

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 6 day of Feb 2006.

Original Application No. 966 of 2000.

Hon'ble Mr. K.B.S. Rajan, Member (J)
Hon'ble Mr. A.K. Singh, Member (A)

Bachcha Jha, S/o Sri Rajendra Jha,
Electric Tuner, CTFO (LR), N.R.
MUGHALSARAI.

.....Applicant

By Adv: Sri A. Rajendra

V E R S U S

1. The Union of India through
Divisional Railway Manager,
ALLAHABAD.
2. The Divisional Personnel Officer, N.Rly.,
ALLAHABAD.
3. The Divisional Electric Engineer (RSO),
Northern Railway,
ALLAHABAD.

.....Respondents

By Adv: Sri Govind Saran

O R D E R

By K.B.S. Rajan, JM

This is a second round of litigation. Earlier
the following orders were passed:-

".....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 the
Hon'ble Supreme Court in the case of **Ram**
Narain Singh. We have been informed by
the departmental representative that on
such a re-determination of the seniority a
large number of convertees who have
already advanced several steps in the
Electrical Side would face reversion
resulting in not only hardship to such

individuals but also functional problem in running the Locomotive. We, therefore, provides that on such re-determination of seniority, the persons who have already been promoted to the higher grades in Electrical Side, shall not be reverted but their subsequent advancement to still higher grades shall be dependent on such 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."

2. Facts of the case are as under:-

- a. The applicant was directly recruited as Assistant Electrical Driver in the year 1988 and since the Steam side became dying cadre was allowed to be absorbed in Diesel side and his seniority is to be counted on the basis of the length of service in Diesel Side.
- b. The respondents prepared a seniority list dated 07.10.1993 of the incumbents working on the post of Assistant Electrical Drivers in such way that those who ~~were~~ joined in that post from Diesel side much earlier were placed below the convertees Fireman A & B who had joined much later in the cadre of Assistant Electric Driver. This resulted in the subsequent inductees' becoming senior to the applicant consequent to which they got promotion in the Electric side earlier than the applicant. It was against such illegal seniority and consequent promotion that the applicant filed the OA No. 1024/95, which was decided on the above terms.
- c. Against the aforesaid judgment, respondents moved the Apex Court which had upheld that the inter-se seniority shall be determined on the basis of entry in the electric side.

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d. The seniority list of-course, was revised to the satisfaction of the applicant, but their grievance is that since those who were not to be promoted had been promoted, it resulted in an anomalous situation of junior drawing more pay; hence this O.A. for a relief to the extent that the applicant's pay be stepped in the scale of pay of 4000-6000 at par with their juniors w.e.f. 16.6.95 and arrears be paid. Similarly stepping of was sought for further promotion as well.

3. The respondents have contested the O.A. According to them, the Tribunal's order had been complied with and as such the applicant is not entitled to any further relief.

4. Rejoinder to the Counter Affidavit has also been filed, reiterating the contents of the O.A.

5. Arguments have been heard and the documents perused. The case of the applicant cannot be said to come under the category of stepping of pay under the normal Rules. By certain misconception in allotting seniority, certain juniors had been given promotion to the exclusion of seniors. And on the applicant's moving the Tribunal correct interpretation of Rules relating to seniority has been given by the Court. The Tribunal has stalled further undue promotion to the juniors and the applicant's grievances were as such redressed.

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6. Rule 228 of the IREM deal with erroneous promotion and while rectifying the error in promotion the following procedure shall be followed:-

"Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-à-vis they are juniors already promoted, irrespective from the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual payment. No arrear to this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher post."

7. The above clearly shows that the applicant would be entitled only to proforma fixation of pay and no arrears shall be paid.

8. The above rule being mandatory, the respondents ought to have while implementing the order of this Tribunal worked out the pay of the applicant at par with his juniors and fixed the pay accordingly and this has not been done. Unless this is done, the junior would be perpetually drawing more pay than the seniors although their life which would be totally unreasonable and would demoralize the senior i.e. the applicant. The applicant is, therefore, entitled to fixation of pay on proforma basis at the stage which the juniors to the applicants were enjoying on account of their erroneous promotion. The applicant would be entitled to higher pay on actual basis from the date he was promoted to the



respective post. The respondents are, therefore, directed to compare and contrast the pay of the applicant with that of his juniors and make up the difference between two on notional basis and fix the pay accordingly. Annual increment corresponding to the fixation of pay should also be afforded to the applicant again on proforma basis and from the date he was actually promoted, his pay should be worked out and arrears of pay resulting thereof shall be paid to him. To this extent, the O.A. is allowed with a further direction that this exercised shall be completed within a period of 4 months from the date of communication of this order. No costs



Member (A)



Member (J)

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