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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1686 OF 2002

Union of India ...Petitioner

Vs.

Mangesh D. Khatu & ors. ...Respondents

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Mr. Suresh Kumar, Advocate for the petitioner.

Mr. Keshav Kalantri i/by K.D. & Co., Advocate for respondent No.1.

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

RESERVED ON : 8th FEBRUARY, 2018

PRONOUNCED ON : 25th APRIL, 2018.

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

The petitioners – Union of India by filing this petition under Article 226 of the Constitution of India assail the order passed by the Central Administrative Tribunal, Mumbai in O.A. No.284 of 1997. Respondent Nos.1 to 7 aggrieved by the order dated 4/3/1997 passed by the petitioners by which respondent Nos. 8 to 15 – direct recruits were assigned seniority over the promotees – respondent Nos. 1 to 7 vide seniority list

notified by letter dated 21/5/1996 filed O.A. before the Tribunal.

2. Undisputed facts are these :-

Respondent Nos. 1 to 7 were selected on 16/9/1992 for the post of Apprentice Mechanics in the scale of Rs.1400-2300 (RPS) against 25% rankers quota from the skilled Artisan staff of Electrical (Power) Department, BCT. After their selection respondent Nos. 1 to 7 had to undergo two years training before their absorption against the working posts. A memorandum dated 21/9/1992 was issued by the petitioners by which schedule of training was intimated to respondent Nos. 1 to 7 in which it was mentioned that respondent Nos. 1 to 7 will be relieved on 1/10/1992 for joining the training. After completion of two years training, respondent Nos. 1 to 7 were finally examined before their eventual absorption and they were placed on the panel vide memorandum dated 9/2/1995. Thereafter their absorption letter was issued by the petitioners vide letter 27/2/1995.

3. The petitioners in the meanwhile appointed candidates through Railway Recruitment Board (RRB) as Apprentice Electricians against direct recruitment quota. These direct recruits also had to undergo two years training from 1/10/1992 vide letter dated 20/10/1992. It is the case of the respondent Nos. 1 to 7 that no direct recruit was deputed for two years training before respondent Nos. 1 to 7.

4. Before the Tribunal respondent Nos. 1 to 7 submitted that by a letter dated 17/1/1994 the case of the direct recruits was referred to General Manager, Western Railway, who by a letter dated 18/2/1994 approved the curtailment period of training of the direct recruits with the condition that “their seniority and increment will be regulated in terms of Note below Rule 302 of the IREM (Revised Edition) read with Railway Board's letter dated 27/11/1990”.

5. It is therefore contention of respondent Nos. 1 to 7 that though respondent Nos. 1 to 7 were placed on the panel vide memorandum dated 9/10/1995 and direct recruit

Electricians were placed on the panel vide letter dated 24/6/1994, their seniority and increment will be regulated in terms of Note below Rule 302 of the IREM (Revised Edition) read with Railway Board's letter dated 27/11/1990. The "Note" reads as under :-

"In case the training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training"

(No.E(NG)I-78-SR-6-42 dated 7.4.1982 ACS 132)

6. It is thus the case of respondent Nos. 1 to 7 that in terms of the said Note below Rule 302 of the IREM, the date of joining the working post in case of such direct recruits shall be the date they would have normally come to a working post after completion of the prescribed period of training. Respondent Nos. 1 to 7 completed their training on 30th September, 1994 and thereafter they were deployed to work as Electrician in their respective departments, but their formal letter of absorption was deliberately delayed by the petitioners in order to give illegal benefit of seniority below direct recruits.

7. In the light of the decision of the Apex Court in the case of **Kuttiyappan Vs. Union of India & ors – [1996] 0 Supreme (SC) 1333**, the Tribunal was pleased to dispose of O.A. with the direction to the petitioner to amend the seniority list based on the principles laid down by the Apex Court in the above case.

8. In paragraph 17, however, the Tribunal has observed thus :-

“17. The earlier decision of this Tribunal in O.A.No. 123 of 1993 as referred to by the ld. counsel for the applicants, applies when Note below Rule 302 comes into play, which relates to date of entry in a grade. The seniority list (column 7 of seniority list Annexure A/2), after applying the ratio of the said case, the dates deserves to be corrected i.e. the dates of completion of two years training ought to be mentioned and not the dates when they have not completed the training period of 2 years, though their training period is curtailed.”

9. We have heard learned Counsel. We have gone through the decision of the Apex Court in the case of **Kuttiyappan** (*supra*). In our opinion, in paragraph 15 of the

Tribunal's order the Tribunal has correctly appreciated the controversy which is in terms of the order passed by the Apex Court in the case of **Kuttiyappan** (*supra*). Paragraph 15 reads thus :-

“15. We are, however, strictly bound by the judgment of the apex court in the case cited above. As held by their Lordship in the above case, in the case of direct recruits, the date of first entry and joining the post is the criteria for determination of the seniority, whereas in the case of promotees, it would be the date on which they start working in the post after completion of the process.”

10. We do not find any reason to interfere with the order passed by the Tribunal as the directions issued by the Tribunal are in conformity with the decision of the Apex Court in the case of **Kuttiyappan** (*supra*).

11. The present petition is therefore devoid of any merits. The same is dismissed with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)