

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 28/6 day of August, 2000

Original Application No. 1921 of 1993

DISTRICT : Jhansi

CURAM :-

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

Hon'ble Mr. S. Biswas, A.M.

1. P.S. Sugathan

Son of Shri Sukumaran,

Resident of 239, AWAS VIKAS COLONY,

Nandanpura, Jhansi.

2. S.K. Tewari,

Son of Shri Radha Mohan Tewari,

Resident of 79, Mohalla Parwaran,

Subji Mandi, Jhansi.

(Sri SK Misra/Sri MP Gupta, Advocates)

..... Applicants

Versus

1. Union of India

Through General Manager,

Central Railway, Bombay V.T.

2. The Divisional Railway Manager,

Central Railway,

Jhansi.

(Sri A.K. Gaur, Advocate)

..... Respondents

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By Hon'ble Mr. S. Biswas, A.M.

By way of this application under Section 19 of the Administrative Tribunals Act, 1985, the applicants have impugned the order No. P/369/2/Eng/E dated 19-3-91 of the DRM, Jhansi (Res-2) and further the order No. P/328/2 Engg/E0 dated 27-2-1990 of D.P.O.(T) C.R. Jhansi and sought the following reliefs:-

- (i) The respondents be directed to recast seniority list dated 19-3-1991 where the applicants have been allegedly shown below their juniors; and
- (ii) The applicants be deemed to have been promoted as Head Clerks w.e.f. 27-2-1990 when their juniors were promoted as Head Clerks.

2. The undisputed facts in the case are that both the applicants were recruited as junior clerks in the Railway Depatt. in 1977 and in that capacity they were promoted as Senior Clerks vide order dated 26-6-1985 on ad hoc basis. They were confirmed after test and D.P.C. vide order dated 14-8-1987. They were subsequently promoted as Head Clerk by the order dated 14-1-1991 whereas their juniors who were recruited in 1986 as Senior Clerks from the graduate quota directly, were promoted as Head Clerks w.e.f. 27-2-1992.

3. These direct recruit Senior Clerks who were recruited on 20-11-1986, have been shown as senior to the applicants though they are officiating as Senior Clerks w.e.f. 26-6-1985 when they were promoted as Senior Clerks on ad hoc basis. But the respondents confirmed them after test and DPC vide order dated 14-8-1987 and have placed the applicants below the

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direct recruits of 1986, in the seniority list which has also been challenged.

4. We have heard the counsel for the parties, both on law and facts.

5. According to us the question of seniority of the staff and officers who have been promoted on ad hoc basis in selection posts and are confirmed later on by regular DPC is a well settled issue.

6. The applicants' counsel has placed before us Rule 216-A of I.R.E.M. Vol. I. In sub-rule (c) thereof it is clearly stated, "that his temporary promotion gives him no right on regular promotion and that promotion is to be provisional". In all cases of ad hoc promotion in selection posts, this endorsement is necessary to be made. The applicants have omitted to annex the order of ad hoc promotion. It is also seen that their ad hoc promotion as Senior Clerk was regularised on 14-8-1987. Hence, they became junior to direct recruits Senior Clerks.

7. The learned counsel for the respondents, has cited the Apex Court's decision in Civil Appeal No. 1129 of 1995 decided on 8-12-1995 in Chief Naval Staff and Another Vs. G. Gopal Krishna Pillai & Ors. "In this case the Central Administrative Tribunal was moved by the respondents contending inter alia that as he had been officiating on ad hoc basis in the post of Store Keeper continuously till he was selected and regularly appointed to the post of Store Keeper, the entire period of officiation would enure to his benefit for the purpose of seniority in the cadre of Store Keeper".

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8. In setting aside the above decision of the Hon'ble Central Administrative Tribunal, the Apex Court held, "In the instant case the respondent Shri Pillai was not selected by a regularly constituted selection body for giving ad hoc appointment to the post of Store Keeper and on such selection he had continued in ad hoc service till regular appointment to such post was made".

9. A similar decision was also given by the Hon'ble Supreme Court in Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra and Ors <sup>case</sup> (in Civil Appeals No. 194 - 202 of 1986 decided on May, 2, 1990):-

"47. To sum up we hold that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of confirmation".

7. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering seniority."

10. We are of the view that the applicants were appointed as Senior Clerks only on ad hoc basis in 1985. The direct recruits were appointed on regular basis in 1986 and the applicants were confirmed as per rule to the selection posts after regular DPC and test and hence they have failed to make their case of seniority above the Senior Clerks recruited

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directly being graduate candidates.

11. The OA fails on merits and hence dismissed.

12. No order as to costs.

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Member (A)

  
Vice-Chairman