

being category B 1 or below. This was on 14.5.1981. After decategorisation, the Railway Administration offered an alternative appointment to the applicant to work as Box Boy but the applicant declined to accept the offer and he asked for being appointed in the Commercial Department. The Railway Administration appointed the applicant as a Commercial Porter at Nayapada and the applicant joined as such Porter on 17.11.1981. The respondents put the applicant in order of seniority at the bottom of the list as a list of commercial porters as on 17.11.1981. After that the applicant appeared at the tests for being promoted to the Grade of Commercial Clerks in May, 1982, again in 1985 and 1986, but he was not appointed. According to the applicant, his services in the post of Safaiwala-cum-Lampman should have been taken into consideration for fixing his seniority in the post of Commercial Porter and further that as he had the requisite qualification, he should be considered to be appointed as a Commercial Clerk (In the relief sought the reliefs have not been correctly mentioned but what has really been meant is stated in this judgment).

2. The respondents have in their Counter maintained that the applicant was offered an alternative appointment of Box Boy in the Operating Branch of the Railways which was in the same grade as Safaiwala-cum-Lampman and as he declined to accept that and requested

for being appointed as a Commercial Porter, he was asked to intimate if he was willing to take the bottommost position in the cadre of commercial Porters, at the date of his appointment to that cadre, the applicant agreed to it and infact on 6.11.1981 gave in writing that he was willing to be placed at the bottom of the seniority list of Commercial Porters as on that date. Copy of this written consent is Annexure-C to the counter. With regard to promotion to the cadre of Commercial Clerks, it is the case of the respondents that in the years 1982, 1985 and 1986 the applicant could not be empanelled but after the selection tests held in the years 1987 and 1988 he was empanelled and was undergoing training in the Zonal Training Centre, Sini whereafter he was to be posted as Commercial Clerk subject to availability of a vacant post.

3. We have heard Mr.H.M.Dhal, learned counsel for the applicant and Mr.L.Mohapatra, learned Standing Counsel for the Railway Administration. As stated above, most of the facts in this case are undisputed. That the applicant gave in writing that he was willing to occupy the bottommost position in the cadre of Commercial Porters on the date of his appointment to that grade has not only been uncontroverted but it is fully established by Annexure-C. According to Establishment Serial No.310/64 Circular No.E/R/14/323/1 dated 19.11.1964 had the applicant

accepted the alternative appointment offered to him he could definitely have claimed seniority on the basis of the period of his service in the cadre from which he was decategorised, but as he refused to accept the offer of alternative appointment and wanted an appointment of his choice, we do not find any impropriety in giving him the juniormost position in the latter cadre, more so, in view of the conduct of the applicant himself in agreeing to such a position.

4. With regard to the promotion to the Cadre of commercial Clerks, there is no dispute that in order to be promoted a person has to pass a test and so long as the incumbent fails to pass the test, he cannot claim any promotion. In the instant case, as would be found from the counter, the applicant qualified himself only in the year 1987-88 and he has been undergoing training required for a Commercial Clerk. A person who took a subsequent examination for qualifying himself is estopped from saying that he was entitled to be promoted earlier to that.

5. In view of the discussions made above, we find that the applicant is not entitled to any reliefs. Accordingly the application is dismissed but in the circumstances of the case we would pass no order as to costs.

R. S. M. S. 28.3.90
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Vice-Chairman



M. S. S. 28/3/90
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Member (Judicial)