

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 03.02.2015.

Pronounced on 5th March 2015.

Original Application No.55/2008

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

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

Harish Chandra Gupta aged about 57 years S/o Late Shri Krishan Lal Gupta R/o Mohalla Hansupur, near Wine Shop , Gorakhpur.

-Applicant.

By Advocate: Sri Amit Verma holding brief for Sri A. Moin.

Versus.

Union of India through

1. General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Ashok Marg, Lucknow.
3. Divisional Personnel Officer (P) North Eastern Railway, Ashok Marg, Lucknow.

-Respondents.

By Advocate: Sri S.P. Singh for Sri Rajendra Singh.

O R D E R

Per Ms. Jayati Chandra, Member (A)

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

(a). to quash the order dated 20.3.2007 passed on behalf of Respondent No.3, as contained in Annexure A-1 to the O.A.

(b). to direct the respondents to correctly fix the applicant and grant him all benefits by treating him appointed/promoted in grade

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Rs.260-4000/- 950-1500/- in the category of Revetter and Feeder Grade III w.e.f. 11.8.1982 with all consequential benefits including further promotions and arrears of pay etc.

(c). to direct the respondents to pay the cost of this application.

(d). any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed."

2. The facts of the case are that the applicant was initially appointed as Substitute Carriage Khallasi on 01.01.1969 and he was promoted as Basic Revetter in Grade Rs.210-290 from 11.08.1982. As per the revised seniority list for the post of Basic Revitter his name finds place at Sl.No.17-A between the name of Sri Sarju Prasad and Ranji Tiwari Annexure-A-3. He was promoted to the post of Revetter in the scale of Rs.260-400 by order dated 27.08.1984. There being no post of Revitter, he gave his option to change his category from Revitter to Fitter and appeared in the Trade Test. His category was changed from Revitter to Fitter in the same pay-scale of Rs.260-400 revised to Rs.950-1500 w.e.f. 15.02.1990 and his name appeared in the order of seniority list dated 15.02.1990 (Annexure A-7) at Sl. No.5. He was promoted as Fitter Grade -II in the scale of Rs.1200-1800 from 21.01.1992 vide order dated 21.01.1991 (Annexure A-8). As the Respondent No.3 had declined to give the applicant his original seniority in scale Rs.950-1500/- from 18.09.1986 for the purpose of fixation of his seniority on promotion as Fitter Grade II, he had filed O.A.No.163/1996. The OA was disposed of in his favour and the respondents pursuant to the order dated 28.05.2005 passed an order dated 23.07.2004

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(Annexure-A-10) and the correct seniority was assigned to him. However, no consequential benefits of this revised seniority were given to him. The applicant represented to the respondents disputing the same as he should be assigned his seniority by taking into consideration the total length of service w.e.f. 11.08.1982 and he has to be assigned correct seniority as per the chart provided by him at (Annexure-11). As per the chart, he is to be placed between one Sri Ghanshyam Nath Mishra at Sl.No.4 and Jiya Lal at Sl.No.6. The reasons for such placement is that said Sri Sri Ghanshyam Nath Mishra is in the list of Fitter Grade -III dated 01.05.1984 at Sl.No.241 on his date of promotion in the said grade was 28.08.1980 while the person immediately below Shri Sri Ghanshyam Nath Mishra was Sri Jiya Lal whose date of induction in the said grade was 26.10.1993. As his date of induction in the pay-scale of Rs.950-1500 is on 11.08.1982 therefore, he should be placed between the two as such, Sri Ghanshyam Nath Mishra and Jiya Lal were promoted as Fitter Grade II w.e.f. 18.09.1986 as apparent from seniority list dated 01.05.1984. Hence this OA.

3. The respondents have refuted the claim of the applicant by filing counter reply stating therein that he was initially promoted as Revitter on 11.08.1982. The post of Revitter became surplus and after qualifying in the trade test and training the applicant was absorbed in Fitter Grade-III (being in the same scale as Revitter) vide Office Order darter 15.02.1990. The applicant had earlier filed O.A.No.163/1996, which was allowed vide order dated 28.05.2004 and thereafter, the seniority of Fitter Grade-III was revised by order dated 23.07.2004. It is stated that the seniority of the applicant in Fitter Grade-

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III has been fixed w.e.f. 11.08.1982 (being the date of promotion as Revitter) but, it does not mean that he was eligible for promotion in further scales prior to his absorption, in the category of Fitter Grade-III and the claim of the promotion against the employees, who were promoted before his absorption cannot be entertained.

4. The applicant has filed Rejoinder reply rebutting the Counter Affidavit more or less reiterating the same points as taken in O.A.

5. We have heard the learned counsel for both the parties and perused the entire material available on record.

6. By means of this O.A., the applicant has basically sought promotion as Fitter Grade-II in 1991, Fitter Grade-I in 1998 and Mechanic in February, 2007. It is noticed that the applicant has challenged his rejection letter dated 20.03.2007 by which his representation dated 27.02.2007 has been rejected. The only ground hereby the respondents have rejected the prayer of the applicant is that he cannot be granted any promotion to Fitter Grade-III and II from a date prior to his absorption in 1990. This is an erroneous assumption as apparent from the facts of the case. The applicant had filed an O.A.No.163/1996, which was disposed of with the following directions:-

"In the result, the OA is allowed. The seniority list issued as on 01.05.1993 (Annexure A-10) and the order dated 28.04.1995 (Annexure A-13) are quashed and set-aside. The respondents are directed to recast the seniority

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of the applicants on the basis of their total length of service in the scale of Rs.260-400/- (revised Rs.950-1500) in the category of Revetter and Fitter Gr.III, and thereafter grant them all consequential benefits. No costs."

7. Consequent upon the directions, the respondents passed an order dated 23.07.2004 (Annexure A-10), which reads as follows :-

“ विषयांकित मामले पर जिसमें कैट/लखनऊ के निर्णय दिनांक 28-05-04 को सक्षम अधिकारी के समक्ष प्रस्तुत किया गया और यह तय पाया गया कि फिटर वें 0 मार्ग 950-1500 की वरीयता सूची जो 1-5-90 की स्थिति पर जारी हुयी थी रिपीटर 260-400/950-1500 की पदोन्नति तिथि 11-8-82 से लेन्थ ऑफ सर्विस का लाभ देते हुए मूल वरीयता क्रमांक -13 पर श्री रसियावन के ऊपर निर्धारित करके शुद्धि पत्र वरीयता सूची की जारी की जा रही है, जिसकी प्रति संलग्न है।
 शेष अन्य वेतनमानों जैसे फिटर -II (1200-1800) व फिटर -I (1520-2040)/4500-7000) में लाभ वरीयता क्रम में ही दिये गये हैं, सुलभ संदर्भ हेतु तुलानात्मक चार्ट भी संलग्न किया जा रहा है।”

8. The applicant in instant O.A. has not challenged this letter dated 23.07.2004 by which he has been placed above Shri Rasiyawan at Sl.No.13. He has claimed parity with one Shri Jiya Lal as by means of a comparative chart placed as Annexure 11. This chart is at variance with the O.M. dated 23.07.2004 issued in compliance of order passed by this Tribunal. The fact remains that by virtue of this placement the applicant is entitled to get all benefits made available to his next immediate junior i.e. Shri Rasiyawan. These benefits would include promotion to the post of Fitter Grade-II, Fitter Grade-I and Mechanic, subject to be clearance of all parameters of promotion. The respondents have stated in the letter dated 23.07.2004 that the applicant has been given the

benefit of Fitter Grade-II Technical as per his seniority. But, the comparative chart is not affixed in O.A. either by the applicant or by the respondents.

9. On the basis of the above discussions, the OA stands disposed of by remanding the matter to the respondents to consider the case of the applicant for promotion to the post of Revitter and Fitter Grade-III with his immediate junior Shri Rasiyawan, if he otherwise found eligible within a period of four months from the date of receipt of the copy of this order. The applicant is not entitled any arrears thereof and his pay be fixed on notional basis. No order as to costs.

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

V.R. Apsawal
(Navneet Kumar)
Member (J)

Amit/-