

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH ALLAHABAD

Original Application No. 424 of 1988

Union of India & Others . . . . . Respondents

Hon'ble Mr. Maharajdin, Member (Judicial)

Hon'ble Mr. V.K. Seth, Member (Administrative)

( By Hon'ble Mr. V.K. Seth, Member(A)

The applicant joined Railway service on 26.4.1958, as Shunt Man and after being promoted as Shunting Jamadar was subsequently promoted as Trains clerk against the departmental quota vide order dated 28.10.1986 and after being declared surplus was transferred as clerk grade-II U/Senior D.E.E(T.R.S.)/Moghalsarai. Later on, he was tested for the post of clerk grade-I and empanelled on 17.1.1980 and subsequently promoted as such on 8.2.1980.

The applicant claims that vide seniority list of clerk grade-II of the Electrical department for Danapur Division published on 7.1.1972, he was placed at serial no. 58 and the respondent no. 4 was placed at serial no. 59.

After formation of Moghalsarai Division in 1978, a provisional seniority list of clerk grade-II was published on 13.4.1979, in which he was placed at serial no. 59 and the respondent no. 4 Jogendra Prasad at serial no. 52 while the respondent no. 5 at serial no. 20. He further avers that as a result of his representation, he was made senior to respondent no. 5 and due to correction of seniority, the

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respondent no. 5 was reverted from the post of clerk grade-I on 1.12.1979 and the applicant was given proforma fixation of pay from 1974 vide office order dated 20.3.1980. He further alleges that the said provisional seniority list dated 13.4.1979 was made final and published on 31.8.80, in which the applicant was placed at serial no. 25 and the respondent no. 4 and 5 at serial no. 28 and 27 respectively. He also states that on the basis of seniority list, he was called for test for the post of head clerk and was found suitable for the said post vide office order dated 11.6.85 and promoted to the post of Head Clerk against upgraded post w.e.f. 1.1.1984 vide office order dated 19.6.1985. He alleges that without giving any opportunity to the applicant, the respondent no. 2 and 3 made respondent no. 4 senior to him vide order dated 8.5.87. In violation of Para 322(b) of Railway Establishment Manual, the seniority list dated 31.8.80 was amended on the representation of the respondent no. 4, after a lapse of 7 years. The representation of the respondent no. 4 should not have been entertained, as laid down in para 322(b) of Railway Establishment Manual. He further avers that arbitrarily, illegally, the respondent no. 2 and 3 purported to assign the seniority of the applicant below to the respondent no. 4 and 5 vide order dated 20.8.87. He further alleges that without paying any heed to his representation dated 16.9.87 he was treated as reverted to the post of clerk Grade-II w.e.f. 1.1.1984 to 9.7.1985 and excess payment made to him for the said period was ordered to be recovered from him in suitable installments.

2. The applicant has also pointed out that the respondent no. 4 came on transfer from Dhanbad Division to

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undivided Danapur Division on his own request accepting bottom seniority and joined in Danapur division on 17.1.67 as Clerk Grade-II. He also pointed out that the respondent no. 5 was promoted as trains clerk vide orders dated 28.10.86 in which, the applicant being in class III category, was promoted as trains clerk and in the panel, he was placed at serial no. 3 while the respondent no. 5 at serial no. 5 vide order dated 28.10.1966. He draws attention to the facts that the respondent no. 4 and 5 were declared ineligible for head clerk vide office order dated 28.4.1987, but were still promoted as Head clerk.

3. Aggrieved by action of the respondent no. 2 and 3, the applicant has approached this tribunal to quash the orders dated 8.5.1987, and 20.8.1987 assigning him seniority below respondents no. 4 and 5 and order dated 25.9.87 reverting him from the post of Head clerk for the period 1.1.1984 to 9.7.85 ordering recovery of excess payments.

4. The respondents have opposed the application, inter-alia, on the ground that the seniority of clerk grade-II Sri R.N. Thakur, Joginder Prasad, ~~and~~ Amir Singh etc. was in dispute and was not finally decided while in the mean time Sri Pandey was promoted as clerk-I dated 8.2.1980 due to in advertence. They also allege that the appeal of Joginder Prasad and Amir Singh (respondent no. 4 and 5) were under consideration and further that Joginder Prasad reported on request transfer in the Danapur Division on 26.11.1966 and was ultimately posted in T.N.C. on 16.1.1967 at Gaya and it was due to over sight that 16.1.1967, was taken into account for the purpose of seniority instead of

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26.11.1986. They also state that the representations of the applicant dated 20.5.87, 16.9.1987 and subsequent dates were examined by the D.R.M. personally in presence of the applicant on 26.10.1987 and the applicant accepted the decision verbally and a written reply dated 19.2.1988 was made available to him.

5. We have carefully examined the records of the case and heard the learned counsel for the parties. During the hearing the learned counsel re-iterated their position as already submitted in the pleadings. The reply dated 8.5.87 to Sri Joginder Prasad(respondent no. 4) on his representation inter-alia, states that your appeal has been examined by the competent authority and he has decided that you will rank senior to Sri Pandey(Applicant)(as clerk grade-II in Electrical Department). The respondents have not been able to produce any documents to show that the applicant was given any opportunity before his seniority was disturbed to assign lower position to his dis-advantage. The applicant has objected to entertainment <sup>of</sup> the representations of the respondents 4 and 5 beyond the time limit in violation of para 322-B(para 321-B) of the Railway Establishment Manual Vol. I(revised addition 1989). This para reads as under:-

" Staff concerned may be allowed to represent about the assignment of their seniority position within a period of one year after the publishing of the seniority list. No cases for revision in the seniority list should be entertained beyond this period."

We are of the view that the language of this para is in the nature of a guide line and directory and not mandatory. Therefore, the administration is not barred <sup>from</sup> entertaining

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representation on the subject matter of seniority beyond the period of one year, in case they feel that a mistake or wrong committed in the past needs to be corrected as otherwise, the same may result <sup>in</sup> ~~in~~ injustice. Nevertheless it goes without saying that such ~~discretion~~ should not be exercised in violation of the principles of natural justice. It was therefore, imperative on the part of the administration to consider the objections of the applicant in accordance with the principle of audi alteram partem before taking a decision in the matter. The reply of the respondents dated 19.2.1988 to the applicant on the other hand shows that our attempt has been made by the respondents to justify the action already taken by them. This letter, inter alia, states that "the D.R.M. after examination concluded that the decision taken . . . . . vide letter dated 20.8.1987 will hold good and that you have already been convinced with the view of the administration." We have no doubt in our mind that the action of the administration is in clear violation of the principles of natural justice, as he was given no opportunity of being heard before his seniority was refixed to his disadvantage below respondents no. 4 and 5.

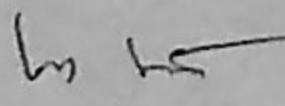
6. The order of the respondents dated 25.9.1989 retrospectively reverting the applicant from the post of Head clerk and ordering recovery likewise suffers from legal infirmity. The applicant during the period from 1.1.1984 to 9.7.1985 had actually worked as a Head clerk shouldering higher responsibility entitling him to a higher pay commensurate with his duties. There is therefore no way of nullifying that fact by a mere stroke of pen and there is no doubt that the applicant

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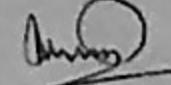
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is fully entitled to the emoluments for the post of Head clerk for the period for which he has worked as such.

7. In view of the fore-going discussion, we quash the impugned orders dated 8.5.1987, 20.8. 1987 and 25.9.1987. We further direct that the applicant will be entitled to the salary of a head clerk for the period 1.1.1984 to 9.7.1985 and in case, any recovery has already been effected from his salary or otherwise in accordance with the orders of 25.9.1987, the same will be refunded to him. We also direct that the seniority of the applicant together with the seniority of the respondents no. 4 and 5 will be fixed afresh as clerks grade II and higher levels after giving a hearing personally to the applicant and the respondents no. 4 and 5 and considering all their pleas by the respondents no. 2 or 3 in accordance with the relevant rules. The respondents shall comply with the above orders within a period of three months from the date of receipt of this judgement. The application is disposed of with the ~~xxxxxx~~ above observations. No order as to costs.

  
Member (A)

Allahabad Dated: 5, 1993.  
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Member (J)