

(Trib)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

Original Application No. 67/2007

Date of order: *2nd April, 2007*

**HON'BLE MR. M.L. CHAUHAN, MEMBER (J).
HON'BLE MR. R.R. BHANDARI, MEMBER (A).**

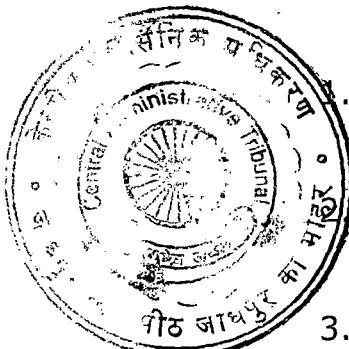
Phusa Ram Bhadu S/o Shri Mangla Ram, aged 48 years, by caste Bhadu, resident of 8/669, Tilak Nagar, Near Hanuman Temple, Bikaner.

Presently working as E R S, N.W. Rly. under Respondent No. 3.

...Applicant.

Mr. M.S. Godara, counsel for applicant.

VERSUS



1. Union of India, through its General Manager, North-Western Railway, Jaipur.
2. The Divisional Railway Manager, North-Western Railway, Bikaner Division, Bikaner.
3. The Divisional Personnel Officer, North-Western Railway, DRM's Office, Bikaner.
4. Sh. Pratap Singh Shekawat S/o Jai Singh Shekawat working as E R S C/o Respondent No. 3 - Service through respondent No. 3.

...Respondents.

Mr. Salil Trivedi, counsel for respondents No. 1 to 3.
Mr. Y.K. Sharma, counsel for respondent No. 4.

**ORDER
Per Mr. M.L. Chauhan, Member (J)**

The applicant has filed this Original Application thereby praying for the following reliefs:

"(A) by an order or direction in the appropriate nature, the respondents may kindly be directed to pass an

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appropriate order of re-deployment of the applicant with effect from the date of passing the CP-3 course examination for E.R.S. i.e. on 20th June, 2001 and not from the date of passing the impugned order dated 26th May, 2005 (Annex. A/1).

(B) The respondents may kindly be directed to assign the seniority to the applicant with effect from the date of promotion in the Office Superintendent Gr. II Rs. 5000-9000 w.e.f. 5th May, 1998 and he may accordingly be placed in the seniority list over and above all the employees of E.R.S. grade appointed after 5th May, 1998.

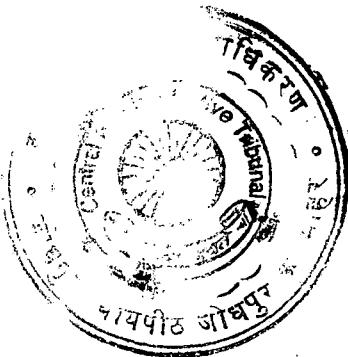
(C) That the order dated 26 May, 2005 (Annex. A/1); seniority list dated 21st Jan., 2007 (Annex. A/2) and the order dated 9th Feb., 2007 (Annex. A/3) passed by the respondents may kindly be quashed and set-aside with all consequential benefits.

(D) That the Railway Board's Circular dated 25th May, 2004 (Annex. A/16) may kindly be declared ultra vires upto the extent it put embargo of carrying forward full seniority of the parent grade or post.

(E) That any other order or direction which this Hon'ble Tribunal deems fit and proper, in the facts and circumstances of the case, may kindly be passed in favour of the applicant.

(F) That the cost of the original application may kindly be awarded in favour of the applicant."

2. Briefly stated facts of the case so far relevant for the decision of this case are that the applicant was promoted on the post of Office Superintendent-II in the Claims Branch on 05.05.1998 (Annexure A/4). Subsequently, 7 employees of the Claims Branch including the applicant were declared surplus and an order in respect of their redeployment were issued, as per option exercised by them, on 25.10.2000 (Annexure A/5). The applicant has exercised his option for the post of Office Superintendent-II in Mechanical Branch. Later on, the applicant was absorbed in the cadre of Enquiry



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and Reservation Supervisor (E.R.S., for short) vide order dated 19.03.2001 (Annexure A/6). It may be stated that the applicant was not straightway absorbed in the cadre of E.R.S. Grade. He was only absorbed after undertaking training which commenced from 08th May, 2001 to 20th June, 2001 and the applicant joined the said duty only on 21st June, 2001 after completion of the training. It is further stated that thereafter the applicant was redeployed in the Telecommunication Department. He made representation against his redeployment in the said Department with a prayer that he may be posted in E.R.S. Grade. Subsequently, the request of the applicant was considered and vide order dated 26th May, 2005, the applicant has been permanently redeployed in the E.R.S. Grade and the applicant has resumed his duty at the new posting place on 08th June, 2005. The grievance of the applicant in this case is regarding his seniority in the cadre of E.R.S. based upon the Railway Board's Circular dated 25th May, 2004. The respondent-department circulated the seniority list dated 22nd January, 2007 (Annexure A/2) wherein the name of the applicant finds mentioned at Serial No. 14. It is on the basis of these facts, the applicant has filed this O.A.

3. The respondents have filed reply thereby opposing the claim of the applicant.

4. The sole question which requires our consideration is whether

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the service rendered by the applicant in the Claims Branch in the grade of Rs. 5500-9000 as Office Superintendent-II with effect from 05.05.1998 should be counted for the purpose of seniority in the cadre of E.R.S. According to us, the matter on this point is no longer res integra. The Apex Court as far back as in the year 1980 in the case of **Rama Kant**

Chaturvedi and Ors. vs. The Divisional Superintendent,

Northern Railway, Moradabad and Ors. 1981 SCC (L&S)

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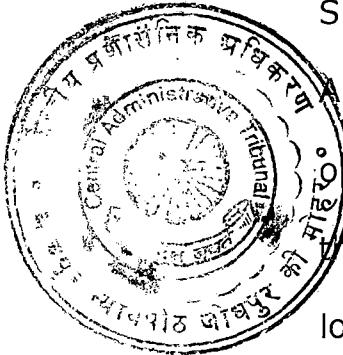
absorbed in the diesel side after the absorption of some of junior persons as Driver Assistant after granting them relaxation in educational qualification should be placed senior in that category on the basis of their seniority in steam side.

The Apex Court categorically held that the seniority on the steam side is of no relevance in determining seniority in diesel side when they are appointed on diesel side on different dates.

The judgment in the case of **Rama Kant Chaturvedi** (supra) was further followed by the Apex Court in the case of **V.K.**

Dubey and Ors. vs. Union of India and Ors., 1997 (4)

SLR 251. This was a case where the appellants before the Apex Court were drafted on diesel side of the locomotive operation. Subsequently on introduction of electrical engines, they were given training and were absorbed in electrical locomotive side. The controversy before the Tribunal was regarding inter-se seniority. The Tribunal held that since they were deployed to the electrical side for the first time, their seniority was required to be counted from the date of deployment in the electrical locomotive operation and the previous service cannot be counted for the purpose of determination of inter-se seniority. For that purpose, reliance was placed on the judgment of the Supreme Court in the case of **Rama Kant Chaturvedi** (supra). The Apex Court while upholding the judgment of the learned Tribunal dismissed the appeal of the appellants and in Para 5 of the judgment, has made the following observations:



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"5. Shri Vijay Bahuguna, learned senior counsel appearing for the appellants, contends that since they had been working on the diesel side for a long number of years, merely because they were sent to training for three months to be absorbed in the electrical locomotive operations, their entire previous length of service cannot be wiped out causing detriment to their length of service and promotional avenues on account of the change in the policy. Therefore, the view taken by this Court requires reconsideration. We find no force in the contention. It is seen that the diesel engine drivers and the staff working with them operates in one sector, namely, diesel locomotive sector, while electrical engine drivers and the staff operating on the electrical engines operate on a different sector. Consequent upon the gradual displacement of diesel engines, instead of retrenching them from service they were sought to be absorbed by giving necessary training in the trains operating on electrical energy. As a consequence, they were shifted to a new cadre. Under these circumstances, they cannot have a lien on the posts on electrical side nor they be entitled to seniority over the staff regularly working in the electrical locomotive detriment. Under those circumstances, this Court has held that they cannot have a seniority over them"



Thus, in view of the law laid down by the Apex Court as stated above, we are of the view that the present O.A. is squarely covered by the ratio laid down by the Apex Court in the case of **Rama Kant Chaturvedi** (supra) more particularly in the case of **V.K. Dubey** (supra) where the issue as involved in this case was directly involved.

At this stage, we may also refer some of the decisions rendered by this Tribunal which are also to the same effect. One of such decision rendered by the Calcutta Bench is in the case of Ram Prabesh Mondal and Ors. Vs. Union of India and Ors. reported in 2005 (2) ATJ 229 whereby it was held that surplus staff on their absorption to other units will count their seniority from the date of absorption and the impugned seniority list assigning seniority to surplus staff on the basis of length of service in the earlier panel was quashed. The Calcutta Bench

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has also placed reliance on some of the earlier judgments of Lucknow and Jodhpur Benches of the Tribunal as can be seen from para 7 of the judgment.

Further, it may also be relevant to mention that even the Railway Board based upon the judgment rendered by the Apex Court in C.A. No. 2530/81 and 1730/1987 in the case of Southern Eastern Railway and Ors. vs. Ram Narain Singh and Ors. and also pursuant to the judgment rendered by the Apex Court in the case of **Rama Kant Chaturvedi** (supra) circulated the copy of the judgment dated 18.11.1980 to the Railways vide Ministry letter dated 16.03.1981 for information and guidance. Despite the fact that the judgment of the Apex Court was circulated as far back as in the year 1981, it was not legally permissible for the respondents to issue instructions, if any, contrary to the decision rendered by the Apex Court as the judgment of the Apex Court is binding on all the authorities. Further, the Apex Court has taken consistent view since 1981 that the service of the surplus staff will not be counted for the purpose of seniority which they have rendered prior to their absorption in the new unit. Even now, the respondents themselves have issued instructions dated 25.05.2004 consistent with the view taken by the Apex Court and also inserted new Para 313A in IREM after existing Para 313, which is to the follow effect:-

"313A: Assignment of seniority to redeployed surplus staff: The surplus employees are not entitled for benefit of the past service

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rendered in the previous unit/department for the purpose of their seniority in the new unit/department. Such employees are to be treated as fresh entrants in the matter of seniority, promotion etc.

Note I : When two or more surplus employees of a particular grade in a unit/department are selected on different dates for absorption in a grade in another unit/department, their inter-se seniority in the latter unit/department will be same as in their previous unit/department provided that:

- (i) *No direct recruit has been selected for appointment to that grade in between these dates and*
- (ii) *no promotion has been approved for appointment to that grade between these dates.*

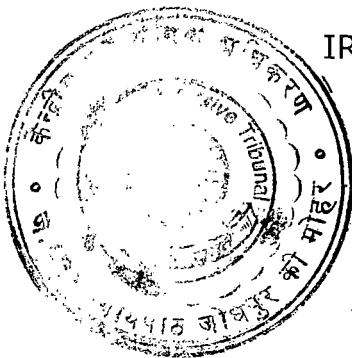
Note II : When two or more surplus employees of a particular grade in a unit/department are simultaneously selected for redeployment in another unit/department in a grade their inter-se seniority in the particular grade, on redeployment in the latter unit/department would be the same as in their previous unit/department."

At this stage, it will also be useful to quote para 2 of the letter dated 25.05.2004 which necessitated the amendment in IREM 1989 in the aforesaid terms and thus reads: -

"2. *CAT/Jodhpur in their recent judgment dated 24-12-1999 in OA No. 165/98 – Shri Surinder Prakash and others vs. Union of India and others and another dated 05-01-2000 in OA No. 489/94 – Indian Railway Ticket Checking Staff Association and another Vs. Union of India and Ors. have allowed the applications filed by the Railway employees against the procedure of allowing full seniority to surplus staff on their absorption to another cadre. These judgements were based upon the judgement dated 29-07-1988 of Hon'ble Supreme Court in C.A. No. 2530/81 and 1730/87 in the case of South Eastern Railway and Ors. vs. Ram Narain Singh and Ors. and also the judgement dated 18-11-1980 in the case of Ramakant Chaturvedi and Ors. Vs. Divisional Supdt., Northern Railway, Moradabad and Ors. - 1980 (Supp) SCC 621. A copy of Apex Court's judgement dated 18-11-1980 was circulated to the Railways vide this Ministry's letter No. E(NG)I-80/PM1/292 dated 16-03-1981 for information and guidance. In the civil side matters also, Hon'ble Supreme Court have given the directions that surplus staff absorbed in other cadres/departments will not count the service rendered by them in the parent cadre/department for the purpose of seniority and promotion."*

Thus, from reading of Para 2 of the letter dated 25.05.2004 as reproduced above, it is clear that the judgment of

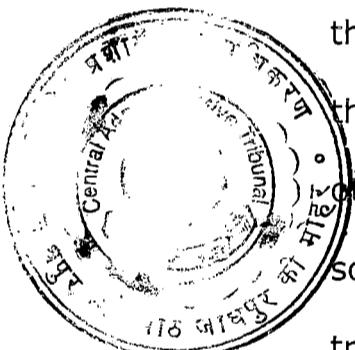
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the Apex Court was circulated for information and guidance vide Ministry letter dated 16.03.1981 and also that the Supreme Court has given directions that surplus staff absorbed in other cadres/departments will not count their service rendered by them in the parent cadre/department for the purpose of seniority and promotion. Thus, viewing the matter on the basis of law laid down by the Apex Court as early as in the year 1980 and followed subsequently and also that now the railway authorities have also inserted specific provision i.e. Para 313A in the IREM, the only conclusion which can be drawn is that the respondent No. 4 belongs to the E.R.S. cadre, whereas the applicant prior to his absorption in the E.R.S. cadre belongs to the Claims Branch which is a different cadre. Consequent upon the displacement of the applicant from Claims Branch along with other persons, instead of retrenching him from service, he was sought to be absorbed in another unit/cadre by giving necessary training so that he can be adjusted to a new cadre. Under these circumstances, the applicant is not entitled to the seniority over the staff already working in the E.R.S. cadre. Thus, the claim of the applicant that he be assigned seniority in the grade of Rs. 5500-9000 with effect from 05th May, 1998 i.e. by counting past service cannot be accepted.

5. Further, the applicant cannot draw any assistance from the instructions dated 21.04.1989 which provides that the seniority of redeployed staff is required to be assigned on the basis of length of service in their respective grade being



contrary to the law laid down by the Apex Court as noticed above and in view of the reasoning given herein above. Thus, we see no infirmity in the action of the respondents whereby the respondents vide order dated 26.05.2005 (Annexure A/1) has stated that the applicant will get seniority in terms of Railway Board's letter dated 25.05.2004.

6. So far second grievance of the applicant that at least he should be assigned seniority with effect from passing of the examination on 20th June, 2001 and not from the date of passing of the impugned order dated 26th May, 2005 (Annexure A/1) and also that the seniority list dated 22.01.2007 (Annexure A/2) and the rejection of the representation vide letter dated 09.02.2007 (Annexure A/3) be quashed and set aside, it may be stated that the seniority list issued vide order dated 22.01.2007 (Annexure A/2) is the provisional seniority list of E.R.S. Grade 5500-9000 in which the name of the applicant finds mentioned at serial No. 14 and date of officiating in the grade has been shown as 05.05.98 / 08.06.2005, whereas one Shri Nirmal Bhati, whose name finds mentioned at serial No. 13 of the said seniority list, his date of officiating in the grade has been shown as 01.11.2003. The applicant has not impleaded Shri Nirmal Bhati as one of the respondent in this O.A. Further, the grievance of the applicant is regarding tentative seniority list and not regarding the final seniority list, as such, we are of the view that no finding on this aspect is required to be given in the absence of necessary

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parties as well as in the absence of challenging the validity of the final seniority list and this question is left open. It is made clear that it will be open for the applicant to re-agitate this point in case claim of the applicant regarding seniority is not decided by the respondents in terms of Railway Board's Circular dated 25th May, 2004 read with provision contained in para 313A of the I.R.E.M.

7. With these above observations, the Original Application is disposed of with no order as to costs.

R.R. Bhandari
[R.R. Bhandari]
Member (A)

M.L. Chauhan
[M.L. Chauhan]
Member (J)

Kumawat

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RECORDED
BY
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RELEASING
RECORDED
BY
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Part II and III destroyed
in my presence on 18/8/2014
under the supervision of
Section Officer (J) as per
order dated 19/8/2014

Section Officer (Record)

9/8/14