

Central administrative Tribunal, Allahabad bench
ALLAHABAD

DATED: THIS THE 16th DAY OF FEBRUARY, 1999

Coram : Hon'ble Mr. S. K. Agrawal JM
Hon'ble Mr. G. Ramakrishnan AM

ORIGINAL APPLICATION NO.203/96

Sudhanshu Kumar Dutta,
son of late M. N. Dutta
r/o 101-B Railway Colony No.2,
Subedargunj, Allahabad- - - - - Applicant
C/A Sri V. K. Agnihotri

Versus

1. Union of India, General Manager,
Northern Railway, Headquarters Office,
Baroda House, New Delhi.
 2. Senior Divisional Personnel Officer,
Northern Railway, Allahabad.
 3. Divisional Railway Manager,
Northern Railway, Allahabad
- - - - - Respondents
- C/R Sri S.K. Jaiswal.

ORDER

By Hon'ble Mr. G. Ramakrishnan AM

This is an application under section 19
of the Administrative Tribunals Act, 1985 for a
direction to the respondent no.2 to restore the
applicant on the post of Clerk/M.Clerk grade
Rs.260-400 from 5.2.1981 and also stay the operation

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of the reversion order dated 16.2.1996 by which the applicant was reverted from Clerk grade Rs.950-1500 to grade Rs.825-1200 (RPS). The applicant has sought the following reliefs :-

- (i) Respondents may be directed to give benefit of promotion with effect from 27.4.1981.
- (ii) Hon'ble Tribunal may further stay the operation of the order dated 16.2.1996 which was passed by the respondent no.2.
- (iii) Hon'ble Tribunal may direct the respondents to pay all the arrears from 27.4.1981 to the petitioner and promote the petitioner as HeadClerk in grade Rs.1400-2300.
- (iv) Hon'ble Tribunal may issue any other and further order under the circumstances of the case.

2. The applicant stated in the O. A. that on 19.10.1980 a written test was held for selection to the post/^{of}office Clerk grade Rs.260-400 in which the applicant appeared having been called for the same by a letter dated 3.10.1980 annexed as annexure A-1 to the petition and he qualified in that written test and was called for viv-voce test on 5.2.1981 but his name was not included in the panel published on 27.4.1981. Further the applicant stated that he was promoted to the post of office clerk in grade Rs.260-400 on 12.11.1984 vide annexure A-3 and he had been working on that post since then. He stated that the respondents promoted the applicant on 12.11.1984 whereas they should have promoted him

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on 27.4.1981 and thus this action of the respondents was illegal, arbitrary, malafide and also against the principles of natural justice. He represented to the respondents by representation dated 3.5.81 and many times thereafter the last one being made on 26.12.1990. The applicant stated that no reply was given to him and he was reverted by an order dated 16.2.1996 with malafide intention after he had worked in higher grade for 12 years. He termed his reversion as illegal, arbitrary and discriminatory. In the supplementary affidavit filed by the applicant it was stated that pay scale of Rs.825-1200 was revised to Rs.950-1500, by annexing annexure SA-1 to the supplementary affidavit and that because of this, respondents' action of reverting him to the previous grade of Rs.825-1200 was illegal, arbitrary and unconstitutional. In the supplementary affidavit, the applicant also stated that on 9.12.1991, he was transferred and posted under WF/SFG in the pay scale of Rs.950-1500 and that because the applicant was working against existing vacancy and not on work charged post, therefore, reversion of the applicant is wholly against the principles of natural justice. According to his statement, there were 2 vacancies in the Division but the respondents illegally reverted the petitioner on 16.2.1996.

3. In their counter affidavit, respondents stated that the applicant held the post of office clerk on adhoc basis and he was given opportunity/chance to clear the departmental examination but because he failed to clear such examination, he was sent back to his substantive post of M.C.C.in

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grade Rs.825-1200 and that applicant's case was not an isolated one but alongwith him, 4 other employees faced identical situation. They asserted that the applicant had no right to hold the post of office clerk and hence this application was liable to be rejected on merit. They submitted that the applicant who was working as Storeman was promoted against workcharged post being purely local adhoc arrangement pending posting of selected staff. ^{Further} It was stated that the applicant appeared in the test held on 19.10.1980 but he could not qualify in the selection finally as he could not clear the viva-voce test and, therefore, his name did not appear in the Select list issued on 27.4.1981. They submitted that the applicant was promoted as office clerk on adhoc basis on 13.11.1984. They denied the claim of the applicant that he should be promoted as office clerk on 27.4.1981 stating that the applicant did not qualify in the selection. They also stated that representation moved by the applicant on 3.5.1981 was not worth consideration and that perusal of the said representation filed as annexure A-4 to the affidavit appeared to be a manufactured document as an after thought and has no legal substance. Respondents categorically stated that the applicant failed to clear the departmental test for which he was given opportunity in 1991 and, therefore, he was sent back to his substantive post. They prayed for dismissal of the application.

4. In the rejoinder affidavit filed by the applicant, the petitioner reiterated whatever was stated by him in the Original application

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5. We have heard learned counsels for the parties and also have given careful consideration to the pleadings of the parties and have also perused the records. The fact which is not in dispute is that the applicant was promoted by a notification dated 12.11.1984 as Office clerk in grade Rs.260-400. A perusal of the notice which was annexed as Annexure-3 of the O.A. clearly indicates that this promotion order was on local and adhoc basis against work-charged post. It is also clearly indicated in the order that the concerned employees will not get the benefit of the adhoc promotion in future. The applicant's plea that he had qualified in the selection for clerks held in 1980-81 is not borne out by facts. The panel published on 27.4.1981 (annexure 2 of the O.A.) does not contain the applicant's name. In any case, the prayer of the applicant in this regard under para 8(a) of the O. A. is badly delayed and is barred by limitation. Therefore, the applicant is not entitled for this relief. Therefore, he is also not entitled for the relief under para 8(c).

6. Notice dated 16.2.1996 enclosed as annexure-5 is the reversion order of the applicant and 4 others. In the counter affidavit, it was stated by the respondents that the applicant appeared against promotional quota selection for clerks in 1991 and did not qualify and as such he was replaced by selected employee and he was directed to work on the original post. The applicant's reiteration in the rejoinder affidavit of having passed the written examination on the basis of annexure-1 of the O.A. does not help the applicant, as annexure.1 of the O.A. is only a circular issued by the respondents enclosing a list of persons eligible to appear in the written test


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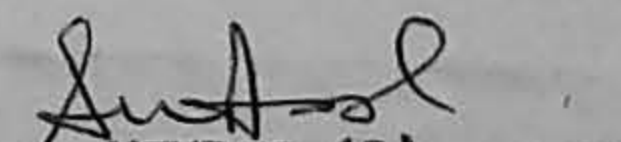
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for the selection of clerks to be held on 19.10.80. As already stated in the panel published on 27.4.81, applicant's name is not included. Therefore, it has to be concluded that the applicant was working as clerk on adhoc basis. Hon'ble Supreme court in Civil appeal No.1152 of 1995 in the case of State of Orissa and another V/s Dr. Pyare Mohan Misra decided on 6.1.1995 (reported in 1995 Supreme court cases (L&S) 643) while upholding the reversion of the respondent in that case who was holding higher grade post on adhoc basis held that mere prolonged adhoc service does not ripen into a regular service to claim permanent or substantive status. In the light of law laid down by the Apex court, we cannot find any fault with the order dated 16.2.1996 by which the applicant has been sent back to his substantive post.

7, Alongwith the supplementary affidavit, the applicant has enclosed a statement as annexure SA-1 as proof that the pay scale of Rs.825-1200 has has been revised to Rs.950-1500. We have perused the said annexure. It is a statement showing the categories exempted from the minimum period of officiating and the daily rate of officiating allowance. This does not corroborate the applicant's plea that the scale Rs.825-1200 had been revised to Rs.950-1500.

8. In view of the foregoing, the applicant is not entitled for any of the reliefs claimed and as such the O.A. deserves to be dismissed and is dismissed accordingly with no order as to costs.


MEMBER (A)


MEMBER (J)