

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.**

Original Application No. 304 of 1998

This the 13 day of February, 2006

**HON'BLE MR. K.B.S. RAJAN, MEMBER-J
HON'BLE MR. A.K. SINGH, MEMBER-A**

1. Janardan S/o Sri Chandrika Singh, R/o 297-A Dairy Railway Colony, Gorakhpur, presently posted as Section Engineer, Works, Planning under the Control of Deputy Chief Engineer, Gorakhpur Area, Gorakhpur, North Eastern Railway.
2. Rajeshwari Prasad, S/o Sri Anant Lal Srivastava, R/o 421-B-Dairy, Railway Colony, Gorakhpur, presently posted as Section Engineer, Works, Planning under the Control of Deputy Chief Engineer, Gorakhpur Area, Gorakhpur, North Eastern Railway

.... Applicants

By Advocate : Sri A. Srivastava.

Versus

1. Union of India through the Chairman, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, North Eastern Railway, Gorakhpur.
3. Chief Engineer, North Eastern Railway, Gorakhpur.
4. Chief Personnel Officer, Administration, North Eastern Railway, Gorakhpur.
5. Sudhir Kumar Srivastava, S/o Sri B.L. Srivastava, working as Section Engineer, Dy. Chief Engineer, N.E.R., Gorakhpur.
6. Ramesh Singh, working as Section Engineer, Dy. Chief Engineer, N.E.R., Gorakhpur.
7. A.K. Chawala, S/o Sri J.C. Chawala, working as Section Engineer, Dy. Chief Engineer, N.E.R., Gorakhpur.
8. Anil Tripathi, working as Section Engineer, Dy. Chief Engineer, N.E.R., Gorakhpur.

9. Alok Kumar Srivastava, S/o Sri O.P. Srivastava, working as Section Engineer, Dy. Chief Engineer, N.E.R., Gorakhpur.
10. Arvind Kumar Pandey working as Section Engineer, Dy. Chief Engineer, N.E.R., Gorakhpur.

....Respondents

By Advocate : Sri D.C. Saxena & Sri S.K. Misra

Alongwith

Original Application no. 305 of 1998

M.F.H. Marufi, S/o Sri MAH Marufi, R/o Alinagar North, Gorakhpur at present posted as Section Engineer, Workshop, North Eastern Gorakhpur.

Applicant.

By Advocate : Sri A. Srivastava

Versus.

1. Union of India through the Chairman, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, North Eastern Railway, Gorakhpur.
3. Chief Engineer, North Eastern Railway, Gorakhpur.
4. Chief Personnel Officer, Administration, North Eastern Railway, Gorakhpur.
5. Sudhir Kumar Srivastava, S/o Sri B.L. Srivastava, working as Section Engineer, Dy. Chief Engineer, N.E.R., Gorakhpur.
6. Ramesh Singh, working as Section Engineer, Dy. Chief Engineer, N.E.R., Gorakhpur.
7. A.K. Chawala, S/o Sri J.C. Chawala, working as Section Engineer, Dy. Chief Engineer, N.E.R., Gorakhpur.
8. Anil Tripathi, working as Section Engineer, Dy. Chief Engineer, N.E.R., Gorakhpur.
9. Alok Kumar Srivastava, S/o Sri O.P. Srivastava, working as Section Engineer, Dy. Chief Engineer, N.E.R., Gorakhpur.

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10. Arvind Kumar Pandey working as Section Engineer, Dy. Chief Engineer, N.E.R., Gorakhpur.

Respondents
By Advocate : Sri D.C. Saxena & Sri S.K. Misra

Alongwith

Original Application no. 821 of 2004

I.D. Pandey, S/o Sri P.N. Pandey, R/o 6-Q Ashok Nagar, Gorakhpur.

Applicant

By Advocate : Sri S.K. Om.

Versus.

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. Chief Engineer, North Eastern Railway, Gorakhpur.
3. Chief Personnel Officer, North Eastern Railway, Gorakhpur.

Respondents
By Advocate : Sri K.P. Singh

O R D E R

BY K.B.S. RAJAN MEMBER-J

In all the three OAs as the issue involved is one and the same, by a common order all the three O.As are dealt with.

O.A. no. 304/98 :-

2. Seniority is the bone of contention in this case. The applicants have challenged the seniority list dated 20.7.95 and 8.1.97 and prayed for a direction for correction of the seniority list in the Grade of IOW Gr. I in the correct place with

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appointees on 1.2.1994. They have also prayed for quashing of order dated 19.12.1996 and 18.7.97.

O.A. no. 305/98 :

3. The applicants in this case have prayed for a direction to the respondents to adopt the selection by way of modified selection procedure as per restructuring scheme dated 21.1.1993 and accord promotion in the Grade of IOW I w.e.f. 1.2.1986.

O.A. no. 821/04

4. The claim of the applicants in this O.A is a same as of O.A. no. 304/98 save that the orders sought to be quashed are 13.12.96 and 8.10.99. In addition, according to him, the earlier promotion to the grade of IOW I from the initial date of promotion had been arbitrarily treated as ad hoc, by canceling the order dated 30-09-1999.

5. Facts capsule:

(a) The applicants were initially inducted as IOW Gr. III and were promoted as IOW Gr. II. On 27.1.93, cadre restructuring scheme was introduced. According to which, vacancies existing on 1.3.93 except Direct Recruitment quota should be filled in a particular manner as contained in para 4 of the Scheme. According to para 4 of the scheme, the existing classification of the post covered under restructuring scheme



would remain unchanged and that for promotion to a selection post, the existing selection procedure would stand modified to the extent that the selection would be based only on scrutiny of service record and ACR without holding any written test or viva voce. The applicants in O.A. no. 304/98 and applicants in O.A. 821 of 2004 were the beneficiary of the restructuring scheme and promoted to the post of IOW Gr. I in the scale of Rs. 2000-3200/- w.e.f. 1.2.1994. And, by an order dated 3.4.95, these applicants were held on regular basis against regular vacancies. A provisional seniority list was issued on 20.7.95 and the applicants' position has been indicated as having assumed the regular post of IOW Gr. I from 5.4.95. The claim of the applicants in these two O.As is that it should be from 1.2.1994.

(b) So far as applicant in O.A. no. 305/98, he was promoted as IOW Gr. I against a work charged post w.e.f. 31.10.1995 with the approval of the Chief General Engineer. Again by order dated 1.2.96, the applicant's promotion as IOW Gr. I was regularised against a clear vacancy w.e.f. 31.1.1996. Despite the above, in the seniority list published on 8.1.97 the name of the applicant did not figure in the list of IOW Gr.I effective as on 1.11.1996. The claim of the applicant in this case is since he had been functioning as IOW Gr.I from 31.10.1995, he having more than 18 months of service in that grade. His name should be reflected in the seniority list, whereas the respondents have asked the applicant to furnish his



willingness to appear in the written test for selection to the post of IOW Gr. I. Hence the applicant has prayed for a direction to the respondents to consider his case for promotion under modified promotion scheme as per the restructuring scheme.

6. The respondents have contested the O.As. According to them, the applicants' promotion as IOW Gr. I was treated only on adhoc basis and their regular appointment is as per the order of regularisation and seniority is counted only from the date of regular promotion.

7. Written submission were called for have been filed by the respondents' counsel in respect of O.A. no. 304/98. No written arguments from the applicants' side, nor for the respondents in other O.As.

8. Arguments were heard and the documents perused. We have given our anxious consideration. Order dated 1-02-1994 (Annexure-III) in respect of the applicants in O.A. no. 304/98 clearly provides for "**promotion-cum-posting**". Of course, the posting was against a work charged post and hence, column 6 provided for the tenure of posting as three months. However, vide order dated Nil January, 1995 (but stated to be as dated 3.4.95) at Annexure IV indicates that the applicant who got promotion vide order dated 01-02-1994 was posted against regular

posts and thus, this order is only a posting order, promotion already having been made under the earlier order dated 01-02-1994. In other words, the order of promotion is dated 1.2.94 and posting against work-charged post was incidental and posting against regular post was made by order dated 3.4.95. If order dated 3-04-1995 were to be the actual promotion order, there should have been a stipulation of that nature whereas, not only that such a stipulation was not available in the order, rather it has been clearly stated therein that the applicant who was promoted under order dated 01-02-1994 was posted against regular post. As such, it is very much evident that the applicant's promotion on 01-02-1994 was on regular basis. So is the case with reference to the applicant in OA No. 821/04. In so far as the applicant in 305 of 1998 is concerned, the initial order dated 31-10-1995 serves as promotion order and the posting was for a period of three months against the work charged post. The order dated 1.2.1996 was the posting order of the applicant against a regular post.

9. In 821.04, certain orders of cancellation of promotion etc, had been referred to (e.g. order dated 13-12-1996 (Annexure A 9) but there is no reference as to any show cause notice prior to such cancellation. An order of promotion cannot be so easily be cancelled or withdrawn especially when no notice has been issued.

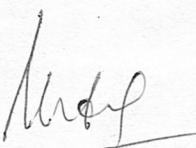
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10. In view of the above discussion, all the O.As are allowed. The applicants are held to be holding the posts of IOW Gr. I respectively from the dates they were appointed against regular posts (Posting against work charge posts had been specifically excluded from the ambit of restructuring, vide para 2.1 of the order dated 27-01-1993. If the applicants were not subjected to normal scrutiny at the time of their initial promotion in accordance with the procedure laid down in the said order dated 27-01-1993 under restructuring, the same could well be carried out. The applicants are entitled to seniority from the respective dates of their promotion against regular posts i.e. 03-04-1995 in respect of Applicants in OA 304/98 and 821/04 and 01-02-1996 in respect of Applicant in OA No. 305/98. The seniority list shall be recast and necessary details as to the revision of seniority of the applicant should be duly reflected in the remarks column of the seniority list. Since this revision is by virtue of this order, there is no need to give prior notice to any one whose seniority may be affected. However, in case there be any representation from the aggrieved employees, the same be looked into by the respondents, keeping in view the fact that in so far as the applicants are concerned, their date of promotion as IOW Gr. I would be from the dated they had been posted against regular basis, as mentioned above. The consequence

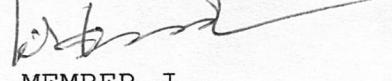


of the revision of seniority i.e. for promotion to higher posts, axiomatically, would be available to the applicants. Time limit for revision of seniority lists of IOW Gr. I as on April, 1995 and February, 1996 duly reflecting the names of the applicants as per these orders, is calendared at six months from the date of communication of this order.

No cost.



MEMBER-A



MEMBER-J

GIRISH/-