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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.146 of 1986

Yogendra Kumar Misra ..... Appellant  
Vs.

1. Union of India  
2. Divisional Railway Manager,  
North Eastern Railway,  
Izatnagar, Bareilly ..... Respondents.

Hon. D.S.Misra, AM  
Hon. G.S.Sharma, JM

( By Hon. G.S.Sharma, JM)

This civil appeal no.39 of 1983 against the judgment and decree dated 1.12.1982 passed by <sup>Bareilly</sup> Munsif Hawali, dismissing suit no. 345 of 1981 with costs, has been received by transfer under Section 29 of the Administrative Tribunals Act XIII of 1985 from the Court of Civil Judge, Bareilly.

2. The relevant facts of this case are that the plaintiff was working in the N.E.Railway as a Junior Clerk and according to the seniority lists published in 1964 and 1967, he was senior to one R.S.Saxena. The said R.S.Saxena was promoted to officiate as Senior Clerk in 1967 ignoring the claim of the plaintiff. On the representation of the plaintiff, the respondent no.2 was directed from the office of the General Manager, N.E.Railway to promote him in place of R.S.Saxena but the respondent no.2 did not carry out the said orders. The denial

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of promotion to the plaintiff thus amounts to punishment without any lawful authority. In accordance with the decision dated 24.11.1979 on the representation of the plaintiff, the respondent no.2 under the direction of the General Manager, N.E. Railway, Gorakhpur promoted and confirmed the plaintiff as Senior Clerk in the grade of Rs.330-560 w.e.f. 21.1.1980. On the other hand, R.S.Saxena was promoted and confirmed w.e.f.21.11.1967; the plaintiff, therefore, claimed the benefit of his promotion and arrears of salary of the post of Senior Clerk w.e.f.27.11.1967 when R.S.Saxena, junior to him, was promoted. Despite a notice under Section 80 Code of Civil Procedure, when the respondents did not pay heed to the request of the plaintiff, he filed the suit giving rise to the present appeal claiming Rs.9,926/- on account of difference in pay w.e.f.27.11.1967.

3. The suit was contested on behalf of the defendant-respondents and denying all the plaintiff allegations, they pleaded in their written statement that the seniority list of 1964 of the plaintiff is not available in the office as the same was destroyed in the fire breaking out in the record room of the divisional office in Feb.1980 and it cannot be said that the plaintiff was shown senior to R.S.Saxena in the said list. The Junior Clerks are promoted as

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Senior Clerks on the basis of seniority-cum-suitability and not on the basis of seniority alone. R.S. Saxena was temporarily promoted to officiate as Senior Clerk w.e.f. 27.11.1967 to 29.10.1971 on the purely ad-hoc basis. On the representation of the plaintiff, he was promoted as Senior Clerk vide order dated 21.1.1980 in a regular vacancy and he has been allowed proforma fixation of pay w.e.f. 27.11.1967 on which date R.S. Saxena was promoted, vide order dated 10.2.1981. Under the rules, the plaintiff is not entitle to claim arrears of pay and allowances from any date prior to the date of his promotion as he did not shoulder the responsibility of the higher post at that time. The suit is barred by time and Section 80 CPC and it is also undervalued.

4. The plaintiff filed a replication in the case reaffirming his plaint allegations and further pleaded therein that the relevant seniority list of 1964 was available in the personal files of the employees. The seniority lists published in 1966, 1969, 1972 and 1975 were available with the plaintiff, in which he was shown to be senior to R.S. Saxeann. R.S. Saxena was promoted as Senior Clerk without any suitability test and his test was taken only on 15.3.1969. His promotion was, therefore, in contravention of rule 212 of Indian Railway Establishment Manual (hereinafter referred to as the Manual) and the plaintiff has been wrongly denied the benefit of

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pay and allowances w.e.f. 27.11.1967 when R.S.Saxena was promoted and his suit is perfectly in order and he is entitled to get the difference claimed.

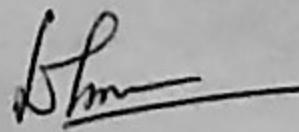
5. The learned trial Court framed 6 issues in the case. The material issue no.1 was decided against the plaintiff and it was held that in view of the circular letter Ex.A-1 of the Railway Board, the plaintiff is not entitled to get higher pay for the period in which he had not worked on the higher post and as the circular orders of the Railway Board have force of law, the plaintiff is not entitled to the amount claimed. The suit was accordingly dismissed with costs. Aggrieved by the findings recorded against him, the plaintiff preferred this appeal, which has come before us under the changed law. Despite full opportunity, the plaintiff-appellant did not appear on the date fixed for hearing and as such, we were deprived of the assistance of his learned counsel and we have heard the arguments only on behalf of the respondents.

6. The sole question arising for determination in this case is whether the Railway Board's letter no.E(NG)68/PM 1/92 dated 15/17.9.1964, which provides that the enhanced arrears on account of delay in promotion shall not be payable as the official did not actually shoulder the duties and responsibilities of the higher grade post before his promotion, is

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valid and binding on the parties. Before a New Delhi Bench of the Central Administrative Tribunal, this question had also arisen under a little different circumstance in the case of S.D.Agnihotri Vs. Union of India ( A.T.R. 1986 CAT- 293) in which the Hon'ble Members of the said Bench had observed that the provisions of the aforesaid Board's circular letter are embodied in para 228 of the Railway Establishment Manual and relying on the same, the petitioner before that Bench was deprived of his right to get arrears of his pay for the period, his promotion was delayed due to the laches of the railway administration. We feel that we are not expected to take a different line of action in this case, specially, when it has not been pleaded before us that the aforesaid circular letter of the Railway Board or para 228 of the Railway Establishment Manual are unreasonable, unjust and infringe any fundamental right of the plaintiff-appellant. We, therefore, uphold the findings recorded by the Court below on this point against the plaintiff and there is no merit in this appeal.

7. The appeal is accordingly dismissed. We will however, like to direct the parties to bear their own costs.



6.1.1987  
Member (A)

6.1.1987  
Member (J)

Dated 6.1.1987  
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