

**Reserved**

**CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH**

Original Application No.615/2005  
This the 5<sup>th</sup> day of October, 2012

**Hon'ble Sri Justice Alok Kumar Singh, Member (J)**  
**Hon'ble Sri D.C. Lakha, Member (A)**

Shyamal Kumar Das, aged about 59 years, S/o Late Sri Sant Kumar Das, R/o H.No.M-1756, Sector-'C', LDA Colony Kanpur Road, Lucknow.

**...Applicant.**

**By Advocate: Sri Alok Trivedi.**

**Versus**

1. Union of India, through the Secretary, Ministry of Railways, Government of India, New Delhi.
2. The General Manager, Northern Railway, Baroda House, New Delhi.
3. The Chief Personnel Officer, Northern Railway, Baroda House, New Delhi.
4. The Chief Electrical Engineer, Northern Railway, Baroda House, New Delhi.
5. The Chief Works Manager, Northern Railway, Alambagh, Lucknow.

**... Respondents.**

**By advocate: Sri S. Verma.**

**(Reserved on 01.10.2012)**  
**ORDER (Oral)**

**By Hon'ble Sri Justice Alok Kumar Singh, Member (J)**

The O.A. has been filed for the following relief;-

“(a). This Hon'ble Tribunal may very graciously be pleased to direct the respondents to forthwith grant

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'notional promotion' to the applicant with effect from the date of his junior was promoted-as Asstt. Electrical Engineer with all consequential benefits, after re-fixing his pay at par with his said junior, Sri R.C. Arya.

(b). Direct the respondents to fix the pension amount and pensionary benefits as per fixation of pay and pensionary benefits, granted to Sri R.C. Arya.

(C). Any other order or direction that his Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case may also be passed, favoring the applicant.

(d). Allow the present application in toto with costs."

**2.** In brief, the case of the applicant is that he was duly selected and appointed on the post of Assistant Electrical Chargeman w.e.f. 01.07.1970 (as mentioned in para-4.1) or on 01.01.1970 (as mentioned in para-4.18 of the O.A.), whereas his junior Sri R.C. Arya was posted on the above post of Group-'C' w.e.f. 01.06.1970. It is further said that in due course of time, he was promoted as Electrical Chargeman on ad-hoc basis and then as Senior Electrical Foreman in 1984. In 1986, however disciplinary proceedings were initiated against him for a major penalty. Thereafter, a Memorandum was issued for minor penalty proceedings on the same charges on 09.06.1993, which finally entailed penalty of 'Censure', vide order-dated 27.09.1993. He preferred an appeal on 25.01.1994, which was allowed in his favour and he was exonerated vide order dated 05.04.1994 (Annexure-1). Meanwhile, a Notification dated 26.02.1988 was issued for selection and promotion to Group-'B' post of Assistant Electrical Engineer from eligible Group-'C' candidates against 75% quota for departmental promotion but, the applicant was not called for the same. Said Sri R.C. Arya, who was junior to him being appointed on 01.06.1970

was however selected and appointed on the said post. The applicant was considered for promotion to Group-'B' post of Assistant Electrical Engineer only in the year 1997 and was promoted w.e.f. 14.08.1998 i.e. more than 8 years after the promotion of his junior Sri Arya. Not only this, his another junior Ram Lakhan was promoted to Group-'B' post w.e.f. 07.02.1994 even though no disciplinary proceedings was pending against the applicant after 27.09.1993. He therefore preferred a statutory appeal on 09.09.1999, claiming his promotion from the date his junior Sri Arya (Annexure-7) was promoted but he was never communicated about the appellate decision, if any. He again moved a representation on 09.12.1993 (Annexure-8). Lastly, he made a representation dated 24.01.2005 (Annexure-9) followed by another representation dated 04.08.2005, but without any effect. His junior Sri Arya was retired from service on 30.11.2005 from the post of Deputy Chief Electrical Engineer. Thereafter, on 06.12.2005, the applicant was promoted on the post of Work-charge Electrical Engineer. The present O.A. was filed on 20.12.2005 and after 10 days i.e. 30.12.2005, the applicant finally retired.

**3.** The official respondents have filed a detailed counter affidavit saying that this O.A. is misconceived. In respect of Sri R.C. Arya, it has been averred in the counter affidavit that he was promoted in grade Rs.700-900/2000-3200 w.e.f. 31.05.1979, whereas the applicant was promoted in that grade w.e.f. 01.01.1984 as a result of restructuring in the cadre. A combined seniority list of Electrical Supervisor Class-II (Group-'B') was issued on 28.06.1989 in which the name of Sri R.C. Arya finds

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place at Serial Number 74 whereas, the name of the applicant is at serial number 200. For the selection of Class-II (Group-'B') a panel was prepared on 20.11.1989, which included 278 candidates and R.C. Arya was at serial number 26. The applicant was not eligible to be called in that selection by virtue of his seniority position in the combined seniority list and all the candidates called in this selection were senior to him and were promoted as S.E./Electrical Grade Rs.700-900 prior to the applicant. The combined seniority list dated 28.06.1989 and the said panel dated 20.11.1989 have been placed at Annexure-C-1 and C-2 to the counter reply. In respect of Sri Ram Lakhan, it has been averred that he was also not junior to the applicant. The name of Sri R.C. Arya is at serial number 74 while Sri Ram Lakhan is at serial number 112 and the name of the applicant is at serial number 200 in the said combined seniority list.

4. Rejoinder Affidavit has also been filed reiterating the averments of the O.A. In respect of relevant paragraphs of C.A. pertaining to combined seniority list and placement of the applicant vis-à-vis Sri Arya and Ram Lakhan only a general denial has been made in the R.A.

5. Written arguments have also been filed from both the sides, which are on record. Having gone through the same, we also heard arguments orally.

6. After filing of this O.A. on 20.12.2005, the applicant has retired on 30.12.2005 i.e. after about 10 days.



7. The whole claim of the applicant appears to be based on the contention that one Sri R.C. Arya, was junior to him in Group-'C', who was promoted in the year 1990 whereas, the claim of the applicant was ignored probably on account of pendency of disciplinary proceedings in which he was finally exonerated by the Appellate Authority. Even the sealed cover procedure was also not adopted. He was ultimately, promoted in the year 1997.

8. Year of promotion of the applicant as well as Sri R.C. Arya have not been disputed from the other side. In para-4.1 his date of initial appointment is mentioned as 01.07.1970 which according to the applicant's counsel, is a typographical mistake. This Para-4.1 has been replied in para-6 of the counter affidavit saying that it needs no comments. Similarly, para-4.18 in which date of initial appointment of applicant is mentioned as 01.01.1970, has been replied in para-4.11 of the counter affidavit saying that contents are denied as alleged. But, specific denial of initial date of appointment has not been made. However, in para-11 of the counter affidavit, it has been clarified that said Sri Arya was promoted in the Grade Rs.700-900/2000-3200 w.e.f. 31.05.1979 whereas, the applicant was promoted in the grade w.e.f. 01.01.1984 as a result of restructuring in the cadre. This para-11 has been replied in para-7 of the rejoinder affidavit. But, there is only general denial in view of the submissions made in the previous paragraph of the rejoinder affidavit. But, in the previous paragraphs also, this Tribunal could not find any specific denial about the above date of first regular promotion of Sri Arya and subsequent, promotion

of the applicant after a gap of about 5 years i.e. from 31.05.1979 and subsequent promotion of the applicant i.e. on 01.01.1984 as a result of restructuring in the cadre. As a consequence of this probably the seniority if any on the basis of initial appointment of the applicant was lost in 1979 itself which was never challenged till date. The applicant also did never challenge the above promotion of Sri Arya which was made in 1979 i.e. about five years before the promotion of the applicant in 1984 on the basis of restructuring. Thus he did not raise any claim of his being senior to Sri Arya either in the year 1979 when Sri Arya was promoted or in the year 1984 when the applicant was promoted as a result of restructuring in the cadre.

9. From the above, it appears that even though the applicant might have been appointed initially prior to Sri Arya but, thereafter he never stood or treated senior to Sri Arya. Thereafter, a combined seniority list was admittedly issued on 28.06.1989 in which Sri Arya is at Sl.No.74 whereas, Sri Ram Lakhan is at Serial No.112 and the applicant is at Sl.No.200 (Annexure-C-1). It is a provisional seniority list. But probably final seniority list was never prepared. Neither of the parties have claimed that any final seniority list was prepared. Coming back to the above provisional seniority list, it appears that it was never challenged by the applicant either in June 1989 when it was issued or thereafter. There is also no such pleading. Since then about 23 years have passed. The applicant has also not made any averment that this provisional seniority list was wrong. From the other side the respondents plea is that the applicant was never

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senior to Sri Arya or Sri Ram Lakhan and this plea of respondents is substantiated by the above seniority list. From the side of the applicant there is nothing on record to prove his case that applicant was senior to said Sri R.C. Arya or Ram Lakhan as claimed by him. One who claims any thing has to prove it. But the applicant has failed to prove it.

**10.** After issuance of the above seniority list in June, 1989 the next selection took place in November 1989. A panel was issued on 12.11.1989 (Annexure-C-2). The name of Sri R.C. Arya finds place at Sl.No.26. The applicant was not eligible for this selection as has been specifically averred in the counter affidavit. Hence, there was no question of his name being anywhere in this panel. Again, it is seen that this panel prepared in November 1989 was also never challenged by the applicant till date. On the basis of above panel Sri R.C. Arya was promoted in the year 1990 to Group-'B' w.e.f. 16.03.1990. Again there was no challenge from the side of applicant. Though, the applicant has claimed his promotion from the above date, but, unless he proves himself to be senior to Sri Arya as claimed by him, he can not succeed. As already discussed above, he could not prove his claim of seniority over Sri R.C. Arya.

**11.** From the aforesaid discussion, it also comes out that the plea of the applicant regarding non adoption of Sealed-cover procedure on account of pendency of the disciplinary proceedings against him, in which he was ultimately exonerated by the appellate authority, also appears to be misconceived. It has been already seen that

he was far behind in the seniority list i.e. about 126 position of seniority below than Sri R.C. Arya. As already said this placement was done in the seniority list issued in the year 1989, which has never been challenged at any stage till the retirement of the applicant or even in the present O.A. As far as the disciplinary proceeding in respect of minor penalty is concerned, according to applicant himself it started in 1993 while the seniority list was prepared in the year 1989 itself. Therefore, it is a misconceived pleading that on account of any enquiry or due to non adoption of sealed cover procedure his claim was ignored. In fact, his seniority position was much below that of Sri R.C. Arya. No junior to the applicant was either called for promotion or promoted to next higher post.

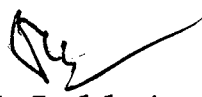
**12.** Therefore, the claim of the applicant for notional promotion from the date of Sri R.C. Arya on the ground of Sri Arya being junior to the applicant has no merit.

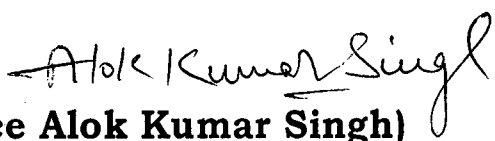
**13.** Before parting with the O.A., it is also worthwhile to mention that the first cause of action accrued to him in the year 1979 when first promotion was given to Sri Arya in Group-'C' itself. The applicant was given this promotion after a gap of 5 years in the year 1984 as a result of restructuring of the cadre. But, he never challenged it. If he was really senior and aggrieved he should have challenged in 1984 itself. Again, a cause of action accrued in the year 1989 when the combined seniority list was issued. At that time also he did not challenge it. Then, the promotion of Sri Arya took place in the year 1990 in Group-'B'. The applicant was not

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within the zone of consideration. However, he did not make any claim at that time. He was called for selection in 1997 and as pleaded by the official respondents some persons senior to him were still available for selection including the candidates of reserved community i.e. SC/ST. But, in 1997 also he did not make any claim. It is only after about 8 years, when he was on the verge of retirement in December, 2005 then he filed this O.A. and in order to bring it within the period of limitation, he got certain representations prepared and sent, copies whereof have been filed alongwith O.A. Thus, this matter is also highly time barred in view of Section-21 of Administrative Tribunal Act, 1985 and Rule-10 of CAT (Procedure) Rules, 1987.

**14.** In the conspectus of the above, this O.A. lacks merit and therefore it is dismissed. No order as to costs.

  
**(D.C. Lakha)**  
**Member (A)**

  
**(Justice Alok Kumar Singh)**  
**Member (J)** 5.10.12

Amit/-