

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 11th day of March, 2004.

Original Application No. 1574 of 2001.

Hon'ble Mrs. Meera Chhibber, Member- J.
Hon'ble Mr. D.R. Tiwari, Member- A.

Piyush Verma S/o Late K.N. Verma a/a 41 years
Residing at 16/27-K-6-AK, Kundan Nagar,
Kadipur, Shiv Nagar, Varanasi.

.....Applicant

Counsel for the applicant :- Sri A.B.L. Srivastava

V E R S U S

1. Union of India through the General Manager(Claims),
Chief Claim Office, Northern Railway,
Baroda House, New Delhi.
2. The Dy. Chief Commercial Manager (Claims)
Northern Railway, Varanasi.

.....Respondents

Counsel for the respondents :- Sri A.K. Gaur

O R D E R

By Hon'ble Mr. D.R. Tiwari, Member- A.

By the instant O.A instituted under section 19 of
Administrative Tribunals Act, 1985, the applicant has prayed
for the following reliefs :-

- (a) The impugned order dt. 31.08.2001 and 12.02.1999
be quashed and set aside.
- (b) A direction is sought to be issued to respondents
to restore the pay fixed initially at the stage
of Rs. 5300/- on 01.01.1996 in the same way as it
was fixed in the manner in the case of Sri G.N.
Tripathi.
- (c) A direction is sought to be issued upon respondents
to pay the arrears of pay w.e.f. 01.01.1996 along
with interest @ 18% P.A.

[Signature]

2. The factual matrix of this O.A has a chequered history behind it. The applicant on an earlier occasion filed O.A No. 310/99 which was disposed of by issuing a direction to the respondents to decide the representation by a reasoned order after giving personal hearing to the applicant within a period of two months. The direction further stipulated that the recovery of the amount shall remain suspended and in case the applicant's contention is accepted, the entire amount recovered shall be paid back to him (Annexure- 3). The respondents accordingly gave a personal hearing to the applicant and his representation was decided by order dated 31.08.2001 (Annexure-1). The applicant now has filed the present O.A challenging the order dated 31.08.2001 and order dated 12.02.1999 (Annexure- 5).

3. The applicant was appointed on 12.04.1982 in the office of Chief Commercial Manager (Claims), New Delhi as Clerk in the grade of Rs. 260/-400. On his own request he was transferred to the office of the respondents in the same grade accepting the bottom seniority on 11.03.1983 (RA-1). He was promoted to the post of Senior Clerk on 31.12.1983. The applicant was posted as Senior Clerk to handle the cases of complex nature against the vacancy caused due to the promotion of Sri S. Prasad as Head Clerk. He was sanctioned special pay of Rs. 70/- w.e.f 29.08.1995. However, subsequently it was found that the sanction of special pay was due to the clerical mistake and it was corrected at a later stage and given from 20.05.1996. The applicant has challenged the withdraw of special pay and not taking into consideration the special pay while fixing his pay mainly on 2 grounds. First, according to him, the total sanctioned strength of Senior Clerk prior to 01.03.1993 was 90 including 7 posts of typist viz Senior Clerks 83+7 Typist and 10% of sanctioned strength of 90 Senior Clerks which came to 9 and those 9 Senior Clerks were paid special pay of Rs. 70/- as per

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their seniority and continue to draw the said special pay even after restructuring carried out as per Railway Board's order dated 27.01.1993. Second, he has alleged, in the alternative, that respondent No. 2 has engaged Sri G.N. Tripathi against the 9 identified posts who was junior to the applicant. The applicant has made specific averment to this effect in para 6(d) of the O.A.

4. The respondents on the other hand have strongly contested the allegations/ contention of the applicant by filing counter reply and Suppl. counter reply. The respondents have submitted that on the report of work study ~~the~~ many posts have been surrendered from time to time on 01.01.1984. The total sanctioned strength of ministerial cadre was 286. On 30.06.1986 L.P.O, Kanpur under the respondents was closed hence 14 posts of ministerial cadre was surrendered which includes 11 posts of clerks and 3 posts of Senior Clerks. They have further stated that due to introducing of restructuring some more posts were surrendered. Finally the total number of post of Senior Clerks were only 83 and as per policy 10% of Senior Clerks were to be granted special pay of Rs. 70 P.M. Therefore, the strength of special pay holders has come to 8.3. The first promotion order after accounts concurrence was issued on 29.08.1995 in which this benefit was wrongly given to the applicant and the special pay to be given to 8 was over-looked as the applicant was 9th candidate (Annexure CR3 and 4). Thereafter the promotion order was issued on 30.08.1996 in which benefit was given to the effected person from 20.05.1996 when the irregularity for granting special pay of Rs.70/- came into light in August, 1996 hence it was corrected. The special pay holders should have been 8 which is clear from annexure CR-5. They have further stated that the applicant was never senior to Sri G.N. Tripathi, who was appointed on compassionate grounds

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and joined his duties on 18.02.1983 as clerk grade (Annexure-CR-2) whereas the applicant was transferred to varanasi on 11.03.1983 accepting the bottom seniority.

5. The salient grounds on which the O.A has been filed are many and have been narrated in sub paras A to D of para 5 of the O.A. However, we shall be dealing with the grounds which have been stressed during the course of hearing of the applicant's counsel in his later part of the order. We have heared the learned counsel for the parties at a considerable length and have given our anxious thought to their submissions, pleadings and the documents on record.

6. During the course of arguments learned counsel for the applicant placed reliance on the case of Bhagwan Shukla vs. U.O.I and Ors. 1998 (2) SLJ 30 SC wherein it has been laid-down that there cannot be reduction of pay in case the mistake has been committed by the respondents. Learned counsel for the applicant took ~~great~~ ^{great} pains to demonstrate before us that the total strength of clerks was 89 and 10% of which would come to 9. He alleged that the respondents contention that the total strength of the clerks to be 83 is not correct. Learned counsel for the applicant has strenuously argued about his seniority also. The thrust of his arguments is that even if it is assumed that the total strength was only 83 then 10% of which would come to 8. In view of this, if his seniority is correctly shown then he would be senior to Sri G.N. Tripathi which in ^{turn} ~~term~~ entitle him for special pay of Rs. 70/- P.M.

7. We have perused the records very carefully. His contention about the strength of ~~the~~ ministerial post does not appear to be correct. The falacy of his arguments lies in the fact that while counting the total strength, counsel for the applicant is including the 6 posts of typist which is a seperate cadre. Once the cadre of Typist is excluded, the

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contention of the respondents is correct and the total strength would come to 83 only. His claim of seniority above Sri G.N. Tripathi is also not tenable and it is clear from para 4.5 of the counter reply that the applicant, though appointed earlier as clerk, requested for transfer to Varanasi accepting bottom seniority. Once he was transferred and accepted the bottom seniority, he cannot claim the seniority over Sri G.N. Tripathi.

8. The next crucial issue which remains for consideration is the question whether the recovery was justified or not. His reliance on the case of Bhagwan Shukla (Supra) is not applicable in the facts of the present case. The Railway administration has taken action as per para 228 of IREM Vol.I 1989 addition. The provisions are being reproduced below :-

"The orders of notification of promotion or appointment of a railway servant should be cancelled as soon as it is brought to the notice of the appointing authority that such a promotion or appointment has resulted from a factual error and the railway servant concerned, should, immediately on such cancellation be brought to the position which he would have held but for the incorrect orders of promotion or appointment.

In the case, however, of a railway servant, who has been erroneously promoted and appointed to a post in a substantive capacity.....railway servant concerned should be brought down to the position which he would have held but for the erroneous promotion."

The learned counsel for the applicant also argued that the above provision has been struck ^{down} by the Ernakulam Bench in case of K. Raghawan. The applicant's counsel reliance in the above case cannot be sustained in view of the decision of Hon'ble Rajasthan High Court in Civil Writ Petition No. 4227/02 decided on 10.09.2003 reported in ATJ 2000 (1) 141 in which Hon'ble Rajasthan High Court has held the provision of para 228 of IREM as valid and not violative of article 14 and 16 of the Constitution. In arriving ^{at} this decision, the

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Hon'ble High Court has relied on the decision of Hon'ble Supreme Court in the case of Virendra Kumar Vs. Avinash Chandra and ors. (1990) 2 SCR 769.

9. In view of the facts mentioned above, we are unable to persuade ourselves to agree with the counsel for the applicant. While deciding the representation the respondents have also given the applicant opportunity of personal hearing to present his case where could not succeed and the representation has rightly been decided by a speaking order.

10. In view of the facts and circumstances mentioned the O,A is bereft of merits and is accordingly dismissed. No costs.

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Member- A.



Member- J.

/Anand/