

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. NO.354 of 1996

Date of order || -8-1999.

Murari Sharan, son of Late Kedar Nath Shrivastava,
resident of Mohalla Nayatola (Yadav Chauk), Hajipur, District
Vaishali.

Applicant

-versus-

1. The Union of India, through the Chairman,
Railway Board, Rail Bhawan, New Delhi-110 001.
2. The General Manager, Farely Place, Eastern Railway,
Calcutta.
3. The Chief Personnel Officer, Farely Place,
Eastern Railway, Calcutta.
4. The Divisional Railway Manager, Eastern Railway,
Khagaul, Danapur, Patna.
5. The Sr. Divisional Personnel Officer, Eastern
Railway, Khagaul, Patna.
6. Smt. Jagriti Nandan, Head Clerk, Personnel
Branch under Senior Divisional Personnel Officer,
Eastern Railway, Khagaul, Danapur, Patna.
7. Sri Pravesh Nandan Sahay, Head Clerk, Personnel
Branch under Senior Divisional Personnel Officer,
Khagaul, Patna.

Respondents

Counsel for the applicant

.. Shri Amit Srivastava.

Counsel for the respondents

.. Shri A.K. Tripathy.

CORAM

: Hon'ble Shri L.R.K. Prasad, Member (A)
Hon'ble Shri Lakshman Jha, Member (J)

O R D E R

Hon'ble Shri L.R.K.Prasad, Member (A):-

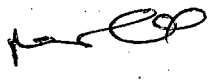
This application has been filed with the following prayers:-

- (i) The order dated 16.7.1996 as at Annexure-1 be quashed.
- (ii) The respondents be directed to the effect that the applicant is eligible to take part in the selection for the post of Office Superintendent Grade II.
- (iii) The applicant be declared senior to respondent no.6 and 7 in the cadre of Clerk Grade I in the scale of Rs.1200-2040(RP). Accordingly, the applicant be placed above the respondent no.6 and 7 in the seniority list as contained in Annexure-A/7.

2. The applicant was appointed as directly recruited Graduate Clerk Grade I from the open market against 20% quota on 16.5.1984 in the office of DME (P), Danapur. On the request made by the applicant, he was transferred from the office of DME (P), Eastern Railway, Danapur to Personnel Department in the same zone against a permanent vacancy of direct recruit Graduate Clerk Grade I under 20% quota. He joined on the transferred place on 27.10.1984. According to the respondents, as the applicant was transferred at his request from one seniority group to another seniority group, he was assigned bottom seniority as per rules. The respondent no.6 (smt. Jagriti Nandan), who was appointed as Clerk Grade II in October, 1982, was promoted as Clerk Grade I on ad hoc

basis with effect from 1.8.1984. She was so promoted on the basis of serving graduate quota (13.1/3%) written examination held on 12.2.1984 and viva voce test held on 13.8.1984. Her services were regularised with effect from 1.9.1984, the date of ad hoc promotion of clerk grade I.

3. The applicant has pointed out that one P.N. Sahay (respondent no.7) was appointed in Clerk Grade II on 20.12.1980 in the office of DRM(P) Mughalsarai. At his request, he was transferred in December, 1982 to the office of DRM(P), Danapur in the same grade. He was absorbed against 13.1/3% direct serving Graduate quota vacancy with effect from 22.4.1988. However, it is alleged by the applicant that the services of respondent no.7 were regularised in Clerk Grade I from the date of ad hoc arrangement (1.8.1984). It is further alleged by the applicant that ad hoc promotion as Clerk Grade I was granted to respondent no.6 and 7 against earmarked vacancies for direct recruit Graduates. This action of the respondents is against the circular of the Railway Board dated 5th September, 1983 (Annexure-A/7), according to which the vacancies arising from 2.10.1980 and onwards which are earmarked for direct recruitment from the open market through Railway Service Commissions or by serving Graduates through a limited competitive examination should remain unfilled until further orders. These vacancies should not be filled even on ad hoc basis.

 It is the claim of the applicant that in view of the aforesaid position, the respondent no.6 and 7 cannot be declared senior to the applicant on the ground that he had

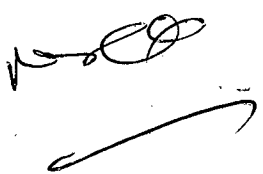
already been confirmed as Clerk Grade I on 1.9.1984/ 27.10.1984. In the seniority list published on 23.9.1985 for Clerk Grade I, respondent no.6 was shown at Serial No.48, applicant at Serial No.50 and respondent no.7 at Serial no.61. However, in the seniority list of Clerk Grade I published on 18.6.1991 (Annexure-2), the respondent no.7 has been shown at serial no.12, the respondent no.6 at Serial No.13 and the applicant at Serial No.16. With reference to said seniority list, the applicant sent a representation to the concerned authority on 24.3.1992.

4. The applicant was promoted as Head Clerk vide order dated 21.10.1992 (Annexure-A/9) ~~after~~ passing the departmental test. Vide order dated 12.1.1995 (Annexure-A/11) the respondent no.6 and 7 were also promoted as Head Clerk with effect from 21.10.1992. It means that the respondent no.6 and 7, though their promotion order (Annexure-A/11) was issued on 12.1.1995, their promotion was given retrospective effect. vide his representation dated 14.2.1995 (Annexure-A/12) the applicant requested the authority concerned to place respondent no.6 and 7 below him and in this regard he placed reliance on an order dated 1.6.1990 passed in O.A.155/89 by this Bench. In his representation dated 14.2.1995 he pointed out the facts of the case. While referring to the order of this Bench passed in O.A.155/89 (supra) he requested for fixing his seniority over respondent no.6 and 7. He sent further representation on 19.7.1996 (Annexure-A/13) in this regard. However, as he did not get any response from the respondents, he filed this O.A. claiming certain

reliefs which have already been mentioned earlier.

5. In this case written statement as well as rejoinder to written statement have been filed.

The respondents have challenged the contentions of the applicant by stating that he was assigned bottom seniority in the clerk grade I because at his request, he was transferred from one seniority group to another seniority group which has been done in accordance with extent rules. As the respondent no.5 had been promoted on ad hoc basis on the post in question prior to joining of the applicant, she was regularised later on from the same date. The respondent no.7 was promoted on ad hoc basis and subsequently regularised from the same date. The seniority question was re-adjusted in accordance with Rule 302 of IREM. It is the stand of the respondents that transferred staff from one seniority group to the other seniority group will be placed below all the existing confirmed/officiating/temporary staff in the relevant grade in the new establishment as per Rule 312 of IREM and the Railway Board's circular dated 21.1.1986. The applicant has challenged this stand of the respondents. According to the applicant, in terms of Rule 302 of IREM, the seniority amongst incumbents in the grade is governed by date of appointment in that grade. As the applicant was appointed as Clerk Grade I from 1.9.1984 and respondent no.6 by order dated 26.2.1985 and respondent no.7 vide order dated 22.4.1988, the applicant cannot be placed junior to the aforesaid respondents in the seniority list of Clerk Grade I.



It is further pointed out that para 312 of IREM is applicable in cases where transfer is made on the request of the person concerned from one Railway to another and not with the same Railway. In the case of the applicant, he was not transferred from one Railway to another but he was transferred within the same Railway under direct recruit quota of Clerk Grade I. It would be appropriate to extract below Rules 302 and 312 of IREM for better appreciation of the case:-

"302. seniority in initial recruitment grades- Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-se-seniority of promotees and direct recruits among themselves. When the date of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se-seniority of each group.

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NOTE- In case the training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training."

"312. Transfer on request.- The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating of temporary service of the transferred railway servants.

NOTE:-(i) This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway.

(Rly.Bd.NO.E(NG) I-85 SR 6/14 of 21.1.1986)

(ii) The expression "relevant grade" applies to grade where there is an element of direct recruitment. Transfers on request from Railway employees working in such grades may be accepted in such grades. No such transfers should be allowed in the intermediates grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no element of direct recruitment.

(NO.E(NG) I-69 SR 6/15, dated 24.6.1969)ACS-14)"

6. It is an admitted fact that respondent no.6 and 7 were officiating in the Clerk Grade I on ad hoc basis while the applicant was appointed as regular clerk under 20% direct recruit quota on 16.5.1984/27.10.1984. It is also a fact that at his request, the applicant was transferred from one group to another within the same Railway on 1.9.1984. Railway Board's circular dated 12.8.1983 (Annexure-A/7) had advised concerned authorities not to fill up the vacant post of Clerk Grade I on ad hoc basis. The respondent no.6 and 7 were promoted under departmental competitive quota on the post of Clerk grade I on 26.2.1985 which is clear from Annexure-A/4. On the basis of requisite test, the respondent

no.7 was promoted to the post of clerk grade I vide order dated 22.4.1988/ (Annexure-A/5). In the case of respondent no. 6 and 7, their services as clerk grade I have been regularised with effect from 1.8.1984, counting the period of ad hoc officiation. According to the applicant, their seniority should have been counted in the post in question from the date of regular appointment after they had passed the requisite test which was held after the applicant had already been appointed on regular basis in the post of clerk grade I.

7. It is noted that arising from the decision of the Hon'ble Apex Court in CP No.374 in Civil Appeal No.4265/98 regarding benefit of proforma fixation of pay as clerk grade I from 1.10.1980 to serving Graduate Clerk grade II on their qualifying LDCE and determination of inter-se-seniority, the Railway Board issued appropriate circular dated 19.3.1999 which is at Annexure-16 (circulated to all concerned in the Eastern Railway vide CP circular dated 24/26.3.1999 (Annexure-16). The ~~said~~ circular of the Railway Board is reproduced below :-

"Pursuant to Hon'ble Supreme Court's order dt. 12.3.96 in OA No.4365/96 (Smt. Anuradha Mukherjee & Ors.vs. UOI & Ors) along with other tagged Appeals, instruction as contained in Board's letter of even no. dated 17.1.97 to Eastern and Northern Railways were issued. subsequently, these instructions were applied to all similarly placed employees in other Rlys,etc. vide Board's letter of same no. dated 7.10.97. In response to these instructions, several reference were received seeking clarifications as to whether in terms of

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the instructions ibid Senior clerks would be entitled to seniority with effect from actual date of promotion after completion of due process or from the date of proforma fixation. After detailed examination it was clarified vide Board's letter of even no. dated 5.6.98 that the seniority should be assigned from the date of proforma promotion.

The Hon'ble Supreme Court while disposing of a contempt petition (No.374/98) filed by some of the Rlys. employees challenging Board's instructions dt.5.8.98 vide their order dated 21.2.99 have held:-

But having examined our earlier judgment and the directions contained in paragraph 7 of the said judgment we have no hesitation to come to the conclusion that the Court merely directed that the proforma promotion would count only for the purpose of computation of pension and the concerned employees will neither get seniority nor any monetary benefit on that score. In that view of the matter, the order dt.5.6.98 of the Rly, Board is certainly contrary to the directions of this court but in the circumstances under which the same was issued, it is not possible to hold that the concerned authorities deliberately passed the said order. Therefore, while we are not taking any action in the Contempt Proceedings, we direct that our directions be followed, as clarified in this order, within a period of six weeks from today.

In view of the Hon'ble Supreme Court's order, the instruction communicated vide Board's letter of even no. dated 5.6.98 stand withdrawn. Further, necessary action in the light of the supreme Court's directions should be taken immediately so as to ensure strict compliance within the stipulated period."

psl

8. It appears from the record that so far as prayer of the applicant for including his name in the list of candidates appearing in the selection test as per letter dated 16.7.1996 (Annexure-1) is concerned, the matter has already been considered by this Tribunal vide order dated 2.8.1996. This Tribunal granted interim relief to the applicant by directing the respondents to include the name of the applicant also in the list at Annexure-1 in order to enable him to appear at the selection test which was to be held on 3.8.1996 for the post of O.S. Grade II. This was, however, subject to final outcome of the O.A. in regard to seniority. In view of the aforesaid order of the Tribunal, the prayer of the applicant for appearing in the examination for the post of O.S. Grade II becomes infructuous. That being the position, the learned counsel for the applicant stated during hearing that the applicant is not pressing the reliefs claimed in this regard as at para 8.1 and 8.2 of the O.A. In such a situation, the only point remains for adjudication is the matter relating to seniority of the applicant vis-a-vis respondent no.6 and 7.

9. During the course of hearing, the learned counsel for the applicant stressed the point of seniority of the applicant vis-a-vis respondent no.6 and 7 in Clerk Grade I. It is squarely covered by the circular of the Railway Board dated 24/26.3.99 as at Annexure-16 which is based on the judgment of the Hon'ble Apex Court in the matter of Smt. Anuradha Mukherjee and others vs. Union of India and others (supra) which relates to benefit of proforma fixation of pay as Clerk Grade II from 1.10.1980 to serving Graduate Clerk Grade II on their qualifying LDCE and determination of inter-se-seniority. The learned counsel for the respondents conceded that the case of the applicant is governed by the

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judgment of the Hon'ble Supreme Court in the case of
Smt. Anuradha Mukerjee and others vs. UOI and others (supra).

10. In view of the facts and circumstances of the case analysed above, we are of the view that the case of the applicant is covered by the above direction of the Hon'ble Apex Court. Accordingly, the respondents are directed to fix the seniority of the applicant vis-a-vis respondent no.6 and 7 in the cadre of Clerk Grade I in terms of the instructions of the Railway Board dated 19.3.1999 as contained in Annexure-16 within a period of three months from the date of receipt of a copy of this order. With the aforesaid direction, this O.A. is disposed of with no order as to the costs.

Lakshman Jha
11.8.99
(Lakshman Jha)
Member (J)

L.R.K. Prasad
11/8/99
(L.R.K. Prasad)
Member (A)

Mahto