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Reserved.

Central Administrative Tribunal, Addl. Bench,
Allahabad.

Dated This The 16th January, 1997.

Coram: Hon'ble Dr. R.K. Saxena, JM.
Hon'ble Mr. D.S. Baweja, AM.

ORIGINAL APPLICATION NO: 1452 OF 1992.

Nazir Ahmad Siddiqui son of Late Sri Habibullah,
at present working as Senior Clerk Personnel
Branch, Office of the Divisional Railway
Manager, Northern Railway, Moradabad.

.. Applicant.

(C.A. Sri A.K. Sinha.)

VERSUS:

1. Union of India through the Divisional
Railway Manager, Northern Railway,
Moradabad.

2. Senior Divisional Personnel Officer,
O/O Divisional Railway Manager,
Northern Railway, Moradabad.

Respondents.

(C/Respondents: Sri A.K. Gaur.)

Order.

(By Hon'ble Dr. R.K. Saxena, J.M.).

The applicant has approached the Tribunal Under Section 19 of the Administrative Tribunals Act, 1985 with the relief that the respondents be directed to decide the seniority of the applicant as senior clerk with effect from 3/9/1979, the date when he was promoted in the grade of Rs 1200/- to Rs 1800/-. The second relief is that the respondents be directed to pay him Rs 70/- p.m. as Special pay attached to the pay post of senior clerk.

2. The facts of the case are that the applicant was working as a highly skilled Fitter Grade-I in the pay scale of Rs 1320/- to Rs 2040/- p.m in the Rosa Shed. The respondents had decided to close down the Rosa shed and option was called for from the staff which was declared surplus. The applicant was also declared surplus; and therefore, he opted for the clerical cadre. The respondents absorbed the applicant in the clerical cadre vide order dated 25.2.1988. He was made senior clerk in the ⁹ Personnel ⁹ branch of the Respondent No. 1. The applicant worked in the capacity of senior clerk. It is claimed that the applicant was promoted in the highly skilled Fitter Grade-II of Rs 1200/- to Rs 1800/- on 3.4.1979 in the Carriage and Wagons Department, Rosa Shed and the post of highly skilled Fitter Grade-II was equivalent to the post of senior clerk. He should, therefore, have been given seniority of senior clerk as on 3.4.1979. It is asserted that the same view was taken while determining seniority of one Sri Om Prakash Singh, who was also a highly skilled Fitter -

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Grade II, ⁹ and was absorbed as a Senior clerk. The applicant claims that the Railway Board had also issued circular dated 21.4.1989 on the subject of abolition of surplus staff and it was clarified that the surplus staff should be absorbed in the Units according to their seniority and should be suitably adjusted with the full seniority.

3. Not only that the proper seniority was not given to the applicant, ~~and~~ the Special pay of Rs 70/-, which was given to the Upper Division Clerks in the non-secretarial administration, was ^{also} not allowed to him. It is contended by the office that because the applicant was a new man in the personnel branch and that he was not aware of the seniority, which was assigned to him, so he could not claim seniority and a representation was made then and there and thereafter as well.

4. It is stated that the respondents in consultation with the Northern Railwa Men's Union had decided that the surplus staff should not be given alternate cadre in the carriage and Wagon department. Accordingly, the applicant was again posted in the Garriage and Wagon Department vide order dated 6.4.1989. The said order was challenged by filing an O.A. No: 324/88.

* N.A.Siddiqui and Others. v/S: Union of India and Others". Two more O.A Nos: 325/89, and O.A.No.326/89 were filed. All the three O.As were decided by a common judgment dated 27.10.1980. The result of this decision was that the order dated 6.4.1989 was quashed. The contention of the applicant was that -

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although, the respondents retained the applicant as Senior clerk, but this seniority vis-a-vis others, was not determined. Juniors to him were promoted and the applicant continued as Head clerk. Special pay was also not given. Representations were made, but with no result.

5. It is stated that the respondents had issued Seniority list of the senior clerks in the grade of Rs1200/- to Rs2040/- on 10.7.1972, but the name of the applicant was not shown. He however, claims that his name should have been between Kashmiri Lal and Surendra Singh. Another seniority of the Head clerks in the grade of Rs1400/- to Rs2300/-p.m was also issued on 23.6.1992. In the said list from Vikram Ram to P.S. Kashyap, who were juniors to the applicant, were shown. ² The third list of Assistant Superintendants in the grade of Rs1600/-to Rs2660/- was also issued. It contained the names of 13 persons. It is claimed that all those 13 persons were junior to the applicant. Since the respondents had not determined the seniority of the applicant correctly and had not paid Special pay allowance of Rs70/-, the O.A. with the above mentioned reliefs, is filed.

6. The respondents have filed Counter-affidavit indicating that the applicant was promoted as a highly skilled fitter Grade-I on 27.3.1982 in the pay scale of Rs1320/- to Rs2040/-p.m. It is submitted that on account of closure of Rosa Depot., the applicant was allowed to change the category. Anyway, it was not known to the respondents whether the applicant had opted or not for absorption as a Senior clerk. It -

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is admitted that he was absorbed as Senior Clerk and was posted in the Personnel Branch on 17.3.1988. The fact of the order dated 6.4.1989 being challenged in the Tribunal, is admitted. It is pointed out that the S.L.P was preferred against the judgment of the Tribunal and the said SLP was pending before the Hon'ble S.C. It is, therefore, urged that the O.A. is not maintainable.

7. The applicant has filed a rejoinder reaffirming all those points which were taken in the O.A.

8. We have heard the learned counsels for the parties and have perused the record.

9. The question of determination in the case as to what should be the seniority of the applicant in the cadre in which he was absorbed on the closure of Rosa Depot. Similarly, the second point for consideration is whether the applicant is entitled for special pay which is attached to the post of senior clerks. There is no dispute that the applicant was working as highly skilled Fitter Grade-I in Rosa Depot. When the decision to close the Rosa depot. was taken, the staff of Rosa depot. was declared surplus. It was also an undisputed fact that the staff which was declared surplus was asked to opt posting in alternate departments. The result was that the applicant had opted for clerical cadre and was given appointment in personnel branch. The contention of the applicant is that there was clear circular of the Railway Board



that the staff which was given alternate jobs, would maintain their old seniority. This fact has not been denied by the Respondents. The applicant, therefore, contends that the post of highly skilled Fitter Grade-II ^{senior &} was equivalent to the grade and seniority of clerk, and the post of highly skilled Fitter Grade-I was equivalent to the Head Clerk. It is also contended that the said benefit was given to one Sri Om Prakash Singh, who was highly skilled Fitter Grade II, and was absorbed as senior clerk. The respondents, no doubt have come with the plea that it was not known if any option was given by the applicant. It appears ridiculous because the applicant could not have been absorbed as senior clerk in the personnel branch unless the option was given by him. No categorical answer about the benefit which was given to Sri Om Prakash Singh, has been given by the respondents. Only thing which is asserted is that the S.L.P. was filed before the Hon'ble Supreme court challenging the order dated 27.10.1980 passed by the Tribunal in the C.A. as were mentioned by the applicant. The S.L.P. is said to be pending. Anyway, here the question of determination of seniority of the applicant is that he was absorbed in the clerical cadre and posted as senior clerk in the personnel branch. Illustration of Sri Om Prakash Singh, who was highly skilled fitter ^{is} ~~could be~~ ^{grade II and was} equated with the senior clerk and was absorbed as senior clerk, there is no justification of the applicant being denied ~~the~~ the said benefit. Admittedly, the applicant before the absorption in the clerical cadre, was working as highly skilled fitter Grade-I. In the clerical side, the next promotion -

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to the senior clerk is that of being appointed as Head clerk. In such a situation, the applicant ought to have been absorbed as Head Clerk in the Personnel branch.

10. It cannot be disputed that the absorption in the clerical grade, the post of seniority would not be kept in view. There are two grounds for this conclusion. First is that while considering the case of Om Prakash Singh, the respondents had taken the same view and had maintained the entire seniority. The second reason is that this view was taken by Madras Bench of the Tribunal in the case of ' Mookiah and Others V/s Union of India and Others' (1992) 19 ATC 552. In another case, " D.K.Jain and Others Vs. Union Of India and Others" (1988) 8 ATC 374. Ahmedabad Bench had also taken the same view. Their Lordships of Supreme Court in the case of " V.S. Murti and Others Vs. Deputy Chief Accounts Officer and Others" 1983(I) SLR 655 held that the seniority of the transferred Govt. Servants for absorption, should be fixed with reference to the date of his first appointment ~~in~~ the former department or the office where ~~he~~ was transferred. In another case " General Manager South Central Railway, Sikandrabad and another. V/S A.V.R.Siddharthi and Others". AIR 1974 S.C. 1755 took the view that in the service wherein the ~~degraded~~ seniority is maintained, the differential treatment could not be made. In this case, their Lordships allowed the

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seniority of the Catageory II and III from the said date from which, it was allowed in the Category-I.

In view of this factual as well as, the legal position we come to the conclusion that the applicant was absorbed in the clerical cadre after he had exercised option and his seniority was protected. In the case of Om Prakash Singh, the decision protecting the seniority and deciding equivlance to the post, was taken into consideration. Thus, the applicant cannot be discriminated against. Since the applicant has retired, he cannot be given actual promotion but he would be entitled for monetary benefits arising out of the same *after rejoining his service*.

II. The applicant has also claimed special allowance of Rs70/- which was admissible to the other senior clerks. After absorption of the applicant in the clerical cadre, he stood merged in the said cadre and thus, he cannot be denied the benefits which were permissible to all other persons.

Accordingly, the applicant is entitled to special allowance in the same manner in which it was made available to the other employees of the clerical cadre.

In the result, the O.A. is allowed. No order as to the costs.

Bhunjis
MEMBER(A).

MEMBER(A).

I. Dukdag
MEMBER(J).