

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA No.31/97

Present :- Hon'ble Mr.D. Purkayastha, Member (J)
Hon'ble Mr.V.K.Majotra, Member(A)

Bimal Ch. Bouri

-Vs-

S.E.Rly

For the applicant : Mr.B.R.Das
Mr.B.P.Manna

For the respondent : Mr.P.Chatterjee

Heard on : 14-8-2001

Date of Order : 17-8-2001

ORDER

Mr.V.K.Majotra, Member(A) :

The applicant has challenged seniority list dated 31-3-95 (Annexure A1) in which the respondents in accordance with the CAT, Calcutta's Judgement interpolated at SL No.44/A the name of the applicant as adhoc Junior Clerk of WRS/Adr in the scale of Rs950-1500/- (RS) as on 31-12-92 treating the applicant to have been regularised w.e.f. 25-7-88 interpolating the applicant. The applicant has also challenged the Annexure A2 dated 10-4-95 whereby the Divisional Personnel Officer sought to direct the applicant for a suitability test for promotion to the post of Sr.Clerk. The applicant has also assailed order of Respondent No.4 (Annexure A3) whereby it has sought to come out with the Provisional Seniority List in the scale of Rs1400-2300/- in Mechanical NP Department as on 28-2-1983 without incorporating the name of the applicant and including the names of his juniors shown as promoted in 1982-1988.

2. The applicant has claimed that he was appointed on 29-8-1972 in the pay scale of Rs70-80/- and was promoted as Junior Clerk in the scale of Rs260-400/- (Rs950-1500/-) (RP) as per order dated 11-2-81(Annexure B). He joined as Junior Clerk on

26-3-81 at Burnpur. The applicant has further stated that vide order dated 5-10-83 issued by Res.No.4 he was promoted as Sr.Clerk w.e.f. 1-10-83 and he functioned as such till 10/12-85. The applicant has also stated that the respondents came out with a Provisional Seniority List of Head Clerk in the scale of Rs1400-2300/- (Mechanical/NP Department as on 28-2-93) (Annexure A3) in which the respondents No.6 & 7 have been appointed as Clerk on 23-5-81 and 13-11-84, ^{respectively.} The applicant claims that as he had been promoted as Clerk on 26-3-81 through a regular selection process he is senior ~~in~~ ^{to these respondents as} Clerk and should have been promoted as Sr.Clerk and subsequently as Head Clerk before the respondents No.6 & 7. He has sought direction to the respondents to modify Annexure A1- assigning the applicant's seniority as Jr.Clerk on 26-3-81 instead of 25-1-1988. He has also sought rescinding/recalling Annexures A2 and A3 and allowing the applicant's promotion with consequential benefits vis-a-vis his juniors including the private respondents.

3. The official respondents have maintained in their reply that the applicant has been accorded appropriate seniority in terms of Judgement dated 17-2-94 in OA 965/88. After that he was called for suitability test for consideration to the post of Sr.Clerk on 25-4-95, 5-9-95, 9-12-96 and 6-1-97 whenever the vacancies of Sr.Clerk were to be filled. The applicant did not choose to appear in the suitability test. According to the respondents there is no such rule in the Rlys to the effect that a Jr. Clerk can be promoted to the post of Head Clerk directly without any suitability test. The respondents have ~~rebutted~~ ^{rebutted} various other averments of the applicant ~~also~~.

4. The applicant has filed rejoinder as well.

5. We have heard the respective learned counsel of both sides and considered the materials on record.

6. The learned counsel of the applicant stated that the applicant qualified in the written examination held on 7-11-1977 for promotion as Office Clerk and he also cleared the Viva-voce test on 8-12-78 whereafter as per Annexure B he was promoted and posted as Office Clerk in the scale of Rs260-400 against the Departmental quota on adhoc measure. On the basis of Annexure-J dated 9-11-78 and the enclosed list of candidates the applicant has claimed that he had cleared the written test and the viva voce test held for the post of Office Clerk in the scale of Rs260-400 (RS) against the Departmental quota. The learned counsel of the applicant pointed out that in the panel of successful candidates in the viva-voce test whereas the name of the applicant had been indicated at S1 361 and the name of Shri Ramesh Ch.Dhupi at 402, ~~but~~ ¹¹ in Annexure A3 which is a provisional Seniority List of Head Clerk as on 2-8-93 whereas Shri R.C.Dhupi was shown at S1.No.53, ~~but~~ ¹¹ applicant's name was not indicated at all. The learned counsel stated that Shri R.C.Dhupi, Jr. Clerk was transferred on promotion as Sr Clerk on 27-4-81 as per Annexure-C dated 16/17-9-81 and the applicant was transferred as Jr. Clerk against Shri Dhupi. The learned counsel of the applicant contended that the applicant is senior to Shri Dhupi and Respondents 6 and 7.

7. Relying on AIR 1991 SC 518 in Rajbir Singh and others V Union of India and others, the learned counsel of the applicant maintained that as the applicant had been promoted as Jr. Clerk on adhoc basis against the substantive vacancy so he should be regularised reckoning the period of his adhoc service for determining his seniority. The learned counsel further drew support from 2000(2) SC SLJ 17 in T. Vijayan and others V. Divisional Rly Manager and others containing that under the Rly Establishment Manual officials can be promoted on adhoc basis in the exigency of service pending regular selection. It was held that period of adhoc service would be counted towards seniority. Referring to IREM Rule 214, the learned counsel maintained that

the post of Jr.Clerk/Sr.Clerk being non-selection post, promotions to these posts have to be made on the basis of seniority without holding any Departmental test.

8. The learned counsel of the respondents contended that the applicant is senior to Shri B.G.Banerjee and he is not senior to respondents 6 & 7 or even Shri Dhupi. The learned counsel maintained that the applicant has been assigned correct seniority ^{in the} at seniority list as 44/A with effect from 25-1-88 as Jr.Clerk in Annexure-A1. He further contended that the applicant had been offered several opportunities of appearing in the suitability test held for the post of Sr.Clerk and Head Clerk. As the applicant did not appear in the suitability test for the post of Sr. Clerk despite several opportunities, ~~were given~~. Thus there is no question of his consideration for promotion to the post of Sr.Clerk/Head Clerk. The learned counsel also showed us official records relating to assignment of seniority to the applicant in pursuance of CAT's Order. He further showed the records relating to seniority list of Jr. Clerk from time to time.

9. Although, apart from respondents 6 & 7, the applicant has claimed seniority as Jr.Clerk vis-a-vis Shri R.C.Dhupi, he has not impleaded Shri Dhupi as a party in the present case. This application certainly suffers from vice of non-impleading him as necessary party. It may also be observed from ~~itself that~~ ^{it} on the basis of Annexure-J filed by the applicant himself relating to viva-voce test for the post of Jr.Clerk in 1978 that whereas Shri R.C.Dhupi has been shown as a SC candidate, the ~~not been shown as~~ applicant has ~~claimed to be~~ a SC candidate. However, he had not agitated on this issue that he was not shown as SC candidate in Annexure-J dated 9-11-78 ^{which} has been adduced by the applicant himself. In the official records the respondents have considered the case of the applicant for regular promotion to the post of Jr.Clerk from the date his next junior got the promotion as Jr.Clerk on the basis of CAT, Calcutta's judgement. It has been

stated that the applicant's junior is Shri B.G.Banerjee, Sl No.45, who was regularised ^{as} a clerk w.e.f.25-1-88. It was decided to assign seniority to the applicant as Jr.Clerk between Shri Chandidas Chatterjee, Sl No.44 and applicant's junior Shri B.G.Banerjee at Sl.45. So, in the Seniority List published on 31-12-92 applicant's name was shown at Sl 44/A: It is also stated in the records that "there is no marking of SC candidate in his service sheet". It has been stated that if the applicant is declared as SC candidate on the basis of furnishing proof he could be considered for promotion to the post of Sr. Clerk subject to passing of suitability test since there is a shortfall of SC candidate in the category of Sr. Clerk.

10. The learned counsel of the respondents also referring to IREM Rule 214(c)(iii) and (iv) contending ^{red h} that the applicant is required to pass suitability test even though the post of Sr.Clerk is a non-selection post. IREM Rule 214 reads as follows:

- a) Non-selection posts will be filled by promotion of the senior most suitable Railway servant suitability whether an individual or a group of Railway Servants being determined by the authority competent to fill the posts on the basis of the record of service and/or departmental tests if necessary. A senior Railway Servant may be passed over only if he/she has been declared unfit for holding the post in question. A declaration of unfitness should ordinarily have been made sometime previous to the time when the promotion of the Railway Servant is being considered.
- (c) In respect of promotions to non-selection post, the following principles should be followed :

- iii) Where non-selection posts are filled from different categories of staff, no hard and fast

time limits need be prescribed as to the number of the candidates to be admitted from each eligible category. In cases where posts are to be filled on the quota basis it should be ensured that each category is adequately represented within the overall number of candidates called up. Employees passing the suitability test should only be placed in the select list. Employees not qualifying in the test should not be taken merely to make up the quota fixed.

iv) An employee who has passed a suitability test once need not be called for the test again and should be eligible for promotion as and when vacancies arises.

The plain reading of the above provisions indicate that even for non-selection posts senior most suitable Rly Servants are required to pass Departmental tests, if necessary. The respondents have maintained that for promotion to the post of Sr.Clerk not only that the records of service are seen, Deptl. tests are also held. According to the respondents, the applicant was invited to participate in the Departmental Test for the post of Sr.Clerk twice in 1995, once in 1996 and more than once in 1997, but on all occasions the applicant declined to appear in the suitability test for the post of Sr.Clerk.

11. Vide Tribunal's Order dated 17-2-94 (Annexure E) the following observations/directions were made :

"In view of the above position, we dispose of this application with the order that the whole period from the date when the applicant was placed under suspension till the date of the revocation of the suspension order be treated as on duty and the applicant shall be paid the full salary for this period, after deducting the amount already paid to him by way of subsistence allowance.

The authorities are further directed to consider the applicant's appropriate regular promotion to the post of Jr.Clerk w.e.f. the date his next junior got the promotion as Jr. Clerk with appropriate seniority and he shall also be given all consequential benefits to that effect.

The order shall have to be implemented by the authorities within a period of three months from the date of communication of this order and all these have to be done strictly in accordance with appropriate rules.”

12. We find that on revocation of applicant's suspension order, the period of applicant's suspension was to be treated as on duty with full salary etc. and applicant's regular promotion to the post of Sr.Clerk was to be considered from the date the applicant's next junior got promotion in Junior Clerk with appropriate seniority and consequential benefits. We have seen the records and the respondents have also explained in their counter reply how respondents 6 & 7 became senior to the applicant having cleared the suitability test for the post of Sr.Clerk, while the applicant declined to appear in the suitability test to the post of Sr.Clerk.

13. In our view references of Rajbir Singh and other & T. Vijayan and others Supra are not applicable to applicant's case. In the former case, the petitioners had been promoted on adhoc basis and also regularised. Thus the period of their adhoc service was taken into account for determining the seniority. In the present case, the applicant had been promoted on adhoc basis but not regularised. In the latter case, too, the adhoc promotions were regularised and direct recruits employed in the meanwhile were placed before the adhoc promotees. In the present case without going into the merits of the applicant's seniority as a junior clerk, we find that Court's directions made in order dated 17-2-94 in OA 965 of 1988 and have been complied with in letter and spirit. The applicant has been accorded regular

promotion to the post of Junior Clerk w.e.f. the date of his next junior Shri Banerjee was promoted as Jr.Clerk. Accordingly the applicant has also been allocated appropriate seniority ~~at~~ S1.44/A. The respondents have been holding suitability test ~~for~~ for promotion to the post of Sr.Clerk. We have found above that the applicant declined to appear in the suitability test held for the post of Sr.Clerk despite 4 opportunities were given. Therefore there is no question of applicant's promotion without holding a suitability test to the post of Sr.Clerk. However, when the applicant has not been promoted as Sr.Clerk, the applicant having declined to appear in the related suitability test ~~and~~ applicant being a Jr. Clerk cannot be promoted to the post of Head Clerk directly.

14, In view of the reasons recorded and discussions made above this OA fails and is dismissed accordingly. No costs.

V.K.Majotra
(V.K.Majotra)

Member(A)


(D.Purkayastha)
Member(J)