

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH: ALLAHABAD

OA 900/1995

New Delhi, this the 6<sup>th</sup> day of ~~December~~ <sup>Jan 2003</sup>, 2002

HON'BLE SH.GOVINDAN S. TAMPI, MEMBER (A)  
HON'BLE SH.A.K.BHATNAGAR, MEMBER (J)

Manoj Kumar Srivastava,  
S/o Late K.K.Srivastava,  
presently working as Law Assistant,  
North Eastern Railway, Gorakhpur ...Applicant  
(By Advocate: Shri Sanjay Kumar Om)

VERSUS

1. Union of India,  
through General Manager  
N.E. Railway, Gorakhpur,
2. Divisional Railway Manager,  
N.E.Railway,  
Lucknow.
3. Senior Divisional Personnel Officer,  
N.E.Railway, Gorakhpur.
4. Sri Faiyzad Ali, S/o late Mahboob Ali,  
R/o Railway Quarter 9-B, Badshah Nagar,  
Railway Colony Lucknow, presently working  
as ad hoc Enquiry-cum-Reservation Clerk,  
N.E. Railway, Lucknow. ...Respondents.  
(By Advocate: Shri V.K.Goel)

ORDER

The reliefs, sought for in this OA, are as below:-

- i) That this Hon'ble Tribunal may be pleased to issue an order or direction in the nature of certiorari quashing the order dated 27.4.1995 passed by the respondent No.3 (Annexure A-1),
- ii) that this Hon'ble Tribunal may be pleased to issue an order or direction in the nature of mandamus commanding the respondents to treat the petitioner as senior to the respondent no.4 in the cadre of Booking Clerk in the pay scale of Rs.1200-2040,
- iii) that this Hon'ble Court may be pleased to issued any other suitable order or direction as this Hon'ble Court may deem fit and proper under the circumstances of


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the case.

- iv) to award the cost of the petition in favour of the petitioner.

2. Heard S/Shri Sanjay Kumar Om, learned counsel for the applicant and V.K.Goel, learned counsel for respondents respectively.

3. The applicant (Manoj Kumar Srivastava), who was appointed as Booking Clerk in the pay scale of Rs.975-1540/- on 30.6.1988, became a Senior Booking Clerk in the pay-scale of Rs.1200-2040/- on 30.9.1993. The applicant had applied for selection post of Law Assistant in the pay scale of Rs. 1600-2600 and was empanelled for the same on 29.3.1995. Respondent No.4 (Faiaz Ali), who joined as Booking Clerk on 28.10.1983, had become Enquiry-cum-Reservation Clerk (ECRC) in the pay scale of Rs. 1200-2040 on 30.3.1993. Though the post of ECRC is a selection post that individual had not passed any selection. Therefore, on 4.8.1991, he was returned to the original cadre of Booking Clerk and promoted as Senior Booking Clerk on 6.6.1991. Respondent No.4 had, however, declined his promotion as Senior Booking Clerk on 19.8.1991 and continued as ECRC. When a person continuously refuses to accept the promotion, he would have to be ranked junior to all promoted persons during the period of his refusal. The applicant was promoted on 30.9.1993 during the period of such refusal by Respondent No.4, and therefore, in terms of para 224 of IREM, he was to rank senior to Respondent No.4. However, it appeared that the refusal by Respondent No.4 was rejected and he was granted the benefit of seniority with retrospective





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effect. On account of above, the applicant had become junior Respondent No.4 which was against the spirit of the directions of IREM. The above respondent also had filed OA No.323/1993, before Lucknow Bench claiming seniority over the present applicant for being empanelled for the post of Law Assistant. The Respondent No.4, who had declined promotion repeatedly and lost seniority was attempting to regain the same over the petitioner in a wrong and improper manner. The applicant apprehends that the official respondents would interpolate the name of respondent no.4 above him in the panel for the Law Assistant, in which post he has been working since 29.3.1995. The petitioner was correctly entitled to his seniority, which has not been granted to him by the Department which was totally improper. Hence this OA.

4. The grounds raised in this OA are:-

(i) the order dated 27.4.1995 rejecting the refusal of the Respondent No.4 was illegal as it had been accepted originally on 21.10.1991.

(ii) The respondent No.4 was permitted to continue as ECRC on ad hoc basis after his refusal of posting as Senior Booking Clerk.

(iii) Respondent No.4 had not withdrawn his refusal.

(iv) IREM has no provision to recall the acceptance of the refusal after four years to the benefit of any one individual.

5. In the above circumstances, the OA should succeed, pleads the applicant. Shri S.K.Om, learned counsel for the applicant strongly reiterated the pleadings raised by him.

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6. In the reply filed on behalf of the respondents, it is pointed by Respondent No.4 that he has filed OA 323/1995 before the Tribunal at Lucknow Bench, challenging the appointment of the applicant (Manoj Srivastava) to the post Law Assistant as he was in fact junior to him (Respondent No.4). Respondent No.4 was appointed as Booking Clerk on 28.10.1983 as against the applicant, who was appointed on 30.6.1988. He became ECRC on 30.3.1987 and the senior Booking Clerk on 6.6.1991. On the other hand, the applicant was promoted as Senior Booking Clerk on 30.9.1993 and, therefore, his apparent promotion to the post of Law Assistant was improper. The respondents also point out that he had filed another OA 471/1994 for regularisation his ad hoc promotion to the post of ECRC on 30.3.1987. The applicant had no right to challenge the order dated 27.4.1995 as the Respondent No.4 had been promoted the parent cadre w.e.f. 6.6.1991. His promotion both as ECRC on ad hoc basis and subsequently as Senior Booking Clerk was on dates earlier to the promotion of the applicant. The applicant was only attempting to stake his correct promotion as Law Assistant, to which post the applicant has been wrongly empanelled.

7. In additional affidavit filed on behalf of Respondent No.4, it is pointed out that the Tribunal had directed the regularisation of both himself himself and another as ECRC but in the meanwhile he had been promoted as Senior Booking Clerk with effect from 6.6.1991. In fact for the period between 6.6.1991 and 27.4.1995, he was already working with



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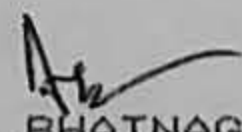
1200-2040. These averments are disputed by the learned counsel for the applicant. During the oral submissions, Shri Goel, learned counsel for the respondents had brought to our attention order passed by the Lucknow Bench of the Tribunal in OA 323/1995 on 18.11.2000 whereunder the claim of the applicant in that OA (Respondent No.4 in this OA) has been negatived. Shri Goel, therefore stated that the present applicant's apprehension that his future promotion would be affected by respondent no.4 has no basis at all.

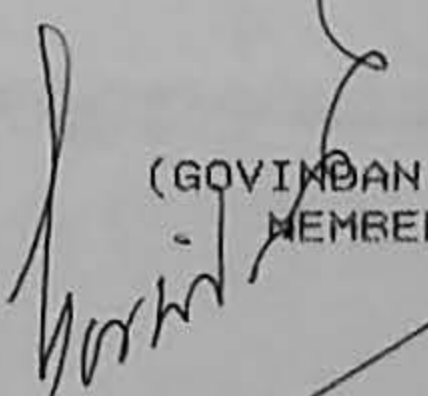
8. We have carefully considered the matter. The applicant in this case is aggrieved that the decision of the respondents on 27.4.1995 rejecting the refusal given by Respondent No.4 for his promotion as Senior Booking Clerk originally accepted in 1991 would come in the way of his promotion as Law Assistant as he would be placed junior to the said respondent. While he does not deny that Respondent No.4 was originally <sup>his</sup> Senior as Booking Clerk, he had gone on the to the ex. cadre post of ECRC on his own in 1987 and had continued without reverting to the parent cadre, while the applicant had become Senior Booking Clerk in 1993. The official respondents were still trying to favour the respondent No.4 by rejecting his refusal once already <sup>accepted</sup> in 1991, and granting him seniority and placing him in the panel for Law Assistant. Perusal of the documents placed before us also clearly shows that the Respondent No.4 had opted to be only ECRC and had refused promotion in his parent cadre of Booking Clerk/Senior Booking Clerk.

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Therefore, rejecting the refusal once accepted four years later and granting him promotion from 6.6.1991 by the impugned order dated 27.4.1995 would appear to be bad and unusual. He has also been ordered to be regularised as ECRC by the earlier decision of the Tribunal in OA 471/1994. The attempt by the respondents to show in 1995 that the respondent No.4 had not refused promotion granted on 6.6.1991 but had only sought for regularisation for the alternate post does not amount to much. The respondent no.4 cannot claim that he should have the <sup>best</sup> of all the world all the time, and <sup>that</sup> too at his choice. The benefit which has accrued to the applicant by selection as Law Assistant cannot be taken away by the retrospective grant of seniority to the Respondent No.4, as is sought to be done by the official respondents. The issue, however, has become only <sup>an</sup> academic value as the applicant's promotion as Law Assistant has already been upheld by the Lucknow Bench by the Tribunal in OA 323/1995 filed by Respondent No.4.

9. In the result, the OA succeeds in principle and is accordingly disposed of. It is directed that impugned order dated 27.4.1995 rejecting the refusal of respondent no.4 and giving him seniority, would not come in the way the applicant's chances for further promotion. No costs.

  
(A.K. BHATNAGAR)  
MEMBER (J)

  
(GOVINDAN S. TAMPI)  
MEMBER (A)