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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 624/91

~~XXXXXXXXXXXXXXXXXXXX~~

DATE OF DECISION 23.3.93.

Shri M. Raj ----- Petitioner

Shri M.S.Ramamurthy ----- Advocate for the Petitioners

Versus

Union of India & Ors. ----- Respondent

Shri N.K.Srinivasan ----- Advocate for the Respondent(s)

CORAM:

The Hon'ble ~~Shri~~ Ms. Usha Savara, Member (A)

The Hon'ble Shri V.D.Deshmukh, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
  2. To be referred to the Reporter or not ?
  3. Whether their Lordships wish to see the fair copy of the Judgement ?
  4. Whether it needs to be circulated to other Benches of the Tribunal ?
- } No

*Usha Savara*  
(MS. USHA SAVARA) 23.3.93.  
MEMBER (A)

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY



OA.NO. 624/91

Shri M. Raj

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Ms. Usha Savara  
Hon'ble Member (J) Shri V.D.Deshmukh

Appearance

Shri M.S.Ramamurthy  
Advocate  
for the Applicant

Shri N.K.Srinivasan  
Advocate  
for the Respondents

JUDGEMENT

Dated: 23.3.93

(PER: Usha Savara, Member (A))

The application has been filed seeking a direction to the respondents No. 1 to 3 to grant seniority to the applicant in the category of Bill Issuer from 15.11.1984 and to treat him as senior to Respondents No. 4 to 8 in the category of Bill Issuer for the purpose of further promotions, regular or ad hoc.

2. The applicant, along with some others, had filed a Writ Petition No. 2627 of 1983 in the Bombay High Court which was transferred to the Central Administrative Tribunal and was numbered as T.A.No.508 of 1987. While the matter was pending before the High Court, on 15.11.1984 interim relief was allowed to the applicants as a result of which the applicants were continued in the post of Bill Issuers. By order dated 28.8.1990, the Tribunal gave the following directions :-

- "i. These applicants shall be given the difference in pay between that of the Cleaner and Bill Issuer from 15.11.1984 treating them as having officiated in the post of Bill Issuer.

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- ii. The written test for the purpose of promotion to the post of Bill Issuer in accordance with the scheme contained in the letter of the General Manager, dated 16.2.1989 (Ex.R/1), shall be conducted expeditiously and such of the applicants who so desire shall be permitted to take the same."

Pursuant to the said judgement, a written test was held.

The applicant and the Respondents No. 4 to 8 were declared as having qualified in the test. The grievance of the applicant is that he has been placed <sup>after</sup> ~~before~~ the Respondents No. 4 to 8, though he had been promoted to the post of Bill Issuer from 15.11.1984 as per Memorandum issued by the respondents on 8.3.1991 (Ex.'C').

3. Shri Ramamurthy, the learned counsel for the applicant, submitted that the applicant had been working as Bill Issuer from 1979, and according to the judgement of the Tribunal, he should have been regularized in the post from 15.11.1984. It is the case of the applicant that the judgement dated 28.8.1990 directed the respondents to pay the difference in pay between that of the cleaner and Bill Issuer treating him as having officiated in the post of Bill Issuer from 15.11.1984, and also directed that he be regularised by holding a formal suitability test. The respondents 4 to 8 have been given a higher seniority than the applicant, who has worked as Bill Issuer from 1979 onwards, whereas the respondents had been working as Waiters all along, and have been promoted as Bill Issuers for the first time by order dated 20.9.1990. They cannot be placed at par with the applicant, who, according to the judgement dated 28.8.1990, has been officiating as Bill Issuer from 15.11.'84. Shri Ramamurthy drew our attention to Memorandum dated 8.3.1991 (Ex.'C') in which it is clearly stated in the last para that the petitioners of T.A.No. 508/87 are promoted to the post of Bill Issuers, scale Rs.225-308 (R)/ 825-1200 (RP) from 15.11.1984.

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Shri Ramamurthy also placed reliance on the judgement dated 9.10.1986 (J.N.MISHRA VS. UNION OF INDIA) in T.A.No. 123 of 1986 as well as the judgement pronounced by the Hon'ble Supreme Court in the case of the Direct Recruits Class II Engineering Officers' Association and others vs. State of Maharashtra & Ors.

4. A reply has been filed by the respondents. It is stated that the Memorandum dated 8.3.1991 (Ex. 'C') was issued only to draw and pay the difference of pay to comply with the directions of the Hon'ble Tribunal in its judgement dated 28.8.1990 in T.A. 508/87. It is further submitted that respondents No. 4 to 8 were at all times senior to the applicant, as they had entered the service earlier. The respondents 4 to 8 had been inducted in the service as commission waiters between 1970 to January, 1978, whereas the applicant was appointed as commission waiter on 15.12.1978. The seniority list of waiters published on 10.2.1983 amply illustrates this point, as also the Seniority List published on 14.5.1990. The applicant had never disputed this position.

5. Shri Shrinivasan submitted that the suitability test for Bill Issuers was open to various categories of employees and the criteria for assigning seniority to employees, who were found suitable, is based on the date of entry initially in Railway Service. Respondents 4 to 8 had entered the service earlier in the same category and scale of pay as the applicant, therefore they are senior to the applicant in the panel of employees found suitable for regular promotion to the post of Bill Issuers. Though the applicant was given the difference in pay as directed by the Hon'ble Tribunal, he was found suitable for promotion as Bill Issuer only after he passed the written suitability test, and was, therefore, regularly

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promoted on 26.11.1990. The judgement dated 28.8.1990 merely gave him the difference in pay, and could not be construed so as to give him seniority in the category of Bill Issuers. It was also argued that the judgment of Jabalpur Bench had no relevance or applicability to the facts of this case.

6. We have heard the learned counsel<sup>s</sup> at length. The main plank of the applicant's claim for seniority is the judgment dated 28.8.1990. The operative portion is as follows :-

- "i. These applicants shall be given the difference in pay between that of the Cleaner and Bill Issuer from 15.11.84 treating them as having officiated in the post of Bill Issuer.
- ii. The written test for the purpose of promotion to the post of Bill Issuer in accordance with the scheme contained in the letter of the General Manager dated 16.2.1989 (Exhibit R/1) shall be conducted expeditiously and such of the applicants who so desire shall be permitted to take the same."

7. The directions are clear and incapable of being misinterpreted. The respondents were directed to give the difference in pay between that of the Cleaner and Bill Issuer from 15.11.1984 treating them as having officiated in the post of Bill Issuer. This direction was complied with and the difference in pay was paid as evidenced by Memorandum dated 8.3.1991. In the same Memo., it is also mentioned that a written test has been conducted in terms of item (ii) of the judgement. Both the directions in the judgment were complied with by the respondents, in spirit as well as in action. There is not a whisper in the aforesaid judgement about giving seniority to the applicant from 15.11.1984, on the other hand it is made amply clear in item (ii) that those applicants who wish to take the written test for the purpose of promotion to the post of Bill Issuer shall be permitted to take the same. This ground, therefore, has to be rejected.


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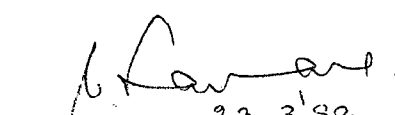
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8. The judgement delivered by the Jabalpur Bench in T.A. No. 123 of 1986 dealt with regularisation of promotion to the post of Assistant Manager and cannot be imported in this case. It is also admitted by Shri Ramamurthy that it was never brought to the notice of the Hon'ble Tribunal when T.A. 508/87 was being heard. In any case, it cannot help the applicant.

9. In the case of Direct Recruit Class II Engg. Officers' Association, the Hon'ble Supreme Court held/<sup>(proposition A)</sup> that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. Shri Ramamurthy reiterated his claim on the basis of this. However, the Hon'ble Supreme Court has gone on to declare that the corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. Clearly, the applicant's case falls in the second category and not the first category. In the case of the applicant there was no ad hoc appointment even to the post of Bill Issuer; his regular appointment was only to the post of Cleaner. He performed the duties of Bill Issuer, and by the order dated 28.8.1990, he was paid the difference in pay. Therefore, the ratio laid down by the Hon'ble Supreme Court is not applicable to him.

10. In view of the above, and other findings recorded earlier, we do not find any merit in the OA., which is accordingly dismissed. There will, however, be no order as to costs.

  
(V.D. DESHMUKH)  
MEMBER (J)

  
23.3.93  
(MS. USHA SAVARA)  
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

(2)

Review Petition No. 43/93 in  
Original Application No. 624/91

M. Raj

... Applicant.

v/s

Union of India and 7 others.

... Respondents.

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

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

Appearance:

Shri M.A. Ramamurthy counsel  
for the applicant.

Shri N.K. Srinivasan, counsel  
for the respondents No 1 to 3.

Shri G.S. Walia, counsel  
for the respondents No. 4 to 8.

Tribunal's order

Dated: 31.3.95

¶ Per Shri B.S. Hegde, Member (J) ¶

This Review Petition has been filed by  
the applicant seeking the Review of the judgement  
dated 23.3.93 in O.A. 624/91.

2. The judgement was delivered by the  
Hon'ble Ms. Usha Savara, Member (A) and Hon'ble  
Shri V.D. Deshmukh, Member (J). Since both the  
Members have retired from service, Hon'ble  
Vice Chairman has constituted a Bench consisting of  
myself and Hon'ble Shri M.R. Kolhatkar as per  
notification No. 13/14/91-JA dated 18.2.92 to hear  
the matter. Accordingly we heard the learned  
counsel for the applicant, Shri M.S. Ramamurthy  
as well as Shri N.K. Srinivasan, counsel for  
respondent Nos. 1 to 3 and Shri G.S. Walia, counsel  
for respondent Nos. 4 to 8.

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3. The short question for consideration is whether the applicant's seniority as "Bill Issuer" should be counted from 15.11.84 vis-a-vis with that of respondent Nos. 4 to 8 in the cadre of Bill Issuer. The contention of the applicant is that though initially he was appointed as a waiter, he was performing the duties of a Bill Issuer from 1979 onwards. In this connection the applicant and others who were working as Bill Issuer had filed writ petition no. 2627/83 in the Bombay High Court claiming the relief inter alia that their services be regularised as Bill Issuer from the dates from which they were working as Bill Issuer. The Writ Petition stood transferred to the Tribunal and came to be numbered as Transfer Application No.508/87 which was heard and disposed of by judgement dated 28.8.90. The Tribunal while disposing of the Transfer Application passed the following order:

- " i. These applicants shall be given the difference in pay between that of the Cleaner and Bill Issuer from 15.11.84 treating them as having officiated in the post of Bill Issuer.
- ii. The written test for the purpose of promotion to the post of Bill Issuer in accordance with the scheme contained in the letter of the General Manager dated 16.2.89 (Exhibit R/1) shall be conducted expeditiously and such of the applicants who so desire shall be permitted to take the same."

4. In the light of the aforesaid observation, it is further contended by the learned counsel for applicant Shri Ramamurthy that though the applicant and others were not required to appear for the test and were permitted to appear only if they so desire, but there was no compulsion to appear

for the test. Admittedly, the applicant appeared in the written test conducted in accordance with the scheme dated 16.2.89. He was treated as having been officiating as Bill Issuer from 15.11.84 and the applicant alongwith others were promoted as Bill Issuer with effect from 26.11.90. Against which he filed the present O.A. 624/91 challenging that his seniority as Bill Issuer was not being shown from 15.11.84 whereas, it is shown only from 26.11.90 alongwith other employees who were permitted to take the post under the scheme and qualified therein but most of them did not work at any time prior to 26.11.90 as Bill Issuer. It is an admitted fact, that the Jabalpur Bench judgement was only referred but the judgement itself has not been produced at the time of disposal of the O.A. No.624/91 on 23.3.90.

5. The respondents in their reply denied the contentions of the applicant. He was treated to have been officiated as Bill Issuer from 15.11.84 as he was doing the work of Bill Issuer without being promoted to the said post either regularly or on adhoc basis. The suitability test for the post of 'Bill Issuer' is open for various categories of employees e.g. waiters, cleaners etc. The criteria for assigning seniority of employees found suitable for the post of 'Bill Issuer' is based on the date of entry initially in Railway service with preference to their category and scale of pay. He can only be treated as Bill Issuer from the date he was regularly promoted and taken over the charge after having qualified in the written suitability test. The order of the Tribunal dated 28.8.90 is silent as regards seniority of the applicant. It is not the contention of the applicant that the seniority of the Bill Issuer is mainly dependent upon the marks obtained in the

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written test, nor is his contention that respondents nos. 4 to 8 have put in less number of years of service as cleaner or waiters. His main argument is that he has been actually working as Bill Issuer much before the respondents nos. 4 to 8 and accordingly he should be granted seniority on the basis of total number of years put in as Bill Issuer and not from the date of his passing the examination. In this connection, counsel for the applicant relied upon Exhibit 'C' dated 8.2.91 wherein the applicant has been promoted as Bill Issuer with effect from 15.11.84. The learned counsel for the respondents nos. 4 to 8, Shri Walia urged that the applicant can be treated as Bill Issuer from the date he was regularly promoted and taken over the charge from 1-12-1990. Admittedly, the respondents nos. 4 to 8 were senior to the applicant in the feeder cadre. While fixing the seniority in the cadre, seniority in the feeder cadre should be taken into account. In this connection, counsel for the respondents nos. 4 to 8, Shri Walia, in support of his contention, relies upon the decisions of the Supreme Court in the case of Masood Akhtar Khan and Ors. v/s State of Madhya Pradesh and Others 1990 SCC (L&S) 580 and in the case of Direct Recruit Class II Engg. Officers' Association v/s State of Maharashtra 1990 (2) SCC 715 and Full Bench decision in the case of Ashok Mehta and Ors. v/s Regional Provident Fund Commissioner and Ors.

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6. He draws our attention to the Apex Court Judgement in the case of Masood Akhtar Khan and Others V/s. State of Madhya Pradesh and Ors. wherein the Supreme Court held that seniority to be reckoned not from the date of their initial stop gap appointment but from the date of their regular selection under Rules.

7. In the case of Ashok Mehta and Ors. V/s. Regional Provident Fund Commissioner and Ors. the Tribunal clearly stated that promotion by way of adhoc or stop-gap arrangement made due to administrative exigencies and not in accordance with the Rules cannot count for seniority. Principle 'B' laid down by the Supreme Court in the Direct Recruit Class II Engineers Officers Association and others V/s. State of Maharashtra and others will apply as explained by the Supreme Court in Keshav Chandra Joshi and others etc. V/s. Union of India and others only to cases where the initial appointment is made deliberately in disregard of the Rules and the incumbent allowed to continue in the post for long period of about 15 to 20 years without reversion till the date of regularisation of service in accordance with Rules.


8. The learned counsel for the applicant, Shri M.S. Ramamurthy vehemently stated that in the case of Direct Recruit Class II Engineering Officers Association V/s. State of Maharashtra the initial appointment is not made by following the procedure laid down by the Rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the Rules, the

period of officiating service will be counted therefore, principle 'B' as laid down in the aforesaid decision would apply to the facts of this case. Against this, learned counsel for the respondents Nos 4 to 8, Shri Walia contends that since the applicant has been asked to officiate without due compliance of the Rules he is only entitled to difference of pay and nothing more. Further, Respondents Nos 4 to 8 were not party to the Transfer Application, hence such matter e.g. seniority matters cannot be decided in Review Application. Since the applicant having appeared in the test without any protest, therefore, it is not open to him to seek the benefit of Jabalpur Bench decision, if any, and further the judgement by itself does not give any cause of action, unless he is a party to it. Hence Proposition 'B' of the Direct Recruit Class II case is not applicable to the present case as no letter of appointment was issued to the applicant either adhoc or otherwise. If the judgement is erroneous, remedy lies elsewhere and not by filing Review Petition. Nowhere it is stated, that he has been issued with any adhoc appointment nor he was exempted from appearing in test.

9. On perusal of the documents and considering the arguments of the learned counsel for the parties, we are of the view, that the law is well settled, that the scope of review application is very limited and the review application is maintainable only if there is an error apparent on the face of the record or some new evidence has come to the notice which was not available even after exercise of due diligence or any other sufficient reason. Review Application cannot be utilised for re-arguing the case traversing the same ground again.

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10. After perusing the review application, we find that none of the ingredients referred to above have been made out to warrant a review of the aforesaid judgment. In the circumstances, we are of the view, that neither an error on the face of the record has been pointed out nor any new facts have been brought to our notice calling for the review of the judgment. Accordingly, we see no merit in the review application, the same is therefore, dismissed.

  
(B.S. Hegde)  
Member (J)

(Per M.R. Kolhatkar, Member (A) )

11. I am inclined to agree with my learned brother Member (J) that the Review Petition is liable to be dismissed. However, in my view, the review petitioner has made out a strong case in terms of Rule 1 Order 47 of C.P.C which, however I am inclined to reject under rule 4 thereof for the reasons which I wish to give separately.

12. The applicant, alongwith some others, had filed a Writ Petition No. 2627 of 1983 in the Bombay High Court, inter-alia claiming that their services should be regularised as Bill Issuers retrospectively with effect from the dates they had been working as Bill Issuers and to consider them eligible for promotion to the higher grade of Asstt. Manager. The said Writ Petition on the constitution of the Central Administrative Tribunal came to be transferred to the Tribunal and came to be numbered as T.A.No. 508 of 1987. The same was disposed of by the Tribunal by its judgment and order dated 28/08/1990 which issued the following directions :

- 1) These applicants shall be given the difference in pay between that of the Cleaner and Bill Issuer from 15.11.84 treating them as having officiated in the post of Bill Issuer.

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the relief was given with effect from 15.11.1984. It is also noted that certain Bill Issuers had approached Jabalpur Bench of the Tribunal vide T.A. 123/86, in which the issue involved was regularisation **for** promotion to the post of Assistant Manager and the Jabalpur Bench in its judgment dated 9th October 1986 observed in para 8 as under :

"8. After carefully considering the contentions and arguments of learned counsel from both sides and in the light of the principles laid down by the Hon'ble Supreme Court in the cases cited above and in the circumstances of this case we are unable to accept 9.7.1973 as the cut off date for the regularisation of Bill Issuers. The cut-off date for absorption should be determined with reference to a reasonable period of continuous officiation. We consider a minimum continuous satisfactory service of two years subject to requisite qualifications and tests as sufficient for considering the *absorption* of an employee from the date he initially entered that post."

17. In terms of this judgment of Jabalpur Bench, the Western Railway had issued orders dt. 25.6.1987 regularising the services of certain employees as Bill Issuers. This is shown as Exhibit 'D' to the R.P. The applicant does not claim relief in terms of Jabalpur Bench judgment in the sense of regularisation after 2 years but he does claim relief in terms of the scheme evolved by Western Railway dated 16.2.89 and the orders issued by Western Railway in terms of this Tribunal's judgment in T.A. 508/87. The applicant has first of all produced an order dated 19.6.1991 issued by Western Railway, vide Exhibit 'C' to the R.P. This is on the subject of fixation of pay and it states that the applicant's pay was fixed in the pay scale of Rs. 200-250 at Rs.218/- with effect from 1.8.1984 and in the pay scale of Rs. 225 - 308 namely pay scale of Bill Issuer with effect from 15.11.1984. Apart from this newly produced order, the applicant invites our attention to the order dt. 8.3.91 which appears at Exhibit 'C' to the O.A in which it is stated as below :

- ii) The written test for the purpose of promotion to the post of Bill Issuer in accordance with the scheme contained in the letter of the General Manager dated 16.2.1989 (Exhibit R/1) shall be conducted expeditiously and such of the applicants who so desire shall be permitted to take the same.

13. O.A. 624/91 claimed the following relief :

"That the respondents 1 to 3 be directed to grant seniority to the applicant in the category of Bill Issuer from 15.11.1984 and treat the applicant senior to respondents 4 to 8 in the category of Bill Issuer, for the purpose of further promotions, regular or adhoc."

14. In the O.A decided on 23.3.1993, the relief was rejected. It is this judgment which is sought to be reviewed by the applicant. Several grounds have been made for review which amount to saying that there were errors apparent on the face of record in the judgment of the Tribunal and there were also certain factual documents which the applicant **because of valid** reasons, could not produce, which he is now producing at the stage of review.

15. In Catering Department of the Western Railway, there are following grades :

	Old pay	Revised Pay
CLEANER	Rs. 196 - 232	Rs. 750 - 940
WAITER	Rs. 200 - 250	Rs. 775 - 1025
BILL ISSUER	Rs. 225 - 308	Rs. 825 - 1200

16. The applicant was, admittedly appointed as a Cleaner with effect from 15.12.78. He claims that he being literate, he was appointed as Bill Issuer in 1979. In the judgment of the Tribunal in TA 508/87, it has been observed that it is in evidence that the applicants have been working as Bill Issuer and even in higher categories. The date is not mentioned but

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"In terms of the item (i) of the above judgment (TA 508/87) the following petitioners in the above petition are promoted to the post of Bill Issuer scale Rs.225 - 308 (R)/Rs.825 - 1200 (RP) from 15.11.1984"

The name of the applicant appears at page 2 of the said order as under :

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S.No.	Name	Designation	Scale	Unit	Remarks
9.	M. Raj	Waiter	775-1025	D/Car-BCT	Since qualified in the written test held for promotion to the post of Bill Issuer and promoted as Bill Issuer scale Rs.825-1200 (RP) on regular basis hence he will continue to officiate as Bill Issuer."

18. The contention of the applicant that he is claiming his seniority as Bill Issuer over Respondents 4 to 8 in terms of this order. He also relies on the relevant para 203 of IREM (Indian Railway Establishment Manual) which states as below :

"Unless specifically stated otherwise, promotion in a grade is governed by date of appointment to that grade"

19. The applicant therefore contends that the assumption made by the Tribunal in O.A. 624/91 that what was at issue <sup>was</sup> seniority in the grade of Cleaner/Waiter was not correct, and that he was initially appointed as a waiter atleast from 15.11.84 if not earlier i.e. 1979 as claimed by him and that he was regularised as Bill Issuer after passing the test and therefore the four employees namely Respondents No. 4 to 8 who had never worked as Bill Issuers prior to 1991 but had all along worked as

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Waiters cannot claim seniority as Bill Issuer over him which unfortunately the respondents have considered today. It is in this context that the applicant suggests that there are following errors apparent on the face of record in the judgment in O.A. 624/91.

- i) that in para 6 of the judgment, it is stated that the <sup>main plank of applicant's</sup> ~~claim~~ for seniority is the judgment dated 28.8.1990. On the contrary, it was repeatedly contended on behalf of the applicant that the judgment dt. 28.8.90 is silent as regards the seniority of the applicant but that the applicant having continuously officiated as Bill Issuer from 15.11.84, he claims seniority as a sequitur to the judgment.
- ii) It is erroneously assumed in para 9 of the judgment that the working of the Applicant was a stop-gap arrangement while discussing Direct Recruits case whereas the working of the applicant was continuous from 1979 and recognised by the Tribunal from 15.11.84 onwards. It is also erroneously assumed in para 9 that the counsel for the applicant relied on preposition (A) in Direct Recruits Class II Engg. Officers Association case, whereas reliance was placed on preposition (B). Thus there is miscarriage of justice.
- iii) In paragraph 8 of the judgment it is erroneously assumed that the judgment of the Jabalpur Bench in T.A. 123/86 dealt with regularisation of the promotion to the post of Assistant Manager and cannot be imported into the case whereas memorandum dt.

26.6.87 would go to show vide para 2(a) that the judgment dealt with the case of Bill Issuers as well, even according to the official respondents. Thus the Jabalpur Bench judgment has been wrongly distinguished and it is an error apparent on the face of the record.

20. The official respondents have denied contentions of the applicant and have stated that what is material is seniority of the applicant as a waiter and since Respondents No. 4 to 8 were senior, they have been rightly placed above the applicant. The learned counsel for the respondents No. 4 to 8 Shri. Walia urged that the applicant can be treated as Bill Issuer from the date he was regularly promoted and taken over the charge from 1.12.1990. Shri. Walia in support of his contention, relies upon the decisions of the Supreme Court in the case of Masood Akhtar Khar and Ors. V. State of Madhya Pradesh and Ors. (1990 SCC (L&S 580) and the case of Direct Recruit Class II Engg. Officers' Association Vs. State of Maharashtra (1990(2) SCC-715).

21. On consideration of all the documents, pleadings and submissions, we are of the view that the judgment in O.A. 624/91 does contain <sup>some</sup> ~~the~~ errors apparent on the face of the record, as pointed by the review petitioners. These errors related to reference in para 2 of the judgment, i.e. "pursuant to the said judgment a written test was held" which is erroneous because the written test was held earlier than the date of judgment and the three grounds referred to in para 19 above. However, the question to be decided while granting an application for review is whether the errors go to the root of the matter and for that reason, the judgment is required to be reviewed. So far as wrong reference to the date of test is concerned

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nothing turns on it. So far as the judgment of Jabalpur bench is concerned, although the applicant has produced a copy at this stage, we are required to assume that the Tribunal did have access to that because the Tribunal has referred to Jabalpur bench judgment in para 8. Maybe, the judgment of Jabalpur Bench did deal with the issue of Bill Issuers but there again the applicant does not claim relief in terms of Jabalpur judgment, namely by way of automatic regularisation after 2 years' continuous service as Bill Issuers. He has really claimed relief in terms of <sup>scheme framed by</sup> Western Railway dated 16.2.1989. In our view therefore, an incomplete reading of Jabalpur bench judgment also does not affect the final outcome. We therefore come to the most important plank of the applicant's claim namely that he had <sup>not</sup> relied proposition 'A' of Direct Recruit's case but on proposition 'B'. Let us consider this contention. In Direct Recruit Class II Engg. Officers Association v. State of Maharashtra, the Supreme Court in para 44 of its judgment summed up the decision in 11 propositions beginning with 'A' and ending with 'K'. The proposition 'A' & 'B' which are relevant, are <sup>re-</sup>produced below:

- (A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.
- (B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. "

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22. The circumstances of the applicability of these two propositions have come for interpretation in the case of Keshav Chandra Joshi & Ors., Vs. Union of India and Ors. (1993 SCC (L&S) 694). There, it is made clear that proposition 'B' comes into play only where initial appointment to a substantive post was made on ad-hoc basis deliberately in disregard of Rules and the incumbent was allowed to continue in the post for well over 15 to 20 years without reversion and till the date of regularisation of the service in accordance with rules. In the present case this is not so. The most important factor is that there is no element of deliberation and secondly the ad-hoc officiation was only for 7 years and that too it was in terms of an interim order/relief granted by Bombay High Court. We quote below, para 26 of Keshav Chandra Joshi judgment :

"As stated, the counsel for the promotees placed strong reliance on proposition 'B' while the counsel for the Direct Recruits relied on proposition 'A'. The controversy is as to which of the propositions would apply to the facts of this case. The proposition 'A' lays down that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The latter part thereof amplifies that where the initial appointment is only ad hoc and not according to rules and is made as a stop gap arrangement, the period of officiation in such post cannot be taken into account for reckoning seniority. The quintessence of the propositions is that the appointment to a post must be according to rules and not by way of ad hoc or stop gap arrangement made due to administrative exigencies. If the initial appointment thus made was de hors the rules, the entire length of such service cannot be counted for seniority. In other words, the appointee would become a member of the service in the substantive capacity from the date of his appointment only if the appointment was made according to rules and seniority would be counted only from that date. Propositions 'A' & 'B' cover different aspects of one situation. One must discern the difference critically. Proposition 'B' must therefore be read along with para 13 of the judgment wherein the ratio decidendi of Narender Chadha was held to have considerable force. The latter postulated that if the initial appointment to a substantive post or vacancy was made deliberately in disregard of the rule and allowed the incumbent to continue on the post for well over 15 to 20 years without reversion and till the date of regularisation of service in accordance with the rules, the period of

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officiating service has to be counted towards seniority. This Court in Narender Chadha case was cognizant of the fact that the rules empower the government to relax the rule of appointment. Without reading the paragraph 13 and Proposition 'B' and Narender Chadha ratio together the true import of the proposition would not be appreciated. We would deal with the exercise of power of relaxing the rule later. After giving anxious consideration, we are of the view that the latter half of Proposition 'A' would apply to the facts of the case and the rule laid down in that half is to be followed. If the concerned rules provide the procedure to fix inter se seniority between direct recruits and promotees, the seniority has to be determined in that manner."

23. It therefore appears to us that although there might be some errors apparent on the face of the record in the judgment dated 23.3.93 in O.A. 624/91, these errors are not such as to vitiate the ratio of the judgment and to justify review of the judgment and grant relief to the applicant. The RP therefore fails and is required to be rejected.

*M.R. Kolhatkar*  
(M.R.KOLHATKAR)  
MEMBER (A)

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

We therefore dispose of the RP by passing the following order :

O R D E R

R.P 43/93 in O.A. 624/91 is dismissed. There would be no orders as to costs.

*M.R. Kolhatkar*  
(M.R.KOLHATKAR)  
MEMBER (A)

*B.S. Hegde*  
(B.S.HEGDE)  
MEMBER (J)

J\*