

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2924/2010

New Delhi, this the 20th day of February, 2017

Hon'ble Shri Justice Permod Kohli, Chairman
Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri K. N. Shrivastava, Member (A)

1. Shri Mange Ram,
S/o Shri Babu Ram,
Working as Head Clerk.

2. Smt. Manjeet Kaur,
W/o Shri Devinder Pal Singh,
Working as Head Clerk.

3. Shri Jai Bhagwan,
S/o Shri Ram Saroop,
Working as D.M.S-II.

.. Applicants

(All working under Dy. Chief Material
Manager, Northern Railway, Shakurbasti,
New Delhi.

(By Advocate: Shri Manjeet Singh Reen)

Versus

Union of India: through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Deputy Chief Material Manager,
Northern Railway,
General Store Depot,
Shakurbasti,
New Delhi.
3. Shri Mohinder Singh,
S/o Shri Chandgi Ram
(Retd as Supdt.)
4. Shri Nand Kishore,
S/o Shri Dharam Nand
5. Shri Kanwal Pal Singh
S/o Shri Bain Singh.
6. Shri Kamaljit Singh,
S/o Shri Preetam Singh.
7. Shri Manohar Lal,
S/o Shri Bhagwan Dass.
8. Shri Chand Kumar
S/o Shri Nand Kishore

9. Shri Suresh Kumar,
S/o Shri Tek Chand.
10. Shri Jawahar Lal,
S/o Shri Mata Din.
11. Shri Fateh Singh,
S/o Shri Ram Parshadh.
12. Shri Hari Kishan,
S/o Shri Devi Prasad.
13. Shri Janak Raj,
S/o Shri Bachittan Singh.

-Respondents

(All working as DMS-III, in Northern
Railway, under the Respondent no. 2)

Services effected through Respondent No.2 of
R-3 to R-13)

(By Advocate: Shri A.K.Behera, Shri V.S.R. Krishna, Ms. Meenu
Mainee and Shri Subhodh Kaushik)

ORDER (Oral)

By V. Ajay Kumar, Member (J):

Heard.

2. This OA has been filed seeking the following relief(s):

“In view of the facts mentioned in para 4 & 5
above, the applicant pray for the following reliefs:

8.1 That this Hon'ble Tribunal may graciously be
pleased to allow this O.A and quash the impugned
orders mentioned in para-1, with all consequential
benefits.

ALTERNATIVELY

That this Hon'ble Tribunal may graciously be pleased to take a view to disagreeing with the order dated 09.07.2003, taken by the co-ordinate bench in O.A.No.1649/1997, and refer the matter to a Full Bench in terms of the law laid by the Hon'ble Apex Court judgment's in the case of Shri K. Ajit Babu & Shri Gopabandhu Biswal and Hon'ble Delhi High Court judgment in the case of Shri Ashok Kumar Pathak & Jai Kishore Sharma & Others Versus Union of India cases.

8.2 That any other or further relief which this Hon'ble Tribunal may be deem fit and proper under the circumstances of the case may also be granted in favour of the applicant.

8.3 That the cost of the proceedings may also be awarded in favour of the applicant."

3. Earlier, this OA, after hearing both sides, was disposed of on merits, by Order dated 15.05.2012. However, the Hon'ble High Court of Delhi by Order dated 01.10.2012 in WP(C) No.6227/2012, filed by some of the applicants in the OA, referred back the OA to this Tribunal to be considered by a Full Bench of this Tribunal. Hence, this reference.

4. Before expressing our view, it is necessary to note certain facts in detail, as the issue has a chequered history, which are as under:

- i) The basic issue in this OA revolves round the granting of seniority from the date of ad hoc promotion and its ramification on other employees.
- ii) The Private Respondents, i.e. Mohinder Singh & Others, were initially appointed as Class IV during

the period 1974-1989. They had further been promoted to Class III as LDCs and MCCs (Mobile Checking Clerks) first on ad hoc basis on various dates from 1981 to 1987 and subsequently on regular basis in the year 1993. They filed OA No.1649/1997 having aggrieved by the action of the official respondents in rejecting to assign seniority from the date of their ad hoc promotion to Class-III. This Tribunal by its Judgment dated 09.07.2003 allowed the said OA and directed the official respondents to re-determine their seniority for Class-III post of MCC/LDC by reckoning their ad hoc officiation in the said post with all consequential benefits. Both the official respondents as well as certain private respondents in the said OA preferred separate Writ Petitions. However, since the said private respondents and the said Mohinder Singh & Others have reached to some compromise, both the official respondents and the private respondents in **Mohinder Singh's** case (supra) have withdrawn their respective Writ Petitions, vide Order dated 14.07.2006 of the Hon'ble High Court of Delhi.

- iii) **Hemant Kumar Swamy & Others** who were working as Head Clerks and Senior Clerks filed OA No.1900/2007 seeking extension of the benefits in OA No.1649/1997 (**Mohinder Singh & Another v. Union of India & Another**) and grant of seniority from the date of ad hoc promotion as Clerks with consequential benefits. Taking a view that the Writ Petitions filed against OA 1649/1997 had been withdrawn and the order attained finality, the OA No.1900/2007 was allowed partly considering the applicants therein as similarly situated and treating the Order in OA 1649/1997 as precedent.
- iv) **Balwinder Singh & Another** (supra) had initially been appointed on regular basis in Class III as Clerks, later promoted as Senior Clerks, Depot Material Superintendent Grade-III and their names had been included in the provisional seniority list of DMS Grade-II Circulated in the year 2001. They had been promoted as DMS-II on 01.11.2003. When the official respondents have taken series of actions in pursuance of the orders in OA 1900/2007 (**Hemant Kumar Swamy & Others v. Union of India & Anr.**) resulting issuance of Show Cause Notices to

Balwinder Singh & Others for their de-
empanelment and reversion from DMS-II to DMS-III,
they filed OA No.1978/2010.

- v) This OA No.1978/2010 filed by **Balwinder Singh & Another** was referred to a Full Bench by observing
as under:-

"9. To conclude, while noting the respective submissions of the parties before us regarding the maintainability of the present OAs, we have refrained from arriving at any conclusive finding about the same. However, in the light of the respective submissions, particularly those by the official respondents, we have not opted for a summary disposal of the OAs. At the same time we have also found relevant the plea taken by the applicants about the need for consideration of the issue of law, which had not been considered by the learned Coordinate Bench of the Tribunal while deciding OA 1649/1997 in its order dated 9.7.2003 and thus the impact of the specific provision under Para 302 of the IREM Vol. I on the issue of reckoning ad hoc officiation of a promotee employee for the purposes of seniority. Being respectfully seized with the decisions of the Hon'ble Apex Court in Suraj Prakash Gupta as also Swapan Kumar Pals cases (supra) and reiterated in the recent judgment in Dharam Pals case also, we find the issue raised deserving consideration by a Full Bench of the Tribunal."

- vi) Accordingly, a Full Bench of this Tribunal by order dated 23.12.2011 answered the reference as under:-

"11. To conclude, for the detailed reasons elaborated in Para 10 above, the judgment rendered by the learned DB vide its order dated 9.7.2003 in the OA 1649/1997 (Mohinder Singh & Ors. Vs. UOI & Ors.) has not been found to be a valid proposition of law.

However, since, as per their own compromise, the present applicants of the OA 1978/2010 (Shri Balwinder Singh & Ors. Vs. UOI & Ors.), as parties in the OA 658/2004 (Shri J.K. Chadha & Ors.) had agreed to

implement the seniority of Shri Mohinder Singh and others as per the terms of the compromise, the benefits of the judgment in the OA 1649/1997 cannot be overturned against the applicants therein.

11.1 As per the stand of the present applicants, their basic grievances are against the ramifications of the follow-up decision rendered in the OA 1900/2007 (Hemant Kumar Swamy & Ors. Vs. UOI & Ors.) vide the Tribunals order dated 12.12.2008. The direction in this case had been issued for consideration of the claims of the applicants by extending the benefits of the decision in Mohinder Singh's case, purely treating the decision in Mohinder Singh's case as final and hence a binding precedent. As has already been discussed above, since the Writ Petition filed against the OA 1649/1997 had not been dismissed on merit, but only allowed to be withdrawn in the background of out-of-court compromise, this view has not been found to be tenable. Besides, it has also been clarified above that the compromise in question would be binding only to the concerned parties and as per the terms contained therein.

Under the circumstances, the decision in Hemant Kumar Swamys case is of no meaning and consequence.

12. Resultantly, on a careful consideration of the DBs reference dated 28.7.2011, the following are the conclusive findings of the Full Bench:-

(i) The OA 1978/2010 is found to be maintainable.

(ii) The interpretation of law vide the Tribunals order dated 9.7.2003 in the OA 1649/1997 is not found to be sustainable. Though, as per the out of court compromise between the parties, the benefits rendered to the applicants of this OA are not to be negated; the decision in this judgment is not to be treated as a precedent.

(iii) The decision in the OA 1900/2007 is not sustainable.

(iv) The OA 1978/2010 is referred back to the DB for consideration and decision on merit.

Post script:

After pronouncing the order on 23.11.2011, it came to our notice that vide our interim order dated 21.9.2011, the entire case was decided to be referred to the Full Bench for determination of all the points raised therein. It is found that besides the points already considered, there is no other

substantive point involved in the OA No.1978/2010. Hence there is no need for referring back this OA to the Division Bench for consideration and decision on merit. Accordingly our findings in Para 12 (iv) of the above order are obliterated and the order stands modified to that extent.

The OA 1978/2010 impugns certain orders and prays for their quashing. These Orders/Notices 4 in number are the sequel to the implementation of the decision of the Tribunal in OA No.1900/2007. As the aforesaid Order has now been held by us as unsustainable, the impugned Orders/Notices in the instant OA would also not be in consonance with law. We, therefore, give the following directions:-

(a) The impugned Notice No.1719/2007 dated 20.6.2009 (Annex. A/1) is against the withdrawal of promotion to the post of DMS-II (Rs.5500-9000) under the restructuring scheme w.e.f. 1.11.2003. The promotional benefits are to be withdrawn from the applicants on the ground their being junior to the applicants in Hemant Kumar Swamy's case. Hence this Show Cause Notice is quashed and set aside.

(b) The impugned order No.1900/2007 dated 10.3.2010 (Annex. A/2) has been issued on consideration of the reply in pursuance of the aforesaid Show Cause Notice. The applicants are held to be juniors as DMS-III to the applicants in the OA No.1900/2007. Hence the decision for their de-empanelment from the post of DMS-II and reversion to the substantive post of DMS-III on completion of requisite formalities has been ordered. This order also is quashed and set aside.

(c) The Order dated 13.5.2010 (Annex. A/3) is with regard to modified selection to fill up the posts of DMS-II (Rs.5500-9000) w.e.f. 1.11.2003. As the applicants have been found junior to some of the applicants in the OA 1900/2007, owing to interpolation of the names of these persons (as a result of the decision in the said OA); the directions are for excluding their names from the panel. This order is also quashed and set aside to the extent it affects the present applicants.

(d) The impugned order dated 19.5.2010 is with regard to the modified empanelment as DMS-II. Consequent to the effect of the OA

1900/2007 and as a sequel to de-empement of the present applicants, the orders for empanelment of three of the applicants in the OA No.1900/2007 to DMS-II on proforma basis w.e.f. 1.11.2003 has been ordered. This order would also stand quashed and set aside to the extent it affects the applicants in the instant OA.

(e) The orders dated 10.3.2010, 13.5.2010 and 19.5.2010 also contain a mention of some other OAs besides the OA 1900/2007. Further on that basis adverse orders have been issued in respect of one Shri Ajay Bhagat not an applicant in the OA 1900/2007. The repercussions of these OAs would also be considered by the official respondents in the light of the principles of law already delineated by the Full Bench in this judgment and accordingly a speaking and reasoned order passed in respect of the persons affected as well. Needless to say, such an order would be after giving an opportunity to show cause in due observance of the principles of natural justice.

Parties may be informed of the post-script, and copy of the same be supplied to them. Surely, if the certified copy of the judgment is applied by any of the parties, post-script, being part of the judgment, shall also be supplied to them."

- vii) Another OA No.2086/2010 filed by **Thakur Dass** (since died after filing, represented by his L.Rs, **Smt. Shakuntala Devi & Anr.**), was also referred to another Full Bench, however, the same was dismissed, on 19.10.2011, mainly on the ground of res-judicata, as the earlier OA No.602/2008 filed by **Thakur Dass** was already dismissed.

4. In the above backdrop, when the official respondents though initially shown the applicants in the instant OA, i.e., OA No.2924/2010, and who were originally appointed to Class III posts on regular basis, as seniors to the private respondents, i.e., Mohinder Singh & Others, who were originally promoted to Class III posts on ad hoc basis and later regularized, but when issued the impugned revised seniority list by showing the private respondents, Mohinder Singh & Others, as seniors to the applicants, filed the present OA.

5. As detailed above, the Full Bench of this Tribunal, in **Balwinder Singh & Others** (OA No.1978/2010), though held in favour of **Balwinder Singh & Others**, who are also identically placed like the applicants in the instant OA, and declared the judgment in OA No.1649/1997, dated 09.07.2003 of Mohinder Singh & Others (private respondents in the instant OA) as unsustainable, but since protected the benefits rendered to **Mohinder Singh & Others** in their OA No.1649/1997, and the impugned orders in the instant OA are in accordance with the decision of Full Bench in **Balwinder Singh**, this instant OA deserves to be dismissed, as this Full Bench is bound by the decision of the Full Bench in **Balwinder Singh** (supra).

6. It is not the case of the applicants that the view expressed by the Full Bench in **Balwinder Singh & Others** (supra), on the point of law, is erroneous. In fact, it supports the case of the applicants, in principle. But the applicants cannot enforce their rights, against the private respondents, i.e., Mohinder Singh & Others, in view of the protection granted to them by the same Full Bench decision in **Balwinder Singh & Others** (supra).

7. In the aforesaid peculiar circumstances, the instant OA No.2924/2010 is dismissed. No costs.

(K. N. Shrivastava)	(V. Ajay Kumar)	(Justice Permod Kohli)
Member (A)	Member (J)	Chairman

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