

Reserved:

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration O.A. 188 of 1987

Parsuram Senkar Applicant.

Versus

General Manager (Personnel) North Eastern
Railway Gorakhpur and another Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The instant dispute is in respect of seniority between the applicant and the respondent no. 2. The applicant was appointed as Junior Clerk on 6.6.1959 and the respondent no. 2 was also appointed as Junior Clerk on 4.5.1959. By means of this application, the applicant has prayed that the respondent no. 1 may be directed to modify the seniority list and the name of the applicant and respondent no. 2 be exchanged on the place of other. So far as the applicant and the respondent no. 2 was concerned, the amended Railway Boards letter 18.2.1967 and the Railway Boards letter dated 13.10.1967 are ultravires and being violative of Rules 306, 315 and 304 of the Railway Establishment Manual, and an order or direction may also be issued setting aside the order dated 7.1.1986 and order dated 9.4.1986 passed by the C.E. (Con) NER Gorakhpur so far as the respondent no. 2 is concerned. 8 posts of Senior Clerk were sanctioned by the Railway Project of Signal Workshop of N.E. Railway Gorakhpur in 1975 and to fill up these posts, a suitability test was initiated

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and was held on 29.11.1975, 4.2.1976 and 20.3.1976. The result of which was published on 13.7.1976 in which the applicant was declared successful while the respondent no. 2 was declared failed. As the result was declared 13.7.1976 i.e. after more than six months after initiation of suitability test and no posting order of the applicant could be issued. In view of the Railway Boards' letter dated 13.10.1967, another suitability test was conducted after expiry of period of six months in which the respondent no. 2 was also called to appear and was declared successful. The applicant filed a writ petition against the holding of subsequent suitability test and also to promote the applicant against the vacancy of senior clerk. The High Court has passed an interim order restraining the respondents for filing in one existing vacancy which had occurred on 28.8.1976 on the basis of selection which took place on 20.10.1976, but it was open for the respondents to appoint the applicant in that vacancy in an officiating capacity. Accordingly the applicant was posted to the post of Senior Clerk vide order dated 22.12.1976 but the applicant could not take charge of the post as the posts were frozen. They were again defrozen on 13.3.1977 and the applicant was promoted as Senior Clerk only on 14.3.1977. The respondent no. 2 was subsequently promoted in pursuance of the suitability test on 12.7.1977 on the availability of the next post. The applicant who was promoted prior to the promotion of the respondent no. 2 but in pursuance of the Railway

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Boards letter dated 18.2.1967, in which in para -3, item no. (1) it has been laid down that such an employee should be given preference over his juniors, who had passed suitability test earlier but is still waiting to be promoted ^{to the} post for want of a vacancy and accordingly the respondent no. 2 has been assigned a higher seniority position in the category of Senior Clerk than the applicant. The respondent no. 2 was promoted to the next higher post of Head Clerk on 16.11.1982 while the applicant was promoted upon the said post on 4.3.1983. The seniority list of the Head Clerk as on 1.4.1985 was published on 22.8.1985 and not on 22.8.1986. In the seniority list of head clerks, the applicant is at No. 23 while the respondent no. 2 is at No. 18, which was based on the seniority list of the senior clerk published on 6.12.1982 as on 1.4.1982 in which the name of the applicant appears at Sl. No. 52 while the name of the respondent no. 2 was at Sl. No. 51. The writ petition filed by the applicant was dismissed in default on 24.5.1984.

2. On behalf of the respondents, a preliminary objection has been raised that the application is barred by time in as much as the applicant has not challenged the seniority list of the year 1982, and as such, it is no longer open to him to question the said seniority list and his application should be thrown out on this very ground. On behalf of the applicant it has been contended that this objection has not substance in as much as the applicant has already challenged the list of the senior clerks published on 3.12.1979 which in fact

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is the basis of the seniority list dated 6.12.1982. There is no denial of the fact that the applicant challenged the seniority list of the year 1979 and at no stage his representation was disposed of. It appeared that the applicant never satisfied with the promotion which was so given to the respondent no. 2 before him and in these circumstances, it can not be said that the application is barred by time or if there is any delay, the delay in these circumstances is liable to be condoned. Much reliance has been placed on the Railway Boards circular dated 21.3.1967. It was also clarified to one of the Railway Administrations that in the case of non-selection posts, a suitability test should not be held at intervals of less than 6 months and all staff eligible on the basis of seniority should be called up for the test irrespective of whether such an employee had failed to qualify in the previous test. It was also clarified that the employee who has passed a suitability test once should be subjected to it again if the interval between the date of passing and the date of occurrence of vacancy is more than 6 months.

3. After taking into consideration all the facts and circumstances of the case, in our view, the applicant is not entitled to get seniority and promotion over the respondent no. 2 but as the applicant has also passed the test and the result was declared after 6 months and that is why, the examination held, the applicant can not be made to ~~suffer~~ suffer because of the laches and lapses on the part of the respondents. In case, the result would have been declared earlier, in normal course, the applicant would have got promotion

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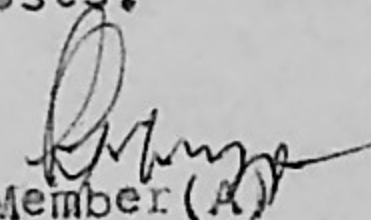
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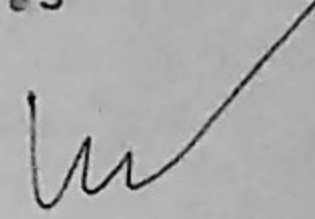
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earlier and in that even he too may have entitled for promotion.

4. Accordingly, the applicant's case for promotion may also be considered counting the period of 6 months from the date when his result was declared. Let this consideration be done within a period of 3 months from the date of communication of this order. But for the above observations, the application is otherwise dismissed. No order as to the costs.


Member (A)


Vice -Chairman

November 5th 1992.
(n.u.)

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Vice-Chairman

November 5th 1992.

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13/11/92