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Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad; this the 1st day of May 2000.

Original Application No. 852 of 1997.

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Hon' Mr. S.K.I Naqvi. J.M.

Hon' Mr. M.P. Singh A.M.

1. Radhey Raman, S/o Late Rama Shanker
working as Senior Clerk, North Eastern
Railway Work Shop, Izzatnagar, Bareilly.
2. Budh Sen S/o Late Bhagwan Dass, working as
Senior Clerk, North Eastern Railway working
shop, Izzatnagar, Bareilly.

(By Advocate :- Sri S.K. Om.Adv)

.....Applicants.

Versus.

1. The Union of India, through General Manager,
North Eastern Railway, Gorakhpur.
2. Chief Workshop Manager, North Eastern
Railway, work shop, Izzatnagar, Bareilly.
3. Chief Work Shop Manager (Personal) N.E.R.
Workshop, Izzatnagar, Bareilly.

(By Advocate:- Sri J.N. Singh, Adv)

.....Respondents.

By Hon'ble Mr. S.K.I Naqvi. J.M.
O_R_D_E_R(Oral)

By Hon'ble Mr. S.K.I Naqvi. J.M.

The applicant Sri Radhey Raman and Budh Sen
are the applicants in this application under section
19 of the Central Administrative Tribunal Act with

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the prayer that order be passed to quash the impugned order dated 07.08.97 and the respondent be directed not to revert the applicant from the Post of Head Clerk to the Post of Junior Clerk.

2. As per applicant case the applicant No.1 was appointed as Apperentice on 01.04.59, he was promoted as Fitter Khalasi in the year 1975 his category was changed, he was promoted as Junior Clerk, likewise the applicant No.2 was initially appointed as Khalasi in Class IV category on 26.12.64 but later on he was promoted as Materilas Clerk/Junior Clerk with effect from 07.04.1973. The applicant have further mentioned that in 1980-81 a restructuring was introduced by the Railway Board and it was decided that those Junior Clerks who have graduation qualification may be promoted as Senior Clerk w.e.f. 01.10.80 or from the date of joining the service, provided, they qualify limited departmental competative examination. The applicant applied for the promotion in graduate quota and also qualified the LDC examination and consequently were promoted as Senior Clerk on 01.10.86 with Seniority, w.e.f. 01.10.80. This promotion was later on cancelled by the respondent and they were reverted from the Post of Senior Clerk to the Post of Junior Clerk. Against this reversion, the applicant filed application before the Tribunal being O.A. No. 833 of 1990, but this application was dismissed on 16.01.97 on the ground of limitation, because the order of promotion of the applicant were cancelled in the year 1987 and the Original Application was filed in 1990, and thereby beyond

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period of
the limitation. The applicant have also mentioned that consequently upon dismissal of this Original Application the Seniority List of Senior Clerk dated 01.04.87 became final. The applicant filed another application before the Tribunal in the year 1994 seeking relief against their supersession and promotion of their Juniors, this application was also got dismissed on 07.04.97 by the applicant having bonafide believed the assurance given by the respondent No.2 that in case they get the petition dismissed by withdrawal they shall be promoted.

3. The applicant have also mentioned that in accordance with Seniority List dated 01.04.87, the applicants were promoted as Head Clerk vide order dated 14.05.1997 with retrospective effect from 6th March 1975 and 14th April 1995, respectively after their promotion the applicant joined as Head Clerk on 14.05.1997, but vide impugned order No 184 of 7th August 1997, the applicants were reverted from the Post of Head Clerk to Junior Clerk, this order has been assailed on the ground of being illegal arbitrary and passed without affording opportunity to the applicant. It has also been assailed on the ground of being non speaking order without mentioning any reason whatsoever for reversion of the applicant against which the applicant have moved representation to the respondents, the copy of which have been annexed as Annexure No.6 to the Original Application.

4. The respondents have contested the case and

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have filed the counter reply in which the claim of the applicant has been contested and impugned order has been supported.

5. Heard the learned counsels and perused the record during the course of argument the learned counsel for the applicant drew attention not only towards the facts and circumstances under which he establishes the claim of the applicant but, has also referred the pleadings from the side of respondents particularly in para 7.8. and 9 of the Counter Affidavit. Since it is a peculiar case and we seldom come across the pleadings of such nature. We find it ^{expeditious} to reproduce those paragraph as Under:-

Para:7 "That since stay order was passed in favour of the applicants from this Hon'ble Tribunal, hence they were not further promoted from Senior Clerk Grade Rs 330-560 to higher Post while the persons Juniors to the applicants in the Seniority List of Junior Clerk were promoted as Head Clerk and Office Superintendent Grade II as per Seniority position"

Para:8 "That the applicants were promoted to the Post of Head Clerk Rs 1400-2300 from the date their Juniors were promoted after office orders dated 14.05.97 of this Hon'ble Tribunal. They were promoted on the basis that they have passed Senior Clerk examination under 10% quota (office letter dated 14.05.97 which is filed herewith as Annexure R.A-6 to this

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Counter Reply)"

Para:9 "That due to above promotion that Juniors to the applicant in the Post of Head Clerk were reverted, so an objection were raised by the Juniors against the applicants that they have not passed examination prescribed for Senior Clerk. Since the applicants have not passed prescribed examination for Senior Clerk, hence they were reverted from Head Clerk Grade Rs 1400-2300 to Junior Clerk Grade Rs 950-1500 vide office letter dated 08.08.97 which is filed herewith as (Annexure No.RA-7) to this Counter Reply".

From the above portion of pleadings on behalf of respondent be find that it lacks proper drafting and facts have been confused by incorporation of Self contradictery facts. At one place in para 8 the respondents have mentioned that "They were promoted on the basis, that they have passed Senior Clerk Examination under 10%quota" In just succeeding para 9 it has been mentioned "That due to above promotion Juniors to the applicant in the Post of Head Clerk were reverted so objections were raised by the Juniors against the applicant that they have not passed examination prescribed for Senior Clerk" "Since the applicant have not passed the prescribed examination for Senior Clerk, hence they were reverted from Head Clerk Grade Rs 1400-2300 to Junior Clerk Grade Rs 950-1500

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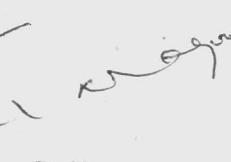
vide office letter dated 08.08.97".

with this position in view, it cannot be held whether the applicant have actually passed the referred prescribed examination for Senior Clerk or not and also that if they are still entitled to the benefit of having qualified the limited Departmental Competative Examination as mentioned in para 4(IV) of the O.A according to which they were promoted as Senior Clerk on 01.10.86 for having qualified L.D.C examination but, reverted vide order dated 4/22.10.90. The applicant have also mentioned that their representation dated 11.08.97 are still pending for disposal with the respondent No.3 and have not been decided.

5. With the above position in view and for rather ambiguous pleadings from the side of respondents. We find it a fit matter to direct the respondents to decide the pending representation of the applicant, the copy of which have been annexed as Annexure No.6, within 3 months from the date of communication of this order and pass detailed reasoned speaking order in the light of observation made above. In case the applicant have actually qualified the prescribed examination for Senior Clerk they be considered for promotion protecting their Seniority and salary. The O.A is decided accordingly.

No order as to cost.


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