

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCHALLAHABAD.

Dated : This the 23rd day of May 2002

Original Application no. 1557 of 1994.

Hon'ble Mr. Justice RRK Trivedi, Vice-Chairman  
Hon'ble Maj Gen K.K. Srivastava, Member (A)

Vinod Kumar Srivastava, S/o Late R.R.L. Srivastava,  
R/o Qr No. 101-B Railway Diary Colony,  
N.E Rly., Gorakhpur, P.O. Rly., Colony, HQ Office  
Gorakhpur.

... Applicant

By Adv : Sri Lallan Jha and Sri B. Tewari

Versus

1. Union of India through General Manager, N.E. Rly., Gorakhpur.
2. General Manager, N.E. Rly., Gorakhpur.
3. Chief Personnel Officer, N.E. Rly., Gorakhpur.
4. Divisional Rly., Manager, NE Rly., Gorakhpur.
5. Divisional Rly., Manager (P), NE Rly., Gorakhpur.
6. Divisional Rly., Manager NE Rly., Samastipur.
7. Divisional Rly., Manager, NE Rly., Sonpur.
8. Sri Mangali Prasad, Chief Train Examiner Carriage and Wagon Inspector NE Rly., Lucknow DRM (Mech) Office.
9. Sri Ram Aghal, Chief Train Examiner/Carriage and Wagon Inspector, Lucknow Division of NE Rly., Gonda.
10. Sri N.K. Jaisawal, Chief Train Examiner/Carriage and Wagon Inspector, N.E. Rly., Gorakhpur.
11. Sri G.P. Yadav, Chief Train Examiner/Carriage and Wagon Inspector, NE Railway, Gorakhpur.

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12. Sri A.K. Bhatnagar, Chief Train Examiner/ Carriage and Wagon Inspector, N.E. Rly.,  
Lucknow.
13. C.M. Dixit, Chief Train Examiner/Carriage and Wagon Inspector, N.E. Rly.,  
Gorakhpur.
14. O.P. Sinha, Chief Train Examiner/Carriage and Wagon Inspector, NE Rly.,  
Gorakhpur.
15. R.R. Gupta, Chief Train Examiner/Carriage and Wagon Inspector, Basic Training Centre NE Rly.,  
Gorakhpur Shops.
16. Gopal Singh, Chief Train Examiner/Carriage and Wagon Inspector, NE Rly., Gonda (Lucknow Division)

... Respondents

By Adv : Sri VK Goel, Sri P Mathur, Sri VN Vishwakarma,  
Sri N Tripathi & Sri GP. Agarwal

ORDER

Hon'ble Maj Gen K.K. Srivastava, Member A.

In this OA, filed under section 19 of the A.T. Act, 1985, the applicant has challenged order dated 18.7.1994

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of General Manager (P), North Eastern Railway (in short NER) Gorakhpur (Ann A-1) promoting Mangali Prasad and Ram Achal who are junior to the applicant and has prayed that respondents be directed to promote the applicant in scale of Rs. 2375-3500 after fixing the proper seniority position of the applicant. The applicant has further prayed that respondents be directed to fix the seniority of the applicant above Sri N.K. Jaisawal in the seniority list of CWI/STXR. The applicant has also prayed for direction to the respondents to fix up proper inter-se~~r~~ seniority of CWI/CTXR scale Rs. 2000-3200 vis-a~~e~~ vis Lucknow, Sonapur, Samastipur and other Divisions.

2. The facts in short, as per applicant, are<sup>as that</sup> the applicant was selected as Apprentice Train Examiner (in short TXR) through Railway Service Commission in 1969 and posted in NER on 13.5.1969. After 5 years of training he was posted as TXR at Gorakhpur in Lucknow Division in scale of Rs. 425-700 (1400-2300 revised) on 14.10.1974. He is Intermediate with 5 years Training of TXR equivalent to Diploma Course. He completed Advance work Study Course from Chandausi, NR which his juniors ie respondents no. 8, 9 and 10 have not done. He went on deputation to Iraq where he worked for Iraq Government for two years from May 1988 to May 1990. Upto 30.3.1985 the posts of TXR/~~Chief~~TXR CWI were Head quarter controlled posts. By order of General Manager (P) NER Gorakhpur dated 8.4.1985 the posts in scale of Rs 425-700 (Rs. 1400-2300 revised) Rs. 550-750 (Rs 1600-2660) and Rs. 700-900 (Rs. 2000-3200) were decentralised w.e.f. 1.4.1985 and were placed under Divisions. Only the posts of CTRX/CWI in scale of Rs. 840-1040 (Rs. 2375-3500) remained Headquarter Controlled posts. Applicant was promoted as HTXR/CWI in scale of Rs. 1600-2660 w.e.f. 1.1.1984 vide order dated 17.4.1985 under restructuring. At this point respondents 8 & 9 were not promoted in scale of Rs. 1600-2660 as they

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were not in zone of consideration. Only respondent no. 10 Sri N.K. Jaisawal TXR was promoted with the applicant but he was junior to the applicant.

3. The applicant, before decentralisation, was transferred from Lucknow Division NER to Headquarter Gorakhpur on administrative ground and applicant is working in Headquarter officer since then. The first selection for the posts of CWI/CTXR Pay scale Rs. 2000-3000 took place in September 1986. The applicant was not informed. He was under Advance Work Study Training at Chandausi NR at that time. In this selection 7 juniors to the applicant were selected and got promotion in scale Rs. 2000-3200 vide result declared on 25.5.1987 (Ann A-4). On return from Chandausi, applicant preferred an appeal to DRM (P) NER Lucknow on 23.9.1986. Applicant was called telephonically for written test for the post of TXR in scale Rs. 2000-3200. He appeared on 12.2.1987 and was declared successful but in oral test his juniors were declared successful ignoring the applicant. This was done malafidely by the respondents because all posts had already been filled up. Again while the applicant was in Iraq during May 1988 and May 1990 second selection was held on 25.6.1988 (written test) but complete selection proceeding was cancelled on 17.11.1988. Another notification was issued on 17.3.1989 and selection was held on 29.3.1989 but the result was not declared upto 28.1.1991 due to stay order. The result was declared on 29.1.1991 after vacation of stay order by court. The applicant was neither intimated nor called for this second selection and number of other juniors were promoted as CTXR/CWI scale Rs. 2000-3200 w.e.f. 16.5.1991. In between the applicant was promoted as CWI/CTXR scale Rs. 2000-3200 on adhoc basis without any selection because of his seniority vide General Manager (P) Gorakhpur order dated 6.1.1988. By <sup>this</sup> time his

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juniors respondent no. 8, 9 and 10 had not been promoted. The third selection was started in the year 1991. Written test was held on 25.11.1991 and 28.11.1991 and oral test was conducted on 6.12.1991. Applicant was promoted and retained at Headquarter officer<sup>in</sup> Gorakhpur. However respondent nos 8 & 9 were promoted in scale of Rs. 2375-3500 w.e.f. 18.7.1994 without facing any selection. Aggrieved by this the applicant has filed this OA which has been contested by the respondents. They have filed counter reply.

4. Heard Sri B. Tewari learned counsel for the applicant and Sri V.K. Goel learned counsel for the respondents and perused records.

5. Sri B. Tewari, learned counsel for the applicant submitted the action of the respondents is violative of provisions of article 14, 16 and 39(d) of Constitution of India and the respondents have ignored the seniority and promotion rules under Railway Establishment code. The posts of supervisors of Carriage and Wagon/Train Examiners side are safety posts and the respondents have promoted applicant's juniors against the extant rules. The applicant is more technically qualified as compared to his juniors, yet the juniors have been assigned wrong seniority position in scale of Rs. 2000-3200 of CTRX/CWI. The applicant was promoted as HTRX/CWI in scale Rs. 1600-2660 w.e.f. 1.1.1984 under restructuring which was not the case with respondents no. 8 & 9 because they were not in the zone of consideration. Only respondent no. 10 who<sup>is</sup> also junior to the applicant was promoted alongwith the applicant.

6. Sri B. Tewari submitted that the applicant was not informed about the selection for the posts of CWI/CTRX in

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scale Rs. 2000-3200 conducted during September 1986. Resultantly seven juniors, who were selected and promoted superceded the applicant. On representation, the respondents called the applicant to appear in the written test held on 12.2.1987 for the post of TXR/CWI scale Rs. 2000-3200 but malafidely ignored him and declared other juniors as successful. This selection was a <sup>ho</sup>farce as all the posts in scale Rs. 2000-3200 were filled up. The constitution of selection committee was wrong and against the selection rules because Sr. DEE Lucknow was not associated and only two members instead three conducted selection. The subsequent selection was done on 29.3.1989 and the respondents neither intimated about the selection nor called him. Though the applicant was on deputation to Iraq, it was the duty of respondents to have intimated him and called for the selection.

7. Sri B. Tewari, further submitted that respondent no. 8 was promoted to scale of Rs. 2000-3200 w.e.f. 1.3.1993 without undergoing selection (the post in scale of Rs. 2000-3200 being selection posts) and again promoted him to the next grade of CTXR/CWI/CWS scale Rs. 2375-3500 without completing two years of service in scale Rs. 2000-3200 against provisions contained in IREM 214 which is a statutory rule. The promotion of respondents no. 8 & 9 was issued on 14.12.1992 but was cancelled by General Manager (P) by order dated 16.12.1992. The respondents no. 8 managed to get the order dated 14.12.1992 before it was cancelled on 16.12.1992 and submitted the same before this Tribunal Lucknow Bench in OA no. 74 of 1988 and misrepresenting the Tribunal obtained order dated 16.12.1992 in his favour getting the benefit of seniority w.e.f. 1.1.1984 in scale of Rs. 2000-3200 of CTXR/CWI although he has been promoted in the above scale on 1.3.1993.

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In 1984 respondent no. 8 was not eligible for promotion in scale Rs. 2000-3200 as per Railway Board's letter under restructuring. Respondent no. 8 and 9 were given second promotion illegally in the next higher scale of Rs. 2375 -3500 by impugned order of promotion dated 18.7.1994. The learned counsel submitted that these promotions are not covered by rules on reservation. Out of 59 posts in the scale of Rs. 2375-3500 only 9 posts should be reserved for SC according to 15% reservation quota but with the promotion of respondents no. 8 and 9, there are now 12 SC candidates working. Thus it is clear that the entire action of the respondents is malafide and illegal. All this has been done in collusion with the then Chief Personnel Officer Sri Ram Deo who is also a member of SC.

8. The learned counsel for the applicant finally submitted that the activity of respondent no. 3 amounts to misconduct in the light of decision of Hon'ble Supreme Court in Govt. of Tamilnadu Vs. K.N. Ramamurthy (1997) 7 SCC 101. Besides <sup>an action of</sup> respondents no. 3, 8 & 9 by filing forged and fabricated documents before this Tribunal Lucknow Bench in OA 74 of 1998 with motive of deceiving the Court tantamounts to criminal contempt as per decision of Hon'ble Supreme Court in Chandra Shashi Vs. Anil Kumar Verma (1995) 1 SCC 421. So suo moto <sup>an</sup> contempt proceedings should be initiated against respondent no. 3 as laid down by Hon'ble Supreme Court in Ram Autar Shukla Vs. Arvind Shukla (1995) Suppl. (2) SCC 130.

9. Sri V.K. Goel, learned counsel for the respondents opposing the claim of the applicant submitted that the present application is not maintainable as the applicant has sought plural reliefs <sup>an</sup> through this OA. It is also time barred. The posts of TXR, HTXR and CTXR were decentralised and declared



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as division controlled post w.e.f. 20.12.1979, 1.4.1983/  
1.8.1986 and 1.4.1985 respectively. Though the order to decentralise the post of HTXR was issued on 1.8.1986 w.e.f. 1.4.1983 but the order of promotion to the post of HTXR were issued by Headquarter vide order dated 17.4.1985 as the decentralisation could not be implemented. Respondent no. 8 and 9 were promoted as HTXR alongwith the applicant vide order dated 12.9.1986. The applicant after completing Advance Study Course, on return from Chandausi appeared in the absentee written test on 16.12.1987 for selection to the post of CTXR scale Rs. 2000-3200. Though he qualified in written test but <sup>after</sup> viva test held on 29.4.1987 was not found suitable and therefore his name did not appear in the select panel declared on 25.4.1987 ~~Constitution~~. The applicant was called for written test for the post of CTXR scale Rs. 2000-3200 vide order dated 29.3.1989 but the applicant did not appear as he was in RITES. The applicant was given adhoc promotion to the post of CTXR scale Rs. 2000-3200 w.e.f. 6.1.1988 by DRM Lucknow under local arrangement and it was made clear in the order itself that adhoc promotion would not confer upon him any right for further promotion or seniority in grade. However, the applicant was promoted after selection as CTXR in scale of Rs. 2000-3200 vide order dated 14/18.2.1992. As such the seniority of the applicant is counted from 18.2.1992 for all purposes and the action of the respondents is correct and legal.

10. The learned counsel for the respondents further submitted that Sri Mangli Prasad respondent no. 8 and Sri Ram Achal respondent no.9 belong to SC community and were promoted as CTXR scale Rs. 2000-3200 w.e.f. 1.1.1984 in scale of Rs. 2375-3500 in compliance of the order of this Tribunal Lucknow Bench

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and since the applicant has been promoted as CTR scale Rs. 2000-3200 w.e.f. 27.1.1992, he stands junior to respondent no. 8 and 9. Therefore, the applicant is entitled for promotion to scale Rs. 2375-3500 only at his turn. Besides the applicant is not entitled to seniority in grade of Rs. 2000-3200 w.e.f. 6.1.1988 as he was promoted on adhoc basis.

11. Sri V.K. Goel further submitted that Sri N.K. Jaisawal is senior to the applicant because he appeared in the written test for selection to the post of CTR grade Rs. 2000-3200 in the year 1987 and was found suitable to appear in the viva-voce test in which he could not ~~appear~~ <sup>appear</sup> being on long sick leave. In terms of Rule 10, 11 and foot note of rules for promotion and selection of non gazetted employees one post was left for him and since he was declared suitable in the selection of CTR in first attempt he has been assigned seniority w.e.f. 8.6.1987 vide General Manager (P) Gorakhpur order dated 2.1.1992.

12. We have heard the counsel for parties and have closely perused records and pleadings. The preliminary objections raised by the learned counsel for respondents about the maintainability of OA are:-

- i. the OA is not maintainable because the applicant has sought plural reliefs through this OA  
and
- ii. It is also time barred as the applicant is challenging the promotion of respondent no. 8 and 9 which was given in 1992 itself and the present OA has been filed  
on 6.10.1994.

We do <sup>not</sup> agree with the learned counsel on both the above points because the reliefs claimed by the applicant are inter-related

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Besides the applicant has challenged the order dated 18.7.1994 promoting respondent no. 8 & 9 by filing this OA on 6.10.1994 itself, the OA is no way barred by period of limitation.

12. The main controversy in this OA is regarding seniority of the applicant as CTR in grade of Rs. 2000-3200 vis-a-vis respondents no 8, 9 & 10. From perusal of record it appears that respondent no. 9 Sri Ram Achal had requested for grant of restructuring on the post of CTR grade Rs. 2000-3200 w.e.f. 1.1.1984 on the ground that certain reserved posts of SC were ~~de~~reserved by the competent authority and general candidates were wrongly appointed against the derserved post. Not only this respondent no. 8 Sri Mangali Prasad filed OA 74 of 1988 before this Tribunal Lucknow Bench which was allowed by order dated 16.2.1992 and the Tribunal awarded the benefit of seniority w.e.f. 1.1.1984 in scale Rs. 2000-3200. On representation of respondent no. 9 Sri Ram Achal that the posts reserved for SC were irregularly ~~de~~<sup>e</sup>rserved and the respondent no. 9 should be given the scale of Rs. 2000-3200 under restructuring was reviewed by Chief Personnel Officer and he approved grant of restructuring benefit to both the staff with retrospective effect wef 1.1.1984 in view of administrative error. The order was prepared on 14.12.1992 to this effect. The applicant's counsel argued that this order was cancelled on 16.12.1992 a fact which was not disclosed before this Tribunal Lucknow Bench and respondent no. 8 got the order in his favour. We do not find substance in this submission of the applicant. In fact the promotion of respondent no. 8 and 9 w.e.f. 1.1.1984 in grade Rs. 2000-3200 was not cancelled. It is only the copy of the order which has been cancelled as the same was not signed by the competent authority. Lucknow Bench of this Tribunal considered all the aspects<sup>in</sup> and then assigned the seniority to applicant

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no. 8 in scale Rs. 2000-3200 w.e.f. 1.1.1984 and therefore there is no doubt in our mind that the date of seniority of respondent no. 8 & 9 in scale of Rs. 2000-3200 is 1.1.1984. Once the seniority of respondent no. 8 and 9 in scale of Rs. 2000-3200 is established w.e.f. 1.1.1984, though they actually took over <sup>in</sup> the same grade vide order dated 1.3.1993 the applicants' plea that the respondents no. 8 and 9 could not have been promoted to the scale of Rs. 2375-3500 as they had not completed two years service in the grade of Rs. 2000-3200 has no force. It is undisputed that as per para 214 of IREM Vol I one has to render minimum of two years service in a particular grade to be eligible for next higher grade but in the instant case the respondent no. 8 and 9 got the deemed seniority w.e.f. 1.1.1984 and therefore they were fully eligible for promotion to the next higher grade in 1994. We do not <sup>find</sup> that the impugned order dated 11.7.1994 promoting respondents no. 8 and 9 to the grade of Rs. 2375-3500 suffers from any legal infirmity.

13. Another plea taken by the applicant is that Sri N.K. Jayaswal respondent no. 10 is also junior to the applicant. ~~We do not find~~ <sup>find</sup> the contention of the applicant is correct. In fact the seniority assigned to Sri N.K. Jayaswal during 1987 is correct and is as per rules. There is force in the submission of learned counsel for the respondents in this regard. The applicant failed in the selection held in the year 1987. He was promoted to the grade of Rs. 2000-3200 on adhoc basis w.e.f. 6.1.1988 and once he cleared the selection he was assigned proforma seniority from 1991 vide order dated 23.2.1994 (Ann A21). Therefore, the applicant cannot claim seniority over any one promoted to the grade of Rs. 2000-3200 after selection before 1991 leave apart Sri N.K. Jayaswal whose seniority dates back to the year 1987.

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14. We also do not find any force in the submission of learned counsel for the applicant that respondent no. 8 committed fraud by concealing the cancellation of order dated 14.12.1992 promoting respondent no. 8 and 9 to the grade of Rs. 2000-3200 by a subsequent order dated 16.12.1992 and are guilty of criminal contempt. In any case if the applicant feels that fraud has been committed by respondent no. 3 and 8, and they are guilty of criminal contempt of this Tribunal Lucknow Bench the applicant has to go before the same court. For any fraud on party he has to go<sup>in</sup> to civil court. We do not feel concerned with this point.

15. We would finally like to observe that since the issue of seniority of the applicant vis-a-vis other respondents alleged to be junior stands settled in view of our discussions there is no substance in the reliefs sought for. The OA is devoid of <sup>in</sup>merits and is accordingly dismissed.

16. There shall be no order as to costs.

  
Member

  
V.C.

Dated : 23/05/2002

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