

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 17th day of November 2000.

C O R A M :- Hon'ble Mr. Rafiq Uddin, J.M.
Hon'ble Mr. S. Biswas, A.M.

Orginal Application No. 588 of 1993.

Shri Krishna, S/o Sri Ram Charan
R/o Railway Quarter No. L- 23- D,
City Railway Colony, Bareilly.

.....Applicant

Counsel for the applicant :- Sri Sanjay Kumar

V E R S U S

1. Union of India Through the General Manager
N.E. Rly. Gorakhpur.

2. D.R.M. (P), N.E. Rly, Izzatnagar,
Bareilly.

..... Respondents.

Counsel for the respondents:- Sri A.V. Srivastava

O R D E R

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

1. By virtue of this application under section
19 of the Administrative Tribunals Act, 1985, the
applicant seeks the following reliefs :-

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i.) quashing of order dated 5/6-4-93 as passed by the respondent (2) (annexure 1 to the OA) and

ii) direction to the respondents to assign proper seniority to the applicant as senior clerk w.e.f. 19.2.82 and proforma fixation of pay as senior clerk in the scale of Rs. 330 - 560 (RPS) w.e.f. 19.2.82 and consequential benefits.

2. The applicant, a graduate, joined N.E. Rly., as junior clerk on 19.2.82. The applicant was eligible for promotion by selection as senior clerk as per the policy of filling $13\frac{1}{3}\%$ of posts of the Railway department by graduate clerks. The applicant availed the facility of promotion by selection to senior clerk from 90% quota. The result was declared on 26.3.84 (21.3.84 being itas shown in the order) and the applicant was promoted to the Senior Clerk's grade of Rs. 330 - 560.

3. The applicant being selected on promotion against 10% quota of 1982, being a graduate entrant to the department he is entitled to refixation of his seniority w.e.f. 19.2.82, when he joined as a junior clerk on that date. The applicant made representation on 11.2.93 for proforma fixation of his seniority w.e.f. 19.2.82 in terms of policy circulation order of Railway Board dated 18.6.80 which states :

"This order will take effect from 1.10.80 but no arrears shall be payable on this account. The pay of an employee appointed to the upgraded post may be fixed proforma from 1.10.80, but the actual payment of emolument in the higher post

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should be allowed only from the date he takes over charge of the upgraded post."

He wanted an equity at par with similarly placed one incumbent of Izatnagar Division (in OA 1090/87) order dated 13.9.91). The applicant was denied the benefit of this order by the order of respondent (2) dated 5/6-4-93 which has been impugned.

4. Heard the learned counsels for the parties on facts and law. The counsel for the applicant wants that the applicants case is squarely covered by Smt. Anuradha Mukherjee & Others Vs. U.O.I. (Civil appeal no. 5265 of 1996 arising in S.L.P. 5177 of 1997).

5. The learned counsel for the respondents admits that by virtue of restructuring order dated 16.6.81 of the Railway Board's, which was given effect from 1.10.80, 20% of the total strength of the senior clerks was to be filled by D.R. graduates. Through R.S.C. ~~and~~ ⁹⁰ 13 $\frac{1}{3}$ % of Sr. Clerks posts were to be filled by in-service graduates. Through competitive examination to be held by R.S.C. 90% of the said vacancies were to be filled by selection among junior in service ^{SD} junior clerks and 10% from amongst in service graduate clerks. The applicant opted to availed the quota of 90% in service junior clerks feeder stream. He was selected and promoted on 4.4.84. He claimed his seniority on an after thought that he is a graduate and therefore, he is eligible for seniority from the date of his recruitment on 19.2.82 though he was

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actually promoted on 4.4.84 as a candidate from the junior grade II clerks stream to the senior clerks. The actual 10% graduate quota was filled in the year 1986. The applicant got the scale of Sr. clerks from the in service junior clerks (Gr II) quota of $13\frac{1}{3}\%$. It is however not denied that the applicant also availed 10% quota of D.R. and cleared the examination in 1986 and had qualified to be senior clerks. But he had already been promoted in 1984 as Senior Clerk from in service quota of junior clerk ($13\frac{1}{3}\%$).

6. In para 9 of the CA it has been clarified by the respondents saying

"...it is clarified by the Ministry of Railways, Railway Boards's vide a circular dt. 30.01.87 that the benefit is to be effective from the date such candidates are appointed to the post of Senior Clerk. A true copy of the said circular is being filed herewith and marked as annexure C.A- I"

Hence, the applicant is not entitled to retrospective effect from the date of recruitment. He is entitled to the benefit of the seniority and fixation from the date he was actually promoted to the grade of Senior Clerk on 04.04.84 that is also the position in the Ministry's order dt. 18.06.81.

7. We have considered the case of Smt Anuradha Mukerjee and ors.. The position of this case have been briefly stated and as per operative para of the Hon'ble Supreme Court's judgment reproduced below, it may be seen that the seniority of Grade II clerks who were appointed after 01.10.80 as senior clerks on the basis of selection and

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suitability test, is to be governed in accordance with para 302 of the Railway Establishment (Vol.I) in the manner indicated there:-

" It is seen such of the graduate Clerks though appointed as Gr. II Clerks after October 1, 1980 by process of selection through open competitive examination or limited recruitment by departmental examination were upgraded under the aforesaid rules they would not get the promotion w.e.f the proforma date of October 1, 1980 but only from the date of their actual appointment as Gd. II Clerks, notionally as Gr. I Clerks since their appointment are after Oct. 1, 1980. The Inter-se seniority of the 20% direct recruits on the one hand and limited recruitment graduate Gr. II Clerks and promotees on the other, shall be determined in accordance with para 302 of the Railway Establishment (Vol.I) in the Manner indicated above."

8. We have gone through the case records carefully and find that the applicant was recruited in the year 1982 but he was promoted to the post of senior Clerks in the year 1984 on 04.04.84. Before promotion he was Gr. II Clerk and hence his seniority as per instructions ought to be governed under para 302 of Railway Establishment Vol.I. The provisions of Sec. 302 is reproduced below :-

" Seniority in initial recruitment grades. Unless specifically stated otherwise the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be date of regular promotion after the process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintaince of inter-se seniority of promotees and

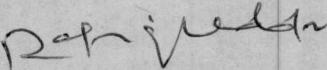
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and direct recruits among themselves. When the date of entry into a grade of promoted railway servant and direct recruits are the same, they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se seniority of each group."

9. It is therefore, clear that the criteria of determination of seniority of the applicant should be on the basis of ~~other~~ ^{their} regular promotion i.e. 04.04.84. Therefore we do not think it necessary to interfere with the order except giving direction to the respondents that the case of the applicant ~~should~~ ^{is} be considered in the light of reproduction of para 302 of Railway Establishment (Vol. I Revised Adition, 1989) within 3 months of this order, if not done already. ~~so~~

10. The O.A is stands disposed of accordingly. There will be no order as to costs.


Member-A.


Member-J.

/Anand/