

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 329 of 1989(L)

Kartar Singh Chaudhary Applicant

Versus

Union of India & Others Respondents.

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, Member (A)

(By Hon'ble Mr. Justice U.C. Srivastava, VC)

The applicant was selected by the Railway Service Commission and was appointed as a Clerk in the office of the District Controller of Stores, Alambagh, Lucknow and was confirmed as a clerk w.e.f. 1.4.1952. The grievance of the applicant in this case is that he was entitled to be promoted as office Superintendent in scale of Rs. 700-900/- (RS) now Rs. 2000-3200/- with effect from 1.10.1985 on the availability of the vacancy, but because of the Administrative lapses and acting in arbitrary manner he could not be promoted earlier, with the result, that he has been made a loser, he was only promoted in the year 1986 and he made representation against the same, but nothing has been done so far, that is why he has approached this tribunal.

2. In the year 1957 the Railway Board's issued a directions to bifurcate the seniority of personnel Branch and General Branch; and the respondent no. 2 issued a notice inviting applications from clerks grade Rs. 60-130 to exercise their option for posting in personnel Branch. Those who did not exercise their option for personnel Branch had to seek their further avenue of promotion in

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General Branch viz ministerial and non-ministerial cadre. The applicant did not exercise his option for his posting in Personnel Branch thus he was entitled for further avenue of promotion in General Branch. The applicant was declared suitable in the suitability test held for promotion as clerk grade-I/senior clerk scale Rs. 130-300/- and was promoted as such w.e.f. 28.3.1963. The post of Head clerk ^{was} was non-selection post that is why he was promoted as a Head clerk on 8.12.1980 by virtue of seniority. The selection for the post of Assistant Superintendent scale Rs. 550-750/- which was not conducted prior to 13.11.1986 and the applicant was promoted as Assistant Superintendent on adhoc basis. His grievance is that he should have been promoted w.e.f. 1.10.1985 as an Office Superintendent, purely due to administrative error, where as he was promoted as Office Superintendent w.e.f. only 15.5.1986 although the vacancy was available from before. It has been pointed out that the vacancy was caused due to retirement of Shri Balwan Singh on 1.10.1985 yet he was not promoted and though the respondent no. 2 has promoted one Shri J.N. Srivastava as an Office Superintendent with retrospective effect i.e. 1.8.1984 against the resultant vacancy caused due to retirement of previous incumbent who was working as an Office Superintendent. The said Shri J.N. Srivastava was working as an Assistant Superintendent in the Scale Rs. 550-750/- on adhoc basis and was promoted as Office Superintendent in the scale of Rs. 700-900/- w.e.f. 1.8.1984 on adhoc basis. The benefit of this post was given to the said Shri J.N. Srivastava in the selection of Assistant Personnel Officer; and thus a great disparity was created and the applicant was deprived of ~~it~~ with this benefit.

3. The respondents have opposed the application and said the applicant's promotion was an adhoc basis and he has no right to claim further promotion on adhoc basis, moreso that after retirement which took place on 31.3.88. Although a plea of limitation has also been raised that he made a representation after 7 months and thereafter he filed an application in 1989, we are not impressed with the argument as the applicant was given another promotion on 12.11.1987 and after retirement he filed a representation after 7 months. The applicant has placed reliance on the Railway Board circular dated 16.10.1964, which was issued because of the hardship of non-gazetted staff due to Administrative error and loss in seniority and pay. In the said circular which has been placed on the record and contains the following decision of the Board :-

"The matter has been considered and the Board desire that each such case should be dealt with on its merits. The staff who have lost promotion on account of Administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the stage which the employee would have reached if he was promoted at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher grade posts."

Relying on this decision the learned counsel contended that the desire of the Railway Board has issued the instruction for the appointing authority which was in the nature of mandate and appointing authority who should have acted upon ; we have to agree @@@@@@@@@@

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with the learned counsel on this behalf and accordingly this application deserves to be all well. The respondents are directed to give benefit to the applicant as per Railway Board decision contained in the year 1964. The result may be, the applicant may get some seniority or some monetary benefit and let the decision on this behalf be given within a period of three months and the benefit to which the applicant is entitled to may also be given to him within another three months, if any.



Member (i)



Vice-Chairman

Lucknow dated 25.8.1992.

(RKA)