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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 05/ 2001

Date of decision: this the 21st day of May, 2004

CORAM:

Hon'ble Mr. J.K. Kaushik, Judicial Member

Hon'ble Mr. G.R. Patwardhan, Administrative Member

Bahadur Singh S/o Shri Mai Lal Ji By Caste Meghwal, Resident of Quarter No. 237-A, Near M.P. Road, Lalgarh, Bikaner, presently working as Clerk in Engineering Department under Divisional Railway Manager, Bikaner.

...Applicant.

(Rep. By Mr. H.K. Purohit, Advocate for the applicant)

v e r s u s

- (1) Union of India through General Manager, Northern Railway, Delhi.
- (2) General Manager (Personnel), Northern Railway, Baroda House, New Delhi.
- (3) Chief Personnel Officer (Construction) Northern Railway, Kashmere Gate, Delhi.
- (4) The Divisional Railways Manager, Northern Railway, Bikaner.
- (5) Divisional Personnel Officer, Northern Railway, Bikaner.
- (6) Asst. Engineer (Construction), Northern Railway, Bikaner.
- (7) Prem Kumar s/o Kedar Nath (Sr. Clerk), By caste Saini.
- (8) Shanker Lal S/o Lachi Ram (Sr. Clerk), By caste Sharma.
- (9) Lalit S/o Sh. Pooran Jiwan, (Sr. Clerk),

All the respondents No. 7 to 9 through the Deputy Chief Engineer (Construction), Northern Railway, Bikaner.

.....Respondents

Mr. Kamal Dave, Advocate for the respondent Nos. 1 to 6.

Mr. Mukesh Mehra, Adv. Brief holder for

Mr. Kuldeep Mathur, counsel for the respondent No. 9.

None present for respondent No. 7 & 8.



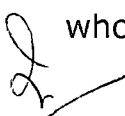
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ORDER**BY THE COURT:**

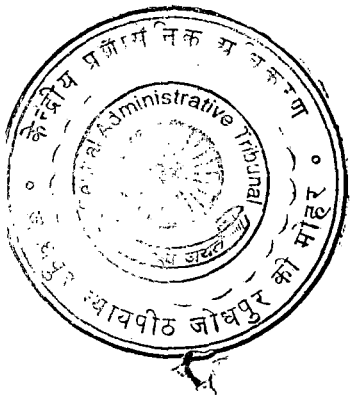
Shri Bahadur Singh has assailed the order dated 3rd December 1996 at Annexure A/7 and has prayed for its quashment with a further direction to the respondents to fix the seniority of the applicant considering his service records.

2. The indubitable facts of this case necessary for adjudication of the controversy involved are that the applicant belongs to SC category and came to be engaged as Casual Labour on the post of Khallasi in the year 1968. He was screened and absorbed against the regular establishment on the post of Chowkidar (Sic. Khallasi) vide communication dated 02.05.1977 (Annexure A/2). He enjoyed his promotion to the post of Clerk on adhoc basis vide letter dated 06.05.1983 (Annexure A/3). Subsequently, in pursuance with the policy in vogue issued by order dated 11.02.1991, the applicant was regularised on the post of M.C.C./Clerk w.e.f. 21.12.1992 alongwith him 32 more persons were regularised. The name of the applicant finds place at Sl. No. 28.

3. The further case of the applicant is that his lien was fixed in Bikaner Division in Engineering Department. The seniority list was issued in respect of the post of Clerk on 04.12.1996 for the Engineering Department of Bikaner Division. The name of the applicant was placed at Sl. No. 33. There are number of persons who are placed above to him in the said seniority list. The



movement he came to know about irregularity, he protested against the same and reminded the matter a number of times. Provisional seniority list came to be issued by respondent No. 3 in March 2000 wherein the applicant has been placed at right place. However, the competent authority did not decide the representation of the applicant despite a notice of demand of justice served on respondents. There was a communication dated 01.11.2000 (Annexure A/1) wherein his correct position was indicated and the concerned Divisional authorities were asked to correct his seniority but the applicant was told that Annexure A/1 cannot be implemented in his case. Hence this application. The Original Application has been filed on multiple grounds enumerated in para 5 and its sub-paras which we shall deal with in the later part of this order.



4. The respondents have contested the case and an exhaustive reply has been filed on behalf of the official respondents. There are certain preliminary objections which have been raised and it has been submitted that the Original Application has no foundation in view of the preliminary objections. The private respondents were placed above the applicant in the panel of Group 'D'. As far as factual aspect of the matter, it has been averred that the applicant was screened first time against 40% vacancies of construction reserved posts and was utilised on the post of Clerk on adhoc basis. He was also empanelled for the post of Clerk vide order dated 21.12.1992 and his seniority was regulated from the date of the

regularisation, hence, the seniority assigned to him vide Annexure A/7 is correct. No seniority can be assigned on the basis of date of screening panel unless the incumbent is regularised against the cadre post. The grounds mentioned in the Original Application have been generally denied.

5. We have heard the learned counsel for both the parties and have carefully perused the records of this case.

6. The learned counsel for the applicant has endeavoured hard to persuade us that the applicant's previous service has not been taken into consideration and if his previous service were taken into consideration then he would have been placed above the private respondents. He has also submitted that that his correct seniority position was indicated by the respondent No. 3 in the seniority list dated March 2000 but the Divisional Authorities have ignored the same. He also submitted that vide communication dated 01.11.2000 (Annexure A/1) also the Divisional Authorities ought to have been assigned in the correct seniority but the same has not been found expedient and convenient for them. In this way, the applicant has been made to suffer for none of his faults.



7. Per contra, the learned counsel for the official respondents as well as the learned counsel for the private respondent have vehemently opposed the contentions raised on behalf of the applicant and have submitted that the applicant was promoted to

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the post of Clerk in view of the specific policy whereby provision has been made that a person who has been working for a period of three years or more continuously in construction organisation was required to be regularised. The applicant came to be regularised in pursuance of that policy alongwith private respondents. It was not a promotion in the normal channel. The learned counsel for the respondents has also submitted that as per the panel (Annexure A/5), the applicant has been shown at Sl. No. 28 whereas the private respondents were placed at Sl. No. 24, 25 & 26 i.e. above the applicant. The seniority has to be regularised in accordance with the panel position in such cases and the same position have been reflected even in the seniority list. The seniority list (Annexure A/8) was issued by the construction organisation for their internal purposes and is not the seniority of open line. The same has no relevance to the controversy involved here. Thus, the respondents have not committed any wrong and their action cannot be termed as arbitrary or illegal by any stretch of imagination.

8. We have considered the rival submissions put forward on behalf of both the parties. As far as the factual aspect of the matter, is concerned, there is hardly any dispute. It is true that the applicant was holding the Group 'D' post and officiating on the post of Clerk on adhoc basis in construction organisation where he came to be regularised through a panel which was prepared in respect of 33 candidates as Annexure A/5. The bare perusal of the order indicates that this is a panel and the position



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of the applicant is shown at Sl. No. 28. We also find the same sequence with the seniority list which has been prepared strictly as per the panel position. We also observe that Annexure A/5 is not under challenge and the position assigned to the applicant remains intact. As far as the general rules of seniority are concerned in cases where the selection panel prepared, it is the candidates from top of the merit are taken equal to number of vacancies and they are subsequently arranged according to their seniority subject to give special treatment to the outstanding candidates. Thus, since the applicant has been assigned his position on the panel below to the private respondents he cannot now complain of regarding his seniority so assigned, since the seniority list has been issued as a consequence to the very panel. In this view of the matter, the inescapable conclusion would be that no fault can be fastened with the action of the respondents and the Original Application cannot be sustained.

9. In the result, the Original Application sans merits and substance and the same stands dismissed accordingly. However, there shall be no order as to costs.




(G.R. PATWARDHAN)
Adm. Member


(J.K. KAUSHIK)
Judl. Member

R/C
Sund/Kum
2015/04
For Kuldeep Mathur
Att.

R/C
Dy. Secy
31/08/04

Recd copy
H. Secy
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