

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD**

**Original Application No. 433 of 2000**

\_\_\_\_ day this the 11<sup>th</sup> day of January, 2008

**Hon'ble Mr. Ashok S. Karamadi, Member (J)  
Hon'ble Mr. K.S. Menon, Member (A)**

Dinesh Kumar aged about 43 years, Son of late Jagdish Narain Saxena, resident of Raja Bagh Colony, C/o H.S. Saxena, In front of Mool Chand Dharmshala, Pilibhit.

**Applicant**

**By Advocate Sri T.S. Pandey**

**Versus**

1. Union of India through Ex-officio Secretary and Chairman, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, North Eastern Railway, Gorakhpur.
3. Divisional Railway Manager, North Eastern Railway, Izzat Nagar Division, Bareilly.
4. Divisional Mechanical Engineer, North Eastern Railway, Izzat Nagar Division, Bareilly.

**Respondents**

**By Advocate Sri K.P. Singh.**

**ORDER**

**By K.S. Menon, Member (A)**

This O.A. has been filed against the seniority list dated 26.02.1997 published by respondent No.3 wherein Shri Pramod Kumar Johri and Sri Subash Kumar Saxena, both junior to the applicant have been shown as senior to the applicant. The applicant has sought by way of relief directions of this Tribunal to quash the said seniority list dated 26.02.1997 and direct the respondents to promote the applicant to the post of Train Light Fitter Grade II from Train Light Fitter Grade III.

2. The applicant's case in brief is that he was working as Train Light Fitter Grade III with effect from 04.02.1993, while Shri P.K. Johari and Shri S.K. Saxena were promoted to Battery Man Grade III from 13.12.1989 and 06.12.1989 respectively. The respondents issued a seniority list dated 01.04.1996 (Annexure-2) in which the applicant's

name was at serial No.11 under Train Light Fitter Grade III while Sri P.K. Johari and Shri S.K. Saxena were at serial No.1 and 2 respectively under Battery man Grade III in the same list. According to the applicant, the channel of promotion in his case as per Railway Board Circular dated 26.02.1986 and 03.07.1987 is from Train Light Fitter Grade III to Train Light Fitter Grade II. In the case of Battery man Grade III, category to which Shri P.K. Johari and Shri S.K. Saxena belonged, the channel of promotion is from Battery man Grade III to Train Light Fitter Grade III and not Train Light Fitter Grade II. The respondents issued a notification dated 30.01.1997 for holding a Trade Test for the post of Train Light Fitter Grade II, which was subsequently cancelled vide the Order dated 26.02.1997, in which the applicant alleges that Shri P.K. Johari and Shri S.K. Saxena were promoted superseding the applicant without any notice to him or an opportunity of being heard. Being aggrieved, the applicant says he represented on 20.04.1997 and followed it up with a reminder dated 29.05.1998 in which he requested that the notification dated 30.01.1997 be given effect to. The respondents replied to this vide their letter dated 10.07.1998 in which the applicant was informed that his seniority had been refixed vide Order dated 26.02.1997, based on the representation of Shri P.K. Johari and Shri S.K. Saxena. The applicant then submitted another representation dated 07.10.1999 to which there was no response from the respondents, hence he filed this O.A. on 19.04.2000 pleading that the seniority list dated 26.02.1997 is in violation of Article 14 read with Article 16 and 309 of the Constitution of India and hence is liable to be quashed and set aside.

3. The respondents on notice have filed their Counter Reply. The learned counsel for the respondents Shri K.P. Singh submits that the O.A. is barred by limitation as the impugned seniority list is dated 26.02.1997 while the applicant's purported first representation dated 20.04.1997 was not received by the respondents. They maintain that the applicant filed his first representation only on 29.05.1998 followed by the second one on 07.10.1999, which indicates that the representations itself were submitted belatedly. Respondents contend that on this ground alone the O.A. is liable to be rejected. On the merits of the case, Shri K.P. Singh argues that the impugned letter dated 26.02.1997 is not a promotional order by which Shri Pramod Kumar Johari and Subhash Babu Saxena were promoted over the applicant. Respondents submit that the notification dated 30.01.1997 was not as per the Rules and was therefore cancelled and this was

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rectified by the notification dated 26.02.1997. They therefore contend that there is no controversy with regard to the promotional channel and there is no need to cancel the order dated 26.02.1997.

4. Shri K.P. Singh further submits that the promotional channels issued by the Railway Board dated 26.02.1986 and 03.06.1987 were replaced by the AVC Scheme issued on 06.03.1992. The channel of promotion prior to 06.03.1992 was Khalasi-Helper Khalasi-Train Lighting Fitter Grade III-Train Lighting Fitter Grade II-Train Lighting Fitter Grade I. However, after 06.03.1992, the channel was Khalasi-Helper Khalasi-Battery Man Grade III-Train Lighting Fitter grade III-Train Lighting Fitter Grade II-Train Lighting Fitter Grade I. Shri Pramod Kumar Johari and Shri Subhash Babu Saxena passed the Trade Test and were promoted as Battery Man Grade III/Train Lighting Fitter Grade III on 13.12.1989 and 06.12.1989, whereas the applicant was promoted as Train Lighting Fitter Grade III on 04.02.1993. The respondents therefore contend that Shri Johari and Shri Saxena are therefore to be governed by the channel of promotion obtaining prior to 06.03.1992, while the applicant is governed by the channel of promotion after 06.03.1992. Since Shri Johari and Shri Saxena were promoted earlier than the applicant. They were ranked higher in the seniority list (for promotion to Train Lighting Fitter Grade II) than the applicant. The action of the respondents Shri Singh contends were well within the existing rules of the department hence there being no illegality in the seniority list dated 26.02.1997, the case of the applicant is without any basis and he is not entitled to any relief as prayed for and the O.A. deserves to be dismissed.

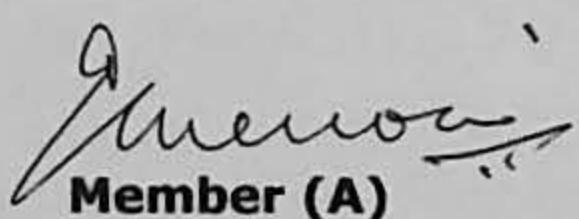
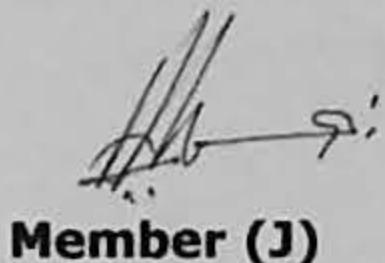
5. Heard, Shri T.S. Pandey, learned counsel for the applicant and Shri K.P. Singh, learned counsel for the respondents and examined the pleadings on record.

6. The respondents admit that the notification dated 30.01.1997 was not in accordance with the rules, it was therefore cancelled. It appears that Shri Pramod Kumar Johari and Shri Subhash Babu Saxena, who the applicant claims were junior to him, had been promoted to Battery Man Grade III prior to 06.03.1992 at that time the channel of promotion was from Battery Man Grade III to Train Lighting Fitter Grade II, and based on Shri Johari and Shri Saxena's representation, their seniority was fixed. The applicant passed the trade test on 04.02.1993 i.e. after the channel of promotion dated 06.03.1992. It is therefore

evident that although the applicant joined service prior to Shri Johari and Shri Saxena, he got his promotion to the Train Lighting Fitter Grade III, which is the feeder grade for promotion to Train Lighting Fitter Grade II much after Shri Johari and Shri Saxena. Therefore, there appears to be no irregularity in the action of the respondents in canceling the notification dated 30.01.1997 and issuing the revised notification dated 26.02.1997 in which the applicant has been shown as junior to Sri Johari and Sri Saxena. Rectification of a notification does not call for opportunity to be given to the applicant by the respondents. The representation of the applicant dated 20.04.1997 has apparently not been received by the respondents as averred in paragraph No.12 of the counter affidavit. This is also borne out by the fact that the applicant in his reminder representation dated 29.05.1998 has referred to his earlier representation dated 21.04.1998 and 27.04.1998 and not representation dated 20.04.1997. Respondents have only received the applicant's representation dated 29.05.1998 which has been replied to by the respondents vide their letter dated 10.07.1998 (annexure CA 2).

7. The applicant has not been able to make out a clear cut case in his favour and the O.A. is, therefore, devoid of merit and deserves to be dismissed.

8. The O.A. being without any merit is accordingly dismissed. No costs.

  
Member (A)  
Member (J)

/M.M. /