

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

**ORIGINAL APPLICATION No.105/2011
This the 8TH day of August, 2019**

**CORAM:- R. VIJAYKUMAR, MEMBER (A) .
R.N. SINGH, MEMBER (J) .**

1. Hemant R. Mhatre
Residing at. House No.121,
Pannalal Ghose Road,
Malad (W) Mumbai-400064.
2. Prasanna Balkrishna Panicker,
Residing at L Purnima Chawl
R. No.9, 'Q' block,
Janata Colony,
Jogeshwari (W),
Mumbai-400 060.
3. Rmaehs T. Tambe
Residing at: 248/1977,
Motinal Nagar No.1,
Road No.6,
Goregaon(W),
Mumbai-400 104.
4. Gautam S. Gaikwad,
Residing at: Salvi Apartments,
Ground Floor, Behind Canara Bank,
Kolse Wadi, Kalyan (E),
Dist. Thane.
5. Mahesh Wasawani,
Residing at: Barrack No.1490,
R. No.4, Section 30 D,
Ulhasnagar 4.
6. Jainandan Singh,
Residing at: 27/30,
Laxmi Nagar,
Mahakali Mandir Marg,
Goregaon (W),
Mumbai 400 090.
7. Lalchandra B.
working as Junior Clerk.

8. Pramod A. Bhise,
Residing at: No.2/17-A, Balaji
Bldg No.1, Madhav Wadi,
MM.G.S.Marg, Dadar (W),
Mumbai-400 014.
9. Sunil M. Gangurde,
Residing at:
Room No.6, Jaykar Wadi,
Near Honesty Dairy Farm,
Datta Pada Road,
Borivali (E),
Mumbai-400 068.
10. Uttam J. Vaval,
Working as Junior Clerk.
11. Shantaram L.,
Working as Junior Clerk.
12. L. T. Dhuri,
Working as Junior Clerk.
13. Paresh B. Bharucha,
Residing at:
D-23 Chhaya Sadan,
Near M B Estate,
Virar (W) 401 303
Dist.Thane.
14. Maruti J. Kamble,
Residing at:
R.No.69, Western Rly,
Chawl No.31-L,
B.M.Marg,m
Elphinstone Road,
Mumbai-400013.
15. Ashok H.,
Working as Junior Clerk.
16. Rajendra Prasad S.,
Working as Junior Clerk.
17. Dasrath N. Panchal,
Residing at:
R.No.19, Premji Patel Chawl,
Shailesh Nagar,
Orlem Tank Road,

Malad (W),
Mumbai-400 064.

18. Shrikesh V.,
Working as Junior Clerk.
19. Vivekanand S. Gaikwad,
Residing at:
94/3, Western Railway colony,
Matunga Road,
Mumbai-400 019.
20. Joseph L,
Residing at:
Western Railway Qtr.No.
51/8, Jogeshwari (E),
Mumbai 400 060.
21. Sanjay S.
Residing at:
105, B/2,
Dulhan, B. Kasam Chawl,
S.L.Matkar Marg,
Elphistone Road,
Mumbai-400 020.
22. Babu A. J.
Working as Junior Clerk.
23. Gursev Singh,
Working as Junior Clerk.

All working as Junior Clerk/TC in Parel/Mahalaxmi
Workshop, Western Railway, Mumbai.

... Applicant.

(By Advocate Shri Ramesh Ramamurthy)

VERSUS.

1. Union of India through
General Manager,
Western Railway,
Headquarters Office,
Churgchgate, Mumbai 400 020.
2. Chief Personnel Manager,
Western Railway,
Headquarters Office,

Churchgate, Mumbai 400 020.

3. Chief Works Manager,
Carriage Repairs Workshop,
Western Railway,
N.M.Joshi Marg,
Mahalaxmi, Mumbai-400 013.
4. Manish K. Chavan,
Working as Senior Clerk (Adhoc)
Carriage Repair Workshop,
Western Railway, N. M. Joshi Marg,
Lower Parel, Mumbai-400013.
5. Ms. Sunanda Burkul,
Working as Senior Clerk (Adhoc)
Carriage Repair Workshop,
Western Railway, N. M. Joshi Marg,
Lower Parel, Mumbai-400013.
6. Sh. Jitendra L. Gharat,
Working as Senior Clerk (Adhoc)
Carriage Repair Workshop,
Western Railway, N. M. Joshi Marg,
Lower Parel, Mumbai-400013.
7. Sh. Shashikant S. Gawade,
Working as Senior Clerk (Adhoc)
Carriage Repair Workshop,
Western Railway, N. M. Joshi Marg,
Lower Parel, Mumbai-400013.
8. Sh. Yogendra S. Rawat,
Working as Senior Clerk (Adhoc)
Carriage Repair Workshop,
Western Railway, N. M. Joshi Marg,
Lower Parel, Mumbai-400013.
9. Smt. Smita M. Naik,
Working as Senior Clerk (Adhoc)
Carriage Repair Workshop,
Western Railway, N. M. Joshi Marg,
Lower Parel, Mumbai-400013.
10. Sh. Deepak M. Nimkar,
Working as Senior Clerk (Adhoc)
Carriage Repair Workshop,
Western Railway, N. M. Joshi Marg,
Lower Parel, Mumbai-400013.

11. Sh. Ravindra S. Mahamuni,
Working as Senior Clerk (Adhoc)
Carriage Repair Workshop,
Western Railway, N. M. Joshi Marg,
Lower Parel, Mumbai-400013.

... Respondents.

(By Advocate Shri V. S. Masurkar & Ms. Priyanka Mehndiratta)

O R D E R (O R A L)

Per: R. Vijaykumar, Member (A)

Present.

1. Shri Ramesh Ramamurthy, learned counsel for the applicant.
2. Shri V. S. Masurkar, learned counsel for the official respondents and Ms. Priyanka Mehndiratta, learned counsel for the private respondents.
3. This application has been filed on 21.02.2011 under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following reliefs:

"a) This Hon'ble Tribunal may be pleased to call for the records and proceedings which led to the issuance of Seniority list dated 22.01.2011 (Annexure A-1) hereto and after considering its legality, validity and propriety quash and set aside the same,

b) This Hon'ble Tribunal may be pleased to hold and declare that the Seniority List dated 25.01.2005 is proper, legal and correct.

c) Heavy and exemplary cost of this application may 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;"

4. The brief facts of the case are that the applicants were initially appointed as Khalasi with the respondents and based on willingness invited from various such categories they commenced duties of Tool Checkers and then in response to the request for merging their category of employees working as Tool Checkers, which was essentially an ex-cadre post with the category of LDCs, the respondents, in order No.PCIII/2002/CTC-I/4 dated 25.03.2004 Annexure A-7, following the directions of this Tribunal in OA No.528/2001, decided on 22.10.2003 to merge the employees working as Tool Checker in Parel/Mahalaxmi prospectively with Ministerial Staff.

5. The matter was taken to the Hon'ble High Court in WP No.1708/2004 by the present applicants in regard to the prospective aspect of the merger and the Hon'ble High Court considered that WP along with WP Nos.1708/2004, 590/2014, 6473/2008 and 285/2009 filed by the official respondents and private respondents belonging to the Ministerial Cadre and passed final order on 16.04.2018 remanding the matter to this Tribunal for fresh adjudication after

considering various aspects of the arguments of the parties and with the following directions:

"58. Accordingly, we dispose of all these petitions with the following order:

a) Writ Petition No.1708 of 2004 is hereby dismissed and the Rule issued therein is hereby discharged;

b) Writ Petition No.6473 of 2008 and Writ Petition No.285 of 2009 are also hereby dismissed and the Rule issued therein is hereby discharged;

c) Writ Petition No.590 of 2014 is partly allowed. Rule is made absolute in terms of prayer clause (a). The impugned judgment and order dated 29th November 2013 is quashed and set aside. However, OA No.105 of 2011 is remanded and restored to the file of CAT for fresh adjudication in accordance with law and on its own merits.

d) The interim order passed by the CAT in OA No.105 of 2011 is directed to continue and operate during pendency of OA No.105 of 2011;

e) The CAT is requested to disposed of OA No.105 of 2011 as expeditiously as possible and in any case within a period of one year from the date of production of authenticated copy of this order;

f) The parties to OA No.105 of 2011 to appear before the CAT on 4th June 2018 at 10.30 a.m. And produce an authenticated copy of this order;

g) All concerned to act on the basis of authenticated copy of this order."

6. Accordingly, this Tribunal has taken up

fresh consideration of OA No.105/2011 and the parties have been heard on the matter.

7. The applicants have impugned an order of the respondents in order no.E1026/CW/6/2/Vol.IV dated 22.01.2011 which reads as under:

"WESTERN RAILWAY

No.E1026/CW/6/2/Vol.IV

CWM's OFFICE/PL

Date: 22.01.2011.

To,
All concerned at PL & MK,
CTC/BCT.

Sub: Merger of Seniority of T/Checker with Ministerial Staff on provisional basis.

Ref: (1) CPO (IR) CCG'S Letter No.EM 834/8/5/5 Vol I (iii) PLW/shop Dated 29.12.2010.

(2) This office letter no.E893/CW/ Merger Seniority/ TC/ Ministerial dated 25.01.2005.

In terms of letter quoted in Ref(1), the proposed revised seniority list of merger of Tool Checker with regular Junior Clerks in PB Rs.5200-20200+GP 1900 (Erstwhile Scale Rs.3050+4590(RSRP) on provisional basis is enclosed herewith in Annexure 'A'.

As per HQ's letter No.EM834/8/5/5 dated 07.12.2010, the seniority of Tool Checker viz-a-viz junior clerks is to be revised on the basis of prospective effect i.e. 22.10.2003 not w.e.f. 25.01.2005. It is further elucidated that merger with prospective effect means one has to take the cut off date as the date of judgment and not the

date of entry into the grade.

All concern staff may please note that the proposed revised seniority position. Any concerned staff who has any doubt about proposed revised seniority they may represent within one months from the date of issue of this letter.

All concerned staff may please note that above seniority is provisional & subject to finalize three court cases pending at Hogg Court bearing No.OA No.1708/2004, WP No.285/2009 and WP No.17323/2008.

(Unmesh Trivedi)
SPO(W)/PL
For CWM/PL

Encl: Annexure 'A' (3 pages)."

8. This order essentially revised the previous seniority list issued on provisional basis in the order of the respondents enclosed as Annexure A-2 in order no.E839/CW/Manager Seniority/ TC/ Ministerial dated 25.01.2005 which had adopted the date of entry as Junior Clerk or Tool Checker of each concerned employee as the basis for determining seniority.

9. The order dated 16.04.2018 explicitly provided that the proposed seniority would be provisional pending the decision of the Hon'ble High Court in WP No.1708/2004, 590/2014, 285/2009 and 6473/2008. The staff had already been invited

to express their objections with reference to the proposed seniority list. Keeping in view the fact that the impugned seniority list dated 22.01.2011 (Annexure A-1) itself states that the seniority list enclosed therewith is provisional and that too depending upon the final decision of the WP Nos.1708/2004, 590/2014, 6473/2008 and 285/2009 and the aforesaid WP have already been decided by the Hon'ble High Court vide order/judgment dated 16.04.2018, recording their views while dismissing the WP No.1708/2004, 6473/2008 and 285/2009 while partly allowing and remanding this OA for fresh adjudication and has made numerous observations on the issues raised by the parties that should enable the respondents to pass final orders but are evidently awaiting directions in this OA.

10. In view of the aforesaid, the present OA is disposed of with directions to the respondents no.1 to 3 to consider the objections filed by the applicants to the aforesaid impugned letter/order dated 22.01.2011 (Annexure A-1) keeping in view the relevant rules/instructions and the views

expressed in the common order/judgment of the Hon'ble High Court dated 16.04.2018 in the aforesaid WP within ten weeks from the date of receipt of certified copy of this order.

12. It is further made clear that in case any of the applicants have not preferred any objections or reply to the aforesaid impugned order casting provisional seniority list, they may do so within two weeks.

12 There shall be no order as to costs.

(R. N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

V.

JD
26/8/19

