

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

ANNEXURE

CAUSE TITLE INDEX SHEET
..... OF CAUSE NO 316/89

NAME OF THE PARTIES *Tajdil Board, Lucknow* Applicant

Versus

..... *Union of India, Govt.* Respondent

Part A, B & C

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CERTIFICATE (15) <i>Validation on a</i>		A 124.

Certified that no further action is required to be taken and that the case is fit for consignment to the record room (decided)

Dated. 23-2-12

Counter Signed.....

Section Officer / In charge

m
Signature of the
Dealing Assistant

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. 316 of 1989

APPLICANT(S) _____

RESPONDENT(S) _____

particulars to be examined

Endorsement as to result of examination

1. Is the appeal competent ?
2. a) Is the application in the prescribed form ?
b) Is the application in paper book form ?
c) Have six complete sets of the application been filed ?
3. a) Is the appeal in time ?
b) If not, by how many days it is beyond time ?
c) Has sufficient cause for not making the application in time, been filed ?
4. Has the document of authorisation Vakalatnama been filed ?
5. Is the application accompanied by B.D./Postal Order for Rs.50/-
6. Has the certified copy/copies of the order(s) against which the application is made been filed ?
7. a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?
c) Are the documents referred to in (a) above neatly typed in double space ?
8. Has the index of documents been filed and paging done properly ?
9. Have the chronological details of representation made and the outcome of such representation been indicated in the application ?
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal ?

yes

yes

yes

No

yes

particulars to be ExaminedEndorsement as to result of examination

Are the application/duplicate copy/s/ re copies signed ?

12. Are the copies of the application, with Annexures filed ?

a) identical with the Original ?

b) effective ?

Wanting in Annexures

Nos. _____ pages Nos. _____ ?

13. Are the file size envelopes bearing full addresses of the respondents been filed ?

14. Are the given address the registered address ?

Do the names of the parties stated in the copies tally with indicated in the application ?

Are the translations certified to be true or supported by an Affidavit affirming that they are true ?

15. Are the facts of the case mentioned in item no. 6 of the application ?

- a) Concise ?
- b) Under distinct heads ?
- c) Numbered consecutively ?
- d) Typed in double space on one side of the paper ?

16. Have the particulars for interim order prayed for indicated with reasons ?

17. Whether all the remedies have been exhausted.

Opinion

✓

No

No

Yes

NA

Yes

Yes No

Yes

3/6/89(4)

Serial
number
of
order
and date

Brief Order, Mentioning Reference
if necessary

How complied
with and
date of
compliance

9-11-89

Hon'ble Mr. D.K. Agrawal, J.M.

Hon'ble Mr. K. Obayya, A.M.

Heard Shri B.C. Saxena counsel for the
applicant.

ADMIT.

Issue notice to respondents to file counter
within 6 weeks to which the applicant may
file rejoinder, within 2 weeks thereafter.

List this case on 12-2-1990 for orders /
hearing as the case may be.

A.M.

J.M.

rrm/

OK
advice given
S
3/11/90

12-2-90

No Sittings adj. to 20-4-90

D
13/4

20-4-90

Sri B. C. Saxena is present.
H. Haider power file on behalf of
O.P. No. 586.

No. Sittings adjourned to 13-7-90

13-7-90

No. Sittings adj. to 10-8-90

13-9-70

Hon Mr. Justice K Nath, rc.
For Mr. M. M. Singh, AM

Dinesh

Counsel for respondents 586
file counter, learned counsel for
the applicant suggests for and is
allowed 2 weeks time to file
rejoinder. Next for final
hearing on 28-11-90.

M. M. Singh

AM

VC

OK
Notices were
mailed on 3/1/90
to H. Haider file
a behalf of O.P. No
5 to 6 but not fully
filed.

No unsworn regd
Copy have been retu
back on behalf of
O.P. No. 1 to 4 & 7
submitted for a

OK
No. RB filed 8/9/90
S. BN

L
27/11/

24.8.92
D.R.

Both the parties are present.
No Counter has been filed.
Respondent to file Counter
by 16.10.92. A.Y.

16.10.92
D.R.

Both the parties are absent.
Counter has not been filed.
Respondent to file it by
16.12.92. A.Y.

16.12.92

"Applicant" side is present.
No CA filed today.
Respondents are directed to
file it by 3.2.93. A.Y.

OR
(After Rept 15.6.92)
R.A. filed
(S.Y.)
OR (S.Y.)

OR
CA filed Rept 15.6.92
R.A. filed 15.6.92
has been filed for
the Counter fil.
S.Y.
25/2/92

26.2.93 Hon' Mr. Justice. V.C. Srivastava, V.C.
Hon' Mr. K. Obayya, A.M.

CA filed today. RA, if any,
may be filed within two
weeks.

List this case on
15/4/93.

Ver

A.M.

V.C.

15.4.93

No sitting of D.B. adjourned
to 24.5.93. A.Y.

24.5.93 Delivered to 20.5.93
S.Y. A.Y.

20-7-93

08316/93

to Mr. S.N. Pansad, T.M.

None responded on behalf
of applicant despite repeated
calls at intervals. Shri W.H.
Floridji learned counsel for
respondent is present. List
this case on 2-9-93 for
hearing

J

J.M.

OR
CRAWD

SH

OR

20/8/93

2.9.93

No setting of D.B. set for
26.10.93

part

OR
CRAWD

SH

OR
20/10/93

2.11.93

26.10.93 - No setting of D.B. Case is
only to 22.11.93

8
B.C.

No setting of D.B. only
to 13.12.93

part

OR
CRAWD

SH

OR
09/11/93

071 316/85

15/2/84

(10)

Hon. Mr. Justice R.K. Krishna,
Hon. Mr. V.K. Sehgal, A.M.

Shri R.K. Srivastava learned
Counsel for the petitioner 2 Shri
A.K. Chaturvedi learned Counsel
of Shri Arul Srivastava Counsel
for the respondents 2 Shri
H.H. Haridas Counsel for
the private Party are
present. As the request
of the learned Counsel for
the Petitioner the case is
adjourned to 31-3-84.

W
AM.

Mr
V.C.

3.3.84

No hearing of D.M.-obj to
264-941

26.4.84 for Mr. S.N. Prasad ^{MRP}
Mr. V.K. Sehgal, A.M.

The applicants 3 and 4 are present
in person. Shri Arul Srivastava
learned Counsel for respondents 1, 2 and 3,
and Shri H.H. Haridas, learned
Counsel for respondent 4 to 7 are present.
Applicants seek adjournment
of the case on 22-7-84 for
hearing.

W
AM

✓
J.M.

✓
R.K. Srivastava
already
exchanged
S. P. letter
23/2/84

✓
O.P.

✓
Submitted by
H.M.

✓
S.P.L.C.

CA 316/89

12-1-95

to Mr. V. K. Soli A.M.

from Mr. D.C. Verma, J.M.

~~Sub. not filed~~
~~SDM~~

Applicant is present in person. The said Grammer informs that a supplementary counter affidavit is to be filed and same time 3 weeks time is granted.

Fix on 20.2.95 for hearing

J.M.

L.V.
A.M.

20.1.95 - No setting of DB set to
27.3.95

For

27.3.95

No hearing a.m. adjn
20.4.95

2
DOC

~~Sub. C.P. Sub P. RT~~
~~not rec'd~~
~~for 20.3.95~~

20.4.95

Heard Mr. V. K. Soli A.M.

from Mr. D.C. Verma 3.M

on the request of Gram
for adjn. a.c. adjn to 31.5.95

d

f
J.M.

L.V.
DM

Q.A. No. 316/89 c

DR

07-9-95

DR

Appropriate Bench is not available. Applicant No. 4, 1, 2-3, are present. None for the respondents. Please before the Hon'ble Bench on 25-9-95 for hearing if concerned benches available.

~~or
proceedings are
complete
at 1/9/95~~

25-9-95

Hon'ble Mr. V.K. Seth - A.M.

Hon'ble Mr. D.C. Varma - J.M.

Sri Sharad Bhatnagar, B.H. for Sri P.K. Srivastava, learned counsel for applicant,

For respondents- Sri Anil Srivastava, learned counsel seeks and is allowed three weeks time by way of last opportunity to file C.A.

In case the C.A. is filed the applicant will have one week thereafter to file Supplementary R.A.

In case no Supplementary C.A. is filed by the due date the O.A. may be decided in the absence of Supplementary C.A.

List on 2-11-1995.

J.M.

K.N.

✓ 25
A.M.

14.3.96

Hon'ble Mr. V. K. Sethi, A.M.
Hon'ble Mr. D. C. Verma, J.M.

on the regn. of Ginnel

to a offl. - offl. adjourned 23.4.96

J.M.

V.K.

A.M.

(X)

23.4.96 - Case not reached. adj.
to 31.7.96

31.7.96

DR.

Appropriate Bench is not
available. dist on 20.8.96
before ~~an~~ appropriate Bench.

for DR.

DR.

DR.

20/8/96

Proceedings are
Completed
16/10/96

Hon'ble Mr. V. K. Sethi, A.M.
Hon'ble Mr. D. C. Verma, J.M.

for applicant: Sh. P. K. Srivastava
is on leave
for respondents: None

list on telecs for
hearing.

J.M.

V.K.
A.M.19.9.96

Case not reached adjourned

28.10.96

DR.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW.

D.A.NO.... 316/89 1989 (L)

T.A.No. ~~199~~ (TL)

Date of Decision 28-11-96.

Jagdish Basad, Iewari & others Petitioner

Sri S. S. Bhatnagar Advocate for the
Petitioner(s)

V E R S U S

Union of India & others Respondent

Sri A. Srivastava Advocate for the
Respondents.

C O R A M

Hon'ble Mr. V.K. Seth Member(A)

Hon'ble Mr. D.C. Verma Member(S)

1. Whether Reporter of local papers may be allowed to
see the Judgment.

2. To be referred to the reporter or not ?

3. Whether their Lord Ships wish to see the fair copy
of the Judgment ?

4. Whether to be circulated to other benches ?

Vice-Chairman/Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

Original Application No. 316 of 1989

this the 28th day of November, 1996.

HON'BLE MR V.K. SETH, ADMN. MEMBER
HON'BLE MR D.C. VERMA, JUDICIAL MEMBER

Jagdish Prasad Tewari, aged about 53 years, S/o
Sro Ram Pati Tewari, R/o Quarter No. II 97-C,
Railway Church Colony, Alambagh, Lucknow.

2. Chunni Lal Vishwakarma, aged about 52 years,
S/o Sri Pearey Lal Vishwakarma, R/o Shukla Bhawan
551 Naya Azad Nagar, Alamnagar, Lucknow.

3. Surya Bali Sonkar, aged about 57 years, S/o
Sri Visheshwar Dayal, C/o Senior Signal Inspector
Northern Railway, Charbagh, Lucknow.

4. Jai Narain Saxena, aged about 53 years, S/o
Sri Babu Ram Saxena, R/o C-1895 Mini LIG,
Rajajipuram, Lucknow.

Applicants

By Advocate : Sri Sharad Bhatnagar,
Sri P.K. Srivastava

Versus

Union of India through the General Manager, N.Rly;
New Delhi.

2. The Divisional Railway Manager, N. Rly; Lucknow.

3. The Senior Divisional Personnel Officer,
N. Rly; Lucknow.

4. Ashfaq Ahmad, at present working Mechanical
Signal Maintainer Grade-I under Chief Signal
Inspector I, N. Rly; Lucknow.

5. Latafat Husain, at present working as
Mechanical Signal Maintainer Grade-I under Chief
Signal Inspector II, N.Rly; Lucknow.

6. S.W. Hussain, at present working as Mechanical Signal Maintainer Grade-I under Chief Signal Inspector-~~I~~ N.Rly; Lucknow.

7. Raj Deo, at present working as Mechanical Signal Maintainer Grade-I under Dy. Chief Signal and Telecom Engineer. N. Rly; Lucknow.

Respondents

By Advocate : Sri Anil Srivastava

O R D E R

D.C. VERMA, MEMBER(J)

The four applicants of this case have claimed seniority above the respondents No. 4 to 7 and benefit under P.S. No. 2709 as was granted to respondent No. 4 Ashfaq Ahmad. The applicants have also claimed quashing of Annexure -7 to the O.A. dated 5/6.6.1989 by which the representation of the applicant No. 2 Chunni Lal for the above relief was rejected by the respondents.

2. By Railway Board's circular dated 15/17.9.64 circulated vide P.S. No. 2709 dated 16.10.1964, it was provided to give relief to the non-gazetted staff whose promotion to the higher grade is some time overlooked due to administrative error, which result in loss of seniority and pay (Annexure-6 to the O.A.)

3. The respondent No. 4 Ashfaq Ahmad and the applicants appeared in the trade test for promotion to MSM Grade-III in the year 1964 but they failed. Ashfaq Ahmad was, however, not relieved by the department to appear in the subsequent trade tests. The applicants, however, ~~all~~ appeared in the tests held prior to 1978.

After 1964 Ashfaq Ahmad was allowed to appear in the trade test in the year 1978 and cleared the same. In terms of PS No. 2709, it was proposed to grant seniority to Ashfaq Ahmad. To that end, notice dated 4.7.88 (Annexure-1 to the O.A.) was issued and it was proposed to place the name of Ashfaq Ahmad above the name of Sri Sant Kumar and below the name of Jagdish Prasad Bhargave to maintain the original seniority. The applicants' case is that on getting this notice, they represented to the department. However, as per papers on record the representation of the applicant No. 2 namely Chunnil Lal was rejected vide Annexure A-7 to the O.A.

4. The respondents/contested the case merely on two grounds. Firstly, that the applicant No. 4 Jai Narain Saxena alongwith one & another had already filed Writ Petition No. 620/70 before the Lucknow Bench of High Court on the matter of seniority, but the same was rejected vide orders dated 24.11.80 (Annexure C-2 to the Counter affidavit). The learned counsel for the respondents has specifically referred to para quoted below from the judgment of the High Court :

"In the writ petitions, objection has also been taken against the promotion of Latafat Husain, Rajdeo, S.W. Husain and Umrao Singh. These four persons were promoted in 1964. The contention of the petitioners is that these respondents, were though senior to the petitioners, were not qualified at the time of their promotion as they had not fulfilled the qualification relating to the requisite length of experience. We are not however, prepared to entertain this plea because their promotion

to

had taken place in 1964 while these writ petition were filed in 1970. As those promotions were not challenged for a period of six years and as in the meantime these respondents had already acquired experience on the higher post, the petitioners cannot be promoted/urge that the promotion of these respondents should be nullified merely on the ground that at the time when they were promoted in 1964 they had not fulfilled the qualification relating to length of experience. The petitioners themselves were not even eligible for promotion at that time."

5. The second contention of the learned counsel for the respondents is that the promotion was given to the respondent No. 4 to 7 in the year 1964 and hence the present petition which was filed in the year 1989 is not maintainable. Further in view of section 21 (2) of the Administrative Tribunals Act, 1985, as the cause of action had arisen to the applicants three years preceding the date on which the jurisdiction, powers, and authority of the Tribunal became exercisable under this Act, the Tribunal has no jurisdiction to entertain this O.A.

6. On reading the judgment of the High Court, it is clear that the claim of the applicant No. 4 namely Jai Narain Saxena was refused by the High Court on the grounds mentioned in para quoted above, the same issue cannot be now raised before this Tribunal.

7. It is nowhere stated in the O.A. that the respondent No. 4 namely Ashfaq Ahmad was juniors to the applicants. Contrary to this, it is mentioned in para 4.12 of the O.A. that the respondents No. 5 to 7 were junior to the applicants. This indirectly indicates that

Ashfaq Ahmad was senior to the applicants. This further, finds support from the findings of High Court as mentioned in para quoted above.

8. It is also not denied that the applicants were given an opportunity to appear in the trade test held during the years 1965 to 1978. The respondents' contention that Ashfaq Ahmad was not relieved to appear in the trade test after 1965 ~~xxxxxx~~ to 1978 is also not denied. Thus, apparently Ashfaq Ahmad was not to be blamed for not appearing in the trade test held between 1965 to 1978. This has been well termed as administrative lapse as Ashfaq Ahmad was not relieved by the administration during the said period. It is not the case of the applicants that all or any of them were not permitted by the administration to appear in the trade test during the aforesaid period. Thus, the claim of the applicants are not covered within PS No. 2709 and the applicants have been, therefore, rightly refused the benefit of PS No. 2709.

9. As per the relief claimed the benefit of PS No. 2709 has been claimed w.e.f. 1964. The Tribunal came into existence in November, 1985. In view of Section 21 (2) of the A.T. Act. This Tribunal cannot entertain such belated claim.

10. The learned counsel for the applicants has drawn our attention towards para 4.6 of the O.A. and has contended that the respondents No.

A

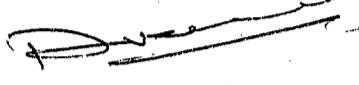
5,6 & 7 had not completed the required period of five years still they were permitted to appear in the trade test for promotion to higher grade. The learned counsel has, therefore, submitted that a discriminatory treatment was given to the applicants. If the applicants were also given such opportunity in earlier years they might have succeeded in their attempt. The contention of the learned counsel is that as ineligible person like the respondent Nos 5 to 7 were called to appear in the trade test held in June 1964, the same benefit was not granted to the applicants of the present O.A.

11. To our mind, the above contention of the learned counsel for the applicant has no merit and is against the principle of law. The Court and Tribunal is to enforce the rule of law. Even if some irregularity or mistake was committed by the respondents in the year 1964, On that basis, the respondents cannot be directed to commit another irregularity or mistake to provide similar benefits to the applicants. ~~The respondents cannot be directed to commit another irregularity or mistake if the same was committed earlier.~~

12. Besides the above, the promotion of the respondent Nos. 4 to 7 were upheld by the High Court vide its order dated 24.11.88 and that has become final so it cannot be disturbed by this Tribunal.

10

13. In view of the discussions made above, none of the applicants can get any relief and the O.A. is liable to be dismissed and is dismissed. No costs.


MEMBER (J)


MEMBER (A)

LUCKNOW : DATED: 28-11-96
GI RISH/-

Central Administrative Tribunal
Circuit
Date of 8-4-85
Date of Rec.

Deputy Registrar)

In the Central Administrative Tribunal

Additional Bench at Allahabad,

Lucknow Circle, Lucknow

APPLICATION NO. 316 OF 1989 (U)

(Under section 19 of the Central Administrative
Tribunals Act, 1985)

1. Jagdish Prasad Tewari, aged about 53 years,
son of Sri Ram Pati Tewari, resident of Quarter
No. II 97-C, Railway Church Colony near
Alambagh, Lucknow.
Vishwakarma

2. Chunni Lal, aged about 52 years, son of
Sri Pearey Lal Vishwakarma, resident of Shukla
Bhawan (Ansuiya), 551 Naya Azad Nagar,
Alambagh, Lucknow

3. Surya Bali Sonkar, aged about 57 years, son
of Sri Visheshwar Dayal, care of Senior Signal
Inspector, Northern Railway, Charbagh, Lucknow.

4. Jai Narain Saxena, aged about 53 years,
son of Sri Babu Ram Saxena, resident of
C 1895 Mini LIG, Rajaji Puram, Lucknow

Applicants

Versus

1. The Union of India through the General Manager,

Northern Railway, New Delhi

2. The Divisional Railway Manager, Northern Railway, Lucknow.

3. The Senior Divisional Personnel Officer, Northern Railway, Lucknow.

4. Ashfaq Ahmad, adult, fathers name not known at present working as ^{Mechanical} Signal Maintainer Grade I under Chief Signal Inspector I, Northern Railway Charbagh, Lucknow

5. Latifat Husain, adult, fathers name not known, at present working as Mechanical Signal Maintainer Grade I under Chief Signal Inspector II, Northern Railway, Charbagh, Lucknow.

6. S.W.Husain, adult, fathers name not known, at present working as Mechanical Signal Maintainer Grade I, under Chief Signal Inspector (I), Northern Railway, Charbagh, Lucknow

7. Raj Deo, adult, fathers name not known, at present working as Mechanical Signal Maintainer ^{Dy. Chief} Gr. I under ~~SS.~~ ^(construction) Signal and Telecom Engineer, RRII, Northern Railway, Lucknow

07014214414
3
Respondents

1. Details of application

Particulars of the order against which the application is made.

Order contained in letter no. 847-E/11-I /MSM/III dated June 5/6, 1989 passed by the Divisional Railway Manager, Northern Railway, Lucknow.

2. Jurisdiction of the Tribunal

The applicants declare that the subject-matter of the order against which they want redressal is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation

The applicants further declare that the petition is within limitation prescribed under section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the case

The facts of the case are given below:

4.1. That the applicants 1, 3 and 4 are at present working as Mechanical Signal Maintainers (hereinafter referred to as MSM) Grade I under the Chief Signal Inspector, Northern Railway, Charbagh, Lucknow while applicant no. 2 is working under C.P.W.I., Northern Railway, Charbagh, Lucknow.

4.2. That respondent no. 3 by a notice no. 847-E/II-I/ MSM/III dated 5.7.1988 intimated that there was a proposal to restore the seniority position of respondent no. 4 Shri Ashfaq Ahmad in the cadre of MSM Grade III on the basis of his original seniority as S & T vis-a-vis persons junior to him as Khalasi Khalasi/promoted as MSM Grade III. The notice stated that in the Trade Tests held

09/02/91 JH/14

from 20.9.1965 to 1969 the said Sri Ashfaq Ahmad had not been given a second opportunity for appearing in the Trade Tests held during the said period whereas few other persons junior to him had been allowed more than one chance to pass the Trade Test of MSM Grade III from 1965 to 1969 and were promoted as MSM on 11.7.1970. On that basis it was stated that the said Ashfaq Ahmad was due for all the benefits of proforma seniority and fixation as MSM Grade III vis-a-vis his immediate junior Shri Sant Ram in terms of P.S. no. 2709 who was promoted as MSM Grade III with effect from 11.7.1970. Representations against the said proposal were required to be submitted by 19.7.1988. A photostat copy of the said notice dated 5.7.1988 is being annexed as Annexure no. A-1 to this application.

4.3. That the applicants 1 to 4 submitted their representations within the prescribed time.

True copies of the said representations are being annexed as Annexures nos. A-2 to A-5 to this application.

2016/21/7/14

4.4 That a perusal of the said representations would show that the applicant's had indicated facts to show that they were also entitled to the benefit of the provisions of P.S. no. 2709

and to be assigned seniority over respondents nos. 5 to 7.

4.5. That by Personnel Department Serial no. 2709 copy of Railway Board's letter no. E(NG) 63 PMI /92 dated 15/17-9-1964 had been forwarded for information and guidance to the General Managers, All Indian Railways etc. The Railway Board's said letter was on the subject of Hardships to non-gazetted staff due to administrative error- Loss in seniority and pay. The Railway Board's said letter, inter alia, provides that the staff who have lost promotion on account of administrative errors should on promotion be assigned correct seniority vis-a-vis their juniors already promoted irrespective of the date of promotion. The said Railway Board's letter further provides that pay in the higher grade on promotion may be fixed proforma at the stage which the employee would have reached if he was promoted at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher grade posts. A photostat copy of the said Personnel Department Serial no. 2709 is being annexed as Annexure no- A-6 to this application.

AP/4/21/84/14

4.6 That with a view to elaborate the claim made in the representations by the applicants the dates of initial appointment as S & T Khalasi and the respective dates of promotion to various grades of Mechanical Signal Maintainers of the applicants and respondents nos. 5 to 7 are being indicated hereinbelow:

Name	Date of initial apptt. as S & T. Khalasi	MSM Gr.III	MSM Gr.II	MSM Grade I
<u>Petitioners</u>	<u>22.5.59</u>	<u>15.6.65</u>	<u>-</u>	<u>29.9.79</u>
1. Jagdish Pd. Tewari				
2. Chunni Lal	9.10.58	3.5.68	1.8.78	25.12.8
3. Surya Bali Sonkar	13.2.59	5.1.68	--	29.12.81
4. Jai Narain Saxena	10.7.59	19.11.68	1.8.78	26.9.79

Respondents

5. Latafat Husain	5.4.62	5.7.64	1.8.78
6. S.W.Husain	1.7.63	8.7.64	1.8.78
7. Raj Deo	20.5.64	8.7.64	1.8.78
			1.1.84

4.8. That from the dates indicated in the preceding paragraph it would be evident that in the initial cadre of S & T Khalasi the applicants date of appointment was earlier in point of time than that of respondents nos. 5 to 7 and thus the applicants were senior to the said

respondents.

4.8 That the said respondents nos. 5 to 7 have unauthorisedly been permitted to steal a march over the applicants when orders for their promotion to the post of MSM Grade III and Grade II and Grade I had been passed. Respondent no. 7 was promoted subsequent to the applicants to the post of MSM Grade I since he had failed at the Trade Test.

4.9. That S & T. Khalasis who have completed five years of service are eligible to be called for a Trade Test for promotion to the post of MSM Grade III. Though respondents 5 to 7 had not completed five years of service, they were called to appear at a Trade Test held in the month of June 1964. Applicant no. 1 on gaining knowledge that the said respondents are being subjected to a Trade Test while he had been ignored, though senior to them, brought the matter to the notice of the relevant authorities. Applicant no. 1 was also subjected to a Trade Test along with the said respondents held in June 1964.

SP/14219974

4.10- That orders for promotion of respondents nos. 5 to 7 were passed and they were promoted on various dates in July 1964 as indicated in the earlier paragraphs. Applicant no. 1 was not promoted from the due date but was promoted

subsequently on 15.6.1965.

4.11. That similarly applicant no. 1's case for promotion to the post of MSM Grade I was not taken up for consideration when the cases of respondents nos. 5 and 6 were so taken. Due to the said administrative error the applicant no. 1 came to be promoted to be post of MSM Grade I subsequent to the said respondents nos. 5 and 6. Applicant no. 1 by his representation, therefore, sought redressal in the matter of delayed promotion due to administrative error which resulted in loss of seniority vis-a-vis the said respondents nos. 5 ~~and 6~~ ^{to 7} who were junior to him.

4.12. That similarly applicants nos. 2 to 4 had indicated that they were also entitled to the benefit of P.S.No. 2709 since respondents nos. 5 to 7 who were junior to them in the post of S & T Khalasi had been granted promotion and subjected to Trade Test earlier than them in the higher post of MSM Grade III. Respondents nos. 5 and 6 were given promotion on the post of MSM Grade I earlier. The said applicants in their representations pointed out which fact is hereinagain reiterated that respondents nos. 5 to 7 were not eligible for being subjected to Trade Test for promotion to the next higher post of MSM Grade III since by 1964 when they were called for the said Trade Test they had not put in the prescribed five years length of service

20/4/21/14

on the post of S & T Khalasi. Further, the applicants being senior to the said respondents had a prior right to be subjected to Trade Test and to be promoted to the post of MSM Grade III in comparison to the said respondents who were junior to them.

4.13. That applicant no.3 was subjected to a Trade Test in September 1965 for the post of MSM Grade III. He qualified at the said test but was given promotion to the post of MSM Grade III belatedly after a lapse of more than 2 years, viz., on 5.1.1968. The said applicant Surya Bali Sonkar and applicants Chunni Lal and Jai Narain Saxena were not called earlier to appear at a trade Test held/in June 1964 while the aforementioned four persons junior to them had been called to appear at the said Trade Test. Applicants Chunni Lal and Jai Narain Saxena had failed to qualify at the Trade Test held in September 1965 and were subjected to a Trade Test in March 1967 and they were promoted respectively on 3.5.1968 and 19.11.1968.

20/10/1989

4.14. That in response to the representation made by the applicant Chunni Lal, on behalf of respondent no.2 it has been intimated by his letter bearing no. 847-E/III-I/MSM/III dated June 5/6, 1989 that the said applicant is not entitled for redressal of the grievances raised

in the said representation. It has been stated that the said applicant was called to appear in the Trade Test held in the year 1965 and he had failed at the said Trade Test. A photostat copy of the said letter dated June 5/6, 1989 received by the applicant Chunni Lal is being annexed as Annexure no. A-7 to this application. A perusal of the said letter would show that it also states that Sri Ashfaq Ahmad respondent no.4 had not been called to appear at any Trade Test for the post of MSM Grade III held during the period 1964 to 1968. The said statement is factually incorrect. The truth of the matter is that Sri Ashfaq Ahmad had been called to appear at a Trade Test held in September 1965. He also failed to qualify at the said Trade Test. He was given a second opportunity to appear a Trade Test held in April 1976 and he passed the same. In proof of the assertion that the said respondent had failed at the said Trade Test for MSM Grade III held between 20.9.1965 and 24.9.1965 a photostat copy of Appendix A of the record of Trade Test of the said respondent no.4 is being annexed as Annexure no. A-8 to this application.

30/6/2014/114

4.15. That by the order dated June 5/6, 1989 respondent no.4 has been assigned seniority above Sant Ram and below Jagdish Prasad Bhargava. Jagdish Prasad Bhargava was appointed

as Khalasi on 30.7.1958 and the date of appointment of Sant Ram as Khalasi is 5.9.1958.

The said Jagdish Prasad Bhargava and Sant Ram qualified at the Trade Test held in April 1968 and respondent no.4 has been accorded seniority treating him to have passed the Trade Test held in April 1968 though he had not appeared at the said Trade Test and was indicated hereinabove failed at the Trade Test held in September, 1965 and he actually qualified at the Trade Test held in 1976.

4.16 That there has been no response to the representations submitted by applicants nos. 1, 3 and 4. All the applicants in view of the facts indicated hereinabove were entitled to be given benefit of P.S.No. 2709 and the hardship caused to them due to administrative error in the matter of seniority and pay needs to be rectified. They are entitled to be treated as having qualified at the Trade Test held in June 1964 and to be treated as promoted as MSM grade III from the date junior to them, viz., respondents nos. 5 to 7 were promoted and to be assigned seniority above the said juniors with consequential benefit of promotion to the next higher posts in accordance with such revised seniority.

20/11/91/4-118

5. Grounds for reliefs with legal provisions

(a) The applicants are entitled to the reliefs prayed for on the following grounds:

(a) Because evidently due to administrative error and lapse the applicants had not been called to appear at a Trade Test held for the post of MSM Grade III in June 1964 but the respondents 5 to 7 who were junior to them in the cadre of Khalasis had been called to appear and were also accordingly promoted to the post of MSM Grade III on the basis of their having qualified at the said Trade Test.

(b) Because there has been violation of the provisions of Articles 14 and 16 of the Constitution of India inasmuch as the benefit of the said circular has been given to respondent no. 4 while the applicants who were similarly circumstanced and had suffered in the matter of pay and seniority due to administrative lapse and error had not been given the benefit of the said circular and consequent redressal of grievance with regard to seniority and pay vis-a-vis persons junior to them, viz., respondents nos. 5 to 7.

07/07/1971

(c) Because the applicants clearly had a preferential right to be called to appear at the Trade Test held in June 1964 since they fulfilled the requisite five years service in the cadre

of khalasis. Respondents 5 to 7 even had not put in the requisite period of service and were ineligible to have been called to appear at the Trade Test held in June 1964.

(d) Because the order has granted seniority to respondent no. 4 on the erroneous assumption or deliberate ignorance of the fact that the said respondent had failed to qualify at a Trade Test held in September, 1965.

6. Details of remedies exhausted

The applicants declare that they have availed of all the remedies available to them under the relevant service rules. The representations of applicants nos. 1, 3 and 4 have not been deliberately decided. The representation preferred by applicant no. 2 has been rejected by letter dated June 5/6, 1989 Annexure A-7 to the application.

7. Matters previously filed or pending

070147214774
The applicants further declare that they have not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Reliefs sought

In view of the facts indicated in para 4
above the applicants pray for the following
reliefs:-

(i) This Hon'ble Tribunal be pleased to direct the respondents to extend the benefit of Railway Board's letter dated September 15/17, 1964 being Personnel Department serial no. 2709 copy of which is Annexure A-6 to this application and to assign seniority to the applicants above respondents nos. 4 to 7 and also grant consequential benefit of promotion to the next higher grades from a date earlier and the date from which respondents nos. 5 to 7 had been promoted with all consequential benefits of arrears of salary and seniority etc.

(ii) This Hon'ble Tribunal be further pleased to set aside the order contained in letter dated June 5/6, 1989 contained in Annexure A-7 to this application.

(iii) to give the applicants such other benefits and reliefs as this Hon'ble Tribunal may deem just and proper in the circumstances of the case; and

(iv) to award to the applicants the costs of this application.

9. Interim order prayed for

Not relevant

10. Particulars of the postal order filed
in respect of the application fee.

(1) Number of Indian Postal
order.

(2) Name of the issuing
Post Office

(3) Date of issue of
Postal Order (s).

(4) Post Office at which
payable.

11. List of documents

Annex. Page
no.

1. Application

1-16

2. Notice dated 5.7.1988

A-1 17-18

3. Representation dated 18.7.1988
made by applicant no. 1

A-2 19-20

4. Representation dated 17.7.1988
made by applicant no. 2

A-3 21-24

5. Representation dated 17.7.1988
made by applicant no. 3

A-4 25-26

6. Representation dated 17.7.1988
made by applicant no. 4

A-5 27-29

7. Personnel Department serial
no. 2709

A-6 30-32

8. Impugned order dated June 5/6,
1989

A-7 33-34

0701460148814

List of documents	Annex.	Page no.
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9. Appendix A of the record of
Trade Test

A-8

35-36

VERIFICATION

I, Jagdish Prasad Tewari, aged about 53
years, son of Sri Ram Poti Tewari,
resident of Quarter no. II 97-C, Railway
Church Colony near Almabagh, Lucknow
do hereby verify that contents of paras
1 to 11 are true to my personal knowledge
and belief and that I have not
suppressed any material fact.

2014/14/14
Applicant no. 1

Lucknow

Dated October , 1989

B.C.Sarkar
(B.C.Sarkar)
Advocate
Counsel for the applicants

To

The Registrar,
Central Administrative Tribunal,
Lucknow Circle, Lucknow

2014/14/14

In the Central Administrative Tribunal

Additional Bench at Allahabad,

Lucknow Circle, Lucknow

O.A. No. 316 of 1989 (2)

Jagdish Prasad Tewari and others --- Applicants

versus

Union of India and others --- Respondents

COMPILATION NO. 2

Sl. Description of documents
No. relied upon

Annex. Page
no.

1. Application 1-16
2. Notice dated 5.7.1988 A-1 17-18
3. Representation dated 18.7.1988
made by applicant no. 1 A-2 19-20
4. Representation dated 17.7.1988
made by applicant no. 2 A-3 21-24
5. Representation dated 17.7.1988
made by applicant no. 3 A-4 25-26
6. Representation dated 17.7.1988
made by applicant no. 4 A-5 27-29
7. Personnel Department Serial
no. 2709 A-6 30-32
8. Impugned order dated June 5/6,
1989 A-7 33-34
9. Appendix A of the record of
Trade Test A-8 35-36

B.C.Saksena
(B.C.Saksena)
Advocate

Applicants

17

In the Central Administrative Tribunal,
Additional Bench at Allahabad,
Lucknow Circle, Lucknow

APPLICATION NO. 316 of 1989 (L)

Jagdish Prasad Tewari and others

--Applicants

versus

Union of India and others

--Opp-partie

Annexure no. A- 1

20/6/1989

Am. P-1

18

AS

NORTHERN RAILWAY.

NO.847-E/II-I/MSM-III

Divisional Office,
Lucknow. Dt. 5.7.1988

NOTICE.

It is proposed to restore the Seniority position of Shri Ashfaq Ahmad in the cadre of MSM Gr.III on the basis of his original seniority as SGT Khalesi. Vis-a-vis persons junior to him as Khalesi promoted as MSM Gr. III as a result of Trade test held from 20.9.65 to 1969 as he was not given a second attempt for appearing in trade test during this period where as few senior persons junior to him had been allowed more one chance to pass the trade test of MSM Gr. III from 1965 to 1969. He were promoted as MSM on 11.7.70. Since Shri Ashfaq Ahmad had passed the trade test of MSM Gr. III in the first attempt after 1965, he is due all the benefits of proforma seniority and fixation as MSM Gr. III Vis-a-vis his immediate junior Shri Shant Ram S/O Ram Chandra in terms of P.S.No.2709 who was promoted as MSM Gr. III w.e.f. from 11.7.70.

Accordingly Shri Ashfaq Ahmad's name is proposed to be placed below Shri Jagdish Pd. Jagrawal and above Sri Sant Ram in the seniority list of MSM Gr. III and MSM Gr. II.

This notice of proposed change in seniority may be given vide publicity amongst the staff for making representation if any against the above proposed change by 19.7.88.

In case no representations are received by 19.7.88 proposed change in the seniority of Shri Ashfaq Ahmad will be treated as final and he could be allowed all the consequential benifites as admissible under the Rules.

A certificate to be effect that the above notice has been given vide publicity amongst the staff may also be furnished to this office by 19.7.1988.

✓ *[Signature]* AB/88
Sr. Lvl. Personnel Officer
Lucknow.

Copy to:- CS91-LK
CSI I&L/LKO for information.

SI(w)/BSB, CSI/E/BSB, SI/2/BSB, SI/C/LKO,
SI/C/LKO, SI/RE, CSI/PBK,
Sr. DSTE/LKO,

Divi. Secty./URMU, NRMU, T-10, near Parccl Office, CB/LKO.
Divi. Secty./NRMU Near Guard Running Room/CB/LKO.

ATTESTED TRUE COPY

B.C. Akter

Advocate

— 11/11/88 —

इन दिन अन्नरेतुल 'हाईकोट' आपु घूँठीक्यर स्ट इलाहाबाद

19

ਲਭਾਨਤਾ ਭੈਨਚ ਲਭਾਨਤਾ

रिट पिटीशन नं 34 अक्टूबर 1989

संक्षेप ज्ञानीय प्रसाद त्रिवारी ————— पिटीयन्नर

छन्दोम्

यौनियन आपा इंडिया --- 35 पौजिया टीज

एनेकण्ठ नं A-2

सेवा १०

श्रीमान वर्षे छ मैण्डले कामिक अधिकारी
उत्तरे ल्ये लहानजे ।

ਛਾਤ੍ਰ ਸੀਓਐਸ ਓਡੀਓ ਲਛਾਨਾਂ

ਪਿਛਾ ਧਾਰਤੇ ਸੀਨਿਫਾਟੀ ਸਨ 1984 ਲੇ ਪਦਸਥਾਪਿਤ ਏਮ0ਸ਼ 0ਏਮ0।।

क्षेत्र सन्दर्भ में आपके नोटिस नं ० -८४७-ई/११-१/एम०एस०एम०-१। । । ।
५-७-८० ।

महोदय

निवेदन है कि प्राधीन ने सन 1964 में सम०स्स०स्म०-111 द्वेष

टेस्ट पास किया था ।

१२४ यह किंतु लतापत्ति हूँन स्स० हक्क्लथूँ हूँन राज्येव एवं

श्री उमाप सिंह ने भी इल जै ० । ६३ आई आर ०४०५०५०५०५० के विपरीत
मैण्डल अधिकारीयों की अवैधानिक एवं अनैतिक कृता से टेस्ट पास कर
सम०स्स०४०५० के पद पर पद्धत्यापित हुए ।

३३ यह किं प्राधीन मई सन 1959 को छालासी के पद पर

पदस्थापित हुआ था । और श्री स० बल्लू हैन । -7-63 2-लतापत्त

होने 5-4-62, उत्तरार्ध 20-5-64 जो कि वर्षों से छालासी में
घृनिया और हमारे साथ ट्रैड ट्रेस्ट पास किया गया हमसे सीनियर के द्वा
रा १४४ यह कि अब आप श्री असपाक अहमद को समस्त समूह-111

में पी०स्स०न०२७०७ के तहत विला ट्रैड ट्रेस्ट पास के श्री सन्ताम से
जरुर कमबद्ध करने जा रहे हैं यह कहा की किस राष्ट्र की बैद्यानिकता है
कि एक और साबूकार से सीनियर होने के बाद भी हो। १९६४ के पैनल
में घृनिया और बिना ट्रैड ट्रेस्ट पास व्यक्ति को सीनियर बनाने जा रहे
हैं जो कि विशेष महत्व पूर्ण दबाव होने का पर्यायक है जिसका
कि मैण्डल रेल विवरण सामना करने में असमर्थ है और बैद्यानिकता
को स्वीकार नहीं कर सकती। आईआर०स्म० की धारा ३१, ३०, बी १६३ वेप्टर -। यसके सामने लुछ भी नहीं जब कि इसका पहला ६८२
रिट पिटीशन ७० के सम्बन्ध में हाङ्क कोट ने भी दिया है। उचित
सम्भा कर निषेद्ध किया।

पृष्ठी

१२-२-२-२
१००
ज्ञानदीपा पसाक विवाही १२-२-२-२
सकन अन्नपूर्णा यात्रिक पृष्ठी
अन्नपूर्णा सी०स्स०आइ०। लहानऊ।

सत्य प्रतीतिलिपि

ATTESTED TRUE COPY

B.C. Dukhiya

Advocate

इन दिन आने वाले हाईकोट आपा पूरी क्षेत्र स्टडलाहाबाद

ਲਾਨੁ ਬੇਚ ਲਾਨੁ

रिट पिटीशन नं 34 पा १८७

१८८

जग्दीश पसाद उप्ता — — — — — पिटीशानर

छनाम

यूनियन आफ इंडिया — — — — — अपोनीजपाटीन

एनेक्टमेंट नं. ~~A-5~~ A-03

सेदा में

ਮੈਂ ਪ੍ਰੇਮਾਨ ਵਰਿਛਠ ਮੈਂ ਜੈਂ ਕਾਮੀਕ ਅਈਡਾਕਾਰੀ

उत्तर ऐलवे लहानजा ।

द्वाता उचित माध्यम ।

विषय :- अपील श्री असपांक अहमद एम०स०एम० नं०-३ की विरुद्धता

के छिलाफ सदृशी - 1 आपकी नोटिस नं 0847-ई/2 सम 0 बजे 0 सम

३ दिनांक ५-७-६६ ।

2- नियम नं० 163 चेप्टा । सेक्षान ३ सब सेक्षान

૩, ૨૦ બી૦ ૩૧.૬ આઇ.આ. ૦૩૮ ૦૪૮૦૫૧૦૪૮૦૮૦ -2709

महोदय

1- निवेदन यह हॉर्टिक प्राथमि सन १९६३ सम०स्स०स्म०का टैड ट्रैस्ट पास

कर गोपीजया बाद स्कूल से प्रमोशन कोर्स पास कर आया है।

2- यह कि जो पुनः सन 1967 में ट्रेट में छुलाया गया जोको भी पास किया ह्यारे साथ ज०एन०एक्सेना ज०एस०एटटर्टा जमीन अहमद ने

मीटिंग ट्रैट पास किया और सभी लोग एम०एस०एम०-३ के पद पर

पदस्थापित है ।

3- यह कि श्री द्वारिका प्रसाद एम०स०ने सन 1965 में टेड ट्रैट पास किया था जो कि सन 1970 में श्री जै०सन०स्क्लेना एवं जै०स०० ट्रैट के साथ रिवड हुए जिन्होंने लखनऊ बैच हाईकोर्ट में याचिका नं० -६२०, ६१२, आप 1970 में दाखिल की और ज्ञाका प्रैलता नम्बर १९८० में आया जिसमें यह तीनों व्यक्ति रु० बी०आ०इ०आ००८० एम० के तहत सीनियर हुए श्री हजारी लाल से ।

4- यह कि 163 ल० चैप्टर -१ सेक्सन -३ के सब सेक्सन -३ के लिए श्री लताकल हुैन एस०डब्लू० हुैन राजेष्व तंत्रा ऊर्जा एवं सिंह को मंजूल रैल व्यक्तिगता ने अवैधानिक रूप से प्रमोद किया ।

5- यह कि श्री सूरज बली द्वारिका प्रसाद उप्ता को रु० बी०आ०इ०आ० एम० के तहत श्री हजारी लाल से वीरष्ठ बनाया ज्या बाकी को त्र० ६ के तहत वीरष्ठता दी गई । जबकि आपके पत्र से यह विद्यित होता है कि सन 1965 से 1969 तक के टेड ट्रैटो की त्र० ६ आई आ००८०८० के तहत छालासी की सीनियार्टी के आधार पर क्रमबद्ध किया ज्या लैकिन मंजूल रैल व्यक्तिगता ने ज्ञाको भिन्न सही ढैंपर प्रतिकारित नहीं किया ।

6- यह कि अब पी०स००२७०९ के तहत श्री सासपानक अद्याद को वीरष्ठ बनाने जा रही है जिन्होंने टेड ट्रैट 1985 में पत्र किया तथा ज्ञाके बाद सम्बन्धित 1976-77 में यह ट्रैट पास किया । यह कितना

अवैधानिक है कि व्यक्तिगत विशेष दबाव में आकर जिस व्यक्ति ने ट्रैट ट्रैट पास नहीं किया ज्ञाके इतना वीरष्ठ बना रही है कि जूँड -

एम०एस०एम०द० जो जूसे सीनियर हो जायें।

7- ~~स्वैच्छ~~ यह कि श्री असफाक अहमद को वीर्घ्यता का लाभ 1964 के पैनल जिमें स्स०एस्स० हैन लतापक हैन आईद ने लैस्ट दिया। ज्या समय भी तो इनको नहीं छुलाया ज्या क्यों न दिया जायें पी०एस०न० 2709 के तहत / और जूसे सीनियर माना जायें।

8- यह कि श्री असफाक अहमद ने 1975 और 1983 की वीर्घ्यता सूची के प्रकाशित होने के बाद क्यों नहीं अपनी सीनियर्टी माँजी तालिक में छल रेल प्रशासन अपनी पहले ही भूल सुधार किया होता। यादि कोई प्रार्थना पत्र सन 75 तूा 83 में की तो बताया जायें।

9- सीनियर्टी लिस्ट के सुधार हेतु नियमानुसार मक्कल माह के अन्दर दिया हो तो कृपया जो प्रकाशित किया जाय यादि नहीं तो जो भी पी०एस० 2709 के तहत सन 64 के पास व्यक्तियों से वीर्घ्य माना जायें।

10- यह कि प्रशासन के लिए सुविधा एक यही होगा कि यातो पैनल वाइज 320 बी० अधिवा तो 6 के तहत अधिवा पी०एस० 2709 के तहत किसी सक को मानकों सीनियर्टी पिस्त कर दी जायें क्योंकि अधिकारा पी०एस०पर आपका 2709 सर्कुलर लागू होता है।

अतः अन्त में निवेदन है कि 23 वाले बाद में छल रेल व्यवस्था का ध्यान ज्या यादि यह विशेष दबाव नहीं तो क्यों है क्यों न सीनियर्टी रेल सक सन 1964 से अब तक सक धारा के तहत तो 320 बी० 163 रेल चेप्टर भैरोक्सन -3 सब सेक्सन 3 अधिवा पर पी०एस०

नं० 2709 अपना लिया जाय और वीरिष्ठता क्रम को सुधार लिया जाय
ताकि कम्पियारों वर्ग अपने साथ अन्याय न महसूस कर सके क्यों कि कोटि
के पैसों ले आई आ००० रुपये को न मानकर मेंझे व्यक्ति ने अपने आर
सस्यात्मक प्रश्न चिन्ह लगाने के मजबूर किया है। क्यों न हमें लतापक्ष
झैन से पूर्व वीरिष्ठ माना जायें।

अौरम पौतीलिपि

सीनियर डीओ० लहानज।

प्राधीर्णि

चुन्नी लालि । ८८८८

चुन्नी लालि
यात्रिक संकेत अनुरक्त - पथाम
अन्ड पौ० डल्ल० आ३०-।
लहानज।

सत्य पौतीलिपि

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B.C. Dukreza

Advocate

OP/14/21/47714

इन दिन आने पुल हाईकोर्ट आपा पूछी क्यों स्टेला हाबाद

लोनज बेंच लोनज

रि पिटीशन नं 349 । 1989
जागीर प्रसाद छप्ता — पिटीशनर

बनाम

रेडप्पुनियम आपा इंडिया — अपोजिट्याटीज
स्नेक्ज नं 22-4

सेवा में

श्रीमान वर्ष-ठ का भी किंक अधिकारी महोदय,
उत्तर रेलवे - लोनज।

द्वारा वर्ष-ठ सेकेत निरीक्षक महोदय
उत्तर रेलवे लोनज।

विषय अपील अन्स्ट पी०स्स०नम्बर 2709

महोदय

निवेदन है कि प्राथी का भारी दिनांक 13-2-59 है आपसे
निवेदन है कि मुझे सन 1964 के टेड टेस्ट में प्रशासनिक भूल के कारण
नहीं छुलाया था अर्ज छुलाया जाता तो मे अवश्य पास होता।

आप मुझे पता चला है कि श्री अशापाक अव्याप्त सम०स्स०सम०दितीय

को आप 2709 पी०स्स०नम्बर के तछ्द वर्ष-ठ बनाने जा रहे हैं जिका
में भी उम्मीदवार हूँ क्यों कि मैंने पहले टेड टेस्ट पास किया है सन
1969 में।

यह कि सन 1964 में जो टेड टेस्ट हुआ था जिसमें श्री सम०डब्लू०
द्वैन लतापत्त द्वैन राजेव और उमाव तिंह अवैदानिक स्प से रुल

नम्बर 163 चेष्टा प्रधाम सम०ओसीसब सेक्षन 3 के विषयीत प्रमोद

किये गये थे जबकि हम सब पुकार से उनसे सीमित थे।

26
X/3

अतः निवेदन हीक अब आपने पी०स्स०नम्बर 2700 के तहत परिष्ठता निधारण का निश्चय किया है और सी प्रशासनिक भूल को स्वीकार किया है तो इस नम्बर के तहत हम भी प्राप्तिवत हैं। अतः हमें भी यांकित चार व्यक्तियों से विष्ट बनाया जाए।

प्रतीलिपि :-

1-सीनियर डीपी०आ००/लहानज।

2-सेकेटी सन०आ००स्म०य००/लहानज।

विनीत

हॉ अ० अ० अ० अ० अ०
सुर्योपली सान्द्रल
यांकित अनुरूप अनुरूप पठाम
इस्ट सन्द्रल कौषल लहानज।

दिनांक । 7-7-1988

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B.C. A. K. R.

Advocate

Y ०८/१६/१९८८

27
इन दिन आने पुल हाइकोट आप घृणीकेर स्ट इलाहाबाद

लहानजे बेंच लहानज

रिट पिटीशन ने आप 1989

जादीशा प्रसाद तिवारी — पिटीशन

बनाम

यूनियन आप हीणद्या — अपोजिटपटीज

सनेक्षण नं 245

सेवा में

श्रीमान सुनिध जीपीओ

उत्तर रेलवे लहानजे ।

दूरा त सी०स्स०आ०ही०-पृष्ठम
लहानजे ।

पिटीय - सी०स्स०न०-2709

सन्दर्भ रुल नं० । 63 चेप्टर - । सेक्टन - ३ सब-से०-३, ३१६, ३२० बी०

आहीआर०स्म०जिट पिटीशन नं० ६२०, ६८२, सन १९७०

हाइकोट इलाहाबाद लहानजे बेंच ।

महोदय

आपकी सेवा में पृथीवी - न्यू निवेदन है

॥१॥ यह कि पृथीवी सन १९८५ का परस्पर स्म०स्स०स्म०है जिसे पुनः

सन १९८७ में छुलाया ज्या और ज्यमें भी पास हुआ ।

॥२॥ यह कि स्म०स्स०स्म०-३ की वरिष्ठता सूखी १९७५ में आउट

हुई जपर हमने आपस्ति पूर्वुत की दस्तके पूर्व हम तथा हमारे दो

सारीध्यों ने रिट पिटीशन नं० ६२०, ६८२, १९७० में दाखिल की ।

हाइकोट में जिसके निर्णय स्वत्त्व हमे ३२० बी के तहत हजारी लाल स्म०

स्त०स्म०प्ले वरिष्ठ माना ज्या ।

४३। यह कि अन्य हारे बहुत से स्म०स्स०स्म० को झा० ६ के तहत सीनियर माना ज्या ।

४४। यह कि हमको मैंण्डलीय पसले के तहत १९६५ से १९६७ तक टैड ट्रैट के कम्पायल का हाईकोर्ट के पसले के विवरीत धारा झा० ६ के तहत सीनियर माना ज्या ।

४५। यह कि हमको मैंण्डलीय पसले के तहत १९६६ से १९६९ तक टैड ट्रैट के कम्पायल का हाईकोर्ट के पसले के विवरीत धारा झा० ६ के तहत वरिष्ठता को निर्मित किया । किन्तु छूटिका प्रसाद सर्व श्री सूरज बली स्म०स्स०स्म०को झा० ० बी के तहत सीनियर माना ।

४६। यह कि उपरोक्त बजहो में आपको झा० ६, झा० २०, बी० आईकोर्ट के पसले की बाण अन्दाज कर अब एक प्रभावी व्यक्ति को पी०स्स० २७०९ के तहत वरिष्ठता देना निश्चित किया है ।

४७। यह कि जब आपने प्रशासनिक भूल सुधार का निश्चित किया है और उपरोक्त सभी कानूनी धाराये तथा कोट के पसलो पर आपका विश्वास नहीं है तो आप पी०स्स० २७०९ की सहारा लिया है तो वरिष्ठता का सुधार आवश्यक हो ज्या है ।

४८। यह कि हम भी इस समूल २७०९ से प्रभावित हैं अतः हम भी २७०९ ने तहत निम्न व्यक्तियों । -लतापत्ति द्वौन, २-स्स०ड्व्ल० द्वौन राजदूप ४ उमराव तिंहसे वरिष्ठ माना जाय क्योंकि १९७५ तथा १९८३ में

-3-

प्रृथ्यापित वरिष्ठता सूची के एक माह के अन्दर ज्ञ पृथ्यावी एम०स्स०एम०-१। ने लोई आपत्ति नहीं की। जब कि हमने वर्ष १९७० से आपका ध्यान इस और आकृष्टि किया। किन्तु मेरे जर आपने २७०९ को नहीं लाना किया जब कि यह भी प्रश्नासीनक भूल थी २ जब आप २३ वर्षों के बाद अपनी भूल सुधार सकते हैं तब ह्याँ साथ जो प्रश्नासन ने भूल की ज्ञको क्यों न सुधार किया जाये।

अन्त मेरे निवेदन है कि जब आपका कानून और नियमों में विश्वास नहीं रहा और पी०स्म०स्कूली को हीसवैष्यर मानते हैं तो जी के तहत हमें भी वरिष्ठता प्रदान ली जाय अन्यथा इस मामले को जो कि पृथ्यावी व्यक्तियों के कारण आप मजबूर होके रद्द किया जाय। क्यों कि इसके तहत अनेको एम०स्स०एम०लछानज मैण्डल के पृथ्यावित होते सन १९६४ में जो प्रश्नासन ने भूल की है ज्ञका समाधान भी आवश्यक है। तथा कोटीका होने की सम्भावना बढ़ जाती है।

दिनांक । ७-७-७८

प्राधी

ज०स्न०स्कैना
सकत अनुरूप क्लिया त्रिक प्राम
अन्दर मुख्य सकत नीक्लाक
प्राम उत्तर रेलवे लछानज

अनुस प्रतीक्षिप

सीनियर डीपी०ओ० लछानज को प्रेषित।

ज०स्न०स्कैना

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B.C. *Subhash*

Advocate

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XW

In the Central Administrative Tribunal
Additional Bench at Allahabad,
Lucknow Circle, Lucknow

Application no. of 1989

Jagdish Prasad Tewari and others

---Applicants

versus

Union of India and others

---Respondents

Annexure no. A-6

29/12/1989

31

6

✓✓

Serial No. 2709.—Circular No. 831-E/25-III(Eiv), dated 16-10-1964.

Sub.—Hardships to non-gazetted staff due to administrative errors—Loss in seniority and pay.

A copy of Railway Board's letter No. E(NG)63PMI/92, dated 15/17-9-64 is forwarded for information and guidance.

Copy of Railway Board's letter No. E(NG)63 PMI/92, dated 15/17-9-64, from Asstt. Director, Establishment, Railway Board, to the General Managers, all Indian Railways, etc.

Sub.—Hardships to non-gazetted staff due to administrative errors—Loss in seniority and pay.

It has been represented to the Board that sometimes due to administrative errors staff are overlooked for promotion to higher grades. This should either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotions or some other reasons Broadly, loss of Seniority due to administrative errors can be of two types:

- (a) where a person has not been promoted at all because of administrative error ; and
- (b) where a person has been promoted but not on the date from which he should have been promoted but for the administrative error ;

001/6314014

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B.C. *.....*

Advocate

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2. The matter has been considered and the Board desire that each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative errors should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the stage which the employee would have reached if he was promoted at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable, as he did not actually shoulder the duties and responsibilities of the higher grade posts.

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B.C. - *Signature*

Advocate

33

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In the Central Administrative Tribunal

Additional Bench at Allahabad,

Lucknow Circle, Lucknow

Application No.

of 1989

Jagdish Prasad Tewari and others

--Applicants

versus

Union of India and others

--Respondents

Annexure no. A-7

201814614

34

उपर देख,

00001-347-40/11-3710/20.8.1987/111

June 21st 1863

8-89

ਗੁਰੂ ਮਨੁ ਪਾ. ਏਤ. ਏਤ. ੩੫-੧੧
ਗੁਰੂ ਮਨੁ ਪਾ. ਏਤ. ਏਤ. ੩੫-੧੧
ਗੁਰੂ ਮਨੁ ਪਾ. ਏਤ. ਏਤ. ੩੫-੧੧

१५-श्री अद्वान अग्रग एम.एस.एस. १५-श्री वी बरोदाता लालारामा ।

ग्राहक नाम : - यत्प्रति गोपी :- भाव :- 17.7.08.

प्राप्तिकार्यः—श्री अष्टाव वर्षम् भृत्या भृत्या

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B.C. 2. 6224

Advocates

1947-1948

35

In the Central Administrative Tribunal
Additional Bench at Allahabad,
Lucknow Circle, Lucknow

Application no. of 1989

Jagdish Prasad Tewari and others

-applicants

versus

Union of India and others

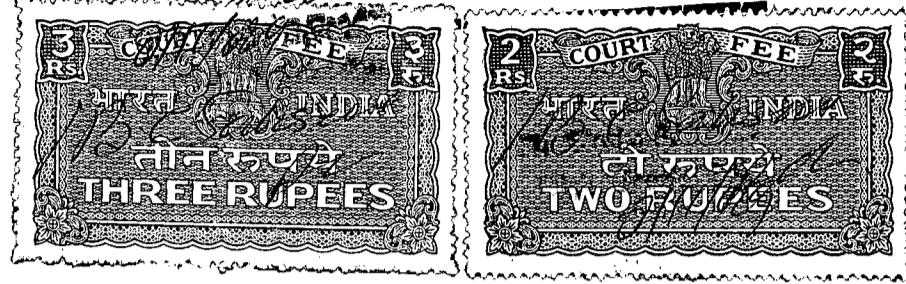
-Respondents

Annexure no. A-8

001412148711

Central Administrative Tribunal Additional
Bench of Allahabad Lucknow महोदय
बजादालत श्रीमान

वादी (मुद्र्द्दि)
मुद्र्द्दि (मुद्रालेह)



Jagdish Basu Tenru lohars

25

न० मुद्रमा वादी लोहर प्रतिवादी (रेस्पान्डेन्ट)
सन ८९ पेशी की ता० १९ रु०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री

Shri B. C. Sahasna Advocate वकील

महोदय
एडवोकेट

को अपना वकील नियुक्त करके (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तस्दीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपक्ष (फरीकसानी) का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करें वकील महोदय द्वारा की गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी। मैं यह भी स्वीकार करता हूं कि मैं हर पेशी स्वयं या किसी अपने पैरोकार को भेजता रहूंगा। अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर न होगी। इसलिए यह बकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

नाम अदालत
न० मुकद्दमा
नाम फरीकाना

Accepted
B. C. Sahasna

हस्ताक्षर *जोधीया*

साक्षी (गवाह)

साक्षी (गवाह) न्युनो जॉल विश्वनाथ

दिनांक

महीना अगस्त सन् १९ रु०

31/08/1970

37

In the Central Administrative Tribunal

Additional Bench at Allahabad,

Lucknow Circle, Lucknow

--

Civil Misc. Application no. 310 of 1939 (U)

O.A. No. of 1939

Jagdish Prasad Tewari and others --Applicants

versus

Union of India and others

Respondents

Application under rule 4(5)(s) of the C.A.T.

Procedure Rules, 1937

This application on behalf of the applicants
above-named most respectfully showeth:-

1. That the applicants are similarly situated
as far as relief claimed in the application is
concerned. They are aggrieved by the order
imputted in the application and have a common
interest in the matter.

00162147113

2. That it is expedient in the interest of justice that this Hon'ble Tribunal be pleased to permit all the four applicants to join together and file a single application.

VERIFICATION

I, Jagdish Prasad Tewari, aged about 53 years son of Sri Ram Pati Tewari, resident of Quarter no. II 97-C, Railway Church Colony near Alambagh, Lucknow, do hereby verify that the contents of paras 1 and 2 are true to my personal knowledge and belief and that I have not suppressed any material fact.

01/10/1989
(J.P.Tewari)
Applicant no. 1

B. S. Tewari
Counsel for the applicant

Lucknow Dated
October , 1989

To

The Registrar,
Central Administrative Tribunal,
Lucknow Circle, Lucknow.

01/10/1989

FF 84-899

ब अदालत श्रीमान् *C. A. T. T. K. M.* महोदय

वादी अपीलान्ट

का

वकालतनामा

प्रतिवादी रेस्पान्डेन्ट

0.A.N. 316/89



Jagdish Rd. Tiwari

(वादी मुद्रा)

बनाम

प्रतिवाद मुद्राअलेह

नं० मुकदमा

सन् १९६६

पेशी की ता०

१० ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री वी० व० श्रीवारुतव, एडवोकेट
एम० एस०-१५१, सेक्टर डी, अलीगंज विस्तार, लखनऊ महोदय

नाम अदालत
नं० मुकदमा
नाम फरीकनी

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ
इस मुकदमा से वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी
व जवाबदेही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटावें
या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा
या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने
हस्ताक्षर से दाखिल करे और तसदीक करें या मुकदमा उठावें या कोई रुपया
जमा करें या हमारी या विपक्ष (फरीकसानी) का दाखिल किया हुआ रुपया अपने
या हमारे हस्ताक्षर युक्त (दस्तखति) रसीद से लेवें या पंच नियुक्त करें वकील
महोदय द्वारा कीं गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं
यह भी स्वीकार करता हूँ कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को
भेजता रहूँगा अगर मुकदमा अदम पैरवी से एक तरफा मेर खिलाफ फैसला हो
जाता है जिसकी जिम्मेदारी मेरे वकील पर नहीं होगी। इसलिए यह वकालतनामा
लिख दिया कि प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

सन् १९६६

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL,
ADDL. BENCH AT ALLAHABAD
CIRCUIT BENCH AT LUCKNOW

O.A. No. 316 of 1989

Jagdish Pd. Tewari & Others ... Applicants
versus
Union of India & Others ... Respondents

Short Counter Application on behalf of
Respondents No. 5 and 6

It is submitted by respondent No. 6 as
under :-

1. That the type copies of the Annexures No. A 2 to A 5 annexed with the application received by the respondent are illegible and as such it is not possible for the respondent to file Counter until legible copies of the said annexures are furnished by the applicants.
2. That in absence of the legible copies of the annexures cited above, the answering respondent has replied to the legal points involved in the application.
3. That the above application has been filed by the applicants for the fixation of their seniority pay etc. The order that has been challenged is No. 847-E/11-1/MSM/III dated 5/6 June, 1989 passed by D. R. M. North ern Railway, Lucknow with reference to Annexure No.A-7 is related to the fixation of seniority of Sri ^{Abhfaq} Afafq Ahmed, Respondent No. 4 and it has no concern to the seniority assigned to

S. Sh. Husain

2.

the respondents No. 5 to 7 25 years ago. A photo-stat copy of the seniority list in the initial grade of MSM III as on 15.6.66 is annexed forming part of this Counter as Annexure No. C-1.

4. That the seniority list of the respondents in initial grades of MSM III was published in the year 1966 and under para 322 of the Railway Establishment Manual, no case for revision of seniority list can be entertained after one year of the publication of seniority list.

5. That Serial No. 2709 - Circular No. 831 -E/25-III (EIV) dated 16.10.1964 is 26 years old and it cannot be used against the respondents No. 5 to 7.

Supreme Court has decided in Malcom Lawrence CECIL D'SOUZA Vs. Union of India and Others. 1976-SCC (L & S) 115 J.
"Seniority cannot be challenged after a long lapse of time".

6. That circular quoted in para 5 above is for guidance of administration only and in the case of the seniority assigned to the respondent No. 5 to 7, the Railway administration during the last 26 years, have had discovered no mistake and ground for revision and as such the applicants cannot get any relief on the basis of the circular quoted above.

7. That the applicants have given false declaration under head No. 7. Matters not previously filed or pending with any other court.

S. Bhushan

The matter of seniority of Respondent No. 5 to 7 came

up before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench 20 years ago in Writ petition No. 620 of 1970 Jata Shanker and Others .. petitioners Versus Divisional Supdt. N. Railway & Others ... Opp. Parties and Sri Jai Narain Saxena (Applicant No. 4 in the present application) was also one of the petitioners in the said writ petition Under Article 226 of the Constitution of India.

Hon. K. S. Verma, J.

Hon. K.N. Goel, J.

(Judgement delivered by Hon'ble K.N. Verma, J.)

Extract from the judgement of the said Writ Petition No. 620 of 1970 relevant to the seniority of the respondents is reproduced below :-

" In the writ petitions, objection has also been taken against the promotion of Latafat Husain, Rajdeo S.W. Husain and Umrao Singh. These four persons were promoted in 1964. The contention of the petitioners is that these respondents, were though senior to the petitioners, were not qualified at the time of their promotions as they had not fulfilled the qualification relating to the requisite length of experience. We are not however, ~~not~~ prepared to entertain this ~~not~~ plea because their promotion had taken place in 1964 while these writ petitions were filed in 1970. As those promotions were not challenged for a period of six years and as in the meantime these respondents had already acquired experience on the higher post, the petitioners cannot be ~~not~~ permitted to urge that the promotion of these respondents should be nullified merely on the ground that at the time when they were promoted in 1964 they had not fulfilled the qualification relating to length of experience. The petitioners themselves were not even eligible for promotion at that time."

Sh. Husain

(61)

4.

The typed copy of the judgement of the Hon'ble High Court forming part of this Counter application as Annexu No. C-2.

8. That in view of the judgement of the Hon'ble High Court quoted above, the application is also not maintainable against the answering ~~re~~ respondents in Central Administrative Tribunal under Sub-Section 2 (a) ^(b) of Section 21 of Limitation under Administrative Tribunal Act 1985.

9. That the applicant is also hit by Rule 10 of the Rules framed under Administrative Tribunal Act which already lays down that dual relief cannot be made in an application.

10. That ~~Relief~~ Relief No. 1 sought in the application against the answering respondents is abuse of process of law and is liable to be rejected.

11. That on facts and circumstances mentioned above, the application filed by the applicants is not maintainable against the answering respondents No.5 and 6 and is liable to be dismissed in LEMINI.

Lucknow:

Dated: 10/9/90

S. Husain
RESPONDENT NO. 6

VERIFICATION

I, S.W. Husain, aged about 50 years son of late Mubarak Husain, R/o S.E./29-B- Fateh Ali Colony, Lucknow is duly authorised by the Respondent No.5 to sign and verify this Short Counter on his behalf, do verify that the contents of Para No. 1 to 11 of this Counter is based on legal advice which is believed by me to be true.

S. Husain
RESPONDENT NO. 6

ANNEXURE NO - C - 2

(6)

IN THE BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH LUCKNOW.

Writ petition No. 682 of 1970.

Dwarika Prasad Gupta _____ Petitioner.

VERSUS

The Divisional Superintendent, Northern Railway Lucknow
and authers Opp. Parties.

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.
LUCKNOW DATED 24.11.1980.

Hon'ble K.S. Verma J.

Hon'ble K.S. Verma J.

For orders see out judgement of date in writ petition No.
620 of 1970 .

Sd/K.S. Verma.

K.N. Goyal.

S. Bhain

24.11.1980

ATTESTED
W. H. HAIDARI
Advocate High Court

ANNEXURE NO. - C - 2

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH, LUCKNOW.

(16)

Writ Petition No. 620 of 70.

Jata Shanker and an others petitioners.

Versus

The Divisional Superintendent, Northern Railway Lucknow.

and others OPP. Partees.

WRIT PETITION UNDER ARTOCLE 226 OF THE CONSTITUTION OF INDIA,
Lucknow dated 24.11.1980.

Hon. K.S. VERMA. J.

—
Hon. K.N. Goyal. J.

(delivered by Hon'ble K.N. Goyal. J.)

These two writ petitions are directed against an order of reversion whereby the three petitioners have been reverted from the post of Khalasi. The contention of the three petitioners is that they were senior to other official who have been retained in the higher post and have not been reverted.

two petitioners in writ petition No. 620 of 1970 are Jata Shanker Bhatt and Jai Narain Saxena. They were appointed as Khalasi in July, 1959 and they passed trade on are J. 1969 whereby their suitability for the higher post was certified. The petitioner writ petition No, 682 of 1970 namely, Dwarika Prasad as appointed as Khalasi in september, 1959 and he passed the trade test on 23-9-1965. All the three petitioners were promoted to the higher post after having passed the trade test. The promotion was not on permanent basis but as in non-fortutious vacancies. In the case of Dwarika Prasad his promotion took place on 10-1-1966. While the other two petitioners were promoted in 1968 and 1969.

STAMPED
W.H.H. 15/9/93
W. H. HIDARI
Advocate High Court

Shankar

(2)

67

As against this, respondent Hazari Lal who is respondent No. 8 in Writ petition No. 682 of 1970 and respondent No. 9 in writ petition No. 620 of 1970 was appointed as a Khalashi earlier than these three petitioners but he passed the trade test only in March, 1969. He was thereafter promoted in non-fortuitous vacancy in February, 1969. On the basis of these dates it has been contended by the petitioners that they were senior to Hazari Lal by virtue of their having qualified on earlier trade test and having got promoted in non-fortuitous vacancies before any subsequent test was held. Reliance has been placed on paragraph 320 (b) of the Indian Railway establishment Manual.

The learned counsel for the Union of India and the authorities concerned has placed reliance, on the other hand, on paragraph 316 of the same Manual, that paragraph, to our mind, does not apply to the case as it relates to different dates of 11 dates of trade tests when such different dates could be treated as one continuous examination. It has not been suggested that the trade tests at which the petitioners qualified in 1986 and 1987 respectively could be treated as one continuous examination which continued till 1988 at the respondent Hazari Lal qualified. In these circumstances paragraph 316 of the Manual is clearly not applicable and paragraph 320 (b) of the Manual is attracted and all the three petitioners must be held senior to Hazari Lal.

Initially the petitioners had challenged the seniority given to Badri as well, as but the said Badri appear to have retired during the pendency of the writ petitioner. Accordingly, no relief can be claimed by the petitioners so far as Badri was concerned.

In the writ petitions, objection has also been taken against the promotion of Latafat Husain, Rajdeo, S.W. Husain and Umrao Singh. These four persons were promoted in 1964. The contention of the petitioners is that these respondents, were though senior to the petitioners, were not qualified at the time of their promotions as they had not fulfilled the qualification relating to the requisite length of experience. We are not however, ~~permitted~~ to entertain this plea because their promotion had taken place in 1964 while these writ petitions were filed in 1970. As those promotions were not challenged for a period of six years and as in the meantime these respondents had already acquired experience on the higher post, the petitioners cannot be promoted. We urge that the promotion of these respondents should be nullified merely on the ground that at the time when they were promoted in 1964 they had not fulfilled the qualification relating to length of experience. The petitioners themselves were not even eligible for promotion at that time.

Accordingly, the petitioners can succeed only against Hazari Lal on the basis of applicability of paragraph No 320 (b) of the Manual. As only one post was available, the senior most among the petitioners can be alone succeed. Deorika Prasad is senior most among the petitioners inter se.



1. Treated
 Contd..... 3/
 W. H. HANSON
 Advocate H. C. Court

(3)

(6)

In the result, writ petition No. 620 of 1970 is dismissed while writ petition No. 682 of 1970 is allowed and writ of mandamus is issued to the union of India to the petitioner as senior to Hazari Lal. The order of reversion, Annexure 1 to the writ petition, in so far as it relates to Dwarika Prasad in the petitioner in this case, is hereby quashed. No order as to costs.

Sd/ K.S. Verma.

Sd/ K.N. Goyal.

Dt. Nov. 24, 1980

Verma
Nov 24/80
M.G. P.L.D.R.I
cc H.C. 11/10/80

In the Central Administrative Tribunal, (9)
Additional Bench at Allahabad,
Lucknow Circle, Lucknow

Rejoinder-affidavit in reply to the ^{short} counter-affidavit filed on behalf of respondents nos. 5 and 6

O.A.No. 316 of 1989

Jagdish Prasad Tewari and others --Applicants

versus

Union of India and others --Respondents

I, Jagdish Prasad Tewari, aged about 54 years, son of Sri Ram Pati Tewari, resident of Quarter no. II 97-C, Railway Church Colony near Alambagh, Lucknow, do hereby solemnly take oath and affirm as under:-

18/12/2001

*Filed today
OSR
24/10/01*

OP/1419/44114

- That I am petitioner no.1 in the above-noted application. I am fully acquainted with the facts of the case. I have obtained necessary instructions from my co-petitioners. This rejoinder-affidavit is being filed on their behalf as well. I have perused the counter-affidavit and have understood the contents thereof.

2. That in reply to the contents of paras 1 and 2 it is stated that opposite-parties 5 and 6 have taken shelter behind an unwarranted plea that typed copies of Annexures A-2 to A-5 were illegible. After receipt of the said counter-affidavit on a perusal of the pleadings of paras 1 and 2 thereof again copies of Annexures A-2 to A-5 were served on Sri W.H. Haider Advocate, learned counsel for opposite-parties 5 and 6. The said counsel, when copies were served upon him, indicated that no other counter-affidavit will be filed on behalf of opposite-parties 5 and 6. It is stated that the short counter-affidavit does not give parawise reply to the pleadings contained in the petition and it deserves to be rejected summarily.

18-12-64

3. That in reply to the contents of para 3 it is stated that a perusal of the petition would show that the applicants have thereby sought a relief for a direction by this Hon'ble Tribunal to the respondents to extend the benefit of Railway Boards letter dated September 15/17, 1964 being Personnel Department Serial no. 2709

SD/14/21/4714

copy of which is Annexre A-6 to the application and to assign seniority to the applicants above respondents nos. 4 to 7 and also grant consequential benefit of promotions to the next higher grades from a date earlier and the date from which respondents 5 to 7 had been promoted with all consequential benefits of arrears of salary and seniority etc. A perusal of the petition would further show that by the impugned order the benefit of the said Personnel Department Serial no. 2709 has been extended by the railway authorities to respondent no.4 who all along has been shown junior to the applicants. The applicants crave indulgence of this Hon'ble Tribunal to appreciate for itself that the respondents 5 and 6 do not seem aggrieved by assignment of higher seniority position above them to respondents no.4 who had been assigned seniority below them for a considerable long time. If that is so, there is no valid reason and justification for respondents nos. 5 and 6 in objecting to the reliefs claimed by the applicants. The factual position is that in a seniority list issued in the year 1987 the name of respondent no.4 Ashfaq Ahmad does not find place. As a

18.12.87

07014147916

consequence of the impugned order he is sought to be assigned seniority at serial no. 28 above ~~in a seniority list issued in the year 1984.~~ one Sri Sant Ram son of Gur Charan. In the said seniority list the respective seniority position of the applicants and respondents 5 to 7 is as follows:

Seniority position of applicants:	Seniority position or respondents
Applicant no. 1 - 13	Respondent no. 5 6
Applicant no. 2 30	Respondent no. 6 8
Applicant no. 3 18	Respondent no. 7 35
Applicant no. 4 20	

4. That in reply to the contents of para 4 the applicants crave indulgence of this Hon'ble Tribunal to appreciate for itself that respondents 5 and 6 seek to rely on para 322 of the Railway Establishment Manual to take a plea that no case for revision of seniority list can be entertained after one year of the publication of the seniority list. The said plea, if accepted, warrants setting aside of the order impugned in the petition. At the same the applicants maintain that if the benefit of Railway Boards circular can be extended to respondent no. 4 after a lapse of so many years by the railway authorities, there can be no objection to the applicants being granted the

10/10/1984

same benefit. In any other view of the provisions of Articles 14 and 16 of the Constitution would stand violated.

5. That in reply to the contents of para 5 it is pointed out that respondents 5 to 7 have raised no grievance with regard to the impugned order by which respondent no.4 has been given the benefit of serial no. 2709 dated 16th October, 1964 after a lapse of 26 years, If they have no objection against the same, they can possibly have no legal objection to the same and to resist the claim of the applicants in claiming the same benefit as has been extended by the railway administration. It is necessary to state that respondents 5 to 7 had been impleaded as respondents to the petition since their seniority would be affected if the benefit of serial 2709 dated 16.10.1964 is similarly granted to the applicants as has been done by the impugned order to respondent no. 4. It needs to be appreciated that the applicants are not directly challenging the seniority list but are seeking equal treatment which has been extended by the railway authorities to respondent no.4.

SD/14/21/ya/114

6. That the ~~plea~~ in para 6 is legally untenable and therefore denied. It is stated that the occasion to file the petition arose because on a non-existent fact the railway administration has chosen to give undue advantage to respondent no.4 and to assign seniority to him above them. The applicants have indicated the factual position necessary to ~~six~~ sustain their claim that they are entitled to the benefit ~~to~~ of serial no. 2709 dated 16.10.1964.

7. That in reply to the contents of para 7 it is stated that the applicants 1 to 3 were not the petitioners in the writ petition quoted in para 7. Only applicant no.4 was one of the petitioners in the said writ petition.

8. That the plea in para 8 is legally untenable and is based on incorrect appreciation of the claim made in the petition. It is, therefore, denied.

9. That the pleas in paras 9, 10 and 11 are based on incorrect ~~assum~~ appreciation of facts and are otherwise legally untenable and therefore denied.

Lucknow Dated
18.12.1990

SP/16/91/449

Deponent

I, the deponent named above do hereby verify that contents of paras 1 to 7 are true to my own knowledge and those of paras 8 and 9 are true on the legal advice which is believed to be true. No part of it is false and nothing material has been concealed; so help me God.

Lucknow Dated
16.12.1990

18/12/1990
Deponent

I identify the deponent who has signed in my presence
N. K. Srivastava
(R.K. Srivastava)
Clerk to Sri B.C. Saksena, Advocate

Solemnly affirmed before me on 18/12/1990
at 2-45 p.m. by *S. C. Jagdish* d. *74/2*
the deponent who is identified by Sri *R. K. Srivastava*
clerk to Sri *B. C. Saksena*
Advocate, High Court, Allahabad. I have satisfied
myself by examining the deponent that he understands
the contents of the affidavit which has been read
out and explained by me.

De- O
A. B. ARUJAN
OATH COMMISSIONER
High Court Lucknow, Allahabad
18/12/1990

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH,

Civil Misc. Petition No. Of 1992 (L)

In Re:

Registration (O.A.) No. 316 of 1989 (L)

J.P.Tewari

..... Applicant.

Versus

Union of India & Others Respondents,

APPLICATION FOR CONDONATION OF DELAY IN FILING

COUNTER REPLY.

That delay in filing Counter Reply is not intentional or deliberate but due to Administrative and bonafide reasons which deserves to be condoned.

P R A Y E R

WHEREFORE, it is most respectfully prayed that in the interest of Justice, delay in filing counter reply may kindly be condoned and counter reply may be taken on record.

Lucknow:

Dated: 26-3-1992.


(ANIL SRIVASTAVA)
Advocate

Counsel for Respondents.

Before The Central Administrative Tribunal (A)

Lucknow Bench, Lucknow.

O.A. No. 316 of 1989 (L)

J. P. Tewari Applicant.

Versus

Union of India & others Respondents.

Counter Reply on behalf of the

Respondents No.1 to 3.

I, Rajkishore working as
Asstt Personnel Officer in the office of Divisional
Railway, Manager Hazaratganj, Lucknow do hereby
solemnly affirm and state as under:-

1. That the official, above named is working in office of respondent No.2 and is well conversant with the fact and circumstances of the case, He has been fully authorised to file present reply.
2. That the contents of paras 1 to 3 of Original Application do not call for any comments.

That the reply of para 4 of Original Application is given as under.

Rajkishore

Contd. 2-

3. That the contents of para 4.1 of Original Application are admitted. It is further submitted that applicant No.2 is working under C.P.W.I. Lucknow as Mechanical Signal Maintenance Grade -I in scale of Rs. 1320-2040.

4. That the contents of para 4.2 of Original Application are admitted to the extent that Opp. party No.3 issued Notice no. 847-/11-I /MSM/III dated 5-7-88 and rest of the contents are denied.

5. That the contents of para 4.3 of Original Application are admitted It is further submitted that since Ashfaq Ahmad got seniority under the provisions of P.S.No. 2709, thereafter alleged applicants asked for seniority under the provision of P.S.No. 2709. therefore applicants were called for trade- test on the basis of seniority , Also seniority of Ashfaq Ahmad does not effect Mr. Jagdish Tewari.

6. That in reply to para 4.4 of Original Application only it is admitted that applicants asked seniority on the basis of P.S.No.2709 and rest of the contents are denied.

7. That in reply to para 4.5 of Original Application it is stated that the contents of P.S.No.2709, Contd.3,

Ans

filed as Annexure No.6 to Original Application, the admitted and rest of contents are denied.

8- That the contents of para 4.6 of Original Application are admitted. It is further stated that Sri J.N. Samson and Sri Jata Shanker had filed W.C. No.670 of 1970 before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow challenging the promotion and seniority of respondent no. 5 & 6, which was dismissed on 24-11-80 by Hon'ble J.K.N.Goyal and J.K.S.Verma, A photo copy of which enclosed herewith as Annexure No.C1 to present reply.

9- That the contents of para 4.7 of Original Application are not admitted as alleged. It is further stated since the matter of respondents no. 5 & 7 have already been dealt by the Hon'ble High Court, by means of order dated 24-11-1980, which is binding on both the side. there is no question of going otherwise.

10- That the contents of para 4.8 of Original Application are categorically denied. It is stated that promotions of respondents were made according to promotion rules.

R. Bhushan

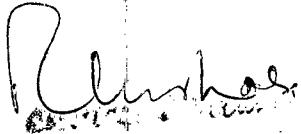
11- That the contents of para 4.9 of Original Application are denied. It is further stated that promotion matter of respondents have already been adjudicated before the Hon'ble High Court as mentioned in para 8 fo the present reply. and has been decided in favour of respondents, Therefore inview of the aforesaid adjudication of the matter by the Hon'ble High Court , application is not maintainable against the answering respondents as per Section 10 of the Administrative Tribunal Act.

12- That the contents of para 4.10 of Original Application are not admitted as alleged.

13- That in reply to para 4.11 of Original Application it is stated that since respondents were promoted in the year 1964 therefore they came-up in the seniority list and such a seniority cannot be challenged after more then twenty five years.

14- That the contents of para 4.12 of Original Application are denied in view of the averments made in the proceeding paragraphs of the present reply .

15- That in reply to para 4.13 of Original Application it is stated that applicants have raise



turning point and can't be held for the same.

twenty five year old issue , which is time-Barred inview of Sub-section 2(b) of Section 21 of limitation act. of Central Administrative Tribunal Act and as such application is not maintainable at this stage. Also a matter which has been adjudicated by the Hon'ble High Court and as such principle of Estoppel applies and this plea cannot be raise before this Hon'ble Tribunal .

16- That the contents of para 4.14 of Original Application are admitted to the extent that in response to the representation made by the applicant Chunni Lal , on behalf of respondent no.2, it has been intimated by his letter bearing no. 847-E/ II-I / MSM/III dated June 5/6, 1989, that applicant is not entitled for redressal of the grievances a copy of which has been enclosed has Annexure NoA7 to the Original Application and rest of the contents are not admitted . Also averments made in the preceeding paragraphs are reiterated.

17- That the contents of para 4.15 of Original Application are admitted to the extent that by the order dated. June 5/6 , 1989, respondent no.4 has been assigned seniority above Sant Ram and below Jagdish Pargad Bhargava, and rest of the the contents are not admitted.

Chunni Lal

18- That the contents of para 4.16 of Original Application are categorically denied. It is stated that since matter had already been adjudicated by the Hon'ble High Court earlier, principle of estoppel bars the entertainment of present application on the same ground.

19- That in reply to para 5 of Original Application it is stated that grounds taken are false, vague, irrelevant, misconceived and not applicable to instant case of the applicant.

20- That the contents of para 6 of Original Application are false and as such denied It is relevant to point-out here that representation preferred by the applicants have already been disposed off.

21- That the contents of para 7 of Original Application are false and as such denied . It is further stated that applicant no.4 Sri J.N.Saxena, had filed the W.P.No. 620 of 1970 before the Hon'ble High Court , in which Rly board's letter dated. September. 15/17.1974, have been Challenged and same has been decided in favour of the respondents, No. 5 to 6.

Rushabh

22- That in reply to para 8 of the Original

Application it is submitted that relief claim is devoid of any merit and as such present application is liable to be dismissed against the applicant and in favour of the answering respondent with cost.

Lucknow:

Dated: 4.3 1992,

Rushmore

VERIFICATION

I, the official named above do hereby verify that the contents of para 1 of the counter reply is true to my personal knowledge and those of para 2 to 22 of the counter reply are believed to be true by me on the basis of record and legal advice.

Lucknow:

Dated: 4.3 1992,

Rushmore

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD .
LUCKNOW BENCH .LUCKNOW .
Writ Petition No.682 OF 1980.

(64)

Dwarika Prasad Gupta,.....Petitioner .

Versus

The Divisional Superintendent ,Northern Rail way Lucknow
and othersOpp.PARTIES .

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.
Lucknow Dated 24.11.1980.

Hon'ble K.S.Verma J.

Hon'ble K.S.Verma J.

For orders see out judgement of date in writ petition No.

620 of 1980 1970 .

Sd/K.S.Verma .

K.N. Goyal.

24.11.1980.

Rishabh

J. P. Tewari
(S. J. H. M)

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

Lucknow Bench, Lucknow.

Writ Petition No. 620 of 70

Jata Shanker andan others Petitioners.
Versus

The Divisional Superintendent, Northern Railway Lucknow
and others Opp. Partes.

WRIT PETITION UNDER ARTOCLE 226 OF THE CONSTITUTION OF, INDIA.

Lucknow Dated 24.11.1980.

Hon.K.S.Verma. J.

Hon.K.N.Goyal.J. (Delivered by Hon'ble K.N.Goyal.J.)

These two writ petitions are directed against an order of reversion whereby the three petitioners have been reverted from the post of Khalasi. The contention of the three petitioners is that they were senior to other official who have been retained in the higher post and have not been reverted.

the two petitioners in writ petition No.

620 of 1970 are Jata Shanker Bhatt and Jai Narain Saksema.

They were appointed as Khalasis in July, 1959 and they passed trade on are J. 1969 whereby their suitability for the higher post was certified. The petitioner in writ petition No.

682 of 1970, namely, Dwarika Prased was appointed as Khalasi in September, 1959 and he passed the trade test on 23-9-1965.

All the three petitioners were promoted to the higher post after having passed the trade test. The promotion was not on permanent basis but as in non-fortutious vacancies. In the case of Dwarika Prased his promotion took place on 10-1-1966. While the other two petitioners were promoted in 1968 and 1969.

Rishabh

(45)

As against this, respondent Hazari Lal who is respondent no.8 in writ petition No. 688 of 1970 and respondent no.9 in writ petition No. 620 of 1970 was appointed as Khassis earlier than these three petitioners but he passed the trade test only in March, 1969. He was thereafter promoted in non-fortuitous vacancy in February, 1969. On the basis of these dated it has been contended by the petitioners that they were senior to Hazari Lal by virtue of their having qualified on earlier trade test and having got promoted in non-fortuitous vacancies before any subsequent test was held. Reliance has been placed on paragraph 320(b) of the Indian Railway Establishment Manual.

The learned counsel for the Union of India and the authorities concerned has placed reliance, on the other hand, on paragraph 316 of the same Manual. That paragraph, to our mind, does not apply to the case as it relates to different dates of /dates of trade tests when such different dates could be treated as one continuous examination. It has not been suggested that the trade tests at which the petitioners qualified in 1963 and 1967 respectively could be treated as one continuous examination which continued till 1969 at the respondent Hazari Lal qualified. In these circumstances paragraph 316 of the Manual is clearly not applicable and paragraph 320 (b) of the Manual is attracted and all the three petitioners must be held senior to Hazari Lal.

Initially the petitioners had challenged the seniority given to one Badri as well, but the said Badri appears to have retired during the pendency of the writ petitions. Accordingly, no relief can be claimed by the petitioners so far as Badri was concerned.

In the writ petitions, objection has also been taken against the promotion of Latafat Hussain, Bajdeo, S. W. Hussain and Umgao Singh. THESE four persons were promoted in 1964. The contention of the petitioners is that these respondents, who though senior to the petitioners, were not qualified at the time of their promotions as they had not fulfilled the experience requirement; however, qualification relating to the requisite length of experience, we are not, however, prepared to entertain this plea because their promotion had taken place in 1964 while these writ petitions were filed in 1970. As those promotions were not challenged for a period of six years and as in the meantime these respondents had already acquired experience on the higher post, the petitioners cannot be urged that the promotion of these respondents should be nullified merely on the ground that at the time when they were promoted in 1964 they had not fulfilled the qualification relating to length of experience. The petitioners themselves were not even eligible for promotion at that time.

Accordingly, the petitioners can succeed only against Hazari Lal on the basis of applicability of paragraph 320 (b) of the Manual. As only one post was available, the senior most among the petitioners can alone succeed. Dwarika Prasad is senior most among the petitioners inter se.

Alka Mehta

(81)

2

In the result, writ petition No. 680 of 1970 is dismissed while writ petition No. 682 of 1970 is allowed and writ of mandamus is issued to the Union of India to the effect that the petitioner be senior to Hazari Lal. The order of reversal, Annexure 1 to the writ petition, in so far as it relates to Dajrika Phool the petitioner in this case, is hereby quashed. No order as to costs.

Sd/ S. S. Verma.

Sd/- K. N. Goyal.
Dt. Nov. 24, 1980.

Rushor

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL CIRCUIT BENCH-LUCKNOW

OA No:- 316 of 1989 (L)

JAGDISH PRASAD TEWARI & OTHERS

APP.

Vs.

UNION OF INDIA & OTHERS

RESPONDENTS.

Application for Fixing the Case for Final Hearing

Before the Hon'ble Bench.

The applicant above named most respectfully submits as under:-

1. That the above noted application was filed in the year 1989.
2. That more than three years have passed but the respondents have failed to file counters reply despite several reminders.
3. That one of the applicant has already retired and one of them is going to retire very soon.
4. That the two respondents by name have filed their counter Reply.
5. That it appears that the respondents i.e. Union of India has no interest in contesting the aforesaid case.
6. That the above noted case may be kindly be fixed for final hearing before the Hon'ble Bench.

PRAYER

WHEREFORE it is Prayed that this Hon'ble Tribunal may be pleased to fix the aforesaid case for final hearing before the Hon'ble Bench.



P.K. SRIVASTAVA

'ADVOCATE'

(Counsel for the applicant)

LUCKNOW.

Dated: 3-2-93

Place of
for hearing
Bench on
26.2.93
26.2.93
21/2/93

Fix For 15/4/93

(89)

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

(CIRCUIT BENCH), LUCKNOW
M.P. 368/93 C.S.
O.A. No. 316(L) of 1989

Jagdish Prasad Tewari & ors. ... Applicants

- vs -

Union of India & others ... Opp. Parties

REJOINDER REPLY OF THE APPLICANT IN REPLY
TO THE COUNTER REPLY FILED BY THE OPPOSITE
PARTIES NOS. 1 TO 3.

I, Jagdish Prasad Tewari, the applicant No.1 in
the abovenoted case, do hereby solemnly affirm and state
as under:-

- 1) That the deponent is the applicant No.1 in the above noted case and has been fully authorised to file present rejoinder reply on behalf of other applicants.
- 2) That the contents of para 3 of the counter reply need no comments.
- 3) That as regards the contents of para 4 of the counter reply it is stated here that Sri Asfaq Ahmad (O.P. No.4) did not appear in the trade test held in the year 1964, 1965 and onwards. The extract of the Notice No. 847-E/11-1/MSM/111 dated 5.7.88 had been issued only to give undue favour to Sri Asfaq Ahmad by the Railway Administration.

4) That as regards the contents of para 5 of the counter reply it is stated here that the applicants Nos. 2, 3 and 4 were not called for trade test in the year 1964 even they were fulfilling the requisite qualifications at that time. They were again appeared in the year 1965 and 1967 and qualified the trade test. Moreover, opposite party No. 4 Sri Asfaq Ahmad applied for the trade test for MSM Grade-III in the year 1976 and then only he qualified. If the advantage of P.S.No. 2709 and circular No.831-E/25-III dt 16.10.64 had been given to Sri Asfaq Ahmad then the applicants are also entitled to get benefit of provisions P.S.No.2709 as they are very much senior to the respondent No.4 and they are also entitled to get the seniority over respondents Nos. 5 to 7.

5) That para 6 of counter reply need no comments.

6) That the contents of para 7 of the counter reply need no comments. It would not be out of place to mention here that the opposite party No.4 got the benefit of provision of P.S.No. 2709 after 20 years, so on that basis applicants are also entitled to get the benefit.

7) That in reply to para 8 of the counter affidavit it is stated that the applicants Nos.1 to 3 were not the petitioners in the writ petition mentioned in para 8. *Original party No.4* Only applicant No.4 was one of the petitioners in the said writ petition.

8) That the contents of para 9 of the counter reply are incorrect, hence denied and the contents of relevant para 4.7 of the original application are reiterated to be true. The correct position has already been mentioned in the preceding paragraphs.

9) That in reply to the contents of para 10 of the counter reply, it is stated that the ~~opposite party~~ ^{applicant} No.1 has passed trade test alongwith respondents Nos.5 to 7 who were also senior to them on the post of Khalasi. So he cannot be placed in the seniority list below opposite parties 5 to 7 and it can be rectified only with the help of provision of PS 2709.

Moreover, it is pointed out that the respondent Nos. 5 to 7 have raised no grievance with regard to impugned order by which respondent No.4 has been given the benefit of Sl.No.2709 dated 16.10.1964 after a lapse of 20 years. If they have no objection against the same, they can possibly have no legal objection to the same and to resist the claim of the applicants in claiming the same benefit as has been extended by Railway authorities.

10) That para 11 of the counter reply are incorrect. Para 4.9 of the original application is reiterated to be true. It has already been stated in preceding paras that applicants Nos.1 to 3 were not the petitioner in the writ petition.

11) That para 12 of the counter reply is incorrect. Para 4.10 of original application is reiterated to be true.

12) That as regards the contents of para 13 of the counter reply, it is stated that the applicant No.1 is senior to respondents 5 to 7 on the post of Khalasi but due to administrative error he became junior to them on the post of MSM-I. At the same time the applicants maintain that if the benefit of Railway Board circular can be extended to respondent No.4 after a lapse of 20 years then the same privilege may be given to applicant No.1 also. If it is denied by Railway administration, then it will be violative

of principles of natural justice and fair play.

- 13) That para 14 of the counter reply is incorrect. Para 4.12 of the original application is reiterated to be true.
- 14) That as regards the contents of para 15 of the counter reply, it would not be out of place to mention here that cause of action accrued arose when applicants came to know that ~~the appx~~ a notice dated 5.7.88 issued by which the seniority of respondent No.4 Sri Asfaq Ahmad was proposed to restore on the basis of P.S. 2709, so the applicants also raised their grievance to get the benefit of P.S. 2709 like Sri Asfaq Ahmad, respondent No.4. Therefore, the application is well within time and need immediate intervention of this Hon'ble Tribunal.
- 15) That para 16 of the counter reply is incorrect. Para 4.14 of the orginal application is reiterated to be true. It would be pertinent to mention here that opposite party No.4 Sri Asfaq Ahmad appeared in the trade test held in September 1965 but failed to qualify. He was given several opportunities to appear in the trade test in the year 1976 and he passed, but he was given seniority in the Cadre of MSM Gr. III on the basis of original seniority as S.T. Khalasi by giving benefit of P.S. 2709. The applicants are also entitled to get the seniority over opposite parties 5,6 and 7 in the Cadre of MSM Gr. III on the basis of their date of initial appointment on the post of Signal & Telecom Khalasi.
- 16) That as regards the contents of para 17 of the counter reply, it is stated that the opposite party No.4 applied for MSM Grade-III test in the year 1976 and he qualified only on 7.4.76 on the post of MSM Grade-III. So in any

case opposite party No. 4 cannot be assigned seniority over Sant Ram and Jagdish Prasad Bhargava as they qualified the Trade Test in the year 1968.

- 17) That para 18 of the counter reply is incorrect. Para 4.16 of the ~~original~~ original application is reiterated to be true.
- 18) That paras 19 to 22 of the counter reply are based on incorrect appreciation of facts and are otherwise legally untenable and therefore denied.
- 19) That the counter reply filed by the opposite parties has no force and the original application filed by the applicants deserves to be allowed.

Dated, Lucknow,

the April 1993.

01/04/1993

DEPONENT

VERIFICATION

I, the deponent named above, do hereby verify that the contents of paragraphs 1 to 19 above are true to my personal knowledge. No part of it is false and nothing material has been concealed, so help me God.

Signed and verified this the day of April 1993
at Lucknow.

01/04/1993

DEPONENT

I identify the deponent Jagdish Prasad Tewari who has signed before me on perusal of records produced before me

(P. K. Srivastava)
Advocate

Sl No 22

Central Administrative Tribunal
Lucknow Bench

Date of Filing

Date of Receipt by Post

15/12/95

(A)

Mr. Registrar (S)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

Re: before Bench
Date on 15/12/95
by Mr. Arif Syed
Adv.

LUCKNOW BENCH LUCKNOW

C.M.P. NO. 3537/95.

Inre:

O.A. NO. 316 (L) of 1989.

Jagdish Prasad Tewari & others --

APPLICANTS.

Vs.

Union of India and others --

RESPONDENTS.

PRELIMINARY OBJECTION

The respondents no. 1 to 3 most respectfully beg to submit as under:-

1. That the applicant no. 1 has also raised Industrial the dispute before the Labour Court which was duly contested by the answering respondents. This fact was concealed by the applicant no. 1 while filing the present original application.

2. That similarly the applicant no. 4 had also filed a writ petition before the Hon'ble High Court, Bench-Lucknow which was duly decided by the Hon'ble High Court vide judgement dated 24th November, 1980 and dispute regarding seniority by the applicant no. 4 viz-a-viz

Central Administrative Tribunal
Lucknow Bench
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By, Registrar (A)

(2)

respondent no. 5 to 7 were raised in the said writ petition but the said writ petition was dismissed against the applicant. The applicant no. 4 also concealed this fact while preferring the present original application.

3. That both the applicants namely Sri J.P.Tewari and applicant no. 4 Jainarain Saxena are guilty of concealment of facts before this Hon'ble Tribunal as such they are not entitled to any relief from this Hon'ble Tribunal.

4. That a perusal of relief clause would indicate that the main relief claimed by the applicants is to give them benefits of P.S.No.2709 and promote them to next higher grade from the date earlier and the date from which the respondents no. 5 to 7 had been promoted with all consequential benefits of arrears of salary and seniority etc. A perusal of para 4.6 of the original application would indicate that from and since the year 1964, the respondents no. 5 to 7 have been declared senior to the applicants. Since 1964 onwards, till date the respondents no. 5 to 7 remained senior to the applicants and applicants knew this fact

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AB

Regd. Registry (J)

(3)

quite well because till date they were promoted several times and each time their seniority were assigned below the respondents no. 5 to 7, as such the said seniority dispute which has been finally settled and for which the applicants already acquiesced, can not be challenged at this belated stage.

5. That it may be submitted here that making representation against the correction seniority of Ashfaque Ahmad the respondent no. 4, the applicants are claiming parity with Sri Ashfaque Ahmad i.e. the benefit of printed serial no. 2709 but actually they are claiming relief against the respondent no. 5 to 7 which can not be allowed at this ~~stage~~ belated stage.

6. That vide annexure no. A-7 to the original application the representation of Sri Chunni Lal the applicant no. 2 and one Sri Jata Shanker Bhatt has been decided vide order dated 5/6 June, 1989. Thus relief relating to applicant no. 1, 3 and 4 are barred by time.

Central Administrative Tribunal
Lucknow Bench
Date of Filing _____
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(AT)

(4)

By, Registrar (),

PRAYER

WHEREFORE, it is most respectfully prayed that the following preliminary objection may be decided before taking up the case on merit:-

- a) Whether, the present original application is barred by time against the applicants no.1,3 and 4 ?
- b) Whether, the present original application is barred by time under section 21 of the Central Administrative Tribunal's Act, 1985?
- c) Whether, no relief could be granted to the applicants no. 1 to 4 because they are guilty of concealment of fact from this Hon'ble Tribunal and also in view of the fact that they have pursued other remedies ?

LUCKNOW: DATED:
/1995.

(ANIL SRIVASTAVA)
ADVOCATE.

COUNSEL FOR THE RESPONDENTS
NO. 1 to

Central Administrative Tribunal

Lucknow Bench

Date of Filing

Date of Receipt by Post

15/2/95

Signature (P)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH LUCKNOW

C.M.P.NO. 35230 /95.

Inre:

O.A. NO. 316 (L) OF 1989.

Jagdish Prasad Tewari & others --

APPLICANTS.

Vs.

Union of India and others --

RESPONDENTS.

APPLICATION FOR CONDONATION OF DELAY
IN FILING SUPPLEMENTARY COUNTER REPLY
ON BEHALF OF RESPONDENTS
NO. 1 to 3

It is most respectfully submitted on behalf
of respondents no. 1 to 3:-

1. That some delay has been occurred in filing supplementary counter reply due to want of necessary records and instructions.
2. That now the supplementary counter reply is ready and is being filed herewith.
3. That the delay in filing supplementary counter reply is bonafide, inadvertently and un-intentional and as such is liable to be condoned.

Central Administrative Tribunal
Lucknow Bench
Date of Filing _____
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(a)

By, Registrar (P)

(2)

4. That it is expedient in the interest of justice that this Hon'ble Tribunal may kindly be pleased to condone the delay in filing supplementary counter reply on behalf of respondents no. 1 to 3.

WHEREFORE, it is most respectfully prayed that this Hon'ble Tribunal may very graciously be pleased to condone the delay in filing supplementary counter reply on behalf of respondents no. 1 to 3.

LUCKNOW: DATED:
/1995.

(ANIL SRIVASTAVA)
ADVOCATE.

COUNSEL FOR THE RESPONDENTS NO.
1 to 3.

Central Administrative Tribunal

Lucknow Bench

Date of Filing 18/12/95 (109)

Date of Receipt by Post

By, Registrar (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH LUCKNOW

C.M.P. NO. 3539/95.

Inre;

O.A. NO. 316 (L) OF 1989.

Jagdish Prasad Tewari and others -- APPLICANTS.

Vs.

Union of India and others -- RESPONDENTS.

APPLICATION FOR TAKING ON RECORD

It is most respectfully submitted on behalf of respondents No. 1 to 3:-

That for the facts and circumstances disclosed in the accompanying supplementary counter reply, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to take on record the supplementary counter reply filed on behalf of respondents no. 1 to 3.

LUCKNOW: DATED:
/1995.

(ANIL SRIVASTAVA)
ADVOCATE.

COUNSEL FOR THE RESPONDENTS
NO. 1 to 3.

Central Admin. Tribunal
Lucknow Bench
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By Registered (J)

101

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH LUCKNOW

O.A.NO. 316 (L) OF 1989.

Jagdish Prasad Tewari & others--

APPLICANTS.

Vs.

Union of India & others ---

RESPONDENTS.

SUPPLEMENTARY COUNTER REPLY ON BEHALF OF
RESPONDENTS NO. 1 to 3 TO THE REJOINDER

FILED BY APPLICANTS

I, Ganga Deori, at present working
as Assistant Personnel Officer, Northern Railway,
Divisional Office, Hazratganj, Lucknow, do hereby
solemnly affirm and state as under:-

1. That the official above named is working
under the respondents and is competent to file the
present supplementary counter reply on behalf of
respondents no. 1 to 3 and as such he is fully
conversant with the facts of the case stated
here-in-after. He has gone through the averments
made in the rejoinder filed by the applicants and
having understood the contents thereof he is in
a position to submit the following parawise reply
to the same.

न्यायिक कानूनी अधिकारी
सचिव राज्यका लाल

Central Administrative Tribunal
Lucknow Bench
Date of Filing _____
Date of Receipt by Post _____

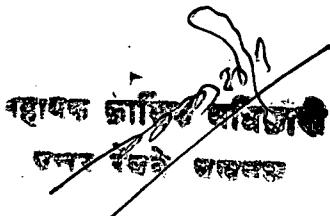
682

Ex. Registry (1)

(2)

2. That the contents of paras 1 and 2 of the rejoinder do not call for any reply.

3. That the contents of para 3 of the rejoinder are not admitted as alleged and those of para 4 of the counter reply are reiterated to be true. It is further submitted that Sri Ashfaque Ahmad did appear in the Trade-test for the post of Mechanical Signal Maintainer Grade-III in the year 1965 but he could not qualify the said Trade Test. Thereafter, due to administrative reasons and in violation of rules he could not be booked for re-trade test. As per rules, he should have been again booked for the said trade-test after 6 months from the date of the result declared in respect of ~~xxi~~ last trade-test. However, Sri Ashfaque Ahmad could be spared for the trade-test for the said post only in the year 1976. Sri Ashfaque Ahmad duly qualified the said trade-test for the post of M.S.M. Grade-III. Accordingly, Sri Ashfaque Ahmad (the opposite party no.4) raised his seniority dispute through the recognised union. The matter was put up before the permanent negotiating machinery (PNM) and it was jointly decided between



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(13)

(3)

the recognised unions and the officials of the respondents.

xx That Sri Ashfaque Ahmad could not be spared for re-trade test on purely administrative reasons, hence he may be given seniority from the date when his juniors were promoted on the said post. Anything alleged contrary to the aforesaid facts are denied.

4. That the contents of para 4 of the rejoinder are denied and those of para 5 of the counter reply are reiterated to be true. Sri Latafat Hussain, Sri S.W. Hussain and Rajdeo impleaded as respondent no. 5 to 7 had passed the trade test for the post of Mechanical Signal Maintainer Grade-III in the year 1964 as detailed in para 4.6 of the original application. While Sarva Sri J.P. Tewari, Chunni Lal, Suryabali and Jai Narain Saxena passed the trade test for the said post of MSM Grade-III only for the year 1968, 1967, 1965 and 1967 respectively. As already explained in the preceding paras Sri Ashfaque Ahmad could not be re-booked for the trade-test purely due to administrative reasons. Accordingly,

Dr. Begum (J)

(4)

on his representation the matter was duly considered and his seniority was fixed as per rules in consultation with the recognised unions after passing his trade-test in the year 1967, Sri Ashfaque Ahmad duly raised his dispute regarding his seniority but the present applicants never raised their dispute. Now at this belated stage they can not raise the same dispute. There is also no similarity between Sri Ashfaque Ahmad and the applicants.

5. That the contents of para 5 of the rejoinder do not call for any reply.
6. That the contents of para 6 of the rejoinder are not admitted as alleged. After passing of trade test in the year 1976 the respondent no 4 namely- Sri Ashfaque Ahmad got raised the dispute of his seniority through the recognised union and the matter was duly put up before the permanent negotiating machinery. Thereafter, the matter was decided and orders were issued as contained in annexure no. A-1 to the original application. All this process

मुक्त दस्तावेज़

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(3)

By, Registrar (P)

(5)

took quite some time betweenx and the matter could be decided only in the year 1988. The applicants' case are not identical nor they raise-d dispute regarding seniority over and above the respondents no. 5 to 7 within time as such ~~as~~ at this belated stage their claim for seniority can not be considered either in favour of them or against them.

7. That in reply to the contents of para 7 of the rejoinder, it is submitted that since the applicant no. 4 was petitioner in writ petition no. 620/70 and this fact was clearly concealed by the ~~hem~~ hence he is not entitled to any relief. Besides the seniority over Sri Latafat Hussain, Rajdeo and S.W.Hussain the opposite parties no. 5 to 7 were also under challenge in the said writ petition, a copy of which has already been annexed as ~~anne~~ the sole annexure to the counter reply, therefore, the said dispute can not be re-opened at the present stage while the ~~same~~ has been settled by the Hon'ble High Court and which has become final.

~~कानूनी विवरण~~
~~कानूनी विवरण~~

By Registered (D)

(6)

8. That the contents of para 8 of the rejoinder are denied and those of para 9 of the counter reply are reiterated to be true.

9. That the contents of para 9 of the rejoinder are denied and those of para 10 of the counter reply are reiterated to be true.

A perusal of chart mentioned in para 4.6 of the original application will belie the contention of the applicant. Besides, the applicant no.1 has also raised an industrial dispute before the Labour Court and he also concealed this material fact from this Hon'ble Tribunal. The said case of the applicant no. 1 before the Labour Court was duly contested by the respondents. The photostat copy of notice of Labour Court, Claim petition filed by the applicant as well as written statement filed by the respondents are being annexed herewith as ANNEXURE NO. SCR-1 to 3 to this supplementary counter reply. Thus, being guilty of concealment of material fact he is not ~~to~~ entitled for any relief from this Hon'ble Tribunal. On the other hand, he is liable to pay the cost and damages ~~to~~ to the answering

कानूनी विवाद
संसद रेलवे व अस्त्रकार

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(7)

Dr. Registrar (7)

respondents.

10. That the contents of paras 10 and 11 of the rejoinder are denied and those of paras 11 and 12 of the counter reply are reiterated to be true.

11. That the contents of para 12 of the rejoinder are denied. The facts mentioned in the para 4.6 of the original application would itself belie the contention of the applicants. As per facts mentioned in para 4.6 of the original application, the respondents no. 5 to 7 were promoted on the post of Mechanical Signal Maintainer Grade-III in the month of July, 1964 while applicant no. 1 was promoted on the said post in June, 1965 while the applicants no. 2 to 4 were promoted on the said post in the year 1968. If the applicants have any grievance against the respondents no. 5 to 7 they should have raised their dispute regarding seniority in the year 1968 or 1965 itself. Keeping mum/silent for all these years now the applicants are estopped to raise any dispute in respect of respondents no. 5 to 7.

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संघर्ष समेत समाज

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Dy. Registrar (J)

(8)

12x. ~~XXXX~~

5 to 7. The respondent no. 4 namely-Sri Ashfaque Ahmad timely raised his dispute through the recognised union which was decided by the competent authority in the year 1988. As already explained in the preceding paragraphs since Sri Ashfaque Ahmad could not be re-booked for said trade test due to purely administrative reasons hence he was ~~selected~~ accorded proper seniority. The applicants' case is not identical to the case of respondent no. 4. Thus, same benefits can not be accorded to the applicants.

12. That the contents of para 13 of the rejoinder are denied and those of para 14 of the counter reply are reiterated to be true.

13. That the contents of paras 14 and 15 and 16 of the rejoinder are denied and those of paras 15, 16 and 17 of the counter reply are reiterated to be true. The applicants are claiming seniority over respondents no. 5 to 7 also. A chart showing various dates of promotions of applicants as well as respondents no. 5 to 7 have been indicated by the applicants themselves

कानूनी विवरण विभाग

कानूनी विवरण

100

Dr. Bhagwanji

(9)

in para 4.6 of the original application. A perusal of the same would itself indicate that respondents no. 5 to 7 became senior to them in the year 1964 itself. The applicant acquiesced with their said seniority positions and they did not challenge the said seniority positions for fairly long time prior to filing the present original application.

Now the applicants are estopped to raise the said dispute at this belated stage. The applicants' case is also not identical with the case of Sri Ashfaque Ahmad the respondent no. 4. Due to administrative lapses and due to administrative reasons Sri Ashfaque Ahmad could not be re-booked for trade test till the year 1976 hence the matter regarding his seniority was duly settled between the recognised union and the officials of the respondents with permanent negotiating machinery. The applicants' case are not identical to the case of the respondents no. 4. Thus, similar benefits can not be given to them. Anything/contrary to the aforesaid facts are denied.

~~REJOINDER~~

14.

That the contents of paras 17, 18 and 19 of the rejoinder are denied and those of

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Lucknow Bench
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By, Registrar (S)

(10)

paras 18 to 22 of the counter reply are
reiterated to be true.

LUCKNOW: DATED:
21 / 11 / 1995.

~~मुख्य अधिकारी~~
~~कार्य संदर्भ, उत्तराखण्ड~~

VERIFICATION

I, the above named official do hereby
verify that the contents of para 1 of the
supplementary counter reply are true to my own
knowledge. Those of paras 2 to 14 of the
supplementary counter reply are based on legal
advice and records.

No part of it is false and nothing
material has been concealed. So help me God.

LUCKNOW: DATED:
21 / 11 / 1995.

~~मुख्य अधिकारी~~
~~कार्य संदर्भ, उत्तराखण्ड~~

Annexure No SCR-11

1500 of Receipt by Post

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LA

Government of India
Ministry of Labour
Office of the Central Govt. Industrial Tribunal Cum-Labour
Court, 117/H-1/378-A, Deoki Palace Road, Pandu Nagar, Kanpur.

8/9

In the matter reference u/s 10-A of the I.D.Act, 1947 :

Reference No. 1-41012/81/88 D.D. B. Dt. 19.7.89

Industrial Dispute No. 168 of 1989

Name of parties :

Shri Govind Ram Singh Applicant/s.
With Shri Ram Singh, B.T.M. and
09.11.81 25/10/1981, the current year, 1989.

And

Shri Shyam Singh, B.T.M. and
09.11.81 25/10/1981, the current year, 1989. Opp. party/s.
With Shyam Singh, B.T.M. and

WHEREAS, Industrial Dispute between the parties named above has been referred to this Tribunal for adjudication u/s 10 of the I.D.Act, 1947.

You are, therefore, hereby summoned to appear before this Tribunal in person on the day 11th month Oct. 1989, to answer and to file a statement of claim complete with relevant documents, list of reliance and witnesses and documents/written statement of reliance of witnesses and documents. by the 11th Oct.

You are, fail to attend to be represented on the above date of hearing the above mentioned reference may be disposed off in your absence and the Tribunal may be free to proceed ex parte as if you duly attended or had been represented.

You are also directed to produce on that day all the books papers and other documents as evidence any thing else in your possession or under your control in any way adjudication by this Tribunal;

Given under my hand seal of this Tribunal this the

15th day of Sept. 1989.

(SECRETARY)
C.G.I.T.CUM.L.C.,
KANPUR.

BS/

*Received on
29/10/89
At
29/10/89.*

IN THE COURT OF SHRI ARJUN DEV JUDICIAL ADMINISTRATIVE TRIBUNAL
PRESIDING OFFICER, CENTRAL GOVT. INDUS. & BLDG. TRIBUNAL,
KANPUR.

(12)

I.C. NO. 168 OF 1989

Date of Filing
Date of Receipt by Post

Jagdish Prasad Tewari

Dr. Dattatreya, B.D.
.... Workman.

* Versus *

Northern Railway Administration
Through Divisional Railway Manager,
Northern Railway, Lucknow.

.... Employer.

CLAIM STATEMENT OF THE UNION.

1. Shri Jagdish Prasad Tewari was appointed as Khalasi on 22.5.59. He was appointed as M.S.M. in the year 1963 after passing trade test for the post. His seniority was incorrectly assigned as M.S.M. Highly skilled Grade II & I and benefits of Upgrading from 1.6.78 in case of M.S.M. Grade II and Grade-I were not given to him.
2. He was superseded in seniority by S/Shri J.N. Saxena and S.W. Hussain whose appointment as Khalasi were on 1.6.59 and 1.7.63 respectively. Both of them became M.S.Ms in 1963 and 1972 respectively. S/Shri J.N. Saxena and S.W. Hussain passed trade test in the year 1972. While benefits of upgrading were given to these two men from 1.6.78, the same were given to Shri Jagdish Prasad Tewari from 28.9.79.

WHEREFORE, it is prayed that the seniority of Shri Jagdish Prasad Tewari may be ordered to be re-cast and he may be given all benefits given to his juniors with effect from 1.6.78. Arrears may accordingly be paid to him.

Sd/-

(I.D. TEWARI)
ZONAL WORKING PRESIDENT

VERIFICATION

I, B.D. Tewari, Zonal working President, do hereby verify that the contents of Paras 1 and 2, as above, are true to my own knowledge and as per record available with the workman.

Signed and verified on this 28 day of August, 1989.

Sd/-

(B.D. TEWARI)
ZONAL WORKING PRESIDENT

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, KANPUR

Central Administrative Tribunal
I.D. CASE NO. 1000168/89

(P)

Jagdish Prasad Tewari

Date of Filing _____
Date of hearing _____ Workman,

V/S

N. Railway Administration

... Opposite Party

Written Statement on the behalf of opposite party.

The opposite party submit as under : -

1. That the contents of Para 1 of the claim only this much is admitted that the alleged workman appointed as khalsi on 22.2.59, rest of contents are denied.
2. That the contents of Para 2 of the claim statement are baseless and are denied.
3. That Shri Jagdish Prasad Tewari was promoted after passing the requisit trade test for the post of Mechanical Signal Mainter in Gr. III on 1.6.65, whereas Shri S.W. Hussain after passing the requisit trade test of MSM Gr. III on 8.7.64 and was promoted accordingly. Shri Jagdish Prasad Tewari did not qualify the requisit trade test of MSM Gr. III, held in the year 1964, and therefore Shri S.W. Hussain was senior to Shri Jagdish Prasad Tewari.

However Shri J.N. Saxena who is still Junior to Shri Jagdish Pd. Tewari and as such the entire claim statement of the Union is baseless, false. Shri J.N. Saxena after passing the trade test in the year 1973, and he was promoted as MSM Gr. III on 6.2.73

21/5/92

4. That Shri Jagdish Prasad Tewari was promoted as MSM Gr. I in grade Rs. 1320-2040 (RPS) and temporarily appointed to officiate as MSM Gr. I and posted at LKO in Fly Gang under S1/C/LKO against upgraded post w.e.f. 29.9.79 whereas Shri S.W. Hussain who was senior to Shri Jagdish Prasad Tewari. He was promoted as MSM Gr. I on 19.12.79 and their pay was fixed accordingly. Shri J.N. Saxena who is junior to Shri Jagdish Prasad Tewari, was promoted as MSM Gr. I from 26.9.79 and pay was accordingly fixed.
5. That the pray para of claim statement in view and facts mentioned in the above paras, the claim is not legally mentioned and also Rly. Rules and as such the alleged workman is not entitled to get any relief from Hon'ble Court.
6. That there is no valid industrial dispute between the parties and defined under section 2 (k) of I.D. Act.

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7. That the alleged Union is not recognised Union Of the Management and as such have no legal right to raised industrial dispute against Railway Administra-
tion.
8. Under the industrial dispute Act, the alleged Zonal Working President have no right to raised the Industrial dispute on behalf of the alleged Union U.R.K.U. There is no post of Zonal Working President in the alleged Union U.R.K.U. The alleged Zonal Working President is required to give strict proof of the same.
9. In the circumstance stated above the claim statement is neither legal nor maintainable in eyes of Law and as such the same is liable to dismissed with cost.

VERIFICATION

Signed and verified this on _____ at Lucknow.

LUCKNOW :

Opposite Party.

DATED :

Central Administrative Tribunal

Lucknow Bench

Date of Filing 15/12/95

Date of Receipt by Post

(115)

S. B. [Signature]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH LUCKNOW

C.M.P. NO. 3310 95.

Inre;

O.A. NO. 316 OF 1989 (L).

Jagdish Prasad Tewari and others ---

APPLICANTS.

Vs.

Union of India and others --

RESPONDENTS.

APPLICATION FOR DISMISSAL

It is most respectfully submitted on behalf
of respondents:-

That for the facts and circumstances
disclosed in the accompanying supplementary counter
reply, it is most respectfully prayed that this
Hon'ble Tribunal may kindly be pleased to dismiss
the aforesaid original application in favour of the
answering respondents and against the applicants.

LUCKNOW: DATED:
/1995.

(ANIL SRIVASTAVA)
ADVOCATE.

COUNSEL FOR THE RESPONDENTS NO. 1 to 3

Central Administrative Tribunal
Lucknow Bench Date of Filing 5.2.96
Date of Receipt by Post

By Registrar (J)

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

(Circuit Bench) Lucknow

Civil Misc Appln No. 286 of 1996

- in re -

O.A. No. 316 (L) of 1989

Jagdish Prasad Tewari and anr. Applicants

vs

Union of India & ors. Opp. Parties

APPLICATION FOR REJECTING PRELIMINARY

OBJECTIONS AS WELL AS SUPPLEMENTARY C.A.

That for the facts and circumstances stated
in the accompanying affidavit, it is humbly prayed
that the Hon'ble Tribunal be pleased to outrightly
reject the preliminary objections as well as
supplementary C.A. filed by the opposite parties.

Dated, Lucknow,
the 5. ~~January~~ 1996.


Counsel for the
Applicants

By. Registrar ()

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

(Circuit Bench) Lucknow

C.A. No. 316 (L) of 1989

Jagdish Prasad Tewari & ors. ... Applicants

vs

Union of India and ors. ... Opp. Parties

REPLY TO THE PRELIMINARY OBJECTIONS AS WELL

AS SUPPLEMENTARY COUNTER AFFIDAVIT FILED BY

THE OPPOSITE PARTIES

I, Jagdish Prasad Tewari, aged about 59 years, son of Sri Ram Pal Tewari, resident of 569-c/172 Prem Nagar, Alambagh, Lucknow do, hereby solemnly affirm and state on oath as under:-

- 1) That the applicant is the deponent in the above noted case and is as such fully conversant with the facts of the case deposed to hereunder. The deponent has gone through the preliminary objections as well as the supplementary counter affidavit and understood the contents thereof. The deponent has been authorised to file this affidavit on behalf of other applicants also.
- 2) That in reply to the contents of paragraph 1 of the preliminary objections, it is stated that a dispute was raised before the Labour Court by the applicant No.1 through their Union which was

By, Registrar (J)

registered as No. 168 of 1989 but subsequently that dispute was not pressed on the ground that he is seeking remedy before the Hon'ble Central Administrative Tribunal, Lucknow and order to this affect dated 21.2.91 is annexed as Annexure-1 to this affidavit. It is further stated that this fact was well within the knowledge of the opposite parties and ^{raising this objection} after 7 years of filing of the original application are abuse of the process of the Court.

3) That in reply to the contents of paragraph 2 of the objection, it is stated that the averments made in paragraph 2 of the objections had already been made in the counter affidavit filed by the opposite parties earlier. It is further stated that the matter before ^{High} the Hon'ble ~~High~~ Court was related to reversion of the two applicants and also regarding the seniority but in the present O.A. the applicants are claiming parity with other persons who were given the benefit of Circular P.S. No. 2709 and the applicants are also claiming the benefit of the said circular. The judgment of the Hon'ble High Court is already on record.

4) That the contents of paragraph 3 of the objections are vehemently denied and it is stated that after 7 years of filing of the present original application, the opposite parties are raising such objections which are even not existing in the present day which is the abuse of the process of court and for which a heavy cost may kindly be imposed against the opposite parties.

Sidharth Garg

5) That in reply to the contents of paragraph 4 of the objections, it is stated that the present original application is well within time as the benefit of the said circular was given to Sri Asfaq Ahmad by letter dated 5.7.88 which has already been annexed as Annexure-1 to the original application.

6) That in reply to the contents of paragraph 5 of the objections, it is stated that giving benefit of one circular to some persons amongst all are wholly arbitrary and against the provisions of Article 14 of the Constitution of India and when such benefit was extended to Sri Asfaq Ahmad in the year 1988 then the applicants immediately represented the matter to the opposite parties and when they failed to get any relief from the opposite parties they filed the present O.A.

7) That the contents of paragraph 6 of the objections are false, hence denied and it is stated that the present original application is well within time.

8) That the contents of paragraph 1 of the supplementary counter affidavit need no comments.

9) That the contents of paragraph 2 of the supplementary counter affidavit need no reply.

10) That the contents of paragraph 3 of the supplementary counter affidavit are false, hence denied. It is further stated that it is not the sweet will of the opposite parties to give benefit of some

Dy. Registrar (J)

Govt orders or circulars to some of the persons amongst many and it is very ridiculous to say that because Sri Asfaq Ahmad his dispute through Union hence the opposite parties gave them the benefit of the said circular. All the applicants are also entitled for the benefit of such circular as Sri Asfaq Ahmad was given the same, otherwise, it will be against the provisions of Article 14 of the Constitution. It is further stated that Sri Asfaq Ahmad ~~was~~ also appeared in the trade test alongwith the applicant in 1965 but failed and he passed the trade test only in the year 1976 after the applicants and if he is given the benefit of the circular, then the applicants are also entitled to get such benefit of the said circular.

11) That the contents of paragraph 4 of the supplementary counter affidavit are false, hence denied and the contents of paragraph 4 of the rejoinder are reiterated to be true. It is further stated that Sri Asfaq Ahmad also appeared in the grade test alongwith the applicants in the year 1965 and failed. So it is wrong to say that the case of Sri Asfaq is distinguishable from the applicants.

12) That the contents of paragraph 5 of the supplementary C.A. need no reply.

13) That in reply to the contents of paragraph 6 of the supplementary C.A. it is stated that although the applicants have not raised the dispute through Union but it is also not disputable to the respondents to give the benefits of same circular to such persons

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Central Administrative Tribunal
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Dy. Registrar (D)

who raised the dispute through the union. If such benefit was given to one person, then it is incumbent upon the opposite parties to give such benefit to all the persons similarly placed.

- 14) That the contents of paragraph 7 of the supplementary C.A. are incorrect, hence denied. The matter before the Hon'ble High Court was different from the present original application. In the present O.A. the applicants are claiming parity with other persons who have been given the benefit of same circular of the department.
- 15) That the contents of paragraph 8 of the supplementary C.A. are incorrect, hence denied and the contents of paragraph 8 of the rejoinder are reiterated to be true.
- 16) That the contents of paragraph 9 of the supplementary counter affidavit are false, hence denied. It is further stated that no such dispute before the Industrial Tribunal is pending as the same was earlier not passed on the ground that the applicants are seeking remedy before the Hon'ble Central Administrative Tribunal and this was well within the knowledge of the opposite parties. So filing of this affidavit are wholly misconceived and abuse of the process of court for which the counter affidavit as well as preliminary objections may kindly be rejected outright.
- 17) That para 10 of the supplementary C.A. are incorrect hence denied and the contents of paras 10 and 11 of the rejoinder affidavit are reiterated to be true.

High Court of Allahabad
Lucknow Bench
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18) That in reply to the contents of paragraph 11 of the supplementary C.A. it is stated that by means of the present original application, the applicants are seeking benefit of Pls. No. 2709 which were given to other similarly placed persons.

19) That para 12 of the supplementary C.A. are incorrect hence denied and the contents of para 13 of the rejoinder are reiterated to be true.

20) That para 13 of the supplementary C.A. is false and denied and paras 14, 15 and 16 of the rejoinder are reiterated to be true. The averments made in the answering paragraphs are only to confuse the Hon'ble Tribunal as they are related to the matter of seniority. On the other hand by means of this O.A. the applicants are seeking the benefit of circular of the department.

21) That para 14 of the supplementary C.A. is incorrect hence denied and paras 17, 18 and 19 of the rejoinder affidavit are reiterated to be true.

Dated, the January, 1996.

5/1/96/14114

DEPONENT

VERIFICATION

I, the deponent named above, do hereby verify that paras 1 to 21 above are true to my personal knowledge. No part of it is false and nothing material is concealed so help me God.

5/1/96/14114

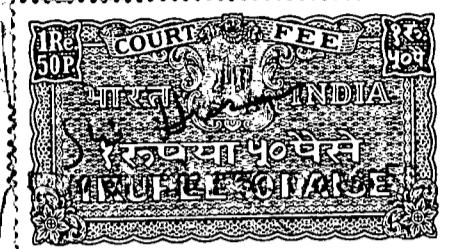
DEPONENT

I identify the deponent Jagdish Prasad Tewari on perusal of records produced before me who has also signed in my presence

(Ram Naresh Yadav)
Clerk to Sri P. K. Srivastava,
Advocate

ब. अदालत धीमान Before the Hon'ble Central Adminstr. महोदय
 [वादी अपीलाट] श्री S. W. Hazarika का वकालतनामा
 प्रतिवादी [रेस्पाडेन्ट]

Application No. 318 of 1929 (L)



Jag deckt Pi Town "if
others

Union of India & others. बनाम

प्रतिवादी (रेस्पाइक्ट)

नं० मुकदमा O.A. No 316-सन् 1949 देशी की तरूं और विदेशी की तरूं १६ ई०
 और W. H. Hardam Advocate

C. 1807. Min. L. S. Raja ji. Kurc. L. 160 बकील
महोदय
✓ एडवोकेट

को अपना बकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में बकील महोदय स्वयं अथवा अन्य बकील द्वारा जो कुछ पंरवी व जवाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रूपया लासूब करें या सुलहनामा व इशब्दाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करे मुकद्दमा उठावे या कोई रूपया जमा करे या हारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रूपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करे—बकील महोदय द्वारा को गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होवा मैं यह भी स्वीकार करता हूं कि हर भेशी पर स्वर्य या किसी अपने पंरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पंरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे बकील पर नहीं होगी इसलिए यह बकालतनामा लिख दिया प्रेमाण रहे और समय पर काम आवे ।

साम बदासतः ००
कदमा ००
साम फरीकेन ००

साक्षी (गवाह) साक्षी (गवाह)
दिवांक महीना February — सन् १९९५ ई.
स्वीकृत

Central Administrative Tribunal
Lucknow Bench

Date of Filing

Before Shri Arjan Dev Presiding Officer
Central Government Industrial Tribunal
Deoki Palace Road, Pandu Nagar, Kanpur

Industrial Dispute No.168 of 1989

12. Dec. 1989 (P)

In the matter of dispute between:

The Divisional Secretary
Uttar Railway Karamchari Union
39-II-J Multistoried Rly Colony
Charbagh Lucknow

And

Senior D.P.O. Northern Rly
Haizratganj Lucknow

Award

1. The Central Government, Ministry Of Labour vide its notification no.L-41012/31/88-D(B) dated 19.7.89 has referred the following dispute adjudication to this Tribunal:

Whether the Sr.D.P.O and Sr.DSTE Northern Rly Lucknow were justified in not extending the up-gradation benefit to Shri Jagdish Prasad Tiwari w.e.f.1.6.78.? If not, to what relief the workman was entitled?

2. On 23.2.91, Shri B.D. Tiwari, in his capacity as president, Uttar Railway Karamchari Union, submitted that since the workman has filed a petition before the Central Administrative Tribunal, Allahabad, the Union does not press the dispute referred to by the Ministry of Labour to this Tribunal.

3. In view of the above statement of Sh Tiwari, the dispute raised by the Union on behalf of the workman is treated as not pressed.

4. It is answered accordingly.

Sd- 21.2.91
(Arjan Dev)

Presiding Officer
C.G.I.T.-cum-Labour
Court, Kanpur

Let six copies of this award be sent to the Govt. for its publication.

(Arjan Dev)
Presiding Officer

21/2/91
Arjan Dev