

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD**

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(THIS THE 19<sup>th</sup> DAY OF May, 2011)

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

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

**Original Application No.1035 of 2005**

(U/s 19, Administrative Tribunal Act, 1985)

1. S.R. Kisku, aged about 54 years,  
Senior Material Manager, North Eastern Railway,  
Gorakhpur.
2. S.N. Thakur, aged about 46 years,  
Senior Material Manager, North-Eastern Railway,  
Gorakhpur.
3. Satya Narain, aged about 48 years,  
Senior Material Manager, Depot North Eastern Railway,  
Gorakhpur.
4. S. C. Verma, aged about 53 years,  
Senior Material Manager, North Eastern Railway,  
Izatnagar, Gorakhpur.
5. Ashok Kumar, aged about 55 years,  
Assistant Material Manager, North Eastern Railway,  
Gorakhpur.
6. Rajesh Lal, aged about 44 years,  
Assistant Material Manager, North Eastern Railway,  
Gorakhpur.

..... **Applicants**

*Present for Applicant :Shri M. K. Upadhyay, Advocate.*

*Shri Shesh Kumar, Advocate*

*Versus*

1. Union of India, through the Chairman, Railway Board, New Delhi.
2. General Manager, North Eastern Railway, Head Quarters, Gorakhpur.
3. General Manager (Personnel), North Eastern Railway, Gorakhpur.
4. Controller of Stores, North Eastern Railway, Gorakhpur.
5. Vijai Shanker Jaipuriyar, Divisional Material Manager, East Central Railway, D.R.M. Office, Samastipur (Bihar).
6. Sri Jayanti Prasad, Assistant Material Manager, Office of the Deputy Chief Material Manager, Depot, North Eastern Railway, Izatnagar, Bareilly (U.P.).

*..... Respondents*

**Present for Respondents :** *Shri A. K. Sinha, Advocate*  
*Sri S. K. Om, Advocate.*

**O R D E R**

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

Heard Shri Shesh Kumar, learned counsel for the applicant and Mr. S. K. Om, learned counsel for the respondents.

2. The following are the details of appointment/promotion of the applicant as Group 'C'/Group 'B' :-

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Sl. No.	Group 'C' Clerk	Group 'B' Post
1)	05.03.1976	17.06.1994
2)	13.01.1981	26.08.1994(LDCE)
3)	08.05.1976	02.09.1995 (70%)
4)	09.5.1973	1995 (70%)
5)	05.04.1971	30.04.1998 LDCE
6)	20.10.1986	30.04.1998 LDCE

3. In the year 1992 one limited departmental competitive examination (LDCE) was to be conducted for two posts (one for general category and other for reserved category). Two candidates by name JB Singh and M.P.Mishra both belonging to general category moved the Tribunal for a direction to the respondents to permit them to appear in the said LDCE, 1992. The OA was allowed and the respondents filed Special Leave Petition before the Apex Court which was rejected. Due to the pendency of the petition, the examination was not conducted in 1992 and could be held only in 2000. In the said examination, respondent Nos. 5 and 6 were selected. These two respondents had in fact appeared in the 1994 and 1997 LDCE also but were not successful in the examinations. In the said examination however, some of the applicants in this OA were selected and rest were also promoted under the normal seniority cum merit quota. Thus before 2000, the applicants had at their credit sufficient number of years of service in group 'B' post. Despite the said position, when seniority list was issued, respondent No. 5 who was selected in the year 1992 exam held in 2000 was placed higher than the applicant. The grievance of the applicant is that when the respondent



No. 5 was not borne in service in 1992 he cannot get the seniority of that year more so when he failed in the year 1994 and 1997 exams while some of the applicants had cleared the exam.

4. The applicants have relied upon the decision of the Apex Court in the case of **State of Bihar and other vs. Sri Akhouri Sachindra Nath and others** and also **B. S. Bajwa and another vs. State of Punjab and others 1998 (2) A.W.C. 809 (SC)**. In addition, the applicants have relied upon the judgment dated 07.12.2005 of Hon'ble High Court, Allahabad, in Civil Misc. Writ Petition Number 47662/2002 wherein the stand of the respondents in this OA (Petitioner in the Writ Petition) was as under :-

*"Sri Tarun Verma, learned counsel appearing for the petitioner has submitted that a person cannot be given seniority from the date he was even born in a particular cadre. The petitioner did not appear in the 1994 main and supplementary test in view of the illness and even though he had submitted representations, he had appeared at the test held in the year 1995 and had been selected. He submitted that if the order passed by the Tribunal was implemented, at least five persons promoted vide order dated 22.12.1994 and some of the persons promoted on 30.3.1994 would be adversely affected but none of them had been made a party before the Tribunal in spite of the specific objections taken by the petitioners. He further submitted that the applicant had joined the promotional post on 30<sup>th</sup> June, 1995 without any protest and that the Tribunal was approached after an inordinate delay and the application was time barred."*

5. The aforesaid contention of the Railway was accepted by the Hon'ble High Court where it has stated as under :-

*"We also take notice of the submissions made by Sri Tarun Verma that a person cannot be given seniority from the date he was not even born in the cadre. The question of assigning the seniority from the date on which the result was declared in respect of an examination in which a candidate did not appear for any reason whatsoever, does not appeal to reason."*

6. In this O.A. the applicant has prayed for the following relief :-

- (i) *To quash the orders/letters dated 10.1.2005 (Annexure-1) and 26.5.2005 (Annexure-2) to the Compilation I of this Original Application issued by the Railway Board.*
- (ii) *To direct the respondents not to make any change in the seniority position of the applicants in pursuance to letter/orders dated 10.1.2005 and 26.5.2005 or to pass such other and further order which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

7. Official respondents who have contested the OA, have contended that Respondent Nos. 5 and 6 were selected against the 1992 vacancies while the applicants were selected either through LDCE or promoted on the basis of seniority against the vacancies of the subsequent years of 1994/1998. It is for this reasons that though 1992 LDCE was conducted in 2000 because of pendency of Court case the private respondents were deemed to have cleared in 1992 and accordingly positioned against that year making them senior to the applicants. They have also stated that when earlier the private respondents were afforded seniority as of 2000, they made representation to the Railway Board and it is on the basis of the decision of Railway Board that they have been assigned seniority in

1994. The respondents have also relied upon Para 203.7 of the Indian Railway Establishment Manual (volume-I).

8. Private respondents filed the counter reply separately. It has been contended by the respondents that the applicants did not participate in the 1992 30% LDCE held in 2000, in which the private respondents were selected. The examinations in which private respondents appeared were of 1994 and 1998 and accordingly they were accommodated against the vacancies of 1994 and 1998 while the private respondents were accommodated against the 1992 vacancies. The private respondents also relied upon Rule Para 203.7 of the IREM.

9. The applicants have filed rejoinder to the counter affidavit in which they have reiterated their contentions as contained in their O.A.

10. In their supplementary counter reply Official Respondents have annexed a copy of the promotion order of the private respondents dated 13.6.2006 in which it was mentioned, "on the issue of seniority matter, Railway Board vide their letter No. E/GP/2003/2/29 dated 10.1.2005 and 26.5.2005 have advised to consider their case for empanelment in the said panel of ACOS /group 'B' against the 25% vacancies after the panel on 75% of corresponding selection..... The above revision of the seniority will be to subject to final outcome of the OA No. 1035/2005 filed by S. R. Kiskoo and other and pending in CAT/Alld"

11. They have also annexed a copy of revised seniority list dated 4.7.2006.

12. With the consent of the parties written submissions were permitted to be filed and order was reserved. Accordingly, the applicant as well as

official respondents filed their written arguments. They were the concise version of the respective contentions raised in the pleadings.

13. Arguments were heard and documents perused. The examination that was to be conducted in 1992 was not so conducted till 2000 and it was conducted after examinations for the subsequent years had been conducted. In the examination for the subsequent years, the fifth and sixth respondents did participate but failed. As by then the applicants (under LDCE) had already qualified, there was no need for them to participate in the examination conducted in 2000 which was actually meant for 1992. When by the time the fifth and sixth respondents had qualified in the examination, the applicants have put in more than a few years' service in the promotional post. The non-conducting of the examination was not due to any intervention of court as there was no stay order. It is true that the respondents did not conduct the examination till the SLP was rejected. However, it is not the case of the fifth or sixth respondents that they had not participated in the subsequent examinations and were waiting only for the outcome of the SLP to participate in the 1992 examination which was held in 2000. They did participate in the 1992 examination but failed while the applicants who were selected under the LDCE quota had qualified in 1994 and 1998 in which the fifth and sixth respondents failed. The question is just because the examinations for 1992 were held only in 2000, whether the seniority of those who are already serving for years in the promotional posts could be disturbed.

14. The Apex court in a recent case of **Amarjeet Singh v. Devi Ratan, (2010) 1 SCC 417**, has held as under:-

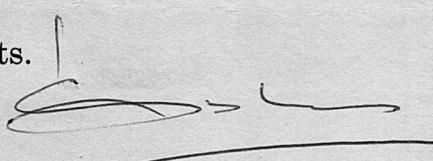


**27. The law permits promotion with retrospective effect only in exceptional circumstances when there has been some legal impediment in making the promotions, like an intervention by the court. An officer cannot be granted seniority prior to his birth in the cadre adversely affecting the seniority of other officers who had been appointed prior to him. "The latecomers to the regular stream cannot steal a march over the early arrivals in the regular queue." [Vide S.P. Kapoor (Dr.) v. State of H.P.; Shitla Prasad Shukla v. State of U.P. and Uttarakhand Forest Rangers' Assn. (Direct Recruit) v. State of U.P]**

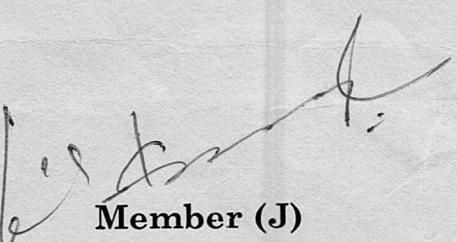
15. There was no legal impediment in not conducting the examination and the chances of the private respondents were not in any way affected by postponing the examination. Thus, on the basis of the above decision, we could safely hold that the seniority of the applicants cannot be disturbed by interpolating the name of the fifth and sixth respondents above the applicants.

**16. The OA is therefore, allowed.** Orders/letters dated 10.1.2005 (Annexure-1) and 26.5.2005 (Annexure-2) of the O.A. issued by the Railway Board are quashed and set aside. Respondents are directed not to make any change in the seniority position of the applicants in pursuance to letter/orders dated 10.1.2005 and 26.5.2005. Any promotion made on the basis of the seniority list wherein the names of the respondents had been placed above those of the applicants be reviewed if need be in case the applicants were affected by such promotion based on the erroneous seniority.

17. No costs.

  
Member (A)

Shashi

  
Member (J)