

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 886 of 2008.

Date of Decision 32.11.

Watson Nirmal Lal Applicant(s)

C/A Mr. P.C. Jhingan Counsel for the
Applicant(s)

V E R S U S

Union of India and others Respondents(s)

C/A Mr. P.N. Rai Counsel for the Respondents(s)

CORAM :

Hon'ble Mr. Justice S.C. Sharma, Sr. Member (J)/HOD.

Hon'ble Mrs. Manjulika Gautam, Member (A)

- ✓ 1. Whether Reporters of local News Papers may be allowed to see the Judgment?
- ✓ 2. To be referred to the Reporters or not?
- ✓ 3. Whether their Lordship wish to see the fair copy of the judgment.
- ✓ 4. Whether to be circulated to all the Benches.


SIGNATURE

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 888 of 2008

Allahabad this the, 3 day of February, 2011

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

Watson Nirmal Lal, Son of Shri R.B. Lal,
Technician (SW) Grade I Ballia Railway Station
Northern Eastern Railway, Ballia.

Applicant

By Advocates: **Shri P.C. Jhingan**
Shri R.K. Shukla,
Smt. Sarita Shukla

Vs.

1. Union of India through General Manager,
Northern Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, N.E. Railway,
Varanasi.
3. Senior Divisional Personnel Officer, N.E.
Railway, Varanasi.

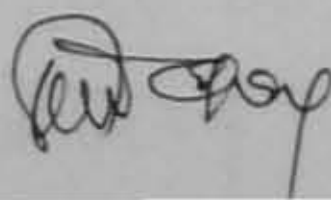
Respondents

By Advocate: **Mr. P.N. Rai**

O R D E R

By Hon'ble Mr. Justice S.C. Sharma, J.M.

Instant O.A. has been instituted for giving
direction to the respondents to fix the
seniority of the applicant in accordance with
order dated 23.03.1999, and to show the exact
position of the applicant in the seniority



list. Further prayer has also been made for giving direction to the respondents to permit the applicant to participate in the suitability test for the post of Senior Technician in the scale of Rs.5000-8000/- for which the applicant was illegally deprived^{of 2} by the respondents in view of seniority of the applicant. Further direction has also been prayed that the respondent No. 2 be directed to make payment of arrears as per proforma promotion as a consequence of his ~~exonerating~~² exonerating from punishment of removal from service and inflicting the minor punishment of Censure.

2. The facts of the parties, in brief, are as under: -

That the applicant was initially appointed on the post of Carriage Khalasi in North Eastern Railway Division, Varanasi on 20.12.1969 and presently he is working on the post of Technician Grade I at Ballia Railway Station in North Eastern Railway. The applicant was suspended from service on 15.12.1984 due to alleged misbehaviour with Senior Fuel Inspector while he was inspecting fuel records in the Office of Loco, Shivan on

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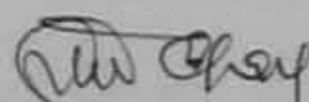
14.12.1984, which was against the discipline of Railway servant under Railway Servants Conduct Rules, 1968. A charge sheet was served on 02.02.1985, and suspension order was passed on 21.12.1984. On the basis of departmental inquiry, the applicant was found guilty of the charges leveled against him and the punishment of removal from service was imposed upon him on 01.07.1985. The departmental appeal was preferred by the applicant against the punishment of removal from service on 25.09.1985. It is stated that the Appellate Authority converted the punishment of removal from service to that of reappointment as Carriage Khalasi on the minimum of pay scale for a period of one year subject to quarterly report of his performance. The order of the Appellate Authority was challenged in the O.A. No. 87 of 1988 before this Tribunal. The O.A. was disposed of on 21.09.1995 and direction was given to the Appellate Authority to re-consider the Appeal and dispose of the Appeal in accordance with law within a period of three months. Instead of deciding the appeal as per directions of the Tribunal rather the Appeal was decided afterwards beyond three months on

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30.07.1998 and punishment of reappointment was substituted with the punishment of Censure. It is stated that the applicant was exonerated from the charges leveled against him and the punishment of Censure has become final and under these circumstances the applicant is entitled to all the benefits which were available to him if the punishment might have not been awarded to him. The punishment of Censure is a minor punishment and due to which the rights of the applicant towards seniority, promotion and consequent monetary benefits and other consequential benefits stand revived. It is stated that seniority of the applicant was below to Sri Ram Nath Ram and above to Sri Bechan Ram. The name of Sri Ram Nath Ram was at serial No. 232, and of Bechan Ram at serial No. 235, and the applicant was placed at serial No. 234. Bechan Ram was promoted to the post of Carriage Fitter Grade III in 1987 and since the applicant was just above to Bechan Ram hence he became entitled for promotion in the year 1987. That applicant remained in litigation from 04.07.1985 to 30.07.1998 and finally the punishment of Censure was awarded to the applicant and hence the applicant was

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entitled to be promoted prior to Bechan Ram from Carriage Khalasi to Carriage Fitter Grade III in the year 1987. The promotion was given to the applicant from the post of Carriage Khalasi to the post of Carriage Fitter Grade III on 16.06.2000 whereas he was entitled to promotion in the year 1987 prior to Bechan Ram. The applicant was further promoted to the post of Carriage Fitter Grade II on 01.07.2003 and further promoted to the post of Carriage Fitter Grade I on 30.09.2005. It was specifically mentioned in the promotion order that the applicant was given the benefit of proforma seniority from the date of removal from service i.e. 04.07.1985 and that the fixation of salary shall be finalized by the Accounts department after inspection and verification but, till date seniority of the applicant has not been corrected. Up to date the applicant is senior to Annuddin and he is entitled to be replaced above to Annuddin in the seniority list but the seniority list has not been revised, and the applicant has not been paid the arrears of proforma salary and at present he is working on the post of Carriage Fitter Grade-I in the pay scale of ₹ 4500-7000 since 30.09.2005. The



Divisional Railway Manager (Personnel) Varanasi had issued a letter for promotion of Carriage Fitter Grade-I to the post of Senior Technician in the pay scale of ₹ 5000-8000/- on the basis of suitability test. 23 posts were earmarked for general category, 6 posts for S.C. and 1 post for S.T. candidate, total 30 posts were advertised. Trade test was conducted on 27.11.2006 and two criteria were fixed in the case that the candidate should be of long standing and not on contractual basis who should highly skilled in which quality and capacity to work both should be included the second criteria was fixed that the candidate recommended for the post of Senior Technician would be watched and examined the performance by the departmental committee. Two groups were constituted for promotion against 30 posts, and the first group was to be tested first and in case the candidates of first group if either fail or did not give consent for the test, then only the test of second group would have been conducted. But this mode was illegal and arbitrary. In the first group junior to the applicant was included and name of the applicant was placed at serial No. 22, and name

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of the applicant was in the second group and in case the candidates of first group were found successful in the test, then the applicant will not get the opportunity for suitability test. And the representations were made in this respect. But the respondents have not considered the same and hence the O.A.

3. The respondents contested the O.A. and filed the Counter Reply. The respondents denied from the allegations of the O.A. It has been alleged that after modifying the punishment by the Appellate Authority whatever benefits to which the applicant was entitled has been given to him after his qualifying the professional examination. As the applicant was not exonerated from all the charges leveled against him, though Censure entry was given to him modifying the punishment of re-appointment, he was rightly not given the benefit of proforma promotion, though given the benefit of proforma seniority and his seniority was fixed above to Abdul Fareed, which is just according to Rule. It is stated that the applicant is not entitled to the benefit of proforma promotion and he was given benefit of seniority

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according to Rules and his seniority has rightly been fixed. In order to fill up 30 vacant posts of Senior Technician e.g. 23 posts for general category while 07 posts were under reserved category. The name of the applicant was in group 'B'. Out of group 'B', persons belonging to Scheduled Caste/Tribes were called according to seniority which were against the reserved post and were junior to the applicant. It is further stated that no person of general category, who was junior to the applicant, was called in the examination for the post of Senior Technician. It is stated that the applicant was rightly not given the benefit of proforma promotion and O.A. lacks merits and the same is liable to be dismissed.

4. We have heard Mr. P.C. Jhingan and Mr. R.K. Shukla, Advocates for the applicant and Mr. P.N. Rai, Advocate for the respondents, and perused the entire facts of the case.

5. It is an admitted fact that on 21.12.1984 the applicant was put under suspension for alleged misbehaviour with Senior Fuel Inspector while he was inspecting fuel records in the

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Office of Loco, Shivan on 14.12.1984, which was against the discipline of Railway servant under Railway Servants Conduct Rules, 1968. A charge sheet was served on the applicant dated 02.02.1985. A departmental enquiry was conducted against the applicant and according to the departmental enquiry, the applicant was found guilty for the charges leveled against him, and he was punished with the punishment of removal from service on 01.07.1985. It is also an admitted fact that the departmental appeal was preferred against the order of removal from service on dated 25.09.1985. The Appellate Authority converted the order of punishment from removal of service to that of reappointment as Carriage Khalasi on the minimum of pay scale for a period of one year subject to quarterly report of his performance. Further it is also undisputed fact that against the order of the Appellate Authority, the applicant preferred an O.A. No. 87 of 1988 before the Tribunal, and the O.A. was decided finally on 21.09.1995, and the order was quashed and the case was remitted back to the Appellate Authority for deciding the Appeal in accordance with law within a period of three

months. Ultimately on 30.07.1998, the Appellate Authority decided the appeal and sentence of reappointment was substituted with the punishment of Censure. Thereafter, Censure entry was not challenged before any Tribunal or Courts. Under these circumstances, the Censure entry is final.

6. It has been alleged by the applicant that the Censure entry is a minor punishment and due to this reason, rights of the applicant regarding seniority, promotion and consequential monetary benefits shall not be affected. It is evident from the pleadings that earlier the applicant was placed below to Ram Nath Ram and Bechan Ram in the seniority list. At the time when the order of removal was passed against the applicant on 01.07.1985, the applicant had been working as Carriage Khalasi. Bechan Ram was below to the applicant and Bechan Ram was promoted as Carriage Fitter Grade III in 1987 and it has been alleged by the applicant that he is entitled to be promoted as Carriage Fitter grade III in 1987 before Bechan Ram. As the punishment order was modified to that of Censure entry and it will

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not affect the future prospects of the applicant regarding promotion etc. that litigation continued up to 30.07.1998 when finally the Censure entry was substituted. But the applicant is entitled for promotion w.e.f. 1987 when Bechan Ram was posted as Carriage Fitter Grade III. Instead of giving promotion to the applicant w.e.f. 1987 from the date when Bechan Ram was promoted, he was promoted as Carriage Fitter Grade III on 16.06.2000 whereas he was entitled to be promoted in the year 1987. Further promotions were also given to the applicant as Carriage Fitter Grade II on 01.07.2003 and Carriage Fitter Grade I on 30.09.2005. The proforma seniority was also given to the applicant from the date of the order passed for removal on 01.07.1985. The seniority of the applicant was not revised after he was exonerated from the charges.

7. It has further been alleged by the applicant that in order to fill up the post of Senior Technician from the post of Carriage Fitter Grade I in the pay scale of ₹ 5000-8000/- a suitability test was conducted. In all 30 posts were advertised and out of this 23 posts

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were earmarked for general category, 6 posts for S.C. and 1 post for S.T. candidate. Trade test was conducted on 27.11.2006 in order to fill up those posts and surprisingly two criteria were fixed in order to conduct the suitability test; firstly that the candidate must be of long standing and not on contractual basis and he should be highly skilled in which quality and capacity to work both should be included. Second criteria fixed was that the candidate should be recommended for the post of Senior Technician and his work shall be watched and examined by the Departmental Promotion Committee. In order to fill up these 30 posts, the Railway administration had constituted two groups of 30 candidates and it was provided that in case any candidate remained unsuccessful in the suitability test in the first group then the candidate shall be put to suitability test from the second group. It is alleged that this criteria was arbitrary and illegal. The applicant being senior was entitled to be placed in Group 'A' and not in Group 'B'. Much junior persons to the applicant were placed in Group 'A'. The candidates of Group 'B' were entitled for

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suitability test in case the candidate failed in Group 'A' otherwise the post shall be filled up from Group 'A'.

8. Most of the facts have been admitted by the respondents but it has been alleged by the respondents that the applicant was not exonerated fully from the charges framed against him. It is stated that it is a fact that earlier punishment was awarded against the applicant of removal from service on 01.07.1985 but in the departmental appeal, the punishment of removal from service was substituted to the punishment of reappointment with certain conditions. It is also undisputed fact that the order of Appellate Authority was challenged in the O.A. before the Tribunal and the Tribunal with certain observations, ordered to decide the Appeal by the Appellate Authority *denovo* and in pursuance of the direction of the Tribunal, the Appeal was decided afresh and further the order of reappointment was substituted to that of Censure. Learned counsel for the respondents argued that as the applicant was not exonerated fully hence he is not entitled for restoration of seniority and

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no junior to the applicant was promoted and recommended for promotion as Technician.

9. It is undisputed fact that the applicant faced departmental enquiry for a major charge but subsequently the minor punishment was awarded of the Censure. The contention of learned counsel for the applicant is that Censure entry will not affect the future prospects of the applicant and the applicant is entitled to his seniority and all the consequential benefits. No such Rule has been cited by learned counsel for the respondents that in case Censure entry is awarded to an employee then he will loose his seniority. However, Censure entry will be considered at the time of promotion but so far as regards the seniority of the employee, it will remain in tact. We disagree with the arguments of learned counsel for the respondents that as the applicant was not exonerated from the charges hence considering the Censure entry his seniority cannot be restored. But this contention of learned counsel for the applicant is not based on any rules or law. It is also an admitted fact that after the order of the

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Appellate Authority regarding Censure, the applicant was promoted from the post of Carriage Khalasi to the Carriage Fitter Grade III on 16.06.2000. The order of the Appellate Authority was passed on 30.07.1998 and the promotion to the applicant was given in the next higher scale of Carriage Fitter grade III on 16.06.2000. It is undisputed fact that Bechan Ram was junior to the applicant and he was promoted as Carriage Fitter Grade III in the year 1987. At the time of giving promotion to the applicant on 16.06.2000, this fact was not considered that the applicant has been awarded a punishment and hence he is not entitled for promotion w.e.f 1987 when his junior was promoted. It is observed above that the seniority of the applicant will not be affected merely by awarding Censure entry irrespective of the fact that the entry of Censure was substituted from the earlier order of reappointment that his seniority will be affected. It will remain in tact and hence he will be entitled for proforma promotion in the year 1987 when his junior Bechan Ram was promoted. It is immaterial that order of promotion was passed on 16.06.2000 but it shall

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be proforma promotion w.e.f. 1987 when Bechan Ram was promoted, and it will also affect his subsequent promotions.

10. Nothing has been argued on behalf of the respondents that as to how the seniority of the applicant shall be affected after awarding the Censure entry. The seniority ought to have been corrected when the punishment order was substituted with minor punishment of Censure entry. There was no justification for not restoring the seniority of the applicant w.e.f. 01.07.1987. It ought to have been with retrospective effect. Earlier the order of punishment was passed for removal of service from 01.07.1985. But when this order of punishment was substituted to the punishment of Censure then, in our opinion, applicant is entitled for restoration of his seniority and under these circumstances, seniority of the applicant ought to have been reconsidered by the respondents and the applicant was also entitled for promotion as per his seniority considering that Bechan Ram was junior to him. It is a fact that all the promotions were given to the applicant but subsequently, not on the

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due date as the order of punishment was continuing against him. It is only the allegation of the respondents that as the applicant was not exonerated from all the charges leveled against him hence, he was not entitled for restoration of the seniority. However, it has also been admitted by the respondents that "Since the applicant was not exonerated from all the charges leveled against him, though Censure entry was given to him modifying the punishment of re-appointment, he was rightly not given the benefit of proforma promotion, though given the benefit of proforma seniority and his seniority was fixed above to Abdul Fareed which is just according to Rule." But the respondents required to substantiate this fact that under what criteria the applicant was placed just above Abdul Fareed, and why this seniority was not restored above Bechan Ram. Nothing has been argued on behalf of the respondents in this connection. Hence we are of the opinion that the applicant is entitled for restoration of his seniority and he is also entitled for consequential promotion from the date when his juniors were promoted. The applicant is also entitled to be considered

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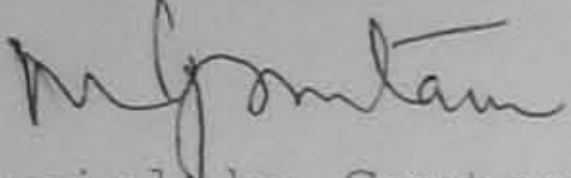
for promotion as Senior Technician in first group. It was not justified on behalf of the respondents to place the applicant in group 'B' on the pretext that his seniority was fixed as per rules but nothing has been argued that what's Rule provided and in our considered opinion the applicant is entitled for restoration of his seniority.


11. For the reasons mentioned above, we are of the opinion that the applicant is entitled for restoration of his seniority w.e.f. 01.07.1985 just above Bechan Ram and he was entitled to be promoted as Carriage Fitter grade-III on the date when his junior Bechan Ram was promoted and subsequent promotion shall also be given to him according to this seniority. O.A. deserves to be allowed.

12. O.A. is allowed. The respondents are directed to fix the seniority of the applicant in accordance with rules and seniority position of the applicant must be given in the seniority list. The respondents are also directed to permit the applicant to participate in the suitability test for the post of Senior

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Technician in the scale of ₹ 5000-8000. The applicant is also entitled for arrears of proforma salary from the date when his juniors were promoted. No order as to costs.


{Manjulika Gautam}
Member - A


[Justice S.C. Sharma]
Member - J

/M.M/