

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 853 of 1998

____ day this the 2 day of Aug 2007

**Hon'ble Mr. Justice Khem Karan, V.C.
Hon'ble Mr. K.S. Menon, Member (A)**

1. Ram Babu Son of Shri Mahadev.
2. D.K. Srivastava, Son of Shri Bula Lal.
3. Anand Kumar, Son of Shri Sharda Prasad.
4. M.A. Siddiqui Son of Shri Ali Ahmad Siddiqui.
5. Sanjay Sarkar Son of Shri Ram Chandra Sarkar.
6. K.G. Dwivedi Son of Shri B.L. Dwivedi.
7. Munir Ahmad Son of Shri Hashnu.
8. Mohd. Ahmad Son of Shri Mohd. Safi.
9. Basant Lal Son of Shri Bihari.

All C/o Sanjay Sarkar R/o 29-D Janmasthmi
Railway Colony, kanpur-4.

Applicants

By Advocate Sri Arvind Kumar

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Allahabad.
3. Divisional Personnel Officer, Northern Railway, Allahabad.

Respondents

By Advocate Sri G.P. Agrawal

G.P. Agrawal

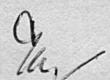
ORDER

By K.S. Menon, Member (A)

Applicants have filed this O.A. seeking the following reliefs:-

- [i] Seniority lists dated 12.08.1997 and 04.01.1998 be quashed;
- [ii] Respondents be directed to refix the seniority of the applicants treating their date of joining as 04.12.1990 or alternatively as 11.02.1991

2. The facts of the case which come out from the pleadings on record are that the applicants were initially appointed as Fireman in the Steam Locomotive side in 1989. They were sent to the Diesel side of Locomotive operation in 1989 itself. In September 1990 the applicants were sent for training for transfer from the Diesel side to the Electrical Locomotive side. On completion of the training on 03.12.1990, they were posted to the Electrical side {Chief Traction Foreman-Rolling Stock Operation) on 04.12.1990. They were formally posted as Electrical Assistant Driver in the grade of Rs. 950-1500/- on 11.02.1991 (annexure A-4). The applicants contend that no consent or option was obtained from them prior to sending them on training and subsequent transfer to the Electrical Side. A seniority list was published on 12.08.1997 in which the applicants were shown at serial No. 388, 389, 290, 392, 397, 398, 400, 401 and 406 and their date of joining as Assistant Electrical Driver was shown as 25.02.1991 (annexure A-1). The seniority list was revised on 04.01.1998 in which the applicants were shown at serial No. 503, 504, 506, 508, 515, 516, 518, 521 and 527 with date of joining as 10.11.1991. This seniority list dated 04.01.1998 was published in pursuance of the Judgment dated 08.12.1996 in O.A. No. 1024 of 1995 (R.K. Singh Vs. U.O.I. and Others and Judgment dated 14.12.1997 in O.A. No. 1110 of 1997 (Prem Shankar Srivastava and others vs. Union of India and others). Applicants argue that in O.A. No. 1024 of 1995, the Tribunal held that the seniority should be fixed on the basis of length of service as Assistant Electrical Drivers in accordance with the principles enunciated by the Supreme Court in the case of Ram Narayan Singh, wherein it had been held that conversion from Diesel side to Electrical side is not a transfer in the real sense and in fact it is an absorption of employees in the



other branch of locomotives instead of retrenching them from service. It was a compassionate conversion rather than transfer from one side to the other. The logical consequence of the Supreme Court's decision they maintain is that conversion from Diesel to Electrical side is nothing but a fresh appointment on the Electrical side and they are therefore to be treated as a direct recruit and seniority is to be fixed from the date of joining on the working post after training as per rules, which in their case is 04.12.1990 and hence they are entitled to the seniority from 04.12.1990 or at best from 11.02.1991 the date when formal orders posting the applicants were issued. They maintain that the seniority list dated 12.08.1997 and 04.01.1998 are wrong as their date of joining have been shown incorrectly and that the seniority should be refixed as per the correct dates of joining.

3. The respondents submitted in their counter affidavit that the applicants on completion of training on 30.11.1990 were sent for line training on 04.12.1990 and were posted as Assistant Electrical Driver in the grade of Rs.950-1500/- (RPS) on 11.02.1991. However, as the post of Assistant Electrical Driver is a selection post and the applicants passed the selection on 10.11.1991, their seniority was fixed as 10.11.1991. This seniority was also fixed as per the directive of the High Court and this Tribunal, hence the claim of the applicants for fixing seniority as 04.12.1990 is without any merit. He further contends that the seniority fixed from 10.11.1991 was from date of selection after empanelment and this was accepted by the High Court in the case of Prem Shankar Srivastava and Others Vs. Union of India and others in O.A. No. 1110 of 1997. Even in the case of V.K. Dubey, the Supreme Court declined to interfere in order passed by this Tribunal (annexure CA-1). The learned counsel argues that the applicants are promotees and as per rules their seniority has been fixed from the date of selection. Since they have come over to the Electrical side their promotional avenues cannot be compared with the Diesel side from where they were transferred. Beside their seniority has been fixed with reference to the extant rules and the directions of this Tribunal, High Court and Supreme

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Court. The grounds, therefore, taken by the applicants are misconceived under law and ought to be rejected.

4. Heard Shri Arvind Kumar, Counsel for the applicants and perused the pleadings and other written submissions, placed on record. Shri G.P. Agrawal learned counsel for the respondents was not present on the date of hearing, he has, however, submitted a short written submission on 14.05.2007, which is taken on record. Since the case was of 1998 it was decided not to adjourn the case further.

5. We feel that it is essential to determine under which category i.e. Promotee, Transferee or Direct Recruit, the applicants fall in order to determine their seniority. In their written Submissions and arguments, the learned counsel for the applicants is trying to establish their status as direct recruits. Shri Arvind Kumar points out that the Supreme Court in their Judgment in Shri Ram Narayan Singh's case state that the Railway Administration instead of terminating the services of the persons on the Diesel or Steam side, absorbed them in the Electrical side. This he contends clearly means the applicants are neither promotees nor transferees and are therefore, to be treated as direct recruits. Once they are treated as direct recruits, their date of joining is relevant for reckoning the seniority. Applicants' further point out that the Railway Administration is not giving any benefit of previous service hence their line of argument for treating them as new direct recruits is further strengthened. In view of the above, the applicants state their date of joining in the Electrical side being 04.12.1990 should be the seniority that should be given to them. The respondents do not challenge the dates mentioned by the applicant with regard to their switch over from Steam to Diesel and then to the Electrical side and the dates of training and joining the Electrical side. The post of Assistant Electrical Driver being a selection post, the applicants were assigned their seniority w.e.f. the date they were finally selected i.e. 10.11.1991, hence there is no merit in

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the applicants claim for consideration of their seniority w.e.f. 04.02.1990.

6. The applicants have raised another issue that juniors to the applicants who remained on the Diesel Side have been promoted as Diesel Shunters in the grade of Rs.1200-2040/- long back, while the applicants despite being senior are still working in the grade of Rs.950-1500/-. They state that this anomaly was never addressed by this Tribunal or the Supreme Court and even if those juniors are sent to the Electrical side after conversion training they will be placed in the grade of Rs.1200-2040/- earlier than the applicants for which the applicants are not at fault. This argument lacks force as once persons are absorbed on the Electrical side further promotions to higher grade on the Electrical side is with reference to their length of service in the Electrical side and has no connection with the Diesel side from where they came irrespective of their seniority in the previous cadre. This argument is, therefore, rejected.

7. In the Rejoinder Affidavit, the applicants have challenged the Order passed by the respondents on 25.08.2000 as per which 128 Assistant Electrical Drivers were promoted to the post of Senior Assistant Electrical Drivers in the grade of Rs.4000-6000/-, candidates from serial No. 111 to 128 appearing in the order are allegedly junior to the applicants. This is, however, not one of the reliefs sought in the O.A. In any case once the seniority issue resolved, the rest of things will fall in place automatically.

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 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

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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 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 & Others (supra). In this regard it would be pertinent to quote following observations 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 rendered 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.

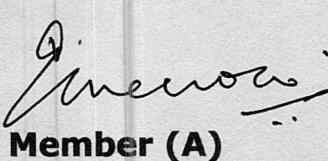
10. The Supreme Court in the case of Ramakant Chaturvedi and Others Vs. Divisional Superintendent, Northern Railway, Moradabad and others 1980 (Suppl.) SCC 821 had observed that seniority of Assistant Electrical Drivers initially recruited on the electrical side vis-a-vis those who were converted to the Electrical side, shall be on the basis of the length of service on the electric side for purposes of promotion to higher grades. They further observed though in a different context on the 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 for determination of seniority the determination 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



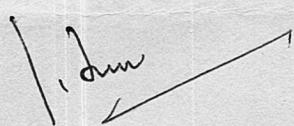
reckoned as the date of seniority for determining the length of service on the electrical side. The applicants completed their conversion course from diesel to electrical on 03.12.1990 and joined their working ^{post} ~~on~~ 04.12.1990. The respondents contend that the applicants were sent for line training 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 and rules laid down, and issue speaking orders accordingly after such a review. No order as to costs.



Member (A)



Vice Chairman

/M.M./