

THE CENTRAL ADMINISTRATIVE TRIBUNAL-ALLAHABAD BENCH-ALLAHABAD.

T.A. No. 2012 of 1987.

Bishambhar Prasad Singh and others..... Applicants.

Versus

The Union of India Respondents.

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

(By Hon'ble Mr. Justice U.C. Srivastava-V.C.)

The applicants filed a suit in the court of Civil Judge Gorakhpur praying that a decree may be passed in their favour against the office order dated 19.5.1984 issued by the Deputy Controller of Stores N.E. Railway Gorakhpur on the basis of letter dated 17.5.84 reverting them from the post of Head Clerk to the Post of Senior Clerk with effect from 8.1.1984 and the defendants were ordered to fix the seniority date of the plaintiffs from the date of entry into the grade keeping in mind the implementation of the Railway Board's letter dated 22.9.69 and they have qualified in the written and Viva Voce test for the post of Office Superintendent Grade II, a decree of mandatory injunction may also be passed that they may be posted as Office Superintendent/II and their seniority be fixed in Office Superintendent Grade II from the date of their selection to the post of Office Superintendent Grade II. The suit was dismissed ^{turn} ex parte, against this they filed an appeal, but no written statement was filed. They filed an appeal which has been transferred to this Tribunal. The pleadings are complete and the ex parte decree is set-aside as the grounds for the same are sufficient and the case is being heard and disposed of on merits.

2. According to the applicant prior to 22.9.69 there were three sides in the Depot - Ministerial, Non-Ministerial and General and the Clerks who were on the General side had no avenue of promotion. Ultimately with the intervention of the Union, the Railway Board issued a circular dated 22.9.1969

to all the General Managers directing that all the staff of Stores Depot, both from Ministerial and Ward-Keeping sides could be initially recruited through the Railway Service Commission and while making the recruitments, the number of Clerks required exclusively for the Establishment Branch of the various offices of the Stores Department should separately be indicated. It was further directed that within one year of their non-fortuitous promotion of these Clerks to the Grade of Rs. 130-300 they would be required to exercise option to seek their further avenue of promotion either on the Ward Keeping (Non-ministerial side) or Ministerial side. The seniority was allowed to the employees vis-a-vis Clerk should be based on their seniority in the initial recruitment grade Rs. 110-180. Vide Circular dated 18.1.1974, the Railway Board provided for channel of promotion. In this circular also emphasized that staff in scale of Rs. 110- 180 in the Stores Depot should exercise the option within one year. The circular was implemented in the Northern Railway in the year 1969, but it was implemented in N.E. Railway on 1.1.1981. In the Second circular no criteria for determining the seniority was laid down. According to the applicant they would have been promoted as Senior Clerk w.e.f. 9.9.1980 and 26.5.81, when they were appointed as Junior Clerk through the Railway Service Commission with effect from 7.9.56, 8.11.56 and 22.3.57 respectively. This claim is on the ground that the railway Circular was implemented in Northern railway w.e.f. 1.1.1969 and those who got promotion later on were cancelled on 1.1.1981. The implementation was taken place in the year 1979 as per allegations that applicants would have been promoted as Office Superintendant in that year. The applicants were called for selection and the applicant no. 1 and 2 qualified in the same, but even then the Deputy Controller of Stores/Depot vide letter dated 3.2.84 addressed to the General Manager/P recommended the case of the applicants holding that the seniority of the applicants has been revised considering

their length of service in terms of Railway Boards Letter dated 22.9.1968. The general Manager issued an order ~~to~~ of promotion to the post of Head Clerk on the basis of Seniority assigned to the applicants be kept in abeyance till a review is conducted in the Avenue of promotion chart. According to the applicants those who were members of rival, were given seniority and without giving any opportunity of hearing whatsoever the General Manager vide his order dated 17.5.84 stating therein that the applicants/ were promoted as Head Clerks vide ~~an~~ office order dated 8/10.1.84 is cancelled and the applicants are being reverted to their substantive post of Senior Clerk and the applicants were reverted. According to them they are entitled to get original seniority from the entry into the Grade and ought to have been promoted/ on the basis of Railway Board Circular letter dated 22.9.69 and they/ have been entitled to have been posted as Office Superintendent Grade-II.

3. The Respondents Railway Administration has opposed the claim on the ground that vide letter issued by the Railway Board directed that a policy be prepared regarding seniority of staff of Stores Depot recruited through Railway Service Commission both for Ministerial side and non-Ministerial Side except the Staff recruited for establishment branch. The General Manager prepared an Avenue of channel of promotion providing for policy and ~~manner~~ of promotion of staff of Stores depot both in Ministerial side and non-ministerial side, The circular dated 6.11.80, partially superseded and modified vide a subsequent letter dated 1.1.81. It was decided that the Clerks will retain their seniority after the distinction is abolished (distinction of Clerk or Senior Clerk of Ministerial side or non-ministerial side). Since Clerks would be retaining their original seniority even after promotion to Senior Clerk grade, they would rank senior to the senior Clerk of non-ministerial side (Depot side) who got promotion after 18.1.74 depending upon length of their service. The Railway

Administration letter dated 18.1.74 only provides for a second option which was to be given to the senior staff at the time of vacancy in the higher grade and this was done only to mitigate the hardship of employees. Senior Clerk was to retain the seniority of Junior Clerk but this was applicable to promotion as Senior Clerk made after 18.1.74. The persons who claiming seniority were promoted as Senior Clerk 18.1.74. Whereas the applicants were promoted in the year 1980 and accordingly seniority of the person in the Grade of Senior Clerk could not be disturbed and the applicants have a right to rank junior to them. They were wrongly assigned seniority position in violation of Circular letter dated 6.11.80 read with 1.1.81 and were called for selection to the post of Office Superintendent. The applicants could not have been promoted prior to 18.1.74 in absence of circular dated 6.11.80 read with letter dated 1.1.80 as there were no vacancy on the post of senior Clerk on Ministerial side. The applicants were junior Clerks on Ministerial side.

4. Thus the case hinges on the interpretation of the circular. The circular dated 22.9.69 which is a pivotal point, for both the sides, it provides that even one more non-fortuitous promotion they will required to exercise/option and the seniority of/above their employees vis-a-vis Clerk should be based on ~~the~~ seniority in the initial recruitment in grade 110 - 180. The channel of promotion of the same was also provided. The circular clearly speaks that clerk will retain the seniority in the grade of junior Clerk and Senior Clerk after the distinction is abolished. The Junior Clerk having ~~been~~ longer service on the Ministerial side will get promoted as senior clerk as and when vacancy arises, since they will be retaining their original seniority after promotion to the grade of senior Clerk, they will be senior to the senior clerk of non-ministerial side. The letter of the year 1981 which also gives the channel of promotion to the postwise seniority of junior

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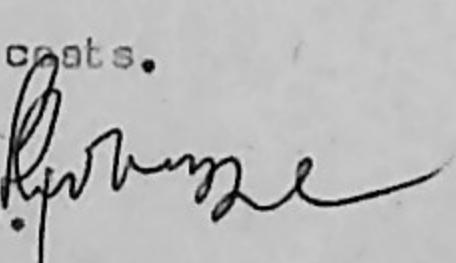
Clerk in the grade 260-400 will be unit controlled. There will be no distinction of Ministerial/non-Ministerial side. There will be one seniority for all Clerks working in one unit, for promotion from Junior Clerk to Senior Clerk, the unitwise seniority will be taken into account. It again re-iterates that the Clerk in the Grade of Junior Clerk or Senior Clerk and a Senior Clerk is required to pass suitability test before his promotion as Senior Clerk on Ministerial side. Vide letter dated 18.1.74 the Railway Board further clarified the position making variation in the earlier decision. It directed for giving effect to decision taken in Departmental council held on 8/9.11.73. It was decided that option for non-fortuitous promotion in the grade of Rs. 130-300 should not be treated final and a further opportunity be given to senior most person at the time vacancy in the higher grade has to be filled. Issues arising are to be settled locally in connection with recognised Union. It was made clear that contention was not that any person promoted in non-fortuitous arrangements should be reverted. Adjustment should be made utilising existing and future vacancies. Thus according to the respondents before issuance of channel of promotion dated 6.11.80. Junior Clerk of Ministerial side even though having more years of service as Senior Clerk as compared to Junior Clerk of Ministerial side was not getting promotion as Senior Clerk and next higher post for want of vacancy on the post of senior Clerk as Ministerial Side. The avenue of promotion dated 6.11.80 provides that Junior Clerk or Ministerial side or non-Ministerial side as promotion as Senior Clerk shall retain their seniority as Junior Clerk but this was applicable to promotion as Senior Clerk made after 18.1.1974. The plaintiff-applicants were promoted as Senior Clerk in 1980 whereas persons mentioned in paragraph 14 of plaint were promoted as Senior Clerk much before 18.1.74 as such they will rank Senior. The plaintiff applicants who were junior Clerks on Ministerial side could not be promoted prior to 18.1.1974 in absence of circular dated 6.11.80 read with letter dated 1.1.1981 as there was no post of Senior Clerk on Ministerial

side. According to the applicants as per avenue of promotion provided vide letter dated 6.11.1980 modified vide letter dated 1.1.1981 issued by General Manager (P) N.E. Railway Gorakhpur was not consistent with the Railway Board's Circular dated 22.6.1969 which was modified vide circular letter dated 18.1.74 and if this would have been properly implemented that would have been no occasion for cancellation of applicants' promotion.

5. In the matter of initial appointment, the applicants were first in time as compared to those who got one promotion earlier and for accommodation when the applicants' promotion has been cancelled. After promotion certain rights accrued in favour of the applicants from which they could have been deprived only if initial appointment was not the starting point for determination of seniority and the circular of 1969 which as such was not varied except in the matter of exercise of option expressly or by implication provided a different mode of determination of seniority. The applicants get benefit from the channel of promotion ~~xxx~~ issued in 1980 which was not be read in isolation detached from initial appointment and dating back of promotion list linking it ~~xx~~ with circular of 1969. The seniority/so prepared causing cancellation of promotion taking a particular date as cut off date. Subsequently smacks arbitrariness ignoring the initial appointment in the grade of 110-180. Accordingly this application deserves to be allowed and it is allowed. No order as to the costs.

Member (A).

Dt: July 20, 1992.
(DPS)


Vice Chairman.