

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI  
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O.A.No. 1176/87.  
M.P.No.174/89.  
M.P.No.3951/91.

Date of decision 28.5.93

Shri Janak Raj & Ors. ... Applicants

V/s

Union of India & Ors. ... Respondents

The Hon'ble Shri B.N. Dhoundiyal, Member (A)

The Hon'ble Shri B.S. Hegde, Member (J)

For the Applicant ... Shri B.S. Mainee, counsel

For the Respondents ... Shri B.K. Aggarwal,  
counsel.

(1) Whether Reporters of local papers may be  
allowed to see the Judgement ?

(2) To be referred to the Reporters or not ?

J\_U\_D\_G\_E\_M\_E\_N\_T

[Delivered by Hon'ble Shri B.S. Hegde, Member (J)]

The applicant, along with two others, has  
filed this application under Section 19 of the  
Administrative Tribunals Act, 1985 alleging that  
though they were called for the viva-voce for the  
post of Senior Clerk vide order dated 18.2.1987 and  
20.8.1987, they were not interviewed. The applicants  
contend that had their seniority in the feeder grade  
of junior clerk been correctly fixed by taking the  
ad hoc service into account, they too would have

been granted the interview for the post of senior clerk. The applicants were working as cleaners and equivalent posts in Northern Railway. Though a selection held on 27.3.1983, the applicants were appointed on seniority basis as Junior Clerks w.e.f. 2.6.1983. They were regularised in May, 1986. They were eligible for promotion as Senior Clerks from the Graduate quota and in a written test held on 2.6.1985 and all of them were declared as qualified. Though they were called to appear for the viva-voce test on 18.3.1987 or 20.3.1987, they were not interviewed. Their representation dated 18.2.1987 has stated no response from the respondents. Their main reliefs prayed for are as under :-

- (1) command the respondents to complete the viva-voce test regarding applicants, declare the result within two weeks from the date of the test;
- (2) direct the respondents to prepare the seniority list for the purpose of selection to the post of senior clerks on the basis of the date of appointment/posting as junior clerk on ad hoc basis i.e. since 2.6.1983; &
- (3) direct the respondents to promote the applicants as senior clerks in the grade of Rs. 330-560 (RS).

2. The respondents, in their reply, denied the contention of the applicants and contend that the Annexure 'C' & 'D' clearly indicates that they were called for viva-voce test but the applicants did not

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turn up before the Board for interview. The letter dated 20.3.1987 annexed by the applicants as Annexure 'A' & 'D' states that they were called for interview on 3.4.1987 but they failed to appear before the Board and no representation <sup>was</sup> made to the competent authority.

~~advantage of their old labels.~~

3. The main prayer in this O.A. is that the respondents may be directed to complete the viva-voce test of the applicants and declare the result within two weeks from the date of the test and also to direct the respondents to prepare the seniority list for the purpose of selection to the post of Senior Clerks on the basis of the date of appointment for posting as Junior Clerk on ad hoc basis w.e.f. 2.6.1983 etc. In this connection the Learned Counsel for the applicant has cited three decisions of this Tribunal i.e. in O.A. No. 1143/88 decided on 29.8.1988, in Prem Kumar vs. U.O.I. through General Manager, Northern Railway, O.A. No. 989/86 decided on 26.6.1987 - Chandermohan Sharma and Bros. vs. UOI and O.A. No. 312/88 decided on 5.9.1988 in Manohar Singh vs. UOI in support of his contention stating that the respondents be directed to reckon their seniority from the date they are promoted

*As per*

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as Junior Clerk in the scale of Rs 260-400 against the substantive post and the respondents should further promote them as Senior Clerk in accordance with their seniority. He also cited the decision of the Supreme Court in K.L.Misra vs. UOI wherein it has been held "in sum the benefit of the long period of service would accrue to all promotees who continuously officiated against long term vacancies would be those that are not for a few days or a few months or are otherwise advantageous, irrespective of whether the posts were temporary or permanent so long as promotion was against long term or substantive vacancies and not against short-term fortuitous vacancies, the period of continuous officiation would have to be reckoned for determining seniority". On behalf of the Respondents, it was urged that the applicants were not promoted vide order dated 2-6-1983, but were only asked to officiate against the rolls of junior clerks on purely ad-hoc basis and this does not confer any right upon them to claim seniority for the period of ad-hoc officiation.

4. It is noticed during the course of hearing and considering the M.P.No.174/89 in O.A. No.1176/89, the applicants prayed that they should be considered/ interviewed for the posts of Senior Clerk as their juniors were interviewed and promoted. It is also not in dispute that the juniors were interviewed on the basis of orders issued by this Tribunal. No such orders

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have been made in relation to the applicant.

Accordingly, this Tribunal had directed that the applicants should also be included for the post of Senior Clerk and the appointment made to the post will be subject to the outcome of the present application.

5. In view of the aforesaid decisions cited by the Learned Counsel of the applicant and the observations made by the Tribunal, we are satisfied that the applicants are considered as civil servants and are working against regular vacancies, though on ad hoc basis and they are subsequently regularly appointed. They are entitled to count the ad hoc officiation period towards the seniority. In view of the specific averment made by the respondents stating that they had been called for the viva voce test, they failed to appear before the Board. It is explained in the rejoinder that two of the applicants were not spared and the third was not granted an interview. It is true, that there is no copy of the representation available on the records.

However, in the interest of justice, since the case

*AS per*

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of the applicants is squarely covered by the decisions of the Supreme Court as well as decisions of this Tribunal, the following directions are issued to the respondents:-

(1) A proper seniority list may be prepared keeping in view of the officiating post in the junior clerk right from the date of appointment i.e. from 2-6-1983.

(2) The respondents are hereby directed to give one more opportunity to the applicants to complete the viva-voce test and declare the result within a period of one month from the date of the test. If they succeed in the viva-voce test and if their juniors have already been promoted to the post of Senior clerk, they should be given a suitable place in the post of Senior clerk over their juniors who have already been promoted by virtue of this Tribunal's orders.

6. In view of the above facts and circumstances of the case, the O.A. is allowed but with no order as to costs.

(B.S. HEGDE)  
MEMBER (J)

(B.N. DHOUNDIYAL) 28/5/93  
MEMBER (A)