

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHBAD BENCH
ALLAHABAD

Dated: this the 19th day of May 2011

Original Application No.295 of 2006

Hon'ble Mr. Justice Shiv Charan Sharma, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

S.K. Pandey, S/o late S.D. Pandey, Presently working as Senior Clerk under CME, North Central Railway, Headquarters Office, Allahabad, R/o 980/1354, Daraganj, Allahabad.

...Applicant.

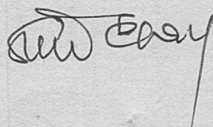
By Adv : Shri S. Ram

Versus

1. Union of India through General Manager, N.C. Railway, Headquarters Office, Allahabad.
2. Chief Personnel Officer, N.C. Railway, Headquarters Office, Allahabad.
3. Divisional Railway Manager, N.C. Railway, Allahabad.
4. Secretary (Estt). Railway Board, Rail Bhawan, New Delhi.
5. Smt. Suman Maurya, presently working as Head Clerk in the Office General Manager, Central Organization of Railway Electrification, Allahabad.
6. Shri M.H. Majahid, presently working as Head Clerk, in the office of CME/N.C. Railway, Allahabad.
7. Shri Mohd. Bilal, presently working as Head Clerk in the Office in the office of CME/N.C. Railway, Head Quarters Office, Allahabad.
8. Shri Vijay Kumar Srivastava, presently working as Head Clerk, in the office of CME/NC Railway, Allahabad.
9. Shri Rajesh Kumar presently working as Head Clerk, in the office of CME/NC Railway, Allahabad.

...Respondents.

By Adv : Shri Ravi Ranjan

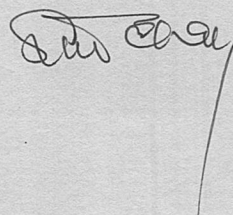


ORDERHon'ble Mr. Justice Shiv Charan Sharma, Member (I)

The challenge in the OA is order dated 31.03.2005 (Annexure A-3) alongwith the eligibility list issued vide letter date 25.08.2004 (Annexure A-1) and 10.11.2004 (Annexure A-2) and the impugned revised provisional seniority list dated 11.03.2004 (Annexure A-4/A) and direction has also been sought to consider the case of the applicant for his due promotion against the upgraded posts of Head Clerk in the Grade of ₹ 5000-8000 on the basis of settled seniority list dated 09.12.2003 under restructuring of cadre with retrospective effect from 01.11.2003 as per policy of Railway Board.

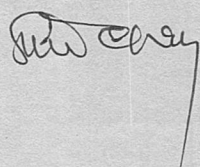
2. The facts of the case are summarized as follows:-

- a. The applicant was initially appointed as Signaller on 30.05.1985 by RRB/Allahabad in the grade of ₹ 950-1500/3050-4590 (RSRP). The applicant joined the duty after training on 06.02.1986 under Station Superintendent, Chandigarh. Thereafter, the applicant was transferred to Northern Railway, Headquarters Office, New Delhi in 1990 as Message Checker/Clerk Grade ₹ 975-1540. On 01.11.1991 the applicant was promoted as Senior Clerk in Grade ₹ 1200-2040 in STR Section in Northern Railway Baroda House, New Delhi. The applicant was also given special pay of ₹ 70/- and he was attached to the post of Senior Clerk Grade ₹ 1200-2040 w.e.f. 28.05.1996. Request was made by the applicant for his transfer from Northern Railway, Headquarter to Allahabad Division in the same



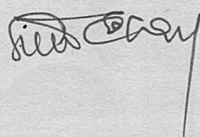
pay scale of senior clerk grade ₹ 1200-2040. The Divisional Railway Manager, Allahabad accepted the proposal for the post of Senior Clerk. After relieving from Headquarter the applicant joined at Allahabad division on 09.09.1996.

- b. After joining at Allahabad he submitted his option for new zone of North Central Railway, Headquarters office, Allahabad in terms of Railway Board circular dated 06.12.1996 and the option was registered. But due to some restriction in staffing of the staff, the applicant was not posted in N.C. Railway, Allahabad. He also submitted fresh option for North Central Railway, Headquarter through proper channel as per terms and condition stipulated in the Railway Board circular dated 19.07.2002. Fresh seniority list was prepared by the respondents on the basis of length of service amongst the optees for North Central Railway, Headquarters Office from all India Railway joining new zone as per terms of Railway Board letter dated 19.07.2002. It was provided in para 2 that seniority of staff pointing threes newly created Zonal Railways on transfer shall be determined in each grade on the basis of Non fortuitous length of service in the grade as per the date of new zonal railway becoming optional. Annexure A-5 is the copy of the Railway Board letter dated 19.07.2002.
- c. Therefore, options were arranged grade wise in order of priority on the basis of length of service as Senior Clerk Grade ₹ 5000-8000 in which the applicant was considered



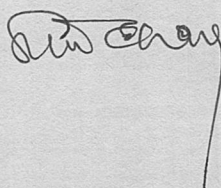
and accepted for N.C. Headquarter, Allahabad for the post of Senior Clerk Grade ₹ 4500-7000 on priority basis on the basis of length of service rendered as Senior Clerk in terms of the Railway Board's circular dated 19.07.2002. The applicant joined as per priority position as Senior Clerk in new zone in North Central Railway, Allahabad on 24.04.2003 and posted as Senior Clerk in Mechanical Department in the in the grade of ₹ 4500-7000. New zone of North Central Railway, was closed on 31.10.2003 in terms of Railway Board letter dated 04.07.2003. After closure of the cadre, Shri P.S. Bisht, APO, Office of the General Manager (P)/(CPO), North Central Railway, Allahabad issued the provisional seniority list of Junior Engineer II/W Grade ₹ 5000-8000 vide letter No. 797-E/Mechanical/Seniority/03 dated 09.12.200 in which the name of the applicant was assigned at Sl. No. 2 above the name of Smt. Suman Maruya and 4 private respondents on the basis of length of service as Senior Clerk in Grade ₹ 5000-8000 as per policy of the Railway Board dated 19.07.2002.

- d. No representation was made by any person against the provisional seniority list dated 09.12.2003 and no show cause notice was given to the applicant in order to revised the provisional seniority list. Hence, the provisional seniority list became final for all purposes in terms of para 321 (b) of IREM Vol. I. Vide letter dated 25.08.2004, the General Manager (P), North Central Railway, Allahabad

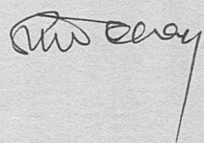


issued a list of eligible persons to be considered for promotion in the higher grade against the upgraded post under restructuring of cadre as Head Clerk in Grade of ₹ 5000-8000 by adopting modified procedure of selection. The applicant being senior person was deliberately ignored from his promotion as Head Clerk Grade of ₹ 5000-8000 with retrospective effect in the eligibility list for promotion as Head Clerk Grade which is a non selection post. No reason was communicated to the applicant for ignoring him for the said promotion where as his name was above the names of the private respondents who were being considered for the promotion as Head Clerk Grade ₹ 5000-8000. There is no other record filed in order to debar the applicant in the next higher grade.

- e. The applicant came to know about this act of the respondents that he not being considered for promotion against the upgraded post for restructuring. A representation was made by the applicant to the respondents highlighting all the facts, but no order was passed. Further list was also considered by the respondents for this staff for promotion as Head Clerk vide letter dated 10.11.2004. In this list also seniority and claim of the applicant was ignored and junior persons to the applicant i.e. private respondents were considered for promotion in the higher grade. Again a representation was made to the respondents. Without giving any reason for ignoring the claim of the applicant the private respondents



were placed above the applicant and final order of promotion as Head Clerk was passed by the respondents on 31.03.2005 and it was a deliberate act of the respondents. It has been provided in para 5 of the Railway Board's letter dated 06.12.1996 that seniority of the staff who have joined Head Quarter Office of the new zonal railways or whose lien has been transferred there to as on 31.12.2003 should be determined on the basis of position and grade held by him in the parent railway on regular basis and on the basis of non fortuitous length of service in the grade as on the date of closure of the cadres on 31.10.2003. A clarification was also given stipulating after finalization of the seniority list of the optees on the basis of non fortuitous length of service in the relevant grade who joined the new zonal after introducing the restructuring of cadre with retrospective effect i.e. 01.11.2002. For determination of seniority in the new zone, an only criterion of seniority is non fortuitous length of service with retrospective effect. There should be no link of the parent department seniority in new zone where seniority was determined not only on the basis of non fortuitous length of service in the relevant grade but also taking into account other factors. The seniority list and the claim of the private respondents were illegally considered and the applicant was senior to the respondents. There are decisions otherwise in favour of the applicant.



3. Respondents No. 1 to 4 contested the case and filed counter reply. It has been alleged that whatever alleged by the applicant in the OA is incorrect. The applicant was transferred to Allahabad Division on his own request in terms of para 312 (b) of IREM Vol. I. The applicant was required to be assigned seniority below all the confirmed temporary and officiating Railway servants in the relevant grade and category in the promotion group in the new establishment. The applicant had joined Allahabad Division on bottom seniority as Senior Clerk Grade ₹ 4500-7000 on 09.09.1996. It has wrongly been alleged that as per Railway Board's letter dated 06.12.1996 the seniority of the employees coming from other Railways to new zonal headquarters was to be determined on the basis of non fortuitous length of service. But the Railway Board further vide letter dated 16.03.2004 issued instructions that the seniority of the staff transferred to headquarters office of the new zonal railway should be determined on the basis of position and grade held by the employees in the parental railway on regular basis as on the date of closure of cadres on 31.10.2003 subject to condition that inter-se-seniority of staff belonging to the same parent unit is not disturbed. The applicant joined at Allahabad division from Northern Railway, Headquarters on inter divisional transfer on 09.09.1996 on his own request. Hence in terms of para 312 chapter III of IREM Vol. I the applicant was to be assigned seniority in the new establishment w.e.f. 09.09.1996. Hence, seniority of the applicant is to be determined as per clarificatory instructions issued by the Railway Board letter dated 16.03.2004. Hence seniority of the applicant in North Central



Railway, Headquarters was to be determined on the basis of position and grade in Allahabad division as on 31.10.2003. As the applicant was assigned seniority in Allahabad division as senior clerk in the grade of ₹ 4500-7000 w.e.f. 09.09.1996 on the basis of his position in Allahabad division, hence he was assigned seniority in the head quarters office in the new railway zone without disturbing the inter-se-seniority of staff senior to the applicant in Allahabad division, who joined the North Central Railway from Allahabad division from the same seniority unit to which the applicant belongs. In the cadre of the applicant Shri Shivaji Pandey, Shri Rajesh Kumar, Mohd. Mujaheed, Mohd. Bilal and Shri Vijay Kumar Srivastava were senior to the applicant in Allahabad division. Hence the inter-se-seniority of the applicant vis-a-vis his seniority in the Allahabad division was required to be maintained as per Railway Board's instructions dated 16.03.2004. The applicant was below in the seniority list to those employees in the cadre of his parent unit and hence the applicant was required to be assigned below these employees on the basis of his own seniority position in Allahabad division. The applicant himself opted for transfer in Allahabad division and the seniority of the employees has to be determined of the employees as per rules. The provisional seniority list of Mechanical department including senior clerk category in which the applicant was working, was issued by the respondents on the basis of service particulars given by the employees in the option form submitted by them for transfer to North Central Railway, Headquarters, Allahabad. As service record of most of the employees were not available with the respondents being new

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zone at the time of issuance of the first seniority list including senior clerk category was issued on 09.12.2002. The provisional seniority list was prepared on the basis of the service particulars given by the applicant in his option form without ascertaining correct fact from the record. The respondents were not aware that the applicant had joined at Allahabad division in interdivisional transfer and he joined at Allahabad division on 09.09.1996 and not from November, 1991 and this was the mistake in preparing the provisional seniority list and it was against Railway Board letter dated 16.03.2004. This fact was brought to the notice of the respondents by one Mohd. Mujaheed by making representation and, thereafter, the correct seniority list was prepared.

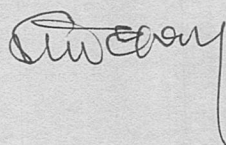
4. In response of the counter reply of the respondents the applicant filed rejoinder reply and has reiterated whatever alleged in the O.A. It has also been alleged in the rejoinder reply that the applicant was promoted as Senior Clerk in the grade of ₹ 1200-2040 on 28.05.1996 in Northern Railway, Headquarters, New Delhi and joined at Allahabad division on transfer as Senior Clerk in the Grade of ₹ 1200-2040 in the same capacity on request basis on bottom seniority on 09.09.1996. This bottom seniority is applicable only for Allahabad division from the Northern Railway, Headquarters Office for limited purposes and not for all purposes. The bottom seniority was relevant only to Allahabad Division. But after creation of new zone of North Central Railway in terms of Railway Board letter the applicant may not be permitted to suffer in future for the purpose of

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seniority in the new zone. The seniority as senior clerk was to be determined on the basis of non fortuitous length of service in terms of Railway Board letter dated 19.07.2002. In the new the applicant was senior to these private respondents.

5. We have heard Sri Sudama Ram, advocate for the applicant and Sri Ravi Ranjan, advocate, for the respondents and perused the entire facts of the case.

6. It is undisputed fact that the applicant was initially appointed as Signaller on 30.05.1985 by RRB Allahabad and he was sent for training for the post of Signaller and thereafter, joined the duties independently on 06.02.1986 under Station Superintendent, Chandigarh. Undisputedly the applicant was transferred to Northern Railway, Headquarters office, STR, New Delhi in 1990 as Message Checker/Clerk Grade ₹ 975-1540. It is also undisputed fact that the applicant was promoted as Senior Clerk in Grade of ₹ 1200-2040 on 01.11.1991 and posted in STR Section, Northern Railway, Baroda House. Undisputedly the applicant made a requested for his transfer from Northern Railway, Headquarters Office, New Delhi to Allahabad Division in the same scale of Senior Clerk Grade ₹ 1200-2040. Divisional Railway Manager, Allahabad also approved for his request for the post of Senior Clerk Grade. Thereafter, the applicant was spared from Northern Railway, Headquarters, Office, New Delhi to Allahabad on 09.09.1996.



7. Now the matter is regarding fixation of seniority of the applicant after 09.09.1996. It has also been alleged by the respondents in the counter reply that the applicant made a request for interdivisional transfer in terms of para 312 (b) of IREM Vol. I and in view of his request transfer the seniority of the applicant has to be assigned below all the confirmed temporary and officiating Railway servants in the relevant grade and category in the promotion group in the new establishment. The respondents also admitted that the applicant joined at Allahabad division on bottom seniority as Senior Clerk grade of ₹ 4500-7000 on 09.09.1996 on interdivisional transfer on his own request. According to the respondents the seniority of the applicant in the new establishment is required to be reckoned from 09.09.1996. The respondents have also filed Annexure CA-1 copy of para 312 of IREM. The applicant has not disputed this provision regarding fixation of seniority. It is a matter to reproduce the relevant para 312 of IREM as under:-

"312. TRANSFER ON REQUEST - The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servants.

Note : -

- i. This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway.

[Rly. Bd. No. E (NG)I-85 SR 6/14 of 21.01.1986].

- ii. The expression "relevant grade" applies to grades where there is an element of direct recruitment. Transfer on request from Railway employees working in such grades may be accepted in such grade. No such transfers should be allowed in the

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intermediate grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no element of direct recruitment."

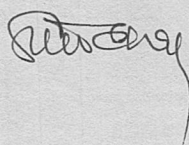
8. Hence, in view of this para 312 of IREM Vol. I the seniority of the applicant is to be assigned below all the existing confirmed temporary and officiating Railway servants in the relevant grade and category in the promotion group in the new establishment irrespective of the length of officiating or temporary service of the transferred railway servants. Undisputedly the applicant was transferred from Northern Railway Headquarters office, New Delhi and he joined at Allahabad division on 09.09.1996.

9. The applicant has filed rejoinder affidavit in response to the counter reply filed by the respondents. The applicant while alleging that the applicant was promoted as Senior Clerk Grade ₹ 1200-2040 in Northern Railway Headquarters Office, New Delhi and had joined at Allahabad Division as Senior Clerk grade in the same capacity on request basis and on bottom seniority only on 09.09.1996 only for Allahabad division from Northern Railway Headquarters Office only for limited purpose and not for all purpose. It has been argued by the learned counsel for the applicant that the bottom seniority of the applicant was relevant only for Allahabad division, but the same is not relevant if the new zone came into existence. It has also been argued by the learned counsel for the applicant that the applicant applied for new zone of North Central Railway in terms of the Railway Board's letter, so that the applicant may not suffer in future for the purpose of seniority in the new zone. Seniority as Senior

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Clerk of the applicant in terms of Railway Board's letter dated 19.07.2002.

10. Learned counsel for the applicant placed reliance on a circular letter issued by the respondents No. 117/2006 (Annexure RA-2). It has been provided in the relevant rule that "the matter has accordingly been considered by the Board and it is clarified that in case of own request transfer, the service rendered in the old unit will count for the purpose of qualifying service for promotion in new unit provided (i) he is otherwise eligible to be considered for the selection to Group 'C' posts as per the extant rules; and (ii) the category in which he was working in the old unit is an eligible category for the selection/post in the new unit also. On the basis of this circular letter learned counsel for the applicant argued that the bottom seniority of the applicant is relevant only for the purpose of Allahabad division and if a new zone is created by the Railway Board then the new bottom seniority of Allahabad division will not be relevant. It has been alleged in para 8 of the rejoinder affidavit that "the applicant for new zone of NCR in terms of Railway Board so that the applicant may not suffer in future for the purpose of seniority as in new zone, seniority as senior clerk was to be determined on the basis of non fortuitous length of service in terms of Railway Board's letter dated 19.07.2002". Learned counsel for the applicant also argued that it is false averment that the seniority in new zone in view of para 312 of IREM Vol. I would apply as the staff in new zone were drawn from different seniority units and their inter-seniority was to be determined only on the basis of non



fortuitous length of service in the grade as on the date of closure of cadre in the new zone in terms of Railway Board's letter dated 19.07.2002 (Annexure A-5). Reliance has been placed on Annexure A-5 to the OA. It is circular issued by the Railway Board No. RB 172/02. In para 2 of the circular letter it has been provided, "in para 5 of this Ministry's letter dated 06.12.1996 it has been stipulated that seniority of staff coming on transfer from the existing zonal Railways to the headquarter offices of the new zonal Railways should be determined in each grade on the basis of non-fortuitous length of service in the grade as on the date of new zonal Railway becoming operations. The requisite notification consisting five new zonal Railways namely East Cost Railway, Bhubaneswar, North Central Railway, Allahabad; South East Central Railway Bilaspur; South Western Railway, Hubli; and West Central Railway, Jabalpur". In view of this circular letter the seniority has to be determined on the basis of non fortuitous length of service. No relevant letter has been place before us that what the applicant is meant by using on non fortuitous length of service. In a legal sense, in this connection the judgment of Hon'ble Apex Court reported in 2000 (4) SLR 787 : Rudra Kumar Sain and others Vs. Union of India and others in which the Hon'ble Apex Court has defined meaning of fortuitous in the service matter. The Hon'ble Apex Court in para 16 has held as under:-

"The three terms ad hoc, stop gap and fortuitous are in frequent use in service jurisprudence. In the absence of definition of these terms in the rules in question we have to look to the dictionary meaning of the words and the meaning commonly assigned to them in service matters. The meaning given to the expression fortuitous in Strouds Judicial Dictionary is accident or fortuitous casualty. This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long

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period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to fortuitous. In Blacks Law dictionary, the expression fortuitous means occurring by chance, a fortuitous event may be highly unfortunate. It thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression ad-hoc in Blacks Law Dictionary, means something which is formed for a particular purpose. The expression stop-gap as per Oxford Dictionary, means a temporary way of dealing with a problem or satisfying a need"

11. Hence, from perusal of the meaning of fortuitous service is that it is by chance and accidental which could not have been reasonably foreseen and the non fortuitous service shall meant that the seniority which has not come by chance or accidentally. The learned counsel for the applicant interpreted in his favour and argued that meaning of non fortuitous service is that the original seniority of the applicant. We are of the opinion that when the applicant was transferred from Northern Railway Headquarters officer on request then the earlier seniority is of no use and in case the applicant is transferred and he joined then the applicant shall be given bottom seniority. The applicant on transfer joined at Allahabad division on 09.09.1996 and whatever was the position in Allahabad division on 09.09.1996 that same will be the seniority position of the applicant. On that date any employee in that cadre working on that post whether temporary or substantive will be senior to the applicant. Earlier seniority of the applicant will not have any relevance. All the benefits will not be admissible to the applicant favorably to him. According to his own version firstly the request of the applicant for request transfer was accepted by the respondents then his seniority was required to be fixed as per Railway Board's rules and according to para 312 of IREM Vol. I the bottom seniority shall be given to

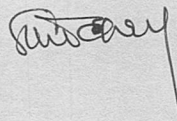
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the applicant. It was on the request of the applicant that he was transferred to Allahabad division then cannot be the position that in case new zone will come into existence then the original seniority of the applicant will come into play irrespective of the fact that applicant's seniority in Allahabad division was w.e.f. 09.09.1996.

12. It has also been stated by the applicant and not disputed by the respondents that after joining at Allahabad division the Railway Board issued circular for creation of new zones in view of Annexure A-5. It has also been stated by the learned counsel for the applicant that the options were invited after coming into existence of the new railway zones. The applicant in terms of Railway Board's circular dated 06.12.1996 submitted the option for North Central Railway, headquarters office, Allahabad and the option was submitted by the applicant through proper channel as per terms and conditions of Railway Board letter dated 19.07.2002 (earlier referred). It has also been alleged by the applicant that fresh seniority in the new zone of North Central Railway, Headquarters office, Allahabad was to be determined on the basis of length of service amongst the optees of North Central Railways, headquarters office, Allahabad. Options were invited for Allahabad from all Indian Railway for joining new zones as per options of Railway Board letter dated 19.07.2002 and how the seniority shall be fixed in that new zone has been stated above and laid down in Annexure A-5. There may be chance that certain employees of the same cadre submitted options for joining the North Central Railway who were senior to

Secretary

the applicant in Allahabad division and the applicant submitted fresh option for re-determining of the seniority as per options. Then whether the persons senior to the applicant in Allahabad division will be deemed junior to the applicant according to the allegation of the applicant. It has been alleged by the respondents that Railway Board issued instructions regarding seniority of staff transferring headquarters office to the new zonal Railways. According to the Railway Board's letter dated 16.12.1996 the seniority has to be determined on the basis of position and grade held by the employees in parental railways on regular position on the date of closure of cadres on 31.10.2003 subject to condition that inter-se-seniority of staff belonging to the same parent unit is not disturbed. It is provided by the respondents that how the seniority of the employee shall be determine. Care must be taken by the respondents that the seniority of the staff belonging to the same parental unit has not to be disturb, if the person was senior in a particular division to a particular employee then he will be considered senior in the zone also and it cannot be said that such employee shall be junior to the particular employee in Allahabad division, but in the Headquarter office of the zonal railway, North Central Railway will be senior to the person who was senior in the division. It is against the spirit of the Railway Circular. A clarification letter was issued by the Railway Board on 16.03.2003 and according to that clarification letter the seniority of the applicant in the new zone, North Central Railway, Headquarters was to be determined on the basis of position and cadre in Allahabad division on 31.10.2003.

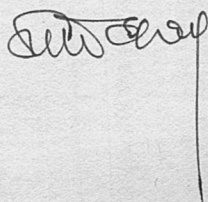


13. It is an undisputed fact that the applicant was assigned the seniority in Allahabad division in the Senior Clerk grade ₹ 4500-7000 w.e.f. 09.09.1996 and hence staff who was senior to the applicant in Allahabad division will remain senior in the North Central Railway also. The private respondents were senior to the applicant in Allahabad division it is an admitted fact that provisional seniority list was issued and in that provision seniority list the applicant was placed at Sl. No. 2, whereas the private respondents were below the applicant. But it has been alleged by the respondents that the provisional seniority list of Mechanical department including Senior Clerks category in which the applicant was working was issued by the respondents on the basis of serviced particulars given by the employee in the option form submitted by them for transfer to North Central Railway, Headquarters office. The records of most of the employees were not available to the respondents in the new zone. Hence, at the time of issuance of provisional seniority list after closure of cadre only provisional seniority list was issued and it cannot be deemed final and representations could have been submitted against the provisional seniority list. Much reliance has been placed by the applicant on the provisional seniority list, but according to the respondents the list was prepared at the time of closure of the option provisionally, hence it cannot be permanent seniority list and all the facts will be considered as stated by the respondents. This fact was ascertained subsequently from the record that the applicant was given bottom seniority in the grade of ₹ 4500-7000 on 09.09.1996 and his seniority has to be

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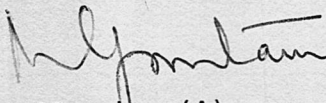
reckoned in Headquarters office of the newly created zone w.e.f. 09.09.1996 and not from November, 1991. We agree with the contention of the respondents that earlier mistakes were committed in preparation of the provisional seniority list, afterwards, representation was received from Mohd. Mujaheed claiming himself senior to the applicant and, thereafter, it was disclosed that the applicant was given bottom seniority on 09.09.1996 as he was transferred at his own request and seniority w.e.f. 1991 cannot be given to the applicant. In the new zone also the seniority of Allahabad division will remain intact. In our opinion the applicant cannot be permitted to avail both the benefits; firstly, the benefit of request transfer to Allahabad division and thereafter on creation of new zone enjoying the old seniority in North Central Railway since November, 1991. In our opinion new seniority list assigned to the applicant w.e.f. 09.09.1996 and for all purposes this seniority will be reckoned. As the main emphasis of the applicant is provisional seniority list and in our opinion the provisional seniority list can be questioned by other effected employees and the representations were received by the respondents against the provisional seniority list and it was found that the applicant was not senior to the private respondents. Under these circumstances the suitability list has rightly been prepared for promotion on the post of Head Clerk.

14. For the reasons mentioned above we are of the opinion that the applicant has not rightly been called for suitability list for promotion as Head Clerk. It is wrong to alleged that after creation of new zone, North Central Railway, Allahabad new

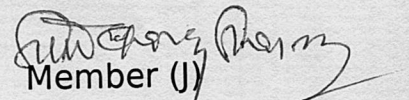


seniority will come into existence and this is the wrong presumption of the applicant that irrespective of the fact that the applicant was given bottom seniority w.e.f. 09.09.1996 even then in the new zone the applicant is entitled to claim old seniority w.e.f. November, 1991 and in our opinion this is not admissible to the applicant and after fixation of seniority in Allahabad division for all purposes this seniority is relevant and whatever has been done by the respondents is according to rules and regulations and circular letter of the Railway Board. The OA lacks merit and is liable to be dismissed.

15. The OA is accordingly dismissed. No cost.


Member (A)

/pc/


Member (J)