

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6213 OF 2008

(@SPECIAL LEAVE PETITION (CIVIL)NO.7686 OF 2004)

UNION OF INDIA & ORS.

Appellant(s)

VERSUS

CHITRA LEKHA CHAKRABORTY

Respondent(s)

WITH

C.A.NO.6214/2008 @ SLP(C)NOS.180603/2005

AND WITH

C.A.NOS.6215-6216/2008 @ SLP(C)NOS.21902-21903/2004

O R D E R

Leave granted.

Delay condoned.

We will first deal with Civil Appeals @ SLP© Nos.21902-03/04 and Civil Appeal @ SLP© no.18603/05.

These appeals, by special leave, are being filed in connection with the selection of Non-Technical Popular Clerical Category of the Railways. The selection was held in the year 1984 and a written test was held on 26.5.1985 followed by an interview on 25.9.1985. Several candidates were selected. There was allegation that some of the candidates, who participated in the selection, indulged in malpractices in the examination and it appears that the selection Board has published a list which contains about 1000 candidates. Some of these candidates who were aggrieved by their non-selection filed various representations before the Railway Recruitment Board.

While these representations were pending, they filed

Original Applications before the Central Administrative Tribunal (for short 'C.A.T.')(at Calcutta). The C.A.T. has directed that their cases be considered and fresh interviews be held and selection be done and the candidates be included. Thereafter several candidates were appointed, pursuant to the direction of the C.A.T.. Prior to this, on 17.2.1986 the Addl. Executive Director Estt.(T&MPP) wrote a letter to the Chairman, Railway Recruitment Board indicating the number of candidates to whom the fresh notices have been issued and it was found that some candidates have secured more marks than the 1000 candidates, who were suspected to have indulged in malpractices, and he was of the view that these candidates should be given careful consideration and on consideration of the same, their rights should be restored and the names of those candidates which were in the list should be included in the appropriate places in the panel. Appropriate direction to appoint the respondents in Civil Appeal @ SLP©Nos.21902-21903/04 and in the appeal @ SLP(C)No.18603/05 were issued, on the basis of the letter dated 17.2.1986 and the said respondents were appointed in the year 1994. These respondents had claimed seniority over the candidates who had already been appointed in the year 1985 based on the statement made in the letter dated 17.2.1986 that their appointments should be made after including them at the appropriate places in the panel. The C.A.T. has directed the railway authorities to fix the specific position of the respondents in the panel for the purpose of determination in the *inter se* seniority against those appointed from the said panel

and the relative position of the applicants in such panel shall be ascribed keeping in view the aggregate marks obtained by the applicants and the relative aggregate marks of the applicants who have already been appointed from the said panel.

This order of the C.A.T. was challenged before the High Court contending that these respondents were appointed only in the year 1994 and that they cannot claim seniority over the candidates who had already been appointed in the year 1985. But this plea of the respondents was not accepted by the High Court and the order of the C.A.T. was confirmed by the High Court. The judgment of the High Court in these two proceedings are challenged in the present appeals.

We will now deal with Civil Appeal @ SLP© 7686/04. The brief facts are :

The respondent herein had participated in the selection in the year 1984 and her name was not found in the selection list and she filed a representation to the Railway authorities in the year 1991 and her representation was not replied by the railway authorities whereafter she filed an Original Application before the C.A.T., Calcutta. The C.A.T. has allowed the O.A. During the pendency of the O.A. before the Tribunal, the Chairman of the Railway Recruitment Board issued a direction to appoint the respondent and she was consequently appointed. Thereafter the O.A. filed by the respondent was disposed of on 8.1.1996 with the direction that the Chairman of the Railway Recruitment Board shall, within two months from the date of communication of the order, convey to the petitioner

therein to specify the specific position of the petitioner in the panel selected for the purpose of determination of her *inter se* seniority amongst those appointed from the said panel and it was also directed that the relative position of the petitioner of such panel shall be ascribed keeping in view her aggregate marks and the relative aggregate marks of other candidates who had already been appointed from the panel. Thereafter the appellant Union of India (Ministry of Railways) has filed a review petition before the C.A.T. and the same was rejected on the ground that it was filed beyond 30 days as prescribed under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 (for short 'the 1987 Rules). The appellant has challenged the same before the High Court and the High Court confirmed the order passed by the C.A.T. Aggrieved by the same, the present appeal has been filed by the Union of India.

Learned Addl.Sol.General for the Union of India contended that the review petition filed by the appellant should have been allowed as there was sufficient cause for extending the period of limitation prescribed under Rule 17 of the 1987 Rules. Learned Addl.Sol.General has placed reliance on a decision of this Court in Consolidated Engg. Enterprises Vs. Principal Secretary, Irrigation Dept. & Ors., reported in 2008(7) SCC p.169, wherein it was held that Section 14(2) of the Limitation Act, 1963 was applicable to an application submitted under Section 34(1) of the Arbitration and Conciliation Act, 1996. It was further held that as per Section

43 of the Arbitration Act, the Limitation Act, 1963 was applicable to the application filed under Section 34 of the Arbitration and Conciliation Act for setting aside the award. In other words, a specific provision was made in the Arbitration and Conciliation Act for application of Limitation Act. In the instant case a specific provision in Rule 17 of 1987 Rules has been made for filing a review application before the C.A.T. and therefore, Section 5 of the Limitation Act was not applicable to a petition filed under Rule 17. The High Court was justified in concluding that the Tribunal has rightly dismissed the application filed beyond 30 days.

On coming to the question of seniority of the respondent the direction of the C.A.T. was that the respondent herein shall be given specific position in the panel for the purpose of determination of her *inter se* seniority against those appointed from the said panel and the relative position of the respondent in such panel shall be ascribed keeping in view the aggregate marks obtained by the applicants who have already been appointed from the said panel. It was contended on behalf of the Railways that the selection was held in the year 1984 and the records relating to the selection are not available with them as there was an accidental fire and the records have been destroyed. Moreover the respondent herein also is not successful in producing any document to show as to what is the aggregate marks obtained by her *vis a vis* the aggregate marks obtained by other candidates who had already been appointed. There is also no common panel prepared conjoining the selection

made in the year 1984 and the persons appointed subsequently so that the seniority could be determined by the appellant. Even though the direction issued by the Tribunal has become final in view of the peculiar position the Railways is directed to give seniority to the respondent from the date on which she joined the service.

The appeal @ SLP(C)No.7686 of 2004 is disposed of accordingly.
No costs.

In the other two appeals i.e. Civil Appeals @ SLP© Nos.21902-03/04 and Civil Appeal @ SLP© no.18603/05, the respondents were appointed pursuant to the direction passed by the C.A.T. and it was also directed that their seniority shall be given based on their aggregate marks over the relative aggregate marks obtained by other candidates who had already been appointed. Neither the respondents nor the Railways are in a position to give the aggregate marks obtained by the respondents nor the marks obtained by the candidates who had already been appointed. There was no common panel *vis a vis* the candidates from the year 1985 and the candidates who had been subsequently appointed. Only if there was a common panel, the seniority could be determined on the basis of Rule 303 which regulates the seniority of the non-gazetted railway employees. There was no common seniority list nor any merit list prepared by including all the candidates. Moreover, the respondents herein were not included in the original list and the C.A.T. has directed that there should be a fresh interview for these candidates and the interview was held subsequently. It must

have been certainly by a different Board which had conducted the interview. Under these circumstances, it is difficult to hold that all these candidates, who had been appointed, were from the same panel. There are no criteria available to determine the *inter se* merit of the candidates. These respondents were appointed several years after the appointments were made in the year 1985. None of the candidates who had been selected in the year 1985 were made parties to the O.A. before the C.A.T. or before the High Court in the writ petition. In the circumstances, the seniority of the candidates who had been appointed in the year 1985 cannot be disturbed without hearing those candidates. Learned counsel appearing for the respondents strongly relied on the letter dated 17.2.1986 written by the Addl.Executive Director to the Chairman, Railway Recruitment Board wherein he expressed the opinion that in case the representations filed by these candidates are allowed their places in the seniority is to be given by interpolating in the seniority list which has already been made. Learned counsel for the respondents contended that this was not the stand of the Railway Board and once the stand was expressly made clear, the appellant was bound by this statement. Reliance was also placed on the observations of this Court in Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors., reported (1978) 1 SCC p.405, wherein this Court has stated that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of

affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out and it was contended that these observations of this Court were further followed in State Govt. Houseless Employees' Association Vs. State of Karnataka & Ors., 2001 (1) SCC p.610 at para 49, Chandra Singh & Ors. Vs. State of Rajasthan & Anr., 2003(6) SCC p.545 para 37 and Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai & Ors., 2005(7) SCC p.627 paras 24 to 27. But in the instant case there was no order passed by any responsible officer or by the Railway Recruitment Board to the effect that if any candidate, who had subsequently been appointed, his/her seniority would be determined on the basis of his/her aggregate marks or the rank secured in the interview. The letter dated 17.2.1986 cannot be considered as an order passed on behalf of the railways. Moreover, the seniority of persons appointed in a service should be decided after hearing the relevant parties and applying the rules regulating the seniority principle.

In these cases there was no common seniority list and marks secured by these candidates and the candidates who had been appointed in the year 1985 are not available and placed before C.A.T. or High Court. The relative merit of the candidates cannot be considered as no marks are placed even before us. It may also be noticed that these respondents were appointed after a period of six years, not due to any fault committed by the Railway Recruitment Board. As per the

allegations and counter allegations, it would appear that some of the candidates had indulged in malpractices and they were disqualified and later on on the basis of the representations and the orders passed by the C.A.T. the respondents were appointed subsequently. There was no negligence or latches on the part of the appellant in making the appointments of the respondents belatedly. Having regard to the peculiar facts, the respondents are entitled to seniority only from the date when they joined their service.

Accordingly, Civil appeals @ SLP©Nos.21902-03/04 and SLP©No.18603/05 are allowed to the extent indicated above and the order passed by the High Court is set aside. No costs.

.....CJI.
(K.G. BALAKRISHNAN)

.....J.
(P. SATHASIVAM)

.....J.
(J.M. PANCHAL)

NEW DELHI;
21ST OCTOBER, 2008.