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(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ALLAHABAD this the 14th day of May, 2007.

ORIGINAL APPLICATION NO. 630 OF 2006

HON'BLE MR. ASHOK S. KARAMADI, MEMBER- J.
HON'BLE MR. K.S. MENON, MEMBER- A.

Abhay Kumar, a/a 37 years, S/o Sri Shesh Narai,
R/o 205-B, New Model Railway Colony,
Izzatnagar, Bareilly..

.....Applicant.

VE R S U S

1. Union of India through the General Manager,
North Eastern Railway, Gorakhpur.
2. The Divisional Railway Manager, North Eastern Railway,
Izzatnagar Division, Bareilly.
3. The Chief Mechanical Engineer (Workshop),
North Eastern Railway, gorakhpur.

.....Respondents

Present for the Applicant: Sri T.S. Pandey
Present for the Respondents: Sri Anil Dwivedi

ORDER
BY HON'BLE MR. ASHOK S. KARAMADI, JM.

This Original Application has been filed for quashing the order dated 20.02.2006 and the seniority list dated 18.04.2006 and further direction not to give effect to the order of the respondents.

2. The grievance of the applicant is that the said seniority list and the consequential orders have been passed by the respondents without

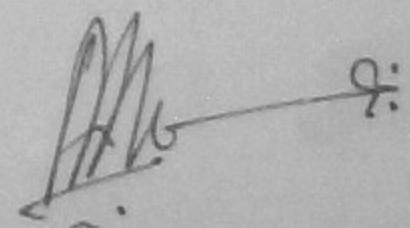
(11)

giving an opportunity to the applicant as two separate and distinguished Units are merged in one seniority, which will badly affect the interest of the applicant in determining the seniority position in the seniority list.

3. On notice the respondents have filed Counter Reply stating therein that the decision taken by the respondents is based on the decision with regard to merger by the competent authority and in exercise of powers and accordingly the applicant has no grievance against the seniority list and subsequent orders passed by the respondents are in the administrative exigencies and in accordance with Rule 226 of the Indian Railway Establishment Code Vol. I. It is further submitted by the respondents that the whole cadre of Supervisor of Mechanical and Electrical Trade, Izatnagar has been merged in one seniority Unit at Division Level, therefore, before taking any decision, it is not obligatory to give an opportunity to the concerned staff.

4. We have heard learned counsel for the parties and perused the pleading on record.

5. It is admitted that the applicant is an employee of separate Unit and is merged with other Unit. Having regard to the fact that two different Units are merged in one Unit without calling for option from the concerned employees, therefore, in the absence of any opportunity, processing to merge the two different cadre in one Unit and preparing a common seniority list cannot guise of the policy decision and such act cannot be allowed to be continued, which are against the principle of natural justice and violative of rules, which are quoted in the Counter Reply. The rule referred in the Counter Reply i.e. para 226 of Indian



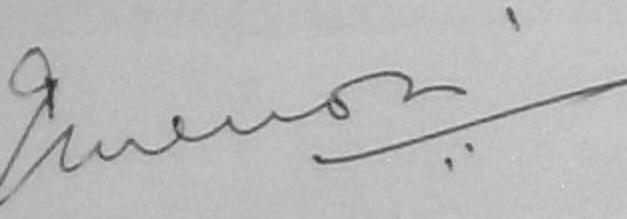
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Railway Establishment Code is only with regard to the transfer which reads as follows:

"226. Transfer: - Ordinarily, a railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another railway or another establishment. In the exigencies of service, however, it shall be open to the President to transfer the railway servant to any other department or railway or railway establishment including a project in or out of India. In regard to Group 'C' and Group 'D' railway servants, the power of the President under this rule in respect of transfer, within India may be exercised by the General Manager or by a lower authority to whom the power may be re-delegated."

On perusal of the above rule and the facts and the circumstances of the case, as pleaded by the applicant, it is clear that the respondents have acted illegally in an arbitrary manner, which has resulted in the miscarriage of justice and as such the applicant has made out a case and accordingly accepting the same, we reject the respondents' contentions.

6. From the discussions made above, the O.A is allowed. The order dated 22.02.200 and the Seniority List dated 18.04.2006 are quashed. The respondents are directed to redo the work after giving an opportunity to the applicant as well as similarly placed persons, if any, within a period of three months from the date of communication of this order.



(K.S. MENON)
MEMBER- A



(ASHOK S. KARAMADI)
MEMBER- J.