

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 08th day of May, 2002.

Original Application No. 1660 of 1994

with

Original Application No. 1095 of 1997.

Q U O R U M :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr. S. Dayal, Member- A.

1. Durga Prasad Singh a/a 39 years
S/o Sri Raj Bali Singh, R/o 46/8, Ganesh Nagar,
Myorabad, Allahabad. At present posted at
Divisional Railway Manager Office, Mechanical Branch,
Allahabad.
2. Mansoor Ahmad a/a 38 years S/o Sri Nazir Ahmad
R/o 266/556- B, Driyabad, Allahabad, at present
posted at D.R.M's Office, Machenical Branch, Allahabadd.
3. Said Ali a/a 39 years, S/o Sri Hamid Ali Siddiqui,
R/o Railway Colony, Naini, Allahabad, at present posted
in C.W.S, Northern Railway, Chheoki, Allahabad.
4. P.K. Gupta a/a 39 years S/o Sri R.K. Gupta
R/o 709-D, Loco Colocy, Allahabad, at present posted at
D.R.M's Office, R.S.O Branch, Allahabad.

.....Applicants

Counsel for the applicants :- Sri T.S. Pandey

V E R S U S

1. Union of India through the General Manager,
Northern Railway, Headquarter's office, Baroda House,
New Delhi.
2. The Divisional Railway Manager, Northern Railway,
Allahabad.
3. The Senior Divisional Personnel Officer,
Northern Railway, Allahabad.

4. Iftikhar Ahmad Siddiqui S/o Sri Rukhsar Ahamed Siddiqui. R/o Vill. and Post- Purwakhas, Karchhana, Allahabad, working under Senior Section Engineer C&W, Allahabad as Head Clerk.
5. Smt. Puspa Verma a/a 44 years D/o Late P.N. Srivastava R/o 511- A, Lalit Nagar, Allahabad, posted as Head Clerk, D.R.M Office, Machanical Branch, Allahabad.
6. Benudhar Das a/a 44 years S/o Late B.N. Das R/o 623/D, Smith Road, Allahabad, posted as Head Clerk under Senior DE/RSO/Allahabad.
7. Padma Kant Malviya a/a 44 years S/o Sri Jawahar Lal Malviya R/o Vill and Post Kotwa, Allahabad, Posted as Head Clerk in D.R.M Office, Machanical Branch, Allahabad.
8. S.K. Saharoy a/a 40 years S/o Late B.B. Saharoy R/o 507/A, Lalit Nagar, Allahabad, posted as Head Clerk, D.R.M. Office, Machanical Branch, Allahabad.

.....Respondents No. 1 to 3
are common and respondents
No. 4 to 8 in O.A 1660/94-.

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

O R D E R (Oral)

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

In both the aforesaid O.As, the question of facts and law and nature of relief are similar and both the O.As can be disposed of by a common order against which the learned counsel for the parties have no objection.

2. Four applicants in O.A No. 1660/94 have approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 and have challenged the order dated 03.06.1994 passed by the D.R.M, Northern Railway, Allahabad and have prayed that it may be quashed



as it runs counter to the judgment of the Tribunal dated 06.07.1992 passed in O.A No. 1405/1988- S.D. Tripathi and others Vs. U.O.I and others and effects adversely the seniority of the applicants in the cadre of Senior Clerks and Head Clerks as determined in compliance of the aforesaid judgment of this Tribunal. It has also been prayed that direction may be given to respondents not to alter the applicants' seniority as determined by order dated 29.12.1992 and 09.02.1993 during the pendency of the S.L.P before the Hon'ble Supreme Court. The applicants have further prayed that opposite parties may be directed not to revert the applicants on the basis of altered seniority, if any.

3. The facts giving rise to the aforesaid controversy are that the applicants were appointed as Clerks in the grade of Rs. 260-400. The dates of appointment of the applicants are as under :-

1. Durga Prasad Singh	21.07.1980
2. Mansoor Ahmad	06.10.1979
3. Sajid Ali	11.12.1980
4. P.K. Gupta	20.02.1982

The Railway Board by order dated 10.11.1980 directed that President has given consent for introducing direct recruitment of Graduates at the level of Senior Clerks in the pay scale of Rs. 330-560 for Personnel Department. 20% of the total strength of the cadre of Senior Clerks was ordered to be filled by the direct recruitment of Graduates from open market. The existing employees of the Personnel Department working as Junior Clerks in the scale of Rs. 260-400/- who were Graduate, were permitted to apply for recruitment against direct recruitment quota. It was also provided that the seniority of the directly



recruited Senior Clerks vis-vis those promoted shall be determined with reference to the date of entry in to the grade. By order dated 18.06.1981 (annexure A- 6) of O.A No. 1660/94) it was directed that this scheme shall take effect from 01.10.1980. The applicants who were already worked against 13-1/3% Graduates Clerks quota, were permitted to appear in the departmental examination and they were selected as Senior Clerk. They were promoted to the post on 31.10.1985. The dispute arose among the Senior Clerks ~~between~~ direct recruits and the promotees under 66.63% who were promoted on basis of the seniority-cum-suitability under the rules. O.A No. 1405/98 S.D. Tripathi and others Vs. U.O.I and others was filed in this Tribunal by 35 applicants seeking direction to the respondents to act in accordance with the orders contained in Railway Board's letter dated 10.11.1980 and 18.06.1981 and to proforma fix the applicants pay and assign seniority to them w.e.f 01.10.1980. This O.A was allowed by order dated 06.07.1992 by following direction :-

" Accordingly, this application is also allowed and the respondents are directed to fix the pay of the applicant on the basis of para-2 of the Railway Board's letter dated 18.06.1981 from 01.10.1980 on the proforma basis and his seniority will also be assigned w.e.f the said date. The application is disposed of with the above direction. Parties to bear their own costs."

4. The order of this Tribunal was challenged before the Hon'ble Supreme Court in S.L.P No. 16030 of 1993 by Union of India and others. The S.L.P was disposed of finally by order dated 23.10.1996. The order of Hon'ble Supreme Court is being reproduced below :-

" The application for intervention is allowed.

Leave granted.

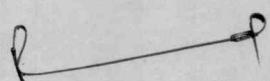
The controversy raised in this appeal is covered by the judgment of this Court in Smt. Anuradha Mukherjee and ors. etc. etc. v. Union of India & ors. etc. (CA 4265 of 1996 etc.) decided on March 12, 1996.

The appeal is accordingly allowed. The order of the Tribunal stands set aside. No costs."

5. The judgment of Hon'ble Supreme Court in case of Smt. Anuradha Mukherjee case has been reported in 1996 SCC (L&S) 1187. Para 14 of the aforesaid judgment deals about the seniority of the direct recruits and promotees, is being reproduced below :-

" It is seen that such of the graduate Clerks though appointed as Grade 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 with effect from the proforma date of October 1, 1980 but only from the date of their actual appointment as Grade II Clerks, notionally as Grade I Clerks since their appointments or after October 1, 1980. The inter se seniority of the 20% direct recruits on the one hand and limited recruitment graduate Grade II Clerks and the promotees on the other shall be determined in accordance with para 302 of the Railway Establishment (Vol. I) in the manner indicated above."

In para 13, Hon'ble Supreme Court after reference of para



302 of Indian Railway Establishment Manual Vol. I concluded that inter se seniority is alternative i.e. promotee first and direct recruit would be below him and the same would continue in the order of merit in the ^{according to} respective lists ~~and~~ the roster maintained by the Railway Administration. In other words promotee would be senior to direct recruits.

6. In the present case the respondents however, have ^{in their} taken the stand ~~as~~ the judgment in S.D. Tripathi's case passed by this Tribunal was set aside by the Hon'ble Supreme Court, the applicants are not entitled for the benefit of the order of Hon'ble Supreme Court in Smt. A. Mukherjee case (Supra). We do not appreciate that the step taken by the respondents is correct. It is true that the order of this Tribunal was set aside but ^{in their} an order was not substituted by another order, except ^{for} making reference of the judgment in Smt. A. Mukherjee case. The position is well clear that the respondents have no choice but to follow the order in A. Mukherjee case. It may also be mentioned here that after hearing parties, this Tribunal on 17.09.1997 passed the following interim order :-

" In view of the above, we do not consider it appropriate to extend the order of status quo passed earlier. We make it clear that the rights of the applicants will be determined on the basis of the principle laid down in Anuradha Mukherjee's case. List for hearing on 22.12.1997."

Thus, This Tribunal had already made it clear by the interim order that the respondents shall ~~abide~~ ^{abide} by the judgment of Smt. Anuradha Mukherjee case. However, the respondents after the order of the Hon'ble Supreme Court dated 23.10.1996 by which the order of this Tribunal in



S.D. Tripathi's case was set aside, disturbed the seniority list and passed orders reverting the applicants on 03.10.1997 and determined the seniority on 17.12.1996 which are subject matter of challenge in O.A No.

1095 of 1997. In our opinion, the applicants are entitled for the relief, ~~as~~ the judgment of Hon'ble Supreme Court in Smt. A. Mukherjee's Case has not been followed and the seniority has not been drawn accordingly, the order reverting the applicants in O.A 1095/1997 is also liable to be set aside.

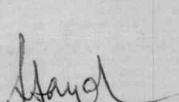
7. For the reasons stated above, both OAs are disposed of on the following terms :-

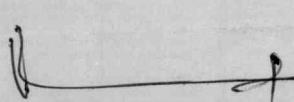
(1) The seniority list drawn on 17.12.1996 shall be re-casted in terms of judgment in case of Smt. Anuradha Mukherjee's case and the applicants shall be placed at their appropriate places according to that judgment and in terms of ~~the rule~~ ~~inter se seniority~~ list contained in para 302 of I.R.E.M Vol. I.

(2) The orders of reversion dated 03.10.1997 are set aside. The applicants shall be restored to the position of O.S Gr. II. However, it shall be subject to further orders passed on re-casted seniority.

The orders shall be carried out within four months from the date of communication of this order.

8. There will be no order as to costs.


Member - A.


Vice-Chairman.

/Anand/