

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A.No. 2929/92.

Date of decision: 30.01.95.

Hon'ble Shri N.V. Krishnan, Vice-Chairman (A)

Hon'ble Smt. Lakshmi Swaminathan (Member (J))

(25)

Tapeshwar Jha,
S/o Shri Satya Narain Jha,
R/o 71, Provident Fund Colony,
Sarvodaya Nagar,
Kanpur (U.P.)
Working as Hindi Translator Gr.II,
in the Office of the Regional Provident
Fund Commissioner U.P. Kanpur.

.. Applicant

(By Advocate Shri S.S. Tewari)

versus:

1. Union of India through
Central Provident Fund Commissioner,
Employees Provident Fund Organisation,
Central Office, Mayur Bhavan,
Connaught Place, New Delhi.

2. The Regional Provident Fund Commissioner,
U.P., Nidhi Bhavan,
Sarvodaya Nagar,
Kanpur-5.

.. Respondents

(By Advocate Shri K.C. Sharma)

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[Hon'ble Smt. Lakshmi Swaminathan, Member (J)]

This application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 against the respondents' action in not reverting him to his original post of Head Clerk and retaining him in the post of Hindi Translator Grade II by the impugned orders dated 26.4.1991 and 12.11.1991 (Annexure 'A' Collectively).

2. The brief facts of the case are that the applicant joined service with the respondents as Lower Division Clerk on 15.9.1961 and he was confirmed

as Upper Division Clerk u.e.f. 1.4.1979. He was appointed as a Hindi Translator Grade II on 16.12.1980 by order dated 28.10.1987 (Annexure 'B'). According to the applicant, he was eligible in his turn for promotion as Head Clerk (now redesignated as Section Supervisor) but he was not appointed by the then Regional Provident Fund Commissioner (RPFC) and his juniors were promoted on 3.11.1985. He claims that on 6.11.1990, he had given his option in favour of the Head Clerk cadre and had requested the respondents to bring him back to the same cadre (Annexure 'C'). The RPFC by his letter dated 14.11.1990 had accepted his option (Annexure 'D'). The applicant states that in the seniority list dated 12.8.1988 (Annexure 'E') the applicant's juniors, namely, Sarvashri Dinesh Jha and R.B.S. Chauhan were promoted to the posts of Head Clerk although they were working as Hindi Translator Grade II but the applicant was discriminated and was not promoted as Head Clerk against the promotion quota. He has also the grievance that in the seniority list of Head Clerks issued by the respondents on 6.2.1991 his name has been omitted (Annexure 'F').

3. The Office of the Regional Provident Fund Commissioner, U.P. vide order dated 20.2.1991 promoted the applicant to the post of Head Clerk against seniority quota and posted him as Head Clerk in the Sub-Regional

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Office at Gorakhpur from Kanpur. This order was, however, cancelled by respondent No. 2 on the instructions of Respondent No. 1 and the applicant was to continue as Hindi Translator Grade II at Gorakhpur by the impugned order dated 26.4.1991 (Annexure 'A').

(also Annexure A)

4. The second impugned order dated 12.11.1991¹ which is in reply to his representation dated 4.10.1991, is with regard to the reasons why the other two officers whom he alleges are juniors to him, namely Dinesh Jha and R.B.S. Chauhan, have been promoted as Head Clerks as they had appeared in the Head Clerks' examination at the time when they were holding the post of Hindi Translator Grade II on ad hoc basis.

5. The applicant's grievance is that once ^{an} favourable order has been passed by the Regional Provident Fund Commissioner, whom he claims is the competent authority, appointing him as the Head Clerk at Gorakhpur, the same cannot be cancelled without a show-cause notice. Secondly, since his juniors have been appointed as Head Clerks through the test quota, he being similarly situated, ought to be promoted to the post of Head Clerk as per the seniority, though not against the examination quota. ^{He claims that} the action of the respondents being violative of Articles 14 and 16 of the Constitution, should be struck down and the respondents should be directed to revert the applicant back to the post of Head Clerk with all consequential benefits.

6. The respondents have vehemently denied the above allegations that the applicant is entitled to be posted as a Head Clerk. The respondents state that the order dated 20.2.1991 posting the applicant as a Head Clerk was issued by the RPFC, Kanpur in violation of the recruitment rules for the post of Head Clerk, inasmuch as the post of Hindi Translator on which the applicant was regularised from 20.12.1980 is not included as a feeder cadre for the post of Head Clerk. As per the recruitment rules for Head Clerks, 25% of the posts were to be filled from amongst UDCs who have rendered not less than 3 years of service and who also qualify in the examination and 75% of the posts by promotion of UDCs serving in the respective regions on the basis of seniority, subject to the rejection of unfit (Annexure R-I).

7. The respondents submit that the cadre of Hindi Translator Grade II is an independent cadre to which recruitment is made on the basis of 50% by direct recruitment and 50% on the basis of a Limited Departmental Competitive Examination as per the relevant rules. A copy of the recruitment rules of Hindi Translator Grade II is placed at Annexure R-3. They state, in their reply, that the applicant had appeared against the vacancy to be filled by the Limited Departmental Competitive Examination of Hindi Translator Grade II and was appointed as Hindi Translator by Order dated 7.5.1986 (Annexure AA-I) ^{long term} on a regular basis w.e.f. 17.1.1986. Later, by Order

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dated 28.10.1987, Office Order dated 7.5.1986 was modified and the applicant was appointed to the post of Hindi Translator Grade II on long-term regular basis w.e.f. 26.12.1980. Once the departmental candidates have been appointed on a regular basis to the post of Hindi Translator, the respondents submit that they have no nexus with the post of LDC/UDC in the line of promotion to Head Clerks and ceased to be in their earlier cadre. The representation of the applicant dated 9.1.1986 (p. 43) to the RPFC claiming his promotion to the post of Head Clerk was prior to his regularisation as Hindi Translator by the aforesaid order w.e.f. 17.1.1986 but he did not follow up the representation thereafter. The respondents have also clarified that in 1985, the other two officers, namely Sarvashri Dinesh Jha and R.B.S. Chauhan had appeared and passed the Limited Departmental Qualifying Examination held in 1985 and were then promoted as Head Clerks by order dated September 6, 1990 (Annexure AA II to the additional affidavit filed by the respondents on 11.8.1994). The seniority lists of Head Clerks dated 12.8.1988 and 6.2.1991 (Annexures 'E' & 'F') do not contain the name of the applicant.

8. On our direction, Shri K.C. Sharma, learned counsel for the respondents has also produced the letters issued by the respondent No.1 dated 8th March, 1991 and 8.4.1991 referred to in the Order of the RPFC, Kanpur dated 26.4.1991 which are placed on record.

9. We have carefully considered the arguments of the learned counsel of both the parties and the records in the case. The contention of the respondents that the cadres of Hindi Translator Grade II and Head Clerks are different is borne out by the fact that there are independent recruitment rules for these two posts. The applicant has been holding the post of Hindi Translator Grade II from 26.12.1980 to which post he was regularised initially from 17.1.1986 and later on from 26.12.1980 itself by order dated 28.10.1987. Before the order of 28.10.1987 was passed, the other two officers, namely, S/Shri Dinesh Jha and R.B.S. Chauhan, whom he claims are junior to him, had appeared in the qualifying examination for Head Clerks in 1985 on the basis of which they were promoted as Head Clerks in 1990. Admittedly, the applicant did not appear for this examination before he was confirmed as Hindi Translator Grade II. However, before regularisation from 17.1.1986 he had made a representation for proforma promotion to the post of Head Clerk but he did not press the same. After his regularisation in the post of Hindi Translator by order dated 28.10.1987, he cannot claim to be posted as Head Clerk on the basis of seniority, as the post of Hindi Translator is not a feeder cadre for the post of Head Clerk as seen from the extract of the relevant recruitment rules, He had also not appeared in the

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limited departmental competitive examination for promotion to the post of Head Clerk. In the facts and circumstances of the case we are, therefore, satisfied that the applicant cannot have a claim for being posted as Head Clerk at this stage.

10. Regarding the second contention of Shri S.S. Tewari, learned counsel for the applicant that once the applicant had been reverted to his original cadre and posted as Head Clerk by the RPFC by order dated 20.2.1991, the respondents cannot change the same, on the ground of promisory estoppel cannot be accepted. The applicant has nowhere shown that the RPFC, Kanpur is the competent authority to pass such an order. Similarly, the acceptance of the option given by the applicant dated 6.11.1990 to be promoted as Head Clerk by the RPFC in his letter dated 11.11.1990 (p.50) is of no avail as this is against the rules and not done by the competent authority. It is also clear from the letters dated 8th March, 1991 and 8th April, 1991 by respondent No. 1 that the order of the RPFC had been issued without prior sanction of the competent authority, namely, the Central Provident Fund Commissioner and contrary to the recruitment rules. It is well settled law that there can be no estoppel against statute.

11. In the circumstances, there was no illegality in the subsequent order issued by the RPFC dated 26.4.1991 to correct the error and place the applicant at the

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appropriate position of Hindi Translator Grade II
in accordance with the rules. (32)

12. In the facts and circumstances of the case,
we find no merit in this application and it is
accordingly dismissed. There will be no order as
to costs.

Lakshmi Swamirathan

(Smt. Lakshmi Swamirathan)
Member (J)

N.V. Krishnan
30.1.85

(N.V. Krishnan)
Vice-Chairman (A)

Delivered in the open Court on behalf of
the Bench today by me.

N.V. Krishnan
30.1.85

(N.V. Krishnan)
Vice-Chairman(A)