

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

HON'BLE MR. A.K. GAUR , MEMBER (J)
HON'BLE MR. S.N. SHUKLA, MEMBER (A)

Original Application Number. 439 OF 2004.

ALLAHABAD this the 5th day of June , 2009.

Om Shankar Lal Srivastava, aged about 42 years, S/o Sita Ram Srivastava, R/o Badhaiya Chauk, Gorakhpur .

.....Applicant.

VER S U S

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. The Chief Personnel Officer, North Eastern Railway, Gorakhpur.
.....Respondents

Advocate for the applicant: Sri Pankaj Srivastava

Advocate for the Respondents: Sri Devendra Pratap Singh

ORDER

Delivered by Hon'ble Mr. A.K. Gaur, J.M.

By this O.A. filed under section 19 of the Administrative Tribunals Act, 1985 the applicant has prayed for quashing the order dated 04.09.2003 (Annexure A-8 to the O.A.) passed by the General Manager, Karmik, North Eastern Railway, Gorakhpur.

2. Facts of the case, in brief, are that in pursuance of advertisement dated 16.04.1987 through Employment Exchange, Gorakhpur for the post of Group 'C' under handicapped quota, the applicant being handicapped applied and appeared in the written examination held on

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10.05.1987 followed by viva voce. The result of said examination was published on 14.05.1988 in which the applicant was declared successful in written examination as well as in viva voce. According to the applicant, after completing all due formalities i.e. medical examination, verification of testimonials etc., a panel of selected candidates was prepared and immediately thereafter appointment letters were issued to the candidates, who were selected for the post of Office Clerk, Typist and Telephone Operator. The grievance of the applicant is that no appointment letter was issued in his favour whereas several persons selected for the post of Senior Clerk by the respondents have got their appointment letter just after the declaration of the result but the respondents did not issue appointment letter to the applicant. Aggrieved by the inaction of respondents, the applicant preferred several representations to the respondents for issuance of appointment letter and ultimately the respondents issued appointment letter only on 12.08.1991.

3. In the seniority list dated 30.03.2001/Annexure A-5 of O.A, the name of the applicant appears at Sl. No. 5 treating his date of appointment as 23.08.1991. Learned counsel for the applicant would contend that the applicant was selected as Senior Clerk in the year 1987 and number of persons selected with him were given appointment letter immediately after the declaration of panel, whereas the applicant could join the post of Senior Clerk only after getting appointment letter dated 12.08.1991. The respondents are counting the services of persons of same panel, who were issued appointment letter prior to the applicant, from the date of issue of appointment letter ignoring the case of the applicant. Aggrieved the applicant filed several representations dated 15.01.2003, 05.02.2003, 21.03.2003, 16.04.2003, 23.05.2003 and 08.08.2003 for

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counting his seniority with effect from the date when the other selected candidates of same panel were allowed to join their duties, ignoring the case of the applicant. Vide impugned order dated 04.09.2003/Annexure A-8 of O.A, the competent authority rejected the claim of the applicant without giving any reason. Learned counsel for the applicant also submitted that the order dated 04.09.2003 is wholly cryptic and has been passed without application of mind. According to the learned counsel for the applicant, the persons selected alongwith the applicant through the same panel have been declared senior to the applicant as they have been issued appointment letter prior to the applicant whereas the applicant could only be issued appointment letter on 12.08.1991 for which he is not at all responsible.

4. On notice the respondents denying the claim of applicant filed Counter Affidavit. Learned counsel for the respondents vehemently denied the plea taken by the applicant that he was always ready to join the duties. In support of his contention, learned counsel for the respondents invited our attention to the representation dated "NIL"/Annexure-1 to the Counter Affidavit preferred by the applicant and submitted that the applicant was not ready to go on posting out of Gorakhpur due to his domestic problems, therefore, when the vacancy occurred at Gorakhpur, appointment letter dated 22.08.1991 was issued to the applicant. Learned counsel for the respondents also denied the submissions of the applicant regarding filing of several representations and submitted that neither such representations have ever been received nor available with the respondents except application dated "NIL"/Annexure CA-1. Learned counsel for the respondents further argued that in pursuance to the appointment letter dated 22.08.1991, the applicant submitted his joining

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on the same date /Annexure-3 to C.A. Learned counsel for the respondents would further contend that although the appointment was made on the basis of panel position and availability of vacancy, but as the applicant had requested for his posting only at Gorakhpur due to his domestic problem, therefore, the appointment letter could only be issued to him when the vacancy arose at Gorakhpur. The seniority of the applicant has rightly been assigned to him according to rule. Learned counsel for the respondents submitted that as per para 302 of the I.R.E.M assignment of seniority of the applicant has rightly been shown from the date of his appointment on the post i.e. w.e.f. 22.08.1991 and sought for dismissal of O.A.

5. Counsel for the applicant has not filed Rejoinder Affidavit denying the averments made by the respondents in their Counter Affidavit.

6. We have heard learned counsel for the applicant and perused the pleading as well as the Written arguments submitted by Sri D.P. Singh, learned counsel for the respondents,

7. For better appreciation, we may refer to para 302 of I.R.E.M Vol. I , which reads : -

"302. Seniority in initial recruitment grade - Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on railway servant seniority above those who are already appointed against

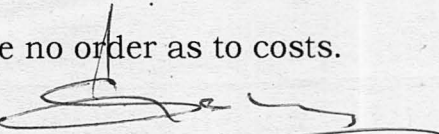
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regular posts. In categories of posts particularly filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-seniority of promotees and direct recruits among themselves.....”.

8. In the present case, in view of para 302 (referred to above), the seniority of the applicant has rightly been assigned for which responsibility cannot be attributed on the respondents as admittedly, the applicant himself vide his representation dated “NIL”/Annexure-1 to the Counter Affidavit, requested the respondents for not posting out of Gorakhpur due to his domestic problems.

9. In view of the observations made above, We find no good ground to interfere with the order dated 04.09.2003 passed by the respondents. Accordingly the O.A is dismissed being devoid of merits.

10. There will be no order as to costs.



MEMBER-A.



MEMBER-J.

/Anand/