

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW**

Original Application No. 408 of 2008

**Order Reserved on 10.04.2017
Order Pronounced on 13/04/2017**

**HON'BLE MR. JUSTICE V.C.GUPTA MEMBER (J)
HON'BLE SMT. P. GOPINATH, MEMBER(A)**

Manoj Kumar Saxena,
Aged about 37 years,
S/o Sri R. C. Saxena
R/o Presently posted as Commercial Porter
DCIT Office, Northern Railway Lucknow.

Applicant
By Advocate: Sri Alok Trivedi

VERSUS

1. The General Manager
Northern Railway Baroda House
New Delhi.
2. The Divisional Railway Manager(Personnel)
Northern Railway, Lucknow Division
Lucknow.
3. The Senior Divisional Personnel Officer
Northern Railway, Lucknow Division
Lucknow.
4. Sri Ram Prakash S/o Sri Rajpati
Presently posted as ASM,
DCIT Office, Northern Railway
Lucknow.

Respondents
By Advocate: Sri B. B. Tripathi.

ORDER

By Hon'ble Mr. Justice V. C. Gupta, Member (J)



Heard the learned counsel for the applicant and the counsel for the respondents.

2. The applicant filed this O. A. claiming following reliefs:

"(a) Direct the respondent to consider the case of the applicant forthwith and assign correct seniority to him, over and above his junior- respondent No.5 in the category/cadre of commercial Porter.

(b) Direct the respondent to consider and dispose of the representations pending before the respondent No. 4 by a reasoned order expeditiously."

3. The fact giving rise to this petition are that the applicant and the private respondent No. 4 Ram Prakash are working in the Northern Railway, Lucknow Division as Commercial Porters. The applicant and respondent No. 4 applied for the post of ASM against 15 % Limited Departmental Competitive Examination Quota for which a written test was conducted on 18th of March, 2006 and Aptitude test on 30th August 2006. The applicant and the Respondent No. 4 also successfully completed the test. However, the name of the present applicant was not included in the panel prepared for appointment. The panel of selected candidates was declared on 4th of June 2007 which has been annexed as Annexure A-1 which reads as under:

"Northern Railway

*Divisional Office
Lucknow
Dated 4.6.2007*

*No. 752E/5-2/ASM/Selection/15%/05
SR. DOM, SR. DSO/LKO
DCM/LKO*



SS/ON, BSB, BOY, MAY, REL, DRG, FD
TIs-BSB, JNU, FD MPP/LKO

Sub-Selection of the post of Asstt. Station Master in scale Rs. 4500-7000(RSRP)

As a result of written test held on 11.3.2006 and 18.3.2006, the following employees have been found suitable for placement on provisional panel of Asstt. Station Master in scale Rs. 45-7000(RSRP) against 15% LDCE quota.

S.No.	Name & Father's Names of the employees/shri	Community	Design/Stn
1.	Mukesh Kumar Srivastava S/o A. N. Srivastava	-	S/Wala/On
2.	Kaushlendra Shukla S/o Harihar Pd. Shukla	-	S/Wala/BSN
3.	Ram Prakash S/o Rajpati	-	PTR/Boy
4.	Vijay Bahadur Yadav S/o Cr.r. Yadav	-	C/Man/May
5.	Ram Kishun S/o Chandrika Prasad	-	G/Maa/BSB
6.	Ashok Kumar S/o Chandrika Prasad	-	PTR/RSL
7.	Jitendra Nath s/o Raj Karan	SC	S/Wala/DRC
8.	Sunil Kumar S/o Ram Mani	SC	S/Wala/FD

This has the approval of competent authority.

The above staff should note that retention of their names on the provisional panel is subject to their work remaining satisfactory during currency of this panel and qualifying TP-I Course from DRTI/CH Promotion will be subject to D&AR/SPE/Vig clearance and not undergoing any punishment of SIT, WIP or reduction of pay or scale etc.

(P.K. Gupta)
For Div. Personnel Officer
NR/LKO

Copy to:

1. Principal ZETI/CH
2. DS/NRMU/URMU/LKO
3. DS/SC-ST& OBC association/LKO"

4. It has been contended that the applicant is senior to respondent No. 4 as is evident from provisional seniority list of Commercial Porters published on 1st of January 2005 wherein, the name of the applicant finds a place at serial No. 20. It was further contended that as per guidelines issued by the Railway Board dated 16.11.1998 for filling up post of General Selection,

(Signature)

the final panel will be drawn from amongst those securing 60% in the professional ability and 60% marks in the aggregate in order of seniority provided that those securing a total of more than 80% marks will be classed as outstanding and placed on the top of the panel in order of their seniority. A panel prepared on 4th June 2007 containing 8 names. On top of the select list first two candidates M. K. Srivastava and Kaushlendra Shukla secured more than 80% marks. Respondent No. 4 was shown in the select list at S. No. 3 but he was junior to the present applicant. The applicant sought information through RTI, when his grievances was not redressed after issue of select panel. It has been informed that the applicant's name was not included because the name of selected candidate is placed in the merit list on the basis of written examination , aptitude test and marks obtained on the basis of entries made in the service record. The marks obtained in the examination has not been disclosed. However, the seniority list has been furnished along with letter dated 17.9.2007 under RTI where the name of the present applicant Sri M. K. Saxena is shown at Serial No. 7 and the name of the private respondent No. 4 Ram Prakash is shown at serial No. 2 . The applicant was not satisfied with the reply given to him under RTI and the present petition has been filed challenging the panel of selected candidate which has already been impleaded. After filing this petition, no interim order was passed and the case is pending since long.

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5. The factual matrix has not been disputed by respondent as has been mentioned in the counter affidavit. It has been further contended that the provisional seniority list appended with O.A. has been finally drawn and furnished to the applicant under RTI. The final seniority list reveals that the applicant is junior to the respondent No. 4. In para 13 of the counter affidavit, it has been mentioned that applicant has admitted that Ram Prakash born on the panel of 1991 and joined the duties in December, 1995. Whereas the applicant was born in cadre in 1993. As such, the list of seniority was rightly prepared.

6. In the counter affidavit, result of written examination was annexed as Annexure A-1 wherein, on the basis of marks obtained, the position of the applicant was placed over and above the present applicant M. K. Saxena. Sri Ram Prakash was shown at Serial No. 32 and the applicant M. K. Saxena was shown at Serial No. 34.

7. No RA has been filed by the applicant. Supplementary affidavit has been filed by the applicant where, it has been contended that as respondent No. 4 has joined in year 1995 pursuance of the panel prepared in 1991, so he cannot be given benefit of seniority prior to date of joining.

8. In this case, the learned counsel for the applicant submits that the seniority list has not been properly prepared. The person who joined later to the applicant has been shown senior to

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him which is not permissible. On that basis he sought the relief of cancellation of panel drawn on 4.6.2007.

9. It is important to mention here that in the final seniority list which was drawn before conducting the exercise of promotion, the applicant was admittedly junior to respondent No. 4. He is also shown in the result of examination, below the respondent No. 4. The result of written examination indicates that 39 employees were declared qualified in the written test, but in final panel, only 8 names are there which has been arranged in accordance with Railway Board's letter dated 16.11.1998.

10. As the claim of the applicant is based mainly on the ground of seniority, and the applicant was shown to be junior to respondent No. 4 as such he finds a place in the final panel. He participated in the exercise on the basis of the seniority list in which he was shown to be junior at that time, but he did not challenge the seniority list prior to appearing in the examination. Hence, he is debarred to challenge the same after declaring him unsuccessful in the examination as he did not find place in the final select panel in view of the judgment of the Hon'ble Apex Court in the case of **Madras Institute of Development Studies and Another Vs. K. Sivasubramaniyan and others reported in 2016 (1) SCC 454.**

11. The relief claimed by the applicant would depend on the basis of seniority position in the cadre. The relief has not been sought to set aside his seniority list. Rather the applicant claims

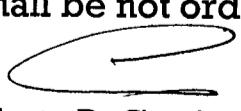


the relief in a indirect way by correcting the seniority list, and setting aside the panel. The applicant could be given benefit only if seniority position is changed. As no relief to challenge the seniority list has been claimed, so panel cannot be set aside. Moreover, it is well settled principle of law that no order could be passed behind back of a person adversely affecting him. He would be a necessary party and must be impleaded on the basis of principle of natural justices as held in **Poonam Vs. State of State of Uttar Pradesh and Others (2016) 2 SCC 779**. Admittedly, large number of persons would be affected if the seniority list is changed or seniority is unsettled. Admittedly, those person were not made parties. Therefore, it would not be advisable to permit the applicant to challenge the seniority list which was fully in the knowledge of the applicant at the time of appearing in the examination.

12. As such, this petition is also liable to be dismissed on the ground of non-joinder of necessary parties.

13. In the case in hand the respondent No. 4 was placed in final select list being senior to applicant. As such, select panel cannot be interfered as the same cannot be said to be illegal.

14. The petition lacks merit and is accordingly dismissed. There shall be not order as to cost.


(Smt. P. Gopinath)

Member (A)


(Justice V. C. Gupta)

Member (J)