

CENTRAL ADMINISTRATIVE TRIBUNAL ALIABAD BENCH.

T.A.No.1836 of 1987.

Nirmal Dey .....Applicant.

Versus

General Manager , N.E.Railway & others ..Respondents.

Hon'ble Mr.Justice U.C.Srivastava,V.C.

Hon'ble Mr.K.Obayya,A.M.

( By Hon'ble Mr.Justice U.C.Srivastava,  
VC )

This is a transferred case under section  
29 of the Administrative Tribunals Act,1985.

2. The applicant filed a writ petition  
before the High Court praying that a writ of  
mandamus be issued directing the respondents  
no.1 and 2 to prepare the seniority list in  
accordance with law showing the applicant senior to  
respondents no.3 to 5. Respondents no.1 and 2 may  
also be directed to promote the applicant as Senior  
Clerk in the scale of 330-560/RS on the basis  
of the seniority list dated 30.6.81 and further  
to make suitable correction in the seniority  
list dated 31.8.84 and to decide the applicant's  
representation by giving a reasoned order. It  
appears that in pursuance of some notification,- the  
applicant applied for appointment in North-  
Eastern Railway on the post of A-2 Signaller in the  
scale of 260-430 vide order dated 14.2.79, issued  
by the General Manager (P), Gorakhpur. The applicant  
was informed that he was found suitable for the  
said post and an offer for the post of Trainee  
A-2 Signaller at stipend Rs.260/- p.m. in the scale  
of 260-430 during training period was given to him

and the period of training as apprentice/trainee was nine months from the date he joined. On completion of training he was to be tested and offered temporary appointment in a regular railway post in the Operating Department of the Railway. It appears that later on the applicant moved an application and yet another offer was given on 22.5.79 offering him the post of Junior Clerk in the scale of 260-400. and it was stipulated that all the appointments will be made on probation for one year. It also appears that the applicant in pursuance thereof joined the duties on 1.6.79 but the applicant was not found suitable for the post of A-2 Signaller. It further appears that the applicant had got this appointment on compassionate ground in place of his father. His father was a Guard-Grade-A and died in service. The applicant was considered for appointment on the post of A-2 Signaller in Grade 260-430 but his psychological test was taken for the said post and he was found unsuitable, that is why the post of Office Clerk was offered to him. The applicant was subsequently approved for the post of Office Clerk in terms of memorandum dated 15.5.79 that is why the said offer was given and in pursuance of that he joined on that date. The seniority list of the applicant was published on 1.1.81 and issued on 30.6.81 and the applicant's position was shown at serial No.146. A representation was made against the same. Thereafter, a corrigendum was issued showing his position at Serial No.151 and the position of other three persons i.e. Sri K.P.Singh, A.L.Srivastava and S.K.Singh was also changed through that corrigendum. There were only 31 posts of Senior Clerk and the

applicant was at serial no.37 in the list out of 58 members who were selected for interview. The applicant's name was at serial number 37 and, therefore, he could be called for the post of Senior Clerk as 31 candidates who were senior in the list were already selected. As 31 posts of Senior Clerk were available, the respondent no.3 was promoted as Senior Clerk against 10% Graduate-quota vide office order dated 3.4.84 and respondents no.4 and 5 were promoted as Senior Clerks vide Office Order dated 7.12.84 against 90% quota on the basis of seniority-cum-suitability. So far the applicant's position for promotion is concerned, he was not considered eligible for the post of Senior Clerk that is why he was not selected. According to the respondents, the aforesaid three persons were selected earlier and the applicant was appointed as Junior Clerk and he has been assigned correct seniority from the date of appointment as Junior Clerk i.e. 1.6.79 and as such paragraph 304 of the Indian Railway Establishment Manual does not apply to this case and as such the applicant's seniority was correctly determined.

3. The contention on behalf of the applicant is that the seniority-list, which was prepared on 31.8.84, was not in accordance with paragraph 304 of Railway Establishment Manual and the applicant's date of selection/appointment is 14.2.79 and as such he cannot be made junior to the persons, who were selected after 14.2.79 i.e. respondents no.3 to 5.
5. An Offer for the post of A-2 Signaller was given

to the applicant on 14.2.79 but the applicant failed in psychological test and yet an another offer for the post of Office Clerk was given to the applicant and in pursuance of that he joined on 1.6.79. But it is due to intervening circumstances that the applicant was placed at serial No. 37 and 31 candidates out of 58 were already selected through from different quotas, and as such the applicant was not selected for the post of Senior Clerk. Obviously, the applicant was not given seniority. But the question here is as to who is senior among the applicant and the three persons. The applicant's contention is that his name was found place in the earlier panel the copy of which has been placed on record by the respondents themselves as Annexure-I and the respondents no.3 to 5 who were junior to the applicant, were not included in the said panel but their names were found place in the second panel. Paragraph 306 of Railway Establishment Manual clearly states that the candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting. This contention has got to be accepted. As such the applicant was senior to the aforesaid respondents and the respondents no.1 and 2 may consider the case of the applicant and by virtue of his seniority, he may be promoted as Senior Clerk according to rules. Within Accordingly, the respondents are directed to consider the plea of the applicant within a period of two months from the date of communication of this order according to rules. There shall be no order as

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to the costs.

*Rubenveld*  
MEMBER (A)

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VICE CHAIRMAN

DATED : APRIL 22, 1992

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