

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

Original Application No. 556 of 2000

Thursday, this the 8th day of January, 2008

C O R A M :

**HONBLE DR. KBS RAJAN, JUDICIAL MEMBER
HONBLE MR. K S MENON, ADMINISTRATIVE MEMBER**

Srimati Nirmala Tripathi,
W/o. Late Rasjender Tripathi,
Ex-Professor, for the present
working as Clerk in the Operation
Department, Divisional Railway
Manager's Office, North Eastern
Railway, Varanasi, for the present
residing in House No. 58-B, Janki Nagar,
Karmatta Post Office, Diesel Locomotive
Works, Varanasi.

... **Applicant.**

(By Advocate Mr. V. Budhwar)

v e r s u s

1. The Union of India through the
Secretary, Railway Board,
Rail Bhawan, New Delhi.
2. The General Manager,
North Eastern Railway,
Gorakhpur.
3. The Divisional Railway Manager,
North Eastern Railway,
Varanasi.

... **Respondents.**

(By Advocate Mr. A. Tripathi)

O R D E R
HONBLE DR. K B S RAJAN, JUDICIAL MEMBER

The Tribunal after hearing the parties on 15.11.2007 allowed this O.A. for
reasons to be recorded separately. This delayed order is accordingly passed on
8.1.2008.

[Signature]

2. The applicant Smt. Nirmala Tripathi at the very young age, unfortunately became a widow within a short spell of 20 months matrimonial life. Her father is late Kapil Dev Mishra, who served sincerely as a Traffic Inspector Siwan under the control of Divisional Railway Manager, North Eastern Railway, Varanasi. The applicant with a view to survival made a request to the authorities concerned for appointment. After great persuasion, the Railway Board addressed a communication to the General Manager, North Eastern Railway, Gorakhpur, stating "it was decided that Smt. Nirmala Tripathi be appointed as Clerk on ad hoc basis on humanitarian ground as a special case subject to regularization of her appointment through Railway Service Commission in due course of time. Order No. E(REP)11-80 AP-11-C 89 dated 24/25.09.80 refers. There after, by order dated 18.09.80, the General Manager, North Eastern Railway, Gorakhpur addressed the Divisional Railway Manager, Varanasi, to appoint the applicant as a Clerk. This direction was complied with by issue of appointment order dated 17.01.1981 in favour of the applicant in the pay scale of Rs. 260-400. After the applicant has cleared the medical test, she was posted in the operating department. As stated earlier, her appointment could be made regular subject to her qualifying in the selection for the post of Clerk through Railway Service Commission as and when the said Commission would notify the selection.

3. The applicant continued to function to the entire satisfaction of the authorities which is evident from the fact that intermittently the applicant was granted cash award and testimonial. However, the Railway Service Commission did not come up with any notification for holding selection to the post of LDCs. This situation continued as many as 17 years.

4. The Railway Board vide its letter dated 24.05.1988 in reply to General Manager, North Eastern Railway, Gorakhpur letter dated 22.04.1988 gave following clarifications when the Board was requested about regularisation of the applicant's service.

"The position stated in your Railway's letter referred to above has been examined and it has been decided that it may not be desirable to ask the Railway Recruitment Board to conduct the examination for a single candidate, i.e. Smt. Nirmala Tripathi therefore, she will have to appear in the examination for the post of Office Clerk as and when it is conducted by the Railway Recruitment Board if she is otherwise eligible for the same"

5. In addition to above, it was also stated in the aforesaid letter that "attention is invited to instructions contained in Board's letter No. E(NG)173 PMI/315 dated 20.1.76 laying down that for Direct Recruitment to all Group 'C' and Group 'D' vacancies, serving employees who have put in three years continuous service in the Railway will be given relaxation by the period of Railway Service put in, subject to the upper age limit of 35 years not being exceeded."

6. From the above, it would be seen that the upper age limit was prescribed as 35 years and the applicant in the year 1983 itself was 34 years. Thereafter, she has penned another representation expressing her inability in participating in the selection as no such selection was conducted by the Railway Service Commission/RRB. On receipt of her representation, the Divisional Railway Manager, Varanasi, addressed a communication to the Chief personnel officer, North Eastern Railway, Gorakhpur, requesting for grant of relaxation in upper age limit of 35 years in respect of the applicant and also suggested for holding a selection locally with the prior approval of the Chairman, Railway Board. The Chief Personnel Officer in turn, addressed a communication to the Dy. Director (Establishment), Railway Board, vide letter dated 2.3.1994 in response to Railway

Board's letter dated 1.2.1994 in respect of regularisation of the service of the applicant in Operating Department, Varanasi. After considerable time, the Dy. Director (Establishment), Railway Board, vide letter dated 6.11.1998 addressed to the General Manager, North Eastern Railway, Gorakhpur, issued following instructions:

"After careful consideration of the matter, Board have decided that Smt. Nirmala Tripathi may be considered for regularisation by screening as envisaged by your Railway subject to the following conditions:

- (i) She should have completed 3 years of service as ad hoc Clerk.
- (ii) She should possess essential qualification and within the age limit (after screening the period of her ad hoc service prescribed for direct recruitment of Office Clerk.
- (iii) Her suitability will be adjudged by a screening committee of the Railway consisting of at least three J.A. Grade officers, including Chairman/Member/Secretary of the Railway Recruitment Board catering to the Railway. The screening will also comprise written test. She should possess typewriting proficiency of 30 words per minute in English or 25 words per minute in Hindi as an essential qualification.
- (iv) Regularisation will have prospective effect."

7. This resulted in issuing the following order by the Divisional Railway Manager, Varanasi.

"Smt. Nirmala Tripathi, Clerk, pay scale Rs. 950-1500 (3050-4590), her services are regularised with effect from 17.12.1998 after the process of written as well as oral examination was conducted for the post of Clerk pay scale Rs. 3050-4590. She has been found successful for regularisation with effect from 17.12.1998 in service.

The above noted notification has been approved through me on 17.12.1998."

8. While the applicant was, to some extent, satisfied about her regularisation being taken place, but her disappointment was on account of the fact that the said regularisation was effective from 17.12.1998 instead of 1981 when the applicant

was initially appointed. As such the applicant has filed this O.A. praying for the following reliefs:

(a) The order of regularisation dated 17.12.98 and 22.11.99 of GM, NER, Gorakhpur be quashed and set aside.

(b) Likewise the order dated 6.11.98 of the Dy. Director (Establishment), Railway Board, New Delhi, be also set aside in so far as it effects the regularisation prospectively and a direction be given to the respondents to regularise the applicant from the date of her initial appointment and due seniority be assigned to her in the Operating Department, Office of the Divisional Railway Manager, North Eastern Railway, Varanasi. Consequential benefits of promotion be granted from the date the applicant's immediate junior was promoted.

9. The respondents have no doubt contested the O.A. But so far as the factual position is concerned, there has been absolutely no denial. They have highlighted their decisions by para 12 of the counter, which reads as under:

"12. That the contents of para 4(12) of the claim petition are not admitted. It is further pointed out that in Railway Board's letter No. E/REP/11/86/AE 11/508 dated 6.11.1998 it has been clearly and specifically stated that the regularisation of the petitioner's services shall be prospective. Accordingly, it will be contrary to rules to accord benefit of regularisation to the petitioner from the date of his appointment in service. On the representation being made by the petitioner on the subject, the matter was referred to the Headquarters. The General Manager (P), N.E. Railway, Gorakhpur, vide letter No. Ka/227/4, Mandal, Bhag 8 (Looz) dated 10.12.1999 intimated that the petitioner will be entitled for seniority only w.e.f. 17.12.1998. The aforesaid Headquarters letter was communicated to the petitioner vide this office letter No. Ka/Pri/254/11/Lipik dated 30.12.1999.

10. The applicant has filed rejoinder in which para 12 of the counter was specifically denied and corresponding para 4 (12) of the O.A. was reiterated.

11. The counsel for the applicant after taking over the history of the case argued that non-holding of selection does not amount to any fault on the part of the applicant but on account of the fault of the respondents in conducting the

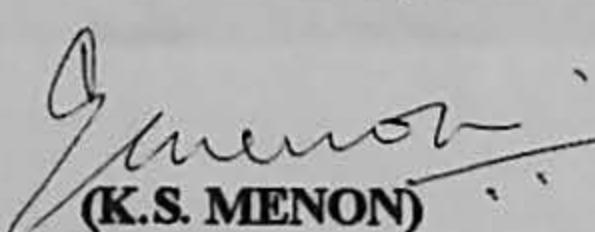
examination. The counsel has relied upon a decision in the case of **S.L. Kaul vs. Secretary to the Government of India**, 1989 Supp (1) SCC 147 wherein it was held that for lapse on the part of the Government in delay in performing their duties, the incumbent should not be made to suffer.

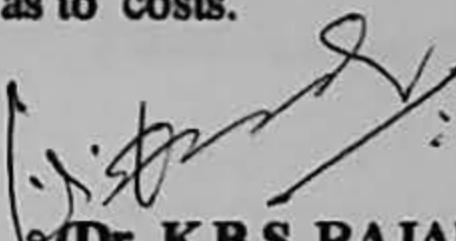
12. Arguments were heard and documents perused. The facts having been admitted the same obviate debate. The legal issue is whether the applicant is entitled to regularisation with retrospective effect. The caliber of the applicant seems to have been tested on various occasions and the fact that she has been afforded cash awards and testimonials is a concrete proof of her efficiency. Nowhere the respondents have expressed any dissatisfaction over the performance of the applicant. The applicant was ever ready right from 1981 to face the selection and prove her efficiency. However, the Railway Recruitment Board never notified any selection. The anxiety of the applicant was growing year to year and when she was to reach about 35 years, with a view to ensure that she be not blamed for not approaching the authority, represented for holding necessary selection so as to have her ad hoc appointment regularised. Her request for such examination was considered but in a slow phase. Ultimately, a relaxation was given in her case as a special case regularising her appointment but with a prospective date. The question now is whether the respondents were right in taking about a score of years in invoking their power to relax. The delay is inordinate and the applicant cannot be found fault with for such an inordinate delay. In a very recent case of **M.V. Thimmaiyyah vs. UPSC**, (CA Nos. 5883-5891 of 2007) decided on 13.12.2007, The Apex Court has held "We cannot hold the incumbent responsible for it and deprive him the due consideration if there is failure on the part of the officers to discharge their duties in writing the ACRs, the incumbent should not be allowed to suffer (In that case, the duties of the

officer related to writing of ACRs).

13. In view of the above, the O.A. succeeds. It is declared that the applicant is entitled for regularisation with effect from 17.01.1983 (2 years after her initial ad hoc appointment). Her seniority shall be counted with effect from the said date. The applicant is also entitled to be considered for regular promotion from the date her immediate juniors were promoted subject however, her having attained the bench mark for such promotional post. However, no back wages is payable and all such promotions shall be treated on notional basis. Her promotion shall be for higher post upto the level the applicant's immediate junior was granted. The benefit of such promotion on actual basis shall be granted to the applicant only form the date the applicant assumes higher responsibility. This drill shall be completed within a period of 4 months from the date of communication of this order.

14. In the circumstances, there shall be no order as to costs.


(K.S. MENON)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER