

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 11th DAY OF FEBUARY, 2010)

PRESENT :

HON'BLE MR. A. S. Karamadi, MEMBER-J
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A

ORIGINAL APPLICATION NO. 265 OF 2003
(U/s, 19 Administrative Tribunal Act. 1985)

Harish Chandra Prasad, Son of Late Sri R.P. LAL, R/o Manas Nagar 1244 C Mugalsarai, District Varanasi.

..... Applicant

By Advocate: Shri Vinod Kumar.

Versus

1. UNION OF INDIA through the General Manager, East Central Railway, Calcutta.
2. The Chief Personal Officer, East Central Railway, Culcutta.
3. The Divisional Railway Manager East Central Railway, Mugalsarai.

..... Respondents

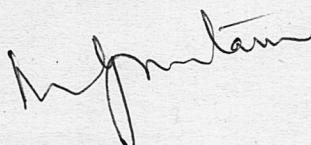
By Advocate: Shri K.P. Singh.

O R D E R

(DELIVERED BY: MRS. MANJULIKA GAUTAM - MEMBER-A)

The Applicant joined Railway Service on 05.06.1958 and was promoted as train lighting fitter in the scale of 260-400 w.e.f. 01.09.1973. On becoming medically de-categorized, he was absorbed as clerk grade-II vide order dated 07/11.10.1982 (Annexure A-I) the order referred to above reads as follows:-

"The Competent authority has approved pointing of Shri Harish Chandra Prasad as Clerk Gr. II on his present pay in the scale of Rs. 260-400/- (Rs.) Shri Harish Chandra Prasad, is posted in enquiry bureau of



personnel branch he will be assigned seniority from the date he was promoted to the grade 260-400/- (Rs.)".

2. It is very clearly stated in the letter that his seniority will be determined from the date he was promoted to the grade 260-400. On the other hand, vide orders dated 03.01.1985 and 03.05.1985 (Annexure A-II and A-III) the applicant was assigned seniority from the date his absorption as clerk grade-II. Aggrieved by this Applicant filed OA No. 1373 of 1994 which was decided on 14.08.2000 setting aside order dated 03.01.1985 and 03.05.1985 with direction to the respondents to fix the seniority of the applicant on the basis of the order dated 07/11.10.1982. The applicant ,thereafter, made a representation dated 19.01.2001 for implementation of the Tribunals order. In response vide orders dated 06.04.2001 he was communicated that in compliance of the said judgment his seniority will be fixed from the date of his joining in personnel Branch i.e. 11.10.1982. The applicant filed a contempt petition on 19.11.2001 in which notices were issued and counter affidavit filed by respondents on 11.04.2002. The contempt petition was dismissed on 09.10.2002 in the absence of counsel for the applicant. The compliance order passed by the respondents dated 17.08.2001 shows the seniority of the applicant in clerical grade-II from 7/11.10.1982. The applicant has filed the present OA seeking the following relief:-

“8. RELIEFS SOUGHT:-

(i) *Issue writ order of direction in the nature of certiorari quashing the impugned order dated*



17.08.2001 passed by respondent (Annexure-with compilation No. I).

- (ii) issue an order or direction in the nature of Mandamus commanding the respondent to implement the order dated 7/11.10.82 passed by the senior D.P.O. Mughasarai with consequential benefits.
- (iii) issue another or direction in the nature of Mandamus commanding the respondent to re-fix the pension of the applicant on the basis of order/judgement on dated 14.8.2000 passed by the Hon'ble Tribunal.
- (iv) to grant any other relief to which the applicant is entitled in the interest of justice.
- (v) to award the cost of the application to the applicant against the respondents."

3. We have heard both counsel and perused the record on file. The crux of the matter is whether the applicant's seniority is to be given from 01.09.1973 or 10.11.1982. Order dated 7/10.11.1982 very categorically stated that the applicant will be assigned seniority from the date was promoted to the grade 260-400 and that date is definitely 01.09.1973. Orders passed by C.A.T. Allahabad Bench in OA No. 1373 of 1994 based the judgment on para 313 of I.R.E.M. which reads as under:-

"313. MEDICALLY UNFITTED RAILWAY SERVANTS

(a) (i)

(ii) The medically decategorised staff absorbed in alternative posts, whether in the same or other cadra, should be allowed seniority in the grade of absorption with reference to the length of service rendered in the equivalent or corresponding grade, irrespective of the rate of pay fixed in the grade of absorption under the extant rules. In the case of staff who are in grade higher than the grade of absorption at the time of medical decategorisation,

M. Jayaraman

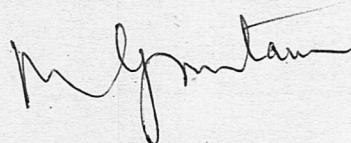
total service in the equivalent and higher grade is to be taken into account."

4. Operative part of the judgment in OA No. 1373/1994 reads as follows:-

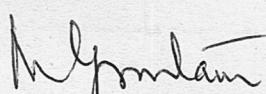
"8. We are clear that the contents of para 313 (ii) stipulates that seniority has to be assigned with reference to the length of service rendered in the equivalent or corresponding grade. We therefore set aside the order dated 3.1.85 and 3.5.85 and hold that the applicant should be given seniority on the basis of order dated 7/11.10.1982. The applicant has since retired, therefore, the respondents are directed to grant him benefit of seniority re-calculate his emoluments on that basis as also his retiral benefits and make payment of the arrears within a period of three months from the date of receipt of a copy of this order."

5. The fact that the contempt petition was dismissed does not make any difference to the merits of the case and as such the Tribunal order referred to above stands. In the counter affidavit filed by the respondents effort has been made to show that seniority of the applicant was fixed from the date of his absorption in clerk grade-II i.e. 11.10.82 whereas the fact is that the applicant had been working in the scale of 260-400/- from 01.09.73. The length of service in this scale should be considered while fixing seniority and his pensionary benefits be calculated accordingly.

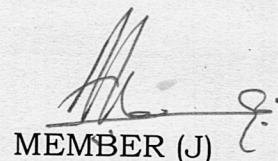
6. We are of the opinion that the case made out by the applicant is based on the existing rules as well as the decision of C.A.T. Allahabad Bench in OA No. 1373 of 1994. OA is accordingly allowed and orders dated 17.8.2001 are quashed and set aside with



direction to the respondents to implement the earlier order of this Tribunal and to fix the seniority of the applicant w.e.f. the date of his joining in the pay scale of Rs. 250-400/- i.e. 1.9.73 and revise his pensionary benefits accordingly.



MEMBER (A)



MEMBER (J)

/S.V./-