

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1406/90.
Ex-Acc-Box

199

DATE OF DECISION 1.8.1991.

<u>Suraj Kumar</u>	<u>Petitioner Applicant</u>
<u>Shri B.S. Mainee</u>	<u>Advocate for the Petitioner(s)</u>
Versus	<u>Applicant</u>
<u>Union of India & Others</u>	<u>Respondent</u>
<u>Shri P.S. Mahendru</u>	<u>Advocate for the Respondent(s)</u>

CORAM

The Hon'ble Mr. **JUSTICE U.C. SRIVASTAVA, VICE CHAIRMAN**

The Hon'ble Mr. **I.P. GUPTA, ADMINISTRATIVE MEMBER**

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 Hon'ble Mr. Justice
 U.C. Srivastava, Vice Chairman.)

The applicant was appointed as a casual labour in construction organisation of the Northern Railway on 15.3.74, has approached this Tribunal against Order dated 11th July, 1990, by which he has been reverted from the post of Clerk to the post of Khallasi. The interim order was granted by the Tribunal on 17.7.1990 and on 1.8.1990 the same was vacated. The applicant after working for 6 years and having attained particular ^{Status} including the temporary status was screened in the year 1980 and was declared fit in the letter dated 5.9.1981 and he was placed in the provisional panel for appointment in the Class IV regular posts sanctioned by DRM/Delhi. The applicant was placed at serial no.47 while

one Subhash Chander was at 49. The applicant was posted under IOW, Rohtak in the open lines. He was transferred on 20.2.1982 on construction organisation and was posted under Senior Engineer(Survey). Shri Subhash Chander who was junior to the applicant, was promoted as Store Issuer (Class III) in the grade of Rs.225-308 on ad hoc basis vide the order dated 18.3.1983. This promotion was undoubtedly on ad hoc basis. According to the Railway Board instructions, ad hoc promotions are to be made in accordance with seniority and suitability. After this ad hoc promotion as a Store Issuer, Subhash Chander was thereafter transferred to construction organisation in 1985. At that time, 67% of clerical cadres were filled up by direct recruitment and 33% by promotion from Khalasis and other class IV employees. Applications were invited by the respondents for the post of Clerks from Class IV employees who have put in 3 years of regular service, and applicant also applied for the same as he had put in 3 years regular service as on 31.5.1985. The respondents again called for the applications and again the applicant applied afresh for the post mentioned above. In the year 1985, Subhash Chander was promoted as Clerk but the applicant was again ignored for promotion as Clerk. The applicant proceeded against the same and represented to respondent no.3. In this connection, he submitted another representation also on 13.1.1988. In the meantime, viva voce for the post of Clerk took place and the applicant, who had applied for the same, was not called for interview. But his juniors were called for the selection which took place on 2.9.1989. According to the applicant, ultimately, he was considered for promotion and order of ad hoc promotion as clerk in the grade of Rs.950-1500 was issued by the notice dated

21.2.90 and he joined duty on 22.2.90. Some 5 months thereafter, the applicant came to know about the order passed to revert him from the post of Clerk to the post of Khallasi vide notice dated 11.7.1990. The applicant states that every time his juniors were promoted and he ~~Max~~ has mentioned four names at page 7 of his application but he had been denied the promotion even though at a later stage, he was promoted yet reversion order has been passed.

2. The respondents have tried to reject the application on the ground that channel of promotion of the applicant, who was a Works Khallasi, is towards artisan category and not to the mentioned cadre. A clarification was issued which excluded Works Khallasis from the post of Clerks, and the applicant was wrongly promoted in view of this clarification and he has been reverted.

3. Now, we have heard learned counsel for both the parties. The falacy in the plea for the respondents is very clear and the facts made are clear. Changeability was permissible and as a matter of fact the applicant was transferred to other line and again back to the original line. Shri Subhash Chander who was given ad hoc promotion in 1983 and thereafter he was promoted in the year 1985 to the construction line and the applicant was also not retained at the same line.

4. The respondents, without any justification, have taken the plea that the Khallasis are to be promoted to artisan category and they cannot be promoted as Clerks even though they have promoted others. The entire plea of the respondents is against the correct facts. The

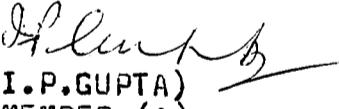
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vacancies occurred for the category of Khallasis and the applicant may be ad hoc one but the applicant was entitled to be promoted before juniors even if a clarification was issued in the month of November, 1989, that could not stand in the way of his promotion and the vacancies occurred much before the issuance of such clarification. No valid reason or justification has been given by the respondents for not promoting the applicant and their pleas are not satisfactory.

5. The action of the respondents in promoting others and re-transferring others and taking the plea of unchangeability has got no relevancy and in this case, there is discrimination and justice could not be done and accordingly it is a fit case to be allowed. The order by which the applicant has been reverted is quashed. The respondents are directed to consider the points raised by the applicant for promotion within a period of 3 months and thereafter consider the seniority due to him.

With these observations, the application stands disposed of with no order as to costs.

/PKK/.


(I.P.GUPTA)
MEMBER (A)
1.8.91.


(U.C.SRIVASTAVA)
VICE CHAIRMAN
1.8.91.