

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.100/2009

Reserved on 10.07.2014.

Pronounced on 6th August 2014

**HON'BLE MR. NAVNEET KUMAR, MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Vinod Kumar Srivastava, aged about 48 years, son of Late Shambhoo Dayal Srivastava, resident of Village Haibat Mau, Police Station Mohanla Ganj, Rae Bareli Road, Lucknow. Presently posted as Motor Driver Grade II, Karshak Vitran, Electricity Division, Northern Railway, Lucknow.

...Applicants.

By Advocate: Sri Ganesh Gupta.

Versus.

1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Senior Divisional Personnel Officer, Northern Railway, Hazratganj, Lucknow.
4. Assistant Personnel Officer, for Divisional Railway Northern Railway, Hazratganj, Lucknow.
5. Senior Divisional Mechanical Engineer (O&F) Northern Railway, Hazratganj, Lucknow.
6. Sanjay Kumar Divide, Son of Sheo Gopal Presently posted as Motor Driver Grade-II Divisional Railway Manager Officer, Hazratganj, Lucknow.
7. Ram Kishan, son of Bhagwan Deen, presently posted as Motor Driver Grade II, Divisional Railway Manager Officer, Hazratganj, Lucknow.

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...Respondents.

By Advocate: Sri S. Verma for Resp.No.1 to 5. None is present for Resp.No.6 and 7.

O R D E R

Pre 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):-

“(i). this Hon’ble Tribunal may kindly be pleased to quash/set aside the order dated 27.11.2008 contained as Annexure N.23 and seniority list dated 8/9.9.2008 contained as Annexure No.21 to this O.A.

(ii). this Hon’ble Tribunal may kindly be pleased to direct the respondents to correct the seniority list dated 8/9.9.2008 by placing the applicant on his correct place as per the seniority list dated 14.7.2003.

(iii). this Hon’ble Court may be pleased to pass any other suitable order or direction which is deemed just and proper in the circumstances of the case.

(iv). Award the cost of this O.A. in favour of the applicant.”

2. The facts relevant to this case as averred by the applicant are that he was appointed as Safaiwala in the scale of Rs.196-232 revised to Rs.750-940 and thereafter promoted as Khalasi Helper in February, 1992. In the year 1997, a Trade Test was initiated by the Divisional Railway Manager, Northern Railway, Lucknow i.e. Respondent No.2 for promotion to the next higher post i.e. Motor Vehicle Driver (MVD) Grade III in the pay-scale of Rs.950-1500. The applicant was allowed to participate in the test. The result of which was declared by the letter

dated 02.5.1997 (Annexure-8). The name of the applicant was placed at Serial No.3 on the basis of his seniority. The names of Resp.Nos.6 and 7 were placed at Serial Nos.17 and 18 respectively. The promotion order was issued on 10.6.1997 (Annexure-9). The applicant joined on the promoted post of Motor Vehicle Driver Grade III. By a subsequent order dated 4.7.1997, 4 others viz. S.K. Misra, Charanjeet Singh, S.K. Divedi and Ram Kishan were also promoted on the post of Motor Vehicle Driver Grade III (Annexure-10). The respondents themselves have clarified by their letter dated 6.8.1998 that the junior most staff namely Sri S.K. Divedi and Ram Kishan i.e. Respondent Nos. 6 and 7 may either give their option to work in the same grade otherwise they can be reverted to their parent cadre as there is no vacancy of Truck/Jeep, MVD. The seniority list of Motor Vehicle Driver Grade III was prepared in the year 2000 and 2001 (Annexure-12 and 14). There seniority list had many errors as it had given wrong seniority to the applicant. He gave his objection alongwith many others and thereafter a revised seniority list was published on 14.7.2003 (Annexure-16) in which applicant was placed at Serial No.4 and Sri S.K. Misra, Charanjeet Singh and Resp.Nos.6 and 7 are placed at Serial No.9,10,11 and 12 respectively. By letter dated 5.8.2008, the applicant and Resp.No.6 and 7 were nominated for Trade Test to be held for promotion to the post of Motor Vehicle Driver (II). The result of the Trade Test was communicated alongwith all the necessary information for promotion to the next higher grade of Motor Vehicle Driver Grade II in the scale of Rs.4000-6000. However, Respondent No.5 instead acting on such a letter have promoted the

persons at Serial No.9 to 12 viz. S.K. Misra, Charnjeet Singh and Resp.Nos.6 and 7 in the present OA as per the seniority list dated 14.7.2003 to the post of Motor Vehicle Driver Grade II vide order dated 17.12.2008 over looking the claims of the applicant, who were at Serial No.4. The respondents have also published another seniority list dated 8/9.09.2008 in which the seniority order has been changed placing the respondents at Serial Nos.4 and 5 and himself at Serial No.6. The applicant has filed his objections against the seniority list dated 8/9.9.2008 by letter dated 22.09.2008 (Annexure-23). But, the respondents have not yet issued the correct seniority list nor have given promotion in accordance with their seniority as fixed in 2003. Hence, the present OA has been filed.

3. The respondents have refuted the claim of the applicant. Further, they have stated that initially the seniority list of Motor Vehicle Driver Grade III dated 2000-2001 was published and objections were invited from the persons shown in the list. Thereafter, some of the persons including the opposite parties no.6 and 7 had raised their objections against the list and the revised seniority list of Motor Vehicle Driver Grade III was published on 14.7.2003 (Annexure-16). In this seniority list the applicant has been wrongly placed at Serial No.4 over and above respondent nos.6 and 7. This list was subsequently rectified by seniority list dated 8/09.09.2008. Respondent No.6 had raised an objection about the trade test proposed by a letter dated 5.8.2008 and vide order dated 27.11.2008 the said trade test was postponed and after considering all the objections of all.

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the persons a revised seniority list was published on 08.9.2008. In accordance with rules and as per the revised seniority list, the respondent no.6 & 7 being senior were promoted as Motor Vehicle Driver Grade II. It is stated that the seniority of the Motor Vehicle Driver Grade III was fixed in accordance with initially prepared panel of Class-IV employees at the time of initial appointment/regularization.

4. Notice was issued to private respondents by Registered Post on 27.07.2009, but no reply has been filed on their behalf.

5. The applicant has filed a Rejoinder reply more or less reiterating his contentions as raised in the OA.

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

7. It is not denied that the applicant and the respondents were both subjected to a trade test for the post of Motor Vehicle Driver. The result of the trade test was declared by letter dated 2.5.1997 (Annexure-8). In this list the applicant is placed at Serial No.3 whereas the respondents have placed at Serial No.17 & 18 below the applicant. It is not clear from the result whether the placement of the names is based on merits or seniority or any other consideration. However, as per the subsequent promotion order dated 10.6.1997, it is seen that the persons placed at Serial no.1 Sri D.C. Srivastava, Serial

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No.2 Sri Lakhan Lal, Serial No.3 Sri V.K. Srivastava, Serial No.4 Sri Rakesh Kumar, Serial No.5 Sri Sarvinder Pal Singh, Serial No.6 Sri Ram Kesh Meena, Serial No.7 Sri Kailash Ram, Serial No.8 Sri Shiv Baran, Serial No.9 Sri Mahesh Kumar and Serial No.10 Sri Ram Singh have been promoted. The order of the respondents, who are at Serial No.17 and 18 were issued by subsequent promotion order dated 04.07.1997. The seniority list Motor Vehicle Driver (III) dated 2001-2001 were issued subsequent to such promotion orders. The applicant challenged that seniority list. A revised seniority list of 2003 was issued holding the applicant senior to the respondents. It is natural to conclude that in issuing the revised seniority list all facts relevant to fixation of seniority was examined by the respondents. This list of 2003 remained in place for five years i.e. up to 2008. In 2008 by letter dated 05.08.2008 five persons, who are in accordance with seniority list of 2003, were deemed to be eligible for being nominated for the Trade Test of Motor Vehicle Driver Grade II. The respondents have thereafter stated that an objection was raised by Respondent No.6 but they have not provided the copy of the said objection nor explained why no objection was raised by the same person to the seniority list of 2003. In fact, it is squarely provided in the seniority list of 2003 that if no objection is raised within the stipulated time, the list shall be Final. Stipulated time in this case was one month from the date of publication of the list on 14.07.2003. The respondents have acted counter to the conditions and published the seniority list of 08.09.2008. The statement of the respondents that in drawing up the impugned seniority list, the date of promotion to the Motor Vehicle

Driver (III) and the date of initial appointment /regularization does not have much force. The ground of drawing up the seniority list in 2003, which was published after inviting objections and of 2008 cannot be based on different parameters. No rule etc. also has been cited in support of the same.

8. In view of the above, the OA succeeds. The impugned order dated 27.11.2008 (Annexure-24) and the seniority list dated 8/09.09.2008 in so far as it relates to the applicant is quashed. The respondents are directed to assign the correct seniority to the applicant and grant promotion on the post of Motor Vehicle Driver Grade II in the scale of Rs.4000-6000 from the date when his immediate juniors have been considered and promoted on the said post. This exercise shall be completed within a period of four months from the date of receipt of a certified copy of this order. No order as to costs.

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

U.R. Agarwal
(Navneet Kumar)
Member (J)

Amit/-