

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 324/2000

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New Delhi this the 27th day of July, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

1. Maan Singh Bisht S/O Sudan Singh Bisht,
Senior Clerk, Operating Branch,
Northern Railway, Baroda House,
New Delhi,
R/O 845, N.I.T., Jawahar Colony,
Faridabad.
2. Hari Nand S/O Urvi Dutt,
Senior Clerk, Operating Branch,
Northern Railway, Baroda House,
New Delhi,
R/O C-113, Vinod Nagar West,
Delhi-92.
3. Smt. Kanchan Wahi W/O Vikas Wahi,
Senior Clerk, Operating Branch,
Northern Railway, Baroda House,
New Delhi,
R/O House No.153/12,
Railway Colony, Shivaji Bridge,
Shankar Market, New Delhi.
4. Satish Rathi S/O S.R.Rathi,
Senior Clerk, Operating Branch,
Northern Railway, Baroda House,
New Delhi,
R/O House No.370/27,
West Ram Nagar,
Sonapat, Haryana.
5. Virender Kumar Dixit S/O Munshi Lal Sharma,
Senior Clerk, Operating Branch,
Northern Railway, Baroda House,
New Delhi,
R/O House No.18,
Krishna Kunj, Mathura, UP.
6. Mahesha Nand Sati S/O K.P.Sati,
Senior Clerk, Operating Branch,
Northern Railway, Baroda House,
New Delhi,
R/O RZ-216-H, Raj Nagar Pt.-II,
Palam Colony, New Delhi-48.
7. Smt. Mamta Sharma W/O P.P.Sharma,
Senior Clerk, Operating Branch,
Northern Railway, Baroda House,
New Delhi,
R/O C-19, Flat No.308,
Shalimar Garden Extn.-II,
Sahibabad.

8. Suresh S/O Chander Bhan,
Senior Clerk, Operating Branch,
Northern Railway, Baroda House,
New Delhi,
R/O N-123, Raghbir Nagar,
New Delhi.

... Applicants

(By Shri S.K.Sawhney, Advocate)

-versus-

1. Union of India through
General Manager,
Northern Railway,
Baroda House, New Delhi.
2. Ved Prakash,
Senior Clerk, Operating Branch,
Northern Railway, Baroda House,
New Delhi,
3. Smt. Daya Ranga,
Senior Clerk, Operating Branch,
Northern Railway, Baroda House,
New Delhi.

... Respondents

(By Shri Rajinder Khattar, Advocate, for Respondent
No.1; Respondents 2 and 3 present in person)

O R D E R (ORAL)

Shri V.K.Majotra, AM :

The applicants have assailed order dated 1.11.1999 (Annexure A-I) whereby respondents 2 and 3 have been assigned seniority over the applicants in the cadre of Senior Clerks (Rs.4500-7000). The applicants were appointed as Lower Division Clerks (LDCs) (Rs.3050-4500) on various dates between 1989 and 1992. They were further promoted to the posts of Senior Clerks after passing the suitability test on various dates between 1992 and 1995. It is alleged that respondents 2 and 3 who were Typists in the scale of Rs.3050-4500 on 11.12.1987 and 12.2.1988 respectively, were transferred as LDCs on 10.1.1997, after all the applicants had already been promoted to the posts of Senior Clerks ^{on various dates between 12.5.92 and 2.8.95} Respondents 2 and 3 were promoted to the posts of Senior Clerks after passing the suitability test on 20.7.1999 and 26.7.1999 respectively.

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2. According to the applicants, the seniority of Typists transferred as Clerks is determined as per the instructions contained in P.S.1819 dated 3.11.1962 (Annexure A-2). Clause (iv) of these instructions provides that the seniority of Typists on transfer to the clerical cadre will be counted from the date of their joining as Typists. However, as per the provisions of clause (vi), their seniority has to be fixed in the clerical cadre in the initial stage as was done in the case of respondents 2 and 3. Clause (vi) reads as follows :

"(vi) The intention is to have only one type of examination for adjudging the suitability of a typist for absorption as clerk either in grade Rs.110-180 (AS) or Rs.130-300 (AS). The grade in which the typist is actually absorbed as a clerk should depend upon the seniority of the typist vis-a-vis the clerks. In other words, if a typist who gets promoted in his own cadre to the grade of Rs.130-300 (AS) has to be absorbed in the clerical cadre, he should be absorbed in scale Rs.130-300 (AS) only if his seniority vis-a-vis the clerks warrants such an absorption, otherwise he should be absorbed in scale Rs.110-180."

3. It has been contended that in case a Typist is promoted to next higher scale of Rs.130-300 in his own cadre, only then he could be absorbed in the ^{clerical} scale Rs.130-300 and in case as a Typist he was in the scale of Rs.110-180, on absorption as Clerk he was to be absorbed in the scale of Rs.110-180 only. The applicants have alleged that in utter disregard of these specific provisions the respondents assigned seniority to Respondents 2 and 3 in the cadre of Senior Clerks on the basis of their length of service as LDCs vis-a-vis the persons who had been promoted as

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Senior Clerks earlier to them. The applicants have sought quashing of order dated 8.9.1999 (Annexure A-3) and order dated 1.11.1999 (Annexure A-1) with direction to respondent No.1 to assign seniority to respondents 2 and 3 in the cadre of Senior Clerks on the basis of their length of service in the cadre of Senior Clerks. 10

4. As per the counter of the respondents, respondents 2 and 3 while working as Typists were absorbed in the cadre of Clerks as per the instructions contained in the aforesaid P.S.1819 by treating them as Clerks in the pay scale of Rs.950-1500/3050-4500 from the dates of their initial appointments. The respondents have contended that respondents 2 and 3 were assigned seniority on pro-forma basis in the cadre of Senior Clerks from the date their juniors who had earlier been promoted as Senior Clerks on passing the suitability test of Senior Clerks in first attempt and accordingly their names were interpolated in the seniority list issued on 8.9.1997 at Sl. Nos.46A and 46B. The respondents have maintained that the seniority of respondents 2 and 3 in clerical cadre (Rs.950-1500) was fixed after conducting the examination for adjudging their suitability. Similarly, seniority was also fixed in Senior Clerks grade Rs.4500-7000 after adjudging their suitability which was successfully passed by respondents 2 and 3 and they were correctly assigned seniority in the cadre of Senior Clerks by interpolating their names at appropriate places, when their juniors had already been promoted as Senior Clerks (Rs.4500-7000).

5. The applicants have filed a rejoinder as well. We have heard the learned counsel on either side as also respondents 2 and 3 who are present in person. (11)


6. The learned counsel for the applicants stated that under P.S.1819, the seniority of Typists on transfer to the clerical cadre is counted from the date of their joining as Typists, but as per clause (vi) of the aforesaid P.S.1819 such Typists have to be absorbed as Clerks in the grade in which they were initially appointed as Typists. However, if they have already attained the scale of Rs.130-300 in the grade of Typists, they could be absorbed in the same scale as Clerks. According to him, in the present case, respondents 2 and 3 were in the scale of Rs.110-180 as Typists; they were to be absorbed as Clerks in the same scale of Rs.110-180, and after clearing the suitability test for appointment as Senior Clerks, they could have been given the next scale of Rs.130-300. The applicants had already been promoted in the scale of Rs.130-300 during the years 1992 to 1995.

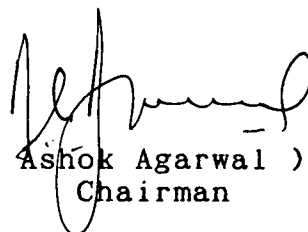
7. According to respondent No.2, Shri Ved Prakash, he was appointed as Typist on 11.12.1987 and was promoted as Senior Clerk on 26.7.1999 in the scale of Rs.130-300. So far as respondent No.3, Smt. Daya Ranga, is concerned, she was appointed as Typist on 12.2.1988 and promoted as Senior Clerk on 26.7.1999,

8. The learned counsel for the respondents also referred to the same clauses of P.S.1819 in support of his contentions. However, the averments of the applicants is that respondents 2 and 3 as Typists were in the scale of Rs.110-180 and were absorbed in the clerical cadre while they were still in the grade of Rs.110-180 and, therefore, their absorption could have been only in the scale of Rs.110-180, and that they could be placed in the scale of Rs.130-300 later on only after clearing the suitability test, much after the applicants had been promoted in the scale of Rs.130-300 as Senior Clerks. (12)

9. In our view, as per the provisions of P.S.1819 a Typist on transfer to the clerical cadre will be assigned seniority in the same scale which he had enjoyed as a Typist with effect from the date of his joining as Typist in that scale. It cannot enable him to count his seniority from the date of his joining as Typist in the lower scale when he is promoted in the higher scale as a Senior Clerk. The grade in which a Typist is actually absorbed as a Clerk would depend upon his seniority as a Typist vis-a-vis the Clerks. A Typist on absorption as Clerk would get his seniority in the higher scale of Rs.130-300 only after he had already attained that grade as a Typist. In the present case, whereas respondents 2 and 3 were in the scale of Rs.110-180 at the time when they were absorbed as Clerks, therefore, their seniority as Clerks would also be fixed in the higher scale of Rs.130-300 only when they were so promoted ^{later on} ~~having come~~ to the cadre of ^{Senior} Clerks.

10. Having regard to the reasons and discussion made above, we find merit in the present O.A. The same is accordingly allowed. The impugned orders dated 8.9.1999 and 1.11.1999 (Annexure A-3 and A-1 respectively) are hereby quashed and respondent No.1 is directed to assign seniority to respondents 2 and 3 in the cadre of Senior Clerks on the basis of their length of service in the cadre of Senior Clerks only. There shall be no order as to costs.


(V. K. Majotra)
Member (A)


(Ashok Agarwal)
Chairman

/as/