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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2397/2017 and CM Nos. 10345-10346/2017

UNION OF INDIA AND ORS Petitioners
Through Mr. Deepak Jain, Sr. Standing Counsel
with Ms. Jaspreet Aulakh and Ms.
Prabhleen Kaur, Advocates
versus

SARDAR SINGH AND ORS Respondents
Through None

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER
% **17.03.2017**

The Union of India impugns the order dated 26th July, 2016 passed by the Central Administrative Tribunal (hereinafter referred to Tribunal) allowing OA No. 2900/2012 filed by Sardar Singh and five others. For the sake of convenience, Sardar Singh and five others, the original applicants, have been referred to as the private respondents.

2. The private respondents were appointed as Farash, Waiter, Cleaner, Mali and Khalasi, which were then Group 'D' posts. These appointments were made on regular basis.

3. Messenger was also a Group 'D' post. Messengers had an advantage. They were eligible for promotion as Lower Division Clerks on seniority and selection through Limited Departmental Competitive Examination.

4. The private respondents, in view of the promotional avenue, had

opted and were inducted into the cadre of Messengers. The said induction was on the condition that the private respondents would be placed at the bottom of the seniority list. For purposes of seniority, benefit of past service in the other cadre in Group D posts was denied.

5. Subsequently, based on the recommendation of the Sixth Pay Commission, Department Of Personnel and Training (DOP&T), issued OM dated 30th April, 2010 upgrading all the Group 'D' posts as Group 'C' posts in Pay Band-1 with Grade Pay of Rs. 1800/-.

6. Further all Group 'D' employees regardless of the post or cadre held by them earlier, were re-designated as Multi-Tasking Staff (MTS). Thus there was merger of different cadres. The Model Recruitment Rules (RPS) were framed and all the ministries/departments were required to amend the recruitment rules for the erstwhile Group 'D' posts.

7. *Inter se* seniority in the different cadres in Group 'D' in the MTS, was prepared according to the date of joining. Later on a fresh seniority list dated 13.07.2012 was notified. The private respondents were downgraded in the notified list, on the basis of their seniority in the cadre of Messengers.

8. The private respondents who had worked on the Group 'D' posts as Farash, Waiter, Cleaner, Mali and Khalasi etc. objected and claimed that the date of initial appointment should be the basis of the seniority. The petitioners did not agree. This had compelled the private respondents to file the aforesaid OA, which has been allowed.

9. Having heard learned counsel for the parties and having examined the reasons given by the Tribunal, we are in agreement with the finding returned in the impugned order dated 26th July, 2016.

10. The Tribunal has referred to paragraphs 4 and 5 of the order dated 12th

April, 2013 passed by the petitioners pursuant to the direction issued in the first round of litigation. This order refers to the Railway Services (Revised Pay) Rules, 2008 which stipulate that “*inter-se* seniority of all the employees in erstwhile Group ‘D’ will be fully maintained with Group ‘D’ employee in a higher pre-revised pay scale being placed higher vis-à-vis an employee in a lower pay scale. Within the same pre-revised pay scale, seniority, which existed prior to revision, would continue.”

11. The private respondents were enjoying a higher pay on account of the fact that they had joined service as Group ‘D’ employees at an earlier point of time to those appointed later as Messengers. Noticeably, the pay scales of Messengers, Farash, Waiter, Cleaner, Mali and Khalasi etc. in Group D were identical.

12. Thus the Tribunal was justified in holding that the services rendered by the private respondents from the date of initial recruitments should not be ignored though they had opted and had been inducted into the cadre of Messengers and were placed at the bottom of the seniority list in the said cadre. There is logic and merit in the said reasoning. If the stand of the petitioners is accepted, then the private respondents would be junior to those who were junior to them in the cadre of Farash, Waiter, Cleaner, Mali and Khalasi etc. All Group ‘D’ employees were upgraded to Group ‘C’ employees and were designated as MTS (i.e. Multi-Tasking Staff). This was an important event which had necessary consequences. Inter-cadre transfer and fixation of seniority of Messengers became somewhat irrelevant once the cadre of Messengers, Farash, Waiter, Cleaner, Mali and Khalasi etc. were merged into one single service. The private respondents’ transfer and induction in the cadre of Messengers from other cadres was without any gap

or break in service. While fixing *inter se* seniority in the merged service, it would be unfair and inequitable to ignore and erase the service from the date of joining the Group D post, in any service/cadre which stand merged.

13. We would like to reproduce the findings returned by the Tribunal in paragraphs 10 and 11 of the impugned order dated 26th July, 2016 which are cogent and aptly elucidate and explain the reasons. The paragraphs read:-

“10. Per contra, the argument of the learned counsel for the applicants is that the applicants have been prejudiced vis-à-vis their juniors in Group “D” posts just because they opted for the post of Messenger which they did to have a better opportunity for appointment as LDC and now what was an avenue for betterment of their career, has become a bane as they have lost seniority vis-à-vis their erstwhile junior. The respondents have filed office memorandum dated 28.09.1999, which are the RRs for different Group ‘D’ posts in Railways (Annexure-5). In this we find that the posts of Messenger, Farash, Safaiwala, Mali and Khalasi, all are shown in Group ‘D’ in the pay scale of Rs.2550-3200. Therefore, shifting from Farash to Messenger was only a shifting from one post to another. Thus, from the point of natural justice, those who have shifted from other Group ‘D’ posts to Messenger, should not lose their seniority as a result and the condition that they would be placed en bloc below the existing Messengers was itself an arbitrary clause, which has created anomaly today since all were in the same pay scale. The only logical course is to take the date of joining for the purpose of deciding seniority as MTS.

11. We, therefore, allow the OA and quash the seniority list dated 13.07.2012, directing respondents to notify the seniority list according to their notification dated 2.02.2012, which is based on date of

joining of Group `D` employees. The revised seniority list should be notified within a period of 90 days from the date of receipt of a copy of this order. The respondents are further directed to grant any promotion as LDC based on original seniority list and modify promotion order issued accordingly. No costs.”

14. The present writ petition is devoid of any merit and the same is hereby dismissed. No costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

MARCH 17, 2017/sd