

(Reserved on 08.05.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD**

This the 25th day of *May, 2018*.

HON'BLE DR MURTAZA ALI, MEMBER- J.

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A.

Original Application Number. 330/01729/2015

1. Raj Kumar Singh, S/o Late Dhaneshwar Prasad Singh, R/o Quarter No. 1252B, Manas Nagar, Mughalsarai.
2. Mohd. Arif Farooqi S/o Shri Mohd. Usman Farooqi, R/o Quarter No. 20/J.II, Diesel Colony, Mughalsarai.
3. Jayant Kumar, S/o Dharm Nath Prasad, R/o Quarter No. 1285/K, Manas Nagar, Mughalsarai.
4. Mittan Chaudhary, S/o Late Husaini Chaudhary, R/o Quarter No. 1274/D, Manas Nagar, Mughalsarai.
5. Prakash Bek, S/o Shri Anthony Bek, R/o Quarter No. 71C/I, Diesel Colony, Mughalsarai,
6. Dukhan Hansda, S/o Late Shoman Hansda, R/o Quarter No. 1448/D, Manas Nagar, Mughalsarai.
7. Tufani Ram, S/o Shri Lal Ji Ram, Quarter No. 419, Q.R Loco Colony, Mughalsarai.
8. Sunil Kumar Sinha, S/o Late J.N. Lal, R/o Quarter No. 686 F, Yuropian Colony, Mughalsarai.
9. Samit Saiman, S/o Maurish Saiman, R/o Village Pakri Mission Road, Post Ara, District Bhojpur (Bihar).

10. Ram Autar Ram, S/o Late Parahu Ram, R/o Village and Post Kori, District – Chandauli.
11. Om Prakash Narain, S/o Shri Mahadev Ram, R/o Village Sahjaur, Post Surhana, District Chandauli.
12. Arun Kumar, S/o Shri Ram Avtar, R/o 5-9/369 B-3-B, Basti, Pandeypur, Varanasi.
13. Rajesh Kumar, S/o Shri Ram Sagar Chaudhari, R/o
14. Chandra Dev Rajak, S/o Shri Shiv Varat Rajak, R/o Quarter No. 835/C, New Central Colony, Mughalsarai.
15. Rama Shankar Pal, S/o Shri Haridas Pal, R/o Quarter No. Out House, 75 D.E., Yuropian Colony, Mughalsarai.
16. Mithilesh Kumar Sharma, S/o Shri Jagdish Prasad Sharma, R/o 113/1, Parahupur, Mughalsarai.
17. Vijendra Prasad, S/o Late Ram Ratan Prasad, R/o 695/C, Hapar Colony, Mughalsarai.
18. Kamlesh Kumar Dwivedi, S/o Late Shri Bhupendra Nath Dwivedi, R/o Quarter No. 943/C, Shashtri Colony, Mughalsarai.
19. Gautam Tiwari, S/o Late Shri Bachchan Tiwari, R/o Quater No. 1264/D, Manas Nagar, Mughalsarai.
20. Pradeep Kumar, S/o Late Vishwanath Prasad, R/o Quarter No. 1495/A, Manas Nagar, Mughalsarai.
21. Bhuwaneshwar Nath Tiwari, S/o Shri Janardan Tiwari, R/o Quarter No. 1172/C.D, New Shastri Colony, Mughalsarai.
22. Shiv Prakash Singh, S/o Shri Briju Singh, R/o 1287/G, Manag Nagar, Mughalsarai.
23. Laxmi Ram, S/o Shri Tapeswar Ram, R/o Hapar Colony, Q. No. 608/B, Mughalsarai.
24. Santosh Kumar Dubey, S/o Shri late Vindhyawasini Dubey, R/o H. No. S-9/183, New Basti, Pandeypur, Varanasi.

25. Parimal Singh, S/o Late Pooran Chandra Singh, R/o Loco Colony, 153B, Gaya, PS Gaya, District – Gaya.
26. Moti Ram, S/o Late Kailash Ram, R/o Village Sarai Pakwan, Post Keshavpur, District – Chandauli.
27. Ashok Pathak, S/o Late Prasa Nath Pathak, R/o Indian Institute Colony, H. No. 480 AB, Mughalsarai.
28. Shambhu Pathak, S/o Shri Ratneshwar Pathak, R/o H. No. 838 C, New Central Colony, Mughalsarai.
29. Jai Kishore Jha, S/o Late Sukhdev Jha, R/o H. No. 1075D, Hapur Colony, Mughalsarai.Applicants.

VER S U S

1. Union of India through the General Manager, East Central Railways, Hajipur (Bihar).
2. Chief Personnel Officer, East Central Railways, Hajipur (Bihar).
3. Divisional Railway Manager, East Central Railways, Mughal Sarai.
4. Senior Divisional Personnel Officer, East Central Railway, Mughalsarai, District - Chandauli.
5. Sanjay Kumar Gupta, S/o Shri R.S.P. Shah, R/o Quarter No. 12/79-A, Manas Nagar, Mughal Sarai.
6. S.K. Singh, S/o Shri P.N. Singh, District Bhojpur (Bihar).
7. Chandra Bhan Singh, S/o Late Sudarshan Singh, R/o Quarter No. 1177, Shastri Colony, Mughal Sarai, District – Chandauli.
8. Munna Prasad Sarai, District Chandauli.
9. Ashit Kumar Dey, S/o Shri G.C. Dey, R/o New Mahal, Mughalsarai, District – Chandauli.
10. Vijya Pratap Singh, S/o Shri R.B. Singh, R/o Manas Nagar, Mughalsarai, District – Chandauli.
11. Virendra Pratap Singh, S/o Shri R.B. Singh, R/o Ravi Nagar, Mughalsarai, District Chandauli.
12. N.K. Mishra, S/o Shri Basant Mishra, R/o New Mohal, Mughal Sarai, District Chandauli.
13. Md. Hshique Fitter Grade-III, U/Sr. DEE/TRS/E.C. Railway, Mughalsarai.

14. Ainul Huda, Fitter Grade-III, U/Sr. DEE/TRS/E.C. Railway, Mughalsarai.
15. Ad. Khalique, Fitter Grade-III, U/Sr. DEE/TRS/E.C. Railway, Mughalsarai.
16. Gautam Kumar Chakravarty, Fitter Grade-III, U/Sr. DEE/TRS/E.C. Railway, Mughalsarai.
17. Direndra Kumar, Fitter Grade-III, U/Sr. DEE/TRS/E.C. Railway, Mughalsarai .
18. Bashistha Narain Pandey, Fitter Grade-III, U/Sr. DEE/TRS/E.C. Railway, Mughalsarai.
19. Pradeep Kumar Ganguly, S/o Late B. Ganguly.
20. Md. Sahabuddin , S/o _____.
21. Deo Nath Singh, S/o Late Ram Naresh Sigh.
22. A.K.P. Srivastava, S/o
23. Binod Kumar Singh, S/o B.B. Singh
24. Ram Lakhan Prasad, S/o Late P. Prasad
25. S. Chaubey, S/o B. Chaubey
26. Ram Krit Ram, S/o Ram Nayayan
27. Surya Nath, S/o Jawahar Lal
28. Suresh Prasad
29. Keshav Paswan
30. Ram Chandra Ram S/o Bahadur Ram
31. Bijayendra Kumar, S/o B.N. Kuwar
32. Arvind Kumar Mishra, S/o N. Mishra
33. Ram Charan, S/o Baiju Pal
34. S.K. Shukla, S/o Late K.N. Shukla
35. Brij Kumar Singh, S/o Nathuni Pd. Singh
36. Hanuman Gupta, S/o Ram Pratap
37. Raj Kumar Singh, S/o Hajari P. Singh
38. Santosh Kumar S/o Jawahar Lal
39. Bibhuti Narayan Singh, S/o S.B. Singh
40. Radha Krishna Mishra S/o

41. Daya Kishor S/o N.J. Das
42. Ram Krishna Marmu, S/o N. Marmu
43. S.C. Vishwakarma, S/o late Samaru.

.....Respondents

Advocate for the applicants : Shri R.K. Dixit

Advocate for the Respondents: Shri Navin Chandra Srivastava
Shri S.K. Mishra
Shri Chandan Sharma

ORDER

DELIVERED BY: HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A

The applicants have filed the instant OA for quashing of the impugned seniority list dated 10.11.2015 (Annexure A-1 to the O.A) and notification dated 15.09.2016 (Annexure A-1/A to the O.A) with prayer to direct the respondents to assign correct seniority of the applicants.

2. The facts of the case, as per the O.A, are that the applicant were initially appointed as ITI pass Class IV employees in TRS Section of Electric Branch of Mughalsarai Division of Eastern Railway. On implementation of 5th CPC, the Chief Personnel Officer, Eastern Railway issued Circular dated 28.09.1998 (Annexure A-2) regarding promotion of Group 'D' staff, serving against skilled posts in Electric Loco Sheds on percentage basis against Group 'C' Technical posts in pay scale Rs. 3050-4590. As per the above Circular dated 28.09.1998, 60% skilled grade of Rs. 3050-4590 in diesel / electric /EMU maintenance trade was to be filled by direct recruitment from whom who have completed Act Apprentice, ITI pass candidates and matriculates, 20% from serving semi skilled and unskilled staff with three years of regular service with educational qualification as laid down under the Apprenticeship Act and 20% by promotion of staff in the lower grade as per prescribed

procedure. The above Circular did not mention to fill up Class III skilled posts of Grade Rs. 3050-4590 by matriculates in service of skilled or semi skilled Class D posts nor does it lay down the procedure to decide the interse seniority between the staffs promoted to class III posts from three streams.

3. The applicants having qualification of High School with ITI / Act Apprentice are eligible to be considered for promotion in skilled grade Rs. 3050-4590 and they were called for trade test vide letter dated 31.05.1999 (Annexure A-3). It is stated that the candidates having qualification of High School pass made representation to consider them for promotion in skilled grade, which was rejected vide order dated 11.06.1999 (Annexure A-4) of the respondents. But the Chief Personnel Officer, Eastern Railway, Calcutta vide letter dated 01.07.1999 (Annexure A-5) clarified that ITI or course completed Act Apprentices or matriculates are eligible for promotion. Thereafter, Assistant Personnel Officer, Mughalsarai issued promotion order dated 11.11.1999 (Annexure A-6) promoting non-eligible Khalasies, who were only matriculates ignoring the order dated 11.06.1999 (Annexure A-4). The respondent No. 3 sought opinion vide letter dated 24.07.2000 (Annexure A-7) from respondent No. 2 regarding reversion of non-eligible persons promoted in skilled grade as Fitter. But instead of taking any action on this reference, the respondents published a seniority list dated 11.09.2003 (Annexure A-8) placing the applicants below the non-qualified and illegally promoted candidates as well as others who were earlier juniors.

4. It is further stated that the respondent No. 3 without any opinion regarding reversion of the ineligible persons, invited them for trade test for the post of Fitter Grade-II in restructuring of Cadre vide letter dated 05.03.2004 (Annexure A-9). Thereafter, O.A No. 1301/2003 was filed by Shri Sanjay Kumar Gupta & others where this Tribunal vide order dated 08.04.2011 (Annexure A-11), quashed the seniority list dated 11.09.2003 and order dated 05.03.2004 and directed the respondents to recast the seniority position in respect of promoted employees. The respondents considered the case of the applicants of O.A No. 1301/2003, but vide letter dated 25.07.2014 (Annexure A-12), rejected the claim of the applicants without considering the order of this Tribunal dated 08.04.2011 on the ground that the order of the Tribunal was not a judgment in rem, but it was personam. Thereafter, the applicants preferred a representation dated 17.11.2014 (Annexure A-14) to the Divisional Railway Manager, East Central Railway, Mughalsarai. Having received no response, the applicants filed O.A No. 1732/2014 and 896/2015.

5. During pendency of these two OAs, the respondents issued order dated 22.05.2015 (Annexure A-15) giving them the benefit of order passed in O.A No. 1301/2003 to the applicants of the said O.A, but ignoring the right of the applicants being senior to the applicants of O.A No. 1301/2003. Aggrieved, the applicants preferred representation dated 02.06.2015 (Annexure A-16) on the ground that they are getting less pay than their juniors i.e. private respondents because of wrong fixation of seniority. Despite these facts, the respondents issued impugned seniority list dated 10.11.2015 (Annexure A-1) showing the

junior persons, above the applicants . Thereafter, the applicants preferred another representation dated 10.11.2015 (Annexure A-18). As they did not receive any response, the instant O.A has been filed. During pendency of this O.A, the respondents issued treating provisional seniority list as final and issued notification dated 15.09.2016 (Annexure A-1/A) for making promotion to the post of Senior Technician in Mughalsarai Division, East Central Railway by non-selection method on the basis of seniority –cum-suitability without finalizing the provisional seniority dated 10.11.2015.

6. The official respondents have filed the Counter Reply stating that a panel of skilled artisan (Tech. Gr. III) in pay scale of Rs. 3050-4590 was prepared vide order dated 12.11.1999. In this panel, the candidates having qualification of course completed Act Apprentice / ITI passed/ Matriculates were considered eligible in terms of para 159 of IREM Vol. I (Edition 1989) and Railway Board's letter dated 28.09.1998. The seniority list of these candidates was published on 11.09.2003. In the meanwhile, the Railway Board issued RBE No. 17/2000 dated 28.01.2000, according to which the educational qualification for recruitment to the post of skilled Artisan was fixed as course completed Act Apprentice / ITI pass. It is submitted in the Counter that this circular dated 28.01.2000 is not applicable in the case of seniority list dated 11.09.2003 in respect of those who have been empanelled on 12.11.1999 and their seniority was prepared on the basis of their joining in Grade 'D' as per seniority.

7. It is also stated that case of Shri S.K. Gupta and others, who were course completed Act Apprentice/ITI pass, was considered in compliance of the direction of Hon'ble Tribunal and on the basis of

revised seniority, their seniority has been assigned in the category of Tech. Grade I and published on 10.11.2015 subject to out come of Civil Misc. Writ Petition No. 34704/2012 filed against the order of the Tribunal dated 08.04.2011 in O.A No. 1301/2003. It is further stated that the seniority list dated 10.11.2015 has been issued on the basis of seniority list dated 11.09.2003 which is provisionally corrected in compliance of the order of this Tribunal , according to which the applicants became junior to S.K. Gupta and 7 others.

8. The respondent Nos. 5 to 12 have filed a separate Counter Affidavit. It is stated that they had filed O.A No. 1301/2003, which was allowed by this Tribunal vide order dated 08.04.2011 setting aside the seniority list dated 11.09.2003. Since the order of the Tribunal was not complied with, the filed CCP No. 65/2012 was filed and during pendency of the CCP, the respondents passed the order dated 20.02.2014 giving them the benefit of seniority. It is also stated that the seniority list was issued in the year 2003 whereas this O.A has been filed in the year 2016. Hence, as per the settled law, the seniority cannot be resettled at this belated stage. It is also stated that the applicants have not challenged the earlier seniority list dated 11.09.2003.

9. The respondent Nos. 19 to 44 have also filed Counter Reply. It is stated that they are the senior most Technician Gr. I and they have been placed in the seniority list dated 10.11.2015 from serial No. 1 to 26 in the seniority list and there is no dispute about their seniority raised by the applicants in the O.A. They were called for trade test for the post of Senior Technician Gr. I in which they appeared but the result has not been declared due to the interim order dated 28.09.2016 which was

passed ex-parte. It is further stated, that since the entire seniority list has not been disputed as the main dispute is between the applicants and respondent Nos. 5 to 18, the notification dated 15.09.2016 may be allowed to be given effect in respect of the respondent Nos. 19 to 44.

10. In the Rejoinder filed by the applicants against the counter filed by the official respondents, it is stated that respondent Nos. 5 to 12 who are placed in the seniority list dated 10.11.2015 (Annexure A-1) and they are junior to the applicants. In the Rejoinder, the applicants have cited following judgments in support of their case: -

- i. AISLJ (I) 1998 (1)54 – K.C. Sharma & Ors. Vs. UOI & Ors.
- ii. 2001 SCC (L&S) 89 – Technical Employees' Association of Railways and another Vs. Ministry of Railways and others.

11. The official respondents filed a Supplementary Counter Affidavit in which it is stated that Shri S.K. Gupta and 7 others (who are respondent Nos. 5 to 12 in the O.A) have been assigned seniority position as per orders of this Tribunal in O.A No. 1302/2003 subject to the decision of in Civil Misc. Writ Petition No. 34704/2012 pending before Hon'ble High Court , Allahabad. Accordingly, the seniority list dated 10.11.2015 was issued provisionally showing the position of the respondent No. 5 to 12 as per order of this Tribunal dated 08.04.2011 and this is subject to Writ Petition No. 34704/2012 filed by the official respondents. It is also stated that the seniority of the applicants has been assigned based on their seniority as per the panel of Tech III (Fitter) as per order No. 910 dated 12.11.1999 (Annexure 1 of the Suppl. Counter).

12. The official respondents have filed a Short Counter Reply on 01.05.2018 stating that the provisional seniority list has been finalized and it was published on 22.12.2017 (Annexure-1 of the Short Counter Reply)

13. We have heard Shri R.K. dixit, learned counsel for the applicants and Shri Navin Chandra Srivastava, learned counsel for respondent Nos. 1 to 4 and Shri S.K. Mishra, learned counsel for respondent Nos. 19 to 44. We has also perused the pleadings.

14. The applicants' counsel submitted that without finalizing the seniority of the applicants, the promotion is being affected by the respondents basing on a defective seniority list. In the recent seniority list, some of the respondents who are juniors to the applicants have been shown as senior to the applicants in the seniority list without any justification. It is also submitted that, as stated in para 8 of the counter of respondent Nos. 19 to 44, they are matriculates, they were not eligible for promotion as per Railway Board instructions dated 28.01.2000, hence as per order of this Tribunal in O.A No. 1301/2003, seniority of the respondent Nos. 5 to 12 was fixed higher than the matriculates. In this O.A, the applicants are ITI passed candidates and they were senior to the respondent Nos. 5 to 12. Learned counsel also cited the following judgment in support of applicants' case: -

- i. SCC 2017 (3) 311 – Sunaina Sharma & Ors. Vs. State of Jammu and Kashmir & ors.
- ii. AIR 1997 SC 108 – I.C.A.R & Anr. Vs. T.K. Suryanarayan & Ors.

15. Learned counsel for the official respondents reiterated the stand in the pleadings. Shri S.K. Mishra, learned counsel for the respondent Nos. 19 to 44 submitted that there is no dispute with applicants with regard to seniority as the respondent Nos. 19 to 44 are senior to the applicants, who were included in the promotion panel dated 12.01.1999 which was not affected by the Railway Board's instructions dated 28.01.2000 as stated in para 7 of the counter reply filed by the official respondents in this case.

16. We have considered the pleadings and submissions of the parties. The issue in this case is whether the respondents have correctly fixed the seniority of the respondent Nos. 5 to 12 in accordance with the order dated 08.04.2011 of this Tribunal (Annexure A-11).

17. The applicants have taken following main grounds in the O.A: -

- i. The respondents have not implemented the order dated 08.04.2011 in OA No. 1301/2003 under which the ITI passed Act Apprentice candidates should have been placed higher in the seniority list compared to matriculate candidates while recasting the seniority list as per the direction of the Tribunal. But instead of doing so, the respondent Nos. 5 to 12 have been simply placed above the private respondents in O.A No. 1301/2003 in the seniority list, adversely affecting the applicants because in that process, applicants have become junior to the respondent Nos. 5 to 12, who are admittedly their juniors in service. The seniority list dated 10.11.2015 is provisional and before finalizing the said seniority list after disposing of the representations of the

applicants, any promotion based on such provisional seniority would be illegal.

ii. The respondents have implemented the reservation quota in promotion in contravention to the judgment of Hon'ble Apex Court in the case of M. Nagaraj & others Vs. Union of India and Others – 2007 (1) SCC (L&S) 1013. For this reasons as well as the reason at (i) above, the notification dated 15.09.2016 (Annexure A-1/1) is illegal.

18. Admittedly, the seniority list dated 10.11.2015 (Annexure A-1) is provisional and it has been prepared to implement the order dated 08.04.2011 of this Tribunal in O.A No. 1301/2003 where the following directions were given to the respondents: -

“14. Learned counsel for the respondents does not have much to submit on the above contention. Under these circumstances, we are firmly of the view that the respondents at serial Nos. 4 to 11 do not possess requisite qualification for being promoted to the grade Rs. 3050-4590. Under these circumstances, they cannot be en-masse Senior to the applicant.

15. Accordingly, the impugned order (Annexure A-1) stand quashed and to be recast. In that the respondents are directed to assign the seniority to the applicants above private respondents at Sl. No. 4 to 11. Similarly, for the same reasons of lack of qualification of the private respondents the impugned letter dated 5.2.2004 for the trade test for the post of Fitter Grade II seniority list also stand quashed and is to be recast in view of directions given by us in the order within three months of receipt of this order.”

19. Specific issue on which the finding was given in the order dated 08.04.2011 related to the seniority of the applicants in that O.A, who are respondent Nos. 5 to 12 in this O.A, vis-à-vis the private respondents in O.A No. 1301/2003. The respondents in order to implement the order dated 08.04.2011 have simply placed respondent Nos. 5 to 12 together just above the respondent No. 4 in OA No. 1301/2003, while issuing the

provisional seniority list dated 10.11.2015 (Annexure A-1). Subsequently, vide short counter affidavit dated 01.05.2018, it is submitted by the respondents that the seniority list dated 10.11.2015 has been finalized vide the list dated 01.12.2017, copy of which was annexed to the short counter. It is seen that this list dated 01.12.2017 is virtually same as list dated 10.11.2015, which is impugned in this OA. Therefore, technically the seniority list dated 10.11.2015 at Annexure A-1 to this OA has already been replaced by the respondents vide seniority list dated 01.12.2017, which has not been challenged in this O.A. It is not known whether the representation submitted by the employees objecting to the provisional seniority list to the respondents within time as stated in the letter dated 10.11.2015 (Annexure A-1) have been disposed of by the respondents or not while issuing the seniority list dated 01.12.2017. It is also stated by the official respondents in their counter that incorporation of S.K. Gupta and 07 others (respondent No. 5 to 12 in this O.A) in the seniority list is in pursuance to the order dated 08.04.2011 of this Tribunal, which has been challenged by the official respondents before Hon'ble High Court, Allahabad in writ petition No. 34704/2012. Therefore, the position of the respondent Nos. 5 to 12 in the seniority list of 10.11.2015 is provisional subject to outcome of the writ petition No. 34704/12, as stated in para 26 of the counter filed by official respondents.

20. It appears to us that while finalizing the seniority list dated 10.11.2015 or 01.12.2017, the respondents have not considered the objections filed by the applicants about their seniority vis-à-vis the seniority of respondent Nos. 5 to 12. Another representation filed by the

same applicants before the official respondents claiming seniority above matriculate employees, was rejected vide letter dated 25.07.2014 (Annexure A-12) stating therein the following: -

“The said order of Hon’ble CAT/ALD dt. 08.04.2011 has been challenged vide Writ Petition No. 34704/2012 in the Hon’ble High Court/ALD on the ground that the panel dated 12.11.1999 was based on CPO Sl. No. 203/98 (Railway Boards L. No. PC-V/97/1/11/7 dt. 28.09.98) applicable at the material time and seniority was correctly assigned on the basis of the panel dated 12.11.1999. Since the panel dt. 12.11.1999 was formed prior to RBE No. 17/2000 dated 28.01.2000, it was appropriate and as per rule to not apply provisions of RBE No. 17/2000 dated 28.01.2000, while forming the seniority list of candidates empanelled on 12.11.1999. It is pertinent to mention that RBE No. 17/2000 dated 28.01.2000 pertains to educational qualifications and not to the principle for assigning seniority to candidates of a particular panel. Further, the said RBE No. 17/2000 dated 28.01.2000 came into effect after the said panel dated 12.11.1999. As such the seniority of candidates in the panel dated 12.11.1999, irrespective of the time of publication of the seniority list, will not be in the ambit of RBE No. 17/2000 dt. 28.01.2000.

Though, the Hon’ble CAT/ALD order dated 08.04.2011 in O.A No. 1301/2003 in case of Shri S.K. Gupta and others have been complied during pendency of contempt of court case no. CCPA 65/12 subject to outcome of writ petition no. 34704/2012 filed before Hon’ble High Court/ALD under special circumstances, the said order of Hon’ble CAT/ALD dated 08.04.2011 has not been accepted as policy because the seniority list published on 11.09.2003 is as per extant rules prevailing at the time of formation of the panel dated 12.11.1999.”

On the ground, as stated above, the claim of ITI passed candidates to be placed above matriculate employees in the seniority list was rejected. However, this letter dated 25.07.2014 has not been challenged in this O.A.

21. The contention of the applicant in para 4.20 and 4.21 of this OA that the respondent Nos. 5 to 12 are junior to them, has not been contradicted either by the official respondents or by the respondent Nos. 5 to 12 in their pleadings. So, the official respondents while implementing the order dated 08.04.2011 passed by this Tribunal have

created an anomalous situation, where the ITI pass employees (i.e. respondent Nos. 5 to 12) who were earlier junior to the applicants, have now been placed senior to them in the seniority list vide the order dated 22.05.2015 (Annexure A-15) of the respondents, for which the erstwhile seniors have become juniors without any specific order of the Tribunal or in absence of any specific rule in this regard.

22. Learned counsel for the applicants has cited the case of Sunaina Sharma & Ors (Supra), which upheld the following principle: -

“16. On analysis of Rule 24 of the Civil Services Rules, it is apparent that as per this Rule the seniority of a person subject to the said Rules is to be determined by the date of first appointment to such service, class, category or grade, as the case may be. Therefore, it is apparent that only the service rendered in a particular service, class, category or grade can be taken into consideration and not the service rendered in some other service, class, category or grade while determining the seniority. Note-1 to the Rules also makes it clear that the date of first appointment shall mean the date of permanent appointment or the first appointment on probation on a clear vacancy. We have already held above that appointment on probation obviously envisages that the person is working against the said post in the particular service, class, category or grade.”

23. It may be seen that the above principle was laid down by Hon'ble Apex court with reference to J&K Civil Service (CCA) Rules 1956 holds good for other services also unless the service rules applicable to the employees provide a different criteria. Applying this principle, the applicants having joined service earlier to the respondent Nos. 5 to 12, are senior to them which is not disputed in this case. But the seniority list dated 10.11.2015 is against the principle, hence it is not sustainable.

24. Learned counsel for the applicants also submitted another judgment of Hon'ble Apex Court in the case of ICAR & another (Supra). In this case, the Hon'ble Apex Court has held that the promotion should

be given in accordance with statutory rules. If some of the employees have been promoted wrongly contrary to the rules, the others cannot claim the similar benefit. It was held as under: -

“8. We are, however, unable to accept the submission made by the learned counsel appearing in both these SLPs. Even if in some cases, erroneous promotions had been given contrary to the said Service Rules and consequently such employees have been allowed to enjoy the fruits of improper promotion, an employee cannot base his claim for promotion contrary to the statutory Service Rules in law courts. Incorrect promotion either given erroneously by the department by misreading the said Service Rules or such promotion given pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory Service Rules. In a court of law, employees cannot be permitted to contend that the Service Rules made effective of 1st October, 1975 should not be adhered to because in some cases erroneous promotions had been given. The statutory Service Rules must be applied strictly in terms of the interpretation of Rules as indicated in the decision of Three Judges Bench in this Court in Khetra Mohan's case 1994 AIR SCW 4154.”.

Applying the above ratio to the present case, the promotion and seniority of the employees should be strictly as per the Rules applicable for the Railways. There is a violation of the rules in the seniority list dated 10.11.2015 since the applicants have been shown junior to the respondent Nos. 5 to 12 in absence of any specific rule or direction of a competent court of law.

25. Regarding the ground that the case of the seniority of the applicants should have been decided as per the order dated 08.04.2011, it is seen that the respondents have challenged the said order in Hon'ble High Court and have implemented the decision by provisionally fixing seniority of respondent no. 5 – 12 subject to outcome of the Writ Petition filed against order dated 08.04.2011. In other words, the order dated 08.04.2011 is disputed as on date. Moreover, the order dated 27.05.2014 which has been passed by the respondents rejecting the representation

to fix seniority of other similarly placed employees as per order dated 08.04.2011, has not been challenged in this OA. Hence, no direction can be given to the respondents to extend the benefit of order dated 08.04.2011 to the applicants, who are similarly placed as the applicants in OA No. 1301/2003.

26. The counter filed by the respondents no. 5-12 have raised an issue of delay on the part of the applicants in raising their grievances. This is not acceptable, since the cause of action for the applications have arisen after publication of the seniority list dated 10.11.2015 while implementing the order dated 08.04.2011 of this Tribunal, adversely affecting the applicants as their juniors have been shown as their seniors. Hence, there is no delay on the part of the applicants in filing the OA.

27. Regarding the issue of allowing the benefit of reservation in promotion, it is noticed that the Railway Board instructions permitting such reservation have not been challenged in this OA. As long as those instructions are in force, no relief can be granted to the applicants on this issue.

28. It is seen that the seniority list dated 10.11.2015 (Annexure A-1) has already been modified by the respondents and now the seniority list dated 01.12.2017 is in force as submitted by the official respondents in their short counter affidavit dated 01.05.2018. Further, the seniority list dated 01.12.2017 is not under challenge in this OA.

29. In the circumstances as discussed above, we dispose of this OA with direction that if the applicants are aggrieved with the seniority list

dated 01.12.2017, they may file a fresh comprehensive representation to the respondent no.1/competent authority showing detailed justifications in support of their claim for seniority as reflected in the seniority list dated 01.12.2017 (Annexure -1 to the Short Counter Reply filed by respondents) vis-à-vis the respondent Nos. 5 to 12 as well as other employees and if such a representation is received within one month of receipt of a copy of this order, then the respondent No. 1 / competent authority shall dispose of the same by a reasoned and speaking order within a period of three months from the date of receipt of such a representation, copy of which shall be communicated to the applicants.

No costs.

(GOKUL CHANDRA PATI)
MEMBER-A

(DR. MURTAZA ALI)
MEMBER-J

Anand...