

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 85 of 2007

Reserved on 11.12.2013

Pronounced on ^{12th} 28 January, 2014

Hon'ble Mr. Navneet Kumar, Member-J

Hon'ble Ms. Jayati Chandra, Member-A

Uttam Kumar Mall, aged about 42 years, S/o late M.R. Mall, R/o 567/93 A, Anand Nagar, Barha Road, Alambagh, Lucknow.

.....Applicant

By Advocate : Sri A. Moin

Versus.

1. Union of India through G.M., Northern Railway, Baroda House, New Delhi.
2. Deputy Chief Material Manager, Northern Railway, Alambagh, Lucknow.
3. Satyendra Kumar.
4. Smt. Sushma Kumari Srivastava.
5. Smt. Sudha Rani Srivastava.
6. Sri Kripa Narain Singh.
7. Sri Rajeev Arora.
8. All respondent nos. 3 to 7 are working as Senior Clerks in the office of Deputy Chief Material Manager, N.R. Alambagh, Lucknow.

.....Respondents.

By Advocate : Sri S.P. Singh for Sri B.B. Tripathi.

ORDER

Per Ms. Jayati Chandra, Member (A)

The applicant has filed the present O.A. seeking following relief(s):-

- “(i) to quash the impugned order dated 29.6.2006 rejecting the representation of the applicant, as contained in Annexure no.A-1 to the O.A.
- (ii) to quash the impugned order dated 22.4.2006 passed on behalf of the respondent no.2 withdrawing the reversion of the applicant as contained in Annexure no.2 to the O.A.
- (iii) to quash the impugned order dated 10.2.2007 passed on behalf of respondent no.2 invited options from the respondent no.3 to 7 as contained in Annexure A-3 to the O.A.
- (iv) to direct the respondents to act on the option of the applicant for the post of DMS cadre/DMS-III and

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consider his promotion for the said post strictly in accordance with the seniority list dated 28.11.2005.
 (v) *to direct the respondents to pay the cost of this application."*

2. In a nutshell, the facts of the case are that the applicant was initially appointed as Clerk in the Grade of Rs. 950-1500/-. He was promoted to the post of Senior Clerk in the pay scale of Rs. 1200-2040/- in December, 1993. In terms of Railway Board's order dated 22.9.1969, all employees within one year of non-fortuitous promotion has to give his option for being promoted either on the ministerial side i.e. as Head Clerk or non-ministerial side i.e. as Ward Keeper. The said Board's order was subsequently clarified vide letter 26.9.1976 as enclosed in the letter dated 11.1.1977 issued by G.M. (P) New Delhi (Annexure no.5) whereby it was provided that the options of Clerical staff for promotion to the post of Ward Keeper and Head Clerk grade would be obtained only after they have qualified either of the posts and that the said option would be treated as final.

3. Without being given any opportunity to exercise his option, the applicant was promoted to the post of Head Clerk in the pay scale of Rs. 5000-8000/- vide promotion order dated 9.8.2004 (Annexure no.6). The applicant joined on the said promotional post. As he wanted to avail of the opportunity of working on the DMS cadre, he therefore, preferred a representation dated 28.7.2005, while working as Head Clerk requesting that he may be considered for promotion to DMS cadre (non-ministerial). He was informed vide office letter dated 17.8.2005 that there is no provision for obtaining option from the clerical cadre for consideration of promotion to the post of Head Clerk. More-over, option is sought from Senior Clerks in the pay scale of Rs. 4500-7000/- for consideration of promotion on non-ministerial cadre to the post of DMS cadre in the pay scale of Rs. 5000-8000/- on the occurrence of the vacancy in that post. In view of the clarification so received the applicant sought his reversion from the post of Head Clerk in the pay scale of Rs. 5000-8000/- to his original post of Senior Clerk in the pay scale of Rs. 4500-7000/- by his letter dated 23.8.2005. The request of the applicant was accepted by the respondents vide letter dated 17.10.2005 (Annexure no.11). He was placed below Sri Niranjana Singh and above Smt. Sushma

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Kumari Srivastava in the seniority list of Senior Clerks. By the same order, he was debarred from promotion to the post of Head Clerk in the pay scale of Rs. 5000-8000/- for a period of one year as per provisions of R.B. letter No. E (NG)1-76-PMI/90 dated 22.9.1978 (Annexure no.16).

4. The applicant gave his option for consideration of his case for promotion to the post of DMS cadre (non-ministerial side) on the basis of seniority position in the cadre of Senior Clerks by his letter dated 24/25.8.2005. He was assured by the respondents by letter dated 8.11.2005 that he would be asked to give his option as and when vacancy for the post of DMS III arose and if his name was in the zone of consideration.

5. Before any action could be taken on his request, the applicant was served with impugned order dated 22.4.2006 by which his earlier reversion order from the post of Head Clerk in the pay scale of Rs. 5000-8000/- to that of Senior Clerk in the pay scale of Rs. 4500-7000/- was withdrawn. The reversion order was stated to have been withdrawn as his case was not covered under PS no. 6211 dated 14.10.1974 on the subject of "effects of refusal on promotion" and the reversion order had been wrongly passed.

6. Subsequently, options were sought for promotion to the post of DMS cadre by impugned order dated 10.2.2007 from the private respondent nos. 3 to 7, but no such option was sought from the applicant, although he was placed above the private respondent no. 4 namely Smt. Sushma Kumari Srivastava in the seniority list of Senior Clerks.

7. The respondents have filed Counter Reply stating therein that the provisions of Railway Board's order dated 26.9.1969 with regard to seeking option prior to promotion to the post of Head Clerk, had been considerably modified through various agreements with recognized unions. In particular, they have referred to the decision arrived at consequent upon to the meeting dated 20.1.2003 to the effect that options for promotion to DMS - III posts are to be sought only on occurrence of vacancies. For regular promotion to ministerial side, no such option is need to be

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sought. Thus, there was no need for any calling for option from the applicant prior to his promotion to the post of Head Clerk from Senior Clerk. The applicant was promoted as Head Clerk alongwith eight other employees vide office order dated 9.8.2004. The applicant was also informed the same vide letter dated 17.8.2005.

8. It is admitted that although the applicant was allowed to be reverted to the post of Senior Clerk by order dated 17.10.2005, the same was withdrawn as per direction of General Manager (P) letter dated 19.4.2006 as the reversion was not in accordance with Railway Board's letter dated 22.9.1978 (Annexure no.16) It is also pleaded by the respondents that as the applicant's reversion order has been withdrawn, he was not eligible for being considered to the post of DNS-III on non-ministerial side.

9. Rejoinder Reply has also been filed by the applicant denying the averments made by the respondents in their Counter Reply and reiterating the averments made in the O.A.

10. Supplementary Counter Reply has also been filed by the respondents reiterating the stand taken in the Counter Reply.

11. Heard the learned counsel for the parties at length and perused the materials available on record.

12. Looking on the facts of the case, it is clear that the applicant was promoted from the post of Senior Clerk in the pay scale of Rs. 4500-7000/- to the post of Head Clerk in the Pay scale of Rs. 5000-8000/- vide promotion order dated 9.8.2004. He worked as Head Clerk for a period of little over one year. The applicant gave an application dated 23.8.2005 seeking his reversion as Senior Clerk which was accepted by the respondents vide their letter dated 17.10.2005. Perusal of reversion order dated 17.10.2005 shows that the contention of reversion are in accordance with RRB letter no. E(NG)1-76/PMI90 dated 22.9.1978 which reads as follows:

".... A person who refuses promotion or seeks reversion after some period stands debarred for promotion for one year. He would, however, lose seniority position below the persons who may be promoted from the panel to which he belongs during the period of one year when he stands debarred for

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promotion. He will, however, remain above the persons empanelled in the subsequent panel if any formed during this period of one year. But if an employee refuses promotion for the second time after the one year period is over, he will have to appear again for a suitability test/selection for empanelment."

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13. The para quoted above makes it clear that ^{there} is a provision for acceptance of a "reversion after some period". On the other hand, the provisions of Sl. No. 6211 circular dated 19.10.1974 reads as follows:-

The matter referred under your office letter cited above has been examined. It is advised that the reversion of Sri Uttan Kumar Mall from the post of Head Clerk grade Rs. 5000-8000/- to the post of Sr. Clerk Gr. Rs. 4500-7000/- at the same station is not governed by para 224 (ii)(4) of IREM Vol. 1 and P.S. No. 5518 and, therefore, not in consonance with the spirit of the rules as per instructions already issued under P.S. no. 6211.

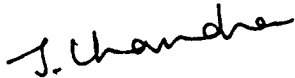
The respondents have chosen to follow this provision without reference to the provision of the later letter dated 22.9.1978. They have further produced a copy of letter dated 19.4.2006 which refers to provision of para 224 of IREM Vol. II.

A perusal of referred para 224 shows that it deals with persons who refuses to avail of promotion either by refusal in writing or by factual non-joining on the post for which he is selected. The case of the applicant is different in that he had actually joined on the promotional post and had worked for over a year. He had subsequently sought reversion and, therefore, his case is rightly covered under the provision of letter dated 22.9.1978.

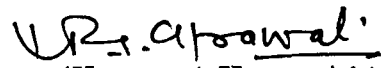
14. In view of what has been stated above, the O.A. succeeds. The impugned orders contained at Annexure nos. 1,2 and 3 are hereby quashed. The respondents are directed to consider the claim of the applicant for promotion to the post of DNS Gr.III in

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accordance with the rules and regulations on the subject. The above exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order. No costs.



(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

Girish/-