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O.A.NO.177/1996

ORDER DATED 23-08-2002.

None appears for the Applicant on repeated calls when the matter was taken up for hearing today. This case was shown in the ready list circulated before 19th of August, 2002. In the said premises, since this is a year old case of the year 1996, where pleadings have been completed long ago, we had to peruse the records and the pleadings of this case and hear the Sr. Counsel Mr. Ashok Mohanty, appearing for the Railways/Respondents.

In this Original Application, the Applicant has sought for the following reliefs;

- i) Order calling upon the Respondents to produce the relevant documents alongwith returns;
- ii) direction be issued for quashing the order vide Annexure-4;
- iii) Order directing the respondents to correct the seniority list (Annexure-2) and place the applicant in proper place and promote the applicant when the juniors were promoted;
- iv) order directing to maintain seniority as available to a decategorised staff under law;
- v) order declaring the action of the respondents not calling the applicant to attend the H/C examination as illegal, arbitrary and unconstitutional;
- vi) direction be issued to hold a written examination afresh within a stipulated period;
- vii) Order allowing the applicant all/any other consequential service benefits available under law;

- viii) pass such other order/orders as the Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case.

Basically, the Applicant aggrieved by the seniority position assigned to him in the seniority list at Annexure- A/2 which was published as on 1-12-1995; as a result of which, the Applicant was not called to attend the examination for promotion to the post of Head Clerk and accordingly he is seeking appropriate position in the seniority list of Senior Clerk.

The brief facts, as mentioned, by the Applicant in this Original Application are that he joined as Jr. Clerk on 7-10. 1982 and was promoted to the post of Senior Clerk w.e.f. 15-2-1987 but in the seniority list, published in Annexure-A/2 of the Senior Clerks, the date of promotion of the Applicant had been shown as 23-5-1989 and the Applicant had submitted a number of representations to correct his date of promotion in the seniority list but the same had not been acted upon and consequently, the Applicant had not been called to take the examination, which was held on 10-2-1996 for the post of Head Clerk but the juniors to the Applicant were called to take the examination. The applicant contends that in the seniority list of Senior Clerk published as on 1-12-1995, his position had been shown at Sl.No.31, taking into a wrong <sup>account</sup> date of promotion i.e. on 23-5-1989 whereas, he was actually promoted to the post of Senior Clerk on 15.2.1987

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(2)

O.A.No.177/1996

contd....Order....Dt.23-08-2002.

and in view of this, he was not allowed to appear <sup>in</sup> the examination for the post of Head Clerk.

Respondents have filed their reply. On going through the reply, it is seen that the Applicant was promoted to officiate as Junior Clerk w.e.f. 11-10-1982 on Ad-hoc basis and the services of the Applicant, as Jr.Clerk were regularised w.e.f. 11-4-1984 after conducting a suitability test and therefore, his seniority as Jr.Clerk had been reckoned w.e.f. 11-4-1984. Subsequently, the Applicant was allowed to Officiate as Sr.Clerk w.e.f. 15-2-1987 and his services as Sr.Clerk, were regularised w.e.f. 23-5-1989 after conducting the suitability test, and accordingly, the seniority of the Applicant in the grade of Senior Clerk had been reckoned w.e.f. 23-5-1989. This being the position, the Applicant's seniority had correctly been assigned in the seniority list. As per the position in the seniority list, as Sr.Clerk, the Applicant was not coming within the zone of consideration for promotion to the post of Head Clerk and accordingly, he was not called for the examination held on 16-2-1996. The Respondents have denied that any junior of the Applicant had been called for the suitability test for the post of Head Clerk. They have also denied that <sup>there is</sup> anything in the rules in support of the applicant, <sup>that</sup> seniority should be fixed on the basis of length of service.

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O.A.No.177/1996

contd...Order....Dt.23-8-2002.

From the averments made by the Respondents, in the counter, it is crystal clear that the promotion of the Applicant to the post of Senior Clerk w.e.f. 15-2-1987 was purely on Ad-hoc basis and that he was regularised in the post of Senior Clerk w.e.f. 23-5-1989 after conducting the suitability test and seniority can be reckoned only from that date as an incumbent can be regularised in the post of Senior Clerk only after passing the suitability test and not from the date of officiating promotion i.e. w.e.f. 15-2-1987. This being so, the seniority position assigned to him w.e.f. 23-5-1989 is in order. The Applicant, is therefore, cannot claim that he should have been called for the suitability test for the post of Head Clerk. That apart, law is well settled that "a settled thing should not be unsettled after a long lapse of time".

In this view of the matter, we find no merit in this Original Application, which is accordingly dismissed. No costs.

*Manoranjan Mohanty*  
(MANORANJAN MOHANTY) 23/08/2002  
MEMBER (JUDICIAL)

*V. Srikanth*  
(V. SRIKANTAN)  
MEMBER (ADMINISTRATIVE)

KNM/CM.