

**CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH, LUCKNOW**

**Original Application No.536/2007**

**Reserved on 16.01.2014.**

**Pronounced on** 19<sup>th</sup> Feb 11.02.2014.

**Hon'ble Mr. Navneet Kumar, Member (J)**

**Hon'ble Ms. Jayati Chandra, Member (A)**

1. Girish Prasads Pandey, aged about 53 years son of Shri Bhagwati Prasad Pandey, Resident of I-15-G, Railway Colony, Barha, Alambagh, Lucknow.
2. Devi Prasad Tiwari, aged about 52 years son of Shri Laxman Prasad Tiwari, Resident of House No.569/K/231/6, Sneha Nagar, Alambagh, Lucknow.

**-Applicants.**

**By Advocate: Sri Pankaj Awasthi**

**Versus.**

1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Lucknow Division, Lucknow.
3. Raj Kumar Bajpai, son of Shri Ganga Ratan Bajpai through Divisional Railway Manager, Northern Railway, Lucknow.
4. Sudhir Basmata son of Sukhram Bastama through Divisional Railway Manager, Northern Railway, Lucknow.
5. Amarnath son of Shri Ram Sundar through Divisional Railway Manager, Northern Railway, Lucknow.
6. Kedar Nath Singh Yadav son of Nattha Singh Yadav through Divisional Railway Manager, Northern Railway, Lucknow.
7. Ram Deem Yadav son of Shri Sri Ram Yadav through Divisional Railway Manager, Northern Railway, Lucknow.
8. Lal Mani Yadav son of Shri Rikhi Ram through Divisional Railway Manager, Northern Railway, Lucknow.
9. Kamlesh Babu son of Shri Ram Ratan through Divisional Railway Manager, Northern Railway, Lucknow.
10. Ram Surat son of Shri Jage Ram through Divisional Railway Manager, Northern Railway, Lucknow.

*J. Chandra*

11. Shri Maya Shankar Gaur through Divisional Railway Manager, Northern Railway, Lucknow.
12. Shri Shiv Mohan through Divisional Railway Manager, Northern Railway, Lucknow.

**-Respondents**

**By Advocate: Sri. Ashish Mishra for Sri M.K. Singh.**

### **ORDER**

**Pre Ms. Jayati Chandra, Member (A).**

The present Original Application has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):-

“(i). to set aside the panel dated 15.11.2007 (Annexure No.1 to the Original Application) as far as it relates to Respondent No 3 to 12, medical examination category A-2 and P-3 Course at Zonal Railway Training Institute, Chandausi etc.

(ii). To direct the Respondent No.1 & 2 to empanel the Applicants as Guard Goods pay scale Rs.4500-7000 in the panel dated 15.11.2007 from amongst Cabin Master (Switchman) and consequently promote the Applicants as Guard Goods pay scale Rs.4500-7000 with effect from the date of the promotion of the juniors with all consequences benefits including difference of salary etc.

(iii). Any other relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may also be granted in favour of the Applicant.

(iv). Allow the Original Application with costs.”

**2.** The facts of the case, as averred by the applicants, are that the applicant no.1 was initially appointed in Group “D” service as Porter on 28.2.1980. He was promoted as Cabin Man w.e.f. 16.1.1991. He was further promoted as Switchman later-on redesignated as Cabin Master w.e.f. 12.09.1994 and continued to work as Cabin Master. The applicant no.2 was similarly appointed in Group ‘D’ as Porter w.e.f. 06.2.1982. He was promoted as Leverman w.e.f. 12.08.1989. He was empanelled for the post of Switchmen (later-on redesignated as Cabin Master) by panel dated 07.07.1995. He is presently posted as Cabin Master under Traffic Inspector, Northern Railway, Lucknow.

*J. Chandra*

**3.** The Respondent No.2 initiated a selection for the post of Guard (Goods) against 60% Ranker Quota through letter dated 20.03.2006 (Annexure-5) to fill up 30 unreserved posts and 27 reserved posts. The applicant and Respondent Nos.3 to 12, by virtue of possessing the eligibility qualifications, submitted their applications in response to the letter dated 20.03.2005. All the respondent nos.3 to 12 and 2 applicants appeared in the written examination held on 12.05.2007 and supplementary written examination held on 19.5.2007. The result of written test was declared on 21.08.2007 (Annexure-7). The applicants were declared successful in the written test. From the list of names and their corresponding seniority number the applicant no.2 came to know for the first time that his seniority in the cadre of Cabin Master had been fixed erroneously. Infact the applicant no.2, was empanelled for the post of Switchman later-on redesignated as Cabin Master against talented quota vide panel dated 7.7.1995. In this panel the name of the applicant no.2 is shown at Serial No.23; whereas the name of Kasmlesh Babu (Respondent No.9) is shown at Serial No.13. The applicant has been wrongly shown as junior to Kamlesh Babu (Respondent No.9) as the applicant no.2 was appointed in Group 'D' w.e.f. 06.03.1982; whereas the Respondent No.9 was appointed in Group 'D' w.e.f. 31.3.1983. Therefore, by virtue of date of initially appointment in Group 'D' in service the applicant no.2 is senior to Respondent No.9 Kamlesh Babu. The applicant no.2 had preferred a representation dated 7.7.1995 against such supersession. This representation still stands undecided. He did not pursue this representation as the wrong inter-se-seniority was not jeopardizing his position as Switchman/ Cabin Master. It is only with the publication of the results of the written examination to the post of Guard Goods that came to know of the seniority list of Cabin Master/Switchman s on 01.01.2005 he preferred a second representation on 07.9.2007, stating that the seniority list of Cabin Man (earlier known as Switchman) as on 01.01.2005 was never circulated prior its usage as the list inviting application to opt for 60% Ranker Quota for promotion to the post of Guard Goods. The applicants have averred that they are junior to Sri Sudhir Basmata (Respondent No.4), Amarnath (Respondent

*J. Chandra*

No.5) and are senior to Raj Kumar Bajpai, Kedar Nath Singh Yadav, Ram Deem Yadav, Lal Mani Yadav and Kamlesh and Ram Ram Surat (Respondent Nos,3,6,7,8,9 and 10) respectively. The applicants have put in three years of regular service as Switchman/Cabin Master and have unblemished service record. Further, they have been declared successful in the written examination as per result declared dated 21.8.2007.

4. The respondents have contested the claim of the applicants. Their contention is that the selection to the post of Guard (Goods) in the pay-scale of Rs.4500-7000 against 60% Ranker Quota is distributed to various categories at a fixed percentage. The recruitment to 57 posts to be filled up. Under the category-wise is as under:-

Category	%age	Post reserved to the category out of 57	General	SC	ST
TNC.Sr.TNC	22%	21	11	05	05
TC/Sr.TC	05%	05	03	01	01
CC/Sr.CC	07%	07	03	02	02
Shunting Jamadar	12%	11	06	03	02
Switch Man	07%	07	03	02	02
Assistant Guard	07%	06	04	01	01
TOTAL	60%	57	30	13	14

5. A Notification to the above effect was issued by letter dated 20.3.2006 (Annexure-5). All the applicants and respondents alongwith others i.e. 196 employees belonging to various categories beings eligible were called for participating in the written examination. Only 173 candidates appeared and 73 candidates qualified in the written examination. It is clarified that this is a promotion not based on seniority but on the basis of clearing the written examination with minimum 60% marks. Those who achieved 60% marks, are further subjected to assessment made on the basis of their annual records. Than a category-wise merit list is prepared and successful candidates are promoted against vacancy available for that category. Para-124 of the Indian Railway

*J Chandra*

Establishment Manual (IREM) read with Railway Board's letter dated 23.3.1965 provides the following:-

**“Note : 1.** Staff after selection as Guard (Goods) grade Rs.4500-7000 under scheme “A” and ‘B” above, should be posted as such only on their passing having TP-2 induction course.

**2.** In promotee quota “A” above, the requisite number of candidates are not selected from a particular category, for which % is prescribed the balance of the vacancies reserved for that category should be filled from other category from amongst those who have secure highest marks in the order of merit with out reference to the category to which they belongs.”

**6.** After completion of the entire process of selection i.e. written examination and assessment of record, category-wise unfilled-vacancies where the requisite number of staff was not selected from the prescribed category for which the percentage is prescribed emerged as under :-

Post/Category	General	SC	ST
TNC/Sr.TNC	Nil	01	05
TC/Sr.TC	02	01	01
CC/Sr.CC	Nil	Nil	02
Shunting Jamadar	05	02	03
Switch Man/Cabin Master	Nil	Nil	02
Assistant Guard* *non-existing cadre	04	01	01
TOTAL	11	05	14

**7.** Thus, posts meant for general candidates, the vacancies for the TC/Sr.TC, Shunting Jamadar and Assistant Guard were not filled. In view of Para-124 of the Indian Railway Establishment Manual (IREM) those persons in order of merit without the provision to their respective categories were selected. These persons came from Switchman/Cabin Man as well as Senior TNC, BC and CC etc.

**8.** Coming to the averments of the applicants with regard to the continuing cause of action on account of wrong fixation of seniority in the feeder cadre of Switchman, the said representation dated 7.7.1995 has now become highly time barred. It is observed

*J. Chandra*

by the Hon'ble Supreme Court in the case of **Ramesh Chand Sharma vs. Udham Singh Kamal reported in AIR 1999 SC 3837** that the promotion should not be challenged after an inordinate delay.

**9.** The applicant no.2 has challenge the seniority list dated 30.09.2005 by his representation dated 27.09.2007. This list was widely circulated and particular time was fixed for entertaining representations against the list. The applicants were not given any representation against the seniority list. Further, the vacancies were announced on 20.3.2006 and list of candidates to the spared for the examination was issued on 22.2.2007. The applicants did not challenge their seniority position any time. Applicant No.2 has submitted his representation dated 27.9.2007 after declaration of final result on 21.6.2007. Apart from the application being highly time barred, it is without merit as the promotion to Group- 'D' cadre has no relevance to seniority in the post of Switchman. The applicant no.2 by his own averment was promoted as Cabin Man on 12.08.1989 and subsequently promoted as Switchman re-designated as Cabin Master against 50% talented quota. Moreover, although both the applicants have stated that their seniority has been wrongly fixed and they have been superseded by Respondent Nos.3 to 12, only applicant no. 2 had preferred a representation with regard to his wrong placement vis-à-vis Kamlesh Babu. The applicant No.1 has not preferred any of the representations on the ground of such alleged wrong placement.

**10.** All the candidates including the applicants have qualified in the written test on the basis of their performance as well as on the basis of record of service, while the applicants have unblemished record. It is on the basis of comparative merit, which is demonstrated in their entire service record and which is the sole basis of final selection.

**11.** The applicants have filed rejoinder rebutting the points raised by the respondents and reiterating the averments made in the O.A. They have stated that there is no delay in challenging the seniority list. The applicant no.2 had submitted a representation

*J. Chandra*

dated 07.07.1995 as soon as the panel of selection of Switchman was published on 07.07.1995. At that time as the cadre of Switchmen was subsequently re-designated as Cabin Master had no regular channel of promotion. The placement of applicants vis-à-vis 3 others (Rahmat Ali, Devendra Dutt Tiwari and Kamlesh Babu) was irrelevant and therefore not followed up. The seniority list issued became relevant after the result dated 21.8.2007 of the selection and they were promoted to post of Guard Goods. Therefore, being adversely affected for the first time, the applicant no.2 again preferred a representation dated 07.09.2007 (Annexure-9). Therefore, being affected by the seniority list for the first time, they are not affected by Rule 10 of Central Administrative Tribunal (Procedure) Rules, 1987 and Section 21 of the Administrative Tribunal Act, 1985.

**12.** On merits of the selection procedure the applicants have stated that the cadres of Assistant Guards/Senior Assistant Guards was declared surplus prior to 13.07.1999 and the existing Assistant Guards/Senior Assistant Guards were absorbed in the cadre of Cabinman in 1999. Therefore, action of the respondents in giving the benefits of these posts remaining unfilled in to others is both wrong and illegal. The provision of Para-124 of the Indian Railway Establishment Manual (IREM) read with Railway Board's letter dated 23.3.1965 specifically stated that only unfilled vacancies can only be filled up from other categories. In this case, as no selection for 7% posts for Assistant Guards/ Senior Assistant Guards was made, as such six posts reserved for said category could not have been filled under note 2 of IREM Para-124. Secondly the assignment of seniority to those achieving 80% and above can only to be done to a limited extent. In IREM (Vol-1) read with E (NG) 1-72/PM 1-158 dt.21-8-1972 it is provided that :-

“(j). The name of selected candidates should be arranged in order of seniority but those securing a total of more than 80% marks will be classed as out-standing and placed in the panel appropriately in order of their seniority allowing them to supersede not more than 50% of total field of eligibility.”

*J. Chandra*

Therefore, if some or any of the respondents achieved 80% marks, they can be placed senior to the extent of 50% of the total field of eligibility and not above all.

**13.** We have heard the learned counsel for the both the parties and perused the entire records.

**14.** The applicants have filed this OA being aggrieved by an order dated 15.11.2007. It is clear from the impugned order No.757E/5-3/Guard Goods/Selection/60% dated 15.11.2007 that the selection panel so declared is drawn up on the basis of passing the written examination and further assessment based on record of service. In terms of Para-124 of IREM, Promotion to the post of Guard (Goods) in the pay-scale of Rs.4500-7000 is made by option and written test with 3 years service from the following service. (A). 60% by Promotee Quota. (B). 15% by Limited Departmental Competitive Examination (LDCE) and (c). 25% through Direct Recruitment. The applicants are coming under the provision of (A) i.e. 60% by Promotee Quota is further shared in accordance with % amongst 6 categories including Assistant Guard.

**15.** The very provision of holding a written test demonstrates that this promotion is not merely based on seniority. The actual selection list depends on the result of the written test specifically as the successful persons must achieve at least 60% marks in written test. This also means that some persons may be senior to some other persons but not having achieved qualified marks of 60% are ineligible for consideration for the second round of selection and to the final promotion. Infact the respondents have said that while 197 persons belonging to different categories were found eligible and only 76 candidates including the applicants and the private respondent nos. 3 to 12 had qualified in the written examination. Out of the 76 candidates again, only 57 could have been promoted as per the number of vacancy available. This would definitely provide for some facts of supersession of the seniority in the feeder cadre.

*J. Chandra*



**16.** The applicants have averred that the respondents have wrongly used 4 general posts meant for Assistant Guard for giving promotion to the persons of other categories as these posts were not left unfilled after holding a written test, but they were left unfilled as the cadre is non-existent. The respondents have fairly admitted that the cadre of Assistant Guard is non-existing. Hence they could not have called for applicants from any one or more cadres in the absence of any amendment made to the IREM reassigning the proportionate % to the other cadres.

**17.** It is seen from the list of persons selected against the vacant posts including Assistant Guard that these posts were filled up by outstanding achievers of all cadres. We see that there has been complete fair play and adherence to the spirit of the promotion procedure. The other alternative was to keep these posts unfilled. It is not understood how that would have profited the applicants. But, the respondents would most certainly have suffered from shortage of man power to man a crucial post such as Guard (Goods). As it is, out of the total of 11 General, 5 SC and 14 ST (Total 30 posts) ultimately only 13 additional selection (11 General 2 SC) were made and the department had to make do with less than required number of people. The list of selected candidate and this original category is given below (page-5 table 2.07 of C.A.).

**18.** Applicants have claimed that they are juniors to Resp.No.4 Sudhir Basmata and Resp.No.5 Amarnath but are senior to Resp.No.3 Raj Kumar Bajpai, Kedar Nath Singh Yadav Resp.No.6, Ram Deen Yadav Resp.No.7, Lal Mani Yadav Resp.No.8, Kamlesh Babu Resp.No.9 and Ram Surat Resp.No.10. In the impugned order these persons are assigned respective No.1,2,28,29,33,35 and 36 numbers. There are persons from other cadres who are filling up the in-between positions. It is only with regard to Resp.No.3 Raj Kumar Bajpai who occupies the first position in the impugned order that it is disclosed that he achieved highest marks. There is no disclosure to the marks obtained by others, vis-à-vis the applicants.

*J. Chander*

**19.** The applicants have not averred that they achieved higher marks in written test and assessment than the persons selected on the basis of the outstanding achievement (80% +). There is no averment of any bias or malafides in the selection process carried out or in the marking. In a merit based selection the position of seniority is only relevant to the extent of their inclusion in the field of eligibility. The applicants had participated in the written examination. Had they been selected on the basis of their overall achievement the question of seniority would not have been raised by them. With regard to the averment that persons achieving 80% or above marks can only supersede 50% of the candidates in the total field of eligibility (E (NG) 1-72/PM-158 dated 21.8.1972, the question of some or all of the persons from the Switchman category of superseding the applicant/s will arise only if the applicants had also been placed in the 'fit' category.

**20.** Thus, in terms of the reliefs claimed, the applicants have failed to demonstrate that the panel dated 15.11.2007 is illegal or that the applicants have been unfairly kept out of it.

**21.** In view of the above, we find that there is no merit in the OA accordingly, the same is dismissed. No order as to costs.

*J. Chandra*

**(Ms. Jayati Chandra)**  
**Member (A)**

*U.P. Agrawal*  
**(Navneet Kumar)**  
**Member (J)**

Amit/-