

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH ALLAHABAD.

Allahabad this the 30th day of January 1996.

Original Application No. 1095 of 1988

Hon'ble Mr. T.I. Verma, JM
Hon'ble Mr. D.S. Baweja, AM

Brijesh Kumar Sonker, aged about
33 years, S/o Sri Brij Bhushan
Sonker, R/o 25, Baghada Kalan,
Cavallery Lines, Allahabad.

..... Applicant.

C/A Sri R.K. Ninam

Versus

General Manager, Northern
Railway. New Delhi.

..... Respondent.

C/R Sri Amit Sthalkar

O R D E R

Hon'ble Mr. D.S. Baweja. Member-A

This application has been filed praying for promotion in the grade Rs. 330-560 from 28.6.82 as a Senior Clerk, when his junior has been promoted, and also transfer back to Allahabad Division.

2. The applicant joined as a junior clerk on a direct recruitment through Railway Service Commission and was posted on 9.7.1979 under Railway Service Commission, Allahabad, and a lien maintain on Allahabad Division of Northern Railway. The applicant appeared in the written test for the post of senior clerk in October 1982, and was placed on the panel notified on 30.10.1982 (Annaxure-2). The applicant was posted back in the office of Divisional Railway Manager Allahabad on 13.8.83. Subsequently he was transferred to Kanpur vide office order dated 21/28.9.83. On reporting back to the

Contd...2....

Division, the applicant represented about his promotion as a senior clerk. Instead of promoting the applicant, however, vide order dated 18.1.1984, he was transferred to Lucknow Division, which is another Seniority Division^{unit}. The applicant had been repeatedly representing about his promotion. Vide letter dated 9.7.1986 Divisional Railway Manager, Allahabad, addressed to Divisional Railway Manager Lucknow (Annexure-A-9), it was agreed that the applicant is entitled for promotion as a Sr. Clerk from 26.8.82, when his junior Sh. B.K. Shankar^{Sonkar} has been promoted in the Electrical Unit Seniority. However, Lucknow Division did not agree with this and stated vide letter dated 9.2.88 (Annexure A-10), that he can be considered for promotion from 7.7.83, when his junior in the Seniority of Lucknow Division has been promoted.

3. The main pleadings put forwarded in the application as well as reiterated by the learned counsel for the applicant during hearing are as under:

- (i) The applicant was regularly selected as a Senior Clerk and was not considered for promotion when due, even though no disciplinary or vigilance case was pending against him.
- (ii) He was transferred to another seniority unit of Lucknow Division without his request.

4. In the original application the multi-reliefs has been prayed for. However, the same were not allowed at the admission stage and only relief (A)^{9(a)} has been allowed in the application.

5. The respondent in the counter have admitted about the applicant having been placed on the panel for the post of Senior Clerk in the grade 330-560 notified on 30.10.82 for filling up the vacancies which occurred after implementing the orders of upgradation with affect from 1.10.80.

Since he was being placed on the panel, a reference was made to the Chairman Railway Service Commission under whom the applicant was working at that time for seeking clearance for the pendency of any disciplinary or vigilance case against the applicant. Chairman Railway Service Commission advised that disciplinary action is contemplated against the applicant on account of unauthorised absence for the period from 9.2.83 to 11.8.83. In view of this the applicant was not promoted as a Senior Clerk. He was posted at Kanpur in the same grade where there was vacancy at that time. Subsequently communication was received from the Head Quarter Office dated transferring the applicant to Lucknow Division with effect from 21.1.84. The applicant never raised any objection against this transfer and having accepted the transfer he cannot make belated complaint against the same now. Further the applicant is not entitled for promotion from 1.10.80 as prayed for by him as the panel declared on 30.10.82 ^{has} formed to fillup the vacancies arising subsequent to implementation of upgradation from 1.10.80. As regards his claim for further promotion to the grade Rs. 550-750, no person junior to him has been promoted on Allahabad Division in the concerned seniority unit.

The respondents have also opposed the application on the ground of being highly time barred.

6. We have heard the learned counsel for the applicant and the respondents. Counter has been filed by the respondents, however, there is no rejoinder to the same by the applicant. We have also carefully considered the material placed on record.

7. It is admitted that the applicant was regularly selected as junior clerk and his name was placed on panel notified on 30.10.82 at S.No. 4. It is also admitted that he was transferred to Lucknow Division which is another seniority unit on the

administrative reason, and not on the request of the applicant. The respondent have averred that being placed on the panel, applicant's clearance for pendency of any disciplinary or vigilance case was sought from the office where the applicant was working at that time. Since the advise was received from the concerned office that disciplinary action was contemplated to be taken for ~~unauthorised~~ absence, the applicant was not promoted when due. However, there is no submission anywhere in the counter that any disciplinary action was initiated against the applicant. It is ^{thus} obvious that the contemplated disciplinary action was not taken. The contention made by respondent for not promoting the applicant on this plea is therefore not understood. The applicant has been ^{therefore} denied of his promotion when due. Although the panel has been declared on 30.10.82, it transpired from the letter dated 9.7.86 of Divisional Railway Manager Allahabad Division (Annexure -A1), that his junior was promoted as a Senior Clerk from 28.6.82, and the applicant was also due for promotion from that date. This is also the prayer of the applicant. Therefore, the applicant is due for promotion as Senior Clerk from 28.6.82.

The promotion by Lucknow Division has not been agreed to be given to the applicant from 28.6.82 on the plea that the seniority unit where the applicant has been posted on the Lucknow Division on transfer, his junior has been promoted from 7.7.83. The transfer has been ordered by Head Quarter Office vide letter dated 7.1.84. The copy of this order has not been furnished by both the parties. However no submission has been made in the counter disclosing the reasons as to why the transfer of the applicant was necessary from ~~the~~ one Division to another in the interest of administration. From the submission made it transpires that Head Quarter letter was a secret letter. No show cause notice was also given to the applicant before being transferred. Therefore, transfer to Lucknow

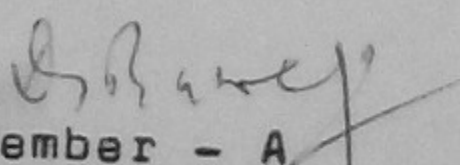
Division which is different seniority unit, without affording reasonable opportunity to the applicant is arbitrary, and illegal and violative of the Principles of Natural Justice.

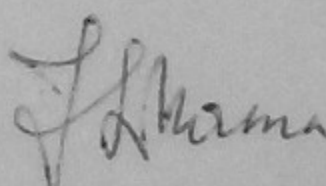
8. As regards the contention of application being barred by limitation, it is noted that Allahabad Division conveyed its decision on the representation for promotion vide letter dated 9.7.86. Lucknow Division reacted to the same vide letter dated 9.2.88 by not agreeing with the date of promotion proposed. As brought out above there has been flagrant violation of Principles of Natural Justice, therefore, we are not inclined to accept the contention of respondent on limitation. We will also refer to judgement of Central Administrative Tribunal (Cuttack) on O.A. 26 of 1988 dated 18.1.1994 reported in SLR 1994(3) Page 692 in which observations on the question of limitation by Supreme Court in a case "State of Karnataka Vs. Kuppuswamy Gounder" AIR 1987 SC 1353 have been reproduced to reinforce the above view.

9. Considering the above background, we allow the application with the following directions:

- (i) The applicant will be treated as promoted as a Senior Clerk from 28.6.82 and will be paid all the arrears of the pay as due from that date onwards.
- (ii) The applicant will be transferred back to the Allahabad Division restoring his seniority in the unit from which he was transferred with promotion as senior clerk from 28.6.82.
- (iii) He will be considered for further promotions on Allahabad Division as due as per the extant rules with his promotion as senior clerk from 28.6.82.
- (iv) Cost of Rs. 1,000/- will be paid to the applicant by the respondents.
- (v) The compliance of the directions will be done within a period of 4 months from the date of judgement.

The application is disposed of accordingly as per the above directions.


Member - A


Member - J