

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

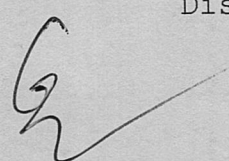
ALLAHABAD BENCH : ALLAHABAD

Original Application No.1030 of 2000.

Allahabad, this the 5<sup>th</sup> day of Oct, 2005.

Hon'ble Mr.K.B.S. Rajan, Member-J

Hon'ble Mr.A.K. Singh, Member-A


1. Balgovind Pandey,  
S/o Sri Rudra Narani Pandey,  
R/o H.No.632, Adarsh Nagar Colony,  
Post- Bharatpur, District- Gorakhpur.
  2. Prahlad Singh,  
S/o Sri Rudal Singh,  
R/o Village- Katka,  
Post-Gadar, District- Gorakhpur
  3. Keshav S/o Sri Shitalu,  
R/o Village-Jodhpur Sukhai,  
Post-Sardar Nagar,  
District - Gorakhpur.
  4. Harish Chandra Singh,  
S/o Sri Ram Sakal Singh,  
R/o Village - Sahupar (Mahdeva),  
Post-Bhatni, District-Deoria.
  5. Ram Prasad S/o Sri Kalpu,  
R/o Village- Farenda Bujurg Tola,  
Post -Lok Vidya Peeth Nagar,  
District - Maharajganj.
  6. Bhikari S/o Sri Abhilakh,  
R/o Village- Mathura Nagar,  
Post-Anand Nagar,  
District - Maharajganj.
  7. Bansi S/o Sri Jag Nandan,  
R/o Village- Chhatahara,  
Post- Shohraqt Garh,  
District-Siddarth Nagar.
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8. Rama Kant Singh,  
S/o Sri Kalpa Nath Singh,  
R/o village-Mohanpur,  
Post-Sukrauli Bazar,  
District- Kushi Nagar (Deoria).
9. Mohammed Ishaq Khan,  
S/o Sri Modi Khan,  
R/o village -Patra Bazar, P.S. Pipraich,  
District - Gorakhpur.
10. Basdeo Mishra,  
S/o Sri Mahatam Mishra,  
R/o village- Kasia,  
Post-Hotalapur,  
District- Kusi Nagar.
11. Giri Shankar Lal,  
S/o Sri Govind Saran Lal,  
R/o Mohalla- Jagarnathy Pur,  
Post- Sadar, District- Gorakhpur.
12. Ali Hussain S/o Sri Kallo,  
R/o Mohalla- Jafarabad,  
Post- Sadar,  
District- Gorakhlpur.
13. Ram Chandar S/o Sri Kuntraaj,  
R/o village- Makhnaha,  
Post-Peepee Ganj,  
District- Gorakhpur.
14. Vijay Kumar Sharma,  
S/o Sri Krishna Kumar,  
R/o Q. No.48, Bauila Railway Colony,  
District- Gorakhpur.
15. Hariram S/o Sri Sri Bhulli,  
R/o village - Kaspa Sarah,  
Post - Gangi Bazar,  
District-Gorakhpur.
16. Lalhji Ojha,  
S/o Sri Bhawani Sankar Ojha,  
R/o Mohalla- Jagarnath Pur,  
Post- sadar, District- Gorakhpur.
17. Sarvajeet S/o Sri Ram Adharey,
18. Ram Kishore S/o Sri Ram Samujh,





- R/o Village - Harpur,  
Post- Lejar Mahadeva,  
District -Maharajganj.
19. Vijay Prakash S/o Sri Sukhdeo,  
R/o village - Ahirauli,  
P.S. Salempur, District - Deoria Sadar.
20. Matiullah S/o Sri Hulasi,  
R/o village -Fatehpur, Near Medical College,  
Post- Jhnugia Bazar, District- Gorakhpur.
21. Hari Prakash Tripathi,  
S/o Sri Mahadeo Tripathi,  
R/o 'Tripathi Sadan', Mohalla- Jafarabad,  
Post-Sadar, District - Gorakhpur.
22. Shambhoo Prasad, S/o Sri Muneshwar Prasad,  
R/o Mohalla- Mohaddipur, Behind Shree  
Talkies, post - Mohaddipur,  
District - Gorakhpur.
23. Ram Lalit Pandey S/o Sri Ram Ugrah Pandey,  
R/o village - Harraiya Molai, post - Brijman  
Ganj, District - Maharajganj.
24. Surendra Kumar Pathak,  
S/o Sri Ram Pyare Pathak,  
R/o village - Mukhlisipur, post- Siktar,  
District- Basti.
25. Phaujdar Singh S/o Sri Mata Badal,  
Village - Semariya, post - Kusmi Bazar,  
District-Gorakhpur.
26. Arunakar Dubey S/o Sri Gunakar Dubey,  
R/o H. No.574-F, Bichhiya Colony, Gorakhpur.
27. Bipat Prasad S/o Sri Sukkhu,  
R/o village - Kusmar, Post- Ghagharsa,
28. Radheshyam S/o Sri Lal Bahadur,  
R/o village - Gopalpur,  
Post - Mahanwan Khor,  
District - Gorakhpur.
29. Gulab Chand S/o Sri Babu Nandan,  
R/o village - Siswan, Post -Bhatnki,  
District- Deoria.
30. Jai Karan Singh,  
S/o Sri Baldeo,  
R/o village - Rampur Kaithwaliya,
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Post - Peepee Ganj, District- Gorakhpur.

31. Indra Bhusan Ojha S/o Sri V.N. Ojha,  
R/o Mohalla - Jagarnath Pur,  
Post - Sadar, District - Gorakhpur.
32. Krishna Kishore Gupta,  
S/o Sri Ram Pyare,  
R/o Mohalla - Suryua Kund,  
Post - Sadar, District-Gorakhpur.

...Applicants.

(By Advocate - Shri B. Tiwari)

Versus

1. Union of India,  
Through General Manager,  
N.E. Railway, Gorakhpur.
2. Divisional Rail Manager (P),  
N.E. Railway, Lucknow.
3. Divisional Rail Manager (Mechanical),  
N.E. Railway, Lucknow.

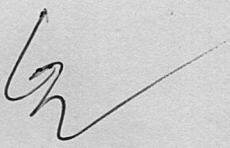
...Respondents.

(By Advocate - Shri K.P.Singh)

O R D E R

By K.B.S. Rajan, J.M.

This OA, apart from the relief claimed by the applicants, raises an important question of law as well i.e. "What is the purpose of seniority? and what is the privilege available to the senior?" Answer to this question is available in the judgment of the Apex Court in the following two cases:-





(a) **S.M. Bawankar v. Chief Officer, Municipal Council, Tumsar, (1999) 9 SCC 184** wherein the Apex Court has held as under:-

*"It is not in dispute that seniority is a relevant term which has reference to the class, category or grade regarding which an issue is raised."*

(b) Regarding the privilege available to a senior, the Apex Court in the case of **Bal Kishan v. Delhi Admn., 1989 Supp (2) SCC 351** had laid down the following law:-

**9. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralizing effect in service apart from being contrary to Article 16(1) of the Constitution.**

2. If the above law is pressed into service in the instant OA, accepting the contention of the respondents would lead only to injustice, of course, subject to clarification of one aspect, which is discussed in one of the following paragraphs. *(para 8) 1/2*

3. A silhouette of the facts of the case is necessary at this juncture and the same are given as under:-

(a) The applicants were Fitter Khalasi (Helper) at the material point of time in the grade of Rs 800 -1150 and were posted in Loco-Shed, Gorakhpur.

(b) A seniority list was published as early as on 25-07-1991 in which the applicants' names figured comparatively at a senior position.

*GH*



(c) As some of the Fitter Khalasi (Helpers) were rendered surplus, the respondents were to adopt the provisions relating to surpluses and absorption as contained in the Railway Board guidelines dated 21-04-1989 and as regards the method of adjustment of the surplus, para 4 and 5 thereof are relevant and the same are quoted below:-

Para-4 - In cases where the seniority of surplus staff is maintained separately, there could be cases where the few staff, who are left behind in the old seniority unit continue to get their promotion as per their seniority along with the other staff transferred to the new unit. To this extent it may happen that in some cases, where the number of the staff left behind in the old unit are small, minimum number of higher grade posts may have to be operated in excess of the percentages laid down so as to avoid transferring the staff left behind in the old unit. However, it shall be ensured that the total number of posts in each grade of the old unit taking into account those both left behind and transferred to the new unit, shall not exceed the original sanction.

Para-5 - Normally, the junior most of the employees should be rendered surplus, irrespective of the manner in which they had entered the grade. However, where staff give their willingness to go on bottom seniority in recruitment grades to other departments, such volunteers should be given preference depending upon the availability of vacancies in the other cadre and their suitability, including medical fitness.

(d) The applicants gave their option for the same vide averment in para 4.3

(e) The applicants found that some persons rank junior to them in the seniority list were all accommodated elsewhere, ignoring

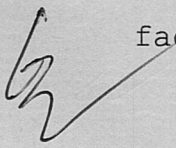


the option given by the applicants who were senior and further these persons were granted higher promotion as well in the grade of Fitter III.

(f) Representations filed by the applicants did not yield any fruitful result and hence, the applicants had filed this O.A. with inter alia the following prayer:-

- (i) to issue an order or direction commanding the respondents to give promotional benefit to the applicants w.e.f. 08.09.1999 in scale of Rs.3050-4590/- as Fitter Grade-III with all consequential benefits including arrears of pay and seniority.
- (ii) To issue an order or direction commanding the respondents to not to fill up vacancies of higher posts in scale of Rs.950-1500/- revised scale Rs.3050-4590/- and in scale of Rs.1200-1800/- revised scale Rs.4000-6000/- by transfer or promotion of outsiders except workers of Loco-Shop.

4. The respondents contest the OA. According to them, the applicants were not rendered surplus and they are working in the very same unit. Those whose services were shifted to the other unit belonged to the Carriage Section, while the applicants belonged to the loco section and hence, they cannot have any grievance over the carriage section fitter Khalasi (Helper) being either rendered surplus or their absorption elsewhere and further promotion. The respondents have not specifically denied, either the factum of the applicants' having given their option

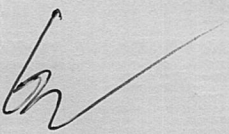




or the existence of seniority list in which the applicants were senior and those who had been absorbed and promoted as Fitter Gr. III as junior.

5. Arguments were heard and the documents perused. The counsel for the applicants had invited our attention to the Railway Board's guidelines dated 21-04-1989, followed by the fact of the applicants' having given their option, vide para 4.3, the reply of the respondents to the same as given in para 6 of the counter and the rejoinder of the applicants therefor, the seniority list at Annexure 4 and response to the same vide para 10 of the reply and submitted that when the applicants were senior, the respondents had ignored the option. The respondents had not followed any uniform method of dealing with the surpluses. The persons chosen were neither from the top of the seniority list nor from the bottom and the policy of pick and choose had been adopted and the same is illegal.

6. Per contra, the counsel for the respondents contended that those who were taken as surpluses and sent to other unit where they were promoted as Fitter Gr. III were "carriage fitters" and the applicants were "loco fitters" and that it is there has been no surplus in respect of loco fitters.





Hence, the applicants' claim is misplaced, contend the counsel.

7. We have given our anxious considerations to the facts of the case. The following are the admitted facts.

- (a) That in so far as dealing with the surpluses is concerned, the guidelines are as contained in the Railway Board letter dated 21-04-1989 (Annexure 1). And as extracted above, vide para 5 thereof, if any senior had preferred an option, he shall be preferred to any of the juniors who would have been rendered surplus.
- (b) The applicants had exercised their option.
- (c) There was a common seniority for loco and carriage fitters.
- (d) Those who were declared surplus and sent to other unit were all juniors to the applicants and they have been given promotion in fitter Gr. III, while the applicants who are seniors to them have not been promoted.


8. Where there is only one common seniority, rendering of surplus should be only from the said seniority and in accordance with the provisions of Para 5 of the guidelines on surpluses, when seniors exercise their option, they do have preference to others. In the instant case the applicants had exercised their option but the same had been ignored. Again, where there is only one seniority, there cannot be a class within the same, as seniority is a relevant term which has reference to the class, category or grade regarding which an issue is raised, as held by the Apex court in the

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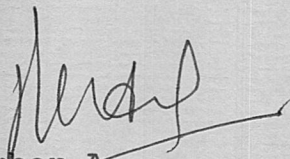
case of **S.M. Bawankar** (*Supra*). Even if the surpluses were from the bottom of the seniority list etc., once the question of promotion to Grade III Fitter is concerned, the seniority list of all the Fitter Khalasi (Helper) should have been considered. That alone would have been in accordance with the law laid down by the Apex Court in the case of **Bal Kishan** (*supra*). But the respondents have simply ignored this as well. Picking up some one not in accordance with the provisions of guidelines is one error and promoting them to the exclusion of the applicants who are senior to them is another error. Thus, viewed from any angle, the respondent's action in giving promotion to the juniors as Fitter Gr. III cannot be justified and nor can the grievance against the same, of the applicants be stultified..

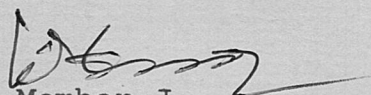
9. In the result, the OA succeeds. The respondents are directed to undertake the exercise of considering the applicants for promotion to the post of Fitter Grade III from the date their juniors had been promoted and fix their pay notionally from the date the juniors have been promoted and actually from the date of filing of this O.A. i.e. September, 2000. The difference in pay and allowance should be worked out and paid to the applicant within a period of eight months from the date of communication of this order. The respondents may create supernumerary posts for this purpose, and as





and when vacancies in the said grade of Fitter III occur, the supernumerary posts be wasted. If the juniors who were promoted as Fitter Gr. III were considered for further promotion, the applicants should also be so considered so that the juniors at no point of time steal a march over their seniors, as held by the Apex Court in the case of Bal Kishan. No cost.

  
Member-A

  
Member-J

RKM/