

**(2007) 05 AHC CK 0247**  
**In the Allahabad High Court**

|                                                             |            |
|-------------------------------------------------------------|------------|
| Jogendra Yadav, Head Clerk and Others                       | APPELLANT  |
| Vs                                                          |            |
| Central Administrative Tribunal, Allahabad Bench and Others | RESPONDENT |

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**Date of Decision :** 18-05-2007

**Acts Referred:**

**Citation :** (2008) 5 AWC 4779 : (2007) 3 UPLBEC 104

**Hon'ble Judges :** Sudhir Agarwal, J;Anjani Kumar, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

1. These two writ petitions arise out of the same judgment dated 21.5.1999 passed by Central Administrative Tribunal (in short the "Tribunal") in Original Application No. 116 of 1998, therefore, as requested by learned Counsel for the parties have been heard together and are being decided by this common judgment.

2. Sri Kedar Nath Prasad, Sri Sarvendra Vikram Singh and Sri Dasrath Singh Yadav (hereinafter referred to as the "private respondents") filed Original Application No. 116 of 1998 before the Tribunal challenging seniority list dated 31.10.1996 published by the Chief Security Commissioner, RPF, (hereinafter referred to as the "CSC") North Eastern Railway, Varanasi and also the selection for the post of Office Superintendent Grade-II notified by the said authority on 12.3.1997.

3. In brief the claim of the private respondents appears to be that they were appointed as Junior Clerk in the pay scale of Rs. 260-400 on 7.7.1978, 16.11.1979 and 26.8.1977 respectively. A suitability test for the post of Senior Clerk was held in the year 1982 and the result was declared on 6.9.1982. A representation against the said panel was made by one Laxmi Narain Singh and consequently the CSC, Gorakhpur vide order dated 25.9.1984 cancelled the aforesaid panel. One candidate filed civil suit which was transferred to the Tribunal, registered as T.A. No. 1642 of 1986, and was allowed by the Tribunal on

20.10.1987 whereupon the CSC, Gorakhpur recalled office order dated 25.8.1984. Sri Kedar Nath Prasad, private respondent thereafter by representation dated 24.3.1988 prayed the CSC, Gorakhpur to implement panel dated 6.9.1982 but the said authority actually promoted only one Sri Abhiman vide office order dated 25.3.1988 w.e.f. 6.9.1982. The matter was again represented on 2.5.1988 and thereafter a further representation was made to General Manager, N.E. Railway, Gorakhpur on 16.9.1988. In the meantime Sri Abhiman was further promoted as Head Clerk w.e.f. 5.3.1990 and Office Superintendent Grade-II w.e.f. 5.9.1995. A seniority list of Senior Clerk was published on 31.10.1996 where in the cadre of Office Superintendent Grade-II, Sri Abhiman was shown at serial No. 8; the private respondent, Kedar Nath Prasad was shown in the cadre of Head Clerks at serial No. 24 showing his date of promotion as 13/14.8.1996; and Sri Sarvendra Vikram Singh and Sri Dashrath Singh Yadav were shown in the cadre of Senior Clerk at serial No. 8 and 6 respectively showing their date of promotion on the post of Senior Clerk as 2.1.1991 and 7.3.1990 respectively.

4. The authorities also notified further selection for the post of Office Superintendent, Grade-II vide notification dated 12.3.1997. At this stage, the private respondents filed the claim petition challenging the aforesaid seniority list and seeking following relief:

(i) to issue an order or direction commanding the respondents to give promotional benefit as Senior Clerk in scale of Rs. 330-560 w.e.f. 06.09.1982, as Head Clerk in scale of Rs. 1400-2300 w.e.f. 05.03.1990 and as Office Superintendent Grade II w.e.f. 05.09.1995 with similar fixation of pay and increment with arrears of pay and other service benefits permissible under Service Rules after correcting seniority list dated 31.10.1996 (Annexure-A1).

(ii) to issue any other order or direction which may deem fit and proper in the circumstances of the case.

5. The private respondents impleaded only Union of India-through General Manager North Eastern Railway, Gorakhpur, Chief Security Commissioner, R.P.F., North Eastern Railway, Varanasi and Divisional Security Commissioner, R.P.F., North Eastern Railway, Varanasi as respondents No. 1, 2 and 3 (hereinafter referred to as the "Railway authorities") in the said original application but none of those who were placed above in the seniority list impleaded. The Tribunal has allowed the original application observing that they were entitled to be promoted on the post of Senior Clerk by restoring their position as it was before the issuance of the order dated 25.8.1984 and therefore has directed the authorities to revise seniority list accordingly. Aggrieved by the order passed by the Tribunal, the Writ Petition No. 37524 of 1999 has been filed by the Railway authorities while Writ Petition No. 35524 of 1999 and 45708 of 1999 has been filed by the private persons (hereinafter referred to as the "petitioners") who were assigned seniority in the aforesaid seniority list much above the private respondents and the order impugned in the writ petition passed by the Tribunal

has adversely affected all these petitioners though they were not given any opportunity of hearing since they were not impleaded before the Tribunal.

6. Learned Counsel for the petitioners vehemently contended that since the seniority list itself was challenged by the private respondents and a relief was sought for correction of the said seniority list, no order could have been passed by the Tribunal without impleadment of the persons who were likely to be affected i.e. those who were assigned seniority over private respondents and in the absence thereof the original application was liable to be dismissed on account of non impleadment of necessary parties. He further contended that in the absence of necessary and proper parties, who were likely to be affected, they could not point out the Tribunal that Sri Abhiman was promoted on the post of Senior Clerk in the vacancy meant for reserve quota and therefore the private respondents could not claim parity or similarity with Sri Abhiman.

7. Sri Tarun Verma, learned Counsel appearing on behalf of Railway authorities in Writ Petition No. 37524 of 1999 sought to assail the judgment of the Tribunal on merits giving various reasons for non promotion of private respondents.

8. The learned Counsel appearing for the private respondents, however supported the judgment and contended that the same does not warrant any interference. However, it is not disputed that no private person was impleaded before the Tribunal though seniority list itself was challenged.

9. We have heard learned Counsel for the parties and perused the record.

10. In our view all these writ petitions are liable to be decided on a short question that in the absence of the persons who were likely to be affected but were not impleaded before the Tribunal, whether the Tribunal could issue any direction for correction of seniority list. From a bare perusal of the original application preferred by the private respondents before the Tribunal it is evident that they were aggrieved by issuance of a seniority list published on 31.10.1996 whereagainst they made representations before the CSC, Gorakhpur and thereafter filed original application seeking quashing of the said seniority list. It is evident from para 4.11 to 4.13 of the original application which are reproduced as under:

4.11 That, against the seniority list dated 31.10.1996 the applicant Nos. 1 and 2 had filed a representation for the correction of the seniority list. The photocopy of the representation dated 9.5.1997 and 31.10.1997 are being enclosed herewith and marked as Annexure Nos. A-9 and A-10 respectively to this Original Application.

4.12 That the applicant No. 3 had given an application dated 2.4.1997 and 21.11.1997 to the Chief Security Commissioner, Gorakhpur. The photocopies of the representation dated 2.4.1997 and 21.11.1997 are enclosed herewith and marked as Annexure No. A-11 and A-12 to this Original Application.

4.13 That, the applicants are entitled promotion for the post of senior clerk in

scale of Rs. 350-560 w.e.f. 6.9.1982, in scale of Rs. 1400-2300 as head clerk w.e.f 5.3.1990 and in scale of Rs. 1600-2660 w.e.f. 5.9.1995 when Mr. Abhiman had been promoted respectively.

4.13 That, in the present time also selection for the post of Office Superintendent Graee II had been notified by the Chief Security Commissioner, R.P.F., N.E. Railway, Gorakhpur by his letter dated 12.3.1997. In which Mr. Subrato Chatterji had been called for the post of Office Superintendent Grade II although initially he was Junior from the applicants and so many Juniors from the applicants mentioned at serial Nos. 7 to 15 in the seniority list had been called for the selection. And if proper seniority would have been assigned to the applicants earlier then they would have been promoted as head clerk and were entitled to appear in the present selection for the post of Office Superintendent Grade II in scale of Rs. 1600-2660 but, due to mistake on the part of the respondents the applicants are suffering irreparable loss and in the interest of justice selection proceeding for the post of Office Superintendent may be stayed during the pendency of this Original Application.

11. The prayer sought by the respondents in the original application has already been reproduced hereinabove, which shows that a direction to the Railway authorities sought for correction of seniority list dated 31.10.1996. The private respondents as we have noticed above were much below in seniority list and the persons who were placed and shown above the private respondents were the knowledge of the private respondents. In case the private respondents intended to seek any direction which would have affected seniority of the persons who were already assigned higher position over the private respondents, their impleadment and opportunity of hearing to them was necessary. In their absence, no order could have been passed by the Tribunal adversely affecting their position in the seniority list. The petitioners, therefore, are justified in contending that the Tribunal erred in granting relief to the private respondents by directing the Railway authorities to correct seniority list without impleading petitioners and without giving them opportunity of hearing. The impugned judgment is clearly in violation of the principle of natural justice and cannot sustain.

12. We, therefore, refrain ourselves from entering into merits of the case since all these writ petitions can be decided only on first contention that necessary parties were not impleaded and in their absence, a direction adversely affecting their seniority could not have been issued.

13. In the result the writ petitions are allowed. The order dated 21.5.1999 passed by the Tribunal is set aside. The matter is remitted back to the Tribunal with the liberty to the private respondents to prosecute original application after impleading the persons over whom they are claiming seniority. In case any such application for impleadment is filed by the private respondents before the Tribunal within three months from today the Tribunal may proceed with the matter in accordance with law failing which the original application shall

automatically stand dismissed for non impleadment of necessary parties. No order as to costs.