

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD

Dated: This the 20th day of May 2011

Original Application No. 230 of 2003
(U/S 19, Administrative Tribunal Act, 1985)

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. D.C. Lakha Member (A)

1. Shri A.S. Yadav Son of Late Ramadhar Yadav, aged about 58 years C.I.T. N. Rly. Allahabad.
2. Shri P.N. Ram S/o Late Sri Jagai Ram aged about 55 years, C.I.T./ Station Allahabad, R/o 91-CD, Loco Colony, Nawab Yusuf Road, Allahabad.
3. Shri R.S. Sajor S/o Shri Chhittan Ram, aged about 59 years C.I.T./ Northern Railway, Kanpur R/o 128/10 Kidwai Nagar, Kanpur.
4. Shri F. Kullu, S/o Shri T. Kullu aged about 46 years, E.I.T. Northern Railway, Tundla, District Firozabad.
5. Shri V.P. Singh S/o Shri S.M. Singh, aged about 59 years C.I.T. Northern Railway, Allahabad.
6. Shri K.B. Kala S./o Late C.N. Kala, aged about 38 Years C.I.T., Northern Railway, Allahabad.
7. Shri O.S. Gayatri, S/o Shri J.S. Gayatri, aged about 50 years C.I.T. Northern Railway Tundla, District Firozabad.
8. Shri D.P. Vishwas S./o Shri Janardan Biswas aged about 54 years C.I.T./ Northern Railway, Kanpur.
9. Shri M.P. Gaur, S/o Shri B.N. Prasad, aged about 51 years C.I.T. N. Rly, Allahabad.
10. Shri Mohd. Tarif S/o Late Mohd. Yakub, aged about 55 years C.I.T. N. Rly Allahabad.
11. Shri Prithvi Ram S/o Shri Bishuni Ram aged about 50 years, C.I.T. N. Rly, Allahabad.

..... **Applicants**

By Adv. : **Shri Sudama Ram**

V E R S U S

1. Union of India through General Manager, Northern Railway, New Delhi.
2. Divisional Railway Manager, Northern Railway, Allahabad.
3. Chief Personnel Officer, North Railway, Baroda House, New Delhi.
4. Senior Divisional Personnel Officer, Northern Railway, Allahabad.
5. Shri Rajendra Singh, S/o Shri Sukh Raj Singh, C.I.T., Northern Railway, Allahabad.

..... Respondents

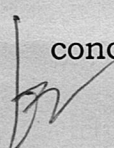
By Advs. : **Shri D.P. Singh**
 Shri Amrendra Singh

O R D E R

(Delivered by Hon'ble Dr. K.B.S. Rajan, Member-Judicial)

1. This case relates to clash between a substantial right and a concessional right to seniority - substantial in the sense that right to seniority by virtue of holding a particular post from a particular time, while concessional means a deemed seniority by virtue of being posted from another post or cadre on medical decategorization. The Applicant belongs to the former category of substantial right to seniority while the private Respondent enjoys the concessional right to seniority.

2. This case also involves a doubt whether the already settled position of seniority could be unsettled by virtue of concessional right to seniority granted to a private Respondent.



3. Briefly stated, the Applicants are all working as Chief Inspector of Tickets in the pay scale of Rs. 2000 – 3000 (6500 – 10500) from various dates ranking from 1984 to 1995. Their seniority as Chief Inspector of Tickets was published as early as on 14.05.1996 in which their seniority position ranked from Sl. No. 5 to 19 (Annexure A-3 refers).

4. Respondent No. 5 was also working as Goods Guard Grade-C in the erstwhile pay scale of Rs. 330 – 560 (1200 – 2400 later on, 4000 – 6000) He was medically decategorized on 14.10.1991 from the post of Goods Guard Grade-C and initially was offered the post of Catering Manager in the same scale by the Screening Committee, which he declined. Later on, in January, 1992 he was offered alternative appointment in the grade as Head Ticket Collector in the grade 1400 – 2300 (as he was entitled to reckon 30% of running allowances pay for posting in the Higher Pay Scale). While the said posting could not be questioned as the same is under alternative appointment, the dispute arises in respect of fixation of seniority. According to the Applicant, the services rendered in the previous post prior to decategorization will be reckoned and accounted for, in fixation of seniority in the alternative appointment only subject of fulfillment of certain condition which, inter alia, included that the cause of decategorization should be either accident or should be proximately related to the nature of service/functional responsibilities. When the decategorization is as a result of some natural cause, the benefit of seniority will not be available. Again, in so far as fixation of seniority is concerned, the same cannot be

above the applicants who have already been functioning as Chief Ticket Examiner and even in respect of Head Ticket Collector, they should be senior to the private respondent. According to the Applicant, law on fixation of seniority on medical decategorization is settled in the case of Sukra Ornam, Guard Mail, Grade 1400 – 2600, who was much senior and two grades higher than the 5th Respondents herein and while after medical decategorization, he was given an alternative appointment he was, however, denied the seniority in the alternative appointment with the benefit of past service (Annexure A-9 refers). In the case of Sukra Ornam (supra) according to the applicants, even the equivalent grade was not granted.

5. Grievances of the Applicant in this case is that by virtue of Annexure A-1, the 5th Respondent had been given the seniority above all the applicants by taking into account his date of entry in the service in his previous cadre prior to decategorization. Vide Annexure A-2 order dated 06.06.2003 a communication from the D.P.O. has confirmed that the private Respondent has been assigned correct seniority. Annexure A-3 is the seniority list wherein, the applicants were shown junior to the private Respondents.

6. The applicants are prayed following relief:-

- (i) the Hon'ble Tribunal may graciously be pleased to quash the impugned orders dated 13.2.2002 and 9.7.2002 (Annexure A-1 and A-2) and impugned order dated 6.6.2003 along with seniority list dated 11.04.2003 (Annexure A-2/A) and direct the respondents (1 to 4) to re-fix the seniority of the respondents no.5 from the date of entry of grade Rs.1400-2300 with effect from 6.1.1992 i.e. from the date of

absorption after medical de-categorization in Hd. T.C. Category.

(ii) Any other order or direction which the Hon'ble Tribunal may deem fit and proper under the circumstances may also be issued.

7. Respondents have contested the O.A.. According to Official Respondents, the 5th Respondents was absorbed as Head Ticket Collector (Grade 1400 – 2300) from 06.01.1992 on medical decategorization and was entitled to seniority in the Grade of Head Ticket Collector and was assigned the said seniority, from the date of his appointment in the Grade w.e.f. 18.07.1979 in accordance with the PS 7331 i.e. equivalent of grade of running allowance. His proforma promotion as Chief Inspector Tickets in the Grade 2000 – 3200 was made with reference to his junior, namely, one Shri R.V. Siddiqui as he qualified in the selection to the post of Chief Inspector of Tickets in the first time in the year 1995. Thus, the seniority was from 01.03.1993 notionally and 29.12.1995 actually.

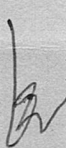
8. The private respondent in his Counter Affidavit stated that initially the respondents has not assigned the correct seniority to the said respondent and on his representation dated 30.07.1993 vide Annexure CA-1 the case was processed and the Applicant was granted seniority for the entire length of service as Goods Guard from the initial date on 30.06.1976 vide Annexure CA-2. His seniority has been interpolated in the seniority list of Chief Inspector Tickets which has been made strictly in accordance with relevant rules and by following the due procedure. The Railway Board itself has confirmed the seniority of the private Respondent

on his absorption in alternative post of TTE in the equivalent grade of pay in the wake of his medical decategorization which took into account the service rendered by him before his medical decategorization. The same is, therefore, in order. Annexure CA-6 refers.

9. The Applicant has filed the Rejoinder Affidavit reiterating his contention made in the original Application and has also relied upon the decision by the Bangalore Bench of the Tribunal (**M. Shankar v. Union of India & Ors**) 2002 (3) (CAT) AISLJ 135.

10. At the time of hearing, the counsel for the Applicant argued that the seniority offered to the private Respondents is against all norms of seniority and it is settled law that seniority from the date when the individual was not even in the cadre cannot be upheld. In this regard, he had relied upon the decision of the Apex Court in **Nani Sha & Ors v. State of Aruranchal Pradesh** 2008 (1) AISLJ 245.

11. In his written argument, Applicant has referred to the case of one **R.P. Tripathi v. Union of India & Ors**. In Writ Petition No. 11527 of 1982. Again as per Para 321 (B) of Indian Railway Establishment Code Vol. I Staff concerned may be allowed to represent about the assignment of their seniority position within a period of one year after the publishing of the seniority list. No



cases for revision in seniority lists should be entertained beyond this period.

12. Counsel for the Official Respondents had taken us through the Counter Affidavit and stated that the seniority assigned to the private Respondent is strictly in accordance with law.

13. There is no representation from private respondent nor was any written submission filed on his behalf.

14. The written arguments, pleadings and the arguments were considered. As stated, at the very outset, the issue is Substantial Right v. Concessional Right of seniority. As regards the applicants' seniority position, needless to mention that seniority as Chief Inspector of Tickets has to be reckoned from the date they have become Chief Inspector Ticket and they had been given the seniority w.e.f. 01.01.1984 (Applicant No.14) 14.12.1992 (Applicant No.6) 01.03.1993 (Applicant No.5, 7, 8. 9 and 11) and 01.12.1995 (Applicant No.10). The private Respondent entered into the cadre of Head Tickets Collector on 06.01.1992. Admittedly, in the Grade of Chief Inspector of Tickets in the pay scale of Rs. 2000 – 3200, the earliest date of seniority of the private Respondents as stated by him vide paragraph No. 3(D) of the Counter Affidavit is w.e.f. 01.03.1993 notionally and 29.12.1995 actually. Thus, those who have already been promoted to the said post of Chief Inspector of Tickets prior to 01.03.1993 cannot be made junior to the private Respondent. In so far as the Applicants

are concerned, other than Applicant No. 10 all these were granted seniority on 01.03.1993 or earlier. Those of the applicants whose date of promotion as Chief Inspector of Tickets was 01.03.1993 they entered the services of the Railways on the following dates:-

(a)	Shri F. Kullu	17.09.1976
(b)	Shri K.B. Kala	12.11.1987
(c)	Shri O.S. Gayatri	25.10.1975
(d)	Shri D.P. Vishwakarma	20.12.1977
(e)	Shri Mohd. Tarif	14.09.1967

15. The date of entry into the service by the Respondent No. 5 is 30.06.1996. In regard to the seniority of those, who had been promoted on 01.03.1993 including the private Respondent's notional promotion, the seniority may be fixed on the basis of their seniority in the previous post.


16. Viewed from the above, **all these applicants whose date of appointment is anterior to 30.06.1976 should be declared senior to the private Respondent.** Thus, the private Respondent's seniority could be above only in respect of Shri K.B. Kala (12.11.1987) Shri D.P. Vishwarkarma (20.12.1977) and Shri F. Kullu (17.09.1976).

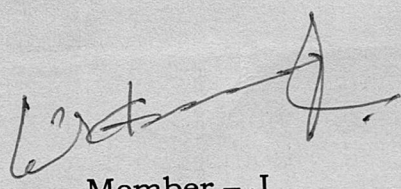
17. The above is the only way of fixing the seniority on the basis of the general rules that seniority is based on the date of joining the service. (Actual is real) The contention of the Applicant that the settled position of seniority cannot be upset or Para-321 of IREM stands good in the normal circumstances, but they are not applicable in the instant case as the case of seniority of private respondent is due to his having switched over from one cadre to

another on account of medical de-categorization. In view of the fact that the respondent could have no chance to agitate against the seniority prior to his absorption in the alternative appointment with seniority of 01.03.1993 on notional basis, his case cannot be brought under the above provisions of Para 321 IREM.

18. In view of the above, O.A. is disposed of with the following directions to the Respondents:-

- (a) The impugned seniority vide Annexure A-3 and impugned orders Annexure A-1 and A-2 are quashed and set aside.
- (b) It is declared that in respect of the applicants whose date of promotion as Chief Inspector of Tickets is anterior to 01.03.1993, they shall stand senior to the private Respondent. In so far as those Applicants whose date of promotion as Chief Inspector of Tickets is posterior to 01.03.1993 they would stand junior to the private Respondent. Seniority of those applicants whose date of promotion to the grade of Chief Inspector of Tickets is 01.03.1993 would be based on their seniority position as Head Ticket Collector/previous post.
- (c) The seniority list shall be suitably modified and the revised seniority list may be circulated to all concerned. Promotion to the higher post shall be based on the revised seniority. If during the pendency of this O.A. any promotion has been made on the basis of impugned seniority list, the same shall be reviewed with reference to the applicants and the Respondent No. 5 on the basis of revised seniority by way of a review D.P.C. and promotion be regulated accordingly. Consequential benefits arising out of such review D.P.C. including pay and allowances shall be admissible to the beneficiary concerned.
- (d) This order may be complied with within a period of six months from the date of communication of this order. No costs.


Member - A


Member - J

Sushil