

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.90/1995

(9)

New Delhi, this the 27th day of August, 1999

HON'BLE MR. JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN (J)
HON'BLE MR. J.L.NEGI, MEMBER (A)

Sh. Rajendra Kumar, S/O Sh. Birbal
Singh, Head Clerk, General Branch,
Northern Railway, Baroda House, New Delhi
- 1.

R/O H.No.1367, Gali No. 2-B, Swatantra
Nagar, Narela, Delhi - 110 040.

---Applicant.

(By Advocate: Mr. P.M.Ahlawat)

VERSUS

1. Union of India Through: The Chairman, Railway Board & Ex-Officio, Principal Secretary to the Govt. of India, Ministry of Railways, Rail Bhawan, New Delhi.
2. The General Manager, Northern Railway, Baroda House, New Delhi.
3. Smt. Vimlesh Bhardwaj, Officiating Head Clerk, General Branch, Northern Railway, Baroda House, New Delhi.

---Respondents.

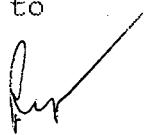
(None for respondents)

ORDER (ORAL)

By Hon'ble Mr. Justice Mr. R.G.Vaidyanatha, VC (J):

This is an application filed by the applicant under Section 19 of the A.T. Act. Respondents have filed their counter reply. We have heard learned counsel for the applicant, Mr. P.M.Ahlawat. None appeared on behalf of the official respondents as well as on behalf of private respondent.

2. The applicant joined the Railway service as a Clerk w.e.f. 3.4.1986. In 1987, the notification was issued for holding the suitable trade test for promotion to



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the post of Senior Clerk. The Notification is dated 29.1.1987. The number of vacancies were mentioned 15. The eligibility list of Clerks was prepared in which the applicant's name was at Sr.No.13. But in March, 1987, the rules came to be amended by fixing minimum service of two years in the lower grade for next promotion. In view of this amended rule, the applicant's name came to be deleted from the list of eligibility candidates since, he had not completed two years service by 1987. The applicant went on making representations. According to the applicant, the subsequent amendment of rule will not apply to vacancies which had occurred earlier and for which notification dated 29.1.87 have been issued for selection. The applicant belongs to Scheduled Caste. He has also alleged that the selected candidates were General candidates and, therefore, the selection is bad since, the General candidates could not have been promoted against reserved vacancy without getting approval for de-reservation. In view of the number of representations of the applicant and the matter being taken by the Union, the Railways subsequently granted proforma promotion to the applicant w.e.f. 5.4.88 after he completed two years service in the feeder cadre. At this stage, he also pointed out that the next selection took place in the year 1991. The applicant passed in suitable trade test and he got promotion in 1991. Later he was given proforma promotion as Sr. Clerk vide order dated 3.3.1993. It appears that subsequently there was an objection by the Accounts Department that the applicant's retrospective

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promotion from 5.4.88 was not correct. On that basis, the administration passed the reversion order recalling the earlier retrospective promotion of the applicant and then issued a fresh order dated 5.1.95 stating that the applicant cannot get retrospective promotion from 5.4.88 and his promotion is only from 1991. Being aggrieved by this order, the applicant preferred this application. His case is that since his name was removed from the eligibility list in 1987 due to administrative errors and when he has subsequently passed the examination in 1991, the administration had rightly given promotion to the applicant notionally from 5.4.88, after the completion of two years service in the feeder cadre and now the administration ^{has} ~~was~~ illegally withdrawn that order by issuing the impugned order dated 4.1.95. The applicant, therefore, wants that this impugned order dated 4.1.95 should be quashed and the order of reversion should also be quashed.

3. The official respondents, namely, respondent Nos.1 & 2 have filed their counter reply and the private respondent No.3, namely, Smt. Vimlesh Bhardwaj has filed a separate counter reply. The defence is almost common. The defence is that the applicant was not eligible for selection in 1987 since he had not completed two years service in the feeder cadre in view of the amended rule of 1987 and hence his name was rightly removed from the eligibility list.

4. The Third respondent, who is a direct recruit as a Senior Clerk w.e.f. 14.4.88, challenges the applicants' promotion w.e.f. 5.4.88 since it will

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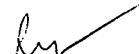
affect her seniority. In fact, she herself had filed an Original Application in this Tribunal challenging the promotion of the applicant retrospectively w.e.f. 5.4.88. During the pendency of the OA, the Railway administration made a statement at the bar that they have since withdrawn the order of promotion of Sh. Rajinder Kumar by order issued by them which is now impugned in the present OA. The application filed by respondent No.3, Smt. Vimlesh Bhardwaj came to be disposed of as having become infructuous.

5. Therefore, both the official respondents and the private respondent say that the applicant is not entitled for promotion w.e.f. 5.4.88 and the order of reversion is perfectly justified and the applicant is not entitled to any of the reliefs.

6. After hearing learned counsel for the applicant and perusing the materials on record, we find that the reversion of the applicant appears to be unjustified and not supported by any rule.

7. The records show that the applicant was promoted as Sr.Clerk in 1991. Then, in 1993, the order was issued giving notional promotion to the applicant w.e.f.

5.4.88. The applicant got promotion as Head Clerk w.e.f. 29.4.94. Now, by virtue of impugned order, the applicant has been reverted from Head Clerk to Sr.Clerk due to loss of seniority.



8. It is common ground that the rules came to be amended in 1987. Both the parties are relying upon the amended rules, a copy of which is at page 15 of the paper book. In fact, according to the applicant, the amended rules should not be applied since the amendment came into force from 3.3.1987 but notification had been issued in January 1987. But now learned counsel for applicant is satisfied if the applicant is given promotion even according to the amended rules; though the amended rules provide that one should have completed two years service in the lower grade for promotion to the next grade, there is a specific clause (iii) which is relevant for our present purpose, reads as follows:

"(iii) The condition regarding minimum service has to be fulfilled at the time of actual promotion in the same manner as in the case of "Safety Categories" as laid down in this Ministry's letter No.E(WG)I/75/PM1/44 dated 26.5.1984."

From the above clause (iii), we find that the insisting of two years rule is at the time of actual promotion.

In the present case, the applicant was appointed as a Clerk on 3.4.1986. It may be in January, 1987 he had not completed two years service but the rule which we have cited above says that this fulfillment of two years service must be insisted of at the time of actual promotion. That is how some of the officials were given promotion w.e.f. 5.4.88 and accordingly the applicant was given proforma promotion

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w.e.f. 5.4.88, after completion of two years service.

If the administration had given promotion to the applicant in 1987 itself, then the respondents' contention that applicant cannot get promotion unless he completes two years service, would be justified. In the present case, the applicant was given proforma promotion only after the completion of two years in view of the specific clause (iii) which we have extracted above.

9. Admittedly and undisputedly, the applicant passed the trade test in 1991 and he got his promotion as Sr. Clerk but his name had been wrongly omitted in 1987 and he could have been given actual promotion after the expiry of two years as provided in the amended rules. Unfortunately, the administration did not follow that procedure.

10. The only question is whether the applicant is entitled to proforma promotion or not? Ld. counsel for applicant invited our attention to Rule 228 of Indian Railway Establishment Manual, Vol.I 1989 which speaks about the denial of promotions due to administrative errors and how it should be corrected. The rule says that when an official has not been given promotion due to administrative errors, it can be corrected at a later stage by giving notional promotion from retrospective date. In view of the statutory provision, there is no difficulty for the applicant to get notional promotion from 5.4.88 which was rightly granted by the administration but unfortunately



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withdrawn subsequently. After going through the relevant rules, we are satisfied that the applicant should have been allowed to participate in the suitability trade test in 1987 and he should have been given actual promotion after completing two years of service. Since, that was not done due to administrative error and since subsequently, the applicant passed trade test in 1991 in the first attempt, he should get the notional promotion from 5.4.88, after completing two years of service as per Rules 228 of I.R.E.R., 1989. The administration did grant this relief but unfortunately withdrew it later on the objection from the Accounts Department. In the facts and circumstances of the present case, we hold that the action of the administration in reverting the applicant as per order dated 4.1.95, is erroneous and not sustainable in law which is liable to be quashed.

The counsel for the applicant now submits that even though the applicant was reverted from Head Clerk to Sr.Clerk by the impugned order dated 4.1.95, the applicant has since been promoted as Head Clerk in 1997.

11. There is some delay on the part of the applicant in approaching this Tribunal. Therefore, in the facts and the circumstances of the case, we are not granting any past monetory benefits to the applicant but he is entitled to proforma promotion including the proper seniority from the date of promotion.

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12. In the result, this application is allowed. The impugned order dated 4.1.95 is hereby quashed. The applicant is deemed to have continued as Head Clerk inspite of the order dated 4.1.95 and he should get the seniority as Senior Clerk from 5.4.88 and seniority as Head Clerk from 29.4.94. It is made clear that as a result of this order, the applicant is not entitled to any arrears of monetary benefits but entitled to get notional promotion and notional fixation of pay on due dates and prospective monetary benefits. The respondents are directed to comply with this order within three months from the date of receipt of a copy of this order. In the circumstances, no order as to costs.

JL Negi
(J.L.NEGI)
MEMBER (A)

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE CHAIRMAN (J)

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