

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 9 DAY OF 2 2010)

Hon'ble Mr. A.K. Gaur, Member (J)

Hon'ble Mrs. Manjulika Gautam, Member (A)

Original Application No. 116 of 1998

(U/S 19, Administrative Tribunal Act, 1985)

1. Kedar Nath Prasad, Aged about 47 years, S/o Shri Haribansh Sahay, R/o 72-A, Loco Colony, Mavaiya, Lucknow. Working as Head Clerk at D.S.C./R.P.F N.E.R, Lucknow.
2. Sarvendra Vikram Singh, aged about 40 years, S/o Shri Uma Shankar Singh, R/o 257-B, New Loco Colony, Varanasi.
3. Dashrath Singh Yadav, aged about 50 years, S/o Shri Chikhuri, R/o E/57j, Old Loco Colony, N.E.R Varanasi.

..... Applicants

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Chief Security Commissioner, R.P.F., North Eastern Railway, Varanasi.
3. Divisional Security Commissioner, R.P.F, North Eastern Railway, Varanasi.
4. Shri Jogendra Yadav, Head Clerk, RPF through Chief Security Commissioner, RPF, N.E. Railway, Gorakhpur.
5. Shri Jai Chand, Head Clerk/ RPF through Chief Security Commissioner, RPF, N.E. Railway, Gorakhpur.
6. Shri Jhullar Prasad, Head Clerk/RPF through Chief Security Commissioner RPF, NE Railway, Gorakhpur.
7. Shri Shashimai Devi, Head Clerk/RPF through Chief Security Commissioner, RPF, NE Railway, Gorakhpur.

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8. Shri Ashok Kumar Shukla, Office Superintendent/RPF, through Senior Divisional Security Commissioner/RPF NE Railway, Gorakhpur.
9. Shri Mohd. Kalim Akhtar Head Clerk/RPF through Chief Security Commissioner, RPF, NE Railway, Gorakhpur.
10. Shri R.K. Chaudhary, Head Clerk through Chief Security Commissioner, RPF, NE, Railway, Gorakhpur.
11. Shri Subrato Chatterjee, Head Clerk through the Chief Security Commissioner, RPF N.E. Railway, Gorakhpur.
12. Shri Shatrughan Das, Head Clerk through Chief Security Commissioner, RPF/NE Railway, Gorakhpur.
13. Shri Amar Nath Rai, Head Clerk through Chief Security Commissioner, RPF/N.E. Railway, Gorakhpur.
14. Shri Chandrabhan, Head Clerk, through the Assistant Security Commissioner, Gorakhpur Area, RPF, NE Railway, Gorakhpur.
15. Shri Bipin Kumar Singh, Head Clerk, RPF through Chief Security Commissioner, RPF/N,E. Railway, Gorakhpur.
16. Shri Ram Sher Singh, Head Clerk/RPF through Chief Security Commissioner, RPF/N.E. Railway, Gorakhpur.
17. Shri Chandra Bhushan Singh, Head Clerk/RPF through Chief Security Commissioner, RPF, N.E. Railway, Gorakhpur.
18. Shri Shatrughan Singh, Head Clerk/RPF Chief Security Commissioner, RPF, N.E. Railway, Gorakhpur.
19. Shri Rajendra Prasad, Head Clerk through Chief Security Commissioner, RPF/N.E. Railway, Gorakhpur.
20. Shri Jai Prakash Yadav, Head Clerk/RPF through Divisional Security Commissioner, RPF/N.E. Railway, Varanasi.
21. Shri Prakash Yadav, Head Clerk/RPF through Divisional Security Commissioner, RPF/N.E. Railway, Varanasi.
22. Shri Mishri Lal Gupta/Head Clerk, RPF through Divisional Security Commissioner, RPF/N.E. Railway, Varanasi.
23. Shri Rakesh Mohan Rai, Head Clerk/RPF through Divisional Security Commissioner, RPF/N.E. Railway, Lucknow.

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2. Through this O.A., the applicant has claimed following main relief/s:-

“(i) to issue an order or direction commanding the respondents to give promotional benefit as Senior Clerk in scale of Rs. 330-560 w.e.f. 06.09.1982, as Head Clerk in scale of Rs. 1400-2300 w.e.f. 05.03.1990 as Office Superintendent Grade II w.e.f. 05.09.1995 with similar fixation of pay and increment with arrears of pay and other service benefits permissible under SEvice Rules, after correcting seniority list dated 31.10.1996 (Annexure A-1)”

3. The brief facts of the case are that the applicants were initially appointed as Junior Clerk in the pay scale of Rs.260-400. The applicants were subjected to a suitability test for the post of Senior Clerk in the pay scale of Rs.330-560, the result of which was declared on 6.9.1982 (Annexure A-3). Against the panel dated 06.09.1982, Shri Laxmi Narain Singh had filed a representation and by order dated 25.08.1984, Chief Security Officer, N.E.R. Gorakhpur has cancelled the panel of suitability test. One of the successful candidate Shri Abhiman challenged this cancellation order in this Tribunal through O.A. NO. 1645 of 1986 which was allowed on 20.10.1987. Consequently, Chief Security Commissioner, Railway Protection Force, Gorakhpur, withdrew the cancellation order dated 25.08.1984, by order dated 22.3.1988 (Annexure A-5) and promoted Shri Abhiman w.e.f. 6.9.1982 as Senior Clerk. The applicant No. 1 through his application dated 24.3.1998 represented the matter to the Chief Security Commissioner, N.E., Railway Gorakhpur for implementation of the panel dated 6.9.1982. Applicant NO.1 gave another representation to respondent NO. 2 on 2.5.1988 and on 16.9.1988 to the General Manager N.E.R Gorakhpur. The applicants claim that

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Since Shri Abhiman was promoted w.e.f. 6.9.1982 as Senior Clerk, Head Clerk w.e.f. 5.3.1990 and O.S II in 1600-2600 w.e.f 5.9.1995, the applicants were also entitled for the same benefit with seniority, pay, increment, fixation of pay and arrears of salary. Applicants stated that seniority list was published on 31.10.1996. Against this seniority list dated 31.10.1996, the applicant Nos. 1 and 2 filed representations for correction of seniority list vide their representations dated 30.1.1997 and 9.5.1997. respectively and applicant No.3 represented on 2.4.1997 and 21.11.1997 (Annexure A-9, A-1 and A-12). According to the applicants, respondent No.2 vide letter dated 12.3.1997 had called, one Shri Subrato Chatterjee for selection for the post of O.S. II, although he was initially junior to the applicants and many more juniors to the applicants mentioned at Serial Nos. 7 to 15 in the seniority list had been called for selection. Applicants claim that if proper seniority had been assigned to them, they would have been promoted as Head Clerks and entitled to appear for the present selection. Further, the applicants claim that since both Shri Abhiman and another one Shri Jai Prakash were junior to the applicants initially and they had been promoted as Senior Clerk, Head Clerk and O.S., earlier than the applicants, the applicants are also entitled for the same benefits.

4. By filing counter reply, respondents have denied the pleas taken by the applicant in the O.A. According to the respondents, the present O.A. which has been filed

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challenging the seniority list dated 24/31.10.1996 and the selection notification dated 12.3.1997 for the post of O.S. Grade II is grossly barred by limitation because of the fact that seniority lists had been issued on 3/4.6.1986, 25/28.5.1990 and 5.11.1993 and promotion orders have been issued for the post of Head Clerk and O.S II since 30.5.1983 onwards, on a number of occasions the applicant No.1 had an opportunity to raise objection but no objections or representations were received from the applicant NO.1 either against seniority lists or against the selections/promotions of OS II and Head Clerk. According to the respondents, the selection and notification dated 12.3.1997 and seniority list dated 24/31.10.1996 had been mentioned just to get over the limitation question in filing the O.A. It was further stated by the respondents that prior to 1993 the seniority of junior clerks of Security Department who were working in the Divisional Office was being maintained at the Divisional level and after their promotion as Senior Clerks, seniority of all categories of clerical staff including senior clerks was maintained at the level of Headquarters' N.E. Railway, Gorakhpur. In 1982, in the office of Divisional Security Commissioner, RPF, Varanasi there were six vacant posts of Senior Clerks, out of which one post was reserved for S.C, for the purposes of promotion from junior clerk to senior clerk on the basis of seniority-cum-suitability. There are provisions for calling as many junior clerks in the order of seniority as there are vacancies for the post of senior clerk. In 1982 in the suitability test for promotion from Junior Clerk to Senior

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Clerk all the 10 junior clerks of Varanasi Division were called, out of which nine appeared. (one person did not appear in the test). The result of the suitability test was declared on 6.9.1982 and promotion order was issued on 7.9.1982 by the Divisional Security Commissioner, Varanasi. When this fact came to the knowledge, of the Headquarters office through an unsuccessful employee namely Laxmi Narayan Singh, the said test was cancelled by the Chief Security Commissioner, Railway Protection Force, Gorakhpur vide office order dated 25.8.1984 (Annexure A-2). In compliance with the orders passed by this Tribunal in O.A. Nos. 1644/1986, 1645/1986-Abhiman Vs. Union of India and Ors dated 20.10.1987, the Chief Security Commissioner RPF, Gorakhpur recalled his earlier order dated 25.8.1984 vide his letter dated 22.3.1988 and Abhiman was promoted and given seniority w.e.f. 6.9.1982 as senior clerk. The respondents referred to the result of the suitability test dated 6.9.1982 (Annexure 3) and stated that Abhiman belonged to Scheduled Caste and qualified in the suitability test under the SC quota he was at Sl. NO.1 as SC and as such he was given promotion as Senior Clerk w.e.f. 6.9.1982 in terms of the direction of this Bench of the Tribunal dated 20.10.1987. According to the respondents, the applicants in the present O.A. belonged to general community and for purposes of six vacancies, after adjusting of 2 posts to be filled on quota basis, the applicants did not come within the zone of consideration for the remaining four posts of general category and were not eligible to be considered in the suitability test. Respondent stated that if

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the suitability test had been held as per Rules, the applicants in the present O.A. would not have been called for suitability test at all. According to the respondents only the following candidates would have been eligible to have been called for suitability test:-

(i)	<i>Anwarul Hq</i>	<i>No.1</i>
(ii)	<i>Jagdish Upadhyaya</i>	<i>No.3</i>
(iii)	<i>J.C. Chakrawarthy</i>	<i>No. 4</i>
(iv)	<i>Laxmi Narain Singh</i>	<i>No. 5</i>
(v)	<i>Abhiman</i>	<i>No.7 (SC)</i>
(vi)	<i>Yogendra Nath Pandey</i>	<i>No.9</i> <i>(Graduate Quota)</i>

Respondents submitted that the applicants were erroneously called to appear in the suitability test and they were outside the zone of consideration, they cannot be given promotion in the absence of vacancy, and further the applicant Nos.1 and 3 were under going major penalty proceedings at that point of time on account of which their results were never declared. Therefore, the question of the applicants being given promotion vis-à-vis Abhiman did not arise and the claim is devoid of merit and is wholly barred by limitation. It was further submitted by the respondents that the applicant NO.1 Kedar Nath Prasad was awarded penalty of censure and applicant NO. 3 Dashrath Singh Yadav was exonerated of the charges and thereafter they were given promotion on ad hoc basis as Senior Clerks w.e.f 15.1.1983 and 11.4.1983. Respondents further stated that under the restructuring w.ef. 1.1.1984, 24 posts of Senior Clerks were reduced resulting in shrinkage of cadre and, therefore, the applicants had to be reverted, and when vacancies again occurred in the posts of senior clerks, the applicants 1, 2 and

3 were given regular promotion from 19.4.1988, 2.1.1991 and 7.3.1990 respectively. Respondents further stated that the representations of applicant NO.1 was replied on 7.6.1988 stating that he would be given seniority as senior Clerk w.e.f 19.4.1988, when the vacancy occurred. It was stated by the respondents that the applicant NO.1 has been promoted as Head Clerk with effect from 14/27.8.1996 and applicant Nos. 2 and 3 would be given promotion as Head clerk as and when the vacancy occurred. Further against the six vacancy posts of OS II one was reserved for ST and for the remaining 5, a notification dated 26.12.1997 was issued calling 15 candidates in the order of seniority as per 1X3 rule and the applicants were beyond the zone of consideration.

5. After impleading private respondents Nos.4 to 26, they have filed counter affidavit. It is submitted that seniority of all the category of ministerial staff including senior clerks was maintained at the level of Head Quarter North Eastern Railway, Gorakhpur. In the year 1982 in the office of the Divisional Security Commissioner, Railway Protection Force, Varanasi there was only six posts of the junior clerks out of which one post was reserved for Schedule Caste for the purpose of promotion from the junior clerks to the post of senior clerk on the basis of seniority cum suitability test. According to the answering respondents the applicant NO.1 has made a representation as referred to in paras 4.5, 4.6 and 4.7 of the original application, the applicants cannot take advantage of the same inasmuch as after that several

seniority list have been published and the said seniority list has been acted upon and the promotions have been granted on the basis of those seniority lists. The applicants never challenged those seniority lists and have acquiesced and as such the present original application is highly belated and the applicant has not given any reason as to why they have not challenged the seniority list published earlier to the seniority list dated 31.10.1996. It is further submitted that the applicants are not at all entitled for promotion w.e.f. 6.9.1982 from the post of Senior Clerk in the scale of Rs. 350-500 to Head Clerk in the scale of Rs.1400-2300 w.e.f. 5.3.1995 and in the scale of Rs.1600-2660 w.e.f 5.9.1995. The case of the applicants and Abhiman is totally different and has no similarity. It is also alleged that subsequently seniority lists was published on 3/4.6.1986, 25.5.1990 and 5.11.1993. The applicants have never raised any objection and as such the applicants have acquiesced to the seniority lists published earlier and the same cannot be disturbed after 22 years. The scheme of restructuring of different posts have been introduced vide Railway Board's order dated 1.11.2003. The answering respondents have further been given promotion on the basis of the seniority list published earlier. Thus, the present original application, so far it challenges the promotion to be held, for the post of O.S. II has become infructuous. Fresh seniority list dated 3.8.2007 has been published after introduction of restructuring Scheme.

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5.A By filing rejoinder reply, the applicant has denied the averments contained in the counter reply. It has been stated by the applicants that although the notification dated 3.6.1986 mentioned that copy of the seniority list would be given to all the employee but the respondents had not given copy of the seniority list except the one dated 31.10.1996 and a copy of this seniority list was also not been given to Shri Surendra Vikram Singh. Further it is stated that, since order dated 25.8.1984 was set aside by the department being non-existent, applicants should have been promoted w.e.f. 6.9.1992, especially since Abhiman had been promoted. In addition it was stated that representations against seniority list could be made within one year of the publication of seniority list as per Rule 321 (b) of IREM.

6. We have heard Shri Sudama Ram, learned counsel for the applicant, Shri K.P Singh, learned counsel for the Official Respondents and Shri Saral Srivastava, learned counsel for the private respondents and perused the written arguments filed by the learned counsel for the parties.

7. Learned counsel for the applicant argued that these seniority lists were not supplied to the applicants as stated in the respective covering letter and only the seniority list dated 31.10.1996 was made available to them. He relied on the judgment of Hon'ble Supreme Court reported in **1998 SCC (L&S) 1837, U.O.I and Ors. Vs. Dinanath Shantantanaram Karekar and Others**, where the Hon'ble

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Apex Court had held "**Where the services are terminated, the status of the delinquent as a Government Servant comes to an end and nothing further remains to be done in the matter but if the order is passed and merely kept in the file, it would not be an order terminating service, nor shall the said order be deemed to have been communicated**". He argued that the seniority list dated 31.10.1996, only had been received by the applicants, and therefore, the cause of action had arisen only at the time of filing the aforesaid O.A. and the issuance of earlier seniority lists are not binding on the applicants. Further, he relied on the citation **(1990) 12 ATC 475, J.P Shukla Vs. UOI and Ors.**, wherein Jabalpur Bench of this Tribunal had held "**On this we may point out that application has already been admitted considering that the matter relating to seniority would be that of a continuing wrong and the application, therefore, need not be rejected on the grounds of limitation**". (para 11), and argued that in this case of giving correct seniority to the applicants bar of limitation would not apply.

8. Learned counsel for the applicant further argued that the representations had not been disposed of properly. He relied on the decision of the Hon'ble Supreme Court (paras 11 to 14) in **D.K. Yadav Vs. JMA Industries Ltd. 1993 (3) SCC 259** wherein it had been held by the Apex Court that "**Action/decision, even administrative in nature, which involves civil consequences must be just and fair,**

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reasonable, non-arbitrary and in consonance with the principles of natural justice". He also argued that representation of applicant NO. 1 was rejected in an arbitrary manner. He argued that the O.A. is thus maintainable and deserves to be allowed.

9. Learned counsel for the respondents submitted that the applicants having not challenged the seniority assigned to them, when seniority lists were being published. It is settled principle of law that seniority list could not be challenged after a long delay. The O.A. is barred by delay and laches and liable to be dismissed. He referred following case law:-

- (i) **AIR 2006 S.C 2228 - N. Birendra Singh Vs. P. Singh (Seniority list cannot be reopened after a long)**
- (ii) **R.S. Makashi and Ors. Vs. I.M Menon and others, 1982 SCC (L&S) 77 (para 30).**
- (ii) **V. Bhaskar Rao & Ors. Vs. State of A.P and others - (1993) 24 ATC 842 (para 10).**

10. It is also urged that in view of **1976 SCC (L&S) 115 Malcom Lawrence D' Souza Vs. Union of India and Ors and 2007 All India Service Law Journal 73 - A.P.P.S.C Vs. K. Sundershan Reddy**, - seniority list cannot be challenged after a long lapse of time. **2006 SCC (L&S) 1105 - H.K.P Sudhakaran Vs. State of Kerala** has been relied upon in order to show that matter should not be unsettled after a long lapse of time.

11. We have given our thoughtful consideration to the pleas advanced by the counsel for the parties.

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12. Applicants are claiming that they are senior to Shri Abhiman and, therefore, seeks promotion to higher grades at par with him and consequent fixation of pay and arrears thereof as admissible after correcting the seniority list of 31.10.1996. Respondents have not disputed that Shri Abhiman is not junior to the applicants. The seniority position of Shri Abhiman in 1982 was stated as 7, but applicant's seniority position was not indicated but seniority position 2, 6 and 8 were blank. They have resisted the claim on the ground that Shri Abhiman was restored as Senior Clerk and given seniority as Senior Clerk w.e.f. 6.9.1992 pursuant to the decision of this Tribunal in T.A. NO. 1645 of 1986 and T.A. NO. 1644 of 1986 and also because Shri Abhiman belonged to SC and in the suitability test held in 1982 for the six vacancies of Senior clerks included one for Graduate Quota and one for SC. But neither in the judgment of T.A. No. 1645 of 1986 nor in the order NO. E/P/210/1 (M)/Pt IX dated 25.8.1984 (Annexure CA-2) there is any mention that out of six vacancies of senior clerks for which suitability test was conducted in 1982, included one vacancy reserved for SC. The only reservation mentioned was for a Graduate. Applicants have resisted even this in the replication wherein it is averred that one Graduate quota post was transferred from Izzatnagar to Varanasi Division in the year 1984 and the same was separate from the six pots of senior clerks. In the results of suitability test published on 6.9.1982, neither the total vacancies for which suitability test was conducted nor the

quotas for graduate and SC are indicated. But in the judgment of T.A. NO. 1645 of 1986 it was stated that the panel was exhausted before its cancellation on 25.8.1984. It was also mentioned in the Counter Affidavit by the respondents that applicants 1 and 3 were promoted as Senior Clerks in 1983 on finalization of the D&A case against them. From the letter dated 7.6.1988 of Chief Security Commissioner (Annexure CA-4) it would appear that applicant NO. 1 was promoted as Senior Clerk on 15.1.1983 and was given seniority from 7.9.1982 and later-on because of reduction of 3 posts of Senior Clerks as a result of restructuring applicant NO.1 was reverted. In the CA also it had been averred that because of reduction of 24 posts of senior clerks as a result of restructuring applicants were reverted from senior clerks. From these there appears to be substance in the applicants' contention made in their respective representations placed at Annexure A-9 to A-12 that they were promoted on the basis of this panel of suitability test dated 6.9.1982. Generally in the restructuring scheme there is a clause that if as a result of the application of revised percentage, the number of posts in a particular grade become less than the number of regular incumbents, the extra posts required to avoid reversion of the regular incumbents will be continued till the incumbents vacate the same by way of promotion/retirement etc. and corresponding number of lower/lowest grade vacant posts in the category will be reduced in the interregnum in the order of the Chief Security Officer dated 25.8.1984 referred to earlier, which

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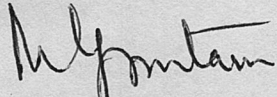
cancelled the panel of suitability test dated 6.9.1982. Direction was also given to treat the persons promoted as Senior Clerks as a result of the said suitability test as adhoc till fresh suitability was conducted. It would appear that it was because of this order, that when 24 posts of senior clerks were reduced as a result of restructuring, the applicants could be reverted. But as a result of the decision of this Tribunal in T.A. O. 1645/1986, respondent NO. 2 withdrew his order dated 25.8.1984 by letter NO. P/E/162/2/83/36 dated 22/29.3.1988 (Annexure CA-3). With the issue of this letter, position of the applicants as operating prior to 25.8.1984 should have been restored. Respondents plea of incorrect calling of candidates for the suitability test etc. cannot be accepted as the order dated 25.8.1984 had been withdrawn by the respondent NO. 2 vide letter dated 22/23.3.1988.

13. In the result the applicants are entitled to be restored, to the posts they were occupying before the issue of the order dated 25.8.1984. The exact dates from which they are to be treated as regularly promoted Senior Clerk should be decided by the respondents on the basis of the position operating then. Based on the dates of regular promotion of the applicants as Senior Clerks so decided, the applicants' revised seniority as Senior Clerks, Head Clerks and further higher grades should be determined. Applicants, on the basis of these revised seniority positions, are also eligible for consequential benefits in accordance with Rule 228 of the Indian Railway Establishment Manual Vol I (revised Edition 1989). Respondents are directed to finalize the revised

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seniority positions of the applicants as above and grant all consequential benefit to them within four months from the date of receipt of the copy of this order.

14. With the above observations/directions, the O.A. is disposed of. No costs.


Member (A)


Member (J)

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