
R.N.R.

Before M.M. Kumar & Ritu Bahri, JJ.

M.S. KHAN & ANOTHER,—Petitioner

versus

UNION OF INDIA & OTHERS,—Respondents

CWP No. 5617/CAT of 2008

1st November, 2010

Constitution of India, 1950—Art.226—Dispute regarding fixation of seniority—Petitioners failing to lay challenge for about 15 years—Tribunal rejecting application on ground of it being barred by time—In a similar case Tribunal allowing claims of applicants—Petitioners' case squarely covered by judgment rendered by Tribunal in Sudesh Pal's case—Petition allowed, order of Tribunal as well as revised seniority list set aside.

Held, that Articles 141 and 142 of the Constitution make the judgment of Hon'ble Supreme Court binding on all the Courts. The constitutional mandate obliges the State to ensure the enforceability of law as laid down by Hon'ble the Supreme Court throughout the country. There cannot be any possibility to circumvent the direction issued by the Courts because it would bring an element of discontentment and frustration amongst the beneficiary of such a judgment. Another aspect emerging from the same principle is that everyone covered by a judgment does not need to rush to the Courts for redressal of his grievance.

(Para 8)

Further held, that by invoking the delay on the part of the applicant-petitioners the Tribunal has non-suited them. This was the argument advanced even in *Sudesh Pal and others versus Union of India and others*, but the same was repelled. The applicant-petitioners are similarly situated. They were recruited as Apprentice Chargeman 'B' in 1987. Even they completed their training in 1989 and only thereafter their posting orders as Chargeman 'B' in the grade of Rs. 1400-2300 were issued along with Shri Sudesh Pal and others. Their *inter se* seniority was also fixed on the basis of their merit in the examination held after training i.e. well before the amendment of Para 303-A of the Railway Establishment Manual in the year 1990 came into existence. On the basis of seniority position, the applicant-petitioners were confirmed on their posts and further promoted to the rank of Chargeman 'A', Deputy Shop Superintendents and Senior Section Engineer. Meaning thereby they have acquired rights on promotional posts. Two different yardsticks cannot be adopted for the persons who are on the same pedestal. In nut shell, the case of the applicant-petitioners is squarely covered by the judgment dated 8th October, 2002 rendered by the Tribunal in *Sudesh Pal's* case. Therefore, the Tribunal has gravely erred in law while rejecting the original application filed by the applicant-petitioners.

(Paras 13 & 14)

Sanjeev Manrai, Advocate, *for the petitioners.*

Puneet Jindal, Advocate, *for the respondent.*

M.M. KUMAR, J.

(1) This petition filed under Article 226 of the Constitution challenges order dated 11th October, 2007 (P-3) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity, 'the Tribunal') rejecting the claim of the applicant-petitioners regarding fixation of their seniority by dismissing the original Application filed by them.

(2) Facts of the case may first be noticed. As a result of the selection made by the Railway Recruitment Board, Chandigarh, the applicant-petitioners were recruited as Apprentice Chargeman 'B.' Shri M.S. Khan-petitioner No. 1 joined at Rail Coach Factory, Kapurthala (for brevity, 'RCF'), on 8th January, 1987, whereas Shri Paramjit Singh-petitioner No. 2 joined there on 13th July, 1987. They were deputed for initial mandatory training of two years. After completion of the training their posting orders as temporary Chargeman 'B' in the grade of Rs. 1400-2300 were issued (A-1 and A-2). On 16th May, 1991 (A-3), a provisional seniority list of regular Chargeman 'B' was circulated by the Senior Personnel Officer, RCF. The names of the petitioners find mention at Sr. Nos. 51 and 162 respectively. By an order dated 23rd August, 1991 the petitioners were further appointed to the next higher post of Chargeman 'A' in the Grade of Rs. 1600-2660 on temporary and *ad hoc* basis (A-4). On 13th September, 1991 the final seniority list of regular Chargeman 'B' in the Grade of Rs. 1400-2300 was issued, wherein the names of petitioner nos. 1 and 2 figure at Sr. Nos. 59 and 186 respectively (A-5). On 8th August, 1992, the petitioners were promoted as Chargeman 'A' in the Grade of Rs. 1600-2600 on regular basis (A-6).

(3) The next higher post from the post of Chargeman 'A' is that of Deputy Shop Superintendents which is a selection post. The petitioners have claimed that a list of Chargeman 'A' who were eligible for selection of available posts of Deputy Shop Superintendents in the scale of Rs. 2000-3200 was prepared (A-7). The said selection panel was prepared as per seniority of Chargeman 'A'.

(4) On 20th October, 1992, again a provisional seniority list of Chargeman 'A' and Chargeman 'B' was issued inviting objections which were to be filed within 15 days of the issue of said list (A-8). Thereafter,

on 6th May, 1993 another provisional seniority list of Chargeman 'A' was issued wherein those employees who failed in the first attempt in passing the test during the training of Chargeman 'B' and passed the same in the supplementary test were placed at the bottom (A-9). The grievance of the applicant petitioners is that while re-drawing the seniority list *vide* order dated 6th May, 1993 (A-9) their seniority position has been altered and they have been brought down below the private respondents Nos. 4 to 11 whereas in the earlier seniority lists they were shown senior to them on the posts of chargeman 'B' and Chargeman 'A' respectively.

(5) Against the order dated 6th May, 1993, petitioner No. 1 filed a representation dated 14th May, 1993 (A-11) for restoration of his seniority in terms of seniority list dated 16th May, 1992. Thereafter, he also preferred an appeal against the afoementioned provisional seniority lists and various other representations. Eventually the applicant-petitioners filed OA No. 273-PB-2005.

(6) Before the Tribunal, the stand taken by the official respondents was that the OA was barred by limitation because the cause of action, if any, accrued to the applicant-petitioners in the year 1993, whereas the OA was filed in the year 2005. It has been further asserted that as per the existing instructions, the seniority of the candidates recruited by the Railway Recruitment Board was to be assigned on the basis of the marks obtained by them at the end of the training. It has been pointed out that the applicant-petitioners along with the private respondent Nos. 4 to 11 were sent to undergo two years training. However, the applicant-petitioners could not qualify the training test held at the end of the said training. Thus, a supplementary examination was conducted for them, which they qualified. However, this fact was not mentioned by the Training School while sending the result of the trainees and accordingly, while issuing the seniority list of Chargeman 'B' the applicant-petitioners were shown senior to the private respondents. They were also promoted to the next higher post of Chargeman 'A'. The above error came to notice when one Shri S.K. Gaur of Shel Trade represented complaining that some of his batch mates who passed the training test in the second attempt have been assigned seniority over and above those who passed the test in the first attempt. Thereafter the matter was looked into and the error has been rectified by order dated 6th May, 1993 (A-9).

(7) The Tribunal dismissed the OA filed by the applicant petitioners *vide* order dated 11th October, 2007 (P-3) by observing as under :—

“6 The original cause of action, has arisen to the applicant in 1992/1993, and it is too late in the day to file an O.A. in 2005, claiming unsettling of certain things which have attained finality during all these long years of about 15 years. The original application is barred by section 21 of the Administrative Tribunal Act, 1985, as well as delay and laches. Merely, because Annexure A-20 has been passed by the respondents on 20th July, 2003, rejecting the representations of the applicants, will not revive a cause of action which arose and expired around 15 years back. Despite a specific objection having been taken by the respondents that the O.A. is barred by time, the applicants have not even chosen to file any application for condonation of delay. Besides, they have not filed any rejoinder controverting the stand taken by respondents in their reply.

7. It is well settled by now that the settled seniority position cannot be annulled after long time as held in the case of **C.P. Aggarwal versus P.O. Labour Court and others**, 1997 SLR, 178 SC. In so far as repeated representations are concerned, it has been held that limitation starts from the original cause of action and repeated representations do not extend the period of limitation and even if delayed representation is considered and rejected, the same will not extend the period of limitation. Reference is made to **High Court of A.P. versus Mahesh Parkash and others** 1995 SCC (L &S) 278; **Administrator of U.T. of Daman and Diu and others versus S.R.D. Valant, ATC 1996 (32) 148**. It is also well settled that decision in another case will not give a fresh lease of limitation.

8. Considered in the light of above discussion, this O.A. is dismissed being barred by law of limitation, besides on delay and laches. No costs.”

(8) We have heard learned counsel for the parties and gone through the record with their able assistance. It may be true that the seniority list was finalised on 6th May, 1993. It is equally well settled that Articles

141 and 142 of the Constitution make the judgment of Hon'ble the Supreme Court binding on all the Courts. The constitutional mandate obliges the State to ensure the enforceability of law as laid down by Hon'ble the Supreme Court throughout the country. There cannot be any possibility to circumvent the direction issued by the Courts because it would bring an element of discontentment and frustration amongst the beneficiary of such a judgment. Another aspect emerging from the same principle is that everyone covered by a judgment does not need to rush to the Courts for redressal of his grievance. In a case of Railway Administration, namely, **Union of India versus Lalita S. Rao (1)**, a dispute concerning seniority in the Indian Railway Medical Department had arisen and Hon'ble the Supreme Court emphasised the need of adherence of this principle of granting relief even to the parties who had not approached the Court as the judgment pronounced squarely cover their interest as well. It would be profitable to read the following extracts from para 3 of the judgment, which reads thus :

“3.....In view of the apprehended confusion in the mind of the Railway Administration on account of the judgments of this Court, referred to earlier, and for doing complete justice in the matter of determination of seniority amongst the Medical Officers recruited by the Railway Administration through UPSC, we have approached the problem on consideration of the different rules in force as well as the orders issued by this Court in several earlier cases and this should apply irrespective of the fact whether some are parties to this proceeding or not. In fact one of the grievances of insider direct recruit Medical Officers like Dr. Srinivasulu is that they had not been arrayed as party when the Court was considering the interlocutory application filed by Dr. Haque for determination of their seniority, who belonged to the category namely, *ad hoc* appointees who got recruited without getting themselves selected through any examination conducted by UPSC only because of the compassionate view that was taken by this Court in **Dr. A.K. Jain case (A.K. Jain (Dr.) versus Union of India, 1987 Supp. SCC 497]**”

(9) Similar view has been taken in the case of **E.S.P. Rajaram versus Union of India, (2)**. It has been held that *per se* discrimination even by judicial pronouncement should be avoided. Even a large number of employees are working in a big establishment like Indian Railway then undesirable situation in some cadre like promotions concerning seniority should be avoided and benefit of one judgment cannot be refused to other which should flow to an employee automatically. In fact, the same principle was echoed by Hon'ble the Supreme Court in the case of **Dr. Santosh Kumari versus Union of India, (3)**. It has been observed that allotment of seat should be according to the merit and it would not depend upon the fact whether meritorious persons have come to the Court or not. Hon'ble the Supreme Court emphasised that the principle of law should not be dependent on the fact that the person has not approached the Court. Accordingly, the facts of the present case need to be examined in the light of the aforesaid principles.

(10) Before coming to the facts of the present case, it may be highlighted that the Tribunal in a similar case of **Sudesh Pal and others versus Union of India and others** (O.A. No. 140/PB of 1997, decided on 8th October, 2002) has placed reliance on a judgement of Hon'ble the Supreme Court rendered in the case of **Prem Kumar Verma and others versus Union of India and others (4)**, to hold that if the process of selection was completed in July, 1989 and the selected candidates were sent for training, the rule first amended in 1990 and further in 1993 for determining the seniority were not made applicable to those persons. In para 5 of the judgement, their Lordships' of Hon'ble the Supreme Court has held as under :---

- "5. In view of our conclusion that the posts fell vacant prior to July, 1989 and the process of selection was completed and the Recruitment Board selected the candidates on 11th July, 1989 the amendment that was introduced on 5th May, 1990 and the further amendment of 1993 will have no application and it is the unamended Rule 303 (a) as it stood on 11th July, 1989

(2) (2001) 2 S.C.C. 186

(3) (1995) 1 S.C.C. 269

(4) AIR 1998 S.C. 2854

would govern the case of *inter se* seniority. The analysis of the provisions of Para 303 indicates that where candidates are required to undergo some training after being selected through Railway Service Commission or any other Recruiting Authority, their seniority is determined on the basis of their respective merit at the examination held at the end of the training period and where candidates do not have to undergo any training then the seniority is determined on the basis of the merit assigned by the Railway Service Commission or other Recruiting Authority. In the present case the candidates had to undergo training and in fact they had undergone training in batches, as already stated. In that view of the matter their seniority had rightly been determined by the Railway Authority on the basis of their respective merit obtained at the examination held at the end of the training period. The Tribunal committed error by altering the said seniority on the basis of a Rule which was not in existence on the date the vacancy arose and on the date when the selection was completed.”

(11) Placing reliance on the aforesaid para, the Tribunal allowed the Original Application in **Sudesh Pal's case** (*supra*). It would be pertinent to notice here that in **Sudesh Pal's case** (*supra*) the applicants before the Tribunal were appointed as Apprentice Chagemen in 1987 and sent for training which they successfully completed in 1989 and their *inter se* seniority was also fixed in 1989 on the basis of their merit in the examination held after training i.e. well before the amendment of Para 303-A of the Railway Establishment Manual in the year 1990 came into existence. Para 303-A, thereafter further amended in the year 1993. On the basis of their initial seniority position those applicants were not only confirmed on their posts but also promoted to the rank of Chageman 'A'. The respondents tried to emphasis before the Tribunal that even as per Para 303-A as it stood in 1990, those who passed the examination in subsequent chances would rank junior to those who had passed the examination in earlier courses. However, the Tribunal did not agree with the argument advanced by the respondents and find that the Para 303-A as amended in 1990 did not exist at the time of issuance of appointment orders together with the seniority list in 1989

of the said applicants. The Tribunal also noticed Para 303 as it stood in 1989, which reads as under :—

“303. The seniority of candidates recruited through the Railway Service Commission or by any other recruiting authority should be determined as under :

- (a) Candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts.”

(12) While interpreting Para 303, the Tribunal finally reached the following conclusion in the case of **Sudesh Pal (supra)** :

“It is clear from a reading of this rule that there is no mention of persons in any subsequent attempt being placed junior. We are also not clear as to how the respondents raised the argument of the applicants not having passed the examination in their first attempt when there is no such indication in Annexure A-1. A-1 merely mentions that the applicants had successfully completed their training and even went to the extent of mentioning the names of 2 persons, Shri Mohinder Singh and Shri K.K. Aggarwal as those who had failed. If the applicants had also failed in their first attempt, there should have been mentioned about it in the said order. We can only draw a conclusion from the fact that no such mention has been made that there was no requirement of such mention because the Regulation as it existed then did not make a difference between those who passed in the first attempt and those who passed in the second attempt, for passing and completion of prescribed training was the only criterion of getting appointment and the marks obtained in the training school were the only criterion for determining the seniority. Further seniority once determined under the Rules as it existed then and finalised several times between 1989 and 1993 cannot be altered after lapse of so many years when the same list was used for earlier promotions to the rank of Chagmen Gr. 'A' as well as for confirmation to the post of Chageman Gr. 'B'. The seniority list of confirmation as

Chargeman Gr. 'B' cannot be altered retrospectively, and in no way because of the decision of the Apex Court in "Prem Kumar Verma" (supra). The situation is almost identical and we find no reason to disagree with the applicants on this score."
(emphasis by us)

(13) However, in the present case by invoking the delay on the part of the applicant-petitioners the Tribunal has non-suited them. This was the argument advanced even in **Sudesh Pal's case** (supra) but the same was repelled. When we compared the facts of the present case with that of **Sudesh Pal's case** (supra), we find that the applicant-petitioners are similarly situated. They were recruited as Apprentice Chargeman 'B' in 1987. Even they completed their training in 1989 and only thereafter their posting orders as Chargeman 'B' in the grade of Rs. 1400-2300 were issued along with Shri Sudesh Pal and others. Their *inter se* seniority was also fixed on the basis of their merit in the examination held after training i.e. well before the amendment of Para 303-A of the Railway Establishment Manual in the year 1990 came into existence. On the basis of seniority position the applicant-petitioners were confirmed on their posts and further promoted to the rank of Chargeman 'A', Deputy Shop Superintendents and Senior Section Engineer. Meaning thereby they have acquired rights on promotional posts.

(14) It is equally well settled that two different yardsticks cannot be adopted for the persons who are on the same pedestal. In nut shell, the case of the applicant-petitioners is squarely covered by the judgement dated 8th October, 2002 rendered by the Tribunal in **Sudesh Pal's case** (supra). Therefore, we have no hesitation to hold that the Tribunal has gravely erred in law while rejecting the original application filed by the applicant-petitioners.

(15) As a sequel to the above discussion, the instant petition succeeds. The impugned judgement dated 11th October, 2007 (P-3) passed by the Tribunal as well as the revised seniority list dated 6th May, 1993 (A-9) are set aside. The official respondents are directed to restore the seniority of the applicant-petitioners as it was originally settled on 13th September, 1991.

(16) The writ petition stands disposed of in the above terms.