

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 17th day of Apr 2009

Original Application No. 501 of 1999

Hon'ble Mr. Ashok S. Karamadi, Member (J)

Hon'ble Mr. S.N. Shukla, Member (A)

Naseer Ahmad, S/o late Abdul Gaffoor, R/o Village
Parasrampur, P.O. Mughal Sarai, Distt: Chandauli UP.

. . .Applicant

By Adv: Shri S.K. Mishra

V E R S U S

1. The Union of India, through the General Manager, Eastern Railway, Calcutta-1.
2. The Divisional Railway Manager, Eastern Railway, Mughalsarai, Chandauli.
3. The Senior Divisional Personnel Officer, E. Rly, Mughalsarai, Chandauli.
4. Sri Sakil Anwar, S/o Sri Gulam Abbaas Ansari working as Fuel Checker U/LF/ER/MGS, Mughalsarai, Chandauli.
5. Sri Nirmal Kumar Singh, S/o late B.N.K. Singh working as Coal/Fuel Checker U/LF/MGS Mughalsarai.
6. Sri Rajendra Parsed, S/o late Raj Bali working as C/Fuel Checker U/LF/ER/MGS, Mughalsarai, Chandauli.
7. Sri Sita Ram, S/o not known, working as Fuel Checker/U/LF/ER/MGS, Mughalsarai, Chandauli.

. . .Respondents

By Adv: Shri A. Tripathi and Sri M.K. Sharma

O R D E R

Hon'ble Mr. S.N. Shukla, AM

This OA has been filed seeking the following
reliefs:-

- "i. To issue a direction in the nature of certiorari quashing the order dated 5.2.98, 29.6.98 and 1.3.99.



- ii. To issue a mandamus directing the respondent no. 1 to 3 to call the applicant for suitability test to the post of Fuel-checker in grade 1400-2300 of (revised as Rs. 4500-7000) and place the applicant above the respondents No. 4 to 7 in the panel placement to above post and grade.
- iii. To quash the impugned order no. EL/00/02/Coal-Fuel Checker/P/99 dated 8/9.3.99.
- iv. To direct the respondent no. 1 to 3 to fix the seniority of the applicant on the basis of seniority list dated 1.11.83 and 12.11.86.
- v. That nay other relief or reliefs to which he is entitled may also be awarded to him with cost."

2. The facts of the case as stated in the OA are that the applicant was initially employed as a Store Khalasi in the Grade of Rs. 196-232 on 25.05.1973 and attained temporary status on 20.11.1973. After eligibility test for the post of Coal Checker in the grade of Rs. 260-400 (PS) from IVth class employee, the applicant was promoted by order No. 1209 dated 01.11.1983 alongwith respondent No. 4, 5 and 6 (Annexure A-1 to the OA). Thereafter, the combined seniority list of Coal checker for Mechanical and Store issuer of Carriage and Wagon Department in the pay scale of Rs. 260-400 (PS) was published on 12.11.1986 in which the applicant was placed at Sl. No. 18 as against respondents No. 4, 5 and 6 at Sl. No. 20, 22 and 24 respectively (Annexure A-2).


3. When respondents No. 4 to 6 were promoted alongwith the applicant, the applicant claimed to be senior most vide combined panel dated 01.01.1983 and 12.11.1986. However, the respondent No. 6 Shri Rajendra Prasad stated to be junior to the applicant in the grade of Rs. 330-560 was promoted without

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following the seniority list of 01.01.1983. Thereafter, vide order dated 31.03.1992 yet another seniority list of Coal/Fuel Checker was published in which respondent No. 6 (Sri Rajendra Prasad) was shown at Sl. No. 6 in the grade of Rs. 950-1500 (Revised Rs. 1400-2300) as against the applicant who being senior shown at Sl. No. 4, but in the lower grade of Rs. 1200-2040 (Annexure A-3).

4. Respondent No. 6 Sri Nirmal Kumar who was appointed as substitute on compassionate ground and attained temporary status in Class IV services on 28.09.1975 and promoted to the post of Coal/Fuel Checker in the Grade of Rs. 260-400 on 08.11.1983 by panel dated 01.11.1983 and 12.11.1986 and find place at Sl. No. 10 and 22 respectfully, has also been allegedly made senior to the applicant. Vide order dated 01.03.1993 Sri Nirmal Singh has been made not only senior to the applicant but also to Sri Rajendra Prasad and promoted in the grade of Rs. 1400-2300 (Annexure A-5).

5. Sri Sakil Anwar (respondent No. 4) was appointed in Class IV and after attaining temporary status on 16.0-7.1974 was promoted to the post of Coal/Fuel Checker w.e.f. 11.11.1983 and is reflected at Sl. No. 7 to 20 in the seniority list dated 01.11.1983 and 12.11.1986 respectfully and was junior to the applicant. He was also lower than the applicant in the seniority list dated 11.03.1992 and 04.11.1995/



10.10.1995, but through letter dated 05.02.1998, seniority of Sri Sakil Anwar was altered and shown above the applicant (Annexure A-6).

6. Aggrieved against the alleged alteration of seniority of the respondent No. 4 to 6 the applicant claims to have made several representations to the authorities through different forums. The applicant is also aggrieved due to perceived impact of alteration of seniority of his juniors who have superseded him promoted to higher grades.

7. In addition to the above, the applicant is also aggrieved with respondent No. 7 Shri Sita Ram, who was posted to the post of Coal/Fuel checker in the pay scale of Rs. 260-400 (Revised Grade Rs. 950-1500) on 01.05.1986 after being declared unsuitable for Second Fireman post. While the applicant was appointed to the grade of Rs. 260-400 on 08.11.1983 he is senior to Sita Ram. However, in the combined seniority list dated 31.03.1992 (Annexure 3 to the OA) Sita Ram has been shown above to the applicant in the grade of Rs. 1200-2040. Sita Ram in the meantime declared surplus (Annexure 12) and rehabilitated vide order dated 17.09.1997 as Fuel Checker (Annexure A-13). In the panel dated 04.01.1995 (Annexure A-5) name of Sita Ram did not figure in the Grade of Rs. 1200-2040 (Revised 4000-6000). In the panel dated 19.06.1998 (Annexure A-9) the applicant is shown at Sl. No. 3 and Sita Ram at

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Sl. No. 4, which is correct seniority list. However, without any logic or reason the seniority position of Sita Ram was revised upwards and he was placed at top by order dated 01.03.1999 (Annexure A-14). The applicant also claims to be belonging to backward class "Julaha" and claims that he was never considered promotion against backward class quota.

8. The respondents through counter affidavit have replied to the applicant's allegation and clarified the official position in respect of each of the respondents from Sl. No. 4 to 7.

9. It transpires that the allegations in the seniority list position of the respondents at different times has occurred on account of corrections made on representations from them. The official position regarding seniority of the applicant vis-à-vis the respondents No. 4 to 7 is stated to be governed by Circular No. E(NG)54-PM/1023 dated 03.10.1961 placed as Annexure 1 to the counter affidavit of respondents No. 1 to 3, reproduced below:

"Serial No. 4621, Circular No. 1023/C/2 dated 04th Nov, 1961. The following is published for information and *. Copy of Railway Board's letter No. E(NG)54-PM/1-35 dt. 03.10.61.

Re: - Determination of relative seniority of staff of various categories promoted against non-selection posts.

The Board have had under considered the manner in which persons form eligible categories should be called up for a suitability test for filing a non-selection post in

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the channel of promotion for staff in such categories and determination of their relative seniority in that post. The matter was discussed at the C.P.Os meeting with the Board held on 27th and 28th July, 1961 in the light of the practice on different Railways, and the following principles have been agreed to which should be brought into force with immediate effect.

1) The number of eligible candidates to be considered at a suitability test should be twice the number of vacancies.

2) No hard and fast limits need be prescribed as to the number of candidates to be admitted from each eligible category, in cases where posts are to be filled on a quota basis, it should be ensured that each category is adequately represented within the overall number of candidates called up. The employees passing the suitability test should not be taken nearly to make up the quota fixed.

3) The combined seniority list should be based on the length of service of comparative grades without, however, disturbing the inter-se-seniority of staff belonging to the same category."

10. In the counter affidavit dated 26.07.2000 the position has been explained as under : -

"a. After publication of the panel of the panel of Coal/Fuel Checker in the grade of Rs. 260-400 (RP) a combined seniority list of Coal Checker/Fuel Checker of Mechanical & Stores Issuer of C&W / Department of Mughalsarai Division was published vide Annexure-2 of the Compilation no. 2 of the original application. No combined panel dated 1.1.1983 has been published. There is difference between panel and combined seniority list. A panel is formed when any selection is made for any post whereas seniority is published from time to time to indicate the place of the employee concerned in the seniority list. On this seniority list employees are called for test or suitability as per rules for post concerned, Annexure A-2 of the original application is a combined seniority list dated 12.11.1986 of Coal Checker of Mechanical and Store/Issuer in Carriage (C&W)/Department. This proves that the applicant himself is confused regarding this seniority and thus

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pointed a wrong picture in this original application. It is made clear that Shri Rajendra Prasad respondent no. 6 is a S.C. candidate when the scheme of restructuring was enforced by the Railway Board in the year 1984, those who were found eligible were promoted accordingly. Since Shri Rajendra Prasad belongs to Scheduled Caste and there was vacancy of Scheduled Caste shortfall quota, so he was promoted under restructuring scheme against the short fall quota of S.C. from 1.1.1984 in scale Rs. 330-560 (RS) 1200-2040 (RP). It is further submitted that the applicant does not belongs to S.C and when his turn came as per seniority and vacancy became available then he was promoted in scale Rs. 330-560 (RP)/1200-2040 (RP) with effect from 1.8.1985 thus there is no illegality or irregularity. It is also stated that Shri Rajendra Prasad respondent no. 6 has been promoted in scale Rs. 1400-2040 (RP)/4500-6000 (RSRP) where as the applicant is still working in scale Rs. 330-560 (RP)/ 1200-2040 (RS)/4000-6000 (RSRP). It is also stated that name of Rajendra Prasad has been shown at serial no. 6 in the seniority list of staff in grade Rs. 1400-2300 (RP), the name of the applicant is at sl. No. 4 in the seniority list of the staff working in scale Rs. 1200-2040 (RS) vide Annexure no. 3 of the original application. The applicant is not senior to Shri Rajendra Prasad rather he is junior to respondent no. 4 to 7.

- b. Shri Nirmal Kumar Singh respondent no. 5 was appointed as a substitute on 27.5.1975. He attained temporary status on 28.9.1975. He was absorbed as Engine Lighter in scale Rs. 196-232 (RP) and joined independent duty on 19.6.1978. He was further promoted to the post of Steam Man in scale Rs. 210-

290 (RP) w.e.f. 22.12.1978. Option was invited for the post of Coal Checker in the scale Rs. 260-400 (RS) Shri N.K. Singh appeared in suitability test and was found suitable. He was promoted as Coal Checker vide E.O.O. No. 1209 of 1983 dated 1.11.1983. He joined independent duty on 8.11.1983 whenever seniority is fixed as per length of service in the grade. Shri N.K. Singh had been promoted in grade Rs. 210-290 (RS) w.e.f. 22.12.1978 as Steam Man where as the applicant was in scale Rs. 196-232 (RP) till 31.10.1983. The applicant has been promoted as Coal Checker in scale Rs. 260-490 (RS) w.e.f. 1.11.1983 and took up independent duty on 8.11.1983. Thus it is quite clear that Shri N.K. Singh is senior to the applicant. It is also clarified that a combined seniority list was published on 12.11.1986 vide Annexure A-2 of the original application. Many representations were filed against that seniority list. No doubt the name of Shri N.K. Singh was at serial no. 22 and that of the applicant at serial no. 18. However, due to objections raised by staff concerned the matter was sent to the Headquarters. The Headquarters finally asked to submit an inter-se-seniority of Coal/Fuel Checker, which was prepared and sent to Headquarters, Calcutta for approval. It was received from there duty approved by competent authority vide CPO/Calcutta No. E/LP/249/ Misc./4 Calcutta dated 4.2.1993. That the seniority position of Shri N.K. Singh was at Sl. No. 22 in the seniority list dated 12.11.1986 vide Annexure A-2 to the OA. Since then he had been representing that his seniority has been wrongly fixed. He had also represented to CPO/Calcutta in this regard. CPO/Calcutta has advised alongwith approval of the inter-se-seniority dated 9.5.1992 that seniority and

promotion of Shri N.K. Singh may be finalized accordingly. Accordingly as advised by CPO/Calcutta the seniority of Shri N.K. Singh was revised and he was placed above Shri Sheo Murat Ram. Later on he was promoted in scale Rs. 1200-2040 (RP) on the post of Coal/Fuel Checker w.e.f. 1.3.1993. After getting the promotion Shri N.K. Singh again represented that his pay should be fixed at par with junior Shri Rajendra Prasad as such his pay was fixed in scale Rs. 330-560 (RS)/1200-2040 (RP) w.e.f. 1.1.1984 the date of his junior Shri Rajendra Prasad has got the scale where as the applicant was in scale Rs. 260-400 (RS) on 1.1.1984. The applicant has got the scale Rs. 330-560 (RS)/1200-2040 (RP) on 1.8.1985. Thus there is vast difference between the applicant and Shri N.K. Singh. In the seniority list vide Annexure A-5 of the applicant Shri N.K. Singh has been shown at Sl no. 6. It is clarified that this was wrongly done hence this anomaly was rectified vide seniority list dated 29.6.1998. In it Shri Rajendra Prasad has been placed at Sl. No. 3 and Shri N.K. Singh at Sl. No. 4.

- c. Shri Ahakil Anwar was appointed on 16.3.1974 as substitute. He got temporary status on 16.7.1974. He took up independent duty as a cleaner on 25.4.1978 in scale Rs. 196-232 (RP). He was promoted as IInd Fireman in scale Rs. 210-270 (RS) and took up independent duty on 28.9.1979, he was promoted as Coal Checker in scale Rs. 260-400 (RP) and took independent duty on 11.11.1983. He was promoted in scale 330-560 (RS) and took over independent duty on 19.12.1991. The option for the post of Coal Checker was called for from Class IV employees of Loco Steam Shed / MGS and Gaya. The applicant as well as Shri Shakil Anwar applied for the post of Coal Checker in scale Rs. 260-

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400 (RP). At that very time the applicant was working in scale Rs. 196-232 (RP) whereas Shri Shakil Anwar was in scale Rs. 196-232 (RS) thus Shri Shakil Anwar was senior to the applicant from the point of view of length of service in the grade. The posting of Coal Checker was published vide E.O.O no. 1209 of 1983 on 1.11.1983 in which the name of Shri Shakil Anwar at Sl. No. 7 and the name of the applicant is at Sl no. 6. This is not a seniority list rather it is posting order. The applicant has wrongly interoperated it as seniority list.

- d. Annexure A-2 of the OA dated 12.11.1986 is a combined seniority list of Coal/Fuel Checker of Mechanical/Loco and Store Issuer of C&W Department of Mughalsarai Division. Many representations were received against this seniority list and after all CPO/Calcutta advised to sent an inter-se-seniority list which was sent to him vide letter dated 9.6.1992 that seniority list was approved and communicated vide Annexure no. CA-1.
- e. Shri Sita Ram has been appointed on 28.7.1967 as substitute. He got temporary status on 21.1.1968. He was made regular as cleaner in scale Rs. 196-232 (RP) on and from 1.1.1973. The applicant was promoted to the post of IInd Fireman in scale Rs. 210-270 (RP) on and from 23.11.1978. It is also clarified that while he was working as IInd Firemen he was sent for periodical Medical Examination as he was a running staff, he was declared unfit in the prescribed medical category for IInd Fireman. Therefore, he was medically de-categorized and posted as Coal Checker in scale Rs. 260-400 (RS) which effect from 23.4.1986. But his seniority remained the same. He got the benefit of restructuring scheme and promoted in scale Rs. 330-560 (RP)/1200-2040 (RS) w.e.f.

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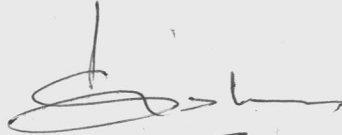
1.5.1986. At present he is working in scale Rs. 1400-2300 (RS) and Fuel Checker. Steam Shed, Gaya was closed on 30.4.1992 at mid night. The promotion of the applicant and respondent no. 4 to 7 has no connection with closure of Steam Shed at Gaya because there persons have been promoted as Coal Checker in scale Rs. 260-400 (RP) w.e.f. 1.11.1983. As such the question of being declared surplus before 1992 does not arise. He was declared medically unfit for the post of IInd Fireman hence he was medically decategorised and posted as Coal Checker in scale Rs. 260-400 (RP) that annexure A-123 of the OA only shows that after closure of steam shed/Gaya in 1992 some staff are declared surplus and for the time being Chief Personnel Officer/E.Rly./Calcutta has sanctioned for creation of 290 Nos. Spl. Supernumerary posts.

- f. Shri Sita Ram was not posted in C&W department. A close look at Annexure A-13 of the OA will make it clear that Shri Sita Ram has been posted under LF/MGS as Fuel Checker. This clearly shows that the applicant has painted a wrong picture and thus his case is totally false and based on misconception.

11. We have heard learned counsel for the parties and perused the pleadings. We have carefully gone through grievances of the applicant against each of the respondents No. 4 to 7. We have also very carefully gone through the explanations submitted by the learned counsel for the respondents in respect of each private respondents No. 4 to 7. We are satisfied that the impugned order passed by the respondents are in conformity with the Sl. No.4621, circular No.1023/C/2

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dated 4, November 1961. There is a valid explanation for variation in the seniority of the respondents wherever applicable. There is no malafide in the impugned orders. We are convinced that the applicant has not made out any case warranting interference by this Tribunal. The OA is accordingly dismissed. No cost.



Member (A)

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Member (J)