

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 315/87

199

~~T.A. NO.~~

DATE OF DECISION 7-9-92

Mrs. Mona L. Chhugani

Petitioner

Shri G.S. Walia

Advocate for the Petitioners

Versus

Union of India and others

Respondent

Shri A.L. Kasture

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice S.K. Dhaon, Vice Chairman

The Hon'ble Mr. M.Y. Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *N*
2. To be referred to the Reporter or not ? *N*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *N*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *N*

mbm*

[Signature]
(M.Y. Priolkar)
(S.K. DHAON) M(A)
VICE CHAIRMAN

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 315/87

Mrs. Mona L. Chhugani
V/s.

... Apolicant.

Union of India through
General Manager, Western
Railway, Churchgate, Bombay.

General Manager, Western Railway,
Churchgate, Bombay.

Chief Personnel Officer,
Western Railway,
Churchgate,
Bombay.

Controller of Stores,
Western Railway, Churchgate,
Bombay.

.. Respondents.

CORAM: Hon'ble Shri Justice S.K. Dhaon, Vice Chairman
Hon'ble Shri M.Y.Priolkar, Member (A)

Appearance:

Shri G.S.Walia, counsel
for the applicant.

Shri A.L. Kasture; counsel
for the respondents.

JUDGEMENT

Dated: 7-9-92

¶ Per Shri M.Y.Priolkar, Member (A) ¶

The applicant, while working as Senior Clerk in the Western Railway, was promoted to officiate as Head Clerk on adhoc basis by order dated 3.1.1981. She is stated to have continued to work as Head Clerk without interruption until the date of filing of this application viz. 27.4.1987, and till she ~~retired~~ on ~~super~~annuation on 31.12.1988. The applicant states that the post of Head Clerk is a non-selection post which is filled in on the basis of seniority-cum-suitability and that the seniority in non-selection posts is to be reckoned with reference to the date of promotion to the non-selection post under para 320 of the Indian Railway Establishment Manual (IREM). According to the applicant, a seniority list of Head Clerks was issued by the respondents on

1.12.1984 in which her name was not included against which the applicant represented on 22.12.1984 submitting that she should be shown in that list above one G. Madhusudan at Sr.No. 77. On the basis of the reply received and subsequent correspondence with the respondents, the applicant further represented on 27.6.1986 that her seniority as Senior Clerk has been wrongly shown at Sr. No. 118 in the seniority list of Senior Clerks dated 7.11.1984 wherein she should have been correctly placed at Sr.No. 70 above G.Madhusudan. She also submitted that she had been promoted as Head Clerk on 8.2.1980 whereas G.Madhusudan had been promoted as Head Clerk on 24.8.1981. The reliefs sought in this application are (a) for quashing letter dated 16.4.1987 of the respondents by which her above representations ~~were rejected~~, (b) for direction for fixing her seniority as Senior Clerk and also as Head Clerk above G.Madhusudan and (c) for direction for considering and promoting her to the higher post of Chief Clerk from 1.1.1984 with consequential benefits.

2. It is clear from the above narration that the real grievance of the applicant is that she has not been considered for promotion to the post of Chief Clerk to which she claims that she was entitled on the basis of what, according to her, should have been her correct seniority in the grade of Head clerk. The only question that arises for our determination is, therefore, whether the applicant had been assigned correct seniority in the grade of Head Clerk. The relevant rule governing seniority in non-selection posts in Railways, namely para 320 of IREM has been reproduced by the applicant at page 4 of the paper book according to which "a railway servant, once promoted against a vacancy which is non-fortuitous, should be considered as senior in that grade to all others who are

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subsequently promoted." The learned counsel for the applicant could not show us any other rule or instructions which require that the seniority in Head Clerk's grade will be determined by the seniority in the grade of Senior Clerk. No doubt, the seniority in the grade of senior clerk would have been material for consideration for promotion to the post of Head Clerk either on adhoc or regular basis but nowhere in the present application nor in any of her representations on record, has the applicant alleged that because of wrong fixation of seniority as Senior Clerk, her juniors in that grade were considered earlier for promotion to the post of Head Clerk. In fact, when the provisional seniority list of Senior Clerks was circulated on 7.11.1984 in which she claims she should have been placed above G. Madhusudan at Sr. No. 70 but was actually shown at Sr. No. 118, she did not make any representation although objections were specifically invited from the aggrieved employees within two months from the date of circulation of that list. She represented on 22.12.1984 only against non-inclusion of her name in the seniority list of Head Clerks circulated on 1.12.1984 stating ^{that} she had been working as Head Clerk since 11.9.1981. Besides, neither G. Madhusudan nor any of the others over whom the applicant claims seniority on the basis of her continuous officiation earlier as senior clerk have been impleaded as respondents in the present application. In any case, as we have stated earlier, the only substantive prayer of the applicant which is for monetary benefits of promotion to the post of Chief Clerk has to be decided with reference to the seniority in the post of Head clerk alone. For all these reasons, we reject the applicant's prayer for fixing her seniority above G. Madhusudan in the seniority list of senior clerks dated 7.11.1984.

3. In support of her prayer for higher seniority in the grade of Head Clerk, the learned counsel for the applicant has relied, apart from para 320 of IREM, on a judgement dated 26.3.1991 of this Tribunal, Bombay Bench in OA No. 213/87 in the case of K.K. Petmur V. Union of India and others (not reported) in which it was held that it is the continuous officiation which determines the seniority unconnected with confirmation. This judgement was based on the Supreme Court decision in the case of Direct Recruits Class II Engineering Officers Association V State of Maharashtra and others (AIR 1990 SC 1607) in which, inter alia, it is held that where the initial appointment is only adhoc and not according to rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for the purpose of seniority. The Railway rule quoted by the applicant also states that promotion against a non-fortuitous vacancy only shall count for the purpose of seniority. The applicant's claim for assigning her seniority in the grade of Head Clerk from the date of her promotion is, therefore, to be decided on the fact whether her appointment as Head Clerk was or was not a stop gap arrangement ~~against a fortuitous~~ vacancy.

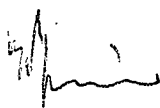
4. The respondents have stated in their written reply dated 31.7.1987 that the applicant was promoted as Head Clerk purely on adhoc basis against leave vacancy of 45 days by order dated 3.1.1981, and continued further to work as Head Clerk against the vacancies caused due to the staff proceeding on leave from time to time, and all these promotions were purely on adhoc basis and her name was not, therefore, included in the seniority list dated 1.12.1984 of Head Clerks. This is not disputed by the learned counsel for the applicant whose contention is that the promotions of G. Madhusudan and some others were also on adhoc basis and the

applicant is, therefore, entitled to seniority above G. Madhusudan on the basis of her earlier adhoc promotion. It is not possible for us to accept this contention. Promotion, without interruption, even though it may be on adhoc basis, will count for seniority under para 320 of IREM, provided it is against a non-fortuitous vacancy. Promotions against a chain of leave vacancies cannot evidently be considered to be promotions against non-fortuitous vacancies. From the office order dated 3.1.1981 (Exhibit A), it is clear that the applicant, then a clerk, was promoted to officiate as Head Clerk ~~as on~~ adhoc basis vice Smt. Daniels who had proceeded ~~on~~ 45 days leave. This promotion was thus against a fortuitous vacancy. The office order dated 22.4.1982 (Exhibit B) states that the applicant who is officiating in leave vacancy as Head Clerk is continued in the same scale and pay vice Shri Karnik promoted as Chief Clerk. The same order also states that G. Madhusudan is promoted on adhoc basis vice Shri Jagtap. The benefit of officiation in fortuitous vacancies for seniority is thus not available to the applicant. It is not apparent from these office orders nor it is the contention of the applicant that the adhoc promotion of G. Madhusudan was also against leave vacancies ~~or~~ other fortuitous vacancies. In any case, G. Madhusudan has not been impleaded as a respondent in this application. We are, therefore, unable to grant any relief to the applicant in respect of her ~~claim~~ for seniority as Head Clerk above G. Madhusudan.

5. The learned counsel for the applicant also contended that by Memorandum dated 5.1.1984 a provisional list of candidates was circulated for selection to the post of Chief Clerk where the

applicant was shown above G.Madhusudan. The learned counsel for the respondents, however, stated that the names in this list have not been shown in the order of their seniority as Head Clerk as alleged by the applicant. There is nothing in this communication dated 5.1.1984 which indicates that the names notified therein were in the order of seniority. Since the applicant is stated to be entitled to be promoted as a Chief Clerk on the basis of her seniority as a Head Clerk from the date of initial promotion to that post, the claim for which has been negatived by us, it is not possible for us to give any direction regarding her promotion as Chief Clerk.

6. This application is, accordingly, dismissed with no order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(S.K. DHAWAN)
VICE CHAIRMAN

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