of advancement in their respective careers should be common, and that separate seniority lists [and thereby separate lien] may not be maintained for these two categories. The Railway Board circulated this suggestion to the various Railways through their letter dated 25.08.1984. It was understood by the Railway Board and the General Manager [P] that in other words the suggestion was to have a common cadre of TCs and TTEs. As was noted in the Board's letter itself, that in support of this suggestion it had been stated that a combined cadre would give greater flexibility to the administration in the postings and deployment of staff in ticket checking categories, keeping in view their aptitudes and their performance, and having due regard at the same time to the exigencies of administrative requirements. It was further suggested that such a combined cadre may help in equalizing the chances of promotion in the two channels of promotion. The Railway Board had through their letter dated 25.08.1984 only wanted to have the remarks of the various General Managers on this proposal. The Railway Board had also wanted to know the manner of filling up of the posts of "Conductors" at that point of time, and as to how these posts should be manned if the two categories of TCs & TTEs are combined into a single cadre.

9. The General Manager of N.E.Railway, Gorakhpur, in the year 1984 became proactive in pursuing this suggestion made to the Railway Ministry, which was still at the stage of examination. For considering the avenues of promotion of the ticket checking staff he requested the recognised Unions to give their suggestions, and on receipt of their suggestions, the General Manager, without waiting for the Railway Board's decision either way on the suggestions made to it, decided as under, as quoted in the letter dated 20/21.11.1984 addressed by his office to the 

DRMs of N.E.Railway :-

*"At the present moment upto the scale of Rs.425-640 the TTEs cadre and the TCs cadre are separate. The merger is taking place at Rs.550-750 grade and thereafter Rs.700-900 grade is a selection post for the combined cadre.*

*For the Commercial purpose the work of the Ticket Collector and the TTE are same in content. So both the Cadres will henceforth be a combined cadre. All the new entrants and those who are new working on the initial grade of Rs.260-40-400 on the T.C. Side and LR T.C. Side, will be utilised henceforth to TTEs side on the basis of seniority, i.e., the seniors will work on the line and juniors at stationary posts. The option so far taken from people to work as TTEs and not yet promoted, should also be cancelled and they will all be put in a common pool.*

*In order to protect the interest of people who have already been promoted from the initial grade to the higher grades on the basis of separate avenue of promotion, the avenue of the TCs' cadre and TTEs' cadre from grades Rs.330-560 right upto 700-900 will be independent for promotion and there will be no merger of the two cadres at any intermediate point, i.e., Rs.550-750 or Rs.700-800. Over a period of time, the existing incumbents of a separate cadre will run out of the system and the combined cadre will get stabilized at each level of promotion.*


*In principle the combined cadre scheme as described above will be brought into effect from 01.12.1984.*

*Board can also be informed that on this Railways we have decided on a combined cadre and we are implementing it from 01.12.1984.*

*In view of the aforesaid cadre decision we have informed the Railway Board that we will act as per GMs -decision from 01.12.1984.*

*As regards filling up the post of Conductor [Rs.425-640], at present it is filled on seniority and suitability basis from TTEs group working in grade Rs.330-560. There will be no change in filling up those posts in future also.*

*You are, therefore, requested to kindly take action accordingly."*

10. Thus, for the first time in the history of service law, a group of people was created in N.E.Railway in which while they were possessing one lien against one post, they were entitled to have their names enlisted in two seniority lists: one in the seniority list of the newly created common pool with effect from 01.12.1984, and secondly, their own existing 

seniority in their respective cadres of TCs or LRTCs/TTEs, as in existence upto 30.11.1984. Nobody gave a thought about the implications of having such a prescription, in which a person could maintain his lien in his original parent cadre, and keep on getting promotions till "his cadre runs out of the system", and yet become part of a newly combined cadre and combined seniority list automatically. Only the new entrants after 01.12.1984 were spared this agony of not knowing as to where they belonged, as they were supposed to be recruited only to the combined cadre, and move ahead through promotions only in the combined cadre.

11. Promptly, some of the employees moved the Lucknow Circuit Bench of Allahabad Bench of this Tribunal in OA 129 of 1986 [L]. We have not had the benefit of a copy of the order of Lucknow Circuit Bench in that OA, but its conclusions were cited by the same Circuit Bench in its order in another OA 275 of 1989 [L] in para 3 as follows :-

*"3. Aggrieved by the above said order some of the employees who were already working in the grade of Rs.425-640 moved this Tribunal in OA No. 129 of 1986. Their contention was that they are already working in higher post duly selected under the old channel of promotion and as such they should not be made to look back to their old seniority but they should be allowed to take seniority from the promotion post. The Tribunal considered their contention and upheld that their seniority should not be disturbed. The applicant in the instant case claims that he is similarly placed and as such the benefit of that decision should also be extended to him but his representations to the authorities in this regard have been of no avail."*

12. It is thus clear that the applicants of that OA No. 129 of 1986 [L] were in the grade of Rs.425-640, i.e., the Grade of "Conductors" who were allowed to take their seniority further from the promotional posts in TTEs' cadre which they were already holding.

13. In the meanwhile, by way of a clarification dated 16/17 May, 1985, the irreverence to the established principles of service law and concept of lien were further fortified by the General Manager[P], *He.*

N.E.Railway, Gorakhpur, through his letter addressed to the DRMs in which it was clarified as follows :-

*"In continuation of this office letter of even number dated 20/21.11.84 following supplementary orders regarding AVC of Ticket Checking Staff :-*

*"The group in which TCs and TTEs were working on 31.12.83 would be the deciding factor in regard to their further advancement. They would continue in the category in which they are working but would be adjusted in their own category in future vacancies."*

*You are, therefore, requested to kindly take action accordingly."*

14. This instruction had tried to advance the effective date of bifurcation of the two existing cadres till "the separate cadre will run out of the system" from 30.11.1984 or 01.12.1984 to 31.12.1983 or 01.01.1984, while retaining the date of the creation of the new combined cadre unchanged, without explaining anything about the 11 months' period of the interregnum, and as to what would be the impact of the upward movements and promotions accorded to individuals in these two separated cadres in this period of 11 months.

15. This clarification was the subject matter of lis in OA 275 of 1989[L] [Ram Autar Singh Vs. G.M., N.E.Railway, Gorakhpur & Ors.] before the Lucknow Circuit Bench of Allahabad Bench of this Tribunal.

The Circuit Bench ordered on 10.12.1990 as follows :-

*"7. The orders dated 20.11.1984 are to be effective from 01.12.1984, according to the Railway Board circular. But this date has been pushed back to 31.12.83 by order dated 16.05.85 of the General Manager, North-Eastern Railway. The latter order by the G.M. modifying Board's orders are liable to be quashed, as G.M. cannot negate a benefit contained in what is a policy decision of the Railway Board. Accordingly, we quash the order dated 16.05.1985 issued by the General Manager [Annexure-5]". [vide Annexure-A/5 of RA].*

16. In plain and simple words, this order of the Lucknow Circuit Bench negated the advancement of the effective date of bifurcation of the

*See.*

two existing cadres, and the date of such bifurcation of the existing cadres was to be the same as the date of the creation of the new combined cadre thereafter. Thus, effectively, every single person<sup>g</sup> in the two separated<sup>Re.</sup> cadres, and in the third new combined cadre, was to have only one lien,<sup>Re.</sup> against one single post, though his name was to figure in two seniority lists.

17. With this, the clarification issued by the General Manager that the groups in which the TCs & TTEs were working on 31.12.1983 would be the deciding factor in regard to their further career advancement in the merged cadre, and that they would continue in the category in which they are working but would be adjusted in their own category in future vacancies, stood set-aside. The result was that the date of creation of the new combined cadre and the bifurcation of the two existing cadres was to be the same, and everybody who was included in the merged cadres of TCs & TTEs as on 30.11.1983 stood merged into a single cadre w.e.f 01.12.1984 and still he maintained his own seniority as on that date in the respective separate category also. But in these instructions and judgments, there was no clarity about how the inter-se seniority of the combined cadre vis-a-vis the respective separate cadres was to be fixed by merging the two different cadres as on 01.12.1984. In the same order dated 10.12.1990, in OA 275 of 1989 [L], the Tribunal further passed the following order :-

*"9. As on 01.12.1984, the applicant was holding the post of a Conductor at Lucknow [Rs.550-750]. Presumably this post has better perquisites. Taking the facts and circumstances of the case, we direct the respondents that :*

*[i] the applicant should not be reverted to a lower post. He should be continued in the grade [Rs.550-750].*

*[ii] If the post of Conductor has better perquisites, that post may be offered to the applicant giving weightage to his seniority in terms of order dated 20.11.1984." [vide Annexure-A/5 of RA]*

18. Thus, with this order, promotion to the post of Conductor in<sup>Re.</sup>

the pay scale of Rs.550-750 was once-again formally allowed, which was a promotional cadre outside the two separate channels of promotion allowed till then, whereby the TTEs Gr. 'A' were called Conductor Divisional and were placed in pay scale of Rs.425-640/-, and on further promotion they were promoted to the grade of Divisional Travelling Ticket Inspectors in the pay scale of Rs.550-750/-. These two judgments of Lucknow Bench in OA 129 of 1986 [L], dated 21.01.1988, and in OA 275 of 1989 [L], dated 10.12.1990, remained unchallenged, and their conclusions became final.

19. The applicants of the OA 361 of 1996, in which the order dated 10.12.2001 under review was passed, had come before this Bench with the limited prayer to set-aside the notifications dated 16.02.1996, and 05.07.1996, whereby their juniors had been allowed to appear in the written test for selection to the post of TTE Gr. 'A', and the result of the written test had been published. A further related prayer had been made for direction to the respondents to prepare a combined seniority list of TCs and TTEs on the basis of their entry into service by treating the date 01.01.1984 as the cut-off date in the Samastipur Division, as was said to have been followed in other Divisions of N. E. Railway, and for orders to fill up the superior posts on the basis of such combined seniority list, so as to give proper effect to the re-structuring scheme on the lines it had been so implemented in other Divisions of N. E. Railway. Since the orders of the Lucknow Circuit Bench of the Allahabad Bench were ostensibly not pointed out before this Bench, this Bench went on to record the facts of the case as follows :-

*"2. The applicants were initially appointed as Ticket Collectors on the dates as mentioned in the notifications as at Annexure-A/3 series in the pay scale of Rs.260-400/-, revised Rs.950-1500. According to old AVC, they had two separate channels of promotion. The Ticket Collectors, who opted to work in the TTE side, were designed as "Leave Reserve Ticket Collectors" [LRTC] and their next avenue of promotion by seniority was in the pay scale of Rs.350-550/-, Re.*

revised Rs.1200-2050, and then as TTE Grade 'A' in the pay scale of Rs.425-560 [Old], revised Rs.1400-2300 by selection. Those Ticket Collectors, who did not give options, their next promotional avenues were to the grade of Sr. Ticket Collectors in the pay scale of Rs.330-560 [Old], revised Rs.1200-2040, and then as Head Ticket Collectors in the scale of Rs.425-650 [old], revised Rs.1400-2300/- by selection. The next promotion to the grade of Divisional Ticket Inspectors on the T.C. side and the Divisional traveling Ticket Collector on the TTE side were on the basis of merger of the posts and through a combined seniority list on the basis of selection.

3. It is stated that the General Manager of North Eastern Railway after considering the view of the Union, and also, in the light of Railway Board's letter dated 25.08.1984, brought changes in the avenue of the aforesaid promotions of the Ticket Collectors and the Travelling Ticket Commissioner [sic Examiners] in the following manners :-

[i] With effect from 01.12.1984, there was to be a combined cadre of TC & TTE. All the new entrants and those working on the initial post of TC would be utilised for TTE, out of them, those who are working in the train would be seniors and the juniors at the stations;

[ii] Those T.Cs, i.e., working in the initial grade, who had given their options to avail either TC or TTE channel, have not been promoted following such options, would be of no use and their options shall be cancelled;

[iii] Those who availed their options i.e. being promoted to the subsequent higher grade, shall not be disturbed and for them the old AVC will continue. However, there would be no merger at the intermediate point of Rs.550-750 and Rs.700-900/- and those promoted in the different channels shall get subsequent promotions be treating two channels completely independent for them only till they are exhausted;

[iv] The combined cadre scheme was to be implemented from 01.12.1984, meaning thereby, that all those who have availed of any promotion in the any channel prior to this date, would be treated independently in their respective channel.

Subsequently, a supplementary circular was issued on 17.05.1985, according to when, in place of 01.12.1984 the cut-off date as 31.12.1983, was introduced, i.e., all those who had availed the options and promoted to the higher grade in their respective channels would continue to get further promotion by treating their channels to be independent. Secondly, according to the supplementary order the

*RA.*



*combined cadres of TC and TTE was to come into effect from 01.01.1984, and not on 01.12.1984, and the combined seniority had to be made from the date itself of both TC and TTE and resultant promotions given on the said seniority. Thus, 01.01.1984, becoming the new cut-off date from which the combined seniority of Tcs and TTEs was to be prepared for all future promotions. It is stated that the Railway Administration accepted and acted upon this cut-off date as the Railway Administration itself took the stand in its W.S filed in OA 170/1989 as at Annexure-A/6. The Divisional Railway Manager, Varanasi issued order No.971 dated 30.04.1990 [Annexure-A/7] which shows that the combined seniority list was made effective from 01.01.1984. The Divisional Railway Manager [P], Sonapur, also issued office order No.160 dated 12.01.1990, which would show that the combined cadre scheme was implemented with effect from 01.01.1984. However, the Samastipur Divisional, North Eastern Railway, did not implement the new scheme of combined seniority list with effect from 01.01.1984, nor cancelled the options of those who had not been promoted till 31.12.1983. The applicants were never asked for exercising options before introduction of the new AVC with effect from 01.01.1984. They had been working as Ticket Collectors as on 31.12.1983, and had not been promoted to any higher rank before 01.01.1984. Therefore, they became subject to the new Scheme and entitled for placement in the combined seniority list."*

*[Vide Annexure-A/1 of RA – Impugned order].*

20. After hearing both the sides, in the impugned order under review, the Bench went ahead to record its findings as follows :-

*"10. It is admitted position that the applicants were initially appointed as Ticket Collectors in the pay scale of Rs.260-400 [Revised Rs.950-1500]. It is also admitted that they did not opt to work in the TTE side and there were two channels of promotions. The TCs who opted for TTE side were next promoted to the scale of Rs.330-550 [Revised Rs.1200-2050] and then TTE Grade 'A' in the scale of Rs.425-650 [Revised Rs.1400-2300] by selection. The Railway Administration took a policy decision of doing away with the aforesaid two channels of promotion of the TC and to form a combined cadre for their advancement on the basis of seniority vide circular letter dated 20.11.11.1984 as at Annexure-A-4.....*

*11. Thus, according to this policy decision the category of Ticket Collectors and TTEs were required to be combined into a single cadre to be effective from 01.12.1984. It was considered that this combined cadre could help in equalizing the chances of promotion of the TCs. However, subsequently, the Railway Administration brought a supplementary order regarding the AVC of Ticket Checking staff vide letter dated 17.05.1985, as at Annexure-A-5 in the following manners :-* du.

*"The Group in which TCs and TTEs were working on 31.12.1983 would be the deciding factor in regard to their further advancement. They would continue in the category in which they are working but would be adjusted in their own category in future vacancies."*

*Thus, according to this supplementary order of the Railway Administration, 31.12.1983 was the date fixed for deciding in regard to their further advancement. It appears from Annexure-R-1 which is circular letter dated 24.09.1992 that the Railway Administration came with further clarification regarding the AVC of Ticket Checking cadre and according to this also, the position of the staff as obtaining on 31.12.1983 were required to be maintained for their further advancement in higher grade.*

X                      x                      x                      x                      x


17. *In view of the aforesaid discussions of the factual position and in the interest of substantial justice, equity and fair play, we hereby dispose of this OA with the following directions to the respondents :-*


*[i] The respondents shall prepare a combined seniority list of the TCs and TTEs on the basis of the position as obtaining on 31.12.1983, and fill up the superior posts on the basis of such combined seniority list treating 01.01.1984 as cut-off date;*

*[ii] The applicants, if within the consideration zone as per their seniority on the basis of such combined seniority list would be allowed to take selection test for promotion to the posts of TTEs Grade A as absentees.*

*[iii] The penal for promotion to the grade of TTEs Grade 'A' against the vacancies would be prepared on the basis of the selection test of the applicants along with the incumbents who have already taken selection test vide the impugned notifications as at Annexures-A-1 and A-2;*

*[iv] The above exercises shall be carried out within four months from the date of communication of this order."* [Vide Annexure-A/1 of RA – impugned order].

21. It is seen that the orders of Patna Bench at para 17[i] were at total variance with the 11 year old orders dated 10.12.1990 of the Lucknow Circuit Bench of the Allahabad Bench of this Tribunal in OA 275 of 1989 [L] [Ram Autar Singh Vs. G.M., N.E.Railway, Gorakhpur], reproduced at para 15 above. The 11 review applicants of the present R.A., who had 

joined Railways on various different dates w.e.f. 1983 to 1985 had, in the meanwhile, been promoted to TTE Gr.'A' w.e.f. different dates in 1990, 1992 & 1994. Later on, vide notification dated 16.12.1996 applications were invited for selection for promotion in the TTE Gr.'A' [Rs.1400-2300] and after the selection test the applicants were selected and got promoted and posted at different places by office order dated 31.08.2000. They assailed the claim of the applicants of O.A. 361 of 1996 stating that they had availed of the opportunity to exercise their option for the post of TTEs, also known as LRTCs. The applicants of the R.A. also state that at the time of merger of the two cadres w.e.f. 01.12.1984, protection had been provided to the interest of the people who had already been promoted from the initial grade of TCs to the higher grades within their own cadres on the basis of their old separate avenues of promotion in the TCs' cadre and TTEs' cadre, by keeping such promotion independent and ordering that there will be no merger of the two cadres at any intermediate point, either in the pay scale of Rs.550-750/-, or in the pay scale of Rs.700-900/-. The review applicants have stated that the private respondents/applicants of the OA No. 361 of 1996 had not opted for their promotion in the TTE Grade, and that they had also accepted their promotion in their own TC side into the Sr. TC grade on various dates from 1984 to 1987. It has been alleged by the review applicants that while accepting their promotion as Sr. TCs in the years 1984 to 1987, the private respondents of the review application/applicants of the OA No. 361 of 1996 had never represented or objected before the authorities to prepare a combined seniority list, and only opted for being guided by the new channel of promotion. On the other hand, a large number of TCs who had opted for LRTCs, even persons who were senior to the applicants of the OA No. 361 of 1996/private respondents of the RA, had continued to remain as LRTCs in the lower pay .

scale and were not given the benefit of re-structuring, and had remained waiting for their turn to be promoted in the TTE side. At least two of the review applicants have stated that after waiting as such LRTCs, they had got the TTE grade of Rs. 330-560/- after six years of such re-organisation, w.e.f. 16.04.1990, while the private respondents of the R.A./applicants of the OA No. 361 of 1996 had got the pay scale of Rs.330-560/- much earlier by accepting promotion in the grade of Sr. TCs without raising any objections, even though many of them were much junior to the review applicants and several other such persons waiting as LRTCs. This, the review applicants stated, goes to show that the private respondents of the R.A./applicants of the OA No. 361 of 1996 were not entitled for promotion in the TTE grade, and, therefore, they are not entitled at all for the benefits of the new channel of promotion prescribed, and should be governed by the old channel of promotion. In support of their contention they pressed the orders of the Lucknow Bench in OA 275 of 1989 [L] [Ram Autar Singh Vs. GM, NER, Gorakhpur] cited above. The review applicants have interpreted these orders to mean that such staff members who were direct recruit TCs and had not got promotion in any of the category, i.e., TTE or Sr. TC, etc. and had continued to remain as TCs upto 30.11.1984, were supposed to seek further advancement only along with the new entrants in the combined cadre of TTEs and TCs that came into force w.e.f. 01.12.1984. This issue must have been raised by many persons, and it was apparently clarified by a letter dated 24.09.1992 issued from the O/o the GM, N.E.Railway as follows through a letter addressed to all the concerned DRMs of NER :-

"N. E. Railway

Office of the  
General Manager [P],  
Gorakhpur *du.*

Dated 24.09.1992

No.E/210/15/O/AVC/TTE/VI.

The Divisional Rly Manager,  
N.E.Railway,  
I2N.1JN.SPJ.SEE & BSE

Sub.- AVC for ticket Checking Cadre.

The current avenue of promotion for Ticket Checking staff has been circulated vide this office letter of even number dated 21.11.1984 which was supplemented by circular of even no. dated 17.05.1985. According to this avenue of promotion following provisions exist for ticket checking staff :-

1. All new entrants and staff working in initial grade of Rs.260-400 in the category of TC of LRTC on 30.11.1984 will have combined cadre for TCs and TTEs.
  2. Others not concerned by above will have separate cadre for TCs and TTEs from the lowest to the highest grades and they will progress in the group in which they were working on 31.12.1983.
  3. The Groups in which TCs and TTEs were working on 31.12.1983 would be the deciding factor in regard to the further advancement. They would continue in the category in which they are working but would be adjusted in their own category in future vacancies.
2. It has been brought to the notice of the administration that the above instructions have not been implemented in the spirit resulting in some deviations on certain Divisions. The clarification as contained in the following paragraph has this become necessary so as to obtain a uniform practice of all Divisions.
3. It was decided to combine the cadre of the TC & TTE w.e.f. 01.12.1984. By that time the restructuring upgrading in the cadre of TC/TTE was also available for implementation. So, with a view to implement the revised AVC, it was decided that the position of the staff as obtaining on 31.12.1983, i.e., those who have opted for TTE cadre and those who are maintaining their original cadre as TC should be maintained for the purpose of their further advancement to higher grade posts received as a result of restructuring applicable from 01.01.1984. It means that the staff who had opted for the category of TTE on the basis of position obtaining on 31.12.1983 will seek advancement in the category of TTE and those retaining their original cadre of TC will seek advancement in the category of TC. The higher grade posts in scale Rs.1200-2040 and above would be filled up in the above manner and such staff who will not get promotion in any of the category, i.e., TTE or Sr. TC etc. and continue to remain

*as TC upto 30.11.1984 will seek their further advancement along with the new entrants in the combined cadre of TTE & TE brought into force w.e.f. 01.12.1984.*

*4. The action otherwise taken by any of the Divisions should be notified accordingly and seniority lists as on 01.12.1984 should be published."*

*- Vide Annexure-A/6 of the R.A.*

22. This instruction, though mentioned in the Patna Bench order dated 10.12.2001 under review in para 11, has not been struck down specifically while ordering in para 17 [i] of that order under review that the combined seniority list of the TCs & TTEs would be prepared on the basis of the position as obtaining on 31.12.1983 and the superior posts shall be filled up on the basis of such combined seniority list treating 01.01.1984 as cut-off date. This appears to be an error apparent on the face of the record, giving rise to the maintainability of the Review Application, ~~inasmuch as~~ <sup>su.</sup> the Bench took notice of the clarification circular dated 24.09.1992, cited above, which was in conformity with the orders of the Lucknow Circuit Bench of the Allahabad Bench of this Tribunal contained in para 7 of the order dated 10.12.1990 in OA 275 of 1989 [L] [Ram Autar Singh Vs. GM, NER], and without striking down this circular dated 24.09.1992 specifically, the Bench still gave a different direction for treating 31.12.1983 seniority to be the basis for filling up of the superior posts on the basis of the combined seniority list as on 01.01.1984 as the cut off date. Therefore, it is held that this Review Application is maintainable, per se, for a correction of an error apparent on the face of the records.

23. While filing this Review application, the review applicants also filed a M.A. 328 of 2003, seeking permission for condonation of delay in filing this RA. In this M.A. filed on 30.07.2003, the review applicants have stated in paragraphs no. 1 to 9 as follows :- su.

"1. That the applicants have filed a Review Application for reviewing the order dated 10.12.2001 passed in OA 361 of 1996.

2. That the present applicants were not the party in the aforesaid OA and they do not have any knowledge of the proceeding of the OA. Hence, they have no knowledge at all of the aforesaid order dated 10.12.2001.

3. That the applicants are posted at different remote places and they are engaged in mobile duty.

4. That in the first week of March, 2003 they came to know that on the basis of the aforesaid order of this Hon'ble Court some of the co-staff working as TTE'A' [Rs.5000-8000] and who were selected alongwith present applicants have been reverted to the TTE Grade [Rs.4000-6000], then upon enquiry the present applicants came to know that in light of the order of this Hon'ble Tribunal dated 10.12.2001 passed in OA 361 of 1996 some of the Sr. TCs have been selected for the post of TTE 'A' grade since alleged to have been senior to the present applicants.

5. That as soon as in the first week of March, 2003 when they came to know about the order of this Tribunal they started collecting documents orders of this Hon'ble Tribunal and also taken legal advice from the counsel.

6. That during the Holi vacation the documents were handed over to the counsel for filing a review petition.

7. That it is very humbly submitted that the review petition has been filed within 30 from the date of the knowledge of the order of the OA. Hence, there is no delay as such.

8. That the delay whatsoever in filing the review petition are only because of lack of communication and lack of knowledge of the order, since the applicants were not the party in the OA 361 of 1996.

9. That the applicants are prejudicially affected by the order of the Hon'ble Tribunal dated 10.12.2001 because several persons have been made senior to the applicants that too without any opportunity of hearing to affected persons more so on a belated and frivolous petition. If the delay whatsoever is not condoned and the matter is not heard on merit than great prejudice shall be caused to the applicants and the applicants shall be subjected to great injustice.

It is, therefore, prayed that your Lordships may graciously be pleased to condone the delay whatsoever in filing the instant review petition and hear the review petition on merit and/or be pleased to pass such other order/orders as your Lordships may deem fit and proper; and for this *se.*

*the applicants shall ever pray."*

24. In one of the recent rulings in 2010 [1] SLJ [CAT] 1 in RA Nos. 185, 186 of 2006 and RA 138 of 2007 in OA 1124 of 2005, [**Raghav Reddy Vs. Union of India & Ors.**] a Five Member Bench of this Tribunal at the Principal Bench has once again clarified that under Rule 17 of the Administrative Tribunals Act, 1985, in the case of aggrieved third parties, i.e., those who are directly and immediately affected, the period of limitation will have to be reckoned from the date of their knowledge. Therefore, since in this case the review applicants are directly and immediately affected, and they were not made a party in the original OA, they deserve condonation of delay for considering this R.A. Hence, the delay in filing this Review Application is condoned.

25. In the connected O.A. 12 of 2003, ten applicants, aggrieved from the same sequence of events, had filed the OA on 31.12.2002, with the prayer for permission to file the original application jointly. That prayer is allowed. These ten applicants had, for the purpose of challenging the above sequence of events, named Shri G.K.Biswas, the first applicant of OA 361 of 1996, decided by this Tribunal on 10.12.2001, as the private respondent no. R-7. Facts of the case in this O.A. need not be discussed again, as they all flow from the same sequence of events as discussed above. This was the first time, that on 31.12.2002, much before the filing of the above RA 22 of 2003 on 02.04.2003, the 10.12.1990 orders of Lucknow Circuit Bench of the Allahabad Bench of this Tribunal in OA 275 of 1989 [L] [Ram Autar Singh] were brought to the notice of this Patna Bench of the Tribunal by these ten applicants through paragraphs 4 to 12 of their O.A. They had pointed out that this order dated 10.12.1990 had since attained finality, whereby the General Manager's clarificatory letter dated 16/17.05.1985 [cited in para 13 above] had been quashed. They were ku.



aggrieved by the fact that the private respondent R-7 [Shri G.K.Biswas] and other applicants of OA 361 of 1996 had obtained orders dated 10.12.2001 of this Tribunal by suppressing the facts relating to the order of Lucknow Circuit Bench of the Allahabad Bench dated 10.12.1990, and had, without making them necessary parties, obtained incorrect orders from this Tribunal. They pointed out the cases of the promotions over a number of years, of many people in the TTE cadre, in 1987, 1989, 1990, 1992 & 1996, which had never been objected to by the applicants of OA 361 of 1996. They submitted that being aggrieved by this Tribunal's order dated 10.12.2001 in OA 361 of 1996, some of the applicants of this OA 12 of 2003 had approached the Hon'ble Patna High Court in CWJC No. 14028 of 2002 which was heard but not allowed on the ground that writ petition was not allowed in the Hon'ble Patna High Court, and by order dated 17.12.2002 of the Hon'ble High Court it was ordered that the applicants should rather approach this Tribunal itself, because of which they had filed this O.A. However, the contents of the OA are more in the nature of a review application.

26. The immediate grievance of the applicants of OA 12 of 2003 arose from the fact that a notification for selection for promotion in the TTE 'A' [Rs.5000-8000] had been issued by the DRM, Samastipur on 17.09.2002 and 21 candidates [19 general and two Scheduled Caste] have be. been considered to be within the zone of selection even though the number of vacancies had not been notified in the notification. They further pleaded that though only 12 persons were applicants in OA 361 of 1996, it was clear that 9 extra persons had been considered for promotion, going beyond the orders of this Bench of the Tribunal. They said that if 16 vacancies notified on 11.04.2001 are taken as the basis, then 48 candidates should have been called for the Selection Test, and not 21. They further assailed be.

the results published on 06.11.2002 [for 16 persons] and on 22.11.2002 [for 19 persons] from the same written test held on 08.10.2002, more so since two of these persons did not even figure in the list of persons called for the written test. They had pleaded that they had filed a number of representations against such incorrect identification of persons in the zone of consideration, but the authorities have not yet rectified their illegal action in this regard. They further submitted that Shri G.K.Biswas, the first applicant of OA 361 of 1996 has been made party respondent in representative capacity for the sake of convenience.

27. In their grounds for appeal they had pleaded that since the supplementary/clarificatory order of General Manager, N.E.Railway, Gorakhpur, dated 16/17.05.1985 had already been quashed by the Lucknow Circuit Bench of Allahabad Bench of this Tribunal in the year 1990 itself, implementation of the new Avenue of Promotion [AVC] for ticket checking staff has to be governed only by the original Combined Cadre scheme dated 20/21.11.1984. They have stated that those who were working in the higher grades on TC side as on 01.12.1984 cannot automatically claim promotion on the basis of combined gradation list, and at best they can claim future promotions independently in the TCs cadre till they reach the stage of Divisional Ticket Inspector. The applicants laid emphasis on the clarification that according to the old system of promotional avenues to the two separate TCs & TTEs cadres, right from grades Rs.330-560 upto Rs.700-900, will have to be separate and independent, and there could be no merger of the two cadres at any intermediary point, either at the pay scale of Rs. 550-750/-, or at the pay scale of Rs.700-900. They submitted that the seniority in cadre position already settled a decade back cannot be unsettled now, specially when several selections for promotions have already been held and promotion Re.

given, as has been held by the Hon'ble Supreme Court in the case 1998 [3] SLJ SC 28 .

28. They assailed that the OA 361 of 1996, filed in 1996, should have been <sup>rejected</sup> by this Bench of the Tribunal as barred by limitation also, since, in the meanwhile, a number of seniority lists had been prepared and people had been given promotions out of the combined cadre lists prepared in the years 1987, 1989, 1990 and then in the year 1992, on the basis of the provisional combined seniority list prepared in 1987. They prayed that they have been directly and adversely affected and prejudiced by the orders of this Tribunal in OA 361 of 1996. They stated that since the policy letter dated 21.11.1994 had specifically stated the word 'henceforth' and was to be given effect from 01.12.1984, this could not have been made operative from retrospective date of 01.01.1984, as had been correctly decided by the Lucknow Circuit Bench of this Tribunal. They, therefore, prayed that the impugned orders of this Tribunal in OA 361 of 1996 were incorrect and liable to be quashed and reviewed. They had, accordingly, prayed for reliefs as follows :-

*"8.1 To declare the order of the Hon'ble CAT dt. 10.12.2001 passed in OA 361 of 1996 as per incuriam and set it aside by reviewing the same in the light of judgment passed by Lucknow Bench [Annexure-A/5] and in the facts and circumstances stated above.*

*8.2 To quash the order dt. 21.08.2002 cancelling the selection for the post of TTE grade 'A' in which the present applicants took part.*

*8.3 To quash the notification dated 17.09.2002 initiating selection for the post of TTE grade 'A' in light of Hon'ble CAT order and any promotion thereupon.*

*8.4 To quash the result of the written test dt. 06.11.2002 and 22.11.2002.*

*8.5 To direct the respondents to publish the result of written test of the present applicants and to consider the matter of promotion of the present applicants in light of earlier notification dt. 11.04.2001.*

*8.6 To grant any other relief/reliefs as this Hon'ble Court thinks fit and proper."* AL

29. The private respondent, Shri G.K.Biswas [Respondent no.7] filed a detailed written statement on 06.12.2004 and official respondents filed a detailed written statement on 15.09.2005.

30. The private respondent admitted the position that the combined cadre of TCs & TTEs was to be given effect from 01.12.1984, and by the subsequent circular dated 16/17.05 .1985 the cut-off date as 31.12.1983 was introduced. He pleaded that 01.01.1984 having then become the new cut-off date, the combined seniority list of TCs & TTEs was to be prepared as on 01.01.1984 for all future promotions. He submitted that the DRM, Varanasi, issued office order dated 30.04.1990 making the combined seniority list effective from 01.01.1984, the DRM [P], Sonpur, also issued office order dated 12.01.1990 implementing the combined cadre scheme from 01.01.1984, and only the Samastipur Division of N.E.Railway did not implement the combined seniority list w.e.f 01.01.1984 and did not cancel the options of those who had not been promoted till 31.12.1983. He, therefore, submitted that since the respondents had never asked for any option to be exercised before the introduction of new AVC w.e.f 01.01.1984, all those who had been working as TCs as on 31.12.1983, and had not been promoted to any higher rank before 01.01.1984, became subject to the new scheme and entitled for placement in the combined seniority list. He also stated that such people were given the benefit of restructuring of Group 'C' cadre in the Commercial Branch w.e.f. 01.01.1984. He further submitted that applicants of OA 12 of 2003 [Awadesh Kumar Singh & Ors.] were much junior to the answering respondent in the cadre of TCs, and yet they were given the opportunity to appear in the selection test of TTE Grade 'A' on the basis of the joint/combined seniority of TCs & TTEs cadres which merged w.e.f. 2004.

01.01.1984. He stated that only on coming to know about these facts he and other similarly situated colleagues, who were affected by such juniors being called for promotion ignoring the rightful claim of the answering respondent, had joined together to file OA 361 of 1996. The answering respondent no.7 further submitted that the DRM[P], Samastipur, had on 03.08.1987 published a seniority list of TCs as on 01.04.1987. He stated that the order of this Tribunal in OA 361 of 1996 was significant as in that it had directed that the candidature of the answering respondent no.7 and other similarly placed persons, who were ignored for TTE 'A' examination, should also be considered, and that they should be allowed to take the selection test as per their seniority in the grade of TCs and their respective initial grade of joining, and that this Bench has very correctly upheld the claim of answering respondent no.7 and other similarly situated persons. He further stated that in pursuance of the order passed by the Tribunal in OA 361 of 1996, the answering respondents and other similarly situated persons were called in the absentee test, and after having been found eligible, and having been being so selected, they have since been promoted as TTE Grade 'A'. He stated that the applicants of this OA No. 12 of 2003 had moved Hon'ble Patna High Court in writ jurisdiction in CWJC No. 14028 of 2002, when the Hon'ble High Court by its order dated 13.12.2002 refused to interfere with the order of this Tribunal, and made an observation that if the petitioners are aggrieved they should approach this Tribunal only [which they have done in RA 22 of 2003]. He prayed that the OA 12 of 2003 is therefore not maintainable and is liable to be rejected.

31. The official respondents explained that a selection process was notified on 11.04.2001 for filling up 16 posts of TTE 'A' Grade in the scale Rs.5000-8000. In that the applicants of this OA, along with other eligible staff, were called to appear in the written test, which test was held

*be.*

on 18.08.2001. Before publication of the result of the written test, on 10.12.2001 the judgment of this Tribunal was passed in OA 361 of 1996, because of which the earlier process of selection initiated vide notification dated 11.04.2001 was cancelled by notification dated 21.08.2002. They submitted that as per the direction of this Tribunal in OA 361 of 1996, a combined seniority list of TTEs and TCs, on the basis of the position as it prevailed on 31.12.1983, was prepared, after reshuffling the TTEs & TCs, and the senior most eligible employees were called for selection test as absentees. Thereafter, having cancelled the earlier notification dated 11.04.2001, a revised notification dated 17.09.2002 was issued to fill up the posts of TTE 'A' Grade. It was also submitted that the applicants of OA 12 of 2003 were neither called in the written test, nor they appeared in the written test, hence the question of their selection does not arise. Therefore, the official respondents also submitted that this OA 12 of 2003 was not maintainable, and was liable to be rejected.

**OA 111 of 2003 :-**

32. 16 applicants of O.A 111 of 2003 have filed this O.A with an application for joining together, which permission was granted. These applicants had made, apart from four official respondents, the applicants no. 1 and 10 of OA 361 of 1996 also as respondents no. 5 & 6 of their O.A. Like the prayers of the review applicants of R.A 22 of 2003, and the applicants of O.A 12 of 2003, the applicants of this O.A had also explained the facts of the case as discussed above. However, the applicant no.1 of this O.A 111 of 2003 was initially appointed in the grade of TCs only on 13.10.1987, and the applicants no. 2 to 16 were appointed on various dates thereafter, upto 08.03.1991. So, the case of these applicants is different from the case of the applicants of R.A 22 of 2003 and O.A 12 of 2003 in the sense that none of these 16 applicants were in service either as on du.

01.12.1984, on which date the combined cadre of TCs & TTEs was supposed to be constituted, nor on 01.01.1984, on which date the combined cadre of TCs and TTEs was ordered to be created by the orders of this Tribunal in O.A 361 of 1996, while upholding the modification order dated 16/17.05.1985 issued by the O/o of the General Manager, N.E.Railway. The grievance of these 16 applicants of this O.A starts from the combined seniority list of LRTCs/TCs working within Samastipur Division, which was published as on 01.04.1990 vide letter dated 21.09.1990. Actually two of the applicants, applicants no. 15 & 16 were appointed even subsequent to this date, on 31.01.1991 and on 08.03.1991 respectively, and hence, the grievance of applicants no.15 & 16 does not relate to even this combined seniority list as on 01.04.1990. Applicants no. 2 & 7 of this O.A got promoted to the grade of TTE [Rs.1200-2040/4000-6000] w.e.f. 17.12.1992 and applicants no.1 & 6 were so promoted on 17.02.1994. When the selection test of eligible TTEs for their promotion in the TTE 'A' grade Rs.1400-2300/5000-8000 was held in the year 1996, the applicants of this O.A were found eligible, having completed more than five years of service and coming within the zone of consideration as per their respective seniority, and hence, they were also called for written test held on 23.03.1996 and the viva-voce test held on 23.07.1996. The applicants were selected and promoted in the TTE 'A' grade and posted at various places on 31.08.2000. As on the date of filing of the O.A, the applicants claimed to have acquired a vested right to hold the posts to which they had been properly selected, and were aggrieved by the orders dated 10.01.2003 issued by the DRM [P], Samastipur [Annexure-A/1 of this OA], the list at page 3 of the order by which they were removed from the posts of TTE 'A' grade as having not been found selected on the basis of marks in the selection test. The applicants stated that it appears that they had been

reverted on the basis of the order passed by this Tribunal in O.A. 361 of 1996, dated 10.12.2001, while the applicants were not parties in the proceeding in the said O.A., and no opportunity whatsoever had been given to the applicants even by the respondent railways also, before passing the order dated 10.01.2003 impugned in this O.A. They also pointed out the orders of Lucknow Circuit Bench of Allahabad Bench of this Tribunal in O.A. 271 of 1989 [L] [Ram Autar Singh Vs. General Manager, N.E.Railway, Gorakhpur], which had on 10.12.1990 quashed the letter dated 16/17.05.1985 of General Manager's, N.E.Railway, and had attained finality more than 12 years back. They submitted that only after this the General Manager, N.E.Railway had, vide his letter dated 20.04.1992 clarified that the effective date of implementation of the combined cadre scheme for Ticket Checking staff shall be 01.12.1984, while at the same time the position of the staff in their respective Cadres as obtaining on 31.12.1983 should be maintained for the purpose of their advancement to further higher grade posts which were created as a result of restructuring of Group 'C' and 'D' posts w.e.f.01.01.1984.

33. They submitted that with the issuance of this clarification dated 24.09.1992, the effective date of implementation of AVC stood settled as on 01.12.1984 in the year 1992 itself, and thus, those TCs whose option for selection as TTE had not been accepted by 31.12.1993, got promotion on the TC side itself as Sr. TC on 01.01.1984 due to restructuring. They alleged that the applicants of O.A. 361 of 1996 had filed their application before this Tribunal by suppressing facts as well as the subsequent developments and the judgment/order of the Lucknow Bench of this Tribunal, and had also not taken care to implead all the affected persons as party respondents. They submitted that as per the new AVC, a large number of LRTCs who had opted for their promotion in the



grade of TTEs had got promoted in the years 1987, 1989, 1990, 1992 & 1996 itself. They stated that since the applicants of OA 361 of 1996 did not opt for promotion on the TTE side, and had accepted their promotions in the TC side, without any objection, starting with the restructuring as on 01.01.1984, they could not have objected to the promotions in the subsequent phases in the respective Cadres in OA 361 of 1996.

34. They also submitted that from the judgment of the Lucknow Circuit Bench of Allahabad Bench of this Tribunal dated 10.12.1990 it was clear that only the staff who had opted for absorption in the category of TTEs upto 31.12.1983, and whose option had been accepted, placing them as LRTCs prior to promotion as TTEs, could seek advancement in that category. They further submitted that the applicants of said O.A. 361 of 1996 could not have claimed advancement in the grade of TTE nor could have sought a combined cadre w.e.f. 01.12.1984 when in between 01.01.1984 and 01.12.1984 they had already started working in the intermediary cadre as Sr. TC.

35. They further submitted that when this Tribunal passed an order dated 10.12.2001, in OA 361 of 1996, it did not anywhere order for reverting the present applicants of OA 111 of 2003, even though the promotion to the applicants were substantive promotion given after written and oral tests, and was not a conditional promotion. They alleged that the respective position of the ticket checking staff had been settled in the years 1984 & 1985 itself and the TCs & TTEs were being given promotion in their respective side but the applicants of OA 361 of 1996 suddenly woke up from their slumber after 12 years and challenged the selection of 1996 in the grade of TTE 'A'. They submitted that OA 361 of 1996 itself was not maintainable at such a belated stage, to unsettle the seniority position which had been settled a decade before. They reiterated du.

that without impleading them as party respondents, OA 361 of 1996 could not be interpreted by the respondents now to prejudicially and adversely affect the selection of the applicants due to implementation of the orders of this Tribunal in that O.A. They objected to the fact that no opportunity was given to them by this Tribunal, nor by the respondent authorities before cancelling the promotion given to them 2 ½ years earlier, and that all the decisions have been taken behind the back of the applicants. They submitted that the order dated 10.01.2003, by which they had been reverted, has civil consequences and, hence could not have been passed in violation of the principles of natural justice and fair play, and is, therefore, liable to be declared as void and set-aside. They took the ground that this unilateral decision of the respondent authorities violated their rights guaranteed under Articles 14, 16 & 311 of the Constitution. They also submitted that even reversion to a lower grade attracts Article 311[2] of the Constitution which requires fair procedure to be followed and reasonable opportunity to be provided. They took the further ground that the Railway Board's circular issued in the year 1985 has stated that no employee can be reverted from the promotional post if he had completed 18 months of service on the said promotional post, without holding any departmental proceedings. They claimed that they had already completed more than 28 months of their service in the senior cadre and no proceeding whatsoever had been held before ordering their reversion and hence, the impugned order is without any authority of law. They prayed that the order of this Tribunal in O.A. 361 of 1996 could not have in any manner be implemented adversely against the applicants as they were not party in the said proceedings. They submitted that the combined cadre having come into force w.e.f. 01.12.1984, the position as on 31.12.1983 has to be taken into account only for the purpose of taking an account of the respective postings and RA.

promotions in the TCs cadre and TTEs cadre, for the purpose of their further advancement. They assailed the order of this Tribunal in favour of the applicants of O.A. 361 of 1996, who were non optees as on 31.12.1983, and were, therefore, rightly promoted to the post of Sr. TCs w.e.f. 01.01.1984, and it was prayed that those applicants cannot be allowed to be promoted from the grade of Sr. TC [Rs.4000-6000] to the grade of TTE 'A' [Rs.5000-8000] since the change of cadre was allowed only at the initial stage of TC, and not at any intermediary grade, like from Sr. TC to TTE'A' grade. They also pointed out the clarifications repeatedly issued by the General Manager's letters dated 25.02.1991, 24.09.1992 and dated 05.03.1994 after the orders of the Lucknow Circuit Bench of Allahabad Bench of this Tribunal dated 10.12.1990 in OA 275 of 1989, by which the matter of seniority and cadre position had been settled more than a decade back, specially when several selections of promotions had already been held in between and had been given effect to. In support of their contention they cited Hon'ble Supreme Court's order in the case of ..... 1998[3] SLJ (SC) 28. They further took the stand that any policy of merger of cadre can only be implemented prospectively and not retrospectively when it would amount to altering the existing status and seniority. They pleaded that they were necessary parties to have been impleaded in OA 361 of 1996, if the orders of this Tribunal were going to directly and adversely affect and prejudice their interests, and affect their seniority already given, by disturbing their promotion. In the result, they had prayed to review the orders of this Tribunal dated 10.12.2001 passed in OA 361 of 1996 by praying for the following reliefs :-

*"8.1 To quash the order of reversion dated 10.01.2003 [Annexure-A/1].*

*8.2 The review the order of the Hon'ble CAT dated 10.12.2001 passed in OA 361 of 1996 [Annexure-A/1] in light of the order passed by Hon'ble CAT, Allahabad [Lucknow Circuit Bench] dated 11.12.2001.*

*10.12.1990 passed in OA 275 of 1989 [L] [Annexure-A/1] and also in light of the subsequent orders of General Manager Annexure-A/9 series and held at per incuriam.*

*8.3 To grant any other relief/reliefs as this Hon'ble Tribunal may deem fit and proper for the sake of justice. "*

36. On their part, the review applicants had filed copies of the following orders :-

[i] State of Bihar and Others Vs. Kameshwar Prasad Singh and another [(2009) 9 SCC 94] - In this case the writ petitioners claimed seniority and promotion under Article 226 of the Constitution and non impleadment of parties likely to be affected was noticed. It was held in para 26 of the judgment that in absence of persons likely to be affected by the relief prayed, the writ petition normally should be dismissed unless there existed specific reasons for non impleadment of the affected persons. It was noted by the Hon'ble Supreme Court that ignoring such a basic principle of law had resulted in the supersession of 168 Inspectors and 407 Deputy SPs, and the interest of so many seniors had been threatened, endangered and adversely affected, and, therefore, the Apex Court had proceeded to allow the appeal of the State, setting-aside the impugned judgment obtained without making the parties likely to be affected as the party in the writ petition. Here in the present case it is being stated by the review applicants that the applicants of OA 361 of 1996 had acted in a similar manner by not correctly pointing out to this Tribunal the persons who were likely to be affected by the Tribunal's order and by not making them the necessary parties.

[ii] In the case B.S.Bajwa and another Vs. State of Punjab and others [(1998) 2 SCC 523] it was held by the Apex Court that a concession extended by the Additional Advocate General, being a concession of law was not binding on the State, and it was further held that the concession did

du. not bind the other respondents in that <sup>case</sup> also, whose seniority was adversely du.

affected, and, hence, the State Government was right to withdraw the said concession by filing a review application. Relevant portion of the judgment reads as under :-

*“.....We have no doubt that the concession on this point, being one of law, it cannot bind the State and, therefore, it was open to the State to withdraw as it has been done by filing a review petition in the High Court itself. That apart that concession made on behalf of the State cannot bind D.P.Bajaj and Jagir Singh or anyone else who would be adversely affected thereby. Those persons, therefore, have an independent right to assail that view taken by the Division Bench.....”*

[iii] In the case of Dr. A.K.Mitra, DG, CSIR and another Vs. D. Appa Rao and Another [(1998) 9 SCC 492] it was held that it was not permissible for this Tribunal to allow the respondents to again raise the issue of seniority, which had been settled in 1972 itself. It was further held that the respondent was not entitled to raise the issue once-again because – [i] he accepted promotion as Office Assistant on 06.04.1983 without any challenge, [ii] he appeared in direct recruitment examination and when did not succeed, he represented to be promoted as a departmental candidate, but this representation was rejected, and it was held that acceptance of promotion without any protest leads to the consequence of the claim for seniority from a prior date being barred, by holding as follows :-

*“.....The Tribunal was not justified in entertaining the claim of the first respondent to reopen an issue relating to the year 1972 in the year 1988. It must be noted that after the appointment of third respondent as Office Assistant [General] in the year 1972, the first respondent was regularly promoted to the post of Office Assistant only on 06.04.1983 and that being the position and he having accepted the promotion without challenge, it was not open to him to contend that he must be deemed to have been promoted as Assistant [General] w.e.f. 11.04.1972 when the third respondent was appointed by direct recruitment to that post.....”*

[iv] In the case of John Lucas and another Vs. The Additional Chief Mechanical Engineer, S.C.Railway and others [O.A.No. 27 & 28 of

1987; decided on 11.02.1987] Bangalore Bench of the Central Administrative Tribunal had considered the question as to whether a non-party can file a review application. It has to be seen here that the review applicants were not a party in OA 361 of 1996, and have now come up by filing RA 22 of 2003. The Bangalore Bench of the Tribunal had held that the words "any person aggrieved" concern not only the parties to the suit under Section 114 of the CPC, but others too. In the result, the Tribunal had held in para 6 of its order that a person who is not a party to the application but is affected by the decision of the Tribunal can invoke Section 22(5)(f) of the A.T.Act, 1985, and ask for a review of the order by stating as follows:-

"6. It is, however, argued that a person who is not a party to a proceeding even though affected cannot file a petition for review of the earlier judgment or order, therefore, this Tribunal should hold that a fresh application under Section 19 is maintainable to set aside the earlier judgment of the Tribunal. The premises upon which this argument proceeds viz., that a person aggrieved cannot file an application for review, because he was not *eo nomine* a party to the earlier proceedings, in our opinion viewed in the context of Section 22 of the Act, cannot be accepted as correct. Section 22 in so far as it is relevant for our present purpose reads as under :-

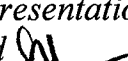
"22. Procedure and powers of Tribunals – [A] A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure 1908 [5 of 1908], but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its enquiry and deciding whether to sit in public or in private.

(2)    x        x        x        x        x        x        x        x

(3)    (a)    (b)    (c)    (d)    (e)    x        x        x

(f)    reviewing its decision;

(g)    dismissing a representation for default of deciding it *ex-parte*;

(h)    setting aside any order of dismissal of any representation for default or any other passed by it *ex parte*;  
and 

(i) x x x x x x

*It would be seen that the Legislature expressly declared under sub-section (1) of Section 22 that the Tribunal is not bound by the procedure laid down in the Code of Civil Procedure. It ordains that it shall be guided by the principles of natural justice. The procedure laid down in the Act and the Rules made thereunder alone govern it. Firstly, it will be again all principles of natural justice to deny a person affected by the Judgment of the Tribunal a hearing and the principles of natural justice can be complied with only if such a person is allowed to seek a review of that judgment. Sub-section (3) of Section 22 lays down that a Tribunal shall, have the same powers as are vested in a civil court under the Code of Civil Procedure, while trying a suit, in respect of reviewing its decisions. This sub-section speaks only of the powers of the Tribunal. It does not specifically lay down as to whose instance these powers may be exercised. It specifically vests in the Tribunal, the power to review its decisions. In exercising this power, as ordained by sub-section (1) of Section 22, the Tribunal has to be guided by the principles of natural justice and not constrained by the strict provisions of Code of Civil Procedure. Further the Tribunal is empowered to regulate its own procedure. Hence, the power conferred on the Tribunal under sub-section (5)(f) of Section 22 of review its decisions cannot be restricted by any provision of the Code of Civil Procedure which lays down that a decision may be reviewed only upon the petition of a party to the earlier application. There is nothing in the Administrative Tribunals Act or the Code of Civil Procedure which prevents a Tribunal from entertaining an application by an affected party to review its judgment. In our view this Tribunal may review its judgment even suo motu. And if it can review suo motu it can certainly entertain a petition by an aggrieved party bringing to its notice any error in its earlier judgment by way of review petition and seeking redressal of his own grievance. But one thing must be emphasized, though perhaps obvious, that a review petition may be filed only a person who is aggrieved and has a grievance to be redressed when he is filing the petition."*

[v] In the case of Union of India & Ors. Vs. Central Administrative Tribunal & Ors. [Full Bench] [2003 LAB. I.C.174] it was held by the Calcutta High Court that the Tribunal is conferred with power under Act and Rules to condone delay under Section 5 of the Limitation Act in filing a Review Application despite Rule 17 of the said Rules. The Hon'ble High Court held in para -18 as follows :-

*"The Tribunal is conferred with power under the Act and Rules to condone delay under section 5 of the Limitation Act in filing a review application despite Rule 17 of the said Rules."*

[vi] In the case of Union of India Vs. Karam Chand Gauha [ 1989

(7) SLR 593], in an ex parte judgment, it was held that if sufficient cause was shown, no limitation is provided for setting-aside an exparte judgment for good and sufficient reasons. The review applicants of this case claim that the judgment in OA 361 of 1996 was exparte as far as they were concerned and, therefore, if they can show good and sufficient reasons, the same can be set-aside in so far as it affects their promotional opportunities.

[vii] In Dharam Deo Narayan Singh Vs. State of Jharkhand and Another [(2009) 12 SCC 398] the applicant while filing the review application have produced certain instructions and other documents along with his review petition. The High Court had rejected the said petition on the ground that there was no error apparent on the face of the record in the order passed in LPA. However, the Hon'ble Supreme Court had held that in order to do complete justice and without going into the niceties of the order 47 Rule 1 of the Civil Procedure Code, it had issued directions to re-consider the review petition by taking on record the circulars and documents files along therewith under Article 142 of the Constitution of India. The review applicants, therefore, pleaded that this Review Application was maintainable in order to do complete justice.

[viii] In the case of Rama Rao & Others Vs. M.G.Maheshwara Rao & Others [(2007) 14 SCC 54] the scope and limits of judicial review by the Tribunal were examined and it was held that the Tribunal cannot interfere with the rules for promotion prescribed by Government, and lay down rules of its own, and give effect to promotions on that basis. It was held that - "The Tribunal acted beyond jurisdiction in prescribing qualification of its own as it considered proper while striking down what according to it was unreasonable provision - Question of promotion was required to be considered on the basis of the Rules as they stood prior to the interference with it by the Tribunal." Ru.



37. In this case also, the private respondent, Shri G.K.Biswas, chose to file a reply on his and on behalf of Awadesh Kumar Singh[R-5 & R-6], who was an applicant at Sl.no.10 of OA 361 of 1996, along with him. In this written statement filed on 03.01.2005 they reiterated the submissions made by them in O.A. 361 of 1996, and the points made by them in the written statement filed in O.A. 12 of 2003, and hence, the same need not be repeated once-again. In para 7 of the written statement, they accepted that they were promoted to the rank of Sr. TC w.e.f. 01.01.1984 in consequence of the re-structuring of the cadres of the commercial branch. It was further admitted that these two answering respondents [R-5 & R-6], and other similarly situated persons, were not given the option by the department asking them as to whether they were willing to switch over to the cadre of TTEs, and they also did not exercise the option before accepting the promotion as Sr. TC w.e.f. 01.01.1984. They again reiterated their point that merger of the two cadres was to be given effect to w.e.f. 01.01.1984, on the basis of where the persons were as on 31.12.1983. They claimed that as they were much higher than the applicants of this O.A. 111 of 2003 in the seniority list of TCs, hence the benefit of the merger of the two cadres had to be given to them, and that this Tribunal had very correctly upheld the claim of the answering respondents R-5 & R-6 of this O.A. and other similarly situated persons while delivering its order in O.A. 361 of 1996.

38. They also quoted that there is no such word known as 'vested right' in service jurisprudence and it is always open to the administration to rectify the mistake, if any, committed by the administration. They reiterated that in the rest of the Divisions the benefit of the new avenues of channel of promotion had been given effect to from 01.01.1984, and only in Samastipur Division it was being given effect to earlier from a later date, but now the Samastipur Division has also taken a decision to implement the Qu.

combined cadre order w.e.f. 01.01.1984. They also pointed out that in O.A. 117 of 1989, the then CPO, N.E.Railway, Gorakhpur, had filed a written statement to the effect that combined cadre scheme had been brought into effect w.e.f. 01.01.1984 and that the position as on 31.12.1983 as TC or TTE would be the deciding factor in regard to their further advancement.

39. As regards the judgment of Lucknow Circuit Bench of this Tribunal, it was submitted that neither these answering respondents, R-5 & R-6, nor the concerned Divisions who were parties before the Court in that case, were parties concerned with the said judgment. They were not aware of it and, therefore, they had not mentioned in OA 361 of 1996, and as far as they are concerned, the orders of this Tribunal in O.A. 361 of 1996 have attained finality.

40. Learned counsel for the private respondents of R.A. No. 22 of 2003 had filed the following judgments in support of his arguments that the Review Application was not maintainable :-

[i] Subhash Vs. State of Maharashtra & Anr. [2002 (1) ATJ 551]

– In this case the Hon'ble Supreme Court had held as unjustified the re-examination of a matter as if it was an original application at the stage of contempt application filed on earlier directions given by the Tribunal. The Hon'ble Supreme Court held that review under Section 22[3][f] is not maintainable unless the error is plain and apparent. The Tribunal cannot review its own earlier order. It is respectfully submitted that the ratio decidendi of this case does not affect the present Review Application, as in this case, in the absence of having been shown the earlier judgment of the Lucknow Circuit Bench, which had attained finality 12 years back, the error which had entered into the orders passed in OA 361 of 1996, is plain and apparent. Therefore, the ratio of this judgment is not applicable in the present case. su.

[ii] Ajit Kumar Rath Vs. State of Orissa & Ors. [2000(2) SLJ

108] - In this case the Tribunal had given a judgment, but later on undertook a review because a decision of the High Court of Orissa was not noted by it. It was held by the Hon'ble Supreme Court that this was no cause to use power of review. The Hon'ble Supreme Court observed as follows :-

*"28. In Review proceedings, the Tribunal deviated from the principles laid down above which, we must say, is wholly unjustified and exhibits a tendency to re-write a judgment by which the controversy had been finally decided. This, we are constrained to say, is not the scope of Review under Section 22[3][f] of the Act which provides as under :*

*"Section 22.*

[1] .....

[2] .....

[3] *A Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 [5 of 1908], while trying a suit, in respect of the following matters, namely -*

[a] .....

[b] .....

[c] .....

[d] .....

[e] .....

[f] *reviewing its decisions;*

[g] .....

[h] .....

[i] .....

*The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a Court under Section 114 read with Order 47, CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important materials or evidence which, after the exercise of due diligence, was not within his knowledge or cannot be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh bearing of arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error.*

*of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.*

*29. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."*

Here, in this case while R.A. 22 of 2003 is in the nature of review application, O.A. 12 of 2003 & O.A. 111 of 2003 are fresh applications. The three cases were heard together as analogous cases. Any decision on O.As 12 & 111 of 2003, in so far as it impinges upon any conclusion which flows from the facts of the case as raised in R.A. 22 of 2003, have to be decided, because of the nature of these two cases being in the form of fresh O.As. It is not simply the case of consideration of a review application. Therefore, while a review cannot be claimed or asked merely for a fresh hearing of further arguments, or correction of an erroneous view on facts or law taken earlier, the power of review can be exercised only for correction of a patent error of law or fact, which stares in the face without any elaborate argument being needed for establishing it. Since sufficient reasons for interfering with the orders earlier passed have been shown by the applicants of OAs 12 & 111 of 2003, per force the Review Application also has to be entertained and decided by this Tribunal, without which a decision in these two fresh O.As cannot be arrived at all. Hence, it appears that a decision on this Review Application at this stage would not attract any fatal blow from the ratio as laid down by the Hon'ble Supreme Court in **Ajit Kumar Rath's** case.

**[iii] Gopal Singh Vs. State Cadre Forest Officers' Association & Ors. [AIR 2007 SC 1978]** – Once again, in this case also the Hon'ble Supreme Court had held that if there is no error apparent on the face of the record, passing of a second order by the Tribunal in the name of reviewing *bu.*

its own judgment is impermissible, as the Tribunal cannot stand as the Appellate Authority over its own judgment. In saying so, the Hon'ble Supreme Court had held as follows :-

*"25. The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court [Justice Sinha] that the Tribunal has travelled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect."*

It is respectfully submitted that this ratio also does not deliver a fatal blow to the findings in this case, because of the fact of the Review Application having been clubbed as analogous case with two Original Applications, in both of which order has to be passed on merits, which would traverse the same ground as the Review Application.

[iv] The Union of India & Ors. Vs. Ramdeo Singh [RA 99 of 2005 (Arising out of OA 446 of 2004); dated of order 27.01.2006] – In this su. case this very Bench of the Tribunal had considered the review powers of this Tribunal when the review application had been filed beyond the period of 30 days mentioned in Rule 30 of the CAT [Procedure] Rules, 1987, and had held that there was delay in filing of Review Application which cannot be condoned, and the review application was therefore dismissed at the threshold as being barred by limitation. However, in that case the review application had been filed by the Union of India – Railway respondents, who were already parties in the OA decided earlier, and were very well aware of the decision of this Tribunal. Therefore, delay in filing of the Review Application was not condoned. Here, in the present case, as the review applicants as well as the applicants of O.As 12 & 111 of 2003 have su.

repeatedly pointed out, the proceedings of OA 361 of 1996 were held behind their back and they were unaware about the proceedings of that case or the judgment of that case till actually the applicants of that O.A. started getting their promotions. They have, therefore, not only assailed the O.A. 361 of 1996 on merits, but also on the ground of non joinder and mis joinder of parties, as it is their contention that they were necessary parties in the O.A. but they were not named as such. It, therefore, appears that the order of this Tribunal in R.A 99 of 2005, dated 27.01.2006, would also not come in the way of entertaining the present R.A.

41. In their written statement filed on 08.02.2005, the official respondents clarified the position regarding the benefit of restructuring scheme having been given w.e.f. 01.01.1984, and taking the side of the private respondents, R-5 & R-6, the official respondents said that they are entitled to avail all the new avenues of promotion on the basis of combined cadre position as on 01.01.1984, on which date they stood promoted to the grade of Sr. TC in the scale of Rs.330-560 under the restructuring scheme. They further admitted that 01.01.1984 was the date taken for promotion to the higher grade in various Divisions; Sonpur, Varanasi, Izatnagar, etc. and only the Samastipur Division had been left out from the combined seniority list as on that date, and when the orders in OA 361 of 1996 were passed, a combined seniority list was prepared accordingly and juniors were reverted and seniors were promoted. In the result they defended the reversion of the applicants in OA 111 of 2003 as being absolutely in the spirit of the Court's order dated 10.12.2001, passed in OA 361 of 1996. They submitted that none of the grounds mentioned in para 5 of the O.A. are maintainable in view of the Railway administration having passed the orders strictly in accordance with the orders of this Tribunal in O.A. 361 of 1996.

42. The applicants chose to file a rejoinder, particularly to the RA.

written statement filed on behalf of private respondents, R-5 & R-6. They reiterated that it was misleading to say that the cut-off date of implementation of the new AVC had ever been changed to 01.12.1984. They pointed out that the written statement filed by the Railways in OA 117 of 1989 was through letter No. 971, dated 30.04.1990, and order No. 160, dated 12.01.1990, and so the replying paragraphs were verified and issued much prior to the orders of the Lucknow Circuit Bench order dated 10.12.1990, passed in OA 275 of 1989 [L]. Hence, they submitted that quoting from the written statement filed by Railways in OA 117 of 1989 was of no relevance now. They also pointed out that, after having taken into account all these controversies, the General Manager had also issued comprehensive directions to all the DRMs to implement the new AVC and restructuring through para 3 of his letter dated 24.09.1992 with the specific stipulation that the action otherwise taken by any of the Divisions should be rectified accordingly, and seniority list only as on 01.12.1984 should be published.

43. They also submitted that it was false to state that the replying respondents, R-5 & R-6, were not asked to exercise their option before 01.01.1984, and pointed out towards a notification dated 08.07.1993 [Annexure-A/12] through which such options had been called for, but the replying respondents, R-5 & R-6, did not opt for the TTE grade then, because of which, in absence of their option, the Railway Board promoted them to the post of Sr. TC, while at the same time many of their seniors who had exercised their option to move as TTEs remained as LRTCs in the lower pay scale, awaiting their promotion in the TTE 'A' grade. It was reiterated that after restructuring, w.e.f. 01.01.1984, only those TCs were given promotion from the date to the grade of Sr. TCs who were non-optees to move as TTEs, and those who had opted for TTE grade remained *SR.*

as LRTCs in the lower pay scale, waiting for vacancies in the TTE Cadre, inspite of being senior to the answering respondents, R-5 & R-6, and similarly situated persons.

44. It was further pointed out that even prior to 1996, several persons junior to the replying respondents were selected and promoted to the TTE 'A' grade, but it was not objected to by the answering respondents, R-5 & R-6, who were two of the applicants in OA 361 of 1996. It was admitted that at the time of selection the applicants and the replying respondents, R-5 & R-6, were not in the same grade, as the respondents R-5 & R-6 were in the grade of Sr. TCs and the applicants were in the basic grade of TTEs, but submitted that at the time of notification for selection in the TTE'A' grade, only TTEs were eligible, and the answering respondents being in the grade of Sr. TCs governed by the old AVC, were not eligible for appearing at the examination. It was submitted that the respective seniority position of TCs who had not opted for becoming TTEs and LRTCs [TCs who had opted for becoming TTEs] as on 01.04.1987 [Annexure-A/10 of the OA] shows clearly that the answering respondents R-5 & R-6 were promoted in the grade of Sr. TC [Rs.1200-2040] before their seniors w.e.f. 01.01.1984, and their seniors who had opted for TTE grade remained as LRTCs [Rs.950-1500] and were promoted in the TTE grade much after, in the year 1988-89. It was reiterated that the answering respondents had obtained the order of this Tribunal in OA 361 of 1996 by suppressing various material facts. They pointed out that the clarificatory order of the General Manager in para 3 of his letter dated 24.09.1992 had neither been quashed nor recalled and was applicable. Any action taken otherwise in violation of the directives to rectify the earlier actions cannot be claimed now as a matter of right of equality. They further pointed out that the letter of the General Manager dated 16/17.05.1985 once quashed by Be.



a court of law cannot remain alive for the Samastipur Division alone merely because the Division was not a party, and a non est letter cannot be made applicable to Samastipur Division alone. They further submitted that even the position as on 01.01.1984 has to be taken into account and the answering respondents R-5 & R-6 cannot be considered eligible for promotion in the TTE grade, because, having become Sr. TC on that date, they had lost even the right to opt for the TTE grade, which right was available only at the initial recruitment level/grade of TCs.


45. In this particular case it appears that while passing the order on 01.01.1984 to be taken as the date for the conferment of the combined cadre, in para 19 [i] of the judgment dated 10.12.2001, this Tribunal had perhaps laid down a rule of its own for giving a direction to the respondents to give effect the promotions on that basis, which delivers a fatal blow to the directions so given. This Tribunal can only interpret Acts, Rules, Regulations, and Administrative instructions, but cannot issue directions of administrative nature on its own, which would amount to appropriating the domain of the Legislature or the Executive to the Tribunal.

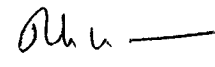
46. In the result, it is clear that a judgment of this Tribunal of an earlier date passed by the Lucknow Circuit Bench of this Tribunal, which had become final, will have to prevail over a judgment which was passed by the Patna Bench with different findings, just because all the parties concerned had failed to point out the earlier judgment of Lucknow Circuit Bench before this Bench. Had that order of Lucknow Circuit Bench been produced before this Bench, the order dated 10.12.2001 of this Bench, passed in OA No. 361 of 1996, also may perhaps have been different. This, therefore, qualifies under the category of an error of law apparent on the face of the record, because of which the Review Application has to succeed. Ru.

47. The other two OAs also, though filed in the nature of O.A., are in effect review applications only. If the finality of Lucknow Circuit Bench order is taken into account, these two O.As also have to succeed.

48. In the result, the picture which emerges is that after 30.11.1984, w.e.f. 01.12.1984, in effect, there were three cadres in operation in the N.E.Railway, the picture in respect of which had got frozen as per the respective position of the persons in the two un-merged cadres as on 31.12.1983. With effect from 01.12.1984, there were one cadre of TCs [without traveling duties] who had a separate channel of promotion till their cadre runs out and exhausted itself. There was another cadre of LRTCs who had opted to become TTEs, and whose options had been approved before 31.12.1983 by including them in LRTC category for the purpose of promotion in the TTE cadre, which cadre was also supposed to remain separate and, through passage of time, exhaust itself. There was a third cadre, i.e., the newly created merged cadre of TCs and TTEs w.e.f. 01.12.1984, where the new appointees from 01.12.1984 onwards were to have their lien, but the names of those in service as on 31.12.1983 [and, by implication, as on 30.11.1984], were to be shown only for the purpose of notional presence in the combined cadre, even though their lien was being separately maintained in their respective cadres, upto 30.11.1984, and onwards also, upto the exhaustion of the two separate cadres of TCs and TTEs. Thus, a person who had a lien in the TCs cadre as on 31.12.1983, though his name had to be shown in the combined seniority list w.e.f. 01.12.1984, his lien remained only in the TCs cadre. Also a person who had been appointed as a TTE, or whose option to be appointed as TTE had been accepted on or before 31.12.1983 and he was kept as LRTC, were to maintain their lien in the TTEs cadre for promotional purposes, even though their names were to be shown notionally in the combined cadre. The

only people who had substantial lien of their own in the new combined cadre, and were <sup>to</sup> remain in the combined cadre, were those appointed on or after 01.12.1984. With this clarification, the Review Application and the two O.As. are allowed. No order as to costs.

  
[Sudhir Kumar]/M[A] 28/09/2010.

 28.9.10.  
[Rekha Kumari]/M[J]

skj