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CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI.

ORIGINAL APPLICATION No. 401/1991

Date of Decision: 23-12-96

J.E.T. Saldanha

Petitioner/s

Mr. L.M. Nerlekar

Advocate for the
Petitioner/s

V/s.

Superintendent,
Printing & Stationery
Central Railway

Respondent/s

Mr. S.C. Dhawan

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B.S. Hegde, Member(J)

Hon'ble Shri M.R. Kolhatkar, Member (A)

- (1) To be referred to the Reporter or not ? X
- (2) Whether it needs to be circulated to
other Benches of the Tribunal ?

[Signature]
M(J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING No.6
PRESCOT ROAD, MUMBAI 400001

O.A. No. 401/91

DATED : 23rd DECEMBER, 1996

CORAM : Hon. Shri B S Hegde, Member (J)
Hon. Shri M R Kolhatkar, Member(A)

Shri J E T Saldanha,
Despatcher Gr.I,
Central Railway Printing Press,
Byculla, Mumbai 27
r/o. B/1 Pradibha Niwas Chawl,
Kaju Pada Pipe Line,
K.A. Road, Kurla,
Mumbai 400072

(By Adv. Mr. L M Nerlekar)

..Applicant

V/s.

Superintendent Printing &
Stationery,
Central Railway,
Byculla,
Mumbai 400027
(By Adv. Mr. S C Dhawan)

..Respondents

ORDER

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{Per: B S Hegde, Member(J)}

1. Heard Mr. L. M. Nerlekar, Counsel for the applicant and Mr. S.C. Dhawan, Counsel for the respondents.

2. In this O.A. the applicant is seeking a direction for fixation of seniority as Packer Gr. 225-308 and Despatcher Gr.I(Rs.225-308) on its merger into one unit as per Railways circular dated 12.3.88.

3. The brief facts are that the applicant was appointed on 1.8.60 in the Machine Section as Khalashi. He was

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promoted and posted as Junior Ticket Checker, Semi-skilled Grade on 28.10.63 and was reverted from 1.7.66 as the second shift was closed in the Ticket Printing Section at Byculla. His main contention is that seniority of Khalasis was in general pool and Khalasis were promoted in different sections according to their seniority from general pool and that he was reverted to the post of Khalasi on 1.7.66 while his juniors were retained. On 3.4.68 the applicant was trade tested as Ticket Printer and was reverted due to closure of night shift from 30.5.1970 and was posted as Khalasi in Binding section. The grievance of the applicant is that though the night shift started again in the year 1971, the respondents have not called back the applicant to the post of Packer Gr.II and as a result of this in the combined list of seniority of Packer Gr.I (Rs.225-308) and Junior Despatcher (Rs.225-308) persons junior to the applicants were shown as senior.

4. Respondent has filed reply opposing the O.A. The Ld. Counsel for the respondent submits that the O.A. is not maintainable as proper parties such as Union of India, General Manager or even the Chief Personnel Officer or the persons who would be affected are not impleaded as party respondents to the O.A. The O.A. is against Superintendent Printing and Stationery, Central Railway, Byculla who is not a corporation sole or a legal person

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and ^{thus} the application is not maintainable on this count also. The respondents issued a notification dated 12.3.88 which reads as under;-

NOTIFICATION

Sub.: Seniority list of Packer-I & Despatcher-II
Gr. Rs.225-308/825-1200 (RPS) and Ticket
Counter Gr. Rs. 265-400/850-1500(RPS) in
Printing Press Byculla.

In continuation of the notification issued vide letter No.PS/B.115 dated 08.03.88, it is further notified for information and guidance to the staff concerned of Ticket Printing section.

The issue of channel of promotion of Ticket counters, Despatchers, Packers of Ticket Printing staff was under consideration for sometime in consultation with both the recognized unions and after going through all the aspect, it has been decided and conveyed by the CPO's (S&M) BB VT letter No.HPB/706/B/B/Press dated 01.2.88, is placed below:

1. Promotion already made to H.S.-I Gr.Rs.380-560 (RS) and H.S.II Gr. 330-480(RS) will not be disturbed, including seniority.
 2. Ticket counter in gr. Rs.260-400(RS) and Ticket Despatcher Gr.260-400 (RS) will be merged together and a seniority list drawn on the basis of their entry into Gr.Rs.260-400 (RS) for further promotion to HSK-Gr.II.
 3. The Seniority of Packer-I Gr. 225-308 and Despatcher Gr.225-308(RS) will be merged together and a seniority list prepared on the basis of their entry in Gr. Rs. 225-308(RS) for further promotion to the skilled Gr. Rs.260-400(RS) (As per item No.2 and 3 the seniority list of the staff is already proposed and notified on 3.3.88).
 4. Promotion to Packer I Gr.Rs.225-308(RS) and Jr. Despatcher Gr.Rs.225-308(RS) will be from Packer II Gr.Rs.210-290 (RS).
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5. However, a combined seniority of Packer-II, Gr. Rs.210-280(RS) vis-a-vis opts Khalasi helpers for the Ticket Printing Section will be prepared based on entry to this grade for further promotion to Gr.Rs.260-308(RS). This will be notified in due course).

6. It has also been decided that on opted Khalasi helpers will be posted as Packer II in identical grade before being promoted to Rs.225-308 (RS).

7. It has also been decided that the designation of Packer-II will be dispensed with after obtaining approval of the Board and the post will be merged with the Khalasi helper.

Sd/-
S.P.S. Byc.

The respondents state that they have prepared seniority list on the basis of the entry of the persons from the two cadres into the grade of Rs.260-400/950-1500. Applicant's position on the basis of his entry into the grade Rs.260-400 the applicant is placed at Sr.No.28. The applicant made a representation which was replied by the respondents on 3.8.90 giving detailed reasons why he could not be considered for giving seniority over Mr. R R Bhatia. The respondents further submit that Bhatia who was junior to the applicant in the category of Packer-II was promoted on 8.9.71 while the applicant was promoted as Packer-II on 1.1.1969 in the scale Rs.210-270. Both the applicant and Bhatia were reverted with effect from 30.5.70 due to closure of night shift. However, in the grade Rs.260-400 Bhatia was appointed on 1.4.77 whereas the applicant got that grade on 1.1.82 onwards. Therefore, the comparison made by the applicant between Bhatia and himself is not justified because though Bhatia

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was junior to the applicant in the grade of Khalashi after reversion, Bhatia remained as Khalashi whereas the applicant had voluntarily applied for transfer to Machine Section severing his link in the Ticket Printing Section after passing the trade test of Junior Machineman and thereby he lost his seniority in Ticket Printing Section. Pursuant to the request of the applicant he was posted to Machine section on 16.11.1970 and continued in that post till 16.9.1971. In the meanwhile, the Railway administration had issued General Circular dated 18.7.71 for filling up the posts of Despatcher in scale Rs.105-135 and the applicant who was in the grade Rs.75-110 as Jr.Mechineman voluntarily applied for the post of Despatcher-II in gr.105-135 and on selection he was appointed as Despatcher-II from 16.9.71. Packer-II gets the promotion as Packer-I and similarly Despatcher-II gets promotion as Despatcher-I in the grade Rs.260-400. The applicant who was appointed as Despatcher-II was promoted as Despatcher-I during 1982 and continued till 1988. As a result of an agreement between the Administration and the recognized Unions it was decided to merge the cadres of Packer-I and Despatcher-I and accordingly seniority list of staff was drawn on the basis of their entry into Gr.260-400 for further promotions. Thus though Bhatia though was junior to the applicant as Khalasi by virtue of reversion in the year 1970 the applicant opted to Machine Section and

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severed his connection as Khalashi thereby Bhatia got accelerated promotion from Khalashi to higher positions. There is no dispute that Bhatia entered the gr.Rs.260-400 on 1.4.77 whereas the applicant got that grade on 1.1.82 and hence in the combined seniority Bhatia is correctly shown as senior to the applicant.

5. During the course of hearing Mr. S C Dhawan draws our attention that the applicant did not care to implead necessary parties except Superintendent, Printing and Stationery, Central Railway, who is not competent authority to decide the seniority etc. He ought to have made necessary parties i.e., General Manager and Union of India as party respondents. Mr. Dhawan, further submits that the applicant has suppressed material fact regarding his voluntarily going on transfer to Machine Section. In this connection he relied upon the decision of the Patna Bench of the Tribunal in CHANDRA SHEKHAR SINGH Vs. CONTROLLER OF DEFENCE ACCOUNTS, PATNA, [1987]4 ATC 962, wherein the Tribunal had held that suppression of material facts in effect would disentitle the relief.

6. Regarding necessary parties the Apex Court in UDIT NARAIN SINGH Vs. BOARD OF REVENUE, AIR 1963 SC 786 held that necessary party is one without whom no order can be made effectively; a proper party is one in whose absence

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an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings.

7. In the instant case if we allow the O.A. the party affected would be Mr. R R Bhatia, who is not included as party. Therefore, the ratio laid down in the above decision squarely applies to the facts of this case. Secondly the applicant has verified that he has not suppressed any material facts, but it is clear from letter dated 30.8.70 wherein he has clearly given an undertaking that he desired to shift to Machine Section by severing his link, which letter was not annexed by the applicant to the O.A. and therefore the observations made by Patna Bench of the Tribunal in C.S.SINGH (supra) squarely apply to the present case. Even otherwise, the applicant has not made out any case for our interference in fixing the seniority vis-a-vis R R Bhatia. In the result, we are of the opinion that the O.A. is devoid of merit and the same is liable to be dismissed.

8. Accordingly the O.A. is dismissed with no order as to costs.


(M.R. Kolhatkar)

Member (A)


(B.S. Hegde)

Member (J)