

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1347 OF 1998

ALLAHABAD THIS THE 12th DAY OF SEPTEMBER, 2003

HON'BLE MR. JUSTICE R.R.K. TRIVEDI, V.C.  
HON'BLE MR. D. R. TIWARI, MEMBER (A)

Arvind Kishor Gupta R.U.S.  
son of Shri Raj Kishor Gupta  
Posted at Bhatni Junction,  
N.E. Railway, Gorakhpur.

.....Applicant

(By Advocate : Shri P.K. Mishra)

**V E R S U S**

1. Union of India through  
the General Manager,  
N.E. Railway, Gorakhpur.
2. General Manager, N.E. Railway,  
Gorakhpur.
3. Divisional Railway Manager,  
(Karmic) Varanasi.

....Respondents

(By Advocate : Shri D. C. Saxena)

**O R D E R**

By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

By this O.A. filed under section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for direction to respondents to promote the applicant to class III post in pursuance of the notification dated 08.07.1998 from the date the person junior to him namely Shri Rajendra Bharti has been promoted. He has further prayed for a direction to respondents to promote the applicant to class III post taking into

consideration the date of appointment as 28.06.1989 and further that he is senior to Rajendra Bharti who has wrongly been shown at serial No.30 though he was appointed on 29.01.1989.

2. The facts, in short, are that applicant was initially engaged as Casual Labour in North Eastern Railway at Chapra Junction on 01.09.1984. He was conferred temporary status by order dated 26.11.1986 and after screening and medical examination, applicant was regularly appointed in the scale of Rs750-940/- by order dated 26.06.1989. Respondents published the seniority list of those who were serving in Commercial Department in the scale of Rs.750-940/- on 01.04.1996(Annexure-3). In this seniority list applicant's name was shown at serial No. 31 and the name of Shri Rajendra Bharti & Mohd. Lal Babu were shown at serial No.29 & 30, though both were appointed on subsequent dates. Applicant was appointed on 28.06.1989 whereas Shri Rajendra Bharti was appointed on 29.06.1989 and Mohd. Lal Babu was appointed on 24.07.1989. Against the mistake in the seniority list, applicant made representation to the respondents. However, before representation could be decided, steps were taken to grant promotion <sup>or</sup> to class IV employee in the commercial department to the extent of 33.33% in limited departmental examination. The applicant appeared in written test and oral test and his name was mentioned at serial No.5 on the basis of the list of successful candidates in the written test. The aforesaid selection was cancelled by order dated 18.02.1998

(Annexure -6) and a fresh selection was initiated in which applicant cleared the written test and he was called for interview on the basis of the result declared on 16.09.1998 (Annexure -8). The name of the applicant was shown at serial No.11 whereas the name of Shri Rajendra Bharti was shown at serial No.6. The applicant appeared in the oral test. However, when the final panel was declared applicant's name was not found in the list. Aggrieved by which, this O.A. has been filed.

3. Counsel for the applicant has submitted that in the present case question of the seniority was <sup>of a</sup> vital importance as both applicant and Rajendra Bharti had passed the written test. From the date of appointment, applicant was senior but seniority list was <sup>corrected</sup> not ~~not~~ though, several requests were made by the applicant. It is also submitted that there is no explanation in the counter as to how the panel of 13 persons was prepared, though, only 11 persons had <sup>had</sup> passed the written examination. Counsel for the applicant has placed reliance on the Judgment of Hon'ble Supreme Court in the case of Smt. KAMESHWARI DEVI VS. UNION OF INDIA AND ORS. reported in 1993(2)UPLBEC 898 and submitted that applicant is entitled for relief. It has also been submitted that before coming to this Tribunal, applicant filed representations (Annexure 10 & 11) but they are still pending, and have not decided.

4. Shri D.C. Saxena , counsel for the respondents on the





other hand submitted that applicant has not impleaded Shri Rajendra Bharti and others who according to applicant were junior to him and in absence of them, relief cannot be granted to applicant. As in case, applicant's name ~~was~~ <sup>is</sup> directed to be interpolated in the panel, the ~~name~~ <sup>names</sup> of those who are already ~~impleaded~~ <sup>included</sup> in the panel will have to be deleted and thus, they were necessary parties. It is also submitted that the alleged representations filed along with the O.A. are not found in the record of the respondents and there was no question of deciding the same.

5. We have carefully considered the submissions made by counsel for the parties.

6. In our opinion, in the present case, the ends of justice shall better be served if respondents are directed to decide the representations of the applicant which were filed according to him before filing this O.A. As the respondents are denying the availability of the representations, applicant may be given liberty to file a fresh representation along with the copy of this order. The matter requires examination by the respondents as question of seniority as well as the effect of seniority while preparing the panel, has to be seen from the record.

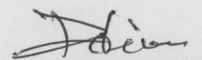
7. For the reasons stated above, the O.A. is disposed of finally with direction to respondent No. 3 to consider the

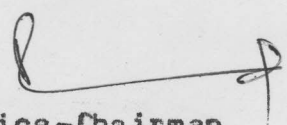


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representation of the applicant and decided the same by a reasoned and detailed order within a period of 3 months from date a copy of this order is filed together with the representation.

8. There will be no order as to costs.

  
Member (A)

  
Vice-Chairman

shukla/-