

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

(13)

O.A. No. 143
T.A. No.

1998

DATE OF DECISION 20.2.2002

Om Prakash Verma

Petitioner

P.V. Lalla

Advocate for the Petitioner (s)

Versus

VOI & ORS

Respondent

U.D. Sharma for R 1 & 2

Advocate for the Respondent (s)

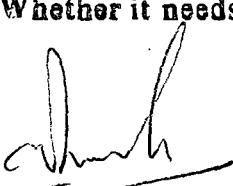
Manu Singh Bhandari R-3

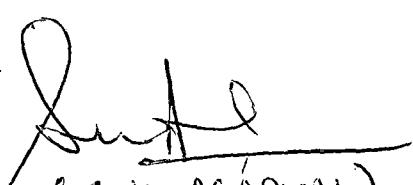
CORAM :

◆ The Hon'ble Mr. S. K. Agarwal

The Hon'ble Mr. N. P. Nawani

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes .
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes .
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(N.P. NAWANI)


(S.K. AGARWAL)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 10.02.2000

OA No.143/98

Om Prakash Verma S/o Shri Durga Sahai Verma, CIHER, in the office of
Divisional Railway Manager, Western Railway, Ajmer.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager (E), Western Railway, Ajmer Division, Ajmer.
3. Shri G.K.Khandelwal, CIHER, Western Railway, DRM Office, Ajmer.

.. Respondents

Mr. P.V.Calla, counsel for the applicant

Mr. U.D.Sharma, counsel for respondents Nos. 1 and 2

Mr. Manish Bhandari, counsel for respondent No.3

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

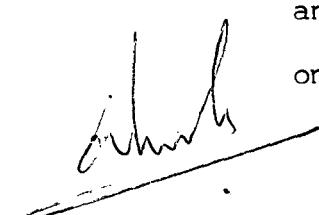
Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

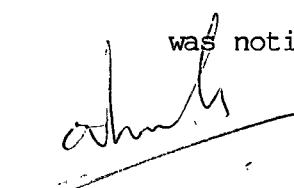
Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks the following reliefs:

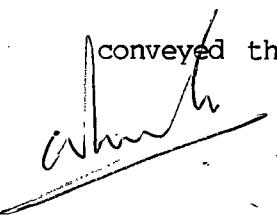
- "I. By an appropriate order the Impugned order Annexure-Al and Annexure A/Al dated 23.3.1998 and 16.3.1998 respectively may kindly be declared illegal.
- II. Further the official respondents may be directed not to take any action to alter the panel position of the applicant issued on 7.6.1990."



2. The facts of the case, as stated by the applicant, are that he was appointed as Guard Grade-C in the pay scale of Rs. 330-530 on 10.2.1982 and was posted in the grade of Rs. 330-560 on 28.6.1984; that the grade of Rs. 330-560 was revised to Rs. 1200-2040 after 4th Pay Commission; that in response to a notice dated 13.2.1990 (Ann.A2) employees from different seniority units in pay scale of Rs. 1200-2040 could apply for the post of Inspector of Hours Employment Regulation (for short, IHER) Grade - III; that the applicant applied and in the final panel of selected candidates dated 7.6.1990 (Ann.A3) as per seniority his name was at Sl.No.1 and that of respondents No.3 was at Sl.No.2; that the applicant was promoted to the next higher grade of Rs. 1600-2660 vide order dated 13.3.1992 (Ann.A4); that an eligibility list for selection to the post of IHER Gr.I scale Rs. 2000-3200 was notified vide letter dated 24.9.1992 (Ann.A5) in which the name of the applicant figures at Sl.No.13 and that of respondent No.3 (for short R3) at Sl.No.14; that a provisional seniority list dated 30.12.1993 (Ann.A6) was issued in which the applicant was at Sl.No.6 and R3 at Sl.No.16; that another eligibility list was issued on 16/21.11.94 (Ann.A7) for promotion to IHER Gr.I scale Rs. 2000-3200 in which name of the applicant is at Sl.No.6 and that of R3 at Sl.No.9; that selection as notified vide Ann.A7 was not conducted for reasons best known to the official respondents but as per the provisions contained in the IREM, the applicant was promoted to the said scale on ad hoc basis vide memo dated 28.12.1994 (Ann.A8) and vide order dated 3.1.1995 (Ann.A9) the applicant was kept in Ajmer Division in the said post; that the process of selection to the post of IHER Gr. I was again initiated with issue of a notification dated 5.5.1995 (Ann.A10) and the list of candidates found eligible in which the name of the applicant was at Sl.No.6 and that of R3 at Sl.No.9; that a panel of suitable candidates for promotion to IHER Gr.I was notified vide order dated 15.6.1995 (Ann.A11) wherein the applicant was

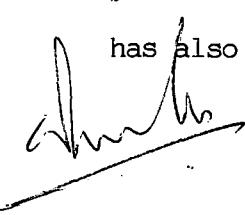


at Sl.No.6 and R3 at Sl.No.9; that the formal order regarding regular promotion of the applicant to the post of IHER Gr.I scale Rs. 2000-3500 was issued vide order dated 28.12.1995 (Ann.A12) and a post of IHER becoming/available in the office of respondent No.2, R3 was also promoted, the record of which is available with the official respondents. However, after a long gap, a show cause notice dated 8.11.1997 (Ann.A13) was issued by respondent No.2 asking the applicant as to why his name should not be shown at position No.2 and that of R3 at position No.1 and the applicant was directed to submit reply within 15 days. The applicant, thereafter requested to provide him the relevant records (Ann.A14) but instead of that the respondent No.2 vide his letter dated 24.1.1997 (Ann.A15) informed him in a very casual manner that "the date of entry of R3 in the scale of Rs. 1200-2040 is 31.1.1983 whereas your date of entry in the grade Rs. 1200-2040 is 28.6.1984, therefore, as per date of entry in the grade Rs. 1200-2040 the panel position is to be revised." Without having the benefit of records, the applicant filed a tentative reply on 3.2.1997 (Ann.A16) adding that he may be provided proper opportunity for filing proper reply to the show cause notice. The respondent No.2, thereafter supplied documents which are listed in para 4.21 of the application (Ann.A17 to A24). After going through the various documents the applicant again wrote on 3.3.1997 (Ann.25), inter alia stating that neither the decision taken by the headquarter office changing panel position nor any circular issued by headquarter Railway Board empowering the railway administration to change the panel position had been made available. The respondent No.2 supplied a copy of letter dated 27.4.1993 issued from headquarter (Ann.A27). On receipt of which the applicant submitted another representation dated 27.5.1997 (Ann.A28) pointing out that the principles laid down in letter dated 5.4.1973 are not applicable in the present case. The headquarter office vide letter dated 9.12.97 (Ann.A30) giving parawise reply to the representation dated 17.1.97 conveyed that "whenever two or more grades are treated equivalent grades



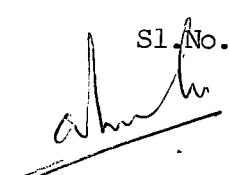
the total length of service in grade will be counted for deciding inter-se seniority. Since the date of appointment of the applicant is 9.2.82 (Ann.A29) and that of R3 is 8.1.69, R3 stands senior to the applicant even after treating both the grades as equivalent." The applicant again submitted a detailed representation to General Manager (respondent No.1) (Ann.A31) stating, inter alia, that the eligibility should be one grade below and length of two grades below cannot be taken into consideration. The applicant also informed that in a case filed before CAT one Shri Anil Srivastava had claimed seniority of an ex-cadre post and the railway not only contested/opposed the case but the same was rejected by the Tribunal. The applicant added that if given a personal hearing, he will explain his case in detail. Thereafter respondent No.2 under a covering letter dated 23.3.98 (Ann.A32) supplied him a copy of the letter dated 6.10.1969 from General Manager regarding selection Board of Grade-III staff (Ann.A33). Thereafter respondent No.2 vide his impugned order dated 23.3.98 (Ann.A1) carry out the modification in which a reference was made of letter dated 7.6.1990 and the applicant was placed at Sl.No.2 and R3 at Sl.No.1, also inserting a note that this change in panel dated 7.6.1990 was being made as a result of the show cause notice issued to the applicant on 8.1.1997 and disposal of various representations made by him. The respondent No.1 also issued an impugned letter dated 16.3.1998 (Ann.A/Al) informing him that the judgment of the CAT in OA No.592/90 was judgment in persona and not applicable to the applicant and, therefore, the decision to revise his seniority vis-a-vis R3 stands good. It was also added that if the applicant desires to have an interview with the CPO-CCG, it is advised that CPO-CCG is available for personal interview on Monday between 4.00 to 5.00 PM.

3. Replies have been filed on behalf of official as well as private respondent (R3). A rejoinder to the replies filed by respondents has also been filed by the applicant.



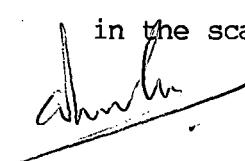
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4. It has been stated by the official respondents that the applicant was initially appointed as Guard Grade-C on 10.2.1982 in the scale Rs. 330-530 and R3 was appointed as Goods Clerk on 1.9.1969 in the scale Rs. 260-430 while the applicant was promoted to the scale of Rs. 330-560 on 28.6.84, the R3 was promoted in the same scale on 31.1.1983 and, therefore, R3 was above the applicant in the grade of Rs. 330-560. Even on the basis of date of appointment in the railway service, R3 was above the applicant. Thus ~~reckon~~^{ed} from any angle, R3 was definitely over and above the applicant. Later, both the applicant as well as R3 came to be appointed as IHER Gr.III on 7.6.1990 on the basis of panel notified vide order dated 7.6.1990 (Ann.A3) wherein admittedly the applicant was at Sl.No.1 and R3 was at Sl.No.2. In view of this panel position, the applicant got promoted to the scale of Rs. 1600-2660 and Rs. 2000-3200 on 13.2.92 and 28.12.95 respectively whereas R3 was promoted to the aforesaid scale on 8.3.1993 and 31.5.1996 respectively. It has been further stated that R3 submitted various representations starting ~~from~~ ^{from} 3.6.1993 claiming seniority over the applicant on the basis of his date of appointment in the grade of Rs. 330-560 earlier than the applicant as also his earlier date of initial appointment in the railways. The representation was considered by respondent No.1 and vide letter dated 20.9.1996, respondent No.2 was advised that before changing the seniority position of R3, it would be necessary to issue a show cause notice to the applicant and accordingly a show-cause notice was issued on 8.1.1997 vide order dated 7.6.1990. The applicant sought various clarifications and documents which have been explained to him properly and the requisite documents were also supplied. Respondent No.2 after giving due and proper consideration and after proper application of mind, considered the representation and vide impugned order dated 23.3.98 (Ann.A1) issued a final order by which R3 was placed at Sl.No.1 and the applicant at Sl.No.2 in the panel notified vide order dated



7.6.1990. It is contended that official respondents have thus fully complied with the principles of natural justice before modifying the panel issued on 7.6.1990. As regards the submission of the applicant that the claim of R3 had been rejected earlier, it has been clarified that the same was rejected earlier only on the ground that the representation has been submitted belatedly and it was thus never rejected on merits and it was only then that it was found that the claim put forward by R3 was valid and legitimate and the panel notified vide order dated 7.6.1990 came to be modified vide order dated 23.3.98. It has also been stated that the change in the seniority position of the applicant vis-a-vis R3 in various grades of Rs. 1400-2300, 1600--2660 and Rs. 2000-3200, that all these posts are ex-cadre posts and both the applicant as well as R3 are holding the post of Chief IHER Gr.I in the pay scale of Rs. 2000-3200 and there is no further avenue of promotion from the said post. Thus the apprehension entertained by the applicant that if the impugned order Ann.A1 stands he will have to work under the supervision of a junior is not tenable. In view of above position the official respondents have prayed that the interim order dated 24.4.1998 directing them not to issue any direction in respect of seniority of the applicant with regard to IHER Gr.II and IHER Gr.I may be vacated.

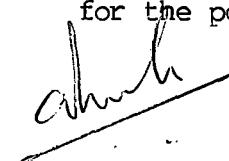
5. In the reply filed by R3 it is stated that the applicant was not qualified for promotion to the post of IHER Gr.III in view of circular dated 15.6.79 and as per this circular Guards were disqualified and were not considered in the order dated 29.7.1994 (Ann.R3/1) It has been contended on behalf of respondent No.3 that it is incorrect to say that the panel was arranged in the order of seniority because no common seniority list of the eligible candidates was published prior to the year 1990. It has also been stated that the applicant was erroneously promoted in the pay scale of Rs. 1600-2660 without publishing the seniority list of the posts in the scale of Rs. 1400-2300 and, therefore, the order at Ann.A4 is of no



consequence while R3 was promoted in the pay scale of Rs. 330-560 prior to the applicant and, therefore, for the corresponding pay scale of Rs. 1200-2040 he cannot be treated as junior to the applicant and this fact was not considered by the official respondents while notifying the seniority list on 30.12.1993 (Ann.A6). Aggrieved by the said seniority list, R3 made ~~2~~ representations/objections within a period of 30 days from the date of receipt of the said seniority list, copies of which are at Ann.R2, R5 and R6. It has also been contended that Ann.A7 was issued for giving name of eligible candidates in the pay scale of Rs. 2000-3200 and it is incorrect to say that it was based on correct seniority position. It has also been opposed that the applicant is seniormost IHER Gr.III and in fact it is R3 who is senior to the applicant because of seniority in the initial grade of Rs. 330-560. It has also been stated that the appointment to the post of IHER grade was made from different streams and posts and as such the employees were not knowing their seniority position vis-a-vis others and the pay scale of Rs. 330-560 which was revised to Rs. 1200-2040 was the basic grade from which employees were to be considered for the cadre of IHER and that was the supporting point from the seniority position and that is what has been done by the railway administration for determining the seniority position in the IHER cadre. It has also been submitted that panels were published by the official respondents from time to time, however, it is incorrect to say that the same has attained finality on account of issuance of seniority list.

6. We have heard the learned counsel for the parties, have gone through the material on record and have also examined the rules etc. cited by the learned counsel for the parties.

7. The origin of the controversy in this case lies in selection for the post of IHER pay scale Rs. 1400-2300 and claim and counter-claim of



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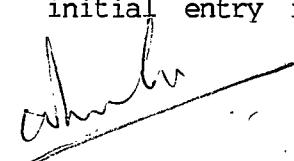
applicant and R3 in respect of seniority in the said posts. We are deliberately using the word "post" because admittedly these are ex-cadre posts and are filled up by candidates from different seniority units. A notice was issued on 13.2.1990 (Ann.A2) to fill two vacancies of IHER in the pay scale of Rs. 1400-2300. It was mentioned therein that those employees who had rendered 5 years of regular service in the pay scale of Rs. 1200-2040 can apply. The eligible candidates were to appear in the written examination to be held on 19.3.1990. From order dated 7.6.90 (Ann.A3) it appears that the selection committee had selected both the applicant and R3, keeping the applicant at Sl.No.1 and R3 at Sl.No.2 in order of seniority in the panel. Consequent upon representations made by R3 and after issuing a show-cause notice to the applicant as also disposing of his representations, vide impugned order dated 23.3.98 (Ann.A1) the name of R3 was changed to Sl.No.1 and that of applicant to Sl.No.2.

8. Before we examine the correctness or otherwise of the modifications made in the panel dated 7.6.1990 it will be appropriate to deal with the plea of the applicant that there was violation of principles of natural justice before carrying out the above mentioned modification in view of the fact that firstly, all the documents which he had requested for were not given to him and secondly, on his asking for a personal interview in which he would like to explain his case, he was informed vide impugned order dated 16.3.1998 that "as regards your desire to have an interview with CPO-CCG, it is advised that CPO-CCG is available for personal interview on Monday between 4.00 to 5.00 PM." As regards the first point, we are satisfied, after going through the exchange of voluminous correspondence between the applicant and the official respondents that the administration had cooperated to the utmost in giving information/documents to the applicant. As regards the denial of personal interview, it is clear from order Ann.A1/A that the applicant was informed that CPO-CCG is available for

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personal interview on Monday between 4.00 to 5.00 PM. The applicant has not produced any document and has not even made a plea that he went to see the CPO-CCG on a particular Monday or on certain Mondays and he was not granted interview. It was the duty of the applicant to make an attempt to see the CPO-CCG on a Monday between 4.00 to 5.00 PM but it appears that he never made an attempt. In view of this, there is no substance in the contention of the applicant that the principles of natural justice were violated.

9. We can now revert back to the question of inter-se seniority between the applicant and R3 in the grade of IHER pay scale Rs. 1400-2300. It is not disputed that two vacancies of IHER Gr.II were to be filled up by candidates from different seniority units and the eligible criteria was 5 years regular service in the scale of Rs. 1200-2040 with knowledge of Labour Legislation, Employees Classification, Preparation of roster and schedule and running staff under HIR. The applicant was eligible as he was enjoying pre-revised pay scale of Rs. 330-530 from 10.2.82 and 330-560 from 28.6.84 in the post of Guard Grade-C. R3 was eligible as he was enjoying the pre-revised pay scale of Rs. 330-560 from 31.3.1983 having been earlier appointed as Goods Clerk in the pay scale of Rs. 260-430 on 8.1.1991. It appears that both the pay scales of Rs. 330-530 and Rs. 330-560 were merged pursuant to the recommendations of the Fourth Pay Commission into a single scale of Rs. 1200-2040 w.e.f. 1.1.1986. On the basis of their eligibility, declared both were selected and in the panel dated 7.6.1990, the applicant was placed at Sl.No.1 and R3 was placed at Sl.No.2 as per the seniority. It has been argued by the learned counsel for the applicant that the relevant rule for determining seniority when employees of different seniority units get selected for a particular post is contained in para 320 of IREM Vol.I whereas the official respondents claimed that "the R3 was definitely over and above the applicant on the basis of length of service from the date of initial entry in the service as well as date on which they have been



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appointed to the grade of Rs. 330-560". It has also been contended by the respondents that there are no specific instructions for treating grades Rs. 330-530 and Rs. 330-560 as equivalent grades, but even if it is accepted that these grades are equivalent, in that case, instructions contained in Board's letter No. E(NG)299/PN.I/195 dated 18.6.69 will be applicable wherein it has been provided that whenever two or more grades are treated as equivalent grades, the total length of service in Group-C will be the criteria for deciding the inter-se seniority and since the applicant's date of appointment in Group-C is 9.2.1982 and that of R3 is 8.1.1969, R3 stands senior to the applicant. Another reason given by the official respondents in the impugned order dated 16.3.1998 (Ann.Al/A) is that the judgment of this Tribunal in OA No.592/90 was a judgment in persona and hence not applicable in that case of the applicant. It has, also been mentioned in the letter dated 8.1.1997 addressed to the applicant from Divisional Office, Ajmer that the representation of R3 for assignment of correct seniority which was subsequently taken ^{up} by WREU at headquarter level in the informal meeting as per decision received from headquarters office, the panel position of Shri G.K.Khandelwal (R3) which was in earlier panel at Sl.No.2 is now to be shown at Sl.No.1 and your position will be at Sl.No.2. Consequently, correction in notified seniorities are to be carried out. The Railway Board circular dated 18.9.1969 was also referred to in support of the contentions of the official respondents.

10. In order to appreciate the statutory position, it will be useful to extract Rule 320 as incorporated in the IREM Vol.I:

"320. RELATIVE SENIORITY OF EMPLOYEES IN AN INTERMEDIATE GRADE BELONGING TO DIFFERENT SENIORITY UNITS APPEARING FOR A SELECTION/NON-SELECTION POST IN HIGHER GRADE.

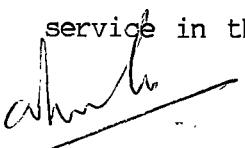
When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total

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length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter-seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to proviso that only non-fortuitous service should be taken into account for this purpose.

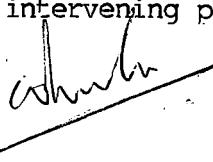
A plain reading of this rule will make it clear that whenever any post is filled up by considering staff of different seniority units, it is necessary to compute the total length of continuous service in the same or equivalent grade held by the competing employees and this will be the determining factor for assigning inter-seniority. The date of confirmation of an employee will not be of any consequence. There is no mention in this rule about seniority to be determined on the basis of length of service in Group-C. The Railway Board's circular dated 6.10.1969 referred to in the reply to the applicant has not been produced before us and we are not in a position to determine whether this circular was supplementing the rule incorporated in para 320 of the IREM and in the absence of this, it will not be possible for us to place the status of this circular over the statutory rule incorporated in para 320 of the IREM. We, therefore, hold that it is para 320 of the IREM which should be used for determining the seniority in the present case.

Having decided that para 320 of the IREM is to be used, it will be necessary to find out as to who among the two employees i.e. the applicant and R3, had greater length of continuous service in the same or equivalent grade. If we find that both the scales of Rs. 330-530 and Rs. 330-560 were merged into Rs. 1200-2040 then the continuous length of service in the common revised scale Rs. 1200-2040 has to be reckoned from



the date from which any of these two grades were being enjoyed by the employees. On the other hand, if it is found that the grade of Rs. 1200-2040 was the replacement scale for only Rs. 330-560, then the date of an employee who was enjoying the grade of Rs. 330-560 becomes the starting point. In this case, since the qualifying grade of Rs. 1200-2040, which came into being with the revision of the pay scale w.e.f. 1.1.1986 is the relevant grade for determining the seniority under para 320 of the IREM, it is necessary to determine their corresponding pre-revised pay scales. For this, we have to look at the Central Civil Services (Revised Pay) Rules, 1986 contained in Swamy's Compilation of CCS Revised Pay Rules (1989). It appears from First Schedule to these rules that both the pay scales of Rs. 330-530 and Rs. 330-560 were merged into a revised pay scale of Rs. 1200-2040. On the other hand, pre-revised pay scale of Rs. 260-430 which the R3 had enjoyed from 8.1.69 to 30.1.83 was revised to Rs. 975-1540. Thus for computation of total length of continuous service the relevant date in respect of R3 will be 31.1.1983 from which date he got promoted and started drawing the pay scale of Rs. 330-560. From 8.1.1969 when he was appointed as Goods Clerk in the pay scale of Rs. 260-430 to 31.1.1983 his replacement scale was not the equivalent pay scale of Rs. 1200-2040. We, therefore, find that the length of continuous service in the relevant grade was longer in the case of applicant since he started drawing the pre-revised corresponding scale of Rs. 330-530 w.e.f. 10.2.1982 whereas R3 was getting corresponding pre-revised pay scale of Rs. 330-560 only from 31.1.1983.

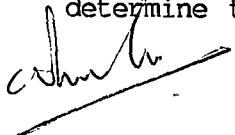
11. The learned counsel for the applicant also argued that matters like seniority and pay scales which are well settled should not be unsettled after a long gap. It appears that there is substantial substance in this argument as far as this case is concerned. The final panel was published on 7.6.1990 and it was sought to be modified through the impugned order Ann. Al dated 23.3.1998 i.e. after a gap of almost 8 years. In this intervening period a number of communications like eligibility list etc. as



also the provisional seniority list have been issued in all of which the applicant has been shown senior to R3. Further, the applicant appears to have also been regularly promoted to the post of IHER Gr. I vide order dated 28.12.1995 (Ann.A12). It is true that R3 was also agitating against his name on the panel having been kept at Sl.No.2 vis-a-vis the applicant but the respondents first rejected his representation and then took such a long time to order modification in the panel dated 7.7.1990. The applicant cannot be held responsible for so much time having been taken by the respondents in modifying the panel even if it was on justifiable grounds.

12. The Railway Board's circular dated 18.9.1969 (copy at Ann.A33) is also sought to be relied upon by the respondents. We have perused this circular and find that its subject relates to "procedure for filling up selection posts - non gazetted". It indicates relevant weightage to be given to various factors like professional ability etc. etc. We, therefore, find that this circular is of no help to the respondents. In any case, for promotion to IHER Gr.III, a written examination appears to have been held and on the recommendation of the selection committee, the applicant was placed in the merit (seniority) at Sl.No.1 and R3 at Sl.No.2.

13. The learned counsel for the applicant has brought to our notice the decision dated 25.1.1997 of this Bench in OA No. 592/90. It appears that the Govt. respondents therein had themselves claimed that para 303 and 321 of IREM are relevant for determining the seniority when the post of Welfare Inspector in that case was filled up by employees coming from different seniority units as in the present case. We find that para 303 relates to seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority and is not, therefore, applicable in the present case. However, as already discussed, para 320 appears to be the relevant rule which should be applied to determine the inter-se seniority of the applicant and R3. It also appears



from the said decision that the Tribunal had observed from the notice inviting the applications that persons holding posts one grade below and those holding posts two grades below the grade of Welfare Inspector were eligible for being considered for appointment as Welfare Inspector. In the present case the notice inviting applications (Ann.A2) only mention that employees who have rendered 5 years of regular service in the pay scale of Rs. 1200-2040 are eligible. The pay scale of Rs. 330-530 and Rs. 330-560 having been merged into a common pay scale of Rs. 1200-2040 w.e.f. 1.1.1986, the pre-revised pay scales of Rs. 330-530 and Rs. 330-560 are required to be taken as satisfying the eligibility conditions as far as pay scale is concerned. As already discussed above taking into consideration these two pre-revised pay scales, which merged into Rs. 1200-2040 on revision, it appears that the applicant was enjoying it for a larger length of continuous service w.e.f. 10.2.1982 as compared to R3 who started enjoying the corresponding pay scale of Rs. 330-560 only from 31.1.1983. We, therefore, come to the conclusion that in a case like this, where selection has been made from amongst candidates belonging to different seniority units it is the rule incorporated in para 320 of the IREM which is applicable and total length of continuous service in the lower (feeder) grades, as also held by this Bench of this Tribunal in OA No.592/90 decided on 25.11.1993, is what matters in determination of inter-se seniority.

14. The learned counsel for the official respondents cited the case of M.P.Singh, Deputy Superintendent of Police, CBI and Ors. v. Union of India and ors. reported in (1987) 3 ATC 48 but we find that it is completely distinguishable. Another authority cited was Dinkar Anna Patil and anr. v. State of Maharashtra and ors., 1999 SCC (L&S) 216 wherein the Apex Court had held that challenging a seniority list before the Tribunal in 1994, when the seniority list was published in 1991, 1993 and 1994 did not suffer from delay and laches but this ruling is also of no help to the respondents since the cause of action for the applicant arose only on

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23.3.1998 when the rank of the applicant was downgraded to Sl.No.2 and his approaching this Tribunal through this OA was thus well within limitation.

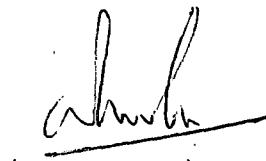
15. We, therefore, come to the conclusion that in a case like this where the selection has been made from amongst candidates belonging to different seniority units, it is the rule incorporated in para 320 of the IREM (Vol.I) which is applicable. The respondents have neither mentioned that this rule was taken into consideration while issuing the impugned order dated 23.3.1998 (Ann.A1) changing the seniority positions nor contended that this rule was not applicable. In fact, in OA No. 592/90 decided by this Bench of the Tribunal on 25.11.1993, which also related to a case of selection from various seniority units, the respondents had submitted that rule 320 was applicable. It was also held in the aforementioned order that the total length of continuous service in the lower grade was what matters. In this case we have found that the total length of continuous service in the qualifying grade of Rs. 1200-2040, inclusive of corresponding pre-revised grades of Rs. 330-530 and Rs. 330-560 (which were merged into the revised common grade of Rs. 1200-2040) was greater in the case of the applicant and, therefore, he was correctly placed at Sl.No.1 vis-a-vis R3, in the panel dated 7.6.1990. We are also of the opinion that in this particular case, things settled for long should not be allowed to be unsettled, especially because of the fact that in the intervening period of almost eight years, a large number of orders/seniority lists/communications were issued by the government respondents always showing the applicant as Sl.No.1 and respondent No.3 at Sl.No.2 and the applicant was even regularly promoted to IHER Grade-I.

16. In view of the facts and circumstances of the case and the legal position as discussed above, we come to the conclusion that modification of the panel dated 7.6.1990 (Ann.A3) by the impugned order dated 23.3.1998 (Ann.A1) is not sustainable. The impugned orders dated

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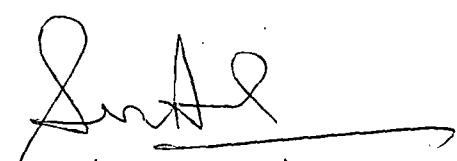
23.3.1998 (Ann.A1) and 16.3.1998 (Ann.A1/A) are, therefore, set-aside and quashed. The panel published vide order dated 7.6.1990 (Ann.A3) is declared to be suffering from no infirmity and should be implemented by the respondents.

17. The OA is accordingly allowed with no order as to costs.



(N.P. NAWANI)

Adm. Member



(S.K. AGARWAL)

Judl. Member