

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
ADDITIONAL BENCH, ALLAHABAD

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Allahabad : Dated the 3rd day of November 1995  
Original Application No. 1233 of 1987

QUORUM:-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

1. Ansar Ali, son of Shri Mohd. Shafin, Claim Tracer, Office of The Deputy Chief Commercial Superintendent, Northern Railway, Varanasi.
2. V.N. Misra, son of Shri Sukhdeo Prasad Misra, Claim Tracer, Office of the Deputy Chief Commercial Superintendent, Northern Railway, Varansi.
3. J.N. Sinha, son of Shri Prahlad Prasad Sinha, Claim Tracer, Office of the Deputy Chief Commercial Superintendent, Northern Railway, Varanasi.
4. U.S. Singh son of Shri Arjun Singh, Claim Tracer, Office of the Deputy Chief Commercial Superintendent, Northern Railway, Varanasi.
5. Sheo Shanker Lal Srivastava, son of Shri Udaya Narain Lal Srivastava, Claim Tracer, Office of the Deputy Chief Commercial Superintendent, Northern Railway, Varanasi.

(By Sri A.K. Gupta, Advocate)

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Versus

1. Union of India, through the New Delhi.
2. The General Manager, Northern Railway, Baroda House, New Delhi.

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3. Deputy Chief Commercial Superintendent, Northern Railway, Railway Station Building Varanasi.
4. Durga Prasad, son of Shri Jawahar Lal Wishwakarma, Claim Tracer, Officer of Dy. Chief Commercial Supdt. Northern Railway.
5. Surendra Singh, son of Shri Angad Singh, Claim Tracer, Office of the Dy. Chief Commercial Supdt. N. Railway, Varanasi.
6. Rakesh Pathak, son of Shri J.M. Sharma, Claim Tracer, Office of Dy. Chief Commercial Supdt., Northern Railway, Varanasi.
7. Sailendra Kumar, son of Shri Iqbal Bahadur, Claim Tracer, Office of the Dy. Chief Commercial Supdt., Northern Railway, Varanasi.
8. Deepak Chakravarty, son of Shri S.N. Chakravarty Kalra, Claim Tracer, Office of Dy. Chief Commercial Supdt. N. Railway, Varanasi.
9. Gopendra Kalra, son of Sri Moti Ram Kalra, Claim Tracer, Office of Dy. Chief Commercial Supdt. Northern Railway, Varanasi.
10. Alok Kumar, son of Shri H.M. Saxena, Claim Tracer, Office of the Dy. Chief Commercial Supdt., Northern Railway, Varanasi.
11. Ashok Kumar Dwivedi, Claim Tracer, Office of the Dy. Chief Commercial Superintendent, Northern Railway, Varanasi.
12. Jang Bahadur Mall, son of Shri Hardeo Mall, Claim Tracer, Office of the Dy. Chief Commercial Supdt. Northern Railway, Varanasi.
13. Pramod Kumar Bhatnagar, son of Shri R.C. Bhatnagar, Claim Tracer, Office of the Dy. Chief Commercial Superintendent, Northern Railway, Varanasi.
14. Rajendra Prasad Chaubey, son of Shri Shri Ram Chaubey, Claim Tracer, Office of the Dy. Chief Commercial Supdt., Northern Railway, Varanasi.
15. Nand Prasad Sharma son of Shri Kuber Sharma, Claim Tracer, Office of the Dy. Chief Commercial Supdt., Northern Railway, Varanasi.
16. Govind Pyare Gupta, son of Shri Ram Pyare Lal Gupta, Claim Tracer, Office of the Dy. Chief Commercial Superintendent, Northern Railway, Varanasi.

(Sri A.K. Gaur, Advocate)

. . . . . Respondents

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ORDER

By Hon'ble Mr. S. Das Gupta, A.M.

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5 Applicants have joined in filing this Original Application under Section 19 of the Central Administrative Tribunals Act, 1985 challenging the seniority list notified vide office order dated 13-10-1987 and seeking relief of quashing the said list <sup>and</sup> of their placement above the Respondent No.4 to 16 with all consequential benefits. The Applicants were clerks. They were promoted on adhoc basis as claim tracers. It is stated that the post of claim tracers are filled from two feeder grades. These are clerks in the office side <sup>and</sup> of the non-ministrial staff of the commercial side also known as open line side in the ratio of 1:2. The office clerks can either opt for promotion in the ministrial side to the post of senior clerk or on the non-ministrial side to the post of claim tracer. The Applicants opted for the non-ministrial side and were promoted as claim tracers but as the promotion thereof was not through normal selection tests, it was on adhoc basis. It is stated that by a letter dated 25-8-1982, a suitability test for the post of claim tracers was notified but only the persons from the commercial side were asked to appear in the said test. Ultimately, 33 persons were finally selected out of which only 14 persons finally joined and they were given seniority from the date of working on the higher post. The Applicants went on representing for regularisation of the services and certain recommendations were made for their regularisation in the inter-departmental correspondence. Finally a separate examination of

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21 adhoc claim tracers including the Applicants was held and they were ~~finally~~ selected and their services were regularised, but by the letter dated 26-4-1995 (Annexure-A-4) it was stipulated that the services of the Applicant were being regularised against the ~~fresh~~ 1/3rd quota and their seniority would remain below the seniority of the claim tracers already regularised. This was represented against by the Applicants repeatedly but nothing came out of this representation and finally a seniority list was issued by an order dated 13-10-1987 in which the names of Respondent Nos. 4 to 16 have been included but the Applicants have not been included in the said seniority list.

2. The aforesaid seniority list has been challenged by the Applicants on the ground that they were promoted on adhoc basis much <sup>before</sup> Respondent Nos. 4 to 16 who were promoted as claim tracers <sup>much later</sup> and the Respondents did not hold suitability test in respect of the Applicants who belong to the office side alongwith those belonging to the commercial side although 16 vacancies were available in their quota. The Applicants, therefore, have filed this O.A. praying that the aforesaid seniority list be quashed and that the Respondents be directed to place the

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Applicants above Respondent Nos.4 to 16 in the seniority list and to grant them all consequential benefits.

3. The Respondents have filed the written statement in which the basic facts of the case have not been disputed. It has only been stressed that the promotion of the Applicants was purely on adhoc basis under local arrangements pending selection through written test and as such promotion was not to confer any right on the Applicants with regard to their seniority. A copy of the relevant orders dated 6-8-1991, 8-1-1992 and 1-3-1992 by which the said adhoc promotions were ordered are placed at Annexures-CA-1, 2 and 3 respectively. As regards their regularisation, the Respondents have stated that they have followed the Railway Board decision which ~~was~~ given in respect of similar cases pertaining to the Western Railways.

These instructions are contained in the Northern Railway Headquarters letter dated 8-7-1982, a copy of which is placed at Annexure-CA-4. The Respondents have further averred that the suitability test in respect of the staff pertaining to the commercial side were held on 12-6-1983 and 7-8-1983 when 33 persons were declared selected out of which only 15 joined. In respect of 1/3rd ratio for office staff, however, no suitability test was held since 1977 and as such all the

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claim tracers between 1977 to 1988 were promoted on adhoc basis from the office side, in accordance with the ratio, while there were 33 posts for commercial side, 16 posts were available for the office side. The Respondents have stated that this was the reason why from commercial side 33 persons were called and the four petitioners were not called. However, on representation by the Applicants, the suitability test was subsequently held on 3-8-1985 in which they appeared and were declared successful and their services were regularised w.e.f. 24-6-1985. They were also assigned seniority from 24-6-1985 as per the direction of Northern Railway Headquarters. The Respondents have also taken a plea that the Application is also time barred as the Respondent Nos.4 to 16 were promoted w.e.f. 31-12-1983 to 8-2-1984 and this was not challenged by the Applicants.

4. Several Applicants have filed individual Rejoinder Affidavit in which the contention made in the O.A. have been affirmed. It has also been contended that since 16 posts for the office side were available, the failure to hold suitability test for them was also illegal and arbitrary and the Applicants should not be made to suffer for ~~not~~ fault of theirs.

5. We have heard the Learned Counsels for both the parties and have gone through the pleadings carefully. The plea of the Respondents that the

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Application is barred by limitation has no force. The Applicants have specifically averred that they have been representing for holding of selection test for them when they were not called for the selection test held in respect of the commercial side staff. Moreover, their cause of action arose when the impugned seniority list was published indicating that Respondent Nos.4 to 16 who belong to the commercial side, were given seniority over the Applicants. Reckoning from the date of issue of the seniority list, this Application is well within the period of limitation.

6. The Respondents have ~~this~~ stated that while 33 posts were available in ~~in~~ the 2/3rd quota for the commercial side, 16 posts were available in 1/3rd quota for the office side. That being so, we find considerable force in the argument of the Applicants that holding suitability test only in respect of 33 posts for the commercial side and not holding suitability test in respect of 16 posts on the office side was totally arbitrary. The Respondents in their Counter Affidavit have indicated no cogent reasons why the selection test could not be held for both sides simultaneously in respect of the vacancies in their respective quota. Had the test been taken simultaneously, those of the Applicants who were coming within the first 16, in the list of seniority of the office clerk opting for the post

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of claim tracers would have got an opportunity for qualifying in the selection test and of being regularised on the higher posts. They have been denied this opportunity and in the absence of any explanation in this regard, we cannot but hold the action of the Respondents as totally arbitrary.

7. In view of the foregoing we hold that the selection test in respect of the adhoc promotees of the office side shall be deemed to have been held alongwith those on the commercial side. Those of the Applicants in this O.A., who figured amongst the first 16 of those who qualified in the test, would be deemed to have been regularised as claim tracers w.e.f. from the date on which their counterparts of the commercial side were regularly promoted. Interse seniority amongst the Applicants and the Respondent Nos.4 to 16 shall be fixed in accordance with the extant rules <sup>relating to</sup> ~~and official~~ interse-seniority between the persons coming from the two different streams for promotion to the same post.

8. The Respondents are directed to re-fix the seniority of the Applicants-vis-avis Respondent Nos.4 to 16 on the basis of principles enunciated above within a period of two months from the date of communication of this order.

9. The Application is partly <sup>allowed</sup> ~~admitted~~ with the above directions. There shall be no order as to the costs.