

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
ALAHABAD BENCH, ALAHABAD**

Allahabad, this the 18 day of May, 2012

Present :

**Hon'ble Mr. D.C. Lakha, Member-A**

**Hon'ble Mr. Sanjeev Kaushik, Member-J**

Original Application No.571/2006

Narendra Kumar Mishra S/o Sri V.S. Mishra, R/o 359-A,  
D.L.W. Colony, Diesel Locomotive Works, Varanasi,  
presently working as Stock Verifier, D.L.W., Varanasi.

.....Applicant.

By Advocate – Shri S.K. Om

V E R S U S

1. Union of India through General Manager, Diesel Locomotive Works, Varanasi.
2. Financial Advisor and Chief Accounts Officer, Diesel Locomotive Works, Varanasi.
3. Secretary, Railway Board, Rail Bhawan, New Delhi.
4. Mohd. Jamaluddin, working as Senior Stock Verifier, Diesel Locomotive Works, Varanasi.
5. S.N. Rai, working as Stock Verifier, Diesel Locomotive Works, Varanasi.

.....Respondents.

By Advocate : Shri P.N. Rai  
Shri L.M. Singh  
Shri Shashi Kant Sharma

**(Reserved on 07.05.2012)**

O R D E R

**By Hon'ble Mr. Sanjeev Kaushik, J.M. :**

By means of present original application, the applicant  
seeks for quashing the impugned orders dated 27.2.2006

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(Annexure-A-1), 3.3.2006 (Annexure-A-2) and 03.03.2006 (Annexure-A-3) and further sought direction in the nature of mandamus commanding the respondents to reinstate the applicant to the post of Senior Stock Verifier in the scale of Rs.6500-10500/- and other relief which this Hon'ble Court may deem fit.

2. The brief facts of the case are that the applicant initially joined the respondents' department as Junior Accounts Assistant on 09.04.1987 in Diesel Locomotive Works. He was promoted as Accounts Assistant in the scale of Rs.1400-2600 from the post of Junior Accounts Assistant in pay scale of Rs.1200-2040/4500-7000/-. There are two avenues of promotion from Junior Accounts Assistants i.e. first Accounts Assistant in the pay scale of Rs.5500-9000 and other one is to Stock Verifier in the pay scale of Rs.5500-9000/-. Only difference is with the post of Stock Verifier, element of arduous allowances of Rs.150/- per month is attached. The applicant was found suitable for the post of Stock Verifier on 5.9.1994 by respondent No.2 (Annexure-A-4). In the panel, the name of the applicant stood at Sl. No.1 whereas the names of private respondents were at Sl. No.2 and 3. Due to some family problem the applicant requested the respondents not to promote him

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vide his letter dated 03.01.1995 (Annexure-A-5). Considering his request, the respondent No.2 vide his order dated 5.1.1995 posted next immediately junior to the applicant Mohd. Jamaluddin, who was at Sl. No.2 in the panel of promotion. Subsequent to that, the private respondent Shri S.N. Rai who was at Sl.3 was also promoted by order dated 27.1.1995. The applicant stated to have made a representation at the same very day to respondent No.2 against promotion of candidate who is at Sl. No.3. On 30.4.1996, the applicant was promoted as Stock Verifier (Annexure-A-7). After restructuring scheme dated 9.10.2003, the applicant was promoted as Senior Stock Verifier w.e.f. 01.11.2003 by order dated 6.12.2003 (Annexure-A-8). It is averred that the applicant shown senior to the private respondents and at no objection has ever been raised by the private respondents. The respondent No.4 directly approached the respondent No.3 by filing representation and ultimately by order dated 9.1.2006 the applicant was reverted from the Senior Stock Verifier to the post of Stock Verifier (Annexure-A-11). Against the above order, the applicant approached this Tribunal by way of OA No.69/06, which was disposed of on 30.1.2006 directing the respondents to treat the Original Application as representation and decide the same within a

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period of two months (Annexure-A-12). In pursuance of the order of the Tribunal the respondents have considered the case of the applicant and rejected the same by impugned order dated 27.2.2006 (Annexure-A-1). Hence, this Original Application.

3. Pursuance to the notice, the official respondents as well as private respondents filed separate reply wherein resisting the claim of the applicant. In Para 3 of the counter affidavit the official respondents have stated which is as under :

- (I) That as per provisions contained in Appendix-IV of IREM-I, as it stood at the relevant point of time, the post of stock verifiers are filled on consideration of seniority and merit including fitness for outdoor work. In the case of Accounts Clerk, promotion to the rank of Stock Verifiers will not be made unless they have passed the examination prescribed in Appendix-II.
- (II) That to fill up the vacant post of Stock Verifier Gr. Ra. 1400-2600 (RPS)/5500-9000 (RSRP) a notification was issued on 18.7.94. 10 candidates including applicant submitted their application for promotion on the post of Stock Verifier Grade Rs. 1400-2600 (RPS)/5500-9000 (RSRP).
- (III) That as a result of suitability test conducted on 24.8.1994, 03 candidates including applicant were found successful and empanelled for the post of

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Stock Verifier Grade Rs. 1400-2600 (RPS)/5500-9000 (RSRP) vide office order No.168 dated 5.9.94.

- (IV) That after notification of the panel dated 5.9.94, applicant submitted an application dated 3.1.95 stating that he is unable to join on the post of Stock Verifier Grade Rs. 1400-2600 (RPS)/5500-9000 (RSRP) immediately due to domestic problems.
- (V) That on receipt of the application dated 3.1.1995 from the applicant the matter was considered and Shri Md. Jamaluddin whose name appears at Sr. No.2 of the panel dated 5.9.94 was promoted on the post of Stock Verifier Grade Rs.1400-2600 (RPS)/ 5500-9000 (RSRP) vide office order No.307 dated 5.1.95. Thereafter, on occurrence of another vacancy of the post of Stock Verifier Grade Rs.1400-2600 (RPS)/ 5000-8000 (RSRP) Shri S.N. Rai whose name appears at Sr. No. 3 of the panel dated 5.9.94 was posted as such vide office order No.330 dated 27.1.1995.
- (VI) That after promotion of Shri S.N. Rai on the post of Stock Verifier, applicant submitted his representation dated 27.1.95 for his posting on the post of Stock Verifier Grade Rs.1400-2600 (RPS)/ 5500-9000 (RSRP). The representation of the applicant was considered and he was promoted on the post of Stock Verifier on 30.4.96 keeping in view the currency of the panel.
- (VII) That prior to 01.10.2004 only seniority of Account Asstt. was being maintained. Accordingly, the applicant had been shown senior to Shri Md. Jamaluddin & S.N. Rai as such the applicant was considered for the post of Sr. Stock Verifier

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Gr.6500-10500/- and on being found suitable was promoted to the post of Sr. Stock Verifier vide office order No.193 dated 06.12.2003.

(VIII) Subsequently, Shri Md. Jamaluddin respondent No.4 submitted representation dated 28.3.2005 for promotion on the post of Sr. Stock Verifier keeping in view of his date of joining on the post of Stock Verifier Gr. Rs.1400-2600 (RPS)/5500-9000 (RSRP) and further on receipt of Board's letter dated 6.9.2005 the matter was sent to Railway Board stating the full facts of the case vide letter No.A Admin/B/10 Part-II dated 27/29.9.2005. The Railway Board after considering the facts of the case observed that it was incorrect on the part of the DLW not to have applied the provisions of para 224 of IREM to the case of Shri Narendra Kumar Mishra when he asked for postponement of his promotion on 3.1.95. It was not therefore, in order to promote him after expiry of one year as Stock Verifier on 30.4.96 without subjecting him to a fresh screening/suitability and further promoting him as Sr. Stock Verifier ignoring Shri Jamaluddin and Shri S.N. Rai who had been promoted much earlier on 5.1.95 & 27.1.95 respectively. Further Board directed DLW to rectify the aforesaid irregularity instructing further that since Shri Mishra was promoted more than nine years ago as Stock Verifier the same may be allowed to stand but his promotion as Sr. Stock Verifier and his placement above Shri Jamaluddin and Shri S.N. Rai in the seniority of Stock Verifier should be undone and Shri Mishra placed below them.

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- (IX) That as per decision taken by the Railway Board vide letter dated 6/9.1.2006, the seniority list was corrected and revised vide dated 17.3.2006.
- (X) In view of the facts stated above, it is clear that the applicant was not entitled for promotion on the post of Stock Verifier and further Sr. Stock Verifier Gr. Ra. 6500-10500/- and he was wrongly assigned seniority above the respondent No.4 & 5 and the same has been rectified pursuant to Railway Board's letter dated 6/9.1.2006. The order dated 27.2.2006 passed by the Addl. Member Staff, Railway Board is in accordance with the rules and suffers from no irregularity as such the same is legal, valid and sustainable in law.
- (XI) That as per the direction given by the Board vide letter dated 6/9.1.2006, the applicant was reverted from the post of Sr. Stock verifier Gr. Rs.6500-10500 (RSRP) to the post of Stock Verifier Gr. Rs.5500-9000 (RSRP) vide office order no. 278 dated 3.3.2006.

The private respondents have filed the reply on the same lines. The applicant has filed the rejoinder.

4. We have heard Shri S.K. Om, learned counsel for the applicant and Shri P.N. Rai, learned counsel for official respondents and Shri L.M. Singh, learned counsel for private respondent No.4. None appeared for respondent No.5.

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5. Shri S.K. Om, learned counsel for the applicant vehemently argued that the impugned order of reversion of the applicant from the post of Senior Stock Verifier to that of Stock Verifier is illegal and arbitrary as the same has been done on the representation made by respondent No.4 directly to the Railway Board. Therefore, the same is liable to be set-aside. He referred to the allegation of malafide made in Para 4.15. He further argued that the reasoning given in the impugned order is also not applicable as Para 224 of I.R.E.M. does not apply to the case of the applicant as no point of time the applicant refused his promotion in pursuance to the order dated 5.9.1994 and the respondents have wrongly applied Para 224 of I.R.E.M., therefore the impugned order is liable to be set-aside. Lastly, he argued that settled seniority cannot be unsettled after a long time. On the other hand, Shri P.N. Rai, representing the Railway argued that the applicant has wrongly been promoted as Senior Stock Verifier. When the above mistake was pointed out by the Private Respondent, by submitting his representation on 28.3.2005, then the matter was re-looked and in terms of Para 224 of I.R.E.M. the order was rectified and the order of reversion was passed. Shri L.M. Singh adopted the arguments advanced by official respondents and in supplement to that, he argued that though the

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applicant was at Sl. No.1 in the panel issued on 5.9.1994 but since the applicant did not join and have specifically given in writing to promote his junior, therefore, the applicant cannot be placed above to the private respondents who were promoted and assumed charge of promoted post earlier to the applicant. He referred to Para 224 (iii) of I.R.E.M. and submitted that in terms of that the persons like the private respondents who have promoted earlier are to be placed senior to the applicant who was promoted subsequently.


6. We have given our thoughtful consideration to the entire matter. There is no dispute that by order dated 5.9.1994 a panel for promotion to the post of Stock Verifier was prepared. The applicant was at Sl. No.1 whereas respondent No.4 was at SL. No.2 and respondent No.5 was at Sl. No.3. The applicant himself by his letter dated 3.1.1995 have requested the respondents to promote junior to the applicant as the applicant have some problem. Undisputedly, the private respondent Nos. 4 and 5 were promoted prior to the date when the applicant was promoted as Stock Verifier. The seniority on promotion and confirmation the rank of Stock Verifier is governed under

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Appendix-IV particular Para 224 of I.R.E.M. Para 224 (iii) of I.R.E.M. reads as under :

**“(iii) Seniority will be as from the date of effect of promotion and he will be junior to all the persons promoted earlier than him from the same panel irrespective of his panel position. He will not, however, lose seniority to another employee promoted to the same promotion category during the one year period of penalty as a result of a fresh selection subsequently held.”**

7. Plain reading of above, leaves no doubt that seniority is to be reckoned from the date of joining on the promotional post irrespective of the placement in the panel. According to above, the respondent No.4 and 5 who were promoted prior to the applicant are to be placed senior to him in the seniority list. Therefore, we found no reasons to interfere with the impugned orders. Hence, the OA is dismissed being devoid of merit. No order as to costs.

  
Member-J

  
Member-A

RKM/