

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 17th day of **July, 2008.**

**HON'BLE MR. JUSTICE A.K. YOG, MEMBER- J.
HON'BLE MR. K.S. MENON, MEMBER- A.**

Original Application No. 700 OF 1998

1. Surendra Pal Singh, S/o Sri Sradar Singh
2. Uma Shankar Yadav, S/o Sri Mewa Lal
3. Pram Kumar Bhagat, S/o Sri Mahavir Bhagat
4. Munna Lal (1st) , S/o Babu Ram
5. Shyam Singh, S/o Ram Prasad
6. Udai Bhan Trivedi, S/o Radha Krishna Trivedi
7. Gnaga Prasad, S/o Nawab Singh
8. Shafiq Pervej, S/o Hafiz Khan
9. S.C. Verma, S/o Chandan Singh Verma
10. Hukum Singh, S/o Mewa Ram
11. Vishwa Nath Singh, S/o Nojadik Singh
12. Gopal Krishna S/o Ram Das
13. Dev Kumar, S/o Raj Nairain
14. Robin Indwar, S/o Patras Indwar
15. Asharfi Lal, S/o Ram Lakhan Yadav

All C/o The Chief Crew Controller, Northern Railway, Tundla.

.....Applicants

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1. Union of India through the General Manager,
North Central Railway, Allahabad.



2. The Divisional Railway Manager,
Northern Railway, Allahabad .
3. The Divisional Personnel Officer, D.R.M. Office,
Allahabad.
4. Senior Divisional Electrical Engineer,
RSO, Northern Railway, Allahabad.

.....Respondents

Present for applicants : Sri A.S. Diwakar
Counsel for respondents: Sri Govind Saran

ORDER

BY HON'BLE MR. JUSTICE A.K. YOG, J.M.

List revised. None present for the respondents. Heard Sri A.S. Diwakar, Advocate, learned counsel representing the applicants.

2. By means of this O.A filed under section 19 of the Administrative Tribunals Act, 1985, the applicants (15 in number) have come up against the seniority list prepared by the respondents' department and issued by Senior Divisional Electrical Engineer, R.S.O, Northern Railway, Allahabad dated 19.01.1998. True copy of the said seniority is Annexure- 1 to the O.A.

3. According to the applicants, they were appointed as Class IV in running category and after having worked satisfactorily, they were promoted as Fire Man 'C' in Steam Traction. They was further promoted as Fire Man^{Qa} 'B' and posted under Loco Foreman, Tundla vide order dated 03.01.1989 (copy enclosed as Annexure- 2 to the O.A) passed by Divisional Personnel Officer. According to the applicants, they were allowed to join training course and the same was completed successfully by them. Consequently they were posted as Electrical Assistant Driver after screening. After screening, they were placed on the panel of selected

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candidates for being posted as Assistant Electrical Driver. The training was to be imparted at Electrical Training Centre , Kanpur. Having completed their training, the applicants were declared successful vide order dated 27.01.1990 (copy enclosed as Annexure- 5 to the O.A) and their posting orders were issued on 15.02.1990. According to the applicants, the seniority list is not prepared in accordance with law and there are various irregularities and being aggrieved, they approached this Tribunal ^{by filing O.A.} ~~and filed~~ the present O.A on the following grounds :

"5.1 Because the petitioners are seniors on the basis of length of service and they were appointed and promoted on 21.02.1990 on the post of Assistant Electrical Driver and they are entitled for seniority and for promotion and selection on the post of Electric Driver Goods and the names of the petitioners should be kept (first) and above the persons appointed on the post of Asstt. Electrical Driver after 21.02.90 or thereafter and the petitioners appointed as direct recruitee on the post of Assistant Driver Electric should be junior in the seniority list from petitioners.

5.2 that the seniority of the petitioners fixed vide seniority list dt. 19.1.98 showing the petitioners juniors from direct recruitee appointed after 21.2.90. the date of promotion of the petitioners on the post of Assistant Driver Electric or the persons appointed in the year 1991, 92, 93 94 and 1995 is illegal and invalid and criteria of the same is wrong which is being challenged.

5.3. Because the Article 14, 16 and 21 of the Constitution of India have been violated and the seniority list dated 19.1.98 is against provisions of natural justice."

4. By means of the present O.A, the applicants have sought following relief(s): -

"8.1 to issue a writ order or direction in the nature of writ of certiorari quashing the seniority list sated 19.1.98 published by the respondent No. 4.

8.2. to issue a writ order or direction in the nature of writ of mandamus commanding the respondent to keep the petitioners name above the persons appointed after 21.2.90 on the post of Assistant Driver Electric treating them seniors of

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the petitioners in the seniority list with direction to prepare another seniority list quashing seniority list dated 19.1.98.

8.3. to issue a writ order or direction in the nature of mandamus directing the respondent to promote and select the petitioners on the post of Electric Driver Goods after the calling petitioners for selection on the aforesaid post completing all the formalities as required under the rules.

8.4. Cost of the petition to be awarded.

8.5. to issue any other order or direction which this Tribunal may deem fit and proper in the circumstances of the case.”.

5. When the case is being taken up for hearing in revised list, learned counsel for the applicant submitted that meanwhile the issue required to be adjudicated in the present O.A has already been considered in other similar /identical matter in O.A No. 853/ 1998 (Ram Babu and 8 others Vs. U.O.I. & Ors.) and the same has been decided finally wide judgment and order dated 02.08.2007. Photocopy of said judgment has been placed before us.

6. Relevant para 8 to 12 of the order dated 02.08.2007 (referred to above) reads: -

“8. In the judgment dated 18.12.1996 of this Tribunal in the case of Raj Kishore Singh & Others Vs. Union of India and others (O.A No. 1024/95), the case of Shri Rama Kant Chaturvedi decided by Hon’ble Supreme Court has been discussed and it has been held: -

“10. It would be seen from the foregoing that the problem which arose in the case of Rama Kant Chaturvedi on dieselization, arose again on electrification of the tracks and the rationale of the decision in Rama Kant Chaturvedi’s case was followed mutatis-mutandis to the facts of the case of Rama Narain Singh. In the case before us also, the controversy has arisen as a result of electrification of the tracks. It is the specific averment of the respondents in para 11 of their counter affidavit that

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the staff of Diesel and Steam Locomotive likely to be rendered surplus were provided training for their permanent absorption in Electrical Locos to avoid mass displacement by way of conversion course (emphasis supplied). It is, therefore, clear that the conversion of the staff on the steam and diesel side to the Electrical side was necessitated by an apprehension that they might be rendered surplus and that they were absorbed in Electrical side in order to avoid mass displacement. In such a situation, the controversy in this case is fully covered by the decision rendered by the Hon'ble Supreme Court in the case of Ramanarain Singh and Others (Supra). In this regard it would be pertinent to quote following observation made in Ramanarain Singh's case: -

'In fact it was not a transfer in the real sense at all. It was absorption of the employees on the diesel side or the electric side upon their completing the qualification required for being absorbed. So also it was made on compassionate grounds that not in the interest of administration.'

9. From the above judgment of the Supreme Court, it is evident that the applicants are not promotees, transferees or direct recruit as they have been 'absorbed' purely to avoid them being surplus or being retrenched. It can also be logically concluded that absorption is complete only after requisite training is imparted and they are finally selected. This action of absorption after final selection was completed as per the respondents on 10.11.1991 and hence the seniority of the applicants was fixed as 10.11.1991.
10. The Supreme Court in the case of Ramakant Chaturvedi and others Vs. Divisional Superintendent, Northern Railway, Moradabad and others 1980 (Suppl.) SCC 821 had observed that seniority of Assistant Electrical Drivers initially recruited on the electrical side vis-à-vis those who were converted to the Electrical side, shall be on the basis of the length of service on the electric side for the purpose of promotion to higher grades. They further observed though in a different context on the

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issue of inter se seniority that 'the Railway administration, instead of retrenching them gave them the option to take the training and to qualify themselves for being posted on the diesel side' it is clear from the above that the determination of seniority, the determining factors are; (I) completion of training and qualifying the test, (II) length of service on the electrical side. It appears logical that the date of completion of training and qualifying the test is to be reckoned as the date of seniority for determining the length of service on the electrical side. The applicants completed their conversion course from diesel to electrical on 03.12.1990 and joined their working post on 04.12.1990. The respondents contend that the applicants were sent for line training w.e.f. 04.12.1990 and selection was made on 10.11.1991 hence seniority was reckoned w.e.f. that date. However, scrutiny of the written submission indicates that nowhere in any of the orders, 03.12.1990 (Annexure A-3) or the orders posting them on 11.02.1991 was it ever mentioned that after the initial 3 months conversion course, the applicants would need to undergo further line training/experience followed by a selection only after which their selection would be considered final. Further even after completion of such training and selection, no order was issued to indicate that applicants had successfully completed their conversion test and after final selection were being posted to appropriate stations.

11. In view of the above, it would be fair to conclude that in the absence of specific orders to the contrary the seniority of the applicants would need to be fixed from the date they joined their duty stations after completion of their basic training i.e. from 04.12.1990.
12. The O.A is, therefore, allowed and the seniority list dated 04.01.1998 is set aside. The respondents are, however, at liberty to review the seniority as per policies

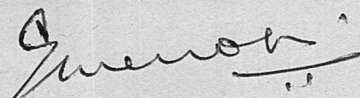
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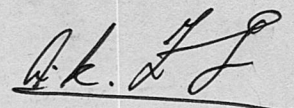
and rules laid down, and issue speaking orders accordingly after such a review. No order as to costs."

7. On behalf of the respondents, there is no controversion of the aforesaid stand. However, we are not entering in this dispute. It is clear that the respondents have no advantage of the Tribunal's judgment. In view of the statement made by ^{the} learned counsel for the applicant at this stage, the O.A is decided on same terms and conditions.

8. Accordingly we direct the applicant to file a certified copy of this order alongwith copy of O.A (with all annexures) and copy of Tribunal's judgment dated 02.08.2007 as well as additional representation, if any within four weeks from today. If such documents alongwith certified copy of this order are filed, the respondents are directed to consider the grievance of the applicants by passing a reasoned order and prepare seniority afresh by reviewing it as required and directed by the Apex Court and also by this Tribunal in its judgment referred to above, within three month.

9. The O.A is allowed to the extent made above with no order as to costs.


MEMBER (A)


MEMBER (J)

/Anand/