

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

ANNEXURE

INDEX SHEET

CAUSE TITLE OA NO 316/89 OF

NAME OF THE PARTIES Tagdish Prasad Tiwari Applicant

Versus

Union of India Respondent

Part A, B & C

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	CERTIFICATE (15) Verbalat mem a	A124

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

Dated...23-2-12

Counter Signed.....

Section Officer / In charge

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 case 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

yes

yes

P.O. Rs.50/-

yes

yes

yes

yes

yes

yes

No

X
✓

Particulars to be Examined

Endorsement as to result of examination

Are the application/duplicate
copy/s copies signed ?

Yes

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

No

a) identical with the Original ?

b) effective ?

c) wanting in Annexures

Nos. _____ pages Nos _____ ?

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

No

14. Are the given address the
registered address ?

Yes

Do the names of the parties
stated in the copies tally with
as indicated in the appli-
cation ?

Yes

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

NA

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

Yes

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 ?

Yes No

17. Whether all the remedies have
been exhausted.

Yes

placed

3/6/89/41

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/

OR
 notice given
 3/11/90

12-2-90

No sitting till 20-4-90
 by

20-4-90

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

No sitting adjourned to 13-7-90

13-7-90

No sitting. Adj. to 10-8-90

10-9-90

Her Mr. Justice K Nath, VC.
 Her Mr. M.M. Singh, AM

Counsel for respondents 586
 files counters. Learned counsel for
 the applicant requests for and is
 allowed 2 weeks time to file
 rejoinders. List for final
 hearing on 28-11-90.

Dinesh

OR

Notices were
 issued on 3/11/90.
 Sri H. Haider files
 on behalf of O.P. No
 5 to 6 but non-reply
 filed.
 No unserved reply
 covers have been retu-
 back on behalf of

O.P. No. 1 to 4 & 7
 submitted for

OR

No. RA filed 8/19/9
 S.F.H.

M M L

AM

Q

VC

27/11/1

24.8.92
D.R.

Both the parties are present.
No counter has been filed.
Respondent to file counter
by 16.10.92. ✓ (X/y)

16.10.92
D.R.

Both the parties are absent.
Counter has not been filed.
Respondent to file it by
10.12.92. ✓

10.12.92

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

or
CA for Sept 15, 6th
Rachshale
SFB
or 1/93

26.2.93 Hon' Mr. Justice. U.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.

A.M.

V.C.

15.4.93

No sitting of D.B. adjourned
to 24.5.93.

24.5.93

Adjourn to 20.5.93. ✓

or
CA for Sept 15, 6th
Rachshale
SFB
or 1/93
SFB only but for
(enumbers)
has been filed for
the counter for
SFB
25/4/93

20-7-93

DA 3/6/93

Mr. Mr. SN. Ponsa, Jm

None responds on behalf
of applicant despite repeated
calls at intervals. Shri W. H.
Haidji learned counsel for
respondents is present. List
this case on 2-5-93 for
leaving

(84)

Jm

OK
as instructed
Shri
20/10/93

20/10/93
2-9-93

No sitting of D.B. case
26.10.93
per

OK
as instructed
Shri
20/10/93

26.10.93. No sitting of D.B. Case is
only to 22.11.93

22.11.93

No sitting of D.B. case
to 13.12.93

per

OK
as instructed
Shri
09/11/93

8 Roc

OT 316/85

17/2/54

(18)

Hon. Mr. Justice R.K. Narayana,
Hon. Mr. V.K. Seth, J.M.

Shri A.K. Srinivasa a learned
counsel for the petitioner 2 Shri
A.K. Chaitinmedi bar of holder
of Shri Anil Srinivasa a counsel
for the respondents 2 Shri
W.H. Hardwar counsel for
the private party are
present. As the request
of the learned counsel for
the petitioner the case is
adjourned to 3/3/54.

Sc

h
M.

R.K.
V.C.

3.3.54

No signing of D.M. only to
26.4.54

26.4.54 Hon. Mr. S.N. Prasad J.M.
Hon. Mr. V.K. Seth, J.M.

of
all have
already been
exchanged
S. Prasad
27/3/54
O.R.

Submitted for
Hearing
28/4/54

The applicants 3 and 4 are present
in person. Shri Anil Srinivasa
learned counsel for respondents 1, 2, 3
and Shri W.H. Hardwar, learned
counsel for respondents 4 & 7 are present.
Applicants seek adjournment.
But the case on 22-7-54 for
hearing.

h
M.

J.M.

12-1-95

Hon Mr. V. K. Seth A.M.
Hon Mr. D.C. Sharma J.M.



Applicant is present in person. Shri Anil Sharma lawyer informs that a supplementary counter Affidavit is to be filed and rules time 3 weeks time is granted.

list on 20.2.95 for hearing

[Signature]

J.M.

L.K.
A.M.

[Signature]

20.12.95 No setting of D.B. set to 27.3.95

[Signature]

27.3.95

No setting a.m. set to 20.4.95
[Signature]
MOC

20.4.95

Hon Mr. V. K. Seth A.M.
Hon Mr. D.C. Sharma J.M.

on the request of the applicant set to 31.5.95

[Signature]
J.M.

L.K.
A.M.

[Signature]

S.C.A. not filed
S.A.M.

or
S.A.M.
20.12.95

Subp. CA, Supp. RA
not filed
30.5.95

CA No. 316/89

(14)

07-9-95

DR

Appropriate Bench is not available. Applicant Ms. 4, 1, 2-3, are present here for the respondents. Please before the Hon'ble Bench on 25-9-95 for hearing if concerned bench is available.

pleadings are complete
21/9/95

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 ^{sub} 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.

K.N.

J.M.

2.15
A.M.

No C.A. filed in compliance of Hon'ble Court's order dt. 25-9-95. Ho Sub B.A. filed 21/10/95

14.3.96

Hon. Mr. V.K. Seth, A.M.
Hon. Mr. D.C. Verma, J.M.

on Mr. request - of Counsel
for a public. Cal - adjourn to 23.4.96

J.M.

A.M.



23.4.96 - Case not reached. adj.
to 31.7.96

31.7.96
OR.

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

20/8/96

Hon. Mr. V.K. Seth, A.M.
Hon. Mr. D.C. Verma, J.M.

for applicant, Sh. P.R. Sinastane
is on leave
for ast order: None

List on 10/10/96 for
hearing

J.M.

A.M.

19.9.96

Can not - reached adjourn to
28.10.96

mac

Plendings are
Completed
16/10/96

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

Date of Decision 28-11-96

English. Basad. Lewan. & others Petitioner

Sh. S. Bhattacharya..... Advocate for the
Petitioner(S)

V E . R S U S

VERSU S
Union of India & others... Respondent.

.....*Sri A. Sivastava*..... Advocate for the
Respondents.

C O R A M

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

Hon'ble Mr. D.C. Verma member (J)

1. Whether Reporters of local papers may be allowed to see the Judgment. ✓
2. To be referred to the reporter or not ? ✓
3. Whether their Lordships 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 ^{for} 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 over looked 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 no-where 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 tests held during the years 1965 to 1978. The respondents' contention that Ashfaq Ahmad was not relieved to appear in the trade test after 1965 ~~and appear~~ 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.

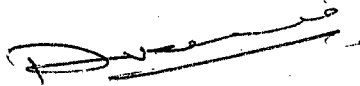
10. The learned counsel for the applicants has drawn our attention towards para 4.6 of the O.A. and has contended that the respondents No.


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 & 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 ~~xxx~~ similar benefits to the applicants. ~~To provide equality, the Court and Tribunal cannot give direction to repeat the same mistake even if the same was committed earlier.~~

12. Besides the above, the promotion of the respondent Nos. 4 & 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.

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/-

Deputy Registrar

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

APPLICATION NO. 216 OF 1989 (L)

(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,

As mentioned in the
Court
D/11

Noted for a/11/89
M. K. B. C. Saxena
epk to B. C. Saxena
B. C. Saxena

21/11/89

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. Latafat 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 Gr. I under ^{dy chief} ~~sr.~~ Signal and Telecom Engineer, ^(Construction) RAIL, Northern Railway, Lucknow

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

20/12/21/21/14

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.

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

21/11/84

A/2

-5-

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.

APR 21 1964

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	Date of promotion as		
		MSM Gr.III	MSM Gr.II	MSM Grade I
<u>Petitioners</u>	22.5.59	15.6.65	-	29.9.79
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

<u>Respondents</u>				
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

4.7. 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

8/17

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 ptomotion 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.

20/11/21/11/14

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

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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 ^{to 7} ~~xxxx~~ 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

AP/14/2174/14

8/10/68

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.

20/12/81

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/II-I/MSM/III dated June 5/6, 1989 that the said applicant is not entitled for redressal of the grievances raised

A/20

-10-

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.

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

SP/16214/114

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 has 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.

14/9/74-11/8

5. Grounds for reliefs with legal provisions

~~kax~~ 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.

(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

27/12/1974

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

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.

AT 14/2/1989

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.

7014/81/714

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

CPD 14814/14

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List of documents	Annex. no.	Page
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 Pati Tewari, resident of Quarter no. II 97-C, Railway Church Colony near Alambagh, 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.

AP/14/21/411/14
Applicant no.1

Lucknow

Dated October , 1989


(D.C. Saxena)
Advocate
Counsel for the applicants

To

The Registrar,
Central Administrative Tribunal,
Lucknow Circle, Lucknow

AP/14/21/411/14

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

O.A. No. 216 of 1989 (2)

Jagdish Prasad Tewari and others
versus

---Applicants

Union of India and others

---Respondents

COMPILATION NO. 2

Sl. Description of documents No. relied upon	Annex. no.	Page
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	35-38

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

Applicants

17
A
24
In the Central Administrative Tribuna,
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

20/12/1989

Ann. A-1 18

NORTHERN RAILWAY.

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

Divisional Office,
Lucknow. Dt. 19.7.88

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 opportunity for appearing in trade test during this period where as persons Junior to him had been allowed more one chance to pass the trade test of MSM Gr.III from 1965 to 1969 and were promoted as MSM on 11.7.70. Since Sri 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 Sant Ram S/O Mr. 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. Jangawa 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 consideration benefits 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.

43/88
Sr. Divl. Personnel Officer,
Lucknow.

Copy to:-
CSI I&II/LKO for information.
SI(W)/BSB, CSI/E/BSB, SI/A/BSB/P2,
SI/C/LKO, SI/REC, CSI/PRH,
Sr. DSTE/LKO,
Divl. Secty./URMU, NRMU, T-10, near Parcel Office, CB/LKO.
Divl. Secty./NRMU Near Guard Running Room/CB/LKO.

ATTESTED TRUE COPY

B.C. D. Khanna
Advocate

इन दि आनरेबल 'हाईकोर्ट आफ् जूडीकेयर' एट इलाहाबाद

लखनऊ बेंच लखनऊ

रिट पिटीशन नं आफ् 1989

सेवा में
जन्दीश प्रसाद तिवारी ----- पिटीशनर

बनाम

यूनियन आफ् इण्डिया ----- अपोजिटपार्टीज

एनेक्ज नं A-2

सेवा में,

श्रीमान वरिष्ठ मण्डल कार्मिक अधिकारी
उत्तर रेलवे लखनऊ।

हाना सी०एस०आई० लखनऊ

विषय वास्ते सीनियर टी सन 1984 के पदस्थापित सम०एस०एम०।।

के सन्दर्भ आपके नोटिस नं० -847-ई/11-1/सम०एस०एम०-1।।
5-7-88।

महोदय,

निवेदन है कि प्राथमी ने सन 1984 में सम०एस०एम०-1।। ट्रेड
टेस्ट पास किया था।

॥2॥ यह कि श्री लतापत्त हुसैन एस०डब्ल्यू हुसैन राजदेव एवं

श्री उमराव सिंह ने भी स्ल नं० 163 आई आर०एम०ई०एम० के विपरीत
मण्डल अधिकारियों की अवैधानिक एवं अनैतिक क्रिया से टेस्ट पास कर
सम०एस०एम० के पद पर पदस्थापित हुए।

॥3॥ यह कि प्राथमी मई सन 1959 को खालासी के पद पर
पदस्थापित हुआ था। और श्री एस०डब्ल्यू हुसैन 1-7-63, 2-लतापत्त

हुए 5-4-62 , 3-राजदेव 20-5-64 जो कि वषों हमसे छालासी में
 पुनिय और हमारे साथ टैड टेस्ट पास किया फिर हमसे सीनियर कैसे ह
 4 यह कि अब आप श्री असमक अहमद को एमएसएसएम-111
 में पीएसएस 2709 के तहत पिता टैड टेस्ट पास के श्री सन्ताम से
 ऊपर कमबटु करने जा रहे है यह कहा की किस राष्ट्र की बैधानिकता है
 कि एक और सबकार से सीनियर होने के बाद भी हों । 1964 के पैरल
 में पुनिय और बिना टैड टेस्ट पास व्यक्ति को सीनियर बनाने जा रहे
 है जो कि विशेष महत्व पूर्ण दवाव होने का परिचायक है जिसका
 कि मण्डल रेल व्यवस्था सामना करने में असमर्थ है और बैधानिकता
 को स्वीकार नहीं कर सकती । आई आर एस की धारा 316 , 320 ,
 बी 163 चेप्टर -1 उसके सामने कुछ भी नहीं जब कि इसका पैरल 682
 रिट पिटीशन 70 के सम्बन्ध में हाइ कोर्ट ने भी दिया है । उचित
 समझ कर निवेदन किया ।

पुनर्

हु
 जदीश पसाद तिवारी 12-2-22
 सकेन अनुष्ठाक यात्रिक पथम
 अन्तर सीएसआई-1 लखनऊ ।

सत्य प्रतीति

ATTESTED TRUE COPY

B.C. Duhrean

Advocate

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8/8

इन दि आनरेबुल हाईकोर्ट आफ़ जूडीकेय स्टइलाहाबाद

लखानऊ बेन्च लखानऊ

रिट पिटीशन नं० आफ़ 1989

सेवा

जदीश प्रसाद गुप्ता ----- पिटीशनर

बनाम

यूनियन आफ़ इण्डिया ----- अपोजिटपार्टीज

एनेक्चर नं० ~~A-23~~ A-23

सेवा में,

श्रीमान वरिष्ठ कोर्ट के कार्मिक अधिकारी,
उक्त रेलवे लखानऊ।

द्वारा उचित माध्यम।

विषय :- अपील श्री असफ़ अहमद सम0सम0 केड-3 की वरिष्ठता

के खिलाफ़ सद० -1 आपकी नोटिस नं० 847-ई/2सम0सम0
3 दिनांक 5-7-88।

2- नियम नं० 163 चेप्टर 1 सेक्शन 3 सब सेक्शन

3, 20 बी0 31.6 आई आ0 सम0पी0सम0ने0 -2709

महोदय,

जदीश प्रसाद गुप्ता

1- निवेदन यह है कि प्रा० री० सन 1963 सम0सम0का टेड टेस्ट पास
कर ली गया बाद स्कूल से प्रमोशन कोर्स पास कर आया था।

2- यह कि जो पुनः सन 1967 में टेस्ट में बुलाया गया उसको भी पास
किया हमारे साथी जे0एन0सक्सेना जे0सम0भाटटलगा जमीन अहमद ने
भी यह टेस्ट पास किया और सभी लोग सम0सम0-3 के पद पर
पदस्थापित हुए।

4- यह कि 163 स्लैट चेप्टर -1 सेक्सन -3 के सब सेक्सन -3

5- यह कि श्री सूरज बली द्वारिका प्रसाद गुप्ता को 320 बी०आई०

6- यह कि अब पीएस 02 709 के तहत श्री सलमान अहमद को विस्थापित
बनाने जा रही है जिन्होंने टेड टेस्ट 1985 में पद किया तथा उसके बाद

सम्पत्ता 1976-77 में यह ट्रेड टेस्ट पास किया। यह कितना

अवैधानिक है कि व्यक्तीय विशेषण दवाव में आकर जिस व्यक्ति ने

ट्रेड टेस्ट पास नहीं किया उसे इतना पीछा बना रही है कि ट्रेड -

एम0एस0एम0द जो उसे सीनियर हो जायें।

7- ~~यही-क~~ यह कि श्री असफाक अहमद को वीरगठता का लाभ 1964 के पेनल जिसमें एस0डब्लू0 हुसैन लताफक हुसैन आदि ने टैस्ट दिया। उस समय भी तो इनको नहीं बुलाया गया क्यों न दिया जायें पी0एस0ने0 2709 के तहत / और उसे सीनियर माना जायें।

8- यह कि श्री असफाक अहमद ने 1975 और 1983 की वीरगठता सूची के प्रकाशित होने के बाद क्यों नहीं अपनी सीनियरिटी माँगी ताकि मण्डल रेल प्रशासन अपनी पहले ही भूल सुधार किया होता। यदि कोई प्राथमिक पत्र सन 75 तथा 83 में की तो बताया जायें।

9- सीनियरिटी लिस्ट के सुधार हेतु नियमानुसार सम्बन्धित माह के अन्दर दिया हो तो कृपया उसे प्रकाशित किया जाय यदि नहीं तो उसे भी पी0एस0 2709 के तहत सन 64 के पास व्यक्तियों से वीरगठ माना जायें।

10- यह कि प्रशासन के लिए सुविधा जनक यही होना कि या तो पेनल वाइज 20 बी0 अथवा 316 के तहत अथवा पी0एस0 2709 के तहत किसी एक को मानकर सीनियरिटी प्रिक्स कर दी जायें क्योंकि अधिकांश

पी0एस0पर आपका 2709 सर्कुलर लागू होता है।

अतः अन्त में निवेदन है कि 23 वर्षों बाद मण्डल रेल व्यवस्था का ध्यान गया यदि यह विशेष दवाव नहीं तो क्यों है क्यों न

सीनियरिटी लिस्ट एक सन 1964 से अब तक एक धारा के तहत 316,

20 बी, 163 रेल चैप्टर असे-सेक्शन -3 सब सेक्शन 3 अथवा पर पी0एस0

अप्रतिपाद्य

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नं० 2709 अपना लिया जाय और वीरिष्ठता कम को सुधार लिया जाय ताकि कर्मचारी वर्ग अपने साथ अन्याय न महसूस कर सके क्योंकि कि कोर्ट के पैसले आई आर० एम० को न मानकर मेण्डल व्यवस्था ने अपने ऊर ससयात्मक प्रश्न चिन्ह लगाने के मजबूर किया है। क्यों न हमें तत्पाक हौन से पूर्व वीरिष्ठ माना जाय।

ओम प्रीति लिपि
सीनियर जी०ओ० लखानऊ।

प्राथमी
चुन्नी लाल 17/7/88
चुन्नी लाल
यात्रिक सकेत अनुष्ठाक - पथाम
अन्ड पी० डब्लू० आई०-1
लखानऊ।

सत्य प्रीति लिपि

ATTESTED TRUE COPY

B.C. Dikshana
Advocate

02/11/2014

25

इन दि आनेपुल हाईकोर्ट आफ़ जूडीशियर एटइलाहाबाद

लखनऊ बेन्च लखनऊ

रि पिटीशन नं आफ़ 1989

जगदीश प्रसाद सुप्ता ----- पिटीशनर

बनाम

स्टेटपुनियन आफ़ इण्डिया ----- अपोजिटपा टीज

एनेक्ज नं A-4

सेवा में,

श्रीमान वरिष्ठ कामि के अधिकारी महोदय,
उत्तर रेलवे - लखनऊ।

द्वारा वरिष्ठ सेक्रेट निरीक्षक महोदय,
उत्तर रेलवे लखनऊ।

विषय अपील अन्स्ट पी0स्स0नम्बर 2709

महोदय,

निवेदन है कि प्राथमिक का भारी दिनांक 13-2-59 है आपसे
निवेदन है कि मुझे सन 1964 के टेड छुट में प्रशासनिक भूल के कारण
नही बुलाया गया था अन्त बुलाया जाता तो मे अवश्य पास होता।

आप मुझे पता चला है कि श्री अशाफाक अहमद सम0स्स0एम0द्वितीय

को आप 2709 पी0स्स0नम्बर के तहत वरिष्ठ बनाने जा रहे है उसका
मे भी उम्मीदवार हूँ क्यों कि मेने पहले टेड टेस्ट पास किया है सन
1965 में।

यह कि सन 1964 में जो टेड टेस्ट हुआ था उसमें श्री सम0डब्लू0
हसन लतापत हसन राजेव और उमराव सिंह अवैधानिक रूप से स्ल
नम्बर 163 चेप्टर प्रथम स्स0ओसीएसब सेक्शन 3 के विपरीत प्रमोद

किये गये थे जबकि हम सब प्रकार से उनसे सीनियर थे।

27/11/89

अतः निवेदन है कि अब आपने पी०एस०नम्बर 2700 के तहत
पिछता निधारणा का निश्चय किया है और उसी प्रशासनिक भूल
को स्वीकार किया है तो इस नम्बर के तहत हम भी प्रभावित है।
अतः हमें भी अरोक्त चार व्यक्तियों से वरिष्ठ बनाया जाए।

प्रतिलिपि :-

1-सीनियर डी०पी०ओ०/लखनऊ।

2-सेक्रेटरी एन०आ०एम०यू०/लखनऊ।

विनीत

ह० अठनीय
सूर्यवली सानुकर
यात्रिक सुकेत अनुष्ठापक पधाम
इस्ट सेंट्रल कोषन लखनऊ।

दिनांक 17-7-1988

ATTESTED TRUE COPY

B.C. A. K. K. K.

Advocate

अप. निशागुप्त

एतदप्युक्तं विदितं माना न्या ।

॥३॥ यह कि अन्य हमारे बहूत से एम०एस०एम० को ३।६ के तहत
सीनियर माना गया ।

॥४॥ यह कि हमको मंगळीय पसले के तहत १९६५ से १९६९ तक
टैड टैस्ट के कम्पायल का हाईकोर्ट के पसले के विपरीत धारा ३१६ के तहत
सीनियर माना गया

14 यह कि हमको मंजिलीय पैसे के तहत 1965 से 1989 तक
डेड स्टैट के कम्पायल का हाईकोर्ट के पैसे के विपरीत धारा 316 के तहत
वरिष्ठता को निर्मित किया। किन्तु छूरिका प्रसाद एवं श्री सूरज बली
एम०एस०एम०को 32.0 बी के तहत सीनियन माना।

15 यह कि उपरोक्त बजहों में आपको 316, 320, बी0 आईकोट के पैसले की सज़ा अन्दाज़ कर अब एक प्रभावशी व्यक्ति को पी0एस0 02709 के तहत परिष्कृत देना निश्चित किया है।

॥6॥ यह कि जब आपने पेशासनिक भूल सुधार का निश्चित किया है और उपरोक्त सभी कानूनी धाराये तथा कोर्ट के फैसले पर आपका विश्वास नहीं रहा और आप पी०एस० 2709 का सहारा लिया है तो परिच्छेद का सुधार आवश्यक हो गया है।

2709 ने तहत निम्न व्यक्तियों । -लतापत्त हुन, 2-ए० डब्लू० हुन र एजेन्स

4 "उमराव सिंह से वरिष्ठ माना जाय क्योंकि 1975 तथा 1983 में

-3-

प्रख्यापित वरिष्ठता सूची के एक माह के अन्दर उस प्रभावी समस्त 0एम0
 -1। ने कोई आपत्ति नहीं की। जब कि हमने वर्ष 1970 से आपका
 ध्यान इस ओर आकर्षित किया। किन्तु मेरे ऊपर आपने 2709 को नहीं
 लाया कि यह भी प्रशासनिक भूल थी 2 जब आप 23 वर्षों
 के बाद अपनी भूल सुधार सकते हैं तब हमारे साथ जो प्रशासन ने
 भूल की उसको क्यों न सुधार लिया जाये।

अन्त में निवेदन है कि जब आपका कानून और नियमों
 में विश्वास नहीं रहा और पी0एम0सकुल को हीसवोपेरि मानते हैं तो
 जी के तहत हमें भी वरिष्ठता प्रदान की जाय अन्यथा इस
 मामले को जो कि प्रभावी हस्तक्षेप के कारण आप मजबूर होंगे
 रद्द किया जाय। क्योंकि इसके तहत अनेको समस्त 0एम0लखानऊ मण्डल
 के प्रभावित होंगे सन 1964 में जो प्रशासन ने भूल की है उसका
 समाधान भी आवश्यक है। तथा कोर्टों होने की सम्भावना बढ़
 जाती है।

दिनांक 17-7-88

प्राप्ति

जे0एम0सकुल
 सकेत अनुशासक मण्डल
 अन्दर मुख्य सकेत निरीक्षक
 प्रमाण उत्तर लेख लखानऊ

अभिप्रेत प्रतीति

सीनिष्ठ डी0पी0ओ0 लखानऊ को प्रेषित।

जे0एम0सकुल

ATTESTED TRUE COPY

B.C. Saksena

Advocate

30

~~A~~
W

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

J

21/11/89

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;

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B.C. D. K. S. S. S.

Advocate

(2454)

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. - Krishna

Advocate

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A/50

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

Application No.

of 1989

Jagdish Prasad Tewari and others
versus
Union of India and others

--Applicants

--Respondents

Annexure no. A-7

पि/वि/२१५६१४

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In the Central Administrative Tribunal
Additional Bench at Allahabad, 8/2/89
Lucknow Circle, Lucknow

--

Application no. of 1989

Jagdish Prasad Tewari and others -applicants
versus
Union of India and others -Respondents

--

Annexure no. A-8

11/11/89

**APPENDIX 'A'.
RECORD OF TRADE TEST.**

Signature. *Sh. Asif Ahmad*
Khilasi

Ticket No. _____
 Station. *Lucknow*
 Department. *MT*
 Station tested at *Lucknow*
 Skilled/Semi-skilled/Basic.

Date of appointment. *13/8/55*
 Date tested on *24/9/55 to 24/10/55*
 Trade for which tested. *SIM/Fitter*

Trade No. of Test applied. _____
 Trade Testing Officer. _____

Subordinate Supervisor. _____

Distinguishing No. _____
 Name. *Sh. S P Paul*
 Designation. *ASTR(w)/Lucknow*
 Name. *Sh. E. M. Paul*
 Designation. *S.I.(w)/Lucknow*

Results of Practical Test
 40 Marks (Pass Marks 40.)

Results of Oral Test 40 Marks
 (Pass Marks 15.)

Particulars of Trade Test.

Spanning
Crossing
Fitting of bolts
Working of a pump

Total Marks: *26* *Failed*

[Signature]
 Signature of Trade Testing Officer.

Signature of Foreman or
 Inspector Supervising Practical Test.

Form No. _____

Forwarded in original to Chairman, Trade Test Panel for approval.

Signature & Designation
 of the District Officer.

Station. _____
 Date. _____

REMARKS OF THE TRADE TESTING PANEL.

Station. _____
 Date. _____

Chairman, Trade Test Panel.

Note:- This form should be finally placed in the personal file of employee after making suitable entry in the Service Record of employee.

ATTESTED TRUE COPY
B.C. Dikran
 Advocate
DENI

DLO

DME

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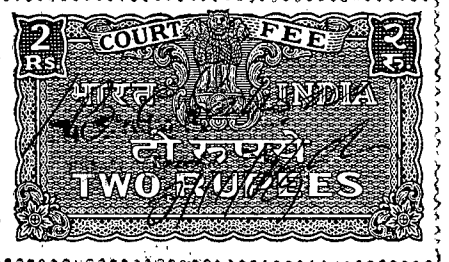
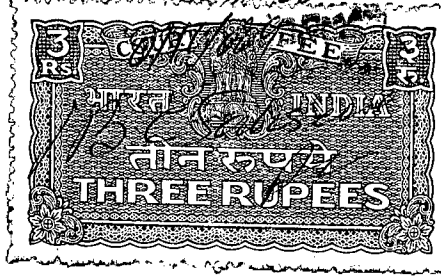
(18)

(8)

Called Name of S. O. No. 70

Central Administrative Tribunal Additional Bench of Allahabad Bench
बअदालत श्रीमान महोदय

वादी (मुद्दै)
मुद्दै (मुदालेह)



Jagdish Prasad Tiwari

Pran Jyoti Tiwari प्रतिवादी (रेस्पान्डेन्ट)

नं० मुददमा

सन ८९ पेशी की ता०

१९ ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री

Sri B. C. Sahasra Advocate वकील

एडवोकेट महोदय

को अपना वकील नियुक्त करके (इकरार) करता हूं और लिखे देता हूं इस मुकदमा 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 मुकदमा 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 मुकदमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर न होगी। इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

नाम अदालत
नं० मुकदमा
नाम फरीकन

Accepted
B. C. Sahasra

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना सन् १९ ई०

37

24

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)(c) of the C.A.T.

Procedure Rules, 1937

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

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

20/11/39 (14/11/39)

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1/5

-2-

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.

Jagdish Prasad Tewari

(J.P.Tewari)

Applicant no.1

Bachchan

Counsel for the applicant

Lucknow Dated
October , 1989

To

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

Jagdish Prasad Tewari

ब अदालत श्रीमान्

C. A. T. L. K. M. महोदय

वादी अपीलान्त

प्रतिवादी रेस्पान्डेन्ट

का

वकालतनामा

0. A. N. 316/89



Jagdish P. T. K. M.

(वादी मुद्दई)

U. J. M. D. M.

बनाम

प्रतिवाद मुद्दाअलेह

नं० मुकद्दमा

सन् १९९६

पेशी की ता०

१० ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री पी० के० श्रीवास्तव, एडवोकेट
एम० एस०-१५१, सेक्टर डी, अलीगंज विस्तार, लखनऊ महोदय

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं
इस मुकद्दमा में 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 डिग्री 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 तसदीक करें या मुकद्दमा 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 की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं
यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को
भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में 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।

नाम अदालत

नं० मुकद्दमा

नाम फरीकन

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

सन् १९९६

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 ^{Asif} Afaz Ahmed, Respondent No.4 and it has no concern to the seniority assigned to

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 ~~1968~~ 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. Hussain

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, ~~xxxxx~~ prepared to entertain this ~~px~~ plea because their promotion had taken place in 1964 while these writ petitions were filled 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~~ 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."

S. Husain

(61)

4.

The typed copy of the judgement of the Hon'ble High Court forming part of this Counter application as Anneru 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 ~~xx~~ respondents in Central Administrative Tribunal under Sub-section 2 ^(b) _(a) 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 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

Sh. 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 the 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.

Sh. Husain
RESPONDENT NO. 5

ANNEXURE NO - C - 2

(5)

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 authors 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.

24.11.1980

Sh. H. H. H.

ATTACHED
W. H. HAIDARI
Advocate High Court

ANNEXURE - 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 ARTICLE 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 10-1-1969 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.

W. H. H. IDARI
Advoca High Court

Sh. Bhatt

(2)

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-fortuitious 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-fortuitious 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 appears to have retired during the pendency of the writ petition. 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, 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 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.

S. W. Husain

RECEIVED
 Contd..... 3/-
 W. H. HADIA
 Advocate H. S. Court

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.

S L Husain

Dt. Nov. 24, 1980

Yusuf
10/9/80
H. H. H. H.
H. H. H. H.

In the Central Administrative Tribunal, (19)
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:-

1. 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.

Filed today

cyuR

24/10/91

JP/42/14/14

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.

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

18-12-64

SP/14214/14

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 respondent~~s~~ 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

18-12-80

AD/4121/87/14

(74)

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 1989.* 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

18-12-89

18/12/89

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~~s~~ 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.

18-12-78

SP 14/21/87/14

44

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 ~~xxx~~ sustain their claim that they are entitled to the benefit ~~xx~~ 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 ~~xxxxxx~~ appreciation of facts and are otherwise legally untenable and therefore denied.

Lucknow Dated
18.12.1990

OP/4/21447
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
18.12.1990

Deponent

I identify the deponent who has signed in my presence

(R.K. Srivastava)

Clerk to Sri B.C. Saksena, Advocate

Solemnly affirmed before me on 18.12.90
at 2-45 a.m/p.m by Sw Jagdish Chandra Tiwari

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.

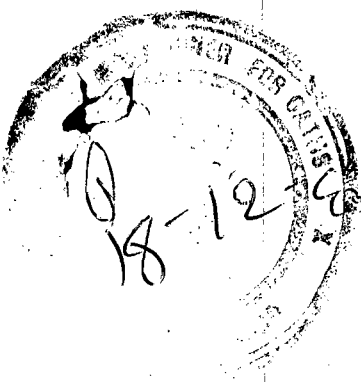
A. B. AFUJAH

OATH COMMISSIONER

High Court Lucknow Bench Allahabad

No. 18-12-90

18.12.90



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: 26-2-1992.

Anil Srivastava
(ANIL SRIVASTAVA)
Advocate

Counsel for Respondents.

Before The Central Administrative Tribunal

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, Rajiv Kishore working as
Asst 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 Applica-
tion is given as under.

Rajiv Kishore

Conted. 2-

(15)

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 Maintanance 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. 347-/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, Conted.3,

Amhar

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.P. 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. K. Sharma

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 of the present reply. and has been decided in favour of respondents, Therefore in view 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 than twenty five years.

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

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

by way of para 4.13 of the present reply.

Chakrabarti

twenty five year old issue , which is time-Barred in view 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 raised 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 grievance a copy of which has been enclosed as Annexure NoA7 to the Original Application and rest of the contents are not admitted . Also averments made in the preceding 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 Prasad Bhargava, and rest of the contents are not admitted.

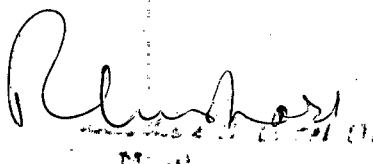
[Handwritten signature]

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.

 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,

Rushore

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,

Rushore

(84)

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

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.

Rubani

J. P. Tewari
Secy. H. H. M. H. H.

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

Lucknow Bench, Lucknow .

(4)

Writ Petition No. 620 of 70

Jata Shanker andan others Petitioners.
Versus

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

WRIT PETITION UNDER ARTICLE 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 Saksena. They were appointed as Khalasis in July, 1959 and they passed trade on 1.1.1969 whereby their suitability for the higher post was certified. The petitioner in writ petition No. 682 of 1970, namely, Dwarika Prasad was appointed as Khalasi in 3 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 a permanent basis but as in non-fortuitous 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.

[Handwritten signature]

As against this, respondent Hazari Lal who is respondent no. 8 in writ petition No. 622 of 1970 and respondent no. 9 in writ petition No. 620 of 1970 was appointed as Khajasi 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 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 1965 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 Latefat Hussain, Bajdeo, G. W. Hussain and Ugrao 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 ~~experience we are not, 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 promoted 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.

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.

Plurshari

A 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 reversal, Annexure 1 to the writ petition, in so far as it relates to Dairika Prasad the petitioner in this case, is hereby quashed. No order as to costs.

Sd/ A. 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)

(8)

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
for
Bench
26.2.93
21/3/93*

M.P. 368/93 CH
O.A. No. 316(L) of 1989

- VS -

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

- 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. 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 ^{applicant} ~~opposite party~~ 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 ~~is~~ 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

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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 original 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

STO/HR/14/11/14

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.

जगदीश प्रसाद तिवारी

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.

जगदीश प्रसाद तिवारी

DEPONENT

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

(P.K.Srivastava)
Advocate

So No 22

Central Administrative Tribunal

Lucknow Bench

Date of Filing

Date of Receipt by Post

By Registrar (1)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

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

By, Registrar (#)

CS

(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

By Registrar (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 acquiescenced, can not be challenged at this belated stage.

5. That it may be submitted here that making representation against the correction seniority of Ashfaq Ahmad the respondents no. 4, the applicants are claiming parity with Sri Ashfaq 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.

(4)

By, Registrar (1)

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

[Signature]
24. 12. 1989 (17)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH LUCKNOW

C.M.P.NO. 3530/95.

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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By, Registrar (J)

(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

Date of Receipt by Post

By, Registrar (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH LUCKNOW

C.M.P.NO. 3839/95.

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.

By, Registrar (J)

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 Deen*, 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.

Central Administrative Tribunal

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Dr. Registrar (J)

(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 Ashfaq 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 his last trade-test. However, Sri Ashfaq Ahmad could be spared for the trade-test for the said post only in the year 1976. Sri Ashfaq Ahmad duly qualified the said trade-test for the post of M.S.M. Grade-III. Accordingly, Sri Ashfaq 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

अध्यक्ष का निदेश
उपस्थित सदस्यों के समक्ष

103

By: [REDACTED]
[REDACTED] and [REDACTED]

xx That Sri Ashfaq 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.

~~सहपत्रक नं. १००० अतिरिक्त~~

By, Registrar (S)

(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 Ashfaq 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 Ashfaq 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 Ashfaq 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

न्यायिक कार्यकारी न्यायाधीश
लखनऊ

By Registrar (2)

(5)

took quite some time ~~between~~ 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 ~~on~~ 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 ~~him~~ 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 ~~xxxx~~ 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.

बहायत जलमक अधिकारी

रजम रेजमे कलमक

By, Registrar (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 entitled for any relief from this Hon'ble Tribunal. On the other hand, he is liable to pay the cost and damages to the answering

~~सहायक प्रमुख अधिकारी~~
~~जलार रोडदे जलनर~~

(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.

Int-7.

न्यायक शक्ति अधिकारी
दस्तावेज संख्या: १०७



By, Registrar (J)

(8)

12x ~~Thak~~

5 to 7. The respondent no. 4 namely-Sri Ashfaq 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 Ashfaq 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

~~हाथ परामर्श अधिकारी
उत्तर देते. पदमंड~~

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Lucknow Bench
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Sy. Registrar / 11

(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 acquiescenced 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 Ashfaq Ahmad the respondent no. 4. Due to administrative lapses and due to administrative reasons Sri Ashfaq 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 respondent no. 4. Thus, similar benefits can not be given to them. Anything/contrary to the aforesaid facts are denied.

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

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By, Registrar (J)

(10)

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

LUCKNOW: DATED:

21 / 11 / 1995.


~~सहायक न्यायाधीश~~
~~उच्च न्यायालय, लखनऊ~~


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.


~~सहायक न्यायाधीश~~
~~उच्च न्यायालय, लखनऊ~~

Annexure No SCR-11

Date of Receipt by Post

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.

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

Reference No. 1-4112/31/88 D.D. B. Dt. 19.7.89

Industrial Dispute No. 168 of 1989

Name of parties :

Shri गुजरात मशीन माली Applicant/s.

श्री श्रीमन्त मदन रत, श्री रत, श्री रत, श्री रत, श्री रत
श्री रत, श्री रत, श्री रत, श्री रत, श्री रत

And

श्रीमन्त श्री रत श्री रत, श्री रत, श्री रत, श्री रत
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Opp. party/s.

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 reliance of witnesses and documents. By the witness

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 1st day of Oct 1989.

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

BS/

24/11/89

24/11/89

IN THE COURT OF SHRI ARJUN DEV J. Central Administrative Tribunal
PRESIDING OFFICER, CENTRAL GOVTS. INDUSTRIAL DISPUTES TRIBUNAL.
KANPUR.

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I.C. NO. 168 OF 1989

Date of Filing
Date of Receipt by Post

Jagdish Prasad Tewari

.... Respondent.

- 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 Khallasi 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 Khallasi were on 1.6.59 and 1.7.63 respectively. Both of them became M.S.Ms in 1965 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/-

(B.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 day of August, 1989.

Sd/-

(B.D. TEWARI)
ZONAL WORKING PRESIDENT

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, KANPUR

I.D. CASE NO. 168/39

Jagdish Prasad Tewari

Date of Filing

Date of ... 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 Maintainer 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

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 SI/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 19.12.73 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.

.....2/-

(114)

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 Administration.
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.

V E R I F I C A T I O N

I _____ A.P.O. do hereby verify that the contents of Para 1 to 3 are true to my knowledge on the basis of record and legal advise.

Signed and verified this on _____ at Lucknow.

LUCKNOW :

[Signature]
Opposite Party.

DATED :

Central Administrative Tribunal

Lucknow Bench

Date of Filing

Date of Receipt by Post

12/12/95

115

[Signature]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH LUCKNOW

C.M.P.NO. 33/10/95.

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.1to3

Central Administrative Tribunal

Lucknow Bench

Date of Filing

Date of Receipt by Post

FF-5 2 96

Dy. 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,
Feb.
the 5. January 1996.

Counsel for the
Applicants

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By Registrar (7)

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

(Circuit Bench) Lucknow

O.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

5/11/89

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 the Hon'ble ^{High} ~~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.

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(11/9)

- 3 -

Dy. Registrar (J)

- 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

(20)

- 4 -

By 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

5/11/21/4/14

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.

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- 6 -

- 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 P.S.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.

J14/9/11/114

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.

J14/9/11/114

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 श्रीमान Before the Hon'ble Central Administration महोदय
[बादो अपीलांट] श्री S. W. Husain का वकालतनामा
प्रतिवादी [रेस्पाडेंट]

Application No 318 of 1989 (L)



Jagdish Pr Tiwari &
Others

Union of India & others बनाम

प्रतिवादी (रेस्पाडेंट)

नं० मुकद्दमा O.A. No 314-सन् 1989 पेशी की त्त० १६ ई०

ओर W. H. Hardani Advocate

लिखे मुकद्दमा में अपनी ओर से श्री

C-1807 Mun. L.C. Raza for Pw. L.C. वकील
व महोदय
✓ एडवोकेट



को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया लसूब करें या सुलहनामा व इफ्तबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करे मुकद्दमा उठावे या कोई रुपया जमा करे या हारो विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करे—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होबा में यह भी स्वीकार करता हूं कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसको जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

नाम अदालत
मुकद्दमा नं०
नाम फरीकन

Accepted
W. H. Hardani
Advocate (Ct.)
LUCKNOW

हस्ताक्षर...
01 No 546

साक्षी (गवाह) ... साक्षी (गवाह) ...
दिनांक ... 12 ... महीना February ... सन् १९९० ई०
स्वीकृत

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

Industrial Dispute No. 168 of 1989

In the matter of dispute between:

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

And

Senior D.P.O. Northern Rly
Hazratganj Lucknow

A w a r d

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

51/4/21/5004