

Central Administrative Tribunal
Principal Bench, New Delhi.

17

OA-499/2004

New Delhi this the 18th day of August, 2005.

Hon'ble Shri V.K. Majotra, Vice-Chairman(A)
Hon'ble Shri Shanker Raju, Member(J)

Uma Shankar,
S/o Sh. Ram Kishore,
R/o 308, Gali No.11,
Budh Vihar, Mandoli,
Delhi-93.

Applicant

(through Sh. Yogesh Sharma, Advocate)

Versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divl. Railway Manager,
Northern Railway, Delhi Division,
Near New Delhi Railway Station,
New Delhi.
3. Sh. Prem Pal Singh,
S/o Sh. Kanchan Singh,
Working as Clerk, under IOW
Office, Northern Railway Station,
Delhi Jan.
4. Sh. Om Parkash,
working as Clerk,
in IOW Officer,
Northern Railway Station,
Delhi Jn.
5. Sh. Suresh Kumar,
S/o Sh. Rubal Dass,
Working as Clerk, under
IOW office, Northern Railway
Station, Delhi Jan.

Respondents

(through Ms. Nasreen Alam, proxy for Sh. Ashwani Bhardwaj, Advocate)

Order (Oral)

Hon'ble Shri Shanker Raju, Member(J)

Applicant seeks benefit of judgment dated 23.09.2002 (Subhash
Chander Vs. U.O.I. & Ors.) by claiming re-fixation of seniority and promotion as
Senior clerk from the date his juniors have been accorded.

2. Applicant, who has participated in the selection for the post of Clerk on 16.12.1984, the aforesaid selection was cancelled and in the fresh selection notified on 12.7.1987 of which result was notified on 20.3.1989, 41 persons were empanelled but the applicant was not called in the selection.
3. Applicant, who was subsequently on a fresh selection in 1990 was promoted to the post of Clerk.
4. A seniority list issued in September, 1997 which is provisional and stated to be final after objections in which name of the applicant was included at Serial No. 98.
5. By filing OA-2206/2001, junior persons of the applicant sought benefit of selection of 1988 on the ground that they have not been called in the selection. The observation of the Court while disposing of the OA was as taken into consideration the active consideration of the matter. In pursuance thereof by an order dated 10.1.1993, seniority of these two persons was revised.
6. Another OA-2305/1997 filed by Suresh Kumar Vs. U.O.I. was disposed of on 26.5.2000 with an observation that applicant therein could not be given participation in the selection held in 1988. As such, deemed to have completed the same and reconsideration has been ordered to correct the seniority. It is stated that when juniors had been promoted earlier and are placed above the applicant, non-consideration of the applicant for extension of benefit is not legally tenable. The decision of the Apex Court in **K.C. Sharma Vs. U.O.I. & Ors.** (1998(1)SLJ 54) has been relied upon.
7. On the other hand, respondents' counsel stated that applicant is not similarly circumstanced as he was never ad hoc MCC and the seniority issued in September, 1997 was provisional and as per seniority issued on 12.4.2004 applicant stands at Serial No. 45.

10

8. Though none is present on behalf of impleaded Respondent No.5, in the reply it is stated that applicant cannot claim benefit of seniority over Respondent No.5 whereas Respondent No.5 was regularized in 1974 but the applicant was regularized in 1980.

9. We have carefully considered the rival contentions of the parties and perused the material placed on record.

10. The ground taken by the respondents to distinguish the case of the applicant by denying benefit of extension of decision in OA-2305/1997 was in a fact situation where though working as ad hoc MCC, the three years service was not an impediment by not allowing participation in the selection held in 1980. The Court observed that the applicant deemed to have passed in 1988 and would be entitled to the seniority.

11. Following the ratio of the case, as the applicant who also applied in the notification issued on 12.7.1987 holding selection for the post of Clerk was fully eligible but without any reasons was not called, as his similarly circumstanced.

12. We have also seen that applicant has claimed benefit of judgment through his representation, which in reply is stated not to have been received by the respondents.

13. In the above view of the matter, we partly allow this OA by directing the respondents to reconsider grant of extension of benefit of the decision in OA-2206/2001 which has been implemented by the respondents to the applicant by passing a detailed and speaking order within a period of two months from the date of receipt of a copy of this order. In case the applicant is found fit, he shall be accorded all the consequential benefits. No costs.

S. Raju

(Shanker Raju)
Member(J)

/vv/

V.K. Majotra

(V.K. Majotra)
Vice-Chairman(A)

18.8.05