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Court no.2  
Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Transfer Application No. 544 of 1986.

Jeet Narain

... Plaintiff-  
applicant.

Versus

Union of India

.... Defendant-  
respondent.

Hon'ble D.S.Misra-AM

Hon'ble G.S.Sharma-JM

( Delivered by Hon'ble D.S.Misra)

Original Suit No.179 of 1984 pending in  
the court of Munsif 'I' Gorakhpur has come to us  
on transfer under Section 29 of the Administrative  
Tribunal Act, 1985.

2. The admitted facts of the suit are,  
that the plaintiff, who was appointed as Hospital  
Attendant w.e.f. 27.6.1964, was subsequently  
promoted as clerk in the scale of Rs. 260-400  
and posted in the statistical office North-  
Eastern Railway, Gorakhpur; that the railway  
administration illegally deleted the name of the  
plaintiff from the Select list and consequently  
cancelled his promotion order as clerk in the  
scale of Rs.260-400; that inspite of his various  
representations to the Railway Administration to  
redress his grievances, the defendant (Railway-  
Administration) did not pay any heed and the  
plaintiff filed a suit in the court of Munsif

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Gorakhpur, which was decreed by the II Addl. Munsif Gorakhpur. The appeal preferred against the said judgment by the Railway Administration was also dismissed by the II Addl. District Judge, Gorakhpur. Consequently the plaintiff was promoted as clerk vide order dated 11.3.1982 of the General Manager(P). In the present suit the plaintiff's grievance is that the Railway Administration illegally posted him in the office of the Chief Hospital Superintendent North-Eastern Railway, Gorakhpur and not in the statistical office. It is alleged that had he been posted in the statistical office, he would have been promoted as senior-clerk in the scale of Rs.330-560 w.e.f. 1.10.1980 consequent upon the restructuring of the clerks of statistical office. The plaintiff submitted representations to the Railway Administration which did not pay any heed to him. Though the plaintiff is senior to others, he is still working in the scale of Rs.260-400 whereas his juniors were promoted in the scale of Rs.330-560 w.e.f. 1.10.1980. The plaintiff has further alleged that consequent on the decree in his suit, the plaintiff became entitled to payment of the difference of wages which he would have received, had he been promoted as clerk in the scale of Rs.260-400 from 1.10.1980. The plaintiff has claimed arrears of wages amounting to Rs.2468/30 P. from the Railway Administration for the period 17.5.1977 to 1.10.1980. The plaintiff has also claimed difference of wages as clerk and as senior clerk w.e.f. from 1.10.1980 to

31.5.1984 approximately amounting to Rs.5500/-. The plaintiff has sought a declaration that he is entitled to get the payment of wages for gazetted holidays, restricted holidays, and second saturdays from 17.5.1977 to 12.3.1982, while he was utilized in hospital as he is to be deemed to have been working as clerk in the scale of Rs.260-400 w.e.f. 17.5.1977 and that he is entitled to promotion as senior clerk in the scale of Rs.330-560 w.e.f. 1.10.1980, the date from which his juniors have been promoted in the statistical office North Eastern Railway, Gorakhpur.

3. The defendants denied the claim made by the plaintiff and contested the suit on the grounds, that the suit is undervalued and the court fee paid is insufficient; that the suit is barred by Section 48 of the Specific Relief Act; that the suit is barred by principle of estoppel and acquiescence; that the suit is barred for want of legal and valid notice under section 80 CPC; that the plaintiff was promoted as Dresser purely on ad hoc basis and he was not eligible to be called in the selection for the post of clerk and as such his appearing in the selection for the post of clerk was found to be irregular and his name was deleted from the panel of clerks reverting him back to his parent department; that subsequent to the decree in plaintiff's suit and dismissal of the Railway Appeal, the plaintiff was posted in the office of Chief Medical Officer, Gorakhpur and his

pay was refixed w.e.f. 17.5.1977 and he was also paid arrears of salary from 17.5.77 to 11.3.1982 the date of actual posting of the plaintiff as clerk in compliance with the judgment of the court; that since the plaintiff initially belonged to medical department, so he was posted back as clerk in his parent medical department and there was no defiance of the verdict of the court in this regard as alleged by the plaintiff; that since the statistical department and medical department are two different promotional units and as the plaintiff was posted in the medical department, where his lien existed, so he has to seek his promotion as per his seniority position in the medical department; that the plaintiff has no right to claim seniority in the statistical office as he is working in the medical department; that the promotion to the post of senior clerk from that of junior clerk is done on the basis of seniority cum suitability unitwise and he will get his promotion in the medical department on his turn; that none of his juniors in the medical department has been promoted to the post of senior clerk; that the assertions made in para 12 of the plaint are merely based on conjectures and the claim of the petitioner for wages on account of casual leave, restricted holidays, second saturdays, and gazetted holidays was not permissible under the rules; that it is incorrect to say that the plaintiff is entitled to receive any difference of

wages as clerk and senior clerk amounting to Rs. 5500/- or any other amount claimed by him for the period 1.10.1980 onward; that it is wrong to say that the plaintiff being scheduled caste candidate, is entitled to get his promotion as senior clerk on exchange basis; and that it is emphatically denied that anything has been done by the Railway Administration to harass the plaintiff because of his filing the suit against the Railway Administration as alleged by the plaintiff.

4. The plaintiff has filed reply to the written statement in which the averments made in the plaint were reiterated and the allegations made by the defendants were denied. The plaintiff asserted that had the order dated 17.5.77 been rightly implemented and had he been posted in the statistical department, he would have got the promotion w.e.f. 1.10.1980. The plaintiff filed annexures 1 to 12 in support of his claim.

5. We have heard the learned counsel for the parties and have gone through the documents on record. The main point for consideration in this case is whether the plaintiff is entitled to be posted in the statistical department w.e.f. 17.5.77. Learned counsel for the plaintiff has contended that the judgment dated 20.3.1980 passed by Munsif II Gorakhpur in suit no. 735 of 1977 which was confirmed by the District Judge, Gorakhpur in appeal and the Hon'ble High Court in Second Appeal, clearly stipulates such an order. The operative portion of

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the judgment dated 20.3.1980 of Munsif-II Gorakhpur directs the Railway Administration, Gorakhpur that the plaintiff should be allowed to work as clerk in the scale of Rs.260-400 in accordance with order no.E/210/14 PT/4/2/8 dated 17.5.1977. The petitioner has filed copies of the judgment dated 20.3.1980 of Munsif-II Gorakhpur (annexure-1), judgment dated 25.3.1981 of the Addl. District Judge,Gorakhpur(annexure-2), order dated 16.9.1981 passed by the Allahabad High Court(annexure-3) and the order dated 17.5.1977 (annexure-4). A perusal of annexure-4 would show that by this Order the applicant was <sup>to be</sup> appointed as a clerk in the scale of Rs.260-400 and posted in the statistical department. 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department w.e.f. 17.5.1977, he would have been promoted to the grade of a senior clerk as his juniors were already promoted. This fact has not been denied by the defendants. The defendants have also conceded that the plaintiff was not due for promotion in the Medical Department even-after reckoning his seniority w.e.f. 17.5.1977. Learned counsel for the defendants has argued that when the applicant was posted as a clerk in the Medical Department on 11.3.1982 as a follow up of the order of the Hon'ble High Court, the plaintiff did not make any objection at that time. The plaintiff has filed copy of a letter addressed to the Chief Personnel Officer N.E.Rly. Gorakhpur in which he has claimed wages for working on national holidays, overtime allowance, promotion as senior clerk and difference of arrears of pay of senior clerk amounting to Rs.150/- p.m.. The date on which this representation was made is not given in <sup>copy</sup> of the filed by him <sup>be</sup> representation. However, from a perusal of the letter dt. 22.2.1984 of the Chief Hospital Superintendent LNM Rly. Hospital, Gorakhpur addressed to General Manager(P), copy annexure-8, it appears that the above-mentioned representation was made sometime before that date, i.e., 22.2.1984. The petitioner has not mentioned the date on which his juniors in the panel found suitable for promotion from Class-IV to that of clerk, were promoted as senior clerk. However, this information can be obtained from a perusal of the notice under Section 80 C.P.C. given by the plaintiff before filing the

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suit. In this notice the plaintiff has claimed arrears of the difference of the pay as clerk and as senior clerk w.e.f. 1.10.1980 to 31.5.1984. In the plaint, the plaintiff has claimed that he was suffering the loss of Rs.180/- p.m. from 1.6.1984. From this it can be inferred that the orders of promotion of some of his juniors in the panel referred to above as a result of restructuring and reorganization was passed sometime in the year 1984, although the order became effective from 1.10.1980. It is after this date that the plaintiff realised that had he been working in the statistical department, he would have been given proforma promotion w.e.f. 1.10.80.

7. From the above narration of events it is established that the plaintiff's grievance is genuine and he can not be deprived of his due rights, merely because he did not protest against his posting in the Medical department in March, 1982 when he was posted there. The plaintiff's conduct was quite natural as he could not foresee the happening which took place at a later date. In his plaint the plaintiff has sought an alternative relief that he may be promoted in the Medical Department itself where some posts of UDC are still available but which are to be filled by general candidates. We have considered the matter and we are of the opinion that the request of the plaintiff is reasonable and should have been acceded to by the Railway Administration. We are also of the opinion that the

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plaintiff is entitled to promotion as Upper Division Clerk w.e.f. 1.10.1980, the date from which his juniors in the Statistical Department have been promoted. So far as the payment of arrears is concerned, the plaintiff is also entitled to receive arrears of pay and fixation of his salary at the appropriate stage treating him as having been promoted w.e.f. 1.10.1980. The plaintiff has also claimed payment of wages for gazetted holidays, restricted holidays, and second saturdays for the periods 17.5.77 to 12.3.1982, while he was utilized in hospital, though he was deemed to have been working as clerk in the scale of Rs.260-400. The plaintiff has not furnished details of such employment and the defendants have denied the claim of the plaintiff. We are of the opinion that this claim of the plaintiff is not maintainable.

8. Other points mentioned in the written statement of the defendants were not pressed before us and therefore, we are not discussing those points.

9. For the reasons mentioned above, the suit is decreed accordingly, <sup>in part</sup> without any order as to costs.

~~20/1/87~~  
A.M.

*Indore*  
20/1/87  
J.M.

J.Singh/ 20.1.1987.