

## CENTRAL ADMINISTRATIVE TRIBUNAL

~~PRINCIPAL BENCH, DELHI~~

AHMEDABAD BENCH

9

O.A No. 504

1989

~~Ex.No.~~DATE OF DECISION 26-4-1990Shri V.U.Acharya . . . . . PetitionerShri Y.V.Shah . . . . . Advocate for the Petitioner (s)

Versus

Union of India & Others . . . . . RespondentShri N.S.Shevde . . . . . Advocate for the Respondent(s)

CORAM .

The Hon'ble Mr. N.Dharmadan . . . . . : Judicial Member

The Hon'ble Mr. M.M.Singh . . . . . : Administrative Member

JUDGMENT

Shri V.U.Acharya,  
Sr.Clerk, Wester Railway,  
Baroda.

: Applicant

(Adv.: Mr.Y.V.Shah)

Versus

- 1. Union of India,  
Through:  
The General Manager,  
Western Railway,  
Churchgate, Bombay.
- 2. Chief Engineer (S & C)  
Western Railway,  
Churchgate, Bombay.
- 3. Dy. Chief Engineer (S & C)  
Western Railway,  
Baroda.

: Respondents

(Adv.: Mr.N.S.Shevde)

Coram : Hon'ble Mr. N.Dharmadan

: Judicial Member

Hon'ble Mr. M.M.Singh

: Administrative Member

ORAL ORDER

Date: 26-4-1990

Per: Hon'ble Mr. N.Dharmadan

: Judicial Member

The applicant in this case approached the Tribunal with a relief that the seniority list prepared as per Annexure A-3 by the respondents has not been prepared taking into consideration his seniority rights <sup>and is</sup> from the date of his appointment <sup>and hence it is to be quashed.</sup> He has a further case that though he was recruited as a clerk with effect from 8.4.1958 by the Railway Selection Committee <sup>and is</sup> he has been promoted as Sr.Clerk with effect from 19.11.1987 by the 3rd respondent <sup>his seniority was not given by any way proper place.</sup> He has also been allowed to act as a senior clerk from 1.1.1979 to 15.7.1982. His claim <sup>for</sup> seniority in terms of the Railway Board's Circulars has not been adverted to by the respondents while preparing the provisional seniority produced along with the application and <sup>marked as</sup> not in Annexure A/3. The learned counsel brought to our notice that immediately after receipt of the said seniority <sup>list</sup> he has objected to it by <sup>filing</sup> following representation. At the time of argument, the learned counsel submitted that in the seniority list his position has been shown

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as Sr.No.228. This according to him is wrong. He ought to have been given a place between Sr.No.74 and 75 in accordance with the circulars applicable to the promotion post.

2. We feel these contentions deserve consideration by the <sup>concerned by</sup> authority while disposing of Annexure A/4. <sup>stated to be pending consideration. by</sup> representation

3. The learned counsel for the respondents, <sup>also by</sup> submitted that the aforesaid representation is even now pending.

Hence we feel, <sup>that</sup> the interest of justice will be better served in this case by disposing of the application with a direction that the applicant's contentions stated in Annexure A-4 and in the application should be considered by the 2nd respondent after giving <sup>him by</sup> an opportunity of being heard <sup>and</sup> while disposing of it. He shall <sup>after considering the above objections.</sup> dispose of the same in accordance with the law. The respondent shall do this within a period of three months, <sup>from the date of receipt of this</sup> O.A. is <sup>dismissed.</sup> disposed of as indicated in the above line. There will be no order as to costs.

M. M. L

(M.M.Singh)  
Administrative Member

N. Dharmadan

(N.Dharmadan)  
Judicial Member

a.a.b.

STE-463/88  
17/10

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

O.A. NO. 504 OF 1989

V.U. Acharya ..... Applicant  
V/s.

Union of India,  
Western Railway & Ors. .... Respondents

I N D E X

Sr. no.	Annexures	Particulars	Page no.
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COPY served  
L.A. Clerk  
Shree

U.V.P.  
Ahmedabad  
4/10/85

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6 23/4/80

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(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

O. A. NO. 504 OF 1989

1. Particulars of the applicant. :

- i. Name of the applicant. : Vinodkumar
- ii. Name of father. : Umiyashanker Acharya
- iii. Designation and office in which employed. : Sr. Clerk, Western Railway
- iv. Office address. : Dy. Chief Engineer (S&C)  
Western Railway, Baroda.
- v. Address for service of all notices. : -do-

2. Particulars of the respondents. :

- i. Name and/or designation of the respondents. : 1. Union of India,  
through the General Manager,  
Western Railway,  
Churchgate,  
BOMBAY - 20.
- ii. Office address of the respondents. : 2. Chief Engineer (S&C),  
Western Railway,  
Churchgate,  
BOMBAY - 20.
- iii. Address for service of all notices. : 3. Dy. Chief Engineer (S&C),  
Western Railway,  
BARODA.

3. Particulars of the order against which application is made. :

- i. Order no. : E (HQ) 1030/2/2
- ii. Date : 4-5-89  
2-8
- iii. Passed by : Respondent no. 2.

iv. Subject in brief. :

Fixing incorrect seniority :

The applicant has been given seniority position at sr. no. 228 instead of between sr. no. 74 and 75, in the seniority list published by the respondent

no.2 as Senior Clerk, Scale Rs. 1200-2040 (RP).

4. Jurisdiction of the Tribunal. :

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

5. Limitation.:

The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985.

6. Facts of the case. :

(A) That the applicant had been recruited as Clerk with effect from 8.4.1958 by the Railway Selection Commission. The applicant has been promoted as Senior Clerk with effect from 19.11.1987 by the respondent no.3. Previously also the applicant has acted from 1.1.1979 to 15.7.1982 as Senior Clerk. That the applicant is a confirmed employee.

(B) That the applicant had registered his name for mutual exchange from Baroda to Ahmedabad, under his letter dated 28th May, 1987. That the applicant has joined the Survey & Construction department (S&C) with effect from 3.3.1976.

(C) As per the Railway Board policy as confirmed by the Bombay High Court, Division Bench judgment dated 19.6.1978, combined seniority list of Construction and Open Line staff is required to be prepared.

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2

(D) The applicant ought to have been assigned seniority from the date of his recruitment dated 8th April, 1958 and not only from the date of joining the S&C department dt. 3.3.1976.

(E) The applicant submits that by mutual exchange with Shri D.C. Christian, he came to S & C department and Shri D.C. Christian has been assigned seniority from the date of his recruitment dt. 11.3.1957, while only the applicant has been assigned seniority from the date of joining the Survey & Construction department, ~~dt. 3.3.1976~~ dt. 3.3.1976 and not from 8.4.1958, i.e. the date of his recruitment. If the seniority list dated <sup>2.8</sup> 4.5.1989 is allowed to operate, his previous 18 years of services will be wiped out. This action of the respondents is clearly violative to Articles 14 and 16 of the Constitution of India.

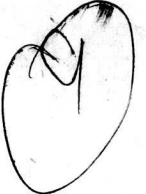
(F) The applicant and Shri D.C. Christian were confirmed Clerks and transferred by mutual exchange from the same Division and in the same Western Railway and therefore, seniority of the applicant alone cannot be adversely affected. Shri D.C. Christian came to Construction department in September, 1970 after the Bombay High Court Division Bench judgment dt. 19.6.1978 and he has not been given seniority from the date of joining the S & C dept. from September, 1970, but he has been assigned seniority from the date of his initial recruitment dated 11.3.1957. This is clear arbitrariness. Bombay High Court, Division Bench judgment has never observed to take away previous services of any employees.

(G) That the applicant has also passed the selection test for the post of a Senior Clerk on 29.5.1983 while juniors who have not passed the selection test have been assigned seniority position above the applicant. Correct seniority is a valuable right and can be challenged forthwith.

(H) That the respondents have not applied their mind before publishing the impugned seniority list. That the applicant has filed objection against the assignment of his wrong seniority in time lastly on 29.8.1989 but yet the same has not been finalised. The applicant is more than 54 years of age, and if his seniority is not correctly fixed, he will suffer consequential benefits of promotion and monetary loss, as well as retiral benefits and therefore, the cause of filing the present application has arisen. If the operation of the seniority list is not stayed, several juniors will get promotion and his chances of promotion will be deprived away for his no fault.

(I) The applicant has a strong prima-facie case and balance of convenience is also in his favour. The impugned action of the respondents in fixing his wrong seniority is arbitrary. The applicant ought to have been assigned seniority from the date of recruitment on par with Shri D.C. Christian and he ought not to have been discriminated in fixing the combined seniority. 18 years of service of the applicant cannot be deprived away.

.....



7. Relief sought :

Be pleased to direct the respondents to assign ~~him~~ correct seniority <sup>to the Applicant</sup> from the date of his initial recruitment with all consequential benefits.

8. Interim order. :

Pending hearing and final disposal of this application, be pleased to stay the execution and operation of the impugned seniority list, dated 4.5.1989 2.8. for the purpose of promotions.

9. Details of the remedies exhausted. :

The applicant declares that he has availed of all the remedies available to him under the relevant service rules.

10. Matter not pending with any other Court, :

The applicant further declares that the matter regarding which this application has been made is not pending before any Court of law, or any other authority or any other Bench of the Tribunal.

11. Particulars of the Postal Order. :

- i. Number of Postal Order. : DD 234630
- ii. Name of the issuing Post Office. : Gujarat High Court
- iii. Date of issue of Postal Order. : 16.8.89
- iv. Post office at which payable : Ahmedabad.

## 12. Details of Index. :

An index in duplicate containing the details of the documents to be relied upon is enclosed.

## 13. List of enclosures. :

1. A copy of an application to enroll the name for mutual exchange, at Annexure A/1.
2. A copy of promotion as Senior Clerk, at Annexure A/2.
3. A copy of impugned seniority list at Annexure A/3.
4. A copy of representation filed by the applicant at Annexure A/4.

Ahmedabad.

Dt. 4.10.89

*U. Acharya*  
APPLICANT.

VERIFICATION

I, Vinodkumar S/O. Umiyashanker Acharya aged about 54 years, working as Sr. Clerk in the office of the respondent no.2, residing at 5-Jayesh Apartment, Opp. Railway station, Maninagar (West), Ahmedabad-8. do hereby verify that whatever stated hereinabove is true to the best of my knowledge and information, and belief. I have not suppressed any material facts.

Ahmedabad.

Dt. 4.10.89

*U. Acharya*  
APPLICANT.

Filed by Mr. Y. V. Chok  
 Learned Advocate for Petitioners  
 with second set & ..... 2 ..... spares  
 1st copy served/not served to  
 other side

Dt. 5/10/89 Dy Registrar : A.T.O  
 Ahmedabad

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Annexure : A/1.

From : V.U. Acharya,  
Clerk,  
DSTE(C)P.I-BRC.

Dated 28th May, 1987

To,  
CE(S&C)CCG.

Through proper channel.  
Sub.: Name Noting for transfer  
to Ahmedabad (Const.) Unit.

.....

Respected Sir,

I desire to enroll my name for my transfer to  
Ahmedabad Construction Unit for the post of Junior  
Clerk or Senior Clerk, whichever is possible earlier  
and advise the Registration number.

Thanking you in anticipation.

Yours faithfully,

sd/-  
(V.U. ACHARYA)

True copy  
V.U. Acharya  
Advocate.

8  
Annexure : A/2.

WESTERN RAILWAY

Dy CE(S&C)'s Office,  
Vadodara-4.

No.BRC/E/839/1 Vol.IV

Dated : 20.11.1987

M E M O R A N D U M

Sub.: Transfer, Promotion & Reversion of  
Class III staff.

Ref.: CE(S&C)CCG's Memorandum No. E/839/111 (S&C)  
& E/839/111(S&C) (i) both dated 18.11.1987.

.....

Following orders are issued.

1. Shri B.J. Maharaja, HC, Scale Rs. 1400-2300(RP) working under AEN(S&C)I/BRC is transferred under DSTE(C)P/I-BRC with effect from 20.11.1987 A.N.
2. Shri V.U. Acharya, Jr. Clerk, reported for duty in this office on 19.11.1987, is promoted as Sr. Clerk in scale Rs.1200-2040 (R/P) and posted under AEN(S&C)I/BRC vice item No. 1 above.

sd/-  
DY. CE(S&C)/BRC

TRUE COPY  
*W.V.*  
Advocate.

A/3

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WESTERN RAILWAY

Headquarter Office,  
Churchgate, Bombay

(12)

No. E (HQ) 1030/2/2 Vol. III

Dated: ~~April~~ 89

4-5-89  
2-8

The DRM (E) - BCT/BRC/RTM/KTT/AII/JP/RJT/BVP  
CE (S&C) - CCG/CE (C) - ADI/FA&C.O.-CCG/CE (S) /CSO-CCG  
Dy. CE (C) - CCG/VB & CCG/BRC/I/II/III/RTM/KTT/KCP/KTT/BVJ/AII  
XEN (C) I & II ADI/JAM/JP/RJT/AII/DDR/JAM/JRH  
DSTE (C) - ~~ADI~~/Dy. CSTE (C) PI-BRC/Dy. CSTE (C) - ~~ADI~~/DEE (C) - ADI  
CPM (RE) - BRC/Bhopal/Dy. CE (C) - KCP-COR/RTM/BRC/AII/BVJ/KTT  
Dy. CSTE (C) - COR-RTM/AEN (C) - ADI/OC E (SR)  
The General Secretary, WREU-GTR-HQ-CCG  
WRMS-BCT-HQ-CCG

Sub: Seniority list of Sr. Clerks of S&C Deptt. &  
Works Engineering Branch.

.....

Seniority list of Sr. Clerks scale Rs. 1200-2040 (RP) is enclosed herewith. This may be given wide publicity amongst the Sr. Clerks working on your division/Unit. If any Sr. Clerk has got any grievance against the seniority list, his/her representation may be examined at divisional/Unit level first and his/her representation forwarded to this office with detailed remarks on the points raised therein in one lot, within one month from the date of issue of this ~~letter~~ letter failing which it will be presumed that the seniority list published herewith in order.

Employees may be informed that no representation whatsoever will be entertained after one month from the date of issue of this letter. You are requested to obtain signature of each concerned employee in token of having noted the seniority list.

*[Signature]*  
for PA/CE

*Final copy  
sent*



ANNEXURE A/4.

From : V.Y. Acharya,  
Sr. Clerk,  
Dy. CE(S&C) BRC

Date : 29.8.1989

To GM(E)CCG

(Through proper channel)

Sub.: Assignment of seniority in clerical cadre S&C department.

Ref.: 1) My representation dated 16.3.1989.  
2) Your office letter No. E/HQ/1030/2/2 Vol.III dated 4.5.1989  
2.8.1989

.....

Respected Sir,

In this connection, I once again dare to invite your kind attention to my previous representations regarding assignment of my seniority in S&C Deptt.

Sir, all the time, I have requested to consider my appeal on humanity ground and arrange to assign seniority according to date of my appointment on Railway i.e. 8.4.58, so that my 18 years of service may not be invain. I was directly recruited through Railway Service Commission, Western Railway, Bombay.

Now, at present, I am assigned seniority at Sr. No. 228 vide above cited letter in which my date of confirmation (column.8) shown as 3.3.76 which is not correct. In fact, I have joined S&C Deptt. on MUTUAL TRANSFER this day.

As such atleast I may assign the seniority from the joining date in S&C Deptt of Shri D.C. Christian, with whom I took mutual transfer Shri D.C. Christian got my position at DCOS-SBI.

I end herewith deep confidence that your kind honour will be good enough to consider my case on humanity ground and oblige me with my due seniority.

Thanking you in anticipation.

Yours most obediently,

sd/-  
( V.U. ACHARYA )  
Sr. Clerk

TRUE COPY  
Advocate

St-450/90  
5/10/90

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IN THE CENTRAL ADMINISTRATION TRIBUNAL AT AHMEDABAD

M. A. NO. 109 OF 1990

IN

O. A. NO. 504 OF 1989

Union of India & Ors...

... Applicants  
(Original  
respondents)

v/s

V.U.Acharya ....

... Opponent  
(Original  
Applicant)

APPLICATION FOR EXTENSION  
OF TIME

The applicants- original respondents humbly  
beg to submit as under:-

1. That the opponent-original applicant filed O.A.NO.504 of 1989 in this Hon'ble Tribunal praying for an order directing the original respondent to assign him correct seniority to the original applicant from the date of his initial recruitment with all consequential benefits stating inter alia that the original respondents have not applied their mind before publishing the impugned seniority list, that the original applicant has filed objection against the assignment of his wrong seniority in time lastly on 29.8.89 but the said objection has not been

10/11

Copy sent  
[Signature]

finalised and also prayed for stay of the execution and operation of the impugned seniority list dated 4.6.1989/2.8.1989 for the purpose of promotion.

2. The applicants submit that the said O.A. No.504/89 came up for admission before the Hon'ble Tribunal on 26.4.1990. The matter was heard. Hon'ble Tribunal was of the opinion that the contentions raised by the applicant - opponent herein deserves consideration by the concerned authority while disposing of Annexure A/4 - representation stated to be pending consideration. Hence the Hon'ble Tribunal felt that the interest of justice will be better served in the said case by disposing of the application with a direction that the Original Applicant's contentions stated in Annexure A/4 and in the application should be considered by the second respondent after giving him an opportunity of being heard while disposing of the said representation. It was directed that the second respondent shall dispose of the same in accordance with the law after considering the observations made in the oral order. It was further directed that the respondent No.2 shall do it within a period of three months from the date of receipt of the said order and the original application was disposed of as indicated in the oral order, with no order ~~xxx~~ as to costs.

3. The applicants submit that the advocate for the applicants wrote a letter dated 19.5.1990 to the respondents Nos.2 & 3 intimating them about the decision of the Hon'ble Tribunal. Thereafter, the respondent No.3 wrote a letter dated 4.6.90 to the respondent No.2 at Bombay enclosing a copy of letter dated 19.5.90 written by the advocate for ready reference and that so far the seniority is concerned HQ Office has to decide the issue and that as per HQ Office- CE(S&C) CCG's Memo No.E 839/111/1 (S&C), dated 12.4.90, the original applicant has been promoted as Head Clerk in the scale of Rs.1400-2300(RP) and relieved on transfer on 1.5.90 to Deputy Chief Engineer(C) North, Ahmedabad vide Dy.CE(S&C),BRC's Office Memo No.BRC/E/839/1 Vol VI, dated 1.5.90 on reporting duty from sick.

4. The applicants submit that the copy of order in O.A.NO.504/89 was not sent by the Registry to the Respondent No.2 directly. It is submitted that the copy of order was supplied to the advocate of the applicants on 7.5.90. The said certified copy of order was collected by the representative of the respondent No.3 on or about 10.7.90 from the advocate. The respondent No.3 thereafter sent the said copy of order along with copy of O.A.NO.504/89 to the respondent No.2 vide letter dated 12.7.90 for further necessary action in the matter. The

said papers were handed over by the representative of the respondent No.3 to the office of the ~~respondent~~ respondent No.2 on or about 13.7.90.

5. Thereafter, respondent No.2 wrote a letter dated 23.8.90 to respondent No.3 stating inter alia that in the present case though CE(S&C) was made one of the respondents, no Court papers were received and hence no action could be taken from his office, that however the Hon'ble Court has directed to take decision for finalising the seniority position of the Hon'ble CAT ~~for~~ by three months from the receipt of the copy of the judgement and as the copy of the judgement is received late, some more time will be required in deciding the case and therefore he should make an arrangement to file an application before the Hon'ble Tribunal through the Railway Advocate for granting extension of three months' time to enable his office to decide the case. Thereafter, the respondent No.2 also wrote a letter dated 17.9.90 to the District Controller of Stores, Sabarmati asking for certain information regarding Shri D.C. Christian, Senior Clerk, immediately without any delay along with personal records, etc. It is submitted that certain information was also called for by respondent No.2 from respondent No.3 also.

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6x

6. The applicants submit that the office of the respondent No.2 has stated processing the case for further action on receipt of copy of order as well as copy of application from the respondent No.3 on or about 13.7.90. The respondent No.2 has also called for necessary information from the respondent No.3 as well as DCOS, SBI, which is a separate Department. It is submitted that some more time is still required by the respondent No.2 for finalising the objection filed by the opponent herein regarding his seniority dated 29.8.89. Hence, this application for extension of time.

7. The applicants- original respondents, therefore, pray that:-

(A) Hon'ble Tribunal will be pleased to grant this application and extend the time to finalise the objection of the opponent dated 29.8.89 by further period of four months from 24.7.90.

(B) The delay in filing this application may kindly be condoned.

(C) Any other order or orders may be passed that the Hon'ble Tribunal deems fit and proper, in the facts and circumstances of the case.

VERIFICATION.

I, M. K. Gupta age about 30 years,  
son of Sh. H. C. Gupta, working as Deputy Chief  
Engineer (Survey & Construction), Western Railway,

Baroda and residing at Baroda, do hereby state that what is stated above is true to my knowledge and information received from the record of the case and I believe the same to be true. I have not suppressed any material facts.

Baroda

Dated: 9 1990

*[Signature]*  
Dy. CE (S&C) ~~BAR~~

Deputy Chief Engineer (S&C),  
Western Railway, Baroda.



*[Signature]*

Advocate for the applicants-  
Original respondents.

Filed by Mr. *R. S. Shinde*  
Learned Advocate for Petitioners  
with second set & *Repro* copies  
copies copy served/not served to  
other side

*for 10/3/90*  
Dy. Registrar C.A.T. (I)  
A'bad Bench