

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

Allahabad, this the 25th day of March 2003

ORIGINAL APPLICATION NO. 1779/93

HON.MR. JUSTICE R.R.K.TRIVEDI, VICE CHAIRMAN  
HON. MAJ GEN K.K.SRIVASTAVA, MEMBER (A)

Subodh Kumar Singh,  
a/a 33 years,  
s/o Sri Samsher Bahadur Singh,  
r/o 136 Tagore Town,  
Allahabad. .... .... Applicant.

(By Advocate:-Shri S.S.Sharma  
Shri S.Ram  
Shri Om Prakash Singh  
Shri A.K.Sinha)

Versus

1. Union of India through the Financial Advisor & Chief Accounts Officer,  
Northern Railway,  
Baroda House,  
New Delhi.
2. Sr. Divisional Accounts Officer  
Northern Railway,  
Office of the Divisional Railway Manager,  
Nawab Yusuf Road,  
Allahabad.
3. P.K.Sharma, Accounts Assistant,  
under Dy. FA&CAO, Northern  
Railway, Allahabad.
4. Smt. Noor Jhan, Accounts Assistant under  
Sr. Divisional Accounts Officer,  
Northern Railway, Allahabad.
5. V.K.Verma, Sr. Accounts Assistant under  
Sr. Divisional Accounts Officer,  
Northern Railway, Allahabad.
6. Mohd Belal Siddiqui Sr. Accounts Assistant under  
Sr. Divisional Accounts Officer,  
Northern Railway, Allahabad.
7. T.A.Siddiqui, Section Officer,  
Sr. Divisional Accounts Officer,  
Northern Railway, Moradabad.
8. Pradeep Charkarwaty, Accounts Assistant under  
Sr. Divisional Accounts Officer,  
Northern Railway, Allahabad.

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9. A.K.Ganguli, Accounts Assistant under Sr. Divisional Accounts Officer, Northern Railway, Allahabad.
10. Masood Ahmad, Accounts Assistant under Sr. Divisional Accounts Officer, Northern Railway, Allahabad.
11. Iftikhar Ahmad, Accounts Assistant under Sr. Divisional Accounts Officer, Northern Railway, Allahabad.
12. Smt. Kusum Kumari, Accounts Assistant under Sr. Divisional Accounts Officer, Northern Railway, Allahabad. ... ... Respondents.

(By Advocate:-Shri P.Mathur  
Shri A.V.Srivastava- Res.8  
Shri A.Srivastava- Res.5)

O R D E R

HON. MAJ GEN K.K.SRIVASTAVA , MEMBER (A)

In this O.A filed under Section 19 of Administrative Tribunals Act, 1985, the applicant has challenged Seniority List dated 19-10-1993 <sup>hand letter dated 8/9-11-1993</sup> <sub>A</sub> rejecting the representation of the applicant dated 6-8-89 and has prayed that the same be quashed with direction to respondents to restore the seniority list dated 31.8.1989 and promote the applicant on the post of Accounts Assistant in grade Rs. 1400-2600 on regular basis with all back wages and also <sup>pay him</sup> <sub>A</sub> 18 % interest on arrears. <sup>hand</sup>

2. The facts, in short, giving rise to this O.A are that the applicant was selected and appointed in respondents' establishment on 10-4-1986 as Jr. Accounts Assistant grade Rs. 1200-2040 at Lucknow. His panel position was 43. He sought for mutual transfer with one Sri Vinod Kumar Mishra (panel position 23) under para 310 of IREM Vol I. He joined at Allahabad on 27-11-86 and Sri Vinod Km. Mishra



was spared for Lucknow. Seniority list of Sr. Accounts Assistant dated 31-8-1989 was issued and the applicant was assigned seniority at Sl. No. 74. Certain aggrieved persons represented about their seniority and the seniority list was reviewed and the applicant was assigned seniority at Sl. No. 43. A fresh seniority list was issued on 19-10-1993 and 10 persons junior to the applicant were assigned higher seniority and old seniority list was superseded. On 19-10-1993 ad hoc promotion orders were issued in respect of 12 persons on the basis of revised seniority list. Apprehending that respondent no. 2 would take action detrimental to applicant's interest the applicant represented on 6-8-93 and again on 27-10-1993 on issue of ad hoc promotion orders. However, the promotion order dated 19-10-1993 was not given effect to and respondent no. 2 vide letter dated 26-10-1993 (A-10) informed the applicant about it. Respondent No. 2 sent parawise comments on the representation of the applicant dated 6-8-1993 to FA & CAO, Northern Railway on 8-11-1993. Since the grievance of the applicant was not redressed, he filed this O.A on 24-11-93 which has been opposed by respondents by filing counter reply.

3. Shri A.K.Sinha learned counsel for the applicant submitted that as per para 310 of IREM, in case of mutual transfer the applicant retains his panel position because the applicant's panel position is 43 whereas that of Vinod Kumar Mishra with whom he sought mutual transfer is 24. Besides the seniority list dated 31.8.1989 became final once the representations of certain aggrieved persons was decided by order dated 23-7-1992 and the applicant was assigned the seniority according to his panel position.



4. The learned counsel for the applicant further submitted that respondent no. 2 wanted to favour certain persons of his community for promotion to the post of Accounts Assistant grade Rs. 1400-2600. He issued a revised seniority list dated 19-10-1993 and on the same day issued ad hoc promotion orders of 12 persons on the basis of revised seniority list dated 19-10-1993 placing the applicant at Sl. no. 11 whereas he should have been at Sl. no. 1. The learned counsel further argued that 5 persons of community of respondent no. 2 were placed above the applicant even though they passed Appendix A-2 Exam in extended period of probation. The applicant passed the Appendix-2 Exam in first attempt in 1987 itself. It was only on protest by the applicant that the promotion order dated 19-10-1993 was suspended.

5. Resisting the claim of the applicant Sri Prashant Mathur learned counsel for the respondents submitted that Respondent no. 2 has committed no irregularity in issuing the revised seniority list dated 19-10-1993 on the basis of relevant rules and instructions. The seniority of the respondents was fixed as per their panel position, though they joined the Division later on. The learned counsel further submitted that the instructions of July 1982 of the Headquarter Office, Northern Railway, Baroda House exist regarding assigning seniority to staff on their request transfer. The action was taken by respondent no. 2 as per the laid down policy. In the Headquarters a Priority Register is maintained for request transfer and persons are being adjusted on availability of vacancies in the Division of their choice. However it does not affect the seniority. Seniority of persons is fixed according to their panel position and the persons placed above the applicant are senior to him in 1986 panel.

6. We have heard counsel for the parties, carefully considered their submissions and perused <sup>h</sup> records. The short controversy involved in this case is whether the case of the applicant is covered under the instructions of July, 1982 of the Northern Railway, Headquarters, Baroda House, New Delhi or not.

7. We have perused the instructions of the Northern Railway Headquarters of Delhi, 1982 regarding assigning seniority to staff on their request transfer. In the said instructions the detailed policy guidelines have been laid down regarding request transfer. However, we do not find any whisper in these instructions regarding cases of mutual transfer. Admittedly, the applicant sought for mutual transfer with one shri Vinod Kumar Mishra. The panel position of the applicant is 43 and <sup>h</sup> that of <sup>h</sup> Shri V.K. Mishra is 24. The seniority of the applicant on mutual transfer has to be <sup>h</sup> fixed <sup>h</sup> as per the instructions contained in para 310 of Indian Railway Establishment Manual Vol. 1 which reads as under:-

"Railway servants transferred on mutual exchange from one cadre of a division office or railway to the corresponding cadre in another division, office or railway shall hold their seniority on the basis of the date of promotion to the grade or take the seniority of the railway servants with whom they have exchanged, whichever of the two may be lower."

According to above rules since the applicant sought for mutual transfer of shri Vinod Kumar Mishra who is at No. 24 of the panel of 1986, the applicant will retain his panel position which is 43. Accordingly the seniority of the applicant was properly fixed in the seniority list dated 31-8-1989. The same is our view cannot be disturbed by the



respondents on the plea that Priority Register for request transfer is maintained at the Headquarters Office and according to the instructions of 1982 even if the transfer takes place later on the person has to be given his seniority according to the panel position. The case of the applicant is different <sup>in form</sup> than those of the respondents. His case is that of mutual transfer and therefore the respondents <sup>in hold</sup> should have to <sup>be</sup> placed after the applicant in seniority list as they joined the Division afterwards.

8. What we find surprising is that the respondent no. 2 on representation of Masood Ahmed, Respondent No. 10 issued a fresh seniority list on 19-10-1993 and on the same day, he also issued the ad hoc promotion orders. We have no hesitation in observing that the action of respondent no. 2 is questionable. The proper course on receipt of representation from respondent no. 10 would <sup>issue a notice</sup> have been to show cause to the persons whose seniority was to be affected adversely and only on receipt of the representation the issue should have been decided which has not been done at all by respondent no. 2. It appears the respondent no. 2 was in hurry to issue the ad hoc promotion orders. Therefore, the action of the respondents no. 2 cannot sustain in the eyes of law.

9. We would also like to observe that the instructions issued by the administration can not supersede the statutory rules and the respondents could not <sup>in</sup> ~~not~~ act <sup>in</sup> against the provisions of para 310 of Indian Railway Establishment Manual Vol. (1) lowering the seniority of the applicant



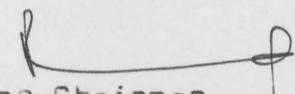
viz-a-viz respondent No. 3 to 10.

10. For the reasons stated above the O.A is allowed. The seniority list dated 19-10-1993 (A-1), ad hoc promotion order dated 19-10-1993 (A-2) and letter dated 8/9-11-1993 rejecting the representation dated 6-8-1989 are quashed. The respondent no. 2 is directed to issue fresh seniority list in view of our <sup>aborescible</sup> discussions. The applicant shall be entitled for all consequential benefits on refixation of his seniority in accordance with law.. The respondent no. 2 is given six months time from the date of communication of this order for compliance.

There shall be no order as to costs.



Member (A)



Vice Chairman

Madhu/