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Court No.1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.1037 of 1988

Awadhesh Misra and 2 Others Applicants

Versus

Union of India & Others Opposite Parties.

Hon. Justice Kamleshwar Nath, V.C.

Hon. K.J. Raman, Member (A)

(By Hon. Justice K. Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for a direction to make proforma fixation of the pay of the applicants as Senior Clerks with effect from 1.10.80 and to give benefit thereof throughout.

2. Counter and Rejoinder have been exchanged and there is not much dispute so far as facts are concerned.

3. The applicants were working as Junior Clerks on 1.10.80 in Stores Group II D.L.W. Varanasi when a policy of restructuring in the ministerial cadre was adopted by the Railway Board. Annexure-I dated 18.6.81 is a letter providing for appointment of Senior Clerks to the extent of 20% of the total strength by direct recruitment through competitive examination held by the Railway Service Commission and by promotion of graduate Junior Clerks with appropriate age relaxation on their passing Railway Service Commission Examination held for the purpose to the extent of $13\frac{1}{3}$ % of the total

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strength. These orders were made effective from 1.10.80 with a condition that arrears could not be paid. The circular was further clarified by Annexure-II dated 31.7.81 stating that vacancies upto 30.9.80 were to be filled in accordance with the orders in force prior to the issue of Annexure-I and that the benefit of Junior Graduate Clerks to the extent of $13\frac{1}{3}\%$ of the total strength would be available only to the vacancies arising on 1.10.80 in consequence of the scheme contained in Annexure-I.

4. By a Circular dated 6.4.84, Annexure-III, applications were invited by 5.9.84 from Graduate Junior Clerks intending to take the limited departmental examination to be held by the Railway Service Commission. It was stated that the candidates must have been graduate as on 1.10.80. The applicants and several others appeared at the examination. Annexure-IV dated 21.2.85 is the panel of the Senior Clerks framed as a result of that examination including the viva voce which was held on 18.1.85. 13 persons were placed on the panel in order of merit. Applicant No.1, Awadhesh Misra is at Sl.No. 13. Applicant No.2, Pradeep Narain Singh is at Sl.No.2 and applicant No.3 Kashi Nath is at Sl.No.5.

5. Letters of appointment dated 5.7.85, Annexure-V and dated 14.8.85, Annexure-VI were issued in favour of applicant Nos 1 & 2 respectively; the letters did not indicate the date from which they would have got the benefit of appointment as Senior Clerks. No order

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of appointment was issued in respect of applicant No.3. It was said in the order dated 15/17.10.85, Annexure, VIB that since the applicant was already working as Senior Clerk from the date earlier than 21.2.85, the question of his promotion as Senior Clerk against Graduate quota did not arise. It was however said that the persons empanelled and appointed would count their seniority with effect from 21.2.85 and not from any earlier date.

6. It also appears from a statement of vacancies contained in the circular Annexure-III inviting applications for appearing at the examination that there were three vacancies on 1.10.80 and six vacancies after 1.10.80 in Stores Group II of the D.L.W. The applicants' case is that since the adequate number of vacancies were already in existence on 1.10.80 and the applicants were regularly selected vide panel Annexure-IV and appointed as Senior Clerks as stated above, they are entitled to the benefit of proforma fixation of their pay as Senior Clerks with effect from 1.10.80 in view of the scheme contained in Annexures I & II. They say that the refusal of the respondents to grant that ~~benefit~~ benefit and to confine the benefit only to the date of empanelment i.e. 21.2.85 is not correct.

7. The substance of the defence is that so long as the applicants have not taken this selection examination and were not declared pass, they could not be

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given the benefit of proforma fixation from a previous date and could only get those benefits from the date of their appointment or at best their empanelment.

8. We have gone through the record and considered the submissions made. Our attention has been invited to a decision dated 29.10.86 contained in Annexure-VIII in O.A. No.132 of 1986 Surendra Kumar Sandhya and Others Vs. Union of India and Others decided by this Bench where these very facts had come up for consideration. The Railway Board's circulars of 18.6.81, Annexure-I and 31.7.81, Annexure-II were considered and it was held in para 9 of the judgement that according to the decisions contained in those letters, upgradation was to be effective only when the candidates were available, actual payment of emoluments in the higher post, i.e. Senior Clerks, were to be allowed only from the date the selected persons took charge of the higher grade post, but the proforma fixation of pay had to be made with effect from 1.10.80 without payment of arrears.

9. It is not necessary to traverse the reasons recorded by this Bench of the Tribunal in O.A. No.132 of 1986; we are in respectful agreement with the reasons stated there.

10. Even so, it has to be established that adequate number of vacancies did exist on 1.10.80 in the Stores Group II, which the learned counsel

for the applicants says 'did exist' as per Annexure-III, and that the applicants ought to stand in the highest order of merit for appointment in the Stores Group II Section. The learned counsel for applicants says that they are the seniormost although according to the panel, as indicated above, they are at Sl. Nos 2, 5 and 13. We do not consider it necessary to ascertain the facts in this regard at this stage because we presume that it will be possible for the respondents to accord due position of the applicants bearing in mind the aforesaid panel.

11. This petition is allowed and it is directed that in case adequate number of vacancies of Stores Group II in D.L.W. Varanasi existed as on 1.10.80, the respondents shall make proforma fixation of pay as Senior Clerks with effect from 1.10.80 in favour of the applicants if they stood seniormost in order of merit as per panel contained in Annexure-IV in the said Group. Their pay shall be computed accordingly as on their respective date of promotion as Senior Clerks and they shall be paid arrears from those dates but they shall not get arrears for the period prior to such dates. Parties shall bear their costs. The respondents shall comply with these orders within three months from the date of receipt of a copy of this judgement.

Member (A)

Vice Chairman

Dated the 23rd May, 1990.

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