

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH ALLAHABAD

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(THIS THE 15 DAY OF NOV, 2010)

Hon'ble Dr.K.B.S. Rajan, Member (J)  
Hon'ble Mr. S. N. Shukla, Member (A)

**Original Application No.1290 of 2005**  
(U/S 19, Administrative Tribunal Act, 1985)

1. Pradeep Kumar, Aged about 44 years  
S/o Late Nanak Chand, R/o 18, Bhodraj  
Sahany Colony (Sipri Bazar),  
Jhansi.
2. Aziz Ahmad aged about 44 years  
S/o Haji Mohd. Sagee Khan  
R/o A-3 Deen Dyal Nagar,  
Jhansi.

..... Applicants

*Present for Applicant : Shri.S. M. Ali, Advocate*

**Versus**

1. Union of India, through General Manager,  
North Central Railway,  
Allahabad.
2. Divisional Railway Manager,  
North Central Railway,  
Jhansi.
3. Senior Divisional Operating Manager,  
North Central railway,  
Jhansi

..... Respondents

*Present for Respondents :Shri D. P. Singh, Advocate*

O R D E R

**(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)**

Counsel for the applicant argued two legal aspects:-

(a) The applicants were appointed at Bhopal and Nagpur, under the Category No. 25, in respect of which, the Railway Board has issued a circular dated 05-01-1990 regarding fixation of notional seniority. When the applicants have respectively from Bhopal and Nagpur Division moved to Jhansi Division in the post of Goods Guard, their move being on the basis of their past services, proforma seniority (together with its consequential benefits, including arrears of pay at par with their juniors) is to be afforded to them taking into account their past service as well.

(b) More than the above, when Shri P.K. Jain, a similarly situated individual has been afforded the benefit of proforma seniority, there is no reason as to why the same should not be extended to them.

2. Counsel for the respondents, however, submitted that the above two contentions are untenable on account of the following reasons:-

- (a) The move of the applicants to Jhansi was at their request and hence, they have to forego the past seniority.
- (b) The case of Shri P.K. Jain is not similar to that of the applicants. Shri Jain was directly appointed in construction organization in Civil Engineering, with his lien fixed in the Jhansi Divisional office as per Headquarters letter dated 15-01-1991.

3. The salient features of order dated 05-01-1990 are as under:-

- (a) There were different notifications, such as (1) employment Notice No. 2/80-81, (2) No. 1/82 RRB BB, 2/82 RRB BB, (3) 1/83, RRB BB, and (4) 1/84 RRB BB. Of these, notification No. 2/80 – 81 came first but selection and panel could not be prepared for the same prior to selection and panel for others. This has posed certain problems in matters of seniority amongst the respective grades. In order to right this wrong, order dated 05-01-1990 was issued.
- (b) As per the same, vide para 3.1, candidates recruited from category No. 25 of employment Notice No. 2/80-81, will rank senior to those empanelled and appointed from those mentioned at Sl. No. 2, 3 and 4 (i.e. those appointed under the other notifications cited above)
- (c) Such a comparison shall be made with reference to the same grade and post (i.e. clerk qua clerk etc.,) and in the same seniority group.
- (d) Candidates appointed against Category No. 25 and that of employment notice No. 1/82 are eligible for proforma seniority only and not for any other benefits.

4. From the perusal of the documents, it is clear that the respondents have mixed the two aspects – benefit accrued to the applicants in respect of the post held by them as Train Clerk and Senior Train Clerk and their transfer to Jhansi Division on request. The latter is one which has not been born when the right to higher proforma fixation of seniority arose to the applicant by virtue of order dated 05-01-1990. Thus, what the respondents had originally done

was, and rightly so, to consider the name of the applicant in the grade of train clerk and senior train clerk, as per the date of their joining and affording the seniority to them. The applicants were afforded the above benefit by virtue of Annexure 4 order dated 17-10-2000, whereby their seniority position was fixed at 13 and 7 respectively, both in the grade of Train Number Clerk and Senior Train Clerk. Due drawn statements were prepared, including in respect of the applicants vide Annexure A-5 stated dated 28-02-2001 but the applicants were not paid the difference in the pay (due from the date of actually holding the higher posts). Result, representation from the applicants vide Annexure A-6 dated 13-05-2005, claiming the difference in pay due as per the seniority assigned to them under Annexure A-4 order dated 17-10-2000 but effective from 1990. It was in 1996 that the applicants had preferred a request transfer under exchange process and got themselves inducted in Jhansi Division and the same is in a different grade i.e. Goods Guard. Their seniority in the grade of Goods Guard is based on the rules relating to fixation of seniority under exchange basis, as per the provisions of IREM. It has got nothing to do with the proforma seniority, initial notional pay fixation and subsequent actual fixation of pay at the other grade of Trains Number clerk or Senior Trains Clerk, as per the order dated 05-01-1990 as well as 17-10-2000. The denial in 2006 of the benefits accrued to the applicants by virtue of order dated 05-01-1990 as afforded to them vide the list of 17-10-2000 and consequent statement at Annexure A-5, is therefore, not justified. If at all there could be any objection, the same may be only on the ground that at the time



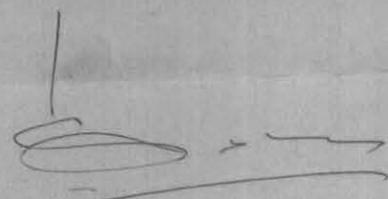
when the applicants were afforded the higher seniority and corresponding notional pay fixation, they were borne in other Divisions/Railways. But, the entitlement of the applicants to the arrears of pay and allowances as had been afforded to others remains intact and therefore, cannot be denied to them. The only hurdle is as to which Division or Railways has to bear this expenditure – Bhopal or Jhansi in respect of Applicant No. 1 and Nagpur or Jhansi in respect of applicant No. 2. The amount is not any stupendous amount; it is just about 60,000/- plus. For this purpose one need not have to undergo the exercise of issue of a separate order one by Nagpur Division and the other by Bhopal division. (Even if there be change in Zonal Railways, the same should not matter, for the entitlement of the applicant cannot change by virtue of they originally belonging to different Zonal Railways!) The North Central Railway could very well bear the negligible expenditure.

5. In view of the above, this O.A. is **allowed**. It is declared that the applicants are entitled to the arrears of pay and allowances as calculated vide Annexure A-5 and the same is payable to them. The applicants have prayed for payment of arrears as well as the consequential benefit. The consequential benefit in terms of money is nothing but interest. Hence, Respondents are directed to afford the applicants the amount as indicated in Annexure A-5 as incremented by grant of simple interest @ 9% per annum from 01-04-2001 (one months from the date of issue of the order at Annexure A-5) till the date of payment. Time calendared for compliance of this order is 90

*[Signature]*

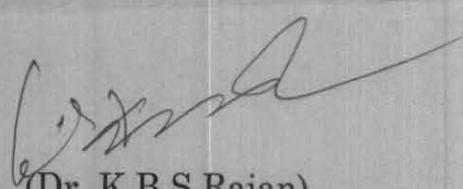
days from the date of receipt of this order. Registry to directly forward a copy to the General Manager, North Central Railways, Allahabad.

6. Under the above circumstances, there shall be no orders as to costs.



(S.N.Shukla)

**MEMBER (A)**



(Dr. K.B.S.Rajan)

**MEMBER (J)**

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