

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

Original Application No.409/2007

This the 20th day of January 2009

HON'BLE MR. M. KANTHAIAH, MEMBER, JUDICIAL.

HON'BLE DR. A.K. MISHRA, MEMBER ADMINISTRATIVE.

1. Mahendra Kumar Pal, aged about 49 on of Late Kailash Narayam Pal R/o House No.551 Ja/30, Ram Prasad Kheda, Alambagh, Lucknow.
2. Mohd. Muslim Khan, aged about 41 years Son of Sri Mohd. Ayub Khan, R/o Lal Kothi Parisar, Teji Kheda, Manak Nagar, Lucknow.
3. M. Willian, aged about 49 Years, Son of Mr. C. Willium, R/o S.S.-687, Sector-G, LDA Colony, Kanpur Road, Lucknow.
4. Sandeep Kumar Srivastava, aged about 37 years, son of Sri T.N. Srivastava, R/o 357/157/13, Rokandipur, Rajajipuram, Lucknow.
5. Purneshwar Srivastava aged about 32 years, S/o Shri Shiv Kumar, Presently working as Diesel Assistant under Senior DME, Diesel Running Shed Alambagh, Lucknow.

...Applicant.

By Advocate: Shri. B.N. Shukla.

Versus.

1. Union of India, through General Manager, Northern Railway, Head Quarter Office, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Lucknow Division, Hazratganj, Lucknow.
3. Senior Divisional Personnel Officer, Northern Railway, Lucknow Division, Hazratganj, Lucknow.
4. Mohd. Idris, son of Sri Gulam Dastgeer, R/o 538 Kha/32 A, Shiv Nagar, Khadra, Stiapur, Lucknow.
5. R.P. Mishra, son of Sri Bhagwan Bux, R/o 1/58, Sleeper Ground, Railway Colony, Alambagh, Lucknow.
6. Tejpal, son of Sri Chhote Lal, R/o Village-Hans Kheda Near Para Chauki, Ring Road, Lucknow.
7. Kunwar Vijay Singh, son of Sri R.L. Singh, presently working as Diesel Assistant under Senior DME, Diesel Running Shed Alambagh, Lucknow.

8. Kuldip Singh, Son of Sri Ishwar Singh, R/o 551/615, Naya Sardari Khedi, Alambagh, Lucknow.

...Respondents.

**By Advocate: Shri Atul Dixit for Shri K.K. Shukla for Official respondents.
Shri A. Moin for Private respondent.**

ORDER

BY MR. M. KANTHAIAH, MEMBER JUDICIAL.

The applicant No. 1 to 5 have filed OA with a prayer to set aside the order Dt. 3.8.2007 (Ann-A-1) passed by Respondent No. 3 under which the Respondent No. 4 to 8 have been assigned seniority over the applicants by way of amendment in the seniority list Dt. 28.7.2005 (Ann-3) for the post of Diesel Assistant / Assistant Loco Pilot and also sought direction to the respondents not to disturb the seniority position of the applicants as contained in seniority list Dt. 28.5.2005.

2. The Respondent No. 1 to 3, who are the official respondents have not filed their Counter Affidavit, inspite of several adjournments and thus, their right to file C.A. is forfeited. Respondent No. 4 to 8 have filed their Counter Affidavit, denying the claim of the applicant and also stated that the applicants have not challenged the notice Dt. 02.04.2007 (Ann.-11), which is the basis for issuance of impugned order Dt. 03.08.2007 (Ann.A-1) and thus the OA is liable for dismissal.

3. Heard both sides.

4. The point for consideration is whether the applicants are entitled for the relief as prayed for.

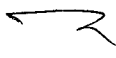
5. The admitted facts of the case are that the applicant no. 1 to 3, who were initially appointed on the substantive post of cleaner during the year 1983 were subsequently promoted to the post of second Fireman grade of Rs.825-1200 (unrevised) in substantive capacity w.e.f. 03.12.1992, 13.1.1993 and 18.1.1994 respectively. Thereafter, there was a selection for the post of Diesel Assistant grade Rs. 950-1500 which was held in the year

1995 , in which these applicants who were promoted as second Fireman were eligible to be selected being second Fireman in grade Rs. 825-1200 were selected and placed in the provisional panel of Diesel assistant issued on 26.09.1995 (Ann.-A-2) and thereafter, they have been promoted in the substantive capacity on the post of Diesel Assistant w.e.f. 20.05.1996 and 21.5.1996 respectively.

6. Coming to applicant No.4, he was appointed on the post of diesel assistant w.e.f. 7.2.2000 by way of direct recruitment and he was posted at Jabalpur Division of Central Railway and subsequently transferred to Lucknow Division on his request and joined the Lucknow Division on 11.12.2000. Similarly, Applicant No.5, who was appointed on 25.09.1996 in Allahabad Division on the post of diesel assistant being recruited through Railway Recruitment Board and thereafter joined the Lucknow Division on 30.09.1999 on his request by inter division transfer.

7. Since, their appointment on the post of diesel assistants, all these applicants have been performing their duties in the same capacity and presently the applicant no. 1 to 3 are working as Senior Diesel Assistant Grade Rs. 4000-6000. The respondents No.2 has issued provisional seniority list for the post of diesel assistant grade Rs. 3050-4590 as on 01.01.2005, in which the name of the applicants no. 1 to 5 finds place at Serial No. 152, 179,190, 370 and 337 respectively. But the finalization of the provisional seniority list was subject to finalization of objections, if any, received against the same. Ann.-A-3 is the copy of said seniority list Dt. 28.07.2005.

8. Private respondents i.e. Respondent no.4 to 8, who were initially engaged as casual laborers in Mechanical department of Lucknow Division, had been subjected to verification subsequently in the Screening conducted by the Screening Committee in the month of August 1990, in which they had been found suitable and thus placed their names on the provisional panel issued on 30.08.1991 on the respective post of cleaner i.e. a Group-'D' post. Ann.-A-4 Dt. 30.08.1991 is the copy of such provisional panel. But



because of vigilance enquiry against Respondent No.4 to 8 they had been de-paneled in May 1994 from the panel of Group-'D' employees issued on 30.08.1991 and thereafter they had been relegated to their original status and thus worked in the capacity of substitute / casual labour. Ann.-A-5 Dt. 31.05.1994 reveals the same. Thereafter, they have been subjected to re-screening in the year 1997 and after having been found suitable, again placed in the provisional panel of substitutes issued on 31.12.1997 (Ann.-A-6) and posted on the post of cleaner/box porter/ fuel khallsi

During the year 2003, a notification for holding selection for the post of Diesel Assistant Grade- Rs. 3050 to 4590 was issued on 16.06.2003 under 50 % promotion quota in which loco cleaners who were empanelled prior to 31.12.1997, with 5 years continuous service were held eligible to appear in the selection and authorities allowed Respondent No.4 to 8 to appear for the written test held on 12.08.2004 and 19.08.2004 in which they have been declared to be successful on completion of other formalities, they have been empanelled provisionally in the panel issued on 16.2.2005 for the post of Diesel Assistant. Ann-7 is copy of results of written test and Ann.-A-8 provisional panel Dt. 16.2.2005.

9. Thereafter, Respondents No.4 to 8 have been promoted on the post of Diesel Assistant Grade Rs. 3050-4590 w.e.f. the date of their joining vide order Dt. 30.11.2005 issued by Respondent No.2 (Ann.-9).

10. But in the meantime, punishment awarded to Respondent No. 4 to 8, due to their involvement in vigilance case was reduced and converted into minor punishment and therefore they have been again placed in the panel of substitute issued on 30.08.1991 (Ann-4) at their respective place vide order Dt. 19.10.2004 (Ann—A-10) issued by Respondent No.2.

11. Respondent No.2 passed impugned order Ann-A-1, rejecting the objection of the applicant and other similarly situated officers and assigned seniority to Respondent No. 4

to 8 over the applicants in the seniority list dt. 28.07.2005 (Ann.-A-3) on the ground that they have been inducted in the merged panel of 1992-93 of Group-'D' in pursuance of order dt. 19.10.2004 (Ann.-A-10) against which no objection were raised and further notice dt. 2.4.2007 (Ann.-A-10) has been issued in continuation of earlier order Ann-A-9.

12. The applicants have challenged the impugned rejection order Ann.-A-1 on the following grounds:-

I. That Applicant No.1 to 3 were appointed on the post of cleaner in the substantive capacity much earlier to Respondent No. 4 to Respondent No.8.

II. Applicants were selected on the post of Diesel Assistant and posted in 1996 in substantive capacity whereas, Respondent No.4 to 8 were selected vide provisional panel dt. 16.02.2005 and subsequently promoted vide order Dt. 30.11.2005.]

III. Rule 306 of IREM provides that the persons selected in the earlier selection shall rank senior to the persons selected in subsequent selection.

IV. When the post of Diesel Assistant has been classified as selection post, the position of Respondent No. 4 to 8 in the merged panel of 1992-93 of Group-'D' has no bearing in determining seniority on the post of Diesel Assistant and further Respondent No.4 to 8 were selected much after the applicants.

13. Admittedly, the official respondents have not filed their counter affidavit and nothing is placed on record to substantiate the impugned rejection order (Ann.-A-1) and to dispute the grounds taken by the applicants in questioning the validity of impugned order Ann.-A-1.

14. But Respondent No.4 to 8 have filed Counter Affidavit and contested the case stating that no opportunity of hearing was given to them before depaneling them vide order dt. 31.5.1994 (Ann.-A-5) from the panel of cleaners (Ann-A-4) and after noticing that there were lapses on the part of the official respondents on account of administrative error, they have corrected and issued reassigning the seniority of the Respondents no 4 to

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8 over and above the applicants, taking into consideration Rule 228 of IREM and thus, there is no illegality in rejection of the objections raised by the applicants in its order dt. 03.08.2007 (Ann.A-1) which is under challenge.

15. On perusal of impugned order Ann-A-1, it is not the case of the respondent authorities that there was any administrative lapse or error on their part in de-paneling the respondents No.4 to 8 vide order dt. 31.5.1994 (Ann.A-5) and that they have corrected any such error taking into consideration Rule 228 of IREM. Similarly the respondent authorities have not taken such grounds by filing their counter affidavit or placing any records. In such circumstances, the stand taken by Respondents No.4 to 8 that the respondent authorities have committed any administrative lapses or error, when they de-paneled Respondent No.4 to 8 in 1994 (Ann.-A-5) from the panel of cleaners (Ann.-A-4) and subsequently they noticed it and due to which corrected and reassigned seniority to them over and above the applicants in the seniority list dt. 28.7.2005 (Ann.A-3) of Diesel Assistant is not at all convincing and no such material is available to substantiate the same.

16. Further, Rule 228 of IREM regarding the erroneous promotion says staff overlooked for promotion to higher grade could either on account of wrong assignment of relative seniority of eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reason. Broadly, loss of seniority due to the administrative error can be of two types.

- (i). Where a person has been promoted at all because of administrative error, and
- (ii). Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

17. But in the instant case, Respondent No. 4 to 8 have been de-empanelled from the panel of cleaners in the year 1994 (Ann.A-5 dt. 31.5.1994) due to vigilance case against

them and thereafter they have been re-screened and re-empanelled as Group-'D' post in 1997 (Ann-A-6 dt. 31.12.1997).

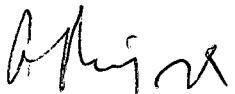
18. Subsequently on 19.10.2004 (Ann.-A-10) the authorities have converted the punishment of the Respondent No. 4 to 8 in vigilance case in to minor punishment and on that reason they have been again placed in the panel of substitute issued on 30.08.1991 (Annexure-A-4) at their respective place. From this, it is clear that the empanelment of these private respondents in their earlier place in the list of 1991 was because of reduction of punishment into minor and in such circumstances, the Respondents No. 4 to 8 claiming benefit under Rule 228 of IREM on the ground that there was administrative lapse or error on the part of the authorities in de-paneling them is not at all correct and thus, the Rule 228 of IREM does not come to the rescue of the private respondents and the same is not at all maintainable.

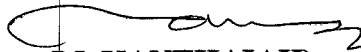
19. Admittedly, the applicants were selected on the post of Diesel Assistant in the year 1996 in substantial capacity whereas, the Respondent No. 4 to 8 were selected vide provisional panel dt. 16.2.2005 and subsequently promoted vide order dt. 30.11.2005 and Rule 306 of IREM also provides that the persons selected in the earlier selection shall rank senior to the persons selected in subsequent selection and even on such ground also the authorities are not justified in assigning the seniority of Respondent No. 4 to 8 over the applicants for the post of diesel assistant and this there are merits in the case of the applicants.

20. The respondents have taken objection on the ground that the applicants have not challenged the notice Dt. 02.04.2007 (Ann.-A-11), which is the basis of issuance of impugned order. It is not in dispute that earlier order Dt. 19.10.2004 (Ann.-A-10) was not circulated and no objection were called for from the effected officials in respect of re-induction of Respondent No.4 to 8 in the panel of Ann-A-4 Dt. 30.8.1991. Admittedly after circulation of such notice, the applicants and similarly situated officials filed

objections, which the authorities did not consider and passed impugned order and in such circumstances, requirement of challenging Ann.-A-11 notice loses its importance and thus the objection on this ground is not at all maintainable

21. In view of the above circumstances, the claim of the applicants in questioning the order Dt. 3.8.2007 (Ann.A-1) passed by Respondent No.3 assigning seniority of Respondent No. 4 to 8 over the applicants by way of amendment in the seniority list Dt. 28.7.2005 (Ann-A-3) for the post of Diesel Assistant/Assistant Loco Pilot deserves to be allowed and thus OA is allowed. No costs.


(DR. A.K. MISHRA)
MEMBER (A)


(M. KANTHAIAH)
MEMBER (J)
20.01.09

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