

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 17/4 day of April 2001

CORAM :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.  
Hon'ble Mr. S. Biswas, Member- A.

Original Application No. 1107 of 1993

Padam Kant Malviya S/o Sri Jawahar Lal Malviya  
R/o Vill. & Post Kotwa, Distt. Allahabad.

.....Applicant.

Counsel for the applicant :- Sri K.S. Saxena

V E R S U S

1. The Union of India through the General Manager,  
Northern Railway, Baroda House, New Delhi.
  2. The Divisional Rly. Manager, Northern Railway,  
Allahabad.
  3. The Divisional Personnel Officer, N. Rly.  
DRM Office, Allahabad.
  4. Sri L.P. Agrawal, Head Clerk, Mechanical Branch,  
DRM Office, Northern Rly. Allahabad.
- .....Respondents.

Counsel for the respondents:- Sri K.N. Katiyar  
Sri S.N. Gaur.

O R D E R

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

By this application under section 19 of the  
Administrative Tribunal's Act, 1985, the applicant has  
sought the following reliefs:-

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1) That direction be given to the respondents to either reverse the officiating promotion of respondent No. 4 from 16.09.84 to 24.08.86 and dis-allow his pay fixation in the gr. of Head Clerk w.e.f 25.08.86 or the applicant's pay be fixed at par with the respondent No. 4 who is his junior w.e.f 25.08.86.

2. The applicant is a Railway employee and in that capacity he was promoted as Head Clerk in the scale of Rs. 1400-2300 in the Mechanical Branch of Northern Rly. Allahabad w.e.f 25.08.86. Immediately before that he was a senior clerk in the scale of Rs. 1200-2040 (RPS). Sri L.P. Agarwal (respondent No. 4) is his junior in the seniority list was also promoted from the Gr. of senior clerk to Head Clerk on the same date (25.08.86). The seniority list of H. Cs annexed as annexure- 2 in this behalf would show that the applicant's position is 99 and respondent 4's position is <sup>depicted</sup> at 103 there. An anomaly cropped up at the time of fixation of the pay of Respondent No. 4 visa-vis the applicant, <sup>regularly</sup> as much as on 25.08.86 when both were ~~wrongly~~ promoted. The pay of the respondent No 4 was fixed at Rs. 1480/- i.e. two increments higher than Rs. 1400, where the applicant, his senior was fixed. This could be ~~shorted~~ <sup>it was</sup> out with reference to R 1316 (IRII) which is equivalent to FR 22 C, but <sup>it was</sup> not done. It has been further clarified by the applicant that as the respondent No. 4 while working as senior clerk in the Mechanical Branch for about two years from 16.09.84 to 24.08.86 he was illegally permitted to officiate as H.C. Before their <sup>to Res 4</sup> regularisation, the officiating pay benefit accrued <sup>and the</sup> considered in fixing his pay in the post of Head Clerk. <sup>his benefit</sup> This the applicant did not get. Though he was senior and he was not permitted to officiate like Respondent No. 4 earlier. The applicant further pointed out that by <sup>4</sup> containing the respondent/for more than four months in

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ad hoc charge, <sup>violated</sup> the provision of Rule 319 (e) of R.E.M Vol. I (1990) were <sup>violated</sup> circulated in the case. The respondent No.4 continued to officiate in the short term vacancy for two years giving rise to the anomaly. The respondents being reluctant to set it right despite repeated representations by the applicant, the O.A was filed. His latest representation dt. 24.01.92 (annexure- A-I) is pending for disposal by the respondents. The applicant has impugned the letter dt. 01.01.92, whereby the respondent has informed the applicant that his case did not come within the purview of the provision of Rule 1316. Though statedly by the applicant, it was relevant for <sup>solving</sup> showing the anomaly, by giving him equal fixation benefit.

3. The respondents disputed the claim of the applicant inter-alia stating :-

i) That the ~~case~~ application suffered from limitation

ii) That the pay of the respondent No. 4 was fixed on the basis of his officiating pay and allowances in the Gr. of Head Clerk from 16.09.84 to 24.08.86 immediately before his regularisation on 25.08.86 alongwith the applicant. The pay of respondent No. 4 was fixed at Rs. 1440/- not at Rs. 1480/- as alleged in the O.A and the respondent No. 4 was admittedly holding the post of Head Clerk during this short period of less than two years on purely ad hoc basis but even then he became eligible for for one increment which has contributed to the difference in fixation. Such a fixation consequent <sup>upon</sup> of increment accrued to the respondent No.4, who was officiating in temporary post, does not attract the provision of Rule 1316.

4. The respondents have further contended that the applicant was at the material time posted as Senior Clerk in control office. The respondent No. 4 was working as Senior Clerk in mechanical Branch where a temporary

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vacancy arose in the post of Head Clerk and respondent No. 4 being available there, was permitted to officiate with the facility of drawing officiating pay in the said vacant post temporarily on adhoc basis for which he had also become eligible to draw one increment as a Head Clerk as per Rules. The applicant could not be asked to officiate there as he was working in as senior clerk in different office.

5. Respondent No. 4 also filed separate CA stating inter-alia that the applicant as Senior Clerk was posted in Store Office when a vacancy in the Grade of Head Clerk arose in the Mechanical Branch where the respondent No. 4 was senior most to be eligible for non-selection officiating facility and drew one increment which has given to him the present benefit of higher fixation as per rules. The applicant was admittedly posted to Mechanical Branch on 06.03.87 after promotion as Head Clerk. That he had been working in the different Branch when the officiating assignment was given to respondent No. 4 was kept <sup>secret</sup> ~~vacant~~ by the applicant. The respondent No. 4 was working in the Mechanical Branch since 06.09.84. He also raised the objection that the claim of the applicant is barred by limitation.

6. Heard the rival counsel and have gone through the records both on material facts and law points.

7. Whether the application is barred by limitation or not was taken up at the time of initial pleadings. The delay was condoned on 16.08.96 at the time of initial pleadings on the O.A.

8. The applicant has tried to make out his case by relying on the facts that his position in the seniority

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list of Head Clerks to which both the applicant and respondent No. 4 have been promoted, showed the applicant at Sl. No. 99 and the respondent No. 4 at Sl. No. 103. The position they held in the seniority list of Senior Clerks is not available for perusal. Though the respondents have not controverted the seniority of the applicant at any level, the question of the applicant doing better at the time of regularisation is not free from <sup>doubt</sup> ~~denial~~. Both sides have kept silent over it.

9. The applicant did not deny that at the material time when the contingency of filling up a vacancy of a Head Clerk's Post arose in the Mechanical Branch, which is provided to be filled as per Rule 319 by the senior most or suitable person or the immediate junior grade of that Branch, the applicant was ~~been~~ posted in a different branch. <sup>He was a</sup> Senior Clerk in control office. The respondents have disputed the claim of the applicant mainly on this ground taking shelter of the provisions of Rule 319 <sup>and</sup> ~~and~~ that the respondent No 4's promotion against temporary vacancy was not contested by the applicant in time. We have had a look in to the provisions of this Rule. The relevant extract thereof is reproduced below :-

" In case of administrative convenience which should be recorded in writing the competent authority consider, it necessary to appoint a Rly. servant other than the senior most suitable Rly. servant to officiate purely in an adhoc capacity in a short term vacancy not exceeding two months as a rule and four months in any case. This will however, not give the junior railway servant any advantage, not otherwise due to him "

10. In our view, though the respondents has not controverted the allegation that respondent No. 4 continued after an adhoc employment for a longer period than it

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it was permissible, we are not able to accept the plea that this itself is an adequate ground to ~~multiply~~ <sup>multiply</sup> the appointment of the respondent No.4. The rule shows that one who is not senior could be ~~not~~ given appointment against temporary vacancy on adhoc basis by a competent authority. It is a different thing that he continued in the exigency of works beyond four months due to inept oversight of the official respondents. That could be no legal basis for overlooking the fact that the respondent No. 4 earned an increment at the adhoc post as permissible after one year of service and the respondent before regularisation served as Head Clerk for little less than two years but validly managed to earn one increment in the grade before his regularisation alongwith the applicant took place on 25.08.86. The applicant has not impugned the order of adhoc appointment of the respondent No. 4 either in the relief or not at any appropriate time earlier.

11. The reliefs are multiple but sought in "if not this, why not that" fashion, reflecting total <sup>lack</sup> ~~that~~ lack of confidence in either of them. Going through the submissions of the applicant, we further notice that his junior in the H.C's seniority list was promoted as H.C on adhoc basis in 1984 as per rules 319. Both were thereafter, regularly promoted on 25.08.85. The regularisation at a late date does not effect the fact that the respondent No. 4 had fortuitously thought but with competent authority's order as per rule, had put in about two years adhoc service making him eligible for an <sup>ad hoc</sup> ~~ad hoc~~ increment in the same grade due to his adhoc service even before regularisation. The Govt. Of India has clarified the contingency of such promotion in the light of stepping up of pay of senior at par with junior in the back ground of junior drawing higher pay etc. The issue and the decision (Bd's letter No. PC/PP1 OT 18.09.65 Pc 60/PP/dt. 19.03.66) are reproduced below :-

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Point

Clarification

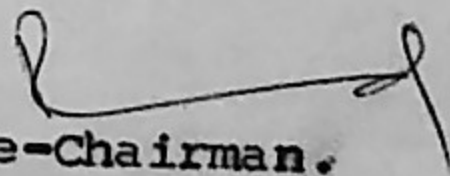
Whether it would be admissible to step up the pay of a senior railway servant in terms of R/316 if the promotion of the junior servant is in a lien/ short term vacancy.

The benefit of stepping up of pay of senior employee can be given except in a case where a junior gets a fortuitous promotion. The pay so stepped up will not be reduced (i) at the time of reversion of the junior employee nor will it be stepped up again when the junior is repromoted.

12. In this case, as noticed earlier, the promotion of a junior posted in a different branch was a conscious decision but he fortuitously continued there for over one year earning an increment, which is not liable to be cut as per the above decision of the Railway Board. Both the applicant and the respondent No. 4 got regular promotion on 25.08.86 giving rise to the issue of anomaly in pay fixation. In our view, the contingency was already anticipated and it was decided by the Railway Board how the same should be dealt with. It was held by them that when the junior is promoted, here he is being regulary promoted, <sup>the issue will stand sorted</sup> and started out by this decision. The applicant him-self failed to contest the adhoc promotion of his junior at appropriate time, thereby forfeiting his further legal remedy. The applicant's pay <sup>is not necessary to</sup> will not be stepped up. We do not see any reason to interfere with this decision at this belated stage, <sup>as this decision</sup> which must have decided or sealed the fate of many such persons who are not in the array. <sup>No illegality has been attributed to this decision.</sup> The O.A is dismissed on merits.

13. There will no order as to costs.

S. B. Rao  
Member- A.

  
Vice-Chairman.

/Anand/