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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 455 OF 2002

Union of India ...Petitioner

Vs.

C.T. Adsule & ors. ...Respondents

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Mr. Suresh Kumar for the petitioner.

Mr. Rahul Walia i/by Mr. G.S. Walia for respondent Nos. 1 to 3.

Mr. G.K. Masand i/by Mrs. S.D. Gulhane for respondent Nos.5 to 12, 14, 16, 17, 19 and 21.

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**CORAM : SMT. V.K. TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 8th FEBRUARY, 2018.

ORDER (PER M.S.KARNIK, J.) :-

By this petition filed under Article 226 of the Constitution of India the petitioner – Union of India are challenging the judgment and order dated 20th April, 2001 passed by the passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai ('the Tribunal' for short) in O.A. No.1030 of 1995.

2. By impugned order the Tribunal was pleased to direct the petitioner to prepare and publish the seniority list of PWI Grade III in accordance with the extant Rules instructions and judicial pronouncements on the subject with a period of three months from the date of receipt of a copy of this order.

3. The respondents were appointed as Permanent Way Mistry (hereinafter referred to as “PWM” for short). From the post of PWM the next promotional post is PWI Grade III though in the same scale. The recruitment to the post of PWI Grade III is partially by way of direct recruitment to the extent of 66 2/3% of the vacancies and 33 1/3% by way of promotion by the departmental candidates for the respective years. According to the respondents, the vacancies existed in the year 1990, 1991 and 1992 and that the respondents have been making representations for conducting the departmental tests, but the same got delayed due to administrative reasons. Even 10 vacancies were available for departmental quota as per letter dated 26/3/1990 but no promotions were effected. The respondents were informed that they do not come within the

zone of eligibility. The respondents had put in more than 3 ½ years of service whereas only two years of service is required for eligibility.

4. The respondents were given ad-hoc appointment though clear vacancies were available. It appears that the respondents were appointed on ad-hoc basis prior to the appointment of the private respondents who were direct recruits appointed as PWI Grade III. The question before the Tribunal was whether ad-hoc service of the promotees should be counted to reckon their seniority.

5. The Tribunal was of the opinion that as there is no denial that the vacancies were not available in the quota for promotions and ad-hoc promotions were made as per para 216 of the IREM and therefore, original applicant/promotees are entitled to count their services towards seniority from the date of the ad-hoc appointment. Accordingly, the directions were issued to prepare the seniority list on this basis.

6. Learned Counsel for the petitioner has relied upon

the decision of the Apex Court in the case of **Union of India Vs.Dharam Pal and ors. (2009) 4 SCC 170**. Learned Counsel invited our attention to paragraph 14. Learned Counsel for the petitioner Shri Suresh Kumar by relying upon the decision in the case of **Union of India vs. Dharam Pal & Ors. (supra)** contends that the question as regards inter se seniority amongst the promotees on the one hand and the direct recruits on the other, are governed by Rule 302 of the Rules. He further contends that it is now a well settled principle of law and in respect whereof there is absolutely no quarrel that in view of the decision of the Apex Court in **Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra reported in (1990) 2 SCC 715**, an employee appointed to a post according to rules would be entitled to get his seniority reckoned from the date of his appointment and not from the date of his confirmation. He further points out that if the initial appointment is only ad-hoc, not according to rules and made as a stopgap arrangement, the period of officiation in such post cannot be taken into account for considering the seniority.

7. Learned Counsel Shri Suresh Kumar points out that the Tribunal while allowing the O.A. held that counting of the seniority is permissible from the date of initial appointment on ad-hoc post in view of para 216 of the Indian Railway Establishment Manual (IREM). The Apex Court in the case of **Union of India vs. Dharam Pal & Ors.** (*supra*) in paragraph 21 has held as under :-

“Apart from the fact that in T. Vijayan (*supra*), the effect of Rule 302 of the Rules had not been taken into consideration, the question as to whether the seniority of the employees could have been reckoned only on the basis of their date of initial appointment irrespective of the fact as to whether in doing so the mandatory procedure laid down in the rules has been followed or not, had not been taken into consideration. It proceeded on the premise that as IREM permits ad hoc promotion, the date on and from which the employee concerned was promoted on an ad hoc basis would be relevant. It was decided keeping in view the peculiar fact situation obtaining therein. The respondents therein were promoted on ad hoc basis in a situation where regular promotion was not immediately possible. There was a huge time gap.”

According to learned Counsel, the judgment of T. Vijayan and others has no application in the present case. It is not Rule 216

which is applicable but it is Rule 302 applicable.

8. Learned Counsel for the promotees supported the order passed by the Tribunal. Learned Counsel pointed out that after this Court was pleased to issue 'Rule' on this petition and the interim relief was refused, there have been some subsequent developments.

9. Heard learned Counsel.

10. It is the case of the petitioner that at the time of posting the original applicants on ad-hoc basis no procedure/process had been followed as required to be followed for regular promotion, but they were promoted on ad-hoc basis in exigency of service without following the procedure. This ad-hoc promotion in the selection post was made out without following procedure under Rule 216.

11. In our considered opinion, the Tribunal was not justified in holding that the promotions were made as per

paragraph 216 of IREM. Moreover, the decision of the Apex Court in T. Vijayan case has been explained by their Lordships in **Union of India vs. Dharam Pal & Ors.** (*supra*). In view of the authoritative pronouncement in case of **Union of India vs. Dharam Pal & Ors.** (*supra*) the view taken by the Tribunal is untenable.

12. However, in the light of the fact that the order of the Tribunal has already been implemented and that, respondent No.2 is sent on deputation, respondent No. 3 having been left the Railway it would not be in the interest of justice to take away the benefits already derived by the respondent Nos.1 to 4 at this juncture. In our opinion, we do not propose to unsettle the position as it exists after the implementation of the decision of the Tribunal. Hence, the following order :-

ORDER

1. The petition is partly allowed.
2. The order passed by the Tribunal is quashed and set aside. However, it is directed that respondent Nos. 1 to 4 may

not be deprived of the benefits already granted upon implementation of the decision of the Tribunal.

3. No order as to costs. Rule partly made absolute in the above terms.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)