

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 13TH DAY OF NOVEMBER, 2000

Original Application No.404 of 1992

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.S.DAYAL, MEMBER(A)

1. Janardan Pd.Gaur
S/o late Shri Bhagwan Das
Sr.Clerk, C.O.S.Office
N.E.Railway, Gorakhpur.

2. Shivkant Singh
S/o late Srikrishna Singh,
Sr.Clerk, C.O.S.Office
N.E.Railway, Gorakhpur.

... Applicants

(By Adv: Shri Manoj Upadhya)

Versus

1. Union of India through
The General manager,
N.E.Railway,
Gorakhpur.
2. The Chief Personnel Officer
N.E.Railway, Gorakhpur.
3. The Controller of Stores
N.E.Railway, Gorakhpur.
4. Shri Tarak nath pandey
Senior Clerk, Controller of
Stores Office ,N.E.Railway
Gorakhpur.

... Respondents

(By Adv: Shri D.C.Saxena)

O R D E R(Oral)

(By Hon.Mr.Justice R.R.K.Trivedi,V.C.)

The dispute raised in this application u/s 19 of the A.T.Act 1985 is about interse seniority between the applicants 2 and 3 and respondent no.4.

The facts giving rise to the dispute are that applicants Janardan pd.Gaur and Shivkant Singh alongwith five others

joined on 1.6.1979 as Clerks in the grade of Rs.260-400 at Gorakhpur. Respondent no.4 Tarak Nath Pandey also joined on 1.6.1979 as Clerk in the afternoon. A seniority list was published on 18.5.1982 in which applicant no.2 Janardan prasad Gaur was shown at sl.no.36 and and Shivkant Singh was shown at serial no.40 and Taraknath Pandey, respondent no.4 was shown at sl.no.41. Other persons mentioned in the panel in which applicants name were included were mentioned above respondent no.4. It appears respondent no.2 filed the representation on 4.4.1982 against the aforesaid seniority list. The representation was rejected by order dated 14.11.1983 by following order:-

" आपकी नियुक्ति तिथि 01-06-79 {अपरान्ह} होने के कारण आपको दिनांक 02-06-79 से वरीयता, वेतन इत्यादि का लाभ दिया गया है। अतएव आपके वरीयता में जन्म तिथि के आधार पर संशोधन करने का प्रश्न ही नहीं है।"

This order was passed by General Manager(P), copy of which has been filed as (Annexure A4). There after promotion was granted to applicants as Senior clerks by order dated 7.12.1984, copy of the order is (Annexure 5). the promotion order in respect of respondent no.4 was passed on 11.6.1985. Thus, on the basis of the promotion also the applicants were senior to the respondent no.4. however, on 22.8.1990 a seniority list was published in which respondent no.4 was shown at sl.no.25 and applicant no.2 was shown at sl.no.26 and applicant no.3 was shown at sl.no.27. Against the abrupt change representations were filed. However, the relief was not granted, applicants have approached this Tribunal.

Counter affidavit has been filed ^{resisting} ~~registering~~ the claim of the applicant and though material facts have not been denied, ⁱⁿ para 17 it has been stated that they were appointed on compassionate ground on one and the same day and respondent no.4 has been given seniority as per date of birth

under Rule 304 of (IREM). The Para 17 is very crucial, therefore it is being reproduced below:-


"That the contents of Para 4(18) of the petition are not admitted. There was no such panel. They were appointed on compassionate ground on one day i.e. 1.6.1979. Tarak nath Pandey joined same day (1.6.1979) (AN). Their seniority has been decided as per their date of birth under Rule 304 of (IREM)"

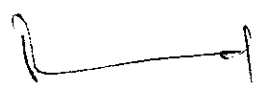
From the aforesaid averments made in the written statement it is clear that respondent no.4 was not included in the same panel. (ANNEXURE A-1) filed by the applicant shows that he and six others were shown in one order and they were appointed. From the order dated 14.11.1983 passed by General Manager(P) it is clear that respondent no.4 was given seniority and pay from 2.6.1979 and not from 1.6.1979. The existence of the aforesaid order has not been denied. If salary was paid to respondent no.4 from 2.6.1979 he could not be treated as appointed on 1.6.1979. The order dated 14.11.1983 was not set aside by any superior Authority or by court or Tribunal and the order had become final against respondent no.4. This position could not be changed. Even while promoting as Senior Clerks applicants were promoted on 7.12.1984 while respondent no.4 was promoted on 11.6.1985. For this reason also applicants were senior to the respondents. However, for strange reasons in the seniority list date of promotion of respondent no.4 was shown as 7.12.1984 which is against record. On perusal of the material on record we have no doubt that somebody in the administration in order to help respondent no.4 made manipulations in the record which ought to have been found by the Railway Administration. In our opinion the applicants are entitled for relief. They have been wrongly shown junior to respondent no.4. At this stage it may also be mentioned

that applicant no.1 Nirmal Dey was similarly situated and was shown junior to respondent no.4, has already been restored seniority by administration.

For the reasons stated above this application is allowed. The respondents are directed to correct the seniority list and show the applicants Janardan Prasad Guar and Shivkant Singh senior to respondent no.4.

There will be no order as to costs.


MEMBER(A)


VICE CHAIRMAN

Dated: 13.11.2000

Uv/