

(RESERVED)

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

HON'BLE MR.A.K. GAUR , MEMBER (J).
HON'BLE. MRS. MANJULIKA GAUTAM, MEMBER (A).

Original Application Number. 240 OF 2006.

ALLAHABAD this the 20 day of 10, 2008.

R.K. Rai, a/a 49 years, son of Sri Pyare Lal, resident of A-60, Deendayal Nagar, near Bharat Mata Mandir, Sipri Bazar, Jhansi.

.....Applicant.

VE R S U S

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Jhansi.
3. Shri Shivendra Pratap Singh, Senior Section Engineer, Electric Loco Shed, N.C. Rly., Jhansi.
4. D.D. Prabhakar, Sr. Section Engineer, Electric Loco Shed, North Central Railway, Jhansi.
5. O.P. Devaliya, Sr. Section Engineer, Electric Loco Shed, North Central Railway, Jhansi.
6. K.R. Pachoria, Sr. Section Engineer, Electric Loco Shed, North Central Railway, Jhansi.
7. R.D. Bhargava, Sr. Section Engineer, IRCOMTECH, Gwalior.
8. Chandramani Tiwari, Sr. Section Engineer, Chief Electrical Engineer's Office, West Central Railway, Jabalpur.
9. Double Singh, Sr. Section Engineer, Electric Loco Shed, North Central Railway, Jhansi.

.....Respondents

Advocate for the applicant: Sri R.K. Nigam

Sri S.M. Ali

Advocate for the Respondents : Sri U.S. Mishra

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(b)

ORDERDELIVERED BY: HON'BLE MR. A.K. GAUR, J.M.

Through this O.A the applicant has claimed seniority over respondent No. 3 and his other juniors in grade Rs. 2375-3500/- for the purpose of consideration in Class II as per notification dated 17.09.2005 coupled with prayer for a direction to the respondents to give the benefit of seniority, pay fixation etc. from the date his junior counterpart namely Sri Shivendra Pratap Singh/respondent No. 3 was promoted.

2. Brief facts of the case are that the applicant belongs to Train Lighting Cadre while the respondent Nos. 3 to 9 belong to T.R.S. Cadre. In grade Rs. 425-700/-, the date of appointment of the applicant is 06.07.1978, whereas the respondent Nos. 3 to 9 were appointed during the period from 10.08.1978 to 20.06.1990. This clearly indicates that all the respondent Nos. 3 to 9 were appointed subsequent to the appointment of the applicant. On 08.09.1989, the applicant was promoted in grade Rs. 2000-3200/- (Rs. 6500-10500/- R.S.R.P.) in the same cadre of Train Lighting. Applicant has further pleaded in his O.A that a new cadre i.e. T.R.S Cadre emerged in Jhansi Division, which was ordered to be closed on 15.09.1990 due to establishment of Electric Loco Shed at Jhansi. Options were invited from the Electrical Supervisors working in different cadres with a view to man/operate various posts in new cadre i.e. T.R.S and especially in grade Rs. 2000-3200/-. The applicant was relieved to join A.C. Loco Shed, Jhansi under Sr. D.E.E (TRS), Jhansi vide letter dated 30.08.1990 (Annexure A-II and A-III of O.A). It is alleged that the applicant was allowed to join on 18.09.1990. It is evident from the record that the applicant was asked to join new cadre much prior to its closure on 15.09.1990 and it was also observed that the applicant shall be deemed to have joined on 14.09.1990 i.e. the date on which office order was issued by D.R.M., Jhansi.

2. The grievance of the applicant is that though the seniority list of T.R.S Cadre was published, but the name of the applicant was not shown therein. He was infact transferred to T.R.S cadre vide H.Q's letter dated 30.08.1990 and D.R.M's Letter dated 14.09.1990. A copy of seniority list circulated under letter dated 28.05.1992, not indicating the

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name of the applicant has also been filed as Annexure A- 4. As the applicant was duly relieved much prior to the closure of the cadre, he made a strong protest and submitted that the date of joining after the date of closure is immaterial. The D.R.M., Jhansi accordingly referred the dispute to headquarter office vide his letter dated 02.12.1993 (Annexure A- V of O.A). In this letter true position of prior relieving of the applicant has been depicted. In the letter of D.R.M dated 02.12.1993, the seniority of the applicant has been assigned w.e.f. 22.09.1990. The Headquarter's Office took a decision in the matter by observing that the applicant shall be deemed to have joined new cadre (T.R.S) prior to closure. Accordingly the name of the applicant was indicated at serial No. 12 A of the seniority list of TRS Cadre in grade Rs. 2000-3200/- above respondent No. 3.

3. In view of the decision of Headquarter dated 21.07.1994, the respondent No. 3 stood junior to the applicant. The final seniority list was published on 04.04.1996 (Annexure A-VIII of O.A) showing the name of the applicant at the top. According to the applicant, it is quite intriguing that ignoring the aforesaid position completely, the private respondent No. 3 and other junior counterparts have been promoted to grade Rs. 7450-11500/- vide office order dated 21.01.1994 granting pecuniary and other benefits w.e.f. 01.09.1993 in their favour. On 07.02.1994, the applicant filed a detailed representation indicating his protest to the official respondents (Annexure A-X of O.A). On the said representation of the applicant, order dated 21.07.1994 was cancelled and notice was given to the applicant inviting objection, if any, within a period of one month.

4. That applicant submitted his objection dated 18.04.1996 (Annexure A- 13 of O.A) but no decision at all was taken by the respondents till date. The respondent No. 2 issued seniority list of electrical Supervisors in grade Rs. 7450-11500/- vide letter dated 27.03.2003 and in this seniority list, the name of the applicant has been placed at Sl. No. 17, while his junior counterparts have been placed above him (at Sl. No. 8 to 16). Against the aforesaid wrong decision dated 27.03.2003, the applicant filed his representation dated 17.06.2003 (Annexure A-XV of O.A).

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5. The further grievance of the applicant is that his juniors have been promoted w.e.f. 01.03.1993 whereas the applicant has been promoted w.e.f. 01.08.1997.

6. In the reply filed by the respondents 1 and 2, it is submitted that the seniority list against which the applicant is aggrieved was issued as far back as on 25.03.1996 but he kept quiet for such a long time and woke up from slumber after an inordinate delay of about ten years and as such the O.A is liable to be dismissed on the ground of delay and latches.

7. According to the respondents, the applicant joined T.R.S cadre on 22.09.1990 i.e. after the closure of cadre while the respondents 3 to 9 resumed duties much prior to the closure of cadre and as such they were included in the seniority list of 28.05.1992. It is nowhere mentioned in the letter of the respondents that the applicant was relieved prior to closure of T.R.S cadre. Vide letter dated 21.07.1994, the issue regarding assignment of seniority of the applicant was examined and decision was taken on the issue by the Headquarter Office in favour of the applicant by holding that the applicant shall be deemed to have joined T.R.S cadre prior to its closure, but infact the applicant joined T.R.S. Cadre on 22.09.1990. On the basis of the above decision, the applicant's name was placed above the name of private respondents in the seniority list dated 04.04.1996. Objections were raised against the said action of the respondents and the Union raised serious objection with regard to the assignment of the seniority to the applicant. This issue was re-examined in terms of para 2 of the Headquarter Letter dated 14.01.1990 (Annexure A- 3 to the O.A), which reads: -

" It has also been decided that the employees, who were found suitable in the earlier screenings and have not yet joined TRS/ cadre for various reasons will not be accepted in TRS/JHS cadre irrespective of reasons for not joining TRS/JHS cadre till now. The staff further willing for come to this cadre will be allowed as per extant Rules."

8. The applicant filed Supplementary Affidavit alongwith Rejoinder Affidavit. Nothing new has been added therein.

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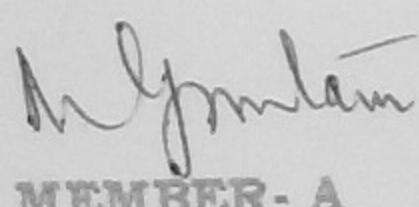
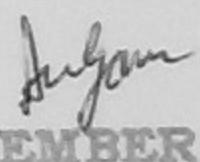
9. We have heard Sri R.K. Nigam, learned counsel for the applicant and Sri U.S. Mishra for respondents 1 and 2.

10. Learned counsel for the applicant contended that the Headquarters office admitted that since the applicant was relieved before the closure, he should be assigned seniority over and above respondent No. 3. Learned counsel for the applicant further submitted that the applicant is senior to the private respondents in all respect, therefore, in any view of the matter, the applicant deserves to be placed above his junior counter part Sri Shivendra Pratap Singh, otherwise due to his wrong placement in seniority list, he will be deprived of right for consideration for promotion in Class II cadre. The respondents have committed serious breach of Article 14 and 16 of the Constitution of India.

11. The learned counsel for respondents 1 and 2 on the other hand vehemently argued that the O.A has been filed challenging the seniority, which has been fixed as far back as on 25.03.1996, and the same was never challenged by the applicant within reasonable time. The applicant is challenging gazette Notification dated 17.09.2005, which has been based on the fixation of seniority of 1996 and as such the claim of the applicant in the present O.A is excessively time barred and is misconceived. According to the respondents, the applicant has no right to challenge the fixation of seniority dated 25.03.1996 after the lapse of more than 10 years in 2006. In support of his contention, learned counsel has placed reliance in the case of **B.S. Baweja Vs. State of Punjab and Ors 1998 (2) SCC page 523**, in which Hon'ble Supreme Court has clearly held that the question of seniority cannot be re-opened after lapse of long time. It has further been contended on behalf of the respondents 1 and 2 that the time prescribed for joining T.R.S cadre on or before 15.09.1990. As the applicant joined TRS Cadre on 22.09.1990 i.e. beyond 15.09.1990, therefore, his seniority has been assigned below the persons, who had joined TRS cadre upto 15.09.1990. Reliance has also been placed in the case of **H.K.P. Sudhakaran Vs. State of Kerla 2006 SCC (L&S) 1105**, wherein it has been held that the question of seniority, which was settled long back, should not be unsettled after lapse of several years.

12. We have carefully seen the record and found that the applicant joined T.R.S Cadre on 22.09.1990, whereas the time prescribed to join T.R.S Cadre was only upto 15.09.1990. As the applicant joined T.R.S. Cadre much after the cut off date, his seniority has rightly been fixed below the persons, who had joined upto 15.09.1990. The private respondents resumed their duties prior to closure of the cadre and therefore, their names were entered in the seniority list dated 28.05.1992 and the name of the applicant was not included therein. There is not an iota of evidence to indicate that the applicant was relieved prior to the closure of T.R.S Cadre. It is also amply clear from the record that the applicant was not promoted vide order dated 21.01.1994 being junior. He has been promoted in the grade Rs. 2375/3500/- (RSP) vide letter dated 01.08.1997 according to his seniority position as decided vide letter dated 02.01.1996 and 25.03.1996. The decision regarding change in assignment of seniority of the applicant was taken vide letter dated 02.01.1996. The earlier decision was changed and the applicant was informed accordingly vide letter dated 25.03.1996. In our considered opinion, repeated representation will not extend the period of limitation. The applicant has made an unsuccessful attempt to get settled position unsettled after a long lapse of time, which is totally against the settled principle of law.

13. In view of the above discussions and observation, we find no merit in the O.A and it is accordingly dismissed with no order as to costs.


MEMBER - A
MEMBER - J.

/Anand/