

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

ALLAHABAD this the 5th day of APRIL, 2007.


ORIGINAL APPLICATION NO. 686 OF 2003

**HON'BLE MR. JUSTICE KHEM KARAN, V.C
HON'BLE MR. K.S. MENON, MEMBER- A.**

1. Pravin Kumar, a/a 48 years, S/o Sri V.N. Srivastava,
Posted as Station Superintendent, Northern Railway,
Phaphamau, distt. Allahabad,
R/o 17-A, Hasimpur, Allahabad.
2. I.A. Farooqui, S/o Sri I.A. Farooqui,
Posted as Assistant Programmer in the office of
Divisional Railway Manager, Northern Railway,
Lucknow.
3. S.K. Srivastava, a/a 49 years, S/o Sri K.P. Srivastava,
Posted as Chief Inspector in the office of Divisional Traffic
Training School, Northern Railway, Lucknow.
4. Mohd. Ali, a/a 49 years, S/o Sri Mohd. Ali, posted as Station
Superintendent, Lalgopalganj, under the Divisional Railway
Manager, Northern Railway, Lucknow.
5. S.P. Tiwari, a/a 46 years, S/o Sri Shitla Prasad Tiwari,
Posted as RestGiver, Station Supdt. Raebereli,
Under DRM, Northern Railway, Lucknow.

.....Applicant.

VER S U S

1. Union of India through the General Manager,
Northern Railway, New Delhi.
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2. The Railway Board, Rail Bhawan,
New Delhi through its Chariman.
3. The Divisional Railway Manager,
Northern Railway, Lucknow.
4. General Manager, Northern Railway,
Baroda House, New Delhi.
5. Sri J.K. Malhotra, posted as Additional Station Supdt.,
Northern Railway, Lucknow.

.....Respondents

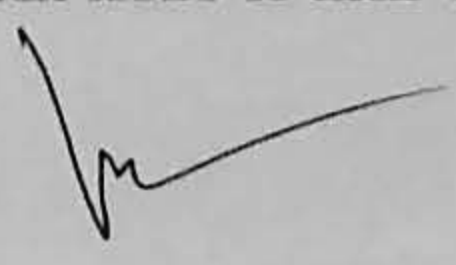
Counsel for the Applicant: Sri S.K. Mishra
Counsel for the Respondents: Sri Ravi Ranjan

ORDER

BY HON'BLE JUSTICE KHEM KARAN, VC.


The five applicants were directly recruited as Traffic Inspector against 15% quota in the year 1982 and thereafter were sent for 3 years training from 13.07.1983 to 12.07.1986, ^{and} thereafter they were posted as Assistant Station Master in the scale of Rs. 453-700 in August, 1996. There were five streams namely SM/ASM/TI/Station Controller/Assistant Yard Masters for absorption of those Traffic Apprentices. The respondent No. 5 and few others (in all 8) were selected in promotion quota of 10% and a panel was drawn for the post of A.Y.M in the grade of Rs. 453-700. The applicants contend in para 9 of the O.A that respondent No. 5 was promoted to the post of Assistant Yard Master vide order dated 07.04.1984 (Annexure A- 6) but before the order dated 07.04.1984, the Railway Board had already launched a scheme of restructuring vide circular dated 29.07.1983 (Annexure A- 7) and ^{at} ~~on~~ ^{at} that ~~on~~ ^{at} the time, the respondent No. 5 was not in the cadre of Yard Master. But vide order dated 18.05.1984 (Annexure A- 8), the office of DRM, Lucknow gave him the benefit of restructuring, by promoting to the post

of Yard Master in the Gr. Rs. 550-750 and that too before passing the P/16 A course and subsequently this was given notional effect from 01.08.1982 and actual effect from 01.03.1983 vide order dated 04.10.1985 (Annexure A- 9). The contention of the applicant in para 14 of the Original Application is that the respondent No. 5, who was not working in the cadre of Yard Master before 1984, could not have been given the benefit of restructuring, that too from back date i.e. 01.08.1982. Conscious of the fact they did not challenge those promotions of respondents ^{No. 5} for all these years, the applicants had to explain in para 14 ¹⁴ that at that time, they were not aware of it. In the meantime, these applicants (except 4 and 5) were promoted to the post of Station Master in the pay scale of Rs. 550-750 (revised 1600-2660) w.e.f. 15.05.1987 vide order dated 02.08.1991 issued pursuant to Board's Circular dated 15.05.1987 (Annexure A 10 & 11). Later on, the applicant No. 5 was also promoted in the scale of Rs. 550-750 w.e.f. 15.05.1987. There came another restructuring of cadre w.e.f. 01.03.1993 vide Board's Circular dated 27.01.1983 (Annexure A- 12) and in implementation of it, all the applicants were empanelled for promotion to the pay scale of Rs. 2000-3200 (earlier it was 700-900) vide order dated 23.11.1994 (CA- 13) and after passing of P/16A course, they were automatically promoted w.e.f. 01.03.1993. In due course, the respondent No. 5 ^{was} posted as Dy. Chief Yard Master and thereafter was promoted as Station Superintendent in the pay scale of Rs. 2375-3500. ⁴ The applicants state in para 21, this promotion of the respondent No. 5 was irregular in the sense that he had not passed the requisite P/16A or 7-14/13 Course. They say as soon as they came to know about undue favour shown to the respondent No. 5, they made a representation in September 1996 (Annexure A- 15) to respondents No. 1, 2 and 3 and since then issue of their seniority vis-à-



vis respondent No. 5 was under consideration and a lot of correspondence, as stated in para 25, 26, 27, and 28, took place. They say in para 29 and 30 that a confusion was created by citing the decision of Lucknow Bench of this Tribunal in O.A No. 91/1989 filed by Sri S.K. Srivastava (applicant No. 3 here). They have tried to say that the issue involved in that O.A was different and moreover, the respondent No. 5 was not a party to that O.A and the decision dated 31.01.1992 (Annexure A- 21) proceeded on the different ground. According to them, after considering all aspects of the matter, ADRM Northern Railway, Lucknow accepted the contention of the applicants and made up mind to resettle the seniority by putting them above respondent no. 5, so he issued order dated 02.05.2000 (Annexure A- 29), inviting objections, if any. A lot of objections were received against the change proposed in order dated 02.05.2000. After considering all these objection, various circular/orders on the subject and after considering the decision of CPO circulated through D.O. Dated 28.03.2000, the DRM passed a detailed order dated 24.07.2000 (Annexure A- 1), which is being impugned in this O.A. He held that the decision dated 02.05.2000 of the ADRM-II, Lucknow was not correct so he took it back . He found no force in the representation of the applicants. The applicants, then preferred an appeal to General Manager but before its outcome, they filed O.A No. 1314/2001, which this Tribunal disposed of vide order dated 05.11.2001 (Annexure A- 34) directing the General Manager to dispose of the appeal. The General Manager, Northern Railway rejected the appeal vide order dated 22.08.2002 (Annexure A- 2), which is also under challenge.

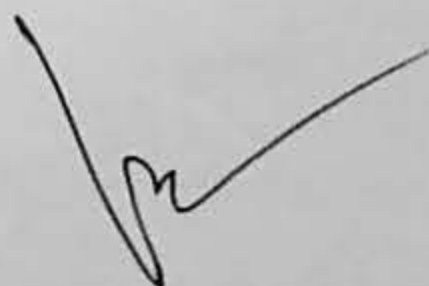
2. There appears to be two main grounds in O.A. One, their seniority in the cadre of Assistant Station Master should be reckoned from



13.07.1983 (the date when they were sent for training) in terms of para 308, 309 and 320 of Indian Railway Establishment Manual Vol. I and not from the date of posting ~~as such~~[§], in terms of para 302 of IREM. The second ground is that the respondents No. 5, who was appointed as Assistant Yard Master in 1984, ~~and was not member of that cadre before~~[§] that ~~that~~[§] could not have been given promotion as a result of restructuring of 1983, that too from 1982.

3. The respondent have contested the claim by filing written reply. According to them, since the claim of the applicant No. 3 for assigning seniority ~~of~~[§] directly recruited persons, over and above promotees, has already been rejected by the Lucknow Bench of this Tribunal vide its decision dated 31.01.1992 (Annexure A- 21) in O.A No. 91/1989 and since that decision has become final, so the O.A is barred by res-judicata and order 2 Rule 2 of CPC. They have also said in para 22, that validity of panel dated 27.09.1983 was upheld by the Apex Court. Relying on the Provisions of para 302[§] of IREM, they have tried to say that applicants' seniority has rightly been reckoned from the date of posting as Assistant Station Master. They have reiterated the reasoning given in order dated 24.07.2000 (Annexure A-1) and the GM's Order dated 22.08.2002 (Annexure A- 2) for giving the benefit of restructuring w.e.f. 1982 to the respondents No. 5 and placing him above the applicants.

4. We have heard Sri S.K. Mishra for the applicants and Sri Ravi Ranjan for the official respondents and have perused the entire material on record of this O.A.



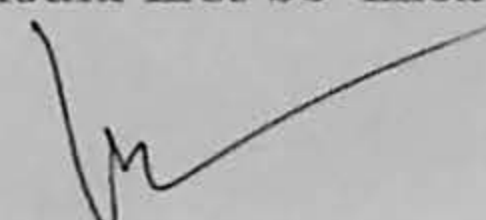
5. We are of the view that after the decision of Lucknow Bench of this Tribunal in O.A No. 91 of 1989, filed by the applicant No. 3 and in view of the clear cut provisions contained in para 302 of IREM, the claim of the applicants for reckoning their seniority w.e.f. 13.07.1983 cannot be accepted. A close perusal of decision dated 31.01.1992 would reveal that the case of the applicant⁴ therein, was that directly recruited persons against 15% quota should be assigned seniority over and above promotees or promotion quota. It was also one of the point that training of promotion quota candidates could not have been cut to 12 months from 3 years. The official respondents defended their action by referring to para 302 of IREM. After quoting para 302, ^{The Tribunal} uphold^{^ < 4} the contention of respondents that seniority of direct recruits under 15% quota was rightly reckoned from the date of posting in terms of para 302. Perhaps, that O.A was not on the point that respondent No. 5 (here in this O.A) was wrongly given benefit of the restructuring. That point was developed later on, When the applicant No. 3 was attacking the seniority of promotees of 10% quota, ^{on} other grounds, as mentioned in the decision dated 31.01.1992, the ground that the respondent No. 5⁴ or similarly situated candidates of his panel, could not have been given the benefit of restructuring, could or ought to have been taken. We think principles of res-judicata or constructive res-judicata would come in the way of the applicants in raising this ground in this O.A.

6. In any case, Sri S.K. Mishra, the learned counsel for the applicants has not been able to explain, as to how para 308, 309 and 320 would be relevant in the context of the applicants' seniority in the cadre of Assistant Station Master. There is no dispute that the ^{induction} individuals to the cadre of Assistant Station Master etc was both by

direct recruitment as well as by promotion, so para 302 becomes applicable, as held by the Lucknow Bench of this Tribunal also. It is not the case that decision of Lucknow Bench of this Tribunal has been overruled by any other judicial pronouncement. We are of the view, ~~in view of what we have said above~~, there no need for further discussion on this point. So we repel the contention of Sri S.K. Mishra that the seniority of the applicants in the cadre of Assistant Station Master ought to have been reckoned from 13.07.1983, the date when they were sent for training and not from the date of posting after training.

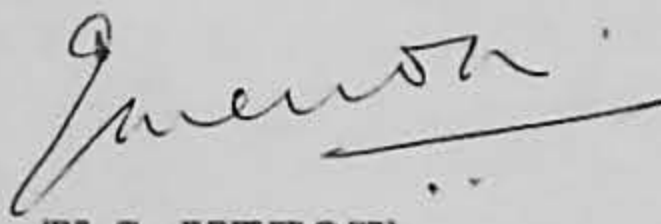
7. This takes to the next point, whether the respondent No. 5 could have been promoted to the post of Yard Master w.e.f. 1982, as a result of restructuring of 1983. Sri Mishra contended that the respondent No. 5 was promoted to the post of Assistant Yard Master vide order dated 07.04.1984 (Annexure A- 6) and earlier to it, he was not member of that cadre, then how he could have been promoted as Yard Master in the scale of Rs. 700-900 w.e.f. 01.08.1982 or 01.08.1983 vide order dated 04.10.1985 (Annexure A- 9), as a result of restructuring of 1983.

8. The DRM has dealt with this point quite at length in his order dated 24.07.2000 (Annexure A- 1) . He says, in Lucknow Division, a panel of 8 persons of promotion quota for the post of Assistant Yard Master was prepared on 07.09.1982 and out of these 8, five had already been given the benefit of restructuring w.e.f. 1979 pursuant to earlier such scheme made effective from 01.01.1979. The remaining ³ three could not be given benefit of that scheme of 1979 but later on, the Board issued a letter dated 23.04.1984 to the effect that all the restructured posts, pursuant to the scheme of 1983, should first be filled in from the



remaining persons of panel and in this way remaining three persons of that panel of 07.09.1982 were to be given the benefit. Views ^{has been} taken on page 10 (Annexure A-1) that in terms of the Board's letter dated 23.04.1984, these persons were to be assigned seniority over and above the persons to be filled under scheme of 1983. Sri S.K. Mishra, learned counsel for the applicant has not been able to show to us as to what is wrong in this reasoning of DRM. Perhaps, ADRM-II was not aware of relevant orders/decisions of the Board, when he passed the order dated 02.05.2000.

9. Moreover, we fail to understand as to how, after lapse of more than a decade of promotions of the respondent No. 5 in consequence of restructuring, to the post of Yard Master etc. can be successfully assailed. According to the applicants themselves, the issue was raised for the first time in representation of 1996 (see para 24 of O.A). They came to Tribunal first in 2001 and now in 2002. As stated earlier, this point was not raised by the applicants in O.A of 1989, therefore, they cannot be permitted to unsettle the settled ⁴ position, after lapse of decades. They are virtually stopped from doing so. Thus the O.A being devoid of merit is dismissed. Interim orders dated 19.09.2005 stands discharged with no benefit to the applicants. No order as to costs.


(K.S. MENON)
MEMBER- A.


(KHEM KARAN)
VICE-CHAIRMAN

/Anand/