



W.P.No.34772 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.10.2023

Pronounced on : 20.11.2023

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.DHANABAL**

**W.P.No.34772 of 2015
and
M.P.No.1 of 2015**

1. G.Sundar
2.N.Dhanasekaran
3.D.Aribaskar
4.M.Siddharthan
5.K.Sasi Kumar
6.A.Srinivasa Raghavan
7.V.S.Venkatesh
8.G.Aranganathan
9.K.Imayaraj
10.M.Jagannathan ... Petitioners

Versus

1.Union of India Rep.by the
General Manager,
Integral Coach Factory,
Chennai-38.

2.The Chief Personel Officer,
Integral Coach Factory,
Chennai-38.

3.The Central Administrative Tribunal,
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Madras Bench,
Chennai-104.

4.Thiru M.Ravichandran
5.Thiru.A.Karunanithi
6.Thiru.R.Nagarajan
7.Thiru.R.Kasim
8.Thiru A.Srinivas
9.Thiru B.V.Dinakar
10.Thiru Dilip Kumar Bag
11.Thiru M.Purushothaman
12.Thiru.A.Munusamy ... Respondents

PRAYER : This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 3rd respondent in connection with the order passed by him in O.A.No.310/00708 of 2014 dated 19.06.2015 and the order passed in R.A.No.17/14 in O.A.No.310/00708 of 2014 dated 12.8.2015 and quash the same and direct the respondents to promote the petitioners to the post of Senior Section Engineer with effect from the date of promotion given to the petitioners' juniors with all monetary and service benefits.

For Appellant : Mr.R.Saravanan
for Mr.T.Saikrishnan

For Respondents
1,2,4,5,7,8,9 & 11 : Mr.Ramkumar
For 3rd Respondent : Tribunal
For Respondents 6, 10 & 12: Not Ready Notice

JUDGMENT

(Judgment was delivered by **P.DHANABAL, J.,**)



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This writ petition is filed to call for the records on the file of the 1st

respondent in connection with the order passed by the 1st respondent in proceedings No.PB/S2/66 dated 28.03.2014 and the order of the 3rd respondent in connection with the order passed by him in O.A.No.310/00708 of 2014 dated 19.06.2015 and the order passed in R.A.No.17 of 2014 in O.A.No.310/00708 of 2014 dated 12.8.2015 and quash the same and direct the respondents to promote the petitioners to the post of Senior Section Engineer with effect from the date of promotion given to the petitioners' Juniors with all monetary and service benefits by issuing a writ of Certiorarified Mandamus or pass any other order.

2. According to the petitioners, they are senior most candidates employed in the post of Junior Assistants, who promoted the post of Senior Section Engineer (SSE). Up to 31.03.2006, 15 seniority units was followed for different trades and after 31.03.2006, common seniority was introduced by calling option from all the employees to say whether they like to maintain trade wise seniority or go to common seniority. The petitioners wanted to retain the trade wise seniority hoping to get promotion. At that time there were four posts available for promotion namely (i) Junior Engineer G.II, (ii) Junior Engineer Gr.I, (iii) Section

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Engineer (iv) Senior Section Engineer. Consequent to the implementation

of the Sixth Pay Commission's recommendations, these posts were merged into two posts with effect from 01.01.2006, namely, (i) Junior Engineer (ii) Senior Section Engineer. By order dated 11.01.2008, common seniority unit was introduced in the cadre of mechanical technical supervisor with effect from 01.04.2006. At the time of introduction of the common seniority unit with retrospective effect from 01.04.2006, the merger of four posts into two posts had not taken place and these posts got merged only on 01.09.2008 with effect from 01.01.2006. The respondents ought to have invited options at the time of merger of four posts into two posts or the respondents should have brought the applicants to the common seniority unit as automatically done in the case of subsequent appointees appointed after 01.04.2006. But the respondents have failed to do so. The petitioners gave representations dated 22.10.2013 and 05.02.2014 but no reply was given. Further, as per the proceedings of the 2nd respondent, dated 24.05.2008, a promise was made that at the time of restructuring, it would not affect the promotional aspects and there would be no order of the detriment of the existing incumbent. The Tribunal by order dated 11.02.2014 in the earlier OA had directed the 1st respondent to consider

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those representations in accordance with law. Thereafter, the

1st respondent passed an order dated 28.03.2014 and the same was challenged through another Original Application and the same was dismissed.

3. The respondent in the reply statement has submitted that the concept of common seniority Unit was devised by giving sufficient opportunity to all concerned to exercise their option vide AC Circular No.4 dated 11.01.2008 and after scrutiny a separate seniority unit called common seniority unit was introduced with effect from 01.04.2006 by Notification No.PB/S2/55 dated 24.05.2008. Further, they contended that those who opted for transfer to common seniority unit were included in the new unit and others who have preferred to stay in their own trade were allowed to do so with the condition that the seniority and promotions in the respective trades shall continue. Further, 1st petitioner/G.Sundar has been promoted to Senior Section Engineer, vide order dated 01.04.2014 and he has accepted the promotion, without any protest and hence he cannot join with others and filed this case on 28.04.2014 seeking a direction to promote him with effect from the date of promotion given to persons belonging to another seniority unit. The 20 trade employees, who were erstwhile seniors to the employees in the

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common seniority unit, could not be promoted as no vacancies have arisen in the trade seniority. They have initially represented for considering promotion as Senior Section Engineer duly including them in common seniority unit based on their length of service as Junior Engineer Gr.II after implementation of the Sixth Pay Commission due to merger of grades. This was not agreed to as there is no provision in the rules for transfer from one seniority group to another, duly protecting the length of service and this was conveyed to them, vide letter dated 28.03.2014.

4. Further in the circular dated 24.05.2008, it was stated that restructuring / annual cadre review in respect of posts in trade seniority would not be undertaken to the detriment of the existing incumbents. Taking into account, though there were 51 excess in the trade seniority to which the petitioners belong, Senior Section Engineers were allowed to continue without reversion. The Tribunal after taking note of the objective of both parties was pleased to dismiss the original application on 19.06.2015 on the basis of the submission made by the respondents that the options once made cannot be altered later without even giving importance to their own order dated 31.03.2006 and 24.05.2008 and

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there is a delay. Further, the contention of the respondents on limitation cannot be accepted as we all were making representations one after another on the basis of their common orders. However, the learned Tribunal has dismissed the original application as well as Review.

5. The Tribunal has failed to consider that the official respondents who had embarked on an important exercise of restructuring the cadre with the primary objective of merging four seniority units in the common seniority unit have the onerous duty to thrash out all the issues and ensure that all the concerned groups of employees get promotional benefits and suffered least disadvantageous before doing so.

6. The Tribunal failed to note that the official respondents have unfairly rejected the request of the applicants to go for newly created common seniority unit. Therefore, the order passed by the Tribunal is liable to be set aside.

7. The learned counsel for the petitioners would contend that these petitioners are the senior most candidates employed in the post of Junior Engineer Gr.I and up to 31.03.2006 separate seniority was already opted for different trades and after 31.03.2006 common seniority was



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introduced for all the trades by calling option from all the employees. The

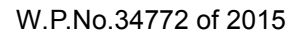
petitioners wanted to retain the trade wise seniority and thereafter the promotion posts of Junior Engineer Gr.II, Junior Engineer Gr.I, Section Engineer and Senior Section Engineer were merged into two posts with effect from 01.01.2006, namely, Junior Engineer and Senior Section Engineer. When the petitioners were given representation before the respondents dated 22.10.2013 and 05.02.2014, no reply was given and thereafter as per the order passed by the Tribunal, the 1st respondent passed an order dated 28.03.2014 and the same was challenged by filing another Original Application and the same was dismissed without taking into note of the admitted position of the case and the circulars. Thereafter, these petitioners have filed O.A.No.310/00708 of 2014 dated 19.06.2015 and the order passed in R.A.No.17 of 2015 in O.A.No.310/00708 of 2014 dated 12.08.2015 to direct the respondents to promote the petitioners to the post of Senior Section Engineer on the basis of date of promotion to the feeder post as per circular dated 09.02.2007 and proceedings dated 24.05.2008 with effect from the date of promotion given to their immediate juniors with all monetary and service benefits by including the applicants in the common seniority unit over and above their immediate juniors with reference to the date of

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initial appointment and the same was dismissed by the Tribunal on the ground that these petitioners already opted to join in common seniority unit and raising the issue nearly six years after the merger of the post cannot be supported particularly, when the seniority is settled, the same cannot be unsettled, after lapse of several years and more so when the persons who are likely to be affected are not made party to the Original Application and it is also the settled position of law that issues impinging on seniority cannot be agitated by the employee after considerable lapse of time as that would unsettle the settled position in a Department. But, the Tribunal failed to consider that at the time of issuing circular for option of common seniority in the four posts were there in the trade seniority, thereafter, it was merged from four posts to two posts in the year 2008 only. Therefore, the petitioners were unable to opt the common seniority and they opted for trade seniority, who joined in the common seniority got promotion prior to the petitioners who were juniors to the petitioners and therefore, the Tribunal has failed to consider the above said aspects and wrongly dismissed the Original Application. Hence, the order passed by the Tribunal is liable to be set aside.



8.2. Further, consequent on implementation of restructuring orders, additional supervisors during 01.11.2013, additional posts have arisen in the trade of common seniority unit and no additional posts have arisen in any of the other trades. Based on the vacancy 138 promotions were ordered in common seniority unit trade vide order dated 01.11.2014. However, 20 trade employees who were erstwhile seniors to employees in the common seniority unit, could not be promoted as no



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vacancies have arisen in the trade seniority. They had initially represented for considering promotion as Senior Section Engineer to them duly including them in common seniority unit based on their length of service as Junior Engineer Gr.II after implementation of the Sixth Pay Commission due to merger of grades. This was not agreed to as there is no provision in the rules for transfer from one seniority group to another duly protecting the length of service, in case, if they are willing to transfer to common seniority unit, they can be considered only on bottom seniority as per Rules and the same have been conveyed to them through letter dated 28.03.2014.

8.3. Against which one Aranganathan and 17 others have filed O.A.Nos.140 to 157 of 2014 before the Tribunal praying to direct the respondents to promote them on par with their erstwhile juniors and the same was disposed with a direction directing the respondents to consider the representation of the applicants in accordance with law through order dated 11.02.2014. In compliance with the above said order, the representation dated 22.10.2013 and 05.02.2014 had been carefully examined and disposed vide letter dated 28.03.2014, stating that they could not be considered for promotion on par with their erstwhile juniors

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as two distinct different seniority units have come into existence and therefore they cannot claim promotions based on the erstwhile seniority position. As against the above said letter dated 28.03.2014, the Original Application has been filed before the Tribunal. The Hon'ble Tribunal has disposed the application by observing that petitioners made their options in the Trade Seniority and after preparation of seniority list, belatedly have chosen to opt for Common Seniority Unit that too on par with the erstwhile juniors and the same will unsettle the settled seniority and further, the persons who are likely to be affected are not parties to the Original Application, thereby the Hon'ble Tribunal dismissed the Original Application.

9. This Court heard both sides and perused the records.

10. On perusal of records, it is observed that these petitioners are working as senior most candidates employed in the post of Junior Engineer Gr.I and already their option was called for whether they opted to common seniority or trade seniority. These petitioners opted for trade seniority and not opted for common seniority and thereafter seniority list was also prepared w.e.f. 01.01.2016. At the time of the above said circular, the four posts were available namely Junior Engineer Gr.II, 12/23



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Junior Engineer Gr.I, Section Engineer and Senior Section Engineer but consequent to Sixth Pay Commission's recommendations, these four posts were merged into two posts with effect from 01.01.2006 namely Junior Engineer and Senior Section Engineer.

11. Thereafter, these petitioners gave representations dated 22.10.2013 and 05.02.2014 for opting common seniority unit since their juniors were promoted from the common seniority unit and these persons have to be posted above the juniors who promoted in the common seniority unit. The said representation was rejected on the ground that already opted for trade seniority, the same was not considered. Thereafter, these petitioners filed petition before the Central Administrative Tribunal, and by order dated 11.02.2014, directed the 1st respondent to consider their representations. Thereafter, these petitioners' representations were considered by the respondents and passed orders that the petitioners submitted their representations belatedly and already they opted for trade seniority and after preparing the seniority list, after promotions were given to others, they sent their representations. As against the said order, they filed this impugned Original Application.

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12. In this case, it is admitted fact that already the respondents issued circular in respect of option for common seniority or trade wise seniority. These petitioners did not opt the common seniority and they opted trade wise seniority. Based on the option the seniority list was prepared in the year 2008 itself and these petitioners names were included in the trade wise seniority list. Thereafter, the four posts were merged as two posts and thereby these petitioners trade wise seniority list was got delayed for promotion. Whereas in common list seniority, the juniors of these petitioners got promoted. Hence, now these petitioners wants to fix their seniority in the common seniority list above the names of their erstwhile juniors. Once these petitioners opted the seniority of trade wise seniority, they cannot claim common seniority on par with their juniors who opted for common seniority. The Department after giving opportunity only processed seniority list in the year 2008, and the petitioners once opted the trade wise seniority later they cannot deny and they estopped.

13. Further, these petitioners gave a representation in the year 2013 and 2014, after lapse of several years. If the petitioners are allowed

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to common seniority list, on par with their erstwhile juniors, certainly it will

unsettle the settled seniority. Once the petitioners opted for trade wise seniority, later they cannot turn around to opt their original seniority on par with their juniors due to delay in getting promotion. Further, as per the respondents, due to implementation of restructuring orders mechanical supervisors during 2013, additional posts arisen only in common seniority unit and no other trades and thereby vacancy arisen for 138 posts and promotion was given, whileso these petitioners cannot once again turn around to opt original common seniority list for promotion purpose. If relief is granted to the petitioners by considering their request for promotion on par with their erstwhile juniors, it would certainly interfere with the common seniority list prepared long back in the year 2016. Once common seniority list was drawn and promotions were given, at this distant point of time considering the request of the petitioners would unsettle the seniority which had settled long back. Therefore, the contention of the petitioner is liable to be rejected on the ground of delay.

14. The next contention of the petitioners is that they have agreed for exercising option under Tradewise seniority and since they did not have avenue of promotion, they have requested for grant of promotion

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under separate category. During the year 2013, based on the common seniority list vacancies arisen for 138 posts and they were duly filled up based on common seniority list and promotions were given based on eligibility. Therefore, now the request of the petitioners for promotion is legally unsustainable since they have already exercised their option to get away with Tradewise seniority. Therefore, the contention of the petitioners is not acceptable.

15. At this juncture, it is relevant to rely the judgment of this Court in W.P.No.10135 and 18224 of 2013, wherein, this Court after relying the Hon'ble Supreme Court judgment held in paras 12 to 14 as follows:

"12. At this juncture, it is useful to refer to the decision of the Hon'ble Supreme Court in *Maloon Lawrence Cecil D.Souza v. Union of India [AIR 1975 SC 1269]* wherein it was held that *"taking up of old matters like revision of seniority after a long time is likely to result in administrative complications and difficulties; it would therefore appear to be fair in the interest of smoothness and efficiency of administration that the settled matters should not be made unsettled and it should be given a quietus after the lapse of some time"*.



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13. The Hon'ble First Bench of this Court in the decision in

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S.Somachari and L.Geetha v. Union of India [Order dated

15.04.2008 in W.P.Nos.7200 of 1999 etc., batch] held as follows:

“5. Firstly, as apparent, the seniority list had been prepared as way back in May, 1989. Law is well settled that in the matters relating to seniority, an aggrieved party is expected to come to the Court as expeditiously as possible without avoidable delay and the matters which are remained settled for a long period should not be allowed to unsettle after a long lapse of time.

5.1. In the present case, the petitioners approached the Tribunal for the first time by filing Original Applications in 1996 or 1997, after about 7 to 8 years. Learned counsels for the petitioners submitted that representations have been made and they have been waiting for the reply from the Government. In such matters, merely by making a representation, an aggrieved employee cannot wait quietly for a long period. If no reply was received within a reasonable period, say six months or one year, obviously the person has to approach the Court to ventilate his grievance.

5.2. The Supreme Court, further, in the judgment relating to the ***State of Tamil Nadu v. Seschalam (2007 AIR SCW 7750)*** held that law leans in favour of those who are alert and vigilant. Speaking for the Bench, S.B. Sinha, J. in paragraph 11 had observed as follows :-

“11. Some of the respondents might have filed representations but filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and / or laches on the part of a Government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted



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as it is well known that law leans in favour of those who are alert and vigilant.”

14. In *Union of India & Others v. Chaman Rana* [2018

SCC Online SC 294], the Hon'ble Apex Court observed as under :

“8. Manifestly, the cause of action first arose to the respondents on the date of initial supersession and again on the date when rejection of their representation was communicated to them, or within reasonable time thereafter. Even if the plea based on *Dev Dutt* [*Dev Dutt v. Union of India*, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771] be considered, the cause of action based thereon accrued on 12-5-2008. There has to be a difference between a cause of action and what is perceived as materials in support of the cause of action. In service matters, especially with regard to promotion, there is always an urgency. The aggrieved must approach the Court at the earliest opportunity, or within a reasonable time thereafter as third-party rights accrue in the meantime to those who are subsequently promoted. Such persons continue to work on the promotional post, ensconced in their belief of the protection available to them in service with regard to seniority. Any belated interference with the same is bound to have adverse effect on those already promoted affecting their morale in service also. Additionally, any directions at a belated stage to consider others for promotion with retrospective effect, after considerable time is bound to have serious administrative implications apart from the financial burden on the Government that would follow by such orders of promotion.

9. As far back as in *P.S. Sadasivaswamy v. State of T.N.* [*P.S. Sadasivaswamy v. State of T.N.*, (1975) 1 SCC 152 : 1975 SCC (L&S) 22] , considering a claim for promotion belated by 14 years, this Court had observed that a period of six months or at the utmost a year would be reasonable time to approach a court against denial of promotion and that it would be a sound and wise exercise of



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discretion not to entertain such claims by persons who tried to unsettle the settled matters, which only clog the work of the court impeding it in considering genuine grievances within time in the following words: (SCC p. 154, para 2)

“2. ... A person aggrieved by an order of promoting a junior over his head should approach the court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the court. It clogs the work of the court and impedes the work of the court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal.” (emphasis supplied)

16. In the facts and circumstances of the present case, any direction to consider retrospective promotion of the respondents at such a belated passage of time of over 17 to 20 years, would virtually bring a tsunami in the service resulting in administrative chaos quite apart from the financial implications for the Government. The order of the High Court is therefore held to be unsustainable and is set aside.”



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16. On careful perusal of the said judgment, it reveals that the

revision of seniority after a long time, is likely to result in administrative complications and difficulties, it would therefore appear to be fair in the interest of smoothness and efficiency of administration that the settled matter should not be made unsettled and it should be given a quietus after lapse of some time. In the case on hand also these petitioners opted the trade seniority in the year 2008 and the seniority list was prepared with effect from 01.04.2006. Thereafter in the year 2013 these petitioners sent a representation to the respondents to re-fix the seniority in the common seniority after lapse of 5 years. Therefore the said case laws are squarely applicable to the facts of the present case.

17. Therefore, the representations of the petitioners cannot be considered in their favour. Further, the persons who are said to be erstwhile juniors to the petitioners who are likely to be affected by seniority are also necessary parties to this petition and without their presence this petition cannot be decided effectively. The Tribunal also considering the nature of application held that the petitioners have already opted for trade seniority and thereafter, the respondent prepared common seniority list and after considerable period these petitioners

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gave their representations and the same was not considered due to delay

and these persons after chosen one seniority list cannot seek another one for promotion. Further, the Tribunal also in the order stated that the other petitioners who are likely to be affected by seniority have also not been arrayed as party in the O.A., and thereby, the petitioners cannot entitle any relief through the original application filed before the Tribunal. Thereafter these petitioners filed Review Application before the Tribunal and the Tribunal also correctly dismissed the review application filed by the petitioners by holding that there is no ground to review the order passed by the Tribunal. Therefore, the order passed by the Tribunal is well reasoned and warrants no interference by this Court. Hence, this writ petition has no merits and deserves to be dismissed.

18. In the result, this Writ Petition is dismissed and the order passed by Central Administrative Tribunal in O.A.No.310/00708/2014 dated 19.06.2015 and the order in R.A.No.17/2014 in O.A.No.310/00708 of 2014 dated 12.8.2015 are confirmed. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.,] [P.D.B., J.,]
20.11.2023



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Index:Yes/No
Speaking/Non-Speaking Order
ssn

To

1.The General Manager,
Integral Coach Factory,
Chennai-38.

2.The Chief Personnel Officer,
Integral Coach Factory,
Chennai-38.

3.The Central Administrative Tribunal,
Madras Bench,
Chennai-104.

D.KRISHNAKUMAR, J.,
and
P.DHANABAL, J.,

ssn/mpa



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Pre-delivery Judgment in

W.P.No.34772 of 2015

and

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