

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 13th day of April 2005.

Original Application no. 1605 of 2004

HON'BLE MR. S.C. CHAUBE, MEMBER-A
Hon'ble Mr. K.B.S. Rajan, Member J

Hub Lal Saroj,
Aged About 55 years,
S/o Late Nachkawoo,
Working as Head Clerk in Engg.
Department in G.M. Office, N.C.R.,
Allahabad,
R/o Village Jhalava, Post Pipal Goan,
District Allahabad.

....Applicant

By Adv : Sri S.Ram.

V E R S U S

1. Union of India through General Manager, N.C. Railway, H.Q., Allahabad.
2. General Manager, N.C. Railway, H.Q. Allahabad.
3. Chief Personnel Officer, N.C. Railway, H.Q., Office, Allahabad.
4. Divl. Railway Manager, N.C. Railway, Allahabad.

...Respondents

By Adv : Sri A.K. Pandey

O R D E R

BY K.B.S. RAJAN, MEMBER-J

The applicant, through this O.A. has inter-alia prayed for quashing of the impugned order dated 1.11.2004 and directing the respondents not to disturb his lien and seniority from the Ministerial cadre of Engineering Department of N.C.R. Headquarters Allahabad and also prayed for a direction

6

to the respondents to consider the applicant on the basis of his seniority for his next higher grade promotion as Office Supdt. (in the grade of Rs. 5500-9000) against the upgraded post under restructuring cadre w.e.f. 1.11.2003.

2. The point of controversy is pure and simple. According to the applicant, he has been functioning as Head Clerk since 1985 and his application giving option to join the NCR Headquarters office at Allahabad was verified by the Principal, C.E.T.A., Northern Railway, Kanpur and the same was considered whereby the applicant was inducted into NCR in the Engineering Branch. He was given the seniority in the grade of Head Clerk as per which he stands as the senior most. Under these circumstances, when the respondents ought to consider the applicant for promotion to the higher grade of Office. Supdt., to his surprise and shock, he was sought to be repatriated back on the alleged ground that he was not on regular basis in the post of Head Clerk. The respondents, on the other hand, contend that as per the service records, which were got to be verified after inducting the applicant in the NCR, it was found that the applicant was promoted as Head Clerk in the year 1985 on adhoc basis and thereafter there was no reference of adhoc converted into regular.



3. As it was found essential that the records were to be called for, respondents, on direction, produced the same which were perused. Arguments were also heard and the pleadings gone through.

4. The service records reflect that the applicant was promoted in the scale of Rs. 330-560/- on the basis of order dated 31.10.1985 on adhoc basis. Subsequently, yearly increments which were paid were duly recorded and the same continued to be reflected till 1.11.2002. The next entry was that relating to induction in the N.C.R. on the basis of order dated 22.4.2003. The next entry in the note sheet portion of the service record is note dated 28.7.2004 wherein the fact of the applicant being rendered surplus and adjusted against the supernumerary post was mentioned. It has been fairly conceded by the counsel for the respondent that the contents of the above note dated 28-07-2004 was not communicated to the applicant.

5. In the course of arguments, the learned counsel for the applicant has taken as through Annexure A-4 order dated 22.5.1996 which relates to lien and seniority fixed in Engineering Branch under DSE (Coordination), Northern Railway, Allahabad in which the name of the applicant finds place at Sl. No.1. The same does not reflect that the applicant was on adhoc basis. The next reference is Annexure A-5, order dated 26.11.1996, reflecting the applicant's position as Head Clerk and posting him to CETA/CNB.

[Handwritten signature/initials 'h' at the bottom left]

Here again, there is no reference about adhoc status. The counsel for the applicant then referred to the seniority list issued by N.C.R. on 9.3.2004 wherein the name of the applicant in the rank of Head Clerk, is shown at sl. No. 1.

6. The counsel for the applicant has further referred to Rule 122 of Indian Railway Establishment Code, which reads as under:-

"Supernummary post:- Supernummary post are permanent posts created under special circumstances for optional for a limited period as such at the discretion of the competent authority to create the post in the administrative convenience."

7. The learned counsel contended that admittedly when the applicant was rendered surplus and was accommodated against a supernumerary post, it cannot be held that the applicant was only on adhoc basis. The learned counsel has also referred to the rule position in respect of promotion to and within Group 'C' of non-safety category post filled by selection, according to which a Scheduled Caste promoted on adhoc basis for a period of six months, need not be subjected to further selection/suitability test and on their empanelment, they should be assigned position on the panel below those who had already been empanelled provisionally (letter no. ESCT) 74 CM 15/34 dated 29.4.1977 and No. 81-E (SCT) 15/60 dated 22.12.1981). He has further stated that assuming without accepting that a formal regular promotion order was not issued, even then by virtue of the

6

applicant having been functioning as Head Clerk for 18 years plus, since 1985 his status cannot but be regular and in this regard applicant cited the Constitution Bench judgment of the Apex Court in the case of **Rudhra Kumar Sen & Others Vs. Union of India & Others 2000 SCC (L&S) 1055**. The apex court has stated that as under:-

"In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be "stoppage or fortuitous or purely adhoc."

8. The counsel for the respondents in his arguments has stated that the applicant being on adhoc basis and the order being specific that it is only the regular employees who could be inducted into N.C.R., relied upon the case of **Inder Pal Yadav & Ors. Vs. U.O.I. & Ors.** And RBE No. 115 of 2003 as per which provisional local promotion in the project cannot be taken as having vested in the employees, a right either to continue in the project to resist the reversion back to the cadre.

9. In so far as the case of **Inder Pal Yadav (supra)** is concerned, the same does not apply to the facts of the present case, as the case in hand, does not relate to employment in any project. The Railways themselves have clarified that judgment of the apex court should be the guiding factor while dealing with "the matter relating to manning of post in the

6

construction and other project including R.E. and reversion of staff back to the cadre". Thus, it does not apply to option for change of zone. The contentions and points raised by the counsel for the applicant on the other hand merit consideration and taking into account the fact that the applicant has been functioning as Head Clerk since October, 1985, coupled with the fact that he has been selected for induction into the NCR where also, his seniority having been duly fixed, all these go to confirm that the applicant has never been treated as ad hoc in all these hears and hence he has been holding the post of Head Clerk on regular basis. In addition, the provisions of Rule 122 of the Code referred to above, come to the rescue of the applicant and the Constitutional Bench Judgment fully supports the case of the applicant.

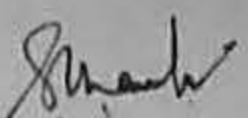
10. In view of the above, the O.A. succeeds. The impugned order dated 1.11.2004 (Annexure-1) is quashed and set-aside. The respondents are directed to retain the lien and seniority of the applicant in the Ministerial cadre in Engineering Department of N.C. Railway Headquarters, Allahabad and allow the applicant to continue in the said Railways. The respondents are further directed to consider the applicant for promotion to the higher grade as Office Supdt. Against the upgraded post under the restructuring cadre w.e.f. 1.11.2003 in accordance with law.



11. Under the above circumstances, no order as to costs.



MEMBER-J



MEMBER-A