

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

Original Application No. 13 of 1996

DATE OF ORDER: July 16, 2002.

Nirankar Nath, son of late Ram Nandan, resident of village - Naubatpur, P.S. Saiyed Raja, District - Varanasi, U.P..

... APPLICANT.

By Advocate : Shri R.N. Mukhopadhyaya.

Versus

1. The Union of India through the General Manager, S.E. Railway, Garden Reach Calcutta - 43.
2. The Chief Personnel Officer (Engineering), S.E. Railway, Garden Reach, Calcutta - 43.
3. The Division Railway Manager (P), S.E. Railway, Chakradharpur, Bihar.
4. The Senior Divisional Personnel Officer, S.E. Railway, Chakradharpur, Bihar.

.... RESPONDENTS.

By Advocate : Shri Gautam Bose.

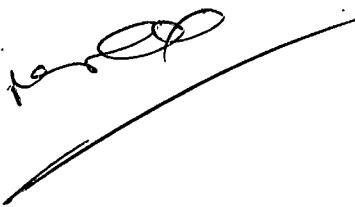
C O R A M

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

Hon'ble Smt. Shyama Dogra, Member (J)

O R D E R (Dictated in Court)

By L.R.K. Prasad, M(A):- This application has been filed seeking the following reliefs:-



- (a) That the respondents be directed to consider the case of the applicant for promotion to the post of O.S. Grade II with effect from the date the post was upgraded, and was not considered by the respondents railway on non-existent ground.
- (b) That the respondents be directed to consider the case of the applicant for promotion to the post of O.S. Gr. I with effect from 1.10.1980 taking into account that the post fell vacant but the case of the applicant was not considered at that point of time.

(c) The respondents be directed to provide the applicant arrears of salary/difference in scale etc. including the fixation of pay-scale for the purpose of calculating the post-retirement benefits and thereafter to release the same in favour of the applicant.

2. Heard learned counsel for the parties and perused the materials on record. The applicant was initially appointed as Ty. Office Clerk (Junior Clerk) in 1958 at Kharagpur (South Eastern Railway). In course of time, he was promoted as Head Clerk. Prior to 1.1.1979, the seniority of clerks of Engineering Department used to be maintained in three different groups, namely, Accounts, Store and Time Keeper. The promotions were made on the basis of the seniority position, sanctioned cadre separately maintained in each group. However, with effect from 1.1.1979, a combined seniority list of Head Clerk under the Engineering Department was prepared and published. The said seniority list is at Annexure -1. In the said seniority list, the applicant is at serial no. 20. The applicant has challenged this seniority list, stating therewith that the persons mentioned from serial no. 6 to 16 are junior to him. The said seniority list was challenged before the Hon'ble High Court at Calcutta vide CWJC No. 6120 (W)/1980. The said case was disposed of on 29.6.1983, and the order is at Annexure-15, whereby the said seniority list was quashed, and the concerned railway authorities were asked to follow the

the Railway Board's instructions for preparing a revised seniority list. In pursuance to the aforesaid direction, a revised seniority list of Head Clerk was prepared in 1985, which is at Annexure -2, in which the applicant has been shown at serial no. 8. It is the stand of the applicant that he should be given promotion to OS Gr. II and OS Gr. I as per the revised seniority, and consequently, he be promoted as OS Gr. II with effect from 1.6.1979 and as OS Gr. I with effect from 1.10.1980 along with all consequential benefits. However, the factual position is that the applicant was promoted as OS Gr. II with effect from 1.10.1980 and OS Gr. I with effect from 1.1.1984 under restructuring scheme and as per law, as submitted on behalf of the respondents. He retired from service on 31.7.1991.

3. While it has been explained on behalf of the respondents that so far as promotion to OS Gr. II is concerned, necessary promotions were given to the persons who were senior to the applicant, and on the basis of roster reservation against the vacant post of OS Gr. II. It is further submitted on behalf of the respondents that the applicant has been correctly promoted as OS Gr. II in 1980 and as OS Gr. I in 1984.

4. During the course of arguments, the learned counsel for the respondents drew our attention to paras 6, 11, 12 and 16 of the written statement. It is

submitted that as on 1.6.1979, two posts of OS Gr. II were sanctioned with effect from 1.1.1979 due to upgradation and another three posts were sanctioned due to upgradation from 1.6.1979. As such, there were five posts of OS Gr. II available due to upgradation, and a panel of five names were published for promotion to OS Gr. II, and those, who were promoted were senior to the applicant. However, all promotions granted on or after 1.1.1979 were subsequently treated as ad hoc, as indicated in the foot note (6) of the seniority

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list of Head Clerks. The respondents have stated that the seniority position of the applicant as on 13.12.1978 was assigned at serial no. 8. Taking into account the vacancies position as on 1.1.1979 and 1.6.1979, five senior most head clerks, including those / falling under reservation roster were promoted on the said date, which included one S.C. and one S.T. At this stage, the learned counsel for the applicant drew our attention to the documents at Annexure - R, according to which the number of posts of OS Gr. II as on 1.6.1979 has been shown as eight. He pointed out that as the applicant is at serial no. 8 in the revised seniority list, he should have been given promotion as OS Gr. II on 1.6.1979. Reacting to the reservation policy, the learned counsel for the applicant stated that the roster becomes applicable against the total number of

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of a particular post / grade
vacancies and not the vacancies which are available at a particular time. He stated that the persons who were out-side the cadre have also been given promotion as *L* OS Grade II ignoring the claim of the applicant.

5. According to the respondents, there were only five posts available in 1979 for promotion to OS Gr. II. The learned counsel for the respondents stated that the roster policy was also taken into account while filling up the post of OS Gr. II in 1979. He also stated that the applicant has been promoted as OS Gr. I with effect from 1.1.1984 as per the restructuring scheme. He cannot be given promotion from 1980 as has been claimed by him. While referring to the explanation given in the written statement, the learned counsel for the respondents stated that the claim of the applicant is not maintainable.

(/ submissions made on behalf of the parties,
6. From the *there* appears to be some kind of dispute with regard to factual position relating to availability of vacancies and application of roster policy at the relevant time when the promotions were made in the grade of OS Gr. II and I. The dispute can be settled after going through the records and examining the factual position in the light of the prescribed rules on the subject. The applicant is also required to present his case in clear terms so as to enable the respondents to take necessary decision, in the matter with regard to his claims in accordance with law, as

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it existed at the relevant time.

7. In view of the above facts and circumstances of the case, we dispose of this original application by granting the applicant liberty to file before the concerned respondents a proper representation, explaining his case, within a period of four weeks from today. The respondents concerned is directed to consider the aforesaid representation of the applicant, if so filed, in accordance with law and dispose of the same by passing speaking order within three months thereafter. No order as to costs.

/CBS/


(SHYAMA DOGRA)
MEMBER (J)


(L.R.K. PRASAD)
MEMBER (A)