

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A.No.683/2011

Dated this Thursday the 7th day of December, 2017.

**Coram: Hon'ble Shri Justice Permod Kohli, Chairman
Hon'ble Shri R. Vijaykumar, Member (A).**

Madar Bakhsh Hashmi,
Tech. Gr.II Fitter
Office of SSE/Airbrake/BUF
Western Railway Carriage
Workshop, Lower Parel,
Mumbai - 400 013.
Residing at
Room No.242, Lakde Wali Galli,
Behram Nagar, Bandra (East),
Mumbai - 400 051.

.. Applicant.

(By Advocate Shri R.G. Walia).

Versus

1. Union of India, through
General Manager,
Western Railway,
Headquarters Office, Churchgate,
Mumbai - 400 020.
2. Chief Works Manager,
Lower Parel Workshop,
Western Railway,
Lower Parel,
Mumbai - 400 013.
3. Mithai Ram,
Ticket No.7580
Working as Fitter Gr.I
Bogie Lifting Mahalaxmi
Western Railway,
Mahalaxmi,
Mumbai - 400 016.
4. Surendra P.,
Ticket No.5937,
Fitter Gr.I,
Lower Parel Workshop,
Western Railway,
Lower Parel,
Mumbai - 400 013.

**(By Advocate Shri V.S. Masurkar for
Respondent No.1 and 2).**

Order (Oral)**Per : Justice Permod Kohli, Chairman.**

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs:-

"(a) This Hon'ble Tribunal may be pleased to call for the records of the case which lead to the issuance of seniority list dated 30.3.2010 and be pleased to quash and set aside the same only to the extent it grants seniority to the Applicant w.e.f. 1997 in Fitter Gr.II.

8(aa) This Hon'ble Tribunal will be pleased to call for the record of the case which led to the passing of the impugned Order dated 17.3.2011 and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same, with all consequential benefits.

(b) This Hon'ble Tribunal may further be pleased order and direct the Respondents to grant promotion and seniority to the Applicant w.e.f. 1994 i.e. 2.12.1994 (Fitter Gr.II promotion) and to consider the Applicant for promotion to the post of Fitter Gr.I w.e.f. 17.08.2005 with full consequential benefit.

(c) Cost of this Original Application be provided for.

(d) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case."

2. The factual matrix as emerged from the record is that the applicant was initially appointed as Khalasi in the Parel Workshop of Western Railway on

11.11.1980. He was appointed on promotion as Tool Checker on 13.07.1983. On 17.12.1985 the applicant was placed under suspension and later reinstated vide order dated 10.03.1986. The charge-sheet dated 30.05.1986 was served upon him. After departmental inquiry he was dismissed from service on 10.10.1988. The order of penalty dismissing him from service was challenged by the applicant in O.A.369/1989. This O.A. was allowed vide Judgment dated 08.08.1991 whereby the order of dismissal was set aside and the matter remanded to the Disciplinary Authority. On reconsideration on remand the Disciplinary Authority modified the penalty of dismissal to reduction to lower stage in time scale of Rs.950-1500 for one year with future effect vide order dated 01.12.1993. On appeal the Appellate Authority further modified the penalty to reduction to lower stage in time scale for a period of one year without future effect. On reduction of the penalty the applicant was given promotion as Fitter Gr.III on 1.1.1989 vide order dated 16.11.1995. In the meantime the same juniors were promoted from Grade III to Grade-II on 30.01.1995. The applicant was also subjected to the trade test but he failed to qualify the same. Later the applicant qualified the trade test for promotion from Grade III to Grade II on 08.01.1997. The seniority list of Fitter Gr.II was notified on 03.07.2002. In this seniority list the applicant

figured at Sr.No.235 whereas his juniors who were earlier promoted are shown at Sr.57,85,86 onwards i.e. above the applicant. The applicant made first representation against this seniority list on 21.06.2004. This representation was however, rejected by the Competent Authority as is evident from the order dated 23.08.2005.

3. The applicant did not challenge this seniority list or even the order dated 23.08.2005. A new seniority list was published on 30.03.2010. The applicant challenged this seniority list in O.A.751/2010. The said O.A. was however, disposed of by this Tribunal vide its order dated 26.10.2010, with a direction to consider the O.A. as representation within the meaning of Section 20 of the Administrative Tribunals Act, 1985 and pass appropriate orders within a period of three months. Consequent upon the aforesaid direction the respondents have passed the order dated 17.03.2011 rejecting the claim of the applicant for his seniority and promotion from the date juniors were promoted. This order is the subject matter of challenge in the present O.A.

4. The O.A. is opposed by the respondents mainly on the two counts that the O.A. is barred by limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985 and the applicant having failed to qualify the trade test along with his juniors is not

entitled to claim the seniority over his juniors or even the promotion from the date his juniors were promoted.

5. We have heard the learned counsel for the parties at length.

6. The factual aspect is not in dispute. Shri R.G. Walia, learned counsel for the applicant submits that the applicant could not have been called for the trade test in view of pendency of disciplinary proceedings against him. He was provided opportunity to appear in the trade test only in the year 1996. It is not disputed that after termination of disciplinary proceedings first trade test was held in the year 1996, the applicant failed to qualify the same. He however qualified the second trade test also held in the year 1996 for which result was declared on 08.01.1997. Based on the success in the second trade test he was promoted as Fitter Gr.II and placed in the seniority list on the basis of the said test from the date of his promotion. The contention raised on behalf of the applicant is that since the applicant was not called for such trade test in the year 1994, it should have been considered that he qualified the test along with juniors. This position cannot be accepted. In the year 1994 the applicant was undergoing disciplinary proceedings and thus could not have been called for the trade test. In the year 1996 when the next trade test

was conducted, he failed to qualify the same. It was only in the next trade test held again in 1996 that he qualified the test and was accordingly granted promotion as Fitter Gr.II. The seniority would commence from the date he was promoted as Fitter Gr.II and not from any earlier date. Apart from the above it is admitted position that first seniority list was notified on 03.07.2002. The applicant did make representation which came to be rejected on 23.08.2005. But the applicant challenged the seniority list of 2010 only by filing O.A.751/2010 which was disposed of as noticed above and impugned order has been passed. The applicant is not entitled to the reliefs claimed for the following reasons:-

That the applicant never challenged the promotion of the juniors made in the year 1994 even when he was reinstated and given the benefit of promotion as Fitter Gr.III from 1989. As a matter of fact the cause of action arose to him with effect from the aforesaid date. Later when the seniority list of Fitter Gr.II was notified on 03.07.2002, the applicant again never challenged the same. The representation dated 21.06.2004 was made by him after two years of the circulation of Seniority. Even when the representation was rejected on 23.08.2005 he never challenged the rejection order. The seniority list of 2002 has attained finality. The 2010 seniority is reiteration of

earlier seniority list. Present O.A. is hit by the doctrine of delay and laches is liable to be dismissed on account of inordinate delay in filing the present O.A. Otherwise also on merit the applicant is not entitled to the seniority as he having failed to qualify the first trade test held in the year 1996. His right to claim the seniority can only be considered from the date he qualified the trade test and promoted as Fitter Grade II.

7. For the above reasons, we do not find any merit in the present O.A., which is dismissed, without any order as to costs.

(R. Vijaykumar)
Member (A)

(Justice Permod Kohli)
Chairman.

H.