

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 3119/2012

This the 05th day of October, 2015

**Hon'ble Mr. Justice B.P. Katakey, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Yogender Kumar Pathak

S/o Late Sh. Krishan Chandra Pathak,

R/o 209, D-2, West Central Railway Colony,

Tuglakabad, New Delhi-110044Applicant

(By Advocate : Shri M.K. Bhardwaj)

Versus

UOI & Ors. through:

1. The General Manager,
West Central Railway,
Jabalpur, M.P.
2. The Divisional Railway Manager,
West Central Railway,
Kota
3. The Senior DE,
Electric loco Shed,
Tuglakabad, New Delhi
4. Rattan Singh,
Serving as Technician Grade-II,
In the office of Senior DE,
Electric loco shed, TKD,
New Delhi

.....Respondents

(By Advocate : Shri Shailendra Tiwary)

ORDER (ORAL)

By Shri B.P. Katakey, Member (J):

The applicant, who initially joined as Khalasi in Electric Loco Shed, TKD, in the month of January 1989 and thereafter promoted as Technician Grade-III in the year 1990 and then as Technician Grade-II, has filed this present OA for directing the respondents to place him in the seniority list of Technician Grade-II in terms of the communication dated 06.11.2006, above Shri Rattan Singh.

2. Shri M.K. Bhardwaj, learned counsel appearing for the applicant referring to the notice dated 16.06.2006 issued by the Divisional Railway Manager, West Central Railway, has submitted that since the authority has proposed to fix the seniority of the applicant in Technician Grade-II, between Shri Rattan Singh at Sl. No. 84 and Shri Laxman at Sl. No. 85 and the officers who would be affected, namely S/Sh. Laxman Singh, Kewal Singh and Mishri Lal having been notified to file objection, if any, the respondent cannot sit over such proposal for an indefinite period of time, as has been done in the instant case. According to learned counsel, though aforesaid S/Sh. Laxman Singh, Kewal Singh and Mishri Lal has intimated the railways administration that

they have no objection in fixing the seniority of the applicant as proposed in the said notice dated 16.06.2006, no final order has been passed by the authority till date. Learned counsel, therefore, submits that railway administration may be directed to take a final decision pursuant to the aforesaid notice dated 16.06.2006 as well as dated 06.11.2006.

3. Shri Shailendra Tiwary, learned counsel appearing for the respondents, on the other hand, has submitted that the applicant earlier filed OA No. 2115/2003 claiming seniority which was dismissed by this Tribunal vide order dated 26.09.2005 and against which as the applicant filed Writ Petition No. 17309/2006 which is still pending, no decision could be taken by the railways administration till disposal of the said WP.

4. It has also been submitted that the application filed by the applicant is barred by time as the applicant is claiming relief based on the show cause notice dated 16.06.2006.

5. Shri Bhardwaj, learned counsel for the applicant has submitted that the applicant filed OA No. 2115/2003 before this Tribunal against the decision of the railway administration in putting him in the bottom of the seniority list as Khalasi, as he was transferred from one place to

another at his own request. It has also been submitted that the present OA concerns the fixation of seniority taking the bottom seniority of the applicant as Khalasi and hence pendency of the aforesaid Writ Petition No. 17309/2006 cannot come in the way of the railway administration in taking a decision.

6. We have considered the arguments made by learned counsel for the parties and perused the pleadings.

7. The applicant earlier filed OA No. 2115/2003 claiming seniority after his transfer from one division to another as Khalasi at his own request, which was denied by the respondent railways on the ground that his seniority has been shown at the bottom. The said OA was dismissed on 26.09.2005, against which the applicant preferred Writ Petition No. 17309/06, which is admittedly pending before the Hon'ble High Court.

8. In the instant case, the applicant claims seniority over S/Sh. Laxman Singh, Kewal Singh and Mishri Lal. The applicant has also claimed seniority over Rattan Singh, based on his bottom seniority after his transferred from one division to another division on his own request. Hence the pendency of the writ petition would not come in the way of

the railway administration in taking decision in the matter of seniority.

9. It also appears that the respondent railway has issued a notice dated 16.06.2006 to S/Sh. Laxman Singh, Kewal Singh, Mishri Lal inviting objection, if any, for fixing seniority of the applicant between Rattan Singh at Sl. No. 84 and Laxman Singh at Sl No. 85.

10. The Divisional Railway Manager, West Central Railway also issued a communication dated 06.11.2006 to Rattan Singh inviting objection, if any, for fixing seniority of the applicant above him. By the aforesaid two communications, one dated 16.06.2006 and other dated 06.11.2006, it was proposed by the railway administration to fix the seniority of the applicant, as aforesaid. Admittedly, no final decision has been taken by the respondent railways on the such proposal, having regard to objection/representation, if any, filed by any of those persons.

11. Since, the respondents authority has not taken any decision despite the aforesaid notices issued, it cannot be said that the application filed by the applicant is barred by time, for the simple reason that the respondent authority is

duty bound to take a decision, which has not been taken despite expiry of almost nine years.

12. In view of the above, we dispose of the OA directing the respondent railways to take a final decision on the aforesaid notices dated 16.06.2006 and 06.11.2006 within the period of two months from today. The order that may be passed shall be communicated to the applicant. It is needless to say that while taking such decision the objection/representation, if any, filed, shall also be taken into consideration.

13. OA is disposed of.

14. No cost.

(K.N. Shrivastava)
Member (A)

(Justice B.P. Katakey)
Member (J)

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