

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

ORIGINAL APPLICATION NUMBER 467 OF 2000  
ALLAHABAD, THIS THE 13<sup>th</sup> DAY OF SEPTEMBER, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)  
HON'BLE MR. S. C. CHAUBE, MEMBER(A)

Abdul Nasir s/o Shri Abdul Majid,  
r/o 88, Akbarpur, Allahabad.

.....Applicant

(By Advocate : Shri N.K. Singh-Absent)

V E R S U S

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

.....Respondents

(By Advocate : Shri A. K. Gaur)

O R D E R

By Hon'ble Mrs. Meera Chhibber, Member (J)

None for the applicant even in the revised call. Since this matter pertains to the year 2000, we are deciding the same on merits after going through petition and hearing the respondents counsel.

2. By this Original Application, applicant has sought quashing of the departmental examination held for selection to the post of Office Superintendent Grade-II in pursuance of letter dated 21.10.1999 and the select list dated

04.04.2000 prepared on the basis of aforesaid departmental examination. He has further sought a direction to the respondents to allow the applicant to appear in the selection for the post of Office Superintendent Grade-II.

3. The brief facts as submitted by the applicant, are that applicant was selected as Junior Clerk after a competitive test held by Railway Commission and posted as such in the office Divisional Railway Manager, Moradabad up to December 1980. It is submitted by the applicant that he was transferred from D.R.M. Moradabad to Allahabad on 01.03.1981 and as per Railway Board letter dated 10.11.1980 and 18.06.1981 a selection was held in Headquarters office from the serving graduate against 13.1/3% quota reserved for vacant post. A panel of 58 candidates of Allahabad Division was drawn by order dated 31.10.1985 wherein applicant figured at Serial No.18. Out of this list first 43 candidates were allotted Allahabad Division while remaining 15 candidates were allotted out of Allahabad Division. As a result of which applicant was promoted as Senior Clerk on 31.10.1985. He was, thus, promoted as Clerk. On 21.10.1999 Divisional Railway Manager invited 54 candidates for participating in the selection for the post of Office Superintendent Gr.I in the scale of Rs.5500-9000/- but applicant was excluded from the said list while candidates junior to him namely Shri M.A. Aziz, Nagendra Kumar and Ansar Ahmad were invited to participate in the said selection. He has explained that Shri M.A. Aziz, was placed at serial No.28, Nagendra Kumar at serial No.49 and Ansar Ahmad at serial No.52 while admittedly applicant was at serial No.18 in the merit list of Senior Clerks drawn on 31.10.1985.

4. Being aggrieved, he gave number of representations for including his name also in the list of candidates to appear in the selection for the post of Office Superintendent Gr.II but ignoring his representation, examination was held on 22.11.1999 and 4.12.1999 and viva-voce was held on 31.03.2000 and 27.03.2000 and a provisional panel has also been drawn on 04.04.2000. It is challenging the said panel, that applicant has filed the present O.A. by submitting that he has a right to participate in the departmental test for selection to the Office Superintendent Gr.II.

5. Respondents on the other hand have opposed this O.A. They have submitted that applicant was not promoted to the regular post of Head Clerk as he was promoted against work-charged post on adhoc basis, which does not confer any right of seniority of him. They have further explained that prior to 09.06.1997, seniority of clerks of Engineering Branch was maintained separately i.e. through Works and Works Accounts. Although, both these wings are of engineering department yet with the consent of recognised union, D.R.M. had approved to merge the seniority in one seniority. Therefore, after merger of seniority inter-se seniority was assigned and the names of those candidates, who were promoted on regular basis had been placed in the new seniority list according to their length of service. After revision of seniority applicant's name comes in the cadre of Head Clerk against the work charged post ~~that~~ <sup>and</sup> ~~not~~ regular post, as such applicant's name could not come within the filed of eligibility for the post of Office Superintendent Gr.II whereas prior to merger, their seniority was maintained separately.

6. They have further explained that applicant has already been replied by office letter dated 25.05.2000 that due to merger of seniority and as per orders of Hon'ble Supreme Court in Special Leave Petition No.16030 applicant's name does not come within the field of eligibility for the selection of Office Superintendent Gr.II. Therefore, the question of considering his representation does not arise. They have further explained that benefit which was allowed earlier as per orders of this Hon'ble Tribunal in O.A. No.1405/1988 S.D. TRIPATHI & ORS. VS. UOI & ORS. According to which seniority of applicant and others were assigned in the category of Senior Clerk w.e.f. 01.10.1980 provisionally subject to the decision of Special Leave Petition pending in the Hon'ble Supreme Court, is withdrawn after the decision rendered in Special Leave Petition. Therefore, it is wrong to suggest that applicant was senior. No junior employees were called to appear in the selection of Office Superintendent Gr.II. They have further explained that promotion order of successful candidates have already been issued by office letter dated 27.04.2000 and the promotion orders have been issued subject to final outcome of decision of this Tribunal in O.A. No.531/97 and 5148/99.

7. Counsel for the respondents submitted that applicant has not impleaded the persons who have already been selected and promoted as Office Superintendent and in case the relief as prayed by him was to be granted, it would definitely affect their rights. Therefore, this O.A. needs to be dismissed even on the ground of non-joinder of necessary party. He has, thus, prayed that the O.A. may be dismissed.

8. We have heard counsel for the respondents and perused the pleadings as well.

9. It is seen counter was filed on 24.11.2000 but till date applicant has not even filed any rejoinder, meaning thereby that averments made by the respondents are deemed to have been admitted by the applicant. Applicant was not <sup>even</sup> <sub>present</sub> in court today to press this case, therefore, we could have dismissed this case for non prosecution. However, since this is an old matter, we are deciding the same on merits.

10. From the detailed reply filed by the respondents, it is clear that applicant was given provisional seniority as Senior Clerk during the pendency of S.L.P. as referred to above. But after the said S.L.P. was decided by the Hon'ble Supreme Court, the provisional seniority assigned to the applicant was withdrawn and as per the seniority list prepared after the S.L.P. was decided by Hon'ble Supreme Court. Applicant does not even come within the eligibility zone. Respondents have explained that applicant was promoted as head clerk only <sup>on</sup> <sub>ad-hoc</sub> basis and only such of the persons have been called for selection to the post of Office Superintendent Gr.II, who were regularly promoted as Head Clerk. This position has not been controverted by the applicant at all. It goes without saying that simply because one works on ad-hoc basis against a work charged post, it does not give him any right to claim seniority and in any case in this case since the matter has already been concluded by the Hon'ble Supreme Court, we do not think that we can go any further in this matter. Applicant has not shown us that he was promoted as Head Clerk on a regular promotion nor has he shown us the seniority list, whereby he can be said to be senior to the persons who were called for appearing in the test of Office Superintendent.

Respondents on the other hand have explained that earlier seniority assigned to the applicant has since been withdrawn after the orders passed by Hon'ble Supreme Court. In these <sup>there is a</sup> circumstances, we do not think <sup>any</sup> merit in the claim made by the applicant. Even otherwise, the persons who had already appeared and empanelled in the select list have already been given promotions but they have not even been impleaded as respondents by the applicant. It is well settled by now that no adverse orders can be passed at the back of an individual. Therefore, if applicant wanted ~~for~~ quashing of the select list, he ought to have impleaded those persons also as respondents, who were already selected by the respondents. To that extent, this O.A. is ~~made~~ <sup>bad</sup> for non-joinder of necessary party as well.

11. In view of the above discussion, there is no merit in the O.A. The same is accordingly dismissed. No order as to costs.

*Shukla*  
Member (A)

*J*  
Member (J)

shukla/-