

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

O.A. NO. 1341/96

THIS THE 4TH DAY OF APRIL, 2005

**HON'BLE MRS. MEERA CHHIBBER, MEMBER (JUDL.)
HON'BLE MR. K.V. PRAHALADAN, MEMBER (ADMN.)**

Shri Manabendra Bhattacharya, son of
Late Ram Mohan Bhattacharya,
Working as Divisional Statistical
Inspector under Divisional Railway
Manager, Eastern Railway, Howrah
Residing at Sapuipara Rabindrapalli,
P.S. Bally, District - Howrah.

.... Applicant.

(By Advocates Mr. M.S. Banerjee, Mr. T.K. Biswas)

Versus

1. Union of India, service through
the General Manager, Eastern Rly.,
17, Netaji Subhas Road,
Calcutta-700 001.
2. Chief Personnel Officer,
Eastern Railway,
17, Netaji Subhas Road,
Calcutta-700 001.
3. Statistics & Analysis Officer,
Eastern Railway, River Side Shed,
2nd Floor, Howrah.
4. Assistant Statistics and Analysis
Officer, Eastern Railway, River Side Shed,
2nd Floor, Howrah.



5. Shri S.K. Singh,
Divisional Statistical Inspector,
Divisional Railway Manager's office,
Eastern Railway, Mughalasarai, UP.

... Respondents.

(By Advocate Mr. P.K. Arora)

ORDER (ORAL)

Hon'ble Mrs. Meera Chhibber, Member (Judl.).

By this O.A., applicant has challenged the placing of Respondent No. 5 above him in the post of Assistant Statistical Inspector (ASI), Grade-III. He has further sought a direction to the respondents to assign seniority to the applicant above Respondent No. 5 as ASI and take into consideration the seniority of senior clerk for the purpose of promotion to the post of ASI.

2. It is submitted by the applicant that he was appointed as Clerk Grade-II in September, 1981 and was promoted as Senior Clerk in July, 1984. The next post is that of ASI, Grade-III. For promotion to the post of ASI, Grade-III, the feeder post is senior clerk but the respondents gave promotion to Respondent No. 5 ahead of applicant vide order dated 22.11.1992 even though he was junior to the applicant as senior clerk. It is submitted by the applicant that Shri S.K. Singh was promoted w.e.f. 5.11.1992 while applicant was promoted w.e.f. 23.11.1992 even though admittedly Shri S.K. Singh was promoted as senior clerk after the applicant (page 26). Being aggrieved, applicant gave representation. However, without giving any reply, the said Shri S.K. Singh was given further promotion as SI by order dated 21.4.1995 (page 25) while denying the same to the applicant. Therefore, once again he gave the representation when applicant was informed vide order dated 29.1.1996 that in the grade of Clerk, Shri S.K. Singh was appointed on



22.11.1980 while applicant was appointed on 19.9.1981. Therefore, applicant was junior to said Shri S.K. Singh and for taking the seniority for promotion to the post of ASI, Grade-III, the combined seniority list was taken into consideration provided the incumbent had 5 years experience of statistical working in the statistical branch.

3. It is this order which has been challenged by the applicant. He has submitted that since the feeder post of ASI, Grade-III is senior clerk, therefore, there was no justification to take into consideration the seniority of clerk Grade by ignoring the seniority of senior clerk.

4. O.A. is opposed by the respondents who have submitted that this O.A. is barred by limitation as applicant's representation dated 1.1.1992 was replied to as back as on 23.2.1992 which was never challenged by him. Therefore, at this belated stage applicant cannot be allowed to challenge the actions of respondents. On merits, they have submitted that Shri S.K. Singh was appointed earlier than the applicant in the grade of Clerk, Grade-II as Shri S.K. Singh was appointed on 22.12.1980 while applicant was appointed in September, 1981. Therefore, Shri S.K. Singh was senior to the applicant in the grade of Clerk Grade-II. They have relied on Railway Board's letter dated June, 1981 to suggest that selection for SI Grade-II was to be made from the combined seniority list, of course, incumbent should have at least 5 years experience of statistical working in the statistical branch and the total length of non-fortuitous service in equivalent grade i.e. Rs.260-400 will be the determining factor for the combined seniority for the purpose of selection of ASI, Grade-III. They have thus submitted that since senior clerk and the Clerk Grade-II were to be given a combined seniority list, therefore,

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there was no illegality committed by the respondents in placing Shri S.K. Singh above the applicant, as admittedly he was senior to the applicant in Clerk Grade-II.

5. We have heard both the counsel and perused the pleadings as well.

6. It was admitted by the counsel for respondents that feeder post for ASI, Grade-III was senior clerk but he was not able to explain to us why the seniority of Clerk, Grade-II was taken into consideration while making the promotions to the post of ASI, Grade-III. Therefore, after hearing both the counsel on 30.3.2005, the matter was adjourned for 4.4.2005 so that counsel for respondents could take further instructions from the Department ^{and R} or explain the position.

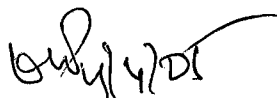
7. On 4.4.2005, one departmental representative appeared but even he was not able to satisfy us as to how the post of senior clerk in the grade of Rs.330-560 could be treated as equivalent to the post of Clerk, Grade-II which was in the scale of Rs.260-4000. We are also not satisfied with the contention made by the respondents' counsel because he could not justify the stand taken by the respondents. After all, if the feeder post for ASI, Grade-III was in senior scale, it would be the seniority of senior scale that would be relevant for the purpose of considering the candidature of persons who were to be promoted to the post of ASI, Grade-III. A vague suggestion was made that since the post of clerk was equivalent to the post of senior clerk, therefore, the basic seniority in the grade of clerk Grade-II was taken into consideration but the rationale behind it could not be explained either by the counsel for respondents or by the departmental representative who appeared before us.

8. Counsel for the respondents on the contrary vehemently argued that this O.A. should be dismissed on the ground of limitation. We have, however, seen that no

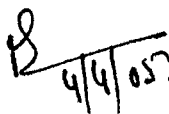


seniority list was issued as senior clerk and when Shri S.K. Singh was given further promotion as SI on 21.4.1995, applicant once again gave the representation which was decided only on 29.1.1996 and the O.A. was filed on 11.11.1996. In these circumstances, the objection of limitation is rejected especially so because we are ourselves not convinced with the stand taken by the respondents. We, therefore, dispose of this O.A. by giving direction to Respondent No. 2 to apply his mind to the grievance raised by the applicant in view of the aforesaid observations made by us and to decide the case by passing a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order. In case it is found that Shri S.K. Singh was placed above the applicant by mistake, appropriate order shall be passed to rectify the mistake. Since Shri S.K. Singh was already impleaded as a party in the present O.A. but he opted not to contest the O.A., there is no need to give any further notice to the said Shri S.K. Singh.

9. With the above directions, this O.A. is disposed of. No order as to costs.


(K.V. PRAHALADAN)
MEMBER (ADMN.)

'SRD'


(SMT. MEERA CHHIBBER)
MEMBER (JUDL.)