

(Open Court)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD**

ALLAHABAD this the **29<sup>th</sup>** day of **March, 2011**

Present:

**HON'BLE DR. K. B.S. RAJAN, MEMBER- J**

**HON'BLE MR. S.N. SHUKLA, MEMBER- A**

**ORIGINAL APPLICATION NO.1273 OF 2005**

1. P.K. Shakya aged about 42 years son of Shri R.S. Shakya working as XEN/TO/Headquarter/N.C. Railway, Allahabad r/o Village Karmullapur, P.O. Sikanderpur, District-Kannauj (UP).
2. Durgesh Chandra son of Shri Ratan Kumar aged about 39 years working as XEN (Const.) N.C. Railway, Gwalior.
3. S.K. Tripathi son of Shri Brij Kishore Tripathi, Working as XEN/TMC/N.C. Railway, Jhansi r/o House No.19, Adarsh Nagar, Kanpur.
4. S.K. Saxena Son of Shri J.P. Saxena aged about 43 years working as XEN/TMC/Line/N.C. Railway, Allahabad.
5. S.K. Gupta, Son of Shri L.L. Gupta, aged about 40 years working as DEN/Line/N.C. Railway, Kanpur r/o village and PO.Ranipur, District-Jhansi.

.....Applicants.

**V E R S U S**

1. Union of India through General Manager, North Central Railway, Allahabad.
2. General Manager, N.C. Railway, HQ Office, Allahabad.
3. Secretary Establishment (Gazetted) Railway Board, Rail Bhawan, New Delhi.
4. Chief Personnel Officer, N.C. Railway, HQ Office, Allahabad.
5. General Manager, Central Railway, Head Quarters Office, CSTM-Mumbai.

.....Respondents

6. Shri K.P. Seth, XEN/Central Organisation of Railway Electrification (CORE)/Allahabad.
7. Shri R.S. Gangwar, DEN/Track, N.C. Railway, DRM's Office, Allahabad.
8. Shri Anil Kumar, DEN/Track, N.C. Railway, DRM's Office, Jhansi.
9. Shri V.K. Agarwal DEN/Estate, N.C. Railway, DRM's Office, Allahabad.
10. Shri Anil Kumar Jain, DEN/Headquarter N.C. Railway, DRMs Office, Jhansi.



11. Shri Santosh Kumar Misra, DEN/East, N.C. Railway, DRMs Office, Jhansi.
12. Shri Mohan Lal, XEN/TM, Headquarter Office, N.C. Railway, Allahabad.

.....Private Respondents

Present for the Applicant: Sri Sudama Ram  
Present for the Respondents: Sri P.N. Rai

### **ORDER**

#### **(DELIVERED BY HON'BLE DR. K.B.S. RAJAN, MEMBER-J)**

Sri Sudama Ram, learned counsel for the applicant and Sri P.N. Rai, learned counsel for the respondents. The applicant joined Railway service (Central Railways) against a Group 'D' post and later on rose upto AEN in the Central Railway. With the creation of N.E. Railway the applicant joined the North Central Railway on the basis of Railway Board's letter dated 22.08.2002. Alongwith the applicant, his colleagues from other railways had also opted and joined North Central Railway. A seniority list was prepared keeping in view the Railway Board letter dated 28.07.2002 whereby the Railway Board has instructed that officers coming on absorption to the New Zones will form a separate seniority list for each department in the New Zone. And, seniority in the new Zone will be determined on the post of their regular appointment in Group 'B' in the parent Railway Zone/District without disturbing the inter-se seniority position of the officers transferred from that Railway.

2. The grievance of the applicant is that for Group 'B' post vacancies arose in 1992-93 for which the applicant was eligible for consideration. However, the selection could not be finalized on account of certain court cases and ultimately the selection could be made in the year 1996 only. In respect of other Railways such a contingency did not persist. When the North Central Railway prepared the seniority list on the basis of Railway Board circular it had taken into account the date of joining Group 'B' post as a criterion for fixation of seniority. Applicant claims



that his seniority should be antedated to 1993 as a vacancy against which he was inducted in Group 'B' post days back in 1992-93. When clarification was sought, the Railway Board vide Annexure A-10 order dated 27.08.2004 stated as under:-

*"Your Railway's letter quoted above for interpolating the name of S/Shri P.K. Shakya, S.K. Saxena and S.K. Gupta, Gr.B officers of Civil Engineering Department of your Railway at S.No.7, 11 and 12 in the permanent absorption orders of even number dated 24.09.2003 has been examined in the Board's office, It is stated that the permanent absorption orders dated 24.09.2003 are not indicative of the seniority position of the Gr.B. officers. Seniority list of the officers absorbed on the New Zones has to be prepared by the Zonal Railways themselves in consultation with the parent Railways. If there is, any doubt the same may be examined in consultation with the parent Railways as per instruction issued by Board (E(GP) Branch of MS Dte.)."*

3. It is the case of the applicant that the North Central Railway never chose to consult the Central Railway in regard to the seniority of the applicant in the post of Group 'B' in the North Central Railway and consequently there is depletion in his seniority position. Hence, this O.A.
4. Respondents have contested the OA. According to them the fixation of seniority is in order.
5. Counsel for the applicant submitted that it is trite law that the previous years' panel precedes, for seniority purposes, the subsequent years panel. It is also equally settled law that if on account of any court case promotion in a particular year could not be made in that year, on finalization of selection after the courts case, the year wise panel should reflect the seniority list and from that point of view the applicant's seniority should be fixed from 1992-93 onwards.
6. Counsel for the respondents reiterated the contentions as contained in the counter affidavit as well as supplementary counter affidavit.





7. We have considered the issue. Whenever promotion is contemplated for filling up of vacancies for a number of years, year-wise panel should be prepared. This is settled law position. In that event for vacancies of the year 1992-93, the seniority should precede the subsequent years' selection. In the instant case, the applicant having been considered for the vacancy of 1992-93 and because of court case the selection not having taken place in time, the seniority should reckon from that particular year i.e. 1992-93, especially when an inter-se seniority list vis-à-vis other Railways is prepared by the N.C. Railway. It would have ended in an anomalous situation if persons selected for the vacancy of 1992-93 is given a seniority below those who have been selected against the vacancies of 1993-94 onwards, either intra-zonal railways or inter-zonal railways. In any event, consultation with Central Railway was to be taken as per the direction of the Railway Board. In the instant case, since such consultation does not appear to have been place this drill has to be conducted afresh.

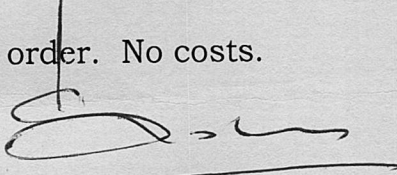
8. Counsel for the respondents has invited our attention to para 9 of the supplementary counter affidavit wherein it has been stated, *"Accordingly the seniority of the Group 'B' officer has been correctly assigned by this Railway relied upon the documents of their parent Railway i.e. Central Railway."*

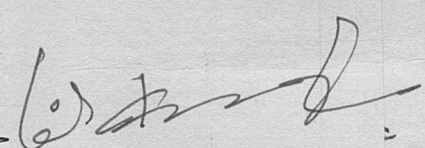
9. The above is not sufficient, since in the case of the applicant the date of seniority has to take into account the yearwise panel against the vacancy of 1992-93 (though final selection took place only in 1996). Specific attention of the Central Railway was to have been drawn by the North Central Railway before fixing the seniority position of the applicant. The counsel for the applicant relies upon the decision of the Apex Court in *Balwant Singh Narwal and Others Vs. State of Haryana and Others*, (2008) 2 SCC (L&S) 586 wherein it has been held as under:-



*"There is no dispute about these general principles. But the question here is in regard to seniority of Respondents 4 to 16 selected on 1.10.1993 against certain vacancies of 1992-1993 who were not appointed due to litigation, and those who were selected against subsequent vacancies. All others from the same merit list declared on 1.10.1993 were appointed on 2.6.1994. Considering a similar situation, this court, in Surendra Narain Singh V. State of Bihar held that candidates who were selected against earlier vacancies but who could not be appointed along with others of the same batch due to certain technical difficulties, when appointed subsequently, will have to be placed above those who were appointed against subsequent vacancies."*

10. The above decision applies to the facts of the present case as well compared to the promotions granted against 1992-1993 vacancies in respect of other Railway. In view of the above the **OA is disposed of** with direction to the respondents (North Central Railway) to consult the Central Railway with specific reference to the promotion of the applicant against 1992-1993 vacancies finalized only in 1996 on account of certain court cases and the decision of the respondents be accordingly communicated to the applicants. Needless to mention that in the event of the applicant gaining the seniority from 1992-1993 the consequential benefits flowing therefrom would also be available to the applicant. The impugned order dated 22.12.2004 is quashed. This drill may be performed within a period of three months from the date of receipt of a copy of this order. No costs.

  
Member-A

  
Member-J

/ns/