

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

T.A.NO.126 OF 2013

New Delhi, this the 4th day of December, 2015

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
&**

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

.....

1. Shri Y.S.Chaudhary,
s/o Sh.Ram Rup Chaudhary,
R/o C-104, Rail Vihar, Sector-3,
Vasundhara, Ghaziabad (UP),
Working as Dy.Chief Engineer (Construction),
Tilak Brij, New Delhi.
2. Shri S.R.Madke,
s/o Sh.Mahadeo Madke,
R/o K-01, Kavi Nagar, Ghaziabad, UP,
Working as Dy.Chief Engineer/General,
Kashmere Gate, New Delhi.
3. Shri Anal Kumar Bhowmik,
s/o Shri A.K.Bhowmik,
R/o Qtr.No.1-H, Railway Officers Colony,
New Alipore, Kolkata 38,
Working as Secretary to Pr.Chief Engineer, Eastern Railway,
Kolkata.
4. Shri B.K.Poddar,
s/o Shri Radharaman Poddar,
R/o 51/A, Adarsha Colony,
Maligaon, Guwahati,
Working as Dy.CE/Safety,

N.F.Railway, Guwahati.

5. Shri S.K.Roy,
s/o late N.B.Roy,
R/o RB-IV, 367/1, Officer& Colony,
Civil Line,Jabalpur,M.P.,
Working as Sr.Div.Safety Officer,
Bhopal, M.P.
6. Shri K.K.Jain,
s/o Sh.V.K.Jain,
R/o Bunglow No.115, Road No.4,
Dairy Colony, Gorakhpur, U.P.,
Working as Dy.Chief Engiener/Planning & Design,
North-East Railway, Gorakhpur, U.P.
7. Shri D.K.Ghulani,
s/o Sh.Din Dayal,
R/o FB-109, Mansarovar Garden,
New Delhi,
Working as Executive Engineer,
Planning & Design, HQTR Office,
Baroda House, New Delhi.
8. Shri Rana Bandyopadhyay,
s/o Shri S.K.Banerjee,
R/o Upasana, 1548, Mukundpur,
Kolkata,
Working as Dy.General Manager
(Project Rail Vikash Nigam Ltd., Kolkata)
9. Shri Pallabh Phouzder,
s/o Shri J.C.Phouzder,
R/o Flat No.2-J, Officers Colony,
New Alipore, Kolkata 038
Working as Dy.Chief Engineer/Con/PRD,
E.Railway, Kolkata.
10. Shri Ashwini Kumar Mondal,
s/o Shri D.C.Mondal,

R/o Qtr.No.1168D, Yule Road,
 Assansol, West Bengal,
 Working as Divisional Engineer/Track,
 Assansol, W.B.

11. Shri Devasish Baksi,
 s/o Shri S.K.Baksi,
 R/o B-39, Amravati,
 PO-Sodepur, Kolkata,
 Working as Sr.Engineer,
 Eastern Railway

1 . Applicants

(By Advocate: Ms.Jyoti Singh)

Vs.

Union of India,
 through its Secretary,
 Ministry of Railways,
 Rail Bhavan,
 New Delhi

1 1 1 .. Respondents

(By Advocate: Mr.Rajinder Nischal)

1 1 1 1

ORDER

RAJ VIR SHARMA, MEMBER(J):

The applicants had filed W.P. (C) No. 3503 of 2010 before the Hon'ble High Court of Delhi, praying for the following reliefs:

1. Issue a writ of mandamus directing the respondents to implement the judgment of the Hon'ble Supreme Court in Civil Appeal bearing No.92/1997 dated 23.9.02 and direct the respondents to give effect to the Notification of the Railways to

release the 238 additional vacancies which were allotted to the Civil Engineering Department by Railway Board and approved by the UPSC.

2. Issue a writ of mandamus directing the respondents to fill the said vacancies from the date of Notification so that the respondents and other belonging to the Civil Engineering Department are given their due promotions with consequential benefits of seniority and emoluments.
3. Pass such other order(s) as this Hon^{ble} Court may deem fit and proper.ö

1.1 The Hon^{ble} High Court of Delhi, vide its order dated 23.10.2013, transferred the said W.P. (C) No. 3503 of 2010 to this Tribunal, as the dispute pertains to service conditions of employees of the Union of India. Accordingly, the said W.P. (C) No.3503 of 2010, on transfer, was registered as T.A. No.126 of 2013 on the file of the Tribunal.

2. The brief facts of the applicants' case are as follows:

2.1 The applicants have been working in the Civil Engineering Department of the Railways.

2.1.1 Applicant no.1 had initially joined as Inspector of Works. He was promoted to Group -B⁰ Gazetted post with effect from 5.10.1989, as Senior Executive Engineer, Group -A⁰ with effect from 14.1.2005, and as Deputy Chief Engineer on ad hoc basis with effect from 2.4.2007.

2.1.2 Applicant no.2 had initially joined as Inspector of Works. He was promoted to Group -B⁰ Gazetted post with effect from 18.10.1989, and to Group -A⁰ post with effect from 13.9.2002, and as Deputy Chief Engineer on ad hoc basis with effect from February, 2007.

2.1.3 Applicant no.5 had initially joined as Design Assistant. He was promoted to Group B_0 Gazetted post with effect from 29.10.1992, and to Group A_0 post with effect from 14.9.2006.

2.1.4 Applicant no.6 had initially joined as Permanent Way Inspector. He was promoted to Group B_0 Gazetted post with effect from 20.11.1990, and to Group A_0 post with effect from 14.1.2005.

2.1.5 Applicant no.7 had initially joined as Permanent Way Inspector. He was promoted to Group B_0 Gazetted post with effect from 10.12.1996, and to the post of Executive Engineer on ad hoc basis with effect from 25.1.2007.

2.2 In the year 1991, the Railway Board decided to allot additional number of vacancies for induction to Group A_0 posts from the cadre of Group B_0 officers in five Departments as under:

i)	Civil Engineering Department	-	238
ii)	Signal & Telecom Department	-	076
iii)	Electrical Engineering Department	-	052
iv)	Personnel Department	-	049
v)	Traffic Department	-	048

	Total	-	463

2.3 The Union Public Service Commission, vide its letter dated 5.3.1991 (Annexure P/1), agreed to the filling up of the aforesaid 463 posts

in Group A_1 /Junior Scale by promotion from Group B_1 officers, as a special case.

2.4 Accordingly, meetings of the DPC were held for inducting the eligible and suitable Group B_1 officers into Group A_1 services in the said five Departments.

2.5 As regards the Civil Engineering Department, according to the applicants, the meeting of the DPC was held to fill up 225 vacancies in IRSE, Group A_1 (Junior Scale). The said 225 vacancies included 158 out of the aforesaid 238 additional vacancies, and other regular vacancies pertaining to the years 1989, 1990 and 1991. According to the applicants, the said 158 additional vacancies pertained to the years 1990 and 1991, and the balance 80 additional vacancies in IRSE, Group A_1 (Junior Scale), pertaining to the year 1992, were left to be filled up subsequently.

2.6 The Railway Board, vide its letter dated 19.2.1993, approved the names of 225 Group B_1 officers of Civil Engineering Department for promotion to IRSE, Group A_1 (Junior Scale), with effect from 24.12.1992.

2.7 O.A.No.283 of 1993 was filed by Smt.P.Viswanathan, a direct recruit officer of IRTS before Madras Bench of the Tribunal, challenging the notification dated 22.7.1992, whereby 99 Group B_1 officers of Traffic Department were promoted to IRTS, Group A_1 (Junior Scale). The said O.A.No.283 of 1993 was dismissed by Madras Bench, vide its order dated 14.2.1994.

2.8 O.A.No.574 of 1993 was filed by some of the officers directly recruited to Indian Railway Service of Signal Engineers challenging the notification dated 15.9.1992, whereby 127 Group -B ϕ officers of the Signal and Telecom Department were promoted to IRSSE, Group -A ϕ (Junior Scale), with effect from 23.7.1992.

2.8.1 The Principal Bench of the Tribunal, vide its order dated 4.8.1995 (Annexure P/6), disposed of O.A.No.574 of 1993 and issued the following directions:

- o (i) It is not competent for the Railways to appoint as many as persons by promotions as they like, in disregard of the provisions of Rule 4 which stipulates the quota for promotion and direct recruitment. Repeated violent departures from the quota rule will lead to collapse of the quota rule (Direct Recruit ϕ s case o supra) and therefore of the linked seniority rule (B.S.Gupta ϕ s case o supra).
- (ii) The principle of weightage in seniority will be limited to promotees appointed against their quota.
- (iii) As the rules stand at present, the maximum quota for promotees is only 40%. It cannot be raised further by relaxation, as Government has no such power.
- (iv) Vacancies not filled in a year o whether in the direct recruitment quota or promotee quota o can be carried over, but all such vacancies have to be filled in the subsequent years by both methods on the basis of the quota mentioned in Rule 4.
- (v) Out of the 127 appointments made by the Annexure -1 order dated 15.9.1993, promotion should be deemed to have been made to the extent of 50% of the vacancies in 1992 which have been computed tentatively at 89 (para 34 supra) subject to departmental verification. They alone are entitled to weightage and seniority on the seniority principles (vii) and (ix).
- (vi) The remaining 38 persons, subject to departmental verification, have been promoted in excess of the promotion quota and they are not entitled to weightage in seniority on the basis of the Annexure A-1 order. Their promotions shall be treated as ad hoc only. They can be treated as regularly promoted against the quota for

promotees in 1993 and thereafter. In that case, such promotees can be given weightage from the dates their promotions are regularized.

(vi) The Annexure A-1 order shall stand modified to the extent indicated above.ö

2.9 As regards the Civil Engineering Department, OA No.865 of 1993 was filed by two direct recruits of IRSE (Group A) before Jabalpur Bench of the Tribunal, challenging the notification dated 19.2.1993, *ibid*, whereby 225 Group B officers were promoted to IRSE, Group ½A (Junior Scale), with effect from 24.12.1992.

2.9.1 Jabalpur Bench of the Tribunal, vide its order dated 5.8.1994, allowed O.A.No.865 of 1993 and directed the respondent to treat the promotions made by the impugned notification dated 19.2.1993 equal in number to the regular promotion quota vacancies attributable to recruitment years 1989, 1990, 1991, 1992 and 1993 as regular, and the remaining promotions made in the impugned notification dated 19.2.1993 as ad hoc for the purpose of granting seniority in IRSE, Group ½A (Junior Scale).

2.9.2 SLP (Civil) No.17364 of 1994 filed against Jabalpur Bench's order dated 5.8.1994, *ibid*, was dismissed by the Hon'ble Supreme Court, vide its order dated 20.1.1995.

2.10 As regards the Electrical Engineering Department, O.A.No.1133 of 1994 was filed by three direct recruits of Indian Railway Service of Electrical Engineers, Group ½A before Bombay Bench of the Tribunal, challenging promotion of 79 officers of Group ½B officers to IRSEE, Group ½A (Junior Scale).

2.10.1 Following the Principal Bench's decision in OA No.574 of 1993, *ibid*, Bombay Bench of the Tribunal, vide its order dated 13.11.2000, disposed of OA No.1133 of 1994 and issued the following directions:

- o (i) It is held that Railways were not competent to appoint as many persons by promotions as they like, in disregard of the provisions of Rule 4 which stipulates the quota for promotion and direct recruitment.
- (ii) Vacancies not filled in a year o whether in the direct recruitment quota or promote quota o can be carried over, but all such vacancies have to be filled in the subsequent year by both methods on the basis of the quota mentioned in Rule 4.
- (iii) If it is necessary, the seniority list should be revised and finalized based on the above principles.
- (iv) Above order shall be implemented within a period of 4 months from the date of receipt of a copy of this order.
- (v) No recovery shall, however, be made in respect of promotions already granted to the officers on ad hoc basis, or otherwise. Also no retrospective benefits shall be granted to the applicant in respect of pay and allowance, even if they become eligible to them.o

2.11 The orders passed by different Benches of the Tribunal, as referred to above, were implemented by the respondent-Railway Board.

2.12 While the matter stood thus, Civil Appeal No.92 of 1997 filed by Indian Railway Class II Officers Federation & another(who were respondents in OA No.574 of 1993) challenging the Principal Bench's order dated 4.8.1995, *ibid*, was decided by the Hon'ble Supreme Court, vide its judgment dated 23.9.2002. The Hon'ble Supreme Court held that no illegality was committed by the Union of India in promoting 127 Group B officers of S & T Department of Railways to the Junior Scale of Group A by the impugned order dated 15.9.1992. The Tribunal committed an error of law in interpreting the relevant rule, and holding that 38 Group B (Class II

officers) promoted in excess of normal quota of 40 per cent had to be promoted on regular basis against future vacancies. Accordingly, the Hon'ble Supreme Court set aside the Principal Bench's order dated 4.8.1995, *ibid*, and allowed the Civil Appeal.

2.13 During the years 2003 to 2006, the request made by the Indian Railway Promotee Officers Federation to the respondent to consider the cases of Group -B officers of the Civil Engineering Department in the light of the Hon'ble Supreme Court's judgment dated 23.9.2002, *ibid*, was not acceded to by the respondent on the ground that the said judgment pertained to the officers of Signal & Telecommunication Department.

2.14 W.P. (C) No. 4110 of 2007 was filed by the present applicants before the Hon'ble High Court of Delhi. On 5.10.2007 the learned counsel representing the applicants sought liberty to withdraw the writ petition and approach this Tribunal for appropriate relief. Accordingly, the Hon'ble High Court of Delhi, vide its order dated 5.10.2007, while granting the liberty sought for, dismissed the said writ petition as withdrawn.

2.15 Thereafter, O.A.No.28 of 2008 was filed by the present applicants before this Tribunal. The Tribunal dismissed the said O.A.No.28 of 2008, vide its order dated 21.1.2010, the relevant portion of which is reproduced below:

ð In so far as Association of the applicants is concerned, it lost its cause up to the Hon'ble Supreme Court when SLP was dismissed in limine, vide orders dated 29.01.1995. It is the case of the applicants that a view in favour of the applicants has now been taken by Hon'ble Supreme Court in its judgment passed in Civil Appeal No.92 of 1997 decided on 23.09.2002 in

the matter of Indian Railways Class II Officers Fedn. & Anr. vs. Anil V.Kumar Sanghi & ors. The pertinent reliance by the counsel representing the applicants on the judgment of the Hon'ble Supreme Court is to the following findings/observations:

öí The provision for variation of percentage from time to time in case of necessity is for all practical purposes equivalent to the power of relaxation. There is no particular reason why the Class II promote officers of S & T Department should be treated differently from the same category in Traffic Department. The application of such different standards could very well be avoided by giving a wider meaning to the expression varied from time to time. Whether it be variation or relaxation, it is meant to provide a leeway for adjustment in exigencies of service which is very much necessary in administrative interest and to cope up with unforeseen contingencies.ö

2. When confronted with the position that this Tribunal may not be able to take a view different to the one taken in an SLP of 1995, and particularly when the matter has been settled by the Hon'ble Supreme Court, counsel representing the applicants seeks permission to withdraw this Original Application with liberty to seek review of the judgment of Hon'ble Supreme Court dated 29.01.1995 or to take such appropriate remedies as may be permissible under the law.
3. With leave and liberty, as prayed for, this Original Application stands dismissed as withdrawn.ö

2.16 Thereafter, the applicants filed a writ petition under Article 32 of the Constitution of India, registered as W.P. (C) No. 143 of 2010 before the Hon'ble Supreme Court. The Hon'ble Supreme Court dismissed the said writ petition, vide its order dated 19.4.2010, which is reproduced below:

öWe are not inclined to interfere in this matter under Article 32 of the Constitution of India. The writ petition is dismissed. However, the petitioner may approach the High Court to pursue other remedies as applicable.ö

2.17 Hence, W.P. (C) No. 3503 of 2010 was filed before the Hon'ble High Court of Delhi. As noted earlier, the said W.P. was transferred to this Tribunal and registered as TA No.126 of 2013.

2.18 It is mainly contended by the applicants that had the aforesaid 238 additional vacancies in IRSE, Group -A₀(Junior Scale) been filled up on the basis of the judgment dated 23.9.2002 passed by the Hon'ble Supreme Court in Civil Appeal No. 92 of 1997, they would have been promoted to IRSE, Group -A₀(Junior Scale) much earlier. The respondent has implemented the Hon'ble Supreme Court's judgment in respect of other Departments. Therefore, non-implementation of the Hon'ble Supreme Court's judgment by the respondent for the Group -B₀ officers in the Civil Engineering Department is discriminatory.

3. Opposing the W.P./T.A., the respondent has filed a counter reply. It is, *inter alia*, stated by the respondent that no cause of action has accrued to the applicants for filing the present application. The application is highly belated. The judgment dated 23.9.2002, *ibid*, was passed by the Hon'ble Supreme Court in the matter relating to Group -B₀ officers of the Signal & Telecom Department of the Railway, whereas the applicants belong to the Civil Engineering Department of the Railway. The judgment passed by Jabalpur Bench was challenged by the promotee officers' Association by way of SLP (Civil) No.17364 of 1994. The said SLP was dismissed by the Hon'ble Supreme Court, vide its order dated 20.1.1995. With the dismissal of the SLP, the order of Jabalpur Bench having attained

finality final has been implemented. Hence, the issue is no more *res integra* and stands settled by the Courts. Any sort of intervention by the Tribunal at this belated stage would result in reversal of the entire exercise which took place about two decades ago. This would also adversely affect the regular Group B officers who are waiting for their promotion.

4. We have perused the records, and have heard Ms.Jyoti Singh, learned Senior Counsel appearing for the applicants, and Mr.Rajinder Nischal, learned counsel appearing for the respondent.

5. Ms.Jyoti Singh, learned Senior Counsel appearing for the applicants, relied on the decision of the Hon'ble Supreme Court in **Workmen of Cochin Port Trust v. Board of Trustees of the Cochin Port Trust and another**, 1978 (3) SCC 119, to contend that the dismissal of SLP (Civil) No.17364 of 1994 by the Hon'ble Supreme Court without any reasons does not constitute *res judicata*, and that the present T.A. filed by the applicants can be considered and decided by the Tribunal. Ms.Jyoti Singh also invited our attention to paragraph 44 of the judgment of the Hon'ble Supreme Court in **Kunhayammed & others v. State of Kerala & another**, JT 2000(9) SC 110, and submitted that the order dated 5.8.1994 passed by Jabalpur Bench in OA No.865 of 1993 cannot be said to have merged in the order dated 29.1.1995 passed by the Hon'ble Supreme Court dismissing, *in limine*, SLP (Civil) No. 17364 of 1994. Therefore, the judgment dated 23.9.2002 passed by the Hon'ble Supreme Court in Civil

Appeal No.92 of 1997 has to be implemented by the respondent in respect of the Group B officers in the Civil Engineering Department of the Railway.

5.1 **In Workmen of Cochin Port Trust's case** (supra), the Hon'ble Supreme Court has held that dismissal of special leave petition by a non-speaking order of dismissal where no reasons were given does not constitute *res judicata*. All that can be said to have been decided by the Hon'ble Supreme Court is that it was not a fit case where special leave should be granted.

5.2 **In Kunhayammed's case** (supra), the Hon'ble Supreme Court has held thus:

544. To sum up our conclusions are:-

- (i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.
- ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. First stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and special leave petition is converted into an appeal.
- (iii) Doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the

Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

- iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.
- v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the apex court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.
- (vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.
- (vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before Supreme Court the jurisdiction of

High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule (1) of Order 47 of the C.P.C.ö

6. As per the averments made by the applicants in the O.A., applicant no.1, 2, 5, 6 and 7 were promoted to Group -Bö Gazetted posts with effect from 5.10.1989, 18.10.1989, 29.10.1992, 20.11.1990, and 10.12.1996 respectively. The dates with effect from which applicant nos.3, 4, 8, 9, 10 and 11 were promoted to Group -Bö posts have not been mentioned by the applicants in their O.A. The applicants have also not made any averment as to whether all of them were eligible and in the zone of consideration to be promoted to IRSE, Group -Aö (Junior Scale) in the year 1992 or 1993, when, according to them, 158 (out of 238) additional vacancies in IRSE, Group -Aö (Junior Scale) in the Civil Engineering Department were filled up with effect from 24.12.1992, vide notification dated 19.2.1993, *ibid*. No document has been produced by the applicants before the Tribunal to show that only 158 out of 238 additional vacancies in IRSE, Group -Aö (Junior Scale) were filled up with effect from 24.12.1992, vide notification dated 19.2.1993, and 80 additional vacancies in IRSE, Group -Aö (Junior Scale) for the year 1992 were left to be filled up in the subsequent year. In the above view of the matter, the applicants cannot be said to have established their plea that 158 (out of 238) additional vacancies were filled up with effect from 24.12.1992, vide notification dated 19.2.1993, *ibid*, and 80 additional vacancies in IRSE, Group -Aö (Junior Scale) were left to be filled up in 1993, and that the purported non-implementation of the judgment dated 23.9.2002 passed by the Honöble

Supreme Court in Civil Appeal No.92 of 1997 has resulted in denial of promotion to them to IRSE, Group -A₀ (Junior Scale) with effect from the date when the aforesaid additional vacancies were available in the Civil Engineering Department. It is also pertinent to mention here that promotions of 225 Group -B₀ officers to IRSE, Group -A₀ (Junior Scale) in the Civil Engineering Department against the additional vacancies in IRSE, Group -A₀ (Junior Scale), as made by notification dated 19.2.1993, were only interfered with by Jabalpur Bench of the Tribunal to the extent indicated in the order dated 5.8.1994 passed in OA No.865 of 1993, against which the SLP (Civil) No.17364 of 1994 was dismissed by the Hon'ble Supreme Court. Accordingly, the respondent implemented the order dated 5.8.1994 passed by Jabalpur Bench in OA No.865 of 1993. Thus, the issue regarding filling up of the aforesaid additional vacancies is no more *res integra*.

7. Even if it is assumed for a moment that 80 additional vacancies in IRSE, Group -A₀ (Junior Scale) for the year 1992 were left to be filled up in the subsequent year, that the applicants were eligible and in the zone of consideration to be promoted to IRSE, Group -A₀ (Junior Scale), and that the respondent did not fill up the same in the subsequent year, the applicants could have made appropriate representations to the respondent to consider their cases at the relevant point of time, and in the event of their having failed to get their grievance redressed in the hands of the respondent, they could have approached the appropriate forum within the prescribed period of limitation for redressal of their grievance, if any. But, it appears that the

applicants have failed to do so. Therefore, the judgment dated 23.9.1992 passed by the Hon'ble Supreme Court in Civil Appeal No. 92 of 1997 cannot be said to have furnished them a fresh cause of action.

8. **In State of Karnataka & Ors. v. S.M.Kotrayya & Ors.**, (1996) 6 SCC 267, the respondents woke up to claim the relief which was granted to their colleagues by the Tribunal with an application to condone the delay. The Tribunal condoned the delay. Therefore, the State approached the Hon'ble Supreme Court. Their Lordships, after considering the matter, observed as under :

"...it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-section (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay."

9. **In Jagdish Lal & Ors. v. State of Haryana & ors.** (1997) 6 SCC 538, the Hon'ble Supreme Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the Court, then such person cannot stand to benefit, and that the delay disentitles a party to

the discretionary relief under Article 226 or Article 32 of the Constitution of India.

10. **In Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another**, (2006) 4 SCC 322, the Hon'ble Supreme Court laid down that when nearly for two decades, the respondent-workmen therein had remained silent, mere making of representations could not justify a belated approach.

11. **In C. Jacob v. Director of Geology and Mining and another**, (2008) 10 SCC 115, the Hon'ble Supreme Court observed thus:

“Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.”

12. **In Union of India and others v. M.K. Sarkar**, (2010) 2 SCC 59, the Hon'ble Supreme Court, after referring to **C. Jacob's case** (supra), ruled that when a belated representation in regard to a ~~stale~~ or ~~dead~~ issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action or reviving the ~~dead~~ issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not

with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

13. **In Bharat Sanchar Nigam Limited v. Ghanshyam Dass and others** (supra) the Hon'ble Supreme Court reiterated the principle stated in **Jagdish Lal's case** (supra), and observed that as the respondents therein preferred to sleep over their rights and approached the Tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

14. In view of the above decisions of the Hon'ble Supreme Court, we have no hesitation in holding that the claim as raised by the applicants in the present proceedings is hit by the doctrine of delay and laches.

15. It is also the admitted position between the parties that the promotions of Group -B officers of the Civil Engineering Department to IRSE, Group -A (Junior Scale) made vide notification dated 19.2.1993, *ibid*, against the additional vacancies in IRSE, Group -A (Junior Scale), were challenged in OA No.865 of 1993 filed by two direct recruits of IRSE Group -A (Junior Scale) before Jabalpur Bench of the Tribunal. Jabalpur Bench, vide its order dated 5.8.1994, *ibid*, allowed the said O.A. and directed the respondent to treat the promotions made by the impugned notification dated 19.2.1993 equal in number to the regular promotion quota vacancies attributable to recruitment years 1989, 1990, 1991, 1992 and 1993 as regular, and the remaining promotions made in the impugned notification

dated 19.2.1993 as ad hoc for the purpose of granting seniority in the IRSE, Group -A₀ (Junior Scale). SLP (Civil) No.17364 of 1994 filed against the order dated 5.8.1994 passed by Jabalpur Bench of the Tribunal was dismissed by the Hon'ble Supreme Court, vide its order dated 20.1.1995. Accordingly, the respondent implemented the said order passed by Jabalpur Bench of the Tribunal.

16. As noted earlier, OA No.574 of 1993 was filed before the Principal Bench of the Tribunal by some of the officers directly recruited to Indian Railway Service of Signal Engineers, Group -A₀ (Junior Scale) challenging the notification dated 15.9.1992 promoting 127 Group -B₀ officers of the Signal & Telecom Department to IRSSE, Group -A₀ (Junior Scale), with effect from 23.7.1992. The order dated 4.8.1995 passed by the Principal Bench in favour of the direct recruits of IRSSE was set aside by the Hon'ble Supreme Court in Civil Appeal No.92 of 1997, vide its order dated 23.9.2002. As the applicants were not promoted against the additional vacancies in IRSE, Group -A₀ (Junior Scale), vide notification dated 19.2.1993, *ibid*, they cannot now be allowed to agitate and/or re-open the matter regarding filling up of the additional vacancies in IRSE, Group -A₀ (Junior Scale) in the Civil Engineering Department on the basis of the judgment dated 23.9.2002 passed by the Hon'ble Supreme Court in Civil Appeal No.92 of 1997, *ibid*. Thus, the question of *res judicata*, or applicability of the doctrine of merger, does not arise in the present case, and we find no substance in the aforesaid contentions of Ms.Jyoti Singh, the

learned senior counsel for the applicants. Therefore, the decisions in **Workmen of Cochin Port Trust's case** (supra) and **Kunhayammed's case** (supra), relied on by Ms.Jyoti Singh, are of no help to the case of the applicants.

17. The Hon^{ble} Supreme Court, by its judgment dated 23.9.2002 passed in Civil Appeal No.92 of 1997, while upholding the promotions of Group -B₀ officers of Signal & Telecom Department to IRSSE, Group -A₀ (Junior Scale), vide notification dated 23.7.1992, set aside the Principal Bench's order dated 4.8.1995 passed in OA No. 574 of 1993. No direction was issued by the Hon^{ble} Supreme Court to the respondent to fill up any vacancy in IRSSE, Group -A₀ (Junior Scale) in the Signal & Telecom Department over and above the number of additional vacancies against which promotions had already been effected vide notification dated 23.7.1992. The applicants have not placed before us any material showing that the respondent promoted any Group -B₀ officer of either Signal & Telecom Department, or of any other Department, on the basis of the said judgment of the Hon^{ble} Supreme Court. Therefore, we find no substance in the applicant's plea of discrimination.

18. Furthermore, as already discussed by us, W.P. (C) No. 4110 of 2007, O.A.No.28 of 2008, and W.P. (C) No.143 of 2010, filed by the applicants claiming the same reliefs as in the present W.P. (C) No.3503 of 2010/TA No.126 of 2013, have been dismissed by the Hon^{ble} High Court of Delhi, Principal Bench of the Tribunal, and Hon^{ble} Supreme Court.

19. After having given our anxious consideration to the facts and circumstances, and the rival contentions of the parties, we find no scope for interference in the matter. Accordingly, the TA is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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