

(A21)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 17th DAY OF JULY, 1995

Original Application No.1199 of 1988

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. S. DAS GUPTA, MEMBER(A)

1. Shri Prem Nath aged about 47 years, son of Shri Jayanti Das, employed as Senior Clerk, Office of the Deputy Chief Engineer(Construction) Northern Railway, Jammu Tawi and R/o Qr. No.E-C/21D Railway West Colony, Jammu Tawi, Jammu and Kshmir.

...Applicant

BY ADVOCATE SHRI G.S. SRIVASTAVA

VERSUS

1. Union of India through the Secretary
Ministry of Railways, Government of India, New Delhi.
2. General Manager Northern Railway, Baroda House, New Delhi.
3. Chief Engineer(Construction), Northern Railway, Kasmiri Gate, Delhi-6
4. Divisional Railway Manager, Allahabad

...Respondents

BY ADVOCATE SHRI A.K. GAUR

Order (Reserved)

JUSTICE B.C. SAKSENA, V.C.

When the O.A. came up for final hearing on 7.7.95 for detailed reasons to follow we had ordered the O.A. to be dismissed. We had heard Shri G.S. Srivastava, learned counsel for respondents for the applicant. Shri A.K. Gaur had sent his illness slip.

2. The learned counsel for the applicant drew our attention to the orders passed on earlier dates whereby it was provided that the O.A. shall be heard in the absence of the learned counsel for the respondents and submitted that since the petition is pending since 1988, it may be taken up for hearing. Accordingly, we were persuaded to hear the learned

counsel for the applicant even though the learned counsel for the respondents was not present.

3. Through this O.A, the applicant, interalia, has prayed for the following reliefs:

- (a) Quashing of the orders contained in Annexure 10 & 11.
- (b) Direction for the respondents to regularise the services of the petitioner as Clerk in the grade 260-400(RS) fixing his seniority with effect from the date of regularisation of service of Shri K.S. Bhatt and for further promotion and other benefits in Open Line at par giving effect to the circular letter and panel list of 31 candidates prepared and issued by the respondents as contained in Annexure 5.

4. The brief facts are that the applicant was appointed as Gangman under PWI Fatehpur in Allahabad Division of the Northern Railway. He was transferred under I.O.W/Spl/Alld as Khalasi and later on he was promoted as Storeman in grade 80-110. It is alleged that in the year 1971 a selection for the post was held from amongst Class IV educated staff working under Construction Organisation. After the selection a panel of 31 candidates were declared promoted and selected and the applicant was posted under Senior Civil Engineer (construction), Northern Railway, Jammu Tawi, and now he is working as a Senior Clerk.

5. The learned counsel for the applicant has taken us through the various documents on record to show that out of the 31 selected candidates the services of quite number have been regularised on the post of ~~XXXXXX~~ Clerk. As far as the applicant is concerned, the documents show that the matter of regularisation of the applicant in the Clerical cadre was taken up for consideration and recommendations were also made in his favour. Ultimately, by the impugned order dated 16.11.84 Annexure 10 passed on behalf of the DRM, Northern Railway Allahabad, it has been indicated that

as per G.M.(P) New Delhi's letter dated 16.5.83 the services of only those who were eligible for the post of Office Clerk are to be regularised. It has also been indicated in the impugned order that the applicant was advised in reply to his representation that he had been substatively appointed as Gangman under PWI. In the said order it has been indicated that there was no such channel of promotion of Gangman to the post of Clerk against promotee quota and as such it was not possible to regularise the adhoc promotion of the applicant in the clerical cadre. Annexure 11 is a letter dated 25.6.85 by which it was indicated that out of the three class IV employees holding lien on Alld. Division who were empanelled as a result of aforesaid selection, two persons were assigned seniority as Clerk but similar action in respect of the applicant has not been taken. It was requested that outstanding issue be decided by advising the branch in which he was assigned lien seniority. It was also indicated that he may be considered for promotion as Senior Clerk. The applicant has indicated in the O.A that he is working as a Senior Clerk.

6. In the written statement the channel of promotion of Office Clerks and Typists have been filed to buterass the plea that the applicant as a Gangman or a Store Keeper does not come in the said channel of promotion to the post of Clerk. The learned counsel for the applicant has not been able to indicate any illegality in the reason indicated in the impugned order to hold that the applicant is not entitled for regularisation in the clerical cadre. The learned counsel has only submitted that the applicant has been discriminated inasmuch as almost all the 31 empanelled candidates have been regularised. We find that in respect of such of the empanelled candidates whether there was a

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dispute against their being regularised on the basis of clerks each case has been considered on merits and orders have been passed accordingly. The reason for the applicant's non-regularisation as clerk has been advanced and indicated in the impugned order. Despite our pointed questions to the learned counsel for the applicant to show that any store man amongst the empanelled 31 candidates has been regularised as Clerk. The applicant's ^{counsel} only drew our attention to Annexure R-1. Therein the names of three persons viz Balvir Singh, Manohar Lal and Bashir Mohd do occur. They were working as clerks in local arrangements. Previously they were store issuers and the last one was working AS A Gangman. This Annexure R-1 furnishes the requisite information only pursuant to the DRM, Northern Railway, Bikaner's letter dated 3.9.83. Annexure 6 contains the names of these persons and we find, that besides the said **names of others** three/awaiting regularisation/and a request was made to finalise the issue so that a reply may be given at the P.N. M. meeting. This document does not show that the three persons referred to Annexure R-1 had been regularised on the post of clerk. In the absence of relevant material it is difficult to hold that the applicant has been discriminated.

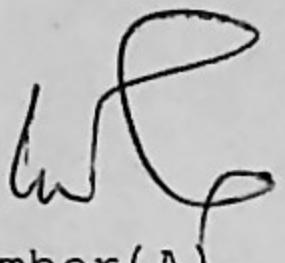
7. However, before closing our decision we wish to point out that the applicant had been duly empanelled as a Clerk. No doubt, the applicant has failed to prove the **plea** / ^{of} discrimination, but nevertheless, the fact remains that the applicant has been working as a clerk since 1971. He also appears to have promoted to the next higher post of Senior clerk. In the circumstances, we put a specific question to the learned counsel for the applicant whether non-regularisation will affect the applicant in the matter of his post retirement benefits. The learned counsel conceded that

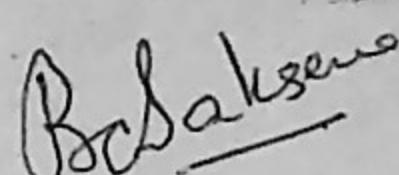
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the period of services rendered by the applicant on the post of a clerk and thereafter as a Senior Clerk will be **computed** for his post retirement benefits. The position on this aspect of the matter is not very clear as the learned counsel for the respondents was not present. We, therefore wish to observe that in view of the factual position that the applicant was continued to work as a clerk after being duly empanelled, the respondents will consider the question of computing the period of services rendered by the applicant in the clerical cadre favourably for grant of post retirement benefits.

8. Subject to the observations made hereinabove, the O.A is dismissed accordingly. There will be no order as to costs.


Member (A)


Vice Chairman

Dated: 17th July, 1995

Uv/