

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH, ALLAHABAD

(THIS THE 13th DAY OF April 2011)

Hon'ble Dr.K.B.S.Rajan, Member (J)

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

Original Application No. 85 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

1. Sohan Lal, S/o Bachan Singh, Helper Khalasi I, Ticket No.314, R/o Tejab Mill, Railway Colony, Kanpur.
2. Krishna Murari, S/o Mewa Lal, Helper Khalasi I, Ticket No. 371, R/o A-231 B Nirala Nagar Railway Colony, Kanpur.
3. Putti Lal, S/o Mewa Lal, Helper Khalasi I, Ticket No.275, R/o 475 B Tejab Mill Railway Colony, Kanpur.
4. Bharat Singh, S/o Sheetal, Heelper Khalasi I, Ticket No.212, R/o B-7 D Military Camp, Railway Colony, Kanpur.
5. Santosh Kumar, S/o Raja Ram, Helper Khalasi I, Ticket No.278, R/o B-12 A Santosh Kumar Military Camp Railway Colony, Kanpur.
6. Madan, S/o Babbu, Khalasi, Ticket No.255 R/o A-112 K Jamunia Bagh Railway Colony, Kanpur.
7. Shiv Govind, S/o Khan Sahai, Helper Khalasi 1 Ticket No.253, R/o 140 E Rajiv Nagar, Yasoda Nagar, Kanpur.
8. Chiraunji Lal, S/o Munke Lal, Khalasi, Ticket No.220, R/o 243 E City Side Colony, Kanpur.
9. Raj Kumr, S/o Late Mool Chand, Helper Khalasi 1 Ticket No. 273, R/o Juhi Military Camp Railway Colony, Near B-11 Kachchi Jhopari, Kanpur.
10. Bhaiaya Lal, S/o Late Chote Lal, Helper Khalasi 1, Ticket No.322, R/o Tejab Mill Colony, Anwarganj, 63-C, Kanpur.

(All applicants are working under S.S.E (C&W),
N.C.Railway, Kanpur)

.....Applicants

Present for Applicants: Shri Sudama Ram, Advocate

Versus

1. Union of India through General Manager,
North Central Railway, H.Q's Office,
Allahabad.
2. Divisional Railway Manager,
North Central Railway, Allahabad.
3. Divisional Personnel Officer,
North central Railway, Allahabad.
4. SSE (C&W), N.C.Railway, Kanpur
Through Sr.Divisional Mechanical
Officer, North Central Railway, Allahabad.
5. Shri Vijai Shanker, S/o Sohan Lal, Ticket No.309
Helper 1, through CDO (C&W)/N.C.Railway, Kanpur.
6. Shri Naresh Chandra, S/o Jumman, T.No.382,
Helper Khalasi 1 through CDO (C&W)/N.C.
Railway, Kanpur.
7. Sri Ram Manohar Yadav, S/o Kedar Nath,
T.No.329, Helper 1,through CDO(C&W)/N.C.
Railway,Kanpur.
8. Shri Narendra Pratap, S/o Durga Prasad,
Helper Khalasi 1, through CDO(C&W)/N.C.
Railway, Kanpur.
9. Shri Devendra Pratap,T.No.390 Helper Khalasi 1,
Through CDO(C&W)/N.C.Railway, Kanpur.
10. Shri Ram Khilari, T.No.430, Helper Khalasi 1,
Through CDO(C&W)/N.C. Railway, Kanpur.
11. Shri Ramesh Kumar, T.No.377, Helper Khalasi 1
Through CDD(C&W)/N.C. Railway, Kanpur.
12. Shri Bhim Singh, T.No.393, Helper Khalasi 1,

Through CDO(C&W)/N.C. Railway, Kanpur.

13. Shri Mustaq Ahmed, T.No.339, Helper Khalasi 1,
Through CDO(C&W)/N.C. Railway, Kanpur.
14. Shri Krishna Deo Prasad, S/o Dwarika Pd,
Helper Khalasi 1, through CDO(C&W)/N.C.
Railway, Kanpur.
15. Shri Chunni, T.No.270, Helper Khalasi 1,
Through CDO(C&W)/N.C.Railway, Kanpur.
16. Shri Guru Prasad, Carpenter T.No.305 1
Through CDO(C&W)/N.C. Railway, Kanpur.

....Respondents

Present for Respondents: Shri A.K. Pandey, Advocate.

ORDER

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

Dispute in this case is as to assignment of wrong seniority to the applicant qua their juniors. According to the applicants the seniority should correspond to panel position of the Group D staff in the grade of Rs 2550 – 3200 declared on 13-06-1980, 16-02-1981, 07-09-1981 and 08-10-1982. It is the case of the applicants that on the basis of a wrong seniority list at the time of initial appointment which was never circulated to enable the applicants to agitate against the same at the appropriate time, the respondents have issued a revised seniority list in 2003 and panel based on the erroneous seniority list. Hence this O.A. seeking the following relief(s):-



- (i) *The Hon'ble court may graciously be pleased to quash the notification/letter dated 2.7.2004 (Annexure A-1), panel dated 14.8.2004 (Annexure A-2) as well as result of trade test/posting order Dated 3.9.2004 (Annexure A-3) issued by the respondents and direct the respondents to issue seniority list of the applicants in artisan category as Artisan Khalasi Grade Rs.2550-3200 as per their panel position and give all consequential benefits Including notional promotions in higher grades in grade Rs.3050-4590 in respect of his junior persons which would arise from revision of their seniority position as per panel position from the stage of artisan Khalasi Khalasi Gr.2550-3200 and Helper Khalasi Gr.2610-3540.*
- (ii) *The Hon'ble Tribunal may further be pleased to Direct the official r4spondents to pay arrears of difference of pay on account of their retrospective promotions in higher grades along with 12% interest there on.*
- (iii) *The Hon'ble Tribunal may further be pleased to quash the seniority list of Helper 1 dated 17.11.2003 partially (Annexure A-1/A) and direct the respondents to interpolate the name of the applicants over the name of the private respondents and to give all consequential benefits which would result from revision of the aforesaid seniority list dated 17.11.2003.*

2. The entire issue revolves round as to whether the seniority list of Khalasi Grade Rs 196-232 semi-skilled/artisan grade Rs 2610 – 3540 and 2650-4000 had been circulated at the appropriate time. The specific averment of the applicants in para 4.2 of the OA is "Till date no seniority lists of Khalasi Grade 196-23 (RS), semi-skilled/Artisan Grade 2610-3540 (RSRP) and 2650-4000 have not yet circulated or got noted at any stage from the applicant." This part of the OA has not been directly met save that the respondents have stated that the seniority list was published on 17-11-2003.

3. At the time of hearing on 16-12-2010, as the records were not brought, while order was reserved after hearing the parties, it was provided "the seniority list of initial grade appointment of Rs 2550 - 3200 be made available within three weeks from today.". Copy of the above order was made available to both the parties. Despite adequate time having been passed, the said seniority list has not been made available for our perusal.

4. Two options are available at this juncture. First is to remit the matter to the authorities for verification from the records as to whether such a seniority list was ever issued during 1980s and if so, whether these were circulated to the employees concerned. If such a circulation had taken place, then the applicants have no case and the department could inform the applicants accordingly. If, on the other hand, no such seniority list was ever prepared and the seniority list prepared in 2003 is the very first list then it is to be seen by the department whether the panel prepared shows the applicants above the individuals named in para 4.2 of the OA and if so, how the juniors could be promoted to the exclusion of the seniors. For, ignoring the seniors for confirmation or promotion amounts to breach of the Constitutional Guarantee right to equality and right to equality in matters of public employment, enshrined in Art. 14 and 16 of the Constitution of India. In this regard, it is appropriate to refer to the observation of the Apex court in the case of **Bal Kishan v. Delhi Admn., 1989 Supp (2) SCC 351** wherein it has been stated, **"In service, there could be only one norm for confirmation or promotion of persons**

belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution"

5. The next option is to draw adverse inference as the respondents have failed to make available the initial seniority list and to allow the O.A. See *Baljit Singh v. State of U.P.*, (1976) 4 SCC 590 wherein the Apex court had in a property case held as under:-

These two documents would conclusively show as to who was in actual cultivating possession of the land in question, and yet even though the Investigating Officer had these documents in his possession he did not choose to file them. From this fact, the only inference that the court can draw was that if these documents had been produced they would have gone against the prosecution and


6. The Tribunal shall have to adjudicate a matter instead of remitting it to the administrative authorities if all the materials are available with the Tribunal for adjudication. (See *State of W.B. v. Subhas Kumar Chatterjee*, (2010) 11 SCC 694 wherein, the Apex Court has held as under:-

21. *This Court on more than one occasion decried such practices adopted by the tribunals directing applications filed before them to be treated as representations before the executive authorities for their decision on merits. It is for the tribunals that are empowered to examine service disputes on merits. Such delegation of power apart from being illegal and unconstitutional amounts to avoidance of constitutional duties and functions to decide such disputes which are exclusively entrusted to them by law.*

7. In the instant case, in view of the non availability of the vital materials i.e. the seniority list, it is only appropriate that the case is

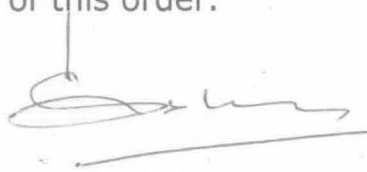
remanded back to the respondents to first ascertain as to whether the seniority list at the base level had been prepared and circulated. It is only after ascertaining the above that the claim of the applicants could be considered.

8. We, therefore, feel as the most appropriate that the matter is remitted to the General Manager, North Central Railway, to undertake the following drill:-


- (a) *to ascertain whether any seniority list in the grade of Rs 2550 - 3200 was ever prepared in the year 1982 and thereafter, which would reflect the names of the applicants and the private respondents.*
 - (b) *If answer to (a) is in affirmative, whether the same stood circulated to all concerned, including the applicants herein and objections called for.*
 - (c) *Whether the said seniority list was prepared in accordance with the provisions of rule 226 of the IREM and the Master circular 43 dated 09-01-1992.*
 - (d) *Whether the applicants' seniority position as per the merit in the panel has been rightly reflected in the seniority list.*
 - (e) *Whether the private respondents' seniority has been reflected correctly.*
 - (f) *Whether the applicants' claim that they are entitled to a higher position than the private respondents is justifiable.*
 - (g) *If the claim is justified, the General Manager shall take remedial measures to redress the grievance of the applicants.*
 - (h) *If the seniority list at the base level containing the names of the applicants in the Group D post had been prepared and circulated in the early eighties (there must be adequate proof to indicate that it was not only published but also circulated to all concerned) and if the applicants were given opportunity to make objections, then their case be rejected.*
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8. The O.A. is disposed of with the above directions. Time calendared for this purpose is four months from the date of receipt of certified copy of this order.

9. No costs.



MEMBER (A)



Member (J)

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