

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 16th day of Dec, 2010

Original Application No. 679 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

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

Harendra Prasad aged about 49 years, Son of Shri Ram Nath Ram, working as Dy. Station Supdt. N.C. Railway, Jeonathpur, R/o 17-C/Jeonathpur District Mirzapur.

..... *Applicant*

By Adv. : Shri Sudama Ram

VER S U S

1. *Union of India through General Manager, N.C. Railway, H.Q. Allahabad.*
2. *Divisional Railway Manager, N.C. Railway, DRM's Office Allahabad.*
3. *Divisional Personnel Officer, N.C. Railway, DRM's Office, Allahabad.*
4. *Sr. Divisional Safety Officer, N.C. Railway, DRM's Office, Allahabad.*
5. *Shri N.K. Singh, Dy. Station Supdt./SS, N.C. Railway, Jeonathpur, District-Mirzapur.*

..... *Respondents*

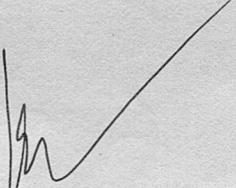
By Adv. : Shri Anil Dwivedi

O R D E R

(Delivered by Hon'ble Dr. K.B.S. Rajan, Member-Judicial)

The case of the Applicant is as under:-

(i) The Applicant was appointed as Assistant Station Master Grade 330-560 and was sent for about 9 months training



at Zonal Training School/Chandausi by the N. Railway, Annexure A-3 refers. After completion of the training he was vide letter dated 08.09.1983 posted at Patna and later on given independent charge on 10.11.1983 as A.S.M. Satnaraini Railway Station. After one year being surplus, he was posted under Traffic Inspector/Mirzapur and thereafter at Sakteshgarh in the same capacity. The Applicant was promoted as Assistant Station Master on 01.11.1985 (Rs.1400-2300/5000-8000). He was further promoted in higher grade in the pay scale of Rs.1600-2660/5500-9000 and posted at Jeonathpur station in terms of Letter dated 05.03.1997 joined his duty at Jeonathpur after availing joining time on 16.03.1997. Respondent No. 5 was promoted in Station Master's Grade (1600-2660/5500-9000 on 22.05.1997 at Dagmagpur. He was posted at Jeonathpur Station where there was only one sanctioned post of ASM against which the Applicant was posted and there was no other vacancy to accommodate him. Despite objection of Inspection Report, Respondent No.5 continued. Respondent No.2 issued the seniority list of Station Master Grade Rs.5500-9000 vide Notice dated 01.12.2003 in which name of the Applicant was placed at Serial No.92 whereas name of the Respondent No.5 is being shown at Sl. No.125. The Railway Board vide their letter dated 09.10.2003 issued cadre structuring and revised the percentage of the cadre merging the cadre of



ASM/SM, Yard Master and Traffic Inspectors, Para 10.1 is reproduced below:-

"10.1 SM/ASM+ YM+TI: The category of Station Masters Assistant Station Masters, Yard Masters and Traffic Inspectors should be merged into one unified cadre of SM/ASM. The recruitment and promotion pattern as prescribed for the category of SMs/ASMs should be followed in the merged cadre. In the initial stage of the merger, efforts should be made to post the employees in the categories in which they have been working. Accordingly, while the staff belonging to the erstwhile three categories will be working and enjoying the benefit of the unified cadre of SMs/ASMs, on their posting in the Yard, they will perform the duties Yard master Retaining their designation as applicable to the category of Yard Master. Similarly, while performing the inspectorial job they will retain their designation as applicable to Traffic Inspectors. But at a later stage, when they are made fully equipped to discharge the functions hitherto being discharged by SMs/ASMs, YMs & TIs, administration will have flexibility to post a person as per the administrative requirement while redefining duties and functions, Railways may also review the rationalize the cadre keeping in view the administrative requirements.

14. Provisions of Reservation: The existing instructions with regard to reservation of SC/ST wherever applicable will continue to apply."

(ii) It was further decided by the Railway Board vide letter dated 06.01.2004 that vacancies caused by the upgradation of posts after revised percentage and vacancies arisen on promotions would also be filled up by simplified/modified procedure of selection and that benefit of promotions and arrears of pay would be allowed accordingly as was to be done taking those vacancies arisen as on 01.11.2003 as per instructions of the Railway Board, Annexure A-8 refers. The Board vide their letter dated 23/26.07.2004 (RBE No.165/2004) have further clarified "benefit of promotion for vacancies arising out of



restructuring would include chain/resultant vacancies as well. The matter has been considered by Board and it is decided that benefit of promotion against chain/resultant vacancies should also be given with effect from 01.11.2003 if the same would arise purely due to the above restructuring.", Annexure A-9 refers. Under the above provisions, the Applicant was entitled to benefits of promotion under restructuring of the cadre with retrospective effect from 01.11.2003 along with fixation of pay in the promoted category arrears of pay also as admissible under the Rules. The Applicant is entitled to get his promotion on his roster point against the upgraded posts in Grade Rs.6500-10500 as well as in lower grade promotion being a scheduled caste railway employee.

(iii) Respondent Nos.2 and 4 issued the promotion orders of the Applicant along with 116 other persons against the upgraded posts of Dy.SS/YM/TI Grade Rs.6500-10500 under restructuring vide letter dated 05.07.2004 against total vacancies occurred as on 01.11.2003 including the upgraded posts under the cadre restructuring. Employees promoted from serial No.1 to 96 were given the benefits of retrospective promotion w.e.f. 01.11.2003 in terms of order dated 05.07.2004 vide impugned Note 9 but employees placed on the panel from Serial No.97 to 117 would be given the benefits of promotion with immediate effect i.e.



from the date of the issue of the order of promotion/joining. The Applicant was placed at Serial No.98 in the said panel as such he was deprived of the benefits of retrospective promotion with effect from 01.11.2003 as given to employees from serial No.1 to 96. Vide Annexure A-9 Notice dated 11.02.2005, Respondents issued a second list of order of promotion of employees against the resultant vacancies of the posts of Dy. SS/YM/TI Grade Rs.6500-10500 arisen on account of promotion order issued vide order dated 23.12.2004. This was first issued for 26 employees, then vide Section (B), posting order of the employees was issued who had made the request with partial modification in order dated 05.07.2004 and vide Section (C), an order was passed that 22 employees mentioned mainly SC/ST employees who were to be the benefits of promotion with retrospective effect from 01.11.2003, would be given the effect of promotion only with effect from 05.07.2004. Besides, the Respondents have violated the reservation policy of 997 issued on the basis of the verdict of the Apex Court laid down in R.K. Sabarwal. Junior persons who were later on promoted vide Notice dated 11.02.2005 were given all the benefits of promotion with retrospective effect from 01.11.2003 along with the arrears of pay and fixation of pay etc. against the resultant vacancies but the Applicant along with other employees who was sufficiently senior

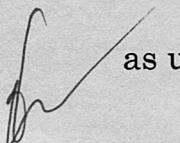
and also promoted earlier to the Respondent No.5 vide order dated 05.07.2004 against the upgraded posts of restructuring, was ignored the benefits of retrospective promotion with effect from 01.11.2003.

(iv) Respondent No.5 was promoted and posted vide serial No.11 vide Notice dated 11.02.2005 as Station Supdt. Grade Rs.6500-10500 at Pahara Station against resultant vacancies caused due to restructuring of cadre. The Applicant sent a detailed representation (Annexure A-12) on 05.05.2005. The Applicant has thus, preferred this OA seeking the following relief/s:-

- (i) *to quash the impugned order to the extent as contained in Note 9 in the Notice dated 05.07.2004 (Annexure A-1) denying retrospective promotion with effect from 01.11.2003 along with the order issued vide Notice dated 11.02.2005 (Annexure A-2) partially by which the junior person i.e. Respondent No.5 was given the benefits of promotion with retrospective effect from 01.11.2003 against the resultant vacancies ignoring the senior persons including the Applicant as per seniority list of Dy. SS/SM Grade Rs.5500-9000 dated 01.11.2003.*
- (ii) *to give benefits of retrospective promotion, fixation of pay, arrears of pay and other resultant benefits to the applicant in the category of Dy. SS/SS/ YM/TI Grade Rs.6500-10500 under restructuring of cadre with effect from 01.11.2003 Respondents have wrongly allowed.*
- (iii) *to assign due and correct seniority position in the category of Dy. SS/SS/ YM/TI Grade Rs.6500-10500 after giving benefit of promotion with effect from 01.11.2003 over the junior persons including Respondent No.5.*

2. The Respondents have contested the O.A. and their main plea is

as under:-



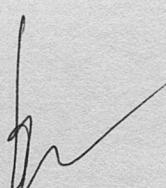
(i) Shrif Harendra Prasad (Applicant) and Shri N.K. Singh (Respondent No.5) were selected as A.S.M. Grade Rs.330-560. Both attended T-I (P/ASM) Course at Chandausi. The merit number of Shri Harendra Prasad was 21 whereas the merit number of Shri N.K. Singh was 10. Both of them were appointed as ASM Grade Rs.330-560 on the Division on 10.11.1983 and 19.12.1983 respectively and their **seniority was fixed according to the merit obtained at the examination held at the end of the training at Chandausi.** Shri Harendra Prasad, got promotion as A.S.M. Grade Rs.425-640 w.e.f. 10.11.1985 further he promoted in Grade Rs.1600-2660 on 16.03.1997. Shri N.K. Singh could not be promoted as he was under going punishment at that time. Shri N.K. Singh was promoted in Grade Rs.425-640/1400-2300 w.e.f. 11.02.1987 and further he was promoted in Grade Rs.1600-2660 w.e.f. 22.05.1997 and further the representation of Shri Singh was allowed and he was granted proforma promotion w.e.f. 01.06.1986 in the grade of Rs 435 – 640 and thereafter allowed a further proforma promotion in Grade Rs.1600-2660 w.e.f. 28.11.1996 from the date of his junior promoted in higher grade. Further his seniority was revised accordingly. In the seniority list dated 01.12.2003 ASM Grade 5500-9000 Shri N.K. Singh Respondent No.5 has wrongly been placed at Sl. No.125.



The revised combined seniority list of SS/Dy.SS/ CYM & T.I. is under process.

(ii) Shri Harendra Prasad was promoted against S.C. quota. Shri N.K. Singh could not be promoted as his name was not in the panel of 126 suitable candidates (102 unreserved, 17 S.C., 7 S.T.) dated 01.07.2004. It is mentioned here that, **as per revised panel dated 13.12.2004 Shri N.K. Singh was promoted in Grade Rs.6500-10500 against chain resultant vacancies under cadre restructuring w.e.f. 01.11.2003. In the revised panel Sl. No.1 to 128 were given benefit of promotion in Grade 6500-10500 and rest of the ASMs in the panel were promoted with immediate effect.** While promoting Schedule Caste candidates under cadre restructuring w.e.f. 01.11.2003, Railway Board's instructions in Para-14 vide letter No.PC-III/2003 CRC dated 09.10.2003 has been followed.

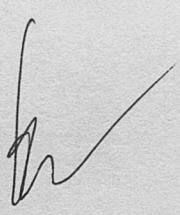
(iii) Seniority of the staff was fixed as per merit obtained at the examination held at the end of the training period as per instructions contained in Para 303 A of the Indian Railway Establishment Manual. It is further stated that **the Applicant previously was allowed the benefit of promotion in grade Rs.6500-10500 under cadre restructuring dated 23.12.2004, the Applicant was**

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given the benefit of promotion w.e.f. 01.11.2003 and noting in this contest has been issued to bill section. The Applicant was given benefit of promotion w.e.f. 01.11.2003 as per revised panel dated 23.12.2004 and his pay has been fixed accordingly and the suitable reply has already been given in earlier paras regarding the promotion and revised pay scale etc.

3. The Applicant has submitted hi Rejoinder Affidavit, wherein he has stated as under:-

(i) Revision of seniority of the Respondents has been resorted to by the Respondents without following the due procedure laid down in Chapter III of IREM Vol. I for revision the seniority list since 1986 which have since been settled in terms of para 321(b) of IREM Vol. I. Before revising the settled seniority list in various grades viz. Rs.1200-1800, 1400-2300, 1600-2660/5500-9000 (RSRP), the Respondents should have issued the proper notice to the affected persons but it was not done. Hence, action of revision of seniority lists in various grades of ASM by placing the Respondent No.5 over about 33 senior persons including the Applicant without any information to the affected persons and the Applicant , is wholly illegal, void ab initio and contrary to the rules and as such are liable to be set aside. In terms of para 321 (b) of IREM Vol. I, the seniority list issued vide Notification



dated 01.12.2003 is final in all respects as the Respondent No.5 never represented against the seniority list issued against the seniority and these seniority lists become final in all respects in terms of Para 321(b) of IREM Vol. I. On the other hand, the revised combined seniority list of S.S./Dy. S.S./ CYM Rs.6500-10500 is under process. In the seniority list issued for ASM Grade Rs.5500-9000 vide Notice dated 01.12.2003 before issue of promotion order under restructuring of cadre, Applicant is senior to the Respondent No.5 as name of the Applicant has been correctly shown at Serial No.92 and of the Respondent at Serial No.125 and it became final after expiry of one year. In fact, seniority of the Applicant should have been shown much at the higher stage in grade Rs.1400-2300, 5000-8000 and 5500-9000, if correct application of roster point in fixation of seniority would have applied by the Respondents.

(ii) It is also totally false and misleading statement that the Applicant has not been promoted in Dy. SS/ST/TI Grade Rs.6500-10500 (RSRP) against his normal seniority position and he was promoted against the reserved quota for Scheduled Caste i.e. on roster point. It is again clarified that the Applicant's name in the seniority list was serial No.92 and of the Respondent No.5 at seniority position at serial No.125. It is being stated that the



Applicant was promoted against S.C. quota having seniority position at Serial No.92, then it is not understood as to how Shri N.K. Singh. Respondents have not maintained the seniority position in accordance with the instructions issued by the Railway Board vide their Circular No.95-E(SCT)1/49/5(1), dated 21.08.1997, (RBE No.114/1997) and the S.C. candidates promoted against reserved points. Respondents have admitted in the under reply that Applicant is also entitled to get promotion and arrears under restructuring with retrospective dated w.e.f. 01.11.2003 but they have not yet filed any such document with regard to submission of their averments and payment of arrears and as well as fixation of his pay in this regard. Instead of enhancing the pay, the Respondents have reduced pay from Rs.7700/- to 7500/- p.m. from August 2005 without giving any reason.

4. By filing Supplementary Counter Affidavit Respondents have stated as under:-

(i) According to Para 303 (a) of IREM, the seniority of Sri N.K. Singh, was to be assigned above the Applicant in the category of ASM Gr.330-560/1200-2040. As per Para 322 of IREM, the seniority of the staff is only affected, if a punishment to this effect is imposed upon him. Withholding temporarily increments for a specified period cannot affect the original seniority position. Sri N.K.Sing



is senior than the Applicant from the initial stage of posting and on expiry of punishment, he was promoted but due to oversight, his seniority position was wrongly assigned in the initial stage and as per his date of promotion in all the seniority lists earlier issued in different grades.

As per seniority norms, he should have been placed at the same position where he initially was. On representation of Sri N.K. Singh, the issue regarding assignment of seniority was examined in detail on the basis of records available and instructions on the subject, which revealed that initially Sri N.K. Singh was allotted wrong seniority position as A.S.M. Gr. Rs.1200-2040 and the same has been rectified as per rules of seniority. It is once again reiterated that the revised seniority list of SS/Dy. SS Grade Rs.6500-10500 is under process and will be circulated shortly.

5. In the Supplementary Rejoinder Affidavit, Applicant has contended as under:-

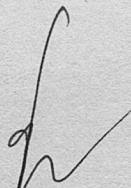
- (i) Seniority of Respondent No.5 would count in Allahabad Division only from the date he joined in Allahabad Division with effect from 18.12.1983. The date of promotion of the Applicant in higher grads has not been correctly shown. For revision of the seniority lists since 1986 which have since been settled in terms of Para 321



(b0 of IREM Vol. I, no provision exist to disturb the settled position of seniority as well as promotions done on the settled seniority lists. Before revising the settled seniority list in various grades viz. Rs.1200-1800, 1400-2300, 1600-2660/5500-9000(RSRP), the Respondents should have issued the proper notice to the affected persons and also promotions issued in higher grades by the Selection Board issuing various panels should have also been revised by the competent authority but nothing was not done. The Respondents never represented to re-assign his seniority above the Applicant in the above various grades and no notice was issued to the Applicant or any other senior persons at any stage in this regard in the past. No seniority can be revised without giving opportunity of hearing of at least of one month of the senior persons including the Applicant against the proposed seniority list to be revised and the Respondents have no jurisdiction to revise seniority in an arbitrary manner, therefore, whole action of the Respondents is illegal, void and contrary to rules and law.

6. In the Supplementary Counter Reply filed on 20.07.2006 Respondents have stated as under:-

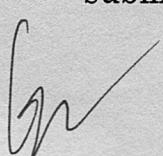
(i) Shri N.K. Singh was allotted Firozabad Division initially, where he did not join, subsequently on request of Sri N.K. Singh, the same division was changed and he was allotted Allahabad Division. It is wrong to submit as alleged in



the Rejoinder as well as in the Suppl. Rejoinder that Shri N.K. Singh has been transferred from Firozabad Division to Allahabad Division at his own after joining Firozpur Division whereas, as already categorically submitted that he did not join at Firozpur Division. This Division was changed to Allahabad and where he initially joined the post of ASM on 18.12.1983 in Gr. Rs.330-560 and his seniority position has rightly been shown above the Applicant because Sri N.K. Singh was the senior in the merit position of CH Result.

7. In the second Supplementary Rejoinder Affidavit filed by the Applicant it is stated that Respondents have concealed the material fact with regard to seniority that the private Respondents No.5 named Shri N.K. Singh after passing the requisite training Course at Chandausi, was posted in Ferozpur Division and he posted there as ASM Grade Rs.330-560 where as the Applicant was posted in Allahabad Division at Satnaraini and he joined on 10.11.1983. Transfer and posting order of Shri N.K. Singh is required to be filed before this Hon'ble Tribunal. Seniority of ASM of both the Divisions is separate. Seniority of Respondent No.5 would count in Allahabad Division only from the date he joined in Allahabad Division with effect from 18.12.1983.

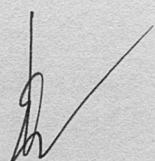
8. With the consent of the counsel for the parties, written submission were filed. The Applicant has stated as under:-



(a) Applicant's name was at serial No.92 of the seniority list and that of Shri N.K. Singh (Junior PERSON) At Serial No.125. Respondent disputed the seniority position of Shri N.K. Singh but due to passage of time, now there is no dispute of seniority position of Shri N.K. Singh but due to passage of time, now there is no dispute of seniority position in the seniority list of 01.12.2003 as both the employees have been medically decategorized and are in the cadre. Therefore, only question rests to be adjudicated is of benefits of restructuring of cadre w.e.f. 01.11.2003 and with its arrears. The present O.A. is confined only to benefits of restructuring of cadre which was arbitrary denied. Applicant was legally entitled for benefits of promotion against upgraded posts under restructuring of cadre with effect from 01.11.2003 and Respondents allowed it only with immediate effect i.e. with effect 05.07.2004 without showing any tangible reason.

(b) The only issue survives in the aforesaid O.A. whether Applicant was entitled for the benefits of restructuring of cadre with effect from 01.11.2003 or with immediate effect.

(c) But arbitrarily, a rider was added vide Note, 9 in the aforesaid letter dated 05.07.2004 that Sl. No.1 to 96 will get benefit of promotion against upgraded posts under

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restructuring of cadre with effect from 01.11.2003 and serial No.97 to 117 would be given benefit of promotion with immediate effect (i.e. from 05.07.2004 only thus too without any arrears of pay). This was an open discrimination without any such legal justification for doing so. It was due to some ulterior motive to deprive the employees from 97 to 117 from the benefits of up-gradation of posts with effect from 01.11.2003.

(d) Respondents allowed promotion to 26 ASM/SMs after serial No.117 which posts were created due to resultant vacancies and benefit of promotions was accorded in these vacancies with effect from 01.11.2003. But Respondents did not allow benefits of promotion w.e.f. 01.11.2003 to ASMs/SMs falling under serial No.97 to 117 which shows arbitrary, biased prejudiced and harassing attitude of the Respondents for which there is no justification at all.

9. Counsel for the Respondents in their written submission reiterated the fact that Shri N.K. Singh did not join the Ferozpur Division initially and his division was changed Allahabad, where he initially join on 18.12.1983 and his seniority was therefore, to be fixed at Allahabad Division on the basis of merit list, the training centre from that point of view Shri N.K. Singh stands Senior to the Applicant right from the beginning. In addition, the Respondents have stated in the written submission as under:-

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(i) As per the instructions of Railway Board, on restructuring of cadre in the category of SS/Dy. SS Grade Rs.6500-10500, the applicant was promoted against SC quota whereas N.K. Singh could not be promoted as his name was not in the panel of 126 suitable candidates (102-unreserved, 17-SC, 7-ST) dated 01.07.2004. However, as per the revised panel dated 13.12.2006, the Respondent No.5/N.K. Singh was promoted in Grade Rs.6500-10500 again chain resultant vacancies under cadre restructuring w.e.f. 01.11.2003. In the revised panel, from Sl. No.1 to 128 were given benefit of promotion in Grade Rs.6500-10500 and rest of the ASMs in the panel were promoted with immediate effect. Pay of all these ASMs have been fixed in Grade Rs.6500-10500.

(ii) Railway Board's instruction in Para 14 vide letter No.PC-III/2003 CRC dated 09.10.2003 has been followed and the seniority of Sri N.K. Singh/Respondent No.5 being senior to the applicant, was revised later on.

10. Counsel for the parties have projected their arguments based on the above stated pleadings.

11. Written Arguments and pleadings/documents perused. The following legal issues are to be considered to arrive at a judicious conclusion in this case:-

(a) Whether the initial appointment of Shri. N.K. Singh could be construed to be at Ferozpur only or whether his appointment at Ferozpur should be treated as a request transfer in which case, bottom seniority has to be afforded to him on his joining the Ferozpur Division.

(b) Whether the seniority at the time of initial appointment be dictated by the merit position in the training or as per the date of joining.

(c) Why was there different dates of promotion, one w.e.f. 01-11-2003 and the other from 'immediate effect' from the date of issue of the promotion order.

12. As regards (a) above, on completion of training if N.K. Singh had been posted for the first time which was carried out by him, at Ferozpur, notwithstanding the fact that he would have been earlier allotted some other Division, he shall be a part of Ferozpur Division only. This is, however, subject to the condition, that the service book reflects that his initial appointment is at Ferozpur only.

13. As regards (b) the rules are clear that seniority would be based on the merit position in the Training, vide Rule 303 of the IREM which reads as under:-

303. The seniority of the candidates recruited through the Railway Recruitment Board or by any other recruitment authority should be determined as under -

- a. *Candidates who are sent for initial training to Training Schools will rank in seniority in the relevant grade in the order of merit obtained in the examination held at the end of the training period before being*

posted against working post. Those who join the subsequent courses and those who pass the examination in subsequent chances will rank junior to those who had passed the examination. In case, however, persons belonging to the same RRB panel are sent for initial training in batches due to administrative reasons and not because of reasons attributable to the candidates, the inter-se seniority will be regulated batch wise provided persons higher up in the panel of the RRB not sent for training in the appropriate batch (as per seniority) due to administrative reasons shall be clubbed along with the candidates who took the training in the appropriate batch for the purpose of regulating the inter-se seniority provided such persons pass the examination at the end of the training in the first attempt.

14. The above makes it crystal clear that in case of recruitment after initial training, the seniority is dictated by their merit position in the examination conducted at the end of the training. In that event, the date of joining is not the criterion. In fact, if the training was deferred to a later date in respect of a particular individual, not on account of his fault, on completion of the training he retains his seniority along with the trainees of the previous batch. In the instant case, the respondents have stated that the seniority of Shri N.K. Singh was on the basis of his merit position and thus he is senior. Later on in the next higher grade, when promotions were granted, the seniority therein would be based on the date of assumption of duties in the higher grade; but here again, in the case of Shri N.K. Singh, as he was undergoing currency of penalty, his promotion was deferred and later on, on his application, the he was granted the proforma promotion w.e.f. 01-06-1986 and his seniority position brought back to a higher position. Thus, in respect of seniority against Shri N.K. Singh, the contention of the applicant is to be rejected.

15. Coming to issue (c) above, i.e. As regards date of promotion w.e.f 01-11-2003, though the applicant contended that the respondent's orders at Annexure A-'1 vide Note No. 4 thereof reflects promotion with immediate effect (from the date of issue of the order), para 17 and 19 of the counter gives the impression that the applicant's promotion is effective from 01-11-2003 itself. It is appropriate to quote verbatim the said two paragraphs, which are as under:-

"17. That the contents of para 4.9 of the original application are not admitted hence denied and it is further submitted here that the Applicant was given benefit of promotion w.e.f. 01.11.2003 as per revised panel dated 23.12.2004 and his pay has been fixed accordingly and the suitable reply has already been given in earlier paras regarding the promotion and revised pay scale etc.

19. That the contents of paras 4.11, 4.12, 4.13 and 4.14 of the original application are not admitted hence denied the contents of para 4.11 to 4.14 of this instant reply are absolutely incorrect. It is submitted that as per Railway Board's guide lines on restructuring of cadre dated 09.10.2003, a modify selection for the total vacancies of 133 posts (34 existing and 99 posts are revised) was initiated in which out of 99 persons were given benefit of promotion in grade 6500-10500 w.e.f. 01.11.2003 and 96 in promotion and 3 under punishment and the remaining persons were given the benefit of promotion from immediate effect i.e. from 5.2.2004 since the name of Sri Harendra Prasad was a Sl. No.103 and he got promotion against S.C. quota and got benefit of promotion and allowed benefit of promotion w.e.f. 05.07.2004 as per Railway Boards order dated 23/26.07.04.

It is further also submitted here that a revised panel dated 23.12.2004 was issued against chain result vacancies in which Sl. No.1 to 128 were gien benefit of promotion w.e.f. 01.11.2003 including Sri N.K. Singh Respondent No.5 as per revised panel dattted 23.12.2004 the Applicant Sri Harendra Prasad was allowed benefit of promotion w.e.f. 1.11.2003 and his pay was also fixed accordingly and then the question of Sri N.K. Singh and 05 others Assistant Station Master who are senior to the Applicant as Assistant Station Master grade Rs.5500-9000 were promoted against chain resultant, vacancies and their name have been correctly placed in panel of SS/Dy. SS. Gr. 6500-10560 as per seniority position in the lower grade, while promoting the schedule cast candidates, the Respondents have fully followed Railway Board's instruction given in Para 14 vide letter No.PC-III/2003/CLC/dated 09.10.2003 has been fully complied with and the pay of all the Assistant Station

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Master promoted under restructuring of cadre w.e.f. 01.11.2003 and 05.02.2004 have been fixed and noting have been given to the bill section also and further it is point out to here that Sri N.K. Singh Assistant Station Master Zeonathpur has been promoted and posted yet SS/PRE under cadre restructuring and further he have been transferred to Zeonathpur against higher Grade vacancy."

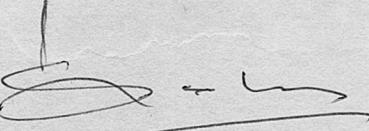
16. The panel dated 23-12-2004 has, however, not been brought on records here. As rightly pointed out by the applicant in his rejoinder, vide para 16 thereof, *the respondents have admitted that the applicant is also entitled to get promotion and arrears under restructuring with retrospective date w.e.f. 01-11-2003 but they have not filed any such documents with regard to submission of their averments and payment of arrears as well as fixation of his pay in this regard.* The above would clinch the issue so far as promotion date and pay fixation are concerned. If the respondents have not so far re-fixed the pay of the applicant on the basis of the above, they are bound to take immediate action in this regard. If the averment of the applicant vide para 16 of the rejoinder is true that there has been rather a truncation in his pay, bringing the same down from Rs 7,700/- to Rs 7,500/- the same is also illegal. Respondents have in regard to this averment have not denied the above position but have given a sort of customary and conventional reply that the applicant is put to strict proof etc.,

17. Thus, the fact remains that there is no error in affording seniority to Shri N.K. Singh and in so far as promotion of the applicant w.e.f. 01-11-2003 is concerned, vide order dated 23-12-2004 (referred to by the respondents in their counter, vide para 17 and 19), the applicant's promotion is effective from 01-11-2003; however, no



fixation of pay seems to have taken place. Thus, the applicant is entitled to pay fixation in the grade of 6,500 – 10,500, w.e.f. 01-11-2003 and is also entitled to arrears of pay and allowance from the said date. As the above is the admitted position, the respondents shall work out the arrears of pay and allowance and make the payment to the applicant within two months from the date of receipt of certified copy of this order. In case there is delay in payment of arrears, respondents shall also pay interest on the arrears at the rate of 12% per annum from the 01-01-2011 till the date of payment. In the event, the delay in compliance of this order is due to inaction on the part of any individual, the extent of interest payable to the applicant shall first be paid by the respondents and the same be recovered from the erring individuals, as the public money cannot be drained on account of the lethargy or recklessness of any erring government servants, as held by the Apex Court in the case of Lucknow Development Authority vs M.K. Gupta (1994) 1 SCC 243.

18. Under the above circumstances there shall be no orders as to cost.



(S.N. Shukla)
Member-A



(Dr. K.B.S. Rajan)
Member-J

Sushil