

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD.

Allahabad this the 29th day of August 2001.

Original Application no. 1563 of 1993.

Hon'ble Mr. Justice RRK Trivedi, Vice-Chairman  
Hon'ble Maj Gen KK Srivastava, Administrative Member

Ram Lal, S/o late Jaikaran Ram,  
working as clerk under CTFO(RSO),/  
Northern Railway,  
Kanpur.

.... Applicant

C/A Sri RM Shukla  
Sri Anand Kumar

Versus

1. Union of India through General Manager,  
Northern Railway, Baroda House,  
NEW DELHI.
2. Divisional Railway Manager,  
Northern Railway,  
ALLAHABAD.

...Respondents

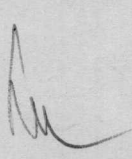
C/Rs. Sri G.P. Agarwal

ORDER

Hon'ble Maj Gen KK Srivastava, Member-A.

In this OA, under section 19 of the Administrative  
Tribunals Act, 1985, the applicant Sri Ram Lal has prayed  
that the respondents be directed to reconsider the seniority

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of the applicant as senior clerk w.e.f. 1.1.1979 with all consequential benefits including promotion due as Head Clerk w.e.f. 12.5.1982, Assistant Superintendent w.e.f. 1.1.1984 and Superintendent w.e.f. 1.3.1993 i.e. from the date his juniors were promoted.

2. Briefly the facts of the case are that the applicant was appointed as Khalasi, promoted to the post of Caretaker in the scale of Rs. 210-240 on 6.8.1974 under Senior Electrical Foreman, <sup>Loco</sup> Northern Railway Mughalsarai. The post of caretaker was upgraded to the scale of Rs. 260-400 w.e.f. 6.12.1975. There was also a post of clerk in the scale of Rs. 260-400 under Senior Electrical Foreman, Loco, who required the applicant to work on the post of clerk w.e.f. 23.1.1978. The proposal was submitted to the Divisional Electrical Engineer (DEE) to approve the arrangement which was approved by DEE on 3.2.1978. The applicant continued to work as clerk w.e.f. 23.1.1978. Two posts of clerk under foreman were upgraded to the scale of Rs. 330-560 on 1.1.1979 which is the scale of the post of senior clerk. The applicant represented that he should be given grade of Rs. 330-560 w.e.f. 6.8.1974 because in addition to job of caretaker he was also required to work as clerk. The DRM Allahabad vide his letter dated 16.12.1982 ordered for regularisation of the service of the applicant as clerk w.e.f. 23.1.1978 the date from which TFR Mughalsarai asked for permission to use the applicant as clerk and he also ordered that the applicant should be given officiating appointment as senior clerk in grade of Rs. 330-560 from 1.1.1979, the date from which the post of senior clerk was created at Mughalsarai. The formal order of the promotion

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of the applicant to the post of senior clerk were not passed. The applicant filed suit no. 131 of 1985 before Munsif West Allahabad which was transferred and registered as TA no. 443 (T) of 1986 before this Tribunal. In this TA the Tribunal vide its order dated 9.4.1991 directed the respondents to pay salary to the applicant in the scale of Rs. 330-560 w.e.f. 23.1.1978, less the amount already paid in the scale of Rs. 260-400 up to the passing of transfer order dated 23.10.1984. It was also directed that the representation of the applicant dated 12.9.1982 be decided. The representation of the applicant dated 12.9.1982 has been decided by DRM Allahabad vide order dated 24.7.1992 (Annexure A-1) and the applicant was advised to appear in the suitability test for the post of Senior Clerk in the grade of Rs. 330-560/1200-2040 in order to be eligible to be promoted as senior clerk. The applicant, has therefore, approached this Tribunal for adjudication in the matter which has been contested by the respondents.

3. Heard Sri R.M. Shukla learned counsel for the applicant and Sri GP Agarwal learned counsel for the respondents and perused the records.

4. Learned counsel for the applicant submitted that the applicant should be regularised as senior clerk in the grade of Rs. 330-560 from 1.1.1979 as the order of DRM Allahabad ~~are~~ <sup>is</sup> quite clear (Annexure A-4). His argument is that on 16.12.1982 the DRM, Allahabad had full powers of creation and promotion of any class III post under schedule of power delegated by General Manager, Northern Railway to DRM's, Northern Railway, in terms of annexure A circulated with PS 7298 dated 31.5.1979 (Annexure A-8). Hence, there was no requirement of referring the issue to General Manager (P), Northern Railway, on 7.3.1983. But not regularising

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the applicant as senior clerk w.e.f. 1.1.1979 they have inflicted heavy financial loss upon the applicant.

5. Learned counsel for the applicant argued that the applicant being Scheduled Caste (SC) candidate has every right to be promoted as senior clerk, since he has successfully completed ad-hoc appointment for more than 6 months as senior clerk in terms of para 10.2(c) of Brochure on reservation for Scheduled Caste and Scheduled Tribes in Railway Services. He also submitted that the post of senior clerk is a non selection post and promotion is done on the basis of seniority cum suitability. The DRM Allahabad is a competent authority to exempt from such suitability test as required, if any, as has been done in case of the applicant by issuing order on 16.12.1982.

6. Learned counsel for the respondents submitted that the relief prayed for in the present OA has already been raised in TA 443 (T) of 1986 which has been decided and the due payment have been made to the applicant, as per direction of this Tribunal. The same matter has been agitated again through this OA and, therefore, the present OA is barred on the Principles of Res Judicata.

7. He further argued that the post of senior clerk grade Rs. 330-560/1200-2040 is a non selection post and is filled on the basis of seniority cum suitability basis. The suitability is adjudged through written test. The applicant was appointed to officiate purely on ad-hoc basis as senior clerk and he was required to pass the written suitability test which is a pre-requisite for regular promotion to the post of senior clerk. The applicant was called to appear in the suitability test for promotion to the post



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of senior clerk on 31.10.1986, 29.8.1987, 7.12.1987, 15.6.1991, 13.7.1991, 19.10.1992 & 22.2.1993, but he did not appear in the written suitability test fixed on the above dates. Therefore, the applicant cannot claim promotion on regular basis for the post of senior clerk and also further promotion as Head Clerk, etc.

8. We have carefully considered the arguments of learned counsel for the parties and perused the records. The contention of learned counsel for the respondents that the present OA is barred by principles of Res Judicata is not tenable because this Tribunal vide its order dated 9.4.1991 in TA 443 (T) of 1986 did not close the issue. The respondents were directed to pay the salary to the applicant in the scale of Rs. 330-560 from 23.1.1978 to 23.10.1984 the period during which the applicant was performing duties as senior clerk. This Tribunal also by the said order directed the respondents to decide the applicant's representation dated 12.9.1982 and, therefore, the matter was kept open. The applicant filed the present OA after his request for regular promotion as senior clerk w.e.f. 1.1.1979 was not acceded to by the respondent no. 2 vide letters dated 24.7.1992 and 4.6.1993 and, therefore, the issue is open for adjudication.

9. We do not agree with the contention of learned counsel for the applicant that the DRM is competent authority to exempt the applicant from suitability test required for promotion from clerk to the post of senior clerk. It is correct that the DRM is the competent authority under schedule of power conferred to DRM, Northern Railway on delegation by the General Manager in terms of Annexure A circulated with

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PS 7298 dated 31.5.1979 (Annexure A-8) to order for promotion from clerk to senior clerk but this power can be exercised by DRM only after one has appeared in the suitability test. The applicant has failed to show any rule laying down that the DRM is competent to exempt any one from suitability test for promotion. In the light of this we find from order dated 16.12.1982 that the DRM has ordered only for regularisation of services of the applicant as clerk w.e.f. 23.1.1978. The DRM in the same letter has further ordered that he should be given officiating <sup>as chance</sup> as senior clerk in the grade of Rs. 330-560 from 1.1.1979 which means that the substantive grade of the applicant continued to be that of a clerk and when he was transferred from Mughalsarai to Kanpur on 23.10.1984, his officiating arrangement as senior clerk ceased.

10. Second argument adduced by learned counsel for the applicant is that since the applicant had already officiated as senior clerk for more than 6 months, he need not be subjected to further selection/suitability test as per para 10.2 (c) of Brochure on reservation for SC and ST in Railway Services. In order to appreciate the correct position we would like to go through the said rule on the subject which is reproduced below :-

"10.2 Promotion to and within Group 'C' (Class III) and Group 'D' (Class IV), from Group 'C' (Class III) to Group 'B' (Class II) - (a) In non-safety categories posts filled by selection, if the requisite, number of Scheduled Caste/Scheduled Tribe employees are not empanelled, the best among the failed Scheduled Caste/Scheduled Tribe employees are to be promoted for six months on adhoc basis against reserved vacancies as per roster points and their cases reviewed after 6 months by the competent authority



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for inclusion or otherwise in the final panel.

(b) The above scheme of promoting best amongst failed Scheduled Caste/Scheduled Tribe candidates is also applicable to the post (non safety) filled on the basis of seniority cum suitability. Like general candidates if senior Scheduled Caste/Scheduled Tribe candidate fails in the suitability test the next senior most Scheduled Caste/Scheduled Tribe candidate should be called for suitability test in continuation upto 6 months. If still there is a shortfall of the best among the failed Scheduled Caste/Scheduled Tribe candidates should be promoted for 6 months on adhoc basis for in service training against reserved vacancies as per the roster points and their cases reviewed after 6 months by the competent authority for inclusion or otherwise in the final panel.


(c) Such of the Scheduled Caste/Scheduled Tribe candidates found suitable after 6 months adhoc promotion need not be subjected to further selection/suitability test. On their empanelment they should be assigned position on the panel below those who had already been empanelled provisionally."

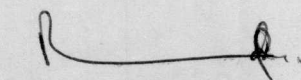
Para 10.2 (c) cannot be read in isolation and it has to be read in conjunction with para 10.2. (a) and (b). It is quite clear by this rule that SC candidates have to appear in the suitability test and even if they fail, the best amongst the failed SC candidate is to be given chance of adhoc promotion for 6 months. Para 10.2 (c) deals with such failed SC candidates and lays down that if such candidates are found suitable after 6 months of adhoc promotion they need not be subjected to further suitability test.

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11. We have perused the orders of DRM dated 24.7.1992 & 4.6.1993 (Annexure A-1 and A-2) deciding the representation of the applicant dated 12.9.1982 & 9.4.1993 respectively. These are detailed and reasoned orders. The applicant has been advised by the DRM by these letters to appear in the suitability test for promotion to the post of senior clerk. He was called upon to appear in the suitability test for 7 times on different dates starting from 31.10.1986 to 22.2.1993. The applicant did not seize the opportunity offered for number of times and, therefore, he has no legal right to claim the promotion only on the ground that he officiated as senior clerk from 1.1.1979 to 23.10.1984
12. We would also like to point out that in relief clause the applicant has not challenged the orders dated 24.7.1992 & 4.6.1993 of DRM Allahabad (Annexure A-1 & A-2). However, this has no bearing on the outcome of the decision which is passed on merit of the case.
13. In view of the above, we are of the view that the applicant is not entitled for any relief. The OA is, therefore, dismissed being devoid of merit.
14. There shall be no order as to costs.

  
Member-A

  
Vice-Chairman

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