

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant(s) *Abdul Aziz*

Respondent(s) *ur 9*

Advocate for Applicant(s)

Advocate for Respondent(s)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
<p><u>8.1.2007</u></p> <p><u>04539/2007 with MA 469/2006</u></p> <p>Mr. Amit Mathur, counsel for applicant Mr. S.S. Hasan, counsel for respondents Hence the learned counsel for the parties</p> <p><u>Order reserved</u></p> <p><i>(Signature) (G.P. Shukla) M(A)</i></p> <p><u>11/11/07</u></p>	<p>ORDERS OF THE TRIBUNAL</p> <p><i>(Signature) (M.L. Chauhan) M(J)</i></p> <p><u>11/11/07</u></p> <p>Order has been pronounced today in the open court by DSC.</p> <p><u>11/11/07</u></p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 11th day of January, 2007

ORIGINAL APPLICATION No.539/2003

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)

HON'BLE MR. J.P.SHUKLA, MEMBER (ADMV.)

Abdul Aziz,
s/o late Shri Abdul Sahid,
aged about 50 years,
r/o Railway Purani Colony,
Quarter No.107, T.A. Kota,
presently working as Shunting
Zamadar, West Central Railway,
Kota.

.. Applicant

(By Advocate: Shri Amit Mathur)

Versus

1. Union of India
through General Manager,
Western Central Railway,
Jabalpur Division,
Jabalpur.
2. The Divisional Railway Manager,
Western Central Railway,
Kota.

.. Respondents

(By Advocate: Shri S.S.Hasan)

O R D E R

Per Hon'ble Mr. M.L.Chauhan

The present OA has been filed by the applicant against the select list dated 1.4.2002 (Ann.A1) prepared by the respondents for promotion to the post of Shunting Master in the grade of Rs. 5000-8000 in which name of the applicant has not been included. The applicant claims to be senior to the employees who have been empanelled for promotion to the post of Shunting Master vide the impugned order. The applicant has filed representation dated 8.4.2002 as also issued legal notice on 24th July, 2002, but the same has not been decided by the respondents. It is on account of these facts the applicant has prayed that respondents may be directed to include his name in the panel dated 1.4.2002 (Ann.A1) for promotion to the post of Shunting Master. The applicant has further prayed that the respondents may also be directed to grant seniority to the applicant from the date persons junior to him were given promotion on the post of Shunting Master.

3. Briefly stated, facts of the case are that the applicant was initially appointed as Box Boy in the year 1973. Subsequently, he was promoted to the post

of Pointsman (Shunter) in the year 1979. It is case of the applicant that provisional seniority list of Shunters, Pointsman and other similar groups were issued on 31.1.1990 (Ann.A4) in which name of the applicant find mention at Sl.No.175. It is further averred that the applicant became eligible for promotion on the post of Shunting Zamadar in the year 1993 and the respondents promoted persons junior to the applicant on the post of Shunting Zamadar in the pay scale of Rs. 4000-6000. However, he was working in the pay scale of Rs. 950-1500 (revised pay scale of Rs. 3050-9000) since 1979 was not promoted at the relevant time and few junior persons to him such as Shri Ram Rai K., Subrati A. and Pooran S. were given promotion in the pay scale of Rs. 4000-6000. It is further stated that the applicant raised his grievance before the competent authority and thereafter the respondents promoted few persons junior to the applicant on the post of Shunting Zamadar in the pay scale of Rs. 4000-6000. It is further stated that the applicant again submitted representation that the persons given promotion to the post of Shunting Zamadar are junior to him. Thereafter, the respondents passed order dated 31.8.2000 by which they promoted the applicant. Copy of such promotion order has been placed on record as Ann.A5. It is further stated that the respondents thereafter issued a provisional seniority list dated 12.6.2001 (Ann.A6) in

which name of the applicant was shown at Sl.No.24 whereas name of Shri Mohan Lal K. was shown at Sl.No.3 in the category of Shunting Zamadar, scale Rs. 4000-6000. The applicant submitted a representation through his union which is placed at Ann.A7. The grievance of the applicant is that no action has been taken on his representation. It is on the basis of these facts, the applicant has filed this OA.

4. Notice of this application was given to the respondents. The respondents in the reply have justified promotion of the so called juniors namely S/Shri Ramrai K., Subrati A. and Pooran S. It has been stated that S/Shri Ramrai K. was selected on the post of Shunter Zamadar in the scale of Rs. 4000-6000 pursuant to selection conducted vide notification dated 11.12.1996 as Shri Ramrai K has submitted application whereas the present applicant did not submit his application in response to the said notification for his selection on the post of Shunting Zamadar, as such his name was not included in the eligibility list. It is further stated that after issuance of eligibility list 3 employees submitted their applications stating that they are also eligible but their names have not been included. Therefore, vide order dated 4.6.97 names of S/Shri Bhanwar Singh, Gopal Lal Sharma and Rajjak Mohammed have been included in the eligibility list for selection on the

post of Shunter Zamadar. The respondents have placed copy of the letter datd 4.6.97 on record as Ann.R4. It is further stated that the applicant has not submitted any application to include his name in the eligibility list and even after completion of selection process, the applicant did not submit any representation to include his name in the eligibility list. The respondents have categorically stated that the process of selection was completed on 20.2.98 and panel and eligibility list was issued on 20.2.98. Copy of panel and eligibility list issued on 20.2.98 have been placed on record as Ann.R5. Thus, according to the respondents the employees who were selected and whose names were notified in the panel/eligibility list dated 20.2.98 became senior to the applicant Abdul Aziz and therefore, their names have been included above in the seniority list for the post of Shunting Zamadar. The respondents have stated that the applicant was promoted as Shunting Zamadar vide order dated 31.8.2000 (Ann.A11), as such he cannot claim seniority over persons who have already promoted in the year 1998.

As regards S/Shri Pooran S and Subrati A, the respondents have stated that these two persons are senior to the applicant as per seniority list dated 10.9.98. According to the respondents as per the said seniority list date of appointment of Shri Pooran is 13.12.60 whereas date of appointment of present

applicant is 1.2.73 and hence Shri Pooran has been placed at SL.No.7 of the seniority list dated 10.9.98 whereas name of the applicant has been placed at Sl.No.53. It is further stated that name of Subrati A figures at Sl.No.5 of the seniority list of Cabinman published on 20.7.98. These persons are senior to the applicant as they were appointed earlier to the applicant, as such, the applicant cannot claim any seniority over and above these two persons.



5. The applicant has filed rejoinder in which he has reiterated the facts as stated in the OA. It is further averred that the applicant was never called for the selection test for the post of Shunting Zamadar. Therefore, there was no occasion for him to participate in this selection test.



6. The respondents have filed reply to the rejoinder in which the respondents have categorically stated that the applicant has not submitted any application in response to the notification issued vide order dated 11.12.96. The respondents have also placed on record the order dated 4.6.97 on record as Ann.R4 which shows that these three persons whose names were not initially included in the eligibility list were also permitted in the selection for the post of Shunting Zamadar by including their names in the eligibility list subsequently whereas the applicant



did not make any such request even subsequently. The respondents have also placed on record copy of the order dated 20.2.98 (Ann.R5) whereby 5 persons including one Shri Mohan Lal K and Ramrai K, the so called junior to the applicant were promoted as Shunting Zamadar. Thus, according to the respondents, the applicant has no case.

7. We have heard the learned counsel for the parties and gone through the material placed on record.

8. From the facts as stated above, it is not in dispute that the applicant was senior to the persons as mentioned by him in the OA as per the combined seniority list dated 31.1.1990 in respect of Senior Pointsman/Points Jamadar/Leverman/LR Cabinman in the grade of Rs. 950-1500 (Revised grade Rs. 3050-4590). It is also borne out from the material placed on record that subsequently the respondents issued seniority list for Cabinman dated 20.7.98 in the grade of Rs. 4000-6000 and Rs. 3050-4590 and the seniority list dated 20.9.98 in the grade of Rs. 4000-6000, copy of the seniority list has been placed on record by the respondents as Ann.R2. In the seniority list dated 20.7.98, name of Shri Subroto A find mention at Sl.No.5 and his date of appointment has been shown as 28.9.66. In the seniority list in respect of senior Pointsman dated 20.9.98, name of Shri Pooran S find

mention at Sl.No.7 and his date of appointment has been shown as 13.12.60 whereas name of the applicant find mention at Sl.No.53 and his date of appointment has been shown as 1.2.73. Thus, contention of the applicant that he is senior to these persons simply because in the earlier seniority list dated 30.1.90 of Senior Pointsman/Points Zamadar/Cabinman etc. he was shown senior to these persons, cannot be accepted as the aforesaid two persons were appointed in the grade of Rs. 3050-4590 much earlier to the applicant. Further, the applicant has not challenged the aforesaid seniority list as issued in the year 1998, as such, even on this account, the applicant cannot be held to be senior to these two persons.

9. So far as seniority over one Shri Mohal Lal K and Ram Rai K is concerned, no doubt, these persons were junior to the applicant, but they were selected and promoted in the grade of 4000-6000 as Shunting Zamadar vide order dated 20.2.98 pursuant to selection as notified vide notification dated 11.12.96 whereas the applicant did not submit any response to the aforesaid notification, as such, the applicant cannot make any grievance at this stage. The applicant was appointed as Shunting Zamadar only in the year 2000 vide Ann.A11, as such, he cannot claim seniority over the persons who have been empanelled vide order dated 20.2.98 much prior to the selection of the applicant

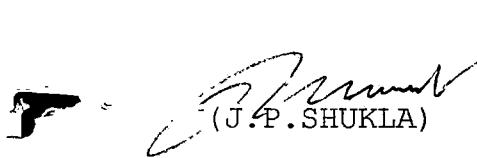
as Shunting Zamadar w.e.f. 31.8.2000. It may also be stated here that S/Shri Pooran S and Subrati were also granted promotion in the scale of Rs. 4000-6000 on ad-hoc basis much prior to the promotion of the applicant vide order dated 31.8.2000 when the post of Shunting Zamadar was declared as non-selection. As such, on this ground also, the applicant is not entitled for seniority over and above these two persons. Since the so called persons who have been included in the select list dated 1.4.2002 were senior to the applicant in the category of Shunting Zamadar, as such, they have been rightly empanelled vide aforesaid order as Shunting Master in the grade of Rs. 5000-8000.

10. Yet for another reason, the applicant is not entitled for any relief. The so called persons, namely S/Shri Mohan Lal K and Ram Rai K were promoted as Shunting Zamadar in the year 1998 whereas the applicant was promoted on such post in the year 2000. The applicant has not challenged validity of promotion order of the aforesaid persons in this OA. As such, the applicant is not entitled to any relief. Similarly, S/Shri Pooran S and Subrati A who have been shown senior to the applicant vide seniority list Ann.R2 were also promoted earlier to the applicant. The applicant has also not challenged validity of their promotion order. Further, the applicant has also not impleaded these persons as respondents in this OA.

As such, on this ground also, no relief can be granted to the applicant. It is not open for the applicant now to contend that he may be considered for the post of Shunting Master in higher grade ignoring the seniority (Ann.R2) and promotion order of the aforesaid persons in the grade of Shunting Master on which post admittedly they were promoted earlier to the applicant.

11. For the foregoing reasons, we are of the view that the present OA is bereft of merit. Accordingly, the same is dismissed with no order as to costs.

12. Since we have disposed of this OA on merit, no order is required to be passed on MA No.469/2003 for condonation of delay.



(J.P. SHUKLA)

Administrative Member

R/



(M.L. CHAUHAN)

Judicial Member