

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No. O.A. 819 of 1997

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. M.P. Singh, Administrative Member

Dhajadhari Mahato, son of Late Sridam Mahato,  
Jr. Clerk, Stores Section, Sr. DCM/S.E. Rly./ADRA's  
Office, Residence : Vill - Phusurabaid, P.O.  
Phusurabaid, Dist. Purulia.

... Applicant

-Versus-

1. Union of India through General Manager, S.E. Railway, Garden Reach, Calcutta.
2. General Manager, S.E. Railway, Garden Reach, Calcutta.
3. Divisional Railway Manager, S.E. Railway, Adra.
4. Sr. Divisional Commercial Manager, S.E. Railway, Adra.
5. Divisional Personnel Officer, S.E. Railway, Adra.

... Respondents

For the applicant(s) : Mr. S.N. Mitra, counsel  
Mr. P.K. Ghosh, counsel

For the respondents : Mr. D.K. Singh, counsel

Heard on : 3.1.2001

Order on: 3.1.2001

O R D E R

D. Purkayastha, J.M. :-

By this application the applicant Sri Dhajadhari Mahato sought relief by way of direction upon the respondents to reckon 28.4.1981 as the date of promotion of the applicant as a regular measure to the post of Clerk in scale of Rs.260/- .. Rs.400/- RS/ (Rs.950/- ... Rs.1500/- (RP) and to fix his seniority accordingly in the seniority list of Clerks in scale Rs.260/- .. Rs.400/- RS/ (Rs.950/- ... Rs.1500/- (RP) of Sr. DCM's Office /ADA with all consequential benefits which include proforma promotion and proforma fixation of pay of the applicant to the posts of Sr. Clerks in scale of Rs.1200/- .. Rs.2040/- and to the posts of Head Clerks in scale Rs.1400/- ... Rs.2300/- as also proforma fixation of seniority in those higher grade posts vis-a-vis his juniors already promoted and to pay to the applicant the arrears as is due and payable together with an interest @ 18% per annum thereon from the date the amount became due payable till the date the amount is actually paid. The case of the applicant in short is that he was promo

as Office Clerk in scale Rs.260/- .. Rs.400/- on ad hoc measure w.e.f. 30.8.1980 vide order dated 30.8.1980 (Annexure 'A' to the application). Thereafter, he was regularised as Office Clerk in the scale of Rs.260/- ... Rs.400/- w.e.f. 25.4.1981 vide order dated 28.4.1981 (Annexure 'B' to the application). He was subsequently confirmed as Jr. Clerk/Office Clerk in the scale of Rs.260/- ..Rs.400/- w.e.f. 1.9.1983 vide order dated 25.10.1983 (Annexure 'C' to the application). It is alleged by the applicant that both the posts of Sr. Clerk and Head Clerk are non-selection posts and as such promotion ought to have been given according to the Seniority under Rule 214(a) IREM. But respondents have not followed the said rule in respect of the applicant in as much as many of his juniors have been promoted to the post of Sr. Clerk in the scale of Rs.1200/- ... Rs.2040/- and some of them have been further promoted to the post of Head Clerk in the scale of Rs.1400/- ... Rs.2300/- ignoring, overlooking and not considering the case of the applicant for reasons not made known. It is further stated by the applicant that the DPO/ADA through his letter dated 29.12.1994 (Annexure 'D' to the application) intimated the Sr. DCM/ADA that the applicant has not yet qualified himself for the post of Clerk in the scale of Rs.950/- ... Rs.1500/- R.P. As such his claim for seniority from the date of his ad hoc promotion is not in conformity with the rules and nothing can be done at this distant date. This statement of DPO/ADA being absolutely wrong and incorrect as would be evident from the facts stated and materials furnished in paragraph 4(a) in the application, the applicant submitted a representation dated 20.2.97 to DRM/ADA (Annexure 'E' to the application) praying his promotion as permissible under the rules. But the respondents did not take any action on his representation and hence he has approached this Tribunal by filing this present application.

2. Respondents filed reply to the O.A. denying the claim and allegations made by the applicant. It is stated by the respondents that the office order bearing No.E/OS(S)/767/Office Clerks dated 28.4.1981 as enclosed by the applicant as Annexure 'B' to the application is not at all an authentic document. The said office order dated 28.4.81 is available in the office record but that

does not contain the name of the applicant. The correct position will be evident from the original Office Order bearing No.E/OS(S)/767/Office Clerk dated 28.4.81 wherein it will be seen that the name of the applicant is not included in the said original Office Order. The said original Office Order dated 28.4.1981 is enclosed with the Reply filed by the respondents marked as Annexure 'R-I'. It is stated by the respondents that from Annexure at page 13 to the O.A., it is seen that the applicant has not yet been qualified for the post of Clerk in the scale Rs.950/- ... Rs.1500/-. As such, his claim for seniority and promotion from the date of his ad hoc promotion is not to be granted. It is further stated by the respondents that the period of working in ad hoc capacity cannot be counted for the purpose of seniority. Therefore, according to the respondents, the application is baseless. It is also stated by the respondents that since the service of the applicant as Jr. Clerk has not yet been regularised, the question of further promotion does not arise. The names of the juniors given by the applicant in Paragraph 4(c) of the O.A. have been regularised as Jr. Clerk and only after then they have been promoted to the post of Sr. Clerk and Head Clerk. But in the case of the applicant, his service as Jr. Clerk has not been regularised and, as such, he could not be promoted as Sr. Clerk/Head Clerk. So, according to the respondents, this application is devoid of merit and liable to be dismissed.

3. Mr. S.N. Mitra, ld. counsel appearing on behalf of the applicant submits that the applicant has been confirmed in the post of Junior Clerk vide order No(C/S)/157 dated 25.10.83 (Annexure 'C' to the application) and since the applicant was confirmed as Jr. Clerk by the order dated 25.10.83, he ought to have been considered for promotion to the post of Sr. Clerk/Head Clerk which are higher grades in accordance with the seniority position. Since the respondents did not consider the seniority position of the applicant and instead of doing so they have promoted his juniors to the aforesaid higher post of Sr. Clerk/Head Clerk; therefore, it can be said that the case of the applicant clearly comes within the ambit of supersession and as such, he is entitled to get the benefits and reliefs as sought in this

application. Mr. Mitra, ld. counsel for the applicant further submits that the respondents did not deny the averment of the applicant that some of his juniors have been promoted to the post of Sr. Clerk/Head Clerk ignoring his case. He further submits that the respondents could not produce the original order of confirmation in this case as per direction of the Hon'ble Tribunal dated 16.6.2000.

4. Mr. D.K. Singh, ld. counsel appearing on behalf of the respondents has drawn our attention to the order dated 28.4.1981 (Annexure 'B' to the application) and submits that the basic document regarding regularisation of the service of the applicant in the post of Jr. Clerk appears to be forged one. So, applicant is not entitled to get benefit of the said document marked as Annexure 'B' to the O.A. which is also annexed by the respondents alongwith their reply statement. Mr. Singh, ld. counsel for the respondents further submits that apart from the above ground for dismissal of the case, the application is barred by limitation since the applicant did not challenge the promotion of his juniors to the post of Sr. Clerk/Head Clerk within the prescribed period of limitation. So, according to the ld. counsel for the respondents, on the two grounds as mentioned above, the application should be dismissed. Mr. Singh, ld. counsel for the respondents further submits that the Annexure marked as Annexure 'B' to the O.A. which is Annexure 'R-I' to the reply filed by the respondents does not contain the name of the applicant and that document is an order of regularisation of some of the incumbents working as office clerks. The document so marked as Annexure 'B' to the O.A. is a forged one. So, according to Mr. Singh, ld. counsel for the respondents, this application is devoid of merit and liable to be dismissed.


5. We have considered the submissions of ld. counsel of both the parties and we have gone through the records. In this case the applicant has claimed promotion to the higher grades of Sr. Clerk/Head Clerk. We are of the view that the right of consideration for / promotion to the higher grade is guaranteed, but the right of

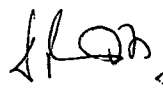
promotion is not guaranteed under the rules and under the Constitution. The applicant has claimed that some of his juniors have been promoted to the higher grades ignoring his case. So, burden lies with the applicant to prove that his juniors have been promoted ignoring his case illegally and also that it is a case of clear supersession. We find that the applicant in support of his claim has produced one photo-copy of a document marked as Annexure 'B' to the O.A. which is a disputed one. Respondents produced the original copy of Annexure 'B' to the O.A. which has been marked as Annexure 'R-I' to the reply. We also direct the ld. counsel for the applicant to produce the original document of Annexure 'B' to the O.A. on the basis of which it has been attested by him since he certified that he attested the Annexure 'B' after verifying the original document. But the ld. counsel for the applicant could not produce the original document of Annexure 'B' to the O.A. for the reasons best known to him. We are of the view that since the document is disputed; then burden lies with the applicant to prove the genuineness of the document. When the ld. counsel for the applicant has attested the said document which is annexed with the application marked as Annexure 'B' to the O.A.; so, it is his duty to produce the same to show that he acted with bona-fide. It is not understood as to why he is unable to produce the said document in original before the Tribunal when the said document (Annexure 'B' to the O.A.) has been disputed and challenged by the respondents by producing the original document. However, we have perused the original order produced by the Department as well as the Annexure 'B' to the O.A. and the Annexure 'R-I' to the reply. On a perusal of the said three documents we find that the applicant did not come before this Tribunal with clean hands. It is apparent from the original documents that 49 persons have been regularised by the order dated 28.4.1981 (Annexure 'R-I' to the reply) and the applicant's name did not find place in the said order and at Sl. No.43 in the said order the name of Sri S.C. Sengupta was missing and name of Sri S. C. Sengupta was included at the bottom of the said list by giving Star Mark " X " as Sl. No,43. But at the time of producing Annexure 'B' alongwith the application we find that the applicant has included his name in place of Sri Sengupta. It is not disputed by the

respondents that they confirmed the applicant by a subsequent order dated 25.10.1983 (Annexure 'C' to the application). The respondents did not produce the said original document (Annexure 'C' to the application) as directed by the Tribunal. But the ld. counsel of the respondents submits that the applicant was wrongly confirmed vide order dated 25.10.1983 (Annexure 'C' to the application) since his ad hoc service has not yet been regularised which is apparent from the order dated 28.4.1981 (Annexure 'R-I' to the reply). However, we find that the applicant could not produce any document/record to show that his ad hoc service has been regularised by any order of the competent Authority as claimed in the application by producing Annexure 'B' to the application. We are of the view that since the applicant has not come before this Tribunal with clean hands; so, he is not entitled to get any relief as claimed in this application. We, we are not inclined to give any relief to the applicant on the basis of wrong confirmation order (Annexure 'C' to the application). More over, we are of the view that the application is barred by limitation. The applicant has alleged that he had been superseded by his juniors in the year 1981 i.e. before the date of confirmation of the applicant i.e. on 25.10.1983. Applicant took the plea that all of his juniors have been promoted to the higher grade of Sr. Clerk/Head Clerk superseding him. But the respondents stated that since his juniors have been regularised prior to him; hence their cases were considered for promotion to the post of higher grade of Sr. Clerk/Head Clerk. We find that the applicant has claimed promotion to the higher grade with effect from 1981 when his alleged juniors were allowed to be promoted to the higher grades ignoring his case. But the applicant did not challenge the said order of promotion of his juniors since 1997. He submitted his first representation in the year 1997. We find that Hon'ble Apex Court in a case of P.S. Sadasivan Vs. State of Tamilnadu reported in AIR 1974 S.C. 2271 in the para 2 held that the person aggrieved by an order of promotion of his junior should

approach the court at least within 6 months or at least a year of such promotion. Alongwith the application, no prayer for condonation of delay has been made by the applicant in this case. We find that the cause of action arose in this case in the year 1981 before the establishment of this Tribunal which came into existence in the year 1985. The application is barred by limitation.

6. In view of what is stated above, we are unable to grant any relief to the applicant as claimed in the application. As such, we dismiss this application with a direction to the parties to suffer their own costs.

  
M.P.SINGH  
MEMBER (A)

  
D. PURKAYASTHA  
MEMBER (J)

3/1/2001

a.m.