

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 2122/99

New Delhi this the 1st day of February 2001

Hon'ble Mr. V.K. Majotra, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

Ms. Laxmi Gupta
D/o late Shri Raghunath Prasad
R/o 475-B 4th Avenue,
Smith Road, Allahabad(UP)

-Applicant

(Applicant in person)

Versus

1. The Union of India,
Through the Secretary,
Ministry of Railway,
Rail Bhawan, New Delhi.
2. The Chairman, Railway Board,
Rail Bhawan, New Delhi.
3. General Manager, Northern Railway,
Baroda House, New Delhi.
4. Divisional Railway Manager,
Northern Railway, DRM Office,
Allahabad(UP).
5. Sr. Divisional Mechanical Engineer
Northern Railway, D.R.M. Office,
Allahabad, UP.

-Respondents

(By Advocate: Shri B.S. Jain)

ORDER

Mr. V.K. Majotra, Member (A)

The applicant was appointed as Junior Clerk on compassionate grounds on 4.10.1973 as per Annexure A-3 which is the seniority list of clerks in Grade Rs. 260-400 as on 1.7.75 issued on 25.7.75. She has challenged order dated 29.5.98 (Annexure A-1) whereby she was relieved of her charge in dealing with M&P, T/Table, Weigh Bridges, RDIs etc stating that order assigning work to her will be issued separately. According to her, she

was confirmed on the post of Clerk vide order dated 21.8.1978 (Annexure A-2). She was issued a charge sheet dated 7.8.81 which was withdrawn on 12.9.83. She was placed at Sr. No. 155 in the group seniority list of Clerks, dated 25.7.75 (Annexure A-3). According to her, she was promoted as Senior Clerk in 1984. Vide another seniority list dated 9.11.1987, she is shown as Head Clerk at Sr. No. 26. However, she has neither been posted as Head Clerk nor given the salary of Head Clerk. She has also preferred her claim for the post of Asstt. Superintendent from 1.1.84 in the grade of Rs. 550-700 and that of Office Superintendent in the grade of Rs. 2000-3200 from 1990. According to the applicant, her representations have not been paid any heed and her juniors have been accorded promotions to the level of Asstt. Superintendent/Superintendent.

2. Applicant had taken leave from 3.6.98 to 5.6.98. With the permission of the Mechanical Branch, DME, Loco Allahabad, she left Allahabad station and she has been in Delhi taking treatment from All India Institute of Medical Sciences. The respondents have admitted to have received two medical certificates dated 29.10.98 and 26.6.99 (Annexure A-4) from the applicant. They have maintained that though leave was granted to her from 3.6.98 to 5.6.98, she had not been given permission to leave the station and she has been absenting herself from 8.6.98 to 16.9.98. She was issued a

charge sheet on 16.9.98 for major penalty for unauthorised absence and she neither received the charge sheet nor submitted her defence statement. She did not participate in the enquiry. Therefore, ex-parte proceedings were conducted against her and she was removed from service w.e.f. 31.8.99. The applicant has filed a rejoinder as well.

3. We have heard the applicant and the learned counsel of the respondents.

4. The applicant has stated that she was never served the charge sheet and has been denied promotions at various stages. The learned counsel of the respondents stated that promotion to the level of Senior Clerk/Head Clerk/Asstt. Superintendent and Superintendent are selection positions requiring the candidate to undergo the requisite test. The applicant has never undergone any test and was never promoted even as Senior Clerk. As regard the medical leave, the learned counsel stated that she had left the HQrs without permission to leave the HQrs and the medical certificates submitted by her were not relied upon and she was not sanctioned leave.

5. From Annexure-17 dated 22.12.98 issued by the DRM Allahabad, the respondents have stated that the applicant has been unwell since 8.6.98 and undergoing treatment at Delhi. It is also mentioned that after she is fit and obtains fitness

certificate she would be allowed to join her duties and she would also be issued the Railway pass. Obviously, the respondents knew that the applicant was not in station. If at all, the charge Memo and the enquiry papers were to be served on her, there are methods available for service of such papers on the person who is out of station and not at local address. The respondents have failed to establish that the enquiry papers were served on the applicant. In our considered view, she has not been afforded proper opportunity of defence.

6. The applicant has already submitted her medical certificates. She should submit an application for the entire period of absence asking for leave along with the fitness certificate on which the respondents should take proper decision. Documents submitted by the applicant prove that she has been working as Senior Clerk since 1984. The post of Head Clerk is a non-selection promotion post from the post of Sr. Clerk. Under the provision of Para-214 of IREM Vol-I, a non-selection posts is filled by promotion of the senior most suitable railway servant. Suitability is determined by the competent authority on the basis of the record of service and/or departmental tests if any. A senior railway servant can be passed over only if he/she is declared unfit for holding the post and such supersession has to be made by reasoned orders. Although in one of the documents quoted above, the applicant has been shown as Head Clerk, in case she

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has been erroneously shown as Head Clerk in that seniority list she should be considered for the post of Head Clerk as per the procedure laid down in para-214(ibid). It appears that the posts of Asstt. Superintendent/Superintendent are selection posts and can be filled by promotion only on passing the suitability test by the candidates. In case the applicant is declared fit for promotion to the post of Head Clerk, she should be given an opportunity to appear in the suitability tests meant for promotion to the posts of Asstt. Superintendent/Superintendent if found eligible and allotted suitable seniority for different posts.

7. Having regard to the above reasons and discussion, the OA is allowed in the interest of justice with the following directions:

(i) The impugned order dated 29.5.98 (Annexure-A-1) is quashed and set aside.

(ii) The order of removal from service w.e.f. 31.8.1999 is also quashed and set aside. The respondents are directed to reinstate the applicant in service as Senior Clerk immediately and assign suitable work.

(iii) The intervening period from 3.6.1998 to the date of removal shall be regularised with the leave of the kind due including extra-ordinary leave.

(iv) The intervening period from the date of removal to the date of reinstatement shall be treated as duty period for all purposes. However, the back wages shall be restricted to 50% (fifty per cent).

(v) The applicant's case should be considered for promotion to the rank of Head Clerk/Asstt. Superintendent/Superintendent as per the prescribed procedure and rules and from the dates she is eligible for these promotions within a period of six months from the date of receipt of a copy of this order.

No costs.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Member (A)

cc.