

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 14th day of January 2004.

Original Application no. 448 of 1999.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr. A.K. Bhatnagar, Member (J)

1. J.B. Singh, S/o late Anurdh Singh
2. A.K. Verma, S/o Panna Lal
3. Raj Kumar, S/o Bhulli Ram

All working as Depot Store Keepers, Gr-III, under Deputy Controllers of Stores (Depot) at DLW, Varanasi.

4. Sunil Kumar Dubey, S/o Sri S.K. Dubey, working as Senior Clerk under Deputy Controllers of Stores (Depot), at DLW, Varanasi.

... Applicants

By Adv : Sri O.P. Gupta

Versus

1. General Manager (P), D.L.W. Varanasi.
2. Union of India, through secretary, Ministry of Railways, Govt. of India, New Delhi.

... Respondents

By Adv : Sri A. Sthalekar

O R D E R

Hon'ble Maj Gen K.K. Srivastava, AM.

In this OA, filed under Section 19 of the A.T. Act, 1985, the applicants have prayed for quashing the impugned rejection order dated 10.8.1998 (Ann 10, 11, 12 & 13) with direction to the respondents to grant proforma promotion and fixation of pay to the applicants for the purposes of computation of pension from the date applicants were initially appointed as Junior Clerks, under serving graduate quota. The applicants have also prayed for direction to treat the applicants no. 1 and 4 as selected and promoted against the notification dated 1.2.1988 and to grant all benefits of

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of
promotion on the post/senior clerks including seniority and salary, from the date of availability of vacancies of senior clerks as notified by notification dated 1.2.1988. Difference of arrears of salary for intervening period may be paid to the applicants.

2. The facts, in short, are that the applicants were selected initially as Junior Clerks in the respondent's establishment. Applicant no. 1 was appointed on 12.12.1987, applicant no. 2 was appointed on 26.5.1988, applicant no. 3 was appointed on 10.5.1989 and applicant no. 4 was appointed on 12.6.1987. All the applicants were Graduate and as per applicants they were entitled to be considered for promotion as Senior Clerks under 13 1/3 % serving Graduate Quota in view of the Railway Board's circular dated 18.6.1981 and 31.7.1981. Five vacancies for the post of senior clerks fell vacant firstly in 1988 which were notified on 1.2.1988 (no selection was held) and, thereafter, 15 vacancies were again notified by notification dated 15.10.1992. The selection was held and all the applicants got selected and promoted as Senior Clerks. The claim of the applicants, in view of the decision of the Hon'ble Supreme Court in case of Anuradha Mukherji^{Wish} that they should be assigned seniority in senior clerks from the date of appointment as Junior Clerks. They made several representations before the respondents for grant of proforma fixation of pay as well as seniority in Grade of Senior Clerks w.e.f. the date they were initially appointed as Junior Clerks, in view of the circular dated 7.10.1997. However, their representations were rejected. Then a detailed appeal was filed before the General Manager, D.L.W., Varanasi

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on 28.9.1998 which is still pending. Aggrieved by the same, the applicants have filed this OA which has been contested by the respondents by filing counter affidavit.

3. Sri O.P. Gupta, learned counsel for the applicant submitted that the notification of 05 vacancies of Senior Clerks was issued on 1.2.1988. The selection was not held for unknown reasons and, therefore, applicants no. 1 & 4 have been subjected to avoidable damage. No selection was made between 1988 and September 1992. Notification was issued on 15.10.1992 for 15 vacancies and the applicants got selected in the first attempt itself. The respondents clubbed the vacancies illegally and if the examination would have been held they would have been promoted in 1988 itself. Infact clubbing of vacancies is not permitted at all. Learned counsel for the applicant also submitted that as per instruction of the Railway Board dated 3.8.1987 ^{and} a calender should be drawn-up/maintained by Zonal Headquarters Division for conducting selection for various grades in time. These instructions have been reiterated again in circular dated 20.9.1996. But in gross violation of the instructions of the Railway Board, the respondents did not hold selection annually, though the vacancies were exsisting and were notified on 1.2.1988. Because of inaction on the part of the respondents and not adhering to the instructions issued by the Railway Board, the applicants have suffered irreparable loss in regard to seniority and salary. Learned counsel for the applicant placed reliance on the judgment of Hon'ble Supreme Court in case of Union of India & Ors Vs. Vipinchandra Hiralal Shah, (1996) 6 SCC 721.

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4. Resisting the claim of the applicant, Sri A. Sthalekar learned counsel for the respondents, submitted that the panel of 1993 has not been challenged. The applicants appeared in the selection in 1992 without protest. They were selected and promoted as Senior Clerks in April 1993. Therefore, the applicants cannot agitate the matter later on. The principle of estoppel would apply.

5. Learned counsel for the respondents further submitted that the applicants are placing reliance on the Railway Board's circular dated 7.10.1997. The Hon'ble Supreme Court vide their order dated 12.2.1999 in contempt application no. 374 of 1998 in CA no. 4265 of 1996 communicated vide Board's letter dated 19.2.1999 have clarified that the Graduate clerks will be entitled for the seniority from the date they actually took over the charge of the post of Senior Clerk. In fact the graduate clerks who were promoted against the vacancies occurred on 1.10.1980 under the orders of re-structuring were to be given benefit of proforma fixation of pay w.e.f. 1.10.1980, if such graduate clerks were in service on 1.10.1980 and in respect of those appointed after 1.10.1980 from the date of their appointment as Clerk. This benefit is not applicable in respect of the applicants to the graduate clerks promoted as Senior Clerks, as they have been promoted against the vacancies arose on or after 2.10.1980. Learned counsel for the respondents submitted that the applicants are not entitled for any proforma fixation of pay from the date they were appointed as Junior Clerks or from 1.2.1988 when the notification for 5 vacancies was issued.

6. we have heard learned counsel for the parties,

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considered their submissions and perused records.

7. The applicants have taken the plea that the selection should have been held in pursuance to the notification dated 1.2.1988 and applicants ~~no~~ 1 & 4 should have got the actual benefit as Senior Clerks. In this connection learned counsel ^{win} for the applicant has argued that since they passed 1992 selection in first attempt, had the selection been held in 1988 they would have cleared in 1988 also. This argument is hypothetical and we are not inclined to accept the same. We would like to observe that the main grievance of the applicant is that no selection was held in 1988, though the notification was issued on 1.2.1988. Therefore, if that be so, the cause of action arose in 1988 and the applicant if they are aggrieved with the same should have approached this Tribunal within the period of limitation under Section 21 of AT Act, 1985. Secondly, the applicant appeared and got selected in the selection for the post notified on 15.10.1992. They were promoted as Senior Clerk vide order dated 22.4.1993. They accepted promotion without any demur. In our opinion the principle of estoppel will apply in this case and the applicants cannot claim for seniority from back date.

8. In view of the reply of the respondents in para 12 of the counter affidavit that the Railway Board in its circular dated 19.2.1999 has clarified, in view of the judgment of Hon'ble Supreme Court dated 12.2.1999

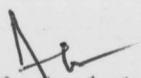
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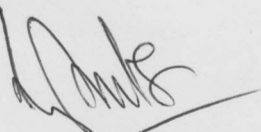
in Contempt Application no. 374 of 1998 that the graduate clerks will be entitled for the seniority from the date they actually took over the charge of the post of senior clerks, the claim of the applicants for proforma fixation of pay and seniority from back date is not established and they are not entitled for the relief sought for.

9. Learned counsel for the applicant has placed reliance on the judgment of Hon'ble Supreme Court in case of Vipinchandra Hiralal Shah (supra). This case pertains to the select list for promotion to IAS and the same is easily distinguishable with the case of the applicants. Therefore, the law laid down by the Hon'ble Supreme Court in the above case will not be applicable.

10. In the facts and circumstances and our aforesaid discussions, the OA is devoid of merit and the same is accordingly dismissed.

11. There shall be no order as to costs.


Member (J)


Member (A)

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