

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 19th day of May 2010

Original Application No. 903 of 2004

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

M.A. Qadeer, S/o late Mohammad Suleiman, R/o 323, Wazirabad Colony,
Gorakhnath, Gorakhpur.

..... Applicant.

By Advocate: Sri A. Ahmad & Sri N. Srivastava

V E R S U S

1. Union of India through the General Manager, N.E. Railways, Gorakhpur.
2. General Manager/General Manager (P), N.E. Railways, Gorakhpur.
3. Divisional Railway Manager/Divisional Railway Manager (P), N.E. Railways, Varanasi.
4. Senior Divisional Personnel Officer, N.E. Railways, Varanasi.
5. Sri A.K. Banerjee, Chief TTE, Inspector, N.E. Railway, Allahabad City.
6. Sri K.K. Srivastava, Chief TTI, N.E. Railway, Varanasi.
7. Sri R.C. Yadav, Chief TTI, N.E. Railways, Mau Junction, Mau.
8. Sri Vashishth Pandey, Chief TTI, N.E. Railways, Varanasi.

..... Respondents.

By Advocate: Shri K.P. Singh

ORDER

BY Hon'ble Mr. S.N. Shukla, Member-Administrative

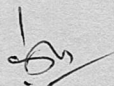
This OA is filed [subsequently amended vide order dated 05.01.2006] against the order dated 19.05.2004 (Annexure A-I), Order dated 03.06.2004 (Annexure A-II) and order dated 14.06.2004 (Annexure A-III). It is claimed that the applicant was appointed as Ticket Collector (in short TC) on 15.02.1965 in the pay scale of Rs. 110-180 and posted at

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Sonepur District. The cadre of TC was bifurcated into two groups namely "Head TC" and "TTE". In the year 1965 options were invited and the applicant opted for "TTE" Group. Once the option was exercised it became final. Consequently, on 20.04.1968 the applicant was placed in TTE Group in the same pay scale of Rs. 110-180, LRTC.

2. Prior to 1969 Railways comprised of regions headed by Regional Commercial Superintendent. Muzuffarpur Region consisted of four districts i.e. Varanasi, Sonepur, Katihar West and Samastipur. On 01.05.1969 the scheme of Divisionalization came into existence. As a consequence Sonepur division was bifurcated into Varanasi and Samastipur division. One half of Sonepur alongwith Varanasi division constituted Varanasi division and the other half of Sonepur division alongwith Samastipur division and Katihar west division became Samastipur division.

3. Prior to 01.05.1969 promotions of TTE were made from the Combined Seniority List of aforesaid four divisions namely Varanasi, Sonepur, Katihar West and Samastipur. Since the applicant had opted for Varanasi division on 01.05.1969 he stood transferred to Varanasi division. On 25.07.1970 promotions to the next higher grade of Rs. 130-212 were held against 53 vacant posts in Samastipur Division. Since the applicant had opted for Varanasi Division he was not considered for promotion in Samastipur Division. Annexure A-IV-1 is a letter dated 30.09.1970 from the office of DS (P)/SPJ to DS (P), N.E. Railway, Varanasi under which it was intimated that a few LRTCs including the applicant at Sl. No. 3 of that letter could not be promoted as TTE in Samastipur Division as they had



opted for Varanasi division and that their promotions may be regularized in Varanasi Division.

4. Prior to 01.05.1969 there were 30 vacant posts to be filled in Varanasi division in the pay scale of Rs. 130-212. These posts were filled up on 06.05.1970. However, since the applicant had not joined Varanasi Division [applicant joined Varanasi Division w.e.f. 25.11.1970] till that date he could not be promoted at Varanasi Division. Thus in both the aforesaid divisions juniors to the applicant were promoted in the pay scale of Rs. 130-212. The applicant was, however, promoted in the pay scale of Rs. 130-212 w.e.f. 25.11.1970 after joining at Varanasi (Annexure A-IV (2)).

5. The provisional seniority list of TTEs in the pay scale of Rs. 130-212 was published on 27.05.1973, wherein the applicant appeared at Sl. No. 116. Yet another seniority list was published on 16.06.1988, wherein the applicant appeared at lower Sl. No. 174 that is to say after enjoying his seniority w.e.f. 25.11.1970 to 16.06.1988 i.e. for 18 years the seniority of the applicant was downgraded. Aggrieved by the seniority list dated 16.06.1988, the applicant filed objections. Thereafter, vide order dated 13.06.1990 Chief Personnel Officer/Chief Commercial Superintendent gave proforma seniority to the applicant below 30 staff members promoted against the vacancies filled up to 06.05.1970. The staff promoted against the vacancy after 25.07.1970 were placed below the applicant (Annexure A-V). This order was duly approved by the General Manager vide his order dated 12.08.1993 (Annexure A-VI). On 21.09.1993 a corrigendum was issued by the office of Divisional Railway Manager (P), Varanasi and the seniority of the applicant placed at Sl. No. 174 was adjusted at Sl. No. 93-B (Annexure A-VII). However, vide yet another order dated 22.09.1993



issued from the office of Divisional Railway Manager (P), Varanasi the order dated 21.09.1993 was placed in abeyance (Annexure A-VIII) followed by yet another order dated 27.09.1993, once again restoring order dated 21.09.1993. Simultaneously order dated 22.09.1993 was cancelled (Annexure A-IX). This order dated 27.09.1993 was approved by the General Manager (Annexure A-X).

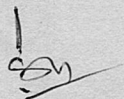
6. The applicant was promoted in the pay scale of Rs. 1400-2300 in TTE Group w.e.f. 01.01.1984 vide order dated 09.08.1996 (Annexure A-XI) (**Not filed ?**). Consequently yet another order dated 12.11.1993 (Annexure A-XII) the applicant was promoted as Divisional TTI in the pay scale of Rs. 15.11.1995, the applicant was promoted as Chief TTI in the pay scale of Rs. 2000-3200 (Annexure A-XIII).

7. Against the run of the events an order dated 14/17.03.1997 was passed by the General Manager (P) vide which orders dated 13.06.1990, order dated 12.08.1993 (Annexure A-VI) and order dated 27.09.1993 (Annexure A-IX) were cancelled with the following observations:-

“वाराणसी मंडल के चल टिकट परीक्षकों के वरीयता नियतन के मामले में महाप्रबन्धक ने निम्नलिखित निर्णय लिया है।

सर्वश्री जेड एच खान राम औतार राम, मो० अब्दुल कादीर, अली अब्बास एवं शम्भुनाथ को इस कार्यालय के पत्र दिनांक 13.6.90, 12.9.93 एवं 27.8.93 द्वारा दिया गया वरीयता जिसके आधार पर ये अपने सीनियर कर्मचारियों के उपर वरीयता पा गये हैं। गलत है। इन लोगों को वाराणसी मंडल में वही वरीयता मिलनी चाहिए जो ये अगर समस्तीपुर मंडल द्वारा समय से अर्थात् 01/5/69 को स्पेयर होने के उपरान्त पाते। अतः 1988 में वाराणसी मंडल द्वारा जारी वरीयता सही है।”

8. Consequently the General Manager (P) passed order dated 21.03.1997 reverting the applicant from the pay scale of Rs. 2000-3200 to the pay scale of Rs. 1600-2660 (Annexure A-XV). The applicant disputed



orders dated 21.03.1997 (Annexure A-XV) and 31.03.1997 (Annexure A-XVI) as arbitrary and having been passed without giving an opportunity of being heard.

9. Aggrieved, one Shri Ali Abbas (similarly placed applicant) filed OA No. 529 of 1997 before the Central Administrative Tribunal, Allahabad Bench. The Tribunal vide its judgment and order dated 01.07.2003 (Annexure A-XVII) quashed the aforesaid orders dated 14/17.03.1997 (Annexure A-XIV), order dated 21.03.1997 (Annexure A-XV) and order dated 31.03.1997 (Annexure A-XVI) with the direction to the authorities to pass fresh orders after giving an opportunity of being heard to the applicant.

10. At the same time one Shri A.K. Banerjee also filed Writ Petition No. 76 of 2004 before the Hon'ble Allahabad High Court against the order of this Tribunal. Writ Petition was disposed of with the following directions:-

"We request the respondents authorities to redetermine the issue after giving opportunity of hearing to the representative or person aggrieved expeditiously...." (Annexure A-18).

11. After giving hearing to the concerned persons as per direction of Hon'ble High Court/CAT the General Manager (P) passed an order dated 19.05.2004, received by the applicant under covering letter dated 25.05.2004, effecting the seniority of the applicant. The applicant is aggrieved against the said order (impugned at Annexure A-I/compilation No. I of OA). The order is accompanied by detailed reasons running into 04 pages. The impugned order was followed up by a fresh seniority list issued by Divisional Railway Manager (P) dated 03.06.2004 (Annexure A-II). The name of the applicant appeared at Sl. No. 23 of the said seniority

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list. It is claimed that in the said seniority list the persons listed below junior to the applicant have been placed above him:-

- | | | |
|-----|-------------------------------|--|
| “5. | Sri Laxman Sharma | <i>(Deleted from list of respondents on amendment)</i> |
| 6. | Sri V.P. Vaishya | <i>(Deleted from list of respondents on amendment)</i> |
| 8. | Sri A.K. Banerjee | |
| 9. | Sri K.K. Srivastava | |
| 10. | Sri K.B. Shukla | <i>(Deleted from list of respondents on amendment)</i> |
| 11. | Sri Radha Mohan Tewari | <i>(Deleted from list of respondents on amendment)</i> |
| 12. | Sri R.C. Yadav | |
| 19. | Sri T.R. Mishra | <i>(Deleted from list of respondents on amendment)</i> |
| 20. | Sri Vashisth Pandey | |

12. The grievance of the applicant against private respondents was however restricted to Shri A.K. Banerjee, Sri K.K. Srivastava, Sri R.C. Yadav and Sri Vashisth Pandey since the OA was allowed to be amended vide order dated 05.01.2006 on MA No. 2257/05.

13. It is averred that the individuals at Sl. No. 9 (Sri K.K. Srivastava) and 12 (Sri R.C. Yadav) were employed in the Sonapur district as TC. In the seniority list dated 22.09.1967 they were shown senior to the applicant as appointed in the year 1964. While in the year 1965, the applicant opted for “TTE Group”, the aforesaid individuals did not. The list of optees of TTE was published on 27.12.1966 reflecting the applicant’s name at Sl. No. 17. The name of these individuals do not find place in the said list (Annexure A-XXII). It is argued that since these individuals did not opt for TTE Group, they cannot be allowed to count their services as TTE w.e.f. 1964 and cannot be placed above the applicant. It was also urged that for the additional reasons narrated below the private respondents could not have been senior to the applicant.

14. Sri K.K. Srivastava (Sl. No. 9), shown at Sl. No. 157 in the seniority list, was placed at Sonapur division as TC in his initial appointment with



date of appointment as 16.08.1964. However in the revised seniority list he was wrongly shown as employed at Varanasi with a deliberate act of commission to favour him, thus allowing him to supersede the applicant.

15. Sri A.K. Banerjee was appointed as TC in the year 1964 at Gonda District and he was transferred to Varanasi at his own request, where he opted for TTE Group in the year 1970 and promoted as TTE in the year 1981. Therefore, he also cannot be supersede the applicant.

16. Sri Vashisth Pandey was appointed in Lucknow Division as TC in the year 1965 and he was transferred to Varanasi at his own request in the year 1967 and accordingly, he was given bottom seniority in the TC grade. He opted TTE group in the year 1970 and was promoted to TTE group in the year 1981 and as such he cannot be given seniority above the applicant reference (Annexure A-XX).

17. In sum and substance of the arguments is that the aforesaid persons were promoted to the higher Group of TTE after the applicant and accordingly could not have been senior to the applicant.

18. It is also argued that the order dated 03.06.2004 being a consequential order of order dated 19.05.2004 issued by the Chief Personnel Officer and not by the General Manager (P) and, therefore, on this ground also it is liable to be quashed.

19. Further the applicant's salary has been reduced and it is prayed that the applicant's pension, gratuity and other post retiral benefits may not be affected due to reduction in pay.



20. For better appreciation of facts we consider it expedient to reproduce the entire order dated 19.05.2004 (Annexure A-I) as under:-

"Sub: Speaking order on seniority dispute to TTEs after personal to all the aggrieved parties concerned.

Ref: - The order of Hon'ble High court/Allahabad dated 14.1.2004 in the Civil Misc. Writ petition No.76 of 2004.

1. In compliance of judgment passed by Hon'ble High Court, Allahabad in Civil Miscellaneous Writ petition No.76 of 2004, I have examined the issue for redetermining and fixation of seniority of TTEs of Varanasi Division. In compliance of the judgment, all the aggrieved persons. TTEs of Varanasi Division were called for personal hearing of the issue on 12.04.04. Following TTEs attended the personal hearing session and put forward their point of views:

S/Shri M.A. Quadir, Z.H. Khan, Ram Autar Ram, Ali Abbas, P.C. Srivastava, T.R. Misra, Kunj Bihari Shukla, A.K. Banerjee, K.K. Srivastava, R.S. Mishra, Vashishta Pandey, R.C. Yadav, Lakshman Sharma, R.M. Tiwari and Others.

I personally heard all of them. All representations & relevant document submitted by them during the course of personal hearing, along with concerned documents of the case, have also been considered in details for redetermining the issue of seniority.

2. Analysis of the Issue & reasons for conclusion: -

2.1 As a matter of fact, the divisional scheme came into force from 1-5-1969. There is no dispute in the seniority of staff who had already been promoted as TTE prior to the divisionalisation. The dispute arose only after the divisionalisation.

As per avenue of channel of promotion for ticket checking staff in vogue at that time, the Ticket Collector was the lowest feeding grade of the ticket checking category. A ticket collector had to opt whether he wanted further advancement in TTEs group, or in Head Ticket Collector group.

2.2 After the divisionalisation, when Varanasi Division came into existence, the ministerial staff of different offices and Ticket Collectors of other district came into Varanasi Division by virtue of heir option for coming to Varanasi Division in Ticket Collector post. As per instructions issued at the time of divisionalisation vide GM(P)'s letter No.F/561 dated 7.3.69 and the judgment passed by Hon'ble High Court, Allahabad, a seniority list of Ticket Collector was issued by Varanasi Division on 1.1.73, for staff as on 1.4.72. In the seniority list, the criteria of length of service in the grade was followed. It means that a person got full seniority as Ticket Collector from the date he had joined in the service in the relevant grade. In this seniority list of Ticket Collector S/Shri K.B. Shukla, A. K. Banerjee, K.K. Shrivastava etc. were senior to Shri Z.H.Khan, Ali Abbas, M.A. Quadir and others.

This seniority list was compatible to the senioritylist published earlier by Sonapur district on 1.4.67 in which Shri K.K. Shrivastava (157) was senior to S/Shri A.Abbas (174), Z.H. Khan (176) & Others.

2.3 For better appreciation of the case the service details of eight employees were examined which are as under:-

Sl No	Name	Earlier Designation and Place of Posting	Date of appointment	Joined as TC in Varanasi Division

[Handwritten signature]

1.	Shri Z.H. Khan	TC, Sonapur	3.6.1965	22.9.1970
2.	Shri R.A. Ram	TC, Sonapur	15.2.1965	22.9.1970
3.	Shri M.A. Quadir	TC, Sonapur	15.2.1965	22.9.1970
4.	Shri Ali Abbas	TC, Sonapur	16.2.1965	22.9.1970
5.	Shri K.B. Shukla	Clerk, Varanasi	21.10.1964	27.11.1972
6.	Shri Radha Mohan Tiwari	Clerk Gorakhpur	22.11.1964	July, 1978
7.	Shri K.K. Srivastava	TC, Varanasi	16.8.1964	16.8.1964
8.	Shri A.K. Banerjee	TC, Varanasi	16.8.1964	16.8.1964

For four staff mentioned at Sl. No.1 to 4, it is seen that they came in the Varanasi Division on 22.9.1970. In the spare memo it has been mentioned that they came in the Varanasi Division on 22.9.1970. In the spare memo it has been mentioned that-

"The above were LRTC and they were due for promotion as TTE in Samastipur Division. But since they were optees of the Varanasi Division they could not be promoted as TTE on Samastipur Division. Their Position might be regularized in your Division."

However, on arrival in Varanasi Division, their seniority had to be interpolated with those of Varanasi division, already working in the grade or with those who would be inducted in the grade by option on administrative interest.

2.4 Some promotions into TTE category were made by Varanasi Division on ad-hoc basis on 27.11.1970 (i.e. prior to publication of seniority list of T.C. on 1.1.73) in which S/Shri Z.H. Khan, R.A. Ram & M.A. Quadir, were promoted as TTE ignoring their seniors namely S/Shri K.K. Shrivastava, A.K. Banerjee, R.C. Yadav and others. It is also important to note that the junior staff promoted by the order dated 27.11.1970 on temporarily officiating basis, were neither reverted not their seniors were considered for promotion in due course, which gave rise to discontentment and anomaly in fixation of seniority in the TTE group. Aggrieved staff agitated & represented.

2.5 In view of the above complication, the case was referred to headquarter by division, for clarifications and directives. After considering the implication of the case, GM/NER decided, as under (on 9.6.88): -

"It will be fair and just to allot seniority to the combined staff of Ex Varanasi district, Ex Sonapur district and Ministerial staff posted as TC after 1.5.69 on the basis of seniority amongst optees.

However, while implementing the above decision it should be kept in mind that this decision is only for the vacancies which occurred after 1.5.69 i.e. after formation of the division which were filled in with the combined staff of Ex varanasi district, Ex Sonapur district and the ministerial staff absorbed as TC in Varanasi Division. The seniority of the staff promoted against the vacancies which occurred prior to divisionalisation are not to be affected."

2.6 In compliance of the above order, Varanasi Division issued a seniority list dated 16.6.1988. Subsequently on representations and references, a further decision was taken by GM(P)/GKP's vide letter dated 13.6.1990 which rules that-

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"Shri Z.H. Khan, Ram Awatar Ram had represented that juniors to them were promoted as TTE on 25.7.1970 by Samastipur Division whereas they were ignored inspite of the fact that they were physically available in Samastipur Division on 25.7.70. The case has been re-examined and it has been decided that they should be given proforma seniority below 30 staff adjusted/promoted against vacancies filled on 6.5.70 and above those staff who were promoted against vacancies after 25.7.70."

Subsequently this ruling was withdrawn.

2.7 Again on 12.8.93, it was decided that the earlier decision conveyed vide the above mentioned letter dated 13.6.90 should be implemented and accordingly this decision was implemented. On implementation of the above decision Shri Z.H. Khan and other became senior to S/Shri K.B. Shukla, A.K. Banerjee and others. It needs to be noted here that Shri K.B. Shukla & other were senior as per seniority list issued on 1.1.73 (Para 2.2 above).

2.8 Shri K.B. Shukla and other represented their case against this decision and it was decided that the decision conveyed earlier by which Shri Z.H. Khan and other were made senior to them was not correct. They should be assigned the same seniority position, as they should have got had they been spared in time during divisionalisation. This decision was similar to that covered by GM/NER in the year 1988.

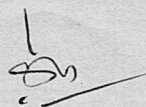
2.9 Being aggrieved with this decision, the issue was raised by the trade union led by PRKS in the zonal PNM Meeting with Rly. Administration in which it was pointed out that the seniority list prepared by Varanasi Division was not according to the decision conveyed by GM in the year 1988. Hence in PNM Meeting it was decided that three representatives each from PRKS, from NERMU and from administrative side would comprise a committee to scrutinize the dispute in seniority as to whether it is implemented according to the decision/extant rules. The committee submitted their report. Thereafter in the PNM Meeting, the case was closed.

As per this Committee report, the seniority as decided in 1988 was correct. This was communicated to Varanasi Division and relative seniority of S/Shri Z.H. Khan, Ali Abbas & Others were corrected and they became juniors to S/Shri A.K. Banerjee, K.B. Shukla & others, in terms of GM (P)'s letter dated 14/17-3-97. Varanasi Division took corrective actions in terms of their letters dated 21.3.97 & 31.3.97.

2.10 Shri Ali Abbas and other had filed a suit in the CAT/Allahabad in O.A. No. 529/1997 in which CAT had cancelled GM (P)'s letter dated 16/17.3.97 and DRM (P)/Varanasi letter dated 21.3.97 and 31.3.97 CAT had further directed that administration should grant a personal hearing to Ali Abbas and thereafter fresh order may issued by the respondents. In fulfillment of the above decision of the Hon'ble CAT, Shri Ali Abbas, TTE was granted personal hearing by the then chief Personnel Officer and the seniority of S/Shri Ali Abbas, Z.H. Khan & other were again restored above those staff who were senior to them considering the date of appointment in the concerned grade.

3. Being aggrieved with this decision of Rly. Administration, Shri A. K. Banerjee and others filed the miscellaneous writ petition No. 76 of 2004 in the Allahabad High Court against the above speaking order passed by the then CPO and as per direction of the Hon'ble Court the issue is being redetermined by the undersigned after granting personal hearing to all aggrieved persons/parties in the case.

4. Conclusion:



The basic principles for fixation of seniority is laid down in the para 311 of Indian Rly. Establishment Manual, Vol. I, which deals with fixation of seniority in the event of transfer of Railway servant from one cadre to another in administrative interest. According to this rule the seniority in such cases is regulated by the date of appointment date of promotion of the grade.

As analysed in the para 2.1 to 2.3 above, Sri A. K. Banerji, Sri K. K. Srivastava, Sri R. M. Tiwari & Sri K. B. Shukla are seniors to S/Shri Ali Abbas, M.A. Quadir, Ram Autar Ram and Z. H. Khan based on the dated of appointment to grade. They were assigned correct relative seniority on this basis in the seniority list of TCs published by BSB division on 1.1.73 (Para 2.2 above).

After 1.5.69, when divisionalisation was completed, promotions to TTE cadre should have been done based on the T.C. seniority list of 1.1.73. However, Shri Z. H. Khan & others were Promoted on 27.11.70, i.e. prior to the publication of inter-se-seniority of TCs who joined the grade from different streams/categories and from different districts. It was recorded explicitly on the promotion order that the promotions were purely on ad-hoc/temporary basis and would not confer on them any right to seniority. Against these Promotions, S/Shri K. B. Shukla & others represented to Administration. But unfortunately no concrete action either to promote the left out seniors or to demote the wrongly promoted persons, was taken by the Administrative. This was main reason for the Discontentment and controversy resulting in disputes in the seniority fixation of TTEs category. Hence the seniority assigned to TTE Category in Shri Z.H. Khan & others on the basis of this promotions order totally wrong.

The Vacancies in TTEs categories used to be filled by optees from the TCs grade (vide para 2.1 above) in fact, the principle of seniority amongst the optees is the criteria of TTEs seniority on a particular date based on Vacancies available at that time. As on date it is not possible to say whether opportunity was given to the senior employees for giving options for promotions to TTE. Thus, these who are already working in TTE group must be deemed to have opted for TTE group and their seniority has to be fixed in the TTE group in accordance with the relative seniority in the feeder grade i.e. Ticket Collectors.

In view of the principles, rules and circumstances, as analysed above, the decision of the then General Manager, N.E. Railway on 9.6.88 was absolutely in conformity with the extant provisions/rules (vide para 2.5 above). This ruling was further corroborated by the committee comprising of representatives from both recognized trade unions & Rly. administration, which was constituted to examine its implementation (vide para 2.8 & 2.9)

Therefore, it is concluded that the seniority position of TTEs should be redetermined afresh on the basis of basic rules for seniority determination as outlined in the General Manager/NER's order dated 9.6.88 (vide para 2.5 above). According to this analysis and reasoning the relative seniority of aggrieved persons/employees shall be, as tabulated below in the orders of seniority.

Sl. No.	Name	Sl. No.	Name
1)	Shri Lakhman Sharma	(8)	Shri P. C. Srivastava
2)	"A. K. Banerjee	(9)	" R. A. Ram
3)	"K.K. Srivastava	(10)	" Z. H. Khan
4)	"K.B. Shukla	(11)	" T. R. Mishra
5)	"R.M. Tiwari	(12)	" Vashishtha Pandey
6)	"R. C. Yadav	(13)	" R.S. Mishra

7)	"Ali Abbas	(14)	" M.A. Quadir
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Varanasi Division should undertake publication of fresh seniority list of TTEs based on the above guidelines.

(A. K. Tiwari)
General Manager (Personnel)
Dated 19-05-04"

21. On a notice counter affidavit has been filed and salient features are as under:-

- a. Personal hearing was given to all concerned to re-determine the seniority and consequently order date 19.05.2004 was passed by the General Manager (P) Varanasi. Orders dated 03.06.2004 (Annexure A-II) and 14.06.2004 (Annexure A-III) were passed as a follow up of order dated 19.05.2004 (Annexure A-I), referred to above.
- b. Prior to 1965 options were called centrally by the Headquarters, Gorakhpur. In the year 1965 the options were not called for the Headquarters, Gorakhpur but it was called Ex. Sonapur district from Ex Sonapur districts staff only. No options were called in the years 1964, 1965 and 1967 from the Headquarters Gorakhpur, where local options were called from the staff in 1964, 1965 and 1967 and Ex Sonapur district.
- c. In Varanasi division options were called in the year 1970. Earlier the last option in this regard were called way back in the year 1959. Pay scales of TC and LRTC was the same and their seniorities were combined. The promotions to the post of TTE were made from TC and LRTC. Further, the posting of LRTC



itself does not confer upon the applicant the right to seniority. This has also been clarified in the footnote to the promotion order dated 27.11.1970 [Annexure IV (ii)]

22. The counsel for the parties were directed to file written submissions, only applicant's counsel responded. His arguments are summarized as under:-

- a. The General Manager (P) is not competent to pass the impugned order in compliance of the order of the Hon'ble High Court and supersede the earlier order passed by a superior authority i.e. General Manager, Gorakhpur who had passed his order in compliance of direction of CAT in OA No. 529 of 1997 : Ali Abbas Vs. Union of India. It is argued that General Manager (P) is junior to General Manager, Gorakhpur and even if he passed an order in compliance of the order of Hon'ble High Court, such orders should have been passed with the with the approval of General Manager.
- b. The Hon'ble High Court did not interfere with the order of the Tribunal in Ali Abbas's case nor did it stay the operation of the order. Therefore, the seniority already determined by the superior officers on the same issue should not have been reconsidered by the subordinate officer.
- c. The conclusion drawn by the General Manager (P) in the impugned order are against the principle of Rule 311 of IREM Vol I which reads, "Seniority of Railway Servant on transfer from one cadre to another in the interest of administration is

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regulated by the date of promotion/date of appointment to the grade as the case may be."

- d. Shri A.K. Banerjee appointed as TC in 1964 was transferred to Varanasi at his own request and opted for TTE in 1970 and promoted in 1981. He was placed at bottom seniority and did not represent against promotion of applicant.
- e. Shri Vashist Pandey appointed as TC in Lucknow region in 1965 but transferred to Varanasi on request hence bottom seniority in 1967 opted for TTE in 1970 and promoted as TTE in 1981.
- f. Shri K.K. Srivastava was always junior to applicant even as TC in Sonapur.
- g. Shri R.L. Yadav TC in Sonapur never exercised option. (4, 5, 6 and 7) promoted as TTE in 1981 and did not represent.
- h. The observation of the General Manager (P) in the 4th para of impugned order regarding presumption of "deemed opportunity" is principally incorrect and also against the facts. The list of optees has been annexed with the OA. The name of all those persons do not find place in the list of optees.
- i. The list of optees of Sonapur division, Gonda division and Varanasi division are also filed with the written submissions. Admittedly the seniority amongst the optees is bases on



vacancies available at that time. The vacancies in TTE category used to be filled by options from TC Grade and no options have been exercised by the persons named above. Therefore, no way they can be considered senior to the applicant on a presumption of "deemed" to have given an option.

- j. In the order of General Manager passed in compliance of the Tribunal's order it was made clear that the respondents did not make any representation/challenge the seniority list of 1972 and 1975 and others years. The representation against the seniority should have been made within a year as per provision given in para 321 of IREM which reads as under:-

"321. PERMISSION TO RAILWAY SERVANTS TO PERUSE SENIORITY LIST :-

- a. *Railway servants may be permitted to see the seniority lists in which there names are placed, or if this cannot conveniently be arranged, they may be informed, on request, of their place on the seniority list.*
- b. *Staff concerned may be allowed to represent about the assignment of their seniority position within a period of one year after the publishing of the seniority list. No cases for revision in seniority lists should be entertained beyond this period."*

It is apparent that no representation was given by the respondents, even the proforma seniority was never challenged.

- k. In para 2.8 of the order of General Manager (P) it has been incorrectly stated that Sri K.B. Singh and others represented their case against the order of General Manager. Infact no such representation was made.
- l. The applicant was promoted as TTE in the pay scale of Rs. 130-212 on 25.07.1970, whereas, the respondents were promoted in

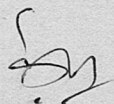


the year 1981. At no point of time either the seniority or promotion of the applicant was challenged and therefore, at this late stage the seniority of the applicant cannot be downgrade.

23. We have given our deep thought and consideration to the issues raised in the pleadings. The first issue raised by the applicant in para 22 (a) and (b), we do find some substance in the arguments that the General Manager (P), North Eastern Railway, Gorakhpur could not have passed the impugned order since the impugned / adjudication order passed in compliance of the order and direction of this Tribunal in **OA No. 529 of 1997 : Ali Abbas and others Vs. Union of India and others** was passed by the General Manager, North Eastern Railway, Gorakhpur who is senior to General Manager (P), North Eastern Railway, Gorakhpur. A perusal of the decision of Hon'ble High Court in Writ Petition No. 76 of 2004, in the title page of the order reads as "Divisional Railway Manager/Divisional Railway Manager (P), N.E. Railways, Varanasi". Apparently this is how the applicant must have described the respondents in the array of the parties. We, however have reservation on the order having been passed by the General Manager (P), North Eastern Railway, Gorakhpur. Since in our view propriety and hierarchy of Rank would demand that the order of the General Manager (P) should have been passed in concurrence/approval of General Manager, North Eastern Railway, Gorakhpur.

24. We now refer to para 311 of Indian Railway Establishment Manual, Vol. I which reads as under:-

"311. TRANSFER IN THE INTEREST OF ADMINISTRATION.- Seniority of railway servants on the transfer from one cadre to another in the interest of administration is regulated by the date of promotion/date of appointment to the grade as the case may be."



25. This raises to a crucial question that for the purposes of determining the seniority of the concerned individuals a reference has to be made to one or both of the following events:-

- i. Date of appointment to the grade
- ii. Date of promotion to the grade

26. In this case the date of appointment will be the date on which the applicant / Private respondents joined the Government service and the date of promotion will be the date on which the applicant / private respondents were promoted in the grade of TTE. In so far as the first criteria is concerned the seniority will be determined by the date of joining as indicated in Table 2.3 of the impugned order (supra). In that case Sri K.K. Srivastava and Sri A.K. Banerjee are senior to the applicant by virtue of joining in the year 1964 as against the applicant's joining in the year 1965. Even, if it was to be determined with respect to the date of joining as TC in Varanasi Division then also officials at Sl. No. 7 and 8 (S/Sri K.K. Srivastava and Sri A.K. Banerjee) are senior to the applicant by virtue of date of joining as TC in Varanasi Division.

27. If the criteria for date of promotion in the grade of TTE is to be adopted then S/Sri A.K. Banerjee and K.K. Srivastava were promoted to the grade of TTE in the year 1981 as against the date of promotion of the applicant in the grade of TTE on 25.11.1970 and hence junior to the applicant.

28. The next crucial issue, however, involved is as to how sacrosanct is the 'option' given / not given to be indicated in the TTE category. From para 2.1 of the impugned order it seems that the factum of exercising option is sacrosanct. In that even the observation given under the heading



"conclusion" of the impugned order that it was not possible to say whether opportunity was given to senior employees for giving options for promotion to TTE and, therefore, those who are already working in TTE group "must be deemed to have been opted for TTE Group" and their seniority has to be fixed in accordance with the relative seniority to the feeder grade i.e. TC is a complete contradiction of the mandatory requirement to exercise option. There cannot be a concept of deemed option. In the written statement it has been reiterated that Sri K.K. Srivastava and Sri R.L. Yadav who were working as TC Sonapur never opted for TTE group. A list of optees was furnished with the OA (Annexure A-XIX). The name of these persons do not find place in the list of optees. Similarly the list of optees of Sonapur District, Gonda District and Varanasi District were furnished with the written submissions. These lists again do not find the disputed names.

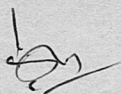
29. From the foregoing narration we have observed that this matter has already undergone several rounds of litigations, re-considerations, corrections and re-corrections, with or without an opportunity of hearing. Perhaps all private respondents and the applicant have already retired. What transpires clearly from the impugned order of the General Manager (P) is that for inter-se-seniority the first and foremost criteria is the exercise of the option to the TTE cadre. Thereafter, the seniority is to be determining amongst the optees only. The next criteria is that principle of fixation of seniority is laid down in paragraph 311 of I.R.E.M. Vol. I, which states that fixation of seniority in the event of transfer of railway servant from one cadre to another in administrative interest is to be regulated by the date of appointment or date of promotion to the grade. A new dispute of facts has also emerged in the rival pleadings i.e. what should be criteria



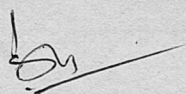
for determining the seniority of an individuals who came to a particular division in this case (Varanasi Division) i.e. due to divisionalisation scheme vis-à-vis those who came at their own request.

30. A similar issue was decided by Hon'ble High Court of Allahabad in Civil Misc. Writ Petition No. 3280 of 1969 vide order dated 19.02.1971 it was held that option exercised by the staff is in response to a facility given by the Railway in the new station of transfer on request would be a transfer made in consequence of a request made by the staff on their own initiative and not at the instance of the railway authorities. Since the transfer made in exercise of the option given by the circular letter at Annexure, it would not be a transfer on request paragraph 311. Paragraph 312 regulates the seniority of the clerks transferred to the cadre of Ticket Collectors as a result of their exercising the option. If paragraph 311 applies, the seniority of the clerks in the grade is maintained on their appointment as Ticket Collectors and they would then be senior to some of the existing Ticket Collectors according to the date of their appointment by the promotions to the common grade. As per the respondents the seniority list dated 27.05.1973 is related to the officiating staff and the Board's circular was issued on 01.01.1973 whereas the applicant position is correctly shown and he is junior to staff at Sl. No. 5 to 12. However, they were allowed to officiate till their seniors came i.e. as on 16.02.1973.

31. On the basis of the discussion so far before we proceed to determine the relating seniority of private surviving respondents, it is found that the applicant had been working in the higher grade, albeit temporarily, as compared to the private respondents. The applicant enjoyed the



seniority for 16 years. His position was not challenged at the time of his promotion as TTE in terms of Rule 321 of IREM within the prescribed time as required. Admittedly the impugned order dated 19.05.2004 (Annexure A-I) has come about on a change of opinion on the **same set of facts** by an officer junior i.e. General Manager (P) against the previous seniority order passed by General Manager, Gorakhpur. On this ground alone the impugned order dated 19.05.2004 may not be incapable of being sustained. We will nevertheless consider the fact of individual private respondent vis-à-vis the applicant and specific issues raised in the pleadings. In para 4.40 of the OA it is alleged that Shri K.K. Srivastava and Shri R.C. Yadav were all employed in the Sonapur district. In the seniority list which was published in 1967 they were shown senior to the petitioner as they were appointees in 1964. In the year 1965 since they had not opted for TTE group, a list of optees for TTE group was published on 27.12.1966 in which petitioner's name finds place at Sl. No.17 whereas the names of the aforesaid persons did not find. Since these persons have not opted in TTE group they cannot be counted for service as TTE from 1964 and they cannot be senior to the petitioners. In counter reply thereof the factum of 'exercise' of option has not been challenged though it is reiterated that the seniority of TTE was to be determined with reference to the date of entry into the grade of Ticket Collectors. In para 4.42 of the OA it has been alleged that Shri K.K. Srivastava has been shown at Sl. No. 157 in the seniority list. While he was posted at Sonapur as Ticket Collector in his initial appointment. Shri K.K. Srivastava has shown his date of appointment as 16.08.1964. However in the fresh seniority list he has been wrongly shown as the employee of Varanasi to the prejudice of the applicant. In reply thereof in para 44 of the counter affidavit it is stated that Shri K.K. Srivastava was posted at CPR at the



time of divisionalisation and the same station of Ex. Sonapur district was merged in Varanasi Division and hence he automatically become the staff of Varanasi Division without being spared from any where and the rest persons came in T.C. Cadre of Varanasi Division by being spared from other Division.

32. In para 4.45 of the OA it is alleged that Shri A.K. Banerjee was appointed as Ticket Collector in T.C. grade in the year 1964 at Gonda District and he was transferred to Varanasi at his own request wherein he opted for TTE group in the year 1970 and he was promoted as TTE in the year 1981 and therefore he also cannot superseded to the applicant. In reply thereof at paragraph 49 of the counter it is stated that Shri A.K. Banerjee was appointed as Ticket Collector in the year 1964 in Ex. Gonda District and in the same year he was transferred and joined in Ex. Varanasi District on administrative ground opted for promotion as TTE in the year 1970 in Varanasi Division. There is no evidence brought by either side as to whether Shri Banerjee came to Varanasi on transfer at his own request on personal ground or he was transferred on administrative exigency.

33. In paragraph 4.46 of the OA it is alleged that Shri Vasishth Pandey was appointed in Lucknow Region as T.C. in the year 1965 and he was transferred to Varanasi on his own request in the year 1967 and he was given bottom seniority in the T.C. grade. He opted for TTE group in the year 1970 and was promoted to TTE group in 1981 as such he cannot be given seniority above the petitioner. Annexure-XX to the OA is typed/unauthenticated paper claimed to be copy of an order dated 18.02.1967 purporting to be transfer order of Shri B. Pandey on his personal request. In paragraph 50 of the counter it has been replied that transfer of Shri B.



Pandey was wrongly done against his appeal which was clarified by the General Manager (P), North Eastern Railway vide letter dated 10.02.1976 in response to Divisional Railway Manager (P)s letter dated 11.12.1975. (No evidence filed).

34. From the conflicting versions of the four private respondents pleaded and narrated in the aforesaid paragraphs it is apparent that in each one of the cases there are unsupported / unresolved claims such as:-

- (a) Sri K.K. Srivastava and Sri R.C. Yadav who were employees in Sonapur Division were shown senior to the applicant in the year 1967 being the appointees of 1964 and 1965, but since they did not opt for TTE Group, in the list of employees of optees which was published on 27.12.1966 where the applicant's name is at Sl. No. 17, the names of Sri K.K. Srivastava and Sri R.C. Yadav did not find place. Then there is a conflicting version of Sri K.K. Srivastava being wrongly shown as employee of Varanasi Division though he was posted at Sonapur. The arguments of the respondents that since Sri K.K. Srivastava was posted at CPR at the time of divisionalisation and the same station of Ex-Sonapur district was merged at Varanasi Division and hence he automatically became the staff of Varanasi Division gives rise to a debatable proposition. Since at the time of initiation of divisionalisation scheme the employees of Sonapur division were required to opt between Varanasi and Samastipur division, the explanation of the official respondents therefore, is not in conformity with the extant scheme.

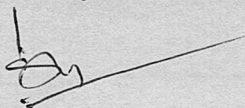


(b) Sri A.K. Banerjee it is alleged that he was transferred to Varanasi division at his own request. In reply, however, it is argued that he was transferred at Varanasi division on administrative grounds. There is no evidence brought by either parties to buttress their claim and hence the correct position remains unclear.

(c) Sri Vashishth Pandey is alleged to have been transferred to Varanasi Division on his own request and was given bottom seniority (Annexure A-XX of the OA). This is, however, been claimed to have been subsequently corrected (para 33 supra). No evidence, however, been brought on record by the official respondents. This position also remains unclear.

35. We thus feel that certain debatable and unsubstantiated factual aspects of the rival parties can perhaps never been resolved finally. Having given a careful consideration to the complex nature of dispute we will therefore take help of certain ratios laid down by Hon'ble Supreme Court from time to time viz.

- i. In the case of Shiba Shankar Mohapartra and Ors Vs. State of Orissa and others [Civil Appeal Nos. 7537 – 7541 of 2009 (arising out of SLP (C) Nos. 13237 – 13241 of 2008)] it has been held that settled legal preposition is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. A reference was made to the case of **K.R. Mudgal Vs. R.P. Singh and others : AIR 1986 SC 2086**, wherein it has been held that the seniority list which remains in existence for 3 to 4 years unchallenged should not be



disturbed. Thus 3 to 4 years is a reasonable period for challenging the seniority and in case some one agitates the issue of seniority beyond this period he has to explain the delay.

ii. In **Ramchandra Shanker Deodhar & Ors. v. State of Maharashtra & Ors. AIR 1974 SC 259** a constitution bench held that the claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period.

iii. In **R.N. Bose v. Union of India & ors; Ors. AIR 1970 SC 470** it has been observed that "it would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be defeated after the number of years."

iv. In **Malcom Lawrance Cecil D'Souza v. Union of India & Ors. AIR 1975 SC 1269** wherein it had been observed as under:-

"Although security of service cannot be used as a shield against the administrative action for lapse of a public servant, by and large one of the essential requirement of contentment and efficiency in public service is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in a seniority list after having been settled for once should not be liable to be re-opened after lapse of many years in the instance of a party who has itself intervening party chosen to keep quiet. Raking up old matters like seniority after a long time is likely to resort in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.

(Emphasis added)"

v. In **P.S. Sadasivaswamy v. State of Tamil Nadu AIR 1975 SC 2271** it has been held that "A person aggrieved by an order promoting a junior over his head should approach the Court at least within 6 months or at the most a year of such promotion."

vi. In **K.A. Abdul Majeed vs. State of Kerala & Ors. (2001) 6 SCC 292** it has been held that the fence-sitters cannot be allowed to


raise the dispute or challenge the validity of the order after its conclusion. The Court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum.

36. The inescapable conclusion to be drawn is that the old seniority matters should not be ordinarily disturbed as they have the effect of disrupting the long held equilibrium. On the facts of this case there is no dispute that the applicant enjoyed and survived roller coaster seniority for a long period of 18 years i.e. w.e.f. 25.11.1970 to 16.06.1988.

37. By the reverse logic the same holds equally good for the private respondents namely S/Sri A.K. Banerjee, K.K. Srivastava, R.C. Yadav and Vashishth Pandey who are the beneficiaries of the impugned order (Annexure A-I) for at least 06 years during the pendency of this OA. Most certainly all of them i.e. the applicant and private respondents have retired from the Government service. Some private respondents had retired even while this OA was filed as is evident from the amendment permitting deletion of certain private respondents vide order dated 05.01.2006, amendment dated 13.01.2006.

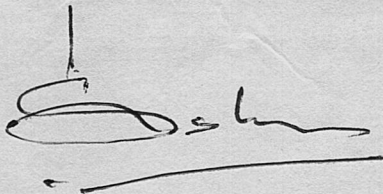
38. In our considered view the ends of justice would be met if a long held seniority of the applicant is not allowed to be disturbed on account of impugned order dated 19.05.2004. Similarly, equity demands that our order restoring the seniority of the applicant should not disturb the benefit enjoyed by private respondents of the impugned order dated 19.05.2004 at this late stage.

39. In view of our observation it is directed that the impugned order dated 19.05.2004 (Annexure A-I) communicated vide order No. E/210/15/0/Bhag-III/Gha/69/Loose dated 25.05.2004, impugned correction



letter dated 03.06.2004 (Annexure A-II) and impugned office order dated 14.06.2004 (Annexure A-III) will have no efficacy in so far as the applicant is concerned. As a result thereof the applicant would be allowed to retain the same seniority which he was enjoying (keeping in mind impact of the order and directions dated 01.07.2003 of this Tribunal in OA No. 529 of 1997) immediately prior to impugned orders dated 19.05.2004 (Annexure A-I), dated 03.05.2004 (Annexure A-II) and order dated 16.04.2004 (Annexure A-III) i.e. all consequential benefit such as the existing/enhanced grade to which would have accrued to him had he earned his promotion but for his seniority / scale having been downgraded vide impugned orders would also be allowed to him. Consequently his pension would be revised and arrears of all retiral benefits will be paid to the applicant within three months from the date of receipt of certified copy of this order.

40. It is also clarified that this order will have no adverse impact on the benefit of all kinds being enjoyed by private respondents at Sl. No. 5 to 8. The relief claimed by the applicant is modified to the extent as directed above. The OA is allowed. Parties will bear their own cost.



Member (A)

/pc/



Member (J)