

(2) CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

New Delhi, dated this the 4th September 1997

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

(19)

O.A. No. 1877 of 1993

Shri Farooq Ahmed,
S/o Shri Nabidad,
Kanoongo Clerk,
Under the Administrative Officer
(Construction),
Northern Railway,
Kashmere Gate,
Delhi.

... APPLICANT

By Advocate: Shri B.S. Mainee

VERSUS

Union of India through

1. The Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Chief Administrative Officer (Cons.),
Northern Railway,
Kashmere Gate,
Delhi.

... RESPONDENTS

By Advocate: Shri P.S. Mahendru

O.A. No. 1943 of 1993

Shri A.K. Saxena,
S/o Shri R.K. Saxena,
Patwari Clerk,
Land Control Office,
Northern Railway,
Baroda House,
New Delhi.

... APPLICANT

By Advocate: Shri S.K. Sawhney

VERSUS

Union of India

1. The Secretary,
Ministry of Railway,
Rail Bhawan, New Delhi.
2. The General Manager,
Northern Railway, Baroda House,
New Delhi.

... RESPONDENTS

By Advocate: Shri P.S. Mahendru

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

As both O.As involve common questions of law and fact they are being disposed of by this common order.

2. Applicants are aggrieved by respondents action in not absorbing them in Northern Railway and have impugned respondents' letter dated 28.7.93 (Ann. A-1) in both O.As.

3. Applicants who were working as Patwari Lekhpal under U.P. Govt. were selected to be deputed as Patwari Clerks Grade Rs.260-400 (PRPS) in Northern Railway on standard terms of deputation. Applicant Farooq Ahmed joined on 1978 while applicant A.K.Saxena joined in 1983 and have been with Northern Railway continuously since.

4. Respondents have not denied that applicant Farooq Ahmed has also been promoted since joining Northern Railway and applicant A.K.Saxena has also received officiating promotion in the higher grade in scale of Rs.1200-2040 w.e.f. 25.8.87.

5. During hearing Shri Farooq Ahmed's counsel has shown us a copy of respondents' order dated 19.1.90, which is taken on record, confirming Shri Ahmed in Northern Railway as Clerk upon completion of two years probation and showing that on that date he

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was working on the promotional post of Kanungo. In the light of this order the question of applicant Farooq Ahmed's absorption in N.R. not being in order (as observed in impugned letter dated 28.7.93 from Respondent No.1 addressed to Respondent No.2) does not arise.

6. Similarly, as regards applicant A.K.Saxena, it is not denied that he has been working continuously with R-2 on deputation since 1983, and in terms of U.P. Govt.'s order dated 21.4.87 recalling him back and threatening to terminate his lien if he did not report back for duty within one week, it is not unlikely that his lien with U.P. Govt. would have been terminated ^{by now}.

7. Respondents took no action to return applicant A.K.Saxena's services back to U.P. Govt. pursuant to their order dated 21.4.87. Now after his putting in 14 years continuous service with them and also having been promoted on officiating basis, and with the added risk of his lien having been terminated in the U.P. Govt., it would be unjust and unfair to compel him to revert back to U.P. Govt., more particularly when there are precedents of respondents ^{absorbing} such Patwaris as Patwari Clerks in Northern Railway. One such precedent cited is that of

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Sewa Singh referred to in respondents' letter dated March, 1971 (Annexure-A9) as well as the one of Shri Farooq Ahmed himself as discussed in foregoing paragraphs. We are supported in our view by the judgment in T.N. Deka Vs. UOI 1986 (4) SLR 37 and Narendra Chadha Vs. UOI AIR 1986 SC 638.

8. During hearing reference was also made to respondents' letter dated Feb. 1997, a copy of which is taken on record directing that applicants be relieved immediately to report to their parent dept. under H.P. Govt.

9. In the light of the foregoing discussion, as applicant Farooq Ahmed already stands confirmed as Clerk in Northern Railway by order dated 19.1.90 on satisfactory completion of two years' probation, the question of now relieving him to report to his parent dept. in UP Govt. does not arise.

10. In the result Respondents' impugned letter dated 28.7.93 as well as Respondents' letter dated Feb. 1997 in so far as it relates to applicants Farooq Ahmed and A.K. Saxena are quashed and set aside. In respect of Applicant A.K. Saxena, Respondents are further directed to consider within three months from today his permanent absorption in Northern Railway, in accordance with law and past precedents (including that of applicant Farooq Ahmed),

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with all consequential benefits.

11. The two OAs stand disposed of in terms of para 10 above. No costs.

12. Let a copy of this judgment be placed in each case record.

A.Vedavalli
(DR. A. VEDAVALLI)
MEMBER(J)

S.R.Adige
(S. R. ADIGE)
VICE CHAIRMAN(A)

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