

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 15/ day of November 2006.

Original Application No. 736 of 2003.

Hon'ble Mr. Justice Khem Karan, Vice-Chairman
Hon'ble Mr. P.K. Chatterji, Member-A

D.P. Joshi, S/o late T.D. Joshi,
R/o Village Bharatpur, Post Kaushal Ganj,
Distt: Rampur

. Applicant

By Adv: Sri S.K. Om

V E R S U S

1. Union of India through General Manager,
N.E. Railway,
GORAKHPUR.
2. Chief Personnel Officer,
N.E. Railway,
GORAKHPUR.
3. Senior Divisional Personnel Officer,
N.R. Railway, Izzatnagar,
BAREILLY.
4. Sri R.B.L. Chaturvedi, PWI Gr. I,
C/o Senior Divisional Personnel Officer,
N.E. Railway, Izzatnagar,
BAREILLY.

. Respondents

By Adv: Sri D.P. Singh.

O R D E R

By Hon'ble Mr. P.K. Chatterji, Member-A

The applicant, in this OA, was a Railway Employee working with the N.E. Railway. He retired in the year 2000. In this OA he has impugned the order of the respondents dated 08.06.2001 which was received by him on 07.05.2002 whereby the

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respondents rejected his representation to correct his seniority position. He was initially appointed on 24.06.1965 as an Apprentice Assistant PWI in the N.E. Railway against the **Work Charge Post**. One Shri S.N. Bajpai also belonging to Work charge Post was immediately senior to the applicant as he was also promoted first as PWI Grade II and thereafter, Grade I alongwith the applicant on 03.06.1981 and 01.01.1984 respectively, as stated by the applicant in the OA. It has been further stated by the applicant that the respondents time and again issued seniority list of Assistant PWI and, thereafter, PWI in which the place of the applicant immediately below Sri Bajpai was confirmed. The respondents issued another seniority list of PWI Grade III on 20.08.1987 wherein Sri Bajpai was shown at Sl No. 103, the applicant at Sl. No. 104 and one Sri R.B.L. Chaturvedi (Respondent No. 4 in this OA) at Sl. No. 112.

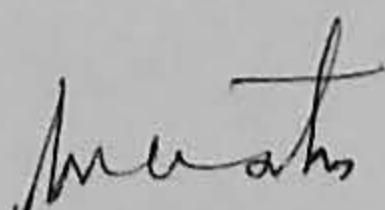
2. At this stage it would be pertinent to record that the OA was submitted beyond the limitation period. However, the tribunal, on considering the delay condonation application admitted the OA by its decision dated 04.09.2003.

3. It has been stated in the OA that before 1989 the post of PWI Grade I, II and III were all controlled by the Headquarters, Gorakhpur, but in

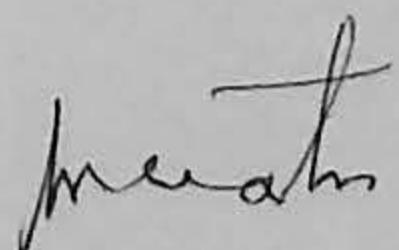
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1989 these were decentralized to the divisions. In the year 1993 another seniority list of PWI I was issued by the respondent No. 3 wherein Sri Bajpai, the applicant and the respondent No. 4 were shown at Sl. No. 12, 13 and 14 respectively. The applicant says that in this seniority list the date of promotion of Sri Bajpai and the applicant were shown as 01.01.1984 and that of respondent No. 4 as 05.01.1990. By all this affirmation the applicant has tried to bring out that respondent No. 4 Sri R.B.L. Chaturvedi was all along junior to him.

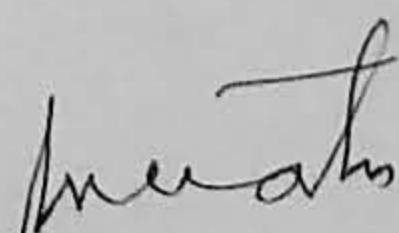
4. On 17.04.1997, the applicant was promoted as Chief PWI which is a centralized post at Headquarters Gorakhpur. While the applicant was working as Chief PWI, he came to know that on 15.01.1993 a combined integrated seniority list of the cadre of PWI, Bridge Inspector and Chief Draftsman etc were issued by the respondent No. 2, wherein Sri Bajpai, the applicant and respondent No. 4 were placed at S. No. 201, 202 and 204 respectively. The applicant further submits that Sri Bajpai made a representation in pursuance to the seniority list dated 15.01.1993 where after it was corrected and in the corrected seniority list dated 22.06.1994 the date of promotion of Sri S.N. Bajpai as PWI I was shown as 01.01.1984/17.02.1990 and his position was rectified from Sl. No. 209 10 169. On the other hand the position of the applicant



continued to be shown at Sl. No. 204 and date of promotion was shown as 01.01.1984/01.03.1993. The applicant feels aggrieved that while both of them were upgraded as PWI from the same date i.e. 01.01.1984, in this seniority list the position was distorted. Not only that in the seniority list dated 22.06.1994 the date of promotion of respondent No. 4, as PWI, was mentioned as 01.02.1990/01.03.1993, whereas the applicant was shown as 01.01.1984/01.03.1993. The applicant objects to this for the reasons that he was promoted as PWI I much before respondent No. 4. The seniority list this portrayed a wrong picture by showing common date i.e. 01.03.1993. The contention of the applicant is that from initial appointment and through out his career the respondent No. 4 was junior to the applicant and for this reason the seniority position thus shown was factually incorrect. The applicant has tried to impart more credibility and force to his contention by saying that on 11.09.2000, the respondent No. 2 made some querries from respondent No. 3 as to how in the selection held in the year 1990 Sri Bajpai and the applicant were not called and officials who were junior to them i.e. Sri Chaturvedi and Sri Brijesh Kumar Gupta were called. This goes to show that respondent No. 3 made a mistake with regard to his seniority vis-à-vis that of respondent No. 4.

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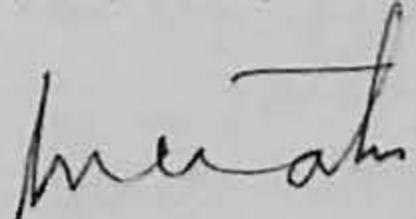
5. After his retirement the applicant sent representations and finally it was disposed of by the respondents who by their letter dated 08.06.2001 turned down the request of the applicant. The applicant was then retired and living in his village and the letter it reached him much later as stated. The applicant has challenged this order on the ground that respondent No. 4 was all along junior to him so he could not be promoted prior to the applicant and the date of promotion to PWI Grade I of respondent No. 4 cannot be equated with that of the applicant. He further contends that seniority lists dated 15.01.1993, 22.06.1994 and 02.09.1994 were never issued to him to enable him to make representation and correct his position in the same way as Sri S.N. Bajpai. Moreover, Sri Bajpai and the applicant were through out treated as confirmed PWI and for this reason holding the selection for the post of PWI I for the year 1990, Sri Bajpai and the applicant should not have been left out. Even if for the sake of arguments the respondents are correct in adopting the principle of regularization as one to one principle, the applicant should have been considered for promotion before Sri R.B.L. Chaturvedi i.e. respondent No. 4. The applicant is severely aggrieved that the respondent No. 4 was again promoted as PWI I before the applicant, although the former was much junior.

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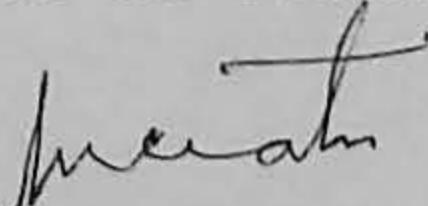
6. The relief sought by the applicant are as follows:

- a. Issue a writ, order or direction in the nature of certiorari quashing the letter dated 8th June, 2001, passed by the respondent No. 2.
- b. Issue a writ, order or direction in the nature of mandamus commanding the respondents to treat the petitioner as PWI (Grade-I) w.e.f. 01.01.1984 and grant all the consequential benefits including the fixation of pay and other terminal benefits.
- c. Issue any other suitable writ, order or direction as this Tribunal may deem fit and proper under the facts and circumstances of the case.
- d. Award cost to the petitioner throughout of the petition.

7. The respondents have denied the allegations of the applicant in toto. Firstly, they have rejected the contention made by the applicant that the respondent No. 4 was promoted as PWI I before the applicant. They have categorically asserted that at on stage the respondent No. 4 was treated as senior to or given promotion before the applicant. They have also explained the reasons as to why the position of Sri S.N. Bajpai vis-à-vis that of the applicant who were next to each others, started changing after seniority list of 22.06.1994. The



respondents have denied that it is due to denial of opportunity to the applicant to have his seniority rectified by representation, while Sri S.N. Bajpai was lucky to have it done. The respondents submit that it is not due to any rectification of errors in the seniority list. They have stated that the applicant has not correctly appreciated the difference in treating that the regular PWI's and the Work charge ones in the matter of promotion/up-gradation through restructuring. The Railway Board while directing the restructuring had laid down that work charge post should be excluded. However, the General Manager, N.E. Railway had directed that while restructuring of Technical Supervisor work charge posts should also be taken into account. The respondents affirm at this stage it was due to this contradiction that that the respondent No. 2 wanted to know from respondent No. 3 as to why Sri Bajpai and the applicant were not called in the selection of regular PWI I. This, however, was explained by the respondents that after the confusion regarding treatment of work charge of PWI's were dispelled, this point was not further pressed and pursued. The inter-se-seniority and promotion in the cadre, however, was made strictly as per Railway Board's letter dated * and promotion of work charge supervisor are made on the principles of '**one in place of one**' whenever anyone junior to a Work Charge Supervisor is promoted. This was the reason



why the seniority position of Sri Bajpai with regard to the applicant got changed as Sri Bajpai had to be promoted as soon as the person immediately junior to him in the regular PWI Grade got his promotion, Sri Bajpai automatically had to be promoted. Likewise the applicant also being a Work Charge Supervisor would be considered when ever his turn comes in the principle of one in place of one.

8. *The respondents have categorically denied that respondent No. 4 was ever treated as senior to or promoted before the applicant.*

9. There are no complicated legal issues involved in this case. What has to be seen is whether legal rights of the applicant as an employee was ever infringed. This has to be judged by comparing the position of respondent No. 4 vis-à-vis that of the applicant, and of course keeping in mind - as the respondents tell us - that the applicant was a work charge PWI whereas respondent No. 4 was regular. The grievance of the applicant is that he was not considered for promotion at the appropriate time as per rules and respondent No. 4 was allowed to supersede him by being given promotion prior to him. It would appear clearly from the submissions made by the respondents that it is not so. The other confusion seems to have arisen due to the applicant's inability to comprehend and appreciate

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the difference between Work Charge Supervisors and the regular ones in the PWI cadre. The applicant has not called into question one in place of one principle as enunciated by the Railway Board on the basis of which his seniority and promotional matters have been processed. Therefore, we are not looking into this aspect. However, we are not convinced the respondents made any wrong interpretation and application of rules as far as the applicant is concerned or allowed the respondent No. 4 to gain any unfair advantage over the applicant dehors the rules.

10. For the reasons stated above the OA has no merit and the same is dismissed accordingly. No costs.

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Member (A)

V.C.

Vice-Chairman

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