

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 452 of 1992

Allahabad this the 26/1 day of Feb. 1997

Hon'ble Dr. R.K. Saxena, Member 'Jud.'  
Hon'ble Mr. D.S. Baweja, Member 'Admn'

C.P. Kalra aged about 55 years S/o Late B.L. Kalra,  
R/o 522/C Patel Nagar, Meerapur, Allahabad, at present  
working as Head Clerk under the Senior Electrical  
Engineer (G), Northern Railway, Allahabad.

APPLICANT

By Advocate Sri Satish Dwivedi.

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Allahabad.
3. The Divisional Personnel Officer, Northern Railway, Allahabad.

RESPONDENTS.

By Advocate Sri Shailendra/T.N. Koel

ORDER

By Hon'ble Dr. R.K. Saxena, Jud. Member

By way of this O.A., the applicant has sought directions to the respondents to provide him the benefit of the post of Senior Clerk from the date when the juniors were promoted as Senior Clerks. The upgradation benefit from the post of Senior Clerk to the post of Head Clerk is also sought from the date when his juniors were promoted. In the alternative, the direction is sought to decide the representation dated 27.12.91 made by the applicant.

2. The facts of the case are that the applicant was appointed on the post of Clerk w.e.f. 21.1.1964.

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The suitability test for the post of Senior Clerk was conducted and the applicant had appeared in the said test on 01.3.1974. The result of all candidates other than the applicant, was declared in August, 1974 but the result of the applicant was declared only in May, 1977 without disclosing any reasons for the delay. It resulted that the juniors to the applicant were promoted as ad hoc Senior Clerk, in the year 1973 and continued as such till 1979 when they were regularised on the post of Senior Clerk. The applicant was not considered for the post of Senior Clerk.

3. It is stated that some vacancies fell during this period but the claim of the applicant was ignored. It is pointed out that one Kanhaiya Lal had absented himself and in his vacancy, one V.P. Dubey who was junior to the applicant, was considered and appointed as Senior Clerk. Not only this, permanent vacancies also fell on the retirement of Sri A.M. Siddiqui and Sri G.S. Sonkar but again was ignored the case of the applicant.

4. It is again stated that in the seniority list of Clerks of Electrical department as on 11.6.1976, the name of the applicant was placed at serial no.46. <sup>those</sup> Thus who were placed below the applicant and at serial no.47 to 59, they were promoted to the post of Senior Clerk, before the promotion of the applicant which was made on 08.12.1981. As a result of it, the applicant became junior in the seniority list of Senior Clerks and his name was shown at serial no.101 in the seniority list of Senior Clerks dated 30/8/1984. It is contended

that the Divisional Personnel Officer, respondent no.3 promoted those persons who were placed at serial no.102 to 130 as Head Clerks vide order dated 11/3/85 and again the name of the applicant was not taken into consideration. Another seniority list of the Senior Clerks of the Electrical department was published on 01.8.1987 and the name of the applicant was shown at serial no.28. Those persons who were at serial no.29 to 179 were promoted on the post of Head Clerks ignoring the claim of the applicant. The applicant, therefore, made a representation for redressal of his grievance but no action was taken. Subsequent representations were also given on 17.9.1981, 04.4.1981, 15.3.1985, 02.4.1985, 15.11.1985 and 14.10.1986 annexure A-1 to Annexure A-6. Without considering the claim of the applicant for promotion on the post of Senior Clerk from the date when his juniors were promoted, again on the post of Head Clerk from the date of his juniors, the applicant was promoted vide order dated 28/2/91 as Head Clerk. The applicant again moved representation on 01.3.1991 for benefit of promotion on the post of Senior Clerk and Head Clerk being given from the date when his junior was given but nothing was done. Last representation was made on 27.12.1991 (annexure A-8). Feeling aggrieved of inaction on the part of the respondents, this O.A. has been filed with the aforesaid reliefs.

5. The respondents have contested the case and claimed that the O.A. was barred by limitation. It is averred that the result of the applicant alongwith other who had taken part in the strike was declared in May, 1977. It is denied that any junior to

the applicant was allowed regular promotion as Senior Clerk in the year 1973. It is also denied that V.P.Dubey was promoted vice Sri K.L. Singh. As regards the upgradation in the ministerial cadre, it is pointed out that it was done w.e.f. 01.1.1979 and the applicant was posted under Senior Divisional Electrical Engineer, Gaziabad vide order dated 30/10/1979 but the applicant did not move on transfer and had requested for his posting at Allahabad. The result was that those who had gone on promotion, they ranked senior to the applicant. The case of the applicant was, however, considered for upgradation which had taken place on 01.10.1980. He was then posted under Senior Divisional Electrical Engineer, Allahabad where a vacancy had occurred. It is again denied that any junior (Senior Clerk) to the applicant was promoted as Head Clerk. The applicant and other persons-- except one Sri R.D. Ram who was a S.C. candidate were promoted as Head Clerk w.e.f. 27/3.1991. The respondents refuted the contention of the applicant that his name in the seniority list of Senior Clerk stood at serial no.28 but he was shown at serial no.95. Another person in the name of Chandra Prakash whose date of appointment in the railway service was 05.12.1964 was shown at serial no.28. The contention of the respondents, however, is that the applicant was rightly promoted when he was due and the promotion was accepted by him.

6. The applicant has filed rejoinder in which the contention of the respondents that the application was barred by limitation, was denied. It is pleaded that the cause of action is recurring one and, therefore, the question of limitation does not arise.

The applicant admitted that he came to Allahabad on transfer from R.D.S.O., Lucknow and lost his seniority because the circumstances compelled him to seek transfer to Allahabad. The reason given by him is that his wife is a teacher in Guru Teg Bahadur Khalsa Girls College, Allahabad and the applicant had a children of 2 or 3 years old who was living with the wife, Hence the transfer was sought. He also tried to justify the reason for not going out of Allahabad on promotion because he became hard of hearing and his treatment was going on. He, however, pleaded that the O.A. is maintainable.

7. In this case the learned counsel for the applicant did not appear for arguments on the date of final hearing. Sri T.N. Koel, learned counsel for the respondents appeared and argued. It may be mentioned that the learned counsel for the applicant had been seeking adjournments. The matter was listed for final hearing on 13.8.96, when illness slip was sent and adjournment was sought; it was adjourned to 18.11.1996 when again counsel for the applicant had sought adjournment. The matter was, no doubt, adjourned to 29.1.97 but it was mentioned that no further adjournment would be granted and if adjournment was sought, the matter would be decided on the basis of pleadings on record. When the matter was again taken up on 29.1.1997, learned counsel for the applicant did not appear. The adjournment was sought but in view of the order passed on 18.11.1996 that no adjournment would be granted and the matter would be decided on the basis of pleadings on record, the adjournment was refused. We had heard Sri T.N. Koel, counsel for the respondents. The

Judgment was reserved. During this period, the learned counsel for the applicant never made any attempt to make any argument in the matter. Thus, we are deprived of the arguments from the side of the applicant. We have, however, perused the record.

8. The main question for decision in this case is whether the applicant is entitled for the relief which he has sought. The contention of the applicant as is shown in the pleadings is that his juniors were promoted as Senior Clerk, and then as Head Clerk whereas his claim was ignored. This fact has been denied on behalf of the respondents. It has been categorically stated that the applicant was promoted alongwith other except one Sri R.D. Ram on 27/3/91. Prior to that date, the applicant had refused to go out on transfer. In the case the applicant opted not to go out on promotion and continued at Allahabad, the respondents cannot be blamed. Thus, the contention that the claim of the applicant was ignored, is falsified. It appears from the perusal of the rejoinder-affidavit that the applicant was initially appointed at Lucknow and he sought his transfer to Allahabad because his wife was teaching in a School here. He was, however, accommodated but he had to loose his seniority as the rule was. Again the respondents cannot be ~~falsified~~<sup>faulted</sup> if the applicant had lost seniority.

9. The applicant has been promoted as Head Clerk. It is admitted by the applicant himself. The respondents contend that the applicant alongwith other was considered in the second list of 27.3.1991. It is apparent that the applicant was no doubt promoted on

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the first occasion but he was not willing to go out. Therefore, there is no substance in the claim of the applicant.

10. The contention of the applicant is that his representation dated 27.12.1991 has not been disposed of and the alternate remedy sought is that the respondents be directed to dispose of the representation. When the facts have been made clear in the counter-reply and it is shown as to why the applicant was not posted as Senior Clerk in the first round, there remains no ground to give any directions to the respondents for disposal of the representation.

11. In the result, we find no substance in the O.A. which stands dismissed. No order as to cost.

*Shrivastava*  
Member (A)

*D. De Souza*  
Member (J)

/ M. M. /