

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1277/87

DATE OF DECISION:07-07-1992.

HIRA MANI SHARMA

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:-

THE HON'BLE MR. P.K. KARTHA, VICE-CHAIRMAN (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI B.S. MAINEE WITH

SHRI D.R. GUPTA, COUNSEL.

FOR THE RESPONDENTS

SHRI R.L. SETHI, COUNSEL

FOR RESPONDENT NO.32.

1. Whether Reporters of Local Papers may be allowed to see the Judgement? *ys*
2. To be referred to the Reporter or not? *ys*

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

P.K. Kartha
(P.K. KARTHA)
VICE-CHAIRMAN(J)

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Shri Hira Mani Sharma, Head Clerk, Stationery, Printing Press, Northern Railway, General Store, New Delhi has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, assailing the order of the respondents dated 9.10.1986 (Annexure A-1), rejecting his request for assigning him seniority as Clerk Grade Rs.110-180 above one Shri Muni Lal and order dated 12.3.1987 (Annexure A-II) informing him that "the matter regarding fixation of your seniority in higher categories is under examination. You will be advised in the matter in due course."

2. The case of the applicant is that he was appointed as Khallasi on 20.10.1964 and promoted as Junior Compositor in grade Rs.75-110 on 8.2.1964. He

was later appointed as Work Order Clerk (Rs.110-180) with effect from 5.2.1965 which post he claims to have held continuously upto 19.7.1977 except to short spells. He was given weightage of seniority in the cadre of Clerks after being transferred to the Clerical cadre of the Store Branch w.e.f. 9.11.1972 vide General Manager (P), Northern Railway letter for the period he worked as Work Order Clerk in pursuance of Railway Board's letter NO. E(NG)70-PMI-232 dated 3.7.1971. The applicant claims that he was appointed as Work Order Clerk with effect from 5.2.1965 against a substantive post, after having been found suitable for the job and accordingly he claims assignment of seniority in the Clerical Cadre with effect from that date. His claim is based on the contention that he had passed the requisite test for appointment to the post of Work Order Clerk. He was, however, assigned seniority with effect from 13.7.1967. He is aggrieved by the assignement of seniority to the Clerical Staff who joined the Store Department upto 30.1.1969 above him in a wrongful and illegal manner. He made several representations from 1977 onwards for proper seniority but these did not yield any result. He admits that in response to reference by Dy. COS vide his letter dated 5.7.1986 (Annexure A-4) to the General Manager, the applicant was assigned seniority from 13.7.67, as the respondents had not called him for written suit-

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ability test for promotion as Senior Clerk grade Rs.330-560 due to administrative error, although his junior had been called. He, however, continued to persist with his representations, claiming seniority with effect from 5.2.1965. According to the applicant's reckoning his seniority should be at srl. No.150 instead of srl. No.190A in the notified seniority list of Clerks. The administration apparently rectified the prejudice caused to him by not calling him for the suitability test held in 1976 and 1977, as he passed the said suitability test when he was eventually called in 1983 in the first attempt.

3. The applicant has prayed for the following reliefs:-

- i) The respondents be directed to assign seniority to the applicant as Clerk with effect from 5.2.1965, when he was appointed as Work Order Clerk after having passed the requisite test.
- ii) To deem the applicant to have passed the suitability test for the post of Senior Clerk held in January, 1976 to March, 1977, when he was not called for the post on account of administrative lapse.
- iii) To fix seniority of the applicant as Senior Clerk, Head Clerk etc. on the basis of appointment as Work Order Clerk with effect from 5.2.1965 and fix his pay accordingly in the respective posts.

4. The official respondents in their counter-affidavit have taken the preliminary objection that the O.A. is time barred, as the applicant is claiming seniority with effect from 5.2.1965. His claim for the said seniority was rejected by the respondents vide their letter dated 24.7.1979. He submitted a subsequent representation, which too was rejected vide letter dated 8.4.1982. The applicant has suppressed this information from the Court. In any case they submit that the representation of the applicant having been rejected as far back as in 1979 and 1982 the present O.A. filed in 1987 is highly belated and, therefore, not maintainable and is liable to be dismissed on this short ground. On the facts the respondents have brought out that the applicant was appointed as Khallasi on 20.1.1964. He was put to work as Junior Compositor Rs.75-110 on 8.2.1964. He was promoted as Skilled Compositor Rs.110-180 on 22.7.1964. He was put to work as Work Order Clerk on 5.2.1965 as is revealed by the entry in his service record, copy at Annexure R-1. He was transferred back to Shop floor as Skilled Compositor in the same scale and pay of Rs.110-180 with effect from 10.3.1966 where he worked upto 16.11.1966. On 17.11.1966 he was again transferred to Press Technical office side and put to work as Work Order Clerk in the scale of Rs.110-180 vide copy of the order at Annexure R-2. The said order clearly states that "Shri Hira Mani Compositor is put to work as Work Order clerk at the same rate

of pay & scale and posted vice Shri Bal Kishan Work Order Clerk, since promoted as Sec. Head Machine. His posting is purely temporary measure and as an adhoc arrangement & will not confer upon him any right to continue in preference to the man found suitable as a result of suitability test when held."

Again on 18.4.1977 he was transferred back as Skilled Compositor (Rs.110-180) vide order dated 26.4.1967 and he remained on that job upto 12.7.1967. It is only with effect from 13.7.1967 that the applicant was transferred to Press Technical Office side and posted as Work Order Clerk vide PTO No.200 of July, 1968 which reads as under:-

"With effect from 13.7.67 F.N. Shri Hira Mani, Offg. Skilled compositor has been transferred to Press Technical Office and posted vide Shri Sham Sunder, work order clerk and vice versa on the same scale of pay and grade."

The respondents contend that his appointment as Work Order Clerk was purely temporary and subject to being found suitable on his passing the suitability test.

Admittedly, the applicant was transferred to the Clerical Cadre of the Store Side and designated as Work Order Clerk in Rs.110-180 vide order No.107 dated 9.9.1977 with effect from the same date as is borne out by Annexure R-8 to the counter. The respondents had tripped in not calling him for the suitability test held during 1976 to

March, 1977 and they made up for this lapse by giving him seniority from 13.7.1967 in the Clerical Cadre on the basis that had he been called for the suitability test he would have passed the same, as in fact he did in 1983. The consideration which weighed with them was that he had continued to remain in the Clerical Cadre with effect from 13.7.1967 without any interruption.

5. Besides the official respondents, respondent No.32 has also filed counter-affidavit. Shri R.L. Sethi, learned counsel appearing for respondent No.32 fervently argued that the matter is patently time barred and, therefore, it deserves to be dismissed on the ground of limitation. The learned counsel also referred us to various other objections taken by him.

6. The applicant has filed a rejoinder to the counter-affidavit filed by respondent No.32 and respondents No. 1-3.

7. We have heard the learned counsel for all the parties and perused the record very carefully. The mainstay of the argument of the learned counsel for the applicant is that the applicant was working as Work Order Clerk continuously from 5.2.1965 excepting some short spells, after he had qualified. In this context he relied heavily on the D.O. letter dated 9.10.1986 of SPO, GR, Northern Railway, Headquarters office, addressed to Deputy C.O.S concerned, Northern Railway, Shakur Basti and on the reply furnished by Chief Printing and Stationery Superintendent, Northern Railway Shakur-Basti to the GM (P), Baroda House, New Delhi in response to Deputy CPO, Headquarters letter to

Deputy COS, Shakur Basti. The respondents No.1-3, however, in their written statement, submissions and by production of the documentary evidence have established beyond doubt that the applicant was posted as a Work Order Clerk purely on a temporary and adhoc basis and subject to the result of the suitability test. He continued uninterruptedly as a Work Order Clerk only from 13.7.1967 vide order dated July 1967. IN 1967-77 when persons placed in identical situation were called for the suitability test, the applicant by an administrative lapse was not called for the same test. When the said mistake was realised, he was called for the test. He passed the suitability test in 1983 in the very first chance and he was assigned seniority retrospectively with effect from 13.6.1967 - the date from which he continuously worked as Work Order Clerk. He should have admittedly been called for the test as in accordance with paragraph 219 of the Booklet of Rules for Recruitment, Training and Promotion of Staff in Railway Printing Presses, as the non-technical staff working in the office of Printing Presses including Clerical Staff of Statistical and Work Order Section form common seniority and have the same channel of promotion with the Store Department. In view of the above, we are of the opinion that the applicant has no case for assigning retrospective seniority with effect from 5.2.65. Besides, the claim of the applicant to seek seniority w.e.f. 5.2.1965 is highly belated. Undisputedly his representation seeking seniority

w.e.f. 5.2.1965 was rejected vide letter dated 27.4.1979 and subsequently on 8.4.1982 while the O.A. has been filed on 31.8.1987.

In the above facts and circumstances of the case we do not find any merit in the Application and the same is dismissed on the ground that first it is barred by limitation and secondly because it lacks merit.

There will be no order as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A) 7/7/92

P.K. Kartha
(P.K. KARTHA)
VICE-CHAIRMAN 7/7/92

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July 7, 1992.