

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH

LUCKNOW

Original Application No. 143/89

Smt. Kamlesh Kumar, widow of  
Late Prem Narain Srivastava &  
others

Applicants

versus

Union of India & others

Respondents.

Hon. Mr. Justice U.C. Srivastava, VC.

Hon. Mr. K. Obayya, Admn. Member.

(Hon. Mr. Justice U.C. Srivastava, VC)

The applicant, now deceased and now represented by his four legal representatives, filed this application praying that he may be promoted in the higher grade of Rs 2000-3200 from the date his juniors i.e. respondent Nos. 5/6 have been promoted and paid difference of pay from the date of promotion of respondent 5/6 in the grade of Rs 2000-3200 and seniority of Stenographers be combined for further avenue of promotion as being done on other railways.

2. The applicant would have retired by this time from the service. Undisputed position appears to be that in the Northern Railway, the Seniority of Stenographers working in the accounts and executive unit are separate. The proximate cause of the applicant for approaching the Tribunal was that the applicant who worked for 1½ years in the office of District Controller of Stores, Alambagh, Lucknow and when, had few months only to retire,

was transferred to Northern Railway in the accounts section, New Delhi, for which he expressed his inability to join and stated that he belonged to executive branch and he would be transferred on the said post which carried higher pay scale. It appears that the seniority of Stenographers working in Extra Divisional Office, i.e. Stores Depot, Loco Workshop, Carriage and Wagon Workshop, Alambagh, Lucknow and Workshop Electrical Engineer was combined for further promotions vide G.M.'s letter dated 8.7.51.

3. In the year 1958 the applicant was posted at Delhi temporarily. The applicant's grievance is that he being senior to respondent Nos. 5 to 8, who were appointed as Typist in the grade of Rs 950-1500 in the Extra Divisional Office while the applicant was appointed in the grade of Rs 1200-2040 and they have been promoted to the grade of Rs 2000-3200 while the applicant was not promoted and he was shifted to the Accounts side, though he had his lien on the executive side. He had been requesting that he did not belong to the accounts side and such requests had been accepted and he had given the instance of one Raj Kumar, <sup>who</sup> was taken on executive side without losing his seniority and he got promotions in executive side. This averment made by the applicant, has not been refuted by the respondents in their counter reply. According to the applicant he, having qualified in all the selections, he was entitled to grade of Rs 2000-3200. In the year 1965, the petitioner was again transferred to Lucknow in Accounts side and then he could learn that the respondents have been promoted. The applicant

made representation in respect of the same but his representation was not allowed and he was transferred to Delhi on the accounts side in the grade of Rs 2000-3200 only a few months before his retirement, which he did not accept in these circumstances as he claimed right in executive side where he had a lien.

4. The respondents have resisted the claim of the applicant stating that the applicant was posted in the Accounts unit, as a result of administrative decision, though the averment made by the applicant is that no option was taken from him and no consent was taken for being shifted to accounts side and it has been further stated that the applicant was holding a lien in accounts unit, as such he cannot be transferred to any other unit and in this unit (accounts) he was sent as he was rendered surplus from DCO/AMV but the averments made by the applicant is that juniors to him ~~xxxx~~ should have been directed to report to G.M., Northern Railway, New Delhi, when the applicant was directed to report, have not been refuted and a very evasive reply has been given.

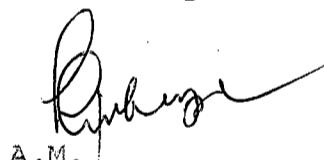
5. In the rejoinder, it has been stated that the applicant's claim from the beginning has been that the applicant was appointed against a permanent vacancy, though it was initially a temporary appointment, appears to be correct. The applicant has claimed the benefit of working 18 months continuously in the control of District Controller of Stores vide decision of the

Railway Administration dated 3.3.72. From the facts stated above, it is thus, clear that the applicant was sent to the accounts side and ~~xxx~~ belonged to the executive side. The applicant's grievance is that as a matter of fact it is the juniors who should have been declared surplus. The applicant stands uncontested. The instance which has been given by the applicant ~~Shri Raj Kumar~~ i.e. of ~~Shri Raj Kumar~~ indicates that the posts were interchangeable. The applicant belonged to the executive side. If he was sent to the accounts side where avenues of promotion were much less; where the persons junior to him got higher promotion on that side, is fully supported by the documents on record. As a matter of fact it is the junior most who should have been declared surplus and that it is interchangeable and the applicant has been claiming that he belonged to executive side and promoted to executive side in preference to his juniors. The administration's decision should not be arbitrary and should not make such classification which is not permissible. Accordingly, the plea raised by the applicant that he has not been given fair promotion is not without merit. The respondents did not consider the position of the applicant in due perspective and wrongly treated him that he had his lien on the accounts side without placing any material on the record, have banked upon their entire claim ~~with~~ which does not support the pleas which are on record. In this case a direction could have been given to the respondents not to discriminate the applicant regarding interchangeability but it will be expedient, in view of the facts

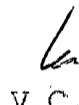
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of the case that an opportunity be given to the Department to consider the matter.

6. Accordingly, we direct the respondents that in Kumar case Shri Raj has been transferred to executive side the applicant shall also be given the benefit of the same and in case some of juniors/have been promoted, to applicant obviously, the applicant shall also be given promotion with effect from that date his juniors in the executive side, unless legally he was not holding lien on the accounts side and in case he is found entitled for the same benefit, which may be made, may now be notionally given but the pensionary benefits will be given to the applicant taking into consideration <sup>whether</sup> that last pay drawn would not be less than that of his juniors <sup>6</sup> the decision. Let a decision be taken within three months from the date of communication of this order by the relevant authority. The application stands disposed of finally in these terms.



A.M.



V.C.

Lucknow Dated: 6/9/91.