

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 27th day of November, 2000.

C O R A M :- Hon'ble Mr. V.K. Majotra, Member- A.  
Hon'ble Mr. S.K.I. Naqvi, Member- J.

Orginal Application No. 1310 of 1999

Baboo Ram Sharma, S/o Sri Munshi Lal Sharma  
R/o Road No. 1, Ram Nagar Colony, Izzet Nagar,  
Barailly.

..... Applicant.

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

V E R S U S

1. Union of India through the Secretary,  
Ministry of Railway, Rail Bhawan, New Delhi.

2, Chairman, Railway Board, Rail Bhawan, New Delhi.

3. General Manager, Northern Eastern Railway,  
Gorakhpur.

4. Divisional Railway Manager, Northern Eastern  
Railway, Izzat Nagar Division, Bareilly.

5. Senior Divisional Personnel Officer, North  
Eastern Railway, Izzat Nagar Division,  
Bareilly.

..... Respondents.

Counsel for the respondents:- Sri K.P. Singh

O R D E R (oral)

(By Hon'ble Mr. V.K. Majotra, Member- A.)

The applicant among others was initially appointed as Gangman in the railways. Subsequently the applicant's services were regularised on the post of Khalasi. In the year 1991, respondent No. 4 notified vide notification No. 704 dt. 10.10.91 <sup>1b</sup> vacancies to be filled through written test and viva-voce for the post of Junior Clerk. The applicant appeared and was declared successful and appointed as Junior Clerk vide order dt. 10.08.92.

2. It is alleged that after ~~continu~~<sup>only</sup> serving for more than six years on the post of Junior Clerk he has neither been promoted to the post of Senior Clerk <sup>have</sup> nor his services <sup>1b</sup> ~~been~~ confirmed. Some similarly placed persons have been reverted vide order dt. 07.10.99 (Anx.1). It is evident that he had made representation on 04.09.99 to determine his seniority and sought promotion but <sup>1b</sup> <sup>no 1b</sup> to avail. The applicant has sought for quashing of the order dt. 07.10.99 and direction to the respondents to confirm the services of the applicant on the post of Junior Clerk and a direction to promote him on the post of Senior Clerk as and when the first vacancy of Senior Clerk <sup>1b</sup> arises.

3. In the counter reply the respondents have denied the various claims of the applicant and submitted that the applicant among others has been appointed against the post of Junior Clerk <sup>purely 1b</sup> on ad-hoc basis. Whereas the applicant has not been reverted, some others have been returned <sup>1b</sup> to their original department and have got promotion in class III. The applicant has not been sent back to his original department nor he has

been recommended to go back to his original Engineering Department.

4. Applicant has filed R.A as well.

5. We have heard learned counsel for both the sides and carefully perused the material available on the record.

6. The learned counsel for the applicant has contended that vide notification dt. 10.10.91 (Anx-2) post of Junior Clerks in the scale of Rs. 950- 1500/- were to be filled up against 25% departmental promotion quota. These posts did not relate to the direct recruitment quota. He further stated that in the appointment order dt. 05.08.92 (Anx. 6) whereby the applicant was appointed as temporary clerk in the scale of Rs. 950- 1500/-, it was clarified as to against which quota the appointment was made. The learned counsel has further taken exception/incompetence of the Senior Divisional Personnel Officer for signing the counter reply. He drew our attention to rule 12-2 of the Central Administrative Tribunal (Procedure) Rules, 1987 which reads as under :-

" In the reply filed under sub-rule (1), the respondent shall specifically admit, deny or explain the facts stated by the applicant in his application and may also state such additional facts as may be found necessary for the just decision of the case. It shall be signed and verified as a written statement by the respondents or any other person duly authorised by him in writing in the same manner as provided for in order VI, Rule 15 of the code of Civil Procedure, 1908 (5 of 19080.)"

He further referred to order VI, Rule 15 of the Code of the Civil Procedure which reads as under:-

"(1) Save as otherwise provided by any law for the time being in force, every pleading shall be varied at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed."

7. Learned counsel for the respondents has contended that the counter reply has been signed by the Sr. D.P.O. who is one of the respondents and has been authorised by all the respondents. There is no legal lacuna in this document and no exception can be made <sup>be made</sup> against this. The learned counsel for the respondents has further submitted that the applicant has not been reverted and that he had been appointed against the post of Junior Clerk against direct recruitment quota and not against 25% promotion quota. It has been clarified in Anx-6 dt. 05.08.92 that the incumbent could be reverted to his department at any time or he could also be reverted on availability of a regularly recruited incumbent from the Railway Recruitment Board. He referred to the last para of the aforesigned memorandum which reads as under :-

"किसी भी लिपिक को कभी भी उसके विभाग में पदावन्त का नापिस मांगा जा सकता है अच्युत रेल-मर्टी नोट से लिपिक उपलब्ध होने पर पदावन्त किया जा सकता है। उपरोक्त व्यवस्था पूर्णतः अस्थाई है तथा इस व्यवस्था का अलगवारण अभियारियों को इस पद पर बने रहने तथा वरिष्ठता-पाने का अधिकार नहीं होगा। लायी जी समाप्ति पा इन अभियारियों को इनके मूल पर्दों पर नापिस का दिया जायेगा।"

8. The learned counsel further stated that as and when the vacancy in the applicant's quota in the Junior Clerk is available he would certainly be considered as per rules.

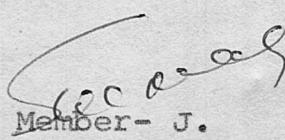
9. As to the point whether counter reply has been filed and signed by a duly authorised person, under rule 15 of the order (6) of Code of Civil Procedure requires that it has to be signed by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. The learned counsel for the applicant has stated that the respondents should have filed an authority alongwith counter reply in favour of Sr. B.P.O. We find that the Sr. D.P.O., <sup>b</sup> who is respondent No 5 in the O.A, <sup>b</sup> is one of the parties in the O.A as per Rule 15 of order VI of Code of Civil Procedure. No objection can be ~~had~~ <sup>to</sup> to his sign <sup>ing</sup> in filing counter reply on behalf of the respondents. In this view of the matter the objection on behalf of the applicant is rejected.

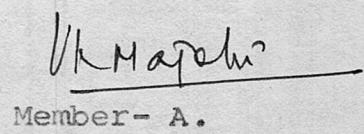
10. Notification dt. 10.10.91 whereby the 8 posts of Clerks were notified to be filled and order dt. 05.08.92 (Anx. 6) whereby among others the applicant was appointed as Clerk, in our view related to each other. The 8 post of Junior Clerks were filled on ad-hoc basis. It was clarified that the administration ~~could~~ reverted the incumbents at any time to their department. The order dt. 05.08.92 shows that the applicant among others had been appointed as Clerk on purly temporary basis and could be reverted in terms of the condition extracted above. We find no reason to disbelieve <sup>b</sup> the learned counsel for the applicant that these 8 posts of Clerk which ~~were~~

filled in pursuance of notification dt. 10.10.91 against the direct recruitment quota and not against 25% promotion quota. Annexure- 1 order dt. 07.10.99 does not concern the applicant. <sup>were b</sup>

11. We do not find it necessary to quash the order dt. 07.10.99. The learned counsel for the respondents has already stated that the applicant would be considered for confirmation on the post of Junior Clerk as and when the vacancy in the 25% promotion quota arises. Going alongwith learned counsel for the respondents we direct the respondents to consider the applicant for confirmation on the post of Junior Clerk as and when there is vacancy against 25% promotion quota <sup>b</sup> and <sup>OA is disposed of b</sup> in accordance with the rules in the above terms.

12. There will be no order as to costs.

  
Member- J.

  
Member- A.

/Anand/