

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1046 OF 1998
ALLAHABAD, THIS THE 05th DAY OF OCTOBER, 2004

HON'BLE MR. JUSTICE S.R. SINGH, VICE-CHAIRMAN
HON'BLE MR. D. R. TIWARI, MEMBER (A)

1. Subhash Chandra s/o Shri N.L. Gupta
aged about 45 years, resident of 78-A
Bhusauli, Tola Khuldabad,
Allahabad.
2. S.C.P. Sinha s/o Late Sri D.N. Sinha
aged about 42 years R/o 53-A/1 Karbala,
Allahabad.
3. Mohd. Haroon Ansari, S/o Raoof,
aged about 40 years, r/o M.N. 409
G.R.P. Railway Colony, Allahabad.

.....Applicants

(By Advocate : Shri O.P. Gupta)

V E R S U S

1. Sri Divisional Personnal Officer
Northern Railway, Allahabad.
2. Divisional Railway Manager,
Northern Railway, Allahabad.
3. Unionof India through General Manager,
Northern Railway, Baroda House,
New Delhi.

.....Respondents

(By Advocate : Shri A.K. Gaur)

O R D E R

By Hon'ble Mr. Justice S.R.Singh, V.C.

The applicants who were initially appointed
as Lower Division Clerk, appeared in the limited departmental

(Signature)

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competitive examination under graduate quota held in 1985 for promotion to the post of Senior Clerk. They were selected and appointed as Senior Clerk in the year 1985. Since the applicants were graduate at the time of their initial appointment ^{to the} ~~with~~ post of Lower Division Clerk, they staked their claim for proforma fixation of pay in the grade of Senior Clerk from the date of their appointment. Supreme Court in the case ANURADHA MUKHERJEE AND ORS. VS. UNION OF INDIA AND ORS. reported in 1996 SCC (L&S) 1187 held, relying upon Board's letter dated 10-08-1983, that promotion of person as Junior Clerks would be effective from 01.10.1980 but no arrears ^{would be} ~~were~~ payable on that account. However, it was clarified that the pay of Railway servants appointed to the upgraded post would be fixed proforma from 01.10.1980 but actual payment of emoluments in the upgraded post would be allowed only from the date they actually took over the charge of the upgraded post. Further that proforma pay would be counted for pensionary benefits as special case "in relaxation of Rule 2545-P.II and para 501 MRHR 1950".

2. It appears that vide order dated 07.04.1998 (Annexure A-3) the pay of the applicants was fixed in senior scale on proforma basis with effect from the date the applicants took over the charge. The actual payment of emoluments admissible to the post of Senior Clerk was however ~~restricted~~ ^{restricted} debited to the actual date of joining as a Senior Clerk. The order aforesaid as per the fixation of pay has been withdrawn by impugned order dated 03.09.1998, which reads as under:-

"As a result of review, all the benefits of proforma fixation allowed to the undenoted Sr. Clerks Gr.330-560/- 1200-2040/ 4500-7000/- of this division vide this office notice of even No. dt.07.04.1998 are withdrawn."

3. It is submitted by learned counsel appearing for the applicants that pay of the applicants was rightly fixed as per the direction of Supreme Court in the aforesaid mentioned case and the order dated 07.04.1998 has been illegally withdrawn without assigning any reason whatsoever. Learned counsel for the respondents on the other hand submits that withdrawal of the order dated 07.04.1998 was necessitated due to the order dated 24.02.1999 passed by Hon'ble Supreme Court in the Contempt Petition No.374 of 1998 in civil appeal No.6265 of 1996 Smt. Anuradha Mukherjee and Ors. wherein it was clarified that court had merely directed that proforma promotion would count only for the purpose of computation of pension and the concerned employees would neither get seniority nor any monetary benefits on that score. Learned counsel for the applicant on the other hand submits that applicants were not given any monetary benefits or seniority from the date of joining as Junior Clerk and hence the question of withdrawal of the order (07.04.1998) is arbitrary and unjustified

4. Having heard counsel for the parties, we are of the view that the order impugned herein cannot be sustained for the simple reason that it has been passed without affording any opportunity of showing cause and without assigning any reason whatsoever. We are of the view that even if the order dated 07.04.1998 was to be withdrawn, the applicants ought to have been afforded an opportunity to have their say atleast on the question whether the order dated 24.02.1998 passed by Hon'ble Supreme Court in the contempt petition referred to above necessitated withdrawal of the order dated 07.04.1998.

5. In view of the submissions made by the learned counsel

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for the applicant that pay of the applicants was fixed strictly in accordance with original judgment of Anuradha Mukharjee and it did not warrant any modification pursuant to observations made by Apex Court in the contempt petition vide order dated February 24, 1998, [✓] We are of the considered view that matter needs to be reconsidered at the level of Senior Divisional Personnal Officer North Central Railway, Allahabad. Accordingly, the O.A. succeeds and is allowed. The impugned order dated 03.09.1998 (Annexure A.4) is quashed. The respondents i.e. Senior Divisional Personnal Officer, North Central Railway, Allahabad is given liberty to pass fresh order after affording opportunity ^{of} ~~to~~ showing cause.

6. There shall be no order as to costs.

D. D. Sharma
MEMBER (A)

(B)
VICE-CHAIRMAN

shukla/-