

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH ALLAHABAD

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(THIS THE 4<sup>th</sup> DAY OF April, 2011)

**HON'BLE DR. K.B.S. RAJAN, MEMBER (J)**  
**HON'BLE MR. D. C. LAKHA, MEMBER (A)**

**Original Application No. 118 of 2007**  
(U/S 19, Administrative Tribunal Act, 1985)

Manoj Kumar Pandey, Son of Ram Bhawan Pandey, Presently posted as Junior Clerk Grade-II, in the Office of Senior Divisional Security Commissioner, Railway Protection Force, East Central Railway, Mughalsarai, District-Chandauli.

..... **Applicant**

By Adv. : **Shri S.P. Pandey**

**V E R S U S**

1. Union of India through General Manager, East Central Railway Hajipur Bihar.
2. Divisional Railway Manager, East Central Railway, Mughalsarai.
3. The Chief Security Commissioner, Railway Protection Force, East Central Railway, Hajipur.
4. Senior Divisional Security Commissioner, Railway Protection Force, East Central Railway, Mughalsarai.
5. Adil Ali, son of late Asad Ali, Presently Posted as Senior Clerk, in the office of Senior Divisional Security Commissioner Railway, Protection Force, East Central Railway, Mughalsarai, District Chandauli.

..... **Respondents**

✓ By Adv. : **Shri P.N. Rai**

O R D E R

(DELIVERED BY HON. DR. K.B.S. RAJAN, MEMBER-J)

Would seniority once determined continue irrespective of certain drastic changes in the service career? - This is the question involved.

2. The applicant and private respondent joined as constables in the Railway Protection Force, the applicant being senior to the private respondent. Both continued in the same post for some time and the private respondent was, on medical de-categorization, posted as a clerk and he had, after sometime, participated in the limited departmental competitive examination, got promotion to the post of senior clerk (and later on stated to be even head clerk). It was when the limited competitive examination was to take place for the post of senior clerk, <sup>15/10/</sup> which the applicant on medical de-categorization, was posted as a clerk and he could not participate in the said examination. Result, he remains as Clerk while his erstwhile junior (as RPF Constable) has gone two steps higher than the applicant.

3. Pleadings were exchanged and also written arguments submitted.

4. Pleadings and the written arguments considered.

Some dates may be relevant at this juncture:-

5. The applicant's initial appointment was on 21-07-1994 and his medical de-categorization was on 13-07-2004; screening committee's recommendation was on 06-08-2004 and his move to the clerical cadre was 30-09-2004. The private respondent's initial appointment was 14-09-1994 while his medical de-categorization took place on 26-06-2003 and his move to the clerical cadre is 19-02-2004. The date of competitive examination for promotion to the post of senior clerk is 04-09-2004.

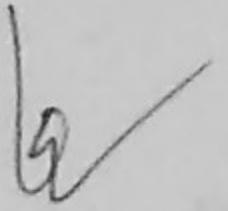
6. The contention of the applicant is that though for holding the examination the respondents had issued a letter dated 3/5-08-2004 in which 13 clerks were shown as eligible candidates, later the respondents had permitted vide memo dated 03-09-2004 three more candidates including the private respondent and the examination was conducted on 04-09-2004. In the case of the applicant, however, though his de-categorization took place 13-07-2004 and was found suitable to hold posts for which medical category is C-1 and below, and though the Divisional Screening Committee recommended for absorption in alternative Group C on 06-08-2004 itself, it was only on 30-09-2004 that he had been inducted in the clerical cadre by which time the examination was already conducted.

This delay in accommodating the applicant within the reasonable time resulted in deprivation of the applicant in participating in the competitive promotional examination thereby his erstwhile junior had become senior clerk, while the applicant is languishing as only clerk.

7. The post of senior clerk is not by sheer seniority position. True, seniority is a consideration to ascertain the eligibility condition for appearing for the competitive examination but ultimately it is the merit position in the competitive examination that counts. As the applicant was not holding the post of clerk on the date when the examination was conducted on 04-09-2005, no fault could be found against the respondents.

8. The applicant has alleged *mala fide* that it was to frustrate the applicant from competing in the promotional examination that there had been delay in inducting him in clerical cadre.

9. For ascertaining whether there has been undue delay in placing the applicant in clerical category, it is appropriate to ascertain the time taken in this regard with reference to the private respondent. The details are as under:-



Sl No.	Details	Applicant	Pvt. Respdt.
1.	Date of medical de-	13-07-2004	26-06-2003

	categorisation		
2.	Date of posting as junior clerk	30-09-2004	19-02-2004
3.	Time gap between (1) and (2)	2 months +	7 months +

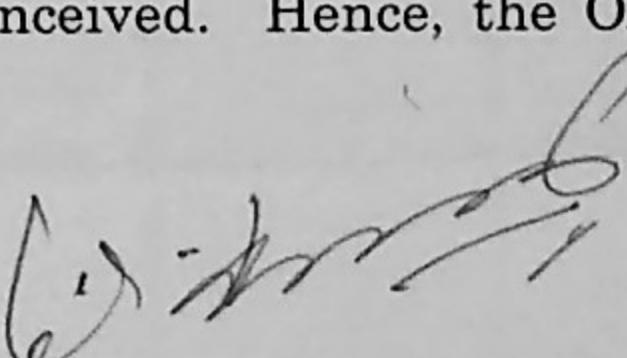
10. The above details would prove that contention that there has been deliberate delay in posting the applicant as clerk is thoroughly wrong. Law is clear that there is always a presumption of bonafide on the part of the government unless proved otherwise. In this regard reference is invited to the observation of the Apex court in the case of ***Mazdoor Sangh v. Usha Breco Ltd.,(2008) 5 SCC 554*** wherein the Apex Court has held:

**34. In Ajit Kumar Nag v. Indian Oil Corp. Ltd. a three-Judge Bench of this Court opined:**

**“56. ... It is well settled that the burden of proving mala fide is on the person making the allegations and the burden is ‘very heavy’. (Vide E.P. Royappa v. State of T.N. ) There is every presumption in favour of the administration that the power has been exercised bona fide and in good faith. It is to be remembered that the allegations of mala fide are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility.”**

11. Thus, no malafide could be attributed to the respondents in not inducting the applicant prior to the examination. The application is misconceived. Hence, the OA stands dismissed.

  
(D.C. LAKHA)  
Member-A

  
(DR. K.B.S. RAJAN)  
Member-J

Sushil