

**Central Administrative Tribunal
Principal Bench, New Delhi**

(50)

O.A.No.1654/1994

Thursday, this the 23rd day of July 2009

**Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Dr. Veena Chhotray, Member (A)**

Shri Basdev Sagar
s/o Shri Prem Singh Sagar
Sr. Clerk (Ad hoc)
Stores Depot under RCF
Tilak Bridge, New Delhi

..Applicant

(By Advocate: Shri B S Mainee)

Versus

Union of India through

1. The General Manager
Rail Coach Factory
Kapurthala (Punjab)
2. The Controller of Stores
Rail Coach Factory
Tilak Bridge, New Delhi

..Respondents

(By Advocate: Shri H K Bajpayee for Shri V S R Krishna)

O R D E R (ORAL)

Shri Shanker Raju:

Applicant, who was holding the substantive status of a Khailasi in open line, was promoted, according to the respondents, to the post of Junior Clerk but as per the applicant on regular basis as Clerk and thereafter on his option, he joined RCF where on exercising another option, he was permanently absorbed. During this interregnum, he was also promoted as Senior Clerk on ad hoc basis.

A show cause notice was issued to the applicant, which is

impugned in the OA, dated 21.7.1994 whereby a proposal has been made to revert the applicant to substantive post of Khallasi. This has been represented by the applicant on various grounds, including the alternative submission of the respondents that though the applicant was regularly appointed as Junior Clerk, yet after working for so many years in the Department in which he retained his lien, prior to permanent absorption in RCF, various selections had been held. However, the applicant was not accorded any opportunity to participate in it. These contentions of the applicant were not considered by the respondents and a bald order reverting him to the substantive rank was passed on 10.8.1994.

2. Learned counsel for applicant would contend that in the RCF, a seniority list of Clerks mentions the name of the applicant at the top, which shows that he was taken as Clerk and permanently absorbed therein.

3. On the other hand, learned proxy counsel for respondents vehemently opposed the contentions and stated that inadvertently the applicant, who has not disclosed that he is functioning as Junior Clerk while joining RFC, was also given another ad hoc promotion as Senior Clerk, yet he was to be regularized as Junior Clerk. As such, his substantive post was restored on reversion. Respondents have defended their orders.

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4. The Tribunal by an order dated 26.5.1998 without acceding to the request of the applicant to restore him back from the back date as a Junior Clerk, disposed of the OA by directing that in the event RCF consider making ad hoc promotions to the post of Senior Clerk again, claim of the applicant should be considered in his turn.

5. This has been challenged by the applicant before the High Court of Delhi by filing WP (C) No.5768/1998. After ten years on 23.9.2008, an order passed by the High Court observed that the Tribunal had not at all adverted to the correctness and otherwise of reversion. As such setting aside the order of the Tribunal, matter has been remitted back for reconsideration on merits.

6. We have heard the learned counsel for the parties and perused the material placed on record.

7. Respondents, in their reply submitted earlier, have struck to the plea that the applicant has never been regularized as Junior Clerk and as such he earned double promotions on ad hoc basis and his status on substantive basis was of Khallasi. Accordingly, he was reverted back to that status in RCF.

8. An administrative authority, at the outset, when acts, fairness demands that on the contentions raised when an order passed causes civil consequences, a speaking order is to be passed. Consideration worth in law, which amounts to deal with the

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contentions raised to defend and to assail the order by the aggrieved party and thereafter in all fairness, these relevant considerations are to be dealt with and a speaking order is to be passed. No doubt, the rules may be silent in directing a speaking order to be passed, yet the reasons show the bent of mind of the authority and the manner in which the contentions have been dealt with. Applicant's stand that for long years he has been continued not only as a Junior Clerk but also earned his promotion on ad hoc as Senior Clerk in RCF, yet he has been directed to produce record to establish his plea. It is very illogical and strange that a person, who holds the substantive rank of Khallasi in Group 'D' post, has not been given an opportunity to participate in several selections held by the respondents, which would, as a presumption in law, indicate that the respondents have been, for all the years since the promotion of the applicant, treating him as a regularly appointed Clerk as such he was never called in selections held. Moreover, in RCF also, when the applicant was transferred, he has not suppressed anything and the respondents *suo motu* on their own treated the applicant as a Clerk and transferred him in that status. Applicant enjoyed the status till he was considered for promotion as Senior Clerk in RCF. Now reverting the applicant to the substantive post, that too, without recording any reasons and considering these aspects of the matter, the show cause notice dated 10.8.1994 cannot be countenanced in law.

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9. Resultantly, we allow this OA to the extent that the order of reversion as well as show cause notice are set aside. We have been apprised by applicant's counsel at this stage that since the applicant has already retired, the aforesaid exercise would be in futility. Accordingly, it is directed that deeming the applicant to have held the status of Junior Clerk at the time of retirement, his pensionary benefits shall now be released by the respondents with difference in arrears, within a period of three months from the date of receipt of a copy of this order. No costs.

Chhotray
(Dr. Veena Chhotray)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

/sunil/