

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No 39/1987

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O.A. No - 39/1987

DATE OF DECISION 1.8.1991

SHRI JOH SINGH

Petitioner

SHRI J.K. BALI

Advocate for the Petitioner(s)

Versus

GENERAL MANAGER, NORTHERN RLY. Respondents  
& OTHERS

SHRI O.N. MOOLRI

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. U.C. Srivastava, Hon'ble Vice-Chairman (J)

The Hon'ble Mr. I.P. Gupta, Hon'ble Member (A)

- 1. Whether Reporters of local papers may be allowed to see the Judgement ?
- 2. To be referred to the Reporter or not ?
- 3. Whether their Lordships wish to see the fair copy of the Judgement ?
- 4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(DELIVERED BY SHRI U.C. SRIVASTAVA, HON'BLE VICE CHAIRMAN (J))

has

The applicant, who now retired from Railway service, was working as Accounts Clerk w.e.f. 19.7.1946 in the Grain Shop Organisation/Department, Northern Railway.

He was given his work of lower category as appears from the reply of the respondents, when the Grain Shop was closed down and the entire staff who became surplus was absorbed in various other departments of Northern Railway. The

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applicant was also absorbed as Junior Outdoor Clerk Grade 55-85 CPC in 1949 and thereafter posted as Railway Shed Clerk in 1954 in Gr.55-130. It appears that on a dispute of seniority, other Ex-Grain shop employees went up to the Supreme Court and the Supreme Court in Civil Appeal No.137, 138/1972 decided on 30.1.1974, that the Grain Shop employees are entitled for seniority from the date of their appointment. After the Supreme Court judgement, a letter in this behalf was also issued by the department on 1.2.1975 in which it was stated that the seniority of the Ex-Grain Shop staff belonging to both the following categories should be refixed in the absorbing departments in the manner indicated below :-

- (a) Temporary staff recruited for other regular departments of Railways, but initially posted to the Grain Shop Department;
- (b) Temporary staff directly recruited to the Ex-Grain Shop department.
  - (i) They should be assigned such seniority which they would have had they been absorbed in the absorbing department right from the beginning of service. The revised seniority should be readjusted with retrospective effect.
  - (ii) Promotions of staff in the absorbing Departments already made to higher grades (selection or non-selection) on the basis of seniority previously determined should not be disturbed. The staff who may now be due promotion to higher grades on the basis of revised seniority should be promoted against future vacancies only.

(iii) Such of the staff who have been confirmed against posts on the basis of the seniority previously determined should not be de-confirmed but those who become senior according to the readjusted seniority should be confirmed against the next available vacancies.

(iv) Staff on promotion will be allowed fixation of pay in the higher grades at the stage which they would have reached had they been promoted on the dates they were due according to revised seniority but no arrears will be payable. Staff who have already been promoted but not from their due dates, will also have their pay in the higher grade now occupied refixed proforma but no arrears will be payable for periods prior to the date of issue of these orders.

Notwithstanding the said directions issued by Supreme Court, seniority was not given to the applicant and the applicant went on making efforts one after another and continued to make the same till the year 1986, but having failed to get any relief, he approached the Tribunal praying that the order dated 26.11.1986 refusing to grant him seniority from the date of his appointment in 19.7.1946 be quashed and the respondents be directed to assign seniority to him from the date of his appointment as Accounts Clerk in the Granshop department w.e.f. 19.7.1946. The respondents took the plea of limitation, which in this case does not apply as the applicant has been making representation after representation and having failed to get any relief, he has again approached the Tribunal with hopes and ultimately got

a reply in 1986. Obviously there is no delay and even if there is any, we condone the same as being a fit case for relief. The respondent's plea that the applicant's seniority will be counted from the date he was absorbed, i.e., in the year 1954 and their explanation in this behalf is that on release from the Grainshop department on becoming surplus, the applicant was a matic in third division and later on he was promoted as Clerk w.e.f. 2.6.54 when relaxation in respect of educational qualification was accorded to him. The applicant has challenged this contention and has pointed out that there is no such rule in which a distinction is drawn between second and third division matic and further no such direction was given by Supreme Court. In their counter affidavit, the respondents have referred to a copy (which has been annexed at Annexure-R 2) of Divisional Office, New Delhi's D.O. dated 20.4.1982 which itself provides that in accordance with the Supreme Court's decision and Railway Board's letter dated 1.2.1975 the seniority of staff should be assigned by the department from the beginning of service irrespective of whether they were absorbed in same category or not and further it was laid down in Railway Board's letter dt. 15.12.1977 that seniority of staff would be in accordance with the letter dt. 1.2.1975. Accordingly, there is no substance in the defence of the respondents and the applicant has been wrongly deprived of his seniority and the other benefits and the application in

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these circumstances deserves to be allowed and the order rejecting the representation is quashed and the respondents are directed to refix the seniority of the applicant from the date of his appointment as Accounts Clerk in Grainshop department, i.e., 19.7.1946 and all the monetary benefits or other pensionary benefits to which the applicant is entitled, shall be given to him. A decision in this behalf shall be taken within a period of 3 months and all the payments to which the applicant is entitled as a result of refixation of seniority, shall be paid to him including pensionary benefits within a period of 1 month thereafter. There will be no order as to the cost.

AKS

*I. P. Gupta*  
(I.P. GUPTA)  
MEMBER (A)

*U*  
(U.C. SRIVASTAVA)  
VICE CHAIRMAN (J)