

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 10/4 day of July 1996.

Original application No. 1508 of 1994.

Hon'ble Dr. R.K. Saxena, JM
Hon'ble Mr. D.S. Baweja, AM

Raja Ram Sharma, S/o Sri Bhagelu
Sharma, R/o Mohalla Jatepur North
(Kali Asthan). District Gorakhpur.

..... Applicant.

C/A Sri Anil Kumar

Versus

1. Union of India through General
Manager, North Eastern Railway,
Gorakhpur.
2. General Manager (P), North Eastern
Railway, Gorakhpur.
3. Chief Mechanical Engineer, North
Eastern Railway, Gorakhpur.

..... Respondents.

C/R Sri V.K. Goel

O R D E R

Hon'ble Mr. D.S. Baweja, AM

This application has been filed under
Section 19 of the Administrative Tribunals Act 1985.
The applicant was initially appointed as a Khalasi
in the Loco Workshop N.E. Railway, Gorakhpur. He
was subsequently promoted as a Daftari in the pay scale
of Rs. 80-110 on 4.6.71. Thereafter he was promoted as

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a junior clerk vide order dated 6.3.73. He worked as junior clerk from 8.3.72 to 2.11.72 but all of ^{a (K)} sudden, he was reverted and posted as a peon. This order ^{was} challenged by him before the Munsif court through suit no. 1031 to 1974. Vide judgement dated 18.3.76, the learned Munsif allowed the petition setting aside the reversion order. This judgement was challenged by the Administration in the civil appeal no. 206 of 1976. This appeal was also dismissed. A second appeal was filed before the Hon'ble High Court and the same has been also disposed of by an order dated 14.10.92 upholding the judgement of the lower courts.

In the mean time, the applicant passed in the selection of junior typist in the scale Rs. 260-400. He was further promoted as a senior typist in the grade 330-560 (1200-2040) vide order dated 7.11.85, and the applicant is still continuing in this grade.

Railway Board issued the order of restructuring of the cadres to be effective from 1.3.93. He was due for promotion as per seniority as a Head Typist from 1.3.93 in the grade Rs. 1400-2300 but he was not considered for promotion when orders for promotion dated 9.12.93 were issued.

2. Consequent to the rejection of the second appeal by Hon'ble High Court, the applicant made a representation dated 6.12.92 with a request for granting reliefs as per the judgement treating the applicant as a clerk in the grade 110-180 from 8.3.72 onwards and granting of all consequential benefits. This was

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followed by a number of reminders/representations. Respondents vide letter dated 18.10.93 asked the applicant to give his option whether he wants benefit in the clerical cadre. The applicant opted for clerical cadre vide his letter dated 19.10.93 with a condition that he may be granted seniority of the clerk from 8.3.72 onwards and granted consequent promotions of senior clerk, Head Clerk, and Office Superintendent grade II without any examination from the relevant dates when his junior has been promoted. The administration accepted his option and passed an order dated 3/4.1.94 regarding applicant's lien in the clerical cadre and giving proforma promotion in the grade 950-1500 from 8.3.72.

The applicant has also filed a Misc. application for proceedings under Contempt of Court Act No. 271/93 before the Munsif Court, Gorakhpur.

It is also noted that Instead of implementing the judgement and granting the consequential benefits, and posting in clerical cadre, the applicant was transferred vide order dated 21/22.1.94 from the office of Deputy Controller Store, N.E. Railway, Gorakhpur to office of General Manager as a senior typist. The applicant carried out the transfer and joined on 24.1.94 as a senior typist. Since joining as a typist on 24.1.94, the applicant had not been given any payment for the month of February and March treating him waiting for orders. However on making representations, the payment for February and March has been made. But further payment from April onwards has been stopped. The applicant made several representations that till the judgement is implemented by allowing all the consequential benefits in the clerical cadre, the applicant may be promoted as a Head Typist in the grade 1400-2300 and continued

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in the Typist's cadre. The respondents are neither permitting the applicant to work in the typist cadre nor in the clerical cadre and not paying his salary since April '94 onwards.

3. This application has been filed being aggrieved, praying for the following reliefs:-

(i) To issue direction to the respondents to pay the applicant salary in Typist cadre from the month of April '94 ^{onwards} till final absorption in the clerical cadre.

(ii) To promote the applicant as Head typist in the scale 1400-2300 from 1.3.93.

(iii) Issue direction to the respondents to grant due promotion to the applicant in the clerical cadre in terms of the order passed by Hon'ble High Court dated 14.10.92 and payment of the arrears of pay and bonus etc. with 18 per cent interest.

(iv) Issue direction quashing the orders dated 21.3.94, 17.5.96, 9.9.94 and 7.3.95 (Annexure-^{R1} 1 to R-4) respectively of the counter passed by the respondents.

4. During the pendency of the O.A. after filing of the counter reply, the applicant has moved an amendment application for certain amendments with regard to non-service of the letters referred to in R-I to R-4 of the counter affidavit and the same was allowed. The applicant also moved a Misc. application

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praying for direction to the respondents not to declare the result of the selection held on 29.8.95 for the post of Chief Typist in the scale 1600-2660 or as an alternative the respondents to keep one post vacant for the applicant pending disposal of the present O.A. On this Misc. application, an interim order dated 12.9.95 was passed that the result of the selection shall be subject to the decision of this O.A. Further the applicant ^{also} ~~after~~ made a prayer with regard to non payment of the pay as a Senior Typist from April ' 94 onwards, and vide order dated 7.10.94, direction was given that respondents to indicate to the applicant as to the post on which he is supposed to work and also to pay arrears of salary as Senior Typist as well as pay his salary in future regularly. These interim orders were confirmed from time to time during the pendency of the application.

5. The respondents have filed the counter-affidavit, admitting the fact of the applicant having filed civil suit and disposal of the second appeal by Hon'ble High Court. It is stated that after the option was received from the applicant for the clerical cadre, his lien was fixed in the clerical cadre vide order dated 3.1.94. Action has been ^{also} taken to grant of promotion and fixation of pay in the various grades up to Head Clerk (1400-2300) and posting also indicated vide order dated 21.3.94. As regards the promotion to the post of Superintendent grade II, it is stated that it is a selection post and he could be given promotion only after he passes the selection. This was indicated to the applicant vide order dated 21.3.94. It has been also advised that the separate selection for the post of

Superintendent grade II will be arranged for him after he joins the clerical cadre.

As regard promotion as Head Typist from 1.3.93, ^{Respondent's submission that} since the applicant had already given his option for joining in the clerical cadre his request for grant of promotion in the Typist cadre cannot be agreed to as the option exercised is irrevocable.

^{Respondent's content} ^{that} the applicant has however absconded from duty and refused to accept the copies of the orders. His period from 21.1.94 till 21.3.94 has been treated as waiting for order vide order dated 17.5.94. It was also ordered that if he failed to join duty as a Head Clerk he would be treated as absent from duty after 21.3.94. In spite of this, ^{the} applicant has continued to remain absent from the duty after 21.3.94 and did not join the post of Head Clerk in the clerical cadre. The applicant was perhaps avoiding joining as a Head Clerk, because of he continued in the Typist cadre he would have been promoted as a Chief Typist (Type-Superintendent grade II).

All the representations made by the applicant have been decided and replied vide letter dated 9.9.94 at annexure-3 ^{by the respondent} and applicant has refused to accept the same. Since the applicant is absent from the duty and he is not entitled for any salary till he joins the post in compliance of the orders.

In view of the above facts, ^{respondent's view that} the applicant is not entitled for the reliefs prayed for.

6. Heard the learned counsel for the parties. The applicant filed the rejoinder affidavit reiterating

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the facts brought out in the application and refuting the averments in the counter affidavit. We have perused all the material brought on the record and given careful thought to ^{the} pleadings made during the hearing.

7. From the contentions advanced, it transpires that the prayer made for reliefs (i) and (ii) in the present application and detailed in para 3 above are indirectly, ^{and} while the reliefs (iii) and (iv) are directly related with the judgement in the civil suit. We will first take up the reliefs No. (iii) and (iv). These are concerned with the implementation of the judgement in the civil suit granting due promotions and payment of the arrears etc. in the clerical cadre. The applicant has averred that a misc. application No. 271/93 under Contempt of Court Act has been already filed in the court of Munsif, Gorakhpur for non implementation of the judgement. This application is said to be still pending. It is also averred that respondents had sought time for implementation of the judgement. The respondents on the other hand have furnished the details of the implementation of the judgement by treating the applicant in the clerical cadre as per the judgement. The applicant has however denied the receipt of any of the letters annexed at R-1 to R-4 of the counter and also averred that copies of these letters have not been filed in the Court with reference to contempt petition. The quashing of these orders has been also prayed for. Since the matter with regard to non implementation of the judgement is already agitated in the civil court through a contempt petition, we refrain to go into the merits of these reliefs.

8. The second relief concerns the promotion as Head Typist in the grade of Rs. 1400-2300 from

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1.3.93 under cadre restructuring orders of Railway Board. The respondents have resisted this claim stating the applicant has opted for clerical cadre in pursuance of the judgement in the civil suit and therefore he has to seek further advancement in the clerical cadre. We are inclined to agree with the contention of the respondents. The applicant cannot seek the benefits of the promotion in the two cadres at the same time. Once he has opted for clerical cadre, then as per the judgement he is to be considered as clerk continued from the initial promotion from 8.3.72. He has to get further promotions in the clerical cadre with this reference to this promotion. The benefit of cadre restructuring from 1.3.93 if any due to him as per the seniority has to be availed in the clerical cadre. He cannot claim first benefit in the typist cadre and then avail the same benefit in the clerical cadre from the same date. In fact from annexure R-2 of the counter, he is promoted as Head Clerk in the grade of Rs. 1400-2300 much earlier from 23.7.90. In view of these considerations, we are unable to find merit in this prayer for this relief.

9. Now we come to the first relief with regard to non-payment of the salary for the month of April '94 onwards. In this connection interim order passed is detailed in para 4, wherein it was directed to indicate the posting of the applicant either in the clerical or typist cadre and pay him regularly including arrears. From the averments made in the counter, we find that after giving his option in the clerical cadre, his promotion upto Head clerk has been ordered vide letter

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dated 21.3.94 and he has been also giving posting order. However the applicant did not join. Another letter dated 17.5.94 was issued regularising the period, — On being relieved from the office of Deputy Chief Controller of stores, Stores Depot Gorakhpur for reporting to General Manager's office for further posting from 21.1.94 to 21.3.94 as waiting for duty, and reiterating the earlier posting order ^{of 21.3.94} ~~was issued~~. In the endorsement of this letter, it is also mentioned that the applicant has refused to accept the order dated 21.3.94 inspite of being available in the office and he will be treated as unauthorisedly absent if he does not join the duty as Head Clerk. The applicant has totally denied the knowledge of these letters and also averred that these have not been served on him. He has also stated that he has been regularly going to the office for duty but the Administration did not permit him to work either in clerical or Typist cadre.

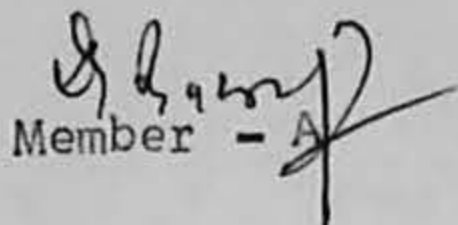
Considering the facts and circumstances of the case, we are afraid that we are unable to accept the contention of the applicant. Subsequent to the letters dated 21.3.94 and 17.5.94, two more letters dated 9.9.94 and 7.3.95 (Annexure-R-3 & R-4) have been issued addressed to the applicant. Letter dated 9.9.94 is in reply to his several representations and sent through his controlling officer. The letter dated 7.3.95 is sent to his residential address with reference to his representation dated 9.2.95. The applicant has submitted in para 4.30 of the application that annexures R-1 ~~to~~ R-4 of the counter affidavit are all false and fabricated documents only to fill up the lacuna when the respondents were faced with contempt petition in the civil suit. On going through these letters, we fail to appreciate that how the applicant

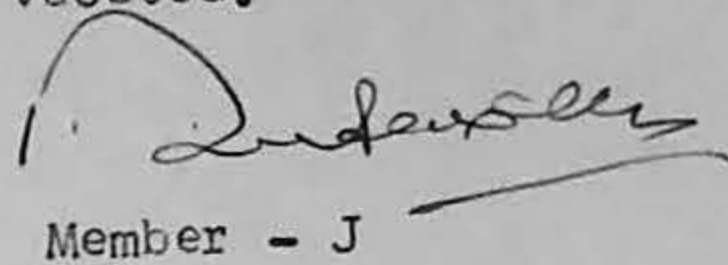
has averred that these documents are fabricated. The copies of these letters are endorsed to all the concerned officers and give the details of the promotions and fixation of pay as due in the compliance of the judgement. The letters dated 9.9.94 and 9.2.95 refer to the representations submitted by him on the different dates. We are unable to accept these submissions of the applicant. If the statement of the applicant that he has seen regularly reporting for duty in the office but not allowed ~~but~~ ^{and} prevented from doing any work, is believed, then it is surprising that how he did not come to know of the issue of any of the letters at R-1 ~~and~~ R-4 of the counter. Did he meet the concerned officer to find out the position of his case? How did he receive the payment of February and March '94 which was given only after the period was regularised waiting for orders vide letter dated 17.5.94. These points are not covered in his averments in the application or rejoinder. From the rival averments, it is clear that the applicant was not willing to join as a Head Clerk and wanted to be promoted as a Superintendent Grade II ^{out} with/selection or join clerical cadre after availing promotion in the typist cadre. Administration was not ready to agree for the same as the post of Superintendent was a selection post. Instead of joining duty as a Head Clerk and then pursue his case for further promotion, he has resorted ^{by the} ~~two~~ course of avoiding the receipt of the ~~and~~ orders and agitate the matter before the Tribunal for making out a case of non payment of the salary even though being on duty and non implementation of the judgement of the civil suit. In our opinion, the applicant has been avoiding joining duty and remaining absent, on his own accord. Therefore he cannot seek any relief

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for payment for the period of absence.

10. In consideration of the facts detailed above, there is no merit in the application as the same is dismissed. No order as to costs. The interim orders dated 7.10.94 and 12.9.95 are also vacated.


Member - A


Member - J

Arvind.