

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH?
ALLAHABADDated : Allahabad this the18...day of Dec.1996.Coram : Hon'ble Mr. Justice B.C.Saksena, Vice-Chairman,
Hon'ble Mr. S. Das Gupta, Administrative Member.Original Application No. 1024 of 1995

1. Raj Kishore Singh son of
Shri Dashrath Singh
2. Sri Surendra Kumar son of
Sri Sharda Prasad
3. Sri Bachcha Jha son of
Sri Rajendra Jha.
4. Sri P.K.Dutta son of
Sri S.N.Datta
5. Sri S.G.A. Hashmi son of
Sri Ghulam Mustafa
6. Sri Anil Kumar son of
Sri Ishwari Paswan.
7. Sri Shashi Kumar Yadav son of
Sri M.L.Yadav.
8. Sri Lal Ji son of
Sri Babulal
9. Sri Ravikant Shukla son of
Sri Rama Kant Shukla
10. Sri Jaiwant Kumar son of
Sri Babulal
11. Sri Awdhesh Bahadur Singh son of
Sri Shiv Bahadur Singh.

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12. Sri Asghar Ali son of
Sri Taufique Ahmad
13. Sri Banarsi son of
Bihari Rao
14. Sri Dush Ram Son of
Sri Bishunlal

All posted as Assistant Electrical Driver
Northern Railway, Allahabad Division, Allahabad.
.....Applicants.

(Through Counsel Sri S. C. Budhwar and Sri Sudhir
Agarwal)

V_E_R_S_U_S

1. Union of India through the Secretary
Ministry of Railways, New Delhi.
2. The General Manager, Northern Railway,
Baroda House, New Delhi.
3. The Divisional Railway Manager, Northern
Railway, Allahabad.
4. The Divisional Electrical Engineer (Parichalan)
Northern Railway, Allahabad.
5. The Divisional Personnel Officer,
Northern Railway, Allahabad.
6. Sri Prem Kumar son of Sri Ram Murti Engine
Turner C/o. Chief Traction Foreman (Loco
Running) Northern Railway, Tundla.
7. Sri Ramesh Chandra Tewari son of Sri R.S.Tewari
Engine Turner C/o. Chief Traction Foreman (Loco
Running) Northern Railway, Moghalsarai.
8. Sri Mohan Singh son of Sri Ishwari Singh,
Engine Turner C/o. Chief Traction Foreman
(Loco Running) Northern Railway, Moghalsarai.
9. Sri Mohd. Ilyas son of Sri Iddu Engine Turner
c/o. Chief Traction Foreman (Loco Running) Northern
Railway, Tundla.

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10. Sri Chandra Bhan son of Sri Sunahri Lal Engine Turner C/o. Chief Traction Foreman (Loco Running) Northern Railway, Tundla.
11. Sri Ram Prakash son of Sri Raja Ram Engine Turner C/o. Chief Traction Foreman (Loco Running), Northern Railway, Tundla.
12. Sri Mewa Ram son of Sri Het Ram Engine Turner C/o. Chief Traction Foreman (Loco Running), Northern Railway, Tundla.
13. Sri Ramji Lal son of Sri Kharga Engine Turner, C/o. Chief Traction Foreman (Loco Running) Northern Railway, Tundla.
14. Sri Rajesh Chandra son of Sri G.C.Saxena, Engine Turner c/o. Chief Traction Foreman (Loco Running), Northern Railway, Tundla.
15. Sri P.N.Tripathi son of Sri A.N.Tripathi, Engine Turner, c/o. Chief Traction Foreman (Loco Running) Northern Railway, Mughalsarai.
16. Sri Kare Deen s/o. Sri Sita Ram Engine Turner C/o. Chief Traction Foreman (Loco Running) Northern Railway, Mughalsarai.
17. Sri M.C.Pal son of Sri R.D.Pal Engine Turner c/o. Chief Traction Foreman (Loco Running), Northern Railway, Mughalsarai.
18. Sri Satish Chandra son of Sri Dule Chandra Engine Turner c/o. Chief Traction Foreman (Loco Running) Northern Railway, Kanpur.
19. H.R.Singh son of Sri G.R.Singh Engine Turner c/o. Chief Traction Foreman (Loco Running), Northern Railway, Mughalsarai.
20. Sri Deo Narain son of Sri Ram Autar Engine Turner C/o. Chief Traction Foreman (Loco Running), Northern Railway, Kanpur.

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21. Sri Kishori Lal son of Sri Satai Engine Turner
C/o. Chief Traction Foreman (Loco Running) Northern
Railway, Kanpur.
22. Sri Bhagwan Das son of Sri Gajadhar Prasad Engine
Turner c/o. Chief Traction Foreman (Loco Running)
Northern Railway, Tundla.
23. Sri S.C. Angad son of Sri V. J. Angad Engine Turner
C/o. Chief Traction Foreman (Loco Running),
Northern Railway, Mughalsarai.
24. Sri Suheil Akhtar son of Sri Tufail Akhtar
Engine Turner C/o. Chief Traction Foreman (Loco
Running), Northern Railway, Kanpur.
25. Sri Siyaram son of Sri Anuroop Prasad Yadav,
Engine Turner c/o. Chief Traction Foreman
(Loco Running), Northern Railway, Kanpur.
26. Sri Hari Lal son of Sri Bhadain Engine Turner c/o.
Chief Traction Foreman (Loco Running),
Northern Railway, Mughalsarai.
27. Sri Jagdish Prasad son of Sri Ram Prasad Engine
Turner C/o. Chief Traction Foreman
(Loco Running) Northern Railway, Tundla.
28. Sri Munna Lal son of Sri Ram Sunder Engine Turner
C/o. Chief Traction Foreman (Loco Running),
Northern Railway, Tundla.
29. Sri Shami Ahmad
son of Sri Peer Ghulam.
30. Sri Ram Kumar Son of
Sri Badri Prasad.
31. Sri A.K.Abbhi son of Sri G.S. Abbhi.

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32. Sri Sangam Lal son of
Sri Prabhu

33. Sri B.B.Giri son of
Sri D.N.Giri

34. Sri Jagdish Lal Srivastava,
son of Sri S.S. Lal.

35. Sri Ram Singh son of Sri
Babu Lal

36. Sri V.K.Dubey son of Sri S.S. Dubey

37. Sri Waheed Ahmad son of Sri Nazeer Ahmad.

38. Sri S.I.H.Naqvi son of Sri S. U.H.Naqvi.

39. Sri Ram Chandra son of Sri Ram Nath

40. Sri Mohan Lal son of Sri Nanku Ram

41. Sri Ram Shanker son of
Sri Ram Kishore.

42. Sri Moti Lal son of Sri
Shyamal Lal

43. Sri D.N.Pandey son of Sri
Ram Iqbal Pandey.

44. Sri Dev Dutt son of Sri
Munna Lal

45. Sri Arjun Lal son of Sri Munna Lal

46. Sri Bharat Ojha son of Sri Radhey Kant.

47. Sri Vijay Kumar son of Sri Hayvansh Lal

48. Sri D.H. Yadav son of Sri Kharapattu.

49. Sri Jagdish Sharma son of Sri Siddhu.

50. Sri Jagdish Kumar son of Sri
Gulab Prasad.

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51. Sri Ajodhar Hussain son of Sri Abid Husain.
52. Sri Ram Prakash son of Sri Badri Pd.
Assistant Electric Drivers in the Scale of Rs.950/-
1500/- Northern Railway, Allahabad Division, to be
served through D.R.M.Northern Railway, Allahabad.

....Respondents.

(Through Counsel Sri B.B.Paul, Shri A.K.Gaur and Sri
M.A.Siddiqui.)

ORDER

(By Hon. Mr. S. Das Gupta, Member-A)

14 applicants have jointly filed this
Original Application under Section 19 of the
Administrative Tribunals Act, 1985 seeking
quashing of orders dated 16.6.1995 , 6.9.1995 and
16.1.1996 by which the private respondents No.6 to
52 have been promoted to the higher grade of Rs.1200/-
2040 allegedly superseding the applicants. They
have also prayed for a direction to the respondents
to finalize the seniority list of the Assistant
Electrical Drivers on the basis of length of service
on that post with all consequential benefits to the
applicants in the matter of promotion.

2. The applicants in this case were directly
recruited as Assistant Electrical Drivers on various
dates and who,after completing the requisite training,
were deployed on the working post on various dates
between July 1988 and March 1989. The private respondents
on the other hand were Fireman 'A'/'B' in the
Steam side or Diesel Assistants in the Diesel Side and
were subsequently brought over to the Electrical side
by a process of conversion on successful completion
of a conversion training. The controversy in this
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case turns on the inter-se seniority between these two groups i.e. those who were directly recruited as Assistant Electrical Drivers on ~~the~~ one hand and those who were converted to the Electrical side on the other.

3. At the outset, it needs to be stated that this controversy has not come up for adjudication for the first time. There has been a series of litigation before the Allahabad Bench of the Tribunal on this issue. This controversy was raised earlier in the Rayjan Kapoor Vs. Union of India & others , T. A. No.251 of 1987(W. P. No. 11613 of 1985) This Transferred application was decided alongwith three other Transferred applications by common order dated 30.7.1992 rendered by a bench of this Tribunal. While the three other applications related to the seniority inter-se among those who were originally on the Steem Side or Diesel Side and subsequently converted into electrical side, the T.A.No.251/87 was filed by direct recruits as ~~there has been~~ Electrical Drivers claiming seniority over those who were brought over to the electrical side after being given training. The bench deciding this matter noted several decisions rendered by various Courts and dismissed the application. Thereafter this matter came up again for adjudication in the case of Sanjay Kumar Singh & others Vs. Union of India and others in O.A.No. 480 of 1992. The application was disposed of by an order dated 15.4.1993 with the observation that the seniority list which was impugned ,shall stand quashed.

and that the respondents shall prepare a fresh seniority list in accordance with the directions already given in the bunch of four cases referred to above. It was further held that there was nothing wrong if a combined seniority list was prepared of all the Loco Running Staff. This was followed by a contempt application filed by Sri Sanjay Kumar Singh and others alleging non-compliance of the Tribunal's order dated 15.4.1993. While dismissing the contempt application an observation was made by a bench of the Tribunal in its order dated 29.6.1994 that the real controversy i.e. inter-se seniority between the petitioners and those who have been brought over to the Electrical line from the other streams, is an issue which does not appear to have been decided in the Tribunal's order dated 15.4.1993. It was further observed that the seniority list dated 7.10.1993 which had been subsequently issued by the respondents, is a provisional one and the applicants could represent against the position assigned to them in the seniority list and after disposal of the representation, if they still had any grievance, they could approach the appropriate forum on a fresh cause of action.

4. After the decision was rendered in the aforesaid contempt application, two sets of original applications were filed. One of these was the one which is before us. The other case was filed by five applicants who are also directly recruited as Assistant Electrical Drivers. This case viz. Sanjay Kumar Singh & others, O.A.No.1018 of 1994 was dismissed by a bench of this Tribunal by its

order rendered on 20.8.1996 on the ground that the aforesaid O.A. was barred by res-judicata. It is relevant to mention that four of the five applicants in O.A.No.1018 of 1994 were also applicants in the earlier O.A.No.480 of 1992.

5. The 14 applicants who are before us were not parties to the earlier cases referred to above. Therefore, we have not ^{been} persuaded to accept the contention of the respondents that the principle of res-judicata would apply. Their specific contention in para 6 of the O.A. is that they submitted representation to the respondents against the seniority list dated 7.10.1993 and the said representations have not been acted upon so far. The respondents, in para 12 of their counter-affidavit, which is in reply to para 4.6 and 4.7 of the O.A. have not specifically denied that the applicants in the present O.A. had submitted representations against the seniority list and the same is yet to be acted upon. The applicants in this case therefore, do have a fresh cause of action and in that view of the matter, the present O.A. is maintainable before us.

6. Both the parties in this O.A. have filed a number of affidavits which are quite bulky. It is not necessary to give details of the pleadings in these affidavit. The only essential facts which

have come out in these pleadings and which ^{are} required to be noted are that the applicants are directly recruited Assistant Electrical Drivers whereas the private respondents were originally in the Steam or Diesel lines and were brought over ^{to} the Electrical Line by a process of conversion. The case of the applicants is that for the purpose of promotion in the Electrical line, the total length of service as Assistant Electrical Drivers shall be the criterion for determining inter-se seniority. The respondents on the other hand contend that in Allahabad Division since the electrification of the Diesel and ~~Steam~~ ^{Electric} Traction, there existed a common cadre of Fireman 'A'/Diesel Assistant and Assistant Electrical Drivers, and they were being borne on a common seniority list. Although not specifically stated, it would imply that in that common seniority list, the criterion for seniority is the length of service in the respective lines irrespective of the date of conversion to the Electrical traction.

7. While the respondents ~~were~~ relied on the decision of this Tribunal which has already been referred (supra), the applicants on the other hand seek reliance on the decision of Hon'ble Supreme Court in the case of South-Eastern Railway and others Vs. Ramanarain Singh & others in Special Appeal Nos. 2530 of 1981 and 1730 of 1986.

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8. At this stage we consider it necessary to set-out the relevant aspects of the order dated 29.7.1988 rendered by the Hon'ble Supreme Court in the aforesaid case of Ramanarain Singh. This case does not appear to have been reported but a copy of the order was made available to us by the learned counsel for the applicants. In that case, the controversy was regarding the inter-se seniority between those employees who originally belonged to the Diesel side and were subsequently absorbed on the Electric side in view of the electrification of the Tracks vis-a-vis those who were directly recruited ^{Electric} on the ~~Diesel~~ side. Their Lordships in the Hon'ble Supreme Court upheld the decision taken by the Madhya Pradesh High Court that the seniority in the parent cadre of those who were brought over from the Diesel to Electrical side would be of no relevance for determining the inter-se seniority in the Electrical side. Their Lordships dis-agreed with a view taken by the Calcutta High Court in the case of Divisional Personnel Officers of Eastern Railway Vs. M. P. Ranga Reddy & others, 1978(2) S.L.R. 346, that on appointment on the Diesel side of those who originally belong to the Steam side, would fall under Rule 311 of the Indian Railway Establishment Manual and that the seniority in the parent cadre in the Steam side would prevail irrespective of the date of posting on the Diesel side. In ~~disapproving~~ the decision of Madhya Pradesh High Court and ~~deferring with~~ the decision of the Calcutta High Court, their Lordships followed the decision of Hon'ble Supreme Court in the case of Rama Kant Chaturvedi & others Vs. Divisional Superintendent, Northern Railway, Moradabad and others,

in that case have been quoted by the Tribunal, the essential underlying principle of law enunciated in Rama Kant Chaturvedi's case, namely, that the seniority in the parent cadre would have no relevance for determination of seniority on the side to which an employee was converted, does not appear to have been appreciated. Moreover, this bench also did not notice the decision of the Hon'ble Supreme Court in the case of Ramanarain Singh which had been rendered on 29.7.1988. We have already noted that this decision does not appear to have been reported. It is possible that this decision was not brought to the notice of the Tribunal. Had this decision ^{been} brought to the tribunal's notice, the decision in Rajan Kapoor's case might have been different. As it was, the only ^{thing} under that can be said about this decision is that it was per incuriam in so far as the decision in Rajan Kapoor is concerned.

12. In the subsequent decision of the Tribunal in the case of Sanjay Kumar Singh in O.A.No.480 of 1992 rendered on 15.4.1993, the decisions of the Hon'ble Supreme Court in Ramanarain Singh does not appear to have been noticed. It is also interesting to note that in the operative portion of the order, the Tribunal had allowed the application and quashed the existing seniority list but, directed the respondents to prepare a fresh seniority list in accordance with the directions given in the bunch of four transferred applications including that relating to Rajan Kapoor. Since the Rajan Kapoor's case was dismissed by the earlier order dated 31.7.1992, allowing the application of Sanjay Kumar Singh which had raised a similar

controversy while directing the respondents to follow the directions given in Rajan Kapoor's case would actually mean denial of relief ^{praya} made by Sanjay Kumar Singh and others. In any case this decision, in so far as it deals with the controversy of inter-se seniority among the direct recruits and the convertees on the Electrical side shall not be binding since we have held the decision in the case of Rajan Kapoor as per incuriam.

13. So far as the question of maintenance of combined seniority list is concerned, a combined seniority list of the employees of all the three sides is not ⁱⁿ direct conflict with the decisions of the Hon'ble Supreme Court in Ramanarain Singh or the earlier case of Rama Kant Chaturvedi. Moreover, the maintenance of a combined seniority list has been given a seal of approval by the bench of the Tribunal deciding the case of Sanjay Kumar Singh by its order dated 15.4.1993. This part of the order is not affected by the decision of Hon'ble Supreme Court. It is, however, clear that the promotions to the higher grades on the three different sides i.e. Steam, Diesel and Locomotive, are to be made separately. In other words, a Fireman 'A' on the steam side, though borne on a common seniority list alongwith those on the Diesel Side and the Electrical side, cannot be promoted to the higher posts either on the Diesel side or the Electrical side, unless he is given conversion training and is brought over to either of these side. To put it in a different way, though the respondents are maintaining a common seniority list, as if ^{it is} has a combined cadre of the employ

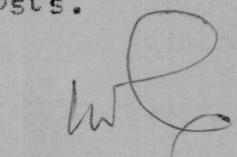
on the three sides, there is no cadre mobility without first undergoing the process of conversion. ~~whole~~

Therefore, ^{intra-} it is for the respondents to decide whether they should maintain a common seniority list or separate seniority list for three different sides, we cannot but hold, in view of the specific decision in this regard by the Hon'ble Supreme Court in the cases of Rama Kant Chaturvedi and Ramanarain Singh, that the inter-se seniority of those who were initially recruited on the Electric side vis-a-vis those who were converted to Electric Side, shall be on the basis of the length of service on the Electric side, for the purpose of promotion to the higher grades in the Electric side.

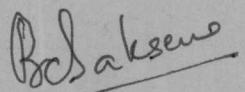
14. In view of the foregoing discussions we direct the respondents that the promotion from the post of Assistant Electrical Drivers to the next higher grade in Electrical side shall be made on the basis of length of service as Assistant Electrical Drivers in accordance with the principle enunciated by Hon'ble Supreme Court in the case of Ramanarain Singh. We have been informed by the departmental representatives that on such a re-determination of the seniority, the number of convertees who have already advanced steps in the Electrical side would face difficulty in not only hardship to such individuals but also functional problem in running the Local. Therefore, provide that on such re-determination of seniority, the persons who have already been promoted to higher grades in Electrical side shall be reverted but their subsequent advancement to higher grades shall be ~~defeasible~~.

re-determined seniority. However, no further promotions shall be made by the respondents, in the Electrical side in contravention of the aforesaid principle of seniority.

15. This application is disposed of with the aforesaid direction leaving the parties to bear their own costs.



MEMBER (A)



VICE CHAIRMAN

(pandey)