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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

O.A No. 258 /2006

, this the 30th day of November, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR SHASHI PRAKASH, ADMINISTRATIVE MEMBER

Mohd. Shafiq, S/o Mohd. Siddiq, at present working as
Driver(Goods), North Central Railway, Kanpur.

- Applicant

(By Advocate Mr Satish Mandhayan

v.

1. Union of India, through General Manager,
North Central Railway, Allahabad.
2. Divisional Railway Manager,
North Central Railway, Allahabad.
3. Senior Divisional Personnel Officer,
North Central Railway,
Divisional Railway Manager Office, Allahabad.

- Respondents

(By Advocate Mr Anil Kumar)

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The applicant was appointed as a Cleaner in the year 1977 in the Railways in the pay scale of Rs.196 – 232. He got his promotion as First Fireman in the pay scale of Rs.260 – 490 which was subsequently replaced by the pay scale of Rs.950 – 1500 w.e.f. 1st January, 1986. The

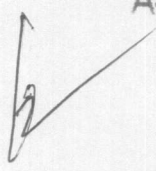
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same pay scale is available even in respect of certain parallel posts such as Diesel Assistants and Electrical Assistants.

2. During mid-80s, electrification of railways was in full swing consequent to which the Diesel as well as steam side were slowly eroding. Initially, not many Electrical assistants were available directly. The respondents, therefore, resorted to shifting the first Fireman and their counterparts in the Diesel side on their passing the requisite trade tests as well as clearing mandatory training attached to such promotions. The applicant was given training of the Diesel Assistants and had duly qualified successfully during the training from March to May 1984. He was put on the Diesel side as Diesel Assistant by order dated 9 February 1989 along with certain others. Annexure A-2 refers.

3. After first of January 1987, direct recruitment to the post of Electrical Assistants began. By that time, the common seniority of first Fireman, Diesel Assistants and Electrical Assistants was already in vogue. The applicant was sent to the Electrical side on 23rd of March 1991 but designated as Diesel Assistant. By the time he also completed the training as for Electrical Assistant as well.

4. In the combined seniority as on 4th July 1991 the applicant figures at serial No. 1078. One Mr. S.M. Hasan was above the applicant and one Shri S.L. Pandey next below to the applicant in the seniority list. Annexure A-4 refers.



5. The applicant was promoted as Driver in the pay scale of Rs 1350 - 2200 in September 1995. As this was a selection post, the seniority was recast and the applicant figures in at S.No. 62, here again sandwiched between the aforesaid two individuals. Annexure 5 refers. The pay scale of Rs.1350 - 2200 has been revised to Rs 5000 - 8000. According to the applicant, for all practical purposes, he is of 1995 batch. However, the next higher pay scale of Rs.5500 - 9000 was granted to the subsequent 1996, 1997 and 1998 batches and the applicant was left high and dry. Order dated 18 August 2005 Annexure A-1 (impugned) refers. It is the case of the applicant that by the impugned order dated 18 August 2005 (Annexure A-1) juniors have stolen a march over the applicant who is senior. Hence this OA claiming the following reliefs:-

- (i) To issue a writ, order or direction in the nature of certiorari quashing the order dated 18.8.2005.
- (ii) To issue a writ, order or direction in the nature of mandamus commanding the respondents not to give effect the order dated 18.8.2005 unless and until the applicant is granted the said upgraded pay scale of Rs.5500-9000.
- (iii) To issue a writ, order or direction in the nature of mandamus commanding the respondents to accord him due seniority above all those who named in the order dated 18.8.2005 as all are of 1996, 1997 and 1998 batch, whereas the applicant belongs to 1995 batch and his name ought to be placed between Shri S.M.Hasan and Shri S.L.Pande.
- (iv) To issue such other and further order or direction which this Hon'ble Tribunal may deem fit and proper in the nature and

circumstances of the present case.

6. Respondents have contested the OA. They have first referred to OA No. 1024 of 1995 filed by one Shri R.K. Singh and 13 others vs Union of India and 51 others and another OA No. 1118 of 1997 (P.S. Srivastava and others vs Union of India). The subject matter in the above two O.As was seniority of the applicants therein (who were direct Recruit Asst. Electrical Drivers) and others who were in the grade of Fireman A/B in the steam side and Diesel Assistant in the Diesel side but who were subsequently brought over to the Electrical side by process of conversion. The Tribunal relied upon two judgments of the Apex Court – (a) **Rama Kant Chaturvedi and others vs Divisional Superintendent, Northern Railway, Moradabad & Others** and (b) **South Eastern & Others vs Ram Narayan Singh & Others** in Spl. Appeal No. 2530 of 1981, which were on the same issue and ultimately held in the two O.As as under:-

"In view of the foregoing discussions we direct the respondent that the promotion from the post of Assistant Electrical Drivers to the next higher grade in the Electrical side shall be made on the basis of length of service as Assistant Electrical Drivers in accordance with the principles enunciated by the Hon'ble Supreme Court in Ramnarain Singh. We're been informed by the departmental representative that on such a determination of the seniority in large number of convertes who have already advanced several steps in the Electrical side would face reversion resulting in not only hardship to such individuals but also functional problems in running the locomotives. We, therefore, provide that on such a determination of seniority, the person who have already been promoted on higher grades in Electrical side shall not be reverted but their subsequent advancement to still higher grades shall be defunct on such redetermined seniority. However no further promotions ^{be} made by the respondents in the Electrical side in contravention of the aforesaid principle of seniority."

7. On the basis of the aforesaid order of the Tribunal, the respondents had revised the seniority list in the Electrical side and rearranged accordingly in which the name of the applicant figures at S.No. 368 vide seniority list dated 4th January 1998. At present the seniority position of the applicant in the list of goods driver is at S. No. 568-A, published as on 22nd of May 2002.

8. The applicant has filed his rejoinder to the counter filed by the respondents. He has stated that OA No. 1024 of 1995 has nothing to do with the case of the applicant. The applicants in that OA are all rank junior to the applicants. That grievance is against Respondent Nos. 5 to 51 who were all erstwhile First Fireman and who were rendered surplus due to closure of the Steam Units in which they were serving. Their seniority position is 1350 onwards. The seniority of the applicants is 1078. No relief whatsoever is claimed against the applicants in the aforesaid OA nor has the applicant been impleaded as a Respondent. Though the applicant was initially promoted as first fireman, he was thereafter absorbed in the Diesel side way back in 1983, after having been afforded adequate statutory training in the Diesel side and was designated as Diesel Assistant in the year 1989. The units in the Diesel side is still functioning and nobody has been rendered surplus.

9. The applicant has further stated in his rejoinder that the Tribunal had opined that seniority list has to be prepared according to the provisions of paragraph 301 to 308 of the Indian Railways Establishment Manual. The

ratio in the aforesaid order would in fact place the applicant correctly even in the Electrical side where he has been promoted as Electrical Driver in the year 1995 and his seniority among the Electrical Drivers has to be considered from the date. The applicant has also maintained that if there be some other design with Railways in respect of the position of the applicant, the applicant is prepared to be back to Diesel side where his seniority is still maintained. The applicant also submitted that as a matter of fact, when people were sent from Diesel side to Electrical side, the applicant was never asked his option and juniors have been sent before he could be sent to the Electrical side. Taking advantage of the order in the aforesaid original applications, juniors to the applicant are being upgraded as is evident from the impugned order, bypassing the legitimate claim of the applicant only because he has been sent to the Electrical side in the year 1995 treating him to be Junior to those brought on Electrical side prior to him. His immediate junior and senior in the previous units were sent in the years 1986 and 1987 whereas the applicant has been kept in the Diesel side. The applicant further emphasized that since a combined seniority is maintained, all empanelled person subsequent to the applicants would become Junior to him. So the seniority in the Electrical side should be countered from the year 1995 in the post of Electrical Driver and promotion to the higher grade in Electrical side cannot be made defunct on the basis of the order of the Tribunal as the applicant is very much senior to all those who are claiming higher seniority. The applicant reiterated that seniority has to be maintained according to paragraph 301 to 308 of the Indian Railway Establishment Manual.



10. Insofar as the seniority list of 4th January 1998 is concerned, the applicant submitted that he was already, as on that date, promoted as regular Electrical Driver and thus cannot be reverted back. It is also contended by him that the aforesaid seniority list was never brought to his notice in accordance with law. The applicant has also questioned about the existence of seniority lists purported to have been published on 22nd May 2002.

11. In his written submission, the applicants has summarised the above situation as contained in his rejoinder and ultimately submitted as under: -

A very piquant situation has arisen where for no fault of the applicant he is being put to such ignominy of his juniors stealing march over his post which is a matter of grave concern as though being excellent in all his working all through his career he is being unnecessarily put to harassment. To clear the imbroglio it may be stated that once the applicant was promoted as First Fireman w.e.f. 1.1.1983 it is this date which ought to have been taken into consideration for further avenues, nevertheless he was taken on the Diesel side after mandatory training on 8.2.1989 which also is acceptable position to the applicant. However, the subsequent putting the applicant to the Electric side coming in 23.3.1991 where even seniority list was prepared on 4.7.1991 to which the applicant has no grouse without any option, but on directives of the Railway Administration where he was even promoted to the post of Electric Driver in September, 1995, therefore, for all practical purposes taking any of these date the applicant is much senior to those even upgraded scale of Rs.5500-9000 under impugned order dated 18.8.2005, therefore, the said order is liable to be set aside to the extent it does not given that scale to the applicant. To keep the record straight, it may be reiterated that the applicant has no grouse if he is sent back to the Diesel side where he will get due promotion etc. whenever entitled or may be included in the Electrical side taking his promotion in September, 1995 to the post of Electric Driver and the seniority may be casted according to that, but only one thing is being stated with some sense of responsibility that he was never rendered surplus as First Fireman, therefore, all these justification in the impugned order are of no consequence and the petition is invariably liable to be allowed granting the upgraded pay scale of Rs.5500-9000 in favour of the applicant from the date when juniors have been granted the same, particularly in the wake of the impugned order dated 18.8.2005. Therefore, either order may be quashed or similar relief may be granted to the applicant.

12. Counsel respondents submitted that the contents as contained in the counter may well be taken as is written arguments.

13. Thus, the pleadings as well as written arguments have been considered. It is appropriate to ~~give~~ ^{give} a brief background of technological development in railway that have taken place.

14. Earlier there was only the steam type of traction in the country. Later the Diesel type was also introduced and further later in 1963 the electric traction system was also added. Consequently there was surplus in the staff engaged in the steam type of traction and at the same time it became necessary to man the electric traction system. The twin problems were solved by shifting some of the Firemen from the steam section, found suitable, to the electric traction system, and filling up the remaining vacancies by direct recruitment. But the seniority became the subject matter of various litigations. Some of the decided cases are as under:-

(a) in **Rama Kant Chaturvedi v. Divisional Supdt., N. Rly.** wherein this Court had held as under:

"The Diesel unit of the Railways was constituted for the first time apart from the steam unit already existing. The two units were treated as separate and distinct having different avenues of promotion. As considerable time might elapse before Diesel Cleaners could be promoted as Shunters and Drivers' Assistants in the Diesel unit it was decided to draft Firemen on the steam side, possessing the minimum educational qualification of matriculation, to the Diesel side as Drivers' Assistants after giving them the requisite training. That was done. All the initial appointments were on officiating basis. As a result of the appointments, some Firemen Grade 'C' (the appellants), who were of lower category than Firemen Grade 'B' and Firemen Grade 'A' but who happened to possess the minimum educational qualification which many of the Firemen Grades 'A' and 'B' did not possess, were drawn into the Diesel unit earlier than some of the Firemen Grades 'A' and 'B' who came in later as a result of the relaxation of the rule prescribing minimum educational qualification. The

Railway Administration issued instructions that the juniormost Firemen Grade 'C' officiating as Diesel Drivers' Assistant should be reverted in order to accommodate the senior staff. Pursuant to these instructions the appellants, all of whom were drawn from the category of Firemen Grade 'C' and who had been appointed as officiating Drivers' Assistants, were reverted to the steam side as Firemen Grade 'C' in order to make way for Firemen Grades 'A' and 'B' who were appointed as Drivers' Assistants on the Diesel side long after the appointment of the appellants as Drivers' Assistants on the Diesel side. Questions for determination were whether the earlier appointees could claim seniority over the later appointees and whether the Railway Administration was justified in reverting the appellants to the old unit."

15. Allowing the appeals the Supreme Court held:

"Those who were drafted into the Diesel unit earlier would not lose the benefit of their continuous service on the Diesel unit merely because the appointments were on an officiating basis and because others who were senior to them on the steam side came in or chose to come in at a later stage. If seniors on the steam side did not come in earlier it was because they were barred from coming in by the requirement of a minimum educational qualification. The subsequent relaxation of the rule cannot enable them to take a 'leap-frog' over the heads of those who had come into the Diesel side earlier. The seniority on the steam side is of no relevance in determining seniority on the Diesel side when they are appointed on the Diesel side on different days."

(b) South Eastern Railway through Chief Personnel Officer, Garden Reach, Calcutta and others v. Shripat Yadav and others, Ramanarain Singh and others v. Union of India and others (Civil Appeals Nos. 2530 of 1981 and 1730 of 1986, decided on July 29, 1988) In this case, the Apex Court has held as under:-

"1. The problem posed and the point raised in these appeals is squarely covered against the appellants by a decision of this Court rendered in Rama Kant Chaturvedi v. Divisional Supdt., N. Rly.¹ In Rama Kant case¹ the

question of seniority had arisen in the context of the employees working as engine drivers on the steam side who were posted on the Diesel side as Diesel Engine Drivers after completing the requisite training and qualifying at the requisite test. The problem arose on account of Dieselization by switching over from steam engines to Diesel engines. Consequently the engine drivers on the steam side were rendered surplus. The Railway administration instead of retrenching them gave them the option to take the training and to qualify themselves, for being posted on the Diesel side. This operation was loosely referred to as "transfer" to the Diesel side though in reality it was an operation for "absorbing" the steam side drivers on the Diesel side upon their being qualified in this behalf after undergoing training. This Court has taken the view that those who were appointed or absorbed earlier in point of time on the Diesel side would be senior to those who were appointed or absorbed on the Diesel side at a later date; notwithstanding the fact that the latter were senior in the parent cadre on the steam side. This Court has formed the opinion that once they ceased to belong to the parent cadre on the steam side the seniority in the said cadre becomes irrelevant. And that seniority on the Diesel side must depend on the length of service on the Diesel side. It appears that one of the qualifications which was initially prescribed was that only those candidates who were matriculates would be posted on the Diesel side. Subsequently, due to exigencies of administration this qualification was relaxed or dispensed with. It was argued before this Court in Rama Kant case¹ that inasmuch as the matriculation qualification was relaxed subsequently, their seniority in the parent cadre on the steam side should prevail. This contention was unhesitatingly negatived by this Court. The view taken is that the subsequent relaxation of the rule cannot enable them to take "leap-frog" over the head of those who were on the Diesel side and that seniority on the steam side is of no relevance in determining the seniority on the Diesel side. In the present appeals the identical problem arises in the context of the employees who originally belonged to the "Diesel side" but were subsequently absorbed and posted on the "electric side" in view of the electrifications of the tracks. Under the circumstances the view taken by the Madhya Pradesh High Court which is in conformity with the view taken by this Court in Rama Kant case¹ cannot be faulted. It may also be mentioned that arranging seniority on the basis canvassed by the appellants will result in anomalous and unjust consequences. An illustration will be useful for proper comprehension of the

point. Visualize the case of an employee of 'D' cadre being appointed in the 'E' cadre after training. He is assigned seniority, say, at Sl. No. 150. In case two new employees from the 'E' cadre itself are promoted later on, they will be assigned seniority at Sl. Nos. 151 and 152. If another employee from 'D' cadre subsequently appointed in 'E' cadre is required to be accorded seniority above Sl. No. 150 because the new appointee was senior vis-à-vis him in the parent cadre (Cadre 'D') can the seniority of those who are assigned Sl. Nos. 151 and 152 be disturbed? If the new appointee who should be at Sl. No. 153 is given seniority above Sl. No. 150, those from 'D' cadre who are assigned seniority at Sl. Nos. 151 and 152 will become juniors to the new appointee absorbed much later. It is thus evident that everything will be in utter chaos. Such a system is thus entirely unworkable apart from being unjust. The order under appeal cannot therefore be successfully assailed."

(c) OA No. 1024 of 1995 of the Allahabad Bench of the Tribunal. In this case, The applicants were initially drafted on the Diesel side of the locomotive operations. Subsequently, on introduction of Electrical engines they were given training and were absorbed on the Electrical locomotive side. The question of inter se seniority of employees already working on the Electrical locomotive side and those shifted from the Diesel locomotive side to the Electrical locomotive side had arisen. The Tribunal has held that since they were deployed to the Electrical side for the first time, their seniority was required to be adjudged from the date of their deployment in the Electrical locomotive operations and the previous service cannot be counted for the purpose of determination of inter se seniority. This order was challenged before the Apex Court in the case of V.K. Dubey vs Union of India (1997) 5 SCC 81, and the Apex Court has dismissed the appeal.

16. The contention of the applicant in this OA is that the respondents have blindly followed the order in the OA No. 1024 of 1995 unmindful of

the fact that insofar as the applicants therein are concerned the dispute is only with reference to their seniority qua that of the private respondents in that OA. The private respondents therein were persons inducted from the steam side and they belonged to those units which were under closure. In other words, they were the surplus declared employees and their shifting to the Electrical side is one of redeployment. In contra distinction to the same, insofar as the applicant is concerned he has not been shifted from his unit on account of any closure. Again, the applicants in the other OA (1024 of 1995) had not expressed any grievances against the applicant nor has he been impleaded. Recasting of seniority should be only with reference to the applicants and the private respondents and thereafter, without disturbing the settled seniority position of the applicant and others who have been shifted from live units to the Electrical side and that too long back. The grievance of the applicant is that if the seniority has to be recast in the manner as it had been done by the impugned order, in that event, the seniority of those who have been shifted from Diesel to Electrical side must be kept intact. The justification he offers for this claim is that at the time of shifting of some of the individuals from Diesel side to Electrical side, no option was taken from the applicant and of their own the respondents have shifted a few from the Diesel side to Electrical side and some of them were senior to the applicant while some other junior. Had he been asked to exercise his option he too would have given his consent for shifting along with or even prior to his juniors. If his seniority is not restored in the Electrical side, he has no objection to go back to the Diesel side where his seniority is still maintained.

17. The applicant has claimed that the seniority should be prepared in accordance with the provisions of Para 301 to 308 of the Indian Railway Establishment Manual. The same reads as under:-

"301. General: The rules contained in this Chapter lay down the General principles that may be followed for determining the seniority of non-gazetted railway servants on railway administration, except that for the purpose of determining the seniority and promotion of non-gazetted employees of the Diesel Locomotive Works the rules contained in paragraphs 324 to 328 of this Chapter shall be followed.

Note: Such of the rules in this section as are not already extent shall apply from such dates as may be fixed by the railway administrations. The seniority of the staff already determined under the extant rules or orders of the respective railway administrations shall not be altered.

302. Seniority in initial recruitment grades: Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-se-seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se-seniority of each group.

Note: (i) In case the training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training.

(No. E (NG) 1-78-SR-6-42 dt. 7-4-1982 ACS. 132).

Note (ii) The Provision contained in Note (i) above will also apply to the Inter Apprentices and departmentally selected candidates against the quotas prescribed in certain categories to be filled by Limited Departmental Competitive Examination (such as 10% in the case of

Traffic and Commercial Apprentices).

(Authority Board's letter NO. E(NG)-89/SR6/35 dated 23-8-1991)

303. The seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority should be determined as under ::

(a) Candidates who are sent for initial training to Training Schools will rank in Seniority in the relevant Grade in the order of merit obtained in the examination held at the end of the training period before being posted against working post. Those who join the subsequent courses and those who pass the examination in subsequent chances will rank junior to those who had passed the examination. In case, however, persons belonging to the same RRB panel are sent for initial training in batches due to administrative reasons and not because of reasons attributable to the candidates, the inter-se seniority will be regulated batchwise provided persons higher up in the panel of RRB not sent for training in the appropriate batch (as per seniority) due to administrative reasons shall be clubbed along with the candidates who took the training in the appropriate batch for the purpose of regulating the inter-se seniority provided such persons pass the examination at the end of the training in the first attempt.

(Authority Board's letter NO. E(NG)-89/SR6/32(PNM) dated 19-3-93)

(b) In the case of candidate who do not have to undergo any training in training school, the seniority should be determined on the basis of the merit order assigned by the Railway Recruitment Board or other recruiting authority.

304. When two or more candidates are declared to be of equal merit at one and the same examination/ selection, their relative seniority is determined by the date of birth the older candidate being the senior.

305. When, however, a candidate whose seniority is to be determined under paragraphs 303 and 304 above cannot join duty within a responsible time after the receipt of orders of appointment, the appointing authority may determine his seniority by placing him below all the candidates selected at the same examination/selection, who have joined within the period allowed for reporting to duty or even below candidates selected at subsequent examination/ selection who have joined before him.

306. Candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by paragraph 305 above.

307. When confirmation follows a specified probationary period if any, without break, the date of appointment to the grade is reckoned from the date of commencement of such probationary period.

308. When a probationary period is followed by an extended probationary period and confirmation follows such extension without break, the date of appointment to the grade or post, unless otherwise stated, should be reckoned from a date later than the commencement of the probationary period. In cases where probationary period is not extended and staff are confirmed at the end of such period the date of appointment to the grade or post will be that on which the employee was sent to the training school for initial training or the date of joining the working post whichever is earlier."

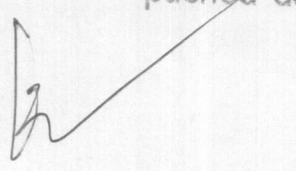
18. OA 1024 of 1995 borrowed the judgment of the Apex Court in the case of Rama Kant (supra). The same has been upheld by the Apex Court. The Apex Court in its judgment in V.K. Dubey (C.A. Against order in OA No. 1024 of 1995) had explained the case of Rama Kant in the following words:-

"In Rama Kant case the question of seniority had arisen in the context of the employees working as engine drivers on the steam side who were posted on the diesel side as Diesel Engine Drivers after completing the requisite training and qualifying at the requisite test. The problem arose on account of dieselization by switching over from steam engines to diesel engines. **Consequently the engine drivers on the steam side were rendered surplus.** The Railway administration instead of retrenching them gave them the option to take the training and to qualify themselves, for being posted on the diesel side. This operation was loosely referred to as "transfer" to the diesel side though in reality it was an operation for "absorbing" the steam side drivers on the diesel side upon their being qualified in this behalf after undergoing training. **This Court has taken the view that those who were appointed or absorbed earlier in point of time on the diesel side would be senior to those who were appointed or**

absorbed on the diesel side at a later date; notwithstanding the fact that the latter were senior in the parent cadre on the steam side. This Court has formed the opinion that once they ceased to belong to the parent cadre on the steam side the seniority in the said cadre becomes irrelevant. And that seniority on the diesel side must depend on the length of service on the diesel side. It appears that one of the qualifications which was initially prescribed was that only those candidates who were matriculates would be posted on the diesel side. Subsequently, due to exigencies of administration this qualification was relaxed or dispensed with. It was argued before this Court in Rama Kant case¹ that inasmuch as the matriculation qualification was relaxed subsequently, their seniority in the parent cadre on the steam side should prevail. This contention was unhesitatingly negated by this Court. The view taken is that the subsequent relaxation of the rule cannot enable them to take "leap-frog" over the head of those who were on the diesel side and that seniority on the steam side is of no relevance in determining the seniority on the diesel side. In the present appeals the identical problem arises in the context of the employees who originally belonged to the "diesel side" but were subsequently absorbed and posted on the "electric side" in view of the electrifications of the tracks. Under the circumstances the view taken by the Madhya Pradesh High Court which is in conformity with the view taken by this Court in Rama Kant case¹ cannot be faulted. It may also be mentioned that arranging seniority on the basis canvassed by the appellants will result in anomalous and unjust consequences. An illustration will be useful for proper comprehension of the point. Visualize the case of an employee of 'D' cadre being appointed in the 'E' cadre after training. He is assigned seniority, say, at Sl. No. 150. In case two new employees from the 'E' cadre itself are promoted later on, they will be assigned seniority at Sl. Nos. 151 and 152. If another employee from 'D' cadre subsequently appointed in 'E' cadre is required to be accorded seniority above Sl. No. 150 because the new appointee was senior vis-à-vis him in the parent cadre (Cadre 'D') can the seniority of those who are assigned Sl. Nos. 151 and 152 be disturbed? If the new appointee who should be at Sl. No. 153 is given seniority above Sl. No. 150, those from 'D' cadre who are assigned seniority at Sl. Nos. 151 and 152 will become juniors to the new appointee absorbed much later. It is thus evident that everything will be in utter chaos. Such a system is thus entirely unworkable apart from being unjust. The order under appeal cannot therefore be successfully assailed." (emphasis supplied)

19. There is no denial of the contention of the applicant that the private respondents in OA 1024 of 1995 were drafted from those units which were facing closure. Such is not the case in the case of the applicant. To that extent the applicant's contention has to be accepted. Therefore, when the respondents re-scheduled the seniority of Assistant Electrical Drivers in pursuance of the order of the tribunal in the aforesaid ~~OA~~ OA No. 1024 of 1995, they should've taken care to ensure that it is only the seniority of those persons who were drafted from those units facing closure that should be revised and not those who are from live units. In so far as shifting from diesel unit to electrical unit, since diesel unit is not under closure it has to be termed as a transfer. Thus all that is to be seen is those who have been drafted from diesel unit to electrical unit their seniority as in the parent unit namely the diesel unit should be maintained subject only to the condition that the general rule—that those who have been shifted prior in point of time would be senior in the electrical units than those who had been inducted from the diesel unit at a subsequent date notwithstanding the fact that those subsequently transferred may be senior in the parent unit,—shall however have to be maintained. This is the purport of the various decisions as cited above.

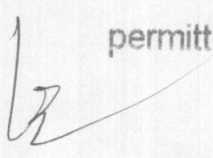
20. Perhaps, the applicant would have been satisfied with the above but for the fact that while so drafting from the Diesel to Electrical Unit no option was called for and consequently, some of the juniors had been shifted earlier to the applicant, consequent to which the applicant has to be pushed down in the seniority in the Electrical Unit. For example, both



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senior and junior to the applicant in the diesel being had been shifted respectively in 1986 and 1987 to the electrical side whereas the applicant could move only in 1991. Since no option was asked from the applicant at that time, the said junior who was shifted to electrical unit in 1987 itself should not be shown as senior the applicant on the basis of the joining the electrical unit under the general rule. Though the tribunal finds some substance in the argument of the Counsel for the applicant in this regard, the applicant cannot be permitted to question the same at this point of time. In case his contention is accepted then the general rule will be violated. The applicant did very well know that the junior was shifted from diesel to electrical much earlier than him. He could've agitated against the same at the material point of time. It cannot be that the applicant is not aware of the general rule. When the applicant even today is prepared to go back, he could've remained there in the diesel unit itself but he was prepared to undertake the training meant for electrical drivers and of his own he chose to move to Electrical wing in 1991. To this extent the applicant's contention cannot be accepted.

21. Though the applicant states that he is prepared to go back to his parent unit (Diesel), in view of the fact that he had left that unit as early as in 1991, at this distance of time, if he is permitted to return to the Diesel Unit, that would entail unsettling the settled seniority of those who have been continuing in the Diesel Unit. The same cannot, therefore, be permitted.



22. All that could be done at this point of time is that a direction can be given to the respondents that they shall undertake an exercise of review of the seniority list to see -

(a) The directions of the Tribunal in OA No. 1024 of 1995 as upheld by the Apex Court are strictly followed. In other words, no unintended benefits of "leap- frog" to those who had joined the Electrical Wing by any relaxation granted or the shifting being one for avoiding retrenchment of those in the units facing closure should be given;

(b) In respect of others who have moved from live units to Electrical Unit, in their case, the general rule of earlier entrant to the Electrical wing would be senior to the later entrant be followed.

23. If in the above exercise, there is any change in the seniority position of the applicant to his advantage, that alone would be available to him. If the review entails a situation whereby his seniority goes further down, the same may not be effected. The contention of the applicant which goes against the above cannot be accepted.

24. The OA is disposed of accordingly. Respondents shall complete the exercise and inform the applicant of his position in the seniority list within a period of four months. No costs.


SHASHI PRAKASH
ADMINISTRATIVE MEMBER


Dr K.B.S. RAJAN
JUDICIAL MEMBER