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Date of decision: February 26, 1991.

Versus

For the applicant ...M/s.D.S.Mishra,
S.Mohapana,
Paramananda Misra, Advocates.

C O R A M:

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

B.R.PATEL, VICE-CHAIRMAN, Briefly stated, the facts are that the applicant joined the Railway service on 9.7.1945. He was deputed to an ex-cadre post as ^{Asst.} Complaint Inspector on 21.8.1965 when his substantive post was Senior Clerk. The regular channel of promotion of a Senior Clerk is Head Clerk. The applicant was on deputation to the post of Complaint Inspector Grade-IV. On 17.6.1981 the post of Complaint Inspector was redesignated as Commercial Inspector and the applicant was made Commercial Inspector, Grade-IV. On 19.10.1971 the applicant

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was confirmed in the post of Asst. Complaint Inspector and this subsequently became a post in the Commercial Department. The applicant alleges that his option for being absorbed in that post was never asked. By this time his lien was there in the parent post. The promotion to the rank of Head Clerk from the rank of Senior Clerk was done in 1971, 1975 and 1977. Admittedly, the applicant declined the promotion in 1971. His prayer is that his appointment as Commercial Inspector on 17.6.1981 should be antedated to 1975 when promotion was due from the post of Senior Clerk to the post of Head Clerk.

2. The Railway Administration in their counter affidavit have controverted the claim of the applicant primarily on the ground that when promotion was due in 1975 and 1977 and offer to that effect was made the applicant declined the promotion. According to them as he has foregone the promotion voluntarily, he has no claim to any antedated promotion.

3. We have heard Mr. D. S. Misra, learned counsel for the applicant and Mr. L. Mohapatra, learned Standing Counsel (Railways) for the respondents and have perused the relevant papers. Mr. Misra vehemently contended that the applicant had never declined promotion offered to him in the year 1975 or in 1977. As the facts were in dispute we requested Mr. L. Mohapatra to produce before us the relevant file. Mr. Mohapatra has produced the file. On perusal of the file bearing No. P. 3/2/Part. VII-Post of Senior Clerks, Head Clerks, at

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page 34 there is a note and draft dated 13.12.1977. In the next page is ~~to be~~^{NA} found Office copy of the letter issued on the directions of the competent authority, at page 33 of the said file. In this copy of the letter it is mentioned that the applicant, Complaint Inspector, Khurda Road "refused promotion twice in 1971 and 1975"., and a copy of this letter was sent to the applicant for his information. This makes it absolutely clear that the applicant had declined promotion offered to him in the year 1975. However this also makes it clear that in 1977 had such offer been made it would have found mention in the letter which was issued on 14.11.1977. We are therefore, convinced that no offer of promotion to the rank of Head Clerk was made in the year 1977. The pay scale attached to the post of Head Clerk is Rs.425-700/- whereas the pay scale of the post of Complaint Inspector, Grade IV or Commercial Inspector, Grade IV was Rs.425-640/-. The entire argument and the averments in the application are based on the premises that the applicant was not offered the promotional post of Head Clerk and that without seeking his option he was confirmed in the Commercial Department. Since we have found that there was really no offer to the applicant in 1977, and as a post of Head Clerk fell vacant on 27.4.1977, in fitness of things the applicant should be deemed to have been promoted proforma as Head Clerk on 27.4.1977 and he be ~~fit to~~^{shown} ~~fit to~~^{filed} in the scale of Commercial Inspector Grade III with effect from that date on the basis of the pay as such Head Clerk. Consequential benefits be granted to the applicant with effect from

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that date.

4. This case is accordingly disposed of. No costs.

M. S. Sanyal

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Member (Judicial)



B. S. Sanyal
26.2.91

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Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
February 26, 1991/Saranghi.