

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 393 of 1991

## Versus

Union of India & Others . . . . . Respondents

Hon'ble Mr. Justice W.C.Srivastava, V.C.

Hon'ble Mr. V.K. Seth, Member (A)

( By Hon'ble Mr. Justice U.C.Srivastava,V.C.)

Feeling aggrieved against the deprivation of the seniority, the applicant has approached this tribunal praying that he may be given seniority over the respondent No. 4 and may be allowed promotion on the post of Guard Grade 'A' w.e.f. the date of promotion of the respondent No. 4 and the salary may also be allowed to him since that date.

2. From the facts as stated by the parties, it appears that the applicant was initially appointed in the Commercial cadre as Assistant goods clerk in the grade of Rs. 110-200/- w.e.f. 26.5.1964 in Allahabad Division, while respondent no. 4 was appointed under commercial grade as Assistant Coaching clerk in the same grade w.e.f. 11.12.64 in the Lucknow Division. In the year 1969, the applicant while working in Allahabad Division came to Lucknow Division on his own request on 16.6.1969 and as such in view of the para 302 of the Indian Railway Establishment Manual, he was placed at the bottom of the cadre at Allahabad Division. The applicant who was commercial clerk ? But on the good side earned certain intervening promotion, while the respondent no. 4 who was on the other side of the commercial side earned certain promotion on the parcel side. The dispute arose, when the seniority list was prepared

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The applicant was promoted on the post of Guard 'C' vide order dated 25.1.1983 and he was placed at serial no. 1. The seniority which was published on 9.10.1986 and no objection to the same was raised. In the seniority list so published which included the name of the applicant and the respondent no. 4, the name of the applicant ~~was~~ was shown at serial no. 196 and the name of the respondent no. 6 was shown at serial no. 160 and according to the applicant, the list was wrongly prepared and he could learn only about the said list in the month of January 1989 when the notice was issued to appear in the written test for the post of Guard grade 'A' and the name of the applicant was shown at serial no. 131 in the notice and the respondent no. 4 at serial no. 101. The applicant represented against the same for giving him due seniority, but without deciding his representation a fresh seniority list was published on 23.5.1990 in which his name was shown at serial no. 55 and the respondent no. 4 at serial no. 29. Although, according to the applicant, it should have been shown at serial no. 28. The representation of the applicant remained pending and in the mean time an order was issued on 6.8.1990 promoting the respondents as Guard grade 'A' and this, the applicant feeling aggrieved and not getting the promotion and seniority has landed before the tribunal claiming the above relief.

3. The application has been opposed by the respondents and the respondent no. 4 who has filed the written statement and the Railway Administration. The learned counsel for the Railway Administration Sri B.K. Shukla prayed for filing a counter-affidavit, as the counter-affidavit is ready, but only signature is needed. We allowed him to argue the case on the basis of the counter-affidavit and taken the written instructions, which have been placed on the record. On behalf of the Railway Administration, it has been stated that the applicant was placed undoubtedly at serial no. 1.

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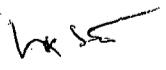
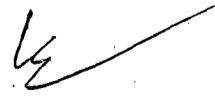
but the recognized union raised the issue of seniority and the respondent no. 4 was assigned seniority over Sri S.S. Tripathi and this rectification gave over riding effect as a result of which the applicant became junior to the respondent no. 4 where as earlier he was senior to him. Thus, a candid admission has been made by the Railway Administration regarding the seniority and juniority of the applicant vis-a-vis respondent no. 4 which was changed in this manner as the respondent no. 4 was given seniority over one Sri S.S. Tripathi at the intervention by the Union <sup>as</sup> resulting in making the applicant also junior to the respondent no. 4. The Railway administration has tried to justify their action by stating that in the 1986 the list was circulated and then no objection was raised and that's why it was become final and the applicant cannot be heard. Although, according to the applicant the seniority list was never brought to the notice otherwise, it is objected to the same. The respondent no. 4 in order to justify his seniority has pleaded that as a matter of fact in pursuance of the notice dated 7.6.1988, he had already given his option for the post of guard and had also passed the P-3 Course from the Zonal Training School, Chandausi held from 20.9.1978 to 4.1.1979, which was a condition precedent for appointment on the post of Guard. This all was done before the selection and training of the applicant and due to administrative error, he was not promoted as a Guard and persons junior to him were promoted. He represented the case through one of the recognized union and the case was examined in P.N.M. meeting and it was decided to interpolate the name of Sri S.S. Tripathi item no. 186. Before interpolating the name of the respondent in the seniority list, a notice dated 19.12.1985 was issued to all concerned

giving an opportunity to the staff to make their representation, but no representation was made and according to the applicant, he never received any such notice and was never aware of the notice. According to respondent no. 4, ~~u~~ after passing the said examination was promoted and appointed as Guard grade 'C' by the same notice with effect from 25.2.1983, but Sri S.S. Tripathi and many others were promoted earlier, which was the administrative fault, and his representation was allowed and he was given seniority as mentioned above and his name was interpolated. The second seniority list was issued thereafter, but the applicant did not make any ~~xx~~ representation and it has been stated that the applicant has passed the P-3 course subsequently and thereafter he was promoted and that's why he will rank junior.

4. The learned counsel for the applicant contended that in view of the paragraph 320 of the Railway Establishment Manual, the applicant who senior to the respondent no. 4 will rank senior and merely because he was wrongly deprived of seniority or the promotion that will not become junior as initially he was senior and further he should only be junior in the division where he was transferred, but so far as the other purpose is concerned, he cannot be made to loose his seniority from the date of initial appointment or the cadre in which <sup>in</sup> he was placed another division before his transfer to ~~xx~~ other division. While according to the respondents even if that may be the position but in view of the paragraph 303 of the Railway Establishment Manual one who

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succeeded in the earlier selection will rank senior to those who succeeded in another selection. No clear either of the statement has been made by the respondents and as a among matter of fact a selection from these persons took place, it has not been stated that the selection was followed by the training, if that was so, obviously, the respondent no. 4 will rank senior to the applicant, but in case, without there being any selection, the respondent no. 4 was given training and was promoted, the applicant who was selected and thereafter given training will rank senior. As the Railway Administration is also silent on this point, the Railway Administration is directed to decide this question, as to whether the respondent no. 4 was selected earlier or not and in absence of selection was given training course or he was given training without selection. If he was given training without selection then of course, one who was selected and was given training earlier will rank senior. In case, the applicant was selected earlier, then the applicant cannot be made to loose his seniority. Even though, the respondent no. 4 has been made senior to the applicant. Let a decision be given in this behalf within a period of two months from the date of receipt of the copy of this order. In case, the respondent no. 4 was selected and given training prior to the selection and training of the applicant, obviously, the respondent no. 4 who was earlier made senior will be senior to the applicant and the application shall stand dismissed. No order as to costs.

  
Member (A)  
Vice-Chairman

Lucknow Dated: 20.4.1993

(RKA)