

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 6th day of June 1997.

Original Application no. 1602 of 1992.

Hon'ble Mr. S. Dayal, Administrative Member.

S.N. Datta, s/o Late Shri M. Datta, Retd Head Clerk,
P.W.I. Office, N. Rly., Fatehpur. R/o House no. 126-A,
Nathpuri Colony, Fatehpur.

.... Applicant.

C/A Shri O.P. Srivastava.

Versus

1. Union of India through General Manager, N. Rly.,
Baroda House, New Delhi.
2. Divisional Railway Manager, N. Rly., Allahabad Division,
Allahabad.

..... Respondents

C/R Shri A.C. Mishra.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the
Administrative Tribunals Act, 1985.

The applicant has prayed that he should be declared
to be holding the post of store clerk on regular basis
since 03.02.67 and was entitled to all consequential benefits.
He has also prayed that arrears due to him should be
ordered to be paid by the respondents with 18% interest
from the date of entitlement, i.e. 3.2.67 to the date
of payment. He has prayed that the respondents should be

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directed to pay the cost of application to him.

The applicant has mentioned in his application that he joined Northern Railway as Material Checking Clerk in the scale of Rs. 105-135 in 1959. The post of Material Checking Clerk in the scale of Rs. 105-135 was upgraded to the post of Material Clerk in the scale of Rs. 110-180 with effect from 1.1.64. The applicant has claimed that the post of Material Checking Clerk, later upgraded to Material Clerk, was semi technical and was in a different category from the post of office clerk. Its method of selection, seniority list and duty list were also different. The applicant claims that only material checking ^{clerks} were upgraded as material clerks and candidates from other categories were not given the benefit of this upgraded post. He states that the post of store clerk in the scale of Rs. 130-300 was created in place of material clerk in the scale of Rs. 110-180 and the post of material clerk ceased to exist from the date of creation of the post of store clerk which was 03.2.67 in the form of Circular letter no. EB/66 Engg/Review. The applicant claims that he was not aware of this circular and that he continued to discharge the functions of Store Clerk. He states that D.S.E. Northern Railway Allahabad asked the Senior Clerks working in the office of the P.W.I to perform the duties of Store Clerk but they opposed the move and did not take over charge of Stores Section. Therefore, DRM Allahabad asked by a circular letter dated 27.2.78 asked material clerks to perform the duties of Store Clerk. The applicant states that he made first representation on 31.7.75. All material clerks were allowed the scale of Stores Clerk @ Rs. 130-300

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which was revised to Rs. 330-560 with effect from 1.1.79. The applicant claims that he worked as Store Clerk from 3.2.67 to 30.9.85 when he superannuated. He claims that there were 38 posts of Stores Clerk as per his calculation and his seniority on 30.06.75 was 8th as material clerk. He claims that there was no stipulation at the time of creation of post of stores clerk that the official should have passed a special examination before he could be appointed as a store clerk.

The arguments of Shri O.P. Srivastava for the applicant and Shri A.C. Mishra for the respondents were heard. The learned counsel for the ^{applicant has} emphasised that conversion from material clerk to stores clerk was simple ungradation which was to be given automatically on the basis of seniority without any examination or suitability test. The learned counsel for the applicant prayed that adverse inference should be drawn on account of non-production of circular dated 3.2.67 and eligibility criteria for upgradation inspite of direction from the Tribunal dated 18.4.95. He has stated that he came to know of the provisions of the Circular only when the Senior Clerks refused to work as store clerk. He has denied that suitability test was for promotion from clerk to senior clerk and states that there was no suitability test for appointment as stores clerk for those who were working as materials clerk. The learned counsel for the respondents has contended that the jurisdiction of the tribunal did not arise where cause of action arose in 1967. He has contended that a certain percentage which was prescribed had to be maintained between posts at the level of clerk and those at the level of Senior Clerks including the post of Stores

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Clerk was of the level of Senior Clerk and, therefore, suitability test was necessary for promotion to this post. He has contested the claim of the applicant that the cadre of material clerk was abolished on creation of the post of stores clerk and stated that the applicant was upgraded to the post of material clerk only on 6.11.67 and was confirmed on this post in 1978.

I have taken the written pleadings as well as arguments into account. I set forth my conclusions on the reliefs claimed by the applicant in the ensuing paragraphs.

The basic issue which has to be addressed in this case is whether the applicant was deemed to be automatically upgraded as stores clerk in the scale of Rs. 130-300 from the post of material clerk in the scale of Rs. 110-180 on 3.2.67. The applicant has urged the tribunal to draw an adverse inference as the respondents have not produced the circular of Railway Board regarding creation of the post of stores clerk dated 3.2.67. I do not accept this plea of the applicant as it is his primary responsibility to produce a copy of this circular and also because the annexures to the O.A. throw light on the contents of circular dated 3.2.67. The applicant has annexed the judgment of the T.A. 519/86 as Annexure 1. Paragraph 2 of this judgment dated 26.3.92 is relevant and is extracted as follows:

"According to him the post of material clerk/stores clerk existed only in PWI section and this post did not exist as well and the material clerk was posted as the stores clerk and this question was not to be considered along with the clerk on the other side. He was due to be promoted as material clerk/store clerk covering the

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prescribed percentage of 40% and later on he was called in the year 1979 and the scale of senior clerk was given to him at Rs. 330-560. In case he would have been promoted earlier he would have got more Salary and with the result his pension benefits should have been more. According to the applicant being eligible candidate for the service, he along with others would have been promoted he would have got promotion earlier with the result his pension benefits would have been elevated.*

The judgment ended by issuance of a directive to the respondents that the claim of the applicant that if first revision had been given to him in 1967 on due date, he would have been covered in the 40% should be considered and if the claim is found correct, relief should be given automatically. The Railway authorities considered the claim of the applicant and gave a reply to the applicant that instructions existed for posting of Sr clerk and Stores Clerks and that it was never intended that M.C. working in the grade of Rs. 110-180 should be given the grade of Sr Clerk i.e. Rs. 130-300 automatically. He was also informed by the same letter of DRM, Allahabad, dated 24.7.92 that the applicant was called as per rules and as per seniority position for suitability test held on 15.04.77 but he could not qualify. He was again called in the suitability test of 11.9.78 and was promoted with effect from 1.1.79 after being found suitable in the test. It was also mentioned in the same letter that it was also stipulated that even after inclusion of Store Clerk in the grade of Rs. 130-300, the percentage strength of the grade of Senior Clerk of Rs. 130-300 should be maintained at 40. He was also informed that reply to his representation dated 31.7.75 was given to him through A.E.N, Fatehpur, vide office letter dated 1-6/7-83 which mentioned that

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seniority of Shri Dutt was correctly fixed and he was not due for promotion and seniority w.e.f. 1967. The applicant has annexed the confidential letter of Railway Board no. PX/63/ES-5/SS-2 dated 7.6.68 which makes it clear that as a result of the study of efficiency bureau, it was the intention of the Railway Board to put the responsibility for accountal and custody of locked up and fenced stores at PWI headquarters borne on uniform, T & P and consuable accounts and do away with the return on consumable stores. The grade of stores clerks was to be enhanced to Rs. 130-300 in sections where they were in the grade of Rs. 110-180 and the stores clerks were to be given the scale of Rs. 130-300 after they were suitably trained in the custody and maintenance of accounts of stores and the responsibility was transferred to them. It is clear from para 2 of this letter that it was to be assessed whether the post of stores clerks could be provided within the percentage laid down for distribution of posts in various grades and whether posts in the grade of Rs. 130-300 could be transferred from higher formations to PWI office and if the percentage was going to be exceeded the number of posts and extent of excess was to be intimated. Such an information is required for obtaining financial sanction for creation of posts. This confidential letter makes it clear that preparatory stage for introducing the system of stores clerk was still going on and the fact that the applicant was drawing pay in the scale of Rs. 110-180 at this time shows that his office had not been covered by the system of stores clerk till this time. This puts paid to the claim of the applicant that he was entitled to the scale of Rs. 130-300 from 3.2.67 itself.

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ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under Section
19 of the Administrative Tribunals Act, 1985-

The applicant has prayed that he should (10) be declared to be holding the post of store clerk on regular basis since 3.2.67 and was entitled to all consequential benefits. He has also prayed that arrears due to him should be ordered to be paid by the respondents with 18% interest from the date of entitlement, i.e. 3.2.67 to the date of payment. He has prayed that the respondents should be directed to pay the cost of application to him.

The applicant has mentioned in his application that he joined Northern Railway as Material Checking Clerk in the scale of Rs. 105-135 in 1959. The post of Material Checking Clerk in the scale of Rs. 105-135 was upgraded to the post of Material Clerk in the scale of Rs. 110-180 with effect from 1.1.64. The applicant has claimed that the post of Material Checking Clerk, later upgraded to Material Clerk, was semi-technical and was in a different category from the post of office clerk. Its method of selection, seniority list and duty list were also different. The applicant claims that only material checking clerks were upgraded as material clerks and candidates from other categories were not given the benefit of this upgraded post. He states that the post of store clerk in the scale of Rs. 130-300 was created in place of material clerk in the scale of Rs. 110-180 and the post of material clerk ceased to exist from the date of creation of the post of Store clerk which was 3.2.67 in the form of Circular letter ~~dated~~ ^{the} no EB/66 Eng/Review. The applicant claims that he was not aware of this circular and that he continued to discharge the functions of Store Clerk. He states that D.S.E., Northern Railway Allahabad asked the Senior Clerks working in the office of the P.W.I. to perform the duties of Store Clerk but they opposed the move and did not take over charge of Stores Section. Therefore, DRM Allahabad asked by a circular letter dated

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the duties of Store Clerk. The applicant states
that he made first representation on 31-7-75.
All material clerks were allowed the scale of
Store Clerk @ Rs 130-300 which was revised to
Rs 330-566 with effect from 1.1.79. The applicant
claims that he worked as Stores Clerk from 3-2-67
to 30.9.85 when he superannuated. He claims that
there were 38 posts of Stores Clerk as per his
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no stipulation at the time of creation of post of Store
Clerk that the official should have passed a special
examination before he could be appointed as a
Store Clerk.

The arguments of Shri O.P. Srivastava
for the applicant and Shri A.C. Misra for the
respondents were heard. The learned counsel for
the applicant has emphasised that conversion from
material clerk to stores clerk was simple upgradation
which was to be given automatically on the basis of
seniority without any examination or suitability test.
The learned counsel for the applicant prayed that
adverse inference should be drawn on account of
non-production of Circular dated 3-2-67 and
eligibility criteria for upgradation in spite of direction
from the Tribunal dated 18.4.75. He has stated that
he came to know of the provisions of the Circular
only when the Senior clerks refused to work as
Store Clerk. He has denied that suitability test
was for promotion from clerk to Senior clerk
and states that there was no suitability test for
appointment as stores clerk for those who were
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for the respondents has contended that the jurisdiction
of the Tribunal did not arise where cause of action

arose in 1967. He has contended that a certain percentage which was prescribed had to be maintained between posts at the level of clerks and those at the level of Senior Clerks including the post of Stores Clerk. He has contended that the post of Stores Clerk was of the level of Senior Clerk and, therefore, suitability test was necessary for promotion to this post. He has contested the claim of the applicant that the cadre of material clerk was abolished on creation of the post of stores clerk and stated that the applicant was upgraded to the post of material clerk only on 6-11-67 and was confirmed on this post in 1978.

(12)

I have taken the written pleadings as well as arguments into account. I set forth my conclusions on the reliefs claimed by the applicant in the ensuing paragraphs.

The basic issue which has to be addressed in this case is whether the applicant was deemed to be automatically upgraded as stores clerk in the scale of Rs 130-300 from the post of materials clerk in the scale of Rs 110-180 on 3.2.67. The applicant has urged the Tribunal to draw an adverse inference as the respondents have not produced the circular of Railway Board regarding creation of the post of stores clerk dated 3.2.67. I do not accept this plea of the applicant as it was his primary responsibility to produce a copy of this circular and also because the annexures to the O.A. throw light on the contents of circular dated 3-2-67. The applicant has annexed the judgment of the T.A. 519/86 as Annexure 1. Paragraph 2 of this judgment dated 26-3-92 is relevant and is extracted as follows:

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 "According to him the post of material clerk / stores clerk existed only in PW section and this post did not exist as well and the material clerk was posted as the stores clerk and this question was not to be considered along with the clerk on the other side. He was due to be promoted as material clerk / stores clerk covering the prescribed percentage of 40% and later on he was called in the year 1979 and the Scale of Senior clerk was given to him at Rs 330-560. In case he would have been promoted earlier he would have got more salary and with the result his pension benefits should have been more. According to the applicant, being eligible candidate for the same, he along with others would have been promoted he would have got promotion earlier with the result his pension benefits would have been elevated."

The judgment ended by issuance of a directive to the respondents that the claim of the applicant that if first revision had been given to him in 1967 on due date, he would have been covered in the 40% should be considered and if the claim is found correct, relief should be given automatically. The Railway authorities considered the claim of the applicant and gave a reply to the applicant that instructions existed for posting of Sr Clerk as Stores Clerk and that it was never intended that M.C. working in the grade of B110-180 should be given the grade of Sr Clerk i.e. Rs 130-300 automatically. He was also informed by the same letter of DRM, Allahabad, dated 24-7-92 that the applicant was called as per rules and as per seniority position for suitability test held on 15.4.77 but he could not qualify. He was again called

in the suitability test of 11.9.78 and was promoted with effect from 1.1.79 after being found suitable in the test. It was also mentioned in the same letter that it was also stipulated that even after inclusion of Store Clerk in the grade of Rs 130-300, the percentage strength of the grade of Senior Clerk of Rs 130-300 should be maintained at 40. He was also informed that reply to his representation dated 31.7.75 was given to him through AEN, Fitchpur, vide office letter dated 1-6/7-83 which mentioned that seniority of Shri Dutt was correctly fixed and he was not due for promotion and seniority w.e.f. 1967. The applicant has annexed the confidential letter of Railway Board no PX/63/ES-5/SS-2 dated 7.6.68 which makes it clear that as a result of the study of efficiency bureau, it was the intention of the Railway Board to put the responsibility for account and custody of locked up and fenced stores at PWI headquarters borne on uniform, Tr P and consumable accounts and do away with the return on consumable stores. The grade of stores clerk was to be enhanced to Rs 130-300 in sections where they were in the grade of Rs 110-180 and the stores clerk were to be given the scale of Rs 130-300 after they were suitably trained in the custody and maintenance of accounts of stores and the responsibility was transferred to them. It is clear from para 2 of this letter that it was to be assessed whether the post of stores clerk could be provided within the percentage laid down for distribution of posts in various grades and whether posts in the grade of Rs 130-300 could be transferred from higher formations to PWI offices and if the percentage was going to be exceeded the number of posts and extent of excess was to be intimated. Such an information is required for obtaining financial

sanction for creation of posts. This confidential letter makes it clear that preparatory stage for introducing the system of stores clerk was still going on and the fact that the applicant was drawing pay in the scale of Rs 110-180 at this time shows that his office had not been covered by the system of stores clerk till this time. This puts paid to the claim of the applicant that he was entitled to the scale of Rs 130-300 from 3-2-67 itself. The applicant has annexed another circular of DRM, Allahabad ^{WS/Track-Depot circulated to} no. MZP, I, II and III / ALLD I & II / CNB, ETW, TDL and ALTN dated 20-6-73 by which stores clerks' work was suggested to be put under the charge of the Senior Clerk. This circular appears to be the first attempt by DRM, Allahabad to introduce the system of Stores Clerk in the division and it is clear that till this date material clerk had not been given the charge of the stores clerk in Allahabad division. The applicant has annexed yet another circular no EO/3 dated 14-3-78 in which PWs including PWI Fatehpur were directed to give establishment and other work to Senior Clerk and Material Checking Clerks / Tr Clerks and Material Clerks in the grade of 260-400 were to deal with all types of materials pertaining to stores. Thus it is clear that the posts of MCCs, MCs and other Ministerial Clerks were in existence till the application of new scales introduced on 1-1-73 and till the circular of 14-3-78. The two seniority lists issued on 15-9-72 and 30-6-75 of Material Clerk also show that the post of material clerk were in existence till those dates. Circular no 561-E/15/upg/V(EMC) dated 18-11-77^x lays down the duties of material checkers and material clerks which shows the existence of these posts till that date.

*
Annexure
15B
to the OA

The documents annexed to the DA
and issued by respondents negate the
hypothesis of the applicant that he
automatically should have been given
upgradation on 3-2-67 and that he was
entitled to arrears and further promotion
The application has to be rejected and
dismissed as having no merits. (16)

There shall be no order
as to costs.

Harsh

A.M.