

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW**

**Original Application No. 264 of 2008
This, the 11th day of April, 2017.**

**Hon'ble Mr. Justice V.C. Gupta, Judicial Member,
Hon'ble Mrs. P. Gopinath, Administrative Member.**

Govind Gupta, aged about 41 years, S/O Sri R.K. Gupta, R/O C/O Jai Ambe Book Depot. Faizabad Road, Matiyari Crossing, Chinhat, Lucknow Applicant

By Advocate: Sri Alok Trivedi.

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. The Divisional Railway Manager (P), Northern Railway, Hazratganj, Lucknow.
4. The Asstt. Divisional Personnel Officer (Engg.), Northern Railway, Hazratganj, Lucknow.
5. Sri Asif Ali, S/O Sri Sabir Ali, presently posted as Signal Maintainer-Grade-I under the Divisional Railway Manager (P), Northern Railway, Hazratganj, Lucknow.
6. T.N. Singh S/O B.B. Singh presently posted as Signal Maintainer-Grade-I under the Divisional Railway Manager (P), Northern Railway, Hazratganj, Lucknow.
7. Sahaj Ram S/O Sausom Lai, presently posted as Signal Maintainer-Grade-I under the Divisional Railway Manager (P), Northern Railway, Hazratganj, Lucknow.
8. R.K. Srivastava adult S/O Shri A.P. Srivastava presently posted as Signal Maintainer- Grade-I under the Divisional Railway Manager (P), Northern Railway, Hazratganj, Lucknow.
9. S.K. Mishra adult S/O SK Mishra presently posted as Signal Maintainer- Grade-I under the Divisional Railway Manager (P), Northern Railway, Hazratganj, Lucknow.

..... Respondents.

By Advocate: Sri H.G. Upadhyay for official respondent.
Sri Praveen Kumar for respondent no. 6 & 7.
Sri A. Verma for Sri A. Moin for respondent no. 5.



ORDER (ORAL)

BY JUSTICE V.C. GUPTA, JM

The brief facts giving rise to this petition in nut shell are that applicant Sri Govind Gupta and respondent no. 5 to 9 participated in the selection process initiated for promotion to the post of Junior Engineer-II/Sig in the pay scale of Rs. 5000-8000 against 25% IA quota with the approval of the competent authority. It is not in dispute that the applicant and the private respondents were all eligible to appear in the departmental examination. After completion of selection process the result was declared and panel was drawn on 10.01.2008 which has been annexed as Annexure No. 4 to the OA and is extracted here in below:

SSE (Sig)/II, RRI/LKO/W, RRI/BSB/FD/SLN/PBH & RBL

Sub: Selection for the post of JE-II/Sig. in scale Rs. 5000-8000 against Intermediate Apprentice quota.

* * *

As a result of written examination held on 16.10.07 and further assessment base on Record of Service, for selection to the post of Junior Engineer-II/Sig. in scale Rs. 5000-8000 against Intermediate Apprentice quota, following employees have been found 'FIT' to be placed on the provisional Panel of Junior Engineer-II/Sig in scale Rs. 5000-8000.

Panel in order of seniority and those secured 80% or more marks have been placed TOP on the panel.

| S.No. | Name (S/Sh) | Whether SC/ST | Desig/Stn |
|-------|-----------------|---------------|--------------|
| 1 | T.N.Singh | | SM-I/LKO |
| 2 | Sahaj Ram | | SM-I/LKO |
| 3 | Govind Gupta | | SM-I/RRI/LKO |
| 4 | R.K. Srivastava | | SM-I/LKO |
| 5 | S.K. Misra | | SM-I/LKO |
| 6 | P.C. Gautam | SC | SM-I/LKO |

Total : 06 (Six only)

The Above employees may be informed that ..placement on panel is no guarantee for promotion, which is subject to their continuous satisfactory working during the currency of the Panel, promotion will be subject to D&AR/SPE/VIG clearance and not undergoing any punishment i.e. WIT, WIP or reduction in Pay or Scale etc and passing pre-requisite training course.

This has the approval of the competent authority.

(JP Pandey)
Asstt. Personnel Officer/Engg
NR/LKO"

2. Aggrieved by this panel one Sri Ashif Ali (respondent no. 5 in this OA) filed an Original Application No. 116 of 2008. During the pendency of O.A. No. 116/2008, the panel was revised and name of the Ashif Ali was

inducted and name of the present applicant was excluded from the revised panel which was issued on 16.07.2008 and is impugned in this original application and same is annexed as Annexure No. 1 which is extracted herein below:

"Northern Railway
No. 752E/2-1/Selection/JE-II/Sig/07 Divisional Office, Lucknow
Dated : 16.07.08

SSE (Sig)/II, RRI/LKO/W, RRI/BSB/FD/SLN/PBH & RBL

Sub: Selection for the post of JE-II/Sig.scale Rs. 5000-8000 (RSRP) against 25% I.A. Quota.

Ref: This office letter of even no. dated 10.01.08

In partial modification to this office letter dated 10.01.2008 referred above the amended provisional panel for the post of JE-II/Sig.scale Rs. 5000-8000(RSRP) is issued as under :-

| S.No. | Name (S/Sh) | Desig/Stn |
|-------|-----------------|--------------|
| 1 | T.N.Singh | SM-I/LKO |
| 2 | Sahaj Ram | SM-I/LKO |
| 3 | R.K. Srivastava | SM-I/RRI/LKO |
| 4 | S.K. Misra | SM-I/BSB |
| 5 | Asif Ali | SM-I/LKO |
| 6 | P.C. Gautam | SM-I/LKO |

Above noted staff are informed that mere placement on provisional panel does not entitle them for promotion as JE-II/Sig.scale Rs. 5000-8000(RSRP) which subject to continuous satisfactory working during the currency of panel, D&AR/SPE Vig. Clearance etc. These orders are provisional and subject to final decision in O.A. No. 116 of 2008 – Asif Ali V/s U.O.I. & Others pending before Hon'ble CAT/LKO.

Note: In the amended Panel the name of Shri Govind Gupta does not find place and has been deleted from the Panel issued earlier and the name of Asif Ali has been added in the Present Panel due to revision in the seniority issued vide his office letter of even no. dated 25.3.08 confirmed vide this office letter dated 11.4.08.

(Prashant Rai)
APO/ENgg/NR/LKO"

3. After the issue of revised panel on 16.07.2008, the petition filed by Ashif Ali was dismissed as infructuous without adjudicating the controversy involved in OA on merit vide order dated 24.07.2008, copy of order dated 24.07.2008 reads as under:

"Since, the claim of the applicant has been redressed by the department, and his name has already been empanelled, the OA has become infructuous and is accordingly disposed of."

4. When panel was revise, the present OA was filed by Sri Govind Gupta whose name was excluded from the panel list. The challenge is based on the ground that seniority of the applicant has not been properly

(Signature)

determined and Sri Ashif Ali (respondent no.5) and Sri S.K. Mishra (respondent no. 9) were wrongly placed above him in the seniority list. It has been contended in the original application that the applicant was shown senior in the provisional list which was the basis for selection but perusal of the same shows that applicant was junior to the Asif Ali was shown the provisional seniority list also, which was issued on 05.07.2006. Ashif Ali was shown at Sl. No. 23 and Govind Gupta at SL. No. 31 in the provisional seniority list. It has been contended that he raised objections against the provisional seniority list on 7.8.2006 and also thereafter, but his grievances was not redressed and without redressing the grievances the panel was issued.

5. Reply has been filed by the official respondent alleging therein that the applicant was junior to Ashif Ali even in the provisional list and his grievance was redressed by order dated 10.04.2008 which was signed on 11.04.2008 and is placed on record by official respondent by filing supplementary affidavit in the May, 2016 and is extracted herein below:

‘उत्तर रेलवे
पत्र संख्या 847 ई/2-1/सिग/वरिष्ठता

मण्डल कार्यालय
उ०र० लखनऊ
दिन: 10/04/08
कार्यालय आदेश

विषय:— वरिष्ठता संशोधन के सम्बन्ध में।

सन्दर्भ:— इस कार्यालय का सम संख्यक पत्र दिनांक 25/3/08

इस कार्यालय के उपरोक्त सन्दर्भित पत्र दिनांक 25/3/08 के द्वारा सिगनल मेन्टेनर ग्रेड-1 वेतनमान ₹० 4500-7000 (आर एस आर पी) की वरीयता सूची जो इस कार्यालय के सम संख्यक पत्र दिनांक 5/7/06 को जारी की गई है, में निम्नलिखित संशोधन के लिए 15 दिन की सूचना देते हुए इस पर आपत्तिया आमंत्रित किया गया था।

(1) श्री एस० के० मिश्रा का नाम कम स० 22ए पर रखा गया है। जो श्री आर०के० श्रीवास्तव के नीचे एवं कम स० 23 श्री आसिफ अली के ऊपर।

(2) श्री गोविन्द गुप्ता का नाम कम स० 23 ए, श्री आसिफ अली के नीचे रखा गया है।

(3) श्री राम औतार का नाम कम स० 44ए श्री महेश कुमार के नीचे एवं कम स० 45 श्री एस०पी० पांडे के ऊपर रखा गया है।

उपरोक्त संशोधनों के सम्बन्ध में श्री आसिफ अली का एक अभ्यावेदन दिनांक 31/3/08 को प्राप्त हुआ था। जिसमें उन्होंने श्री एस० के० मिश्रा को स्वय से ऊपर वरिष्ठता प्रदान किये जाने पर आपत्ति जतायी थी। इस सम्बन्ध में यह स्पष्ट किया जाता है कि श्री एस०के० मिश्रा को आसिफ अली से ऊपर प्रधानाचार्य एस एण्ड टी प्रशिक्षण केन्द्र गाजियाबाद के पत्रांक ३ई/अप्रेन्टिस/ईएसएम/एमएसएम/गाजियाबाद दिनांक 13/11/07 के द्वारा सूचित मेरिट के आधार पर रखा गया है।

उपरोक्त के आलावा इस सम्बन्ध में कोई प्रत्यावेदन प्राप्त नहीं हुआ है।

अतः इस कार्यालय के दिनांक 25/3/08 के उपरोक्त सन्दर्भित पत्र द्वारा जारी संशोधित वरीयता को अन्तिम माना जाता है।

(प्रशान्त राय)
सहायक कार्मिक अधिकारी
कृते मण्डल रेल प्रबन्धक
उ०र० लखनऊ

प्रतिलिपि:—

- (1) वरिष्ठ मण्डल सिगनल एवं दूर संचार अभियन्ता लखनऊ।
- (2) वरिष्ठ खण्ड अभियन्ता आर आर आई।। लखनऊ आर आरआई पश्चिम वाराणसी फैजाबाद सुल्तानपुर प्रतापगढ़ रायबरेली।
- (3) मण्डल मन्त्री एन आर एम यू एसएसटी एण्ड ओबीसी ऐसोसियेशन

10/04/16

(4) श्री एस०के० मिश्रा गोविन्द गुप्ता एस०के० राय, आसिफ अली, राम औतार एवं एस०पी० पान्डेय।'

The perusal of this order reveals that Sri S.K. Mishra was shown at Sl. No. 22A who is above to Ashif Ali at Sl. No. 23 and below the Sri R.K. Srivastava. The name of Sri Govind Gupta was placed in the seniority list at Sl. No. 23A which is below the name of Sri Ashif Ali.

6. It is not in dispute that the persons who secured 80% or more marks were placed on the top of the list according to inter-se-seniority. Consequently, the respondent no. 6&7 was placed in the top of the select list at Sl. No. 1&2. The learned counsel at this stage conceded that in view of amendment incorporated by 13.11.1998 50% was enhanced at 80% and as such the same will apply in the present case. As such the applicant has no grievance with placement of respondent no. 6&7 in the select panel at the top. In this case respondent no. 8&9 did not choose to contest.

7. The subsequent panel which was revised contains the name of select candidate from S.No. 3 onward in view of the order dated 11.04.2008. The order reveals that Sri S.K. Mishra (Respondent no. 9) is above Sri Ashif Ali in the seniority list and the present applicant is just below to Ashif Ali. Admittedly Sri R.K. Srivastava and Sri S.K. Mishra are senior. Sri P.C. Gautam a SC candidate being of reserved category, was placed at the bottom of the seniority list. As only 3 person were inducted in the impugned panel on the basis of seniority Sri Govind Gupta being junior to Ashif Ali could not be placed in select panel in view of decision taken on 11.04.2008.

8. It was further contended by counsel for the respondents that select panel has been challenged by the applicant and not the seniority list. Hence the panel which was prepared is in consequence with the seniority list as amended by order dated 11.04.2008 and hence the applicant cannot be permitted to challenge the impugned panel.

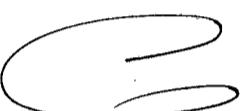
9. As the fact of this case is not in dispute, the only question involved is whether the applicant may be permitted to challenge the panel which has already been implemented, unless inter-se-seniority of the petitioner and the respondents is revised as desired by the applicant ?

10. The case of the counsel for the applicant is that he has not been provided the decision taken on 11.04.2008, hence he could not challenge the same. The perusal of the aforesaid order reveals that the copy of the decision dated 11.04.2008 was sent to Sri S.K. Mishra, Govind Gupta (applicant), S.K. Rai, Ashif Ali, Ram Autar and S.P. Pandey. It was also mentioned in the impugned order in para -2 that revision of

panel occurred on account of revision in the seniority issued by office letter of even number dated 25.03.2008 and confirmed by this office letter dated 11.04.2008.

11. The revised panel is of 16.07.2008, which has been challenged by the applicant. Therefore we are of the view that the applicant fails to show that he was not aware with the order passed on 11.04.2008. The seniority has not been disturbed so far. Therefore we are of the view that the panel which has been implemented and challenged in this original application cannot be quashed, as the seniority list has already attained finality in respect of private respondents and applicant.

12. In view of the observation made herein above, petition lacks merit and is accordingly dismissed. However there shall be no order as to costs.



(Mrs. P. Gopinath)
Administrative Member



11/04/2008
(Justice V.C. Gupta)
Judicial Member