

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A.No.1149/88

DATE OF DECISION 4.6.91

SHRI KRISHAN DUTT SHARMA

--APPLICANT

VS

UNION OF INDIA & ANR.

--RESPONDENTS

C O R A M

SHRI B.N.JAYASIMHA, HON'BLE VICE CHAIRMAN

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

--SHRI S.K.SAWHNEY

FOR THE RESPONDENTS

--SHRI S.N.SIKKA

1. Whether Reporters of local papers may be allowed to see the Judgement? *ys*

2. To be referred to the Reporter or not? *ys*

J U D G E M E N T

(DELIVERED BY SHRI J.P.SHARMA, HON'BLE MEMBER (J))

The applicant is working as Head Clerk, Diesel Shed, Northern Railway, Tughlakabad filed this application under Section 19 of Administrative Tribunals Act, 1985 aggrieved by the order dated 27th March, 1987 (Annexure - I) passed by the Divisional Personnel Officer revising his seniority without affording applicant any opportunity to show cause

~~order~~ against it. As a consequence of revision of seniority, orders for recovery has also been made.

2. The applicant has claimed the following reliefs:-

- i) Direct the Respondents to assign seniority of the applicant at S.No.166A after counting his period of officiation, from 23-2-1969 to 15-6-1978 as tool Checker which was followed by regularisation on 16-5-1978 without break with all consequential benefits of promotion to next higher scales.
- ii) Quash the order of Divl. Personnel Officer Delhi dated 27-3-1987 whereby the seniority position of the applicant was changed from S.No.166A to 259.
- iii) Quash the orders of Sr.Divl. Personnel Officer, dated 13-5-1988 whereby the pay of the applicant was reduced from 1-1-1984 on account of illegal revision of seniority.
- iv) Any other relief that this Hon'ble Tribunal may deem fit and proper.
- v) Award costs of this application.

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3. The facts of the case are that the applicant initially joined the Railways on 28-11-1960 as Callman and was promoted from time to time to higher posts and presently working as Head Clerk. The position in the seniority list of the applicant stands at Sl. No.166A below Shri Tribani Pd. and above Shri Sham Lal. The applicant officiated as Tool Checker since 23rd of February, 1969 till 15th May, 1978. The post of Tool Checker was upgraded with effect from 24th August, 1973 and the applicant was granted proforma officiation of this scale Rs.110-180 vide letter dated 27th April, 1979 (Annexure A5) There is combined seniority list of Tool Checker, Fuel issuer, telephone attendant, Storemen and Clerks and the list was issued by Respondent No.2 on 5-8-1976. The name of the applicant was missing in this seniority list of 5-8-1976. The applicant made representation and as a result of the same the name of the applicant was added in the seniority list of Tool Checker at Sl.No.251A on the basis of officiation of the applicant as Tool Checker with effect from 23rd February, 1978. The applicant was promoted on the basis of his seniority as Senior Clerk in September, 1983 (Annexure A8). The applicant was wrongly shown in the seniority list at Sl.No.259 and on the representation of the applicant his position was changed to 251A(vide order Annexure A-10). Certain posts of Senior Clerk were upgraded to Head Clerk and on the basis of seniority as Senior Clerk the applicant was promoted as Head Clerk with effect from November, 1989 (Annexure A-11). However by the impugened letter (Annexure A-1) on the representation of some staff

members, the seniority of the applicant was arbitrary changed to Sl.No.259 from 166A. The applicant was not afforded any opportunity. There has also been a revision of pay scale of the applicant on the basis of the changed position in the seniority list of Head Clerk and the applicant was ordered to refund excess amount and recovery were also ordered from the pay of the applicant. By the order dated 17th August, 1988, the interim relief was granted to the applicant and a direction was issued to the respondents not to make any further recovery from the applicant. It was also directed that any promotion made to the post of Assistant Superintendent will be subject to the outcome of this applicant and the promotee should be informed accordingly.

4. The respondents contested the application and filed the written statement. It is stated in the reply that the applicant was appointed as Callman on 28th November, 1960. It is stated that the promotion of the staff is made on the basis of their seniority and passing of certain suitability test as required under the rules. It is admitted to the respondents that the applicant officiated against the fortuitous vacancies in the cadre of Fuel Issuer, Fuel Checker and Telephone Attendant. The post of Fuel Issuer, Fuel Checker & Store Issuer were upgraded in the scale of Rs.110-180 from the earlier grade of Rs.105-135 from 1973. The applicant was promoted as Clerk in grade 110-180 vide letter dated 4-5-1978 after qualifying the selection which indicates that the applicant was inducted in the cadre of Clerk on 16-5-1978. The applicant was not regularised with effect from 24th August, 1973 alongwith other staff as the applicant was not qualified Fuel Checker on 24-8-1973 and the applicant is not entitled to the seniority

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from that date. It is stated the letter dated 27-4-1979 is a proforma fixation of pay and the same did not support the regularisation for the benefit of seniority as the applicant had been officiating locally during the said period. The applicant has been inducted in the cadre of clerks grade with effect from 16-5-1978. The name of the applicant was wrongly interpolated in the seniority of July, 1976 at Sl.No.251 because the applicant was officiating as Fuel Checker on local ad-hoc purely temporary arrangement. In the seniority list of Senior Clerk circulated vide letter dated 17-7-1984 the applicant was assigned the seniority at Sl.No. 259 with effect from September, 1983. His seniority was refixed at Sl.No.166A in stead of at Sl.No.259. The applicant was promoted as Head clerk with effect from 1-1-1984. The General Manager after examining the record of the applicant and the respondents No. 3 to 47 reached ~~the~~ conclusion that the applicant has been assigned wrong seniority in the cadre of Clerk grade and seniority date as Clerk is from 16-5-1978. The seniority of the applicant was revised and he was given the place again at Sl.No.259. The respondents No.3 to 47 were senior to the applicant as they were promoted in grade to Rs.260-400 in 1972 and 1973. It is stated that the seniority of the applicant is correctly revised vide impugned order dated 27th March, 1987. The post of Clerk grade Rs.260-400 is a selection

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post which filled by direct recruitment to the extent of $66\frac{2}{3}\%$ and the remaining $33\frac{1}{3}\%$ if filled up by promotion from group B post and junior clerk grade. The applicant was not holding to the post of Tool Checker but had qualified as Telephone Attendant. The applicant appeared for the selection in the grade of Clerk and after being declared successful he was inducted for the cadre on 16-5-1978.

5. We have heard the learned counsel of the parties at length and perused the record. The undisputed facts are that the applicant joined as Callman on 28th November, 1960 and since then he has been working with the respondents on various posts after getting officiating or ad-hoc promotion. From 23rd February, 1969 to 15-5-1978, as per the reply of the respondents the applicant, has been officiating in the cadre of Fuel Issuer Store Issuer, Tool Checker and Telephone Attendant in the grade of Rs.105-135. The Posts of Fuel Issuer, Store Issuer and Tool Checker was upgraded in the scale of Rs.110-180 in 1973. The grievance of the applicant is that he should have been given **in seniority** the benefit of officiation from 23rd February, 1969 to 15-5-1978. The contention of the respondents

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is that the applicant was promoted as Clerk on regular basis after he passed the qualifying test on 16-5-1978, the date when he took charge in the grade of Rs.110-180. Against this the contention of the applicants' counsel is that the applicant has been regularised against the upgraded post of Fuel Issuer/Store Issuer and Tool Checker with effect from 24-8-1973. In this connection the learned counsel for the applicant has referred to the letter dated 27th April, 1979 (Annexure 5) which goes to show that the applicant was given the scale of the upgraded post of Tool Checker from 24-8-1973 under rule 2018B (F.R.22-C)R-II in terms of letter No.561E/85/132/Pt.3 E-12 dated 8-12-1978. The contention of the respondents is that this letter is proforma for fixation of pay and the same did not support the regularisation of the applicant for the benefit of seniority as he had been officiating locally during the said period. This contention of the respondents does not stand to reason. The learned counsel for the applicant has referred to the judgement of Rajbir Singh and Ors. versus Union of India Civil Appeal No.5317 of 1990 decided by the Hon'ble Supreme Court on November, 12, 1990 allowing the Appeal of the applicant employee against the judgement of Central Administrative Tribunal, Principal Bench, New Delhi rejecting the **claim** of seniority of Shri Rajbir Singh on the basis of continuous officiation on ad-hoc service since 1975. Shri Rajbir Singh was also appointed in 1974

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in Class-IV and subsequently was promoted to Class-III post. The Hon'ble Supreme Court held as follows:-

"Considering all aspects of the matter, we cannot but hold that the order of the Central Administrative Tribunal, Principal Bench, New Delhi dated 01-01-1989 is without any merit and as such we set aside the order and direct the authorities concerned to consider the case of the appellants and to determine their seniority after taking into account the period of ad hoc service since the initial date of their promotions to class III service till the date of regularisation in 1986. The appeal is, thus, allowed."

Shri Rajbir Singh also belonged to the same service and is also in the same seniority list so the learned counsel has argued with force that this case of the applicant is governed by the judgement of Shri Rajbir Singh.

6. The contention of the learned counsel for the respondents is that the present case is not covered by the judgement of Shri Rajbir Singh (supra) because in that case the applicants were appointed in 1971 in Class-IV post and they were promoted in the scale of Rs.192-232 in 1975 and were further promoted to

to Class-III post. The learned counsel for the applicant referred to Annexure AA2 of the rejoinder wherein there is an entry in column 6 (whether qualified in the trade test/suitability test/promotion course) that in 1963 by A.M.E.-II New Delhi for the scale of Rs.105-3-135 being a senior most and suitable. Thus the contention of the applicant is that he has been given a regular officiation from 23rd February, 1969 on ~~the retirement on~~^{de} the promotion of **Guru** Charan Singh Store Issuer and since then the applicant has been working without any break. The learned counsel further pointed out that in view of this the seniority list (Annexure AA4) dated 5-8-1976 was earlier corrected and the name of the applicant was entered at Sl.No.251A. This position of 251A has not been changed. The applicant on the basis of this corrected seniority list was allowed to appear in the test of Senior Clerk by the office order dated 12 March (Annexure 6). In the seniority list of Senior Clerk Mechanical Branch dated 21st April, 1984 (Annexure A8) the name of the applicant is shown at Sl.No.166A while it was earlier shown in the same list at Sl.No.259 and that appears to have been corrected by the order dated 19th February, 1985. These facts are not being challenged by the learned counsel for the respondents. After the promotion of the applicant as Head Clerk

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by ~~-----~~ the impugned order (Annexure 1) dated 27-11-1987 the applicant was restored in the original ~~-----~~ seniority list at Sl.No.259 in supersession of the earlier **order No.** where he was placed at Sl.No.166A. The copy of the representation on which the change has been effected has been filed by the applicant as Annexure to the rejoinder (Annexure AA5). The applicant was never heard or issued a show cause notice so the impugned order on this ground is also bad. If a advantage has been given to a person then it could not be withdrawn without notice to him.

7. There is a force in the contention of the learned counsel of the applicant that since there is general seniority list of Tool Checker, Store Keeper, Fuel Issuer and Clerks in the grade of Rs.260-400 then the applicant who had been officiating since 23rd February, 1969 should be given the benefit of that officiating period even though he might have been regularised subsequently as Clerk and in the present case from 4-5-1978. There is no scope to enter into further arguments as similarity situated Shri Rajbir Singh has been given the benefit by the Hon'ble Supreme Court in the Civil Appeal No.5317 of 1990 arising out of S.L.P. No.7055 of 1989. In view of this fact this fact

order

the impugned ^{order} of November, 1987 cannot be sustained.

8. In view of the ^{above} discussion we are of the opinion that the application be allowed and the impugned order dated 27-11-1987 be quashed and the applicant shall be given due benefit of his

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continued officiation period. The respondent are directed to give relief to the applicant on the basis of continued officiation since that period with all consequential benefit and restore to the applicant to his original position of seniority at Sl.No.166A as the seniority list issued in 1984 and give all other consequential benefits like promotions, arrears of pay on the principle of next below rule. In the circumstance the parties shall bear their own costs.

J. P. Sharma

(J.P. SHARMA) 4.6.91
MEMBER (J)

B. N. Jayasimha

(B.N. JAYASIMHA)
VICE CHAIRMAN

Proposed by me

J. P. Sharma

4.6.91